

ASYLUM AND IMMIGRATION TRIBUNAL

GG (political oppositionists) Ivory Coast CG [2007] UKAIT 00086

THE IMMIGRATION ACTS

Field House
14 June 2007

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Before

**SENIOR IMMIGRATION JUDGE STOREY
SENIOR IMMIGRATION JUDGE LATTER
MRS A J F CROSS DE CHAVANNES**

Between

GG

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representatives:

For the appellant: Mrs K Ojutiku of Counsel instructed by Freemans Solicitors

For the respondent: Miss S Leatherland, Home Office Presenting Officer

- i. *Political oppositionists in the Ivory Coast (including members and supporters of the RDR) do not in general face a real risk of persecution or serious harm or ill-treatment on return.*
- ii. *For a political oppositionist who is a high-ranking member or an activist, the position may well be different, at least so far as risk in that person's home area is concerned. That is so whether he or she is a member of the RDR, the northern-based FN or some other oppositionist party or organisation.*

- iii. *A person who is not a member but merely a supporter of the RDR or the FN (or other oppositionist party or organisation) may, depending on the circumstances, be at real risk if he or she is also an activist.*
- iv. *In the context of deciding cases involving persons claiming to be at risk because of their actual or perceived membership of, or support for, political opposition parties or groups, the existence of certain other factors (being a northerner, being a Muslim and being a West African immigrant) may raise the level of risk, although whether they raise it enough to cross the threshold of persecution or serious harm or ill-treatment will depend on the particular facts of the case. Even in combination with a low or medium-level political profile as an oppositionist, such factors will not normally give risk to a real risk.*
- v. *Political oppositionists who are able to give a credible account of risk in their home area will in general be able to avoid a real risk of further persecution or serious harm or ill-treatment by relocating.*
- vi. *AZ (Risk on return) Ivory Coast CG [2004] UKIAT 00170, heard 4 May 2004, remains valid as country guidance for the period up to that date. DI (Ivory Coast) CG [2002] UKIAT 04437 remains a relevant source of guidance on FGM-related claims. However, VG (Coups) Ivory Coast CG [2002] UKIAT 04020 and TD-K JK (Relocation of ex-President Bedie) Ivory Coast CG [2002] UKIAT 03140 no longer hold value as guidance.*

DETERMINATION AND REASONS

1. The appellant is a national of Cote d'Ivoire (or Ivory Coast). In a determination notified on 15 October 2004 the Adjudicator Mr T Jones dismissed his appeal against a decision dated 26 May 2004 refusing to grant asylum and a decision of the same date to remove him as an illegal entrant. Following a successful application for review, a panel of the Tribunal (Immigration Judge Culver, Ms S E Singer, Mr A A Lloyd) decided on 7 February 2006 that the Adjudicator had materially erred in law. That decision stated:

“The adjudicator failed to make findings on the central issues of the case. Particularly the detention of the appellant and the abuse allegedly received. The adjudicator did accept that the appellant was the Treasurer of his local section of the Rassemblement Des Republicains (RDR). His findings on the documentary evidence are less than clear. Both representatives agree with this statement of the material error of law.”

2. Subsequent directions issued by the Tribunal to the parties stated that the second-stage reconsideration would require a complete rehearing of all issues, including credibility. Before us both parties confirmed that remained their position. We accept that the errors identified in the determination are such that no findings of fact made by the Adjudicator can be preserved.

3. This case was originally listed for hearing on 25 October 2006, but had to be adjourned, as a need was identified for an updated report from country expert Mr R Reeve. The appellant's representatives also stated that it was their

intention to call a second expert, Mr Said Kone, who was said to be a member of the RDR and someone who also knew the appellant. Permission was granted at this hearing for both these witnesses to attend in order to give oral evidence, subject to the revised report of Mr Reeve and the report and witness statement of Mr Kone and skeleton arguments being served on the respondent and the Tribunal on or before 10 January 2007. The parties were also directed to comply with standard Tribunal Directions concerning submissions of evidence and skeleton arguments. Almost none of the directions, specific or standard, were complied with.

4. On 11 June 2007 the appellant's solicitors faxed an application for an adjournment of the hearing set for 14 June. The application said that the country expert Mr Reeve was unavailable and that one of the witnesses who had been recognised as a refugee and who had agreed to give evidence in the appellant's case was busy with exams on the day of the hearing, while another witness was ill and could not attend. That application was refused on 12 June 2007.

