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OPERATIONAL GUIDANCE NOTE

UGANDA

CONTENTS

1. Introduction

1.1 This document provides UK Border Agency case owners 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Case owners 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 case owners 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. Where a claim for asylum or Humanitarian

Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

1.4 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 the relevant COI Service country of origin information material. 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://fcohrdreport.readandcomment.com/read-and-download-the-report/

2.2 Actors of protection

2.2.1 Case owners must refer to section 7 of the Asylum Instruction - Considering the asylum claim and assessing credibility. To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must 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.

2.2.2 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 also had significant responsibility for implementing the disarmament campaign in Karamoja, providing election-related security, and responding to walk-to-work protests. The Internal Security Organization (ISO) and External Security Organization (ESO), security agencies and intelligence-gathering entities under the Minister of Security, occasionally detained civilians. 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 Antiterrorism Taskforce (JATT), an interagency paramilitary group under Chieftaincy of Military Intelligence (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, UPF, ISO, and ESO.[1]

2.2.3 The UPF were constrained by limited resources, including low pay and lack of vehicles, equipment, and training. The UPF's Professional Standards Unit (PSU) investigated complaints of police abuses, including torture, harassment, unlawful arrest and detention, abuse of office, irregular or discreditable conduct, mismanagement of case papers, and corrupt practices. From January to November, the PSU received 218 reports of human rights violations and unprofessional conduct. The PSU was unable to provide information on the number of cases acted upon during 2011.[2]

2.2.4 The UPDF continued efforts to transfer responsibility for law enforcement in the North and in the Karamoja region to UPF. In 2010 the UPF deployed an estimated 2,000 additional police officers to Karamoja.[3]

2.2.5 In conjunction with the Ugandan Human Rights Commission (UHRC) and international organisations including the International Committee of the Red Cross (ICRC) and the Office of the High Commissioner for Human Rights (OHCHR), the UPDF and UPF continued to train officers on internationally recognised human rights standards. During the year 1,057 police officers attended human rights and constitutional workshops. The UPF, UPDF, and Prisons Service also used human rights manuals in their training programs.[4]

2.2.6 The UHRC is a constitutionally mandated institution with quasi-judicial powers to investigate allegations of human rights abuses and award compensation to abuse victims. Although the UHRC operates independently, the president appoints its seven-member board. Under the law the UHRC may subpoena information, order the release of detainees, and order the payment of compensation for abuses. The UHRC pursued suspected human rights abusers, including in the military and police forces, and had branches countrywide. Its resources were inadequate to investigate all complaints received.[5]

2.2.7 In 2011, the UHRC registered a total of 1,021 new complaints on human rights violations, representing a 28% increase from the 797 complaints registered in 2010. The increased number of complaints received is attributed to the establishment of Masaka Regional Office, as well as the UHRC's mobile complaints handling system and the continued creation of public awareness. Mobile complaints handling involves the UHRC going to the local communities to register complaints of allegations of human rights violations. The violation of freedom from torture or cruel, inhuman or degrading treatment or punishment topped the list of the alleged human rights violations with 34.8. % of the total complaints received. This was followed by detention beyond 48 hours at 21.5%, Complaints of detention beyond 48 hours increased by 46% from 181 in 2010 to 264 2011.[6]

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[1] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[2] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[3] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[4] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[5] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[6] Uganda Human Rights Commission 14th Annual Report 2011,
http://www.uhrc.ug/index.php?option=com_docman&task=doc_view&gid=125&tmpl=component&format=raw

2.2.8 The UHRC also registered a 22.2% increase in cases related to the right to a fair and speedy trial from 9 in 2010 to 11 in 2011. The UHRC noted a 6.9 % decrease in the violation of the right to a fair and speedy investigation by the Uganda Police Force (UPF) which dropped from 29 in 2010 to 27 in 2011. The practice and prevalence of torture has often attributed to extortion, abuse of office, corruption, the need to extract confessions or statements from suspects in order to secure easy convictions, as well as the lack of basic modern skills of investigation on the part of law enforcement officers.[7]

