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OPERATIONAL GUIDANCE NOTE

NIGERIA

CONTENTS

1. Introduction

1.1 This document evaluates the general, political and human rights situation in Nigeria and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Nigeria Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html

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

1.4 With effect from 2 December 2005, Nigeria is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002 in respect of men only. Asylum and human rights claims must be considered on their individual merits. If, following consideration, a claim made on or after 2 December 2005 by a male who is entitled to reside in Nigeria is refused, case owners must certify it as clearly unfounded unless satisfied that it is not. A

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

Source documents

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

2. Country assessment

2.1 Nigeria is a democratic federal republic with a multi-party political system, comprising the Federal Capital Territory and 36 states. Executive powers of the federation are vested in the President, who is the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces. The president is elected by universal suffrage for a term of four years. The legislative powers of the country are vested in the National Assembly, comprising a Senate and a House of Representatives. The 109-member Senate consists of three senators from each state and one from the Federal Capital Territory, who are elected by universal suffrage for four years. The House of Representatives comprises 360 members, who are also elected by universal suffrage for four years. The ministers of the government are nominated by the president, subject to confirmation by the Senate.[1]

2.2 The most recent elections, held in April 2007, were heavily criticised by foreign and domestic observer groups for poor organisation and large-scale vote rigging. Umaru Yar'Adua of the People's Democratic Party (PDP) won the presidential election with 70% of the vote. In February 2008, a tribunal dismissed petitions from the losing presidential candidates (Muhammad Buhari and Atiku Abubakar) to annul the election results. The Supreme Court rejected subsequent appeals in December 2008, thereby upholding the election of President Yar'Adua. The results of the April 2007 gubernatorial elections were also subjected to legal challenges, with a number of results overturned as a result.[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 Government's human rights record is poor. Problems include extrajudicial killings; arbitrary arrest; and the use of lethal and excessive force, including torture, by members of the security forces, with impunity. The judiciary exercises a degree of independence, but executive influence and judicial corruption continue, especially in the criminal justice system. Government and official corruption remains a problem.[4]

2.5 More than twelve thousand Nigerians have lost their lives in ethnic, religious, and political clashes since the end of military rule in 1999. In November 2008, some four hundred were

[1] Home Office COI Service Nigeria Country of Origin Information Report December 2008 (Background Information: Political System) & U.S. Department of State report on Human Rights Practices (USSD) 2008: Nigeria (Introduction)
[2] COIS Nigeria Country Report December 2008 (Background Information: History & Recent Developments), USSD 2008: Nigeria (Introduction & Section 3), Foreign and Commonwealth Office (FCO) Country Profile: Nigeria & Human Rights Watch (HRW) World Report 2009: Nigeria
[3] COIS Nigeria Country Report December 2008 (Background Information: Constitution)
[4] COIS Nigeria Country Report December 2008 (Human Rights: Introduction), USSD 2008: Nigeria (Introduction & Sections 1 & 3) & HRW World Report 2009: Nigeria

killed in Plateau State when Christians and Muslims clashed over the result of a local election. This was reportedly the most serious episode of intercommunal violence since 2004. Meanwhile, clashes in Ebonyi, Enugu, and Benue states during 2008 left at least 42 dead and hundreds displaced. Politicians have reportedly manipulated ethnic and religious tensions by sponsoring violence for personal political gain.[5]

3. Main categories of claims

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

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 the individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.

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

3.6 The Niger Delta

3.6.1 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 gangs or the security forces working in the interests of the oil companies that operate in the Niger Delta. Such claims are often submitted by young Ijaw males and are based on the individual's fear of the security forces or the oil companies because they refuse to sell or move from sought after land in the region.

3.6.2 ***Treatment.*** The oil-rich Niger Delta remains the scene of recurring violence between members of different ethnic groups competing for political and economic power, and between militia groups and security forces sent to restore order in the area. Violence between ethnic militia groups often occurs within the context of the control of crude oil. Despite a robust military and police presence in the region, local communities remain

[5] COIS Nigeria Country Report December 2008 (Preface: Latest News & Human Rights: Introduction) & HRW World Report 2009: Nigeria

vulnerable to attack by militia groups and criminal gangs.[6]