5. At the outset of the hearing Mrs Ojutiku did not seek to renew the request for an adjournment but she did seek permission to call a female witness who she said was someone who was an RDR activist and could give evidence about the appellant's RDR involvement. Ms Leatherland objected to this late request.

6. We decided to refuse Mrs Ojutiku's request. This was a case in which the parties were given very clear directions as long ago as 25 October 2006 as to what preparations they had to make in time for the hearing. The appellant's representatives failed to comply with each of the three specific directions which were made (relating to a revised report from Mr Reeve, a report and witness statement from Mr S Kone and a skeleton argument) as well as with the standard Tribunal direction requiring, inter alia, all witness statements of the evidence to be called at the hearing to be submitted no later than 7 working days before the date of the hearing. Even as late as 11 June 2007, in the fax requesting an adjournment, the appellant's representatives made no mention of this witness. Mrs Ojutiku said that even now there was no witness statement from this person. She was not able to assist with why that was the case - save to say that she understood from the appellant and those instructing her that it was only very recently that the appellant had made contact with this witness. We found this explanation unacceptable. The appellant has been in the UK since 18 December 2002 and has been legally represented for much of that time. He has known for a considerable time that the issue of his RDR involvement both in the Ivory Coast and in the UK has been viewed as central to his case. He and his legal representatives have also known since October last year that it was seen of particular importance by the Tribunal that the parties in this case have an opportunity to examine any further evidence (in addition to that which was before the Adjudicator and the first-stage reconsideration panel) in advance of the hearing, so that each would be able to prepare any relevant response. For these reasons this application was refused.

7. We would add that although Mrs Ojutiku did not renew the application for adjournment, we would have seen no merit in any application based on the other problems mentioned in the fax requesting an adjournment and touched

upon by her at the outset of the hearing. The country expert, Mr Reeve, has known for a considerable time what the date of hearing was and there was ample opportunity before 11 June for him via the appellant's representatives, to have alerted the Tribunal to any problems concerning availability. (In any event, as we mention below, it transpires that Mr Reeve did not feel able to assist with up-to-date written or oral evidence). Similarly Mr Kone has known for some time that the hearing was set for today and that he was supposed to submit a written report and a written statement by 10 January 2007. In the light of the failure of the appellant's representatives to comply with directions relating to his evidence, we take the view that the appellant has been given every opportunity to produce evidence from Mr Kone and we are not prepared to grant any further opportunity. So far as the person mentioned in the fax as being involved with exams is concerned, even disregarding the oddity that before us there were said to be two persons, not one, tied up with exams, we are not prepared, in the absence of a written statement which could and should have been produced at an earlier date, to consider any adjournment or late receipt of evidence from such a person or persons.

8. We also need to clarify that we made plain at the outset that we would not consider any further documents which the appellant said were relevant to his case but which he had not been able to adduce earlier. We mention this because Mrs Ojutiku stated that the appellant had informed her just before the hearing that he has assembled a number of further documents relevant to his case but which were in French only. She was not able to assist with why the appellant had not adduced these earlier. For similar reasons as given above, we made clear that we were not prepared to consider such documents, even if they had now existed in translated form. The appellant has had ample opportunity to adduce relevant documentary evidence and he has not even given an explanation for why such documents were not available earlier.

9. We did make clear at the outset, however, that we were prepared to accept several items of background evidence which the parties had submitted late. Both parties said that this would not inconvenience them in presenting their cases. They included: an Amnesty International Report of 23 May 2007 and excerpts from the 10th Progress Report of the Secretary-General on the UN Operation in Cote d'Ivoire, 17 October 2006, the Foreign and Commonwealth Travel Advice on Ivory Coast, 15 November 2006 (from the appellant); and the US State Department Report on Cote d'Ivoire March 6, 2007, BBC News Reports 4 March 2007-26 April 2007 and a COI Service Response to a Request of 21 May 2007 (from the respondent).

