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Rwanda

1. Introduction

1.1 This document summarises the general, political and human rights situation in Rwanda and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with any CIPU or COI Service Rwanda Country Information Bulletins.

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

1.4 Where source numbers have been cited, these refer to source documents which are listed 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][2a][2b][3]**

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 1 million Rwandans. It was halted by the RPF taking control of the country. The extremist politicians and over 2 million Hutu fled the country together with many members of the Rwandan Armed Forces (the FAR) and the Interahamwe, both with their weapons to neighbouring countries. The majority went to Zaire (now DRC). The largely Tutsi Rwandan Patriotic Front (RPF) took power in 1994 and formed a Government of National Unity. **[1][2b][3]**

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% of the vote for a 7-year term, and the RPF won 73.8% of the votes in the Parliamentary elections. The tenure for MPs is 5 years. **[1][2b][3]**

2.4 Progress has been marred by military engagement in the neighbouring DRC. Although Rwandan troops withdrew from the DRC in 2002, allegations have persisted that Rwanda maintains a presence in eastern DRC. There are also continued questions over domestic human rights and political freedoms. Although voting in the 2003 elections was generally well run and orderly, international observers reported irregularities in the electoral process, including intimidation of voters. 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 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 an ethno-centric political party. In March 2005 the main Hutu rebel group, Democratic Forces for the Liberation of Rwanda (FDLR), said it would cease hostilities and that its members would disarm and return to Rwanda. FDLR is one of several groups accused of creating instability in DRC; many of its members are accused of taking part in the 1994 genocide. **[1][2b]**

2.5 In 1994, the UN 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 23 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 to be tried within their own communities. **[1][2b]**

2.6 Sixty thousand refugees remained outside Rwanda in 2004; most were unsure if they wanted to return and lived in fear of being forcibly returned. According to the UN High Commissioner for Refugees (UNHCR), 8,457 Rwandan refugees were repatriated in the first six months of 2004 from African countries that had signed tripartite agreements with Rwanda and UNHCR. Despite vigorous promotion of voluntary repatriation, the number of Rwandan registering for repatriation remained small. UNHCR postponed until mid-2006 a decision on the application of "cessation clauses" which would terminate international protection for Rwandan refugees. **[3][4]**

2.7 The Government's human rights record remained poor in 2004, and the Government continued to commit serious abuses. In their annual reports covering 2004, Amnesty International and Human Rights Watch highlighted the suppression of political opposition, suppression of civil society, unfree press, abuses in the criminal justice system including the slow progress of genocide trials under the ICTR and sexual violence against women as areas of particular concern. **[3][4][5]**

2.8 The right of citizens to change their government was effectively restricted in 2004. Members of Local Defence Forces (LDF) committed unlawful killings. The Government investigated reports that organised groups targeted and killed witnesses to the 1994 Genocide in certain provinces. During 2004, there were reports of politically motivated disappearances. Police often beat suspects in custody, and torture was a problem. Prison conditions remained life threatening. Arbitrary arrest and detention and prolonged pre-trial detention remained serious problems during the year. The judiciary did not always ensure due process or expeditious trials. The Government continued to conduct genocide trials at a slow pace. **[3][4][5]**

2.9 The Government restricted freedom of speech and of the press in 2004, and it limited freedom of assembly and association. In several instances, local government officials restricted the freedom of religion, particularly for Jehovah's Witnesses. Government officials reportedly harassed and imprisoned refugees and asylum seekers during the first half of 2004, when the Government was taking over responsibility for their registration. Societal violence and discrimination against women and ethnic minorities, particularly the Batwa, were problems. Child labour was prevalent, and trafficking in persons was a problem. **[3][4][5]**

2.10 Human rights NGOs suffer restrictions and harassment and disappearances have been reported. During 2004, the Government released a report that accused human rights groups, journalists, churches, and local government officials of "genocide ideology"; the Government subsequently justified scores of arbitrary arrests and the effective dismantling of the country's independent human rights organisations as part of its campaign against "divisionism." Human rights organisations assert that accusations of promoting divisionism have been been used to silence criticism of the Government. **[1][3]**

2.11 In December 2004, President Kagame promised a national human rights campaign. Many NGOs continue to focus on education and reconciliation in the wake of the genocide. The Government has established a National Human Rights Commission (NHRC) and a National Unity and Reconciliation Commission (NURC). **[1][3]**

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 API 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 flight are set out in the relevant API's, 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 claimant 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 API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en
/home/laws___policy/policy_instructions/apis.html

3.6 Members of opposition political parties

3.6.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the state authorities due to their membership of, involvement with, or perceived involvement in opposition political parties - most notably the Rwanda Democratic Movement (MDR) or the Party for Democratic Renewal (PDR - Ubuyanja).

