



11 APR. 2005

Report on human rights issues in Nigeria

Joint British-Danish fact-finding mission
to Abuja and Lagos, Nigeria

19 October to 2 November 2004

Copenhagen, January 2005

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1. Introduction

- 1.1. This report presents the findings of a joint British-Danish fact-finding mission to Nigeria, conducted by the Danish Immigration Service (DIS), Documentation and Project Division, Asylum Department and the British Home Office, Immigration and Nationality Directorate (IND), Country Information and Policy Unit (CIPU) as part of a continuing programme of collaboration on fact-finding missions.
- 1.2. The fact-finding mission was conducted to obtain detailed factual information about conditions in Nigeria as they relate to specific aspects of the determination of asylum and human rights claims made in the United Kingdom (UK) and Denmark. The full terms of reference for the fact-finding mission are in **Annex 1**.
- 1.3. This report is not intended to be a detailed or comprehensive survey of all human rights issues in Nigeria. If some facts or events are not mentioned in the report it is not an indication that these do not exist but more that the information is not of direct relevance to common types of asylum and human rights claims made in Denmark and the UK.
- 1.4. In the report, care is taken to present the views of the various spokespersons in an accurate and transparent way. It is inevitable that this report will contain some seemingly contradictory statements. However, it should be noted that the report has been produced to accurately reflect, as far as possible, what the delegation were informed in the various meetings attended and does not contain any opinions or policies of the DIS or the IND.
- 1.5. The delegation met with representatives of Nigerian authorities including the National Human Rights Commission (NHRC), diplomatic representatives, International Organization for Migration (IOM), a number of Non-Governmental Organisations (NGOs) and media organisations as well as advocates, political and religious commentators. All authorities, individuals and organisations referred to in this report were advised as to the purpose of the mission and consented to the information they provided to the delegation to be used in the report and for it to be attributed to them.
- 1.6. The report also includes information from a number of written sources. The written sources include reports by NGOs, researchers, news agencies and government authorities. Also used are documents, reports, etc. provided by organisations, authorities and individuals with whom the delegation met in Nigeria. Where such material is used it is appropriately attributed.
- 1.7. The mission to Nigeria took place from 19 October to 2 November 2004. The delegation visited Abuja and Lagos. The British High Commission (BHC) in Abuja and in Lagos supported the delegation by organising meetings and providing logistics. For security reasons the delegation was supplied with the BHC's armoured vehicles as well as armed police guards during its stay in Lagos.
- 1.8. The delegation comprised Jens Weise Olesen, Senior Adviser - Africa, Jan Olsen, Regional Adviser - Africa, DIS, Copenhagen and Andrew Saunders, Head of CIPU of the IND, Home Office, London. The report has been jointly written by the delegation.

2. Human rights – overview

- 2.1. Nigeria is a federal republic composed of 36 states and the Federal Capital Territory (FCT) including the federal capital Abuja. The states are divided into 768 local government areas.¹ A map of Nigeria is included as **Annex 2**.
- 2.2. 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.²
- 2.3. The BHC provided the delegation with an overview of human rights developments in Nigeria and explained that 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 routinely 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 NHRC and appointed a panel under Justice Oputa to hear grievances from those who had suffered under former regimes. The BHC added that Nigeria has a free and vibrant press, which routinely draws public and government attention to human rights abuses.
- 2.4. The BHC stated that the international community, including the UK, accepted both the 1999 and April 2003 elections, which saw Obasanjo re-elected in accordance with the 1999 constitution. The 2003 elections also resulted in Obasanjo's People's Democratic Party (PDP) winning 70 per cent of the seats in the national legislature and 75 per cent of the state governorships. International and domestic observers stated that these elections were marred by serious irregularities and fraud, including political violence. Opposition parties continued to challenge the election in court during 2004.
- 2.5. The BHC emphasized that the government of Obasanjo has 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 a result of the 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. The law enforcement agencies suffer from a lack of resources, particularly inadequate training. But Obasanjo has ended the pattern of systematic state-sponsored human rights abuses that were prevalent under military rule.

¹ Europa Publications, *Africa South of the Sahara 2005*, London, 2004, p. 867.

² Home Office, *Nigeria – Country Report*, London, October 2004, section 5.1.

- 2.6. In its World Report 2005 Human Rights Watch (HRW) reported: "Under President Obasanjo, Nigeria continues to enjoy a generally positive image in the eyes of foreign governments. The country has assumed regional significance through Obasanjo's chairmanship of the African Union and his efforts to broker peace in the Darfur region of Sudan. This, combined with Nigeria's economic significance as a major oil producer, creates an unwillingness on the part of key governments—notably the United Kingdom and United States—and intergovernmental organizations such as the African Union and the Commonwealth—to criticize Nigeria's human rights record, despite abundant evidence of serious human rights problems and little action on the part of the government to address them."³
- 2.7. In early 2003 HRW considered: "human rights improvements have taken place under Obasanjo's government, especially in terms of respect for freedom of expression."⁴ However, HRW reported in January 2005 "Despite significant gains in civil liberties since the end of military rule, several restrictions on freedom of expression remain. There were numerous cases of arrests, detention, ill-treatment, intimidation and harassment of critics and opponents of the government."⁵
- 2.8. Kabiru A. Yusuf, Editor-in-Chief, Daily Trust Newspaper, Abuja, considered that there has been a significant improvement in human rights since 1999. People are able to freely express their views and organise themselves. There are only a "very, very small number" of incidents in which individuals have been detained because of their political views. Now and then individuals have been suspected of subversive activities, but such cases are extremely few. The cases have mostly been related to religious extremism in Muslim areas and those detained have all been released after a few months' detention. Yusuf emphasized that the pattern of human rights violations of the days of military rule is completely gone.
- 2.9. The United States (US) Department of State reported in February 2004: "The Federal Nigeria Police Force (NPF) is tasked with law enforcement and the Inspector-General of Police (IGP) officially reported directly to the President. Internal security is the duty of the State Security Service (SSS), which reports to the President through the National Security Advisor."⁶
- 2.10. In 2003 HRW expressed its concern that "serious human rights violations, including extra judicial executions, torture, and prolonged pre-trial detention, have remained unchecked, and few of the individuals responsible for these violations have been brought to justice."⁷

³ HRW, *Nigeria World Report 2005*, New York, January 2005.

⁴ HRW, *The O'odua People's Congress: Fighting Violence with Violence*, Volume 15, Number 4 (A), Washington DC, February 2003, p. 52.

⁵ HRW, *Nigeria World Report 2005*, New York, January 2005.

⁶ US Department of State, *Nigeria, Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

⁷ HRW, *The O'odua People's Congress: Fighting Violence with Violence*, Volume 15, Number 4 (A), Washington DC, February 2003, p. 52.

- 2.11. In its 2005 World Report HRW repeated its concern in a number of human rights areas in Nigeria, namely inter-communal violence, conflict in the Niger Delta, i.e. Delta, Bayelsa and Rivers States, abuses by the police, freedom of expression, application of *Shari'a* law and political violence.⁸
- 2.12. Clement Nwankwo, Attorney-at-Law and former Director of the civil rights group Constitutional Rights Project, did not consider that deliberate persecution by state agents takes place in Nigeria. However, he stated that it is a serious human rights problem that the governmental institutions are not in place and "the bull has not yet been tackled by the horn". The problem is that the authorities still permit human rights violations and that the government structures are suffering from shortcomings especially regarding regulations of police investigations into ill-treatment and harassment committed by the authorities.
- 2.13. Nwankwo considered that Nigeria has moved far into the democratisation process since 1999 and that constitutional rights have been restored. However, in reality there are still problems as the NPF and the security service to a large extent have continued its own traditions from the period of military rule.
- 2.14. Professor Pat Utomi, Lagos Business School, Pan-African University, Lagos, who is a well-known commentator in the Nigerian media, said that there is genuine commitment and desire by the President to end corruption in the country - Nigeria being rated the third most corrupt country in the world in year 2004 by Transparency International. Professor Utomi chaired a Presidential Committee to review systems of integrity in state institutions. The committee had high-level membership and included Transparency International. In practice however action in dealing with the problem has been very slow and none of the committee's recommendations have not yet been implemented.
- 2.15. Utomi added that there is similarly strong government commitment to deal with police impunity but again in practice improvements are only slowly being taken forward.
- 2.16. According to the Nigerian NGO Legal Defence and Assistance Project (LEDAP) there was an increase during 2001 to 2003 "in cases of political violence, extra judicial killings, torture and acts that are clearly tantamount to degrading treatment. Although the state seemed to have improved in the observance of such rights as freedom of expression, association and movements, it however failed woefully in the protection of such rights as the rights to life, personal liberty, and the integrity and security of the person."⁹
- 2.17. Nigeria's estimated population of 124 million people is divided almost equally between Muslims and Christians and about 5% to 10% animists. In general Christians dominate the south of the country while Muslims dominate the north. Nigeria comprises approximately 250 ethnic groups. More than two-thirds of all Nigerians belong to one of the three largest groups: Hausa-Fulani, Yoruba and Igbo (or Ibo). Hausa-Fulani are Muslims while a large part of Yoruba and most Igbos are Christians.
- 2.18. In January 2004 the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA), Integrated Regional Information Network (IRIN) reported: "The

⁸ HRW, *Nigeria World Report 2005*, New York, January 2005.

⁹ LEDAP, *Impunity in Nigeria, Report of extra judicial, arbitrary and summary executions in Nigeria 2001-2003*, Lagos, 2004, p. 1.

application of strict Shari'ah has heightened tension between Nigeria's Islamic north and the largely Christian south. This has given rise to periodic outburst of sectarian violence in which thousands of people have died in the past four years."¹⁰

- 2.19. The US Department of State reported in February 2004 that some militant members of the Ijaw ethnic group in the oil-producing Niger Delta region continued to commit serious abuses, including unlawful killings and kidnappings, leading to violent reprisal attacks by the Itsekiri ethnic group. Ethnic and regional discrimination remained widespread, and localized discrimination and violence against religious minorities persisted.¹¹
- 2.20. In January 2004 IRIN reported that according to the government's National Commission for Refugees (NCR) some 800,000 people have been displaced from their homes as a result of communal and religious clashes in Nigeria over the past four years. The head of the NCR stated that areas with the highest concentrations of displaced people were Plateau and Benue states in central Nigeria, Yobe State in the Northeast, Cross River State in the Southeast and the oil-rich Niger Delta.¹²
- 2.21. The US Department of State reported in February 2004 that police were unable to control ethno-religious violence on numerous occasions during 2003, and the government continued its reliance on the army in those cases. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted outside the law. Security forces committed several serious human rights abuses. Security forces committed extra-judicial killings and used excessive force to apprehend criminal suspects, and to quell some protests. There were several politically motivated killings by unknown persons during the year. Security forces regularly beat protesters, criminal suspects, detainees, and convicted prisoners; however, there were fewer reported incidents of torture by security agents than in previous years. Impunity was a problem.¹³
- 2.22. On 18 May 2004 Obasanjo declared a state of emergency in Plateau State in the wake of weeks of fighting between Christians and Muslims that also spread to the northern state of Kano. The government expressed fear at the time that the violence could spread to other parts of the country. Obasanjo accused the governor of Plateau State of doing nothing to quell the violent unrest, in which hundreds were killed.¹⁴
- 2.23. Reporting on the May 2004 developments IRIN commented that "polarisation between the oil-rich, predominantly Christian and Animist south of Nigeria and the poorer and largely Muslim north appears to be increasing and many civic and religious leaders are calling for a

¹⁰ IRIN, *NIGERIA: Man sentenced to stoning for sex with step-daughter*, 6 January 2004.

¹¹ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

¹² IRIN, *NIGERIA: 800,000 internally displaced across country*, 2 January 2004.

¹³ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

¹⁴ IRIN, *NIGERIA: End of emergency rule in Plateau State*, 17 November 2004.

“Sovereign National Conference” to rewrite the constitution and save the country from collapse. [...] Ethnic and religious massacres are nothing new in Nigeria. However, the latest outburst of sectarian violence comes against a background of increasing poverty in this country of 126 million people, increasing radicalisation in the Islamic north and declining public confidence in its latest six-year-old experiment with multi-party democracy.”¹⁵

- 2.24. However, rather than deteriorate the situation improved leading to the state of emergency being lifted on 18 November 2004.¹⁶

¹⁵ IRIN, *NIGERIA: Ethnic, sectarian upheavals push troubled Nigeria to the edge*, 18 May 2004.

¹⁶ IRIN, *NIGERIA: End of emergency rule in Plateau State*, 17 November 2004.

3. Human rights – specific groups

3.1. Political opposition

- 3.1.1. According to Professor Utomi opposition politicians can freely express their views. However, a problem among opposition politicians is that they all desire to be close to power and therefore they limit their criticism towards the government. There are close personal relations between members of the government and members of the opposition.
- 3.1.2. According to Nwankwo the only opposition parties that have not been subject to full patronage by the ruling PDP-party is the All Nigeria People's Party (ANPP), the Alliance for Democracy (AD) and the All Progressive's Grand Alliance (APGA).¹⁷ ANPP and AD perform "some political activities" and represent the only real political opposition in the parliament. However, APGA is active in the southeast and is closely affiliated with the separatist Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) as it takes some of its political basis from this Igbo movement. The government's displeasure with MASSOB "rubs off" on the Igbo-based APGA.
- 3.1.3. Professor Utomi said that although neither the 1999 and 2003 elections were regarded as free or fair, Nigerians accepted the outcome because of a very strong desire not to return to the days of the military dictatorship. After the 1999 elections there was a surge in the popularity of Obasanjo. The 2003 elections were, as someone once commented to Utomi "rigged elections which the President would have won anyway". Utomi believed that Obasanjo acts as though he has more legitimacy than he really has.
- 3.1.4. A couple of weeks ahead of the Nigerian local elections on 27 March 2004, IRIN reported: "Analysts and human rights groups had accused rival political parties in Nigeria of frequently resorting to violence as a means of intimidating opponents during campaigns. Large quantities of arms and ammunitions handed over to political thugs by politicians are often used to perpetrate other crimes, including armed robbery."¹⁸
- 3.1.5. The IRIN report continued: "There has been a long list of unsolved political murders since Obasanjo's election to office in 1999, which ended more than 15 years of military rule. One high-profile case was that of former justice minister Bola Ige, murdered in December 2002 in his home in the southwestern city of Ibadan. Though Ige was from the Alliance for Democracy (AD), he was also a member of Obasanjo's cabinet."¹⁹
- 3.1.6. IRIN added: "The recent spate of deaths has aroused much suspicion since some of the victims are political and state officials. [...] All the recent killings have targeted members of the ruling PDP or individuals with ties to the party. Opposition politician Balarabe Musa of the People's Redemption Party blamed the ruling party for most of the violence, urging it to

¹⁷ APGA has its support in Eastern Nigeria and won 2 seats in the National Assembly after the 2003 elections, while AD won 31 seats, see *Africa South of the Sahara 2004*, p.845.

¹⁸ IRIN, *NIGERIA: President meets police chiefs over rising political killings, banditry*, 9 March 2004.

¹⁹ Ibid.

look inward for those responsible for its members' deaths. According to Musa, much of the violence is a result of rigging in the April 2003 presidential and parliamentary elections compounded, he claimed, by plans to rig local polls on 27 March 2004.²⁰

- 3.1.7. HRW reported in early January 2005: "Several opponents or critics of the government have been arrested, harassed, and intimidated. Scores of people were killed in violence related to the local elections in March [2004]. [...] Politically motivated killings and violence continued to be a regular occurrence in Nigeria. Most incidents of violence involve fighting between factions of the ruling People's Democratic Party (PDP) or between the supporters of the PDP and the main opposition All Nigeria People's Party (ANPP). Local party leaders regularly hire and arm thugs to intimidate political opponents, and then protect them from prosecution. In the weeks preceding the local government elections in March 2004, numerous prominent politicians were killed or targeted in assassination attempts. Local candidates, election officials and rank and file party members were also killed in many incidents that went unreported".²¹
- 3.1.8. However, Professor Utomi stated: "state terror is not at the Abacha-level" and emphasized that the media is "still in place and it still functions independently". It was added that the media is not only free but also almost "sensational". Journalists operate and work without any restrictions or pressure placed upon them.
- 3.1.9. John Momoh, Chairman/Chief Executive Officer (CEO), Channels Television, and a well-known commentator in the Nigerian media, explained that the Nigerian authorities have always harassed the printed press and this is still the case. However, the majority of the printed media speculates in events and stories and very often it goes far beyond the limits. Momoh explained that SSS now and then have requested a meeting with him as Director of Channels Television in order to give him "good advice". Channels Television is a 100% independent TV station and Momoh stated that normally his TV station has good relations with the government and added that the last time he, as a media person, was called in for a "chat" with the authorities was back in 1993. Channels Television was set up in 1995 and the TV station has never experienced any sort of harassment by the authorities, not even during the Abacha-regime.
- 3.1.10. When the NPF are arresting people, including prominent persons, the media is normally on the spot and very often such persons are being released shortly afterwards. Momoh emphasized that the Nigerian media is very vocal and is reporting almost every episode of bad police behaviour.
- 3.1.11. Momoh confirmed – in line with Professor Utomi – that ordinary Nigerians are not at risk of persecution by state agents and he agreed that in general only persons such as political leaders who are capable of organising a real threat to the government would be at risk of persecution. According to Momoh there are persons held in detention centres and prisons for political reasons.
- 3.1.12. A study undertaken by LEDAP states that "while other cases of violations are a continuing occurrence, cases of political killings were seen to be more rampant during and immediately

²⁰ IRIN, *NIGERIA: President meets police chiefs over rising political killings, banditry*, 9 March 2004.

²¹ HRW, *Nigeria World Report 2005*, New York, January 2005.

after the 2003 general elections. While the violations by the security agents, religious and cult killings were easily classifiable as either state actors or non-state actors, the perpetrators of political killings could not be classified. This is due to the inability of the law enforcement agencies to resolve any of them.”²²

Movement for the Actualisation of the Sovereign State of Biafra (MASSOB)

- 3.1.13. According to a senior representative of the IGP, the NPF and political opposition parties, including the separatist movement MASSOB, are not regarded as a “serious threat or problem” and there has never been any violence involved in their activities. The BHC confirmed that political opposition groups such as MASSOB are in general free to express their views, although those that take part in demonstrations may face detention.
- 3.1.14. In January 2005 HRW reported that during 2004: “members of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), an Igbo self determination group critical of the government, were repeatedly harassed and arrested.”²³
- 3.1.15. Muhammad Sani Usman, Chief Administration Officer (Research), NHRC, confirmed that MASSOB is a non-violent political faction, whose struggle for independence of Biafra is entirely political. However, the leader of MASSOB, Ralph Uwazurike raised the Biafra-flag at his house in October 2004 and the NPF searched his house and confiscated 110,000 Naira²⁴ in cash and six cell phones. Uwazurike escaped but between 10 and 15 members of MASSOB were arrested. Usman was unaware of whether or not these members are still detained. He emphasized that they may face being charged for treason, as it is unconstitutional to raise the flag of Biafra and thus institute a state within the Federal Republic of Nigeria. Uwazurike is still in hiding but he communicates with the Nigerian press and he insists that MASSOB is a non-violent political movement.
- 3.1.16. Professor Utomi explained that there has been significant level of resentment in Igbo society about the treatment of Igbo people since the civil war. There was a philosophy of an Igbo-renaissance amongst young Igbo men and women born since the civil war and they have found allies in the Igbo diaspora. This has been exploited by MASSOB. However, MASSOB is very much a fringe group but because of government over-reaction to it, it has gained support. The government is strongly opposed to MASSOB and several members and supporters have been arrested and detained for months even though MASSOB insists that it is a non-violent movement. Professor Utomi explained that the ghost of MASSOB has created concern within the SSS and now and then its forces have over-reacted.
- 3.1.17. It was added by Professor Utomi that the leadership of MASSOB, i.e. “those that energise and mobilise support for the movement”, are at risk of arrest and detention by the authorities.

²² LEDAP, *Impunity in Nigeria, Report of extra judicial, arbitrary and summary executions in Nigeria 2001-2003*, Lagos, 2004, p. 3.

²³ HRW, *Nigeria World Report 2005*, New York, January 2005.

²⁴ 1 US \$ = 135 Naira as of October 2004.

- 3.1.18. According to Momoh, the Igbo people are marginalized and feel a need to voice their concern. MASSOB has become the platform to voice that concern. However, the BHC commented that there are many Igbos at senior level within government, business and civil society, as well as among Obasanjo's closest advisers.
- 3.1.19. Momoh considered that there is a trend locally in Nigeria to seek influence and achieve relevance. However, it is characteristic of Nigerian governments to embrace those movements and parties by allocating resources to them. This is also the reason why so many regional or local movements are launched. However, the government is deeply concerned that the formation of states within the state can pose a threat to the unity of the nation and create security problems. Momoh was of the opinion that there is a need for a national conference on the subject of the status of the federation and the states but he also emphasized that the Nigerian federation will have to carry on. He added that the introduction of *Shari'a* in northern Nigeria is not an issue in this respect.
- 3.1.20. In the beginning of 2004 a large number of MASSOB sympathisers were arrested and Nwankwo stated that there is a massive hunt for persons affiliated with MASSOB. He was not aware whether MASSOB registers members and issues membership cards or not but he doubted this would be the case. Nevertheless MASSOB has produced an independent Biafra State flag and issued a currency. However, the flag and the currency are not legal and if a person is caught in possession of the currency or the flag the person will be arrested. Some may even be accused of sedition or treason, which according to the law is punishable by death.
- 3.1.21. Nwankwo doubted that establishment of a Biafra State is in fact a wish of the majority of the Igbo people. Though the Igbo constitute the largest single ethnic group in Nigeria, they are spread out over the country and cannot be seen as an entity.
- 3.1.22. Nwankwo portrayed MASSOB as an "entirely political movement" demanding total independence for Biafra and he could not accept that MASSOB is regarded as a "militant movement". MASSOB is unarmed and Nwankwo found it hard to believe that persons associated with MASSOB would be armed or that such persons would have been engaged in smuggling arms. Nwankwo believed that if someone were charged with such activities it would most likely be a result of the NPF "setting-up" the individual in order to detain the person. He added that on several occasions MASSOB has claimed that the NPF have killed sympathisers of MASSOB. Momoh confirmed that members of MASSOB and others have claimed to have been falsely accused of carrying arms.
- 3.1.23. Nwankwo emphasized that MASSOB is an un-armed and non-violent movement. In spite of this a large number of suspected MASSOB members or sympathisers are detained in Abuja and the government has refused to release them on bail. Nwankwo explained that, since February 2004, 300 members of MASSOB are being detained in Abuja alone awaiting trial. He added that two members of the National Assembly have requested him to be defence counsellor for the 300 pending MASSOB cases in Abuja. Some of those detained may be faced with charges for treason, which is punishable by death. However, Nwankwo was not aware that any governor has signed a death penalty under common criminal law since 1999. But extra-judicial killings are common in Nigeria and it has been claimed that the NPF frequently kill members of MASSOB and others with impunity.
- 3.1.24. Nwankwo considered that the detention of suspected MASSOB members and sympathisers is part of an intimidation strategy by the government and the NPF. It was added that media

focus on such cases could eventually lead to the release of some of the prominent detainees while the less prominent detainees would remain imprisoned. Nwankwo regarded the detained persons in Abuja, as well as other MASSOB-detainees, as political prisoners. So far none of the detained in Abuja have been convicted in court.

