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OPERATIONAL GUIDANCE NOTE

Uganda

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Uganda 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 Uganda Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

- 2.1** Uganda is a land-locked country in central Africa which shares boundaries with Sudan, Kenya, Tanzania, Rwanda and Democratic Republic of Congo (DRC). It became independent in October 1962. Milton Obote, leader of the Uganda People's Congress (UPC) was elected Prime Minister but was ousted in a military coup by Idi Amin in 1971 who established a brutal dictatorship. Amin was overthrown with military assistance from Tanzania in 1979. 1980 elections returned Obote to power on a disputed mandate. Obote's government relied on the support of the army and became embroiled in a guerrilla war against Yoweri Museveni's National Resistance Army (NRA). Growing dissent within the army resulted in Obote's overthrow in 1985 by General Tito Okello. Okello established a military council but in 1986, the NRA occupied Kampala and Museveni was installed as President. One million Ugandans had been killed by war; two million uprooted as refugees; 500,000 seriously injured; and the economy was in ruins.¹
- 2.2** A key feature of Uganda's politics since 1986 has been the 'no party' system, or Movement system, by which Uganda was governed until 2005. Multi-party politics were reinstated following a referendum held at the end of July 2005. In February 2006, presidential and legislative elections were conducted. In the presidential election, Museveni was re-elected for a further five-year term, with 59% of valid votes cast. The National Resistance Movement Organisation (NRM(O)), the previous establishment in new guise, won 191 of 215 parliamentary seats. Dr Kizza Besigye, the candidate of the Forum for Democratic Change (FDC) his closest rival among four other candidates, was recorded as having received 37% of valid votes. The rest of the 305-strong parliament was made up of 69 District Women's representatives and representatives of the Ugandan Army, the youth, persons with disabilities and workers, a large majority of whom represent the NRM(O). Besigye was arrested on treason and rape charges in late 2005. The arrest and detention of such a major opposition figure, as well as the blocking of campaign rallies and unequal access to state resources, raised some concerns about the election process. However, despite significant flaws in the campaign process, the EU Observation Mission and the Commonwealth Observer Group concluded that the election had represented the will of the people.²
- 2.3** Uganda played an active role in the conflict in the DRC from 1996 and was one of five signatories to the 1999 Lusaka Cease-fire Agreement. Under the terms of the 2002 Luanda Agreement between Uganda and DRC, Uganda completed the withdrawal of its troops in June 2003. Relations with Rwanda suffered because of the DRC, culminating in clashes between the Ugandan and Rwandan armies at Kisangani (DRC) in 1999 and 2000. Tension was bolstered by mutual accusations of support for dissidents. Meetings between President Museveni and Rwanda's President Kagame between 2001 and 2004 have helped to ease the strains and relations are much improved.³
- 2.4** After several years in which relations between the DRC and Rwanda defined the political outlook for the Great Lakes region, interactions between DRC and Uganda are now emerging as the key factor for wider peace and security. In mid-2007, the situation between the two countries deteriorated when a series of border incidents threatened to escalate into full-blown war between DRC and Uganda. In response to growing tensions, in late September 2007, strong international pressure resulted in a summit in Ngurdoto, Tanzania. The Ngurdoto Agreement provided for, among other things, a joint boundary commission to better define the border between DRC and Uganda, and also recognition that competition over access to oil exploration wells had been a key factor in the clashes, which led to a commitment to joint DRC/Uganda oil explorations. However, confrontation returned in May 2008 when DRC moved the Congolese customs post from 5km to within 300 metres of the agreed Ugandan border. Many in Kinshasa were reported to have been sceptical that the

¹ FCO Country Profile 3.01.08

² FCO Country Profile 3.01.08

³ FCO Country Profile 3.01.08

agreement over joint oil exploration would hold when a series of significant oil fields were found on the Ugandan side of the border.⁴ In September 2008 President Museveni met with a DRC delegation led by Foreign Affairs minister Mbusa Nyamwisi in which both parties confirmed their commitment to mutual co-operation.⁵

