



Flygtningenævnets baggrundsmateriale

Bilagsnr.:	131
Land:	Nigeria
Kilde:	Home Office
Titel:	"Operational guidance note"
Udgivet:	5. maj 2006
Optaget på baggrundsmaterialet:	15. september 2006



OPERATIONAL GUIDANCE NOTE

NIGERIA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Nigeria and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Nigeria country information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4** With effect from 2 December 2005 Nigeria is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from a man who is entitled to reside in Nigeria, made on or after 2 December 2005, is refused, caseworkers must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Nigeria is not listed in section 94 in respect of women. If, following consideration, a claim from a woman is refused, caseworkers may, however, certify the claim as clearly unfounded on a case-by-case basis if they are satisfied that it is. The

information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

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

2. Country assessment

- 2.1** Nigeria is a democratic federal republic with a multi-party political system, comprising the Federal Capital Territory and 36 states. Executive powers of the federation are vested in the President, who is the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces. The president is elected by universal suffrage for a term of four years. The legislative powers of the country are vested in the National Assembly, comprising a Senate and a House of Representatives. The 109-member Senate consists of three senators from each state and one from the Federal Capital Territory, who are elected by universal suffrage for four years. The House of Representatives comprises 360 members, who are also elected by universal suffrage for four years. The ministers of the government are nominated by the president, subject to confirmation by the Senate. The current president is Olusegun Obasanjo of the People's Democratic Party.¹
- 2.2** Local municipal elections took place in December 1998 and state legislative elections were held in January 1999. The People's Democratic Party (PDP) secured about 60 per cent of the votes cast in the municipal elections and 50 per cent of the votes cast in the state legislative elections. National legislative elections were held on 20 February 1999. In those elections, the PDP secured 215 seats in the 360-member House of Representatives and 66 seats in the 109-member Senate. A presidential election was held on 27 February 1999, which was won by Olusegun Obasanjo, with 62.8 per cent of the votes cast. Obasanjo was formally inaugurated as President of Nigeria on 29 May 1999. A new constitution was formally promulgated on 5 May 1999, and came into force on 29 May 1999. Four years later, presidential and legislative elections were held in April and May 2003. Obasanjo won the 2003 presidential election, and his PDP party won large majorities in the 2003 legislative elections. Following the elections held in April and May 2003, Obasanjo was inaugurated as president on 29 May 2003. A new federal government was set up in July 2003. The next elections are scheduled for 2007.²
- 2.3** Basic human rights freedoms are enshrined in the constitution including the right to life, the right to personal liberty, the right to a fair trial, freedom of expression and of the press, freedom of religion and the right to dignity of the person. The new constitution has been a source of tension since its introduction in 1999. Critics of the new constitution claim that it concentrates too much power in the central government, defying the aspirations of many Nigerians for a looser federation. Other areas of contention include the dominance of the federal government in the control of state police and the appointment of judges.³
- 2.4** 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 National Human Rights

¹ Home Office COIS Nigeria Country Report April 2006 para 5.07

² COIS Nigeria Country Report para 4.03

³ COIS Nigeria Country Report para 5.01 – 5.02

Commission (NHRC) and appointed a panel under Justice Oputa to hear grievances from those who had suffered under former regimes. Nigeria has a free and vibrant press, which routinely draws public and government attention to human rights abuses.⁴

- 2.5** 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 ill trained security forces' use of excessive force and their poor treatment of protesters, criminal suspects, detainees and convicted prisoners. This reflects the scale of the problems Obasanjo inherited from his military predecessors, particularly rebuilding the police force from scratch in a country facing so many other urgent and complex issues, such as inadequate infrastructure, endemic corruption and severe levels of poverty. 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.⁵
- 2.6** The government's human rights record nevertheless remained poor in 2005 and government officials at all levels continued to commit serious abuses. Inadequate infrastructure, endemic corruption, and general economic mismanagement hindered economic growth. Much of the country's wealth remained concentrated in the hands of a small elite. More than 70% of citizens live on less than one [US] dollar per day.⁶
- 2.7** Nigeria's most serious human rights problems remained unresolved in 2005. The government has largely failed to tackle the impunity that often attaches to serious human rights abuses, particularly abuses committed by the security forces and government officials. No one has yet been brought to justice for the massacre of hundreds of people by the military in Odi, Bayelsa state, in 1999, and in Benue state, in 2001. While the federal government has made some efforts to tackle corruption, it remains a pervasive problem even as the vast majority of Nigerians continue to live in extreme poverty. Widespread corruption leads directly to violations of social and economic rights and exacerbates other causes of violence and intercommunal tension.⁷
- 2.8** In recent years, Nigeria has repeatedly been shaken by outbreaks of intercommunal violence that are often fuelled by government mismanagement and political manipulation. Intercommunal violence along ethnic, religious and other lines has claimed thousands of lives since the end of military rule in 1999. While 2005 saw no large-scale outbreaks of communal violence comparable to the worst incidents of recent years, smaller local-level clashes, for example in Kwara, Delta and Edo states, during which scores of people were believed to have died, occurred throughout 2005. Human Rights Watch estimates that between two thousand and three thousand people have been killed in outbreaks of intercommunal violence in Plateau State alone since 2001, including seven hundred people in 2004.⁸
- 2.9** In 2005 and early 2006, the continuing tensions underlying Nigeria's endemic intercommunal clashes – including conflicts over citizenship rights, environmental and population pressures, basic state failure to provide needed services, religious extremism, economic decline, corruption and cynical political manipulation of intercommunal divisions – were as complex as they were volatile. But Federal and State government officials in Nigeria have generally failed to heed warning signs that might allow them to prevent episodes of violence and have failed to respond effectively to violence when it occurs. Security forces are often notably absent when violence erupts, and widespread impunity for human rights violations contributes to the cycle of violence and emboldens perpetrators. For example, since the 2004 violence in Plateau and Kano, those responsible for instigating and planning the attacks appear to have escaped justice.⁹