- 3.1.25. Normally anonymous sympathisers of MASSOB do not draw the attention of NPF. More prominent leaders of MASSOB are at risk of persecution and also persons affiliated with those leaders could be at risk of persecution and detention. Less prominent persons who are affiliated with MASSOB could be targeted as well in order to intimidate others.
- 3.1.26. Nwankwo explained that there is no law that prohibits non-violent movements and organisations. The Nigerian government has declared that MASSOB and a number of other organisations and movements are “violent” and banned them.
- 3.1.27. Nwankwo repeated that he definitely does not consider MASSOB as violent and it is groundless to label the movement as a “rebel movement”. MASSOB has not undertaken violent activities and any allegation is most likely orchestrated by the police.
- 3.1.28. Finally, Nwankwo suspected that the government’s relatively “soft approach” on the Yoruba-based O’dua Peoples Congress (OPC), that is known to be violent, and its “hard approach” on the non-violent MASSOB might be explained by the fact that Obasanjo is Yoruba.

3.2. Vigilante groups: neighbourhood or community watchers

- 3.2.1. HRW explain that underlying all the vigilante groups’ ability to operate freely and without accountability is the fundamental inability of NPF to perform its law enforcement functions effectively, and the consequent lack of public confidence in the police. For many years, NPF have suffered from a severe lack of resources, insufficient or inadequate training, poor pay and conditions, and widespread corruption. This has resulted in the perception on the part of the general public that it is futile to report crimes to the police, or expect any remedial action from them. All too often, the police are more likely to be involved in crime, corruption, and human rights violations themselves than to have the will or ability to solve these problems.²⁵
- 3.2.2. A senior representative of the IGP confirmed that vigilante groups had in the past been prevalent in taking the law into their own hands because the police, until recent years had not had the capacity. However since 1999, the NPF has grown in size and capacity and now has a much higher profile. Former 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 elsewhere operating 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 and these can be checked with the NPF. The source emphasized that there is, and always has been, only one police force [NPF] in Nigeria, and it was firmly denied that any vigilante group operates on its own.

²⁵ HRW, *The O’dua People’s Congress: Fighting Violence with Violence*, Volume 15, Number 4 (A), Washington DC, February 2003, pp. 8-9.

- 3.2.3. Usman considered that any former vigilante group or movement that has registered and is co-operating with the authorities would have to be screened by the police. NHRC does not receive complaints about groups that have been registered and integrated within the NPF, and they do not cause any problems. Usman portrayed such groups as “decent”, as they are not involved in gross human rights violations. Such groups would often name themselves according to the local area or district in which they operate. Oluwakemi Asiwaju, Director, Centre for Law Enforcement Education (CLEEN), referred to such groups as neighbourhood or community watch groups.
- 3.2.4. However, Asiwaju considered that NPF does not fully control all the various neighbourhood watch groups or community watchers in the country, as they are not all registered by the police. On the other hand local police will know which group controls the respective area and who the leader is. Asiwaju stated that in many cases people have more confidence in these groups than in NPF. The latter is also considered slow in their dealing with complaints whereas the neighbourhood watch groups usually work much faster. Neighbourhood watch groups may be in control of certain local areas. However, it was added that in the southwest and especially in Lagos some members of the neighbourhood watch groups could also be members of militant organisations such as the OPC.

3.3. Vigilante groups: armed militias

- 3.4.1. In contrast to the above-mentioned registered groups Usman mentioned a number of non-registered vigilante groups, which he described as “outlaws” or “militias”. These groups are to be found in various locations throughout Nigeria and include the OPC, Bakassi Boys, Yan Daba, Egbesu Boys etc. as well as various warlords, militias and cult gangs in the Delta and other regions. The authorities are fighting some of these militant groups “man-to-man”, according to Usman.
- 3.4.2. Although Usman had already stated that MASSOB is a non-violent group he added that there is also a small violent, armed faction of MASSOB, which was originally founded in Onitsha and in Aba in Abia State in the southeast under the name “Bakassi” [not to be confused with the “Bakassi Boys”]. This faction is to be considered as an “outlaw” group as it has committed serious crimes, including the burning of people when still alive and summarily executions of armed robbers. Nigeria’s armed forces have tried to combat this faction and have succeeded in the containment of it. However, the faction is not defeated as it is better armed than the NPF and it makes a lot of money from oil bunkering [theft of crude oil]. The faction operates in complete impunity due to failings of the criminal justice system.
- 3.4.3. A senior representative of the IGP explained that 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 of course 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. There have been prosecutions for such destructive behaviour and the courts have handed down sentences that have ranged from between two and six years according to the seriousness of the offence. Many though have been charged and are still awaiting trial. On the other hand the source was not aware of any complaints made by individuals in respect of the Bakassi Boys or similar vigilante groups. The source repeated that any member of Bakassi Boys or any other vigilante group would be

arrested if he or she had committed any crime or had acted in a destructive manner. The NPF deal with individuals within these groups in the context of any illegal activities committed by the individual.

- 3.4.4. HRW reported that the reason few individuals make complaints about the Bakassi Boys is because those individuals having dared to criticise or denounce their methods have been dealt with ruthlessly by the Bakassi Boys.²⁶
- 3.4.5. Usman explained that the Yoruba-based OPC is found throughout western Nigeria, especially in the southwest and in Lagos city. He described OPC as “a violent group and an authority in itself.” OPC is responsible for violent inter-ethnic clashes between Yoruba and Igbo/Hausa and the killing of members of NPF in and around Lagos. OPC is a strong group and it does not recognise the government or the authority of the police. The government has tried to contain OPC but with little success and so far it has not been possible to arrest or prosecute the leaders of the movement.
- 3.4.6. According to Usman the Bakassi Boys are a replica of OPC and can be found in eastern Nigeria.
- 3.4.7. Usman described the group Yan Daba as “a gang of criminals”. Its members have committed crimes such as rape, killing, intimidation and humiliation. Yan Daba arrests people without any involvement of NPF or any other official authority. The group operates in Kano.²⁷
- 3.4.8. Further information on recruitment and membership as well as structure, activities and governmental actions taken against OPC, Bakassi Boys and Yan Daba as well as a number of other armed militias can be found in HRW/CLEEN 2002; in HRW 2003; in Birgit Kisten Müllner & Barbara Svec, *Nigeria – Länderbericht August 2004*, Österreichisches Rotes Kreuz/Austrian Centre for Country of Origin and Asylum Research and Documentation (ÖRK/ACCORD) 2004; in Agbu 2004; and in Sesay, Ukeje, Aina and Odebiyi 2003.²⁸
- 3.4.9. Usman described the Egbesu Boys and all other militias as even more dangerous than, for example, the Bakassi Boys and OPC because they have gained access to oil-pipelines and are using money from oil bunkering in order to buy heavy weapons. ÖRK/ACCORD describes Egbesu Boys as an ethnic militia, i.e. the militant or armed wing of the Ijaw Youth Council (IYC). The concept of “Egbesu” stems from a system of beliefs and from the god of war among the Ijaw in southern Nigeria. The Egbesu-priests play an important role in the activities of the Egbesu Boys and are consulted before the group is undertaking any larger

²⁶ HRW/CLEEN, *The Bakassi Boys: The Legitimization of Murder and Torture*, Volume 14, Number 5 (A), Washington DC, May 2002, p. 33.

²⁷ Birgit Kisten Müllner & Barbara Svec, *Nigeria – Länderbericht August 2004*, ÖRK/ACCORD, Vienna, 2004, pp. 36-37.

²⁸ HRW/CLEEN, *The Bakassi Boys: The Legitimization of Murder and Torture*, Volume 14, Number 5 (A), Washington DC, May 2002; HRW, *The O'dua People's Congress: Fighting Violence with Violence*, Volume 15, Number 4 (A), Washington DC, February 2003; Birgit Kisten Müllner & Barbara Svec, *Nigeria – Länderbericht August 2004*, ÖRK/ACCORD, Vienna, 2004; Agbu, Osita, *Ethnic Militias and the Threat to Democracy in Post-Transition Nigeria*, Research Report No. 127, Nordiska Afrikainstitutet, Uppsala, 2004; *Ethnic Militias and the Future of Democracy in Nigeria*, Ed. by Amadu Sesay, Charles Ukeje, Olabisi Aina and Adetanwa Odebiyi, Obafemi Awolowo University Press, Ile-Ife, 2003.

operation. According to ÖRK/ACCORD the leader of Egbesu Boys is “Dokubo Asari”.²⁹ Usman explained that his full name is Alhadji Asari Mujahedi Abubakar.

- 3.4.10. Usman considered that members of the above-mentioned militant groups, warlords and armed militias are responsible for serious crimes against civilians and they should under no circumstances be granted asylum in any country. However, Usman also considered that members of these groups, should they be returned to Nigeria, would be at risk of persecution from their own groups as these may seek revenge if they are considered deserters. Finally, Usman found it unlikely that any authority would protect such persons.
- 3.4.11. Local politicians at times use these groups to assassinate political enemies. Regarding the possibility of internal flight alternative for persons with problems with these groups Usman was of the opinion that it depends on the nature of the problem and the profile of the person concerned. A person who has a serious problem with OPC cannot return to Lagos or the southwest in safety because of the inability of the authorities to provide adequate protection against the OPC. However, a person in those circumstance could, depending on the nature of the problem with OPC, in most cases relocate to, and be safe in, for example, Abuja.

3.4. The Niger Delta conflict

- 3.4.1. Usman explained that there are a number of warlord militias and cult gangs to be found in southern Nigeria, especially in the Niger Delta (Delta, Bayelsa and Rivers States) and in the cities of Warri, Port Harcourt, Benin City and Yenagoa where law and order have broken down completely. These groups all have their own particular name.³⁰
- 3.4.2. The BHC did not agree with Usman’s comments concerning the break down of law and order in Warri, Port Harcourt, Benin City and Yenagoa and stated that it would be more accurate to say that “law and order only broke down completely in the city of Warri in 2003 and early 2004 and that the army now maintains law and order in Warri. There were also outbreaks of violence in Port Harcourt in the autumn of 2004 but peace has been restored.”
- 3.4.3. HRW reported in January 2005: “The oil rich Niger delta, in the south of the country, remains 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. Local groups are also fighting over control of the theft of crude oil, known as “illegal bunkering”. The violence is aggravated by the widespread availability of small arms—a problem which exists throughout Nigeria but is particularly acute in the delta. Despite a massive army, navy and police presence in the area, local communities remain vulnerable to attack by the militias, criminal gangs and security forces. Oil companies rarely speak out publicly about such abuses; indeed, some of their own practices have contributed to the conflict.”³¹
- 3.4.4. Amnesty International (AI) reported in November 2004: “The [oil] companies have turned to the state security forces which in some cases have used force, often arbitrarily and

²⁹ Birgit Kisten Müllner & Barbara Svec, *Nigeria – Länderbericht August 2004*, ÖRK/ACCORD, Vienna, 2004, p. 37.

³⁰ Names such as Icelanders, Elegam Face, Dey Gbam, Greenlanders, Bush Boys and Orika Boys have been mentioned.

³¹ HRW, *Nigeria World Report 2005*, New York, January 2005.

disproportionately, against individuals. The easy availability of small arms in the region has made the situation more serious. While no firm statistics are available, NGOs estimate that there were nearly 1,000 violent deaths in the Niger Delta alone in 2003, some of which were intra-communal or inter-communal but also the result of excessive use of force by security forces or the police force. In terms of intensity of violence, this would be equivalent to the conflict in Chechnya or Colombia.³²

- 3.4.5. Usman commented on the two warlords Dokubo Asari and Ateke Tom. Both warlords are responsible for a number of gang killings and other human rights abuses as well as seizure of property in the "south-south". These warlords', and their militia's, activities go far beyond those of other groups. They attack oil-pipelines for the purpose of tapping crude oil to finance their activities, they are responsible for the killing of more than 500 persons, and they have robbed banks and are also involved in piracy and possibly in human trafficking. However, the BHC explained that the figure of 500 persons killed is an AI estimate for the total number of persons who are supposed to have been killed in the Delta over a three-month period by both militias and security forces.
- 3.4.6. According to AI: "It is difficult to establish the exact number of deaths because of discrepancies in media reporting, and also the significant difference between official figures published by government authorities and those given by local witnesses and other sources. Amnesty International's calculations based on local and international media reports, show that the number of people killed in the Delta, Rivers and Bayelsa States in 2004 up to and including incidents late August, could be in the region of 670. Independent sources in the Niger Delta, however, estimate that the number of people killed in August 2004 in Rivers State alone as a result of the violence in and around Port Harcourt could be as high as 500."³³ Regarding the violence in Rivers State in 2004 HRW reported in January 2005: "hundreds of people were killed (some by security forces and others in fighting between the groups) and thousands of people displaced from their homes".³⁴
- 3.4.7. IRIN reported in October 2004, that Dokubo Asari is the son of a former high court judge. He went to university to study law, but dropped out in 1988 after converting to Islam. Then he became swept up in radical politics and came to prominence in 2002 as president of the IYC. In an interview with IRIN in early 2004 Dokubo Asari explained that he only decided to take up arms after witnessing massive fraud in the 2003 elections, which returned Obasanjo and the ruling PDP for a second term of office. Dokubo Asari claimed that the governor of Rivers State, which encompasses Port Harcourt, was offended by his lack of support and the governor then created Ateke Tom's Niger Delta Vigilante Service (NDVS) to eliminate him.³⁵ In July 2004 Dokubo Asari stated that "PDP-sponsored thugs led by rival gang leader Ateke Tom" tried to assassinate him and this prompted him to take up arms and fight. IRIN also reported that according to human rights activists and representatives of the Civil Liberties Organisation, Ateke Tom was a well-known member of the PDP and retained

³² AI, *Nigeria: Are human rights in the pipeline?*, 9 November 2004 (AI Index: AFR 44/020/2004).

³³ AI, *Nigeria: Are human rights in the pipeline?*, 9 November 2004 (AI Index: AFR 44/020/2004).

³⁴ HRW, *Nigeria World Report 2005*, New York, January 2005.

³⁵ IRIN, *NIGERIA: Peace deal reached in Niger Delta, but will it hold?*, 4 October 2004.

close links with the authorities. At the same time IRIN reported that Dokubo Asari's former colleagues from the IYC have distanced themselves from his declaration of armed struggle, insisting on a peaceful campaign to wrest the oil resources from the federal government. However, a leading activist in the IYC has said that heavy-handed repression by the security forces in the delta simply played into the hands people like Dokubo Asari.³⁶

- 3.4.8. In July 2004 IRIN reported: "Since early 2004 Dokubo Asari's militia Niger Delta's People Volunteer Force (NDPVF) has battled repeatedly with government forces in the Niger delta for control of crude oil. At the same time Dokubo Asari is demanding a sovereign national conference for Nigeria "so that we can decide if we still want to be part of Nigeria". But opponents of the 40-year-old militia commander say he is little more than a gangster who finances his operations by tapping crude oil from the pipelines of multinational operating in the delta and reselling it on the black market."³⁷ On the other hand Dokubo Asari claims that the governor of River State supports his archrival Ateke Tom, who is an Ijaw as well. However, the state governor rejected the accusations, which according to Africa Confidential is "less outrageous than it sounds".³⁸
- 3.4.9. HRW reported that on 27 September 2004 Dokubo Asari of the NDPVF "threatened to launch an "all-out war" in the Niger Delta – sending shock waves through the oil industry – unless the federal government ceded greater control of the region's vast oil resources to the Ijaw people, the majority tribe in the Niger Delta. The threat, [...] followed the deployment of federal government troops to quell months of intense fighting between the NDPVF and a rival armed group, the Niger Delta Vigilante (NDV), led by Ateke Tom."³⁹
- 3.4.10. However, an all-out war did not take place in the Niger Delta as Dokubo Asari and Ateke Tom agreed on a ceasefire. HRW reported: "The Nigerian government first publicly dismissed Asari's September 2004 threat of "all-out war," calling him a "gangster" and "criminal." Later in the month, however, Nigerian President Olusegun Obasanjo invited Asari and Tom to the capital, Abuja, to broker an agreement to end the fighting. On October 1, 2004, Asari and Tom agreed to an immediate ceasefire, the "disbandment of all militias and militant groups," and total disarmament. At this writing, attacks have sharply diminished. However, the agreement—as currently structured—offers only short-term prospects for stability and the protection of the local population."⁴⁰
- 3.4.11. However, according to the Nigerian newspaper *This Day* Dokubo Asari has claimed that the government has not lived up to the promises it made under the disarmament deal in October and stated at the end of December 2004 that he is growing angry at what he claims is the official failure to address broader issues raised in the peace agreement, including demands for greater control of oil wealth and self-determination for his Ijaw people. *This Day* added that the peace accord has stopped the localised violence for now, but few people outside

³⁶ IRIN, *NIGERIA: Self-styled rebels seeks independence for oil-producing Niger delta*, 16 July 2004.

³⁷ IRIN, *NIGERIA: Self-styled rebels seeks independence for oil-producing Niger delta*, 16 July 2004.

³⁸ Africa Confidential, *Nigeria, Delta damages*, Vol. 45, No. 15, 23 July 2004, pp. 3-4.

³⁹ HRW, *Violence in Nigeria's Oil Rich Rivers State in 2004, A Human Rights Watch Briefing Paper*, February 2005, p. 1.

⁴⁰ *Ibid.*, p. 2.

government think disarmament will do much to reduce the large number of weapons circulating in the Delta among many communities and ethnic militias.⁴¹ On 25 December 2004 *This Day* reported that Dokubo Asari is “threatening to return to the mangroves and swamps if government continue to ignore the agreement reached. This, to many observers, means that peace is not in sight in the Niger Delta in 2005, despite a recent master plan by the Niger Delta Development Commission (NDDC) to develop the area and reduce poverty”.⁴²

- 3.4.12. The BHC stated that following the peace agreement signed by Dokubo Asari and Ateke Tom and the government and the disarmament and reintegration process the two are now political figures with offices in Port Harcourt and that the situation has now died down in connection with them, at least for now.
- 3.4.13. In January 2005 HRW commented cautiously on the agreement: “This may signal a shift away from the heavy handed approach of the past, but it remains to be seen whether the federal government will heed demands for greater resource control for the people of the delta.”⁴³
- 3.4.14. In February 2005 HRW commented on the agreement: “To encourage disarmament, the state government offered U.S. \$1800 for the return of each assault rifle surrendered. The state government also offered members of the armed groups amnesty from prosecution and the release of members held in detention in exchange for weapons. Although at this writing disarmament was progressing—as of mid-December the army claimed some 1100 weapons had been turned in—this number is a small fraction of the weapons believed held by the armed groups. There are also reports that very old weapons are being traded to claim the financial reward, while newer, more sophisticated models remain in the hands of the fighters.”⁴⁴
- 3.4.15. Regarding the recruitment to militias HRW reported in February 2005: “Both Asari’s NDPVF and Tom’s NDV are primarily comprised of young Ijaw men from Port Harcourt and nearby villages. In addition to these two groups, there are, according to the state government, more than 100 smaller armed groups, locally known as “cults.” Many of these “cult” groups, with names such as the Icelanders, Greenlanders, KKK, Germans, Dey Gbam, Mafia Lords, and Vultures, were originally formed in the early 1990’s as university fraternities, but later largely evolved into criminal gangs. In late 2003, in an effort to increase their access to weapons and other resources, many of the “cult” groups formed alliances with either Asari’s or Tom’s armed group as the two leaders fought for control of oil bunkering routes. Although the smaller groups retained their names and leadership structures, Asari and

⁴¹ *This Day, Peace Accord Fails to Pour Oil On Troubled Waters of Niger Delta*, Lagos, December 24, 2004.

⁴² *This Day, Will Niger Delta Know Sustainable Peace?*, Lagos, December 25, 2004

⁴³ HRW, *Nigeria World Report 2005*, New York, January 2005.

⁴⁴ HRW, *Violence in Nigeria’s Oil Rich Rivers State in 2004, A Human Rights Watch Briefing Paper*, February 2005, p. 19.

Tom assumed command and control responsibilities over the militant actions of these smaller groups.”⁴⁵

3.5. Secret cults and student cults

- 3.5.1. A senior representative of the IGP explained that local police is obliged to investigate and do investigate cases where individuals have been subject to threats from secret cults and similar groups. Intimidation and other forms of harassment from secret cults are illegal according to the law.
- 3.5.2. Usman explained that these cults are becoming increasingly prevalent. There are some recent examples of ritual killings and some of those killings have taken place in order to intimidate others and may be related to local elections, control of money or control of persons. Such killings can even be attributed to persons involved in human trafficking. Usman considered that victims of secret cult activities would be able to seek protection within Nigeria and they may also be able to get assistance from the police. This would especially, but not only, be the case in those areas of Nigeria that are dominated by Muslim societies. However, Usman could not fully rule out that a person being victimised or threatened by members of a secret cult would at all times be able to find safety. If through requesting assistance from the NPF the victim was seen to be posing a threat to the cult's existence, then the victim may be at risk from the cult. However Usman emphasised that the NPF is generally very dedicated to acting firmly against threats from secret cults throughout Nigeria.
- 3.5.3. Nwankwo explained that personal attacks and intimidation by secret cults are rather recent phenomena in larger cities of Nigeria. Recently Port Harcourt was the scene of fighting between different cults. However, he stated that a person escaping persecution or being killed by a secret cult only rarely would be at risk in another location within Nigeria. Nwankwo did not know of any examples of cult members killing non-cult members and was of the opinion that this would only take place in extreme cases.
- 3.5.4. In August 2004 IRIN reported that NPF had arrested 30 witch doctors on suspicion of carrying out human sacrifices after finding 50 mutilated bodies and 20 skulls in an area known as “Evil Forest” by local people. The location is near Okija village in Anambra State in southeastern Nigeria. The bodies were missing breasts, genitals and hearts or other vital organs. A villager said that priests might have killed some of the victims for their rituals. According to IRIN the mainstream religions of Christianity and Islam mingle in Nigeria with traditional faiths, many of which involve fetish magic, known as *juju*. Ritual killings are common in some parts of Nigeria, where some people believe they can accrue great riches by participating in macabre ceremonies. Others believe human body parts can be worn as charms to protect the bearer from physical or spiritual harm. IRIN reported that according to Nigerian media businessmen and politicians from the economic capital Lagos and the east of the country were among the clients of the Okija witchdoctors. NPF said that the victims had been made to pledge cash and other property to a deity after their death and those enquiries were continuing.⁴⁶

⁴⁵ Ibid., p. 3.