3.6.2 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 effectively restricted in 2003-4. There were numerous credible reports that during the presidential and legislative campaign periods in 2003, Kagame's opponents and their supporters faced widespread harassment and intimidation, including detention, which made it virtually impossible to campaign. **[3]**

3.6.3 During 2004, the main opposition party the MDR remained inactive as a result of the cabinet's recommendation in May 2003 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 reregister under a new political party law. The actions taken by authorities during the 2003 election campaign period created an atmosphere of fear, so many groups simply chose not to meet. Members of political parties other than the ruling RPF reported that, because Rwanda had essentially become a one-party state, there was no sense in meeting. The Government continued to harass former members of the MDR and other opposition figures throughout 2004. **[1][3]**

3.6.4 On 30 June 2004, the Government released a report on the status of several ongoing investigations of high-profile disappearances that occurred in 2003, following the release of a Government report of that year criticising the MDR and calling for its dissolution. According to the report, Lieutenant Colonel Cyiza, a former Supreme Court Vice-President who disappeared in April 2003, was residing in the DRC; two other military officers previously reported missing were in Burundi. In both cases, however, the Government did not provide any proof of these claims. The report provided no new information on the whereabouts of Dr. Leonard Hitimana, an MDR member of the National Assembly. There were numerous reports of political detainees, including MDR Secretary General Pierre Gakwandi. **[3]** There were reports that some MDR members were arrested and detained in 2004 and that family members of some alleged MDR members or supporters had their land confiscated or were denied social services by local authorities. Some top officials who worked for Faustin Twagiramungu during his 2003 presidential campaign were arrested and unlawfully detained. **[4]**

3.6.5 There were some reports of political prisoners in 2004, including former President Pasteur Bizimungu and seven other persons believed to be involved with Bizimungu's banned PDR-Ubuyanja party. **[3]** Individuals suspected of association with the PDR have also been subject to arrest. Gratien Munyarubuga, founder member of the PDR, was murdered in December 2001. He had received death threats after he

visited Bizimungu at his home. Bizimungu, Ntakarutinka, and others who were arrested in connection with them in 2002 are still in detention. **[6] (paras 6.41 & 6.43)**

3.6.6 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.

3.6.7 Internal relocation. As this category of applicants' 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.

3.6.8 Caselaw

IAT/AIT Determinations: 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.

3.6.9 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 ordinary members, or relations of members, of these parties are at risk from the authorities. Claimants 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 or PDR-Ubuyanja are unlikely to be able to adduce 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. In cases where claimants are able to demonstrate that they are a high-level MDR or PDR-Ubuyanja leader or activist, the grant of asylum is likely to be appropriate.

3.7 Ethnicity / mixed marriages

3.7.1 Some claimants will apply for asylum based on societal discrimination amounting to persecution due to their ethnicity, either Tutsi or Hutu or because they're involved in a mixed marriage. Some Hutu claimants may allege state-sponsored discrimination or harassment on account of their ethnicity.

3.7.2 Treatment. Before 1994, an estimated 85% of citizens were Hutu, 14% were Tutsi, and 1% were Batwa (Twa). However, Hutus and Tutsis were not clearly distinct groups since the two have intermarried for generations. The 1994 mass killings and migrations probably affected the ethnic composition of the population, but the extent and nature of the changes remained unknown. With the removal of ethnic labels from identification cards, the Batwa no longer were 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 continue to be treated as inferior citizens by both the Hutu and Tutsi groups. **[1][3]**

3.7.3 Large-scale interethnic 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 Hutu-dominated armed forces called the ex-FAR and Interahamwe militia. The genocide ended later the same year when a predominately Tutsi militia, operating out of Uganda and occupied Rwandan territory, overthrew that government and established the Government of National Unity, which was composed of members of eight political parties and which ruled until the elections in August and September 2003. **[1][3]**

3.7.4 In 2004, some organisations and individuals accused the Government of favouring Tutsis, particularly English-speaking 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. **[3]**

3.7.5 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. **[6] (para 6.83)**

3.7.6 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 cleavages. The Constitution provides for the eradication of ethnic, regional, and other divisions and the promotion of national unity. **[3]** The Rwandan National Police (RNP) has a positive image - all recruits

receive extensive training in human rights and there is little problem with corruption or discipline within the police force due to national pride, strict training, and close monitoring. **[6] [paras 5.58 & 6.82]** There is no evidence that the state authorities discriminate against any particular group, therefore Hutus, Tutsis and those in mixed Hutu/Tutsi marriages who face societal discrimination are able to seek and receive sufficient protection from the authorities.

