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OPERATIONAL GUIDANCE NOTE

UGANDA

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1. Introduction

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

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

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

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

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

Source documents

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

2. Country assessment

- 2.1 In February 2006 presidential and legislative elections were conducted under Uganda's newly instituted multi-party political system. In the presidential election, Yoweri Museveni, the head of state since 1986 and the candidate of the National Resistance Movement

(NRM), was re-elected for a further five-year term, with 59.3% of valid votes cast. Dr Kizza Besigye, the candidate of the Forum for Democratic Change (FDC) his closest rival among four other candidates, was recorded as having received 37.4% of valid votes. The rate of voter participation in the presidential election was recorded as 68.6% of the registered electorate.¹

- 2.2** The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice during 2005, however, the President has extensive legal powers of judicial appointment. The President can appoint Supreme Court, High Court, and Court of Appeal judges with the approval of Parliament. The President also nominates, for the approval of Parliament, members of the Judicial Service Commission, who make recommendations on appointments to the High Court, the Court of Appeal, and the Supreme Court. However, despite this political influence the judiciary ruled against the Government on several high-profile cases during 2005.²
- 2.3** The government's human rights record remained poor during 2005 and although there were some improvements in a few areas, serious problems remained including restrictions on opposition party activity, unlawful killings by security forces, disappearances, use of torture and abuse of suspects by the security forces', vigilante justice, official impunity, arbitrary arrest, incommunicado and lengthy pre-trial detention.³
- 2.4** However, during 2005 the government also took significant steps to improve human rights and workers' rights. In October 2005 the parliament passed a series of reforms that allow political parties to participate in government and compete in elections. These reforms followed the July 2005 referendum in which citizens voted to adopt a multi-party system of government.⁴
- 2.5** The war in northern Uganda between the Lords Resistance Army (LRA) and the Ugandan Peoples Defence Force (UPDF) continued throughout 2005 with serious abuses being committed by both sides. The LRA were responsible for numerous atrocities including attacks on private homes, schools, and IDP camps, the summary execution of civilians, often by gruesome methods, rape and abduction of children.⁵ In February 2004, the LRA committed the worst massacre of the entire conflict by attacking Barlonyo internally displaced person's camp, and killing more than 330 people.⁶
- 2.6** The LRA continued to abduct thousands of civilians for training as guerrillas during 2005. Most of the victims were children and young adults whom the LRA forced into virtual slavery as labourers, soldiers, guards, and sex slaves. More than 85 percent of LRA forces were made up of children mostly aged 11-16.⁷
- 2.7** There were also reports that the security forces tortured and abused civilians suspected of collaborating with the LRA during 2005, however, unlike in previous years, there were no reports that security forces killed suspected collaborators. There were also reports that UPDF soldiers raped civilians living in IDP camps.⁸
- 2.8** Many of the security force abuses occurred in unregistered detention facilities and were intended to force confessions. The Uganda Human Rights Commission (UHRC) received approximately 58 complaints of torture during 2005, which was less than half the number of complaints received in 2004. The UHRC conducted human rights training for the police and military throughout the year.⁹

¹ COIS Uganda Country Report para 5.28

² COIS Uganda Country Report para 5.39

³ USSD 2005 (Introduction) & COIS report 2006 para 6.1

⁴ USSS 2005 (Introduction) & COIS report 2006 para 6.1

⁵ USSD 2005 (Section 1)

⁶ COIS Uganda Country Report para 6.94

⁷ USSD 2005 (section 4)

⁸ USSD 2005 (Section 1)

⁹ USSD 2005 (Section 1)

- 2.9** In December 1999 an Amnesty Act came into force, offering an amnesty to all rebel fighters who give themselves up to the authorities.¹⁰ The amnesty law confers upon the beneficiaries of the amnesty an irrevocable legal immunity from prosecution or punishment. An Amnesty Commission and a Demobilisation and Resettlement Team (DRT) were established by the Act to oversee the amnesty process. The Commission is establishing its presence nationally and in the regions. Gulu and Kitgum now have Amnesty Commission offices as do Arua and Kasese in western Uganda, and another is planned for Mbale in the east.¹¹ The amnesty covers any Ugandan residing within or outside of the country.¹² During 2005, 691 former LRA combatants applied for and received amnesty.¹³