⁴⁶ IRIN, *NIGERIA: Police arrest witchdoctors after finding 50 mutilated bodies in 'Evil Forrest'*, 5 August 2004.

- 3.5.5. Usman explained that secret cults have been widespread in Nigerian universities since the 1950s. Universities and other educational institutions are considered as an integral part of society and as such they are bases for secret cults as well as the rest of society. Parents of students may well be members of a secret cult themselves and Usman explained that this could be the reason for a young student to join a cult as well. Secret cults at the universities are often a tool by which students can intimidate professors, lecturers and other staff members as well as fellow students. Very often these cults will be aligned to a patron who protects the members of the cult.
- 3.5.6. According to Usman secret university cults have been responsible for kidnapping or even killings of staff members and students. In spring 2004 members of a secret university cult allegedly kidnapped and killed a professor at the Ibadan University in Lagos. The case has, however, never been verified but the authorities believe that a secret cult committed the murder.
- 3.5.7. In spite of these actions Usman emphasised that he did not consider that the threat from secret cults at universities would make it necessary for university students or staff to leave university and seek protection overseas. Normally it is possible to complain about these cults activities to the board of the university or to NPF and in this way attain protection. Cultism is an offence and even parents of students who have committed such an offence may face trial. This would particularly be the case if a student has committed a serious crime. However, Usman noted that such forms of arrests are at random and therefore illegal. It is illegal to have a parent sit in for a crime committed by his/her child.

3.6. Trade unionists and civil society opposition

- 3.6.1. Utomi and Momoh both considered that prominent and very vocal members of trade unions and other civil society organisations might be at risk of persecution.
- 3.6.2. HRW reported in January 2005: “[...] during nationwide strikes to protest against an increase in the price of fuel in June and October [2004], several labor union activists were detained and obstructed by police”.⁴⁷
- 3.6.3. Professor Utomi believed that when a government is losing its legitimacy it turns its focus on groups that are critical of the government. Leaders of civil society organisations and trade unions in Nigeria who can mobilise anti-government support are at risk of arrest and detention. It is however only the leadership at risk, ordinary members, supporters or those associated with them are not at any risk of persecution by state agents. Only persons that are “very, very active” would be at risk of persecution. It was explained that when the government consider that the organisational and mobilising capacity of a person can pose a threat to its legitimacy it might persecute or intimidate that person.
- 3.6.4. Momoh regretted the recent arrest of Adams Oshiomhole, the outspoken president of the Nigeria Labour Congress (NLC), and stated that he personally appreciated the actions of the NLC.

⁴⁷ HRW, *Nigeria World Report 2005*, New York, January 2005.

- 3.6.5. Professor Utomi also commented the recent arrest of Oshiomhole who was arrested in public and detained without any reason by the SSS at Abuja airport during the recent national strike. Professor Utomi considered the arrest as politically motivated and a very clear human rights problem – even though he himself is a close friend of the head of the SSS. The head of SSS is a political appointee who reports directly to the president.
- 3.6.6. British Broadcasting Corporation (BBC) reported that Oshiomhole was arrested early on 9 October 2004.⁴⁸ According to a press release by NLC “Mr. Oshiomole was arrested at gunpoint at 8.30 am on Saturday 9 October at Nnamdi Azikiwe Airport, Abuja, as he was about to board a flight for Lagos. About 15 officers of the State Security Service (SSS) took part in the operation, during which Mr. Oshiomole was wrestled to the ground, dragged along the tarmac and then forced into a car which had no licence plates. His jacket was torn and he sustained severe bruising to both knees and his left arm – now in a sling further to hospital treatment – as a result. Three people who accompanied Mr. Oshiomole to the airport [...] were also briefly detained and questioned at the airport [...]. The SSS claim that the arrest was a ‘misunderstanding’ and that Mr. Oshiomole was released shortly afterwards. The NLC informs us that he was not released until 6 p.m. that evening. Nor do they believe it was a misunderstanding. Their view is that it was an attempt at intimidation, in retaliation at the announcement the day before of a four-day general strike seeking the reversal of petrol price rises. The ICFTU shares that view, particularly in light of the reported arrest, on the same day, of two other NLC officers, Innocent Ogwuche and Emmanuel Udoh, in a separate incident.”⁴⁹
- 3.6.7. Oshiomhole was recently described by IRIN as a “charismatic, outspoken trade unionist” increasingly perceived as Obasanjo’s most vocal opponent and IRIN added that Oshiomhole’s drive to bring down prices for the 70 percent of the people who live on less than one US dollar a day in Nigeria has won the support of the white-collar Trade Congress as well as a coalition of civic groups.⁵⁰
- 3.6.8. IRIN reported that political analysts have said that Obasanjo had been shaken as the NLC has challenged his authority, which triggered a political struggle in Nigeria.⁵¹ NLC is an umbrella of 29 blue-collar unions and Adams Oshiomhole is described as the “spearhead of the new opposition movement”. IRIN reported that opposition political parties and civil society groups who are unhappy with Obasanjo’s economic policies appear content to follow the leadership provided by the NLC. Chekwes Okorie, chairman of the third largest opposition party APGA stated that “If we, the opposition political parties, had the structural strength like the NLC, we would have called the strike on our own to express our dissent to what is happening in the country [...] but thank God the NLC is giving us the needed leadership”.⁵²

⁴⁸ BBC News, *Nigerian union leader ‘released’*, 10 October 2004.

⁴⁹ *Protest letter by the International Confederation of Free Trade Unions (ICFTU) to President Olusegun Obasanjo over the abduction of NLC President*, www.nlcng.org, n.d.

⁵⁰ IRIN, *NIGERIA: Unions call off strike after 11th-hour govt offer*, 15 November 2004.

⁵¹ Ironically, Obasanjo created NLC in the late 1970’s when he ruled Nigeria as a military head of state.

⁵² IRIN, *NIGERIA: Trade unions draw more support than opposition parties*, 20 October 2004.

- 3.6.9. IRIN added that NLC has tens of millions of members in Nigeria and has repeatedly since 2000 organised large-scale demonstrations. Obasanjo has reacted with anger to NLC's challenge to him and the mass demonstrations. Obasanjo said – visibly angry – in a televised broadcast to the nation in October 2003: "The NLC has constituted itself into an opposition political movement." The president went on to accuse the trade unions of pursuing the "avowed objective bringing down a democratically elected government." In April 2004 Obasanjo presented a bill to parliament that aimed to curb NLC's powers by amending the Trade Union Act of 1990.⁵³

3.7. Homosexuals

- 3.7.1. Usman explained that according to Islamic law homosexuality is a capital offence. A married man may face a death penalty while an unmarried man may risk a penalty of 100 lashes.
- 3.7.2. Homosexuality is illegal according to Nigerian common law in the south but 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 the *Shari'a* codes 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.
- 3.7.3. Homosexuals living in the larger cities of Nigeria may not have reason to fear persecution, as long they do not present themselves as homosexuals in public. Homosexuals 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.
- 3.7.4. Usman was aware of a recent case in which two lesbian girls were dismissed from the University of Enugu. However, shortly after the revelation a newspaper interviewed one of the girls who openly told her story to the paper.
- 3.7.5. Finally, Usman referred to cases from Lagos and Kano where the NPF had humiliated homosexuals. NPF officers had forced the accused into homosexual acts and then photographed the acts in order to present proof in court.
- 3.7.6. Yusuf explained that the Nigerian society had not come to terms with homosexuality. There are laws against homosexuals and no organisations exist to assist or support them. It is therefore likely that any person known as a homosexual may face very serious problems. Society does not tolerate homosexuals and no homosexual dares speak out openly that he or she is a homosexual. Homosexuals tend to live "underground" in Nigeria. As an illustration of fear among homosexuals Yusuf explained that it was impossible for the Daily Trust to come across any spokesman for homosexuals in the large city of Lagos.
- 3.7.7. Yusuf considered that any homosexual in Nigeria has a well-founded fear of being ill-treated not by the authorities but from the person's local community and society at large. Yusuf stated that he was aware of cases in which false accusations such as rape had been made and the NPF have subsequently detained the accused. The BHC confirmed that homosexuals

⁵³ IRIN, *NIGERIA: Trade unions draw more support than opposition parties*, 20 October 2004.

cannot publicly express their sexuality because they would suffer societal isolation and discrimination.

- 3.7.8. According to Obiagwu there are no cases of legal action taken against consenting adults. However, one death sentence regarding sodomy has been handed down under *Shari'a* law. Obiagwu referred to a case concerning Jibrin Babaji who was sentenced to death by stoning in September 2003 by a *Shari'a* court in Bauchi after being convicted of sodomy. The individual was subsequently acquitted on appeal. The three minors who were also found guilty in this case had already had their punishment of flogging carried out before the appeal was determined.
- 3.7.9. IRIN reported in May 2004 "gay rights groups made their first ever appearance at the country's fourth national AIDS conference in the capital Abuja. They called on their fellow countrymen to recognise and protect Nigeria's gay community, pointing out that it has been hit hard by the AIDS pandemic. In Nigeria, homosexual practice can carry a 14-year jail sentence under federal law. In 12 northern states that have adopted Islamic *Shari'a* law, adults who are found to have engaged in homosexual intercourse can be stoned to death. However, most of the time, people deny the existence of "MSMs" - men who have sex with men - as male homosexuals are generally known in Nigeria. "It means that, for most of the Nigerians, MSMs are not human beings - they simply don't exist," said Oludare Odumuye, president of the Alliance Rights Nigeria (ARN)⁵⁴, an organisation representing sexual minorities in the country. "Recently, some of us have been arrested by the police, thrown into jail and raped in the cells," Odumuye told a handful of journalists and conference delegates who turned up to hear his message at a fringe meeting. "One out of 50 lawyers we have contacted has accepted to defend their interests. The others were too afraid to be associated with homosexuals, even if they were homosexuals themselves!" he continued. Things are particularly bad in the Muslim north, according to Odumuye. "Because of the application of the *Shari'a* code, they kill men and even young secondary school boys in the north of the country," he said. "We know that it's still happening today. People are expelled, dismissed, arrested - they bug us!"⁵⁵
- 3.7.10. The IRIN report continued: "With his beaded bracelets, flashy snakeskin shoes and refined manners, Odumuye caught the attention of watching policemen - five of whom installed themselves on a nearby sofa to get a better view. "You see, they didn't intervene," he said with a nod in the direction of the police officers. "Some progress has been made since the start of the struggle!" he added with a large smile. Odumuye began battling to publicise the plight of the gay community in the early 1990s. In July 1999, with a group of friends, he founded the ARN for "Lesbians, Bisexuals, Transsexuals and Queers" across the country.

⁵⁴ According to the NGO Behind the Mask "Alliance Rights Nigeria is a gay welfarist association and was formally launched on the 2nd of July, 1999 in Lagos, Nigeria. Since inception last year, ARN have been engaged in organising seminars and lectures in various high schools within the Lagos metropolitan area which is their present base of operations. Their lectures focus mainly on AIDS, STD's and safer sex. They also encourage LGBT pride as a means of achieving freedom within their society. At present, Alliance Rights Nigeria has 467 registered members, though there are thousands of 'sagba's (the word sagba refers to homosexuals in Nigeria) in Nigeria, that are indifferent in becoming members. It is hoped that this will change in the future. Alliance Rights Nigeria's vision centres on the elimination of the belief amongst literate and non-literate Nigerians that homosexuality is a taboo and alien to African culture." www.mask.org.za.

⁵⁵ IRIN, *NIGERIA: Persecuted gay community cautiously seeks a voice*, 7 May 2004.

From the eight founder members, the organisation has grown to a membership of 8,000 - most of whom are men forced to keep their true sexuality in the dark. But the fact that homosexuality is widely ignored in Nigeria is having a negative impact on the spread of AIDS in the country. The Nigerian gay community has been largely forgotten about when it comes to AIDS awareness campaigns. These have always focused on preventing the spread of the HIV virus through heterosexual relationships. "It's unfortunate but homosexuals, because no educational programme targeted them, have become one of the main high risk groups in Nigeria. This is causing a lot of damage among our [gay] community, but also to those around them," Odumuye said. Because of the stigmatisation of homosexuality, many gay men have girlfriends and even marry to be seen to conform to cultural and societal norms. It is not uncommon, said Odumuye, for men to insist on using a condom with a woman but not bother with a male lover since they do not always realise that AIDS can be caught from sex with another man."⁵⁶

- 3.7.11. Finally, IRIN reported: "According to Odumuye, around 40% of MSMs are married, but they continue to have sex with male partners covertly - putting their wives and families at risk of HIV infection. Confined to the fringes of society, Nigeria's gay men also face huge problems in finding proper health care. "For instance, if they announce to the doctor that they have anal wounds, you can be sure that they won't get proper care," Odumuye said. "However, health care should meet the needs of sexual minorities." Professor Femi Soyinka, a leading human rights activist in Nigeria, agreed that MSMs are pushed to the sidelines of society. But he told IRIN that until they feel comfortable enough to identify themselves publicly, it will be very difficult to help them. "If somebody, who is an MSM, goes to the hospital, of course he will not want to be identified as being an MSM," Soyinka said. "For this reason, it's very difficult for us to know how they would be received as they're not identifying themselves." However, Odumuye was positive that things were improving. "Three or four years ago, it wouldn't be possible to hold such a meeting, talking freely about our concerns," he said. "The situation is gradually getting better."⁵⁷

3.8. Religious freedom including Jehovah's Witnesses

- 3.8.1. According to US Department of State the 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, practice, and observance. While the federal government generally respects religious freedom, there were some instances in which limits were placed on religious activity to address security and public safety concerns.
- 3.8.2. Furthermore, US Department of State reported that the government required permits for outdoor public functions; government authorities and those assembling often ignored this requirement. The government retained legal provisions banning gatherings whose political, ethnic, or religious content might lead to unrest. Many states prohibited open-air religious services held away from places of worship due to fears that these religious services would heighten interreligious tensions or lead to violence. Ondo State continued to ban open-air

⁵⁶ IRIN, *NIGERIA: Persecuted gay community cautiously seeks a voice*, 7 May 2004.

⁵⁷ IRIN, *NIGERIA: Persecuted gay community cautiously seeks a voice*, 7 May 2004.

religious events, and the Kaduna state government enforced a ban on processions, rallies, demonstrations, and meetings in public places on a case-by-case basis. In the southern part of the country, large outdoor religious gatherings were common.⁵⁸

- 3.8.3. Yusuf and Zakaria Mohammed confirmed that everyone in Nigeria is free to practice whatever religion they choose.
- 3.8.4. Yusuf had not heard of reports of anyone experiencing problems because of their religion. Asked specifically about Jehovah's Witnesses he repeated that he had not heard of any reports of them experiencing any problems and mentioned that one of his employees at the Daily Trust was a Jehovah's Witness and had not mentioned experiencing any problems. Yusuf added that a member of Jehovah's Witnesses might, through strict adherence to their beliefs, be unable and thus denied his or right to register and vote.
- 3.8.5. Yusuf also mentioned a recent case reported by the Daily Trust concerning three people, associated with an extremist religious group who had been detained in Kano. They had been moved to Lagos where they had recently been released by the courts and awarded 150,000 Naira in compensation.

3.9. Female Genital Mutilation (FGM)

- 3.9.1. According to the Nigerian women-NGO BAOBAB there is no federal law prohibiting FGM in Nigeria. However, laws in Cross River State, Edo State, Akwa Ibom State and Ondo State prohibit FGM, but in spite of these laws the custom of FGM continues.
- 3.9.2. The BHC confirmed that the Nigerian constitution outlaws inhumane treatment but also provides for citizens to practice their traditional beliefs. The government have warned against harmful traditional practices like FGM and campaigns have been conducted through the Ministry of Health and the media. A draft bill outlawing FGM has been before the National Assembly since 2001.
- 3.9.3. In its National Economic Empowerment and Development Strategy (NEEDS), which was launched in May 2004 by Obasanjo, the government stated its intention to intensify its campaign for the eradication of harmful traditional practices such as FGM, and stated that several states had already passed the necessary legislation, and many more are in the process of doing so.⁵⁹
- 3.9.4. Individual complaints to NHRC concerning FGM are few and far between and during the last 12 months NHRC only registered one complaint. NHRC was of the opinion that the situation regarding FGM in general has improved significantly. FGM is not common in the northwestern part of Nigeria whereas it is a predominant phenomenon in the Middle Belt and in the southwest. Various forms of FGM are practiced according to the culture and tradition amongst different ethnic groups in Nigeria. In general FGM is performed on young or newborn girls. However, in some communities FGM is a precondition of entering marriage, which means that even adult women may have to undergo FGM. In those communities some

⁵⁸ US Department of State, *Nigeria, International Religious Freedom Report 2004*, Washington DC, 2004.

⁵⁹ *National Economic Empowerment and Development Strategy (NEEDS)* May 2004, pp. 103-105.

women may regard not undergoing FGM as shameful in much the same way as being a victim of rape.

- 3.9.5. Women's Aid Collective (WACOL) confirmed that FGM may take place between the ages of newborn to the age of marriage and that FGM is far less prevalent in the northern, primarily Muslim part of the country than in the rest of the country. Finally, WACOL had never heard of FGM being performed in northern Nigeria on adult women (over the age of 18). WACOL estimated that in some states in the south the prevalence of FGM is more than 95% (e.g. Enugu, Imo, Plateau), but there are no statistics to show the exact figures.
- 3.9.6. According to BAOBAB the practice of FGM in Nigeria is quite diverse depending on tradition. In Edo State the law prohibits FGM during the first pregnancy of a woman, i.e. adult women. However, most women throughout Nigeria have the option to relocate to another location if they do not wish to undergo FGM. Government institutions and NGOs afford protection to these women. BAOBAB was of the opinion that FGM in itself is not a genuine reason for applying for asylum abroad.
- 3.9.7. On the subject of protection a senior representative of the IGP said that there is a law banning FGM, but the NPF does not become involved in FGM matters, as "it is a family thing". However, there are groups that are against the practice of FGM and should a girl desire to avoid FGM in spite of pressure from her family to do otherwise she has the opportunity to complain to the NPF or the NHRC and in addition she may seek protection by women lawyers or NGOs. The source added that traditional leaders might also be asked to step in. NHRC confirmed that it is possible to avoid FGM but added that the "traditional attitude" of a police officer or a village council would normally determine their level of concern and intervention. NHRC emphasized that cultural attitudes would still be prevalent and some victims would probably never have the courage to take their case to court.
- 3.9.8. According to BAOBAB the government and prominent NGOs in Nigeria provide protection to women escaping FGM. WACOL stated that it is possible for women to seek protection in the shelter run by WACOL in Enugu in the south. WACOL explained that the organisation's Enugu office assist many adult women seeking protection against FGM.

3.10. Forced marriages

- 3.10.1. According to BAOBAB forced marriages are especially common in northern Nigeria and is mostly a concern for young women who are being forced to marry an older man. BAOBAB was aware of many young women from the north escaping forced marriages but the organisation also receives reports on this from the southern part of the country. Women from the north who find themselves under pressure to marry against their own wish may take up residence in another state in the northern part of Nigeria or in the south, especially in Lagos. Those women can seek legal assistance from a number of NGOs and some do so.
- 3.10.2. Women who are trying to escape forced marriage may be assisted by WACOL, but WACOL emphasized that the vast majority of such disputes have been solved and the parties reconciled by the assistance of WACOL. In some cases women are underage when they are forced to marry. Finally, WACOL regretted that the organisation is only able to provide assistance to victims arriving at its office in Abuja.

3.11. Ill-treatment by Nigerian law enforcement agencies

- 3.11.1 HRW reported in January 2005: "Despite repeated promises of reform by senior government and police officials, extra-judicial killings, torture, ill treatment, arbitrary arrests and extortion remain the hallmarks of the Nigerian police. Throughout the years, a large number of extra-judicial killings occurred not only in the context of crime fighting operations against alleged armed robbers, but also during routine duties such as traffic control. Cases of torture and ill-treatment by the police during arrest and detention are common. Police often take advantage of situations of generalized violence and disorder to carry out further killings. For example, in May 2004, riots between Muslims and Christians in Kano left more than two hundred people dead, dozens of whom had been shot dead by the police. In very few cases were the individuals responsible for these acts or their superiors brought to justice."⁶⁰
- 3.11.2 In 2000 CLEEN and NHRC published a national survey on the root causes of police and community violence in Nigeria.⁶¹ The survey documented that torture and police brutality was widespread. The survey also documented violence against NPF by Nigerian citizens.
- 3.11.3 It must be noted that the CLEEN/NHRC survey was carried out before the democratically elected government was inaugurated in 1999. However, according to LEDAP the law enforcement agents as under the military administration continued their old ways of torture, extra-judicial executions and other forms of human rights abuses.⁶²
- 3.11.4 According to the above-mentioned survey 68.8% of the respondents had experienced being stopped and searched by the NPF. The phenomenon of roadblock or checkpoints (derogatively called "toll points") as a crime prevention strategy has been associated with monumental police corruption and extortion, violence and sometimes extra-judicial killings. One third of the respondents had been arrested by the police, half of them twice or more.⁶³
- 3.11.5 More than two-fifths of the respondents reported that they had experienced abuses by the police. Between 10% and 20% have ever been injured (10.6%), beaten (14.8%), kicked (13.5%) and slapped (20.0%) by NPF. The survey revealed that 22.5% had experienced a police officer pointing a gun at them; while 21.3% of the respondents reported that the NPF had threatened to shoot them. The survey shows that police brutality is widespread at checkpoints, where NPF menacingly display their guns to threaten passers-by. Under the military regime, the issuance of "shoot at sight" order against crime suspects as well as demonstrators give the police the wrong impression that firearms and violence are to be used as tools of routine police work.⁶⁴
- 3.11.6 As an example of police brutality in present day Nigeria Asiwaju referred to "Operation Fire-for-Fire" according to which the NPF has adopted a tough and determined approach

⁶⁰ HRW, *Nigeria World Report 2005*, New York, January 2005.

