Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**225**
Land:	Nigeria
Kilde:	British Home Office
Titel:	Operational Guidance Note
Udgivet:	1. september 2011
Optaget på baggrundsmaterialet:	13. januar 2012

OPERATIONAL GUIDANCE NOTE

NIGERIA

CONTENTS

1. Introduction

1.1 This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Nigeria, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to

fail.

2. Country assessment

2.1 Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010

2.3 Actors of protection

2.3.1 Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.3.2 The Nigerian Police Force (NPF) reports to the inspector general of police, who is appointed by the president and responsible for law-enforcement operations. An assistant inspector general commanded each NPF state unit. The constitution prohibits state and local governments from organising their own police forces; however, state governors may direct federal police for local emergency actions. Due to the police's inability to control societal violence, the government continued to rely on the army in some cases.[1]

2.3.3 The NPF is the largest institution in Nigeria and also the country's largest employer. By the end of 2008, the Nigeria police force comprised 5,515 police stations, 1,115 Police Divisions, 123 Area Commands, and 36 State Commands and one Federal Capital Territory Command. The headquarters of the force is located in Abuja, in the Federal Capital Territory. Known as the Force Headquarters, this is also the operational and administrative base of the IGP [Inspector General of Police]. The Force Headquarters is also known as 'Louis Edet House,' named after the first Nigerian IGP. The Force Headquarters is organized into six departments, each headed by a deputy inspector-general (DIG) of police.[2]

2.3.4 Policing in Nigeria is also characterised by pervasive corruption, such as diverting police resources for personal protection or enrichment in a variety of police-for-hire arrangements; harassment and intimidation of victims; and the destruction of evidence, including the bodies of victims of extrajudicial executions. Officers routinely practice extortion on members of the public at roadblocks and on public highways. Corruption and extortion are perhaps the defining characteristics associated with the NPF. [3]

[1] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[2] COIS Nigeria Country Report April 2011 (para 8.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[3] COIS Nigeria Country Report April 2011 (para 8.06) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

2.3.5 In addition to the police, however, other law enforcement agencies exist in Nigeria. These include the State Security Service (SSS), the National Drug Law Enforcement Agency, the Economic and Financial Crimes Commission, the Federal Road Safety Commission, and the Nigerian Security and Civil Defence Corps. Both the Immigration Service and the Customs and Excise department also have powers of investigation, arrest, and detention under the laws governing them. Like the police, these are all federal institutions established by law and are empowered to undertake investigation and prosecution.[4]

2.3.6 The NPF committed human rights abuses and generally operated with impunity in the apprehension, illegal detention, and sometimes execution of criminal suspects. The SSS also committed human rights abuses, particularly in restricting freedom of speech and press.[5]

2.3.7 The Nigeria Police Force has set up various mechanisms for the public to file complaints against police misconduct. These include the Public Complaints Bureau, complaint boxes or telephone hotlines at police stations, and human rights desks. The Nigerian government has also established various external mechanisms where members of the public can report police abuses. Depending on the nature of the complaint, members of the public can file complaints against the police at no fewer than eight government agencies; however, most of these complaint mechanisms lack the resources to investigate the complaints.[6]

2.3.8 There are several public complaint mechanisms in Nigeria;

-The Police Service Commission (PSC) is an independent body established in 1960, is responsible for police discipline. In 2008, the PSC's Department of Police Discipline received 129 complaints from the public—29 of which involved cases of police corruption or extortion. Most of these cases were referred back to the police force to investigate because of lack of resources in the department.

-The Public Complaints Commission (PCC), established in 1975, receives complaints against public officials, including police officers. Most complaints against the police are forwarded to the Police Service Commission for processing.

-The Nigeria Police Force – Public Complaints Bureau (PCB), established by the Nigeria Police Force in 1979, is run by the public relations officer at the various levels of the force, but the PCB has been largely ineffective and has no budget to carry out its functions. In 2007, the PCB received only 49 complaints from the public.

-The Code of Conduct Bureau (CCB) was established in 1990 and receives complaints from members of the public against public officials, including police officers, for violating the Code of Conduct for Public Officers.

-The National Human Rights Commission (NHRC), the Nigerian government established the NHRC in 1995. The NHRC received 574 public complaints in 2007 regarding all classes of human rights abuses, including 70 of 'degrading treatment' or 'unlawful arrest and detention' by members of law enforcement agencies. The NHRC can initiate investigations on its own, but lacks independent prosecutorial power. Draft legislation before the National Assembly would empower the NHRC to prosecute cases of human rights violations.

-The Independent Corrupt Practices and Other Related Offences Commission (ICPC), established in 2000, receives complaints from members of the public against public officials, including police officers, for corrupt practices.

[4] COIS Nigeria Country Report April 2011 (para 8.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[5] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[6] COIS Nigeria Country Report April 2011 (para 8.21) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

-The Economic and Financial Crimes Commission (EFCC), established in 2002, receives complaints from members of the public regarding cases of financial fraud, money laundering, and other corrupt practices.