3.7.7 Internal relocation. It is possible that ethnic groups and people in mixed marriages may face social pressures in some parts of the country, however there is free movement within the country and the claimant may internally relocate to another region in order to escape this threat.

3.7.8 Conclusion. The Rwandan government is strongly committed to national reconciliation and there is no significant 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 now 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, the availability of sufficient protection from the authorities and the level of societal discrimination being unlikely to amount to persecution means that the grant of asylum in such cases is not likely to be appropriate.

3.8 Rebel militia groups in the DRC

3.8.1 Some claimants will apply for asylum based on ill treatment amounting to persecution at the hands of the state authorities due to their membership, involvement with or perceived involvement in Hutu rebel militia groups (the Interahamwe or Democratic Forces for the Liberation of Rwanda - FDLR) based in the Rwanda-DRC border region.

3.8.2 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 the DRC following their defeat by the Rwandan Patriotic Army (RPA, now RDF). They combined with the army of the defeated Hutu regime (Ex Far forces) to create the Army for the Liberation of Rwanda (ALIR). During the war in the DRC the ALIR were allied with the DRC Government against the Rwandan army. ALIR is now called FDLR. **[6] (Annex B)** Rwanda has in the past accused the Rwandan rebel militias in the DRC of "uniting with Kinshasa troops to destabilise the region." The Government reported 11 attacks by FDLR on north-western Rwanda in 2004. Rwanda deployed its troops heavily along the border with DRC and Burundi in April 2004 in response to attacks in the northwest by the rebels. **[6] (paras 6.77 & 6.79)**

3.8.3 During 2004, there were several unconfirmed reports from multiple credible sources that Rwandan Defence Forces (RDF) troops were at times present in the eastern part of the DRC, particularly following public threats by the Rwandan President in November 2004 indicating that the Government might send RDF troops into the DRC to attack Hutu rebels deemed a threat to its security. **[1][3]** There were also reports that RDF military advisors remained integrated with former Congolese Rally for Democracy (RCD/G) forces. However, the Government publicly denied allegations that RDF troops were operating in the DRC. During 2004, Rwandan rebels in the DRC, known as the Democratic Forces for the Liberation of Rwanda (FDLR), conducted attacks in the north-western region of Rwanda. **[3]**

3.8.4 The Government has set up a Demobilisation and Reintegration Commission and launched a programme for the return of an estimated 25,000 ex-combatants from the Interahamwe in the DRC. In early 2004, more than 5,000 returnee militias from the DRC had been demobilised and reintegrated into their communities. **[6] (paras 6.68, 6.69 & 6.100)** In March 2005, leaders of the FDLR announced their intention to end attacks against their homeland, according to the UN Mission in the DRC (MONUC) and indicated a willingness to enter a UN programme of disarmament, demobilisation, repatriation, reinstallation and rehabilitation (DDRRR).However, by mid-August 2005 there had been no additional disarmament of FDLR members and the FDLR had increased its activities against MONUC peacekeepers and the civilian population in eastern DRC. **[2b][8a][8b]**

3.8.5 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.

3.8.6 Internal relocation. As this category of applicants' 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.

3.8.7 Conclusion. The Interahamwe militias and groups fighting as the FDLR have continued sporadic attacks against the RDF on both sides of the Rwanda-DRC border in 2004. The Government however continued its programme to demobilise and reintegrate ex-rebel militia members through the year and the main rebel group, the FDLR, announced in March 2005 that it intended to cease hostilities. The Rwandan government has subsequently 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.

3.8.8 The various Rwandan rebel forces in the Rwandan-DRC border region have been responsible for numerous serious human rights abuses and actions that amount to war crimes. If it is accepted that the claimant was a member or combatant for one of these groups then caseworkers should consider whether to apply one of the Exclusion clauses.