⁶¹ E.E.O. Alemika & I.C. Chukwuma, *Police-Community Violence in Nigeria*, CLEEN, Lagos & NHRC, Abuja 2000.

⁶² LEDAP, *Impunity in Nigeria, Report of extra judicial, arbitrary and summary executions in Nigeria 2001-2003*, Lagos 2004, pp. 1-3.

⁶³ E.E.O. Alemika & I.C. Chukwuma, *Police-Community Violence in Nigeria*, CLEEN & NHRC, Lagos/Abuja 2000, p. 50.

⁶⁴ *Ibid.*, pp. 57-58.

towards assumed criminals. Preparation for an investigation into "Operation Fire-for-Fire" and police brutality is now being made. US Department of State reported that NPF officers enforcing "Operation Fire-for-Fire" were among the most frequent human rights offenders in Nigeria during 2003.⁶⁵ The NHRC stated that the Nigerian authorities, including the NPF, are the most important human rights offender in Nigeria.

- 3.11.7 Finally, according to the CLEEN/NHRC survey the respondents observed the NPF engaging in diverse acts of abuse of power or brutality against citizens – insulting (79.5%); slapping (72.1%); kicking (69.0%) beating (73.2%); inflicting injury (51.9%), pointing a gun (63.3%), shooting (27.5%), receiving a bribe (82.5%).⁶⁶
- 3.11.8 A senior representative of the IGP confirmed that members of the police using excessive force is a problem and that there are many complaints made. The law only permits "minimum reasonable force" to be used. When complaints are made, the police officers concerned are suspended pending the investigation. If the complaint is substantiated the officer concerned will be dismissed and action initiated in respect of the particular offence, e.g. charged with using threatening behaviour, actual bodily harm etc. and dealt with through the criminal courts. The source was not able to provide no exact figures on the number of complaints made, investigated and their outcomes, against policemen by the public. Although the source undertook to provide the delegation with the information before the end of the mission, it was not unfortunately forthcoming.
- 3.11.9 Momoh confirmed that bribery and extreme violence is often committed by the NPF. Normally the government does not intervene and Momoh considered NPF abuses as a major human rights problem. He added that the SSS harass persons for no particular reason and mass arrests are taking place in order to extract money from those arrested. Very often the victims will have to pay up to 2,000 Naira for their release otherwise they risk being accused of "wandering" and possibly prosecuted.
- 3.11.10 As an example of police brutality and mentality Momoh explained that NPF might also present themselves as civilian bus drivers. At bus stations a police officers would call for passengers to a certain destination and as soon as the bus is full it is driven to an unknown destination and all passengers are then forced to pay money for their release. Momoh explained that this takes place often and that a few days ago this actually took place on a location close to his office at Channels Television in the district of Ikeja, Lagos. Intimidation, false accusations and arbitrary arrests are also common features within NPF.
- 3.11.11 Asiwaju explained that police brutality in Nigeria is much more common in rural areas than in major urban centres such as Lagos or Abuja but no statistics are available to document the scale of police brutality in Nigeria. In general the NPF has a long history of abuse and violence and it is difficult to change its course and transform it into a democratic institution.

⁶⁵ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

⁶⁶ E.E.O. Alemika & I.C. Chukwuma, *Police-Community Violence in Nigeria*, CLEEN & NHRC, Lagos/Abuja 2000, pp. 57-58.

3.12. Summary executions and extra-judicial killings

- 3.12.1 Yusuf said that there are reports of several hundred incidents of NPF officers arresting and executing armed robbers, instead of taking the culprits through the courts. He explained that a court case can take many years and as accused armed robbers might be able to avoid trial through bribery the police officers might take suspects out of town and shoot them. According to Yusuf such extra-judicial killings are frequent and widespread.
- 3.12.2 In addition Yusuf explained that well-to-do people often use NPF to settle their personal disputes and it is in this connection that extra-judicial killings can take place. The use of bribery is also widespread.
- 3.12.3 Extra-judicial killings are common and Yusuf referred to recent reports carried by the Daily Trust, which informed about 19 bodies that were buried by NPF in a cemetery in Kaduna. The local community believed that it was people who had been arrested during the general strike and dug up the bodies. However, the NPF claimed that the bodies were of armed robbers shot whilst escaping. The state government has set up an enquiry into the incident and has appointed a former police commissioner to conduct the enquiry. Yusuf added that the local community does not see this as an impartial enquiry.
- 3.12.4 According to IRIN the NPF claimed that the bodies belonged to armed robbers who had been killed in recent gun battles. But local residents who exhumed the bodies said they recognised among them relatives who had been arrested by NPF during street protests that accompanied the recent general strikes.⁶⁷
- 3.12.5 LEDAP distinguishes between summary executions and extra-judicial killings. Summary executions refer to unlawful killings by non-state actors; extra-judicial killings refer to killings carried out by state agents, such as law enforcement agents like the police, military, drug enforcement agents, customs and security outfits. LEDAP reported that more than 700 victims of summary and extra-judicial killings in Nigeria were reported during the two-year period between December 2001 and December 2003. A total of 177 cases are documented in LEDAP's report, with a breakdown of 61 for political and ethnic violence, 105 for extra-judicial executions and 11 for cult killings. LEDAP emphasizes that its report is not an exhaustive account of all violations of rights to life and human security. There are many cases that have not been reported due to the fact that they have not been brought to the attention of LEDAP or the media.⁶⁸
- 3.12.6 Finally, the above-mentioned report concluded that officials or security operatives who violate people's rights frequently go unpunished. Although a few of the violators were apprehended and charged, LEDAP considered that the proportion brought to account was minute in comparison to the hundreds of cases yet to be resolved.⁶⁹

⁶⁷ IRIN, *NIGERIA: Kaduna checks identity of 19 bodies buried by police*, 19 October 2004.

⁶⁸ LEDAP, *Impunity in Nigeria, Report of extra judicial, arbitrary and summary executions in Nigeria 2001-2003*, Lagos 2004, pp. 1-3.

⁶⁹ *Ibid.*, p. 63.

4. Avenues of redress and options for protection

4.1. Complaints against police and impunity

- 4.1.1. The BHC stated that the Nigerian government does not tolerate ill-treatment by the police and that any such activity is by rogue elements within the police. Individuals who encounter ill-treatment are able to make formal complaints about the treatment they received but action is not always taken to investigate the complaint and few prosecutions are brought.
- 4.1.2. The BHC added that individuals who experience problems, threats or ill-treatment from non-state agents (for example militia groups, secret cults and societies) are able to take their case to the NPF. The NPF is however reluctant to challenge groups or individuals who may be better armed than the police and as a consequence the police do not take any action. The NPF is also sometimes reluctant to take action against such groups because these groups have the backing of senior government officials. Any prosecutions which are brought as a result of police action will invariably be in favour of the wealthier party to the complaint.
- 4.1.3. A senior representative of the IGP explained that the NPF is a federal force. Nigerian law requires the NPF to investigate all complaints made to them. If a person makes a complaint to the Divisional Police, and he or she is not satisfied with the response or action of the NPF then the case can be appealed to the Area Commanders. If the person is still not satisfied the case can be taken to the State Police Headquarters. If still not satisfied the person can take the matter to the IGP (i.e. the Force Headquarters).
- 4.1.4. As previously stated, the senior representative of the IGP acknowledged that the use of excessive force by members of the NPF was a problem and that many complaints made are made. When complaints are made, the police officers concerned are suspended pending the investigation. If the complaint is substantiated the officer concerned will be dismissed and action initiated in respect of the particular offence, e.g. charged with using threatening behaviour, actual bodily harm etc. and dealt with through the criminal courts.
- 4.1.5. Asiwaju confirmed that the NPF is assigned to investigate allegations that are made about police brutality and other violations committed by NPF officers. Asiwaju explained that a police officer might be suspended and/or demoted in cases where accusations of use of excessive force were substantiated. If the victim of police brutality has died the case will be referred to the Ministry of Justice (Director of Public Prosecutions). The policeman will be treated as anyone else and enjoy the same rights. In cases where a police officer has been tried and found guilty he or she will be dismissed automatically from the NPF.
- 4.1.6. According to E.E.O. Alemika, Professor of Criminology and Sociology of Law, Nigeria has multiple institutions both external and internal for holding police accountable. The constitution of Nigeria establishes two principal external organs for the control of NPF, the Nigeria Police Council (NPC) and the Police Service Commission (PSC).⁷⁰

⁷⁰ E. E. O. Alemika, *Police Accountability in Nigeria* in *Civilian Oversight and Accountability of Police in Nigeria*, CLEEN & PSC, Lagos/Abuja 2003, pp. 39-40. NPC consists of the president, the governor of each state, the chairman of PSC and the IGP. NPC is the highest governmental institution responsible for the police.

- 4.1.7. NPC is tasked with the overall organisation, administration and general supervision of NPF. This does not include the appointment, disciplinary control and dismissal of members of NPF. At present there appears to be no political will to establish strong mechanisms for accountability at this political level.⁷¹
- 4.1.8. Ayo Obe, member of PSC, considered that the PSC⁷² is the very embodiment of the concept of civilian oversight for NPF. PSC is responsible for the appointment, promotion, discipline and dismissal of every police officer in Nigeria other than the IGP.⁷³ Acknowledging this Alemika considered that if the PSC was to be strengthened – organisationally, financially, materially and staff-wise – and allowed to function as an independent organisation as provided for by the constitution, it will be one of the most powerful and autonomous civilian oversight institutions of the police in the world. However, the potential of the PSC has not been realised for a number of reasons e.g. lack of appropriate structures, directorates, policies and guidelines due to poor funding. Also as in many other countries the relationship between civilian oversight bodies and NPF is often characterised by tension, suspicion and sometimes open hostility. However the PSC has an advantage in so far as it has and exercise power of promotion and discipline.⁷⁴
- 4.1.9. In April 2004 CLEEN reported that the PSC was set to launch its investigation department, which is one of five departments statutorily provided for in the enabling act. The investigation department will be responsible for handling complaints from members of the public against police misconduct as well as processing petitions from police officials challenging the fairness of the internal disciplinary procedures through which they have been punished for offences against discipline.⁷⁵
- 4.1.10. Asiwaju stated that various internal disciplinary mechanisms exist within NPF. Asiwaju pointed to the Public Complaints Bureau, which investigates police misconduct with a view to bringing the perpetrators to justice. Though such bodies for ensuring police accountability exist and are taking measures they are difficult to monitor and suffer from defectives.
- 4.1.11. According to Alemika the Police Act and police Regulations provide for internal disciplinary measures and mechanisms within in NPF. Police misdemeanour is not due to lack of rules but rather due to inadequate compliance and enforcement.⁷⁶

⁷¹ Ibid.

⁷² PSC was established in 2001 according to the 1999 constitution. Of its seven members and a secretary one is a retired senior police officer. The rest are from the non-police sector of society. The act under which PSC is established specifies that its members should include representatives of women, the press, human rights NGOs and the private sector.

⁷³ Ayo Obe, *Preface in Civilian Oversight and Accountability of Police in Nigeria*, CLEEN & PSC, Lagos/Abuja 2003, p. ix.

⁷⁴ E. E. O. Alemika, *Police Accountability in Nigeria* in *Civilian Oversight and Accountability of Police in Nigeria*, CLEEN & PSC, Lagos/Abuja 2003, pp. 42-43.

⁷⁵ CLEEN, *Newsletter*, Vol. 1, Issue 1, April 2004.

⁷⁶ E. E. O. Alemika, *Police Accountability in Nigeria* in *Civilian Oversight and Accountability of Police in Nigeria*, CLEEN & PSC, Lagos/Abuja 2003, pp. 45-46.

- 4.1.12. Furthermore, Alemika explained that police officers that abuse their powers are liable to civil and/or criminal proceedings, depending on the nature of the abuse. Sections 341 and 374 of the Police Regulations pronounce the liability of individual police officers for abuse of power. In the case of criminal liability, either NPF or the Attorney General of a state or of the federation will have to invoke the process. They will do this only in a case they consider serious and in which the power exercised by an officer is considered unjustified. However the prospect of an aggrieved citizens taking recourse to civil action is limited because of grinding poverty among the majority of the citizens.⁷⁷
- 4.1.13. CLEEN added that members of the public that are aggrieved by acts of police misconduct only in theory have the option of seeking redress via the internal disciplinary system.⁷⁸
- 4.1.14. Yusuf did not believe that the government is doing enough to bring the NPF under proper control. Only when there is an outcry among the local people affected some investigation of police brutality may take place. Having said that Yusuf referred to reports of police officers being suspended, dismissed and prosecuted when they have acted improperly. These cases usually see the light of day when the victims are influential people or well connected to such people, which ensure that action is taken against the police officers concerned.
- 4.1.15. According to CLEEN it is usually only when the NPF is being criticised by the media for serious violations of human rights such as extra-judicial killing or when the victim is a prominent person that one mostly hear about NPF's internal disciplinary system. On these occasions NPF would either dismiss the erring officers from service or quickly convoke orderly room trials.⁷⁹
- 4.1.16. Asiwaju confirmed that specific cases of police brutality and impunity would be dealt with only if NGOs or other observers are able to generate attention by mobilising the media and politicians.
- 4.1.17. Alemika also confirmed that the NPF routinely use the internal mechanism to address problems that are identified by the public. However, the outcomes of the disciplinary procedures resulting in dismissals of hundreds of officers for corruption and other forms of abuse of power are not made available to the public, thereby inadvertently creating the impression of a police force that is complacent towards public complaints against abusive exercise of power.⁸⁰
- 4.1.18. CLEEN reported that "while it could be argued that the number of police officers investigated or disciplined for acts of misconduct has greatly increased since the inauguration of an elected government in 1999, information or statistics on culprits, their

⁷⁷ E. E. O. Alemika, *Police Accountability in Nigeria* in Civilian Oversight and Accountability of Police in Nigeria, CLEEN & PSC, Lagos/Abuja 2003, p. 44.

⁷⁸ Innocent Chukwuma, *Internal Disciplinary Systems as Important Complement to External Oversight of Police* in Nigeria in Civilian Oversight and Accountability of Police in Nigeria, CLEEN & PSC, Lagos/Abuja 2003, p. 65.

⁷⁹ Ibid., pp. 66-67.

⁸⁰ E. E. O. Alemika, *Police Accountability in Nigeria* in Civilian Oversight and Accountability of Police in Nigeria, CLEEN & PSC, Lagos/Abuja 2003, pp 46-47.

offences and the processes through which they were disciplined are hardly available in the public domain. The list of the individuals is only provided when NPF come under severe public criticisms for not doing much to bring its erring members to book. On such occasions they would usually publish long list of their men and women that have been dismissed, demoted or reprimanded. Such lists usually do not contain the offences of the officers and a discussion of the administrative processes through which they were sanctioned in order to enable an analysis of whether they were fair or not. The impression is that such statistics are prepared to suit the occasion in question and not a routine or regular feature of police work and administration, which would have assisted them in tracking officers that are subjects of unusually high number of complaints and disciplinary sanctions.”⁸¹

- 4.1.19. In its study on impunity LEDAP stated: “most of those who kill, give order or fail to intervene in extra judicial executions do so with impunity and often escape without ever being investigated, prosecuted, tried or punished. [...] Based on the cases studied, 756 deaths were recorded out of which 16 were investigated and only 3 had their perpetrators tried and resolved. This brings the percentage of prosecuted cases to about 4.7% confirming the alarming rate of impunity to summary and extra judicial executions in Nigeria.”⁸² LEDAP emphasised that its report is not an exhaustive account of all violations of rights to life and human security. There are so many cases that were not reported because they were not brought to the attention of the LEDAP or were not reported in the media.⁸³
- 4.1.20. According to Obiagwu the police enjoyed absolute impunity under the Abacha government. Since then five cases of police killings of civilians have been brought to court. The NPF does not on its own investigate and prosecute cases of excessive force. The NPF only takes up cases that are disclosed in public and are subject to debate in the media. Yusuf added that this is a widespread problem throughout the country. The basic problem is that ordinary Nigerians do not know their rights and little is done when the police “round up” or detain or abuse people. The victims of such injustice are very often ordinary people and especially those without family and social networks can easily encounter problems.
- 4.1.21. However, according to Obe: “members of the public can and do raise complaints against police officers. Cases of death or serious injury in police custody or resulting from torture at the hands of investigating officers, seizure of property, wrongful or malicious arrest, extortion and bribe-taking, release of suspected criminals (who then turn round to terrorize those who named them as suspects) – these have all been reported to the Nigeria Police Force. But even cases taken up by non-governmental organisations and legal practitioners are often left un-addressed and ignored in the expectation that the complainant will eventually get tired.”⁸⁴

⁸¹ Innocent Chukwuma, *Internal Disciplinary Systems as Important Complement to External Oversight of Police in Nigeria* in Civilian Oversight and Accountability of Police in Nigeria, CLEEN & PSC, Lagos/Abuja 2003, p. 66.

⁸² LEDAP, *Impunity in Nigeria, Report of extra judicial, arbitrary and summary executions in Nigeria 2001-2003*, Lagos 2004, pp. 2-3.

⁸³ Ibid., p. 3.

⁸⁴ Ayo Obe, member of PSC, *Preface* in Civilian Oversight and Accountability of Police in Nigeria, CLEEN & PSC, Lagos/Abuja 2003, p. ix.

4.1.22. According to CLEEN an aggrieved person can complain against police misconduct or abuse of power by taking one of the following measures:

- Verbal complaints to superior officers
- Writing of petition to a divisional police officer
- Writing of petition to an area commander
- Writing of petition to a commissioner of police
- Writing of petition to an assistant IGP
- Writing of petition to the IGP
- Sending a written complaint to the PCB
- Writing to the Force Secretary.⁸⁵

4.1.23. The large number of these mechanisms, including some other internal disciplinary mechanisms, “creates confusion among the citizens as to which of them to send their petitions to, which is further compounded by the fact that there is no regulation guiding the invocation of the mechanisms. [...] This has led to a situation where a citizen could wake up and write a petition to the Inspector General of Police in faraway Abuja, the Federal Capital Territory, for allegations of police misconduct that could have been handled by the divisional police officer in his local community. And when he or she doesn’t get either a reply or redress on time, the conclusion would be [...] that the police do not take complaints against its personnel seriously.”⁸⁶

4.1.24. Regarding impunity LEDAP reported that the violation of the right to life and the failure to bring those responsible for unlawful killings to justice is prevalent. Most of the perpetrators of 700 victims of summary and extra-judicial killings in Nigeria between December 2001 and December 2003 have not been prosecuted and neither have the families of the victims been compensated. The Nigerian government does not only lack the capacity to apprehend the culprits but also the will to prosecute violators.⁸⁷

4.1.25. LEDAP’s study furthermore exposes the fact that most of those who kill, give order or fail to intervene in extra-judicial executions do so with impunity and often escape without ever being investigated, prosecuted, tried or punished.⁸⁸

4.1.26. Professor Utomi considered that there is a strong government commitment to deal with police impunity in Nigeria but in practice improvements are only slowly being taken forward.

⁸⁵ Innocent Chukwuma, *Internal Disciplinary Systems as Important Complement to External Oversight of Police in Nigeria in Civilian Oversight and Accountability of Police in Nigeria*, CLEEN & PSC, Lagos/Abuja 2003, p. 69.

⁸⁶ Ibid., p. 70.

⁸⁷ Ibid., p. 1.

⁸⁸ Ibid., p. 2.

- 4.1.27. According to Yusuf the NPF hold a militant culture that promotes the use of excessive violence. It was emphasised that there is "massive impunity" for police officers and that the NPF protects its own staff members.
- 4.1.28. Impunity continues to be a human rights problem in Nigeria as HRW reported in January 2005: "Tackling impunity remains a key challenge for the government. [...] The police continue to commit numerous extra-judicial killings, acts of torture and arbitrary arrests."⁸⁹

4.2. Presence of human rights bodies

- 4.2.1. In addition to the above-mentioned official channels to seek redress a number of independent NGOs, including women NGOs, offer support including legal protection and assistance to ordinary citizens that have become victims of various human rights violations and abuses.
- 4.2.2. Tony Ojukwu, Assistant Director and Legal/Special Assistant to the Executive Director, NHRC, explained that NHRC is the only governmental human rights body in Nigeria. There are no government human rights institutions at state level but a number of regional NHRC-offices have been established. These are located in Lagos (Lagos State), Maiduguri (Borno State), Port Harcourt (Rivers State), Kano (Kano State) and Enugu (Enugu State). An additional office will soon be established in Jos (Plateau State).
- 4.2.3. Ojukwu explained that NHRC records human rights violations, receives complaints from individuals and advises the government and the authorities regarding human rights. Within the last twelve months NHRC received approximately 800 complaints regarding extra-judicial killings, domestic violence, authorities misuse of power, illegal arrests and detention, police violence, pension and co-operative matters and environmental complaints. Only two such complaints were brought to the courts within the same period.
- 4.2.4. During the mission to Nigeria the delegation held meetings with the following NGOs: LEDAP, PRAWA, Women Trafficking & Child Labour Eradication Foundation (WOTCLEF), WACOL and BAOBAB. The representatives of these five organisations all stated that in one way or another they provide legal assistance and support to individuals that are victims of injustice, harassment from non-state agents, e.g. violent husbands, forced marriages, FGM, trafficking agents or madams as well as rulings by *Shari'a* courts.
- 4.2.5. The five NGOs mentioned operate in various locations throughout Nigeria and they cooperate with a number of other local NGOs so that individuals in need of protection and/or legal assistance will find such kind of assistance available to them. However, it was also emphasised that poor, illiterate or uneducated people may be unaware of the existence of the legal system and the avenues to seek redress or the availability of support from and protection provided by the extensive network of NGOs in Nigeria.
- 4.2.6. The five NGOs have offices and representatives in the following locations:
- LEDAP: located in Lagos, Enugu, Kano, Port Harcourt and Jos.
- PRAWA: located in Lagos and Enugu.
- WOTCLEF: located in Lagos and Benin City.

⁸⁹ HRW, *Nigeria World Report 2005*, New York, January 2005.

