

**0900773 [2009] RRTA 337 (30 April 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0900773

**DIAC REFERENCE(S):** CLF2008/162824

**COUNTRY OF REFERENCE:** Nigeria

**TRIBUNAL MEMBER:** R Mathlin

**DATE:** **30 April 2009**

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## 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 [in] December 2008. He applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] December 2008. The delegate decided to refuse to grant the visa [in] February 2009 and notified the applicant of the decision and his review rights by fax [on the same day].
3. The applicant applied to the Tribunal [in] February 2009 for review of the delegate's decision.
4. 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

5. 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.
6. 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).
7. 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'

8. 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.
9. 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.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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**

18. The Tribunal has before it the Department's file CLF2008/162824 relating to the applicant, and the Tribunal file.
19. The Department's file contains notes of an interview conducted with the applicant on arrival in Australia, the protection visa application and supporting material, a recording of an interview between the delegate and the applicant, and the delegate's decision.

### *Airport Entry Interview*

20. The applicant stated that he was born in Lagos on [date of birth deleted in accordance with s.431(2) of the Migration Act 1994 as it may identify the applicant]. He said that he was a mechanic/auto parts dealer. He stated that his parents, wife and two sons remained in Nigeria as well as a number of siblings whose whereabouts were unknown, including a brother, who he said was on the run. He said that he began to think of leaving Nigeria in February 2008, because the fighting was escalating, "they" were killing people and destroying his workshop and his business. "They" are killing people all the time and leaving corpses by the side of the road. He described the groups he feared as militants, but was unable to identify precisely who they were. He travelled to Australia using a genuine Nigerian passport issued in his own name. He left his wife and a three month old baby, but said that the militants do not target women and children.

### *Protection visa application*

21. The applicant provided several residential addresses in Nigeria. He was born in Lagos, but lived in [Village A], Ibaa Town in Rivers State until 1994, when he returned to Lagos. In 2000 he returned to [Village A] In November/December 2007 he moved to an address in Port Harcourt. Between January and September 2008 he resided at a different address in Port Harcourt.
22. He stated that he was self employed as a mechanic-spare parts salesman until 2000. He stated that from 2000 he was self employed, performing odd jobs such as driving, bus conductor, and carrying goods.
23. In a statement setting out details of his claims to protection, the applicant stated that since 2001, conditions in the Niger Delta (where Rivers State is situated) have been very difficult. In September 2008 problems arose in the applicant's "place". The local chief is [Person 1]. He started having problems with the other chiefs who he had previously pacified with money. Disagreements, violence and killings started; the militant boys kidnap people who don't want to join them. The chief wanted the young men to support him and drafted them to fight for him. There were people in [Village A] who were against the chief. The applicant did not want to fight on either side. He ran

from his village and went to Port Harcourt. Later he went to Lagos where an agent helped him to get a visa.

24. The applicant is a Christian. His uncle worships idols. As his father's oldest son, the applicant is expected to continue the practice of worshipping idols. He has been threatened with death if he does not do so. The applicant's father told him that if he saw him in Lagos he would kill him. The applicant was baptised as a baby and has always practised as a Christian.
25. He did not feel safe in Lagos. The people from his region who were chasing him could find him there. He is afraid that he will be killed if he goes back.

*Interview with delegate [in] January 2009*

26. The applicant said that his parents had lived in Lagos for the last five years. He was married in Lagos, in a Christian ceremony. He does not know where wife is currently; she was in the village when he left.
27. The applicant left Lagos for Rivers State as an infant, when he went to live with his mother's sister to learn their culture. This aunt baptised the applicant as a Christian; his father's side were idol worshippers. He returned to Lagos in 1994 to learn a trade; in 2000 he went back to the village because of a political problem causing the locking up of market where he traded.
28. From 2000 in the village he did odd jobs – he carried loads for people and worked as a conductor on a bus, which he said was his main job. He returned to Lagos in late 2008.
29. The delegate asked the applicant to provide the names of towns surrounding Ibaa, saying that if he had lived there, and especially if he had worked as a conductor on buses between [towns deleted: s431(2)], he must be familiar with the villages in the area. The applicant was able to name several towns, but the delegate was not satisfied with his response.
30. The applicant said that he started thinking about coming to Australia from 2007 because of his father, who was not happy with the applicant being a Christian; he wanted the applicant to worship at the family shrine. He wants the applicant to take over because he is the first son, he is supposed to be speaking for their God. When the applicant was in Lagos in 2007 his father told him that if he ever set eyes on him again he would kill him; that day he used a glass on the applicant and hit him on the head.
31. He last saw his father in about September 2008; he went to Lagos and tried to see him but his father had had a stroke. The applicant's mother is against what his father is saying, but she does not argue with him.
32. The applicant left the village and went to Lagos in September 2008 because of the problem with his father, and also the chief of the village wanted youths to fight for him. The chief's supporters approached the applicant on a Sunday at 8pm, when he was talking to a group of people about Christ; they were just outside, near the applicant's house. Four young men came along, with bikes, and called out "what are you doing, why are you outside when it is dark; are you doing something against [Person 1]?" The applicant said that he had nothing against him, but they said "if you are not for us you

must be against us”. They said the applicant is a strong man, he should join them. The applicant took off and ran, and the next day went to Pt Harcourt.