2.2.9 The constitution and law provide for an independent judiciary, and the government generally respected this provision in practice. 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 2011. Lower courts remained understaffed, weak, and inefficient. Judicial corruption was a problem.[8]

2.2.10 The military court system often did not assure the right to a fair trial. The law establishes a court martial appeals process. Sentences, including the death penalty, can be appealed only to the senior UPDF leadership. Under circumstances deemed exigent, a field court martial can be convened at the scene of an alleged crime. The law does not permit appeal of a conviction under a field court-martial. Despite a 2006 court ruling prohibiting the military from trying civilians in military tribunals, this practice continued. In July 2011 HRW issued a report documenting the prosecution of civilians in military courts and reported that at least 1,000 civilians had been court-martialed since 2000. In September 2011 the UPDF announced that it would end the practice of trying civilians in military tribunals.[9]

2.2.11 Uganda's military court system violates international standards on fair trials and due process by its infrequent sessions, painfully slow processes, lack of adequate defense preparation, and lack of legal expertise among the army officers who act as judges. Suspects have waited in some cases up to nine years for trial resolutions. Some await trial for periods exceeding the maximum sentence for their charges. The military court has in the past admitted into evidence confessions extracted by torture. Suspects on remand often feel they must plead guilty to conclude their case. In contravention of international legal standards and Ugandan constitutional law, military courts have routinely prosecuted civilians, particularly for gun possession, although there were indications during 2011 that this practice would end.[10]

2.2.12 The slow pace of the civilian justice system also violates human rights law. Fifty-five percent of the Ugandan prison population is held on remand, though international law requires pre-trial detention be an exception and as short as possible. While the

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[7] Uganda Human Rights Commission 14th Annual Report 2011, http://www.uhrc.ug/index.php?option=com_docman&task=doc_view&gid=125&tmpl=component&format=raw&Itemid=97

[8] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

[9] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

[10] Human Rights Watch, World Report 2012; Uganda http://www.hrw.org/world-report-2012/world-report-2012-uganda

donor-driven Justice Law and Order Sector program has made progress in reducing the case backlog, detainees are still in custody for several years, pending trial. Most detainees, including those accused of serious crimes and face long remand times, lack legal representation or the practical ability to apply for bail without counsel.[11]

2.2.13 Executive influence undermines judicial independence. Prolonged pretrial detention, inadequate resources, and poor judicial administration impede the fair exercise of justice. The country has also faced criticism over the military's repeated interference with court processes. Rape, vigilante justice, and torture and abuse of suspects and detainees by security forces remain problems. The Joint Anti-Terrorism Task Force has committed many of the worst rights abuses. The prison system is reportedly operating at nearly three times its intended capacity, with pretrial detainees constituting more than half of the prison population.[12]

2.2.14 There is an independent and impartial judiciary in civil matters. Victims may report cases of human rights violations through the regular court system or the UHRC, which has judicial powers 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. Victims can appeal their cases to the Court of Appeal and eventually the Supreme Court, but not to an international regional court. Civil courts and the UHRC have no ability to hold perpetrators of human rights abuses criminally liable, and enforcement of judgments for financial compensation was hampered by bureaucratic delays.[13]

2.3 Internal relocation.

2.3.1 Case owners must refer to the Asylum Instruction on Internal Relocation and in the case of a female applicant, the AI on Gender Issues in the Asylum Claim, for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O 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 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. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.3.2 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,

[11] Human Rights Watch, World Report 2012; Uganda http://www.hrw.org/world-report-2012/world-report-2012-uganda
[12] Freedom House, Freedom in the World 2012; Uganda http://www.freedomhouse.org/report/freedom-world/2012/uganda
[13] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

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 unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

2.3.3 The constitution and law provide for freedom of movement, foreign travel, emigration, and repatriation. The government at times limited these rights in practice. A married woman must obtain her husband's written permission on her passport application if children are to be listed on her passport.[14]

2.4 Country guidance caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012) The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

Supreme Court. HJ & HT *v* SSHD [2010] UKSC31 7 July 2010 The Supreme Court hereby established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

(i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?

