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OPERATIONAL GUIDANCE NOTE

DEMOCRATIC REPUBLIC OF CONGO

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in the Democratic Republic of Congo (DRC) 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 DRC 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 Instructions 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** The Democratic Republic of Congo (DRC) is a republic with a president as the head of state. Cabinet is appointed by the ruling party in the parliament and the prime minister is also elected by the parliament. In December 2005, a national referendum to approve a revised constitution to assist with preparations for general elections returned a large majority in favour. The new constitution was promulgated in February 2006.¹
- 2.2** The Transitional National Government (TNG) was formed on 30 June 2003 with the aim of ending the five-year conflict between the Government and the rebel forces that started in August 1998. There are also five 'citizens' institutions' an Observatory for Human Rights, a Truth and Reconciliation Commission, a High Authority for Media, an Ethics and Anti-Corruption Commission, and the Independent Electoral Commission. Forces of the United Nations Mission for Congo (MONUC) have been deployed in the country since 1999.²
- 2.3** President Joseph Kabila was the head of the TNG which also comprised four vice-presidents (Jean-Pierre Bemba, Azarias Ruberwa, Arthur Z'Ahidi Ngoma and Yerodia Abdoulaye Ndombasi), 36 Ministers and 25 Deputy Ministers. These were drawn from the previous administration, the Mayi-Mayi (Mai Mai) militia, the rebel forces (Congolesse Rally for Democracy RCD-Goma, Congolesse Rally for National Democracy RCD-N, Congolesse Rally for Democracy - Liberation Movement RCD-ML and the Congo Liberation Movement MLC), unarmed political opposition and civil society.³
- 2.4** The three-year transitional period drew to a close with multi-party presidential and National Assembly elections in July 2006, and presidential runoff and provincial assembly elections in October 2006. Voters elected Joseph Kabila president and gave his Alliance for the Presidential Majority (AMP) coalition a majority of legislative seats in elections that international observers considered credible. Kabila was inaugurated on 6 December 2006 and nominated Antoine Gizenga as prime minister later that month. In January 2007, a 108 seat Senate was indirectly elected, in which the AMP holds more than half the seats, with allies of defeated presidential candidate Jean-Pierre Bemba holding 20 seats. In February 2007, President Kabila and Prime Minister Gizenga announced a government of 60 Ministers. Antoine Gizenga resigned in September 2008 and Adolphe Muzito was appointed prime minister on 10 October. The new government comprises 54 members including 3 deputy prime ministers (François-Joseph Nzanga Mobutu, Mutombo Bakafuasenda, and Emile Bongeli).⁴
- 2.5** Violence broke out in the Bas Congo Province in February 2007 after supporters of the Bundu Dia Kongo (BDK) movement protested against the results of the senatorial and gubernatorial elections in the province. Unhappy that the opposition dominated provincial assemblies in Kinshasa and Bas Congo elected members of the ruling party as state governors, the protesters alleged that the January election was rigged. The United Nations estimated that 134 people died as a result of the violence, including members of the security forces.⁵
- 2.6** Jean-Pierre Bemba accepted his 2006 presidential election defeat after an initial appeal to

¹ Home Office COI Service Democratic Republic of Congo (DRC) Country of Origin Information Report May 2008 (Background Information: Constitution & Political System) & U.S. Department of State Background Note: DRC

² COIS DRC Country Report May 2008 (Background Information: History & Political System & Annexes: Annex A - Chronology of major events)

³ COIS DRC Country Report May 2008 (Background Information: Political System & Annexes: Annex A - Chronology of major events) & Foreign and Commonwealth Office (FCO) Country Profile 2008: DRC

⁴ COIS DRC Country Report May 2008 (Background Information: Political System), FCO Country Profile 2008: DRC & MONUC 'A new government appointed to restore state authority in east' dated 28 October 2008

⁵ COIS DRC Country Report May 2008 (Background Information: History & Political System & Human Rights: Freedom of Religion)

the Supreme Court. However, Bemba's armed guards refused to lay down their weapons and join the national army in accordance with the agreed deadline and this led to two days of intense clashes between them and government troops in Kinshasa in March 2007. The number of those killed is not known, but European Union diplomats estimated that up to 600 people died during the clashes. Mr Bemba's allies condemned what they described as the arbitrary arrest and intimidation of its members, but President Kabila insisted that his troops had put down an armed rebellion and threatened to issue a warrant for Bemba's arrest despite his immunity as a senator. Bemba initially took refuge in the South African embassy, but in April 2007 he was given permission to travel to Portugal for medical treatment on his leg. In Bemba's absence, the opposition boycotted parliament on the grounds of lack of safety and harassment, but later returned after being promised talks with President Kabila. Bemba has not returned to the DRC and in May 2008 he was arrested in Belgium on charges of war crimes and crimes against humanity in relation to atrocities allegedly committed by his forces in the Central African Republic in 2002. He has since been transferred to The Hague to face trial at the International Criminal Court.⁶

- 2.7** The DRC continues to be affected by violence and insecurity, especially in the east where the insurgency of General Nkunda and the continued presence of Rwandan rebels and other armed groups, have displaced in excess of one million. In 2007, armed groups in these areas reportedly continued to commit serious abuses including unlawful killings, rape and sexual violence, banditry, and forced labour. In January 2008, a peace conference took place in Goma with the aim of bringing peace to the eastern DRC, involving representatives from the Government, various rebel and militia groups, refugees, and civil society. A peace accord was eventually signed on 23 January 2008, but violent clashes continued and in February 2008 General Nkunda's National Congress for the Defence of the People (CNDP) temporarily suspended involvement in the peace process. An estimated 250,000 people have been displaced by renewed fighting between government troops and rebel forces loyal to General Nkunda which began in the region in August 2008. General Nkunda called a ceasefire at the end of October 2008, but reports of fighting have continued. The UN has expressed concern about the humanitarian situation in the city of Goma where thousands of people have fled to avoid the fighting.⁷
- 2.8** The Government's human rights record remains poor with both the UN and the U.S. Department of State reporting arbitrary executions, torture, cruel inhuman and degrading treatment, sexual violence, interference in the administration of justice, as well as intimidation and threats against human rights defenders. According to the U.S. Department of State, the security forces continued to commit these abuses with impunity during 2007. Reports of human rights abuses have continued in 2008, most notably in relation to the violent clashes between the police and the BDK in Bas Congo in February and March. According to Government figures, 27 people were killed in the clashes, but the MONUC investigation into the violence reported at least one hundred fatalities. MONUC also indicated that the high death toll resulted, in large part, from unwarranted or excessive use of force from the Police, and in some cases from arbitrary executions. The Government rejected MONUC's findings, however, and intends to launch its own judicial investigation