33. The delegate put to the applicant that at the airport, when asked when he first thought about leaving, he said February; but now he said that he left because of this approach in the village in September 2008. The delegate also noted that the applicant had said that he had been thinking about leaving for a while because of problems with his father, and asked would not his father have killed him by now if he in fact intended to do so.
34. The delegate asked why the applicant had got a passport in April 2008, and suggested that he had been planning to come to Australia then. The applicant denied this.
35. The applicant said that he had met a guy on the truck in Pt Harcourt and had told him about the problems with his father; this man told the applicant that he would introduce him to a person who could help him get a visa. The applicant said that he paid 350,000 shillings and gave the agent his passport and photos in September 2008; he got the passport back, with the visa, in mid November.

#### *Application for review*

36. Prior to the hearing the applicant submitted a number of reports about human rights conditions in Nigeria. These comprise folios 45-102 of the Tribunal’s file.
37. The applicant appeared before the Tribunal at hearings held [in] March and [in] April 2009 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent, who attended the second hearing.

#### *Evidence at first hearing*

38. The applicant said that both his parents came from the same village; he had met his wife in Lagos.
39. He described in detail the events which he says caused him to leave Lagos in 2000. Essentially, a fight broke out when a trader refused to pay protection money to the Odua People’s Congress (OPC). There was a commotion, goods and vehicles were destroyed and there was general fighting in which the applicant was involved. The applicant ran away from the markets and was pursued for some time by an OPC member. At some point, when the applicant was gaining the lead, he heard someone else say “let him go, I know where he lives”. The applicant said that he knew this meant big trouble for him; he did not return to his home that night, but stayed with a friend. After a week he returned to the market and found that his goods had been destroyed, as had whole sections of the market. He said that he knew it was not safe for him to remain in Lagos; he knows that the OPC will continue to go to the homes of their enemies and pick them off one by one. A friend told him that after about a week they did come to his home looking for him. He mentioned that he and a friend had previously been in a fight with the OPC, and he thought that they were aware of this; he said that “if they get me they will eat me raw”. He decided to return to his home state.
40. The Tribunal asked about the reasons for which the applicant fears returning to Nigeria now. He said that he fears harm from his family because he refuses to take over from his uncle as the person in charge of the family religion. The applicant explained that

many people in Nigeria call themselves Christians and go to church, but at the same time they worship traditional religions. This was the case in his family; except that his father's older brother had nothing to do with Christianity. This senior uncle has no son; the applicant's parents did not have children for some time, and he believes that they did certain things and made certain promises in order to conceive him. The applicant was supposed to take over from his uncle as the person in charge of the family shrine; he was ready to do this, until in 2007 he was converted to a Charismatic Christian church, and became what he regards as a true Christian. This new commitment prevented him from worshipping at the family shrine. When he told his father in September 2007, his father was furious. They had an argument and his father threw a glass object at the applicant's head.

41. The Tribunal asked what problems the applicant had from his family between the argument with his father in September 2007 and December 2008, when he left Nigeria. The applicant said that from new year 2008 everybody in his family was "bombarding him" all the time, because his father told the family that the applicant refused to serve them. In January 2008 he left the village and went to live in Port Harcourt. The Tribunal asked why they had not taken further action against him if they really intended to do him serious harm. He said that his family was waiting until December 2008, at which time he was supposed to undertake the final initiation rite. He believes that they were waiting to see what he would do, and if he refused they would kill him. The Tribunal asked why the final rite was to take place in December 2008 and he said that it was at the discretion of the family head.
42. The Tribunal asked the applicant if it was the case that he left the village for Port Harcourt because of problems with his family. He said that he also left the village because of problems with the militant groups in the village.
43. He said that he obtained a passport in April 2008 because of the problem with his family; he thought that all he could do was run. Later the militants started taking young men; they came looking for him in the park in Port Harcourt where he worked.
44. The Tribunal asked the applicant when he first made inquiries about actually leaving the country, once he had his passport. The applicant did not respond directly, but eventually said that he thought it was after Easter; around May or so. His friend mentioned that he knew an agent. The Tribunal asked when the friend introduced the applicant to the agent. He said that the friend went to Lagos to speak to the agent for him. He could not remember when this was. He said that that he himself first spoke to the agent on the phone in June. He offered the applicant a "slot" to Australia. The applicant said that he was prepared to go anywhere. The Tribunal asked when the applicant told the agent to go ahead and get the visa. He said that he thought it was May or June. The Tribunal asked why he left Port Harcourt for Lagos in September 2008. He said that the agent called him and said to come. Also people were coming and pressure was mounting on him; he did not know if they were from his family, or militants.
45. The Tribunal asked how long he was in Lagos before he obtained his passport and visa. He said that he was hiding with a friend; he went round on trucks with his friend. He thought the visa was issued in October or November.
46. He went to see his father in Lagos. He was in hospital. He was either asleep or unconscious. The Tribunal asked about his father's current state of health. The

applicant said that he does not know because his father does not permit anyone from the family to speak to him. All of a sudden they stopped talking to him and stopped taking his calls. The Tribunal asked when members of his family were forbidden to speak to him, as he had previously said that they bombarded him all the time. He said that it was some time in 2008; they gave him a year to come around and fulfil his duties. Then they started coming to his place, he started running and hiding from them to avoid arguments. He was calling the younger members of the family to try to reason with them.

