

**0805340 [2008] RRTA 418 (20 November 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0805340

**COUNTRY OF REFERENCE:** Nigeria

**TRIBUNAL MEMBER:** Robert Wilson

**DATE:** 20 November 2008

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Nigeria, arrived in Australia on [date] and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa on [date]. The delegate decided to refuse to grant the visa on [date] and notified the applicant of the decision and his review rights by letter dated [date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations for the grant of a Protection (Class XA) visa.
4. The applicant applied to the Tribunal on [date] for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources, including its file.
20. The applicant appeared before the Tribunal on [date] to give evidence and present arguments. The Tribunal also received oral evidence from [Person A] The Tribunal hearing was conducted with the assistance of an interpreter in the Yoruba and English languages.
21. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.

*Application for a Protection visa received on [date]*

22. The applicant is a single Christian man born in [Location A], Nigeria. His parents and siblings live in Nigeria. He has received [number] years of education and he can speak, read and write Yoruba and English. He studied [course] at Lagos State Polytechnic from [year] to mid [year]. From then until [month, year] he was in hiding because of the problems he had in Nigeria. He travelled to Australia for [Event A]

*Typed statement in answer to questions on the Application for a Protection visa form.*

### **Q41 Why did you leave that country?**

I need the help of the Australian government if I am sent back I will be killed by the [Organisation A].

The [Organisation A] wanted to forcefully recruit me. As a Christian I have been baptised by the Baptist Convention. God says they shall not kill your neighbour so it is the will of God for me not to kill.

They sent letters to my house asking me to meet them but I did not go. I received the first letter in [month, year]. They want to recruit me because I am very strong, strong physical body and they need people who are strong.

They are very violent and they kill people. When they graduate from the [Organisation A] they turn into assassins and the government uses them against the political rivals.

If I don't want to be with them they will still take me by force and if I don't do what they tell me to do they will torture me, punish me and if I still don't do what they tell me to do they will kill me.

I saw the members of the [Name A] strike on campus. I saw them searching trying to find one of their opponents to kill him, they came with guns AK 47 guns. About [number] of them were looking for one person. All of us in the campus, the students were running. By the time the

police came the student had been killed and the [Name A] men had run away. They were dressed in black and they had masks, this is how we knew they were the [Name A].

I told my mother that I was scared. My mother was also scared but she told me that it is not my fate, that God would look after me. I asked my mother to help me, to do something to keep me safe before it was too late. My mother sought advice from a friend Her friend told her that the only way to help me was to fly me out of the country because those cults are very dangerous . My mother sold all her properties to save me.

We also told the Pastor in our church the problem and he also advised that I should leave the country. I came to Australia because to attend [Event A] and because my life was in danger.

I arrived in Australia on [date], one day before the other people of the delegation (2 other people) from my country arrived. I am the leader of the Nigerian delegation that came to [Event A], I came 1 day earlier to escape from the people who were after me.

..

**Q42 What do you fear may happen to you if you go back to that country?**

If I go back to my country they will forcefully take me with them and they will hurt me and kill me because I refuse to join them or do what they say I should do.

**Q43 Who do you think may harm you/mistreat you if you go back?**

The [Organisation A].

**Q44 Why do you think this will happen to you if you go back?**

Because they want to forcefully recruit me and I refuse. As a Christian I do not want be forced to be involved and do bad things against people, in doing evil things and doing things for or against the government.

They are still looking for me. After I came to Australia they came looking for me and attacked my mother.

I cannot hide from them. They have their spies and agents and they can find me.

One of my former high school friends has joined the society so he has all the information and photographs of me, he knows me very well and my family.

**Q45 Do you think the authorities of that country can and will protect you if you go back? If not, why not?**

If I go to the police it be more dangerous because they have connections with the police. They get the guns from the police.

23. The applicant also provided an attestation letter (photocopy) dated [date] from [Person B], the Pastor of [Church A], Lagos, Nigeria. The pastor stated that he has known the applicant for [number] years. He stated that he had a strong Christian background, and was a member of the Youth Fellowship of the church.
24. The applicant further provided a letter (photocopy) from [Person C], the [position title] at Lagos State University Teaching Hospital. He stated that (the applicant's mother) [Person D]

had been attacked by cult members who were looking for the applicant. He described her symptoms. She was discharged some weeks after admission.

25. The applicant further provided his Certificate of Baptism (photocopy), which stated that he was baptised on [date].
26. The applicant's mother made a declaration (photocopy) dated [date] in which she stated that the applicant was born on [date] in Lagos, Lagos State.
27. The applicant also provided four typed threats (photocopies) dated in [month/month, year] and [month, year].
28. He also provided a curriculum vitae and a Diploma from Lagos State Polytechnic.

*Hearing held before the Tribunal on [date]*

29. The applicant provided photos of his mother participating in church activities. Another photo showed her being awarded with a [Organisation B] certificate. Another photo showed the applicant with friends at the Polytechnic. Further photos were provided.
30. The applicant provided a Certificate [certificate type] given to his mother from an organization named '[Organisation C]' ([Person E] Chapter, [Church A]). It is dated [date].
31. The applicant's father is alive. He is a Roman Catholic.
32. The applicant stated that there are three religions in Nigeria: Christians, Muslims and Animists. There is a crisis in Nigeria in that the animists wish to recruit Christians into their secret society. The applicant has been baptised and does not want to be a member of this evil society. He rejected them because of his Christianity. The animists wanted to force him to join by any means. If he rejected them they might want to kill him. They recruited a young Christian. His mother consulted a Christian friend who said to send him overseas. The Pastor supported it, as the applicant may be killed otherwise. The animists looked for a way. They attacked his mother in her home In [month, year] they gave his mother a letter for him, stating that he had to report to the Shrine. He did not want to go, and his mother was scared. She sold some property to enable him to leave Nigeria by aeroplane
33. The applicant stated that the animists have the highest population in the Nigerian community. If the applicant stated in Nigeria he would not receive justice from the judiciary.
34. The applicant had to discontinue his course at the Polytechnic in order to leave Nigeria.
35. The applicant stated that the group that sent him the threatening notes is called '[Name B].' He did not know the names of the persons who signed the documents.
36. The applicant was baptized at [Church A] on [date]. He was baptised in a pit, like a small swimming pool.
37. The applicant knew that Jesus was the Son of God, and that he died for mankind's sins, nailed to the cross. He referred to his favourite miracles of Jesus as the healing of the blind man and of lepers He gave a fair description of the meaning of Baptism.