- 2.5** Northern Uganda has also experienced more than two decades of conflict between the Lord's Resistance Army (LRA) and government forces resulting in the displacement of an estimated 1.7 million people and the kidnap and death of tens of thousands of civilians. The LRA insurgency in the Acholi area of northern Uganda involved a brutal campaign of atrocities against the local Acholi and Langi population, often in punishment for failure to support the LRA cause. Successive Ugandan military campaigns against the LRA failed to end the conflict. The majority of the LRA is now based in the DRC and Southern Sudan. In May 2006, the Government of Southern Sudan offered to mediate between the LRA and the Ugandan government.⁶
- 2.6** A Cessation of Hostilities agreement was signed on 26 August 2006. The Comprehensive Solutions Agreement signed on 2 May 2007 agreed the roadmap to removing the sources of conflict. The Accountability and Reconciliation Agreement signed on 29 June 2007 set out the justice mechanism for holding those responsible for committing crimes on both sides. A Permanent Ceasefire Agreement was signed on 23 February 2008 and an Agreement on Disarmament, Demobilisation and Reintegration of the LRA forces was signed on 29 February 2008. All negotiations relating to the five phases of the complex agreement have been completed paving the way for ceremonial signing of the Final Peace Agreement which was first expected to take place in April.⁷
- 2.7** However, leader of the LRA, Joseph Kony, has so far refused to sign the Final Peace Agreement. Mediators said in November 2008 that Kony must sign a peace deal by the end of the month. They did not specify what action might be taken if the deadline was not met, although countries in the region threatened a joint military operation against the LRA.⁸ Joseph Kony has said that a peace agreement is only possible if the 2005 International Criminal Court (ICC) indictments against him are dropped. To accommodate Kony and other LRA leaders, Uganda's negotiators have proposed alternative domestic remedies: a mixture of *mato oput* (the traditional Acholi system of reconciliation rituals) for lesser crimes, and recourse to a special Ugandan High Court for more serious offences.⁹ Under ICC rules, there is provision for its jurisdiction to be curtailed under certain circumstances but this has not been pursued so far.¹⁰
- 2.8** On 14 December 2008, the armed forces of Uganda, DRC and Southern Sudan launched a joint intelligence-led military operation against the LRA bases in the Garamba forests of the DRC.¹¹ The aim of the operation was to force Kony to sign the peace deal. Several LRA camps were destroyed, including its main base.¹² Shortly afterwards suspected LRA rebels began attacking villages across hundreds of kilometres in an area stretching from the Central African Republic (CAR) through Sudan and into DRC. It was reported on 28 January that more than 900 people had been killed and over 130,000 had fled from their homes to escape the attacks.¹³
- 2.9** The longest running civil wars in Africa have surrounded and spilled into the Karimoja region in north eastern Uganda between southern Sudan and northern Uganda.¹⁴ The

⁴ Reliefweb 'DRC/Uganda Lake Albert spat imperils wider region' 29.05.08

⁵ All Africa.com. Uganda: 'Museveni receives officials from DRC'

⁶ FCO Country Profile 3.01.08

⁷ Civil Society Organisations for Peace in Northern Uganda (CSOPNU)

⁸ Reuters 'Mediators give Ugandan rebels deadline to sign deal' 6.11.08

⁹ The Jamestown Foundation: Global Terrorism Analysis April 2008

¹⁰ International Refugee Rights Initiative: Refugee Rights New, Volum 4, Issue 6: October 2008

¹¹ Reliefweb / <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MYAI-7MC2D7?OpenDocument>

