

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71392/99

AT AUCKLAND

Before: A R Mackey (Chairperson)
L Tremewan (Member)

Counsel for Appellant: J Sullivan

Date of Hearing: 30 July 1999

Date of Decision: 12 July 2000

DECISION DELIVERED BY L TREMEWAN

[1] This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service declining the grant of Refugee Status to the appellant, a national of the Federal Republic of Nigeria.

BACKGROUND

[2] At the end of the appellant's hearing his counsel indicated that he would be attempting to obtain further country information to assist the Authority in dealing with the unusual issues which had arisen in the case. No further information was forthcoming from Mr Sullivan. The Authority has itself made its own quite extensive enquiries in search of country and other relevant information following the hearing. The most relevant of this information is referred to later in the decision. It has necessarily taken some time for the Authority to be in a position to finalise and publish this decision. The delay in being able to do so any sooner is regretted.

[3] It is to be noted that on 4 May 2000, the Authority sent a very detailed letter to Mr Sullivan, referring to the information which it had received since the hearing

which had a potential relevance to the case. The letter detailed the information received from the office of the United Nations High Commissioner for Refugees (UNHCR) (Nigeria) on 2 September 1999 and 2 May 2000 (which will be set out subsequently in this decision.) It also enclosed copies of the following:

- (a) Five decisions of the Immigration and Refugee Board of Canada Convention Refugee Determination Division (C.R.D.D.) (which are fully cited subsequently in this decision);
- (b) An Australian decision of the Refugee Review Tribunal (RRT) *N96/12507* (4 February 1998) and an appeal from that decision, of the Federal Court of Australia, in *Vitalia Ananze Okere v Minister for Immigration & Multicultural Affairs* [1998] 1171 FCA;
- (c) A decision of this Authority, referring to what is termed the Internal Protection Alternative (IPA) test, in *Refugee Appeal No. 71684/99* (29 October 1999).

[4] Twenty one (working) days were allowed for Mr Sullivan to make further submissions on behalf of the appellant. Detailed submissions were subsequently received and have been fully considered by the Authority prior to appeal being determined.

THE APPELLANT'S CASE

[5] The appellant is a single man in his late twenties, who was born in a city in Edo State. He is the eldest of his parent's five children. His two younger brothers and two younger sisters remain living in Nigeria with the appellant's mother. His father is deceased.

[6] The appellant was educated to a tertiary level; he studied, successfully, for two years at University, towards a business qualification. He did not complete that qualification due to financial difficulties.

[7] The appellant's mother worked selling meat in a large local market place. His father, who died in May 1998 (and whose death was a precursor to the appellant leaving Nigeria, for reasons which will be shortly explained), worked in the military until his retirement in about 1980. Because the appellant's father was,

as a result of his occupation, required to spend most of his time living away from home at the bases at which he was performing his service, this meant that for the appellant's growing up years he and his siblings were primarily under the care and influence of his mother, his father only being at home when on leave. There was one year, however, when the family left home to live with the appellant's father, when he was based in the north of Nigeria, however the appellant's mother found it too difficult to live there with her children and she and the children soon returned home to Edo State.

[8] The appellant's mother is a strict Catholic who raised her children as Catholics. The appellant continues to actively practise his faith.

[9] The appellant's father on the other hand was, in the appellant's description, a "pagan" who was the eldest (or "senior") son of his own father, who was a member of the Ogboni cult. As a result, when the appellant's paternal grandfather died, in 1980 (the same year that the appellant's father retired from the military) the appellant's father, as the senior son, was obligated to assume his father's cult title. He became deeply committed and involved with the Ogboni cult from that time. In the appellant's perception, he "changed" in that regard. The appellant himself, on the death of his father would also be required to take up the patrilineal title, and assume Ogboni status, according to the rules of the cult. The appellant also understands that their general family title also had an additional role within the cult, concerning matters of discipline.

[10] The appellant recalled that when he was five or six years old, his father took him out in the family vehicle, apparently to visit friends. Once at the destination, however, he was blindfolded by his father who took him by the hand and told him not to be afraid. After being taken along some kind of path, the appellant was brought into a large structure and his blindfold was removed.

[11] The appellant described in considerable detail (which need not be repeated here) what he saw and experienced at that time. In summary, there were a number of males present performing various rituals, which the appellant found distressing. It is also noteworthy that he received, during one ritual, cuts to the backs of his hands, in a particular pattern. Some other young boys who were present also had this happen to them. The appellant's cuts were then "treated" in some way, and have remained like tattoos on the backs of his hands since then. The appellant understood the tattoos denoted cult status. The tattoos on the

backs of the appellant's hands were seen by the Authority members at the hearing.

[12] The appellant was told by his father that as he was his father's senior son, he would grow to take his father's title upon his death. The appellant was, however, terrified by what he had experienced and although his father threatened him not to say anything about what had taken place, he told his mother what had happened. His mother made it clear that she did not approve of the rituals to which the appellant had been exposed and told him that he should remember his Catholic beliefs, pray and fast.

[13] Although the appellant's father had accordingly initiated him into the cult at a young age, as already mentioned it was not until the appellant's paternal grandfather later died in 1980, that the appellant's father became more fervently involved in the cult's activities. As it coincided with his retirement from the military he had the time to devote himself to the cult. The details of that involvement were not disclosed to the appellant's mother, due to the obligations of secrecy imposed by the cult (and also because of her disapproval of the cult).

[14] When the appellant was about 10, after his father had taken his own father's title, he again took the appellant to the place where the Ogboni rituals were practised. As the appellant was then regarded as an initiated member he was not blindfolded. His father explained to him that he was required to come to witness other younger boys being initiated. On this occasion he was however marked again himself, this time on the outside of each of his upper arms. These markings remain. Although the appellant found this incident upsetting it was not as deeply traumatic as when he had first been initiated.

[15] In 1987, when the appellant was about 16, his mother separated from his father, taking the children with her. This was because she had discovered certain Ogboni ritual garments in the house belonging to her husband. Although she had well known that her husband was a cult member who had taken his father's title, she had hoped that he was not as deeply involved in the cult as he clearly was and she could not tolerate this any longer. After their separation, the appellant's father remarried and had two more children, a son and a daughter. These children, being the appellant's half brother and half sister, have remained living with their mother, following the death of the appellant's father (which event will be described shortly).

[16] The appellant explained to the Authority how, as a teenager he had spoken to his father about his extreme concern at the prospect of taking his father's cult title upon his death. His father reiterated what the appellant already knew, namely that it was not a matter over which he had any choice. His father also referred to him as being childish and that in the fullness of time he would come to realise that taking up his title was his obligation. He also made it clear that he would risk his life if he attempted to avoid his responsibilities in this regard. The appellant however, regarded the cult's practises as satanic and "against the will of God", and against what his mother had taught him.