3.9 Genocide survivors / witnesses

3.9.1 Some claimants will apply for asylum 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).

3.9.2 Treatment. On 7 April 2004, Rwanda commemorated the 10-year anniversary of the 1994 genocide. Within Rwanda, 80,000 detainees awaited trial for their alleged participation in the genocide. They were held in harsh conditions. Another 500,000 to 600,000 Rwandan were implicated in the genocide, largely through the pre-trial confessions of detainees. A reformed judiciary was established in mid-2004. The nationwide establishment of the 8,140 Gacaca jurisdictions - a community-based system of justice intended to try most genocide suspects - was delayed until 2005. The trial phase of the 746 Gacaca jurisdictions in a pilot project which began in 2002 was similarly delayed. Not all of them had completed the pre-trial phase by the end of 2004. **[4]**

3.9.3 Since 1994, the ICTR has delivered verdicts on 23 persons, including 6 during 2004. Government authorities sporadically prevented witnesses from attending and giving testimony at the ICTR, which delayed the judicial process. Relations and co-operation between the Government and the ICTR improved following the 2003 appointment of Hassan Bubacar Jallow as the ICTR's Prosecutor. Discussions between the Government and the Tribunal continued on investigating Rwandan Patriotic Army (RPA) crimes, or "revenge killings," committed in 1994. 25 ICTR trials were in progress at the end of 2004 and 11 cases were under appeal. An additional 17 persons remained in detention, awaiting trial at the end of 2004, while 3 persons accused of genocide awaited transfer to Arusha. Two of the three ICTR investigators arrested in 2001 on genocide charges were in custody awaiting trial at year's end; the remaining investigator had been released from custody but was fired by the ICTR. **[1][3]**

3.9.4 There have been reports of murder, harassment and intimidation of Survivors by genocide suspects. In early 2004, a man was killed and dismembered in front of his family as a warning to other potential witnesses. Several genocide survivors have fled provinces like Gikongoro where the killings were rampant, for fear of becoming targets. NGOs have accused the ICTR of recruiting genocide suspects or their relatives as defence investigators without paying enough attention to the security of prosecution witnesses. **[6] (paras 6.108 - 6.109)**

3.9.5 Sufficiency of protection. Many of the genocide suspects released were rearrested in June 2003 to investigate and verify fresh allegations made against them by the genocide survivors group Ibuka. The Constitution has a provision, under Article 179, for a National Commission for the Fight Against Genocide to advocate the cause of genocide survivors within the country and abroad. A commission which includes Rwandan senators, was established in December 2003 to investigate the allegations of mistreatment of witnesses. **[2c][6] (paras 5.27 & 6.109)** The Rwandan National Police (RNP) has a positive image ? all recruits receive extensive training in human rights and there is little problem with corruption or discipline within the police force due to national pride, strict training, and close monitoring. **[6] [paras 5.58 & 6.82)** Genocide survivors are therefore able to seek and receive sufficient protection from the state authorities.

3.9.6 Internal relocation. As the targeting of genocide survivors has been limited to certain provinces (most notably Gikongoro) while most other provinces are considered safe, internal relocation to a safe region to escape this threat is a feasible option.

3.9.7 Caselaw.

IAT/AIT Determinations: 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 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.

3.9.8 Conclusion. While there have been continued reports in 2004 of harassment and intimidation of genocide survivors / witnesses testifying to the Gacaca system or ICTR, the state authorities have demonstrated a willingness and ability to protect the genocide survivors. Government-sponsored support organisations and other NGOs continue to assist and monitor the genocide survivors and witnesses, while actual instances of societal discrimination are isolated and regionalised. Claimants 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.

3.10 Prison conditions

3.10.1 Claimants 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 the Rwanda are so poor as to amount to torture or inhuman treatment or punishment.

3.10.2 Consideration. Prison conditions were described as harsh and life threatening in 2004. The International Committee of the Red Cross (ICRC) has registered approximately 76,000 prisoners detained on genocide or security-related charges and estimated that an additional 10,000 prisoners were detained on charges unrelated to the genocide; however, the Ministry of Justice routinely referred to the prison population as numbering 87,000. While the Government was committed to improving prison conditions, chronic overcrowding remained a major problem. During 2004, the Government completed the construction of two new prisons while closing down the four remaining cachots (local detention centres) in the country. **[3]** In July 2005, the government announced the release of 36,000 prisoners, the vast majority of which had confessed to genocide crimes, in order to relieve prison overcrowding. **[2c]**

3.10.3 Sanitary conditions are extremely poor, and despite continuing efforts, the Government did not provide adequate food or medical treatment in 2004. The ICRC provided 30% of the food in the 16 main prisons and also provided additional expertise and medical, logistical, and material support to improve conditions for inmates. Prison deaths in 2004 were largely the result of preventable diseases and suspected cases of HIV/AIDS. There was an undetermined number of deaths in prison reported during 2004. Prisoners may also be hired out to perform work at private residences and businesses. **[3]**

