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OPERATIONAL GUIDANCE NOTE

DEMOCRATIC REPUBLIC OF CONGO

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.11
3. Main categories of claims	3.1 – 3.5
Opposition political activists or members of former rebel forces	3.6
Members of non-government organisations (NGOs)	3.7
Tutsis in western DRC	3.8
Banyamulenge from eastern DRC	3.9
People of Hema, Lendu or related ethnicity from Ituri	3.10
General situation in eastern and northern DRC	3.11
Prison conditions	3.12
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.4
6. List of source documents	

1. Introduction

- 1.1** This document summarises the general, political and human rights situation in the Democratic Republic of the Congo (DRC) and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with the RDS – COI Service DRC Country of Origin Information Report of October 2005 at:

http://www.homeoffice.gov.uk/rds/country_reports.html

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

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

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

Source documents

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

2. Country assessment

- 2.1** The DRC is a republic with a president as the head of state. The president can exercise legislative power by decree following consultation with the Council of Ministers. The president is the chief of the executive and of the armed forces and has the power to appoint and dismiss members of the Government, Ambassadors, Provincial Governors, senior army officers, senior civil servants and magistrates, in consultation with the other members of the Transitional Government.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. Forces of the United Nations Mission for Congo (MONUC) have been deployed in the country since 1999.²
- 2.3** Joseph Kabila is the President of the DRC and head of the TNG. The TNG comprises the President, four Vice-Presidents, 36 Ministers and 25 Deputy Ministers 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 state institutions such as the army, police and local administrations are to be integrated, and election preparations made, during a transition period due to end by 2005. This transitional government is to remain in place until local, legislative and presidential elections are held in 2005 and 2006, however voter registration, logistical difficulties and security issues continue to delay the preparation for these elections.³
- 2.4** A number of ministers and public officials were dismissed in November 2004 and January 2005 in connection with corruption allegations. The MLC element of the TNG threatened in January 2005 to withdraw its participation in protest at these dismissals. However the rift between Vice President Bemba, leader of the MLC, and President Kabila subsequently subsided.⁴
- 2.5** There were violent demonstrations in Kinshasa on 10 January 2005, and a general strike on 14 January, following reports that elections might be delayed to October 2005 instead of 30 June 2005. At least four people had been killed and 60 others arrested on the previous day. The Union pour la Democratie et le Progrès Social (Union for Democracy and Social Progress (UDPS) party denied suggestions by a government spokesman that they had organised the demonstrations and the general strike.⁵
- 2.6** A new constitution for the post transition state was adopted by the national assembly in May 2005. In late May 2005 important elements of the legislative framework were in place, including the laws on nationality and voter registration, however amnesty, referendum and electoral laws were still to be adopted. On 15 June 2005, the transitional parliament agreed the recommendation of the head of the electoral commission to extend the country's transitional period for at least 6 months, to allow more time for preparations for elections originally intended for 30 June 2005.⁶
- 2.7** There were demonstrations and incidents in Kinshasa and other towns on and around 30 June 2005, after protest action on that day was called by the UDPS party against the decision to postpone the elections. Between 10 and 26 people were killed, scores wounded,

¹ Home Office COI Service DRC Country of Origin Information Report October 2005 (paragraphs 5.09 – 5.13)

² COI Service DRC Country Report (paras 4.02 & 5.13)

³ COI Service DRC Country Report (paras 5.13 – 5.14 & 5.19 – 5.25)

⁴ COI Service DRC Country Report (para 4.09)

⁵ COI Service DRC Country Report (paras 4.10 – 4.12)

⁶ COI Service DRC Country Report (paras 4.13 – 4.14)

and hundreds were arrested. The security forces were accused of responding to the demonstrations with unnecessary force.⁷