3.6.3 Members of the security forces have reportedly been responsible for extrajudicial executions, torture, and the destruction of homes in the Niger Delta. In 2008, several dozen civilians were killed in clashes between security forces and gangs, though during the year the security forces were reportedly more careful to avoid inflicting civilian casualties than in previous periods of Delta violence. According to reports, members of the security forces alleged to have been responsible for abuses are rarely brought to justice.[7]

3.6.4 Oil companies in the Niger Delta have not always been held to account for the impact their security arrangements (whether involving government forces or private individuals) have on the situation in the region, though some companies have admitted that some of their activities have contributed to the violence. In recent years, the oil companies operating in the Niger Delta have reportedly come under greater scrutiny with regard to their social responsibility in the region, and several companies are signatories of the Voluntary Principles for Security and Human Rights (including Chevron and Shell). These principles are intended to guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights. They apply wherever the company operates but have no monitoring mechanism, making it difficult to evaluate companies' adherence.[8]

3.6.5 ***Sufficiency of protection.*** As stated above, members of the security forces have been responsible for ill-treatment in the Niger Delta, often with impunity. Even in cases where privately employed individuals are responsible for such actions, it is unlikely that the victims of such actions would be able to seek and receive adequate protection from the state authorities.

3.6.6 ***Internal relocation.*** The constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[9] Though this category of applicants' fear is of ill-treatment/persecution by the security forces, it relates only to those who reside in the Niger Delta region of Nigeria and there is no evidence to suggest that the security forces would maintain interest in such applicants were they to reside in another part of the country. Therefore, relocation to an area of Nigeria outside of the Niger Delta would be an effective way of avoiding any risk of ill-treatment and would not be unduly harsh.

3.6.7 ***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 will not 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 on the grounds that they

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[6] COIS Nigeria Country Report December 2008 (Human Rights: Militia Groups in the Delta Region), HRW World Report 2009: Nigeria, Amnesty International (AI) Report 2008: Nigeria & USSD 2008: Nigeria (Section 1)

[7] COIS Nigeria Country Report December 2008 (Human Rights: Militia Groups in the Delta Region), HRW World Report 2009: Nigeria, AI Report 2008: Nigeria & USSD 2008: Nigeria (Section 1)

[8] AI - Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta

[9] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Movement) & USSD 2008: Nigeria (Section 2)

fear ill-treatment amounting to persecution at the hands of the 'Bakassi Boys' or other similar vigilante groups.

3.7.2 ***Treatment.*** Vigilante groups in Nigeria range from those involved in community policing to ethnic-based groups and even to state-sponsored or supported gangs. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some 'policing', they reportedly also undertake debt collection, crime prevention, extortion and armed enforcement services. The right of citizen arrest is often invoked to justify the groups' activities.[10]

3.7.3 The Bakassi Boys is a group active mainly in Abia, Anambra and Imo states that reportedly has been responsible for many extrajudicial executions, often carried out publicly. They reportedly patrol the streets in heavily armed gangs; arrest suspects; and determine guilt on the spot and exact punishment, which may involve beating, 'fining', detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.[11]

3.7.4 ***Sufficiency of protection.*** Membership or association with vigilante 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. Therefore, any member of the Bakassi Boys or other similar vigilante group would be arrested if he or she had committed a crime. However, the United Nations has noted that, in practice, state governments do not generally impose any form of regulation or accountability on these groups.[12]

3.7.5 ***Internal relocation.*** The constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[13] Internal relocation to escape ill-treatment from non-state agents is almost always an option. In the absence of exceptional circumstances, it would not be unduly harsh for individuals in this category to internally relocate to escape this threat.

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 are not free to practise their religion and that they would face ill-treatment amounting to persecution at the hands of the authorities as a consequence. Some applicants may express fear of Shari'a courts in northern Nigeria whilst others 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 is Muslim, about 40% is Christian, and the remaining 10% practise traditional African religions or other beliefs, or have no religion. Many persons combine elements of Christianity or Islam with elements of a traditional indigenous religion. The predominant form of Islam in the country is Sunni. The Christian population includes Roman Catholics, Anglicans, Baptists, Methodists, Presbyterians, and a growing number of Evangelical and Pentecostal Christians.[14]