47. The Tribunal asked when they stopped harassing him and started to leave him alone. He said that when they harassed him at his house he got scared. He started running away. He was scared they would kidnap him. During February, March and April it was too hot for him; he was confused; he did not know whether it was his family or militants that were harassing him. He stopped sleeping at his house and stayed with other people. He stopped doing the transport work at the park and did mainly construction work.
48. The Tribunal asked again when his family members stopped coming to him or taking his calls. He said that it was about June. He called one of his brothers. The brother told him that their uncle had said that he knew how to fix the applicant, and asked the applicant to leave him alone.
49. The Tribunal asked the applicant for what Convention reason he was targeted for harm by the militant gangs operating in his village, accepting that this was the case. He said that it is to do with local politics; he does not want to be involved with local politics. They use young men to fight; he does not want to kill people.
50. The Tribunal asked the applicant why he could not go to any neighbouring African countries. He mentioned various difficulties in all the countries which border Nigeria.
51. The Tribunal asked the applicant why he could not live in any other part of Nigeria, given that the Ibos are the third largest population group and reside in many areas. He said that he is an Ibo from Ikwerrri. That is the only place he can stay in the East. There are problems everywhere in Nigeria. The Tribunal acknowledged this, but said that many of the problems concern general lawlessness or criminal activity, for which the applicant would not be targeted for any Convention reason, and against which the Refugees Convention does not provide protection.
52. After the first hearing the applicant submitted a large number (over forty pages) of media and human rights organisation reports dealing with the situation in the Niger Delta and human rights in Nigeria generally. He also submitted a letter making additional claims that he feared harm from the Nigerian security forces (Joint Task Force) in Rivers State, as they were carrying out human rights abuses against the general population in their attempt to stamp out the operations of the militant groups there. He also submitted media and human rights reports dealing with this issue.

#### *Evidence at second hearing*

53. The Tribunal firstly asked the applicant to clarify the reasons for which he fears returning to Lagos now.

54. He said that this is because of the problem with his father and his family; and because of the OPC.
55. As to the OPC, the Tribunal noted that the country information available indicated that the OPC is not as active in Lagos now as it was during the period 1999 – 2002; human rights reports in recent years made little mention of it. The Tribunal noted that this could be because the available information indicated that the government had taken steps to stop the activities of the OPC in around 2000, which may have been successful. There was no information suggesting that Ibos remained a specific target of the OPC. The Tribunal noted that it was difficult to accept that the applicant would still be wanted by the OPC, and at serious risk of harm if he returned now, eight years after the events in the market that he says caused him to flee.
56. The applicant said that he has a very big problem with the OPC because of what happened in the market in 2000; the young men who were after him know him very well. It was a very big problem in the market – three or four people were killed. The applicant said that when he was in Lagos in September 2007 and from September to December 2008 the OPC had not disbanded, they had an office in Lagos and he had to be very careful to hide from them.
57. The applicant said that since the Biafran war Ibos suffer discrimination throughout the country; people hate them and tell them to go back to “their place”.
58. The Tribunal then discussed with the applicant its concerns about the seriousness and immediacy of the risk of harm at the hands of his family, and in particular, his explanation as to why they had not taken action against him between September 2007, when he had told his father that he refused to perform his religious duties, and December 2008, when he left Nigeria.
59. The applicant said that his family did a lot to harm him during this time. In September 2007 his father threw a glass at him during their argument. The applicant returned to Rivers State. His father arrived five days later and told the family about the applicant’s decision. In February and March 2008 family members came to the applicant’s house on two occasions. In the first, three of them argued with him and threatened him; the second time he was not at home. For the rest of 2008 he did not stay in one place, he was moving around to avoid them. He said that he did not have contact with members of his family after that visit to his place in about February or March 2008.
60. The Tribunal noted that the applicant appeared to be changing his account, as he had stated at the last hearing that his family members had harassed and bombarded him throughout early 2008 until they had suddenly cut off all contact with him. He had also stated that it was because they set a deadline of December 2008 for him to agree to what they wanted that they did not take action against him during this earlier period.
61. The applicant became quite agitated and indicated that he thought it was because of language problems that he appeared to have changed his story. The hearing was adjourned for five minutes. On resumption the Tribunal asked the applicant to explain why it was that his family did no harm to him during the period September 2007 to December 2008, if it was the case that they really had an ongoing intention to harm him.