(ii) If yes, would gay people who live openly be liable to persecution in that country of origin?

(iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.

(iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

JM (homosexuality: risk) Uganda CG [2008] UKIAT 00065 In this country guidance case the Tribunal found that 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

[14] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

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.

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. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction 'Considering the asylum claim and assessing credibility').

3.3 For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction 'Every Child Matters; Change for Children' sets out the key principles to take into account in all Agency activities.

3.4 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 does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.5 Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR. An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

3.6 Other severe humanitarian conditions and general levels of violence meeting the Article 3 threshold. There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

3.7 As a result of the Sufi & Elmi v UK judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

3.8 Credibility

3.8.1 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 'Section 4 – Making the Decision in the Asylum Instruction 'Considering the asylum claim and assessing credibility'. Case owners 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 UK Border Agency 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 matches 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.

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

3.9.1 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).

3.9.2 **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.[15]

3.9.3 The LRA has over the years abducted children and forced them to commit atrocities against other people and used kidnapped girls as sex slaves. It has also a history of killing and mutilating its victims.[16]

3.9.4 Kony's rebels have terrorised swathes of South Sudan, Democratic Republic of Congo and the Central African Republic over the years. It is estimated by the Ugandan army that there are only 450 members of the LRA left. Kony is wanted by the International Criminal Court for war crimes including rape, the murder of civilians and forcibly recruiting children to serve in his Lord's Resistance Army.[17]

3.9.5 In 2012, the Ugandan military, the only force in the region with the capacity to pursue LRA groups into remote areas, focused on pursuing LRA groups in southeast Central African Republic (CAR) thought to contain senior LRA commanders such as Dominic Ongwen and Okot Odhiambo. In particular, Ugandan operations concentrated on LRA groups operating in the large forested reserves west of Djemah, CAR.[18]

3.9.6 LRA forces reportedly killed 38 people from January – June 2012. 10% of all reported LRA attacks included a civilian killing. This was a significant drop from 2011, when LRA forces killed a civilian in 29.6% of all reported attacks. From January – June 2012, the LRA reportedly abducted 311 people. Of these abductions, 47.6% were confirmed as short-term abductions (abductions in which the person escaped or was released within 72 hours).[19]

3.9.7 Following an announcement by President Obama in October 2011, US military advisers were deployed to central and east Africa to assist in regional counter-LRA efforts, primarily working with the Ugandan military. A majority of the advisers are

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[15] War Child, The Lords Resistance Army, accessed October 2012, http://www.warchild.org.uk/issues/the-lords-resistance-army

[16] UN news service, UN envoy on children in conflict urges Uganda to prosecute captured LRA officer, 14 May 2012 http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=4fb202f02&skip=0&coi=UGA&querysi=lra&searchin=title&display=10&sort=date

[17] BBC News, Joseph Kony's sister tells of family's 'curse' 20 August 2012 http://www.bbc.co.uk/news/world-africa-19314268

[18] LRA crisis tracker Mid –Year Security Brief Jan –June 2012 http://www.lracrisistracker.com/sites/default/files/reports/LRA%20Crisis%20Tracker%202012%20Mid-Year%20Security%20Brief.pdf

[19] LRA crisis tracker Mid –Year Security Brief Jan –June 2012 http://www.lracrisistracker.com/sites/default/files/reports/LRA%20Crisis%20Tracker%202012%20Mid-Year%20Security%20Brief.pdf

based in Uganda, with forward bases in Nzara, South Sudan, and Obo and Djemah, CAR. The advisers have a limited presence in Congo, where Ugandan troops have not been allowed to officially operate since September 2011.[20]

