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OPERATIONAL GUIDANCE NOTE

RWANDA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Rwanda and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Rwanda Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

- 2.1** Rwanda is a republic dominated by a strong presidency. It was led by a succession of Hutu-dominated governments following independence from Belgium in 1962 after a Hutu uprising (1959-61) and large scale massacres of Tutsis. In 1985, Tutsi exiles in Uganda formed the Rwandan Patriotic Front (RPF). Having failed to negotiate their return to the

country, the RPF invaded Rwanda from Uganda in October 1990, demanding representation and equality for all Rwandans. A civil war in the border area ensued. Each incursion by the RPF was followed by reprisal massacres, largely of Tutsis, by government forces. A peace agreement was brokered in 1993, the Arusha Peace Accords, which inter alia provided for a power-sharing arrangement involving all political forces and the RPF.¹

- 2.2** Unwilling to share power, a group of extremist Hutu politicians planned to consolidate their hold on the country by wiping out all the Tutsi, along with moderate Hutu leaders. They prepared the largely illiterate population through ethnic propaganda, armed extremist youth militia (known as the Interahamwe) and drew up lists of those to be targeted. The killing was sparked by the assassination of President Habyarimana in April 1994. The genocide and massacres lasted until July 1994 and cost the lives of around one million Rwandans. It was halted by the RPF taking control of the country. The extremist politicians and over two million Hutu fled the country together with many members of the Rwandan Armed Forces (FAR) and the Interahamwe, both with their weapons, to neighbouring countries. The majority went to Zaire (now Democratic Republic of Congo). The largely Tutsi Rwandan Patriotic Front (RPF) took power in 1994 and formed a Government of National Unity.²
- 2.3** The RPF has remained the dominant party in Rwanda since July 1994 sharing power with other parties, except the Rwanda Democratic Movement (MDR), under the formula agreed at Arusha in 1993. This arrangement, together with a nominated 70-member multi-party Transitional National Assembly lasted until 2003. During that period, the RPF ensured domestic security, put in place programmes for economic reconstruction, justice and community reconciliation and ended any official distinction between Hutu and Tutsi. Under a new constitution agreed by referendum in May 2003, presidential and parliamentary elections took place in August and September 2003. Paul Kagame was elected president with 95 percent of the vote for a 7-year term, and the RPF won 73.8 percent of the votes in the parliamentary elections.³
- 2.4** Although voting in the 2003 elections was generally well run and orderly, international observers reported irregularities in the electoral process, including intimidation of voters. There are also continued questions over political freedoms in Rwanda as all alternative parties have to join the Forum of Political Parties, chaired by the RPF, are not allowed to organise at a local level, and do not, therefore, provide a strong opposition. In June 2004, former President Pasteur Bizimungu was sentenced to 15 years imprisonment for a variety of offences after trying to establish a political party, though he was released from jail in April 2007 after receiving a presidential pardon.⁴
- 2.5** Rwandan troops withdrew from Democratic Republic of Congo (DRC) in 2002, but allegations have persisted that Rwanda maintains a presence in eastern DRC. The Democratic Forces for the Liberation of Rwanda (FDLR), largely made up of Rwandan Hutus who fled to DRC after the genocide in 1994 and led by those believed to be responsible for leading the genocide, is one of several groups whose presence in eastern DRC is reported to have created tension between DRC's Hutu and Tutsi populations and led to instability in the North Kivu province. In March 2005, the FDLR stated that it would cease hostilities and that its members would disarm and return to Rwanda, but there has reportedly been little progress since. Clashes between the FDLR and troops led by the renegade Tutsi Laurent Nkundu have continued in North Kivu in

¹ Foreign and Commonwealth Office (FCO) Country Profile 2007: Rwanda, British Broadcasting Corporation (BBC) News Country Profile: Rwanda, BBC News Timeline: Rwanda & U.S. Department of State report on Human Rights Practices (USSD) 2006: Rwanda (Introduction)

² FCO Country Profile 2007: Rwanda & USSD 2006: Rwanda (Introduction)