62. The applicant said that he was supposed to take over the religious duties from his uncle when he died; he had undergone part of the initiation, and was supposed to undergo the final initiation in December 2008. However, this did not stop his family from trying to take him by force to the compound prior to December 2008; but they did not do so because they could not catch him.
63. The Tribunal asked the applicant to confirm that he was claiming that his family did not harm him during 2008 because they could not find him, despite the fact that he was staying in Port Harcourt, which is located about half an hour from his village. He said that this was the case.
64. The Tribunal noted that this made his claim that he could not return to any part of Nigeria and remain safe from his family appear implausible. The applicant started to talk about the reasons for which he claims he cannot live in different parts of Nigeria.
65. The Tribunal put to him that country information indicated that there were four states where Ibos predominated – Imo, Anambra, Enugu and Abia: CX22283, Country Information Report no.127/97, *Nigeria: National Youth Council of Ogoni People* The Tribunal asked why the applicant could not relocate to any of these. The applicant said that he has never lived in any of those states; also the Bakassi Boys, a vigilante group are active there. Further, the existence of MASSOB (Movement for the Actualisation of the Sovereign State of Biafra, a separatist group which believes in secession for the Ibo states) in those states would be a problem, as the government kills anyone who its suspects of supporting MASSOB. The Tribunal put to the applicant that there was nothing in any of the information before it to suggest that the applicant would be at risk of harm because he was a member of MASSOB. He replied that he believes in MASSOB because they are fighting for the Ibo's cause.
66. The Tribunal noted that the applicant claimed that he was at risk of harm in Rivers State. There was country information indicating that there was a high level of generalised violence in Rivers State, but it was difficult to see what harm the applicant might face for a Convention reason. The applicant said that there is fighting all the time, not a week goes by without a shooting incident. He said that the militants are looking for young men who will fight for them; the JTF is also looking for young men, they just shoot at villages with rockets, they come to villages and brutalise people, especially young men, Ibos and Ijaws.
67. The Tribunal asked whether the applicant had personally had problems from the JTF while he was living in Port Harcourt The applicant said that they are looking for all young men; they know him, as he did not hide himself, he was preaching in the park; they were arresting young men. The Tribunal asked the applicant why he was not arrested if it was the case that he was well known, and was preaching in the park. He said that maybe it was the will of God, or fate.
68. The Tribunal put to the applicant and his adviser that the country information certainly indicated that there was a high level of violence in Rivers State, and the applicant may well fear returning there; however, the Tribunal had doubts as to whether the applicant would be targeted there for persecution for any Convention reason; moreover, it appeared that it might be reasonable for the applicant to relocate to another area of Nigeria.

69. The applicant's adviser submitted that the applicant was genuinely scared and had sound grounds for fearing that he would be subjected to violence if he returned. The Tribunal allowed further time for the applicant and his adviser to provide submissions as to any Convention link to the violence feared.
70. [In] April 2009 the Tribunal received the applicant's adviser's further submissions and supporting material. As to the Convention link for the harm feared by the applicant, she states that the harm he fears both from his family and from the militant gangs in Rivers State is because of his religion: he refuses to take on the role required of him by his family for this reason, and because of his religious beliefs, he refuses to take part in politically motivated violence, as demanded of him by the gangs.
71. She states that there is nowhere in Nigeria where the applicant could safely and reasonably relocate. The Ibo mainly live in the Niger Delta states, all of which are beset by violence similar to that in Rivers State. As a Christian he cannot go to the Muslim north of Nigeria. Other Ibo states are Anambra, where he fears harm from the Bakassi Boys, an armed vigilante group used by the state to carry out extra-judicial killings of political enemies and indigenous people; or other states where members or imputed members of MASSOB, an Ibo separatist group, are subject to arrest by the authorities. The applicant is afraid to go to Lagos because of the OPC and because his family could find him there.
72. The applicant's adviser cited a large extract from the United States Department of State 2008 *Human Rights Report* on Nigeria, arguing that the Nigerian authorities perpetrate serious human rights abuses against the population, such that state protection would not be available to the applicant against the harm he fears.
73. Also enclosed was country of origin information about the Bakassi Boys, said to be active in Imo, Abia and Anambra states. They are stated to be mostly Ibo, and responsible for vigilante activities including extra-judicial killings of suspected criminals, and of political opponents of various politicians.

