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OPERATIONAL GUIDANCE NOTE

UGANDA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Uganda and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Uganda Country of Origin Information at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers 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.

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% 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% of valid votes. The rate of voter participation in the presidential election was recorded as 68% 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 and workers' rights. In October 2005 the parliament passed a series of reforms that allowed 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) has led to 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, rape and abduction of children.⁵
- 2.6** There were also reports that the security forces tortured and abused civilians suspected of collaborating with the LRA, however, unlike in previous years, there were no reports that security forces killed suspected collaborators during 2005. There were also reports that UPDF soldiers raped civilians living in IDP camps.⁶ 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.⁷
- 2.7** In July 2006, peace talks between the Government and the LRA began in southern Sudan and on the 26 August 2006 the Government and the LRA signed a truce aimed at ending their long-running conflict. A cessation of hostilities agreement came into force on 29 August 2006⁸ and this was subsequently extended on 1 November and 16 December.⁹ A UN Special Envoy was appointed at the end of November 2006.¹⁰

¹ Europa 2006

² USSD 2005 (Section 1)

³ USSD 2005 (Introduction)

⁴ USSS 2005 (Introduction)

⁵ USSD 2005 (Section 1)

⁶ USSD 2005 (Section 1)

⁷ USSD 2005 (Section 1)

⁸ BBC timeline (21 September 2006)

⁹ BBC article 'Ugandan LRA rebel truce extended' (18 December 2006)

¹⁰ BBC article ' New UN envoy for Northern Uganda' (5 December 2006)

- 2.8** Since December 1999, an Amnesty has been in force, for all rebel fighters who give themselves up to the authorities. The amnesty covers any Ugandan residing within or outside of the country.¹¹ Since the amnesty law came into force, over 17,000 rebels have renounced violence and taken advantage of the amnesty and are being reintegrated into their communities.¹²

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in 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/documents/asylumpolicyinstructions/>
- 3.6 **Members and suspected members of the rebel organisations including 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 one of a number of rebel groups most notably the Lords Resistance Army (LRA), the Allied Democratic Front (ADF) or the Peoples Redemption Army (PRA).
- 3.6.2** In addition other claimants will claim that although they are not involved with any of these groups they face ill-treatment amounting to persecution or breach of the ECHR at the hands of the Ugandan authorities due to the authorities simply suspecting that they are involved with these organisations.

¹¹ IRIN article (22 January 2003)

¹² BBC article 'Traditional drink unites Ugandans' (29 September 2006)

3.6.3 Treatment. There were reports that the Ugandan security forces tortured and abused civilians suspected of collaborating with rebel groups, however, unlike in previous years, there were no reports that security forces killed suspected collaborators during 2005. There were also reports that UPDF soldiers raped civilians living in IDP camps. 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 2004.¹³

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.¹⁴

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.¹⁵

3.6.6 Since December 1999 an Amnesty has been in force, for all rebel fighters who give themselves up to the authorities. Since the amnesty law came into force over 17,000 rebels have renounced violence and taken advantage of the amnesty and are being reintegrated into their communities.¹⁶

Lords Resistance Army (LRA)

3.6.7 The war in northern Uganda between the Lords Resistance Army (LRA) and the Ugandan Peoples Defence Force (UPDF) has led to serious abuses being committed by both sides. (see paras 2.5 and 2.6). However, thousands of LRA fighters and commanders, including many responsible for grave abuses, are among the thousands of people who have received amnesties under the Amnesty Act. The government provides these ex-fighters 'amnesty packages' of cash and supplies to help them start a new life.¹⁷

3.6.8 In July 2006, peace talks between the Government and the LRA began in southern Sudan and on the 26 August 2006 the Government and the LRA signed a truce aimed at ending their long-running conflict. A cessation of hostilities agreement came into force on 29 August 2006¹⁸ and this was subsequently extended on 1 November and 16 December 2006.¹⁹ A UN Special Envoy was appointed at the end of November 2006.²⁰

Allied Democratic Front (ADF)

3.6.9 By the end of 2004, it has been reported that the ADF have been largely destroyed as an organisation by the Ugandan People's Defence Force. 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.²¹

Peoples Redemption Army (PRA)

3.6.10 The PRA is thought to be a rebel group based in the Ituri district of the eastern Democratic Republic of Congo. Ugandan security agencies claim that members of the Forum for

¹³ USSD 2005 (Section 1)

¹⁴ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.4

¹⁵ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.5

¹⁶ BBC article Traditional drink unites Ugandans (29 September 2006)

¹⁷ HRW Report 'Uprooted and Forgotten Impunity and Human Rights Abuses in Northern Uganda' p.37-39

¹⁸ BBC timeline (21 September 2006)

¹⁹ BBC article 'Ugandan LRA rebel truce extended' (18 December 2006)

²⁰ BBC article 'New UN envoy for Northern Uganda' (5 December 2006)

²¹ USSD 2004

Democratic Change (FDC) (see section 3.7) are actively involved with the PRA. However, while dozens of political opponents and others have been arrested in connection with the PRA, no links have been found 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.²²

3.6.11 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 AIT found in **UKAIT 00022 PN [2006]** 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. The IAT found in **UKIAT 00166 AZ [2004]** that there is no evidence to show that an ADF supporter would be imprisoned if he returned to Uganda as under the amnesty returning rebels were not. Therefore those members and supporters of rebel groups who are not involved in or who renounce violence and surrender under the terms of the amnesty will not face persecution or prosecution by the authorities.