¹² BBC News: 'UN backs action on Uganda rebels' 18.12.08

¹³ BBC News 'LRA rebels commit new atrocities' 16.01.09

¹⁴ Karamoja: Uganda's Land of Warrior Nomads

Karamojong live astride the borders of Uganda, Sudan, Kenya, and Ethiopia. The estimated 1.4 million members of the pastoral and agro-pastoral ethnic groups who constitute what is known as the Karamoja Cluster mostly share a common language and culture.¹⁵ For generations, the people in Uganda's north eastern Karamoja region have been fighting an inter-clan war that has taken countless lives, resulted in the displacement of thousands of people, and plunged the region into poverty. The conflicts centre around livestock. Small arms trade across Southern Sudan, northern Uganda and northwestern Kenya has fuelled cattle-rustling in the region, turning an already violent tradition into a much more deadly activity. Access to water, health services and education are far below national levels, and many parts of the region face chronic food shortages due to recurrent droughts and overpopulation. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), Karamoja scores lowest on Uganda's key development and humanitarian indicators, even when compared to the northern region which has been wracked by conflict between government troops and the LRA. The Ugandan government and development agencies have started to pay increasing attention to the region. According to UN and other aid workers, Karamoja region has gradually started moving from instability to peace and development, especially when compared to the situation in 2006.¹⁶ After months of negotiations, most groups have signed peace agreements and large-scale raids have become more unusual. At the same time, the Ugandan army is trying to disarm the Karamoja clans who have been equipped with modern assault rifles since the 1970s. However raids continue and poor security in the region remains a problem.¹⁷

- 2.10** Since the late 1980s Uganda has for the most part become relatively peaceful, stable and prosperous. In the 1970s and 1980s Uganda was notorious for its human rights abuses but, since becoming president in 1986, Yoweri Museveni has introduced democratic reforms and has been credited with substantially improving human rights, notably by reducing abuses by the army and the police.¹⁸ Security and human rights conditions improved particularly after the LRA were pushed out of northern Uganda in 2005 and peace talks began. While civilian authorities generally maintained effective control of the security forces, elements of the security forces occasionally acted independently of government authority. The government continued to take steps to improve human rights during 2007. The armed forces, the Uganda People's Defence Forces (UPDF), continued to professionalise and demonstrated a marked improvement in respect for human rights, and the government continued to improve conditions in the central prisons.¹⁹
- 2.11** The police force, under the Ministry of Internal Affairs, has primary responsibility for law enforcement. The UPDF is the key armed force charged with external security but has had partial responsibility for maintaining order in the north. The Internal and External Security Organisations, under the direct authority of the president, occasionally detained civilians. The Chieftancy of Military Intelligence (CMI), under UPDF authority, detained civilians suspected of rebel and terrorist activity. Local Defence Units (LDUs) reinforced government efforts to protect civilians from LRA attacks. Security forces, including police, UPDF officers and members of LDUs or militias, were reported to have been responsible for unlawful killings in 2007 during forcible dispersal of demonstrations, apprehension and other activities; for deaths in custody, some due to torture; and for accidental killings. Torture generally occurred in unregistered detention facilities and was intended to force confessions. The Uganda Human Rights Commission (UHRC) received 164 complaints of torture during 2007. The government generally punished perpetrators appropriately.²⁰
- 2.12** The law requires search warrants to be issued by judges or prosecutors before arrests are made but in practice suspects were often taken into custody without warrants and detained for longer than the prescribed period without charge. Mass arrests during police security

¹⁵ ReliefWeb 'Uganda: the struggle for cattle, power and guns in Karamoja' 31.12.07

¹⁶ IRIN: 'Optimism in Karamoja despite lingering security concerns' 20.09.07

¹⁷ Reuters 'Giving Peace a chance in Karamoja' 13.11.08

¹⁸ BBC News: Country Profile

¹⁹ USSD 2007

²⁰ USSD 2007

sweeps remained a problem, as did arrests on treason charges. Human rights groups reported that civilians were detained in military barracks and unregistered detention facilities.²¹