⁶ COIS DRC Country Report May 2008 (Background Information: History & Political System, Human Rights: Introduction & Security Situation - General & Annexes: Annex A – Chronology of major events), British Broadcasting Corporation (BBC) News 'Former DR Congo leader arrested' dated 24 May 2008 & BBC News 'Congo ex-leader sent to the Hague' dated 3 July 2008

⁷ COIS DRC Country Report May 2008 (Background Information: Recent Developments & Human Rights: Introduction & Security Situation – General), FCO Country Profile 2008: DRC, BBC News 'Rebels seize Congo border town' dated 29 October 2008, BBC News 'Battles rage near key Congo town' dated 29 October 2008, BBC News 'Dr Congo rebel leader calls truce' dated 29 October 2008, BBC News 'UN fears over Congo unrest' dated 30 October 2008, BBC News 'UN urges end to Dr Congo conflict' dated 30 October 2008, BBC News 'Fighting as DR Congo talks begin' dated 7 November 2008, BBC News 'Q&A: Dr Congo conflict' dated 7 November 2008, BBC News 'UN alleges war crimes in DR Congo' dated 8 November 2008, BBC News 'Head rebel backs DR Congo peace' dated 16 November 2008, BBC News 'UN head outlines DR Congo abuse' dated 25 November 2008 & BBC News 'Congo agrees to rebel peace talks' dated 5 December 2008

into the events.⁸

- 2.9** The law provides for an independent judiciary, however, judges, who are poorly compensated, reportedly remain subject to influence and coercion by officials and other influential individuals. According to the U.S. Department of State, the civilian judicial system, including lower courts, appellate courts, the Supreme Court, and the Court of State Security, failed to dispense justice consistently and was widely disparaged as ineffective in 2007.⁹
- 2.10** Societal discrimination on the basis of ethnicity continued to be practised widely by members of virtually all ethnic groups in 2007 and this was evident in hiring patterns in some cities. There were no reports during 2007 of government efforts intended to address the problem. Ethnic conflict or friction is apparent in several areas of the country: between the Hema and Lendu around Bunia in Orientale province, between Congolese Tutsis (Banyamulenge) and other groups in the Kivus, and between the baLuba of Kasaï and the Lunda of Katanga. In 2007, the security forces in Kinshasa sometimes harassed, arbitrarily arrested, or threatened members of ethnic groups from Equateur Province. Similarly, the security forces in North and South Kivu provinces reportedly sometimes harassed, arbitrarily arrested, and threatened members of many different ethnic groups resident there.¹⁰

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 the DRC. 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 guidance 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 Instruction on Considering the Asylum Claim).
- 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 the 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 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.

⁸ COIS DRC Country Report May 2008 (Background Information: Recent Developments, Human Rights: Introduction & Security Situation – General & Security Forces), FCO Country Profile 2008: DRC & United Nations Security Council: Twenty-sixth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

⁹ COIS DRC Country Report May 2008 (Human Rights: Judiciary)

¹⁰ COIS DRC Country Report May 2008 (Human Rights: Ethnic Groups)

3.5 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.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.6 Opposition political activists or members of former rebel groups

3.6.1 The majority of asylum and/or human rights applicants cite a fear of persecution by the Congolese authorities because of the applicant's political activities or membership of, or association with a member of, a former rebel group.

3.6.2 *Treatment.* The peace agreement and the establishment of the TNG in June 2003 embraced the range of interest groups in the country. Led by Joseph Kabila, the TNG was drawn from the previous administration, the Mayi-Mayi (Mai Mai) militia, the rebel forces (Congolese Rally for Democracy RCD-Goma, Congolese Rally for National Democracy RCD-N, Congolese Rally for Democracy – Liberation Movement RCD-ML and the Congo Liberation Movement MLC), unarmed political opposition and civil society. The transitional constitution stated that political pluralism should be recognised and that all Congolese should have the right to create a political party or to become a member of a party of their choice. As a result, most former rebel groups are authorised to act as political parties.¹¹

3.6.3 New legislation governing political activity was passed in 2004. Political parties are free to hold meetings and campaign, but must first register with the Ministry of the Interior. This last restriction, which has been in place since 1999, is contested by the main political parties, such as the Union for Democracy and Social Progress (UDPS), which argue that they have been registered as political parties since the national conference in the early 1990s, and do not need to do so again.¹²

3.6.4 According to the U.S. Department of State, political parties were able to operate without restriction or outside interference during 2007. Whilst the constitution provides for the freedom of peaceful assembly, the Government restricted this right in some instances during the year. The Government requires organisers of public events to inform local authorities in advance and the U.S. Department of State noted occasions during 2007 when demonstrations were broken-up and curtailed. There were reports that the security forces were responsible for the deaths of at least fourteen individuals during the year with assault and unlawful detention also common.¹³

3.6.5 Having initially refused to take part in the TNG formed in June 2003, an August 2004 party-issued statement indicated that although the UDPS is not part of the TNG, the organisation was fully participating in the transition process. In December 2005, the party boycotted the referendum on the election and also missed the party candidate registration deadline in March 2006. On 10 March 2006, UDPS-organised demonstrations against election delays were dispersed by riot police and around 40 demonstrators were temporarily detained. On 22 March 2006, demonstrators again took to the streets of Kinshasa to demand that the UDPS be integrated into the country's election organisational structures. Throughout the campaigning, elections and post-election events from April to September 2006 the UDPS maintained its boycott, citing electoral irregularities and organised demonstrations and spoiling tactics against rival parties and the electoral process. In a letter dated 7 June 2007, the British Embassy in Kinshasa noted that as a result of its detachment from the electoral process, the treatment of UDPS members was significantly better in 2007 than it was in 2005. The Embassy also noted that the number of human rights abuses of UDPS members reported to MONUC and Embassies in Kinshasa had diminished drastically.¹⁴

¹¹ COIS DRC Country Report May 2008 (Background Information: Political System, Human Rights: Political Affiliation & Annexes: Annex A – Chronology of major events) & FCO Country Profile 2008: DRC

¹² COIS DRC Country Report May 2008 (Human Rights: Political Affiliation)

¹³ COIS DRC Country Report May 2008 (Human Rights: Political Affiliation)

¹⁴ COIS DRC Country Report May 2008 (Background Information: Political System, Human Rights: Political

3.6.6 Nearly 18 million of the 25 million registered voters participated in the July 2006 presidential and parliamentary elections and more than 15 million voters participated in the October 2006 presidential run-off and provincial elections. Following the elections, the National Assembly was installed in September 2006, Joseph Kabila was inaugurated in December 2006, and Antoine Gizenga was appointed prime minister later that month. International observers identified some irregularities in the 2006 elections relating to the campaign period, voting procedures, and the collection of election materials. Still, the Supreme Court dismissed claims by presidential candidate Jean-Pierre Bemba that massive fraud had occurred and the elections were considered credible by international observers. There were reports of isolated cases of violence during the election process, but there is no evidence to suggest that the violence was intended to prevent, or that it prevented, citizens from voting.¹⁵