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Uganda. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the Claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:
http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html
- 3.6 **Members and suspected members of the Lords Resistance Army (LRA)****
- 3.6.1** Some claimants will claim asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to their active membership or active involvement with or support for the Lords Resistance Army (LRA).
- 3.6.2** However, most claimants will claim that although they are not involved with the LRA they face ill-treatment amounting to persecution or breach of the ECHR at the hands of the

¹⁰ COIS Uganda Country Report para 6.06

¹¹ COIS Uganda Country Report para 6.07

¹² COIS Uganda Country Report para 6.08

¹³ USSD 2005 (Section 1)

Ugandan authorities due to the authorities simply suspecting that they are involved with this organisation.

- 3.6.3 *Treatment.*** There were reports that the Ugandan security forces tortured and abused civilians suspected of collaborating with the LRA during 2005, however, unlike in previous years, there were no reports that security forces killed suspected collaborators. There were also reports that UPDF soldiers raped civilians living in IDP camps.¹⁴
- 3.6.4** The government failed to meaningfully prosecute military personnel responsible for abuses or otherwise discipline its forces in the north. Even when action was taken, it usually involved the transfer of the offending soldier or unit, the dispersal of a small sum of money for 'medical costs,' or the beating of the soldier in the barracks.¹⁵
- 3.6.5** However, on occasion the active involvement of civilian officials and the high command of the army in efforts to end impunity has radically improved the situation. In Bobi camp, Gulu district, training in 2004 of local leaders by a Ugandan human rights non-governmental organisation helped build confidence and understanding in the displaced population on what their rights were and how to complain about abuses. A high-ranking Ugandan army official was invited to and attended the workshop. His subsequent intervention with the local battalion helped to halt recurring sexual abuse in the camp.¹⁶
- 3.6.6** In December 1999 an Amnesty Act came into force, offering an amnesty to all rebel fighters who give themselves up to the authorities.¹⁷ The amnesty law confers upon the beneficiaries of the amnesty an irrevocable legal immunity from prosecution or punishment. An Amnesty Commission and a Demobilisation and Resettlement Team (DRT) were established by the Act to oversee the amnesty process. The Commission is establishing its presence nationally and in the regions. Gulu and Kitgum now have Amnesty Commission offices as do Arua and Kasese in western Uganda, and another is planned for Mbale in the east.¹⁸ The amnesty covers any Ugandan residing within or outside of the country.¹⁹ During 2005, 691 former LRA combatants applied for and received an amnesty.²⁰
- 3.6.7** In July 2004 thousands of people turned out to watch, as around 300 former Lord's Resistance Army (LRA) rebels marched through Gulu town before heading to a showground for a passing-out ceremony. They were then welcomed into the regular Ugandan army.²¹
- 3.6.8** Thousands of LRA fighters and commanders, including many responsible for grave abuses, are among the 15,000 persons who have received amnesties under the Amnesty Act, which was enacted to encourage rebels to lay down their arms and surrender. The government provides these ex-fighters 'amnesty packages' of cash and supplies to help them start a new life, which has created resentment among the impoverished civilian population in the north.²²
- 3.6.9** However, no organisation is specifically charged with following up on this protection issue of former LRA fighters returning home. There is currently no monitoring of these ex-LRA returnees and little is known about how they are actually received by the community. The Amnesty Commission does not have the resources to follow up after issuing amnesty certificates and packages to applicants. Although very little is actually known about how well these returnees are received, as a result of the advocacy efforts of the Acholi traditional and religious leaders it has become received wisdom that there is little or no

¹⁴ USSD 2005 (Section 1)

¹⁵ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.4

¹⁶ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.5

¹⁷ COIS Uganda Country Report para 6.06

¹⁸ COIS Uganda Country Report para 6.07

¹⁹ COIS Uganda Country Report para 6.08

²⁰ USSD 2005 (Section 1)

²¹ COIS Uganda Country Report para 5.81

²² HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.37-39

retribution because the Acholi are said to be very forgiving. However, some members of the Acholi population did not agree with the prospect of having the LRA leaders forgiven, however, but instead wanted justice, even retribution.²³