³ FCO Country Profile 2007: Rwanda & USSD 2006: Rwanda (Introduction)

⁴ FCO Country Profile 2007: Rwanda, BBC News Timeline: Rwanda & BBC News 'Rwanda ex-leader freed from jail' dated 6 April 2007

2007 and the FDLR has alleged that the Rwandan Government is financially supporting General Nkunda's group, an accusation denied by President Kagame.⁵

- 2.6** In 1994, the United Nations Security Council established an International Criminal Tribunal (ICTR) to try the main leaders and planners of the genocide. Its progress has been slow but it has now convicted 26 people. Given the large number of Rwandans involved in the genocide and the inability of the local Judicial system to cope, the Rwandan Government set up in 2002 a modern version of the traditional justice system, called gacaca, where lesser offenders are tried within their own communities. Gacaca courts began operating throughout Rwanda in 2006. In an attempt to ease prison overcrowding, however, an estimated 60,000 prisoners accused of involvement in the 1994 genocide have been released since 2003.⁶ The Rwandan Government abolished the death penalty in June 2007 reportedly, in part at least, to strengthen efforts to extradite from abroad those suspected of involvement in the 1994 genocide.⁷
- 2.7** Members of the Rwandan security forces were reportedly responsible for serious human rights abuses during 2006, including extrajudicial killings, the torture and abuse of suspects with impunity, and arbitrary arrests. However, it has also been reported that the Government took significant steps during the year to address human rights deficiencies and institute reforms. For example, the Government formed a unit in the National Police to investigate citizens' reports of official abuse and corruption, and police authorities fired more than 70 police officers on various counts of indiscipline. In 2006, the judiciary also demonstrated increased independence in its growing willingness to rule against the executive branch, its release of some political prisoners, and in its use of the Judicial Council to conduct investigations into judicial corruption.⁸

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Rwanda. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).

⁵ FCO Country Profile 2007: Rwanda, USSD 2006: Rwanda (Introduction & Section 1), BBC News Timeline: Rwanda, BBC News 'Behind DR Congo's war games' dated 19 October 2007, BBC News 'Move to end DR Congo's insecurity' dated 28 August 2007, BBC News 'Rwanda anger at Congo rebel move' dated 15 August 2007, Swisspeace – FAST International update: Rwanda Number 5 (September to October 2007) & Swisspeace - FAST International update: DRC/Kivu Number 4 (August to September 2007)

BBC News 'Living with Rwanda's Hutu rebels' dated 16 June 2005

⁶ FCO Country Profile 2007: Rwanda, BBC News Timeline: Rwanda, Human Rights Watch (HRW) World Report 2007: Rwanda & USSD 2006: Rwanda (Section 1)

⁷ Swisspeace – FAST International update: Rwanda Number 3 (May to June 2007)

⁸ USSD 2006: Rwanda (Introduction)

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on Assessing Credibility in Asylum and Human Rights Claims).
- 3.5** In dealing with applications from Rwandan applicants who may have been involved in war crimes or crimes against humanity, case owners must also refer to the Asylum Instructions on Identifying, Handling and Considering Asylum Claims Made by Suspected War Criminals and Perpetrators of Crimes Against Humanity, Including Genocide before making a decision on their applications.
- 3.6** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html
- 3.7 Members of opposition political parties**
- 3.7.1** Some applicants will make an asylum and/or human rights claim based on ill-treatment at the hands of the state authorities due to their membership of, involvement with, or perceived involvement with opposition political parties - most notably the Rwanda Democratic Movement (MDR) or the Party for Democratic Renewal (PDR – Ubuyanja).
- 3.7.2 *Treatment.*** The Constitution provides for the right of citizens to change their government peacefully; however, despite peaceful presidential and legislative elections during 2003, this right was reportedly restricted in 2006. There were numerous credible reports that during the presidential and legislative campaign periods in 2003, Paul Kagame's opponents and their supporters faced widespread harassment and intimidation, including detention. The constitution provides for a multiparty system of government and for the free operation of political organisations; however, the Government reportedly restricted political party activities in 2006. During the year, the MDR, the main opposition party, remained inactive as a result of parliament's May 2003 recommendation to ban it. Although the Supreme Court never acted upon the recommendation, the MDR was dissolved shortly thereafter when all existing political parties were required to re-register under a new political party law.⁹
- 3.7.3** Parliament is dominated by the Rwandan Patriotic Front (RPF). Although seven other political parties are represented in the Chamber of Deputies and the Senate, most choose to associate themselves with the RPF rather than assert independent positions. The constitution provides for a multiparty system but provides few protections for parties and their candidates. Rwanda reportedly made significant progress toward political pluralism during 2006, but parties still faced legal sanctions if accused of engaging in divisive acts. The Government's continuing campaign against divisionism, and its holding of political detainees and prisoners, including the occasional use by local officials of illegal detention against those critical of the Government, also discouraged open debate or criticism of the Government or its policies in 2006. Political observers and members of political parties other than the ruling RPF agree that the RPF dominates the political arena, although, as provided by the constitution, members of other political parties hold key positions in government and parliament, including the presidency of the