3.6.7 There were widespread allegations of corrupt practices in the conduct of the senatorial and gubernatorial elections of January 2007 and violence broke out in the Bas Congo Province in February 2007 after supporters of the BDK movement protested against the results of the elections in the province. The United Nations estimated that 134 people died as a result of the violence, including members of the security forces. Although Jean-Pierre Bemba accepted the 2006 presidential election result, the refusal of his armed guards to join the national army led to intense clashes between Bemba's supporters and government troops in Kinshasa in March 2007. Mr Bemba's allies condemned what they described as the arbitrary arrest and intimidation of its members, but President Kabila insisted that his troops had put down an armed rebellion. Mr Bemba travelled to Portugal after initially taking refuge in the South African embassy, and in his absence the opposition boycotted parliament on the grounds of lack of safety and harassment. During this period of unrest, the Presidential Guard reportedly seized and ransacked the MLC headquarters and targeted the homes of MLC politicians, robbing and threatening their families. However, opposition parties later returned to parliament after being promised talks with President Kabila and reports of politically-motivated harassment on all sides have diminished.¹⁶

3.6.8 **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.

3.6.9 **Internal relocation.** Although this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of

Affiliation & Annexes: Annex A – Chronology of major events & Annex B – Political Organisations)

¹⁵ COIS DRC Country Report May 2008 (Background Information: Political System & Annexes: Annex A – Chronology of major events), FCO Country Profile 2008: DRC, & U.S. Department of State report on Human Rights Practices (USSD) 2006: DRC (Introduction & Section 3)

¹⁶ COIS DRC Country Report May 2008 (Background Information: Political System, Human Rights: Political Affiliation & Annexes: Annex A – Chronology of major events), & COI Service Country of Origin Information Request: Request Number 06/07-41

ill-treatment/persecution in their home area would be able to relocate to a part of the DRC where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.6.10 *Case law.*

MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007]

UKAIT 00023. The Tribunal found that despite indications from recent political events in DRC that the UDPS is perceived as less of a threat than previously, the guidance given in **AB and DM Democratic Republic of Congo (DRC) CG [2005] UKAIT 00118** and confirmed in **MK DRC CG [2006] UKAIT 00001** remains correct. The Tribunal found that low level members/sympathisers of the UDPS will not be at real risk on return to DRC in the current climate, but concluded that it is too early in the process of transition of DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists.

AB and DM (DRC) CG [2005] UKIAT 00118. Risk categories reviewed – Tutsis added. The Tribunal reviewed the risk categories established in **M (DRC) [2004] UKIAT 00075** and **VL (DRC) CG [2004] UKIAT 00007**.

‘...We also confirm as an existing risk category those having or being perceived to have a military or political profile in opposition to the government. The risk fluctuates in accordance with the political situation. On the basis of the evidence before us, the current position is as follows. The Tribunal accept that there is a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasa UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. At present there is a lesser risk for PALU members. There is a potential risk for DSP members who are considered as potential or actual collaborators for JP Bemba and his MLC movement. The risk for those associated with the Mobutu regime has considerably lessened. It is clear from the background evidence that close relatives of Mobutu have returned to DRC from exile: CIPU report paragraph 6.110-2. It is reported that those not suspected of collaboration with the rebels would no longer be at risk and affiliation to the MPR would not normally involve the risk of political persecution. No repression has been organised against PDSC members since the death of Laurent Kabila. (para 51)

The evidence before us sought to identify a number of further potential risk categories: rebel movement members now in opposition to their own movement and those who come from the east (including Kivu) but are returned to Kinshasa without a political or military profile. However, these issues do not arise in the present appeal and we do not have sufficient evidence to make it appropriate to reach conclusions about them. (para 51)’

3.6.11 *Conclusion. Non UDPS opposition parties/formal rebel groups.* There were politically related clashes in Bas Congo Province in 2007 and February-March 2008, and Jean-Pierre Bemba’s allies condemned what they described as the arbitrary arrest and intimidation of its members during the March 2007 clashes in Kinshasa. However, there is no evidence of systematic persecution of opposition party activists by the authorities, and the British Embassy in Kinshasa has reported that politically motivated harassment on all sides has diminished. Members of political parties are not at risk of persecution on the basis of membership alone. Cases in which the applicant has a record of political activity and of ill-treatment amounting to persecution, and establishes a well-founded fear of future persecution are therefore likely to be very rare. In such cases the grant of asylum will be appropriate. Members of political parties who have in the past encountered ill-treatment by the authorities will not necessarily have a well-founded fear of persecution in the future. Former rebel forces groups are represented in the recently elected National Assembly and the Senate having stood in the DRC’s first peacetime democratic elections. Accordingly, members or associates of these groups are not likely to be at risk of persecution by state authorities. The grant of asylum is not therefore likely to be appropriate in such cases.

3.6.12 *UDPS members or activists.* While mainstream political and former rebel groups represented in the National and Provincial Assemblies face no systematic risk of persecution based on party activity, the UDPS has, in recent years, been somewhat of an

exception. In the build up to the July 2006 elections the party maintained its boycott of the electoral process and organised numerous demonstrations which were forcefully suppressed by the security forces. While the party has remained in self-imposed exile from mainstream politics, activists who have brought themselves to the adverse attention of the authorities have, on occasion, been liable to face a real risk of persecution. However, the treatment of UDPS members was considered to be significantly better in 2007 than it was in 2005. Since June 2006, the number of human rights abuses of UDPS members reported to MONUC and Embassies in Kinshasa has diminished drastically. As highlighted in **MM (UDPS members - Risk on return) CG [2007] UKAIT 00023**, the available information does not suggest that low level support or membership (i.e. no known activism) of the UDPS alone automatically constitutes grounds for the grant of asylum. Case owners should, therefore, carefully assess the applicant's level of involvement before deciding on whether their particular circumstances meet the 'real risk' threshold.

3.7 Members of non-governmental organisations (NGOs)

3.7.1 Members of non-governmental organisations may make an asylum and/or human rights claim based on fear of intimidation, harassment or ill-treatment by the Congolese Government in order to prevent the full and accurate reporting of human rights issues. Some members of NGOs may claim a similar fear of rebel forces for the same reason.

3.7.2 *Treatment.* The Government generally co-operated with international NGOs in 2007 and permitted their investigators access to conflict areas. A wide variety of domestic and international human rights organisations investigated and published findings on human rights cases. The Human Rights Ministry worked with NGOs and MONUC during the year and responded to requests for information. The main Kinshasa-based domestic human rights organisations included Voices for the Voiceless (VSV); the Committee of Human Rights Observers (CODHO); and the Christian Network of Human Rights and Civic Education Organizations. Prominent organisations operating in areas outside Kinshasa included Heirs of Justice in Bukavu, Lotus Group in Kisangani, and Justice Plus in Bunia, Ituri District.¹⁷

3.7.3 In 2007, prison officials sometimes obstructed NGO access to detainees, and the security forces reportedly harassed, intimidated, or arrested local human rights advocates, NGO workers, and MONUC investigators. NGO workers continue to work in conditions of extreme danger, especially in eastern regions. For example, in July 2008 the UN reported armed robberies of international NGOs in South Kivu and noted a recognisable increase in the number of attacks against civilian targets, NGOs, and UN agencies, funds and programmes in North Kivu.¹⁸

3.7.4 *Sufficiency of protection.* If this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents in eastern and northern DRC, there is no evidence to indicate that such individuals would not be able to seek, and receive sufficient protection from the authorities in government-controlled areas.