38. The applicant did not know that 25 December was referred to as Christmas. He did not know who baptised Jesus Christ (it was John the Baptist). He initially stated that Abraham did. He initially stated that Easter represented the birth of Christ.
39. The Tribunal said words to the effect that it was going to put information that may be the reasons for affirming the Department's decision. The consequences of the information is that if the responses are not satisfactory, then the applicant may not be granted a Protection visa and I will invite you to comment on or respond to the information. You may respond to that information today or in writing. The Tribunal stated that it would go through the information and the applicant could then decide what he wanted to do. Additional time to comment on or respond to the information may be requested
40. The information provided was as follows.
  - (i) Newsletters from Lagos State Polytechnic website which were issued by the Information and Public Relations Unit of the Rectors Office, indicate recent problems with student cult gangs on campus. The management of the university took action and put three of the students involved on probation. The relevance of this information is that the authorities at this level, the university, were taking action against these cultist groups. The Tribunal stated that it would send the adviser a reference to that article.
  - (ii) On 16 July 2007 the *Daily Champion*, a Lagos based news organisation, reported on the arrest of a "notorious cultist" who kidnapped two students from Lagos State Polytechnic. The importance or relevance of that information is that the police at this level were also taking action against cultists.
  - (iii) After an incident in 2004, the Lagos State Polytechnic decided to establish "an anti-cultism bureau." The relevance again is that the university was trying to do something about the cultists.
  - (iv) The next piece of information was that raised by the Department's decision maker that the cultists appear to be motivated by criminal intent to get people to join the cultist groups and it is not based primarily on a person being a Christian, or a member of a particular social group, or any other Convention reason.
  - (v) The Tribunal also raised with the applicant whether it was possible for him to live in another part of Nigeria. Firstly, away from the university, and secondly, away from cult groups. If that is possible, then if he can safely live in another part of Nigeria, then Australia does not have a protection obligation to him
41. The applicant stated that he would like two weeks in which to reply.
42. [Person A], one of four persons supporting the applicant at the Tribunal hearing stated that she first met the applicant while he was in detention. She has been driving him all over since then. She stated that she has been dealing with refugees for several years, and runs an

organization called [Organisation D]. She won a [type of] Award in [year] for her work. She stated that the applicant is totally trustworthy and his actions have been motivated by his belief in God.

43. The Tribunal tried to ring a witness in Nigeria, [Person B] on the two numbers provided, on several occasions, without success. The Tribunal asked if a written statement could be obtained.
44. The Tribunal asked for the applicant's passport to be provided to the Tribunal.

*Letter dated [date] sent to the applicant's adviser by the Tribunal*

45. The letter provided the country information referred to in (i), (ii) and (iii) above. (Reproduced in the INDEPENDENT COUNTRY INFORMATION, below.)

*Letter from the applicant's adviser dated [date]*

46. The adviser provided the following four documents.
47. A letter from [Person B]. In the undated letter [Person B] stated that he has known the applicant for the past few years as the [position title] of [Church A] He stated that he was an ardent church-goer and a church worker. He stated that strategies on curtailing the cultist activities in Nigeria's higher institutions had been formed. He stated that the security provided by the Police Force is 'prone to loopholes'.
48. [Person B] stated that with reference to the Daily Champion story on 16 July 2007, previous governments in 2004 and 2007 had pledged to eradicate the scourge, without success. Various animist individuals on Nigeria's higher institutions and powerful politicians who are in one 'negative cult or the other,' foiled the programmes aimed at eradicating cultism in our institutions of higher learning.' He stated that the applicant's mother had been attacked by the cultists after he left Nigeria. He continued in his support for the applicant.
49. [Person F] of the [Church B], [location] (a suburb of Sydney) wrote to the Tribunal on [date], in support of the applicant's application for refugee status. [Person F] stated that he had served in Africa and he understood the problems. He stated that he has no reason to question or doubt the matters shared with him by the applicant. The pastor had witnessed this before when he served in Africa, and understands 'the situation is real and frightening.' He stated, 'His future is certainly unsure at the best and at the worst is very grim.'
50. [Person F] stated that after commencing worship at [Church B], the applicant came the next day asking to do voluntary work at the church. He did not seek financial reward or 'even for us to support his case.' He was given manual work to do which he completed 'without complaint or reward.' He returned each day offering his help. He is 'different to just about all who come to our church – he has not asked for anything!'
51. [Person G], the Senior Pastor at the [Church B] stated in a letter dated [date] stated he has inspected some of the applicant's personal documents and he believes that he is a genuine Christian and has attended [Church A] in Nigeria.
52. [Person D], the applicant's mother, stated in an undated typed statement that her intention after the applicant's problems was to send him to a higher institution of learning in [location], Nigeria, where his father came from. In a letter of threat from the cultists to her, they made



her aware that they knew of her plan, and that if she sent him to the [location] or [location] areas of Nigeria , he would be identified and earmarked for their nefarious mission. One of the applicant's lecturers made her understand that the applicant was the cultist's choice and nothing could be done to subvert their wish to enlist him into their animist religion. She heard about the [Event A] at a church service and she channelled the proceeds of the sale of her property to send him to Australia.

*Letter from the applicant's adviser dated [date]*

53. **Important issues for the Tribunal to consider when examining the Applicant's claims**

The applicant's claims that he is at risk of persecution if returned to Nigeria because of his belief in Christianity and his rejection as a Christian to believe or participate in a cult group(s).

**Comments related to the information raised by the Tribunal at the hearing that the cultists appear to be motivated through some criminal intent and not primarily based on a Convention reason.**

It is submitted that the Tribunal should consider whether although cultist appear motivated through some criminal intent the motivation of the cultists may be also Convention related. In terms of assessing the Applicant's claims it is submitted that the Tribunal should consider whether young men who refuse to join cults in Nigeria constitute a particular social group and in particular whether young Christian men who refuse to join cults in Nigeria constitute a particular social group for the purposes of the Convention definition.