10. One further matter we need to clarify at this stage concerns the status of Mr Reeve's report. As already noted the appellant's representatives, despite stating at an earlier directions hearing that they intended to adduce an update report from Mr Reeve, and agreeing to a direction that they obtain such a report, failed to do so. Not only that but Mrs Ojutiku initially sought before us to withdraw Mr Reeve's original report, saying that the appellant's representatives no longer wished to rely on it, as they were instructed it was no longer relevant. However, apart from the concern that it was now out-of-date, Mrs Ojutiku was unable to identify any other reason for seeking to withdraw it, such as admitted error in its analysis of past events. Indeed, in answer to questions from the Tribunal, she confirmed that Mr Reeve had not said anything to suggest that he disowned the report. In such circumstances

we are not prepared to disregard this report. It is not for a party to proceedings to adduce a report and then, depending on whether it is seen to assist or weaken an appellant's case, to withdraw it. Mr Reeve was asked to produce an updated report but failed to do so. We do of course take fully into account Mr Reeve's concern that his existing report not be taken as up to date, but it is relevant evidence which is before us.

11. Finally, it is appropriate to note that Senior Immigration Judge Latter has contributed significantly to the writing of this determination.

The Appellant's Evidence

12. We heard evidence from the appellant. He has set out the basis of his claim in his statement dated 1 December 2003 submitted with his Statement of Evidence Form dated 5 April 2004. He has also submitted witness statements dated 6 July 2004, 10 October 2004, January 2006 and 19 October 2006. He was interviewed about his claim on 21 May 2004, a copy of the interview appearing at Annex C of the appeal papers.

13. In his oral evidence the appellant adopted these various statements. They can be summarised as follows. The appellant was born on 2 August 1965 in Anyama, a suburb of Abidjan in the southern part of the country. He is a Muslim and is from the Bete ethnic group based in the centre west of the Ivory Coast. He was a prosperous businessman. He and his brother used to have three shops which sold construction materials. The appellant first became interested in politics in 1994 when other parties were allowed in what had previously been a one party state. The appellant became an active member of the RDR, an offshoot of the Parti Democratique de Cote d'Ivoire (PDCI). He was an active member and from 1996 onwards was one of the leaders in his area, Treichville in Adjame and was treasurer of a local branch. After the presidential election on 22 October 2000 won by Lauren Gbagbo of the Front Populaire Ivoirien (FPI), there was a dispute as to the result and the RDR leader called for renewed elections.

14. The appellant took to the streets with others to protest. On his account large numbers were involved as his party was supported by more than 50 % of the population. The police opened fire on the marchers. The appellant was arrested and imprisoned for 45 days initially at the Agban Military Camp and then in the prison in Yopougan. He was physically ill-treated and beaten regularly. He was hit over his left eye and sustained an injury which is still visible. After 45 days all the detainees were released as there was an amnesty of political prisoners following representations made by the French authorities. When he returned home he found that one of his shops had been burnt down. He continued to be an active party member. One of his remaining shops was located in Cocody, an FPI area and, because he was associated with the RDR, his shop came under suspicion. In 2001 he received a visit from four members of the judicial police asking to inspect materials kept in the shop and he was asked if he was storing arms.

15. On 19 September 2002 there was an attempted coup d'état and about 100 people were killed. The following day rebel soldiers from the Mouvement Patriotique de Cote d'Ivoire (MPCI) invaded the rest of the country from the north. On 21 September 2002 government newspapers attributed the coup to

the RDR. The following day the house belonging to the RDR leader, Lassane Ouattara, was burnt down. This was about 250 metres from the appellant's shop in Cocody. The next day the appellant was on his way to the shop when he saw a large crowd outside breaking the windows, vandalising and looting it. An employee was with him and went as far as the crowd and came back to tell the appellant that everything was burnt and that another of his employees, KA, had been beaten to death and was lying in a pool of blood. The appellant drove away to the house of a friend and fellow party member, SC, who told him that he was wanted by the government and was accused of using his shop as an arms depot for the rebels.

16. The next day the appellant went to see his deceased employee's family to tell them about his death and when he returned he saw a large crowd in front of his house. He decided to drive straight to his father's home in Anyama. His father suggested that the appellant hide his car and ask someone to take him to their village, Daloa, in the country where he could hide. On 13 October that village was taken over by rebel forces from the north but on 20 October the rebels were forced out of the village. To the appellant's surprise people from the village started to threaten and abuse him and his relatives alleging that they had helped the rebels. He felt it was unsafe to stay and so he went to the SC's family home in Port Bouet in Abidjan. Whilst in hiding there he heard of more than ten arrests of members of the RDR and he felt that he had no choice but to leave the country.

