

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	211
Land:	Uganda
Kilde:	British Home Office
Titel:	Operational Guidance Note
Udgivet:	6. november 2011
Optaget på baggrundsmaterialet:	24. januar 2012



OPERATIONAL GUIDANCE NOTE

UGANDA

CONTENTS

1. Introduction	1.1 – 1.3
2. Country assessment	2.1 – 2.2
Actors of protection	2.3
Internal relocation	2.4
Country guidance caselaw	2.5
3. Main categories of claims	3.1 – 3.4
Members and suspected supporters of the LRA	3.6
Members and suspected supporters of opposition political organisations	3.7
Gay men and lesbians	3.8
Prison Conditions	3.9
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.3

1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Uganda, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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

2. Country assessment

- 2.1** Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessable-hrd-report-2010>

2.3 Actors of protection

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 2.3.2** The Uganda Police Force (UPF), under the Ministry of Internal Affairs, has primary responsibility for law enforcement. The Uganda People's Defence Forces (UPDF) is charged with external security but had significant responsibility for preventing violence resulting from inter-clan cattle raids in the Karamoja Region. The Internal Security Organisation (ISO) and External Security Organisation (ESO), which are security agencies and intelligence-gathering entities under the minister of security, occasionally detained civilians. The Chieftancy of Military Intelligence (CMI) is legally under UPDF authority, although it often acted as a semiautonomous unit in detaining civilians suspected of rebel and terrorist activity, as did the ISO and ESO. The Joint Anti-terrorism Taskforce (JATT), an interagency paramilitary group under the CMI, has no codified mandate but illegally detained civilians suspected of rebel and terrorist activity. The JATT is a joint command whose members are drawn from the UPDF, police, ISO, and ESO.¹

- 2.3.3** The UPF continued to be constrained by limited resources, including low pay and lack of vehicles, equipment, and training. The UPF Human Rights Desk investigated complaints of police abuses, including mismanagement of case papers, torture and harassment, unlawful arrest and detention, abuse of office, irregular or discreditable conduct, and corrupt practices. The UPF reported receiving 1,296 allegations of human rights violations and unprofessional conduct between January and September and stated it took action in response to 330 of these cases.²

- 2.3.4** The UPDF continued efforts to transfer responsibility for law enforcement in the north and in the Karamoja region to the UPF. During the year the UPF deployed an estimated 2,000 additional police officers to Karamoja.³

- 2.3.5** In conjunction with the Uganda Human Rights Commission (UHRC) and international

¹ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

² US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

³ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

organisations including the International Committee of the Red Cross (ICRC) and the UN Office of the High Commissioner for Human Rights (OHCHR), the UPDF and police continued to train officers on internationally recognised human rights standards. During the year 224 police officers attended human rights and constitutional workshops. The police, UPDF, and Prisons Service also used human rights manuals in their training programs.⁴