3.6.10 Sufficiency of protection. Active members and supporters of the LRA who are engaged in anti-government activities and who are not willing to surrender under the terms of the amnesty will not be able to avail themselves of the protection of the Ugandan authorities. However, those LRA members and supporters who renounce violence and surrender under the terms of the amnesty will not face persecution or prosecution by the authorities. The AIT found in **[2006] UKAIT 00022** that the Ugandan Government's amnesty for members of the LRA remains in place and there is no current risk from the Ugandan authorities to a former member of the Lord's Resistance Army (who renounces violence) on return to Uganda.

3.6.11 Internal relocation. In general active members or supporters of the LRA who are wanted nationwide by the Ugandan authorities will not be able to internally relocate to another part of Uganda as they are likely to be traced by the Ugandan authorities.

3.6.12 However, internal relocation may be an option for suspected supporters or sympathisers of the LRA who may have experienced difficulties with the authorities in northern Uganda but who are not wanted nationwide. The UPDF are known to illegally detain, question and possibly ill-treat people in the north of Uganda on suspicion of being a supporter of the LRA. However, these detentions often result in the detainee being released without charge. Any claimant who has been illegally detained in northern Uganda and then released without charge is unlikely to be known to the authorities across Uganda and will be able to internally relocate to another area of the country and in particular the south and the capital Kampala.

3.6.13 Caselaw.

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

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

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

[2004] UKIAT 00326 LA (Acholi – Gulu detainee – Returnees) Heard 15 July 2004 The appellant was a member of the Acholi ethnic group who was accused of being a supporter of the LRA and was detained by the Ugandan authorities. The IAT found that even if there were a record of her detention in Gulu, the issue then remains as to whether or not it

²³ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.48

resulted in her name appearing on a list of wanted persons. The logistics of maintaining a list of all those who are unlawfully detained are formidable. In the judgement of the IAT there is neither, evidence that such a list is feasible nor that, as a matter of fact, it exists in Uganda. In the IAT's judgement, there is no credible evidence that, were the appellant to settle in accommodation in Kampala or elsewhere, the events in Gulu are likely to come to the attention of the authorities so as to put her at risk.

3.6.14 Conclusion. As part of the ongoing conflict with the LRA the Ugandan authorities have committed serious human rights abuses including torture and rape in northern Uganda. Some members and/or active supporters of the LRA may face ill treatment at the hands of the Ugandan security forces that may amount to persecution. Active members or supporters of the LRA who are wanted nationwide by the Ugandan authorities will not be able to internally relocate to another part of Uganda and may (subject to para 3.6.16 below) qualify for asylum

3.6.15 However, as established by the AIT in [2006] UKAIT 00022 members and active supporters of the LRA who renounce violence are able to take advantage of the Government's amnesty and will not face persecution or prosecution from the Ugandan authorities. Since 2000 thousands of LRA fighters and commanders, have received amnesties and have been provided with 'amnesty packages' of cash and supplies to help them start a new life. Therefore, in the majority of cases it is unlikely that a grant of asylum or Humanitarian Protection will be appropriate.

3.6.16 Caseworkers should note that members of the LRA have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for the LRA and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

3.6.17 As part of the ongoing conflict with the LRA the Ugandan authorities may sometimes detain and question individuals who they simply suspect of being involved with the LRA. In some cases these individuals may face ill treatment at the hands of the Ugandan security forces that may amount to persecution and may qualify for asylum. However, these detentions often result in the detainee being released without charge. Any claimant who has been illegally detained in northern Uganda and then released without charge is unlikely to be known to the authorities across Uganda and will be able to internally relocate to another area of the country and in particular the south and the capital Kampala. The IAT found in [2004] UKIAT 00326 LA that a suspected supporter of the LRA who had been illegally detained in northern Uganda by the authorities would not appear on a nationwide wanted list and therefore would be able to internally relocate to another part of Uganda in particular to the capital Kampala. Therefore, in the majority of cases it is unlikely that a grant of asylum or Humanitarian Protection will be appropriate.