⁴ UK-Danish Fact Finding Mission Report: Jan 2005 para 2.3

⁵ COIS Nigeria Country Report para 6.01

⁶ COIS Nigeria Country Report para 6.03

⁷ COIS Nigeria Country Report para 6.03

⁸ COIS Nigeria Country Report para 6.03

⁹ COIS Nigeria Country Report para 6.03 & 6.35 – 6.38

3. **Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Nigeria. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, 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 claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 **Membership of MASSOB**

- 3.6.1** Some claimants may express a fear of persecution by the Nigerian authorities on account of their association with, or membership of, the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB).
- 3.6.2** **Treatment.** MASSOB is an un-armed non-violent movement that advocates a separate state of Biafra for the Igbo, the dominant ethnic group in the Igbo speaking southeast states of Abia, Anambra, Ebonyi, Enugu and Imo. The Federal Government banned the movement in 2001, alleging that its activities threatened the peace and security of the country. Despite the ban, MASSOB has continued to pursue its campaign for self-determination. Although MASSOB does not appear to enjoy the level of support which would represent a serious political threat to the government, some MASSOB members have reportedly been harassed by the police, acting on orders from the federal government and its leader, Ralph Uwazuruke, has been arrested several times. Although many of those members of MASSOB who have been arrested are quickly released without charge, or released on the order of courts, some are reported to remain in custody awaiting trial.¹⁰
- 3.6.3** It is understood that MASSOB do not register members or issue membership cards. MASSOB has however produced an independent Biafra State flag, and issued a currency,

¹⁰ COIS Nigeria Country Report paras 6.99 – 6.102

which are both illegal.¹¹ Political opposition groups such as MASSOB are in general free to express their views, although those that take part in illegal demonstrations or other illegal activities [eg raising the “Biafra” flag or being in possession of “Biafra” currency] may face arrest and prosecution for any offences that have been committed.¹²

- 3.6.4** In the southeast over 600 people were arrested and detained during 2005 on suspicion of being members of MASSOB. Those arrested tended to be youths whose links to MASSOB were unproven, and by mid-2005 over 70 had been released without charge. Demonstrations in September 2005, following Biafra Day on 26 August 2005, claimed a reported 6 lives although other local reports indicated as many as 200 may have been killed by police. Ralph Uwazurike, the leader of the group, was arrested in October 2005 along with six of his deputies on treason charges. This arrest incited a series of protests which continued until the end of 2005 and caused business and road closures along with up to 20 deaths and an unknown number of other casualties. Human rights activists believed that the crackdown on MASSOB merely gave impoverished non-MASSOB-affiliated, Igbo youths reason to take to the streets and loot shops and homes.¹³
- 3.6.5** *Sufficiency of protection.* As this category of claimants’ fear is of ill treatment by the Federal Government, they cannot apply to these authorities for protection.
- 3.6.6** *Internal relocation.* As this category of claimants’ fear is of ill treatment by the Federal Government, relocation to a different area of Nigeria to escape this threat is not feasible.
- 3.6.7** *Conclusion.* The human rights situation has improved since the return to civilian rule in 1999. However the government does not take any chances with any groups that threaten the unity of the country such as MASSOB whose members will usually be from the Igbo speaking southeast states of Abia, Anambra, Ebonyi, Enugu and Imo. The leadership of MASSOB, i.e. “those that energise and mobilise support for the movement”, and those affiliated with the leaders, are at risk of arrest and detention by the authorities on account of their political opinion. Less prominent persons who are affiliated with MASSOB might be at risk of ill treatment by the authorities in order to intimidate others. Normally anonymous sympathisers of MASSOB do not draw the adverse attention of the authorities.
- 3.6.8** If it is accepted that the claimant has had significant political involvement in MASSOB and has previously come to the adverse attention of the authorities, then a grant of asylum is likely to be appropriate. However the number of such claims is likely to be very small and given the prominence of the individuals concerned the identity and veracity of their claims can be readily verified. Claimants who assert that they have been detained in connection with MASSOB activities for short periods of less than a few days on a limited number of occasions, and have not been seriously ill treated, will be clearly unfounded. Those claimants who describe low-level activities and have not previously come to the attention of the authorities would not be in need of international protection and such claims will be clearly unfounded.
- 3.7** **Fear of Bakassi Boys (or other vigilante groups)**
- 3.7.1** Some claimants will make an asylum and/or human rights claim on the grounds that they fear ill treatment amounting to persecution at the hands of the “Bakassi Boys” or other similar vigilante groups.
- 3.7.2** *Treatment.* Vigilante groups have in the past been prevalent in Nigeria taking the law into their own hands because the police, until recent years, had not had the capacity to do so. However since 1999, the Nigerian Police Force (NPF) has grown in size and capacity and now has a much higher profile. Some vigilante groups have now been brought within and under the control of the NPF. They are registered with and operate under the supervision of