3.6.12 Internal relocation. In general, active members or supporters of 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.

3.6.13 However, internal relocation may be an option for suspected supporters or sympathisers of rebel groups who may have experienced difficulties with the authorities in a certain area of Uganda ie the northern districts 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 rebel supporter. However, these detentions often result in the detainee being released without charge. The IAT found in **UKIAT 00326 LA [2004]** that even if there were a record of a persons detention in one part of Uganda, the issue then remains as to whether or not it resulted in a name appearing on a list of wanted persons. In the judgement of the IAT there is no evidence that such a list is feasible or that it exists in Uganda. The IAT also concluded that there is no credible evidence that, were the appellant to settle in accommodation in Kampala or elsewhere, the events in northern Uganda are likely to come to the attention of the authorities so as to put them at risk. Any claimant who has been illegally detained in northern Uganda and is 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.

3.6.14 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

²² HRW Report, "Concerns regarding torture and other cruel, inhuman or degrading treatment or punishment in Uganda" 2005

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 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.

[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.

3.6.15 Conclusion

Members and active supporters of rebel groups

- 3.6.16** As part of the ongoing conflict with rebel groups in particular 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 these groups may face ill treatment at the hands of the Ugandan security forces that may amount to persecution. Active members or supporters 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 3.6.20 below) qualify for asylum
- 3.6.17** However, as established by the AIT in **UKAIT 00022 PN [2006]** and **UKIAT 00166 AZ [2004]** members and active supporters of rebel groups 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 1999, 17,000 rebel 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.
- 3.6.18** Caseworkers should note that members of the LRA and other 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 the LRA or another group 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.

Suspected members or supporters of rebel groups

3.6.19 As part of the conflict with the LRA and other groups the Ugandan authorities may sometimes detain and question individuals who they simply suspect of being involved with the 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 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 **UKIAT 00326 LA [2004]** 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 Supporters of opposition political organisations

3.7.1 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.

3.7.2 *Treatment* A key feature of Uganda's politics since 1986 has been the so-called 'no party' or 'Movement' political system. Uganda's 1995 constitution provided for political participation and voting but prohibited political parties from sponsoring candidates. President Museveni won 74% of the vote in the 1996 elections and 69% of the vote in 2001. The 2001 elections were marred in places by violence and intimidation and Museveni's main rival, Dr Kizza Besigye, subsequently left the country to spend the next 4 years in South Africa.²³

3.7.3 After 2001 calls for multi-party democracy in Uganda became more persistent and in July 2005 a referendum was held to decide on the political system. This time the government supported the change and secured a 92% vote in favour of restoring a multi-party system. The opposition boycotted the referendum and turn out was low (47%). Parliament voted in August 2005 to lift the constitutional two-term limit on the office of President to allow unlimited terms.²⁴

3.7.4 A number of political parties emerged in expectation of the switch to a multi-party system. The National Resistance Movement Organisation (NRM) is the existing establishment as a political party, the Uganda People's Congress (UPC), Democratic Party (DP) and Conservative Party (CP) are Uganda's pre 1986 parties which were permitted to exist but not to contest elections. Some new opposition groups emerged, including the Reform Agenda (RA), and cross-party pressure groups such as the Parliamentary Advocacy Forum (PAFO). Both of these are now part of the Forum for Democratic Change (FDC).²⁵

3.7.5 Dr. Kizza Besigye returned to Uganda from exile in South Africa in October 2005. He was arrested on treason and rape charges three weeks later, which led to violent street protests in Kampala and elsewhere in Uganda. Whilst in detention he was nominated as the Presidential candidate for the Forum for Democratic Change (FDC). He was released on bail on 2 January 2006 and was obliged to simultaneously defend himself in the High Court on the criminal charges and campaign on behalf of the FDC and his own Presidential candidacy. The arrest and detention of such a major opposition figure, as well as the blocking of campaign rallies and unequal access to state resources, raised some concerns about the election process. However, the EU Observation Mission and the Commonwealth Observer

²³ FCO country Profile (October 2006)

²⁴ FCO country Profile (October 2006)

²⁵ FCO Country Profile (October 2006)

Group concluded that the election had represented the will of the people, despite identifying significant flaws in the campaign process.²⁶