-The Ministry of Police Affairs – Police Performance Monitoring (PPM) Division, established the PPM Division in December 2008. In its first year, it received about 100 complaints against the police from members of the public, but according to a ministry spokesperson, 'very few were investigated' due to funding shortages and the lack of trained investigators.[7]

2.3.9 Corruption remains pervasive despite government efforts to improve transparency and reduce graft. In a watershed case, former PDP deputy chairman Olabode George was sentenced in October 2009 to over two years in prison for graft dating to his tenure as head of the Port Authority. Also in 2009, U.S. oil-services firm Halliburton admitted distributing over $180 million in kickbacks to Nigerian officials to secure more than $6 billion in contracts. Seven former governors were charged with corruption in 2007 on orders from the Economic and Financial Crimes Commission (EFCC), the country's main anticorruption agency.[8]

2.3.10 Although the constitution and law provide for an independent judiciary, the judicial branch remained susceptible to pressure from the executive, the legislative branch, and business.[9] The higher courts are relatively competent and independent, but they remain subject to political influence, corruption, and inefficiencies. Certain departments, particularly the Court of Appeals, have often overturned decisions on election challenges or allegations of corruption against powerful elites, raising doubts about their independence.[10]

2.4 Internal relocation.

2.4.1 Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 Nigeria is divided administratively into the Federal Capital Territory (Abuja) and 36 states, which are organized into the following six zones: South-West Zone – Lagos, Ekiti, Ogun, Ondo, Oshun and Oyo; South-South Zone – Akwa, Bayelsa, Cross River, Delta, Edo, Ibom, and Rivers; South-East Zone – Abia, Anambra, Ebonyi, Enugu, and Imo; North-West Zone

[7] COIS Nigeria Country Report April 2011 (para 8.22) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[8] COIS Nigeria Country Report April 2011 (para 19.03) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[9] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[10] COIS Nigeria Country Report April 2011 (para 12.04) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

– Kaduna, Kano, Katsina, Jigawa, Kebbi, Sokoto, and Zamfara; North-Central Zone – Benue, Kogi, Kwara, Nassarawa, Niger, and Plateau; and North-East Zone – Adamawa, Bauchi, Bornue, Gomber, Taraba, and Yobe.[11]

2.4.4 The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation; however, police occasionally restricted freedom of movement by enforcing curfews in areas experiencing ethno-religious violence and routinely set up roadblocks and checkpoints to extort money from travellers. Security officials continued to use excessive force at checkpoints and roadblocks, which were sometimes maintained every few miles.[12] It may be practicable for applicants who may have a well-founded fear of persecution on one area to relocate to other parts of Nigeria where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

2.5 Country guidance caselaw

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

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

JO [2004] UKIAT 00251. The Tribunal found that there would be a real risk of serious harm if this appellant were to be returned to her home area. However, internal flight is a viable option. The Tribunal also stated that trafficked women do not qualify as a particular social group within the terms of the 1951 Refugee Convention.

SB (PSG – Protection Regulations –Reg 6) Moldova CG [2008] UKAIT 00002. The Tribunal found that 'Former victims of trafficking' and 'former victims of trafficking for sexual exploitation' are capable of being members of a particular social group within regulation 6(1)(d) of the Protection Regulations because of their shared common background or past experience of having been trafficked. The Tribunal emphasised, however, that, in order for 'former victims of trafficking' or 'former victims of trafficking for sexual exploitation' to be members of a particular social group, the group in question must have a distinct identity in the society in question (paragraph 112).

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

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

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

[11] COIS Nigeria Country Report April 2011 (para 1.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[12] COIS Nigeria Country Report April 2011 (para 28.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

PO [2009] UKAIT 00046 (CG)

(1) In general terms, women and girls in Nigeria do not face a real risk of serious harm from human traffickers, but the risk is heightened for females under 40 years of age living in suburban areas with a poor level of education. However, where it can be shown that an individual does face a real risk of being forced or coerced into prostitution by traffickers, the issue of whether she will be able to access effective protection from the authorities will need to be carefully considered in the light of background evidence.

(2) There is in general no real risk of a trafficking victim being re-trafficked on return to Nigeria unless it is established that those responsible for the victim's initial trafficking formed part of a gang whose members were to share in the victim's earnings or a proportion of the victim's target earnings in circumstances where the victim fails to earn those target earnings. It is essential that the circumstances surrounding the victim's initial trafficking are carefully examined.

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Nigeria. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

3.5 Credibility

3.5.1 This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 The Niger Delta

3.6.1 Applicants may make an asylum and/or human rights claim based on the grounds that they fear ill treatment amounting to persecution at the hands of gangs or the security forces working in the interests of the oil companies that operate in the Niger Delta. Such claims are often submitted by young Ijaw males and are based on the individual's fear of the security forces or the oil companies because they refuse to see or move from sought after land in the region.