¹¹ UK-Danish Fact Finding Mission Report Jan 2005 para 3.1.20

¹² COIS Nigeria Country Report para 6.99 – 6.102

¹³ COIS Nigeria Country Report para 6.103

NPF and are akin to services like the “neighbourhood watch” scheme in the UK and operate principally at night. The accounts of those that claim to be ill-treated by such groups can be easily verified by asking for the particular name, location and dates of any such incidents.¹⁴

- 3.7.3** In contrast to the above-mentioned registered groups, there are a number of non-registered vigilante groups which have been described as “outlaws” or “militias”. These groups have committed very serious human rights violations and have also been responsible for violent inter-ethnic clashes. These groups are to be found in various locations throughout Nigeria and include the *Bakassi Boys*, *O’dua People’s Congress (OPC)*, *Yan Daba*, and *Egbesu Boys* as well as various warlords, militias and cult gangs in the Delta and other regions.¹⁵
- 3.7.4 Sufficiency of protection.** Membership or association with these groups or economic support for them is not itself illegal but any illegal acts those groups or members of those groups might commit are criminal offences and will be treated as such. For example, threatening behaviour or otherwise preventing people from going about their normal lives will be treated appropriately. The NPF deal with individuals within these groups in the context of any illegal activities committed by the individual. There have been prosecutions for such destructive behaviour and the courts have handed down sentences that have ranged from between two and six years according to the seriousness of the offence. Many though have been charged and are still awaiting trial. Any member of the *Bakassi Boys* or other similar vigilante group would be arrested if he or she had committed any crime or had acted in a destructive manner. However in practice few complaints are made to the NPF about the *Bakassi Boys* (and other similar groups) for fear of reprisals from those groups.¹⁶
- 3.7.5** The Federal Government strongly oppose the *Bakassi Boys* and other similar vigilante groups and have instructed the police to suppress their activities. However the NPF have had only limited success in dealing with these groups and some political figures at State level have been reported to have used these groups at times for their own ends.¹⁷
- 3.7.6 Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.¹⁸
- 3.7.7** Internal relocation to escape any ill treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.¹⁹ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.
- 3.7.8 Conclusion.** The human rights situation has improved since the return to civilian rule in 1999. The Federal Government are clearly determined to tackle the problems of vigilantes, various warlords, militias and cult gangs. For claimants who fear, or who have experienced, ill-treatment at the hands of these groups, there is a general sufficiency of protection and they are also able to safely relocate within the country. Claimants who fear ill-treatment at the hands of vigilante groups surreptitiously acting on behalf of rogue politicians or officials at State level will also be able to safely relocate within the country to escape such treatment. General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection.

¹⁴ COIS Nigeria Country Report para 6.87

¹⁵ COIS Nigeria Country Report para 6.87

¹⁶ COIS Nigeria Country Report para 6.87

¹⁷ UK-Danish Fact Finding Mission Report Jan 2005 para 3.3.1 – 3.3.11

¹⁸ COIS Nigeria Country Report para 6.62

¹⁹ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

Applications under this category therefore are likely to be clearly unfounded and as such fall to be certified (see para 1.4).

3.8 Religious persecution

- 3.8.1** Some claimants make an asylum and/or human rights claim based on the grounds that they are not free to practise their religion and that they would face ill treatment amounting to persecution at the hands of the authorities as a consequence. Some claimants may express fear of *Shari'a* courts in northern Nigeria whilst other may have a fear of *Hisbah* groups who operate at local level in northern Nigeria to enforce *Shari'a*.
- 3.8.2 *Treatment.*** Approximately half of Nigeria's population practises Islam, more than 40 percent practises Christianity, and the remainder practise traditional indigenous religions or no religions. Many persons combine elements of Christianity or Islam with elements of a traditional indigenous religion. The predominant form of Islam in the country is Sunni. The Christian population includes Roman Catholics, Anglicans, Baptists, Methodists, Presbyterians, and a growing number of Evangelical and Pentecostal Christians. Catholics constitute the largest Christian denomination.²⁰
- 3.8.3** The Nigerian constitution provides for freedom of religion, including freedom to change one's religion or belief, and freedom to manifest and propagate one's religion or belief in worship, teaching, 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.²¹
- 3.8.4** Many states prohibited open-air religious services held away from places of worship due to fears that these religious services would heighten inter-religious tensions or lead to violence. Ondo State continued to ban open-air 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.²²
- 3.8.5** *Shari'a* penal code was introduced in 2000 in the 12 northern, largely Muslim, states of Zamfara, Sokoto, Kebbi, Niger, Kano, Katsina, Kaduna, Jigawa, Yobe, Bauchi, Borno, and Gombe. Muslims in these 12 northern states automatically come under the jurisdiction of the *Shari'a* courts. However, Muslims can opt to have their case judged by the parallel criminal justice system but few opt for non-*Shari'a* courts. Non-Muslims are not automatically under the jurisdiction of *Shari'a* courts but can opt to have their case heard in a *Shari'a* court and there is a formal legal consent form, which they have to sign if they elect to do so.²³
- 3.8.6** 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. There has however been only one recorded execution under *Shari'a* law in Nigeria, that of Sani Yakubu Rodi in January 2002. Only three sentences of amputation have actually been carried out with the last one being in mid-2001. No executions or amputations have taken place since then. A number of cases are still awaiting appeal to the Federal Court of Appeal but to date none have reached substantive hearing. 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.²⁴
- 3.8.7** If a person awaiting trial before a *Shari'a* court or a convicted person runs off he or she is not pursued and under *Shari'a* law no action is taken. But the individual concerned will risk not being considered a "complete Muslim". The individuals concerned are encouraged to