3.7 Members and suspected members of other rebel groups

3.7.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to their active membership or active involvement with other rebel groups notably the Allied Democratic Front (ADF), the Peoples Redemption Army (PRA), the National Army/Union for the Liberation of Uganda (NALU/NULU), the West Nile Bank Front (WNBK), the United National Rescue Front II (UNRF II), and the Citizens Army for Multiparty Politics (CAMP).

3.7.2 Most claimants will claim that although they are not involved with any of these rebel groups they face ill treatment amounting to persecution at the hands of the Ugandan authorities due to the authorities simply suspecting that they are supporters of the above mentioned organisations.

3.7.3 Treatment. There were reports that the Ugandan security forces tortured and abused civilians suspected of collaborating with the LRA during 2005, however, unlike in previous years, there were no reports that security forces killed suspected collaborators. There were also reports that UPDF soldiers raped civilians living in IDP camps.²⁴

Allied Democratic Front (ADF)

3.7.4 It has been reported that between the start of the amnesty and May 2002, over 500 ADF rebels have surrendered. Their former Chief of Staff Chris Tushabe Benz is one of those who has surrendered and is now a UPDF Major.²⁵ In August 2004, 22 members of a Muslim group arrested in 2003 for allegedly financing the ADF were set free after treason charges were withdrawn. As of 2004, the ADF had been largely destroyed by the Ugandan People's Defence Force.²⁶

Peoples Redemption Army (PRA)

3.7.5 During 2003 and 2004, the Government arrested and charged with treason more than 40 persons for collaborating with the People's Redemption Army (PRA).²⁷ Information from an *Africa News* report from June 2005 indicates that the PRA is held to operate / be based in eastern Congo.²⁸

3.7.6 Ugandan security agencies claim that members of the Forum for Democratic change (FDC) are actively involved with the People's Redemption Army (PRA). The PRA is held to be a rebel group based in the Ituri district of the eastern Democratic Republic of Congo. While dozens of political opponents and others have been arrested in connection with the PRA, no criminal trial has shown the link between the PRA and FDC. Many observers believe that the PRA poses little threat to security, law and order. Others have questioned the existence of the PRA because it has not conducted military operations inside Uganda. Some detainees have 'confessed' PRA links to the press while in military custody and later said these confessions were made under duress. These detainees have been charged with treason or terrorism and detained for long periods. A few have been amnestied and released.²⁹

National Army/Union for the Liberation of Uganda (NALU/NULU)

3.7.7 The National Army/Union for the Liberation of Uganda (NALU/NULU) is an ADF-affiliated group that has claimed responsibility for terrorist attacks that resulted in fatalities. The NALU/NULU's aims were unclear and most of its operations were aimed against the local peasant population. It faded from view in 1994 and was thought defunct, most of the members having been absorbed into the ADF. However, it re-emerged in 1997 under the leadership of Jafari K Salimu and issued both a manifesto dedicated to overthrowing the Government and an invitation to President Museveni to meet them.³⁰

West Nile Bank Front (WNBf)

3.7.8 It was reported in August 2005 that over 5,000 West Nile Bank Front (WNBf) former combatants are to be integrated into the Uganda People's Defence Forces (UPDF). The conflict ended under a peace agreement and the rebels were offered amnesty. Maj. Gen Taban Amin, son of former president Idi Amin, and commander-in-chief of the WNBf said he was in contact with his 14,300 former troops, most of whom are resettled in the West Nile sub-region and that many had shown interest in joining the UPDF. He said some would be shaped into a reserve force and the rest would form a taskforce for the Movement.³¹

United National Rescue Front II (UNRF II)

²⁴ USSD 2005 (Section 1)

²⁵ COIS Uganda Country Report para 6.108

²⁶ COIS Uganda Country Report para 6.109

²⁷ COIS Uganda Country Report para 6.120

²⁸ COIS Uganda Country Report para 6.123

²⁹ COIS Uganda Country Report para 6.131

³⁰ COIS Uganda Country Report para 6.117

³¹ COIS Uganda Country Report para 6.112

- 3.7.9** In December 2002 a peace deal was signed between the Government and the UNRF rebels after over five years of negotiations between the two sides. In the peace deal about 700 of the rebels were to be integrated into the Ugandan army while the remainder will be given resettlement packages.³²