In considering this it is important for the Tribunal to consider the Applicant claims that he is at risk of persecution is real because authorities in Nigeria are not able to provide effective protection to members of this particular social group.

**Comments related to information provided by the Tribunal at the hearing (and its letter dated [date]) regarding references to authorities at Lagos State Polytechnic taking action against cults.**

In terms of the above it is submitted that it is important for the Tribunal to consider,

- i) That the the risk faced by the Applicant is not limited to a location (ie.Lagos State Polytechnic)
- ii) That the above evidence can also be seen as supporting the Applicant claims regarding the danger faced because of the existence of cults in Nigeria as authorities at a tertiary institution have had to take steps such as establishing an armed police post on campus and an "anti-cultism bureau at Lagos State Polytechnic to "...investigate, document and take appropriate actions on cultists based on complaints of threat and harassment by students; to appraise cult situations every six months, and to determine the extent of the membership of students in cult-activities in the polytechnic "(Tribunal's "Invitation to Comment on information letter" p2, paragraph 3). It is submitted that the need for a tertiary institution to take such steps also provides an example that authorities in Nigeria are not able to provide effective protection against cultists.
- iii) It is also submitted that there is independent country information (see Country Information below) that state and federal laws and the actions of university authorities appear to have been unsuccessful in curtaining cult activity and in providing effective protection.

## COUNTRY INFORMATION

An example of independent country information that provides information to support the Applicant claims that authorities in Nigeria to have been unsuccessful in curtaining cult activity and in providing effective protection is the immigration and Refugee Board of Canada's publication "Nigeria: Societal and government reaction to student cult activities (2002-2004)" dated 23 February 2005 available at <http://www.irb...>

This publication states:

*"An Association of African Universities report by Sam O. Smah of the Centre for Development Studies at the University of Jos, in Nigeria, identifies 1981 as the year and the University of Lagos as the site at which the earliest known incident of cult-related violence took place (Smah May 2001, 17). The military regime of General Mohammed Buhari (Offiong 2003, 102) issued Decree No. 20 of 1984, which was amended by General Ibrahim Babangida in 1989 by Decree No. 47, to establish a special tribunal able to impose a fine of 50,000 naira [valued at CDN\$473.00 as of 23 February 2005 (Oanda 23 Feb. 2005a)] or a five-year prison term, or both to offenders (Smah May 2001, 20). Decree No. 47 in 1989 empowered school vice-chancellors to ban societies whose activities contravened the national or public interest and suspend students suspected of belonging to secret cults (ibid.). Still the problem of cult violence continued (ibid, 17-20; see also Daily Champion 3 Sept. 2004), so much so that President Olusegun Obasanjo adopted an anti-cult strategy following national outrage over the killing of five students at Obafemi Awolowo University on 10 July 1999 (Daily Trust 6 Aug. 2002; This Day 12 July 2004; Daily Champion 3 Sept. 2004; ibid 1.5 Sept. 2004; ibid. 30 Aug. 2004). Measures included ordering vice-Chancellors to expel cult members from their schools within a specified time period (This Day 12 July 2004; Daily Champion 3 Sept. 2004; ibid. 30 Aug' 2004; ibid. 15 Sept. 2004) or lose their jobs (Off long 2003, 139), offering a monetary reward to cult members who renounced their association with cults (Daily Trust 6 Aug. 2002; Daily Champion 15 Sept. 2004; ibid 30 Aug. 2004), and promising to establish a unit to identify cults and their activities and a database with the names of dismissed students as a way to keep them from enrolling in other schools (ibid.).*

*In spite of Obasanjo's seeming tough stance on cults, cult violence has worsened (ibid.; ibid. 3 Sept. 2004; Daily Trust 6 Aug. 2002; This Day 12 July 2004; Odili 11 Aug. 2004; Moja Jan. 2000, 42; ACCORD and UNHCR 28-29 June 2002; Smah n, d.; ibid, May 2001, 5-6; Vanguard 19 Dec. 2004). Initially, cult activity appeared to wane (Daily Champion 3 Sept. 2004; ibid 30 Aug. 2004; Smah May 2001, 38), at least in the first year following Obasanjo's decree (ibid.; Daily Champion 30 Aug. 2004), as universities organized televised renunciation sessions for students who confessed to their membership in a cult (ibid ; Smah May 2001, 5, 13; This Day 24 Jan. 2005; Daily Trust 6 Aug. 2002), apologized and proclaimed themselves born-again Christians (ibid.).*

*By all accounts, however, the federal government's efforts to eradicate cult activity, described as "inadequate" and "half-hearted" by the media (Daily Champion 30 Aug. 2004) and "ineffective" by a World Bank report (Moja Jan. 2000, 42), failed at stemming the tide of resurgent violence (Daily Trust 6 Aug. 2002; Smah May 2001, 5), Five years after the July 1999 student killing that had prompted Obasanjo's decree, the student union at Obafemi Awolowo University condemned the federal government for not charging anyone for the murders and described cult activity as "more rampant" than in 1999 (This Day 12 July 2004). As recently as August 2004, Rivers state governor Peter Odili, speaking before a summit on security issues, similarly described cultism as 'pervasive and endemic in Nigeria' (Odili 11 Aug. 2004).*

### **Federal Government Action**

*In 2001 the House of Representatives passed the Secret Cult and Secret Society Prohibition Bill, which would make it a constitutional offence for any person to form, join, or take part in any secret cult activity and imposed a fine of 250, 000 naira [valued at CDN\$2,365.44 as of 23 February 2005 (Oanda 23 Feb, 2005b)] or a prison term of from two to five years, or both (Vanguard 8 Feb. 2001). Apparently, the bill required Senate approval and presidential assent before it could become law (ibid.). In 2004 the media reported the Education Minister as saying that a blueprint for reducing cults had been sent to the universities after the Federal Executive Council had approved it (ibid. 19 Dec. 2004; Daily Champion 15 Sept. 2004).*