3.6.2 ***Treatment.*** Since the 1990s, local groups have agitated for more of the wealth that emanates from the Niger Delta. Although at the heart of Africa's second-largest oil industry, the region is poor, underdeveloped and polluted. The first protests to the Nigerian government, and oil companies like Royal Dutch Shell and Chevron, were made by the Ogoni people, under activist Ken Saro-Wiwa. Saro-Wiwa was executed in 1995 by the government of Dictator Sani Abacha, and in 1998 ethnic Ijaws took up the campaign. Despite the 1999 return to democracy in Nigeria, many funds under the government's revenue-sharing scheme still failed to reach local people. Armed militants such as the Niger Delta People's Volunteer Force (NDPVF) and Niger Delta Vigilantes (NDV) emerged in 2003–4, adding the terrorist tactics of bombing pipelines, attacking oil and gas installations, and kidnapping industry workers to the already widespread practice of stealing, or 'bunkering', oil from pipelines. The Movement for the Emancipation of the Niger Delta (MEND), the latest group appearing in 2006, has escalated the violence – which costs Nigeria an estimated $1 billion annually in lost output. The government has often been repressive in its response to militants, but in 2009 tried to engage them in a peace process.[13]

3.6.3 Militia groups in the region have proliferated, often sustained by government and party officials who use the militias for their own political and economic purposes. Groups such as the Movement for the Emancipation of the Niger Delta (MEND), which was organized in 2006, function as a loose network of gangs rather than a coherent organisation. They lack a common political agenda or political wings that could participate in a negotiation process. While some groups possess legitimate grievances and goals, they also engage in criminal activities that lead to the continuation of the conflict—by doing the bidding of the politicians and others who pay them, the militia members perpetuate the governance system that contributes to the region's problems.[14]

3.6.4 In June 2009 the government announced a general and unconditional amnesty for militants in the Niger Delta, and almost all major militant leaders accepted the offer by the October 2009 deadline. Authorities established a training camp in Obubra, Cross River State, and some of an estimated 20,000 former militants had completed training in nonviolence by year's end. Many militants expressed interest in vocational training as well. They received stipends during rehabilitation. The amnesty program resulted in a decline in militant violence; however, some observers expressed concern that the militants' amnesty payments were being used to purchase more arms.[15]

3.6.5 Following a lull in violence in the oil-rich Niger Delta, attacks increased, including kidnappings of schoolchildren, wealthy individuals, and oil workers, and car bombings in Delta State, Bayelsa State, and Abuja. The 2009 amnesty - in which a few thousand people, including top militant commanders, surrendered weapons in exchange for cash stipends - led to a reduction of attacks on oil facilities in 2010, but their disarmament, demobilisation, and reintegration have been poorly planned and executed. The amnesty has further entrenched impunity, and the government has made little effort to address environmental degradation, endemic state and local government corruption, or political sponsorship of armed groups, which drive and underlie violence and poverty in the region.[16]

3.6.6 An Integrated Regional Information Networks (IRIN) report of 17 December 2010 noted that the government efforts to quell violence are hampered by corruption and fail to get at the

[13] COIS Nigeria Country Report April 2011 (para 10.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[14] COIS Nigeria Country Report April 2011 (para 10.03) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[15] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[16] Human Rights Watch World report 2011: Nigeria http://www.hrw.org/en/world-report-2011/nigeria

deep-seated causes of unrest in the region. A local human rights activist said corruption is rife in the amnesty programme, with planned government assistance falling short, despite available funds.[17]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.6.7 ***Conclusion.*** Whilst applicants from the Niger Delta may face harassment and ill-treatment at the hands of the security forces who work to protect the interests of the oil industry, they are unlikely to be able to establish that they face treatment amounting to persecution based solely on their residence there. Applicants who are able to demonstrate that they face a level of harassment and ill-treatment amounting to persecution at the hands of the security forces in the Niger Delta and unlikely to be able to seek redress from the authorities. Such applicants, however, have the option to relocate internally to another area of the country outside of the Niger Delta where they will not be of continuing interest to the security forces feared. Therefore, a grant of asylum or Humanitarian Protection will not be appropriate for this category of claim.

3.7 Fear of Bakassi Boys (or other vigilante groups)

3.7.1 Some applicants may make an asylum and/or human rights claim based on their fear of ill-treatment amounting to persecution at the hands of 'Bakassi Boys' or other similar vigilante groups.

3.7.2 ***Treatment***. Vigilante groups have been a major problem for the state security forces in Lagos and south-eastern Nigeria. Claiming to provide law and order, the groups have used brutal and unconstitutional means to deal with suspected criminals. Some of these groups have been armed with automatic weapons, and have run organised crime networks of their own.[18]

3.7.3 The Bakassi Boys were created in 1998 by traders in the Nigerian city of Aba who wanted to protect themselves from armed robbers and "hoodlums". Having had success in reducing crime in Aba, the Bakassi Boys became "in high demand" and their activities spread to other cities in eastern Nigeria.[19]

3.7.4 In 2002, the Bakassi Boys were allegedly disbanded following a federal government move to prohibit vigilante groups. However, state governments continued to "covertly condone" their existence, allowing the Bakassi Boys to carry on their operations. In Imo, Abia, and Anambra, the state government has provided the Bakassi Boys with salaries as well as offices, uniforms and vehicles, bearing the names of the vigilante groups. In January 2006, the governor of Abia State passed into law a bill to legally recognize the operations of the Bakassi Boys, despite the earlier federal legislation prohibiting such vigilante groups.[20]

3.7.5 Abia State House of Assembly rounded off its 4-year session by passing a bill which empowered the state vigilante service, popularly known as Bakassi Boys, to carry low calibre weapons.[21]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