3.10.4 Women are detained separately from men, and more than 500 minors were incarcerated with adults throughout the prison system in 2004. During 2004, the Government made efforts to better ensure that minors were incarcerated separately from adults, as well as efforts to release children; however, an undetermined number of children classified as minors remained incarcerated on genocide-related charges at year's end. Pre-trial detainees generally were separated from convicted prisoners; however, there were numerous exceptions as a result of the large number of genocide detainees awaiting trial. High profile political prisoners, such as former president Pasteur Bizimungu, were kept in special sections of regular prisons. The ICRC, human rights organisations, diplomats, and journalists had regular access to the prisons. The ICRC continued its visits to communal jails and military-supervised jails. Unlike in 2003, there were no reports that RCD/G combatants (or ex-RCD/G combatants) incarcerated persons in the private residences of rebel military commanders. **[3]**

3.10.5 Caselaw.

IAT/AIT Determinations: 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)

3.10.6 Conclusion. Whilst prison conditions in Rwanda are poor with poor sanitary conditions and a lack of medical and health care being particular problem conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants 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 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.

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants 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 Constitution states that "Every person has the right and duties relating to health." The government aims to provide affordable and accessible healthcare for all and there has been a steady investment in the health sector since 1994. Access to healthcare, at 87%, is among the highest in the region and there is no evidence of discrimination on ethnic lines. The Ministry of Health has divided Rwanda into 40 health districts, 33 of which have district hospitals. Life expectancy in Rwanda is 49 years and the infant mortality rate is 130 per 1,000 population compared with sub-Saharan averages of 54 and 91 respectively. [6] (paras 5.78 & 5.80) USAID is helping the Ministry of Health to develop strategies and tools for managing health financing through prepayment health schemes called 'mutuelles'. Belgium has pledged 13 million Euro for Rwanda's health and education sectors. A new hospital with a 180 bed capacity has been planned for Kigali Province with two children's wards, a male ward, a female ward, a maternity ward, an AIDS ward and an out-patients clinic. **[6] (paras 5.79 & 5.83)**

4.4.3 Mental health receives the support of a number of NGOs including the British Voluntary Service Overseas (VSO). Rwanda has one mental health hospital, Caraes, situated in Ndera, a small rural village outside Kigali. Treatment provided is either during consultation at Service de Consultation Psycho Social (SCPS) or at Ndera hospital for hospitalisation. The National Unity and Reconciliation Commission has completed the training of 45 trauma counsellors who will handle trauma-related cases expected to increase under the Gacaca justice system **[6] (paras 5.83, 5.86 & 5.87 - 5.88)**

4.4.4 Rwanda is among the 16 most affected countries in Africa for HIV/AIDS. The National Commission against AIDS assumed responsibility in 2002 for implementing Rwanda's national HIV/AIDS strategy which aims to strengthen preventive measures, including preventing mother-to-child transmission. Rwandan women's organisations such as Pro-femmes members and Avega Agahozo also provide AIDS counselling to their members. **[6] (paras 5.89 & 5.91)**

4.4.5 The UN World Food Programme (WFP) has signed a US $35.4 million development aid deal with the Rwandan government which would provide support for improved self-reliance for HIV/AIDS affected households. A UK-funded body, the Support of International Partnership against AIDS in Africa (SIPAA) has donated 47 billion Rwandan francs to help fight the spread of HIV/AIDS. Since the introduction of anti-retrovirals (ARVs) in Rwanda in 2000, the prices for the drugs have dropped from US $727 to $27 per dose. However, only a small proportion of HIV/AIDS patients has access to ARVs. Rwanda is still waiting for money from the HIV/AIDS Global Fund in order to further reduce ARV prices to at least less than a dollar a day for a patient. **[6] (paras 5.95 - 5.96)**

4.4.6 Where a caseworker considers that the circumstances of the individual claimant 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 appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel

document should not be taken into account when considering the merits of an asylum or human rights claim. Returns are to the capital Kigali.

5.2 In a letter of January 2005, the UNHCR advises that the return of unsuccessful asylum seekers should be approached with caution, particularly in respect of persons originating from the north-western and south-western parts of the country, where sporadic rebel attacks still occur. **[7]** The UNHCR's position provides a broad assessment of the situation in Rwanda and we do not dispute that it presents an accurate overview of the general humanitarian situation and the social and security problems inherent in Rwanda. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We therefore take the view that it is safe for any individual Rwandan national found by the Home Office and the independent appeals process not to be in need of international protection to return to Rwanda.

5.3 Rwandan nationals may return voluntarily to any region of Rwanda at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation 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 2001, 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 020 7233 0001.

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