3.8.3 The constitution provides for freedom of religion, including freedom to change one's religion

[10] COIS Nigeria Country Report December 2008 (Human Rights: Vigilante Groups)
[11] COIS Nigeria Country Report December 2008 (Human Rights: Vigilante Groups)
[12] COIS Nigeria Country Report December 2008 (Human Rights: Vigilante Groups)
[13] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Movement) & USSD 2008: Nigeria (Section 2)
[14] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Religion) & U.S. Department of State International Religious Freedom Report (USIRFR) 2008: Nigeria (Section I)

or belief, and freedom to manifest and propagate one's religion or belief in worship, teaching, practise, and observance. While the Federal Government generally respects religious freedom, there have been some reported instances in which limits were placed on religious activity to address security and public safety concerns.[15]

3.8.4 Many state governments prohibit open-air religious services held away from places of worship due to fears that these religious services may heighten inter-religious tensions. The Kaduna State Government has enforced a ban on processions, rallies, demonstrations, and meetings in public places on a case-by-case basis. A security forces committee ban on all religious meetings in Plateau State has also been implemented on an ad hoc basis.[16]

3.8.5 Applicable to Muslims only, the Shari'a penal code was introduced in 2000 in twelve northern states. In 2008, Shari'a courts delivered 'hadd' sentences including caning for minor offences such as petty theft, public consumption of alcohol, and prostitution, though it was not known if any of the sentences were carried out by year's end. Those guilty of adultery are subject to death by stoning under Shari'a law. Although such cases were handed down during 2008, none were carried out, nor were death sentences carried out in cases originating in earlier years. There were also no sentences of amputation handed down during 2008. Similarly, numerous Shari'a cases that were pending appeal or implementation of sentence from previous years were not carried out during 2008.[17]

3.8.6 In some 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 and cracking down on prostitution. Hisbah groups funded by state governments in Zamfara, Niger, Kaduna, and Kano States, enforced some Shari'a statutes in their respective states in 2007 and 2008; however, overall they reportedly continued to serve primarily as traffic wardens and marketplace regulators.[18]

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

3.8.8 ***Internal relocation.*** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[19] Internal relocation to escape any ill-treatment by Hisbah groups is almost always an option. In the absence of exceptional circumstances, it would not be unduly harsh for any individual who claims a fear of local Hisbah groups to safely relocate elsewhere in Nigeria where the particular Hisbah do not operate or have any influence.

3.8.9 ***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.
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> **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

3.8.10 ***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

[15] COIS Nigeria Country Report December 2008 (Human Rights: Political Affiliation & Freedom of Religion) & USSD 2008: Nigeria (Section 2)
[16] COIS Nigeria Country Report December 2008 (Human Rights: Political Affiliation) & USSD 2008: Nigeria (Section 2)
[17] COIS Nigeria Country Report December 2008 (Human Rights: Shari'a Penal Codes), USIRFR 2008: Nigeria (Section II) & USSD 2008: Nigeria (Section 1)
[18] USIRFR 2008: Nigeria (Section II) & USSD 2008: Nigeria (Section 2)
[19] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Movement) & USSD 2008: Nigeria (Section 2)

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 clearly 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 any influence. Claims made on the basis of fear of Hisbah groups are therefore also likely to be clearly unfounded and will similarly fall to be certified.

3.9 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.*** FGM is a cultural tradition that is widely practised in Nigeria. The Nigeria Demographic and Health Survey (NDHS) estimated that approximately 19% of the female population has been subject to FGM, although the incidence has reportedly declined steadily in recent years. While practised in all parts of the country, FGM is reportedly much more prevalent in the south among the Yoruba and Igbo. Women from northern states are reportedly less likely to undergo the severe type of FGM known as infibulation. The age at which women and girls are subjected to the practise varies from the first week of life until after a woman delivers her first child; however, three-quarters of the NDHS 2003 survey respondents who had undergone FGM had been subjected to it before their first birthday.[20]

3.9.3 ***Sufficiency of protection.*** The Federal Government publicly opposes FGM, but in 2008 took no legal action to curb the practice. Bayelsa, Edo, Ogun, Cross River, Osun, and Rivers states have banned FGM, but non-governmental organisations (NGOs) have reportedly found it difficult to convince the local government area authorities that state laws were applicable in their districts. The Ministry of Health, women's groups, and many NGOs have sponsored public awareness projects to educate communities about the health hazards of FGM. They have worked to eradicate the practice, but financial and logistical obstacles remain.[21]

3.9.4 ***Internal relocation.*** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[22] Internal relocation to escape ill-treatment from non-state agents is almost always an option. In the absence of exceptional circumstances, it would not be unduly harsh for any individual in this category, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.9.5 ***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 this situation would if they choose to do so, also be able to seek assistance from women's NGOs in the new location. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate and such claims should be certified as clearly unfounded.