3.9.8 Since 2000 the government has offered blanket amnesty to former LRA and Allied Democratic Forces rebel combatants to encourage defections. More than 26,000 individuals have received amnesty since 2000, and more than half of these are former LRA combatants. During 2011 the government approved 29 amnesty cases. On 22 September 2011, the Constitutional Court upheld the constitutionality of the Amnesty Act, ruled that the Department of Public Prosecutions (DPP) illegally denied LRA Colonel Thomas Kwoyelo's request for amnesty, awarded Kwoyelo amnesty, and ordered his release from prison. Kwoyelo was captured by the UPDF in the DRC in 2009 and is accused of dozens of murders, mutilations, and abductions. The government claimed Kwoyelo's alleged crimes make him ineligible for amnesty and refused to release him from prison. Kwoyelo remained in custody at the end of 2011.[21]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.9.9 **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.

3.9.10 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 must refer to the guidance on Exclusion under Article 1F of the Convention, and consider whether one or more of the Exclusion clauses is applicable. Case owners must refer such cases to a Senior Caseworker.

3.10 Members and suspected supporters of opposition political organisations

3.10.1 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.

3.10.2 **Treatment**. The constitution and law provide citizens with the right to change their government peacefully.[22] The 2011 Ugandan general elections showed some

[20] LRA crisis tracker Mid –Year Security Brief Jan –June 2012
http://www.lracrisistracker.com/sites/default/files/reports/LRA%20Crisis%20Tracker%202012%20Mid-Year%20Security%20Brief.pdf
[21] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[22] US State Department Human Rights Report 2011; Uganda

improvements over the previous elections held in 2006. However, the electoral process was marred by avoidable administrative and logistical failures which led to an unacceptable number of Ugandan citizens being disenfranchised. Notwithstanding a number of incidents of violence and intimidation, especially on Election Day, the electoral campaign and polling day were generally conducted in a peaceful manner. Restraint in campaign rhetoric contributed to this improved campaign environment.[23] Although a multiparty system was introduced in 2005, the playing field remains tilted heavily in the ruling party's favour.[24]

3.10.3 The conduct of the 2011 elections surprised many participants in that violence, ballot-stuffing, manipulation of registration and intimidation were considerably lower than in past elections. Nevertheless, there were significant logistical challenges and a number of reported irregularities.

3.10.4 Power of incumbency - Many observers argued that the National Resistance Movement (NRM) had switched its tactics to massive payments to voters, pointing to large supplementary appropriations that had been passed by Parliament shortly before the elections.[25] Each party received an inadequate official financial allocation for its campaigns based on the number of its representatives in Parliament, a policy that advantaged the NRM. NRM candidates, particularly the president, tapped state funds for their races. Parliament passed a supplemental budget of $260 million in January 2011 that observers believed was largely spent on campaigns. Further, the NRM mobilized far more contributions from foreign and local business interests than other parties.[26]

3.10.5 Space for opposition - Approximately 38 political parties were registered. The ruling NRM party operated without restriction, regularly holding rallies and conducting political activities. Authorities occasionally restricted some activities of the main opposition parties by refusing permission for them to hold public demonstrations and preventing opposition leaders from appearing on local radio stations.[27] This was particularly the case in rural areas. Many candidates were threatened, had business loans recalled, had tax bills hiked, and found it difficult to get time on radio and TV stations.[28]

3.10.6 While the constitution provides for freedoms of assembly and association, the government did not respect these rights in practice. The UPF continued to require advance notification and approval for public gatherings, despite a 2008 Constitutional Court decision nullifying section 32(2) of the Police Act and the requirement to obtain written police approval for any assembly of 25 persons or more. During the year the UPF routinely restricted the right to assemble freely. Opposition parties and civil society organizations critical of the government that sought UPF authorization for public gatherings often received no official response or were instructed not to assemble. Police often met attempts to assemble by these

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http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

[23] European Union Election Observation Mission, Uganda, Final report General Elections 18 February 2011, 10 March 2011, http://www.eueom.eu/files/pressreleases/english/eueom_uganda2011_final_report_en.pdf

[24] Freedom House, Freedom in the World 2012; Uganda http://www.freedomhouse.org/report/freedom-world/2012/uganda