- 2.8** The TNG has yet to fully establish its authority in the former rebel areas and outbreaks of fighting still occur in the east and north of the country. There have been serious human rights abuses in these areas including killings, rape, torture, the kidnapping of civilians and the recruitment of children as combatants. Violence continues in the Kivu provinces of eastern DRC and in Ituri district of north-eastern DRC. Fighting between Hema and Lendu militias as well as clashes between factions of the Congolese Army continue to cause large scale civilian casualties and displacement. The Banyamulenge ethnic group has been targeted violently, particularly in South Kivu.⁸
- 2.9** The Government's human rights record is poor: although there have been some improvements, serious problems remain. The security forces are ineffectively trained and controlled, and committed numerous human rights abuses, such as unlawful killings, torture, beatings, acts of rape, extortion and other abuses, largely with impunity.⁹
- 2.10** At least 400 political parties registered after their 1990 legalisation, but they were later banned under Laurent Kabila. Following the passage, in April 2004, of new electoral laws, 34 of 239 existing political parties were dissolved for failing to register with the government before a six-month deadline. Most former rebel groups are now authorised to act as political parties.¹⁰
- 2.11** Societal discrimination on the basis of ethnicity is practiced widely by members of virtually all ethnic groups and was evident in private hiring patterns in some cities; however, intermarriage across major ethnic and regional divides was common in large cities and a wide range of ethnic groups are represented in the transitional government. Ethnic conflict 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 Kasai and the Lunda of Katanga.¹¹

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 which may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant APIs, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

⁷ COI Service DRC Country Report (para 4.15)

⁸ COI Service DRC Country Report (paras 4.16 & 6.01 – 6.10)

⁹ COI Service DRC Country Report (para 6.04)

¹⁰ COI Service DRC Country Report (para 5.24)

¹¹ COI Service DRC Country Report (paras 6.75 – 6.79)

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover all issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

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

3.6 Opposition political activists or members of former rebel groups

- 3.6.1** The majority of asylum claims made by DRC nationals in the United Kingdom claim a fear of persecution by the DRC authorities because of the applicant's political activities or membership of, or association with a member of, a rebel group.
- 3.6.2** *Treatment.* There is no evidence that the former rebel groups (see paragraph 2.3) had bodies of supporters active in government-controlled areas prior to the establishment of the TNG. However, there were reports that at times of tension in the past, there were occasional arrests by the security forces of those suspected of being rebel collaborators.¹² The peace agreement and the establishment of the TNG in June 2003 embraced the range of interest groups in the country, including pro-government Mayi-Mayi militia, the rebel forces (see para 2.3 above), unarmed political opposition and civil society.¹³ An amnesty was declared on 15 March 2003 to allow members of the rebel forces to take part in the Transitional Government institutions.¹⁴
- 3.6.3** The Government eased the right of political association on 29 September 2003, with the issue of a decree authorising all political parties to function legally. This decree also authorised former rebel forces (see paragraph 2.3) to function as political parties. There is no evidence of a systematic campaign of persecution against opposition party activists by the security forces and members of political parties are not at risk of persecution on the basis of membership alone.¹⁵
- 3.6.4** 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 pour la démocratie et le progrès social (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. There are dozens of small opposition parties, but few are of significance, frequently being the vehicle for individuals some of whom have made it into the transitional government as ministers.¹⁶

¹² COI Service DRC Country Report (Annexes A & B)

¹³ COI Service DRC Country Report (paras 4.03 & 5.13 – 5.14)

¹⁴ COI Service DRC Country Report (paras 6.272 – 6.273)

¹⁵ COI Service DRC Country Report (paras 6.39 – 6.46)

¹⁶ COI Service DRC Country Report (para 6.41)

- 3.6.5** During 2004, the Government occasionally harassed opposition parties during private meetings and police occasionally arrested peaceful demonstrators most commonly involving the Union for Democracy and Social Progress (UDPS) and the Unified Lumumbist Party (PALU). There were also a number of occasions on which demonstrations and political meetings had been restricted or repressed. But unlike in 2003, there were no confirmed reports that security forces forcibly dispersed political party press conferences or rallies. The Government required political parties to apply for permits to hold press conferences; According to local NGOs, such permits sometimes were denied.¹⁷
- 3.6.6** In August 2005, the United Nations Mission for Congo (MONUC) documented an increase in the number of violations of human rights associated with the forthcoming elections, including the arbitrary arrest and detention of members of political opposition parties in several provinces, in particular Katanga, the Kasais, Orientale and Bas-Congo, and in Kinshasa. There were also difficulties faced by MONUC in accessing political detainees held in several detention facilities. While the Presidency has since indicated that the Government will facilitate such access, the Mission is still frequently prevented from monitoring political detainees.¹⁸
- 3.6.7** ***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.
- 3.6.8** ***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.
- 3.6.9** ***Conclusion.*** There is no evidence of systematic persecution of opposition party activists by the authorities. 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 who 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 now represented in the TNG and accordingly members or associates of these groups are not likely to be any longer at risk of persecution by state authorities. The grant of asylum is not therefore likely to be appropriate in such cases.