- 2.13** The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice. However, the President has extensive legal powers of judicial appointment. The President appoints Supreme Court, High Court, and Court of Appeal judges with the approval of Parliament. The President also nominates, for the approval of Parliament, members of the Judicial Service Commission, who make recommendations on appointments to the High Court, the Court of Appeal, and the Supreme Court. The judiciary ruled against the government on several high-profile cases during 2007 but judicial corruption was a common problem. The lower courts remained understaffed, weak and inefficient. The military court system often did not assure the rights to a fair trial.²²

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 Uganda. 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 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 below 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').
- 3.5** All Asylum Instructions can be accessed on 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** **Members and suspected members of the Lords Resistance Army (LRA)**

²¹ USSD 2007

²² USSD 2007

Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to involvement or suspected involvement with the Lords Resistance Army (LRA). (see 2.5 – 2.8)

- 3.6.1 Treatment.** The Acholi-based LRA has its roots in the 1986 overthrow of Uganda's Acholi ruler, General Tito Okello, by Yoweri Museveni's National Resistance Army (NRA). The Acholi are a sub-group of the Luo people of South Sudan who migrated to northern Uganda several centuries ago. Traditionally a dominant force in the Ugandan army, the Acholi who feared a loss of influence in the new regime started a number of insurgent groups in north Uganda, many with religious overtones.²³ Leader of the LRA, Joseph Kony, is a self-proclaimed mystic fighting to defend the Biblical Ten Commandments, although his group has also articulated a range of northern grievances. The LRA is infamous for kidnapping children for use as soldiers, porters and "wives". Although there are no universally accepted figures, the children are believed to number many thousands. Some are freed after days, others never escape. But the tactics of abducting recruits and killing civilians soon alienated supporters and many northerners revile Kony for his group's atrocities.²⁴ After years of fighting and recent internal dissent, it is reported that the LRA consists today of little more than 800 individuals, including kidnapped children and young women. At least half of its fighters are believed to be children kidnapped from north Uganda, though many older fighters appear to be drawn by opportunities for looting or commitment to the cause of Acholi rights.²⁵
- 3.6.2** The LRA was once supported by the Government of Sudan as a proxy militia, although Sudan cut its ties with the LRA in 2005 when the resolution of the civil war in southern Sudan ended Khartoum's need for the LRA. No longer secure in their bases along the Sudanese side of the border with Uganda, the LRA moved into Garamba National Park in the DRC and also established a base in the south-eastern Central African Republic (CAR).²⁶ There are recent reports that they have looted villages and abducted civilians from the Central African Republic (CAR), Sudan and Congo.²⁷
- 3.6.3** The ceasefire agreement called for all LRA fighters to assemble at Ri-Kwangba in southern Sudan for final disarmament and demobilisation. Some fighters gathered nearby but most of Kony's commanders and several hundred fighters appear to have remained in CAR.²⁸ Violence has largely subsided during the peace talks and some refugees have begun returning.²⁹ President Museveni has assured people in northern Uganda that the LRA will never return to disturb the peace being consolidated by the government through its Peace, Recovery and Development Plan for Northern Uganda (PRDP), the framework introduced in July for rebuilding the north and assisting IDPs to return to their home areas.³⁰
- 3.6.4** Since the military pushed the LRA out of northern Uganda and peace talks began, there were fewer reports of abuses in internal conflicts. There were no reports of government killings of suspected LRA rebels during 2007, nor were there reports of LRA Killings of government forces or civilians. There were also no reported abductions in internal conflicts during 2007. The government continued to take steps to improve human rights. The UPDF continued to professionalise and demonstrated a marked improvement in respect for human rights and the government continued to improve conditions in the central prisons. The government has offered a blanket amnesty since 2000 to former combatants for treason charges as a means to encourage defection from the LRA and other rebel groups. Since then, any Ugandan will be granted amnesty without risk of criminal prosecution or

²³ The Jamestown Foundation 'Leadership Bloodbath marks failure of Uganda's LRA to sign peace treaty' 16.04.08