- 3.7.6** President Museveni stood again in the Presidential elections held in February 2006, the first multi-party elections since 1980, and won with 59% of the vote. His nearest challenger, Dr Kizza Besigye, gained 37%. In the February 2006 Parliamentary elections, 284 MPs (215 Constituency MPs and 69 District Women's Representatives) were elected. Together with representatives of the Ugandan Army, the youth, persons with disabilities, and workers, there will be 309 MPs in the 8th Parliament. A large majority are representing the NRM. In June 2006, Latigo Ogenga from the FDC was nominated as Leader of the Opposition.²⁷
- 3.7.7** The police and security forces harassed and detained opposition activists²⁸ and there were reports of intimidation and assault of opposition supporters and independent candidates by the ruling party during 2005.²⁹ 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.³⁰
- 3.7.8** 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.³¹
- 3.7.9** 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.³²
- 3.7.10 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.
- 3.7.11 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.
- 3.7.12 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

²⁶ FCO Country Profile (October 2006)

²⁷ FCO Country Profile (October 2006)

²⁸ USSD 2005 (Section 1)

²⁹ HRW Report Uganda: 'Government Threat to Free Elections' (13 February 2006)

³⁰ USSD 2005 (Section 1)

³¹ USSD 2005 (Section 1)

³² HRW Report Uganda: 'Government Threat to Free Elections' (13 February 2006)

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.

3.8 Prison conditions

- 3.8.1** 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.
- 3.8.2** 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.8.3 Consideration.** Prison conditions remained harsh and frequently life threatening during 2005, primarily as a result of the government's 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.³³
- 3.8.4** 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.³⁴
- 3.8.5** 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 2005.³⁵
- 3.8.6** 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 gave 59 senior prison officers the powers of magistrates to try inmates and prison staff suspected of committing offences.³⁶
- 3.8.7** 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 2005 the high court 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.³⁷

3.8.8 Caselaw

³³ USSD 2005 (Section 1)

³⁴ USSD 2005 (Section 1)

³⁵ USSD 2005 (Section 1)

³⁶ USSD 2005 (Section 1)

³⁷ USSD 2005 (Section 1)

UKIAT 06119 [2002] 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.

3.8.9 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. 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.

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) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

4.2 With particular reference to Uganda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate 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

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).³⁸

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

³⁸ The Ugandan Ministry of Health 2001-2002

infant mortality rates and the rising utilisation 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 prenatal conditions, cardiovascular conditions, and trauma/accidents.³⁹

- 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 2004/05.⁴⁰

HIV/AIDS

- 4.4.5** 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.⁴¹

4.4.6 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.

³⁹ The Ugandan Ministry of Health 2001 -2002

⁴⁰ The UK Department for International Development (DFID)

⁴¹ World Health Organisation Summary country profile for HIV/Aids treatment: Uganda.

4.4.7 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. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 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.

6. List of sources

Europaworld.com Uganda- Recent Events (February 2006)

US State Department (USSD) Report 2005 (Published 8 March 2006)

<http://www.state.gov/g/drl/rls/hrrpt/2005/61598.htm>

US State Department (USSD) Report 2004 (Published 28 February 2005)

<http://www.state.gov/g/drl/rls/hrrpt/2004/41632.htm>

Foreign and Commonwealth Office (FCO) Country Profile Uganda (October 2006)

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019745104836>

Human Rights Watch (HRW) report 'Uprooted and Forgotten Impunity and Human Rights

Abuses in Northern Uganda' published September 2005 <http://hrw.org/reports/2005/uganda0905/>

Human Rights Watch report, "Concerns regarding torture and other cruel, inhuman or degrading treatment or punishment in Uganda" (17 May 2005)

<http://hrw.org/backgrounder/africa/uganda0505/index.htm>

Human Rights Watch Uganda: Government Threat to Free Elections" 13 February 2006

<http://hrw.org/english/docs/2006/02/13/uganda12669.htm>

BBC article Traditional drink unites Ugandans (29 September 2006)

<http://news.bbc.co.uk/1/hi/world/africa/5382816.stm>

BBC timeline Uganda (21 September 2006) <http://news.bbc.co.uk/1/hi/world/africa/1069181.stm>

BBC article 'New UN envoy for northern Uganda' (5 December 2006)

<http://news.bbc.co.uk/1/hi/world/africa/6209424.stm>

BBC article Ugandan LRA rebel truce extended (18 December 2006)
<http://news.bbc.co.uk/1/hi/world/africa/6190283.stm>

The Ugandan Ministry of Health – “Health Infrastructure” <http://www.health.go.ug/>

Department for International Development Uganda - Country profile - A paper produced by the Department for International Development (20 July 2004)

World Health Organisation Summary country profile for HIV/Aids treatment”- World Health Organization 2005 http://www.who.int/3by5/support/june2005_uga.pdf

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