- 2.3.6** In 2009 the UHRC received 916 complaints compared to 1,060 in 2008. There was therefore a decline in the number of complaints received due to the application of the strict admissibility criteria, the change of addresses for receipt of complaints as well as the change in attitudes resulting into greater respect for human right in the country. Most of the complaints registered were against the Uganda Police Force (UPF). At least 106 complaints were also registered against the Uganda People's Defence Forces (UPDF). There was a significant increase in the complaints registered against the Rapid Response Unit as they more than doubled from 26 in 2008 to 55 in 2009, marking an increase of 111.5%. Similar increases were recorded in the complaints against the Internal Security Organisation which increased by 57.1% (from seven in 2008 to 11 in 2009); and the complaints lodged against the Chieftaincy of Military Intelligence which more than doubled as they increased from two in 2008 to seven in 2009. The complaints made against the Uganda Prisons Service reduced from 33 in 2008 to 29 in 2009, marking a 12.1% decrease.⁵
- 2.3.7** The law requires that judges or prosecutors issue search warrants before arrests are made; however, in practice, suspects often were taken into custody without warrants. The law requires suspects to be charged within 48 hours of arrest, but suspects frequently were held longer. Suspects arrested under the Antiterrorism Law must be brought to trial or released on bail within 120 days (360 days for a capital offense); however, if the case is presented to the court before the expiration of this period, there is no limit on pretrial detention. Detainees must be informed immediately of the reasons for their detention, although authorities did not always do so. The law provides for bail at the discretion of the judge, and bail was generally granted with stringent conditions. Detainees are required by law to have access to a lawyer; however, many went without legal representation. The government provided attorneys for indigent defendants accused of capital offenses.⁶
- 2.3.8** The constitution and law provide for an independent judiciary, and the government generally respected this provision in practice; however, the president has extensive legal powers of judicial appointment. The president appoints Supreme Court, High Court, and Court of Appeal judges with the approval of parliament. The president also nominates, for the approval of parliament, members of the Judicial Service Commission, who make recommendations on appointments to the judiciary. The judiciary ruled against the government on several high profile cases during the year. Lower courts remained understaffed, weak, and inefficient. Judicial corruption was a problem.⁷
- 2.3.9** There is an independent and impartial judiciary in civil matters. In the case of a human rights violation, there is access to the UHRC, which has the powers of a court under the constitution. These powers include the authority to order the release of detainees, payment of compensation to victims, and other legal and administrative remedies, such as mediation. There were problems enforcing domestic court orders.⁸

2.4 Internal relocation.

- 2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most

⁴ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

⁵ COIS Uganda Country Report April 2011 (para 8.18) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

⁷ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

⁸ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

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

2.4.3 The Republic of Uganda is a land-locked equatorial country in East Africa, bordered by Sudan to the north, the Democratic Republic of the Congo to the west, Kenya to the east and Rwanda, Tanzania and Lake Victoria to the south, covering an area of 241,038 sq km (93,072 sq miles).⁹ The estimated population in 2008 was 31,657,000; with around 13 per cent living in urban areas.¹⁰ The population is made up of over 20 ethnic groups including Baganda (17%), Banyankole (8%), Basoga (8%), Iteso (8%), Acholi and Langi. Small Asian and European communities also exist.¹¹

2.4.4 The constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation; however, the government at times limited these rights in practice. Travel restrictions were imposed on opposition party members, journalists, and others with pending charges of sedition and treason. A married woman must obtain her husband's written permission on her passport application if children are to be listed on her passport.¹² It may be practical for applicants who may have a well founded fear of persecution in one area to relocate to other parts of Uganda where they would not have a well founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

2.5 Country guidance caselaw

JM (homosexuality: risk) Uganda CG [2008] UKIAT 00065

Although there is legislation in Uganda which criminalises homosexual behaviour there is little, if any, objective evidence that such is in fact enforced. Notwithstanding a prevailing traditional and cultural disapproval of homosexuality, the evidence does not establish that in general there is persecution of homosexuality in Uganda.

PN (Lord's Resistance Army) Uganda CG [2006] UKAIT 00022

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

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

⁹ COIS Uganda Country Report April 2011 (para 1.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁰ COIS Uganda Country Report April 2011 (para 1.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹¹ COIS Uganda Country Report April 2011 (para 1.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹² US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

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

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

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Uganda. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the 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 Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 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** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

3.5 Credibility

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Members and suspected supporters of the Lords Resistance Army (LRA)