[25] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda

[26] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda

[27] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

groups with excessive and brutal force.[29]

3.10.7 The government's respect for the rights of freedom of association and assembly deteriorated over the past few years. Political and civil society activists were frequently attacked, arbitrarily arrested, and held for long periods without trial. The police prevented or aggressively broke up several rallies in which demonstrators were demanding a change in the membership of the Electoral Commission in 2009 and 2010. In 2011, police tried to prevent the "Walk to Work" demonstrations. In doing so, the security forces killed at least ten protestors and repeatedly arrested scores of others, including many civil society activists and politicians. To prevent Kizza Besigye, a main opposition candidate, from "walking to work," the police confined him to his home while refusing to charge him. In several recent cases, while attempting to maintain political order, police have killed both demonstrators, including students protesting conditions in their schools, and bystanders.[30]

3.10.8 The government maintained its intolerance for opposition for the rest of the year. In September, Vincent Nzaramba, the author of a book advocating peaceful protest to overthrow Museveni, was detained for several days and said he was physically abused in custody. Attempts to renew the April–May protests in October led to 40 arrests and treason charges—which can carry the death penalty—for three of the organizers. The charges were pending at year's end.[31]

3.10.9 While there were no reports of political prisoners during the year, hundreds of opposition politicians, supporters, civil society activists, journalists, or others critical of the government were detained on politically motivated grounds for short periods. Many of these individuals were released without charge. Others were released after being charged with crimes such as treason, inciting violence, and promoting sectarianism. None of the hundreds of people arrested for protesting rising prices during the walk-to-work campaign were convicted of an offense, and courts dismissed all walk-to-work related cases brought to trial by the DPP for lack of evidence.[32]

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.10.10 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.

3.10.11 Each case must be decided on its individual facts to determine whether a

[29] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[30] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda
[31] Freedom House, Freedom in the World 2012; Uganda http://www.freedomhouse.org/report/freedom-world/2012/uganda
[32] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

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.

3.11 Gay men and lesbians

3.11.1 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.

3.11.2 **Treatment.** LGBT persons faced discrimination and legal restrictions. It is illegal to engage in homosexual acts, based on a law from the colonial era that criminalises "carnal knowledge of any person against the order of nature" and provides a penalty up to life imprisonment. While no persons were convicted under the law, the government arrested persons for related offenses. For example, in July police arrested an individual for "attempting" to engage in homosexual activities. On 15 July 2011, a court in Entebbe charged him with "indecent practices" and released him on bail. Hearing of the case was pending at year's end.[33]

3.11.3 LGBT persons were subject to societal harassment, discrimination, intimidation, and threats to their well-being and were denied access to health services. Discriminatory practices also prevented local LBGT NGOs from registering with the NGO Board and obtaining official NGO status.[34]

3.11.4 On 3 January 2011, the High Court ruled that an obscure local tabloid had violated three LGBT persons' constitutional rights to privacy and human dignity in 2010 by publishing their pictures, identities, and addresses under the headline "Hang Them." This was the second High Court ruling upholding the rights of LGBT individuals. In 2008 the High Court affirmed LGBT individuals' constitutional right to human dignity, protection from inhuman treatment, and privacy in Victor Juliet Mukasa and Yvonne Oyo v. Attorney General.[35]

3.11.5 On 26 January 2011, LGBT activist David Kato, who had successfully sued the local tabloid discussed above for the 2010 publication of his picture under the headline "Hang Them," was bludgeoned to death at his home outside Kampala. On 2 February, police arrested Sidney Enock Nsubuga for Kato's murder. On 9 November 2011, Nsubuga pled guilty and was sentenced to 30 years' imprisonment.[36]

3.11.6 On 6 May 2011, parliament's Parliamentary and Legal Affairs Committee held hearings on a draft "anti-homosexuality" bill submitted to parliament in September

[33] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[34] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[35] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[36] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