3.7 Members of non-government organisations (NGOs)

- 3.7.1** Members of non-governmental organisations may claim a fear of intimidation, harassment or ill treatment by the DRC 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.*** In 2004, the Government cooperated with international governmental organisations and NGOs and permitted international humanitarian and human rights NGOs access to conflict areas. A number of UN representatives and international NGOs visited the country in 2004. International NGOs, including Amnesty International (AI) and Human Rights Watch (HRW), and international organisations such as the UN published several reports on the human rights and humanitarian situation in 2004. a wide range of domestic NGOs operate within the country, including in areas under marginal government control.¹⁹

¹⁷ COI Service DRC Country Report (paras 5.26, 6.46 & Annex B)

¹⁸ COI Service DRC Country Report (para 6.47)

¹⁹ COI Service DRC Country Report (paras 6.217 – 6.218)

- 3.7.3** The Human Rights Ministry and the Observatory for Human Rights worked with NGOs during 2004 and were responsive to their requests and recommendations. However, many prison officials regularly obstructed NGO access to detainees, and security service personnel harassed and arrested domestic human rights workers. In areas under marginal government control, domestic human rights NGOs and civil society members were subjected to frequent harassment and abuse, particularly in Ituri. During 2004, human rights workers in North Kivu received death threats, following what appeared to be a concerted campaign against them by local renegade RCD-Goma forces, and similar threats in other provinces, including Katanga. The AI report referred to threats against several leading activists in Goma.²⁰
- 3.7.4** In 2005, a growing number of human rights activists across eastern Congo reportedly received death threats after denouncing serious human rights abuses by provincial authorities.²¹
- 3.7.5** **Sufficiency of protection.** If this category of claimants' 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 from the authorities sufficient protection in government-controlled areas.
- 3.7.6** **Internal relocation.** The law provides for freedom of movement. However, the Government at times restricts this right in areas under its control by for example the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG, the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the Transitional Government took office.²²
- 3.7.7** If a 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. 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.
- 3.7.8** **Conclusion.** Members of NGOs or human rights organisations are not at risk of persecution on the basis of membership alone. Although some human rights activists in northern and eastern regions have been subject to ill treatment by the authorities, there is no evidence of such activists being at risk of ill treatment from the authorities in Kinshasa. An applicant who fears ill treatment/persecution 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 Tutsis in western DRC

- 3.8.1** Some asylum applicants may claim to have a fear of persecution by either the DRC authorities, or non state agents in western DRC on the grounds of their actual or perceived Tutsi origin.

²⁰ COI Service DRC Country Report (paras 6.220 – 6.222)

²¹ COI Service DRC Country Report (para 6.223)

²² COI Service DRC Country Report (paras 6.64 – 6.70)

- 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 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 erstwhile 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.²³
- 3.8.3** Members of former rebel groups dominated by Tutsis (see paragraph 2.2) have been appointed in the TNG. There have been no recent reports that Tutsis have been subjected to any serious abuses by either government authorities or citizens. A National Institute for Social Security (INSS) centre for Tutsis who were at risk was established in Kinshasa in 1998 with support from the Ministry of the Interior, ICRC, and international donors. However in the light of the greatly diminished risk of abuse and the increased tolerance of the local population the centre was closed in June 2003.²⁴
- 3.8.4** During 2004 it was reported that anti-Tutsi sentiments - including appeals to force Tutsis into exile and practice discrimination toward Tutsis in regard to citizenship rights - were expressed in private and government-affiliated media. In addition to inflammatory articles and editorials in the major government-affiliated newspaper, L'Avenir, government-affiliated television talk shows featured guests with extreme, anti-Tutsi views. During 2004, there were credible reports that certain members of the Government directly and indirectly encouraged hate speeches and programmes that advocated forcing Tutsis into exile. Such programmes were aired periodically through the first half of 2004.²⁵
- 3.8.5 *Sufficiency of protection.*** If this category of claimants' 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.²⁶ 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. However, the Government at times restricts this right in areas under its control by for example the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted.²⁷
- 3.8.7** If a claimant's 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. 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.²⁸ 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 *Caselaw.*

AIT/IAT Determinations: AB and DM (DRC) CG [2005] UKIAT 00118 promulgated 21 July 2005. Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the

²³ COI Service DRC Country Report (paras 6.89 – 6.91)

²⁴ COI Service DRC Country Report (paras 6.92 – 6.93)

²⁵ COI Service DRC Country Report (para 6.95)

²⁶ COI Service DRC Country Report (paras 6.85 - 6.88)

²⁷ COI Service DRC Country Report (paras 6.64 – 6.70)

²⁸ COI Service DRC Country Report (paras 6.64 – 6.70)

current risk categories on return to the 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 the 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 the 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).