WACOL: located in Enugu, Port Harcourt and Abuja.

BAOBAB: located in Lagos, Adamawa, Borno, Edo, Kaduna, Kano, Katsina, Kogi, Osun, Oyo, Plateau, Taraba and Zamfara.

- 4.2.7. Being one of the most important women's NGOs in Nigeria BAOBAB⁹⁰ co-operates with a number of women's NGOs and the representatives of BAOBAB explained that its co-operation with the following has been rewarding:

Girls Power Initiative: located in Benin City, Calabar (Cross River), Asaba (Delta) and Uyo (Akwa Ibom).

Project Alert on Violence Against Women (Project Alert): located in Lagos.

Catholic Secretariat: located in Lagos.

Women Consultants of Nigeria: located in Lagos, Abeokuta (Ogun State) and Enugu.

In addition WOTCLEF explained that it co-operates with the Abuja-based NGO Daughters of Ibrahim. Daughters of Ibrahim assist victims of trafficking and prostitution.

- 4.2.8. According to BAOBAB between 10 and 15 NGOs in Nigeria are exclusively devoted to support women, as there is no government system to support women.

4.3. Freedom of movement (internal relocation)

- 4.3.1. The BHC believed that internal relocation to escape any ill treatment from non-state agents was almost always an option. Some individuals may, however, face difficulties with regard to lack of acceptance by others in the new environment as well as lack of accommodation, land etc. The situation would be considerably easier if the individual concerned has family or other ties on the new location.
- 4.3.2. According to the Minister of Internal Affairs, Dr. Iorchia Ayu there is no longer any state persecution in Nigeria. Persons that encounter any difficulties from non-state agents are able to relocate internally. There is free movement for all citizens within the country. Those who travel overseas to claim asylum have no reason to do so. Although claiming asylum overseas reflects badly on the country returnees will not encounter any problems upon return.
- 4.3.3. A senior representative of the IGP stated that NPF 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.
- 4.3.4. Momoh explained that it is possible to evade "social persecution" e.g. FGM, forced marriage, *Shari'a* punishment etc. by relocating inside Nigeria. Momoh saw only one obstacle for escaping FGM in the form of lack of means for a person from the rural hinterland. Regarding forced marriages Momoh explained that it is possible to escape such

⁹⁰ BAOBABs activities include support and legal aid to women who face punishment under the *Shari'a* law as well as support to victims of domestic violence.

arrangements by relocating. Forced marriage is predominately a phenomenon in the northern part of Nigeria and a woman can escape a forced marriage by relocating to the south. It was emphasised that there is freedom of movement throughout Nigeria.

- 4.3.5. NHRC expressed surprise if someone actually had to leave Nigeria in order to avoid FGM instead of taking up residence elsewhere in Nigeria. NHRC added that it might be difficult for a woman residing in the southern part of Nigeria who wishes to avoid FGM to take up residence in the northern part whereas all Nigerians have the possibility to take up residence in Lagos due to the ethnic diversity and size of the city.
- 4.3.6. According to BAOBAB internal relocation for victims of FGM and forced marriages is an option within Nigeria and BAOBAB stated; "the women do so". BAOBAB considered that some victims of trafficking might find it difficult to find protection against persecution by agents of trafficking. However, those victims may even find their security at stake abroad. BAOBAB emphasised that trafficking agents do have a well-established network even internationally. This network makes it possible for agents to harass, intimidate and even kill their victims or their relatives overseas. BAOBAB referred to a recent case from Italy in which someone presumably connected to trafficking agents had killed the sister of a victim of trafficking.
- 4.3.7. Regarding victims of trafficking Momoh considered that if social stigmatisation in the home area of a victim turned out to be a problem for a returnee this person would only have to settle temporarily somewhere else in Nigeria before returning to her home area.
- 4.3.8. Yusuf confirmed that there are problems with secret cults in Nigeria, including university cults. Although these make life difficult for some it is not to the extent that the victims are driven away. Generally speaking individuals who encounter problems can readily relocate elsewhere. Yusuf was not aware of any reports of persons who have encountered problems in that situation.
- 4.3.9. Nwankwo confirmed that victims of secret cult's activities could relocate within Nigeria without encountering security problems.
- 4.3.10. Regarding trade unionists Yusuf stated that some of these might be in trouble and at risk of persecution. However, internal relocation elsewhere in Nigeria could be a way out for such persons.

5. Trafficking in women

5.1. Background

- 5.1.1. Commenting on the subject of the increase in trafficking in women in Nigeria, Usman explained that the Nigerian society in general is becoming increasingly commercial and many people are poor. Furthermore, the oil business in the Niger Delta region has to a great extent destroyed the local environment and the livelihood of people living there. Consequently many people are in need of an alternative income to make up for the loss of farming land. As a result prostitution has become more widespread in the Niger Delta and the presence of the high number of oil workers and their ability to pay for sexual services have added to this. This development has also led to an increase in the number of female-headed households in which daughters may face a difficult future if they are born out of wedlock or if their mothers have abandoned them.
- 5.1.2. When mothers see how remittances from girls or young women abroad improve the standard of living for some persons in the local society they often become willing accomplices to the traffickers. However, not all Nigerian women who are engaged in prostitution abroad are victims of trafficking.
- 5.1.3. According to Momoh trafficked women and girls may send money back to their families either to assist their family or to make a saving for future investment. 100 US\$ per month would add considerably to a family's budget and it could mean that it would be able to establish some kind of small-scale business or shop.
- 5.1.4. In addition to this Ernest Ogboxor, Country Director and Ighorodje Voke, Project Administrator, Prisoners' Rehabilitation and Welfare Action (PRAWA) stated that they were aware of cases in which husbands have sold their daughters and even wives to trafficking agents well aware that these women may be exploited and forced into prostitution overseas. Both sources confirmed that many victims of trafficking are in debt to agents and madams and they dare not return to Nigeria.
- 5.1.5. Usman explained that most trafficking in women takes place from the southern part of Nigeria and in particular from the Niger Delta region. Although Benin City has a reputation of being the centre of trafficking there are replicas all over Nigeria. Trafficking from the Middle Belt is predominately directed towards the US and Europe. Trafficking in women to Saudi Arabia takes place in considerable scale from the northern part of Nigeria. BAOBAB confirmed that the majority of women being trafficked originate from Edo State.
- 5.1.6. WACOL explained that for religious reasons trafficking in women and children is not as serious a problem in northern Nigeria as it is in the south. However, an increasing number of northerners are arriving in the south, as poverty is on the increase in northern Nigeria. Many of these are trying to make a living from begging or they may become prostitutes.
- 5.1.7. Momoh emphasised that a number of so-called "victims of trafficking" are actually persons who voluntarily use traffickers so that they can enter into prostitution overseas for financial

reasons. However, some persons who have travelled overseas expecting to be employed as au pair girls or in similar jobs may also end up in prostitution.

- 5.1.8. Tomasso de Cataldo, Chief of Mission, IOM, explained that a recent survey conducted by IOM showed that it is mostly victims of internal conflicts that are being trafficked and that internally displaced children also are victims of trafficking. Internal conflicts in Nigeria are conducive to establishing illegal trafficking and also for recruiting children. De Cataldo emphasised that it is important to recognise the scope of the problem. The laws are in place and the President has declared that the government intends to fight the phenomena. Nigeria is now able to crack down on trafficking agents inside the country. Many agents have their origin in Edo State. Trafficking in women is a growing problem but it is also a mere development of an existing system of trafficking in forced labour. There is freedom of movement within Nigeria and if the government is to improve border control NPF will need more resources. Many trafficked women in Nigeria travel overseas via Niger, as the land borders are mostly not guarded.
- 5.1.9. According to Usman the agents and women usually travel by road when they leave Nigeria. The victims are taken illegally into Niger in small trucks or even on camel back. In Niger the journey continues in larger trucks on to Libya and on to Europe or elsewhere. Usman's hometown is very close to one such travel route.
- 5.1.10. Groups of trafficked women cannot leave Nigeria through its international airports due to the attention this would attract and intervention from the authorities. One or two might slip through and bribery of immigration and police authorities in the airports is always a possibility.
- 5.1.11. Usman explained that trafficking from the northern part of Nigeria takes a different form. Single women are not permitted to travel to Saudi Arabia by themselves. In order to obtain a visa to Saudi Arabia a temporary marriage is made. In Hausa this is called "*awren* visa", meaning visa marriage. Yusuf confirmed that single women cannot obtain Saudi visas and they travel to Saudi Arabia illegally. Each year the Saudi Arabian authorities routinely round up Nigerian illegal immigrants both male and female and deport them to Nigeria.

5.2. Contracting the victims

- 5.2.1. According to Usman trafficking in women from the southern part of the country is most often set up by an agent or a madam who can also be involved in money lending business. The madam or the agents have the means to obtain visas and can pay the travelling cost for the girl or young women. A contract is made with the woman and she has to swear an oath to a shrine. The woman swears the oath in the presence of a priest, the madam and the parents (mostly the mother). Usually a number of rituals are a part of the oath swearing – a goat or chicken is slaughtered, "nonsense words" are said and wine spilled on the ground. The woman subjects herself to the bidding of the madam and is obliged to pay back money to her. The oath to the shrine is not an unusual phenomenon but a part of ordinary life and the social system in parts of Nigeria. Shrines are dotted all over the southern part of Nigeria and the Middle Belt and other places where Christians and believers of traditional religions live. Even if the mother and the girl or young woman are not fully aware of the implications of the contract and believe that the woman is going abroad to work as a housemaid, in the cleaning business or even to receive an education the woman is obliged to the oath and to the bidding of the madam.

- 5.2.2. Dayo Akinmoyo, Special Assistant to the President on Human Trafficking and Child Labour, confirmed that the sworn oath given by the victims and their sense of obligations towards the shrine make them fear of reprisals even before they are sent off to a foreign country. However genuine this fear might be, Akinmoyo considered it to be more of a psychological nature rather than founded in reality.
- 5.2.3. Usman explained that the contract might run for two or three years depending on the woman's earnings abroad. During that time the woman return the majority of her income to the madam and also smaller amounts to her household via commercial money transfer companies. Usman assumed that a pimp or madam abroad is in contact with the madam or agent in Nigeria and thus have the means of controlling the woman. Usman stressed that nobody has specific information about this. However, the woman is no longer bound by her oath to the shrine when the contract expires and the debt to the madam or the agent has been paid.
- 5.2.4. Carol N. Ndaguba, Executive Secretary/Chief Executive, National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP), considered that trafficked women and girls abroad might fear being forced to return to Nigeria. She explained that very often these victims 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. Because of the victim's fear of her compulsion to the *juju* shrine and the possible risk of being persecuted by the madam or the priest the victim might feel a genuine fear of returning home. However, Ndaguba considered such kind of fear as unfounded.
- 5.2.5. Ndaguba referred to a recent incident in which six trafficked women had refused to testify against their traffickers because of the promise or covenant at the '*juju shrine*' they had been forced to enter into. The victim's fear of reprisals against themselves and their families has always made it very difficult for NAPTIP to convince the victims to testify. In order to demystify the shrines and the victim's fear of obligations NAPTIP recently raided two shrines in Benin City and in Uromi, Edo State. A number of items were recovered including the pictures and hair of six victims. Two priests were arrested and they were presented to the victims in order to convince them that they had no power to intimidate them and that their fears was unfounded.
- 5.2.6. Veronica Kehen Umaru, National Co-ordinator, WOTCLEF, confirmed that returning victims of trafficking might have a genuine fear because of the oath they have given but she emphasised that NAPTIP is fully aware of this problem and working hard on de-mystifying the phenomenon. However, Umaru made it clear that there are examples of parents of trafficked women who have been intimidated and threatened by agents of trafficking, madams or other individuals. NAPTIP is assisting the victims of such cases and has provided protection for both the victim of trafficking as well as the victim's family.

5.3. Legal provisions and governmental actions

- 5.3.1. Akinmoyo pointed out that there is a strong political will within the federal government to address the problem of human trafficking and child labour but the government does not fully control the policies of the state and local governments. On the federal level a number of

governmental bodies are concerned with trafficking and a National Presidential Committee has the overall responsibility for all activities and an anti-trafficking police force has been established. The key NGO engaged in anti-trafficking is WOTCLEF, but Akinmoyo emphasised that there is a need to form a coalition of anti-trafficking NGOs throughout the country as the victims of trafficking most likely are more prepared to co-operate with a local NGO whom they may know.

- 5.3.2. Ndaguba explained that the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was enacted in 2003 and in August the same year NAPTIP was established under the provision of that legislation. NAPTIP commenced its work in January 2004 and has received international donations of funding. Ndaguba added that internal trafficking in Nigeria is minimal compared to trafficking across the borders. Trafficking is a very serious problem in Nigeria and a number of government agencies and ministries are now engaged in addressing the problem.
- 5.3.3. Umaru explained that it was only after the democratic elected government was installed and WOTCLEF founded in 1999 that attention was paid to the problem of trafficking and child labour. When WOTCLEF commenced its campaigns against trafficking the situation changed dramatically. Umaru explained that although WOTCLEF does not have any legal status to prosecute traffickers, the foundation co-operates closely with NAPTIP and provides shelter for victims of trafficking.
- 5.3.4. Besides the federal law on trafficking, Edo State has, according to BAOBAB, specific provisions in state law against trafficking and Zamfara State Penal Code also contains provisions in this regard. As already stated the majority of women being trafficked originate from Edo State.
- 5.3.5. 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. Ndaguba explained that the punishment for trafficking is imprisonment of between five years and life.
- 5.3.6. 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 NPF and immigration facilities at state and local level and even in neighbouring countries. Ndaguba explained that a well-known Nigerian trafficker had been arrested in Senegal a few days previously and that the trafficker had now been transferred to Nigeria. There are thousands of Nigerian victims of trafficking in the countries of West Africa, Libya, Morocco, Saudi Arabia, Europe and the US.
- 5.3.7. NAPTIP is closely co-operating with NPF and about 40 police officers and police detectives are now working for the agency. This provides a quick and effective instrument against traffickers as well as for quick support to victims of trafficking. All cases of trafficking are referred to NAPTIP. To further assist victims of trafficking and to improve the scope to investigate suspected cases of trafficking NAPTIP has established a hotline. The line is open to everyone and about one call per day is registered.
- 5.3.8. De Cataldo explained that the Nigerian government has taken positive steps to address the problem of trafficking. IOM has a constructive relationship with NAPTIP with whom the

organisation co-operates and de Cataldo meets with NAPTIP's Technical Committee on a weekly basis. A number of countries have expressed interest in co-operation with IOM regarding voluntary return of victims of trafficking to Nigeria.

5.4. Risk of reprisals by traffickers and madams

- 5.4.1. Momoh stated that only on rare occasions have returned victims of trafficking been ill-treated by agents of trafficking. In some cases the trafficked person may possibly be at risk of ill treatment or revenge if the trafficked person returns to Nigeria before the madam or the agent have been satisfied with payments. However, Momoh had no records of any such incidents and believed that if this were a problem he would be aware of it. It was added that in Edo State as well as in some other states shelter facilities are available to female victims of trafficking.
- 5.4.2. According to BAOBAB agents of trafficking are able to kill a woman who has been returned to Nigeria if they desire to do so and that agents have a strong network. However, BAOBAB was aware of only one case of reprisals being made and this involved an agent killing the sister of a victim of trafficking. The sister was residing in Italy when she was killed.
- 5.4.3. Usman expressed some concern about a woman's security if she is returned to Nigeria before the contract with the madam has expired. The woman would at least have a genuine if not well founded fear of her security because she is still bound by her oath to the shrine. However, her fear could indeed be well founded if she has not been able to pay back the madam or the agent the full amount as agreed in the contract. If the madam or the agent feel that their standing in society is threatened they can send out people to look up the woman or her family and pose threats in order to collect the debt.
- 5.4.4. The madam or the agent can also trace a woman if they suspect that she intends to co-operate with the authorities. In such cases the madam or the agent may hire persons from militant groups like the Bakassi Boys, Egbesu Boys or OPC and in this way have the woman killed as a deterrent to others. This will particularly be the case if the victim is considered as a threat against the agent, for example if the victim is co-operating with NAPTIP in disclosing the identity of agents of trafficking.
- 5.4.5. Usman was convinced that madams or agents would be able to trace a returned victim of trafficking. Only in few cases have the authorities prosecuted traffickers. It is very likely that women who agrees to testify against a madam or an agent of trafficking would face intimidation or acts of revenge pending the hearing of any court case because of the delays in the judicial system.
- 5.4.6. Akinmoyo believed that the biggest problem facing victims of trafficking was the traumatic experience they have undergone living as prostitutes in a foreign country, but believed that the victims were not at risk of persecution from any Nigerian authority if they return home. Akinmoyo considered that in general returning victims would be secure and that agents of trafficking or madams would not be in a position to persecute returned victims of trafficking in Nigeria. Akinmoyo believed that returned victims of trafficking should always have access to a protection programme upon returning to Nigeria to help the victims deal with their traumatic experiences. No long-term shelters for returned or deported victims of trafficking are available in Nigeria. The existing shelters only offer protection and

rehabilitation for a maximum of two weeks. After this period of time victims are expected to manage on their own and for some victims this could prove itself to be very difficult.

- 5.4.7. Umaru was unaware of whether or not any agent or madam has ever been able to trace and persecute a returned victim of trafficking in Nigeria. She did not believe that even agents have a sufficiently organised network to trace a returned woman. Umaru was convinced that she would have been informed had there been any cases where agents had been able to persecute returned victims of trafficking.

5.5. Societal attitudes

- 5.5.1. Usman considered that women who had worked as prostitutes abroad would not in general face negative social attitudes from their community. Some people, the more well-off and highly educated, in the predominantly Muslim northern part of Nigeria, may feel offended. 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 her relatives consider her a breadwinner. Usman emphasised that sexual morality is not as strict in the south as in the north.
- 5.5.2. Momoh believed that there is a general understanding in Nigeria of why women might travel abroad to work and end up in prostitution. No authority in Nigeria would persecute such persons when they return, even if they might have applied for asylum abroad.
- 5.5.3. Finally, Akinmoyo did not consider that returned victims of trafficking are subject to any kind of social stigmatisation in Nigerian society merely because they have worked as prostitutes abroad. In some cases stigmatisation may occur but this will be on an individual level and not on a social level. The returned victim's local community will not seek to exclude or ostracise her.
- 5.5.4. Yusuf agreed that returnees are not faced with any social stigma and often returnees are well thought of because they might be in a better financial position upon their return.

5.6. Protection of victims

- 5.6.1. Usman as well as Ndaguba emphasised that the Nigerian authorities do not view women who have been trafficked as criminals but rather as victims of a crime.
- 5.6.2. For the purpose of assisting such victims NAPTIP has established a Council for the Rehabilitation of Victims, which provides for reception centres or shelters for victims. The Council does not yet operate throughout Nigeria, but shelters have been established in Benin City and in Lagos. IOM provides assistance to the shelters. Victims received in NAPTIP's Abuja office are referred to a rehabilitation centre there run by WOTCLEF. NAPTIP plan to set up its own centre in Abuja. During their stay at the shelters victims are trained in order to prepare them for rehabilitation and reintegration into society. It is intended that shelters should be established in all states in Nigeria. However, Ndaguba emphasised that funding of these shelters is a major concern. A total of 65 victims have passed through NAPTIP and 35 have been rehabilitated and handed over to their parents. The lack of resources and the absence of reception and rehabilitation centres or shelters have limited the effects of NAPTIP's performance. For example in February 2004 the lack of appropriate reception centres hampered the ability of NAPTIP to adequately deal with the trafficking victims

among 63 deportees from Spain. Although NAPTIP has qualified counsellors and rehabilitation officers, it does not have enough rehabilitation centres to assist all victims of trafficking.

- 5.6.3. As already stated by Ndaguba and Akinmoyo, Umaru also expressed regret that the capacity to assist victims of trafficking is limited but she emphasised that due to WOTCLEF's efforts to rehabilitate and reintegrate the victims there have been no reports during the last two years regarding problems for returned victims. A number of returnees have received vocational training at WOTCLEF before returning to their home areas in Nigeria.
- 5.6.4. De Cataldo explained that in addition to NAPTIP's shelters WOTCLEF and IOM operate two shelters each in Nigeria. More shelters are needed but there is not sufficient funding to cover the establishment.
- 5.6.5. Umaru stated that there are a few other NGOs in Nigeria that provide support to victims of trafficking and prostitution. There are some religious centres providing shelter and in Abuja the organisation Daughters of Ibrahim provides shelter for former prostitutes from within Nigeria.

5.7. Return of victims

- 5.7.1. Usman explained that the government of Edo State campaigns against prostitution but so far the appeal has not reached the population in general. Throughout Nigeria, if a prostitute is arrested by the NPF it is usually to extract bribes rather than to bring charges or to prosecute the women.
- 5.7.2. Usman explained that upon return to an international airport in Nigeria the returnees are not detained but can be held for questioning and their travel documents and papers seized. They are always released after a short time. Usman pointed to several cases where large groups of women were deported from foreign countries on chartered planes. In April and in May 2004 a group of 371 Nigerian women were deported from Italy. They were held for a couple of days while their families were contacted and brought in, along with some Catholic priests, in order to provide support to the victims of trafficking. The women were shown on television and the newspapers carried articles and pictures of the incident. Usman considered that this did not take place in order to expose the women but as a warning for others against engaging in trafficking. None of the women were prosecuted. Later the same year a large group of women were deported to Kano in the northern part of Nigeria from Saudi Arabia. All the women were released after having been questioned and nobody was prosecuted.
- 5.7.3. Asked about the treatment of the group of women returnees recently deported from Saudi Arabia to Kano, Yusuf explained that there is no public prostitution in Saudi Arabia and therefore it is hard to state whether or not the returnees had actually been working as prostitutes. However, there is a large Nigerian community in Saudi Arabia.
- 5.7.4. BAOBAB regretted that in many cases returned women have been shown on television. BAOBAB considered such "parading" as a violation of the rights of the women and further limits their opportunities to subsequently find jobs and get married. In addition, the parading of victims only served to "show off" that the NPF was doing all it can to combat trafficking in women.