⁹ USSD 2006: Rwanda (Sections 2 & 3)

Senate (held by a Social Democrat). Other political parties represented in parliament held regular meetings during 2006 and were free to recruit new members.¹⁰

3.7.4 In accordance with the constitution, all political organisations are required to join the Forum for Political Organisations. In addition, the law regulates the formation, structure, and functioning of political organisations; it also monitors their use of the media, management of financial assets, and relations between political organisations and other institutions. The law outlines a code of conduct for political organisations. For example the law states that political organisations have the 'moral obligation to condemn any biased ideas and behaviour aimed at turning the state into a state governed by a cluster of politicians'. The law also outlines the Government's ability to cancel an organisation's mandate.¹¹

3.7.5 There were no reported political killings by the Government or its agents in 2006 and there were no reports of politically motivated disappearances within the country. Some political prisoners were detained during 2006, including former president Pasteur Bizimungu and former transport minister Charles Ntakirutinka, who were convicted of incitement of civil disobedience, formation of a criminal association, and embezzlement of public funds. In March 2006, the Supreme Court upheld the sentences of 15 years for Bizimungu and 10 years for Ntakirutinka and reversed the lower court's not-guilty verdict on the charge of plotting against the Government using violence. However, the court ruled in favour of the appeals of the six co-defendants in the case, who were immediately released. Local and international human rights non-governmental organisations (NGOs) criticised the trial, saying the guilty verdicts were politically motivated. Pasteur Bizimungu was released from jail in April 2007 after receiving a presidential pardon.¹²

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

3.7.7 **Internal relocation.** The principle of internal relocation is not excluded where the persecution feared in one part of the country emanates from the state. All must depend on a fair assessment of the relevant facts. However, the reach of the state authorities in Rwanda extends to all parts of the country, and they are sufficiently systematic and organised to preclude a finding that a risk of ill-treatment at the hands of, or with the connivance of state agents, could be sufficiently mitigated by internal relocation within Rwanda.

3.7.8 **Caselaw.**

AN (Rwanda) [2004] UKIAT 00334 promulgated 12 July 2004. MDR family member. The Tribunal accept the general proposition that there is no objective evidence to show family members of MDR members, or members of the would-be successor parties, are at risk from the authorities (para 19). However, in this particular case the Tribunal considered that it would not be possible to say that there is no reasonable likelihood of the appellant having imputed to him the political opinion of his uncles [leaders of an MDR faction]. The circumstances of this case were emphasised as exceptional and the appeal was allowed on Article 3 grounds.

3.7.9 **Conclusion.** The MDR and PDR-Ubuyanja are proscribed political parties and their activities subject to monitoring by the authorities, however there is no objective evidence to show that members, or relations of members, of these parties are at risk of mistreatment by the authorities. Applicants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of the MDR

¹⁰ USSD 2006: Rwanda (Section 3)

¹¹ USSD 2006: Rwanda (Section 3)

¹² USSD 2006: Rwanda (Section 1) & BBC News 'Rwanda ex-leader freed from jail' dated 6 April 2007

or PDR-Ubuyanja are unlikely to be able to establish a well-founded fear of persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate. Still, case owners should assess on an individual case by case basis whether there may be a real risk that a high-level MDR or PDR-Ubuyanja leader or activist will encounter ill-treatment amounting to persecution. The grant of asylum may therefore be appropriate in some cases.