*Country of origin information submitted by applicant*

74. The applicant has submitted a great deal of country of origin information from a variety of sources dealing with the security and human rights situation in Nigeria. Extracts from this material are referred to throughout this Statement of Reasons, where relevant. The following is a useful summary of the violence and insecurity prevalent throughout Nigeria. According to the report "*Armed violence and poverty in Nigeria: Mini case study for the Armed Violence and Poverty Initiative*", Jeremy Ginifer and Olawale Ismail, Centre for International Cooperation and Security, March 2005:

Armed violence in many areas of Nigeria has escalated since 1999 and is destabilising and impoverishing communities. Vigilante groups have sprung up that both protect and extort from local communities. Rival gangs in towns such as Lagos are engaged in armed violence against each other and also against state security forces with civilians caught in the cross fire. Further, a gun culture has been established and there has been a progressive militarization of society. Small arms and light weapons (SALW) are freely available and both regional and state controls are minimal. The state is doing little to protect civilians against armed violence and in fact some state agencies are involved or complicit in robbing and persecuting sections of the population. All this has contributed to an insecure environment where mass

displacements are taking place, communities are targeted on ethno-religious lines, where livelihoods are difficult to maintain, and extortion and insecurity are leading to a growth in private security.

## FINDINGS AND REASONS

75. Having sighted the passport on which the applicant travelled to Australia, the Tribunal accepts that he is a national of Nigeria. There is no evidence before the Tribunal to suggest that the applicant has the right to enter or reside in any other country. Accordingly, his claims to refugee status will be assessed against Nigeria, as his country of nationality.
76. The applicant claims that he faces persecution in Nigeria for three main reasons. Firstly, he states that should he return to Lagos he would be at risk of harm from the OPC, as a result of the incident at the market which occurred in 2000, when he last lived there. Secondly, he claims that he faces serious harm from members of his family, who will kill him if he refuses to take over the role assigned to him as head of the family traditional religion. Thirdly, he claims that he is at risk of harm from militant groups in the Niger Delta region, his tribal home, because he refuses to fight with them. He also claims that government forces target young men in Rivers State in their attempts to suppress the activities of the militants. These claims will be dealt with in turn.
77. The applicant has also raised further claims of harm that he fears from various groups in response to the Tribunal's suggestion that he may be able to relocate to other areas of Nigeria and thereby avoid the three main forms of harm he outlined initially. These further will be dealt with under the Tribunal's consideration of the issue of relocation.

### *Harm from the OPC*

78. The Tribunal accepts that the market in which the applicant worked in Lagos was affected by riots instigated by the OPC in 2000, which resulted in damage to the property and livelihood of people such as the applicant who worked in the market. Country of origin information submitted by the applicant confirms that such events occur: see material at folios 84-92, Tribunal file, which states:

IRIN also states that the OPC was one of a number of organizations that emerged to challenge Abacha (18 Jan. 2000), while *Post Express* writes that "people were of the opinion that the membership of the OPC was largely drawn from the crop of hooligans popularly referred to as "Area Boys" (10 Nov. 1999). Reports have linked the OPC to a range of violent activities that include ethnic conflicts, attacks on police stations, and vigilante attacks on alleged criminals (*Tempo* 28 Jan. 2000; *Washington Times* 27 Jan. 2000; *The News* 24 Jan. 2000a; IRIN 18 Jan. 2000).

The acquisition of greater power for the Yoruba ethnic group is central to the goals of the OPC (*Post Express* 25 Feb. 1999; IRIN 18 Jan. 2000; *Tempo* 28 Jan. 2000). Sources have reported the OPC's call for self-determination for the Yoruba people (*ibid.*; *P.M. News* 9 Aug. 1999); it is sometimes referred to as "separatist" and OPC members have at times called for a separate Yoruba state (CRP 9 Dec. 1999; IRIN 18 Jan. 2000; *P.M. News* 18 Nov. 1998).

...

In a February 2000 report on the possibility of the break-up of Nigeria the *Mail* and *Guardian* writes:

At the heart of the south-west's burgeoning ethnic nationalism is the Oodua People's Congress (OPC), a Yoruba separatist movement founded six years ago to oppose military rule. It is blamed for much of the killings of hundreds of Hausas and eastern Igbos in and around Lagos in recent months, provoking retaliatory massacres of Yorubas in other parts of Nigeria.

...

There are numerous reports since September 1999 of Nigerian police arresting persons alleged to be OPC members (*Guardian* 10 Sept. 1999; *ibid.* 4 Dec. 1999; *ibid.* 17 Jan. 2000b; *Post Express* 5 Nov. 1999b). For example, according to P.M. News persons were "being arrested virtually on a daily basis" in connection with a suspected murder by the OPC in Lagos of a Divisional Police Officer and that over 1,000 people had already been detained (18 Jan. 2000).

The Lagos Police Commissioner had "ordered a stop to indiscriminate arrest of persons suspected to be members of OPC" and to have said that the police had instead created a "list of members of the OPC we are looking for" (*Guardian* 31 Jan. 2000).

There are also numerous reports since September 1999 of persons alleged to be OPC members being arraigned before judges (*Guardian* 14 Sept. 1999; *ibid.* 3 Nov. 1999; *ibid.* 18 Dec. 1999; 18 Jan. 2000). According to the *Guardian*, seven persons who were arraigned for the attack in December on Lagos State Governor Tinubu's convoy confessed to being members of Adams' OPC faction (18 Dec. 1999).

...