*Nevertheless, the federal government appears to have done little to follow up on Obasanjo's 1999 ultimatum (ibid 3 Sept. 2004; This Day 12 July 2004). In 2004, the Daily Champion claimed that Nigerians were surprised that Obasanjo had not carried out any additional measures to curb cult activity since the 1999 decree (3 Sept. 2004) while the Obafemi Awolowo University student association went further, accusing the government of "willfully" encouraging cultism (This Day 12, 141y 2004). The National Association of Nigerian Students (MANS) made a similar accusation when, also in 2004, the chairman of the Violent Crimes, Crises and Cultism Eradication and Management committee charged government officials with stoking the flames of cultism and even of belonging to secret cults themselves (Daily Champion 15 Sept. 2004; This Day 17 Aug. 2004). Again in 2004, NANS accused the government of "paying lip service to the fight against cultism" when the individuals who had been apprehended for the death of 10 students in a cult-initiated brawl at the University of Ibadan were allowed to return to the school (Daily Champion 30 June 2004).*

### ***Calls for Government Action***

*The cessation of cult activities, wrote New York University professor Teboho Moja in a 2001 World Bank report, requires the "sustained attention" of government and individual institutions (Maja Jan. 2000, 42). Three years later, C. N. Achi presented a paper at the 2003 ,Engineering Conferences International (ECI) conference, in which he said that efforts to eradicate cults should not begin with the schools but emerge from the action of government and business leaders (ECI 2004, 2). Media such as the Daily Champion and the Daily Trust have been vocal in calling on the government to take action (Daily Champion 3 Sept. 2004; ibid. 30 Aug. 2004; Daily Trust 6 Aug, 2002). In 2002, for example, the Daily Trust suggested the government close down for two years those universities at which incidences of cult violence occurred (ibid). In separate reports the Daily Champion urged the government to make the eradication of cult activity a priority and impose capital punishment on convicted cult members (Daily Champion 3 Sept. 2004), as well as to close up any loopholes in the law or design a law similar to that of Rivers state (ibid 30 Aug. 2004).*

*Other voices calling on the government to act more decisively include Nobel laureate Wale Soyinka, one of the original members of the Pyrates Confraternity that is said to be the progenitor of every subsequent cult (Smah May 2001, 13; Ofiong 2003, 51). Along the lines of the Daily Trust, Soyinka has called for the closure of universities for two years as a means to resolve their problems (Smah n. d., 15), and canvassed for harsher penalties for students involved in cult activities (Vanguard 18 Feb. 2004). Rivers state governor Odili has also encouraged the government to follow his lead in promulgating a law and ensuring police enforce it nationwide (Odili 11 Aug. 2004).*

### ***State Government Action***

*Edo state appears to have been the first state to sign into law a bill banning the existence and activities of and membership in, a secret cult when it passed the Secret Cult (Prohibition) Bill in 2000 (This Day 8 Dec. 2000). According to the Edo state governor, the law gave the police "sweeping powers... including the power to 'arrest without warrant any person reasonably suspected of having committed or about to commit an offence under the law'" (!bid). Two years*

later, in 2003, the Ebonyi state governor signed into law a bill aimed at outlawing cults and weapon possession as a means to maintain law and order and protect human rights (ibid 23 Dec. 2003). The Kwara state governor followed suit in April 2004 when he signed into law a secret cult and society prohibition bill (Daily Trust 27Apr. 2004), and the Enugu State Executive Council sent a bill to the House of Assembly in September 2004 that, when passed into law, will make it a punishable offence to belong to any cult group or engage in cult activities (Vanguard 10 Sept. 2004)- 2004 also saw Rivers state governor Odili pass the Secret Cult and Similar Activities (Prohibition) Law (Odili 11 Aug. 2004). At a youth campaign focused on the dangers of cults, which was jointly organized by the Ministry of Youth and Sports and the Peace on Campus Initiative of Nigeria, the governor of 'Akwa Ibom state indicated that his government will no longer tolerate cult violence and that they will focus on the laws put forward by the House of Assembly (This Day 1 Feb. 2005).

### **Action by Universities**

Following Obasanjo's decree in 1999, the government gave the universities 300 million naira [valued at CDN\$2,838,533 as of 23 February 2005 (Oanda 23 Feb. 2005c)] to carry out his order to end cult activity (Daily Trust 6 Aug. 2002; see also Daily Champion 15 Sept. 2004). Under pressure to act quickly, the universities apparently staged the ensuing televised renunciations to, as the Daily Champion stated, "deceive the concerned public" (3 Sept. 2004). The Daily Trust accused the university authorities of pocketing the money and instructing the cultists to keep a low profile until public and government attention turned to other matters (6 Aug. 2002). Since then, some universities have reportedly expelled students for involvement in cult activities, including seven students from Ebonyi State University (P.M. News 25 Aug. 2004) and about 100 students from Nnamdi Azikiwe University of Awka (This Day 11 Dec. 2004). Over 100 students at Ambrose Alli University (Vanguard 29 Dec. 2004) and 19 students at Delta State University were suspended pending further investigation and the promise of expulsion if found guilty of cult membership (This Day 8 Feb. 2005). The governor of Eyaelsa state approved the expulsion of 25 students at Niger Delta University, among which were the sons of a state commissioner and a top civil servant (Vanguard 22 Apr. 2004).

In spite of these efforts, however, the former vice-chancellor of the University of Ibadan, speaking at a lecture called the "Growing Menace of Cultism in Nigerian Society, " describes university efforts to deal with campus cults as weak, particularly the Matriculation Oaths which failed to catch, as he stated "the real culprits" (Vanguard 25 Oct. 2004). River state governor Odili admitted that school authorities suffer a lack of credibility since they are not completely free of corruption (Odili 11 Aug. 2004). Apparently, some lecturers benefit from cult activities and, as a consequence, encourage their continued existence (ibid.), Nevertheless, Odili commended the University of Port Harcourt for publishing the names of students expelled for cult activities in the Guardian in July 2004, while calling on university authorities to more determinedly root out cultism (ibid).

