



Flygtningenævnets baggrundsmateriale

Bilagsnr.:	54
Land:	Rwanda
Kilde:	Home Office
Titel:	"Operational Guidance note"
Udgivet:	4. september 2006
Optaget på baggrundsmaterialet:	29. november 2006



OPERATIONAL GUIDANCE NOTE

RWANDA

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.10
3. Main categories of claims	3.1 – 3.5
Members of opposition political parties	3.6
Ethnicity / mixed marriages	3.7
Rebel militia groups in the DRC	3.8
Genocide survivors / witnesses	3.9
Prison conditions	3.10
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.2
6. List of source documents	

1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Rwanda and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Rwanda country of origin information at:

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

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

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights
 API on Article 8 ECHR

- 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. 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 API on Article 8 ECHR.

Source documents

- 1.4 A list of sources cited in footnotes can be found at the end of this note.

2. Country assessment

- 2.1** Rwanda is a republic dominated by a strong presidency. It was led by a succession of Hutu-dominated governments following independence from Belgium in 1962 after a Hutu uprising (1959 – 61) and large scale massacres of Tutsis. In 1985 Tutsi exiles in Uganda formed the Rwandan Patriotic Front (RPF). Having failed to negotiate their return to the country, the RPF invaded Rwanda from Uganda in October 1990, demanding representation and equality for all Rwandans. A civil war in the border area ensued. Each incursion by the RPF was followed by reprisal massacres, largely of Tutsis, by government forces. A peace agreement was brokered in 1993, the Arusha Peace Accords, which inter alia provided for a power-sharing arrangement involving all political forces and the RPF.¹
- 2.2** Unwilling to share power, a group of extremist Hutu politicians planned to consolidate their hold on the country by wiping out all the Tutsi, along with moderate Hutu leaders. They prepared the largely illiterate population through ethnic propaganda, armed extremist youth militia (known as the Interahamwe) and drew up lists of those to be targeted. The killing was sparked by the assassination of President Habyarimana in April 1994. The genocide and massacres lasted until July 1994 and cost the lives of around 1 million Rwandans. It was halted by the RPF taking control of the country. The extremist politicians and over 2 million Hutu fled the country together with many members of the Rwandan Armed Forces (the FAR) and the Interahamwe, both with their weapons to neighbouring countries. The majority went to Zaire (now DRC). The largely Tutsi Rwandan Patriotic Front (RPF) took power in 1994 and formed a Government of National Unity.²
- 2.3** The RPF has remained the dominant party in Rwanda since July 1994 sharing power with other parties, except the Rwanda Democratic Movement (MDR), under the formula agreed at Arusha in 1993. This arrangement, together with a nominated 70-member multi-party Transitional National Assembly lasted until 2003. During that period, the RPF ensured domestic security, put in place programmes for economic reconstruction, justice and community reconciliation and ended any official distinction between Hutu and Tutsi. Under a new constitution agreed by referendum in May 2003, Presidential and parliamentary elections took place in August and September 2003. Paul Kagame was elected President with 95% of the vote for a 7-year term, and the RPF won 73.8% of the votes in the Parliamentary elections. The tenure for MPs is 5 years.³
- 2.4** Although Rwandan troops withdrew from the DRC in 2002, allegations have persisted that Rwanda maintains a presence in eastern DRC. There are also continued questions over domestic human rights and political freedoms. Although voting in the 2003 elections was generally well run and orderly, international observers reported irregularities in the electoral process, including intimidation of voters. All alternative parties have to join the Forum of Political Parties, chaired by the RPF, are not allowed to organise at a local level, and do not provide a strong opposition. In June 2004, former President Pasteur Bizimungu was sentenced to 15 years imprisonment for a variety of offences after trying to establish an ethno-centric political party. In March 2005 the main Hutu rebel group, Democratic Forces for the Liberation of Rwanda (FDLR), said it would cease hostilities and that its members would disarm and return to Rwanda. Since then, there has been little progress. FDLR is one of several groups accused of creating instability in DRC; many of its members are accused of taking part in the 1994 genocide.⁴