- 3.6.1** Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to involvement or suspected involvement with the Lords Resistance Army (LRA).
- 3.6.2 *Treatment.*** The Lord's Resistance Army (LRA), a rebel group led by Joseph Kony, originated in Northern Uganda as a movement to fight for the interests of the Acholi people. Kony rapidly lost support, and for the last 24 years has led a terrifying regime targeting attacks on innocent civilians, kidnapping children and forcing them to fight in his rebel forces. Driven out of the country by the Ugandan army, the LRA's rebels are now scattered across the Democratic Republic of Congo (DRC), Central African Republic (CAR) and southern Sudan, where brutal attacks continue on remote villages that can take months to be reported.¹³
- 3.6.3** The LRA is notorious for kidnapping children and forcing the boys to become fighters and using girls as sex slaves. It is listed by the US as a terrorist organisation and now operates mainly in neighbouring countries such as Democratic Republic of Congo, South Sudan and Central Africa Republic.¹⁴
- 3.6.4** The Lord's Resistance Army (LRA), which relocated to the Democratic Republic of the Congo (DRC) in 2005, continued to hold children forcibly abducted from the country. An estimated 5,000 of 40,000 children abducted by the LRA in previous years for use as labourers, soldiers, guards, and sex slaves were reportedly still missing. There continued to be numerous reports of LRA abductions of children in the DRC, CAR, and Sudan during the year. As in the past five years, there were no reports that during the year the LRA abducted or conscripted children within Uganda. The governments of Uganda, Southern Sudan, and the DRC continued military actions against the LRA in the DRC, Southern Sudan, and the Central African Republic.¹⁵
- 3.6.5** Since 2000, the government has offered a blanket amnesty to former LRA and Allied Democratic Forces rebel combatants to encourage defections. On June 14 (2010), parliament extended the mandate of the Uganda Amnesty Commission for two years. Over 26,000 individuals, more than half of whom are former LRA combatants, have benefited from amnesty.¹⁶
- 3.6.6** In July 2011 the BBC news website reported on the first war crimes trial of a LRA commander. Thomas Kwoyelo appeared before Uganda's International Crimes Division court, more than two years after his capture. He denied 53 counts of murder, hostage-taking, destruction of property and causing injury. The International Crimes Division court was set up following peace talks several years ago between the government and the LRA. The government assured the LRA that its fighters would be granted amnesty or they would be tried by Ugandan courts, rather than the International Criminal Court (ICC). ICC arrest warrants exist for LRA leader Joseph Kony and his close aides. They are accused of rape, murder, mutilation and forcibly recruiting child soldiers. The talks collapsed after Mr Kony demanded the withdrawal of the arrest warrants and a guarantee that he would not be tried by the ICC. At least 30,000 people have been killed in the 24-year conflict between the LRA and the Ugandan government. The LRA claims that it is fighting for a biblical state and the rights of the northern Acholi people.¹⁷

See also: [Actors of protection](#) (section 2.3 above)
 [Internal relocation](#) (section 2.4 above)

¹³ War Child, The Lords Resistance Army <http://www.warchild.org.uk/issues/the-lords-resistance-army-LRA>

¹⁴ BBC News 'Uganda's first war crimes trial of LRA commander opens' 11 July 2011 <http://www.bbc.co.uk/news/world-africa-14106941>

¹⁵ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

¹⁶ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

¹⁷ BBC News 'Uganda's first war crime trial of LRA commander opens' 11 July 2011 <http://www.bbc.co.uk/news/world-africa-14106941>

Caselaw (section 2.5 above)

- 3.6.10 Conclusion.** Despite the continued military actions against the LRA in the DRC, Southern Sudan and the Central African Republic there is no evidence that the comprehensive Amnesty and reintegration package extended to former members of rebel groups, including the LRA, have been affected. There is nothing to suggest that former members of the LRA or any other rebel group would be subjected to detention and ill-treatment by the Ugandan authorities on return. A grant of asylum will not, therefore, be appropriate.
- 3.6.11** Case owners should note that members of the LRA have been responsible for serious human rights abuses. If it is accepted that the claimant was an active operational member or combatant for the LRA and the evidence suggests that he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.
- 3.7 Members and suspected supporters of opposition political organisations**
- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Ugandan authorities due to their active membership or support for opposition political organisations.
- 3.7.2 Treatment.** The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right in practice through generally free and fair elections based on universal suffrage.¹⁸
- 3.7.3** The ruling National Resistance Movement (NRM) party operated without restriction, regularly holding rallies and conducting political activities. Approximately 38 other parties were registered and allowed to function, although members of some parties were subjected to political violence, and authorities sometimes restricted opposition parties' ability to meet or demonstrate. Political involvement was primarily concentrated within the elite. Membership in the NRM conferred greater access to government positions and resources.¹⁹
- 3.7.4** Government officials detained and interrogated political leaders who made public statements critical of the government and used libel laws and national security as grounds to restrict freedom of speech. The President's Office reportedly monitored political talk shows, and the government occasionally attempted to block participation of opposition members on radio talk shows.²⁰
- 3.7.5** Throughout the year (2010), numerous instances of electoral violence and human rights abuses were recorded. These were not investigated and suspected perpetrators were not brought to justice. In January 2010, the police arrested 35 female activists from the Inter-Party Cooperation Coalition – an alliance of opposition parties – who were protesting against the Electoral Commission, accusing it of partiality. The activists complained of ill-treatment by the police – including being forced to undress and being held overnight with men in the same police holding cells – and the use of excessive force. They were subsequently charged with holding an unlawful assembly. In June 2010, the police and a group of men armed with sticks and locally known as “the Kiboko squad” disrupted a rally in Kampala by opposition leader Kizza Besigye and beat him, as well as officials and supporters of his party. The government promised an investigation but no announcement was made of any progress by the end of the year.²¹
- 3.7.6** Key opposition leaders had public rallies and media events, particularly radio talk shows, cancelled or blocked by the police and government representatives. An opposition leader,