2009 by parliamentarian David Bahati. The draft legislation sought to impose punishments ranging from imprisonment to death for individuals twice convicted of "homosexuality" or "related offenses, " including "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. The committee heard testimony from local human rights and LGBT activists, the UHRC, the Uganda Prison Service, and "anti-homosexuality" proponents. The draft bill expired when parliament adjourned on 13 May 2011. On 25 October 2011, the new parliament voted to "save and retain" two dozen expired bills from the previous session, including the draft "anti-homosexuality" bill but took no further action. During 2011 several senior government officials stated they did not support the bill, and in 2010 the UHRC determined that the bill violates the constitution and international law.[37]

3.11.7 The bill has received fluctuating attention since it was first introduced in 2009 and until recently attention had receded. However, The Canadian Foreign Minister in a speech to the Inter Parliamentary Union Assembly in October 2012 criticised Uganda for its "draconian punishment and unspeakable violence" against homosexuals.[38] The Ugandan Parliamentary Speaker, Ms. Kadaga, who was in attendance responded strongly, arguing that Canada should not force its values on Uganda.[39] Pressure to pass the Bill subsequently increased and Ms. Kadaga promised to allow time for a debate on the Bill before Christmas.[40] However, the Ugandan Parliament went into recess on 14 December without considering it. Parliament will resume again in February.[41] On 17 December 2012 it was reported that Uganda's president said gay people should not be killed or persecuted, as MPs continue to consider a controversial Anti-Homosexuality Bill. In his first public comments on the bill for some time, President Yoweri Museveni also said that homosexuality should not be promoted. The original version of the bill stipulated the death penalty for some homosexual acts but the MP that brought the Bill forward has reportedly said he is happy to drop that clause.[42]

3.11.8 On 3 October 2011, the Constitutional Court heard oral arguments on a 2009 petition filed by a local human rights and LGBT activists challenging the constitutionality of Section 15(6)(d) of the Equal Opportunities Commission Act. Section 15(6)(d) prevents the Equal Opportunities Commission from investigating "any matter involving behaviour which is considered to be (i) immoral and socially harmful, or (ii) unacceptable by the majority of the cultural and social communities in Uganda." The petitioner argued that this clause is discriminatory and violates the constitutional rights of minority populations. A decision was pending at year's end.[43]

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[37] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

[38] Foreign Affairs and International Trade Canada, Address by Minister Baird at Inter-Parliamentary Union Assembly, 22 October 2012 http://www.international.gc.ca/media/aff/speeches-discours/2012/10/22a.aspx?view=d

[39] Life Site News, Ugandan parliamentarian blasts Canadian Foreign Affairs minister over gay 'marriage' remark, 24 October 2012 http://www.lifesitenews.com/news/ugandan-parliamentarian-blasts-canadian-foreign-affairs-minister-over-gay-m

[40] BBC news, Uganda to pass anti-gay law as 'Christmas gift' , 13 November 2012 http://www.bbc.co.uk/news/world-africa-20318436

[41] All Africa, Uganda: Anti-Gay Bill Hurting Economy - Govt Official, 10 January 2013 http://allafrica.com/stories/201301101384.html

[42] BBC News, Uganda's President Yoweri Museveni: Don't kill gay people, 17 December 2012 http://www.bbc.co.uk/news/world-africa-20754891

[43] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

3.11.9 Public prejudice against gays and lesbians remains high. In late 2011, a local paper printed the names and pictures of those they believed to be homosexuals. In July 2011, the Constitutional Court heard a case to determine whether Sec. 15(6)d of the Equal Opportunities Commission Act of 2007 discriminated against LGBT minorities because it prohibited the EOC from investigating behaviour considered immoral by the majority of Ugandans. The decision in the case had not been announced by early August 2012.[44]

3.11.10 In June 2012 police raided a human rights workshop attended by lesbian, gay, bisexual and transgender (LGBT) activists in Kampala. The workshop, which was organised by the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) to teach human rights monitoring skills to LGBT activists from Rwanda, Tanzania, Kenya as well as Uganda, was closed down following the police action. A dozen police surrounded the hotel where the workshop was being held, and sealed the exits, police in full riot gear then pulled up outside preventing anyone from entering or leaving. Many workshop participants, who had come from Kenya, Rwanda and Tanzania, retreated to their hotel rooms but police checked the hotel register and then went door to door to round them up. After a meeting with senior police officials who admitted their response may have been “over zealous”, EHAHRDP were asked to present their official documents of registration at police headquarters the next day.[45]