Citizens Army for Multiparty Politics (CAMP)

- 3.7.10** The Citizens Army for Multiparty Politics (CAMP) had originally been led by Brigadier Smith Opon Acak (who had been Obote's army chief of staff). He was shot by the UPDF in July 1999 when they raided his camp near the town of Lira in northern Uganda.³³ CAMP is one of a number of groups that took up arms to fight the National Resistance Movement.³⁴

- 3.7.11** ***Sufficiency of protection.*** Active members and supporters of rebel groups who are engaged in anti-government activities and who are not willing to surrender under the terms of the amnesty will not be able to avail themselves of the protection of the Ugandan authorities. However, the majority of these groups are either no longer active in Uganda and/or have agreed ceasefires with the authorities. Those members and supporters who renounce violence and surrender under the terms of the amnesty will not face persecution or prosecution by the authorities. The IAT found in **UKIAT 00166** that there is no evidence to show that the appellant (an ADF supporter) would be incarcerated if he returned to Uganda under the amnesty as returning rebels were not.

- 3.7.12** ***Internal relocation.*** In general active members or supporters of any of these rebel groups who are wanted nationwide by the Ugandan authorities will not be able to internally relocate to another part of Uganda as they are likely to be traced by the Ugandan authorities.

- 3.7.13** However, internal relocation may be an option for suspected supporters or sympathisers of these groups who may have experienced difficulties with the authorities in one area of Uganda but who are not wanted nationwide. The UPDF are known to illegally detain, question and possibly ill-treat people on suspicion of being a supporter of a rebel organisations. However, these detentions often result in the detainee being released without charge. Any claimant who has been illegally detained in one area of Uganda and then released without charge is unlikely to be known to the authorities across Uganda and will be able to internally relocate to another area of the country and in particular the capital Kampala.

3.7.14 Caselaw.

[2004] UKIAT 00166 AZ (Uganda) Heard 28 May 2004, Promulgated 22 June 2004 The appellant was a youth mobiliser for the ADF, and used to talk to people on a one to one basis, explaining the position of the ADF and also recruiting people. However he was not involved in any violence and did not witness any violence. The IAT found that there is no evidence to show that the appellant would be incarcerated if he returned to Uganda under the amnesty as returning rebels were not, and the appellant was not even involved in the armed conflict. There is no reason why he would be viewed as a suspected terrorist. The human rights situation in Uganda is far from ideal and there is a climate of suspicion, however the adjudicator should not have found that the appellant would not benefit from the amnesty and the Tribunal do not find that the appellant would be rearrested as a suspected rebel.

- 3.7.15** ***Conclusion.*** Some members and/or active supporters of these rebel organisations may face ill treatment at the hands of the Ugandan security forces that may amount to persecution. Members or active supporters of these rebel groups who are wanted nationwide by the Ugandan authorities will not be able to internally relocate to another part of Uganda and may (subject to para 3.7.17 below) qualify for asylum.

³² COIS Uganda Country Report para 6.115

³³ COIS Uganda Country Report para 6.118

³⁴ COIS Uganda Country Report para 6.119

- 3.7.16** However, most of these rebel groups have agreed ceasefires with the Ugandan authorities or no longer exist as viable organisations. Those members and supporters who are still active are able to take advantage of the Governments amnesty and will not face persecution or prosecution from the Ugandan authorities. Since the Amnesty Act thousands of former rebels have surrendered to the authorities and many have been incorporated into the UPDF. Therefore, in the majority of cases it is unlikely that a grant of asylum or Humanitarian Protection will be appropriate.
- 3.7.17** Caseworkers should note that members of rebel groups have been responsible for numerous serious human rights abuses, some of which amount to war crimes and crimes against humanity. If it is accepted that a claimant was an active operational member or combatant for any of these groups and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.
- 3.7.18** As part of the ongoing conflict in Uganda the Ugandan authorities may sometimes detain and question individuals who they simply suspect of being involved with these rebel groups. In some cases these individuals may face ill treatment at the hands of the Ugandan security forces that may amount to persecution and may qualify for asylum. However, these illegal detentions often result in the detainee being released without charge. Any claimant who has been illegally detained in one part of Uganda and then released without charge is unlikely to be known to the authorities across Uganda and will be able to internally relocate to another area of the country. The IAT found in **UKIAT 00326 LA** that a suspected supporter of the LRA who had been illegally detained in northern Uganda by the authorities would not appear on a nationwide wanted list and therefore would be able to internally relocate to another part of Uganda in particular to the capital Kampala. Although this applies to a suspected LRA member it can be applied to all rebel groups. Therefore, in the majority of cases it is unlikely that a grant of asylum or Humanitarian Protection will be appropriate.