[17] The appellant described to the Authority in detail the various paraphernalia which denoted membership of the cult. He indicated that many people of status in Nigerian society, including within the police and military forces, wear such items so that they may be recognised as having the special status of the cult membership. Membership brings with it advantage, privilege and protection which is exercised between the members in terms of one another. The appellant stated that it is well known that cult membership is relatively commonplace and that its rules are strictly adhered to. The emphasis placed on secrecy, however, with dire consequences for those who break this rule, cause to make it a very secretive organisation in terms of knowledge of its inner workings being made known to the outside world.

[18] Due to his Christian beliefs the appellant does not fear curses being placed upon him by cult members, but he does fear that his life would be at risk from the members themselves should they discover that he has breached the rules of secrecy. Moreover he considers himself to be a risk for failing to meet his obligation in terms of taking up his father's title, as will be shortly explained.

[19] In the mid -1990s (although he is not able to be accurate as to the date), a close friend of the appellant's, A, refused to take his father's Ogboni title, following his father's death. About five months after his father's funeral, A was kidnapped and his body was later found at the side of a road. A post-mortem examination was reported to have revealed that he had died from poisoning. No other findings or convictions have ever followed as a result of A's death. The appellant stated that it was commonly understood that A was killed as a result of his refusal to take up his father's title.

[20] Also in the mid-1990s, the appellant's mother was offered the opportunity to be chair-lady of the Butcher's Association at her market, a position of some importance. She would have received payments from the members of the association over the term of her office, and enjoy certain buying privileges. However, she would first be required to become a member of the Ogboni women's group. The appellant explained to the Authority that the women's groups are separate and that one can seek to join both the men's and women's groups even if there is not (in the case of the men) a requirement of joining. However, his mother declined the opportunity to take up the chair-lady's position because of her unwillingness to join the Ogboni cult. There were no repercussions as a result; she simply did not have the privileges which she would have had otherwise.

[21] The appellant did also state that around this same period of time, his mother had a civil dispute with another local woman, over a small piece of land to which they each considered they had title. A court case was held with the ruling being made in favour of the other woman. In the appellant's view this was because the other woman was a member of the Ogboni women's group and was therefore in a position of greater influence than his mother.

[22] In another incident, the appellant's younger brother E had been involved in a small car accident, having borrowed the car from a man who was Ogboni. Following the accident the owner demanded compensation for the damage, but the amount sought was more than the cost of the repairs. The appellant's mother simply paid the amount demanded, without challenge or comment, as she did not want any conflict or problems with an Ogboni member.

[23] On 26 March 1998, the appellant's father died unexpectedly, following a car accident. The appellant moved to his father's house, as is culturally required in such circumstances, and cared for his father's wife and children while making the arrangements for his father's funeral. This was to be held on 20 April 1998, being a month following the death. However, after a few days, some Ogboni cult members approached the appellant and reminded him of the expectation that he would take his father's Ogboni title on the day of his father's funeral. The appellant had previously had it in the back of his mind that it might be possible for the eldest son of his father's second marriage to be a substitute for him, however it emerged that this was not regarded as acceptable. The appellant asked if he could have a few days to think matters over. He was told that there was nothing to think about as he was required, quite simply, to see through his obligations.

[24] The appellant believed from what he knew, that the final stages of the initiation may involve his being required to consume some part of his father's body.

[25] After the Ogboni men had left, the appellant immediately returned to his mother's house and spoke with her and her brother. It was decided that the appellant should leave Nigeria immediately and arrangements were made in this regard. The appellant had a valid passport which he had obtained in 1992 although he had never travelled out of Nigeria.

[26] The appellant left Nigeria on 10 April 1998, and travelled to Israel where he was able to obtain some work for a few months. He did make an enquiry as to whether he could formally seek refuge in Israel but was told that such avenues were not available. He now accepts that the information he obtained in this regard, from a university student, may have been unreliable though he had accepted it as accurate at the time. Eventually, he made arrangements to leave Israel, travelling on a friend's South African passport. He intended to come to New Zealand as he had been told that it was visa free for a person travelling on such a passport and that he could possibly obtain refuge here.

[27] The appellant arrived in New Zealand on 28 October 1998 and applied for refugee status at the airport. The authorities here however refused to issue him with a permit upon his arrival, pursuant to s.128 of the Immigration Act 1987, as amended by the Immigration Amendment Act 1999. The appellant was subsequently detained at an Auckland prison and an RSB interview was held there on 4 November 1998. The appellant was not legally represented at that time.

[28] After some time the appellant was released from custody (the Authority does not know precisely when). The RSB decision to decline the appellant's refugee status application was issued on 12 March 1999 (although the decision itself incorrectly bears the date 12 March 1998), and the appellant subsequently filed a notice of appeal in respect of that decline decision.

[29] The appellant stated that he fears returning to Nigeria as he believes that his life is at risk there as a result of his not having taken up his father's Ogboni title. He considers that this is a most serious matter and that it would only be a matter of time before he would suffer retribution in the same way that his friend A did. He considers that he is unable to receive protection from, for example, the police as members of the police are Ogboni themselves. In any event they are

unable to provide effective protection to the appellant in any meaningful way given the degree of risk and the general circumstances of his situation.

[30] The appellant maintains that even if he were to leave the city where he has lived his life (and where he is well known and could easily be eventually located) but moved elsewhere, still this would not afford him any effective protection for a number of reasons. Firstly, the appellant claims that members of the Edo tribe (who are easily identifiable as such, by name, language and facial markings) are more likely to be cult members. Further, the backs of his hands and upper outer arms have markings/tattoos which the appellant stated are Ogboni markings which would serve to identify him as having that association.

[31] The appellant also explained in some detail to the Authority how Ogboni recognise one another and make special efforts to befriend and associate with one another, giving each other what advantage they can, and protecting one another. Even if he went to some remote part of Nigeria where he was not personally known or recognised, the appellant stated that he would soon be identified as an Ogboni. It would then become a matter of some suspicion that he was not acting in the expected manner nor taking opportunities to visit the shrine. Eventually, he would be properly "found out" and in the meantime would live a life of fear and in hiding.

[32] The appellant's previous experiences have had an impact on him. He often ruminates about his situation and experiences, and also suffers nightmares, although he draws some comfort from his faith.