¹ Foreign and Commonwealth Office (FCO) Rwanda Country Profile 23 December 2005, BBC Rwanda Profile 5 May 2006 and BBC Rwanda Timeline 12 May 2006 & US Department of State Rwanda Human Rights Report (USSD) covering 2005 (Introduction)

² FCO 23 December 2005, BBC Timeline 12 May 2006 & USSD 2005 (Introduction)

³ FCO 23 December 2005, BBC Timeline 12 May 2006 & USSD 2005 (Introduction)

⁴ FCO 23 December 2005 & BBC Timeline 12 May 2006

- 2.5** In 1994, the UN Security Council established an International Criminal Tribunal (ICTR) to try the main leaders and planners of the genocide. Its progress has been slow but it has now convicted 23 people. Given the large number of Rwandans involved in the genocide and the inability of the local Judicial system to cope, the Rwandan government set up in 2002 a modern version of the traditional justice system, called Gacaca, where lesser offenders are to be tried within their own communities.⁵ In 2005, Rwanda expanded its system of people's courts (gacaca) from one tenth of the territory to the whole country. In July 2005 nearly 20,000 detainees who had confessed to genocide, were elderly or ill, or minors in 1994 were provisionally released.⁶ In January 2006, Rwanda's 12 provinces were replaced by a smaller number of regions with the aim of creating ethnically-diverse administrative areas.⁷
- 2.6** The Government's human rights record remained poor in 2005, and the Government continued to commit serious abuses. In their annual reports covering 2005, Amnesty International and Human Rights Watch highlighted the suppression of political opposition, suppression of civil society, unfree press, abuses in the criminal justice system including the slow progress of genocide trials under the ICTR and sexual violence against women as areas of particular concern.⁸
- 2.7** While the government's human rights record was poor in 2005 and there were instances when the government committed serious abuses, there were some improvements during the year. There were slightly fewer reports of human rights violations committed by the government. Unlike in 2004, there were no reports of politically motivated disappearances, and there were fewer reports that police abused suspects and that the government arbitrarily arrested members of civil society groups and opposition politicians.⁹
- 2.8** During 2005 prison conditions improved. Unlike in 2004, there were no reports that the government hindered the UN International Criminal Tribunal for Rwanda (ICTR), or that security forces monitored homes or telephone calls. There were fewer reports of the government violating the rights of Jehovah's Witnesses. Women continued to be well represented in the legislative branch, and government anticorruption efforts resulted in a reduction in the level of corruption perceived by citizens.¹⁰
- 2.9** Unlike in 2004, there were no reports of the Local Defense Forces (LDF) recruiting children; fewer reports of women being trafficked internally or to Europe for prostitution; and no reports of local government officials inciting Tutsi citizens to make false accusations against or discriminate against Hutus. Widespread poverty and the destruction of the country's social fabric, human resource base, institutional capacity, and economic and social infrastructure during the 1994 genocide continued to have an adverse impact on the country's human rights situation however.¹¹
- 2.10** Nevertheless some serious abuses of human rights continued in 2005. The following areas of concern were reported: abridgement of citizens' right to change their government; reports of unlawful killings by security forces; reports of the use of torture and excessive force by security forces; harsh prison and detention center conditions ; impunity; arbitrary arrest and detention and political detainees; prolonged pre-trial detention and denial of fair public trials; political prisoners, including former President Pasteur Bizimungu; arbitrary interference with family and home; restrictions on freedoms of speech, press, assembly, and association; restrictions on freedom of religion ;

⁵ FCO 23 December 2005 & BBC Timeline 12 May 2006

⁶ Human Rights Watch World Report (HRW) covering 2005

⁷ BBC Timeline 12 May 2006

⁸ HRW 2005 & Amnesty International Annual Report 2005

⁹ USSD 2005 (Introduction)