²⁰ COIS Nigeria Country Report para 6.26

²¹ COIS Nigeria Country Report para 6.23 – 6.24

²² UK-Danish Fact Finding Mission Report Jan 2005 para 3.8.1 – 3.8.2

²³ UK-Danish Fact Finding Mission Report Jan 2005 para 6.2.3 – 6.2.28

²⁴ UK-Danish Fact Finding Mission Report Jan 2005 para 6.2.3 – 6.2.28

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.²⁵ The Nigerian Police Force does not return anyone to the jurisdiction of a *Shari'a* court if he or she has relocated elsewhere in Nigeria in order to escape *Shari'a* jurisdiction.²⁶

- 3.8.8** In most northern states, *hisbah* groups have been formed at a local level to enforce *Shari'a* laws such as banning the sale and consumption of alcohol, the wearing of indecent clothing by women and arresting of petty thieves, often without authorisation by the *Shari'a* court. Some observers have compared the role of the *hisbah* to that of vigilante groups operating in other parts of Nigeria. The *hisbah* share some characteristics with these groups but there are also significant differences. Like other vigilante groups, the *hisbah* are made up mostly of locally-recruited young men who usually patrol their own neighbourhoods and sometimes instantly administer punishments on people suspected of carrying out an offence, without, or before handing them over to the police. *Hisbah* members have been responsible for flogging and beating suspected criminals, but there have not been any reports of killings by *hisbah* members. *Hisbah* members may carry sticks or whips but unlike some vigilante groups in other parts of Nigeria, they do not usually carry firearms.²⁷
- 3.8.9** The relationship between *hisbah* groups in the states where they are active and the police is complex. While the *hisbah* were set up by State governments, the police across Nigeria remain a federal institution, answerable to federal and not State structures. The existence of these two parallel structures, both of which have responsibilities for enforcing law and order, has resulted in conflicts of interest. The police are seen as a secular institution, and include both Muslims and non-Muslims. Unlike the *hisbah*, the police do not have the specific mandate to ensure enforcement and implementation of *Shari'a*; yet in the twelve States where they are operating *Shari'a* is legally in force under State legislation. In practice, the police in the northern States have not taken on an active role as '*Shari'a* enforcers', nor have they actively sought to enforce new codes of behaviour which were introduced alongside *Shari'a*, such as dress codes for women, segregation of sexes in public transport, and strict prohibition of alcohol.²⁸
- 3.8.10 Sufficiency of protection.** As this category of claimants' fear is of ill treatment by the authorities at State level, they cannot apply to these authorities for protection.
- 3.8.11 Internal relocation.** Although the *Shari'a* legislation to a large extent is identical in each of the 12 states where it has been implemented 1999, there is no inter-State co-operation or co-ordination between the justice systems. Breaking *Shari'a* law in one state will not mean that the individual faces prosecution under *Shari'a* law in another state. If someone on *Shari'a* -related charges in one of the northern states leaves that state, the police will not arrest and bring him/her back to the state. This is because the police are a federal institution with no responsibilities for a court system not following federal law and *hisbah* groups do not operate or have any influence outside of their own state.²⁹ Claimants who claim a fear of local *hisbah* vigilante groups are able to safely relocate elsewhere in Nigeria where the particular *hisbah* do not operate or have any influence.
- 3.8.12** The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.³⁰
- 3.8.13** Internal relocation to escape any ill treatment by *hisbah* groups is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance

²⁵ UK-Danish Fact Finding Mission Report Jan 2005 para 6.2.3 – 6.2.28

²⁶ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.3

²⁷ COIS Nigeria Country Report para 5.24 – 5.33

²⁸ COIS Nigeria Country Report para 5.24 – 5.33

²⁹ COIS Nigeria Country Report para 5.28

³⁰ COIS Nigeria Country Report para 6.62

by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.³¹ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.8.14 **Caselaw.**

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

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

3.8.15 Conclusion. The right to religious freedom and expression is enshrined in the Nigerian constitution and there are no reports of anyone experiencing any problems with the federal government in practising their chosen religion. Claims under this category will therefore be clearly unfounded and as such should be certified (see para 1.4)

3.8.16 Claimants who express a fear of *Shari'a* courts have the constitutional right to have their cases heard by the parallel (non-Islamic) judicial system and as such their claims are likely to be clearly unfounded and fall to be certified. Claimants expressing fear of *Hisbah* vigilante groups are able to safely relocate elsewhere in Nigeria where such groups do not operate or have any influence. Claims made on the basis of fear of *hisbah* groups are therefore also likely to be clearly unfounded and will similarly fall to be certified (see para 1.4)