¹⁸ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

¹⁹ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

²⁰ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

²¹ Amnesty International Annual Report 2011: Uganda <http://www.amnesty.org/en/region/uganda/report-2011>

Olara Otunnu, faced criminal charges of sectarianism for discussing alleged government complicity in human rights abuses during the war in northern Uganda.²² Significant concerns remain over the ability of opposition parties to compete with the ruling NRM. The opposition is hindered by restrictive party registration requirements, voter and candidate eligibility rules, the use of government resources to support NRM candidates, a lack of access to media coverage, and paramilitary groups—such as the Kiboko Squad and the Black Mambas—that intimidate voters and government opponents. Army representatives in the National Assembly have openly campaigned for President Yoweri Museveni.

3.7.7 The government proposed a Public Order Management Bill which would, if enacted into law, unduly restrict the rights to peaceful assembly and to freedom of expression. The Bill had not been submitted for debate in Parliament by the end of the year.²³ The 2010 Public Order Management Bill would require that groups of three or more people receive prior police approval before gathering to discuss any government actions, failures, or policies. The proposed law would also give police wide powers to regulate the conduct of public meetings. Members of the opposition were reportedly beaten and arrested during demonstrations against the composition of the electoral commission in January and June (2010).²⁴

3.7.8 There were no reports of political prisoners during the year; however, over 100 opposition politicians, supporters, or journalists critical of the government were detained on politically motivated grounds for short periods.²⁵

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.7.9 Conclusion. Despite Uganda allowing the registration of opposition political parties, some opposition political groups continued to face restriction on their ability to assemble and their supporters were subjected to political violence, harassment and sometimes ill treatment by the authorities. Some opposition supporters were detained by the security forces and some face charges of treason. However, others who were similarly detained were released without charge.

3.7.10 Each case must be decided on its individual facts to determine whether a particular applicant is at risk. In some cases, particularly those of prominent members of political parties or those accused of treason who have been detained for long periods of time and who have suffered at the hands of the Ugandan authorities, a grant of asylum or Humanitarian Protection may be appropriate. However, in other cases such as that of a low level activist detained for a few days and then released without charge, the harassment suffered will not reach the level of persecution or breach Article 3 of the ECHR and therefore they will not qualify for a grant of asylum or Humanitarian Protection.

3.8 Gay men and lesbians

3.7.2 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men or lesbians in Uganda.

3.8.2 Treatment. Lesbian, gay, bisexual, and transgender (LGBT) persons faced discrimination and legal restrictions. It is illegal to engage in homosexual acts, based on a 1950 legal provision from the colonial era criminalising "carnal acts against the order of nature" and prescribing a penalty of life imprisonment. No persons had been convicted under the law.