3.8 Ethnicity/mixed marriages

3.8.1 Some applicants will make an asylum and/or human rights claim based on societal discrimination due to their ethnicity, either Tutsi or Hutu or because they're involved in a mixed marriage. Some Hutu applicants may allege state-sponsored discrimination or harassment on account of their ethnicity.

3.8.2 *Treatment.* Before 1994, an estimated 85 percent of citizens were Hutu, 14 percent were Tutsi, and 1 percent was Batwa (Twa). Following the genocide, the Government banned all identity card references to ethnic affiliation as divisionist or contributing to genocide ideology. As a result, the Batwa were no longer officially designated as an ethnic group. The Batwa, survivors of the Twa (Pygmy) tribes of the mountainous forest areas bordering the DRC, exist on the margins of society and reportedly continue to be treated as inferior citizens by both the Hutu and Tutsi groups.¹³

3.8.3 Large scale inter-ethnic violence in the country between Hutus and Tutsis has erupted on three occasions since independence in 1962, resulting on each occasion in tens or hundreds of thousands of deaths. The most recent and severe outbreak of such violence, in 1994, involved genocidal killing of much of the Tutsi population under the direction of a Hutu-dominated government and in large part implemented by the Hutu-dominated Rwandan Armed Forces (FAR) and Interahamwe militia. The genocide ended later the same year when a predominately Tutsi militia, operating out of Uganda, occupied Rwandan territory, overthrew the Hutu-dominated government and established the Government of National Unity, which was composed of members of eight political parties and which ruled until the elections in 2003.¹⁴

3.8.4 In its effort to prevent incitement of violence and discrimination and to encourage reconciliation, the Government has pursued a strict policy of non-recognition of ethnic identities. The Government has eliminated all references to ethnicity in written and non-written official discourse, and there is no government policy of ethnic quotas for education, training, or government employment. Some organisations and individuals continue to accuse the Government of favouring Tutsis in government employment, admission to professional schooling, recruitment into or promotion within the army, and other matters. However, the Government continues to deny this charge and there is no evidence suggesting that the Government practises ethnic favouritism. In January 2006, Rwanda's 12 provinces were replaced by a smaller number of regions with the aim of creating ethnically-diverse administrative areas.¹⁵

3.8.5 Information from US Citizenship and Immigration Services indicates that while harassment is not unheard of, there is little opportunity for systematic targeting of intermarried couples by government authorities or society. There is no such thing as a child of mixed ethnicity because a child will always belong to his or her father's ethnic group.¹⁶

¹³ USSD 2006: Rwanda (Section 5)

¹⁴ USSD 2006: Rwanda (Section 5) & FCO Country Profile 2007: Rwanda

¹⁵ USSD 2006: Rwanda (Section 5) & BBC News Timeline: Rwanda

¹⁶ U.S. Citizenship and Immigration Services (USCIS) Resource Information Center: Would a Tutsi woman married to a Hutu man in 1990 currently be at risk of harm in Rwanda? (dated 21 March 2000).

3.8.6 Sufficiency of protection. Since 1994, the Government has called for national reconciliation and committed itself to abolishing policies of the former government that had created and deepened ethnic divisions. The Constitution also provides for the eradication of ethnic, regional, and other divisions and the promotion of national unity. The Rwandan National Police lacks basic resources, but all recruits receive extensive training on human rights, non-lethal use of force and professionalism. During 2006, there were reports of corruption, arbitrary arrest, and lack of discipline within the police force, but the police's office of internal affairs investigated and addressed many of them. For example, the authorities fired more than seventy police officers in October 2006 on various counts of indiscipline, including the solicitation of bribes, unlawfully beating persons, and absconding from duty.¹⁷ There is no evidence that the state authorities discriminate against any particular group and Hutus, Tutsis and those in mixed Hutu/Tutsi marriages who face societal discrimination are able to seek and receive sufficient protection from the authorities.