¹⁰ USSD 2005 (Introduction)

¹¹ USSD 2005 (Introduction)

abridgement of protection rights for refugees or asylum seekers; restrictions on civil society; societal violence and discrimination against women; trafficking in persons; child labour; lack of protections of some workers' rights.¹²

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Rwanda. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** **If the applicant's name appears on either of the two published lists maintained by the Rwandan government (on the following websites: www.gov.rw/government/category1.htm and/or www.parquetgeneral.gov.rw) of those wanted for genocide or where there is any evidence that the applicant was, for example, politically active, employed in any official, media or military capacity at the time of the genocide decision-makers should consider whether to apply one of the Exclusion clauses and should refer such cases to the War Crimes Unit. To assist in identifying possible genocide perpetrators caseworkers should refer to the War Crimes Interviewing Aid on the Knowledge Base.**

All APIs can be accessed via the IND website at:

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

3.6 Members of opposition political parties

- 3.6.1** Some claimants will make an asylum and/or human rights claim based on ill treatment at the hands of the state authorities due to their membership of, involvement with, or

¹² USSD 2005 (Introduction)

perceived involvement in opposition political parties - most notably the Rwanda Democratic Movement (MDR) or the Party for Democratic Renewal (PDR – Ubuyanja).

- 3.6.2 *Treatment.*** The Constitution provides for the right of citizens to change their government peacefully; however, despite peaceful presidential and legislative elections during 2003, this right was effectively restricted in 2005. There were numerous credible reports that during the presidential and legislative campaign periods in 2003, Kagame's opponents and their supporters faced widespread harassment and intimidation, including detention, which made it virtually impossible to campaign. The constitution provides for a multiparty system of government and for the free operation of political organisations; however, the government often did not respect these provisions. During 2005 the MDR, the main opposition party, remained inactive as a result of the cabinet's May 2003 recommendation to ban it. Although the Supreme Court never acted upon the recommendation, the MDR was dissolved shortly thereafter when all existing political parties were required to re-register under a new political party law.¹³
- 3.6.3** Parliament is dominated by the Rwandan Patriotic Front (RPF); six other political parties are represented in the Chamber of Deputies and the Senate; however, none are considered to be fully independent of President Kagame and the RPF. The constitution provides for a multiparty system but provides few protections for parties and their candidates. The government's continuing campaign against divisionism and its occasional use of arbitrary arrest against those critical of the government discouraged potential election candidates or others from engaging in open debate or criticism of the government or its policies. According to Amnesty International in 2005, officials "interrogated and intimidated" two former presidential candidates after radio broadcasts in which they voiced doubts about *gacaca*. Political observers and members of political parties other than the ruling RPF agreed that the RPF dominated the political arena, although, as provided by the constitution, members of other political parties held key positions in government and parliament, including the presidency of the Senate (held by a Social Democrat). Other political parties represented in parliament held regular meetings and were free to recruit new members.¹⁴
- 3.6.4** In accordance with the constitution, all political organisations are required to join the Forum for Political Organisations. In addition the law regulates the formation, structure, and functioning of political organisations; it also monitors their use of the media, management of financial assets, and relations between political organisations and other institutions. The law outlines a code of conduct for political organisations. For example the law states that political organisations have the "moral obligation to condemn any biased ideas and behaviour aimed at turning the state into a state governed by a cluster of politicians." The law also outlines the government's ability to cancel an organisation's mandate.¹⁵
- 3.6.5** During 2005 there were 10 political prisoners, including former President Pasteur Bizimungu and a local *Umuco* journalist Alexander Rugambage. On 25 October 2005, the Supreme Court began to hear an appeal by Bizimungu, former transport minister Charles Ntakirutinka, and six other persons believed to be involved with Bizimungu's banned Party for Democratic Renewal. A court had convicted all eight individuals in June 2004 on charges of "threatening national security by forming a criminal association"; it sentenced Bizimungu to 15 years in prison, Ntakirutinka to 10 years in prison, and the remaining six to 5 years each. The defendants, including foreign embassy employee Valens Munyaneza, were detained for two years prior to their 2004 trial. Local and international observers considered the verdict of the lower court politically motivated due to insufficient material evidence to substantiate the charges and dubious witnesses.¹⁶

¹³ USSD 2005 (Section 2b & 3)

¹⁴ USSD 2005 (Section 3)

¹⁵ USSD 2005 (Section 3)

¹⁶ USSD 2005 (Section 1)

3.6.6 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.