²² Amnesty International Annual Report 2011: Uganda <http://www.amnesty.org/en/region/uganda/report-2011>

²³ Amnesty International Annual Report 2011: Uganda <http://www.amnesty.org/en/region/uganda/report-2011>

²⁴ Freedom House Uganda Country Report 2011

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8155>

²⁵ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

On 12 October 2010, police in Kampala arrested one individual for alleged homosexuality, and on 15 October 2010 a court in Kampala charged the individual with homosexuality and released him on bail. Hearing of the case was pending at year's end (2010).²⁶

- 3.8.3** In September 2009 parliamentarian David Bahati introduced a draft anti-homosexuality bill that would impose punishments ranging from imprisonment to the death penalty on individuals twice convicted of "homosexuality" or "related offenses" to include "aiding and abetting" homosexuality, "conspiracy to engage" in homosexuality, the "promotion of homosexuality," or "failure to disclose the offense" of homosexuality to authorities within 24 hours. This draft legislation remained in the committee stage during the year but resulted in increased harassment and intimidation of LGBT persons. Although the government did not endorse the draft legislation, several senior members of government and President Museveni's Cabinet openly expressed homophobic sentiment despite the High Court's December 2008 ruling that constitutional rights apply to all persons, regardless of sexual orientation. In its annual report for 2009, released in October 2010, the UHRC determined that the draft anti-homosexuality bill violates the Ugandan constitution and international law.²⁷
- 3.8.4** The fight against the anti-homosexuality bill has also pushed Ugandan activists to the fore, raising concern for their privacy and safety. These deepened in late 2010 when a local tabloid called Rolling Stone, unconnected to the US magazine, published pictures, names, and residence locations of some members of the LGBT community, along with a headline saying, "Hang Them." David Kato, a leading voice in the fight against the anti-homosexuality bill, photo appeared on the cover and inside another photo appeared with his name. Three activists, including Kato, eventually sued the publication and won on January 3. The judge ruled that the publication had violated their constitutional rights to privacy and ordered compensation. He also issued an injunction prohibiting any further publication of the identities and home locations of individuals labelled homosexuals.²⁸ David Kato was later beaten to death in his home in Uganda.²⁹
- 3.8.5** LGBT persons were subject to societal harassment, discrimination, intimidation, and threats to their wellbeing during the year (2010). Individuals openly threatened members of the LGBT community and their constitutional rights during several public events. For example, on April 15 2010 in Jinja, Pastor Martin Ssempe led a march against homosexuality, and during an April 17 2010 event against homosexuality at a church in Kampala, Ssempe showed a pornographic slideshow to audience members, which included several children. During these rallies participants openly threatened LGBT individuals.³⁰
- 3.8.6** Most LGBT persons find it difficult to 'come out' of their closeted lives or to be open about their sexual orientation. Most blend within the wider society and even live under the cover of heterosexual relationships while maintaining their LGBT relationships underground.³¹
- 3.8.7** There are currently several LGBT groups in Uganda;

Freedom and Roam Uganda (FARUG) a lesbian, bisexual, transgender and intersex human rights organisation founded in the July of 2003. FARUG started informally, gained experience, strength and support and then decided to organise more formally to achieve identified goals.³²

²⁶ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

²⁷ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

²⁸ Human Rights Watch, Uganda: Promptly Investigate Killing of Prominent LGBT Activist, 27 January 2011

<http://www.hrw.org/news/2011/01/27/uganda-promptly-investigate-killing-prominent-lgbt-activist>

²⁹ BBC News Uganda gay rights activist David Kato killed, 27 January 2011 <http://www.bbc.co.uk/news/world-africa-12295718>

³⁰ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

³¹ COIS Uganda Country Report April 2011 (para 19.21) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³² COIS Uganda Country Report April 2011 (para 19.34) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Sexual Minorities Uganda (SMUG), a coalition of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) human rights organizations. SMUG was born on March 3, 2004 to organise LGBTI groups to create one big strong LGBTI community in Uganda. The need for a coalition arose because there were several LGBT groups operating in the country lacked concrete organisation and teamwork with fellow groups. SMUG would then work on behalf of its member organisations, enforcing their activities and representing them in a more organised manner.³³

Gay Rights Uganda, whose mission is to end discrimination against lesbian, gay, bisexual, and transgendered persons particularly in Uganda and the rest of Africa, through highlighting acts of discrimination and abuse against the LGBT community.³⁴