3.7.5 *Internal relocation.* The law provides for freedom of movement within the DRC, however, the Government sometimes restricted these rights in areas under its control in 2007 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Security services in North and South Kivu provinces sometimes required travellers to present official travel orders from an employer or government official. The risk of rape by soldiers and armed groups, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas during 2007, particularly in the east. Movement between areas under central government control and

¹⁷ COIS DRC Country Report May 2008 (Human rights: Human Rights Institutions, Organisations and Activists)

¹⁸ COIS DRC Country Report May 2008 (Human rights: Human Rights Institutions, Organisations and Activists)

areas not under central government control can be hazardous but is possible by river or air. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.¹⁹

- 3.7.6** Although there are practical difficulties in moving between areas under government control and areas which are not under government control, relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.
- 3.7.7** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the DRC where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

- 3.7.8 Conclusion.** While activists may at times be subject to questioning or intimidation by the authorities, members of NGOs or human rights organisations are not at risk of mistreatment amounting to persecution on the basis of membership alone. Although some human rights activists have been subject to mistreatment in the unstable regions of northern and eastern DRC, there is no evidence of such activists being at risk of persecution by the authorities in Kinshasa. An applicant who fears mistreatment at the hands of non-state agents will similarly be safe in Kinshasa or other government-controlled areas where they will also be able to seek protection from the state authorities. It is therefore unlikely that the grant of asylum will be appropriate in such cases.

3.8 Non-Banyamulenge Tutsis

- 3.8.1** Some individuals will make an asylum or human rights claim based on their mistreatment by either the Congolese authorities, or non state agents particularly in western DRC on the grounds of their actual or perceived Tutsi origin.
- 3.8.2 Treatment.** At times of tension and anti-Rwandan feeling, numbers of people living in Kinshasa or other areas of western DRC have been assaulted or arrested by the authorities on the grounds of their Tutsi ethnic origin, many because of their supposed Tutsi features. The most severe forms of anti-Tutsi feeling were demonstrated in August 1998 and in the succeeding months, after the Kabila Government broke with its Rwandan supporters and incited hatred against Tutsis. At that time, many people of Tutsi origin living in western DRC left the area, sought asylum abroad or were resettled in other countries.²⁰

¹⁹ COIS DRC Country Report May 2008 (Human rights: Freedom of Movement) & USSD 2007: DRC (Section 2)

²⁰ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

- 3.8.3** There are Tutsi members of both houses of parliament, provincial assemblies, and provincial governments. Societal discrimination on the basis of ethnicity is reportedly practiced by members of virtually all of the country's more than 400 ethnic groups and in 2007 the Armed Forces of the DRC (FARDC) and other security forces sometimes harassed, arbitrarily arrested, and threatened Tutsis. Still, in its letter of 7 June 2007 the British Embassy in Kinshasa reported that, for the most part, Tutsis in Kinshasa go about their business unmolested. A National Institute for Social Security (INSS) centre established in Kinshasa in 1998 for Tutsis who were at risk was even closed in 2003 due to the greatly diminished risk of abuse and the increased tolerance of the local population.²¹
- 3.8.4** According to the British Embassy in Kinshasa, recent fighting in eastern DRC has seen General Nkunda blamed, and Tutsis demonised by certain sections of the Kinshasa media and political scene. However, the Embassy has no reliable evidence to suggest that this has translated into increased harassment or other abuse of Tutsis in the city.²²
- 3.8.5** **Sufficiency of protection.** If this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to those authorities for protection. In October 2004, the Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups in eastern DRC.²³ The authorities have therefore demonstrated their capacity to protect Tutsis from rival ethnic groups. If the ill-treatment/persecution is at the hands of non-state agents there is no evidence that such individuals would not be able to seek adequate protection from the authorities.
- 3.8.6** **Internal relocation.** The law provides for freedom of movement within the DRC, however, the Government sometimes restricted these rights in areas under its control in 2007 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Security services in North and South Kivu provinces sometimes required travellers to present official travel orders from an employer or government official. The risk of rape by soldiers and armed groups, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas during 2007, particularly in the east. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.²⁴
- 3.8.7** Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.
- 3.8.8** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

²¹ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups) & USSD 2007: DRC (Section 5)

²² COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

²³ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

²⁴ COIS DRC Country Report May 2008 (Human rights: Freedom of Movement) & USSD 2007: DRC (Section 2)

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the DRC where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.8.9 *Caselaw.*

AB and DM (DRC) CG [2005] UKIAT 00118. Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to DRC, specifically, the risk to ethnic Tutsis and to failed asylum seekers in general. The Tribunal reviewed the risk categories established in **M (DRC) [2004] UKIAT 00075 and VL (DRC) CG [2004] UKIAT 00007** to add those of Tutsi origin to the list. The current risk categories are:

“those with a nationality or perceived nationality of a state regarded as hostile to DRC and in particular those who have or presumed to have Rwandan connections or are of Rwandan origins” (para 51(i)).

“those who are Tutsi (or Banyamulenge) or are perceived to be Tutsi (or Banyamulenge)” with the possible exception of high-level officials of RCD/Goma (para 51(ii)).

“those having or perceived to have a military or political profile in opposition to the government” (para 51(iii)).

“In assessing the risk for Rwandans or Tutsis, much depends on the perception of the authorities. A person is more likely to be viewed as Tutsi if he or she shares that groups distinctive physical characteristics. Dialect, tribal links and geographical origins will also be relevant. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile” [*emphasis added*] (para 54 in full below).