3.6.7 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.

3.6.8 Caselaw.

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

3.6.9 Conclusion. The MDR and PDR-Ubuyanja are proscribed political parties and their activities subject to monitoring by the authorities, however there is no objective evidence to show that ordinary members, or relations of members, of these parties are at risk of mistreatment by the authorities. Claimants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of the MDR or PDR-Ubuyanja are unlikely to be able to adduce a well-founded fear of persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate. In cases where claimants are able to demonstrate that they are a high-level MDR or PDR-Ubuyanja leader or activist, the grant of asylum is likely to be appropriate.

3.7 Ethnicity / mixed marriages

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

3.7.2 Treatment. Before 1994, an estimated 85% of citizens were Hutu, 14% were Tutsi, and 1% were Batwa (Twa). However, Hutus and Tutsis were not clearly distinct groups since the two have intermarried for generations. The 1994 mass killings and migrations probably affected the ethnic composition of the population, but the extent and nature of the changes remained unknown. With the removal of ethnic labels from identification cards, the Batwa no longer were officially designated as an ethnic group. The Batwa, survivors of the Twa (Pygmy) tribes of the mountainous forest areas bordering the DRC, exist on the margins of society and continue to be treated as inferior citizens by both the Hutu and Tutsi groups.¹⁷

3.7.3 Large scale inter-ethnic violence in the country between Hutus and Tutsis has erupted on three occasions since independence in 1962, resulting on each occasion in tens or hundreds of thousands of deaths. The most recent and severe outbreak of such violence, in 1994, involved genocidal killing of much of the Tutsi population under the direction of a Hutu-dominated government and in large part implemented by Hutu-dominated armed forces called the ex-FAR and Interahamwe militia. The genocide ended later the same year when a predominately Tutsi militia, operating out of Uganda and occupied Rwandan territory, overthrew that government and established the

¹⁷ FCO December 2005 & USSD 2005 (Section 5)

Government of National Unity, which was composed of members of eight political parties and which ruled until the elections in August and September 2003.¹⁸

- 3.7.4** Unlike in 2004, there were no reports in 2005 that local government officials incited Tutsi citizens to make false accusations against or discriminate against Hutus. In its effort to prevent incitement of violence or discrimination and to encourage reconciliation, the government pursued a strict policy of non-recognition of ethnic identities. Government identification cards do not indicate ethnicity, and the government eliminated all references to ethnicity in written and non-written official discourse. There is no government policy of ethnic quotas for education, training and government employment.¹⁹ In January 2006, Rwanda's 12 provinces were replaced by a smaller number of regions with the aim of creating ethnically-diverse administrative areas.²⁰
- 3.7.5** Information from US Citizenship and Immigration Services indicates that while harassment is not unheard of, there is little opportunity for systematic targeting of intermarried couples by government authorities or society. There is no such thing as a child of mixed ethnicity because a child will always belong to his or her father's ethnic group.²¹
- 3.7.6** **Sufficiency of protection.** Since 1994 the Government has called for national reconciliation and committed itself to abolishing policies of the former government that had created and deepened ethnic divisions. The Constitution provides for the eradication of ethnic, regional, and other divisions and the promotion of national unity.²² The Rwandan National Police (RNP) has a positive image – all recruits receive extensive training in human rights and there is little problem with corruption or discipline within the police force due to national pride, strict training, and close monitoring.²³ There is no evidence that the state authorities discriminate against any particular group, therefore Hutus, Tutsis and those in mixed Hutu/Tutsi marriages who face societal discrimination are able to seek and receive sufficient protection from the authorities.
- 3.7.7** **Internal relocation.** It is possible that ethnic groups and people in mixed marriages may face social pressures in some parts of the country, however there is free movement within the country²⁴ and the claimant may internally relocate to another region in order to escape this threat.
- 3.7.8** **Conclusion.** The Rwandan government is strongly committed to national reconciliation and there is no evidence of any state-sponsored or societal discrimination on ethnic grounds that would amount to persecution. Claims based on membership of a particular ethnic group are now unlikely to engage the UK's obligations under the 1951 Convention. Persons in mixed marriages may face social discrimination or unequal and adverse treatment. However, the availability of sufficient protection from the authorities and the level of societal discrimination being unlikely to amount to persecution means that the grant of asylum in such cases is not likely to be appropriate.