The former University of Ibadan vice-chancellor lays the blame largely on social and government practices that work against attempts to eradicate cult activity and parents who attempt to influence court-dispensed justice (Vanguard 25 Oct. 2004). The Daily Champion has also argued that expelled students, somehow able to obtain court orders demanding their reinstatement into the school, render the universities ineffective (30 Aug. 2004). As the former vice-chancellor and others, such as Smah, and sociologist Daniel O. Offiong, seem to suggest, the practice of cult activity is a systemic problem with wide and deep roots in the larger society (vanguard 25 Oct. 2004; Smah May 2001, 3, 50; Offiong 2003, 9; see also Moja Jan. 2000, 42). It is a problem, Odili says, that requires "a multi-disciplinary and holistic approach" if it is to be overcome (11 Aug. 2004).

### **Action by the Police**

*A number of media reports tell of the police arresting suspected cult members; for example, in 2003, nine suspects were arrested in Rivers state in connection with the murder of a University of Port Harcourt student (Vanguard 17 July 2003). In 2004, three Ilorin State Polytechnic students and one other woman were arrested for their alleged involvement in campus cult activities and on suspicion of murder (Daily Champion 31 Jan. 2004; This Day 16 Feb. 2004); thirteen suspected cult members were arrested in Enugu while at the scene of an initiation (Vanguard 26 Oct. 2004); twenty-nine students of Moshood Abiola Polytechnic were arrested as state police renewed efforts to curb cult activity (This Day 13 Dec. 2004); and at least 17 suspected cult members were arrested by townspeople of Onicha Local Government Area and handed over to the, Ebonyi state police (This Day 6 Jan. 2005).*

*Police activity was also subject to calls for improvement (Odili 11 Aug. 2004; Vanguard 18 Aug. 2004). The Vanguard lauded Oyo State High Court for sentencing three students to four year prison terms for beating a rival cult member to death and recommended police ensure investigations of cult-related complaints are effective enough to be brought to court (ibid). In 2002, the combined ACCORD and UNHCR report predicted that police protection is likely incomplete because of the attempts of influential relatives of cult members to thwart police action (28-29 June 2002). In his speech to the summit on security issues, Odili, while calling for adequate equipment and funds with which to carry out their task also admitted that police needed to do more to implement existing laws against cult activity (11 Aug. 2004).*

### **Failure to Eradicate Cults**

*Media, academics and others provide a number of reasons explaining why it is that state and federal laws and the actions of university authorities appear to have been unsuccessful in curtailing cult activity (African Affairs 2003, 237; Smah May 2001, 20; Odili 11 Aug. 2004; Vanguard 18 Feb. 2004; Daily Champion 3 Sept. 2004; ibid 15 Sept. 2004; Daily Trust 6 Aug. 2002; This Day 17 Aug. 2004; ibid. 24 Jan. 2005). For example, some suggest that the parents of cult members are senior military and political figures (African Affairs 2003, 237), or wealthy and influential individuals (Odili 11 Aug. 2004; Vanguard 18 Feb. 2004) who supply the cults with weapons (Daily Champion 3 Sept. 2004). Government and other high-ranking individuals have been accused of either belonging to cults or supporting them for their own gain (ibid.; ibid. 15 Sept. 2004; Daily Trust 6 Aug 2002; Odili 11 Aug. 2004; This Day 17 Aug. 2004); NANS has charged politicians with providing cult members with their arms and ammunition (ibid). Soyinka argues that traditional rulers sometimes protect students caught in cult activities from justice (Vanguard 18 Feb. 2004). Others have taken the courts to task for failing or refusing to convict students alleged to be guilty of cult activity (This Day 24 Jan. 2005). Law courts are apparently unable to enforce penalties because the law does not clearly define the nature of a secret cult (Smah May 2001, 20). Finally poor funding, exploding university enrolment, inadequate building and equipment (ibid., 46) and poor living conditions plague universities and fuel students' anger and discontent (ibid., 48; Daily Champion 5 Aug. 2004). "*

In terms of country information and the the Applicant claims it is also important to consider Publications such as the the UN Commission on Human Rights Report on Freedom of Religion which states:

*"The Government of Nigeria generally does not deliberately violate the right to freedom of religion or belief. Although Nigerian authorities have often limited or restricted important religious gatherings or religious ceremonies or, in some places, prohibited the use of microphones, in order to prevent interreligious tensions. the Special Rapporteur has not received indications of the existence of apolicy that would directly limit the right to freedom of religion or belief of Nigerians. "*

*"This however does not mean that Nigerians do not suffer from violations of their right to freedom of religion or belief There are indeed strong and consistent indications that*

*violations of this particular right occur in many parts of Nigeria and are either committed by non-State actors - or are the consequences of acts committed by non-State actors - or indirectly result from the Government's policy or, on the contrary, from the absence of appropriate measures to protect "*

*"It would therefore be wrong to consider that in the apparent absence of direct violations of the right to freedom of religion or belief by the Government, that it is relieved of its international obligations related to this and other rights. As the Special Rapporteur and her predecessor have recalled in many reports to the Commission on Human Rights or to the [UN] General Assembly, the internationally accepted standards of freedom of religion or belief include a relatively extensive catalogue of positive obligations." (UK Home Office COI Report: Nigeria 2007 at 19.02 available at .. )*

In terms of country information it is important to note that country information also raises concern regarding the poor human rights record of the Nigerian government and report the ongoing concern by governments and independent organizations regarding human rights abuses by government authorities in Nigeria including:

- > the extent to which security forces , particularly the police engage in extrajudicial killings, false charges, arbitrary arrests and torture;
- > the existence of judiciary corruption;
- > the existence of police corruption.