“In the light of our findings this determination is to be read as replacing the existing country guidance cases on DRC save for **VL** for what it says about the approach to the issue failed asylum seekers. It also replaces **RK (obligation to investigate) CG [2004] UKIAT 00129**, but we would emphasise that the latter remains as a legally important reported case in respect of what it says about the obligation to investigate.” (para 52)

“The Tribunal would reiterate some earlier observations on the task of assessing whether a person falls within the new second risk category as now extended. There are two main aspects to this. Firstly on the evidence before us, most but not all Tutsis would be at risk. As noted in paragraphs 39-40, some Tutsis may be able to obtain the protection of MONUC albeit in practice they may be limited to those with wealth who are high-level officials within RCD/Goma and appear able to look to the authorities for protection.” (para 53)

“Secondly, as with the military or political category, much depends on the perception of the authorities as to whether they view someone adversely. It is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be scrutinised carefully. Given that Tutsis are described as being physically distinct from other tribes (CIPU report October 2004 para 6.71) a person is more likely to be viewed as a Tutsi by the authorities if he or she has those distinctive characteristics. Similarly those whose dialect, tribal links and geographical origins link them closely to Tutsis such as the Banyamulenge would also appear to fall within the at risk category. However, the mere fact of coming from the East or being of mixed ethnicity is unlikely without more to give rise to a perception of being Tutsi. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile.” [*emphasis added*] (para 54)

The appeal of the first appellant was allowed. The Tribunal found that he would be at risk by dint of his perceived Tutsi ethnicity and his previous political activity (paras 55-57). The appeal of the second appellant was dismissed on credibility grounds. The Tribunal found that he did not fall into one of the known risk categories (para 58).

MK (DRC) CG [2006] UKAIT 00001 heard 29 November 2005. **AB & DM** confirmed. The June 2005 HJT report concerning suspension by the Netherlands of the return of asylum

seekers to DRC does not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in AB & DM.

R (on the application of MUKENDI) v SSHD [2006] EWHC 4565 (Admin)

The Secretary of State was entitled to reject an asylum seeker's further representations as not constituting a fresh claim for asylum, and the mere assertion by an asylum seeker that she was a Tutsi and as such at risk of persecution if removed to the Democratic Republic of Congo was of itself insufficient to found a claim for asylum.

In the circumstances, the Secretary of State had been entitled to treat the further representations as not constituting a fresh claim. No fresh evidence or fresh material had been adduced by M to take her claim beyond the matters that had been before the adjudicator and rejected. A mere assertion by M that she was, or was likely to be perceived in DRC as being, a Tutsi and therefore in danger if returned there was not sufficient to support a claim for asylum. **AB and DM (Risk categories reviewed-Tutsis added) DRC CG (2005) UKIAT 00118** considered. Application refused.

3.8.10 Conclusion. While Tutsis have, in the past, been assaulted and arrested during times of tension and anti-Rwandan feeling, there is no current evidence of deliberate attacks or systematic ethnic discrimination which might suggest that someone of Tutsi origin would be at risk of discrimination or ill-treatment amounting to persecution at the hands of state authorities in Kinshasa or other government-controlled areas on the basis of their ethnic origin alone. Moreover, there is no evidence that those fearing persecution by non-state agents would not be able to seek and receive adequate protection from the state authorities or internally relocate to escape this threat. The grant of asylum in such cases is therefore not likely to be appropriate.

3.8.10 The **AB and DM** and **MK** Country Guidance caselaw (summarised above) adds Tutsis to the 'at risk' categories and the judgments indicate that most Tutsis and those perceived as Tutsis are likely to be at risk of mistreatment. The judgments do not however imply that all individual applicants accepted as Tutsis will automatically be at risk of persecution simply on the basis of their ethnicity, rather that ethnicity in addition to other factors such as political activity are likely to bring such individuals to the adverse attention of the authorities resulting in mistreatment which may amount to persecution. Case owners should assess each claim on the basis of a careful analysis of an individual's ethnicity, background and profile, with well-connected, more affluent Tutsis being unlikely to encounter / in a better position to avoid any risk of mistreatment.

3.9 Banyamulenge Tutsis

3.9.1 Some applicants will make an asylum and/or human rights claim based on their mistreatment by either the Congolese authorities and/or non-state agents on the grounds of their Banyamulenge ethnic origin.

3.9.2 Treatment. The Banyamulenge is a group of primarily ethnic Tutsis who before independence migrated from Burundi and Rwanda into the Mulenge Mountains of South Kivu. Like the Banyarwanda living in North-Kivu, the Banyamulenge were drawn into the inter-ethnic violence that spilled into Zaire (now the DRC) from Rwanda and Burundi in the 1990s.²⁵

3.9.3 The Bukavu revolt in late May and early June 2004, the forced deportation of Congolese of Rwandan origin in July 2004, and the Gatumba massacre in August 2004 sharply increased fear and hatred between Tutsi and Banyamulenge peoples and other ethnic groups in eastern DRC. In October 2004, there were violent protests in the eastern town of Uvira against returning Banyamulenge refugees. UNHCR and World Food Programme (WFP) had aided 1,500 families who returned via the Uvira transit centre. That same month, the

²⁵ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups. There was rioting in the town of Moba on 1 August 2007 when an estimated one thousand people took to the streets angered by rumours that ethnic Tutsis who fled during the war may be returning to the area. Calm returned to the town the following day.

- 3.9.4** The draft post transition constitution addresses the extremely touchy question of the Banyamulenge Tutsis long-settled in the region whose status as Congolese citizens has been heavily politicised and manipulated over the past 25 years. The draft constitution recognises: “as Congolese citizens all those that were resident in DRC at independence in 1960.” In November 2004, a law effectively granting citizenship to the Kinyarwanda speaking communities in the east (including the Banyamulenge) was passed. The law grants citizenship upon individual application to those whose tribes were present in the Congo at independence in 1960.²⁶
- 3.9.5** The issue of statelessness of the Banyamulenge might appear to have been solved by the 2004 nationality law however this has not yet produced tangible results. In practice, there are no examples of cases of Banyamulenge who have successfully obtained Congolese nationality. During the registration of electors in 2005 there were some incidents reported over the registration in the Kivus by “Tutsis” being Banyamulenge or otherwise “alien Tutsis” whose nationality was reported to be unclear.²⁷
- 3.9.6** **Sufficiency of protection.** If the applicants’ fear is of ill-treatment/persecution by the state authorities, they cannot apply to those authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents, the hostile and suspicious view of Banyamulenge by the state authorities means that such individuals are unlikely to be able to receive adequate protection from the authorities.
- 3.9.7** **Internal relocation.** The law provides for freedom of movement within the DRC, however, the Government sometimes restricted these rights in areas under its control in 2007 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Security services in North and South Kivu provinces sometimes required travellers to present official travel orders from an employer or government official. The risk of rape by soldiers and armed groups, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas during 2007, particularly in the east. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.²⁸
- 3.9.8** Although this category of applicants’ fear is of ill-treatment/persecution by the state authorities, or the authorities unwillingness to provide sufficient protection against action taken by non-state agents, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

²⁶ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

²⁷ COIS DRC Country Report May 2008 (Human rights: Ethnic Groups)

²⁸ COIS DRC Country Report May 2008 (Human rights: Freedom of Movement) & USSD 2007: DRC (Section 2)

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the DRC where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.9.9 *Caselaw.*

AB and DM (DRC) CG [2005] UKIAT 00118. Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to DRC, specifically, the risk to ethnic Tutsis and to failed asylum seekers in general. The Tribunal reviewed the risk categories established in **M(DRC) [2004] UKIAT 00075** and **VL (DRC) CG [2004] UKIAT 00007** to add those of Tutsi origin to the list. The current risk categories are:

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“those having or perceived to have a military or political profile in opposition to the government” (para 51(iii)).