3.8.7 Internal relocation. The constitution provides for freedom of movement within the country and in 2006 the Government generally respected this right in practise.¹⁸ Ethnic groups and people in mixed marriages, who face social pressures in some parts of the country, may internally relocate to another region in order to escape this threat.

3.8.8 Conclusion. The Rwandan Government is strongly committed to national reconciliation and there is no evidence of any state-sponsored or societal discrimination on ethnic grounds that would amount to persecution. Claims based on membership of a particular ethnic group are therefore unlikely to engage the UK's obligations under the 1951 Convention. Persons in mixed marriages may face social discrimination or unequal and adverse treatment. However, this is unlikely to amount to persecution and the authorities are generally able to provide sufficient protection to those at risk. The grant of asylum in such cases is not likely to be appropriate.

3.9 Rebel militia groups in Democratic Republic of Congo (DRC)

3.9.1 Some applicants will make an asylum and/or human rights claim based on ill-treatment at the hands of the state authorities due to their membership, involvement with or perceived involvement with Hutu rebel militia groups (the Interahamwe or Democratic Forces for the Liberation of Rwanda - FDLR) based in the Rwanda-DRC border region.

3.9.2 Treatment. The Interahamwe, an unofficial civilian militia force, comprised of Hutu rebels, carried out much of the killing in Rwanda during the 1994 genocide. Its members fled to the Kivu region of DRC following their defeat by the Rwandan Patriotic Army. They combined with the army of the defeated Hutu regime to create the Army for the Liberation of Rwanda (ALIR). During the war in DRC the ALIR were allied with the DRC Government against the Rwandan army. ALIR is now called FDLR. Rwanda has in the past accused the Rwandan rebel militias in DRC of uniting with Kinshasa troops to destabilise the region.¹⁹

3.9.3 The Government has established a Demobilisation and Reintegration Commission and by the end of 2005, an estimated 25,000 ex-combatants had been demobilised and peacefully resettled in Rwanda since the beginning of the disarmament, demobilisation, and reintegration programme. In March 2005, leaders of the FDLR announced their intention to end attacks against their homeland, but there has been little progress since and during 2006 it was reported that the FDLR continued to actively oppose Kagame's

¹⁷ USSD 2006: Rwanda (Sections 1 & 5)

¹⁸ USSD 2006: Rwanda (Section 2)

¹⁹ USSD 2006: Rwanda (Introduction & Section 1), FCO Country Profile 2007: Rwanda, BBC News Country Profile: Rwanda, BBC News Timeline: Rwanda, BBC News 'Behind DR Congo's war games' dated 19 October 2007, BBC News 'Move to end DR Congo's insecurity' dated 28 August 2007 & BBC News 'Rwanda anger at Congo rebel move' dated 15 August 2007

Government.²⁰ Clashes between the FDLR and troops led by the renegade Tutsi Laurent Nkundu have continued in North Kivu in 2007 and the FDLR has alleged that the Rwandan Government is financially supporting General Nkunda's group, an accusation denied by President Kagame.²¹

3.9.4 The Government has reportedly welcomed and repatriated hundreds of former FDLR combatants who have fled the tight control of the FDLR's leadership. However, in 2006 the Government reiterated its policy that FDLR members would not receive special treatment and would be subject to genocide trials, like the general population, if they were over 14 years of age at the time of the 1994 genocide.²²

3.9.5 ***Sufficiency of protection.*** As this category of claimants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.9.6 ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.9.7 ***Conclusion.*** The Government has established a programme to demobilise and reintegrate ex-rebel militia members and the main rebel group, the FDLR, announced in March 2005 that it intended to cease hostilities. Though the FDLR have since failed to agree terms of a peace agreement and clashes between the FDLR and General Nkundu's troops have continued in eastern DRC, the Rwandan Government has reaffirmed that FDLR members are welcome to return to Rwanda once disarmed. As such, it is unlikely that disarmed members of rebel militia groups based in the Rwanda-DRC border region will encounter persecution by the authorities. The grant of asylum in such cases is therefore not likely to be appropriate.