Near the end of November President Obasanjo issued what was referred to as a "shoot-at-sight" order for "perpetrators of violence in Lagos and the Niger Delta" (*Guardian* 26 Nov. 1999). "Short of pronouncing the ... OPC an illegal organisation, the President said the police had been directed to arrest members of the organisation or shoot at them if arrest is resisted, saying: 'We cannot allow this country to be taken over by hoodlums and criminals'." (*Guardian* 26 Nov. 1999). Country Reports 1999 stated that "as of year's end, there were no reports of police killings as a result of this order" (25 Feb. 2000). The *Guardian* reported the Osun State Police Commissioner, following the arrests of 50 suspected OPC members, as saying that if police had followed the order, the mortuary would have been "full of dead people. At least, we could have killed 100" (4 Dec. 1999).

...

A 10 January 2000 *Post Express* commentary claimed that the OPC was receiving "kid-glove treatment ... from the authorities." In January, President Obasanjo was accused by the House of Representatives of "laxity" with regard to the OPC's violent acts (*Post Express* 14 Jan. 2000). However, there have also been allegations of police excesses in this search for OPC members (*Tempo* 28 Jan. 2000; *Post Express* 5 Nov. 1999b; P.M. News 28 Jan. 2000). A P.M. News report claimed that in their search for OPC members, police officers have looted homes and engaged in extortion. The newspaper article alleged that at checkpoints police were "threatening to frame people as OPC members if they do not" pay "extra transport fares" (*ibid.*). The Lagos State Police Commissioner denied that "police arrest and kill innocent citizens under the pretext of searching for OPC members" and denied allegations that police "extort money from

innocent citizens all in the name of arresting OPC members" (*Tempo* 23 Feb. 2000). The commissioner stated that persons arrested, were arrested because of their involvement in "criminal activities" (*ibid.*).

79. This material indicates that the OPC is a Yoruba based group, which has been involved in some apparently tribally based fighting against other tribal groups, including the Ibo. The OPC also has a quasi-political agenda, and has been described as a vigilante group, but on the whole, it seems to operate as a criminal gang. The violent incident described by the applicant in 2000 appears to the Tribunal to have had an essentially criminal character, as he said that it was sparked when a trader refused to pay protection money to the OPC and a brawl broke out.
80. Accepting the applicant's account of what occurred during the 2000 events, the Tribunal is not satisfied that he has a well founded fear of Convention persecution as a result. Indeed, when asked at the first hearing for what reason he fears returning to Nigeria now, he did not mention his fears in relation to the OPC. The Tribunal is satisfied that, eight years after these events, the risk of the applicant being sought out and targeted for harm as a consequence of his involvement in the 2000 riots is remote and speculative. The Tribunal finds that the applicant was essentially caught up in a general melee; while he may have been pursued when he ran away, the Tribunal is satisfied that the possibility that his pursuer would seek to locate him or harm him now, or in the reasonably foreseeable future, is remote, speculative and insubstantial. The Tribunal is further satisfied that, to the extent that he was specifically pursued at the time, this was because of his role in the fighting, and not because of his tribal group, or for any other Convention reason.
81. The Tribunal also notes that the applicant returned to Lagos, albeit for short periods, in September 2007 and between September 2008 and his departure from Nigeria in December 2008, but does not find his evidence that he was hiding from the OPC during these periods to be persuasive. He has provided no evidence indicating that he remained of interest to the OPC at those times; although he may have been afraid, no objective basis for his fear, at that time, is apparent to the Tribunal.
82. While the applicant claims that the police and politicians are corrupt and protect the OPC, the country information he submitted indicates that the authorities took substantial measures to halt the OPC violence in 2000. In these circumstances, the Tribunal is not satisfied that, if the applicant did indeed face harm not related to the Convention at the hands of the OPC, the authorities would fail to protect him for any Convention reason.
83. In these circumstances, the Tribunal is not satisfied that the applicant has a well founded fear of persecution, or that he would face harm directed at him for a Convention reason by the OPC, should he return to Nigeria, or specifically, to Lagos.

#### *Harm from family*

84. The Tribunal has concerns about the reliability of the applicant's evidence in relation to the harm he claims to face from his family because of his refusal to assume his rightful role as head of the family shrine. His accounts of his dealings with family members following the assault on him by his father were confused, incoherent and inconsistent. Some of his assertions are, in the view of the Tribunal, inherently implausible.