3.8 Supporters of opposition political organisations

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Ugandan authorities due to their active membership or support for opposition political organisations.
- 3.8.2 *Treatment*** The political organisation The Reform Agenda (RA) originated from the Elect Kizza Besigye Task Force, a group which backed Col. Dr. Kizza Besigye in the 2001 Presidential Elections. On 12 July 2002, The Reform Agenda was launched in Kampala, with the election of a National Steering Committee and Col. Dr. Kizza Besigye was elected first Chairman of the RA in absentia.³⁵ In August 2004, a number of parties including the Reform Agenda, the Parliamentary Advocacy Forum (PAFO) and the National Democrats Forum formally announced the formation of a new party, the Forum for Democratic Change (FDC).³⁶
- 3.8.3** On 28 July 2005, citizens voted in a national referendum to adopt a multi-party system of government. On 24 October 2005, the parliament amended the electoral laws to formally include opposition party participation in elections and in government. There were approximately 25 opposition parties registered by the end of 2005. However, before the multi-party system was formally adopted the government restricted non-Movement political gatherings and dispersed numerous political meetings not sanctioned by the Movement.³⁷
- 3.8.4** On 26 October 2005, FDC leader Kizza Besigye returned from self-imposed exile and on the 29 October 2005 was elected as the party's presidential candidate. On 14 November 2005, police arrested Besigye and the next day he and 22 other individuals were charged with

³⁵ COIS Uganda Country Report para 5.32

³⁶ COIS Uganda Country Report para 5.38

³⁷ USSD 2005 (Section 2)

treason for allegedly organising the rebel group PRA. Besigye was also charged the same day with rape that reportedly occurred in 1997.³⁸

- 3.8.5** The ruling Movement regularly held rallies, conducted political activities, and in 2003 registered the National Resistance Movement-Organisation, a political party that generally operated without restriction. Opposition parties have been able to open offices and register new members during 2005. After the 28 July 2005 referendum, opposition parties conducted elections among registered members at the grassroots level for delegates to attend the party conference to select a presidential candidate.³⁹
- 3.8.7** The law restricts freedom of assembly, particularly for political groups, although some restrictions were lifted in October 2005 when parliament amended relevant laws to open the political system to multiple political parties. For groups legally authorised to operate, permits were not required for public meetings; however, groups were required to notify the police prior to such gatherings.⁴⁰
- 3.8.8** The constitution provides for freedom of association; however, the government restricted this right in practice during 2005, particularly for opposition political parties and organisations. On 23 January 2005, the army blocked opposition party leaders Major General Mugisha Muntu of the FDC and MP Cecilia Ogwal of the UPC from attending a fundraising function at Aromo IDP camp in Lira District.⁴¹
- 3.8.9** Police and security forces harassed and detained opposition activists⁴² and there were reports of intimidation and assault of opposition supporters and independent candidates by the ruling party during 2005.⁴³ On 15 November 2005, police arrested 44 supporters of the Forum for Democratic Change (FDC) for 'causing chaos' during protests over the jailing of opposition leader Kizza Besigye. However, on 13 December 2005, a Kampala court dismissed the charges against them.⁴⁴
- 3.8.10** There were reports of political detainees, and the government continued to arrest persons for treason. Opposition parties claimed that approximately 60 supporters were arrested during 2005 for political reasons. The International Committee of the Red Cross (ICRC) registered approximately 200 detainees held for offences against the security of the state. The government permitted access to political detainees by international humanitarian organizations. Treason suspects were subject to numerous abuses, such as detention without charge, detention in unregistered and unofficial locations, and mistreatment, including torture.⁴⁵
- 3.8.11** Opposition candidates have often found it almost impossible to campaign via state-controlled television. Besigye was turned away from several radio stations or had his broadcasts cancelled. President Museveni, as a candidate, has never been turned away. State-owned television meanwhile has devoted six times more airtime to the incumbent president's party than to all the opposition parties put together.⁴⁶
- 3.8.12** On 24 March 2005 more than 1,000 opposition supporters staged a rare demonstration in the Ugandan capital, Kampala.⁴⁷ There were no reports that government agents seized passports of opposition party members or blocked their travel during 2005.⁴⁸