“In assessing the risk for Rwandan’s or Tutsi’s, much depends on the perception of the authorities. A person is more likely to be viewed as Tutsi if he or she shares that groups distinctive physical characteristics. Dialect, tribal links and geographical origins will also be relevant. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile” *[emphasis added]* (para 54).

“In the light of our findings this determination is to be read as replacing the existing country guidance cases on DRC save for **VL** for what it says about the approach to the issue failed asylum seekers. It also replaces **RK (obligation to investigate) CG [2004] UKIAT 00129**, but we would emphasise that the latter remains as a legally important reported case in respect of what it says about the obligation to investigate.” (para 52)

“The Tribunal would reiterate some earlier observations on the task of assessing whether a person falls within the new second risk category as now extended. There are two main aspects to this. Firstly on the evidence before us, most but not all Tutsis would be at risk. As noted in paragraphs 39-40, some Tutsis may be able to obtain the protection of MONUC albeit in practice they may be limited to those with wealth who are high-level officials within RCD/Goma and appear able to look to the authorities for protection.” (para 53)

“Secondly, as with the military or political category, much depends on the perception of the authorities as to whether they view someone adversely. It is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be scrutinised carefully. Given that Tutsis are described as being physically distinct from other tribes (CIPU report October 2004 para 6.71) a person is more likely to be viewed as a Tutsi by the authorities if he or she has those distinctive characteristics. Similarly those whose dialect, tribal links and geographical origins link them closely to Tutsis such as the Banyamulenge would also appear to fall within the at risk category. However, the mere fact of coming from the East or being of mixed ethnicity is unlikely without more to give rise to a perception of being Tutsi. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile.” *[emphasis added]* (para 54)

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MK (DRC) CG [2006] UKAIT 00001 heard 29 November 2005. **AB & DM** confirmed. The June 2005 HJT report concerning suspension by the Netherlands of the return of asylum seekers to DRC does not afford a sufficient basis for modifying the conclusions on failed

asylum seekers reached in AB & DM.

3.9.10 Conclusion. In spite of the introduction of citizenship legislation in November 2004, the new measures have yet to bring any meaningful improvement to the situation for the Banyamulenge which in practice remains unchanged. Banyamulenge are in a vulnerable and insecure position in the eastern Kivu provinces, and face discrimination amounting to persecution throughout DRC. If it is accepted that the applicant is of Banyamulenge origin, a grant of asylum is likely to be appropriate.

3.10 General situation in the Ituri region: people of Hema or Lendu ethnicity

3.10.1 Applicants from the Ituri region of the DRC may make an asylum and/or human rights claim based on mistreatment by the Lendu group because of their Hema ethnic origin and vice versa.

3.10.2 Treatment. Violence in the Ituri region of the DRC between the Ugandan-backed Hema and Kinshasa-backed Lendu militias has occurred since 2002. The Ituri Pacification Commission, resulting from the bilateral peace accords signed in Luanda in September 2002, failed to make headway against the chaotic situation around the city of Bunia and the main Hema and Lendu armed factions remained outside the overall political dialogue until May 2004 when a disarmament agreement was signed with MONUC and the TNG.²⁹

3.10.3 MONUC, helped in part by the FARDC, pushed forward the demobilisation of around fifteen thousand combatants in 2005, though the process was slow at times, with setbacks often following gains. Militia groups including the Front for National Integration (FNI), the Congolese Revolutionary Movement (MRC) and the Front for Patriotic Resistance in Ituri (FRPI), signed a ceasefire agreement with the Government in October 2006 that included promises of amnesty and FARDC commissions for their leaders, many of whom have been widely accused of crimes against humanity. As a consequence, reports of more serious abuses by Ituri militias decreased in 2007 and in November 2007 the UN reported that the last three warlords from Ituri, Peter Karim (FNI), Cobra Matata (FRPI), and Mathieu Ngudjolo (MRC), had joined the FARDC.³⁰

3.10.4 While most rebel groups have surrendered, a number of combatants have not disarmed and occasional skirmishes between the FARDC and militia groups were reported at the end of 2007 and into 2008. Minor harassment and extortion of civilians by Ituri militia also continued in 2007 and thousands remained displaced by the fighting.³¹

3.10.5 Sufficiency of protection. The Government is seeking to establish its authority throughout the entire country, but the Government's control in certain areas of the east of the country remains weak. As such, the state is as yet not fully able to provide sufficient protection to either the Lendu or Hema in the Ituri region. The Government can however provide sufficient protection within areas fully under its control.

3.10.6 Internal relocation. The law provides for freedom of movement within the DRC, however, the Government sometimes restricted these rights in areas under its control in 2007 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Security services in North and South Kivu provinces sometimes required travellers to present official travel orders from an employer or government official. The risk of rape by soldiers and armed groups, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas during 2007, particularly in the east. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air.

²⁹ COIS DRC Country Report May 2008 (Human rights: Security Situation – General)

³⁰ COIS DRC Country Report May 2008 (Human rights: Security Situation – General) & USSD 2007: DRC (Section 1)

³¹ COIS DRC Country Report May 2008 (Human rights: Security Situation – General) & USSD 2007: DRC (Section 1)

A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.³²

- 3.10.7** Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.

3.10.8 Caselaw.

NA (risk categories – Hema) DRC CG [2008] UKAIT 00071. The Tribunal confirmed **AB and DM** (summarised in paragraph 3.8.8 above) subject to adding that members of the Hema tribe are likely to be treated by the authorities in the DRC in the same way as Tutsis and Rwandans and may be at risk of persecution on return to the Ituri region. The Tribunal found that tribal membership by itself is not determinative and that the question of whether a member of the Hema is at real risk of persecution or is able to relocate internally depends not only on his ethnicity but also on his profile, background and circumstances looked at in the light of the country evidence as a whole.

- 3.10.9 Conclusion.** Reports of serious abuses by Ituri militia have decreased since the ceasefire agreement of 2006, but sporadic violence still occurs and thousands remain displaced by the fighting. There is no evidence that those who cite a serious risk of ill-treatment at the hands of non-state agents in the Ituri region as a consequence of their Lendu ethnicity would not be able to relocate to Kinshasa or other government-controlled areas where they will, should the need arise, also be able to seek protection from the state authorities. It is therefore unlikely that the grant of asylum will be appropriate in such cases.

- 3.10.10** The Tribunal found in **NA** that members of the Hema tribe are likely to be treated by the authorities in the DRC in the same way as Tutsis and Rwandans and may be at risk of persecution on return to the Ituri region. The judgment does not, however, imply that all individual applicants accepted as Hema will automatically be at risk of persecution simply on the basis of their ethnicity, rather that ethnicity in addition to other factors will determine whether an applicant is at real risk of persecution or is able to relocate internally. Case owners should therefore assess such claims on the basis of a careful analysis of the individual's Hema ethnicity, profile, background, and circumstances in the light of the country evidence as a whole. The grant of asylum may be appropriate in some cases.