3.8.9 Conclusion. While the situation for Tutsis deteriorated somewhat during 2004 with increased instances of sporadic anti-Tutsi media campaigns, there is no 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 While the AB and DM Country Guidance caselaw (summarised above) adds Tutsis to the ‘at risk’ categories, the judgment does not imply that all individual claimants accepted as Tutsis will automatically be at risk of persecution simply on the basis of their ethnicity but that the

assessment of each claim is made on the basis of a careful analysis of an individual's ethnicity, background and profile.

3.9 Banyamulenge from eastern DRC

- 3.9.1** Some asylum applicants claim to have a well-founded fear of persecution by either the DRC authorities and/or non-state agents in eastern DRC 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 Nord-Kivu, the Banyamulenge were drawn into the interethnic violence that spilled into Zaire (now DRC) from Rwanda and Burundi in the 1990s.²⁹
- 3.9.3** In 2004, Government forces and armed groups targeted civilians on the basis of ethnicity for extra-judicial killings, rape, looting, and arrest. For example, during the seizure of Bukavu by ex-RCD/G combatants in late May and early June 2004, the ex-Rally for Congolese Democracy (RCD/G) forces targeted non-Tutsis for attack, and the Congolese Armed Forces (FARDC) in turn targeted Congolese Tutsis when it reoccupied the city in June 2004. The Bukavu revolt and the Gatumba massacre sharply increased fear and hatred between Tutsi and Banyamulenge peoples and other ethnic groups in eastern DRC." In June 2004 killings and other abuses of Banyamulenge people by pro-government forces were claimed as the reason why rebel forces took control of Bukavu in June 2004.³⁰
- 3.9.4** In July 2004, the military and local authorities detained 283 Rwandan immigrants and Congolese of Rwandan ancestry in a military camp in Bunyakiri [South Kivu] for two weeks and, with UNHCR's assistance, deported them to Rwanda, which granted them asylum. UNHCR reported that those deported were not refugees but second-generation Congolese nationals of Rwandan origin. 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 Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups.³¹
- 3.9.5** 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 the 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 1960.³²
- 3.9.6 *Sufficiency of protection.*** If the claimants' 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. However, the Government at times restricts this right in areas under its control by for example the erection of

²⁹ COI Service DRC Country Report (para 6.81)

³⁰ COI Service DRC Country Report (paras 6.85 – 6.86)

³¹ COI Service DRC Country Report (paras 6.85 – 6.88)

³² COI Service DRC Country Report (paras 6.82 – 6.84)

temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the Transitional Government took office.³³

3.9.8 As the applicants' fear is of either ill treatment/persecution by the state authorities, or the authorities unwillingness to provide sufficient protection against action taken by non-state agents, in-country relocation to a different area to escape this threat will not normally be a viable remedy.

3.9.9 Caselaw.

AIT/IAT Determinations: AB and DM (DRC) CG [2005] UKIAT 00118 promulgated 21 July 2005. Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to the 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 the 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 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 the 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)

³³ COI Service DRC Country Report (paras 6.64 – 6.70)

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).

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 claimant is of Banyamulenge origin, a grant of asylum is likely to be appropriate.

3.10 People of Hema, Lendu or related ethnicity from Ituri

3.10.1 Asylum applicants from the Ituri region of DRC may claim to have a fear of persecution by the Lendu ethnic group because of their Hema ethnic origin and vice versa.