³⁸ USSD 2005 (Section 2)

³⁹ USSD 2005 (Section 2)

⁴⁰ COIS Uganda Country Report para 6.25

⁴¹ COIS Uganda Country Report para 6.26

⁴² USSD 2005 (Section 1)

⁴³ COIS Uganda Country Report para 6.28

⁴⁴ USSD 2005 (Section 1)

⁴⁵ USSD 2005 (Section 1)

⁴⁶ COIS Uganda Country Report para 6.28

⁴⁷ COIS Uganda Country Report para 6.29

⁴⁸ COIS Uganda Country Report para 6.35

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

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

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

3.9 Prison conditions

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

3.9.2 Prison conditions remained harsh and frequently life threatening during 2005, primarily as a result of the government's severely inadequate funding of prison facilities. In addition, there were several reports that security forces and guards tortured inmates. Prison conditions came closest to meeting international standards in Kampala, where prisons provided medical care, running water, and sanitation; however, these prisons also were among the most overcrowded. There were an estimated 19,258 inmates in the country's prisons and police cells. By one estimate, the country's prisons held approximately three times their planned capacity.⁴⁹

3.9.3 Severe overcrowding was also a problem at juvenile detention facilities and in women's wings of prisons. The remand home in Kampala, designed for 45 inmates, held more than 123 children. The reception centre, designed for 30 children, held 73 juveniles under the age of 12. Due to lack of space in juvenile facilities, juveniles often were held in prisons with adults.⁵⁰

3.9.4 In Kampala jails, pre-trial detainees were separated from convicted prisoners, however, in the rest of the country, due to financial constraints, pre-trial detainees and convicted prisoners sometimes were held together. Inmates at most prisons grew maize, millet, and vegetables, however, the Ugandan Human Rights Commission (UHRC) accused prison farms of overworking inmates and prisoners as young as 12 performed manual labour from dawn until dusk. Prisons were believed to have high mortality rates from overcrowding, malnutrition, diseases spread by unsanitary conditions, HIV/AIDS, and lack of medical care; however, accurate estimates were unavailable. According to the prisons department, 272 inmates died in custody during the year.⁵¹

3.9.5 The law provides for access to prisoners by their families, however, ignorance of this right and fear of prison authorities often limited family visits. The UHRC reported that it received allegations that officers in charge of prisons sometimes demanded bribes to allow visits. There were no investigations conducted during 2005. On 25 July 2005, the government

⁴⁹ COIS Uganda Country Report para 5.73

⁵⁰ COIS Uganda Country Report para 5.77

⁵¹ COIS Uganda Country Report para 5.77

gave 59 senior prison officers the powers of magistrates to try inmates and prison staff suspected of committing offences.⁵²

- 3.9.6** The Community Service Act seeks to reduce prison congestion by allowing minor offenders to do community service in lieu of imprisonment. Since 2001 2,953 offenders have been sentenced to community service. In July the high court also launched 'Operation Open Gate' to reduce congestion of pre-trial detainees. The operation created special court sessions to fine and release petty criminals who were willing to plead guilty.⁵³

3.9.7 Caselaw

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

- 3.9.8 Conclusion.** Whilst prison conditions in Uganda are poor with overcrowding and disease being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Uganda a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)
- 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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate support, care and reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate support, care and reception arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are not adequate support, care or reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