17. He left Abidjan on 14 December 2002 travelling by small boat to Ghana where he stayed until 18 December 2002. He did not stay there as friends explained there was an extradition agreement between Ghana and the Ivory Coast and for this reason he would not be safe there. He obtained some travel documents and boarded a Ghana Airways flight from Accra arriving in London 18 December 2002. He was able to pass through immigration control using his Ghanaian documents. He said that he no longer has these papers as they were stolen from his bag while he was staying at a homeless hostel. He was befriended by a taxi driver who told him that he should go to Croydon to claim asylum. This the appellant did on 2 January 2003.

18. In his oral evidence he confirmed that the summonses he had produced had been left at his home and sent to him in this country by members of his family. Other documents produced had also been sent by friends. He confirmed that he had been detained for 45 days, not 40 days as he had said at interview (Q20). He was still in fear of returning to the Ivory Coast. If he was not killed he would be sent to jail. There was fear and hatred there and, 20% of the people who had died in the country were from his party. It was said that the situation was improving but there was no peace either in the country or in the people's hearts. He was scared to go back because his enemies were still in power. When asked about the ongoing peace process, he said there had been previous peace treaties but they had not gone anywhere.

19. In cross examination he confirmed that he had been in business and was involved in running three shops. He had worked for the RDR: he thought this might be for about twenty-twenty five hours per week. He confirmed that he was the local treasurer in Treichville. There were other sections in the local party including those involved with mobilisation, finance and organisation.

Their departmental secretary was CG who had provided the certificate at A 6. He had been able to keep in contact with him until 2005.

20. The appellant estimated that about 60% of the population were involved in the demonstrations in October 2000. He had been at the front of a group and had been lucky in the sense that the military came from behind and started shooting those behind him. He had been arrested, taken to a gendarmerie and then to prison. There were 45 people in a small cell. When he was released he was given a certificate (2A36).

21. He had been personally targeted as a member of the RDR. In September 2002 his shop in Cocody had been attacked. He had not been in the area but he was on his way to the shop and he could see the crowd outside. He learnt that one of his employers had been badly injured. He went to visit him at the hospital but he had died the following night. The crowd outside the shop had sticks and machetes. He had got information about what had happened from Mr SC. He told the appellant that those involved were not robbers but from the FPI. He also said that the government was after him because it believed he had allowed the shop to be used for keeping weapons. He said that he been under a duty to tell his employee's parents about his death and he did go to see his relatives. He then went to his own house and saw people outside. He went to his father who advised him to go to the village as it would not be safe in Abidjan. He did have money and he explained that in Africa if you were a businessman it would not be unusual to have £2,000 in your pocket. He had not intended to come to this country. He had wanted to go into hiding to avoid being killed. He confirmed that it was his claim that he was a high ranking member of the RDR. He referred to his membership card. There were other people who could have come with him to the hearing but only one person had been able to do so. When he was told that he could claim asylum, he had done so.

22. In answer to questions from the Tribunal he said that he had not been released on any condition after his detention nor had he been taken before a court. He had two brothers in Ivory Coast; he did not know the whereabouts of one of them now. He thought he had been summonsed because he was wanted by the government on suspicion of keeping weapons at his premises.

The Submissions

23. Miss Leatherland urged us to treat the Country Guidance case of AZ (Risk on return) Ivory Coast CG [2004] UKAIT 00170 as still offering reliable guidelines on risk categories in the Ivory Coast. There was now a considerable body of evidence before the Tribunal dealing with events since early 2004, but it did not support a contention that even low level or ordinary members of the RDR would be at risk. Even in respect of a person who faced charges for offences seen as political, there was now an amnesty and all such prosecutions were said to have been dropped. Furthermore, 2007 had seen major changes. The UNHCR Position Paper of October 2006 was now out of date, as was Mr Reeve's report and most of the background reports analysing the situation in the Cote d'Ivoire. If it was now safe for a former President to return to the Ivory Coast, then it was certainly safe for ordinary members of political opposition parties. The new power-sharing agreement was having a positive effect. Ivory Coast was now a multi-party democracy. Recent reports (she

quoted from a Home Office Country Information Bulletin 2/2004) showed a decrease of attacks on Muslims (6.2) and only relatively few incidents of attacks on RDR members and supporters (64.2). She accepted there remained significant levels of violence, including politically and non-politically motivated attacks, but there was no systematic targeting of RDR members or supporters. The 2006 FCO travel advice was directed specifically to persons who were British citizens or who were non-Ivorian foreigners; it was not intended as a risk assessment relevant to refugee-determinations.