- 5.7.5. Momoh did not consider that the exposure on television of returned victims is a human rights abuse by the authorities. He believed that it only takes place to deter others from entering into the same business and to raise public consciousness about the problem of trafficking. Momoh added that it did of course also serve to demonstrate to the public that the authorities do address the problem. Momoh had no information as to whether any of the returned victims had encountered any problem as a consequence of their exposure on television and explained that all victims had been released shortly after.
- 5.7.6. Ndaguba explained that the personal experiences of a victim remain confidential and that a victim's picture and identity would not be made public without the prior consent of the victim. A victim has the right to compensation from her trafficker for economic, physical and psychological damages. A victim is also entitled to a shelter for a period not exceeding two weeks for her psychological and vocational counselling. Finally, a victim is entitled to rehabilitation and reintegration programme of the NAPTIP, and on request the victim can benefit from a micro-credit programme to enable her to complete the process of reintegration into society.
- 5.7.7. According to Usman the authorities have not harassed returned victims of trafficking upon their arrival in Nigeria. The fact that a trafficked woman may have worked as a prostitute abroad does not make her a criminal, and Usman did not have any information that anybody had been persecuted by any authority when returning to Nigeria. Usman suggested that any country that is about to return a victim of trafficking to Nigeria should notify the NPF and immigration authorities as well as NAPTIP and relevant NGOs prior to the return. He added that NHRC would also welcome a copy of the notification.
- 5.7.8. IOM supports the systems in Nigeria to assist victims of trafficking avoid being harassed. De Cataldo stressed that before any return of victims of trafficking takes place the deporting authorities ought to contact NAPTIP and supply them with details of the case - ideally in the framework of a readmission agreement as is already in place between Nigeria and several western European countries. NAPTIP's Technical Committee is dedicated to deal with the reception of victims of trafficking and according to the law victims of trafficking are not to be subject to any kind of harassment upon return. De Cataldo repeated that he considered it very important to contact NAPTIP before the return of victims takes place and he added that representatives of NAPTIP and even IOM might be present at the airport at arrival to assist with reception.
- 5.7.9. According to BAOBAB deported victims of trafficking are detained upon arrival to Nigeria. During this time the NPF and immigration authorities extort money from the women.
- 5.7.10. De Cataldo regretted the absence of a dialogue between the Nigerian government, countries receiving victims of trafficking and IOM in order to address the problem of trafficking. According to de Cataldo IOM has an excellent dialogue with the Nigerian authorities but there is hardly any dialogue between IOM and the countries receiving victims of trafficking.
- 5.7.11. IRIN reported in November 2003: "Nigeria and Italy have signed an agreement to co-operate in combating human trafficking under the auspices of the United Nations. The agreement was reached within a framework prepared by the UN Inter-regional Crime and Justice

Research Institute (UNICRI) aimed at stopping the trafficking of minors and young women from Nigeria to Italy for sexual exploitation.”⁹¹

- 5.7.12. IRIN added: “During the past decade tens of thousands of Nigerian women have been smuggled by sophisticated criminal rings into Italy, where they are forced into prostitution and debt bondage. According to Alberto Bradanini, director of UNICRI, the women brought into the sex industry often earn up to 3,000 Euros (US \$3,492) a month for their bosses, who usually require them to pay off debts for accommodation and travel expenses in the region of 50,000-60,000 Euros (\$58,200-\$69,840) in order to be free. Under the programme covered by the bilateral agreement, both countries will exchange information on the activities of traffickers. Italy will also provide training for Nigerian law enforcement agencies in order to improve their expertise in dealing with issues related to trafficking. “Given the transnational nature of human trafficking, the best way to combat this new form of slavery is through international cooperation,” said Bradanini. Between 2000-2002, about 3,591 women forced into the sex industry in Italy have been included in social protection schemes. Of these, 1,895 of them have been issued permits to stay. A further 14,378 women; victims of human trafficking have received social support.”⁹²
- 5.7.13. Finally, IRIN reported: “The UN Convention against Transnational Organized Crime, also known as the Palermo Convention, came into effect on 23 September 2003. Its supplementary protocol on trafficking in women and children will come into force on 25 December 2003.”⁹³
- 5.7.14. WOTCLEF has co-operated with the Italian authorities on the return of large groups of victims of trafficking from Italy who have been refused asylum in Italy. The Nigerian embassy in Rome assisted the Italian authorities in issuing travel documents and Nigerian embassies in other European countries are likely to co-operate in the same manner. However, Umaru was not certain whether WOTCLEF would have the capacity to receive and reintegrate large numbers of returned failed asylum seekers, but she explained that the foundation is presently negotiating with IOM regarding future co-operation on assistance to returned victims of trafficking. It was added that the Chinese embassy in Nigeria has provided funds for its activities.
- 5.7.15. BAOBAB also referred to an agreement between the Italian government and the women’s NGO Catholic Secretariat in Lagos regarding reception and support to victims of trafficking upon return to Nigeria. BAOBAB considered the Catholic Secretariat as the most competent NGO assisting returned victims of trafficking as it has a “holistic attitude” regarding return and reintegration. But BAOBAB also considered the support to victims provided by the two NGOs Girls Power Initiative in Benin City and Women Consultants of Nigeria as important. It was emphasised by BAOBAB that the Italian authorities never had any problems in its co-operation with the Catholic Secretariat.

⁹¹ IRIN, *NIGERIA: Agreement signed with Italy to combat human trafficking*, 13 November 2003.

⁹² IRIN, *NIGERIA: Agreement signed with Italy to combat human trafficking*, 13 November 2003.

⁹³ Ibid.

6. Justice systems

6.1. Federal courts

- 6.1.1. The US Department of State records that the 1999 Nigerian constitution provides for an independent judiciary. The performance of the Supreme Court and decisions at the federal appellate level were indicative of growing independence. State and local judiciary are significantly influenced by political leaders and suffered from corruption and inefficiency more than the federal court system.⁹⁴
- 6.1.2. Bola Odugbesan, Personal Assistant to Attorney General and Minister of Justice gave the delegation an overview of the organisation and the structure of the Nigerian courts. The Supreme Court, based in Abuja is the highest court in Nigeria. The Supreme Court is the last stop on all appeal matters, and has exclusive jurisdiction to hear and determine appeals from Courts of Appeal. The Court of Appeal, which is divided into a number of divisions (locations) throughout Nigeria has exclusive jurisdiction to hear and determine appeals from the Federal High Court, State High Courts (including the FCT High Court), and *Shari'a* Courts of Appeal.
- 6.1.3. The Federal High Court has exclusive jurisdiction of in civil cases and matters relating to revenue of the federal government such as taxation, patents, bankruptcy etc. There is one State High Court for each state and a FCT High Court (i.e. 37 in total). The jurisdiction of these High Courts covers all matters not covered by the Federal High Court. Fundamental human rights cases can be heard at either the Federal High Court or the State High Courts. All civil matters go straight to the State High Courts.

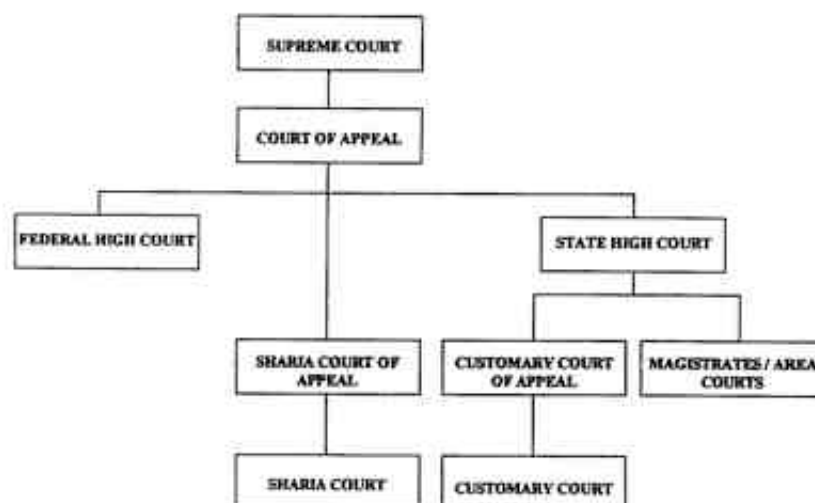


Table 1: Nigerian Criminal Court Structure

- 6.1.4. The role of *Shari'a* courts and *Shari'a* courts of appeal are defined in section 2.62 of the Nigeria constitution and operate in the 12 states in northern Nigeria. Muslims in the 12 states

⁹⁴ U.S. Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

concerned are automatically covered by these courts but can opt to have their cases heard by area courts. Similarly non-Muslims can also opt to have their cases heard by *Shari'a* courts. Those charged with minor offences can choose to have their cases heard before customary courts. Unlike other courts the police rather than the Director of Public Prosecutions bring the prosecution at customary courts.

- 6.1.5. Odugbesan explained that delays in hearing cases at customary courts are minimal. Ogboxor and Voke explained that delays in court trials are a major problem due to the lack of transportation (normally in heavy trucks referred to as "Black Marias") from prisons to courts.
- 6.1.6. Delays in cases being heard at customary courts are negligible. Cases to be heard by magistrates' courts do suffer delays. Odugbesan believed that one of the main reasons for this is that NPF officers, who are part of a federal force, are often posted elsewhere within Nigeria before cases are heard and are therefore not available to attend court hearings. This also leads to many cases being dismissed on technicalities. The process is however speeding up and it is now rare for any case not to be heard within 12 months.
- 6.1.7. According to a senior representative of the IGP trials are held, wherever possible in the state in which the offence is committed. Depending on the seriousness and complexity of cases, it can take years for cases to come before the courts.
- 6.1.8. According to Odugbesan the NPF is able to grant bail in cases of minor offences such as affray, petty theft, disturbing the peace and other minor public order offences. In other more serious cases, it is the court that decides whether bail is granted. With the current prison overcrowding, the granting of bail is becoming more common.
- 6.1.9. Odugbesan confirmed that those arrested have to be taken before a court within 24 hours and formally charged. The 24-hour period could however be extended, at the discretion of the police, if more time is required to complete their investigations. The courts do not have to formally approve any extension to the 24-hour period, but those who wish to challenge being held beyond the 24-hour period can take their case to magistrates' court.

6.2. *Shari'a* courts

- 6.2.1. The US Department of State reported that *Shari'a* courts in 2003 sentenced persons to harsh punishments including amputations and death by stoning. However, no amputation or stoning sentences were carried out, and one of the judgements was dismissed on appeal during the year.⁹⁵
- 6.2.2. Regarding the application of *Shari'a* to criminal law in northern Nigeria the delegation consulted the federal authorities, an Imam, a number of NGOs, including women NGOs as well as the media. A comprehensive and field-based study on the extension of *Shari'a* was published by HRW in September 2004. The study covers all relevant issues regarding

⁹⁵ U.S. Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

Shari'a and detailed information on these issues as well as case studies is included in HRW's report. Therefore the following only covers issues regarding jurisdiction, enforcement, penalties for theft, death sentences and quality of judges. For more detailed information on human rights and Islamic law see HRW, "*Political Shari'a*?" *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC September 2004.

Jurisdiction

- 6.2.3. According to a senior representative of the IGP only those who consent to be subject to *Shari'a* law are covered by it. However, the US Department of State reported in February 2004: "adherence to *Shari'a* provisions was compulsory for Muslims in some states and optional in others and enforcement varied by locale. Adherence to *Shari'a* provisions was not compulsory for Christians in any of the 12 states."⁹⁶ The 12 states are Zamfara, Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno and Gombe.
- 6.2.4. Zakaria Mohammed explained that Muslims in the 12 northern states automatically come under the jurisdiction of the *Shari'a* courts. However, Muslims can opt to have their case judged by the parallel criminal justice system, which Zakaria Mohammed referred to as "Peoples Verdict Courts" and "Common Law Courts". However, Muslims who opt not to have their cases heard by *Shari'a* courts, will be regarded as not being "complete Muslims" and are open to being charged with "hypocrisy". Few Muslims, Zakaria Mohammed stated, opt for non-*Shari'a* courts.
- 6.2.5. Yusuf confirmed that some Muslims do opt not to go before *Shari'a* courts. However, this is a serious move and can be considered as apostasy by the local community.
- 6.2.6. Zakaria Mohammed stated that 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. Most non-Muslims elect to have their cases heard by *Shari'a* courts. However, Yusuf emphasised that he had never heard of non-Muslims opting for *Shari'a* and he stated that he would be much surprised if this ever happened.
- 6.2.7. However, in September 2004 HRW reported that: "According to a lawyer in Kaduna State, the state attorney general decides which type of court should hear a case if the case is especially serious or controversial, or if it is a "capital offense". He [the lawyer] explained that the state attorney general's decision as to which type of court should hear a case is entirely at his own discretion. In other cases, the decision is taken by the state commissioner of police. While Christians can refuse to be tried by a *Shari'a* court, Muslims cannot. The reasons for the decisions are not always clearly articulated. For example, while a number of murder cases involving Muslim defendants have been brought before *Shari'a* courts, others have been brought before magistrates' courts. Furthermore, as indicated in this report, NPF are often susceptible to pressure and corruption, and in practice, the decision to take a case to a particular type of court is often made at the lower levels of the judiciary. [...] In Zamfara State, however, in October 2002, a separate law was passed removing the criminal jurisdiction of magistrates' courts to try offenses committed by Muslims, thus confirming the

⁹⁶ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

absence of choice for all Muslim defendants: “[...] magistrates courts of whatever grade shall cease to have jurisdiction to try any criminal offence where the accused or all the accused persons profess the Islamic faith.” The law, initiated by the governor, was passed by the state house of assembly without much debate or controversy. As a result of this law, all cases involving Muslims were transferred from the magistrates’ courts to the *Shari’a* courts in Zamfara State.”⁹⁷

- 6.2.8. Zakaria Mohammed considered that the reason why non-Muslims would opt for *Shari’a* courts is because they are seen as fairer, and quicker, than the parallel non-*Shari’a* courts. In some cases *Shari’a* courts have clear advantages for some accused. According to Zakaria Mohammed *Shari’a* has a far more narrow and clear definition of what constitutes theft and sentences handed down are non custodial. The Zamfara State Governor, who is one of the keenest advocates of *Shari’a* in Nigeria, told HRW: “If someone’s basic needs are met but he still goes to steal, the requirement for amputation has been met. But if the person is needy, they can’t even be punished under *Shari’a*. Or they will be given a light sentence, for example one or two months.”⁹⁸
- 6.2.9. According to HRW, under *Shari’a* theft is punishable by amputation.⁹⁹ HRW reported in September 2004: “Dozens of people have been sentenced to amputation by *Shari’a* courts since 2000, the majority charged with theft. Under the *Shari’a* penal codes of their respective states, most were sentenced to amputation of the right hand. All the defendants in cases known to Human Rights Watch are men; almost all are from a poor background. *Shari’a* courts in several states, including Zamfara, Sokoto, Kano, Kebbi, Katsina, Kaduna, and Bauchi, have handed down amputation sentences [...] there have been more than sixty amputation sentences since 2000. However, as with other types of sentences passed by *Shari’a* courts, accurate statistics are unavailable, and cases are often unreported, so the real figure may be higher. It has also been difficult to confirm the details and progress of each case. There is no central record of cases and no concerted attempt to record and maintain an overview of cases, either within state governments’ ministries of justice or even among nongovernmental organizations.”¹⁰⁰
- 6.2.10. In spite of the many sentences handed down Zakaria Mohammed stated that only three amputations have actually been carried out and that the last one was in mid-2001. This corresponds to the information provided by HRW in September 2004: “To date, Human Rights Watch has only been able to confirm two cases where amputations have been carried out, both in Zamfara State. A third amputation was reported to have taken place in Sokoto State in mid-2001, but Human Rights Watch was not able to obtain independent confirmation of the case or the circumstances of the trial.”¹⁰¹

⁹⁷ HRW, “Political *Shari’a*”? Human Rights and Islamic Law in Northern Nigeria, Vol. 16, No. 9 (A), Washington DC, September 2004, pp. 20-21.

⁹⁸ Ibid., p. 12.

⁹⁹ Ibid., p. 11.

¹⁰⁰ Ibid., p. 36.

¹⁰¹ Ibid., p. 37.

- 6.2.11. Yusuf emphasized that Muslims and non-Muslims in the southern states all come under the jurisdiction of the non-*Shari'a* courts in those states and it is not open to them to choose *Shari'a* courts to hear their cases because they do not exist in those states.
- 6.2.12. Finally, Yusuf said that he would be surprised if anyone states that he or she is in fear of *Shari'a*. Most people consider *Shari'a* as “a way of life” and the local population have welcomed the introduction of *Shari'a* criminal courts in the north. There are some activists who oppose the introduction of *Shari'a* and present *Shari'a* law as a problem in order to be granted asylum abroad, but most people will not do so.

Enforcement of verdicts

- 6.2.13. Zakaria Mohammed stated that 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. But the individual concerned will risk not being considered a “complete Muslim”.
- 6.2.14. Yusuf confirmed that the *Shari'a* courts make no effort to find those who run away. The individuals concerned are 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.
- 6.2.15. However, the introduction of *Shari'a* saw the formation of Islamic vigilante groups known as *hisbah*. *Hisbah* have made it their duty 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. *Hisbah* often impose the punishments for such offences on their own without taking the accused to the designated *Shari'a* court for trial.
- 6.2.16. According to HRW the *hisbah* share some characteristics with OPC and Bakassi Boys but there are also significant differences. HRW reported: “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 Human Rights Watch is not aware of reports of killings by *hisbah* members, in contrast with the Bakassi Boys or the OPC. *Hisbah* members may carry sticks or whips but unlike some vigilante groups in other parts of Nigeria, they do not usually carry firearms. Most *hisbah* members are recruited at the local level, by traditional leaders and local governments, who then submit the lists of names to their state government.”¹⁰²

Death sentences

- 6.2.17. Zakaria Mohammed explained that since *Shari'a* was extended to criminal law in the 12 northern states in 2000, *Shari'a* courts have handed down between 10 and 12 death sentences. All death sentences have to be approved by the state at federal level. Only one or

¹⁰² HRW, “Political *Shari'a*”? *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC, September 2004, pp. 74-75.

two death sentences have been carried out. All the other cases are awaiting decision by the Federal Court of Appeal.

- 6.2.18. However, the BHC considered the comment by Zakaria Mohammed that “all death sentences have to be approved by the State at Federal level” was misleading. The BHC noted that HRW reported in September 2004: “To date no death penalty case tried under *Shari’a* has reached the Federal Court of Appeal. Nigerian observers, including lawyers, agree that should that happen, it is highly unlikely that the Federal Court of Appeal would uphold the sentence. A similar favourable outcome would be expected from the Supreme Court”. The BHC added that HRW only recorded one execution under *Shari’a* law in Nigeria, that of Sani Yakubu Rodi in January 2002. This execution was authorised by the governor of his home state, Katsina. BHC understands from lawyers dealing with death penalty cases under *Shari’a* law that, without exception, their clients’ cases are awaiting a decision by their respective state *Shari’a* courts. HRW reported that Sani Yakubu Rodi was sentenced to death on November 5 2001 and explained: “He did not appeal against the sentence. His execution was authorized by the governor of Katsina State, and he was executed by hanging on January 3, 2002. Even though he was tried in Katsina State, he was hanged in neighboring Kaduna State prison, as this is the only center equipped to carry out executions in northern Nigeria.”¹⁰³
- 6.2.19. According to HRW’s World Report 2005: “No executions or amputations have taken place since early 2002 though a number of defendants remain under sentence of death. For example in September and October 2004, two women in Bauchi state, were sentenced to death by stoning for adultery. Both are currently appealing their sentence. Many trials in *Shari’a* courts fail to conform to international standards and do not respect due process even as defined by *Shari’a* legislation; defendants rarely have access to a lawyer, are not informed about their rights, and judges are poorly trained.”¹⁰⁴
- 6.2.20. HRW noted in its September 2004 report: “When northern state governors began introducing their own *Shari’a* penal codes in 2000, the scope of the death penalty was expanded to cover offences such as *zina* (extra-marital sex). [...] Previously, *zina* was an offence under the Penal Code of Northern Nigeria, but was punishable by a prison term or a fine, not by death. The new *Shari’a* legislation not only continues to criminalize consensual sexual relations between adults, but imposes the harshest punishment for them. It makes a distinction between the penalties for married and unmarried defendants facing charges of *zina*. The charge of *zina* carries a sentence of death by stoning if the defendant is married, or has ever been married, even if they have subsequently divorced; in this context, the offence is referred to as adultery. In the case of unmarried defendants, the offence is referred to as fornication, and the sentence is one hundred lashes. Since *Shari’a* courts started hearing criminal cases in 2000, they have handed down at least ten death sentences. Of these, one has been carried out; five have been overturned on appeal; and, at the time of writing, four are still in appeal.

¹⁰³ HRW, “Political *Shari’a*”? *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC, September 2004, p. 32.

¹⁰⁴ HRW, *Nigeria World Report 2005*, New York, January 2005.

Those sentenced to death include four women and six men. The offences for which they have been sentenced to death have included murder, sodomy, and adultery.”¹⁰⁵

Death sentences and women

6.2.21. Regarding the death penalty and women in Nigeria HRW reported in September 2004:

“women have been disproportionately affected in adultery cases, because of different standards of evidence required: a man facing charges of adultery must have been seen in the act by four independent witnesses before he can be convicted, whereas a woman can be found guilty on the basis of pregnancy alone.”¹⁰⁶

6.2.22. AI has condemned the use of the death penalty on women in Nigeria. AI considered that death penalty discriminates against women in certain cases such as abortion and sexual behaviour. Laws which classify abortion as homicide punishable by death and the harsh punishments prescribed for adultery under Islamic or *Shari'a* law are particularly weighted against women. AI protested that one woman who was currently on death row had been charged with culpable homicide after she apparently delivered a stillborn baby. The court condemned her to death after ruling that she had undergone an illegal abortion.¹⁰⁷

6.2.23. IRIN reported that the Nigerian human rights lawyer, Dele Aremu, has said that he agreed with AI's view that certain provisions of Nigerian law discriminate against women. IRIN continued: “Apart from the better known cases of women sentenced to death for adultery under *Shari'a*, the law which classifies abortion as culpable homicide exists in our penal code and has been used to obtain convictions in the past. [...] This law was inherited from the British colonial government but is no longer applicable in Britain and should be expunged from our penal code.” Furthermore IRIN reported: “According to AI, a total of 33 people have been sentenced to death in Nigeria since President Olusegun Obasanjo was first elected to power in 1999. There are now a total of 487 prisoners on death row in Nigeria, of whom 11 are women. Some women charged and detained for capital offences have spent up to 10 years in prison awaiting trial. Amnesty International described such long delays in meting out justice as a form of “cruel, inhuman and degrading treatment” forbidden by the United Nations declaration on human rights.”¹⁰⁸

6.2.24. According to IRIN Jama'atu Nasril Islam, the umbrella body for Islamic organizations in Nigeria, responded to the report by accusing AI of carrying out an anti-Muslim campaign and stated: “The issue of stoning for adultery is an Islamic injunction which applies only to Muslims and every Muslim who commits adultery is aware of the consequence of this offence if he is prosecuted.”¹⁰⁹

¹⁰⁵ HRW, “Political Shari'a”? *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC, September 2004, pp. 21-22.