3.10.2 Treatment. Serious incidents of violence between the Lendu and Hema ethnic groups in the Ituri area in Orientale province, north-eastern DRC, have occurred since 2002. Serious human rights abuses have been perpetrated by both sides. Government forces and MONUC soldiers have been deployed to the area. The conflict continues but has become less intense in recent months. In May 2004, 30 militia groups in the region signed a disarmament agreement with MONUC and the TNG.³⁴

3.10.3 The Ituri situation deteriorated sharply in the second half of 2004 with the disarmament programme hindered both by local militia leaders, and by the government's failure to integrate some of them into the national army. There was an escalation in fighting in the first half of 2005 between the FNI (Front pour les nationalistes et integrationnistes, ethnic Lendu rebel group) and UPC-L (Union des patriotes congolais, Hema rebel group). In the Djugu territory over 25,000 people had been displaced from the towns of Kasenyi and Tchomia on Lake Albert, following hostilities in the Nyamamba area that began at the end of December [2004], and that 40,000 people had fled from the Tch  district of Ituri since the beginning of 2005.³⁵

3.10.4 The security situation in Ituri as of August 2005 remains volatile, despite robust measures taken by FARDC with MONUC support since March 2005 to disarm combatants. Moreover, the Transitional Government has yet to take the necessary measures to extend its authority, particularly security and administrative services, throughout the district.³⁶

3.10.5 Sufficiency of protection. The TNG is seeking to establish its authority throughout the entire country, but has not yet fully done so. 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. However, the Government at times restricts this right in areas under its control by, for example, the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG, the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-

³⁴ COI Service DRC Country Report (paras 6.159 – 6.160)

³⁵ COI Service DRC Country Report (paras 6.161 – 6.163)

³⁶ COI Service DRC Country Report (paras 6.165 – 6.175)

controlled territory and former rebel-held areas resumed after the Transitional Government took office.³⁷

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 Conclusion. The situation in Ituri remains unresolved and serious human rights abuses of the civilian population continue to be reported. Nevertheless, claimants who cite a serious risk of ill treatment at the hands of non-state agents in the Ituri region as a consequence of their ethnic origin, are able to escape that ill treatment by relocating 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.

3.11 General situation in eastern and northern DRC

3.11.1 In addition to members of the Hema, Lendu and Banyamulenge ethnic groups above, other claimants from eastern and northern regions of DRC may claim to be in fear of return to DRC because of on-going violence and human rights abuses by dissident militias in eastern and northern DRC.

3.11.2 Treatment. In spite of the establishment of the TNG in June 2003, sporadic fighting in the eastern area of the country involving the forces of rebel groups and those of other African countries, including Rwanda and Uganda has continued. The provinces of North and South Kivu, Maniema, Equateur and the Ituri district of Orientale have been badly affected, and violence has also occurred in Katanga and North and South Kasai. The concern of the international community has been expressed in peacekeeping efforts by the UN through MONUC and the efforts of governments and international organisations.³⁸

3.11.3 The fighting has had a devastating effect on the population in the east, where the infrastructure of transport, commerce, medical and social support was already extremely poor. By the end of 2004, nearly 4 million people had died as a result of the war. Grave human rights abuses of civilians have been carried out in the conflict, and the fighting has continued between armed groups and government forces in parts of eastern and north eastern DRC.³⁹

3.11.4 Sufficiency of protection. The TNG is seeking to establish its authority throughout the entire country, but has not yet fully done so. As such the state is as yet not fully able to provide sufficient protection to the civilian population in parts of eastern and northern DRC. The Government can however provide sufficient protection within areas fully under its control.

3.11.5 Internal relocation. The law provides for freedom of movement. However, the Government at times restricts this right in areas under its control by, for example, the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by air or river. Commercial flights between former government-

³⁷ COI Service DRC Country Report (paras 6.64 – 6.70)

³⁸ COI Service DRC Country Report (para 6.149)

³⁹ COI Service DRC Country Report (paras 6.01 – 6.11 & 6.150 – 6.151)

controlled territory and former rebel-held areas resumed after the Transitional Government took office.⁴⁰

3.11.6 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.

3.11.7 Conclusion. If the claimant fears, or has experienced, ill treatment at the hands of dissident militias in northern or eastern regions, the availability of safe relocation to Kinshasa or other government-controlled areas means that a grant of asylum is unlikely to be appropriate.