3.9 **Female Genital Mutilation**

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

3.9.2 Treatment. Female genital mutilation (FGM) is a cultural tradition that is widely practised in Nigeria. The Nigeria Demographic and Health Survey (NDHS) have estimated the FGM rate at approximately 19 percent among the nation's female population, and the incidence has declined steadily in the past 15 years. While practised in all parts of the country, FGM is much more prevalent in the southern part of the country. The NDHS survey found that women from northern states are less likely to undergo the severe type of FGM known as infibulation and that the age at which women and girls were subjected to the practice varied from the first week of life until after a woman delivers her first child; however, three-quarters of the survey respondents who had undergone FGM had the procedure before their first birthday.³²

3.9.3 Sufficiency of protection. The Nigerian constitution outlaws inhumane treatment but also provides for citizens to practise their traditional beliefs. The Government publicly opposes the practice of FGM but there are at present no federal laws banning FGM throughout the country. A draft Bill outlawing FGM has however been before the National Assembly since 2001 and campaigns have been conducted through the Ministry of Health and the media. Some states (Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers States) have enacted legislation at state level banning the practice of FGM and many other states are in the process of doing so. However in spite of these laws and campaigns the custom of FGM continues. In its National Economic Empowerment and Development Strategy (NEEDS), which was launched in May 2004 the federal government stated its intention to intensify its campaign for the eradication of harmful traditional practices such as FGM.³³

³¹ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

³² COIS Nigeria Country Report para 6.117 – 6.120

³³ COIS Nigeria Country Report para 6.117 – 6.120

3.9.4 In States where FGM is prohibited in law, a female seeking to avoid FGM in spite of pressure from her family to do otherwise has the opportunity to make a complaint to the Nigerian Police Force (NPF) or the National Human Rights Commission (NHRC). However in practice very few such complaints are made to those bodies. The matter is usually dealt with within the family and on occasion traditional leaders might also be asked to intervene. However the “traditional attitude” of a police officer or a village council would normally determine their level of concern and intervention. Cultural attitudes would still be prevalent and some victims would probably never have the courage to take their case to court. Most women therefore resort to relocating to another location if they do not wish to undergo FGM.³⁴ Furthermore there are between 10 and 15 NGOs operating throughout Nigeria who are exclusively devoted to support women including those escaping FGM. The support provided includes provision of accommodation in shelters.³⁵

3.9.5 *Internal relocation.* The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.³⁶

3.9.6 Internal relocation to escape any ill treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.³⁷ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

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

3.10 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 a blood oath to a “*juju shrine*” and to the *juju* priest of their local community. The victims are most likely in debt to a madam who may have sponsored their travels abroad.

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

³⁴ COIS Nigeria Country Report para 6.117 – 6.120

³⁵ COIS Nigeria Country Report para 6.18

³⁶ COIS Nigeria Country Report para 6.62

³⁷ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

supervising, controlling and co-ordinating efforts on the rehabilitation of trafficked persons.³⁸

- 3.10.3** Through its National Investigation Task Force, NAPTIP conducts investigations and monitoring activities as well as bringing prosecutions of traffickers. The task force has the mandate to operate anywhere in Nigeria using both Nigerian Police Force and immigration facilities at state and local level and even in neighbouring countries.³⁹
- 3.10.4** NAPTIP has established a Council for the Rehabilitation of Victims to assist victims and provide reception centres or shelters for victims. The Council does not yet operate throughout Nigeria, but shelters have been established in two major centres with the assistance of the International Organization for Migration (IOM). A number of NGOs also operate rehabilitation centres for returning victims of trafficking. However through resource constraints there are no long-term shelters for returned or deported victims of trafficking - the existing centres only provide shelter and rehabilitation and reintegration training for a maximum of two weeks.⁴⁰
- 3.10.5** The Nigerian authorities do not view women who have been trafficked as criminals but as victims of crime. Women who had worked as prostitutes abroad would not in general face negative social attitudes from their community. Most people will hold the women in high regard due to the fact that they have been to Europe and probably have more financial means. Often their relatives consider them a breadwinner.⁴¹
- 3.10.6** *Sufficiency of protection.* There is conflicting information about the ability of traffickers to seek reprisals against the victim if they were to return to Nigeria before the madam or the agent has been satisfied with payments. Some reliable sources believe that whilst there is a real risk of such reprisals there was no record of it ever having happened; whilst others are aware of rare (one or two) such incidents.⁴²
- 3.10.7** The government provided limited funding for assistance to victims in 2005. NAPTIP served as the point of contact for immigration and police officials when victims were found. Seventy-three victims passed through the agency during 2005. NAPTIP directly provided overnight shelter to victims, and agency officials connected victims to nongovernmental or international organisations for shelter, counselling, and reintegration assistance. NAPTIP established a hot line for victims and anyone seeking or wanting to provide information regarding trafficking. In some cases the government helped victims repatriate to the country and reunited trafficked children with their families. The Ministry of Labour and Productivity, in collaboration with NAPTIP, the police, and other federal agencies, provided food, transportation, and other logistical assistance to reunite internally and externally trafficked children with their families.⁴³
- 3.10.8** The government continued to operate the 120-bed shelter in Lagos, with involvement by the IOM. NAPTIP also operated a second facility as a secure location in Benin City, Edo State, as a victim shelter. At the state level, the government of Akwa Ibom donated a shelter for trafficked children. The government of Kano State, in association with UNICEF, also donated a shelter for trafficked children. The government provided some funding for protection activities. For victims serving as witnesses, divisional police officers were appointed to serve as witness protection officers. NAPTIP officials and the officer worked together to provide assistance. NAPTIP outreach efforts were based on a series of 'town hall' meetings with community leaders, traditional leaders, teachers, school children, and other groups to raise awareness of the dangers of trafficking, legal protections, and available resources. Several state governments in the south continued strong efforts to