3.8 Rebel militia groups in the DRC

- 3.8.1** Some claimants will make an asylum and/or human rights claim based on ill treatment at the hands of the state authorities due to their membership, involvement with or

¹⁸ FCO December 2005 & USSD 2005 (Section 1 & 5)

¹⁹ USSD 2005 (Section 5)

²⁰ BBC Timeline 12 May 2006

²¹ UN Citizenship and Immigration Services (USCIS) March 2000

²² USSD 2005 (Introduction & Section 1)

²³ USSD 2005 (Section 1-2)

²⁴ USSD 2005 (Section 2d)

perceived involvement in Hutu rebel militia groups (the Interahamwe or Democratic Forces for the Liberation of Rwanda - FDLR) based in the Rwanda-DRC border region.

- 3.8.2 *Treatment.*** The Interahamwe, an unofficial civilian militia force, comprised of Hutu rebels, carried out much of the killing in Rwanda during the 1994 genocide. Its members fled to the Kivu region of the DRC following their defeat by the Rwandan Patriotic Army (RPA, now RDF). They combined with the army of the defeated Hutu regime (Ex Far forces) to create the Army for the Liberation of Rwanda (ALIR). During the war in the DRC the ALIR were allied with the DRC Government against the Rwandan army. ALIR is now called FDLR. Rwanda has in the past accused the Rwandan rebel militias in the DRC of uniting with Kinshasa troops to destabilise the region.²⁵
- 3.8.3** The Government has set up a Demobilisation and Reintegration Commission and launched a programme for the return of an estimated 25,000 ex-combatants from the Interahamwe in the DRC. In early 2004, more than 5,000 returnee militias from the DRC had been demobilised and reintegrated into their communities. In March 2005, leaders of the FDLR announced their intention to end attacks against their homeland, according to the UN Mission in the DRC (MONUC) and indicated a willingness to enter a UN programme of disarmament, demobilisation, repatriation, reinstallation and rehabilitation (DDRRR). However, by the end of 2005 there had been no additional disarmament of FDLR members and the FDLR had increased its activities against MONUC peacekeepers and the civilian population in eastern DRC.²⁶
- 3.8.4** Unlike in 2004, there were no reports in 2005 that the FDLR conducted attacks in the northwestern region of Rwanda. There were also no developments in 2005 on the 2004 killings by FDLR members and other armed individuals. During 2005, the government welcomed and repatriated hundreds of former FDLR combatants, who had fled the tight control of the FDLR's leadership; however, the government reiterated its policy that the FDLR members would not receive special treatment and would be subject to genocide trials, like the general population, if they were over 14 years of age at the time of the 1994 genocide.²⁷
- 3.8.5 *Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.8.6 *Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.8.7 *Conclusion.*** The Interahamwe militias and groups fighting as the FDLR continued sporadic attacks against the RDF on both sides of the Rwanda-DRC border until early 2005. The Government continued its programme to demobilise and reintegrate ex-rebel militia members through 2005 and the main rebel group, the FDLR, announced in March 2005 that it intended to cease hostilities. Though the FDLR have since failed to agree terms of a peace agreement, the Rwandan government has reaffirmed that FDLR members are welcome to return to Rwanda once disarmed. As such, it is unlikely that disarmed members of rebel militia groups based in the Rwanda-DRC border region will encounter persecution by the authorities. The grant of asylum in such cases is therefore not likely to be appropriate.
- 3.8.8** The various Rwandan rebel forces in the Rwanda-DRC border region have been responsible for numerous serious human rights abuses and actions that amount to war