24. Mrs Ojutiku's submissions on the general risk categories made several main points. The AZ case should no longer be considered as reliable country guidance. Events between 2004-2006 had demonstrated that the degree of insecurity and the levels of violence were more entrenched than AZ had envisaged. She urged us not to attach any significant weight to other recent events of since March/April 2007. As the appellant had emphasised, the period since 2002 had seen many peace agreements come and go.

25. There was no sound reason to think that the latest one will prove any different especially as President Gbagbo and the FPI retain principal control of the army, the police and the security forces. To set store by a series of events spanning only a few months (4 March 2007 –June 2007) would be foolhardy. The background evidence concerning 2006 continued to document attacks on RDR members and supporters. Significantly a number of the references describe attacks on RDR members, without differentiating between high-level or low-level members. She submitted that we should adhere closely to the October 2006 UNHCR position paper. The authorities still have every reason to want to visit harm upon political opponents, including members and supporters of the RDR.

26. Mrs Ojutiku accepted that being of Bete ethnicity did not appear to place person at any significantly greater risk, but there was significant evidence that being a northerner and being a Muslim added to risk were additional risk factors.

27. In summary, Mrs Ojutiku argued that mere membership or support for the RDR sufficed to put a returnee at risk.

28. Turning to the appellant's particular case, Miss Leatherland submitted that the appellant had not been a credible witness and that his answers were inconsistent and evasive. There was no clear evidence about his level of involvement with the RDR. It was not likely, if he was working full time as a businessman, that he would have the time to be a high-level activist for the RDR. There was no satisfactory evidence to confirm his position within the party. There were doubts about the dates of his arrest. The release document was dated 14 December 2000 and this was not consistent with being arrested on 23 October 2000 and held for 40-45 days. If he had been wanted by the authorities there was no reason why they would not have taken action against him before 2002. The appellant's evidence was confused about the events of September 2002 and in particular whether he had sent a friend or Mr SC to go and find out what was happening at his shop. The appellant had used forged documents to travel to this country and had delayed in claiming asylum. The documents produced by the appellant were unreliable. The death certificate of his employee did not identify the cause of death. Despite the length of time

the appellant had been in this country, very little documentation had been produced from the RDR to confirm his account.

29. Mrs Ojutiku submitted that the appellant's evidence was credible. There was nothing inconsistent, she said, about the appellant running a business and working for the RDR at the same time. Evidence had been produced about the appellant's role in the RDR: A6/7. No adverse inferences could properly be drawn from the difficulties that the appellant had with the precise dates of detention. The fact remained that he was detained and released after international pressure was put on the authorities. The employee's death certificate did record that his parents were deceased but it would be natural for the appellant to want to make sure that his close relatives were properly informed. There was no proper basis for drawing an adverse inference from the delay in claiming asylum. He had arrived in this country on 18 December 2000 and claimed asylum on 2 January 2001. In the light of Christmas and the New Year holiday this delay could hardly be described as unreasonable.

30. Against this background she asked us to accept the appellant's evidence that he was a high-level RDR member or consider that on the basis of his evidence he was at least a medium-level RDR member. Even if we did not accept this, we should find that he was still a refugee for the reason she had already stated, namely that mere membership for the RDR sufficed to put a returnee at risk.

The Background Evidence

31. We had before us a copious body of background materials, which are itemised in the Annex. Below we summarise the main sources, but we shall first seek to describe the general situation and basic details about the RDR - drawing on all the evidence we had before us.

The General Situation

32. Since becoming independent in 1990 the Ivory Coast has had contrasting experiences. Under its first President, Felix Houphouet Boigny who ruled for thirty-three years until his death in 1993, the country was considered the wealthiest and most stable country in the West African region, notwithstanding the economic recession in the 1980s, when its main exports, cocoa and coffee were hit by plunging commodity prices. The government of the country's second President, Henri Konan Bedie, did not maintain the careful ethnic and regional balance. Laurent Gbagbo became the country's third elected President in 2000, but the election excluded those of the major parties, the PDCI and the RDR, and was marred by significant violence and irregularities. A failed coup attempt in September 2002 split the country into two, the rebel "Forces Nouvelles" (NF) retaining control of the northern 60% of the country, with the government controlling the slightly smaller but numerically larger south. Various peace agreements and UN Resolutions followed, none of which resulted in any real change: the Marcoussis Accord in 2003; the February 2004 Resolution 1528 (approving the UN Operation Cote d'Ivoire (ONUCI) deploying 6,000 peace keeping corps alongside the 4,000 French Licorne force); Accra III (July 2004); the Pretoria Agreement (April 6, 2005); Pretoria II (June 29, 2005); the 6 October 2006 extension by the African Union (AU) and UN Security Council Resolution 1721 of Gbagbo's

term of office by up to one year and the agreed installation of economist Charles Konan Banny as Prime Minister with the mandate of disarming militias and rebels and organising elections. In March 2006 the rebel leader, Guillaume Soro, had taken up his seat of government in the rebel-controlled north which has remained under his control since.