[33] Since the appellant has been in New Zealand, he has only made one brief telephone call home, to a neighbour's house, speaking with two of his siblings. There was no particular news to report at that time. However, when the appellant had first left Nigeria and was earning wages in Israel he was then able to make more regular telephone calls. He was told then that his next youngest brother, E had not been attending college as he was 'lying low', fearful that he would be targeted by Ogboni members wanting information as to the appellant's whereabouts. E had, however then returned to college to finish his education. Although nothing untoward had been reported as having happened to any of the family members they were said to be fearful for the appellant and for themselves, worried that they might be approached by cult members.

THE ISSUES

[34] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

[35] In terms of *Refugee Appeal No. 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

[36] Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No 71684/99* (29 October 1999) requires a third and final issue to be addressed:

- (c) Can the appellant genuinely access domestic protection which is meaningful?

In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

ASSESSMENT OF THE APPELLANT'S CASE

[37] Before assessing the issues outlined above, it is first necessary to make an assessment of the appellant's credibility.

[38] The Authority accepts that the appellant's account has been truthfully given. While many aspects of the appellant's narrative may seem bizarre we found his evidence as to his past experiences to generally have a 'ring of truth' about it. His demeanour was consistent with his evidence. His evidence at the hearing was also materially consistent with statements which he has previously given at the Refugee Status Branch interview and at the airport. The account has also been generally consistent with country information separately obtained by the Authority.

[39] We now turn to the issues to be addressed.

[40] Before turning to the first of the issues framed, namely whether there is a real chance of the appellant being persecuted if returned to Nigeria, it is necessary to refer to some country and other relevant information.

COUNTRY INFORMATION

[41] It is relevant to refer to some comprehensive country information before summarising the approach which has been adopted in respect to the issues arising in this case by other similar jurisdictions (particularly as the Authority has not previously dealt with a case involving these issues).

[42] At the end of the appellant's hearing, the Authority sent a request for information to the UNHCR (Nigeria) concerning the Ogboni cult. The request indicated that the Authority was interested to know any information about the present strength and status of the group, its current practises/activities and what risks are posed by the cult to those who do not support it or who antagonise its members. The response, received on 2 September 1999, firstly referred to some earlier information dated January 1994, which was said to still be current. That general information is first set out below (*verbatim*):

"Ogboni Fraternity

AAA) A/M society said to have always been sustaining spiritual power behind Yoruba Kingdom.

- BBB) Reformed Ogboni Fraternity (ROF) alleged established within the church by Reverend Ogunbiyi about 70 years ago to encourage elites who were members of Ogboni Society and felt church was for the poor, to attend church. Group said to possess tremendous mysterious powers including necromancy, instilling fear into non-members.
- CCC) Members initiated after certain rituals, members protect each other under any circumstances, enjoy special privileges in society and participate in various rituals. Group is alleged to oppress non-members within communities.
- DDD) Round about 1977, when activities of group allegedly became notorious, the then Federal Military Govt issued ultimatum for members of ROF in civil service to either repudiate membership or leave the service. Some members far advanced in hierarchy of group chose to resign appointments as civil servants rather than repudiate membership.
- EEE) Another group - Ogboni Aborigine, a derivative, is alleged to be and possesses more diabolical powers than the ROFG.
- FFF) Membership of the two societies is voluntary and open to all ethnic groups. Presently there is no government proscription of their activities/membership non (sic) is anyone known to have been penalised for being a member (UNHCR Lagos)."

[43] The UNHCR report then referred to the specific query raised by the Authority, relating to the question of risks posed by the Ogboni, as follows:

"... persecution (by the group) arises only when member withdraws membership, which is seen by group as a violation/betrayal of oaths sworn to by such members. Such cases (if any) are treated as any other civil matter, and govt. only intervenes if it involves physical violence."

[44] There has been a considerable amount of information written about the Ogboni, however much of it dates back to the 1960s, when an academic, Emeritus Professor Peter Morton-Williams (then of the University of Ulster, now retired) specialised in studying the cult. An Immigration and Refugee Board Documentation Centre (IRBDC) (Ottawa) DIRB Response to Information Request NGA 8434 (7 May 1991) (Refworld) cites references relating the historical origins of Ogboni:

"... According to anthropologists Susan Druker-Brown of the University of Cambridge, Michelle Gilbert of Yale University and Smith College, and Karin Barber of the University of Birmingham, Emeritus Professor Peter Morton-Williams of the University of Ulster is considered as one of the leading experts on the Yoruba Ogboni cult, specifically the Ogboni of the Oyo region of Yorubaland. However, Professor Morton-Williams' publications on the subject were written mainly in the early 1960s.

Yorubaland formerly contained several hundred chiefdoms and occupied most of what is now western Nigeria. Each chiefdom had an Alafin, the Oba or King, which, in Oyo region, was checked by the Oyo Misi (Council of State) which in turn was restrained by the chiefdom's Ogboni. The "Ogboni is a secret and ritually

united corporation of political and religious leaders and its special priests" (Morton-Williams 1960, 364)...

...The word Ogboni is derived from gbo to be old and eni, a person (Morton-Williams 1960, 368). The cult itself worshipped the "earth spirits" and its judicial functions were mainly concerned with the settling of disputes in which "blood had been shed on the earth" (Morton-Williams 1960, 366). According to J.S. Eades, Lecturer of Social Anthropology at the University of Kent at Canterbury, the cult's "wider political significance lay in the fact that it provided an opportunity for the leading elders of the town to meet in guaranteed secrecy" (Eades 1980, 98).

The initiation into the Ogboni goes as follows:

Initiation rites are performed at entry into the senior grade only, with a further rite marking induction into a titled office. There is no initiation into the grade of juniors, this being really little more than a state in which potential membership of the higher grade is recognised. It indicates that an individual is a patrilineal descendant of an Ogboni and, because Ogboni are still recruited from the descent group, some spiritual protection is extended to him. It also entails the duty of contributing to the funeral expenses of lineage Ogboni members. Boys may accompany their fathers into the "ileadi", when no sacrifices are to be made and when no sacred images shown, but are threatened with death if they mention anything seen or heard there (ibid., 368).

Secrecy was an important part of the Ogboni cult and according to Morton-Williams, the cult "has the right to impose sanctions over those who reveal its secrets and procedures to others" and these "sanctions are imposed not only to guard secrets but also to protect agreements reached at the Ogboni meetings" (Morton-Williams 1960, 362, 366).