85. In particular, the applicant's evidence at the first hearing about the immediacy of any harm he faced at the hands of his family was vague and inconsistent. For example, he gave evidence that from early 2008, after he told his father in September 2007 that he would not take on the role, members of his family were "bombarding" him with demands that he do as his father demanded. When queried about the delay in any action then being taken against him, he said that the family was waiting until December 2008, which he said was a date chosen at his uncle's discretion as the deadline for him to assume his duties. Apparently contradicting his evidence that he was bombarded throughout 2008 with demands from family members who constantly came to his place to harass him, he subsequently stated that his father instructed members of the family to have nothing to do with him. This second claim was raised for the first time when the Tribunal asked about the current state of the applicant's father's health, and he responded that he does not know because his father does not permit members of the family to have contact with him. His evidence was then very vague as to when the claimed harassment by members of his family ceased and turned to ostracism; his response is set out at paragraphs 47 and 48, above. He said at first that it was "some time" in 2008; that "it was too hot for him" because they came to his house all the time in February, March and April; then he said that his family ceased contact in about June. He also stated that he did not know if it was members of his family or militants that were coming to his house all the time in the early part of 2008. As to this last claim, the Tribunal simply does not accept that the applicant would not know if the people allegedly harassing him were members of his family or members of militant groups who wanted him to fight for them.
86. At the second hearing, the applicant's evidence was clearer, and he said that he had been confused at the first hearing because of language difficulties. However, the Tribunal considers implausible the applicant's explanation for the failure of his family to take any action against him over the period between his announcement to his father that he would not do as requested, and his departure from Nigeria over twelve months later. He claimed that they did nothing to harm him because, after one visit to his house in February or March 2008, they could not find him. The Tribunal does not accept this explanation, given his other evidence that Port Harcourt was half an hour away from his village; and that he was always in the park, preaching, and that he was not hiding; and also that he continued to work during this period. This explanation is also inconsistent with his claims that the family was waiting until December 2008 to give him a chance to change his mind. The Tribunal considers that this last explanation is simply implausible. The Tribunal considers that the applicant's confused and inconsistent evidence about this period is the result of him attempting to explain away the obvious issue as to the delay between the perceived threat arising, his obtaining of his passport and the making of the departure arrangements, and the actual departure.
87. In the light of this unsatisfactory evidence, the Tribunal is not satisfied that the applicant is at real risk of harm from his family based on his refusal to carry out his religious obligations. The Tribunal considers that members of his family had ample opportunity to harm him had they really intended to do so. The Tribunal does not accept the explanations put forward by the applicant for their failure to take action against him, and is satisfied that this failure demonstrates that the applicant does not face a real chance of harm from his family. While the Tribunal accepts that the applicant and his father may have argued in September 2007, and that his father threw a glass at him, the Tribunal does not accept that this one incident constitutes sufficiently

serious harm as to be considered persecution. Nor does it disclose, in the light of the deficiencies in his evidence set out above, that there exists a real chance that further harm amounting to persecution would be carried out by members of his family.

88. This finding is further supported by the applicant's visit to his father in September 2008, which also appears to the Tribunal to be inconsistent with the holding of a well founded fear at that time; likewise his ability to remain in Lagos between September and December 2008 without harm.
89. Further, the Tribunal considers the applicant's claim that he moved from his village to Port Harcourt in January 2008 to escape the harassment by his family to be implausible, given his earlier evidence that the village is located only thirty minutes by vehicle from Port Harcourt; as is his claim that the harassment in Port Harcourt continued to such an extent that he did not know whether the source was his family or militants.

#### *Niger Delta situation*

90. The country of origin information submitted by the applicant to the Tribunal indicates that there is ongoing conflict in the Niger Delta region which has caused widespread human rights abuses. However, there was no specific reference in the information submitted by the applicant to the dispute in his village which he claims caused him to flee; nor has the Tribunal been able to find any independent reference to that particular dispute.
91. The country of origin information available to the Tribunal, including that submitted by the applicant, refers to "rival armed gangs" as being responsible for much of the violence in Rivers State, although there are political and tribal elements to some of the fighting, for example between the Ijaw and Itsekerry tribes; and between different local government areas and the central government over issues such as access to oil revenues and pollution. According to a Human Rights Watch report submitted by the applicant, fighting between armed groups "is linked to claims on political patronage, competition over territory, oil bunkering networks, or other sources of revenue or influence": *Criminal Politics, Violence, "Godfathers" and Corruption in Nigeria*, Human Rights Watch, 11 October 2007, page 42, (at folios 131-147, Tribunal file).
92. According to a recent Amnesty International report,

The current outbreak of violence in Port Harcourt is not an isolated event. Over the past years armed gangs have clashed on many occasions, resulting in numerous deaths and injuries. In the run-up to and during the April 2007 elections, many politicians in the Delta sought the support of armed gangs and encouraged political violence. Already in August 2006, at least 12 people -- both bystanders and gang members -- were killed in a clash between armed gangs linked to politicians in Rivers State. As the police failed to take effective steps to investigate and prosecute gang members, the violence continued in 2007. The violence between gangs supporting opposing politicians did not cease after the inauguration of the new governor and state assembly. Politicians reportedly continue to sponsor these gangs and encourage violence in order to gain political power. Poverty, corruption and the presence of oil, arms and gangs, have made the Niger Delta a very volatile region.

*(Nigeria: Violence in Port Harcourt escalates* Download: HTMLPDFIndex Number: AFR 44/020/2007 Date Published: 22 August 2007, folio 76, Tribunal file.)