3.9.8 The various Rwandan rebel forces in the Rwanda-DRC border region have been responsible for numerous serious human rights abuses. If it is accepted that the applicant was an active operational member or combatant for one of these groups then case owners should consider whether to apply one of the Exclusion clauses. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.10 Genocide survivors/witnesses

3.10.1 Some applicants will make an asylum and/or human rights claim based on societal discrimination amounting to persecution due to them being survivors of, and/or having given evidence about, the 1994 genocide to the gacaca justice system or the United Nations International Criminal Tribunal for Rwanda (ICTR).

3.10.2 ***Treatment.*** Gacaca courts serve as the Government's primary judicial process for adjudicating genocide cases and between 2002, when they began operating, and the end of 2006, gacaca courts considered approximately 51,000 genocide-related cases. Officials have set the end of 2008 as the deadline for all gacaca hearings and in July 2006 the gacaca courts transitioned from the pilot phase to nationwide hearings in order to resolve the enormous genocide caseload. The gacaca law provides for reduced

²⁰ USSD 2006: Rwanda (Introduction & Section 1), USSD 2005: Rwanda (Introduction & Section 1) & BBC News Timeline: Rwanda

²¹ FCO Country Profile 2007: Rwanda, USSD 2006: Rwanda (Introduction & Section 1), BBC News Timeline: Rwanda, BBC News 'Behind DR Congo's war games' dated 19 October 2007, BBC News 'Move to end DR Congo's insecurity' dated 28 August 2007, BBC News 'Rwanda anger at Congo rebel move' dated 15 August 2007, Swisspeace – FAST International update: Rwanda Number 5 (September to October 2007) & Swisspeace - FAST International update: DRC/Kivu Number 4 (August to September 2007)

BBC News 'Living with Rwanda's Hutu rebels' dated 16 June 2005

²² USSD 2006: Rwanda (Section 1)

sentences, including community service, for cooperation and credit for time served. Lawyers are not permitted to participate officially in gacaca but can testify as private citizens. Defendants in gacaca courts have the right to present witnesses and evidence on their own behalf. In addition to gacaca courts, genocide-related cases continued to be tried by the International Criminal Tribunal for Rwanda (ICTR) and by the Government in conventional courts during 2006. In an attempt to ease prison overcrowding, an estimated 60,000 prisoners accused of involvement in the 1994 genocide have been released since 2003.²³

3.10.3 Threats against genocide witnesses hampered the gacaca process in 2006, with persons accused of genocide-related crimes, including some individuals who had been released by the Government from pre-trial detention, reportedly making these threats. The Government held local communities responsible for protecting witnesses, and relied on the Local Defence Forces (LDF), local leaders, police, and community members to ensure the safety of witnesses. Despite these efforts, however, it was reported that unidentified individuals killed between 12 and 20 genocide survivors during 2006 and many citizens were believed to be too frightened to testify.²⁴

3.10.4 Some citizens are reportedly too frightened to testify in gacaca courts. However, while thousands of citizens left for Burundi in 2005 and 2006, preliminary reports indicating that their movement was partly due to fears of gacaca appeared to have been overstated, and the large majority did not claim fear of gacaca as their reason for leaving the country, according to the Office of the UN High Commissioner for Refugees (UNHCR). Nevertheless, near the end of 2005, gacaca officials reported that 69 persons accused of genocide-related crimes had committed suicide during the year out of fear of appearing before a gacaca court. There were also reports of more than 20 suicides among genocide survivors in 2006. The intention to process cases as quickly as possible has also increased suspicion about the fairness of the gacaca system and the impartiality of gacaca judges has been questioned.²⁵