Sanctions tend to vary according to the perceived offences but details about the sanctions such as the type, the mode and the enforcement are scarce.... Most Ogboni rituals involved the sacrificing of animals, but according to Morton-Williams, some rituals used to include forced suicide, poisoning, human sacrifice and cannibalism. For example, if an Oba embarked on a course of action of which the Ogboni disapproved, he would have been coerced into committing suicide (ibid., 367). If someone in the Ogboni cult broke the code of secrecy, "the Ogboni will try to poison him, or to paralyse him by casting a spell on his footprints" (ibid., 370).

Concerning a major issue which deeply divided the Ogboni and following a majority decision, a human sacrifice would be offered to Ikuku-oro and Aiwo-oro ("Spirit of Death" and "Unseeing Spirit"). Morton-Williams does specify that he had never been given an account of a particular occasion when such a sacrifice was made but he does add that he is "satisfied that it would be regarded as a compelling sanction even in political issues" and that "in comparison to their neighbours to the east or to the west, the Yoruba were not a bloodthirsty people, and regarded human sacrifice as very awesome" (ibid., 370).

In another ritual, after a Yoruba Alafin died in the Oyo region, his successor would be given the dead Alafin's heart to eat and later he would be handed the skull of his predecessor, "which has been filled with a corn gruel which he must drink" (ibid., 371).

During a telephone interview on 4 May 1991, Professor Morton-Williams stated that according to him, the Ogboni had lost its judicial role in today's society and government although it still commands some fear and exerts some influence but not to the extent it did in the past...

Morton-Williams tends to agree with Mrs Maureen Eke, a Nigerian Ph.D. student and the Associate Outreach Coordinator of the African Studies Centre at Michigan

State University, when she states that the main purpose of any society like the Ogboni claiming the use of rituals involving human sacrifice and cannibalism is to deter inquiries into their affairs; to promote a sense of mysticism and a sense of the occult and to build themselves up in the eyes of the impressionable in order to keep some sort of influence and control over the people.

Professor Morton-William's added that in general the Ogboni have always been a very tolerant society which, rather than clinging to its exclusivity, tended to accept into its ranks most faiths as long as the members conformed with the Ogboni's ways.

Morton-Williams also added that he heard that a new group, the Reformed Ogboni Cult, now existed and that although he had very little information on the subject, he believes that the occult stories surrounding this Reformed Ogboni Cult are being circulated in order to enhance its mysticism and therefore achieve a greater influence and control over the targeted individuals and groups."

[45] The Authority has considered various articles describing ongoing tensions between the Christian churches in Nigeria and the cult. Many of these referred to situations where cult members have pervaded the church hierarchy and other sections of society, to the highest levels. For example, an editorial piece in *The Ethnic News Watch*, "The Week", dated 24 November 1997, referred to events in mid 1996 when Olu Holloway, described as a "leading light" within the Methodist Church of Nigeria died. He had also, however, been the supreme head of the Reformed Ogboni Fraternity (ROF). On 11 May, while his funeral was taking place, the Church members were physically ousted by cult members who overtook the proceedings. The scenario was repeated two months later at the funeral on 23 July, of Mofolorunso Olutola-Dada, son of Moses Dada, reputed to be the first indigenous Methodist minister in Africa. He was also, however, the Abore (chief priest), of the Reformed Ogboni Fraternity.

[46] A notable case, however, referred to in the article from *The Ethnic News Watch* concerned Adetokunbo Ademola, knight of the British Empire, Nigeria's first indigenous chief justice while the longest serving supreme head of ROF (from 1952-1993). The article stated:

The crisis of secret societies, particularly the Ogboni, the most prominent in Nigeria's Christendom, has not been confined to the Methodist church. Indeed, the Ogboni Fraternity, later refined to become the Reformed Ogboni Fraternity, was founded by Anglican clergymen more than 70 years ago....The relationship between Ogboni and Christianity....blows into the open at periods of transition between the burial of a departing supreme head and the installation of a new one. Such was the case of Adetokunbo Ademola, knight of the British Empire, Nigeria's first indigenous chief justice and the longest serving supreme head of ROF (1952-1993). The case of Holloway who succeeded Ademola was different only to the extent of the intensity of the furore which marked his departure.

...[T]he Methodist church did take a decision at its Ikot-Ekpene conference in August 1996, spelling out 25 organisations it classified as secret societies and the

penalties for membership, both for the laity and the clergy. The year before, the Anglican communion had taken a stand against all such organisations as the ROF, Freemasonry and AMORC at a meeting in Awka.

Despite the pronouncements on the matter, the spirit of cultism does not appear to be waning in the older churches. On the contrary, those designated by the churches as belonging to these secret societies are becoming defiant, insisting that the clergy was not in any position to inflict penalties on them, least of all, ex-communication. In a nutshell, the battle is about to burst forth again.

When the war of cult and christianity was being waged in 1996 following Holloway's demise, we did a cover on the story which attracted considerable interest among Christians in particular, and Nigerians in general. The expectation is that the battle would have to come to a logical conclusion. More than a year after and a lot of canonical rumblings later, the issue is here once more, prompting us to send a team of reporters into the field..."

[47] The Authority notes that the above article referred to an earlier lengthy article on the "War of Cult and Christianity" also published on 5 August 1996, by *The Ethnic News Watch "The Week"*. In that article, subtitled "*Trouble in God's House*", the difficulties faced by the Christian churches in light of the threat by the Ogboni was described as the "most acute dilemma facing the church in Nigeria today". It stated, *inter alia*,

... Before the Methodist, the Catholic Church had tasted of the bitter cup of cultic conflict. A prominent Catholic, Adetokunbo Ademola, a Knight of the British Empire and first indigenous Chief Justice of Nigeria has been the longest serving supreme head of the Ogboni fraternity. He was the Olori Oluwo from 1952 till his death in January 1993, a period of some 40 years. He was president of the Catholic Friendly Society, CFS, a group of professionals whom some of the worshippers saw as constituting the ROF wing of the Catholic hierarchy.

Upon Ademola's death, the Catholic Church was in quandary on what to do over his burial rites. The church had always held that members of the secret societies should not receive holy communion and at death should not be accorded the normal Catholic burial follows this order.....

...Months later, an inter-denominational memorial service was organised on May 14, 1993, for the repose of Ademola's soul. Held at the Ake palace in Abeokuta, Ogun State, the service attracted the clergy, high chiefs, and traditional rulers. The Ogboni Fraternity was notably represented. In a sermon, S.C. Sopein, the primate of the United Spiritual Church of Nigeria took a swipe at Nigerians critical of the Ogboni fraternity as a secret cult of evil-minded persons. He said the fraternity, like other religious sects, seeks to get people to see the light and lead them to obtain everlasting joy. In his estimation, the life of late Ademola was the best thing that ever happened to Nigeria.