²⁵ FCO December 2005, USSD 2005 (Section 1a) & BBC Country Profile May 2006

²⁶ BBC Timeline May 2006 & USSD 2005 (Section 1a)

²⁷ USSD 2005 (Introduction & Section 1a)

crimes. If it is accepted that the claimant was an active operational member or combatant for one of these groups then caseworkers should consider whether to apply one of the Exclusion clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.9 Genocide survivors / witnesses

- 3.9.1** Some claimants will make an asylum and/or human rights claim based on societal discrimination amounting to persecution due to them being survivors of, and/or having given evidence about, the 1994 genocide to the Gacaca justice system or the United Nations International Criminal Tribunal for Rwanda (ICTR).
- 3.9.2 *Treatment.*** The judiciary continued efforts in 2005 to resolve the enormous genocide caseload of more than 80,000 cases, 53,000 of which were in detention. Gacaca courts served as the government's primary judicial process for adjudicating thousands of genocide cases. The gacaca law provides for reduced sentences, including community service, for cooperation and credit for time served. Lawyers were not permitted to participate officially in gacaca but could testify as private citizens. Defendants in gacaca courts had the right to present witnesses and evidence on their own behalf. In addition to gacaca courts, genocide-related cases were tried by the ICTR and by the government in conventional courts. Between the creation of the ICTR in 1994 and the end of 2005, it rendered only 20 judgments on 27 cases.²⁸
- 3.9.3** Threats against genocide witnesses hampered the gacaca process in 2005; persons accused of genocide-related crimes, including some individuals who had been released by the government from pre-trial detention, reportedly made these threats. The government held local communities responsible for protecting witnesses, and relied on the LDF, local leaders, police, and community members to ensure the safety of witnesses. Despite these efforts, however, unidentified individuals killed approximately 15 genocide witnesses during 2005. Although many fewer genocide witnesses were killed than in 2004, many citizens still were too frightened to testify.²⁹
- 3.9.4** During 2005 the government investigated reports from 2004 that organised groups targeted and killed witnesses to the 1994 genocide in certain provinces. Near the end of 2005, a local pro-government newspaper and a local NGO reported that 69,000 persons accused of genocide-related crimes had committed suicide during 2005 out of fear of appearing before a gacaca court. In addition during the winter and spring more than 6,500 Rwandans left for Burundi or Uganda, reportedly due, in part, to fears of gacaca and for economic reasons.³⁰
- 3.9.5 *Sufficiency of protection.*** The Constitution has a provision, under Article 179, for a National Commission for the Fight Against Genocide to advocate the cause of genocide survivors within the country and abroad. A commission which includes Rwandan senators, was established in December 2003 to investigate the allegations of mistreatment of witnesses.³¹ The Rwandan National Police (RNP) has a positive image – all recruits receive extensive training in human rights and there is little problem with corruption or discipline within the police force due to national pride, strict training, and close monitoring.³² Genocide survivors are therefore able to seek and receive sufficient protection from the state authorities.

²⁸ USSD 2005 (Section 1e) & AI 2005

²⁹ USSD 2005 (Section 1e) & AI 2005

³⁰ USSD 2005 (Section 5) & AI 2005

³¹ UN IRIN 19 December 2003

³² USSD 2005 (Sections 1-2)

3.9.6 Internal relocation. As the targeting of genocide survivors has been limited to certain provinces (most notably Gikongoro) while most other provinces are considered safe and there is freedom of movement³³ internal relocation to a safe region to escape this threat is a feasible option.