---

[17] COIS Nigeria Country Report April 2011 (para 10.09) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[18] COIS Nigeria Country Report April 2011 (para 11.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[19] Immigration and Refugee board of Canada, Nigeria: Bakassi Boys; leadership, membership, activities, and treatment by authorities (January 2005 - February 2006) 14 February 2006, http://www.unhcr.org/refworld/docid/45f1478b2.html
[20] Immigration and Refugee board of Canada, Nigeria: Bakassi Boys; leadership, membership, activities, and treatment by authorities (January 2005 - February 2006) 14 February 2006, http://www.unhcr.org/refworld/docid/45f1478b2.html
[21] All Africa, Nigeria: Abia House Empowers Bakassi Boys to Carry Arms,18 May 2011 http://allafrica.com/stories/201105180412.html

Caselaw (section 2.5 above)

3.7.6 ***Conclusion.*** Applicants who fear, or who have experienced ill-treatment at the hands of vigilante groups and for whom sufficiency of protection is not available will generally be able to safely relocate within the country to escape such treatment. Therefore, a grant of asylum or Humanitarian Protection will not generally be appropriate for this category of claim.

3.8 Religious persecution

3.8.1 Some applicants may make an asylum and/or human rights claim based on the grounds that they aren't free to practise their religion and that they would face ill-treatment amounting to persecution ay the hands of the authorities as a consequence. Some applicants may express gear of Shari'a courts in northern Nigeria while others may have a fear of Hisbah groups who operate ay local level in northern Nigeriato enforce Shari'a.

3.8.2 ***Treatment.*** The country has an area of 356,700 square miles and a population of 150 million. While some groups estimate the population to be 50 percent Muslim, 40 percent Christian, and 10 percent practitioners of indigenous religious beliefs, it is generally assumed that the numbers of Muslims and Christians are approximately equal. The predominant sect of Islam is Sunni; however, there is a small but growing Shi'a minority. Christians include Roman Catholics, Anglicans, Baptists, Methodists, Presbyterians, and a rapidly growing number of non-traditional evangelical and Pentecostal Christians. There are also adherents of The Church of Jesus Christ of Latter-day Saints (Mormons).[22]

3.8.3 The constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion including freedom to change one's religion or belief, and freedom to manifest and propagate one's religion or belief through worship, teaching, practice, and observance. Twelve northern states use Shari'a (Islamic law) courts to adjudicate criminal and civil matters for Muslims and customary law courts to adjudicate cases involving non-Muslims.

3.8.4 The government generally respected religious freedom in practice, although some local political actors stoked sectarian violence with impunity. The government often invoked religious sensitivity as a reason for caution in taking a stance on international issues with religious implications. The constitution prohibits state and local governments from adopting a state religion or giving preferential treatment to any religious or ethnic community. [23]

3.8.5 Christians in the predominantly Muslim northern states continued to allege that local government officials used zoning regulations to stop or slow the establishment of new churches and, in some cases, demolished churches that had existed for as long as a decade. Muslims in the predominantly Christian southern part of Kaduna State alleged that local government officials prevented the construction of mosques and Islamic schools. Officials denied discrimination, attributing application denials to zoning regulations in residential neighbourhoods and a large backlog of applications.[24]

3.8.6 The constitution provides that states may establish courts based on the common law or customary law systems. Twelve northern states (Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno, Zamfara, and Gombe) maintained Shari'a courts, which adjudicated both criminal and civil matters, alongside common law and customary law courts. Many Christians alleged that having Shari'a courts amounted to the adoption of Islam as a state religion. In addition the Civil Liberties Organisation, a prominent nongovernmental organisation (NGO), contended that Zamfara State promoted Islam as a state religion through its establishment of a Commission for Religious Affairs.[25]

---

[22] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[23] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[24] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[25] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm

3.8.7 Hisbah vigilante Shari'a enforcement groups funded by state governments in Bauchi, Zamfara, Niger, Kaduna, and Kano states enforced some Shari'a statutes. In Kano Hisbah leaders cited enforcing prohibitions on alcohol and prostitution as the group's primary focus; however, they continued to serve primarily as traffic wardens and marketplace regulators.[26]

3.8.8 In many communities Muslims or Christians who converted to another religion reportedly faced ostracism by adherents of their former religion. In some northern states, those wishing to convert to Islam applied to the Shari'a council for a letter of conversion to be sent to their families, which served to dissolve marriages to Christians, and to request Hisbah protection from reprisals by relatives. There were unconfirmed reports of Christians forced to convert to Islam, particularly during the July 2009 Boko Haram attacks.[27]

3.8.9 Violence between Christian and Muslim communities increased in several regions due to political and socioeconomic conflicts. Acute communal violence in the Middle Belt heightened tensions between religious groups even in areas that did not experience the violence. Religious differences often paralleled and exacerbated differences among ethnic group. In the Middle Belt, identity is simultaneously moulded along both ethnic and religious lines. Competition for scarce resources, in concert with livelihood differences and discriminatory employment practices, often underlay the violence. Local politicians and others continued to use religion on occasion to spur hostility among groups.[28]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.8.10 ***Conclusion.*** The right to religious freedom and expression is enshrined in the constitution and there are no reports of anyone experiencing any problems with the Federal Government in practising their chosen religion. Claims under this category will therefore be clearly unfounded and as such should be certified. Applicants who express a fear of Shari'a courts have the constitutional right to have their cases heard by the parallel (non-Islamic) judicial system and as such their claims are likely to be unfounded and fall to be certified. Applicants expressing fear of Hisbah groups are able to safely relocate elsewhere in Nigeria where such groups do not operate or have no influence. Claims made on the basis of fear of Hisbah groups are therefore also likely to be clearly unfounded and will similarly fall to be certified.