²⁴ Reuters: Factbox, Key facts about Uganda's LRA 23.02.08

²⁵ The Jamestown Foundation 'Leadership Bloodbath marks failure of Uganda's LRA to sign peace treaty' 16.04.08

²⁶ Reuters: Factbox, Key facts about Uganda's LRA 23.02.08

²⁷ BBC News 'Uganda rebels denounce offensive' 9.09.08

²⁸ The Jamestown Foundation 'Leadership Bloodbath marks failure of Uganda's LRA to sign peace treaty'

²⁹ Reuters 'Uganda rebels, government sign 'permanent' ceasefire 23.02.08

³⁰ International Refugee Rights Initiative: Refugee Rights News Volume 4, Issue 6, October 2008

punishment in a national court for offences related to the insurgency.³¹ Almost 22,000 individuals have benefited from the law since its implementation, over half of whom were former LRA members.³² In May 2008, the government extended the amnesty for a further 2 years.³³

3.6.5 Sufficiency of protection. The AIT found in **UKAIT 00022 PN [2006]** (see below) that the Ugandan Government's amnesty for members of the LRA remains in place and accordingly that there is no current risk from the Ugandan authorities to a former member of the Lord's Resistance Army (who renounces violence) on return to Uganda. Recent information indicates that the Amnesty is still in force. Members of rebel groups who renounce violence and surrender under the terms of the amnesty will not, therefore, face prosecution by the authorities.

3.6.6 Internal relocation. As there is no current risk to members of rebel groups who comply with the terms of the amnesty, the question of internal relocation does not arise.

3.6.7 Caselaw.

[2006] UKAIT 00022 PN (Lord's Resistance Army) Uganda CG Date of hearing: 17 January 2006 Date Determination notified: 06 March 2006. The AIT found there is no current risk from the Ugandan authorities to a former member of the Lord's Resistance Army on return to Uganda. The Ugandan Government's amnesty to members of the LRA remains in place. A person who is at real risk of forcible conscription into the LRA in the north of Uganda may be able to relocate without undue harshness to Kampala. This case confirms and supplements the findings in AZ (Eligibility for Amnesty) Uganda [2004] UKIAT 00166.

Even if the appellant's account of his experiences in Uganda had been true, he has no wish to continue to support the LRA in any anti-government activities. There is no evidence to show that he would be unwilling to avail himself of the amnesty, either whilst he is still in the United Kingdom or immediately on return to Kampala. There is no evidence whatsoever to show that he would be arrested detained and ill-treated by the authorities upon his arrival there.

In addition it is manifest that the appellant could relocate to Kampala without real risk of serious harm from the LRA and without undue harshness. There is no evidence that the LRA is active in the capital or that it is able there forcibly to conscript persons to its ranks. As for undue harshness, on the appellant's story, he has no relatives in Uganda with whom he is still in contact. He is, however, a basically fit 20 year old who has demonstrated resourcefulness in gaining entry to the United Kingdom and who, whilst here, has shown educational aptitude and the ability to begin to forge a career for himself as a musician. Those attributes would enable the appellant to make a life for himself in Kampala, notwithstanding any difficulties which the system of land tenure in that city (to which the appellant made vague reference) might give him.

[2004] UKIAT 00107 LM (Acholi – LRA – internal flight) Uganda CG heard 28 April 2004, promulgated 17 May 2004. The appellant's evidence was that she was abducted by the Lord's Resistance Army and treated as a sex slave. The AIT found that it is not in general unduly harsh for Acholi to relocate, for example to Kampala but that it was always necessary to consider the facts of each particular case to ascertain whether the individual would face risks or whether, for that individual, the internal flight option would not be viable.

3.6.8 Conclusion Despite the recent offensive against LRA bases in DRC there is currently no evidence that the comprehensive Amnesty and reintegration packages extended to former members of rebel groups, including the LRA, have been affected. There is nothing to suggest that former members of the LRA or any other rebel group would be subject to detention and ill-treatment by the Ugandan authorities on return. A grant of asylum in such cases will not, therefore, be appropriate.