¹⁰⁶ HRW, “Political Shari'a”? *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC, September 2004, p. 22.

¹⁰⁷ AI, *NIGERIA: The Death Penalty and Women under the Nigeria Penal Systems*, 10 February 2004 (AI Index: AFR 44/001/2004).

¹⁰⁸ IRIN, *NIGERIA: Amnesty condemns use of death penalty on women*, 12 February 2004.

¹⁰⁹ Ibid.

Quality of judges

- 6.2.25. Yusuf stated that there was much concern about the lack of appropriate training given to judges in the *Shari'a* criminal courts. He also expressed concern that not enough effort was made to make people understand what *Shari'a* is all about and “what is happening”.
- 6.2.26. Zakaria Mohammed admitted that he was uncomfortable about the quality of many judges in *Shari'a* courts. Many judges do not have sufficient knowledge or experience to apply *Shari'a* correctly or consistently in criminal cases. Better training is needed to improve the standard of judges.
- 6.2.27. When asked about areas of special concern, Obiagwu mentioned the fact that there is no monitoring of *Shari'a* courts in place especially regarding minor offences.
- 6.2.28. HRW reported in September 2004: “The *Shari'a* legislation was introduced in 2000 with very little preparation. Not only was the legislation itself drafted in a hurried fashion, but also the judicial personnel charged with its implementation had received very little training. Most judges were transferred straight from the area courts, which dealt only with personal status law cases, into *Shari'a* courts where they were expected to deal with criminal cases. Many of them did not have any prior legal professional training, even when they were working in the area courts, and they were not trained in the new *Shari'a* legislation before being appointed. Yet they were given power of life and death over the accused who were brought before them. The consequences of this lack of training among *Shari'a* court judges have been illustrated in several cases described in this report, such as those of Fatima Usman and Ahmadu Ibrahim, Amina Lawal, and others sentenced to death in trials characterized by numerous substantive and procedural flaws.”¹¹⁰

6.3. Double Jeopardy: convicted drugs criminals (Decree 33 of 1990)

- 6.3.1. Odugbesan explained that those convicted overseas on drug charges could face being tried and sentenced again on return to Nigeria. However, Odugbesan was not aware of anyone being convicted a second time when a “full sentence” had already been served overseas. However, Odugbesan stated that drug offences are being punished sternly in Nigeria and he added: “if Nigerian law provides for an additional sentence it will take place.”
- 6.3.2. Neither Odugbesan nor Obiagwu were aware of any pending appeal either at the Supreme Court or the Court of Appeal brought by the State of Nigeria regarding the constitutional implications of double jeopardy (Decree 33 of 1990).
- 6.3.3. Section 12 (2) of Decree 33 of 1990 states that “Any Nigerian citizen found guilty in any foreign country of an offence in involving narcotic drugs and psychotropic substances and who thereby bring the name Nigeria into disrepute shall be guilty of an offence under this subsection”. The punishment is laid down in Section 12 (3) of the Decree: “Any person convicted of an offence under subsection [...] (2) of this section shall be liable to

¹¹⁰ HRW, “Political *Shari'a*”? *Human Rights and Islamic Law in Northern Nigeria*, Vol. 16, No. 9 (A), Washington DC, September 2004, pp. 71-72.

imprisonment for a term of five years without an option of fine and his assets and properties shall be liable forfeiture as provided by this Decree.”¹¹¹

- 6.3.4. Birgit Kisten Müllner & Barbara Svec reported that two Nigerian drug dealers were deported from Italy to Nigeria in March 2003. Upon arrival in Nigeria the two deportees were handed over to the National Drug Law Enforcement Agency (NDLEA). In December 2003 *This Day* reported that the Special Area Commander of the NDLEA, Alhaji Abdullahi Abubakar Danburam had stated that the NDLEA would make sure that anyone convicted of drug charges abroad and “putting Nigeria’s name to disrepute” would be prosecuted and face court trial upon return to Nigeria.¹¹²
- 6.3.5. Birgit Kisten Müllner & Barbara Svec referred to the newspaper *Vanguard*, 8 July 2004, in which it was reported that during the first six months of 2004 the NDLEA had detained a total of 55 deported drugs convicted Nigerians upon arrival at the Murtala Mohammed Airport. NDLEA stated that all of them would be put to trial.¹¹³
- 6.3.6. Birgit Kisten Müllner & Barbara Svec reported that NDLEA is engaged in combating drug related crimes. NDLEA is closely associated with Nigeria’s military and foreign intelligence, SSS, and various ministries in Nigeria. NDLEA is a prominent institution whose activities are being frequently reported in the Nigerian press.¹¹⁴
- 6.3.7. Obiagwu confirmed that persons, who have served their sentences abroad for drug trafficking, upon return to Nigeria have been prosecuted and convicted again. The legal argument is that “bringing the name Nigeria into disrepute” as stated in the drug trafficking law is another crime and isolated from drug trafficking as such. The principle of double jeopardy is not violated according to this interpretation.
- 6.3.8. Ogboxor and Voke stated that they knew of examples in which deported Nigerians from abroad had been punished according to Decree 33 of 1990. They referred to their colleague Felix Obi, Programme Officer, PRAWA.
- 6.3.9. Obi confirmed that double jeopardy takes place in Nigeria. He explained that not only drug traffickers may be punished upon their return to Nigeria but also persons convicted of money laundering, advance fee fraud¹¹⁵, armed robbery, rape and many other offences. The Nigerian authorities do not believe that imprisonment in Europe is “real punishment” and therefore “proper disciplining” in a Nigerian prison is needed. Depending on the investigations the courts may add another two to three years and in extreme cases up to seven years in Nigerian prisons to the term a person may already have served overseas. Such persons will often be put into a maximum-security prison.

¹¹¹ *National Drug Law Enforcement Agency (Amendment) Decree No. 33, 1990.*

¹¹² Birgit Kisten Müllner & Barbara Svec, *Nigeria – Länderbericht August 2004*, ÖRK/ACCORD, Vienna, 2004, p. 20.

¹¹³ *Ibid.*, p. 20.

¹¹⁴ *Ibid.*, pp. 19-20.

¹¹⁵ Advance fee fraud or ‘419’ fraud (named after the relevant section of the Nigerian Criminal Code) is a popular crime with the West African criminal element. There are a myriad of schemes and scams - mail, faxed and telephone promises designed to facilitate victims parting with money. All involve requests to help move large sums of money with the promise of a substantial share of the cash in return (extract from Metropolitan Police Authority (MPA), London, UK).

6.3.10. Obi added that the conditions in maximum-security prison are often better than in ordinary prisons. Maximum-security prisons are not as congested as other prisons, but the prisoner's condition is highly dependent of the leadership of the prison. However, Obi did not consider that deported convicted persons are being treated any differently from other prisoners.

7. Prison conditions

- 7.1. The US Department of State reported in February 2004 that prison conditions in Nigeria are harsh and life-threatening, and conditions, including denial of proper medical treatment contributed to the death of numerous inmates. Security forces continue to arbitrarily arrest and detain persons, including for political reasons. Prolonged pre-trial detentions remain a serious problem. The judicial system often is incapable of providing criminal suspects with speedy and fair trials.¹¹⁶
- 7.2. Dr. Ayu acknowledged that prison conditions are “very, very bad”. The reason for this is the lack of funding during the former military regime. Improvement of prison standards is a government priority and in 2004 the Ministry of Internal Affairs has been allocated additional funds for this purpose. Considerable effort is being made to improve the prison infrastructure, refurbishing prisons and building new ones. Ensuring proper water supplies is also a priority and new wells are being drilled at prisons. Dr. Ayu also referred to new supplies of bedding (mattresses) being delivered to prisons and explained that the plans to improve prison conditions are of high priority and that the next two to three years would show further significant improvements in prison standards.
- 7.3. Deputy Comptroller General of Prisons, Paschel Nzerem was of the opinion that the current tempo of reforms in the Nigerian Prisons Service (NPS) has picked up and that there have been big improvements in standards, which, if sustained, will allow international standards to be met. Nzerem did not consider that prison conditions in Nigeria could now be considered as “life threatening”.
- 7.4. Obiagwu, who was imprisoned under the Abacha regime, considered that conditions in Nigerian prisons are getting worse. He pointed in this respect to the increasing number of suicides and attempts to escape the prisons. Inmates have limited access to medical treatment and space with many prisons suffering severe overcrowding. In Obiagwu’s opinion prison conditions remained inhumane and life threatening. The prison authorities hold no record of the death toll in prisons and just “dispose” of the bodies. Referring to PRAWA the US Department of State reported that dead inmates promptly are buried on prison compounds, usually without notifying their families.¹¹⁷
- 7.5. Ogboxor stated that whilst prison conditions in general remain “inhumane, degrading and life-threatening”, he did not doubt the government’s commitment to address the problems. There has been increased funding to improve conditions and more prisons have been built to a high standard including those for specific categories of prisoner (e.g. drug offenders), and both health provision and conflict resolution have improved. The biggest problem does however remain that of overcrowding and in that regard the Presidential Task Force on Prison Congestion has been reconstituted in 2004 to address the issue. Ogboxor also pointed to two Bills currently before the National Assembly – one reforming the Prison Act of 1972 and the organisation of the NPS, and another to establish a Prison Service Commission with the power to recruit, set standards and discipline prison staff.

¹¹⁶ U.S. Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

¹¹⁷ Ibid.

- 7.6. The BHC confirmed that prison conditions generally are very poor. The High Commissioner had recently visited Enugu Prison and described the conditions in that particular prison as “dreadful” and “appalling”.
- 7.7. Official Nigerian prison statistics show that the capacity of Nigeria’s 227 prisons is 44,031. As of 30 June 2004 there was a total inmate population of 39,763. Of those 25,665 (58%) are remand prisoners awaiting trial. However, according to US Department of State, February 2004, some human rights groups estimated a higher number of inmates, perhaps as many as 60,000.¹¹⁸
- 7.8. Nzerem explained that overcrowding in Nigerian prisons is a result of the large proportion of persons in pre-trial detention. Some detainees have been held in pre-trial detention for four to five years and some even up to 10 years. This is the most serious problem facing Nigerian prisons. A detained person is held in a prison close to the place of arrest and the detainee is only moved to another prison after being convicted. This means that prisons in large cities where there is a high level of crime are particularly overcrowded, whereas the inmate population of other prisons is considerably lower than their designed capacity.
- 7.9. US Department of State estimated in February 2004 that some prisons hold 200% to 300% more persons than their designed capacity.¹¹⁹ This corresponds to the statistics provided to the delegation by the NPS.¹²⁰
- 7.10. Nzerem pointed to the improvements regarding the availability of medical treatment in prisons. All prisons now have medical clinics with nurses or paramedics working there. Four large prisons have actual hospitals inside the prison (Lagos, Bauchi, Kaduna and Ilesha). Medical doctors are employed in almost all prisons, and where they are not, there is ready access to them. The situation regarding sanitation problems are being addressed and are improving with the introduction of public health officers in most of the prisons. Whilst access to safe drinking water remains a problem in some areas, due to the inability to connect the prison to any public water supplies, bore holes are being drilled to overcome this.
- 7.11. Nzerem explained that convicted prisoners have access to purposeful activity and that more funds have been made available to improve such facilities. As an example Nzerem mentioned the purchase of tractors for 10 prison farm centres around the country and the current construction of another farm centre. Industrial workshops to teach inmates new skills now exist in all prisons and in addition cottage industries, e.g. soup making, toilet roll manufacturing and printing, have been established in some other prisons. These activities/facilities are however not available to pre-trial prisoners.

¹¹⁸ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

¹¹⁹ Ibid.

¹²⁰ NPS, *Prison Capacity and Inmate Population as at 30 June 2004*. According to the statistics some prisons in Abuja, Anambra, Delta, Ibadan, Kaduna, Kano, Lagos and Port Harcourt hold more than twice as many prisoners than their designed capacity.

- 7.12. Ogboxor, Voke and Obi explained that PRAWA co-operates with both government bodies, especially the NPS with whom PRAWA has a well-functioning working relationship, and other NGOs. PRAWA monitors human rights issues related to prison conditions and undertakes training of prison officers in human rights, good prison practice and adherence to international standards. In association with the NPS, PRAWA has established so-called Prison Link Units (PLU) in a large number of prisons. PLUs are staffed by trained prison officers who support and offer assistance to prisoners and their families. The PLUs provide an avenue through which any complaints can be addressed. The PLUs also have an important role in monitoring conditions in prisons and through that they lead to improve the conditions for prisoners.
- 7.13. Ogboxor and Voke stated that in addition to this PRAWA has permission to visit any prison in Nigeria. Although such visits can only take place with prior agreement, there have not been any occasions when a visit has been refused.
- 7.14. Obi explained that he visits Nigerian prisons regularly on behalf of PRAWA. He was imprisoned between June 1986 and September 1999 and released as part of an amnesty given to 8,000 prisoners to relieve prison overcrowding. After 13 years and three months in prison he was, upon release, given 40 Naira on which he was expected to survive. This PRAWA believe is a prime example of the lack of resources and care shown to prisoners.
- 7.15. Obi described how, during the period he was imprisoned, he witnessed that up to five inmates died on a daily basis in his prison. The majority died from malnutrition, diseases, congestion and general lack of medication and health facilities. From his own experience as a prisoner and from his prison visits on behalf of PRAWA, Obi considered that in general prison conditions in Nigeria have improved, most significantly in respect of overcrowding which is not as bad as it used to be. More resources have been allocated to the prison system and today there are specialised prisons, e.g. prisons for drug criminals, women and children, better medication, and more space as well as conflict resolution projects. Even the quality of the food has improved and is more plentiful than it was in 1999. Obi concluded: "There is a world of change".
- 7.16. Ogboxor and Voke added that despite the improvements, they would still describe the food in prisons as "bad" even though since 1999 the money spent on daily meals to each prisoner has increased from 20 to 50 Naira. Regarding the food Ogboxor stated: "When I say bad, I mean really bad!" Regarding overcrowding they added that this issue remains a serious problem. They explained that the Nigerian prisons had about 45,000 inmates in 1999 but only a total capacity of 26,000 prisoners. There are still around 45,000 inmates in prisons but the total prison capacity has increased to 46,000 prisoners. However, the overcrowding in some prisons remains critical.
- 7.17. In addition to the serious problem of overcrowding, Ogboxor also pointed at the lack of sleeping facilities, inadequate access to safe drinking water and medical treatment. During the military regime prison conditions had deteriorated because of lack of funding and the increased problem of overcrowding due to the large number of people arrested during this period. Today these problems have not yet been resolved in spite of the 1999 amnesty.

Women in prison

- 7.18. Nzerem explained that female inmates are kept separated from male inmates. A women prison exists in Lagos and in other prisons women are kept in separate dedicated wings. According to official statistics provided to the delegation by the NPS, there were a total of 777 female inmates as of 30 June 2004. This represented less than 2% of the total prison population. Of the 777 female inmates, 200 (26%) were convicted prisoners and 577 (74%) were in pre-trial detention.
- 7.19. Ogboxor and Voke drew attention to PRAWA's women project, Innocent Women out of Prison Project (IWOP), and supplied the delegation with a draft of IWOP's first narrative report.¹²¹ On request they informed the delegation that it was free to quote from the draft report provided that it was made clear that it is only a draft. This draft report highlights what it describes as "a system of Justice administration that employs un-acceptable, and informal system known as "insurance system".¹²²
- 7.20. The draft report explains that under this system (mostly) women are unjustly imprisoned, as hostages, or "insurance" while NPF or NDLEA are searching for suspects who have absconded. PRAWA "discovered that some of these women were actually being held instead of their relatives, friends, associates, or husbands, who had obviously absconded in face of the problem".¹²³ It was added that some women are also being held in prison in lieu of debts owed by their employees. A large proportion of these prisoners did not know why they were imprisoned or detained or what they were being charged for.
- 7.21. According to the draft report a total of 69 female inmates were found in the 10 prisons visited by the IWOP-team. 34 of these (representing 49.3%) were innocent and had been charged in lieu of actual culprit.¹²⁴
- 7.22. According to the draft report the IWOP teams found little or no co-operation from policemen on duty in the prisons and there was no genuine attempt to refute the claims made by female inmates. The draft report finally states that most of the innocent women in prison are poor, indigent and have little or no formal education. They cannot intelligently express themselves, nor can they afford to pay for legal assistance. Because of this police officers are able to uphold the practice of "insurance".¹²⁵

¹²¹ PRAWA, *Innocent Women out of Prison Project (IWOP), 1st Phase Narrative Report, Submitted to: The Democracy and Human Rights Fund (DHRF), Embassy of the United states of America, Abuja, Nigeria, n.d. (DRAFT).*

¹²² Ibid., p. 1.

¹²³ Ibid., p. 3.

¹²⁴ Ibid., p. 5.

¹²⁵ Ibid., pp. 6-7.

8. Availability of medical treatment

8.1. Background

- 8.1.1. It has been widely reported that health services in Nigeria are of low quality, and many lack basic equipment and drugs. Few in Nigeria (63% in urban areas and 48% in rural areas according to the World Bank) have access to primary health care. As with other sectors, the Nigerian Health Service is subject to a major reform programme.
- 8.1.2. Obasanjo stated the Nigerian Government's commitment to the Health Sector Reform Programme in his 2004 Budget speech to the National Assembly on 18 December 2003. The budget included a doubling of capital allocation and a 28% increase on recurrent costs, to support improved delivery of health services with particular emphasis on HIV/AIDS and malaria prevention and control, and improved health delivery infrastructure.
- 8.1.3. In May 2004 Obasanjo launched the NEEDS as Nigeria's "home-grown poverty reduction strategy". NEEDS provides for implementation of a social charter to improve access to, amongst other things, healthcare. In this connection the NEEDS sets out in detail the components of the health sector reforms. These reforms give particular emphasis on the strengthening of preventive and curative primary healthcare services and are aimed at strengthening the national health system, and enhancing the delivery of effective and affordable health services to all Nigerians.
- 8.1.4. Obasanjo in an address to the National Assembly on 12 October 2004 reporting progress on the 2004 Budget said:

"[...] Taking the Health sector, for example, we have finally laid to rest the Oral Polio Vaccine (OPV) controversy and intensive activities are presently ongoing for the immunization campaign with a view to totally halting transmission of the wild polio virus by 2005. I want to thank all those concerned at federal and state levels who made it possible to get through this difficult issue and show the world that we are responsible citizens of our country. Our routine immunization rates for other diseases had fallen to unacceptably low levels of about 20%. We have now taken steps in 2004 to correct this and guarantee our children better health.

There has now been 100% procurement of vaccines for routine immunization for the target population, and 66% cold chain replacement carried out throughout the country; 84,000 personnel have been recruited and trained to support the immunization campaign nationwide which has already begun. I ask the cooperation of every Nigerian man, woman and child in the country in this campaign. Our goal is to reach a routine immunization rate of 60% by end 2005. On the issue of HIV-AIDS, I am happy to announce a drop in the National HIV prevalence rate from 5.8% to 5% based on the latest Sentinel survey results. This may be a cause for some celebration but surely not for complacency. A 5% rate is still too high. We must continue to work hard on HIV-AIDS prevention to lower the rate still further.

Meanwhile, we have increased the number of persons on Anti-retroviral treatment from 10,000 to 13,113 in 25 centers nationwide and at a 70% subsidy per person borne by the Federal Government. We have also fully completed, equipped and made

functional 30 model primary care centers nationwide, with 16 others to be completed and made functional by end year and construction of 120 others to be started.

To treat malaria, we have allocated over 900,000 insecticide treated nets for distribution to all 36 States of the Federation and FCT along with 10 drums per state of Deltamethrin for residual spraying. At the tertiary level, our VAMED engineering project to rehabilitate and re-equip 8 teaching hospitals has picked up steam and pre-installation works are reaching an advanced stage in some hospitals. Finally, NAFDAC [National Agency for Food, Drugs Administration and Control] continues to make us proud with its advances in fighting counterfeit drugs. Confidence is now being restored all along the West Africa region in Made-in-Nigeria Drugs. This is of great benefit to our pharmaceutical industry."

8.2. Current capabilities

- 8.2.1. According to Dr. Abengoe, who is Professor of Cardiology at the National Hospital in Abuja and one of the panel of doctors at the BHC Clinic, hospitals throughout Nigeria are now generally able to cope with bacterial infections (including HIV, tuberculosis, malaria, typhoid and yellow fever). Non-communicable illnesses such as diabetes and high blood pressure – both very common in Nigeria – can also be treated but the costs of medication (drugs) is very high and many patients do not take the drugs because the cost is prohibitive.
- 8.2.2. Dr. Abengoe's experience is that all hospitals either stock, or can readily obtain, all drugs on the World Health Organisation's (WHO) Model List of Essential Medicines. Some pharmacies do not store the drugs in the proper conditions. The better quality, more reputable pharmacies do however have proper storage facilities.
- 8.2.3. In Dr. Abengoe's opinion Nigerian hospitals are not well equipped to perform kidney transplants – only two or three hospitals in the country have the facilities for this operation. Kidney dialysis however is widely available.
- 8.2.4. Dr. Abengoe explained that Nigeria does not have any heart institute and its ability to deal with coronary illness is very limited. Whilst electrocardiogram (ECG) is available in teaching hospitals, there are no facilities available to perform heart by-pass operations or other coronary surgical procedures. Nor are there any intensive care units for those suffering from coronary illness. Those who need these procedures have them undertaken overseas most commonly in Ghana or Israel.
- 8.2.5. According to Dr. Abengoe treatment for cancers (breast, prostate, stomach, bone and liver are the most common in Nigeria with very little lung cancer) can be treated but availability of irradiation therapy is very limited, and restricted to a few teaching hospitals. Again the majority of people in need of cancer treatment travel overseas to receive it. Heavy reliance is placed on early detection of cancers available at teaching hospitals.
- 8.2.6. Dr. Abengoe explained that there are four institutes of psychiatry in Nigeria that are able to deal with general mental health care. Those suffering from Post Traumatic Stress Disorder (PTSD) do not normally seek medical assistance – PTSD carries a stigma for the individual and nor is it recognised as a condition that requires treatment. There are as a consequence no facilities or experts within this area in Nigeria.