3.10 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

[20] COIS Nigeria Country Report December 2008 (Human Rights: Women) & USSD 2008: Nigeria (Section 5)
[21] COIS Nigeria Country Report December 2008 (Human Rights: Women) & USSD 2008: Nigeria (Section 5)
[22] USSD 2008: Nigeria (Section 2)

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 trafficked persons. There are no available government or NGO estimates on the extent of trafficking, but the magnitude of the problem is believed to be significant. Nigerians, particularly women and children, are trafficked to Europe, the Middle East, and other countries in Africa for the purposes of forced labour, domestic servitude, and sexual exploitation. Trafficking in children, and to a lesser extent in women, also occurs within the country's borders. Children in rural areas are trafficked to urban centres to work as domestics, street peddlers, merchant traders, and beggars.[23]

3.10.3 ***Sufficiency of protection.*** The Nigerian Government continues to demonstrate commitment to eradicating human trafficking and is at the forefront of regional efforts to confront the problem. Nigeria prohibits all forms of trafficking through its 2003 Trafficking in Persons Law Enforcement and Administration Act, which was amended in 2005 to increase penalties for traffickers, and its 2003 Child Rights Act. Prescribed penalties include five years' imprisonment for labour trafficking, ten years' imprisonment for trafficking of children for forced begging, and a maximum of life imprisonment for sex trafficking.[24]

3.10.4 The Government has also established the National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP), a special government agency, to coordinate its efforts to combat human trafficking locally. Despite NAPTIP's efforts to investigate and prosecute trafficking cases, the relative number of convicted traffickers remains low. In June 2008, the U.S. Department of State noted that during the last year, NAPTIP had reported investigating 114 trafficking cases, 62 of which were prosecuted. Of the 62 cases, seven resulted in convictions with 51 still pending in the courts. Sentences imposed on convicted trafficking offenders ranged from one to ten years' imprisonment. In March 2009, the U.S. Department of State reported that preliminary data for 2008 showed NAPTIP had investigated 149 new cases, prosecuted 37 new cases, and obtained twenty convictions during the year, with 66 cases pending. Some observers have attributed these low conviction rates to witnesses' reluctance to testify and the slow progress of cases through the courts.[25]

3.10.5 NAPTIP also assists victims of trafficking, either through the provision of shelter or by connecting victims to non-governmental or international organisations for shelter, counselling, and reintegration assistance. NAPTIP maintains a hot line for victims and anyone seeking or wanting to provide information regarding trafficking. While the Government assists an increasing number of victims, the quality of care provided remains compromised by inadequate funding. NAPTIP continues to operate seven shelters throughout the country (Lagos, Abuja, Kano, Sokoto, Enugu, Uyo, and Benin City), however, due to inadequate funding, some shelters are reportedly not well-maintained, offering limited rehabilitation care and no reintegration services. In January 2008, for example, the Lagos shelter, with a capacity for 120 victims, housed only 15 victims. NAPTIP also reportedly suffers from a lack of personnel, suitable facilities, and adequate training for its staff. Despite these reported limitations, NAPTIP maintains that is able to offer victims full protection against physical violence from the agents of trafficking, including victims who have testified against traffickers abroad or in Nigeria or are indebted to their agents or madams.[26]

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[23] COIS Nigeria Country Report December 2008 (Human Rights: Trafficking) & USSD 2008: Nigeria (Section 5)

[24] COIS Nigeria Country Report December 2008 (Human Rights: Trafficking) & USSD 2008: Nigeria (Section 5)

[25] COIS Nigeria Country Report December 2008 (Human Rights: Trafficking) & USSD 2008: Nigeria (Section 5)

[26] COIS Nigeria Country Report December 2008 (Human Rights: Trafficking) & USSD 2008: Nigeria (Section 5)

3.10.6 ***Internal relocation.*** The Nigerian constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[27] Internal relocation to escape ill-treatment from non-state agents is almost always an option. In the absence of exceptional circumstances, it would not be unduly harsh for any individual in this category, whether or not they have family or other ties in any new location, to internally relocate to escape this threat.