³¹ UN Disarmament, Demobilisation and Reintegration Resource Centre

³² USSD 2007

³³ All Africa.com: Uganda '8 former rebels granted amnesty' 6.08.08

3.6.9 Case owners should note that members of the LRA have been responsible for serious human rights abuses. If it is accepted that the claimant was an active operational member or combatant for the LRA and the evidence suggests that he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.7 Supporters of opposition political organisations

3.7.1 Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to their active membership or support for opposition political organisations. (**see 2.2**)

3.7.2 *Treatment* A number of political parties emerged in expectation of the switch to a multi-party system. The National Resistance Movement Organisation (NRM) is the existing establishment as a political party; the Uganda People's Congress (UPC), Democratic Party (DP) and Conservative Party (CP), Uganda's pre 1986 parties have declined. The Forum for Democratic Change (FDC) is now the main opposition group in parliament holding 37 seats.³⁴

3.7.3 The 2006 elections generally reflected the will of the people although serious irregularities occurred. The police recorded 450 cases of violence during the election period, including the killing of two persons by a UPDF soldier, when he fired into a crowd gathered to see FDC opposition leader Besigye. The case was ongoing at the end of 2007. More than 100 election challenges were filed in the High Court and the Constitutional Court following the 2006 elections, including charges of bribery, intimidation, incidents of violence, multiple voting and ballot stuffing.³⁵

3.7.4 Tensions between the opposition and government have centred on the subversion of the independence of the judicial process, particularly during the ongoing trial of individuals suspected of involvement with a rebel group called the PRA. On 31 January 2007, opposition MPs suspended their participation in Parliament for three weeks over political manipulation of the justice system, and in March 2007 judges and lawyers went on strike in protest.³⁶

3.7.5 During 2007 the Electoral Commission conducted 8 by-elections to fill seats declared vacant by the High Court for irregularities that occurred during the 2006 parliamentary elections. The media reported that several of the by-elections were marred by arrests of opposition members, violence, intimidation and bribery. Local observers said the presence of intimidation squads, undercover police personnel, and security incidents caused fear among voters.³⁷

3.7.6 The law restricts freedom of assembly. Since September 2007, permits are required for all public meetings, demonstrations and processions which previously only applied to unregistered groups and parties. The 2005 ban on demonstrations related to FDC leader Besigye's trial remained in effect, although it was ignored. Police denied permission to hold public rallies, used excessive force to disperse demonstrations and arrested demonstrators during 2007. Some police attempts to prevent or disperse demonstrations resulted in death.³⁸

3.7.7 On 5 January 2007 the court martial dropped the 2005 terrorism and other charges against FDC opposition leader Kizza Besigye and 22 FDC members but the court introduced new charges of unlawful possession of firearms against the 22. Disposition of the possession of firearms case was pending at the end of 2007. Treason charges against Besigye and the 22

³⁴ FCO Country Profile 3.01.08

³⁵ USSD 2007

³⁶ FCO Country Profile 3.01.08

³⁷ USSD 2007

³⁸ USSD 2007

are also pending in the High Court. Besigye and 18 of the 22 were released on bail. Of these, 11 were granted amnesty, one died of natural causes, while four remained in prison because they could not meet bail.³⁹

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

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

3.7.10 Conclusion. Despite the relaxation on the rules governing political parties and the move towards multi-party politics, opposition political parties continued to face restrictions on their ability to assemble and organise and their supporters were subject to harassment and sometimes ill-treatment by the authorities. Some opposition supporters were detained by the security forces and some face charges of treason. However, others who were similarly detained were released without charge. In some cases, particularly those of prominent members of political parties or those accused of treason who have been detained for long periods of time and who have suffered ill treatment at the hands of the Ugandan authorities, a grant of asylum or Humanitarian Protection may be appropriate. However, in other cases such as that of a low level activist detained for a few days and then released without charge, the harassment suffered will not reach the level of persecution or breach Article 3 of the ECHR and therefore they will not qualify for grant of asylum or Humanitarian Protection.