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 Treatment. Most prisons date from the colonial period and are in a very advanced state of decay. The State is unable to guarantee food for prisoners. Most of them are fed by their families or by humanitarian NGOs. Given the state of the prisons, the standard minimum rules on the separation of male and female, minor and adult, and petty and serious offenders are not respected and, owing to the shortage of resources, detainees who are taken ill and need specialized care are not transferred to hospital in time. As a result, several detainees have died from a lack of proper medical care. Special attention needs to be paid to the situation of women in prisons. The perimeters surrounding most prisons are not sound enough to make them secure. Escapes are commonplace.⁴¹

3.12.3 Conditions in most large, central prisons in 2004 were harsh and life threatening. The penal system continued to suffer from severe shortages of funds and trained personnel. Most prisons were in a poor state of repair, lacked sanitation facilities, or were not designed to detain persons. Makala remained overcrowded. Health care and medical attention remained inadequate, and infectious diseases, including tuberculosis, were a problem. The same source stated that Government-provided food remained inadequate and malnutrition was widespread. Women and juveniles sometimes are detained separately from men in larger prisons but were not separated in other detention facilities. There were numerous credible reports that male prisoners raped other prisoners, including men, women and children.⁴²

3.12.4 The Government allowed the International Committee of the Red Cross (ICRC) and many NGOs access to all official detention facilities in 2004.⁴³ Conditions in smaller detention facilities were harsher than in larger prisons, and an unknown number of persons died. These facilities were overcrowded and generally intended for short-term pretrial detentions; however, in practice they were often used for lengthy detentions. Authorities often arbitrarily beat or tortured detainees. There usually were no toilets, mattresses, or medical care, and inmates often received insufficient amounts of light, air, and water. Such detention centers generally operated without a budget and with minimal regulation or oversight. Local prison authorities or influential individuals frequently barred visitors or severely mistreated particular detainees. Prison guards frequently required bribes from family members and NGOs to visit or provide detainees with food and other necessities.⁴⁴

⁴⁰ COI Service DRC Country Report (para 6.64 - 6.70)

⁴¹ COI Service DRC Country Report (para 5.58)

⁴² COI Service DRC Country Report (para 5.59)

⁴³ COI Service DRC Country Report (para 5.60)

⁴⁴ COI Service DRC Country Report (para 5.66)

3.12.5 Prison conditions in areas under marginal government control in 2004 were extremely harsh and life-threatening. Most detention facilities were not designed as jails. Detainees often were kept in overcrowded rooms with little or no light or ventilation and sometimes were detained in small pits dug by various armed groups. Detainees typically slept in small, overcrowded cells on cement or dirt floors without bedding and had no access to sanitation, potable water, toilets, or adequate medical care. Infectious diseases were widespread. Detainees were provided very little food, and guards demanded bribes to allow family members or friends to bring food to prisoners. Prisoners frequently were subjected to torture, beatings, and other abuse with no medical attention.⁴⁵

3.12.6 Conclusion. There are many areas of concern with DRC prison conditions. Conditions in most detention facilities are liable to reach the Article 3 threshold. However, the individual factors of each case should be considered, such as the seriousness or nature of the offence, the likely length of detention, and the likely type of detention facility. Caseworkers should carefully question claimants about conditions in the prison if s/he claims to have been imprisoned before. Cases where the claimant demonstrates a real risk of imprisonment for a substantial period of time upon return or when the claimant demonstrates a particular likelihood of ill-treatment may justify a grant of Humanitarian Protection.

4. Discretionary Leave

4.1 Where an application for asylum is refused and the grant of Humanitarian Protection falls to be refused, there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (see API on Discretionary Leave)

4.2 With particular reference to 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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave

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

4.3.2 Minors claiming in their own right without a family to return to, or where there are not adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 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.

4.4.2 The public health care system in the DRC has been seriously degraded as a result of years of civil war and neglect. 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

⁴⁵ COIS Service DRC Country Report (para 5.68)

and Christian charities provide some health care services. Facilities are better in Kinshasa compared with the rest of the country.⁴⁶

4.4.3 Caselaw.

AIT/IAT Determinations: 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 caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment, making removal contrary to Article 3 or 8, a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a SCW for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Returns are to the capital Kinshasa.

5.2 Caselaw.

AIT/IAT Determinations: 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 and AB and DM (DRC) CG [2005] UKIAT 00118 have all held that returned failed asylum seekers are not at risk of persecution per se on account of having claimed asylum.

5.3 DRC nationals may return voluntarily to any region of the DRC at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in the DRC. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. DRC nationals wishing to avail themselves of this opportunity for assisted return to the DRC should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- UK Home Office DRC Country of Origin Report October 2005 at: http://www.homeoffice.gov.uk/rds/country_reports.html

**Asylum and Appeals Policy Directorate
17 November 2005**

⁴⁶ COI Service DRC Country Report (paras 5.81 – 5.89)