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

- 3.8.8 Conclusion.** Case owners must refer to the Asylum Instruction on sexual orientation in the asylum claim.
- 3.8.9** Homosexual acts are illegal in Uganda and can carry a penalty of life imprisonment. There is however no evidence to show that anyone has been convicted to life imprisonment as a result of their sexuality. The 2008 country guidance case **JM** found that the evidence at that time did not establish that there was in general persecution on grounds of sexual orientation in Uganda. However, despite the High Court's December 2008 ruling that constitutional rights apply to all persons, regardless of sexual orientation, the current country evidence is that LGBT persons continue to be subject to societal harassment, discrimination, intimidation, and threats to their wellbeing. This can in individual cases amount to persecution and in general the Ugandan authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection.
- 3.8.10** Where gay men and lesbians do encounter social hostility they may be able to avoid this by moving elsewhere in Uganda. There are however likely to be difficulties in finding safety through internal relocation given that homophobic attitudes are prevalent across the country. The Supreme Court in the case of HJ (Iran) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.8.11** Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in Uganda on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Uganda may be considered to be members of a particular social group.
- 3.8.12** If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.
- 3.8.13** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to

³³ COIS Uganda Country Report April 2011 (para 19.38) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁴ COIS Uganda Country Report April 2011 (para 19.39) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.9 Prison conditions

- 3.9.1** Applicants may claim that they cannot return to Uganda due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Uganda are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.9.3** **Consideration.** Prison conditions remained poor and, in some cases, life threatening. There were reports that security forces tortured inmates, particularly in military facilities and unregistered detention centres. Abusive forced labour in prisons countrywide remained a problem.³⁵
- 3.9.4** Prison conditions came closest to meeting international standards in Kampala, where medical care, running water, and sanitation were provided; however, these prisons were among the most overcrowded. Serious problems in prisons outside Kampala included long remand periods, overcrowding, inadequate staff, and lack of food, water, medical care, and bedding.³⁶
- 3.9.5** Inmates in three Ugandan detention facilities – Gulu and Fort Portal prisons, plus the prison referral hospital at Murchison Bay, Luzira – continued to benefit from improvements in health and hygiene conditions thanks to an International Committee of the Red Cross (ICRC) project to provide preventive and curative treatment for HIV/AIDS, TB and malaria. A total of 4,923 detainees in all three prisons participated in a second mass TB screening (the first took place in 2009) and received various medical, hygiene and other items – from disinfectants to food-serving trays – to reduce infection rates. Following the expansion of cell space, inmates with TB could live separately from other patients, thus reducing the risk of transmission. Staff and detainees also received additional TB-awareness booklets, plus copies of a manual containing guidelines for the control of TB in prisons. In addition, 800 detainees in Gulu and Murchison Bay prisons faced fewer health risks after water and sanitation facilities were improved.³⁷
- 3.9.6** The Uganda Prisons Service reported there were 30,312 prisoners in the prison system at the end of August (2010), approximately three times capacity. Severe overcrowding was also a problem at juvenile detention facilities and in female wings of prisons. The Kampala Remand Home, designed for 45 children, held 110. The Naguru reception center, designed for 30 prisoners, held 150 juveniles. The Prisons Service recorded 103 prisoner deaths nationwide from torture, overcrowding, malnutrition, poor sanitation, disease, overwork, and lack of medical care.³⁸
- 3.9.7** Female prisoners in central prisons were held in separate facilities; however, services and facilities for female prisoners in local prisons, including separate cells, were lacking in some areas. The Prisons Service had no budget for accommodating pregnant women or mothers with infants; the number of infants in women's prisons increased during the year. Due to lack of space in juvenile facilities, minors were held in prisons with adults.³⁹

³⁵ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

³⁶ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

³⁷ ICRC Annual Report 2010; Uganda <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-2010-uganda.pdf>