3.8 Prison conditions

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

3.8.2 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.

3.8.3 Consideration. Prison conditions remained harsh and frequently life threatening during 2007. While government funding nearly doubled in 2007-08 over the previous years' allocation, limited resources hindered the Prison Authority's ability to fully implement the 2006 Prisons Act. In addition there were reports that security forces and guards tortured and raped inmates. Prison conditions came closest to meeting international standards in Kampala, where prisons provided medical care, running water, and sanitation; however, these prisons also were among the most overcrowded. There were an estimated 19,000 prisoners in the system, approximately three times the prisons-capacity.⁴⁰

3.8.4 Serious problems in prisons outside of Kampala included congestion, inadequate staff and lack of food, water, medical care and bedding. The UHRC continued to note improved conditions at central prisons, including cleaner and more structurally secure buildings, an increase in uniforms for inmates and adequate food rations. Nevertheless severe overcrowding remained a problem at juvenile detention facilities and in women's wings of prisons. Female prisoners in central prisons were held in separate facilities; however, services and facilities for female prisoners in local prisons, including separate cells, were lacking. Due to lack of space in juvenile facilities, juveniles often were held in prisons with adults. In Kampala jails, pre-trial detainees were separated from

³⁹ USSD 2007

⁴⁰ USSD 2007

convicted prisoners but in the rest of the country, pre-trial detainees and convicted prisoners sometimes were held together.⁴¹

- 3.8.5** The UHRC reported allegations that prison officials sometimes demanded bribes to allow visits and telephone calls. No investigations of these allegations were made during the year. In 2005 the government gave 59 senior prison officers the powers of magistrates to try inmates and prison staff suspected of committing such offences but no prison officials were tried during 2007.⁴²
- 3.8.6** Prison populations had high mortality rates due to overcrowding, malnutrition, diseases spread by unsanitary conditions, HIV/AIDs and lack of medical care. The Prisons Service registered 136 deaths nationwide between January and June as a result of illness. Local human rights activists reported that inmates were treated humanely.⁴³
- 3.8.7** The government permitted access to prisons by the International Committee of the Red Cross (ICRC), foreign diplomats and local NGOs, principally the Federation of Human Rights Institute (FHRI) and the Uganda Prisoners' Aid Foundation. Authorities required advance notification of visits, a process that was sometimes subject to administrative delays.⁴⁴

3.8.8 Caselaw

UKIAT 06119 [2002] Heard 19 December 2002 Promulgated 17 January 2003. The IAT found that following guidance set out in **Fazilat [2002] UKIAT 00973** and on examining the conditions in Ugandan prisons based on the objective material they concluded there is no violation of Article 3 of ECHR to return the appellant.

- 3.8.9 Conclusion.** Whilst prison conditions in Uganda are poor, with overcrowding and disease being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Uganda 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. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction 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 Instruction on Article 8 ECHR.
- 4.2** With particular reference to Uganda 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 Instruction on Discretionary Leave and the Asylum Instruction on Article 8 ECHR.
- 4.3 Minors claiming in their own right**

⁴¹ USSD 2007

⁴² USSD 2007

⁴³ USSD 2007

⁴⁴ USSD 2007

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 support, care and reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate support, care and reception arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are not adequate support, care or reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave as set out in the relevant Asylum Instruction.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Uganda due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.