For example the US 2007 Country Reports on Human Rights Practices- Nigeria released on March 11 2008 ( available at ..) states:

*"Nigeria is a federal republic composed of 36 states and a capital territory, with a population of approximately 140 million. In April Umaru Musa Yar'Aduo of the ruling People's Democratic Party (PDP) was elected to a four year term as president; the PDP won 70 percent of the seats in the national legislature and 75 percent of the state governorships. The election was marred by what international and domestic observers characterized as massive fraud and serious irregularities, including vote rigging and political violence. Election tribunals, which continued at year's end, contested the results at all levels, resulting in the nullification of nine local-level elections, six senatorial elections, and five gubernatorial elections. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted outside the law.*

*The government's human rights record remained poor, and government officials at all levels continued to commit serious abuses The most significant human rights problems included the abridgement of citizens' right to change their government; politically motivated and extrajudicial killings by security forces; the use of excessive force, including torture, by security forces; vigilante killings; impunity for abuses by security forces; beatings of prisoners, detainees, and suspected criminals; harsh and life-threatening prison conditions; arbitrary arrest and prolonged pretrial detention; executive influence on the judiciary and judicial corruption; infringement on privacy rights; restrictions on freedom of speech, press, assembly, religion, and movement; domestic violence and discrimination against women; female genital mutilation (FGM); child abuse and child sexual exploitation; societal violence; ethnic, regional, and religious discrimination; and trafficking in persons for the purpose of prostitution and forced labor.*

It is also submitted that a government's human rights record is an essential factor in determining a government's ability and willingness to provide effective protection of its citizens and that a government that has a record of serious human rights abuses that include the use of torture,

extrajudicial killings and arbitrary arrest by its security forces and corruption of the judiciary is unlikely to provide effective protection to the Applicant.

### **Relocation**

It is submitted that the Applicant's ability to evade persecution by relocating to another part of the country in order to be safe is not possible since independent country information provides evidence that the situation in Nigeria, regarding cultism and the failure of authorities to provide effective protection occurs across the whole country

*Letter dated [date] from the applicant's adviser*

54. Further country information was provided.
55. An article in the Daily Sun dated 24 October 2008 referred to the Police Commissioner, Mr Marvel Akpoyibo's sojourn in the occult world before turning his life to God.
56. Another article published by the National Association of Seadogs (a.k.a Pyrates Confraternity) stated that the Police Commissioner was never a member of their group, which they stated is an international charitable and humanitarian organization, although he tried as an undergraduate to join. They then stated that in fact the Police Commissioner was one of the Nine Founding Fathers of the Neo Black Movement of Africa, otherwise known as Axe Men on campuses.
57. In another article published in the National Daily on 9 October 2008, the situation regarding the Police Commissioner was discussed. The author stated, 'Nigeria is today bedevilled by corrupt practices in every sector and those who ought to prevent same have continued to be enmeshed in covenant relationship with the unknown gods.'

### **INDEPENDENT COUNTRY INFORMATION**

- (i) Three students put on probation at Lagos State Polytechnic –

Management has placed three students of the School of Part-Time Studies (Evening), SPTS(E): Sokunbi Babatunde Johnson(ND2 Computer Science), Ogunsanmi Olakunle Samuel(ND2 Computer Science) and Unokeniegben Gabriel(ND2 Accountancy) on immediate probation for engaging in cult-related activities.

The trio have been identified as the king-pins of a cult group in the SPTS(E) carrying out relentless terrorism on innocent students through forceful initiation, snatching of GSM hand sets and extortion of money.

The activities of these suspects have resulted into many innocent students being lured out of the campus during lecture hours and taken across the Shagamu Road for initiation into cult groups. They have also been found to close late for lectures and loiter under the cover of darkness around the 1st gate to dispossess students on their way home.

The Rector has reiterated the purpose for which the SPTS(E) was created, "to afford students who could not gain admission through the Joint Admission and Matriculation Examination Board (JAMB) an opportunity to enjoy polytechnic education as well as meet the Lagos states's education policy of Education for all".

He has therefore declared a total war on all forms of anti-social activities in the Polytechnic, emphasizing that “there is no hiding place for cultists” (‘Laspotech News Flash’ 2008, Lagos State Polytechnic website, 23 May [http://mylaspotech.net/newsflash/newsflash\\_2008\\_05\\_23.pdf](http://mylaspotech.net/newsflash/newsflash_2008_05_23.pdf) – Accessed 29 August 2008).

- (ii) On 16 July 2007 the *Daily Champion*, a Lagos based news organisation, reported on the arrest of a “notorious cultist” who kidnapped two students from Lagos State. The report states that:

Police in Lagos have arrested a notorious cultist, who allegedly specialises in kidnapping students and forcing them to join secret cults against their wish.

The suspect identified as Ibrahim Musa was said to have kidnapped two students of Lagos State Polytechnic Ikorodu at the weekend and threatened to kill them if they decline to join one of the cults in the school.

Daily Champion learnt that luck ran against Musa, when the students declined to enlist as members of Eiyé fraternity insisting that they promised their parents not to join secret cults before enrolling in the school.

A witness noted that Musa and four others took the students inside a thick bush at Ikorodu to coerce them to join the cult or face undisclosed punishment.

...Ojajuni, who is a Superintendent of Police (SP) said two students (names withheld) overheard the discussions of the cultists and reported to the police at Ikorodu who immediately raced to the scene.

He stated that Musa has confessed his serial roles in kidnapping and recruiting members for Eiyé fraternity and other cults in several higher institutions in the state (‘Police Nab Notorious Cultist in Lagos’ 2007, *Daily Champion*, 16 July, allAfrica.com website <http://allafrica.com/> – Accessed 2 September 2008).

- (iii) After an event in 2004 a decision was taken by the Lagos State Polytechnic to establish “an anti-cultism bureau” and an armed police post on campus.

The decision to establish an anti-cultism bureau at the Lagos State Polytechnic (LASPOTECH) has come as a big relief to staff, students and parents who are just smarting from an attack suspected to have been launched by cultists on the Isolo campus of the institution on Friday, April 30 during students’ union elections for the 2003/2004 academic session.

...The anti-cultism bureau which would be established by the management of the Polytechnic with the support of Lagos state government, is to be headed by a police officer. The task of the bureau is to eradicate all cult activities and other related vices in the school. Its terms of reference are as follow: to investigate, document and take appropriate actions on cultists based on complaints of threat and harassment by students; to appraise cult situations every six months, and to determine the extent of the membership of students in cult-activities in the polytechnic.

The Governing Council of the Polytechnic further approved for immediate implementation the establishment of a police post with armed policemen at the Isolo and Ikorodu campuses of the institution, raising of the wall fence at Isolo campus, to be reinforced with American



security spiral fence wire as well as the introduction of personal accident insurance scheme for all staff and students.