Not many will agree. To a magnitude of Nigerians, the Ogboni fraternity conjures evil secrecy, terror, nepotism, perversion of justice, fetishism and even ritual murders. None could have been more aware of this negative image than Ademola himself. In an interview with *Vintage People* three years before he passed on, Ademola tried to put some shine on the society he headed from 1952 to 1993. He said the ugly image of the fraternity was due to the tendency of the African to look down on anything indigenous while putting a disproportionate premium on things foreign. He equally saw it as arising from ignorance. Even so, his response sometimes raised more questions than answers. Hear him: "What do you want

me to say about Ogboni? I won't discuss it with you. You are not a member. People can think what they like about the fraternity but only members can know what goes on in there. There is nothing to talk about".

That is precisely the point. Official reaction against secret societies in recent memory came during the Murtala Muhammed regime. Quite appropriately, Theophilus Danjuma, the then chief of army staff, opened the government assault. At the army command in Ibadan, he released a fusillade targeting secret societies as "a formidable threat to the stability of the army". He bristled: "They are nothing but a protection racket invariably with the sole motive of avoiding and neutralising justice".

By 1977, the federal government clamped down on "these societies whose proceedings are kept secret, whose minutes are not kept and whose list of officers and members is not published or made known". The government's indictment was scathing. According to it, "these are societies whose members are under oath, obligation or threat to promote the interests of other members (whether these interests are legitimate or not) and whose members are compelled to come to one another's aid under all circumstances without regard to merit, fairplay, or justice and to the detriment of the legitimate expectations of non-members".

Though the demonization could have been referring to such other societies as the AMORC and the Freemasons, it fitted perfectly the public perception of the Ogboni Fraternity. Such perceptions were somewhat confirmed when the government ordered public officers to renounce their membership of these societies or face dismissal and when some military governors, notably in Benin, drafted soldiers to seal up the temples of the Ogboni, Freemasons, and the Rosicrucians. The Obasanjo administration followed this up by outlawing public servants' membership of secret societies in the 1979 constitution.

Following this development, members of the ROF literally went underground, preferring to lie low. The organisation popped up again in 1984 during its 70th anniversary. It decided to use the occasion for image polishing by issuing a manifesto attempting to deny the toga of secrecy woven around it...

That did not seem to help. Almost a decade later, the ROF was again compelled to advertise itself to the public following the religious controversy over Ademola's burial and the election of Holloway to succeed him as the Olori Oluwo...."

[48] Another article from *The Economic News Watch*, "The Week", dated 24 November 1997 entitled "*Evidence of Things Not Possible*", included the following passages:

"As Abidodun Ade-tiloye Archbishop and head of the Church of Nigeria, (Anglican Communion) embarked on a pastoral visit to the Benin Diocese a couple of months back, one issue weighed heavily on the different tunes played in the minds of the visiting prelate's mind and that of his hosts the parishioners of St. James Anglican Church, Benin, Edo State. Of utmost concern to Adetiloye was how to stamp out the growing membership and influence of secret cult members among the flock. To achieve the object, the man of God decided to borrow a leaf from the Methodist Church of Nigeria whose leadership had introduced a new oath of allegiance "to Jesus Christ alone" to be administered on all members of the church under the leadership of Sunday Mbang, Primate of the church in Nigeria, the 35th biennial conference of Methodists had risen last year with a number of proclamations including oath-taking following a virulent attack by evangelicals to curb cultism within the Methodist fold. (sic)

With his pastoral work over in Benin, Adetiloye then invited the elders of the Church to lead the congregation by example by swearing to the oath which had identical wordings as those employed by the Methodist Church: "I declare that my allegiance is for Jesus Christ alone and I hereby denounce publicly the secret cults that I belong to and by the power and grace of God, I pledge that I will never go back to it (sic)." If the Anglican head in Nigeria thought this was a straightforward ritual, he was grossly mistaken. The reaction of some of the elders of St. James Anglican Church, Benin City, that Sunday morning jolted him. While some of the elders bluntly refused to denounce publicly their membership of secret cults, others stayed away from service that morning, claiming that they had either taken ill or travelled out of town. Though the deviant church elders were roundly ... booed and jeered by other parishioners, Adetiloye jetted back to Lagos without satisfactorily fulfilling his task of bringing the erring flock back to christian rectitude.

Still the Anglican prelate is not alone in his predicament. He has good company in Mbang, his opposite number at the Methodist church. Things got to a head (sic) last month when the Primate reportedly threatened to arraign cult members before the Methodist Church Conference, described as the highest ruling council of the Methodist Church of Nigeria, when the body meets next month. In a story published in *The Guardian* of Tuesday, October 14, this year, the Primate was reported to have said that (t)hose found guilty would be excommunicated in what was clearly a desperate strategy in the lingering battle between christianity and cultism ...

... But the conflict between the leadership of the churches and the cultists would appear to have just begun, given the spirited efforts being made by the cultists "to arrest some misconceptions in the minds of the people," as Falowa, the Olori-Apena of Ogboni, put it in a press conference he addressed in Lagos last week.He was to stretch the enigmatic nature of the ROF when he sought to explain the motive force of the society. "We are not evil at all," he said, and then added in another breath: "We are just merciless in our decisions. We do not put sentiment and pity into our decisions. Once a decision has been taken, it must be carried out." And equally mysterious was Falowa's enumeration of some of the benefits of the Ogboni fraternity to the larger society. Exemplifying with Sagamu, a local government headquarters in Ogun State, the ROF spokesman said his society, more than the police or even Operation Wedge, the state government special anti-robbery squad, has been responsible for the near-absence of armed robbers in the town. The people of Sagamu, he said, had never experienced the kind of peace they now enjoy, adding that it is only the people of the town that can explain how the robbers that were caught were killed. Falowa boasted: "If the government can give the Ogbonis just six months to handle crime cases in Nigeria, you will not hear anything of robbers again"

Though the ROF frequently lays claim to the possession of some higher social good, their officials often fall short of speaking directly about their activities as Falowa does. The result is public perception of ROF as personifying evil secrecy, terror, nepotism, perversion of justice and ritual murders. Such close-mouthedness was displayed by Adetokunbo Ademola, Nigeria's first indigenous chief justice, who as a staunch Catholic was equally the longest-serving Olori Oluwo of ROF from 1952 to 1993 when he died. In an interview with *Vintage People* in 1990, he bluntly refused to oblige his interviewer on the group's mode of worship. "I won't discuss it with you. You are not a member," the longest reigning Olori Oluwo had said then.

....