3.9 Female Genital Mutilation (FGM)

3.9.1 Some female applicants may seek asylum on the basis that they, or their children, would be forcibly required by family members to undergo female genital mutilation (FGM) if they were to return to Nigeria.

3.9.2 **Treatment** The 2008 Nigeria Demographic and Health Survey (NDHS) reported that 30 percent of women in the country had been subjected to FGM. While practiced in all parts of the country, FGM was most prevalent in the southern region among the Yoruba and Igbo. Infibulations, the most severe form of FGM, was infrequently practiced in northern states but was common in the south. The age at which women and girls were subjected to the practice varied from the first week of life until after a woman delivered her first child; however, most women were subjected to FGM before their first birthday.[29]

3.9.3 The law criminalises the removal of any part of a sexual organ from a woman or girl, except for medical reasons approved by a doctor. According to the provisions of the law, an offender is any woman who offers herself for FGM; any person who coerces, entices, or induces any woman to undergo FGM; or any person who, for other than for medical

[26] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[27] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[28] US State Department Religious Freedom Report 2010: Nigeria http://www.state.gov/g/drl/rls/irf/2010/148713.htm
[29] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf

reasons, performs an operation removing part of a woman's or a girl's sexual organs. The law provides for a fine of 50,000 naira (£200), one year's imprisonment, or both, for a first offense and doubled penalties for a second conviction.[30]

3.9.4 The federal government publicly opposed FGM but took no legal action to curb the practice. Twelve states banned FGM. However, once a state legislature criminalised FGM, NGOs found that they had to convince the local government authorities that state laws were applicable in their districts. The Ministry of Health, women's groups, and many NGOs sponsored public awareness projects to educate communities about the health hazards of FGM; however, underfunding and logistical obstacles limited their contact with health care workers.[31]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.9.5 **Conclusion** Whilst protection and/or assistance is available from governmental and non-governmental sources, this is limited. Caseowners will need to ensure that each case is considered on its own merits, however in general those who are unable or, owing to fear, unwilling to avail themselves of the protection of the authorities, can safely relocate to another part of Nigeria where the family members who are pressurising them to undergo FGM would be unlikely to trace them. Women in this situation would if they choose to do so, also be able to seek protection from women's NGO's in the new location.

3.9.6 There is no established case law on whether Nigerian women or children who have not undergone FGM should be regarded as members of a PSG. Claims for protection made by or on behalf of members of ethnic groups that practice FGM will need careful analysis to determine whether they are members of a particular social group (PSG). Individual claimants from these ethnic groups who are accepted as members of a PSG, who are able to demonstrate a real risk of such treatment and who could not escape the risk by internal relocation should be recognised as refugees and granted asylum. Where membership of a PSG is not accepted, humanitarian protection should be granted. In the event that it is accepted a child is in need of international protection because neither its parents nor the authorities in the area of origin would be able to offer protection, and where internal relocation would not be reasonable, the accompanying parents of such applicants may be considered for a grant of discretionary leave unless they are able to establish their own protection needs.

3.9 Victims of trafficking

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

3.10.2 **Treatment** Nigeria is a source, transit, and destination country for women and children subjected to forced labour and sex trafficking. Trafficked Nigerian women and children are recruited from rural, and to a lesser extent urban, areas within the country's borders – women and girls for domestic servitude and sex trafficking, and boys for forced labour in street vending, domestic servitude, mining, stone quarries, agriculture, and begging. Nigerian women and children are taken from Nigeria to other West and Central African countries, including Gabon, Cameroon, Ghana, Chad, Benin, Togo, Niger, Burkina Faso,

[30] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[31] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf

the Central African Republic, and The Gambia, as well as South Africa, for the same purposes. During 2010, reports indicated significant numbers of Nigerian women are living in situations of forced prostitution in Mali and Cote d'Ivoire. Nigerian women and girls, primarily from Benin City in Edo State, are taken to Italy for forced prostitution, and others are taken to Spain, the Netherlands, Germany, Turkey, Belgium, Denmark, France, Sweden, Switzerland, Norway, Ireland, Greece, and Russia for the same purposes. Nigerian women and children are recruited and transported to destinations in North Africa and the Middle East, including Saudi Arabia, the United Arab Emirates, Lebanon, Egypt, Libya, and Morocco, where they are held captive in the sex trade or situations of forced labour. During the reporting period (2010), traffickers decreasingly relied on air travel to transport trafficking victims, and more often utilised land and sea routes, for example by forcing victims to cross the desert on foot to reach Europe.[32]

3.10.3 The US State Department report goes on to state that the Government of Nigeria fully complies with the minimum standards for the elimination of trafficking. In 2010 the Nigerian government sustained a modest number of trafficking prosecutions as well as the provision of assistance to several hundred trafficking victims, but did not demonstrate an increase in its anti-trafficking law enforcement efforts. An apparent increase in referrals to the National Association for the Prohibition of Trafficking in Persons (NAPTIP) of cases involving non-trafficking crimes against children – such as paedophilia and baby selling – appears to have burdened the organisation. Victims' shelters operated below their full capacity, offered limited reintegration services, and were not always well maintained.[33]