3.10.5 Sufficiency of protection. The IBUKA, an umbrella association for genocide survivors, criticised the Government in 2006 for not doing enough to prevent the killings of genocide witnesses, saying the lack of adequate action encouraged additional killings. During the year, however, the Government continued to investigate reports that organised groups targeted and killed genocide witnesses in certain provinces and criminal investigations resulted in the prosecution of some persons. According to the Ministry of the Interior, at the end of 2006 conventional courts were handling the cases of hundreds of persons accused of participating in the assassination of genocide witnesses, survivors, and judges. During 2006, the police processed 215 cases involving the charge of genocide ideology, and 172 cases of divisionism. Nearly all cases reportedly involved gacaca proceedings; persons accused of attacking or abusing genocide survivors or witnesses to genocide were charged with genocide ideology or divisionism as well as with substantive criminal offences such as attempted murder or assault.²⁶

3.10.6 The Rwandan National Police lacks basic resources, but all recruits receive extensive training on human rights, non-lethal use of force and professionalism. During 2006, there were reports of corruption, arbitrary arrest, and lack of discipline within the police force, but the police's office of internal affairs investigated and addressed many of them. For example, the authorities fired more than seventy police officers in October 2006 on various counts of indiscipline, including the solicitation of bribes, unlawfully beating

²³ BBC News Timeline: Rwanda & USSD 2006: Rwanda (Section 1)

²⁴ USSD 2006: Rwanda (Section 1) & Amnesty International (AI) Report 2007: Rwanda

²⁵ Swisspeace – FAST International update: Rwanda Number 3 (May to June 2007), USSD 2006: Rwanda (Section 1), USSD 2005: Rwanda (Section 1) AI Report 2007: Rwanda & HRW World Report 2007: Rwanda

²⁶ USSD 2006: Rwanda (Section 1)

persons, and absconding from duty.²⁷ In the light of the above, those who survived or witnessed the 1994 genocide are able to seek and receive sufficient protection from the state authorities.

3.10.7 Internal relocation. Organised groups have targeted and killed genocide witnesses in certain provinces. Still, the constitution provides for freedom of movement within the country and in 2006 the Government generally respected this right in practice.²⁸ As the threat from these organised groups is generally localised, it is practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Rwanda where they would not have a well-founded fear and except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.

3.10.8 Caselaw.

K (Rwanda) [2004] UKIAT 00054 promulgated 25 March 2004. Hutu female minor able to return – protection available. The IAT found that a returning Hutu female minor whose parents were both killed in the 1994 genocide would be able to access sufficient protection provided by the IBUKA, the Rwandan Genocide Survivors Organisation. The Tribunal also found that the claimant would be able to receive adequate protection more generally from the Rwandan judicial system and that internal relocation was a viable option in such a case.

3.10.9 Conclusion. While there have been continued reports of harassment, intimidation and even murders of genocide survivors/witnesses testifying to the gacaca system or the ICTR, the state authorities have demonstrated a willingness and ability to protect the genocide survivors and witnesses. Government-sponsored support organisations and other NGOs continue to assist and monitor the genocide survivors and witnesses, while actual instances of societal discrimination tend to be isolated and regionalised. Applicants who cite their status as genocide survivors/witnesses in an asylum application are therefore unlikely to encounter persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.11 Prison conditions

3.11.1 Applicants may claim that they cannot return to Rwanda due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Rwanda are so poor as to amount to torture or inhuman treatment or punishment.

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

3.11.3 Consideration. Prison and detention centre conditions were reportedly harsh and well below international standards in 2006. Chronic overcrowding, a consequence of the genocide combined with a lack of government capacity, remains a problem. However, in an attempt to ease overcrowding, an estimated 60,000 prisoners accused of involvement in the 1994 genocide have been released from prison since 2003. The Government remains committed to improving prison and detention centre conditions, and they were reported to have improved during 2006. Sanitary conditions in prisons and detention centres were reportedly poor at the beginning of 2006, but improved as the year progressed. The Government also continued to improve prison healthcare during 2006, but was not always able to provide adequate medical treatment. The Government

²⁷ USSD 2006: Rwanda (Sections 1 & 5)