33. As to what has happened more recently, we only have news reports to go by: their contents is described below at para 71 under the heading “Recent developments”. Nevertheless we can note here that they appear to chronicle a number of major developments following the signing of the Ougadougou peace agreement in early 2007 institutionalising power-sharing. In April 2007 Guillaane Soro was appointed Prime Minister and formed a government comprising thirty-one ministers from different parties and organisations, including President Gbagbo’s FPI (11), his own FN (5) and the RDR and Democratic Party (5). The UN and French troops withdrew from the 600 km-long buffer zone (or “confidence zone”) dividing the rebel-run north from the loyalist-controlled south. In the same month an amnesty law was passed. Measures have also been taken to begin the process of disarming fighters on both sides, to fix a date for free and fair elections within 10 months and to pursue a mass identification programme to give identity cards to disenfranchised, mainly immigrant Ivorians.

34. As regards the state of human rights in the Ivory Coast, there is as yet no hard evidence that the new power-sharing agreement struck between President Gbagbo and Guillame Soro in early 2007 has resulted in major improvements. Hence for the moment the situation has to be considered as continuing to exhibit the patterns which have dominated since the outbreak of civil war in 2002.

35. The US State Department Reports and other major country reports covering the period since September 2002 up to the present consistently describe the government’s and rebel organisation’s human rights records as poor. Reported human rights abuses attributed to the government include:

“restriction of citizens’ rights to change their government; arbitrary and unlawful killings, including summary executions by security forces, pro-government militias and student groups; disappearances; torture and other cruel, inhuman or degrading treatment and punishment by security forces, pro-government militias and a student group; deplorable prison and detention centre conditions; security forces impunity, arbitrary arrest and detention; denial of a fair public trial; arbitrary interference with privacy, family, home and correspondence, ; police harassment and abuse of non-citizen Africans; use of excessive force and other abuses of internal conflicts; restrictions on freedoms of speech, press, peaceful assembly, association, and movement. Corruption, discrimination and violence against women; female genital mutilation, (FGM); child abuse and exploitation; trafficking in persons; forced labour including by children, and child labour including hazardous labour” (US State Department Report for 2006, March 6, 2007)

36. Reported human rights abuses attributable to the NF include: the killing and disappearance of civilians in NF-held territories, arbitrary arrests, detentions and ad hoc justice.

37. On the social front, the crisis has exacerbated the poverty rate, accounting for an estimated 44% of the country. On the Human Rights Development

Index (HRDI), the county's position has significantly deteriorated; the country now ranks 163 of 179 countries noted.

38. So far as opposition parties in the south are concerned, the US State Department reports continue to record disappearances (disappearance of journalists and ordinary citizens were specifically noted) and violent actions and threats against both political opposition activists and human rights activists. On p.4 the latest report observes that “[t]here were numerous reports that opposition leaders received death threats over the phone and from armed men dressed in fatigues, and that armed men harassed family members”. Police and security forces used excessive or lethal force to disperse demonstrations. At page 5 it is stated:

“Security forces remained on heightened alert for potential rebel infiltrators or active sympathizers erected numerous roadblocks and searched Abidjan neighbourhoods. Individuals who were associated with opposition parties or rebellion leaders or believed to be sympathisers were subjected to increased harassment and abuse”.

39. There were reports of security forces conducting warrantless searches of opposition party officials' residences, allegedly in search of weapons. Mention was also made that other groups who supported President Gbagbo attacked opposition newspapers, several ONUCI convoys, and person under ONUCI protection during the year. However, there were no reports of political prisoners or detainees. Although there are a number of newspapers critical of the government, according to the latest US State Department Report the government and the ruling FPI “continued to exercise considerable influence over the official media's programme content and news coverage, using them to promote government policies and criticise the opposition”. On December 12, President Gbagbo renewed a ban on all forms of outdoor public demonstrations in Abidjan until June 15, 2007. Police harassed opposition members at the airport and sometimes prevented foreigners from travelling overland between the north and the south.