³⁸ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

³⁹ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

- 3.9.8** Pretrial detainees in Kampala prisons were separated from convicted prisoners, but pretrial detainees and convicted prisoners in the rest of the country were sometimes held together. Local NGOs reported that prisoners and detainees had reasonable access to visitors and were allowed to submit complaints. Prison authorities acknowledged a backlog in the investigation of complaints. Authorities allowed international NGOs, foreign diplomats, and local NGOs, principally the Foundation for Human Rights Initiative (FHRI) and the Uganda Prisoners' Aid Foundation, to conduct prison visits during the year but required advance notification.⁴⁰
- 3.9.9** In January, Uganda's highest court – the Supreme Court – upheld a 2005 judgement of the Constitutional Court that the mandatory application of the death penalty is unconstitutional. The Court also decided that death sentences that courts had been obliged to impose, which applied to the vast majority of more than 400 appellants in the case, should be commuted to life imprisonment. However, the Supreme Court also ruled that the death penalty remains constitutional. Civilian and military courts continued to impose the death penalty. There were no executions.⁴¹
- 3.9.10 Conclusion** Whilst prison conditions in Uganda are poor, with overcrowding being a particular problem, conditions are unlikely to reach Article 3 threshold. Therefore even where applicants can demonstrate a real risk of imprisonment on return to Uganda a grant of Humanitarian Protection will not generally be appropriate. However the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Uganda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Uganda. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Uganda due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for

⁴⁰ US State Department Human Rights Report 2010; Uganda <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154375.htm>

⁴¹ COIS Uganda Country Report April 2011 (para 12.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Article 3 and/or 8 to be engaged.

- 4.4.2** The delivery of health services in Uganda is done by both the public and private sectors with the Government of Uganda (GoU) being the owner of most facilities. The GoU owns 2242 health centres and 59 hospitals compared to 613 health facilities and 46 hospitals by 'Private Not for Profit' (PNFPs) and 269 health centres and 8 hospitals by the 'Private Health Providers' (PHPs). Because of the limited resource envelope with which the health sector operates, a minimum package of health services has been developed for all levels of health care for both the private and the public sector and health services provision is based on this package.⁴²
- 4.4.3** Public health services in Uganda are delivered through Health Centres, general hospitals, Regional Referral Hospitals (RRHs) and National Referral Hospitals (NRHs). The range of health services delivered varies with the level of care. In all public health facilities curative, preventive, rehabilitative and promotive health services are free, having abolished user fees in 2001. However, user fees in public facilities remain in private wings of public hospitals.⁴³
- 4.4.4** Approximately 60% of Uganda's population seek care from Traditional and Complementary Medicine Practitioners (TCMPs) (e.g. herbalists, traditional bone setters, traditional birth attendants, hydro-therapists, spiritualists and traditional dentists) before visiting the formal sector. TCMPs are available in both urban and rural areas even if the service provided are not consistent and vary widely. Many traditional healers remain unaffiliated. Most TCMPs have no functional relationship with public and private health providers. A regulatory bill and policy framework for TCMPs is awaiting cabinet approval and it is essential to establish functional relationship between the TCMP and the rest of the health sector.⁴⁴
- 4.4.5** Uganda's draft mental health policy encompasses many positive reforms, including decentralisation and integration of mental health services into Primary Health Care PHC. The mental health legislation is however outdated and offensive. Services are still significantly underfunded (with only 1% of the health expenditure going to mental health), and skewed towards urban areas. Per 100,000 population, there were 1.83 beds in mental hospitals, 1.4 beds in community based psychiatric inpatient units, and 0.42 beds in forensic facilities. The total personnel working in mental health facilities were 310 (1.13 per 100,000 population). Only 0.8% of the medical doctors and 4% of the nurses had specialised in psychiatry.⁴⁵
- 4.4.3** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual 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 Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Uganda of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** 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.

⁴² COIS Uganda Country Report April 2011 (para 23.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴³ COIS Uganda Country Report April 2011 (para 23.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴⁴ COIS Uganda Country Report April 2011 (para 23.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴⁵ COIS Uganda Country Report April 2011 (para 23.24) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 5.3** Ugandan nationals may return voluntarily to any region of Uganda at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Uganda. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Ugandan nationals wishing to avail themselves of this opportunity for assisted return to Uganda should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
November 2011