These measures aimed at beefing up security in the institution became necessary after the suspected cultists beat all security arrangements and forced their way into the auditorium arena of the Isole campus in a convoy of three vehicles. The invaders consequently disrupted the hitherto peaceful students' union elections by shooting sporadically into the air.

Investigations revealed that the attackers, putting on black caps and armed with matchets, had stormed the campus to disorganise the elections after realising that one of their members was clearly losing the election. At the same time, the suspected cultists had an axe to grind with a teacher at the Polytechnic, Ahmed Omotola Ojodu of the department of Business Administration, who was at the voting exercise as one of the returning officers.

Ojodu had allegedly stepped on their toes by exposing an HND 1 Business Administration student, while cheating during the first semester examination of the 2001/2002 academic session. With dismissal hanging on the student's neck, he allegedly led the April 30 attack, identified Ojodu as the lecturer who caught him cheating and ordered that he be attacked by the dare-devil gang that came with him.

Accordingly, several matchet cuts were inflicted on Ojodu, but the one that nearly terminated his life had landed on his head which affected the veins supplying blood to his system. Taking him for dead after falling, his assailants had left him to attack students who were opposed to their activities. It was during this time that Ojodu managed to crawl to a safe point where he was rushed to the nearest hospital. His life was saved after transfusing him with ten pints of blood.

No fewer than eight students received serious matchet wounds from the attackers (Adenipekun, O. 2004 'Lagos Poly Establishes Anti-Cultism Bureau' *Vanguard*, 13 May allAfrica.com website <http://allafrica.com/> – Accessed 2 September 2008).

## **The police**

Human Rights Watch published a detailed report on the Nigerian police in July 2005. It states that the police frequently use torture; that deaths in custody are common; that senior police are aware of this and are sometimes involved; and that complaints and official enquiries rarely result in the perpetrators being brought to justice:

Despite national and international law prohibiting the use of torture, a Human Rights Watch investigation in Nigeria in March 2005 found the use of torture and other cruel, inhuman, and degrading treatment by the Nigerian Police Force to be widespread and routine. The organization conducted interviews in the cities of Enugu, Lagos and Kano with some fifty victims and witnesses. They described brutal acts of torture, dozens of which resulted in death. The violations were perpetrated by and with the knowledge of senior police officers, including inspectors, divisional police officers, a deputy superintendent of police and a chief superintendent of police. So routine is the practice, that some of these senior officers are known within the police stations by the nickname "Officer in Charge Torture" The abuse that Human Rights Watch documented is carried out in local and state police stations, often in interrogation rooms which witnesses and victims said appeared to be especially equipped for the purpose...

...The majority of the victims are ordinary criminal suspects, arrested for crimes ranging from petty theft to armed robbery. Many of these arrests were unlawful and arbitrary because the police failed to inform the suspects of their reasons for arrest or produce evidence against them. Suspects who claimed to be innocent told Human Rights Watch researchers that they were arbitrarily

apprehended at police checkpoints or during anti-crime patrols, either because they happened to be in the wrong place at the wrong time or on the basis of what the police later told them was a tip-off. Most of those interviewed said they were tortured to extract confessions admitting to an alleged crime and forced to sign a statement that was written or dictated by a police officer. Many described how they signed a statement without knowing what it said because they were illiterate or because the document was withheld from them. According to the interviews, young men aged between eighteen and thirty-five appeared to be most vulnerable to torture and ill-treatment. However, Human Rights Watch also documented cases of abuse against women, children and the elderly (Human Rights Watch 2005, *“Rest in Pieces”*: Police Torture and Deaths in Custody in Nigeria, July, Vol.17, No.11(A), pp.1-2).

Section X of the Human Rights Watch report examines the impunity that most police enjoy under the current system:

Impunity is one of the biggest single obstacles to the reduction or eradication of torture and other serious abuses by police in Nigeria. The fact that all but a handful of largely symbolic cases there has been no effort to ensure accountability for violations committed emboldens the perpetrators and has perpetuated the culture of violence in the Nigerian Police Force. Individual victims, human rights organizations and lawyers who have tried to register complaints of torture or ill-treatment with the police authorities frequently cite police obstruction to thwart investigations or prosecution. This may take a variety of forms, for example, direct harassment and verbal or physical threats in an effort to intimidate witnesses to drop the case, connivance with judicial officers to ensure the case is thrown out of court, or attempts to bribe the victims or their families to drop the case... Some local human rights organizations make good efforts to monitor and document police abuses but find they are hampered by lack of capacity and funds. Where they do submit information to the police authorities or the government, it is rare for them to make use of it (Human Rights Watch 2005, *“Rest in Pieces”*: Police Torture and Deaths in Custody in Nigeria, July, Vol.17, No.11(A), pp.56-57).

The report states that criminal investigations into police conduct rarely succeed as the investigation is usually done by the police themselves. Cases rarely get as far as the courts due to police obstruction (Human Rights Watch 2005, *“Rest in Pieces”*: Police Torture and Deaths in Custody in Nigeria, July, Vol.17, No.11(A), pp.58).

Section 1(a) of the 2006 US Department of State report supports the view of Human Rights Watch:

Abuses by poorly-trained, poorly-equipped, and poorly-managed police against civilians were common human rights violation, and the police were rarely held accountable. During the year police, military, and anticrime personnel continued to use lethal force against suspected criminals. For example on June 5, police officers killed 2 youths in Port Harcourt, Rivers State, and detained the driver of the youths' vehicle incommunicado for 17 days. Authorities initially claimed the two youths were known armed robbers; however, when investigation revealed that it was a case of mistaken identity, police attempted to cover the mistake by framing the youths for an actual armed robbery. The youths' father lodged an appeal with the inspector general's office. On occasion police were reprimanded for the use of excessive force. For example on February 20, police in Makurdi, Benue State, shot and killed 19-year-old Suleiyol Hiikyaa, a passenger in an automobile driven by her boyfriend. The couple was allegedly having sex in the vehicle when police became suspicious that the two were armed robbers and opened fire. All four policemen involved were dismissed from the force, and the policeman who fired the shot that killed Hiikyaa was charged with manslaughter.