²⁸ USSD 2006: Rwanda (Section 2)

provided food to prisoners in 2006, but it was reported that this was not sufficient and that family members supplemented food provisions. During 2006, the International Committee of the Red Cross (ICRC) also continued to provide additional expertise and medical, logistical, and material support to improve conditions for inmates.²⁹

- 3.11.4** In August 2005, the Government released all minors who had been detained for genocide-related crimes in a provisional prisoner release. The 740 minors who remained in prison were detained for crimes not related to the genocide. The Government reportedly also made efforts to better ensure that minors were incarcerated separately from adults in 2006; 13 of 16 prisons no longer housed minors and adults together, and work was underway to build facilities at the remaining three prisons for minors. In addition, courts continued to give minors special treatment during 2006, taking into consideration their ages during sentencing. Pre-trial detainees generally were separated from convicted prisoners in 2006, however, there were numerous exceptions as a result of the large number of genocide detainees awaiting trial.³⁰
- 3.11.5** Women were detained and imprisoned separately from men in 2006. In addition, there was at least one prison (Miyove Prison in Byumba district) exclusively for women. At another prison (Cyangugu Prison), living conditions for women were reportedly better than those for men. Women prisoners were fewer in number and housed in their own block, with separate beds. During 2006, it was reported that the Government generally permitted independent monitoring of prison conditions, and the ICRC, diplomats, and journalists usually had access to the prisons. The ICRC also continued its visits to communal jails and military-supervised jails.³¹
- 3.11.6** The Rwandan Government abolished the death penalty in June 2007 reportedly to strengthen efforts to extradite from abroad those suspected of involvement in the 1994 genocide.

3.11.7 Caselaw.

AG (Rwanda) CG [2004] UKIAT 00289 promulgated 28 October 2004. Returnees – deserters – prison conditions. The IAT found that even with regard to civilian prisons there is no consensus that conditions in them were life threatening. The worst type were the Cachots but they had been closed down in all but two provinces. As a 26 year old man without any medical problems, the appellant would not suffer an Article 3 breach by reasons of imprisonment. (paras 21, 23 & 26)

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

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See AI on Discretionary Leave) Where the claim includes dependent family

²⁹ USSD 2006: Rwanda (Section 1) & BBC News Timeline: Rwanda

³⁰ USSD 2006: Rwanda (Section 1)

³¹ USSD 2006: Rwanda (Section 1)

members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

- 4.2** With particular reference to Rwanda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Rwanda.

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

4.4 Medical treatment

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

- 4.4.2** The Government has adopted a primary health care approach for its health system. The Government's allocation of resources to health has increased in recent years and in 2004 the total expenditure on health was 7.5 percent of gross domestic product. A shortage of human resources in the health sector has reportedly been a problem and in 2004, there were 0.05 physicians and 0.42 nurses per 1,000 population. In order to fill the gaps, the Government has invested resources in pre-service training institutes and established the Kigali Health Institute, which is charged principally with training nurses and technicians for the health sector.³²

- 4.4.3** A mental health policy was formulated in 1995 based on advocacy, promotion, prevention, and treatment. Mental health is part of the primary health care system and actual treatment of severe mental disorders is available at the primary level. There are reportedly 0.2 psychiatric beds per 10,000 population and 0.03 psychiatrists per 100,000 population. According to reports, therapeutic drugs are also generally available at the primary health care level.³³ An estimated 190,000 live with HIV in Rwanda and the prevalence rate for adults aged 15 to 49 is 3.1 percent. Since the introduction of anti-retrovirals (ARVs) in Rwanda in 2000, the prices for the drugs have dropped considerably and an estimated 39 percent of HIV-infected men and women currently receive ARV therapy.³⁴

- 4.4.4** Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be

³² World Health Organisation (WHO): Rwanda

³³ WHO Mental Health Atlas 2005: Rwanda

³⁴ UNAIDS: Rwanda Country Profile & IRIN: Rwanda '45 to take part in HIV/AIDS vaccine trials' dated 10 March 2004

appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate.

5. Returns

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

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

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