3.9.7 Caselaw.

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

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

3.10 Prison conditions

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

3.10.2 Consideration. Prison and detention centre conditions in 2005 were well below international standards and were harsh. Chronic overcrowding, a consequence of the genocide combined with a lack of government capacity, remained a serious problem, although the conditional release of approximately 22,000 prisoners in August 2005 relieved some of the problems attributed to overcrowding. The government remained committed to improving prison and detention centre conditions, and they improved during 2005.³⁴

3.10.3 The International Committee of the Red Cross (ICRC) estimated that there were 67,000 prisoners following the August 2005 release in the country's 16 central prisons, including approximately 53,000 accused of genocide-related crimes and approximately 14,000 detained on charges unrelated to the genocide. Sanitary conditions in prisons and detention centers were poor at the beginning of 2005 but improved as the year progressed. Despite continuing efforts, the government did not provide adequate medical treatment.³⁵

3.10.4 The government provided food to prisoners, but it was not sufficient. Family members supplemented food provisions, and the ICRC assisted the government by providing 15% of the food in the 16 main prisons and also provided additional expertise and medical, logistical, and material support to improve conditions for inmates. Prison deaths largely were the result of preventable diseases and suspected cases of HIV/AIDS. There were an undetermined number of deaths in prison reported during 2005. National prison policy prohibits the hiring of prisoners to perform work at private residences and businesses.

³³ USSD 2005 (Section 1 & 2d)

³⁴ USSD 2005 (Section 1c)

³⁵ USSD 2005 (Section 1c)

However, community service was often part of a prison sentence for those who confessed to crimes, and prisoners may work (uncompensated) on community projects such as building roads, bridges, and private residences.³⁶

3.10.5 More than 500 minors were incarcerated with adults throughout the prison system. In August 2005 the government released all minors who had been detained for genocide-related crimes in a provisional prisoner release. The 800 minors who remained in prison were detained for crimes not related to the genocide. The government also made efforts to better ensure that minors were incarcerated separately from adults. However, due to the physical constraints of prison facilities, many minors were held with the general adult population, although at one prison (Cyangugu Prison), children between 14 and 18 years of age were housed in a separate block. In addition courts continued to give minors special treatment, taking into consideration their ages during sentencing. Pre-trial detainees generally were separated from convicted prisoners; however, there were numerous exceptions as a result of the large number of genocide detainees awaiting trial. Some high profile political prisoners, such as former president Bizimungu, were kept in special sections of regular prisons, while others, such as Father Guy Theunis, a Belgian priest accused of genocide-related crimes, were kept with the general population with no reported problems.³⁷

3.10.6 Women were detained and imprisoned separately from men in 2005. In addition there was at least one prison (Miyove Prison in Byumba district) exclusively for women. At another prison (Cyangugu Prison), living conditions for women were better than those for men. Women prisoners were fewer in number and housed in their own block, with separate beds. During the year Lawyers without Borders reported that an NGO undertook efforts at Gitarama central prison to facilitate the separation of women, juveniles, and pretrial detainees from convicted prisoners. The government permitted independent monitoring of prison conditions, and the Red Cross (ICRC), human rights organizations, diplomats, and journalists had regular access to the prisons. The ICRC continued its visits to communal jails and military-supervised jails.