3.11.11 Continued harassment of human rights activists is an egregious violation of human rights law to which Uganda is a party. On 14 February 2012, Uganda’s Minister for Ethics and Integrity, Simon Lokodo, raided another LGBT rights workshop and attempted to order the arrest of Kasha Jacqueline Nabagasera, a prominent LGBT rights activist and winner of the 2011 Martin Ennals Award for Human Rights Defenders. She was forced to flee from the hotel.[46]

3.11.12 In September 2012 the British producer of a play that highlights the difficulties of being gay in Uganda was charged with a criminal offence after the production was staged despite a ban by regulators. The offence carries a sentence of two years in jail. The Ugandan Media Council sent a letter to David Cecil, producer of The River and the Mountain, on 16 August saying it was considering whether to grant the play clearance to be performed. "In the meantime," read the letter, "this play is not to be staged in any theatre or public place in Uganda." The play's run at the National Theatre was cancelled but it was performed at two small venues in the capital Kampala. Ugandan ethics minister Simon Lokodo said the play was not granted clearance because "this play is justifying the promotion of homosexuality in Uganda, and Uganda does not accommodate homosexual causes. We will put pressure on anyone saying that this abomination [homosexuality] is acceptable."[47] On 2 January the Magistrate dismissed the case in response to a failure of the Prosecution to disclose.[48]

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[44] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda

[45] Amnesty International, Uganda: Police close down gay rights workshop, 19 June 2012 http://www.unhcr.org/refworld/docid/4fe4211b2.html

[46] Amnesty International, Uganda: Police close down gay rights workshop, 19 June 2012 http://www.unhcr.org/refworld/docid/4fe4211b2.html

[47] The Guardian, British producer arrested in Uganda over play exploring gay issues, 7 September 2012 http://www.guardian.co.uk/world/2012/sep/07/uganda-british-producer-arrested-gay-rights

[48] The Guardian, British theatre producer escapes two years in Ugandan jail for gay play, 2 January 2013 http://www.guardian.co.uk/world/2013/jan/02/uganda-british-gay-play-jail

See also: **Actors of protection (section 2.3 above)**

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

3.11.13 Conclusion. Homosexual acts are illegal in Uganda and can carry a penalty of life imprisonment. The 2008 country guidance case of JM (homosexuality: risk) Uganda CG [2008] UKIAT 00065 found that at that time there was little, if any evidence, that such legal provisions were in fact enforced; and that notwithstanding a prevailing traditional and cultural disapproval of homosexuality, the evidence did not establish that in general there is persecution of LGBT persons in Uganda. The current country evidence is that LGBT persons continue to be subject to societal harassment, discrimination, intimidation, and threats to their well being which has been exacerbated by the Anti-Homosexuality Bill and the rhetoric surrounding it. This treatment 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.

3.11.14 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 throughout 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.

3.11.15 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.

3.11.16 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.

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

3.12 Prison conditions

3.12.1 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.

3.12.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.12.3 **Consideration.** Whilst the Human Rights Watch (HRW) report that prison conditions improved slightly during the 2009 to 2011 period, treatment of prisoners remains far below minimal standards for the protection of human dignity,[49] and the USSD Human Rights report continues to state that prison conditions remained poor and, in some cases, life threatening. There were reports that State Security Forces (SSF) tortured inmates, particularly in military facilities and unregistered detention centres and abusive forced labour in prisons countrywide remained a problem.[50]