3.10.7 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.

3.10.8 ***Caselaw.***

> **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.
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> **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).

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

3.10.10 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.

3.10.11 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

[27] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Movement) & USSD 2008: Nigeria (Section 2)

appropriate.

3.11 Fear of secret cults, juju or student confraternities

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

3.11.2 ***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, though many Ogboni members reportedly self-identify the group as a social club rather than a cult or a secret society. Ordinary Nigerians are reportedly afraid of the society, believing that its members are capable of using sorcery in order to get their way. However, there is no corroborated evidence of the society using violence or recent examples of persons being forced to join.[28]

3.11.3 So called 'student cults' are a particular variety of criminal gang that began as benign campus fraternities, the first of which emerged in 1952 when a group of University of Ibadan students, including future Nobel laureate Wole Soyinka, organised a fraternity called the Pyrates Confraternity. They have since increased in number and evolved into violent gangs that often operate both on and off campus. These so called 'student cults' have, according to reports, forcibly recruited new members and waged battles between one another that have included the killing of rival cult members and innocent bystanders. The power and prevalence of these groups has grown steadily over the decades, especially since 1999. In media reports and other studies, names such as the Vikings, the Buccaneers (Sea Lords), the Amazons, the National Association of Seadogs, the Black Axe/Neo-Black Movement, the KKK Confraternity, the Eiye or Air Lords Fraternity, the National Association of Adventurers and the Icelanders feature regularly.[29]

3.11.4 Reliable statistics about the on-campus human toll of Nigeria's cult violence epidemic do not exist, but former Minister of Education Obiageli Ezekwesili estimated that some 200 students and teachers lost their lives to cult-related violence between 1996 and 2005. Cult-related clashes on university campuses continue to be reported, especially in southern Nigeria and cult groups have been implicated in other abuses including extortion, rape and violent assaults. It has been reported that the reach of many cults has, on occasion, spread beyond university campuses, with groups involved in drug trafficking, armed robbery, extortion, and various forms of street crime.[30]

3.11.5 ***Sufficiency of protection.*** Membership or association with a secret cult or a student confraternity is not illegal, but some states have passed laws expressly outlawing many cult groups.[31] Any illegal acts those involved with secret cults/student confraternities might commit (such as threatening behaviour or murder) are criminal offences and will be treated as such by the Nigerian authorities.

3.11.6 ***Internal relocation.*** The constitution provides for the right to travel within the country and the Federal Government generally respects this right in practice.[32] Internal relocation to escape ill-treatment from non-state agents is almost always an option. In the absence of exceptional circumstances, it would not be unduly harsh for any individual in this category to internally relocate to escape this threat.

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[28] COIS Nigeria Country Report December 2008 (Human Rights: The Ogboni Society)
[29] COIS Nigeria Country Report December 2008 (Human Rights: Student secret cults)
[30] COIS Nigeria Country Report December 2008 (Human Rights: Student secret cults)
[31] COIS Nigeria Country Report December 2008 (Human Rights: Student secret cults)
[32] COIS Nigeria Country Report December 2008 (Human Rights: Freedom of Movement) & USSD 2008: Nigeria (Section 2)

3.11.7 ***Caselaw.***

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

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

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

3.11.8 ***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 Prison Conditions

3.12.1 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.

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

3.12.3 ***Consideration.*** Prison and detention conditions reportedly remain harsh and in some instances life threatening. Most of the 227 prisons were built 70 to 80 years ago and lack basic facilities. Lack of potable water, inadequate sewage facilities, and severe overcrowding reportedly resulted in unhealthy and dangerous sanitary conditions during 2008. With an estimated population of 40,000 in 2008, some prisons reportedly held 200 to 300% more persons than their designed capacity. The Federal Government has acknowledged overcrowding as the main cause of the reported harsh conditions common in the prison system. Excessively long pre-trial detention also contributes to the overcrowding.[33]

3.12.4 According to the U.S. Department of State, disease was pervasive in the cramped, poorly ventilated facilities in 2008 and chronic shortages of medical supplies were reported. In 2008, only those with money or whose relatives brought food regularly had sufficient food and prison officials reportedly stole money provided for food for prisoners. Poor inmates