⁵² COIS Uganda Country Report para 5.74

⁵³ COIS Uganda Country Report para 5.75

- 4.4.1** Claimants may claim they cannot return to Uganda due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 to be engaged.
- 4.4.2** Medical facilities in Uganda were made up of 104 hospitals (57 government, 44 NGO and 3 Private), 250 health centres (179 government, 68 NGO and 3 private), palliative care 2 (government 1, NGO 1) and others (989 government, 352 NGO and 41 private).⁵⁴
- 4.4.3** Over the past fourteen years considerable effort has been made to restore the functional capacity of the health sector, reactivate disease control programmes and re-orient services to Primary Health Care. The positive impact of these measures is evidenced by the fall in infant mortality rates and the rising utilization of services. However this steady improvement is still clouded by several factors such as: The high prevalence of preventable communicable diseases; The rising incidence of non-communicable diseases; The rapidly increasing demand for services due to population growth and effects of HIV/AIDS and the resource constraints. The diseases responsible for the largest proportion of morbidity and mortality continue to be: Malaria, Acute Respiratory Infections, HIV/AIDS, Tuberculosis, Malnutrition, Maternal and Perinatal Conditions, cardiovascular conditions, and Trauma/accidents.⁵⁵
- 4.4.4** The UK Department for International Development (DFID) noted an increase in usage and demand of health services in Uganda with the country's poorest people being the main beneficiaries. The programme of health sector reforms has scrapped patient fees in government health centres. As a result the number of people attending clinics soared to 20.2 million in 2003/04. Furthermore, progress in reducing child and maternal mortality rates has been disappointing. Nationally outpatient attendances have increased by 75 percent and immunisation coverage has increased from 41percent in 1999/2000 to 89 percent in 2004/05.⁵⁶

HIV/AIDS

- 4.4.5** According to the Centre for Disease Control and Prevention Uganda's response to HIV/AIDS has been comprehensive, and is viewed as a model for the rest of sub-Saharan Africa. There are now 13 active HIV/AIDS control programs in government ministries. In addition, almost 2,000 indigenous Ugandan nongovernmental and faith-based organizations (NGOs and FBOs) contribute to the national response -- a best practice unique to Uganda. As of March 2005, the US government supported 54 active international and local partners implementing a range of prevention, care, treatment and system strengthening interventions in all 14 program areas supported by the U.S. President's Emergency Plan for AIDS Relief.⁵⁷
- 4.4.6** The Ugandan HIV Drug Access Initiative was launched in 1997 with five accredited centres in the region around Kampala. As of June 2005, the number of accredited health facilities had increased to 146 centres, of which 114 were providing anti-retroviral therapy. Provision was largely confined to nongovernmental organizations, commercial providers and research and pilot projects. With the government initiative to provide free treatment to people living with HIV/AIDS, AVR drugs are being provided in the public sector through regional referral hospitals, other accredited district and mission hospitals, and level IV health centres (small hospitals). Treatment is also provided through non-governmental organisations such as the Joint Clinical Research Centre, the Medical Research Council and the Mildmay Uganda Centre. The Joint Clinical Research Centre is providing an estimated 12,500 people, mostly in Kampala, with generic anti-retroviral drugs at cost price.⁵⁸

⁵⁴ COIS Uganda Country Report para 5.90

⁵⁵ COIS Uganda Country Report para 5.88

⁵⁶ COIS Uganda Country Report para 5.89

⁵⁷ COIS Uganda Country Report para 5.96

⁵⁸ COIS Uganda Country Report para 103

- 4.4.7** However, according to a report issued by the International AIDS charity AVERT few people living with HIV/AIDS have adequate access to anti-retroviral therapy which means that many people continue to die from AIDS-related diseases. In resource-poor countries such as Uganda, poor nutrition, geographic instability, poor sanitation and water-supplies reduce people's chances of remaining healthy, especially if their immune systems are damaged by AIDS. In such circumstances, progression from HIV infection to death from AIDS-related diseases is likely to take less than 4 years.⁵⁹

4.4.8 Caselaw

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

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

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

- 4.4.9 Conclusion** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Ugandan nationals may return voluntarily to any region of Uganda at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Uganda. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Ugandan nationals wishing to avail themselves of this opportunity for assisted return to Uganda should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

⁵⁹ COIS Uganda Country Report para 104

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