- 8.2.7. Dr. Abengoe considered that hospitals in Nigeria do not have adequate facilities to deal fully with complications in pregnancies. Caesarean section can be done but there are otherwise no intensive care facilities or specialised maternity nurses. There is no provision for the care of the elderly who are normally cared for by family members.
- 8.2.8. According to Dr. Abengoe Nigerians who are employed by large businesses, banks etc. have access, as part of the terms and conditions of employment, to very good quality private clinics and hospitals. Nigerian government employees also have similar access to private clinics but these are a lesser, albeit still good, standard. However the majority of Nigerians (80%) live in villages, are surviving on poverty levels and have to rely on inadequately funded government hospitals. These hospitals generally have good quality doctors and nurses but there are staff shortages particularly in the area of medical specialists. The hygiene standard is not good in some hospitals and there are serious problems of secondary infections in many of them. As a consequence many ordinary Nigerians turn to traditional medicine – although this can cure some ailments it is very unsophisticated and in many instances its side effects lead to conditions being compounded. The introduction of the National Health Insurance Scheme, which is due to become operational in 2005, is seen as a major step in improving access to medical treatment, improving funding for health care and raising standards.

9. Immigration and embarkation

9.1. Exit and re-entry procedures

- 9.1.1. Musa Baraya, Acting Comptroller General, Comptroller General of Immigration, Nigerian Immigration Service (NIS), acknowledged that border control – particularly along the borders to the north of the country – was a serious problem. There are official border crossing points but in practice anyone could easily cross at any point. Economic Community of West African States (ECOWAS) agreements provide for free movement with neighbouring countries but there is still a requirement for individuals to have proper travel documentation. NIS, in an effort to tackle the problem of illegal border crossing, has put in place mobile border patrol units on land and introduced air patrols. They have also developed close working relationships with counterparts in neighbouring states and these initiatives are proving to be successful.
- 9.1.2. The US Department of State reported that Nigerian law provides that women are required to obtain permission from a male family member before having an application for a passport processed. However, this provision was not enforced strictly in 2003. Some men take their wives' and children's passports and other identification documents with them while travelling abroad to prevent their family from leaving the country.¹²⁶
- 9.1.3. According to the US Department of State there were confirmed reports in 2003 that persons are questioned upon entry or exit to the country at Murtala Mohammed International Airport in Lagos. These persons, some of whom are community or political activists or had been opponents of the Abacha regime, remained in immigration computer systems as individuals to be questioned by immigration or security officers.¹²⁷

9.2. Treatment of returned failed asylum seekers

- 9.2.1. Ndaguba emphasised that there are no laws in Nigeria which make it illegal to leave the country and that no Nigerian asylum seeker has been persecuted or punished after having returned from abroad as a consequence of having applied for asylum.
- 9.2.2. Yusuf confirmed that during the democratic elected government in Nigeria no returned rejected asylum seeker has been arrested or detained only because he or she had applied for asylum abroad.
- 9.2.3. Baraya confirmed this but added that those who are perceived as having damaged the reputation of Nigeria, by for example claiming that the government has persecuted them are "not liked". Although in theory such individuals might be facing prosecution for "defamation", Baraya could not recall any example of this ever having happened in practice.

¹²⁶ US Department of State, *Nigeria: Country Reports on Human Rights Practices – 2003*, Washington DC, February 25 2004.

¹²⁷ Ibid.

- 9.2.4. Nick Newman, Visa Section, BHC, Abuja, explained that failed asylum seekers who are returned on UK emergency travel document are questioned on arrival in Nigeria in order to establish why the person concerned had been in the UK and why he or she had been deported. The interview would usually last on average 15 to 20 minutes. Newman was not aware, or had ever heard, of any returned failed asylum seeker being held in detention or having encountered any ill-treatment or other problems upon his/her return to Nigeria. Individuals deported back to Nigeria are subsequently able to apply for and be issued with ordinary full Nigerian passports in the normal way to allow further travel overseas. Those however who are wanted by the Nigerian authorities for, in particular drug smuggling, are likely to be arrested on return and prosecuted by the police for those criminal offences.
- 9.2.5. The delegation was able to hear first hand from two returned failed asylum seekers who were separately attending the BHC in connection with visa applications to return to the UK. The first applicant had been returned to Nigeria with a certificate of identity issued by the UK authorities. The applicant said that he was questioned by the immigration authorities on return and held for about two or three hours while his identity was confirmed; he was not questioned by the SSS or anyone else. As soon as the applicant's identity was confirmed the person in question was admitted to Nigeria. The applicant said that he had not encountered any problems or difficulties since and has been issued a replacement passport through normal channels.
- 9.2.6. The second applicant had been returned to Nigeria on an emergency travel document issued by the Nigerian High Commission in London. The applicant said that he had passed through immigration control at Murtala Mohammed International Airport in Lagos without being questioned and had not experienced any problem from any government body since returning to Nigeria. The applicant had also been issued a full replacement passport in the usual way.
- 9.2.7. Baraya explained that a presidential committee on handling returned failed asylum seekers was established in 2002 to make recommendations on co-ordinating the activities of the various government departments with an interest in such matters and to clarify their respective roles. Baraya was not aware of the committee having yet reported its recommendations.
- 9.2.8. Baraya stated that the current process is for those returning on temporary travel documents to be questioned by immigration staff on arrival back in Nigeria. The purpose of the questioning is to establish the circumstances in which the individual had been deported back to Nigeria and the reasons behind that. The questioning might last for up to a few hours or even as long as one day depending on the number of returnees arriving that day and the complexity of the cases.
- 9.2.9. Finally Baraya explained that if a person has been involved in drug related activity, the NIS would refer the case to the NDLEA. Those involved in trafficking would be referred to NAPTIP and those wanted for ordinary criminal offences would be referred to NPF. NIS themselves would only take further action if any immigration rules had been breached. Those returnees who are without any means of support are referred to the National Emergency Management Agency for assistance.

9.3. Falsified passports, documents and arrest warrants

- 9.3.1. Newman explained that passports are issued at offices in each state. The process takes a maximum of two to three weeks but often passports are issued within a matter of a few days of the application being made.
- 9.3.2. According to Newman the presentation of false travel documents in Nigeria is prevalent. These are usually genuine passports which have been falsified, typically, through inserting fake bio data pages. The changes made to passports are usually of a high quality.
- 9.3.3. BAOBAB confirmed that falsified documents are prevalent in Nigeria. BAOBAB especially emphasised the prevalence of falsified certificates of custody allegedly issued by magistrates' courts and high courts. BAOBAB warned that even though the form itself may be genuine the document might be falsified.
- 9.3.4. Regarding false newspaper warrants Momoh confirmed that this phenomenon is very common and that the printed media would let persons buy space in a second unofficial edition of a newspaper in order to insert a false warrant including the name of a wanted person. This is being done in order to support a potential asylum seeker's case when applying for asylum abroad.
- 9.3.5. Dr. Ayu acknowledged that the use of forged documentation is a problem and informed that new biometric passports are to be introduced in 2005 and that this would assist resolving the issue, as the true identity of individuals will be able to be verified simply and quickly.
- 9.3.6. Baraya explained that the initiative regarding the introduction of biometric passports had begun in 2002. The technological aspects of the scheme, which uses fingerprint biometrics, have now been finalised and the necessary equipment is now being installed in passport offices. Some are already operational and the first biometric passports have been issued. According to Baraya the scheme will be fully operational in 2005 and all new passports will contain biometrics (fingerprints).

10. Marriage and child custody

10.1. General

10.1.1. There are four legal forms of marriage in Nigeria and different procedures for marriage and dissolution apply to each category.

- Islamic (*Maliki* school of law)
- Christian
- Civil (statutory law)
- Customary (tribal/traditional)

10.1.2. According to BAOBAB Muslim personal law in northern Nigeria is generally practised in preference to statutory law. Muslims very rarely choose to marry under statutory law. In the southern parts of Nigeria marriage under statutory law is much more common. However, throughout Nigeria, other than where Muslim law is applied, it is generally the various customary laws that govern personal matters – even when couples have married under statutory law.¹²⁸

10.1.3. BAOBAB stated that the courts might determine custody in divorce cases based on, in principle, the best interest of the child. However, various traditions and customs have in many places replaced the law. Also, there is often a gap between what is stated by law and what is in fact the reality.

10.1.4. Many women may refrain from divorcing even a violent man, as they have no prospect of attaining the custody of the children unless they try their case at a court. However, it was stressed by BAOBAB that the Nigerian courts are corrupt and that this refrain many from bringing custody cases to the courts. Furthermore, the court may grant the custody to the father purely based on economic reasons.

10.1.5. BOABAB considered that if child custody were contested in court the father would almost certainly win the case. According to the social norms the child is the property of the father and his family and not the woman as an individual.

10.1.6. According to information provided by the Visa Section, BHC, the concept that members of extended families bring up children is strong in Nigerian culture. For example maternal grandmothers or cousins or aunts bring up children. This concept of “wards” is widespread for economic and social reasons but it does not constitute legal custody of the children concerned.

10.1.7. According to BOABAB the rights of women is very often dependent of their educational background and weak women may often see their children be taken away with no right even to see them. It is extremely difficult for a woman to reclaim a child. Following a divorce a woman have to leave the house and return to her relatives who may have a hard time

¹²⁸ BAOBAB, *Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report*, Lagos, 2002, p. 2.

supporting her let alone her child or children. In such cases a woman has practically no recourse unless a NGO can provide her with lawyers working *pro bono*.

- 10.1.8. WACOL confirmed that many women do not know their rights in the event of a divorce. The presence of local co-ordinators from WACOL in northern Nigeria has improved the situation for a number of women because they can assist women in seeking redress by lawyers affiliated with the organisation.
- 10.1.9. BAOBAB explained that the general precondition for anyone to document his or her right to custody of a child is that the marriage has been entered according to statutory law and if the child custody has been fought in court after the divorce. In all other cases custody is not documented.

10.2. Islamic marriages

- 10.2.1. According to the Visa Section, BHC, the rules, which apply to Islamic marriages in Nigeria, are the same as elsewhere in the Islamic world. A man may take a maximum of four wives. Normally no marriage certificate will be issued, but an Imam on request will issue such a document.
- 10.2.2. A divorce may only come about at the man's instigation. The marriage will be considered legally dissolved if the husband pronounces the *Talaq* three times in succession. No certificate of divorce will normally be issued, but it can be obtained from an Imam. There is no means by which a woman may divorce a man. If a husband refuses to divorce a woman who no longer wishes to remain in a marriage, the only recourse she has is to seek the support of her husband's family members in the hope that they will exert pressure on the man to effect a divorce.
- 10.2.3. BAOBAB explained that Muslim women in the north practically never leave or divorce their husbands. However, a woman can ask for a court to arbitrate or pronounce a divorce on the following reasons: The husband fails to provide maintenance, is insane, impotent or frigid, prolonged absence, injury or discord, failure to provide sexual satisfaction or refusal of the husband to enable the woman to undertake her religious obligations. Finally, a woman may divorce by "ransom" (*khul'u*) i.e. return of bride price. Courts usually decide such cases and also set the amount of the ransom.¹²⁹
- 10.2.4. According to the Visa Section, BHC, following a divorce, children remain with the father if that is his wish. The woman may contest this arrangement through the court, but this is rarely done and she is unlikely to be successful. However, BAOBAB stated that after a divorce the child remains in the custody of the mother. If the woman is unable to take custody of her child, the custody passes on to the woman's mother or sister or to the sister of the mother. The woman or her female relatives is always given preference before that of the father.¹³⁰

¹²⁹ BAOBAB, *Divorce - The dissolution of a Marriage in Muslim Personal Laws in Nigeria*, Lagos, 1999, pp. 8-12.

¹³⁰ BAOBAB, *Child Custody & Guardianship in Muslim Personal Laws in Nigeria*, Lagos, 1999, pp. 7-9.

- 10.2.5. Following the death of the husband/father the custody remains with the mother according to the Visa Section, BHC. By mutual agreement, the children are often informally adopted by the husband's family (usually a brother) if he is in a more favourable position to support them. If the mother is still relatively young and seeking to remarry, such an arrangement will increase her chance of finding a husband.
- 10.2.6. Furthermore, BAOBAB explained that when a woman remarries, especially if the new husband is not related to the child, the custody is often lost to the next preferred person in line. This can be the mother or sister or the sister of the mother. The woman may also lose custody if she resides at a distance of more than 48 kilometres from the father's place of residence. If the woman is considered to live an immoral life, or neglects to take proper care of the child, she may also lose custody. However, a woman can regain custody of her child if the court considers that she remains more entitled to and better qualified than the father.¹³¹
- 10.2.7. Finally, BAOBAB explained that the mother holds custody of a child born outside of marriage.¹³²

10.3. Christian marriages

- 10.3.1. According to the Visa Section, BHC, polygamy is not permitted in Christian Nigerian marriages. For the marriage to proceed, both parties must be baptised, and the woman is often required to take a pregnancy test. A marriage certificate will be issued in all cases.
- 10.3.2. Either party may petition for divorce through the family courts, but only on the grounds of infidelity. A certificate of divorce will be issued in all cases.
- 10.3.3. Following a divorce, the children will normally remain with the mother. The father may contest this through the family court, but such applications are rare.
- 10.3.4. In the case of children born outside marriage, they would remain with the mother. The only legitimate means by which the father could gain custody would be by reaching an agreement with the mother. The courts would not become involved in such cases.

10.4. Civil marriages

- 10.4.1. According to the Visa Section, BHC, registry offices conduct civil marriages. A certificate is issued in every case. Either party may file for a divorce on various grounds i.e. separation, unreasonable behaviour, infidelity, irreconcilable breakdown. The court deals with such files. A certificate of divorce is issued in all cases.
- 10.4.2. In case of divorce children would normally remain with the mother. Any contest would be before the court.

¹³¹ BAOBAB, *Child Custody & Guardianship in Muslim Personal Laws in Nigeria*, Lagos, 1999, pp. 9-10.

¹³² BAOBAB, *Child Custody & Guardianship in Muslim Personal Laws in Nigeria*, Lagos, 1999, p. 10.

10.5. Customary marriages

- 10.5.1. According to the Visa Section, BHC, there is no upper limit to the number of wives a man may take under tribal custom. An elderly, respected male member of the community, normally a member of the bride's family, performs the marriage ceremony.
- 10.5.2. The issue of customary marriages is complicated since no marriage certificate is issued, or even obtainable. Either party may seek to dissolve the marriage for any reason. This would simply require the agreement of the official at the wedding, or the local chief. No certificate of divorce is either issued or obtainable.
- 10.5.3. Children remain with the father if this is his wish, but this is rarely the case. Child support is the responsibility of the mother and her family.
- 10.5.4. BAOBAB explained that a woman could try a claim of custody in a court in the event of divorce. This is in general very difficult as the child, according to customary law, belongs to the father's family or lineage. Divorced women, who find themselves in a weak family position, will also find it very hard to return to their home village. In such circumstances the children often stay with their father.
- 10.5.5. BAOBAB confirmed that customary laws regarding child custody are more favourable to men than to women. It is often the case that the father is mostly awarded custody of those children aged seven or above. This may be done without consideration of whether the father is capable of looking after the children.¹³³

10.6. Custody of children born outside marriage

- 10.6.1. According to the Visa Section, BHC, custody of children born outside of marriage is not decided in law. Neither of the party holds legal custody and in practice the case of custody is resolved between the parties involved. The courts are not involved and no certificates of custody are issued. Although custody arrangements in such circumstances could be "notarised", they are not legally binding. (See also the sections above).

10.7. Transfer of custody

- 10.7.1. BAOBAB stated that transferral of custody by mutual consent of the parents is very rare in Nigeria. If a woman for some reason wishes to transfer the custody of her child to either her former husband (or the father of the child if the latter is born outside marriage) and the child's father lives abroad then she can obtain an *affidavit* (a sworn written statement) from the Ministry of Justice or the Ministry of Information and National Orientation. If this happens the transfer of custody is legal under Nigerian law.
- 10.7.2. However, such *affidavits* can easily be falsified. BAOBAB can assist foreign immigration authorities in order to verify the authenticity of *affidavits* by consulting the issuing authority. BAOBAB stressed that transferral of custody can be problematic as it may promote trafficking.

¹³³ BAOBAB, *Women's Access to Justice and Personal Security in Nigeria: A Synthesis Report*, Lagos, 2002, p. 8.

- 10.7.3. It was added that it is also possible to request custody certification from the High Court or a magistrates' court, though it could easily be false documents, even though the form itself may be genuine.

11. Authorities, organisations and persons consulted

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13. Abbreviations

ACCORD – Austrian Centre for Country of Origin and Asylum Research and Documentation

AD – Alliance for Democracy

AI – Amnesty International

ANPP – All Nigeria People's Party

APGA – All Progressive's Grand Alliance

ARN – Alliance Rights Nigeria

BBC – British Broadcasting Corporation

BHC – British High Commission

CIPU – Country Information and Policy Unit

CLEEN – Centre for Law Enforcement Education

DIS – Danish Immigration Service

ECG – Electrocardiogram

ECOWAS – Economic Community of West African States

FCT – Federal Capital Territory

FGM – Female Genital Mutilation

HRW – Human Rights Watch

IGP – Inspector General of Police

IND – Immigration and Nationality Directorate

INGO – International Non-Governmental Organisation

IOM – International Organization for Migration

IRIN – Integrated Regional Information Network

IWOP – Innocent Women out of Prison Project

IYC – Ijaw Youth Council

LEDAP – Legal Defence and Assistance Project

MASSOB – Movement for the Actualisation of the Sovereign State of Biafra

MSM – Men who have Sex with Men

NAFDAC – National Agency for Food, Drugs Administration and Control

NAPTIP – National Agency for the Prohibition of Traffic in Persons and Other Related Matters

NCR – National Commission for Refugees

NDLEA – National Drug Law Enforcement Agency

NDPVF – Niger Delta's People Volunteer Force

NDVS – Niger Delta Vigilante Service

NEEDS – National Economic Empowerment and Development Strategy

NGO – Non-Governmental Organisation

NHRC – National Human Rights Commission

NIS - Nigeria Immigration Service

NLC – Nigerian Labour Congress

NPC – Nigerian Police Council

NPF – Nigeria Police Force

NPS – Nigerian Prisons Service

OCHA – Office for the Coordination of Humanitarian Affairs

OPC – O'odua People's Congress

ÖRK – Österreichisches Rotes Kreuz

PDP – People's Democratic Party

PLU – Prison Link Unit

PRAWA – Prisoners Rehabilitation and Welfare Action

PSC – Police Service Commission

PTSD – Post Traumatic Stress Disorder

SSS – State Security Service

UK – United Kingdom

UN – United Nations

UNICRI – UN Inter-regional Crime and Justice Research Institute

US – United States

WACOL – Women's Aid Collective

WHO – World Health Organisation

WOTCLEF – Women Trafficking & Child Labour Eradication Foundation

14. Annexes and maps

Annex 1: ToR

Annex 2: Map of Nigeria

Annex 1

*Danish
Immigration*



Service



*Immigration and Nationality
Directorate*

Terms of Reference for joint Danish-British fact-finding mission to Nigeria

October 2004

Building on previous co operation in conducting fact finding missions, the Documentation and Research Division of the Danish Immigration Service and the Country Information & Policy Unit (CIPU) of the UK's Immigration and Nationality Directorate and have agreed to conduct a joint fact finding mission in October 2004 to gather information about the situation in Nigeria to assist in the determination of asylum and human rights applications.

The fact-finding team will specifically, to the extent possible, gather information on:

1. Human rights – general

- Avenues for victims to seek redress (availability, access and opportunities)
- Presence of human rights bodies
 - (a) Governmental human rights institutions
 - (b) Independent human rights organisations
- Investigation and prosecutions for human rights abuses
 - (a) Authorities ability to protect individuals against ill-treatment from vigilante groups/secret cults/societies etc
 - (b) Authorities control and treatment of vigilante groups etc and police forces
 - (c) Authorities investigations into complaints of ill treatment by vigilante groups etc and by police
- Freedom of movement and availability of internal flight from human rights abuse and private conflict

2. Human rights – specific groups

- Political opposition

- (a) Conditions for political opposition
- (b) Treatment of militant political opposition
- (c) Situation for members of Movement for the Actualization of the Sovereign State of Biafra (Massob)
- Vigilante groups/secret cults/societies etc
 - (a) Treatment by authorities
- Homosexuals
 - (a) Treatment by authorities
 - (b) Attitudes and reactions from local communities
- Women's issues
 - (a) Trafficking of women (threats from agents of trafficking (prostitution), sanctions by authorities and local communities (social stigmatisation))
 - (b) Female genital mutilation. Possible protection (offered by the authorities, presence of human rights organisations and support from women NGO's)
 - (c) Forced marriages
- Jehova's Witnesses

3. Justice system

- Sharia courts
 - (a) Jurisdiction of the courts (Moslems/Christians and territorial competence)
 - (b) Adultery
 - (c) Sex outside marriage
 - (d) Apostasy
- Federal courts
 - (a) Jurisdiction of the courts
- Double jeopardy
 - (b) Convicted drugs criminals abroad (Decree 33 of 1990 and status of pending appeal at Federal High Court)

4. Prison conditions

5. Availability of medical treatment

6. Immigration and embarkation

- Exit and re-entry procedures

- Treatment of returned failed asylum seekers
- Use and availability of forged documents

7. Marriage and child custody

- Marriage
 - (a) Contracting of legal marriage and dissolution of marriage
 - (b) Documenting
- Child custody
 - (a) Custody of children born within marriage – in case of divorce or death of spouse
 - (b) Custody of children born outside marriage
 - (c) Documenting

Methodology

The delegation will produce an agreed report of the mission that presents the views of the various spokespersons in an accurate and transparent way and reflects exactly what members of the fact-finding mission team were told in their meetings with the various interlocutors. Unless otherwise indicated, all statements within the report should be specifically attributed to named sources. As such the report will be purely factual and objective and will contain no opinions of members of the mission as to policy or practice towards Nigerian asylum claims in either the UK or Denmark. The report should also include, as may be necessary, relevant contextual information from other written sources and these, where used, should be appropriately attributed.

The delegation should meet with a wide range of relevant representatives of government bodies, non-governmental and inter-governmental organisations and individuals in Nigeria to obtain relevant information.

The aim should be to publish the report of the mission within one month of the completion of the mission.

23 September 2004