3.10.4 The NAPTIP website referred to the running of seven shelters in the country in Abuja, Lagos, Benin, Uyo, Enugu, Kano, Sokoto with capacities to accommodate numbers ranging from 120 to 50. Each of the seven NAPTIP shelters is attached with qualified medical personnel in charge of the Agency's mini-clinics. Also the unit is working hand in hand with private hospitals and government hospitals to take care of complex, and emergency medical cases. Voluntary HIV test is administered on victims of sexual exploitation after medical counselling.[34]

3.10.5 A number of NGOs are assisting victims of trafficking in Nigeria. Among the most prominent of those are GPI (Girls' Power Initiative), COSUDOW (Committee for the Support and Dignity of Women), IRRRAG (International Reproductive Research Rights Action Group), WOCON (Women's Consortium of Nigeria), WOTCLEF (Women Trafficking and Child Labour Eradication Foundation), AWEG (African Women's Empowerment Guild), Idia Renaissance and the Catholic Secretariat of Nigeria/Caritas Nigeria.[35]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.10.6 **Conclusion** When considering applications under this category, case owners must always refer to the Asylum Instruction on 'Victims of Trafficking'. That a person has been trafficked is not, in itself, a ground for refugee status. However, some trafficked women have been able to establish a 1951 Convention reason (such as a membership of a particular social group) and may have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. Trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families and there may be a risk of being re-trafficked. Each case should be considered on its individual merits

[32] US State Department Trafficking in Persons report 2011: Nigeria http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm
[33] US State Department Trafficking in Persons report 2011: Nigeria http://www.state.gov/g/tip/rls/tiprpt/2011/164233.htm
[34] COIS Nigeria Country Report April 2011 (para 26.13) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[35] COIS Nigeria Country Report April 2011 (para 26.15) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

and in the context of the country on which it is based.

3.10.7 Where a victim of trafficking has agreed to give evidence as part of a criminal prosecution consideration should be given to whether this is likely to affect the basis of the asylum claim (for example by increasing the risk of retribution), and therefore whether the decision should be postponed until after the trial is concluded. The impact of the applicant's evidence at the trial on the likelihood of future risk can then be assessed. It may be necessary to liaise with the police in this situation.

3.10.8 Support and protection from governmental and non-governmental sources in Nigeria are generally available to victims of trafficking. Internal relocation will often also be a viable option for applicants who fear reprisals from traffickers upon return to the country. Cases in which sufficiency of protection is clearly available and/or internal relocation is a reasonable option are likely to be clearly unfounded and as such should be certified. Still, applications from those who have been trafficked and who are able to demonstrate that the treatment they will face on return amounts to torture, inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. In individual cases, sufficiency of protection by the state authorities may not be available, and in such cases where internal relocation is also not possible, a grant of Humanitarian Protection may be appropriate.

3.11 Fear of secret cults, juju or student confraternities

3.11.1 Some applicants may make an asylum and/or human rights claim on the grounds that they fear ill-treatment amounting to persecution at the hands of secret cults or those involved with conduction rituals or fetish magic, known as juju (the African phrase for voodoo). Other applicants may express a fear of ill-treatment at the hands of student confraternities, often referred to as student cults.

3.11.2 **Treatment** The term cult is very freely used in Nigeria, and may refer to any organised group of people where there is some sort of secrecy around the group members' reasons to organise and/or modes of operations. The term also implies a religious dimension, generally linked to practice of juju. Organisations ranging from the famous Ogboni secret society via ethnically based vigilante groups to university fraternities are all referred to as cults in Nigerian media. Cults and secret organisations are common in the south of Nigeria, but considerably less so in the north. Secret brotherhoods operate all the way up to elite levels of society, it is widely believed in Nigeria that people in power form secret networks where conspiracies and abuse of occult powers are a matter of routine.[36]

3.11.3 Fraternities at Nigerian universities became violent in the 1970s and soon were feared by students and staff alike. Pseudo-confraternities or campus cult groups such as the Supreme Vikings, Black Axe, and the Klansmen Konfraternity were formed in the 1980s as tools of the Nigerian military and they in turn formed street cult groups. The latter control territory and certain illicit operations such as drug dealing within their territory. With the support of political leadership some fraternity groups mutated into violent pressure groups which were used by politicians to secure electoral victories and in doing so have seriously hindered the growth of open democracy in Nigeria.[37]

3.11.4 The perverse nature of gang culture in the universities has turned the institutions to breeding grounds of vices. Gang members from the universities are actively engaging in armed robbery, hired assassinations, kidnapping and the formation of fragments of resistance organisations to fighting government and private enterprises. University gang members have been recruited into both the insurgency and counter-insurgency groups in the Niger Delta causing havoc and distorting crude oil production; elsewhere in the country, university gangs regularly causes breach of peace, for instance in the northern part of

[36] COIS Nigeria Country Report April 2011 (para 11.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[37] COIS Nigeria Country Report April 2011 (para 11.04) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Nigeria the gangs engage in religious violence by organising riots and the use of lethal force against persons that opposes their religious views.[38]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.11.5 **Conclusion** For applicants who fear, or who have experienced ill-treatment at the hands of these groups, there is a general sufficiency of protection and they are generally able to safely relocate within the country. Applications under this category therefore are likely to be clearly unfounded and as such should be certified.