The RDR

40. The Rassemblement des Republicains (RDR) was started in October 1994, as a dissident faction of the ruling PDCI party. By 1994 it had replaced the FPI as the main opposition party. It draws its main support from the (mainly Muslim) north. As the major opposition party in the south, the RDR has often borne the brunt of the government's repressive measures. The latest US State Department Report notes, for example, that in 2006 security forces arrested and detained several hundred RDR members in the wake of the July 2005 violence in Anyama and Agboville, sixty-one persons being charged. On May 5, 2006 three police officers arrested Mariam Sangone-Traore, the wife of an RDR local leader for the district of Yupougou in Abidjan, alleging that she had forged identity papers (she was later released). On May 8, security forces in the district of Yopougou entered the homes of RDR members to search for weapons that the RDR had allegedly distributed to its followers (no weapons were found). In July 2006 the RDR reported that its militants were attacked in clashes over the UN-backed identification programme (designed to register over 3,000,000 unregistered workers). RDR members occasionally had difficulties associating freely and there were reports that security forces

harassed members who had been “disappeared”; most were RDR. From time to time RDR activists also had to contend with adverse attention from government militias: e.g. on July 2, 2006 the Young Patriots attacked a delegation of RDR activists in Boloquin.

41. However, the RDR was able to function as a legal opposition party. To some extent its level of activity depended on governmental actions e.g. in 2006 the youth wings of both the RDR and the PDCI were reported as having become more active following the security forces violently repressing a demonstration by the unarmed opposition.

42. We turn to summarise the main reports which were produced before us as well as pre-existing country guidance. After that, we will turn to attempt a summary of recent developments in the light of recent press/news cuttings.

Home Office Country of Origin Service: Ivory Coast, 14 November 2006.

43. This is a short document: leaving aside its index it occupies only 8 pages. Since it largely draws and relies on reports we mention below, no separate summary of this source is necessary

Amnesty International Report 2007: Cote d’Ivoire, 23 May 2007

44. Despite being dated May 2007 this report, disappointingly, does not cover the major events which have taken place since March/April 2007. However, it remains useful as a source describing the general situation prior to that date. Its report and assessment is very much in line with that contained in the US State Department Report, March 2007.

Freedom House: ‘Freedom in the World 2006: Cote d’Ivoire’, 6.9.2006.

45. This report’s overview was:

“Deadlines for disarmament passed in 2005, and presidential and legislative elections scheduled for the end of the year were postponed for at least one year. Cote d’Ivoire remained split between a government-controlled south and rebel-controlled north. Ethnic tensions remained rife, especially in the country’s volatile west, although press freedom improved slightly.”

46. The report notes the important step taken towards breaking the political deadlock in Cote d’Ivoire in 2005, when Gbagbo signed an executive order that would allow his main opponent, Outtara, to run for President (the nationality law had formerly required presidential candidates to have two Ivorian born parents). It later states:

“The New York-based Human Rights Watch (HRW) has reported that pro-government militias kill, torture and harass civilians with impunity. Most of the militia members are from Gbagbo’s Bete tribe in south-central Cote d’Ivoire. HRW said in a May 2005 report that government forces in the first three months of the year were training and equipping militia forces, including Liberian mercenaries, to renew the war against the New Forces. The report said the government was making increased use of the militia by targeting northerners, Muslims and West African immigrants.”

The Foreign and Commonwealth Travel Advice for the Ivory Coast dated 15 November 2006

47. This document summarises its advice as follows:

“We continue to advise against all travel to Ivory Coast. The situation in the country remains fragile and unpredictable especially in the far west of the country, which should be avoided at all times.

There is potential for unrest, with implications, for the sudden deterioration of law and order, at any time. Political tensions are particularly heightened at present as the peace process is at a critical stage with UN Security Council Resolution 1633 expiring on 31 October. ...”

UNHCR, “Update on International Protection Needs of Asylum Seekers from Cote d’Ivoire”, November 2006

48. This October UNHCR Position Paper begins by recalling that its previous position paper of January 2004 had recommended a moratorium on returns to Cote d’Ivoire with the exception of individuals from the economic capital Abidjan, whose relatives had been contacted in the city prior to their return (in order to avoid creating internal displacement). It explained that its January 2004 position depended on a:

“relatively favourably level of security having been established in Abidjan, in contrast to the presence of armed elements elsewhere in the country which posed a serious threat to both people and property outside Abidjan”.