On March 2, a policeman in Makurdi, Benue State, shot and killed a commercial bus driver when the driver could not pay a \$0.15 (20 naira) bribe. Angered by this killing and the February 20 killing of Suleiyol Hiikyaa, members of the community burned a police station, blocked roads, burned cars, severely beat an assistant inspector-general of police, and reportedly killed at least three policemen. The policeman who shot the bus driver confessed to the killing, claiming he was drunk at the time. He was dismissed from the force and charged with murder. His trial had not begun by year's end.

## **FINDINGS AND REASONS**

58. Based on the applicant's passport and other evidence, the Tribunal accepts that the applicant is a national of Nigeria and it has assessed him accordingly.
59. The applicant's claims may be summarized as follows.
60. The applicant is a single Christian man born in [Location A], Nigeria. He studied [course] at Lagos State Polytechnic from [year] to mid [year]. He fears that a cult group, [Organisation A], which tried to forcefully recruit him. He fears they will take him by force and if he does not do what they tell him to do they will torture him, punish him, and possibly kill him. One of his former high school friends has joined the society and he has information and photographs regarding the applicant, and he knows him and his family very well A group known as '[Name B]' sent him the threatening notes. He does not know the names of the persons who signed the documents. The applicant's mother was attacked by cult members who were looking for the applicant. The applicant had to discontinue his course at the Polytechnic in order to leave Nigeria
61. If he seeks protection from the Police it will be more dangerous because the group has connections with the police. They get their guns from the police. He would not receive justice from the judiciary.
62. The Tribunal found the applicant to be credible, as his evidence when it was able to be tested, generally accorded with the independent country information. The Tribunal accepts the evidence that the applicant attended Lagos State Polytechnic from [year] to mid [year]. The Tribunal was not able to find any information regarding [Organisation A], but it does not place any weight on this, as the country information it has sourced refers to their being a number of different cults. The Tribunal did find information regarding [Name B] group. The Tribunal accepts the applicant's mother's evidence concerning the applicant's desire to avoid the cult group at the Polytechnic. It also accepts the medical report of [Person C] detailing the mother's injuries after being beaten by cult members, and finds that she was beaten by cult members who were trying to locate the applicant. It accepts that the mother was advised that her son would be located by the cult wherever he went in Nigeria. The Tribunal accepts the four threatening notes provided as evidence that the applicant was being forced to enter [Name B] cult.
63. The Tribunal accepts that the applicant is a Christian, although his knowledge of the Christian matters that the Tribunal asked him about did not demonstrate a deep understanding. However, the Tribunal is aware that there are cultural and language difficulties which can arise at hearing, as well as placing too much emphasis on questions about knowledge, whereas faith is more the issue in Christianity. However, in this case the Tribunal was convinced by the evidence of [Person G] and [Person F] of [Church B], [location]; [Person B] of [Church A], Lagos; [Person A] of [Organisation D]; and the

applicant's mother. The Tribunal accepts this evidence. The Tribunal also accepts the applicant's Certificate of Baptism.

64. The Tribunal accepts [Person B]'s evidence that cultism had not been eradicated from Nigeria's higher institutions, and powerful politicians foiled these programmes. The Tribunal accepts the applicant's country information which clearly supports this view. The Tribunal accepts the applicant's adviser's comments about the Tribunal's country information which was shown to support the view that cults are powerful and have not been eradicated.
65. The Tribunal accepts the applicant's statement that it is more dangerous to report cult activities to the Police. This was supported by [Person B] who stated that the police security was prone to loopholes. It was also supported by the applicant's country information. Further, the Tribunal's country information regarding the police indicated that the police are poorly-trained, poorly-equipped and poorly-managed (USDOS 2006) and there is little protection available from the authorities (Danish Immigration Service 2005). The Tribunal accepts the applicant's submission that the authorities in Nigeria are not able to provide effective protection against cultists. In this regard the Tribunal accepts the Daily Champion's 30 June 2004 report that the government has paid lip service to the fight against cultism. The Tribunal also accepts the Accord and UNHCR 2002 report that predicted that police protection is incomplete because of influential relatives of cult members to thwart Police action. The Tribunal accepts the reports that politicians have been charged with providing cult members with arms and ammunition.
66. The Tribunal finds that the applicant's evidence was consistent with the independent country information. As a result of these considerations, the Tribunal accepts the applicant's claims referred to, and summarised above.
67. The Tribunal accepts that if the applicant returned to Nigeria now or in the reasonably foreseeable future, there is a real chance that he would be harassed, and possibly killed by [Name B] cult because of his Christian religion.
68. In *Applicant S*, Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of a particular social group at [36]:

...First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.
69. The Tribunal finds that young Christian men who refuse to join cults in Nigeria form a 'particular social group' for the purposes of the Convention as they have characteristics or attributes that unite them as a group and distinguish them from society as a whole (see *Applicant S*, referred to above).
70. The Tribunal finds that the applicant would not be able to live freely and openly in Nigeria as a member of this particular social group. If he were to do so, there would be a real chance that he would be killed.
71. The Tribunal finds that the Nigerian Police Force is weak and inadequate and cannot protect the applicant (Refugee Board of Canada 2005), and if he lodges a complaint to it, it would persecute him.

72. Overall, the Tribunal finds that the persecution which the applicant fears clearly involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to his life or liberty, significant physical harassment, and physical ill-treatment.
73. The Tribunal finds that the applicant's religion and membership of the particular social group in Nigeria is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a). The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason.
74. In this case, the Tribunal has considered whether relocation is a reasonable option. The Tribunal accepts that there is no part of Nigeria to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.
75. Considering all of the claims of the applicant, both specific and general, the Tribunal is satisfied that the applicant faces a real chance of persecution should he return to Nigeria now, or in the foreseeable future.
76. Therefore the Tribunal is satisfied on the evidence before it, that the applicant has a well-founded fear of persecution for reasons of his religion and membership of the particular social group in Nigeria if he returns to that country now or in the reasonably foreseeable future.
77. There is nothing in the evidence before the Tribunal to suggest that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, Nigeria. The Tribunal therefore finds that the Applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

## **CONCLUSIONS**

78. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

79. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officers ID: PRRTIR</p>
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