³⁸ COIS Nigeria Country Report para 6.53-6.61

³⁹ COIS Nigeria Country Report para 6.53-6.61

⁴⁰ UK-Danish Fact Finding Mission Report Jan 2005 para 5.1.1 – 5.7.15 & COIS Nigeria Country Report para 6.58

⁴¹ COIS Nigeria Country Report para 6.60-6.61

⁴² COIS Nigeria Country Report para 6.53-6.57

⁴³ COIS Nigeria Country Report para 6.58

protect victims. Victims were no longer charged with crimes or detained with criminals in cells as they were in previous years.⁴⁴

3.10.9 Internal relocation. The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.⁴⁵

3.10.10 Internal relocation to escape any ill treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.⁴⁶ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.10.11 Those that contract victims of trafficking are often members of the same family or other who operate in a particular locale. In such circumstances it is possible for the victim to safely relocate to another area within Nigeria without risk of those who contracted the victim being able to contact them.

3.10.13 Case law.

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 state that trafficked women do not qualify as a particular social group.

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

3.11 Fear of secret cults, juju or student confraternities

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

3.11.2 Treatment. Secret societies or cults exist in Nigeria but, by their nature, very little is known about them. The most widely reported and studied is the *Ogboni* cult. Some cults are linked to particular villages, some to ethnic communities and/or political groups. Membership of a cult may be advantageous to a person or his family as a means to social integration and to obtain access to resources. There is usually no forced recruitment into cults but individuals may feel pressured to join because of the advantages of being part of the cult. Membership of cults is not open to everyone but only to individuals from highly regarded families. Those families who traditionally have had the authority to invite new members to join their cult would choose the most suitable candidate. If this person should not wish to join and if there is no other candidate from his or her particular family, he or she might be ostracised and might also lose property or an inheritance, but would not have to fear for his or her life.⁴⁷

⁴⁴ COIS Nigeria Country Report para 6.58

⁴⁵ COIS Nigeria Country Report para 6.62

⁴⁶ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

⁴⁷ COIS Nigeria Country Report para 6.131

- 3.11.3** Secret cults are widely believed to be attributed with supernatural powers and are feared because of this. If a member of a cult wished to leave, this would not necessarily result in an adverse reaction or persecution. It is possible, however, that a former member of a cult may provoke an adverse reaction from society members, if the person concerned divulged secret information to outsiders about the society. Some secret cults have engaged in animal sacrifice. Human sacrifices for ritual purposes or cannibalism happen extremely rarely. There are no reports of any examples of cult members killing non-cult members.⁴⁸
- 3.11.4** In August 2004 it was reported that the Nigerian Police Force (NPF) had arrested 30 witch doctors on suspicion of carrying out human sacrifices after finding 50 mutilated bodies and 20 skulls in an area in south-eastern Nigeria known by local people as “*Evil Forest*”. 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.⁴⁹
- 3.11.5** So called “*student cults*” are more correctly known as ‘confraternities’, they are closer to the American idea of college fraternities than religious cults. The origin of these secret confraternities can be traced back to the *Pirates* confraternity (also known as *National Association of Sea Dogs*) and was formed by the first African Nobel Laureate, Professor Wole Soyinka at the University of Ibadan in 1953. Confraternities were originally intended to be a forum for like minded students to meet, network and assist each other in later life. They were generally seen to be a force for good and performed some significantly useful services on the university campuses. However, from the beginning of the 1980’s, the activities of confraternities became violent and secretive. Their activities include “dealing” with any non-members who snatched a member’s girl friend or “sugar daddy” (in case of female members). Their activities also included “settling” lecturers in cash or kind and female members of confraternities began to operate prostitution rings. Since the 1980’s, these so called student cults have become more widespread and, in addition to the *Pirates*, include *Black Eye*, *Vikings*, *Buccaneers*, *Mafia*, *Dragons*, *Black Beret* and others. The female cults include, *Temple of Eden*, *Frigates*, *Barracudas*, *Daughters of Jezebel* and others.⁵⁰
- 3.11.6** There have been reports of student cult-related violent incidents in 2004 and in 2005. In one incident in August 2004, 33 students died due to violence between rival confraternities. In another incident in March 2005, it was reported that at least ten students had died in violent clashes between rival cult gangs at another university. Smaller scale clashes in a number of schools around the country led to significant destruction of property. Isolated clashes included cases of personal injury and rape.⁵¹
- 3.11.7 Sufficiency of protection.** Membership or association with a secret cult or a student confraternity is not of itself illegal but any illegal acts those involved might commit (such as threatening behaviour or murder) are criminal offences and will be treated as such by the Nigerian authorities. As described above, the evidence shows that the Nigerian Police Force take appropriate action in such cases.
- 3.11.8 Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.⁵²
- 3.11.9** Internal relocation to escape any ill treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or

⁴⁸ COIS Nigeria Country Report para 6.133 – 6.140

⁴⁹ UK-Danish Fact Finding Mission Report Jan 2005 para 3.5.1 - 3.5.7

⁵⁰ COIS Nigeria Country Report para 6.133- 6.140

⁵¹ COIS Nigeria Country Report para 6.133- 6.140

⁵² COIS Nigeria Country Report para 6.62

other ties in the new location.⁵³ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.11.10 Secret religious cults or university campus confraternities do not generally extend their influence or threat beyond the immediate locale or campus.⁵⁴ In such circumstances it is possible for the victim, or potential victim, to safely relocate to another area within Nigeria.