3.10.7 Caselaw.

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

3.10.8 Conclusion. Whilst prison conditions in Rwanda are poor with overcrowding, insanitary conditions and a lack of medical care 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 Rwanda a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not 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 unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4. Discretionary Leave

³⁶ USSD 2005 (Section 1c)

³⁷ USSD 2005 (Section 1c)

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependents in accordance with the API on Article 8 ECHR.
- 4.2** With particular reference to Rwanda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.
- 4.4 Medical treatment**
- 4.4.1** Claimants may claim they cannot return to Rwanda due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The Constitution states that "Every person has the right and duties relating to health." The government aims to provide affordable and accessible healthcare for all and there has been a steady investment in the health sector since 1994. Access to healthcare, at 87%, is among the highest in the region and there is no evidence of discrimination on ethnic lines. The Ministry of Health has divided Rwanda into 40 health districts, 33 of which have district hospitals. Life expectancy in Rwanda is 49 years and the infant mortality rate is 130 per 1,000 population compared with sub-Saharan averages of 54 and 91 respectively.³⁸
- 4.4.3** Since the introduction of anti-retrovirals (ARVs) in Rwanda in 2000, the prices for the drugs have dropped from US \$727 to \$27 per dose. However, only a small proportion of HIV/AIDS patients has access to ARVs. Rwanda is still waiting for money from the HIV/AIDS Global Fund in order to further reduce ARV prices to at least less than a dollar a day for a patient.³⁹
- 4.4.4** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

³⁸ Economist Intelligence Unit Rwanda Report covering 2003 & CIPU Rwanda Country Report April 2004 & UK-Danish Rwanda Fact Finding Mission Report May 2002 (p. 72)

³⁹ UN IRIN 10 March 2004

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Rwandan nationals may return voluntarily to any region of Rwanda at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Rwanda. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Rwandan nationals wishing to avail themselves of this opportunity for assisted return to Rwanda should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- Amnesty International Annual Report covering 2005: Rwanda. At <http://web.amnesty.org/report2006/rwa-summary-eng>
- British Broadcasting Corporation (BBC) Country profile: Rwanda. Last updated 5 May 2006 at http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1070265.stm
- BBC Timeline: Rwanda. Last updated 12 May 2006 at http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1070329.stm
- BBC World News Africa 'Rwanda starts prisoner releases' 29 July 2005 at <http://news.bbc.co.uk/1/hi/world/africa/4726969.stm>
- BBC World News Africa 'Genocide witnesses 'being killed'', 16 December 2003, at: <http://news.bbc.co.uk/1/hi/world/africa/3324871.stm>
- Economist Intelligence Unit (EIU) Rwanda Country Profile 2003 http://db.eiu.com/report_full.asp?valname=CPRWD601&title=Country+Profile+Rwanda
- Human Rights Watch World Report covering 2005: Rwanda. At http://hrw.org/english/docs/2006/01/18/rwanda12286_txt.htm
- UK/Danish joint fact-finding report on Political Situation, Security and Human Rights in Rwanda Published in Copenhagen, May 2002 http://www.udlst.dk/Publikationer/Publikationerne/fact-finding_Rwanda.htm
- UK Foreign and Commonwealth Office (FCO) Country profile: Rwanda. Last updated 23 December 2005 at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020338066458>
- UN Citizenship and Immigration Services, (USCIS) Resource Information Center Would a Tutsi woman married to a Hutu man in 1990 currently be at risk of harm in Rwanda? 21 March 2000 <http://uscis.gov/graphics/services/asylum/ric/documentation/RWA00002.htm>

- UN IRIN '45 to take part in HIV/AIDS vaccine trials, 10 March 2004 at: <http://www.plusnews.org/pnprint.asp?ReportID=3126>
- UN IRIN Commission to probe murder and harassment of genocide survivors, 19 December 2003 at: <http://www.irinnews.org/print.asp?ReportID=38509>
- US Agency for International Development Health and Family Planning Overview, Rwanda, July 2002, http://www.usaid.gov/locations/sub-saharan_africa/publications/health.html
- US Department of State Report on Patterns of Global Terrorism 2002, Extract <http://www.state.gov/s/ct/rls/pgtrpt/2002/pdf/>
- US Department of State: Bureau of Democracy, Human Rights and Labor Country Report on Human Rights Practices 2005: Rwanda. Released 8 March 2006 at <http://www.state.gov/g/drl/rls/hrrpt/2005/61587.htm>

Asylum and Appeals Policy Directorate
4 September 2006