3.12 Gay men and lesbians

3.12.1 Some applicants may make asylum and/or human rights claims based on ill-treatment amounting to persecution as gay men, lesbians, bisexual or transgender persons in Nigeria.

3.12.2 **Treatment** Homosexual activity is illegal under federal law, and homosexual practices are punishable by prison sentences of up to 14 years. In the 12 northern states that have adopted Sharia law, adults convicted of engaging in homosexual activity may be subject to execution by stoning, although no such sentences have been imposed.[39]

3.12.3 While these laws are silent on female homosexuality, they still serve to police same-sex activity between women and stifle lesbian and bisexual organising. Moreover, the laws of Nigeria are not the only means of controlling sexuality, and lesbian and bisexual women must also deal with customary and religious laws that dictate and limit their behaviour. In those northern states which have adopted Sharia, both male and female homosexuality have been outlawed, with death as the maximum penalty for male homosexuality and whipping or imprisonment as the maximum penalty for female homosexuality.[40]

3.12.4 Because of widespread taboos against homosexual activity, very few persons openly demonstrated such conduct. There were no public gay pride marches. The NGOs Global Rights and The Independent Project provided lesbian, gay, bisexual, and transgender (LGBT) groups with legal advice and training in advocacy, media responsibility, and HIV/AIDS awareness. The government or its agents did not impede the work of these groups during the year (2010).[41]

3.12.5 The British-Danish *2008 Fact Finding Misson Report* stated that at a meeting with the Nigerian NGO, Civil Liberties Organisation (CLO), a spokesman stated that he believed that homosexual acts or behaviour were tolerated in Nigeria, as long as they were carried out discreetly and in private, but homosexuals would be arrested for offending public decency if they showed affection in public. He added that violent attacks against homosexuals were not a common occurrence in Nigeria. He further stated that the public have little confidence in the police who are perceived to be inefficient and corrupt, but believed that they would provide protection for homosexuals threatened with violence for being homosexual. However, the spokeswoman for Global Rights stated that violence against homosexuals is widespread, and that societal disapproval of homosexuality meant that, even if a bribe was offered to the police to drop sodomy charges, at least 65% of such charges and prosecutions would go ahead, in her opinion at least.[42]

[38] COIS Nigeria Country Report April 2011 (para 11.03) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[39] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[40] COIS Nigeria Country Report April 2011 (para 22.05) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[41] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[42] COIS Nigeria Country Report April 2011 (para 22.19) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

3.12.6 The online publication LGBT Asylum News of 28 November 2010 noted that ten non-governmental organisations (NGOs) have openly declared the protection of LGBTI rights as one of their focus areas of work. These include Alliance Rights Nigeria, the International Centre for Reproductive Health and Sexual Rights (INCRESE), the Centre for Youth Policy Research and Advocacy (CYPRAD) and the Support Project in Nigeria (SPIN), The Initiative for Equal Rights (TIER), Queer Alliance and Global Rights Nigeria.[43]

See also: **Actors of protection (section 2.3 above)**
Internal relocation (section 2.4 above)
Caselaw (section 2.5 above)

3.12.7 **Conclusion** Case owners must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.

3.12.8 Societal hostility and discrimination against LGBT persons exists in Nigeria and same sex relationships are illegal. However, evidence suggests that homosexual acts or behaviours are tolerated in Nigeria as long as they are carried out discreetly and in private. Where gay men and lesbians do encounter social hostility they should be able to avoid this by moving elsewhere in Nigeria and it would not in most cases be unduly harsh to expect them to do so. It is therefore unlikely that a gay man or lesbian will be able to establish a claim to asylum or Humanitarian Protection on the basis of their sexuality alone.

3.12.9 Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in Nigeria on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Nigeria may be considered to be members of a particular social group.

3.12.10 If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

3.12.11 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.13 Prison conditions

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

3.13.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.13.3 ***Consideration.*** Prison and detention conditions remained harsh and life-threatening. Most

[43] COIS Nigeria Country Report April 2011 (para 22.29) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

of the country's 227 prisons were 70 to 80 years old and lacked basic facilities. Lack of potable water, inadequate sewage facilities, and severe overcrowding resulted in dangerous and unsanitary conditions. The federal government operated all the country's prisons, but maintained few pretrial jail facilities. Of the total prison population, 73 percent was not yet convicted. There were no regular outside monitors of the prisons, no statistics on mistreatment of prisoners, or on the availability of food or medical care.[44]

3.13.4 Prison illnesses included HIV/AIDS, malaria, and tuberculosis. Inmates with these illnesses lived with the regular population. Although authorities made an effort to isolate persons with communicable diseases, the facilities often lacked the space to do so. No reliable statistics exist on prison deaths.[45]

3.13.5 Prison authorities allowed visitors within a scheduled timeframe. Few visitors came due to lack of family resources and travel distance. Prisoners could attend religious observances, although prisons often did not have equal facilities for both Muslim and Christian worship. In some prisons outside clergy constructed chapels or mosques.[46]