Kukah of the Catholic Secretariat has little faith in the efficacy of the various measures being put in place by the churches to arrest the menace of the cultists. Describing the societies as "alternative rungs in the ladder of social mobility," the reverend father believes members are drawn into them more by a describe to satisfy some of those needs which the system could not otherwise guarantee. (sic)

Making specific example of cultism in schools, Kukah reckons that it is usually the need by the individual to seek alternative avenues to belong when the society seems to have rejected him that often drives him into belonging to societies and clubs which seem capable of gratifying those needs. To arrest the situation, Kukah urges that the system, both in schools and the outside world, be made responsive enough to guarantee the benefits individuals go to seek in secret societies.

A food for thought for Mbang, Adetiloye and other leaders of the religious organisations currently enmeshed in a war of attrition with secret cult members in their folds.”

[49] The Authority has also referred to an article in *The Economist* (31 July 1999) “*Nigeria: Reaching for your machete: Does the spreading violence in Nigeria presage a wider social breakdown?*” This refers to “ethnic clashes, village feuds”, and what are called “cult killings on university campuses”. It describes, for example, eight students at Obafemi Owolowo University in south-western Nigeria, having allegedly been murdered by members of a “campus cult”. The involvement of university students in cults was also reported in a reference from *The Documentation*, Information and Research Branch, Immigration and Refugee Board (DIRB), Ottawa, request for information (NGA 13942) (concerning a crackdown and arrest of members of the ‘*Buccaneer Confraternity Cult*’) (dated 18 May 1993) (UNHCR Refworld). It stated, inter alia:

“... the Xinhua General Overseas News Service also mentioned arrests of students at some institutions of higher learning for their involvement in secret societies (Xinhua 12 June 1991). As well, the Ogboni Cult Fraternity which had been officially banned by the Nigerian government, was reported to be operating in secrecy and engaging in satanic practices (IRBDC 16 March 1992).”

Decisions from other jurisdictions:

[50] The issues raised in the present case have been previously canvassed in some other jurisdictions, notably Australia and Canada. A summary of cases located by the Authority from those jurisdictions follows.

Australia:

[51] In a decision of the *Refugee Review Tribunal* (RRT) N96/12507 (4 February 1998), the Tribunal accepted the credibility of an account presented by an applicant who had been selected through local custom to lead a cult (unnamed). He had refused due to his Christian beliefs, and faced the prescribed penalty of death as a result. It was accepted that he had a well founded fear of persecution.

[52] The Tribunal however dismissed the claim on the basis that there was no Convention ground. The Tribunal stated, at 4 (citing from *Kuldip Ram v. Minister for Immigration and Ethnic Affairs* (1995) FCR 565):

“...[I]t is the motivation of the persecutor, in inflicting harm, which determines whether the harm amounts to persecution within the meaning of the Convention. In order to be considered Convention persecution, the harm must be motivated, on the part of the persecutor, by a desire to harm the applicant for reason of his or her race, religion, nationality, political opinion or membership of a particular social group”.

[53] Later in the decision the Tribunal stated (citing *Jahazi v. MIEA* (1995) 61 FCR 293):

“It is not sufficient that there be a bare causal connection between the harm feared and a Convention reason - it is not sufficient that the Applicant follows a particular religion, or belongs to a particular kinship group, and also faces persecution. There must be a relevant causal connection between the harm feared and the Convention category so that it can be said that the harm is motivated by and directed at the Applicant because of that Convention ground”.

[54] The Tribunal concluded by stating that the Applicant faced persecution because of what he had done as an individual, refusing to lead the followers of traditional religion in his village, “not for reason of his race or religion”. It also dismissed the applicability of whether there could be a Convention ground of particular social group, noting that such a group had to be:

“a cognisable group within their society...Moreover, the characteristic or element which unites the group cannot be a common fear of persecution. In other words, the group must not be defined by the persecution.”

[55] The decision in *N96/12507* (ibid.) was however successfully appealed to the Federal Court of Australia. In the decision, *Vitalia Ananze Okere v Minister for Immigration & Multicultural Affairs* [1998] 1171 FCA, Branson J referred to Article 31 of the *Vienna Convention on the Law of Treaties*:

“ which calls for a holistic approach in which “[p]rimacy is to be given to the written text of the Convention but the context, object and purpose of the treaty must also be considered”.

[56] The Court referred to the need to apply “common sense to the facts of each case”, citing a decision of Mason CJ in *March v Stramare* (1991) 171 CLR 506, at 515). With regard to that decision, it was said:

“I appreciate that the *March v Stramare* test is a common law test of causation, but having regard to the principles of interpretation of treaties referred to above, it reflects, in my view, an appropriate approach to the construction of this aspect of Article 1A(2) (of the Refugee Convention)....

....The RRT was required in this case, in my view, to ask itself whether, applying common sense to the facts which it accepted, the applicant had a well-founded fear of persecution, the true reason for which is his religion.

It follows from the above analysis that I reject the contention made on behalf of the respondent that Article 1A(2) of the Refugee Convention is to be construed as excluding from the protection afforded...[by the Convention] persons who have a well-founded fear of persecution which is motivated not directly for reason, for example, of their religion, but only "indirectly" for reason of their religion. According to this contention, for example, persons who have a well-founded fear of persecution for reason of their refusal to work on the Sabbath could not be found to have a well-founded fear of persecution for reason of their religion; the persecution feared by them would be related to their refusal to work and not to their religion.

Professor Hathaway in his book *The Law of Refugee Status* (1991) at p. 148 expresses the view that "indirect prevention of religious practice is sufficient to establish a claim to refugee status". He refers to the decision of the Immigration Appeal Board (Canada) in *Tomasz v Gozdalski* (decision M87-1027X, 23 April 1987)...

..History supports the view that religious persecution often takes "indirect" forms. To take only one well known example, few would question that Sir Thomas More was executed for reason of his religion albeit that his attainder was based on his refusal to take the Succession Oath in a form which acknowledged Henry VIII as head of the Church of England."

[57] Branson J set aside the decision at first instance, and referred the matter back to the Refugee Review Tribunal for reconsideration. That reconsideration did not eventuate however, for unrelated reasons.

[58] Before leaving this section of the decision, the Authority notes in passing that New Zealand is a State Party to the Vienna Convention on the Law of Treaties (23 May 1969). That Convention did not come into force until 1980, subsequent to the Refugee Convention, however it has been accepted by the International Court of Justice that the relevant article (Article 31) merely restates the customary international law position (see *Territorial Dispute Case (Libya v. Chad)* [1994] ICJ Reports para 41).