4.4.2 Medical facilities include 104 hospitals (57 government, 44 NGO and 3 Private), 250 health centres (179 government, 68 NGO and 3 private), palliative care 2 (government 1, NGO 1) and others (989 government, 352 NGO and 41 private). Government hospitals are in three categories, national referral, regional referral and district/rural hospitals.⁴⁵

4.4.3 Over the past fourteen years considerable effort has been made to restore the functional capacity of the health sector, reactivate disease control programmes and re-orient services to primary health care. The positive impact of these measures is evidenced by the fall in infant mortality rates and the rising utilisation of services. However this steady improvement is still clouded by several factors such as: the high prevalence of preventable communicable diseases; the rising incidence of non-communicable diseases; the rapidly increasing demand for services due to population growth and effects of HIV/AIDS and the resource constraints. The diseases responsible for the largest proportion of morbidity and mortality continue to be: malaria, acute respiratory infections, HIV/AIDS, tuberculosis, malnutrition, maternal and prenatal conditions, cardiovascular conditions, and trauma/accidents.⁴⁶

4.4.4 The UK Department for International Development (DFID) noted an increase in usage and demand of health services in Uganda with the country's poorest people being the main beneficiaries. The programme of health sector reforms has scrapped patient fees in government health centres. As a result the number of people attending clinics soared to 20.2 million in 2003/04. Furthermore, progress in reducing child and maternal mortality rates has been disappointing. Nationally outpatient attendances have increased by 75 percent and immunisation coverage has increased from 41percent in 1999/2000 to 89 percent in 2004/05.⁴⁷

HIV/AIDS

4.4.5 The Ugandan HIV Drug Access Initiative was launched in 1997 with five accredited centres in the region around Kampala. As of June 2005, the number of accredited health facilities had increased to 146 centres, of which 114 were providing anti-retroviral therapy. Provision was largely confined to nongovernmental organizations, commercial providers and research and pilot projects. With the government initiative to provide free treatment to people living with HIV/AIDS, AVR drugs are being provided in the public sector through regional referral hospitals, other accredited district and mission hospitals, and level IV health centres (small hospitals). Treatment is also provided through non-governmental organisations such as the Joint Clinical Research Centre, the Medical Research Council and the Mildmay Uganda Centre. The Joint Clinical Research Centre is providing an

⁴⁵ The Ugandan Ministry of Health

⁴⁶ The Ugandan Ministry of Health

⁴⁷ The UK Department for International Development (DFID)

estimated 12,500 people, mostly in Kampala, with generic anti-retroviral drugs at cost price.⁴⁸

4.4.6 **Caselaw**

[2005] UKHL 31 N (FC) v SSHD 5 May 2005 The House of Lords found that there was no breach of the ECHR in the SSHD refusing the asylum claim and returning the appellant, an advanced sufferer of HIV/AIDS, to Uganda. The overriding principle found in law is that aliens have no right under Article 3 to claim medical services that are not readily available in their home country. The European Court took the position that it is not the likelihood of receiving care in the home country that is decisive, but its existence, even if virtually unattainable. In order to satisfy the test of “very exceptional cases” it would have to be shown that the medical condition was critical and there were compelling humanitarian grounds for not removing to a place where the lack of services would lead to acute suffering.

[2005] UKIAT 00012 FM (Uganda) Heard 29 September 2004 Promulgated 17 January 2005 The Tribunal reviewed the principles in the case of N [2003] EWCA Civ 1369. The Tribunal found that N continues to be a binding authority in cases such as this. The use of N as a benchmark in ill-health cases of this kind has been specifically endorsed by the Tribunal in the case of UK Rwanda [2004] UKIAT 00262 and that approach remains correct in the light of both Ullah and CA.

In respect of Article 8 the Tribunal recognised that, given its qualified nature, Article 8 could only avail the Respondent if the circumstances of her case were such that removal could not be said to be within the range of reasonable responses open to the Secretary of State. Courts and Tribunals must recognise that the Secretary of State's policy will be to pay particular regard to the importance of maintaining effective immigration controls.

4.4.7 Conclusion The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner 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. 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 Ugandan nationals may return voluntarily to any region of Uganda 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 Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. 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 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.

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