3.12.4 Prisons are badly overcrowded and prisoners spend years on remand. In September 2009, the Uganda Prisons Service reported that the prisons were at 224 percent capacity and that 55 percent of prisoners had not yet been tried. However, HRW reported much higher rates at several prisons. Some prisons, particularly military detention centres, formed human rights committees and oversaw improved conditions. However, lengthy pretrial detention, poor hygiene, inadequate food, beatings, deficient accommodation and solitary confinement have persisted. Only 48 of 222 prisons in the country provide healthcare.[51]

3.12.5 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. Prisons outside Kampala lacked food, water, medical care, and bedding. In March HRW and the NGO Advocates Without Borders (AWB) released detailed reports on prison conditions. The AWB report alleged inmates were held in places that did not meet international human rights standards for food, water, medical care, and basic hygiene. Prison authorities estimated more than half the prison population was on remand or pretrial detention and had not been convicted. In 2010 the Ministry of Justice reported that the average remand period for prisoners was reduced from 27 months in 2009 to 15 months. Data for 2011 was unavailable.[52]

3.12.6 The Uganda Prisons Service reported 31,749 prisoners in the system at the end of August 2011. The approved holding capacity of prisons is 13,670 prisoners. 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 194. The Naguru Reception Center, designed for 30 children, held 180 juveniles. The Prisons Service recorded 84 prisoner deaths nationwide from January to August from torture, overcrowding, malnutrition, poor sanitation, disease, overwork, or lack of medical care.[53]

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[49] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda
[50] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[51] Freedom House, Countries at Crossroads 2012; Uganda http://www.freedomhouse.org/report/countries-crossroads/2012/uganda
[52] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[53] US State Department Human Rights Report 2011; Uganda http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254

3.12.7 Information was unavailable on conditions in unregistered and illegal detention facilities, although SSF allowed the UHRC and some international NGOs access to selected unregistered facilities. Observers reported poor conditions and numerous cases of abuse in illegal detention facilities or "safe houses."[54]

3.12.8 Although female prisoners in central prisons were held in separate facilities, 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, and 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. Pretrial detainees in Kampala prisons were separated from convicted prisoners. Elsewhere they 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 to conduct prison visits during the year but required advance notification.[55]

3.12.9 Prison authorities reported improvements in record keeping by the introduction of computers up to the regional level, provision of plastic water tanks, and adoption of a new sanitation system at several prison facilities. Community service is statutorily available as a sentencing option. Prison authorities reported that more than 100,000 persons were sentenced to community service during the year.[56]

3.12.10 Civilian and military courts continued to impose the death penalty for capital offences. According to official statistics from September 2011, around 505 people − 35 of them women − were held on death row. There were no executions[57] although 5 death sentences were imposed during 2011.[58]

3.12.11 **Conclusion** Prison conditions in Uganda are poor and taking into overcrowding and poor conditions may reach the Article 3 threshold in some cases. Where an individual applicant is able to demonstrate a real risk of significant period of detention or imprisonment on return to Uganda, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection may be appropriate but the individual factors of each case should be considered.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave)

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[54] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[55] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[56] US State Department Human Rights Report 2011; Uganda
http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186254
[57] Amnesty International Annual World Report 2012; Uganda
http://www.amnesty.org/en/region/uganda/report-2012#section-23-12
[58] Amnesty International, Death Sentences and Executions 2011
http://www.amnesty.org/en/library/asset/ACT50/001/2012/en/241a8301-05b4-41c0-bfd9-2fe72899cda4/act500012012en.pdf

4.2 With particular reference to Uganda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on Discretionary Leave.

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. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of KA (Afghanistan) & Others [2012] EWCA civ1014. In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3.2 At present there is insufficient 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 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

4.4.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of N (FC) v SSHD [2005] UKHL31, it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

4.4.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of GS and EO (Article 3 – health cases) India [2012] UKUT 00397(IAC) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning

children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

4.4.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

4.4.5 Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the Asylum Instruction on Discretionary Leave for the appropriate period of leave to grant.

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.

5.3 Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with chapter 53.8 of the Enforcement Instructions and Guidance.

5.4 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.

5.5 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.choices-avr.org.uk.

Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Assurance Group
UK Border Agency

March 2013