Canada:

[59] The Authority has located five relevant decisions of the Immigration and Refugee Board of Canada Convention Refugee Determination Division (C.R.D.D.).

[60] In *B. (I.F.) (Re)* [1991] CRDD No. 355 No. M91-01381 (10 July 1991), the claimant was a Christian whose father was a high priest of the Ogboni cult. He was summoned by the cult to initiate his daughter as a priestess, and the claimant

was told that if she refused she would be killed. The claimant attempted to get help from within her church, and from the police who advised that there was nothing that they could do and refused to take her complaint. The police officers with whom she dealt referred to the existence of cult members occupying “virtually all important positions in the judiciary, army, police and even in the policy-making body of the country”. She left the country with the assistance of her church and claimed refugee status.

[61] The Board, however, in dismissing the claim, referred to country information (which the Authority notes includes much the same information which it has sourced) and stated:

“Based on documentation cited above, we believe that the obligation to be initiated into the Ogboni society is limited to sons, or perhaps the eldest son, although the documentation does not say this, of an Ogboni priest. We believe that the risk is minimal - if any- that a daughter, even the eldest, and surely not a young daughter of twenty-three, the age of the claimant, be obliged to be initiated into the Ogboni society (sic)”.

[62] The Tribunal rejected the credibility of the account on the above basis. It also stated:

“Were she ...a male descendent, we could consider the well-foundedness of a fear of persecution. However, the claimant, the eldest descendent, is a female descendent and documentation does not support her claim to belonging to a particular social group....”

[63] In *G. (E.C.) (Re)* [1991] CRDD No. 1211 No. U91-05670 (21 November 1991), the Tribunal dismissed the claim of a Christian male who had refused to offer a human sacrifice as directed by Ogboni cult members when his father had fallen ill. He claimed to have been beaten and escaped. His father had subsequently died, resulting in the claimant having the obligation to take his father’s title.

[64] In this decision, there is no reference to whether the account presented by the claimant was accepted as credible. The Tribunal appears to have focused on the comment of retired Professor Morton-Williams (in a telephone interview) which opined that the Ogboni “had lost its judicial role in today’s society and government although it still commands some fear and exerts some influence but not to extent that it did in the past”. The Tribunal considered that :

“There is no indication in the documentary evidence that the Ogboni society or any other secret society has infiltrated the rest of Nigeria or that its activities are tolerated or widespread.”

[65] It also went on to state that:

“Nor is there any indication that the government of Nigeria tolerates actions of a criminal nature by any secret society. Thus neither the Ogboni, nor for that matter any other secret society, can violate the laws of Nigeria with impunity.”

[66] It referred to the presumption of state protection stating that there was no indication that any barriers existed to prevent the claimant from seeking protection elsewhere in Nigeria.

[67] Similarly, in the case of *K.(X.X.) (Re.)* [1993] *CRDD No. 390 No. U93-08591* (21 December 1993), the Tribunal was faced with a claim from male Christian who had refused to take up his father’s position within the Ogboni cult. His business had been burnt down by Ogboni. In this decision, as in the previously cited decision, no reference was made with respect to the credibility of the account presented but no adverse comments were made in that regard. The Tribunal referred to an DIRB Response to Information Request NGA 10364 (16 March 1992) which referred to Ogboni rituals as being illegal and amounting to a criminal offence. When this had been put to the claimant he had responded by saying that “people do them anyway”. The Tribunal also referred to the same IRBDC Response to Information Request (*ibid*) Ogboni as “a satanic cult officially banned by the government”. The claimant had stated that the documentation had been written in a way to protect the Ogboni and that “many of the top people” (within the police or other agencies from whom one might seek help) were Ogboni.

[68] On the facts the Tribunal found that the claimant had not sought help and that it was not unreasonable for him to have sought the protection of the state, particularly when his business was burnt down. The Tribunal considered that the claimant would be protected by the state from the harm feared, and also commented that he had failed to establish the presence of a Convention ground in his case.

[69] In *E. (L.L.) (Re)* [1992] *CRDD No. 584 No. M91-07499* (3 April 1992) the Tribunal granted refugee status to a male, Christian, lawyer from Nigeria, who had encountered problems at the death of his father, an Ogboni cult member. The claimant had been required to take his father’s title, stating that initiation of the eldest son at the death of his father (if it has not already occurred during the

father's lifetime) is compulsory at the time of the father's death. Membership would have required him to engage in abhorrent practises. He referred to the issue of the Government ban (of the cult) but stated that the enforcement of the law was not possible. He stated "they make claim to changes to alleviate pressure on them and make themselves appear more acceptable, but they still do the same things". He also named individual and group members of the cult who held positions of importance within society, and referred to lawyers who were members of the cult getting "special dispensations from Judges who are also members. If you want protection, you have to join". He stated that cult members were "known to kill people who cross them. People who cross them have disappeared", and of having heard of situations where people tried to refuse initiation into the Ogboni society and were not seen again.

[70] The claimant stated that he could not have lived elsewhere in Nigeria without people knowing, having relatives in every major city in Nigeria.

[71] The Tribunal accepted the credibility of the account given, considering it was consistent with available country information. With regard to the issue of state protection the Tribunal referred to country information suggesting that:

"...[W]hile the agent or agents of persecution are not state sanctioned, the agent or agents of persecution appear to be a group over which the state has little control, because of the myths surrounding the group as well as lack of effective control".

[72] The Tribunal ultimately accepted that the claimant faced a well-founded fear of persecution across Nigeria, placing particular weight on the fact that he was a member of the Nigerian bar. It was considered that he therefore had some profile in that regard.

[73] It found that the applicable Convention ground was 'a particular social group'. In a brief analysis, which did not actually specify the particular social group, it simply referred generally to this concept being "supported by the testimony and the documentation which confirmed that initiation into the Ogboni Secret Society is by descent".

[74] In *S. (H.O.) (Re)* [1992] CRDD No. 351 No. C92-00088 (21 September 1992), the Tribunal dismissed a claim brought by a female claimant, making adverse findings about the credibility of the claim which really in any event amounted to a family dispute.

Is there a chance of the appellant being persecuted if returned to Nigeria?

[75] In turning to the appellant's risk of persecution if returned to Nigeria it is necessary to consider the relevant country information. Taking a general overview of the information, and, placing weight on the fact that the Ogboni cult clearly goes to some lengths to adopt secrecy about itself and its rituals resulting in a situation where there is consequently a very limited amount of reliable information available in this regard, we accept that what the appellant has told us that he fears as generally reliable.