3.11 North Kivu

- 3.11.1** Applicants from North Kivu may make an asylum and/or human rights claim based on the political, human rights and/or humanitarian situation in the region.

- 3.11.2 Treatment.** The DRC continues to be affected by violence and insecurity, especially in the east where the insurgency of General Nkunda and the continued presence of Rwandan rebels and other armed groups, have displaced in excess of one million. In 2007, armed groups in these areas reportedly continued to commit serious abuses including unlawful killings, rape and sexual violence, banditry, and forced labour.³³

- 3.11.3** In January 2008, a peace conference took place in Goma with the aim of bringing peace to the eastern DRC, involving representatives from the Government, various rebel and militia

³² COIS DRC Country Report May 2008 (Human rights: Freedom of Movement) & USSD 2007: DRC (Section 2)

³³ COIS DRC Country Report May 2008 (Background Information: Recent Developments & Human Rights: Introduction & Security Situation – General) & FCO Country Profile 2008: DRC

groups, refugees, and civil society. A peace accord was eventually signed on 23 January 2008, but violent clashes continued and in February 2008 General Nkunda's National Congress for the Defence of the People (CNDP) temporarily suspended involvement in the peace process. In July 2008, the UN reported a reduction in the number of ceasefire violations documented by MONUC, though there continued to be reports of attacks against civilian targets.³⁴

- 3.11.4** An estimated 250,000 people have been displaced by renewed fighting between government troops and rebel forces loyal to General Nkunda which began in the region in August 2008. General Nkunda called a ceasefire at the end of October 2008, but reports of fighting have continued. The UN has expressed concern about the humanitarian situation in the city of Goma where thousands of people have fled to avoid the fighting. General Nkunda's rebel forces and pro-government militias have also been accused by the UN of committing human rights abuses.³⁵
- 3.11.5 *Sufficiency of protection.*** The Government is seeking to establish its authority throughout the entire country, but the Government's control in certain areas of the east of the country remains weak. As such, the state is as yet not fully able to provide sufficient protection to those in North Kivu. The Government can however provide sufficient protection within areas fully under its control.
- 3.11.6 *Internal relocation.*** The law provides for freedom of movement within the DRC, however, the Government sometimes restricted these rights in areas under its control in 2007 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Security services in North and South Kivu provinces sometimes required travellers to present official travel orders from an employer or government official. The risk of rape by soldiers and armed groups, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas during 2007, particularly in the east. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.³⁶
- 3.11.7** Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.
- 3.11.8 *Conclusion.*** More than one million people have been displaced by the fighting and general insecurity in North Kivu and the UN has expressed recent concern about the humanitarian situation in and around Goma. However, Goma is approximately one thousand miles from

³⁴ COIS DRC Country Report May 2008 (Background Information: Recent Developments & Human Rights: Introduction & Security Situation – General) & United Nations Security Council: Twenty-sixth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

³⁵ BBC News 'Rebels seize Congo border town' dated 29 October 2008, BBC News 'Battles rage near key Congo town' dated 29 October 2008, BBC News 'Dr Congo rebel leader calls truce' dated 29 October 2008, BBC News 'UN fears over Congo unrest' dated 30 October 2008, BBC News 'UN urges end to Dr Congo conflict' dated 30 October 2008, BBC News 'Fighting as DR Congo talks begin' dated 7 November 2008, BBC News 'Q&A: Dr Congo conflict' dated 7 November 2008, BBC News 'UN alleges war crimes in DR Congo' dated 8 November 2008, BBC News 'UN alleges war crimes in DR Congo' dated 8 November 2008, BBC News 'Head rebel backs DR Congo peace' dated 16 November 2008, BBC News 'UN head outlines DR Congo abuse' dated 25 November 2008 & BBC News 'Congo agrees to rebel peace talks' dated 5 December 2008

³⁶ COIS DRC Country Report May 2008 (Human rights: Freedom of Movement) & USSD 2007: DRC (Section 2)

Kinshasa and there is no evidence that those who cite the violence and/or humanitarian situation in the region would not be able to relocate to Kinshasa or other government-controlled areas where they will, should the need arise, be able to seek protection from the state authorities. It is therefore unlikely that the grant of asylum or Humanitarian Protection will be appropriate in such cases.

3.11.9 Case owners should note that rebel forces loyal to General Nkunda and pro-government militias have been accused of human rights abuses in North Kivu. If the evidence suggests that the applicant has been involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer all such cases to a Senior Caseworker in the first instance.

3.11.10 Case owners should also note that various Rwandan rebel groups have been responsible for human rights abuses either during the Rwandan genocide in 1994 or since they fled to the Kivu region of the DRC (see also the current Rwanda Operational Guidance Note). If the evidence suggests that the applicant has been involved in such actions, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer all such cases to a Senior Caseworker in the first instance.

3.12 Prison conditions

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

3.12.2 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.

3.12.3 *Consideration.* According to the U.S. Department of State, conditions in most large, central prisons were harsh and life threatening in 2007. The penal system continued to suffer from severe under funding in 2007 and most prisons suffered from overcrowding, poor maintenance, and a lack of sanitation facilities. Healthcare and medical attention reportedly remained inadequate during the year, and infectious diseases were also a problem. In some cases, prison doctors were available; when they were however, they lacked medicines and supplies. Friends and families provided the only available food and necessities at most prisons during 2007 and malnutrition was reportedly widespread. In July 2008, the UN expressed alarm that 26 inmates had died from acute malnutrition at the main prison in the city of Mbuji-Mayi since February 2008. Women and juveniles sometimes were held separately from men in larger prisons but were not separated in other detention facilities. There were reports in 2007 that male prisoners raped other prisoners, including men, women and children.³⁷

3.12.4 Conditions in smaller detention facilities were reportedly harsher than in larger prisons in 2007. According to the U.S. Department of State, these facilities were overcrowded, had no toilets, mattresses, or medical care, and provided detainees with insufficient amounts of light, air, and water. Originally intended to house short-term detainees, they were often used for lengthy stays. During 2007, smaller detention facilities generally operated without dedicated funding and with minimal regulation or oversight. Detention centre authorities often arbitrarily beat or tortured detainees. Guards frequently extorted bribes from family members and NGOs to visit detainees or provide food and other necessities.³⁸

³⁷ COIS DRC Country Report May 2008 (Human rights: Prison Conditions) & BBC News 'Congo prisoners starve to death' dated 22 July 2008

³⁸ COIS DRC Country Report May 2008 (Human rights: Prison Conditions)