93. The additional claims and information submitted by the applicant after the first hearing refer in more detail to involvement by the Nigerian government in human rights abuses in Rivers State, as the security forces attempt to bring the activities of the militant groups under control.
94. Accepting that the applicant resided in Rivers State from 2000 to 2008, the Tribunal accepts that he may have witnessed and felt threatened by the generally violent situation there. However, the Tribunal is not satisfied, based on the information before it, that the applicant had a well founded fear of persecution there, directed at him for a Convention reason.
95. The applicant described one incident when he was approached by young men who he said were involved in one of the militant gangs. Even accepting that they asked him to join them, the Tribunal is not satisfied that in the generally chaotic situation described in the country of origin information, the applicant would have been further targeted by the gang, or that they would have sought him out in Port Harcourt, where he claims to have fled from them, for a Convention reason. Nor is it credible that, in the atmosphere of extreme violence that exists in Rivers State, a militant group which did actually intend serious harm to the applicant would have merely threatened and harassed him over a period of time without actually carrying out their threat. Moreover, as noted above, the Tribunal does not find credible the applicant's evidence that he was harassed all the time, but did not know whether it was militants or his family members who were harassing him. The Tribunal therefore does not accept that the applicant was subjected to serious and sustained threats by militant groups in Rivers State that either constituted, or gave rise to, a well founded fear of persecution.
96. The Tribunal accepts that the applicant may well be afraid to return to Rivers State, and that he may be at risk of harm there because of the high level of generalised violence which exists in that region. However, the Tribunal is not satisfied that he would be targeted for such harm for any Convention reason; rather, the risk would be of being caught up in random generalised violence, including from the Joint Task Force.
97. The Tribunal does not accept the contention of the applicant's adviser in her submission [in] April 2009 that the persecution would be for reason of the applicant's religion, on the basis that it is because of the applicant's religious beliefs that he refuses to fight. While this may be applicant's motivation, it is not the motivation of his potential persecutors.

#### *Relocation*

98. In any event, the Tribunal considers that it would be reasonable for the applicant to relocate to another area of Nigeria outside the Niger Delta region, should he return, and is satisfied that he could do so safely. For the reasons set out above, the Tribunal does not accept that the applicant is at risk of harm either from his family or from the OPC in Lagos. There is nothing in the abundant information submitted by the applicant to suggest that the militant groups operating in the Niger Delta region are active outside that area, or that they would pursue their enemies outside that region. The Tribunal is therefore satisfied that the applicant could safely and reasonably return to Lagos. In so finding it notes that he was born there, and resided there from 1994 until 2000. The applicant has put forward no other reasons, apart from the harm he claims to fear, to suggest that it would not be reasonable for him to return there.

99. The Tribunal is also satisfied, on the basis of independent country information, that the Ibo tribe comprises the third largest tribal group in Nigeria, and that members of the Ibo tribe reside in large areas of the country, predominantly in Imo, Abia, Enugu and Anambra states: CX22283 Country Information Report No.127/97, Nigeria: National Youth Council of Ogoni People. While the Tribunal acknowledges that relocation to an area outside his family's original area may be difficult, it is satisfied that any difficulties would not be such as to force the applicant to return to an area where he would be at risk of Convention persecution. There is no independent information to support the applicant's assertion that Ibo face discrimination everywhere. The Tribunal would expect that there would be some independent documentation of this, given the abundant material available about the human rights situation in Nigeria, if it were the case.
100. The Tribunal has considered the applicant's claims that he fears harm from the Bakassi Boys who are active in Imo, Abia and Anambra states. However, on the basis of the country information submitted by the applicant, the Tribunal is satisfied that the Bakassi Boys target criminals and sometimes political opponents of politicians who support or pay them. There is no evidence before the Tribunal to suggest that there is a real chance that the applicant would be targeted for persecution by the Bakassi Boys for those reasons, or indeed for any Convention reason were he to relocate to an area where they are present.
101. As to his claim that he may be harmed by government security authorities in Ibo states where MASSOB operates, as a suspected supporter or member of MASSOB, there is no information before the Tribunal to support a finding that merely being an Ibo who broadly supports MASSOB's political agenda would, without more, result in a real chance of the applicant's persecution by security authorities.

## **CONCLUSION**

102. In summary, the Tribunal makes the following findings:
- There is no real chance that the applicant would face serious harm amounting to persecution at the hands of members of his family, as the credible evidence about their lack of action prior to the applicant's departure does not demonstrate the existence of a real intention to inflict serious harm upon the applicant.
  - There is no real chance that the applicant would continue to be at risk of serious harm amounting to persecution by the OPC eight years after his last experience with them, which occurred in a general melee.
  - While the applicant may be at some risk of harm as a result of generalised violence in the Niger Delta region, there is no real chance that he would be targeted for harm for a Convention reason by any of the state or non-state armed groups currently operating there.
  - The applicant could reasonably and safely relocate from the Niger Delta area to Lagos, or to another area of Nigeria where the Ibo tribe predominates.

103. Given these findings, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

**DECISION**

104. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 *Migration Act 1958*.

Sealing Officer's I.D. prrt44