[76] We accept that there would be a real chance if the appellant returned to his home area that his life would be at risk at the hands of Ogboni members as a result of his failure to fulfil his obligations. He is well known there, having lived there all of his life. It appears from the evidence that his father also had some degree of local prominence within the cult. We accept that the Ogboni relies on continuity as a means of ensuring its continued existence, and that fear and mysticism are central tenets of its belief system. The UNHCR information to which we have already referred, while not entirely supportive of the appellant's case, did note that risks arise when a member (of the cult) withdraws membership. It stated that such "is seen by (the) group as a violation/betrayal of oaths sworn".

[77] Thus we accept that the appellant faces a real chance of persecution in his home area.

[78] However, the issue of whether there is an Internal Protection Alternative (IPA) available to the appellant in this case now needs to be determined.

Internal Protection Alternative:

[79] Taking a general overview of the country information to which the Authority has already referred, certain conclusions can be drawn. The Authority notes however, that it has placed particular weight on the information from the office of the UNHCR (Nigeria) given that it is recent, obtained from officers working 'in the field' in Nigeria (whose task it is to deal with refugee issues), and is generally considered to be reliable and independent. We also note that no issue was taken with the reliability or accuracy of this information by the appellant's counsel.

[80] While the Ogboni clearly still have a considerable presence in Nigeria (and indeed the Authority has already accepted that the appellant faces a well founded risk of persecution from the cult in his local area), the cult's sphere of influence is clearly less than it has been in the past. Certainly while some dire tactics are still adopted by the cult, and efforts made by its members to maintain secrecy, on the other hand, its activities are, for instance, no longer legally countenanced.

[81] It is material in our view that cult members seek to show themselves to one another in order to obtain advantage and privilege. The appellant's evidence was consistent with this, for example when he described the paraphernalia and symbols used (such as the wearing of rings) by cult members so they can identify themselves to one another. The Authority has gained the clear impression that this is the way that cult members primarily exert their status within the community. The evidence strongly suggests that there are cult members at all levels of Nigerian society, but it is important to note for present purposes that (according to the UNHCR information), that this is "only when their membership is kept a secret", and that "it is hard to tell who these persons are".

[82] We do not overlook the fact that the appellant focused on the risks of his non-compliance of his cult obligations. The UNHCR information, *inter alia*, also referred to these risks. However, the appellant maintained that this would be a real risk for him where ever he went in Nigeria, for reasons which we will now explore.

[83] The appellant stated that as an Edo, there was a greater likelihood (and therefore expectation) of his being thought to be an Ogboni member. The country information however does not suggest this. Rather, the only tribal group with which the cult is so strongly tied is the Yoruba. This is not to say that cult members do not come from other tribes too - we accept that they do do so - however, there is no independent evidence which suggests that Edo are more likely (or even likely at all) to be seen as connected with the cult. The UNHCR information (cited earlier) stated:

"The cult is widespread throughout Nigeria however the majority of the members originate from the Yoruba tribe. The Yoruba tribe is primarily situated in the South West of Nigeria. It is possible to move to other parts of the country to escape or avoid the cult members, especially when one moves to a big city such as Lagos".
(emphasis added)

[84] The appellant also focused in his evidence on the risks posed by the markings he has on his hands and upper arms. We have accepted that these were carried out as a part of his local initiation. However, there is simply no evidence which suggests that the placing of such markings is in any way common. None of the many sources of relevant country information, or decisions from other jurisdictions, referred to such markings at all. When the matter was raised by us with the office of the UNHCR (Nigeria), the following information was given:

“It should be stressed that it is generally unknown which persons belong to the Ogboni cult. In other words the cult members do not distinguish themselves and do not look different from non members. Most members will carry on with their day to day practices, such as going to work, going to church, etc. without anyone having to know that they are cult members. As for distinguishing marks such as scars and tattoos, it is common in Nigeria for people belonging to a certain group, family, clan or village to have distinguishing marks or tattoos depending on their traditions. This has the purpose of identification towards that particular group. As for the tattoos on the back of IC’s hands and upper arms, these are not typically Ogboni symbols. As for the cuts on IC chest, again this does not necessarily mean that he belongs to the Ogboni. It is possible that these cuts were applied according to the tradition of his family or village where he belongs to, but more information is needed on IC’s background in order to verify this.”

[85] The Authority notes in regard to the above extract, that it is already aware from the appellant’s evidence that his chest cuts have no real relevance to the case (and thus we have not previously referred to them) as they simply denote that he is the eldest son but not anything about cult status *per se* (as suspected by the UNHCR officer). Similarly, facial markings were, the appellant stated, tribal markings, not cult markings. Thus, we do not accept that there is any evidence at all that the appellant would be identified (outside his own area where local practises apply) as a cult member because of his hand and arm markings.

[86] It is noteworthy too, that the appellant has not contested the evidence from the UNHCR in this regard when given the opportunity. His counsel referred to obtaining further information, however we have already made exhaustive enquires over a long period of time for information pertaining to the cult. None of that information referred to the markings/tattoos as denoting cult membership - indeed the focus appeared to be on the secrecy of the membership. The above evidence clearly suggests that the appellant’s markings relate to a localised tradition which would only be of relevance in his home locality. The comment by the UNHCR officer (about obtaining further information) referred to the chest scars and facial scars - however the appellant himself has not claimed that these are cult markings, so little purpose would be served in obtaining further information about these.

[87] We also note that the relevant decisions of the Canadian authorities (while we accept that their application of the Refugee Convention is not necessarily quite the same as our own) only found in one case that the applicant faced a well founded fear of persecution across Nigeria. This was based on his relatively high individual profile as a member of the Nigerian bar. (See E. (L.L.) (Re) [1992] *CRDD No. 584 No. M91-07499* (3 April 1992). The appellant in the present case has not made any such claim, nor do we consider on the evidence that this would apply to him.

[88] For the above reasons, we are of the view that the appellant has the option of an 'Internal Protection Alternative' in other parts of Nigeria away from his home area. Any risk of persecution in other places outside his own locality falls below the level of real chance, which level of risk is therefore eliminated. We also consider that in such a site or sites there are no other particularly serious harms of the kind that might give rise to the risk of return to the place of origin (indeed, counsel conceded this point in his written submissions). Lastly we find that there is nothing to suggest that the local conditions in any such site do not meet the standard of protection prescribed by the Refugee Convention.

Convention Ground

[89] Given our findings as above, it is not necessary for a finding in respect to the vexed issue of Convention Ground to be reached.

CONCLUSION

[90] For the reasons set out above, we find that the appellant is a not refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

.....
 L Tremewan
 Member
 Refugee Status Appeals Authority