- 3.12.5** Despite a pre-2007 presidential decision to close illegal jails operated by the military or other security forces, there were no reports of illegal jails being closed during the year. According to MONUC, the security services, particularly the intelligence services and the Republican Guard, continued to operate numerous illegal detention facilities characterised by harsh and life threatening conditions during 2007. Authorities reportedly denied family members, friends, and lawyers access to these illegal facilities.³⁹
- 3.12.6** In general, the Government allowed the International Committee of the Red Cross, MONUC, and some NGOs access to all official detention facilities in 2007. However, these organisations did not have access to the illegal detention facilities.⁴⁰
- 3.12.7** Prison conditions in the DRC are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, abuse of inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in the DRC are likely to reach the Article 3 threshold. Where case owners believe that an individual is likely to face imprisonment on return to the DRC they should also consider whether the applicant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a Senior Caseworker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to the DRC and exclusion is not justified, a grant of Humanitarian Protection may 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 Asylum Instructions on Discretionary Leave) Where the claim includes dependent family 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 the DRC 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 the Asylum Instructions 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 the DRC.
- 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 favorable 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 the DRC 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.

³⁹ COIS DRC Country Report May 2008 (Human rights: Prison Conditions)

⁴⁰ COIS DRC Country Report May 2008 (Human rights: Prison Conditions)

4.4.2 The public health care system in the DRC has been seriously degraded as a result of the war and the economic collapse. Hospitals and other health infrastructure suffer from serious shortages of medical staff and supplies. Patients must often provide or pay for their own medical supplies. Private clinics operate in most of the large urban areas. Aid organisations and Christian charities also provide some health care services. Facilities are better in Kinshasa compared with the rest of the country.⁴¹

4.4.3 Caselaw.

G (DRC) [2003] UKIAT 00055 Promulgated 22 August 2003. The situation of an appellant with HIV fell far short of the threshold for breach of Article 3.

4.4.4 Where a case owner considers that the circumstances of the individual applicant and the situation in the DRC 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. 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 Caselaw.

BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098. In a determination dated 18 December 2007, the Asylum and Immigration Tribunal (AIT) found that on return to the DRC failed asylum seekers do not per se face a real risk of persecution or serious harm or treatment contrary to Article 3 ECHR. In so finding, the decision updated and reaffirmed existing country guidance. At paragraph 385 of the determination the Tribunal concluded, "Despite concerted efforts by a significant number of people - lawyers, NGOs and others - and despite there having been a long lead-in period to the hearing and conclusion of this case during which members of the UK's DRC Diaspora have been encouraged by leaflets and public meetings in over six cities to come forward with cases, we have found no evidence to substantiate the claim that returned failed asylum seekers to the DRC as such face a real risk of persecution or serious harm or ill-treatment." BK appealed to the Court of Appeal, but in a judgment dated 3 December 2008 the Court of Appeal upheld the AIT determination.

K [2003] 00032; N [2003] UKIAT 00050; M [2003] UKIAT 00051; L [2003] UKIAT 00058; M [2003] 00071; L [2004] UKIAT 00007; JT (DRC) [2005] UKIAT 00102; AB and DM (DRC) CG [2005] UKIAT 00118 and MK (DRC) CG [2006] UKAIT 00001 have all held that returned failed asylum seekers are not at risk of persecution per se on account of having claimed asylum.

5.3 Congolese nationals may return voluntarily to any region of the DRC at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border 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 the DRC. 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. Those wishing to

⁴¹ COIS DRC Country Report May 2008 (Human rights: Medical Issues)

avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. **List of source documents**

- Home Office COI Service Democratic Republic of Congo (DRC) Country of Origin Information Report dated 21 May 2008. http://www.homeoffice.gov.uk/rds/country_reports.html
- COI Service Country of Origin Information Request: Request Number 06/07-41.
- U.S. Department of State Background Note: DRC (October 2008). <http://www.state.gov/r/pa/ei/bgn/2823.htm>
- U.S. Department of State report on Human Rights Practices (USSD) 2007: DRC (released on 11 March 2008). <http://www.state.gov/g/drl/rls/hrrpt/2007/100475.htm>
- USSD 2006: DRC (released on 6 March 2007). <http://www.state.gov/g/drl/rls/hrrpt/2006/78728.htm>
- British Broadcasting Corporation (BBC) News 'Congo ex-leader sent to The Hague' dated 3 July 2008. <http://news.bbc.co.uk/1/hi/world/africa/7487932.stm>
- BBC News 'Former Dr Congo leader arrested' dated 24 May 2008. <http://news.bbc.co.uk/1/hi/world/africa/7418932.stm>
- BBC News 'Congo prisoners starve to death' dated 22 July 2008. <http://news.bbc.co.uk/1/hi/world/africa/7518993.stm>
- BBC News 'Thousands displaced in DR Congo' dated 24 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7690015.stm>
- BBC News 'Rebels seize rebel border town' dated 29 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7696958.stm>
- BBC News 'Battles rage near key Congo town' dated 29 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7694766.stm>
- BBC News 'Dr Congo rebel leader calls truce' dated 29 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7698437.stm>
- BBC News 'UN fears over Congo unrest' dated 30 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7699286.stm>
- BBC News 'UN urges end to Dr Congo conflict' dated 30 October 2008. <http://news.bbc.co.uk/1/hi/world/africa/7698882.stm>
- BBC News 'Fighting as DR Congo talks begin' dated 7 November 2008. <http://news.bbc.co.uk/1/hi/world/africa/7714791.stm>
- BBC News 'Q&A: Dr Congo conflict' dated 7 November 2008. <http://news.bbc.co.uk/1/hi/world/africa/3075537.stm>
- BBC News 'UN alleges war crimes in DR Congo' dated 8 November 2008. <http://news.bbc.co.uk/1/hi/world/africa/7717720.stm>
- BBC News 'Head rebel backs DR Congo peace' dated 16 November 2008. <http://news.bbc.co.uk/1/hi/world/africa/7731937.stm>
- BBC News 'UN head outlines DR Congo abuse' dated 25 November 2008. <http://news.bbc.co.uk/1/hi/world/africa/7747271.stm>

- BBC News 'Congo agrees to rebel peace talks' dated 5 December 2008.
<http://news.bbc.co.uk/1/hi/world/africa/7766602.stm>
- United Nations Security Council: Twenty-sixth report of the Secretary General on the United Nations Organization Mission in the Democratic Republic of Congo (dated 3 July 2008).
<http://www.un.org/Depts/dpko/missions/monuc/monucDrp.htm>
- MONUC (UN Mission in DR Congo) 'A new government appointed to restore state authority in east' dated 28 October 2008. <http://www.monuc.org/news.aspx?newsID=18511>
- Foreign and Commonwealth Country Profile 2008: Democratic Republic of Congo (last reviewed 17 March 2008). <http://www.fco.gov.uk/en/about-the-fco/country-profiles/sub-saharan-africa/congo-democratic-republic>

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