3.11.11 Case law.

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

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

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

3.11.12 Conclusion. The human rights situation has improved since the return to civilian rule in 1999. The government are clearly determined to tackle the problems of vigilantes, various warlords, militias and cult gangs. Secret religious cults or university campus confraternities do not generally extend their influence or threat beyond the immediate locale or campus. For claimants who fear, or who have experienced, ill-treatment at the hands of these groups, there is a general sufficiency of protection and they are also able to safely relocate within the country. General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. Applications under this category therefore are likely to be clearly unfounded and as such should be certified (see para 1.4).

3.12 Gay men

3.12.1 Some claimants will apply for asylum and/or a human rights claim based on ill treatment amounting to persecution at the hands of non-state agents of persecution, usually societal discrimination, due to them being gay.

3.12.2 Treatment. Regarding societal attitudes to homosexuality, it is a widespread belief in Nigeria that homosexuality is alien to African traditional culture, and that it is the result of corrupting influences from Western colonisation and/or Arab cultural influence in the northern parts of the country. General attitudes regarding homosexuality in the population as very rigid, and there is a considerable pressure to get married. Though Nigerian society has not yet come to terms with homosexuality and gay men cannot publicly express their sexuality because they would suffer societal isolation and discrimination, homosexuals living in the larger cities of Nigeria may not have reason to fear persecution, as long as they do not present themselves as homosexuals in public. Homosexuals that are wealthier or

⁵³ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

⁵⁴ COIS Nigeria Country Report para 6.133- 6.140

more influential than the ordinary person may be able to bribe the police should they be accused or suspected of homosexual acts.⁵⁵

- 3.12.3** According to Article 214 of the Nigerian Penal Code, the act of sodomy between males is illegal and the penalty is imprisonment for 14 years. Attempting to commit the offence of sodomy is also illegal and the punishment for this offence is imprisonment for seven years. Under Article 217 of the Penal Code, other male homosexual acts or practices, defined as 'gross indecency', whether in private or in public, are also illegal and the punishment for this offence is imprisonment for three years. Maximum penalties for non-consensual acts are the same as for consensual acts. Lesbianism and lesbian sexual acts are not mentioned in Nigerian criminal law. Homosexuality is illegal under federal law; homosexual practices are punishable by prison sentences of up to 14 years.⁵⁶
- 3.12.4** Though homosexuality is illegal according to Nigerian common law in the south, few cases have been tried in the courts and there is usually very little attention in the press and among the public regarding these cases. The penalty for homosexual activities depends on whether the offence is dealt with under the penal code, criminal code or 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. In the 12 northern states that have adopted *Shar'ia*, adults convicted of having engaged in homosexual intercourse are subject to execution by stoning, although no such sentences were imposed in 2005.⁵⁷
- 3.12.5** Up to the end of 2004, there were 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. The laws on homosexuality are rarely applied in practice but contribute to the climate of intolerance towards homosexuals. Young people who discover that they are homosexual tend to hide the fact, as they fear being ostracised or thrown out of the family home, if their homosexuality became known.⁵⁸
- 3.12.6** In January 2006, the Nigerian government proposed a law to ban homosexual relations and same-sex marriage. The bill would make engaging in homosexual relations and entering into a same-sex marriage offences punishable by five years imprisonment. Priests or other clerics or anyone helping to arrange such a union would also be subject to a five-year jail sentence. The proposed law would also ban movements for promoting gay rights. Opposition to gay relations is deep-rooted, with the bulk of the north's Muslims and the south's Christians united in their hostility toward homosexuality. Gay rights activists say the proposed law would be an utter breach of human rights.⁵⁹
- 3.12.7 Sufficiency of protection.** Homosexual relations between men are illegal in Nigeria and though penalties have not been enforced recently, plans by the authorities in January 2006 to apply more restrictive legislation in relation to homosexuals and gay rights groups means it is unlikely that such individuals would be able to seek and receive adequate protection from the state authorities.
- 3.12.8 Internal relocation.** The Nigerian constitution provides for the right to travel within the country and the government respects those rights. Although law enforcement agencies regularly use roadblocks and checkpoints to search for criminals, there are no reports that government officials restricted movements of individuals.⁶⁰

⁵⁵ COIS Nigeria Country Report paras 6.128 – 6.130

⁵⁶ COIS Nigeria Country Report paras 6.124 – 6.125

⁵⁷ COIS Nigeria Country Report paras 6.124 – 6.125

⁵⁸ COIS Nigeria Country Report paras 6.125 – 6.126

⁵⁹ COIS Nigeria Country Report para. 6.128

⁶⁰ COIS Nigeria Country Report para 6.62

3.12.9 Internal relocation to escape any ill treatment from non-state agents is almost always an option. As would be expected some individuals may encounter a normal level of lack of acceptance by others in the new environment as well as lack of accommodation, land etc, and the situation would be considerably easier if the individual concerned has family or other ties in the new location.⁶¹ In the absence of exceptional circumstances it would nevertheless not be unduly harsh for any individual, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.12.10 Conclusion. While sexual relations between gay men are outlawed in Nigeria with more restrictive legislation planned in 2006 and openly gay men are likely to face societal discrimination and isolation, there have not been any cases prosecuted under the laws against homosexuals, and gay men in urban areas who do not openly present themselves as homosexual have no reason to fear mistreatment by non-state agents. The availability of a viable internal relocation alternative also indicates that gay men in Nigeria would be able to escape this threat. It is therefore unlikely that such individuals will encounter mistreatment in breach of Article 3 of the ECHR and the grant of Humanitarian Protection in such cases is not likely to be appropriate.