[33] USSD 2008: Nigeria (Section 1)

often relied on handouts from others to survive. Beds or mattresses were not provided to many inmates during the year, 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.[34]

3.12.5 Harsh conditions and denial of proper medical treatment reportedly contributed to the deaths of numerous prisoners during 2008. The Federal Government allows international and domestic NGOs, including Amnesty International; Prisoners Rehabilitation and Welfare Action; and the International Committee of the Red Cross, regular access to prisons. The Federal Government has admitted that there are problems with its incarceration and rehabilitation programmes and has worked with groups such as these to address problems.[35]

3.12.6 ***Conclusion.*** Whilst prison conditions in Nigeria are poor with overcrowding and poor basic facilities being particular problems, they are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Nigeria, a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Nigeria.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favorable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

[34] USSD 2008: Nigeria (Section 1)
[35] USSD 2008: Nigeria (Section 1)

4.4 Medical treatment

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

4.4.2 Responsibility for health care in Nigeria is split between the different levels of government. The Federal Government is responsible for establishing policy objectives, training health professionals, coordinating activities, and for the building and operation of Federal medical centres and teaching hospitals. The states are responsible for the secondary health facilities and for providing funding to the Local Government Areas (LGAs), which are responsible for primary health care centres. In addition to government-run public facilities, there are also private health facilities, most of which are secondary level facilities. According to reports, the health care system in Nigeria is inadequately funded and understaffed, and suffers from material scarcity and inadequacy of infrastructure. Access to quality health care is therefore limited and many Nigerians do not go to government facilities first but rather seek health care from traditional healers, patent medicine stores, lay consultants and private medical practices and facilities owned by faith-based organisations.[36]

4.4.3 Medical treatment is available for those diagnosed with cancer, but clinical services are reportedly distributed poorly and there is a dearth of adequately trained personnel in the field of oncology. Treatment is available for a wide variety of cardiovascular conditions and diseases and drugs are also available. Mental health care is part of the primary health care system and actual treatment of severe mental disorders is available at the primary level. However, relatively few centres are believed to have trained staff and equipment to implement primary health care. Therapeutic drugs are available for those suffering from mental disorders.[37]

4.4.4 There are an estimated 3.6 million people with HIV/AIDS in Nigeria and the HIV prevalence among adults in Nigeria increased from 1.8% in 1991 to an estimated 5.4% in 2003. According to official estimates, Nigeria faced 200,000 new infections in 2002 and approximately 310,000 people died from AIDS related deaths in 2004. The Federal Government focuses its efforts on the prevention and treatment of HIV/AIDS through the National Action Committee on AIDS. Anti-retroviral (ARV) drugs are available and an estimated 270,000 Nigerians living with HIV/AIDS are receiving ARV therapy.[38]

4.4.5 Where a case owner considers that the circumstances of the individual applicant and the situation in Nigeria reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

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

5.2 Nigerian nationals may return voluntarily to any region of Nigeria at any time by way of the

[36] COIS Nigeria Country Report December 2008 (Human Rights: Medical Issues)
[37] COIS Nigeria Country Report December 2008 (Human Rights: Medical Issues)
[38] COIS Nigeria Country Report December 2008 (Human Rights: Medical Issues)

Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Nigeria. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of source documents

- Home Office Country of Origin Information (COI) Service Nigeria Country of Origin Information Report dated 5 December 2008. http://www.homeoffice.gov.uk/rds/country_reports.html
- Foreign and Commonwealth Country Profile 2008: Nigeria (last reviewed on 13 February 2008). http://www.fco.gov.uk/en/about-the-fco/country-profiles/sub-saharan-africa/nigeria
- U.S. Department of State International Religious Freedom Report 2008: Nigeria (released on 19 September 2008). http://2001-2009.state.gov/g/drl/rls/irf/2008/108385.htm
- U.S. Department of State report on Human Rights Practices 2008: Nigeria (released on 25 February 2009). http://www.state.gov/g/drl/rls/hrrpt/2008/af/119018.htm
- Human Rights Watch World Report 2009: Nigeria. http://www.hrw.org/en/node/79250
- Amnesty International (AI) Report 2008: Nigeria. http://thereport.amnesty.org/eng/regions/africa/nigeria
- AI – Nigeria Ten Years On: Injustice and Violence Haunt the Oil Delta. http://www.amnesty.org/en/library/info/AFR44/022/2005

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