3.13.6 The government provided access to prisons for monitoring conditions, although few outside visits occurred. The local Red Cross made attempts to visit prisons, but could not maintain a regular visit schedule. Authorities inconsistently maintained records for individual prisoners in paper form, but without making them widely accessible.[47]

3.13.7 Disease was pervasive in cramped, poorly ventilated prison facilities, and chronic shortages of medical supplies were reported. Only those with money or whose relatives brought food regularly had sufficient food; prison officials routinely stole money provided for food for prisoners. Poor inmates often relied on handouts from others to survive. Prison officials, police, and other security forces often denied inmates food and medical treatment as punishment or to extort money.[48]

3.13.8 Inmates died from harsh conditions and denial of proper medical treatment during the year; however, an accurate count was not available from prison authorities. Prisoners with mental disabilities were incarcerated with the general prison population, and no mental health care was provided.[49]

3.13.9 Nigeria retains the death penalty for ordinary crimes, including murder, armed robbery and culpable homicide. In 2007, Nigeria imposed at least 20 death sentences. In 2008, the number of death sentences imposed rose to over 40, and in 2009, this rose again to 58 death sentences. However, no executions were carried out in 2009. Nigeria voted against both the 2007 and 2008 UN General Assembly Resolutions on the adoption of a moratorium on the use of the death penalty. Although Nigeria has been a party to the International Convention on Civil and Political Rights (ICCPR) since 1993, it has neither signed nor ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (1989).[50]

3.13.10 ***Conclusion*** Prison conditions in Nigeria are harsh and life threatening and taking into account the levels of overcrowding and lack of basic facilities have the potential to reach the Article 3 threshold in individual cases. The individual factors of each case should be carefully considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the reasons for detention, the likely length of detention, the likely type of detention facility, and the individual's gender, age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be

[44] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[45] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[46] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[47] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[48] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[49] US State Department Human Rights Report 2010: Nigeria http://www.state.gov/documents/organization/160138.pdf
[50] COIS Nigeria Country Report April 2011 (para 15.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Nigeria the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Nigeria. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Nigeria due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The principal arm of Government in health care delivery is the Federal Ministry of Health. The Ministry is charged with coordinating all health activities throughout the Federation. Medical and health services are also the responsibility of the state governments, which maintain hospitals in the large cities and towns. Most of the state capitals have public and private hospitals, as well as specialised hospitals. Each city also has a university teaching hospital financed by the Federal Ministry of Health.[51]

4.4.3 Drugs are available but may be expensive. There are many pharmacies throughout Nigeria. The National Agency for Food and Drug Administration and Control (NAFDAC) has worked hard to ensure that these pharmacies are regulated and sell genuine medicines to the Nigerian public. But, data obtained from a study in 36 countries from all World Health Organisation (WHO) geographical regions, and covering World Bank income groups, has revealed an alarming lack of essential medicines in the public sector. The study, which included Nigeria, shows that this is driving patients to pay higher prices in the private sector, or go without any.[52]

4.4.4 In Nigeria, an estimated 3.6 percent of the population are living with HIV and AIDS. Although HIV prevalence is much lower in Nigeria than in other African countries such as South Africa and Zambia, the size of Nigeria's population (around 149 million) meant that by the end of 2009, there were almost 3 million people living with HIV. Approximately 192,000 people died from AIDS in 2009. With AIDS claiming so many lives, Nigeria's life expectancy has declined significantly. In 1991 the average life expectancy was 54 years for women and

[51] COIS Nigeria Country Report April 2011 (para 27.01) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[52] COIS Nigeria Country Report April 2011 (para 27.02) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

53 years for men. In 2009 these figures had fallen to 48 for women and 46 for men.[53]

4.4.5 The government's National HIV/AIDS Strategic Framework for 2005 to 2009 set out to provide ARVs to 80 percent of adults and children with advanced HIV infection and to 80 percent of HIV-positive pregnant women, all by 2010. However, only 34 percent of people with advanced HIV infection were receiving ARVs in 2010. In the revised framework (from 2010 to 2015), the treatment goals were set back to 2015.[54]

4.4.6 Mental health care is part of the primary health care system. Actual treatment of severe mental disorders is available at the primary level. However, relatively few centres have trained staff and equipment to implement primary health care. Regular training of primary care professionals is carried out in the field of mental health. Each state has a school of Health Technologists for [the] training of primary care professionals including health care workers. There are community care facilities for patients with mental disorders. Community care is available in a few states. Providers include private medical practitioners, NGOs, especially faith-based organizations and traditional healers.[55]

4.4.7 The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 There is no policy which precludes the enforced return to Nigeria of failed asylum seekers who have no legal basis of stay in the United Kingdom.

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.3 Nigerian nationals may return voluntarily to any region of Nigeria at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

5.4 The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Nigeria. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers Nigerian nationals wishing to avail themselves of this opportunity for assisted return to Nigeria should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

[53] COIS Nigeria Country Report April 2011 (para 27.07) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[54] COIS Nigeria Country Report April 2011 (para 27.09) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/
[55] COIS Nigeria Country Report April 2011 (para 27.25) http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Country Specific Litigation Team
Immigration Group
UK Border Agency

September 2011