3.13 Prison conditions

3.13.1 Claimants 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 Consideration. Prison and detention conditions in 2005 remained harsh and life threatening. Most prisons were built 70 to 80 years ago and lacked basic facilities. Lack of potable water, inadequate sewage facilities, and severe overcrowding resulted in unhealthy and dangerous sanitary conditions. Some prisons held 200 to 300% more persons than their designed capacity. The government acknowledged overcrowding as the main cause of the harsh conditions common in the prison system. Excessively long pre-trial detention contributed to the overcrowding.⁶²

3.13.3 A working group assigned by the attorney general to investigate prison conditions in the country released its report in March 2005. The group found that 64% of inmates were detainees awaiting trial, and only 25% of those detainees had legal representation. Nearly two-thirds of the country's prisons were over 50 years old. All of the prisons were built of mud brick, and their sewers, food, health care, education, and recreational facilities were well below standard.⁶³

3.13.4 Disease was pervasive in the cramped, poorly ventilated facilities, and chronic shortages of medical supplies were reported in 2005. Prison inmates were infrequently allowed outside their cells for recreation or exercise and many inmates had to provide their own food. Only those with money or whose relatives brought food regularly had sufficient food; petty corruption among prison officials made it difficult for money provided for food to reach prisoners. Poor inmates often relied on handouts from others to survive in 2005. Beds or mattresses were not provided to many inmates, forcing them to sleep on concrete floors, often without a blanket. Prison officials, police, and security forces often denied inmates food and medical treatment as a form of punishment or to extort money from them.⁶⁴

3.13.5 Women and juveniles were held with male prisoners in 2005, especially in rural areas. The extent of abuse in these conditions was unknown. In most cases, women accused of minor offences were released on bail; however, women accused of serious offences were detained. Although the law stipulates children shall not be imprisoned; juvenile offenders were routinely incarcerated along with adult criminals. The Prison Service officially required

⁶¹ UK-Danish Fact Finding Mission Report Jan 2005 para 4.3.1 – 4.3.2

⁶² COIS Nigeria Country Report para 5.43

⁶³ COIS Nigeria Country Report para 5.43

⁶⁴ COIS Nigeria Country Report para 5.43

separation of detainees and convicted prisoners, but in practice the method of confinement depended solely on the capacity of the facility. As a result, detainees often were housed with convicted prisoners.⁶⁵

3.13.6 Harsh conditions and denial of proper medical treatment contributed to the deaths of numerous prisoners in 2005. According to the National [non] Governmental Organisations (NGO) Prisoners Rehabilitation and Welfare Action (PRAWA), dead inmates were promptly buried on the prison compounds, usually without notifications to their families. A nationwide estimate of the number of inmates who died in the country's prisons was difficult to obtain because of poor record keeping by prison officials. The government allowed international and domestic NGOs, including PRAWA and the International Committee of the Red Cross (ICRC), regular access to prisons in 2005. The government admitted that there were problems with its incarceration and rehabilitation programmes and worked with groups such as these to address those problems.⁶⁶

3.13.7 Conclusion. Whilst prison conditions in Nigeria are poor with overcrowding and poor basic facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Nigeria a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3 or for reason of one of the five Refugee Convention grounds, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate. Only where it clearly *cannot* be argued that an individual will face treatment which reaches the Article 3 threshold, should a claim of this kind be certified as clearly unfounded.

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for the period detailed in Asylum Policy Instruction on or until their 18th birthday, whichever is the shorter period.

⁶⁵ COIS Nigeria Country Report para 5.43

⁶⁶ COIS Nigeria Country Report para 5.43

4.4 Medical treatment

- 4.4.1** Claimants 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 to be engaged.
- 4.4.2** 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. The Nigerian Government's commitment to the Health Sector Reform Programme was under lined in its 2004 Budget which 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. The introduction of a National Health Insurance Scheme [which became operational in June 2005] is seen as a major step in improving access to medical treatment, improving funding for health care and raising standards.⁶⁷
- 4.4.3** An overview of the current capabilities of the Nigerian health service is set out in paragraphs 5.46 – 5.65 of the COIS Nigeria Country Report April 2006.
- 4.4.4** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Nigerian nationals may return voluntarily to any region of Nigeria at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Nigeria. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Nigerian nationals wishing to avail themselves of this opportunity for assisted return to Nigeria should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- UK Home Office IND-RDS COIS Nigeria Country Report April 2006
http://www.homeoffice.gov.uk/rds/country_reports.html
- UK-Danish Nigeria Fact Finding Mission Report January 2005
http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/fact_finding_missions.html?

**Asylum and Appeals Policy Directorate
5 May 2006**

⁶⁷ UK-Danish Fact Finding Mission Report Jan 2005 para 8.1 – 8.28