49. Since then there had been “significant negative developments” in the country despite the signing of further enhancements to the Linas-Marcoussis Peace Agreement. The paper pointed to the acute situation in the country’s western region, particularly within the Zone of Confidence, as a result of an increase in both inter-ethnic violence and crime. It cited Professor Walter Kalin, the Secretary-General’s Representative on the Human Rights of Internally Displaced Persons (IDPs) who, as a result of his mission to Cote d’Ivoire from 17-24 April 2006, concluded that there was a “protection crisis in terms of the human rights of the internally displaced” [some 700,000 persons]. The paper concludes:

“In light of the foregoing, it is apparent that Cote d’Ivoire is, for the time being, unstable and unsafe, with the rule of law having broken down and the government absent from large parts of the country.”

50. Under the subhead “Security Developments”, the paper states:

“Cote d’Ivoire remains one of the most insecure nations in West Africa. Apart from the two main fighting factions, namely the FDS (government forces) in the south and the FAFN (opponents of the government) in the north, rather there are large numbers of militants and uncontrolled armed elements all over the country ... Despite the presence of the 11,000 strong international force comprised of UN as well as French forces, the security situation in the country remains unstable and unpredictable, with frequent reports of

incidents of extreme violence, including looting, extortion and armed attacks, which occur notably in the Zone of Confidence.:

Whilst recognising that not all asylum seekers from Cote d'Ivoire may qualify for refugee status under the 1951 Convention, UNHCR recommends that persons fleeing Cote d'Ivoire and seeking asylum abroad should be recognised as in need of international protection. Where such persons are found not to be eligible under the criteria of the 1951 Convention and/or 1967 Protocol ..., they should be accorded a complementary form of protection unless excluded or based on the exclusion clauses of the 1951 Convention. In countries where the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is applicable, Art 1(2) should be applied with regard to those who are not excludable but are not eligible under Art 1(1).

51. More particularly UNHCR recommends that:

- 1) All claims should be examined in fair and efficient refugee status determination procedures, on the basis of their individual merits, against the criteria of the 1951 Convention and/or 1967 protocol, or, where applicable, Art 1(1) of the 1969 OAU Convention. Due attention should be paid to the possible grounds for exclusion ...
- 2) With regard to individuals found to be eligible for refugee status under the 1951 Convention and/or 1967 Protocol, but the individual is not excluded from international protection, a complementary form of protection should be granted. Similarly in countries where the 1969 OAU Convention is applicable, the current situation in Cote d'Ivoire warrants favourable consideration of the refugee claim under Art 1(2) of the Convention, unless the exclusion clauses are found applicable.
- 3) No asylum seeker from Cote d'Ivoire should be forcibly returned until such time as the security and human rights situation in the country has improved sufficiently to justify it."

Expert Report of Richard Reeve, 9 October 2006

52. We have already noted our reasons for deciding to take this report into account.

53. Mr Reeve describes his specialist field as political and security risk and the role of the military in the government and society in West Africa. He worked as an independent consultant but has been an Associate Fellow for the African Programme at Chatham House (Royal Institute for International Affairs), London since September 2005 and is their primary contract on West Africa. Between November 2000 and September 2005 he worked for Jane's Information Group producing a number of conflict analysis publications in their name. He remains Africa correspondent for Jane's Intelligence Review. In 2005 he advised the UN Group of Experts tasked with investigating the arms embargo on Ivory Coast. His report covers the general situation in the Ivory Coast and the appellant's risk profile (on the basis of the appellant's own account).

54. Dealing with political oppositionists generally he states:

“Those groups opposed to the current government or significant elements within the government may be summarised as the four political parties aligned in the Rassemblement des houphouetistas pour le developement et la paix (RHDP) and the armed insurgent movement Force Nouvelle, which have controlled the north of the country since late 2002. All these groups have been represented in government at least since March 2003, although most power still rests with President Gbagbo and a parallel administration of his Front Populaire Ivoirien (FPI).”

55. He situates the position of the RDR within the opposition forces as follows:

“The ... RDR party, for which [the appellant] has been a district treasurer of Abidjan, is seen as particularly strongly opposed to the FPI because of the perceived overlap of its agenda and support base with the FN rebels and the strong electoral challenge it is likely to present. Many southerners and FPI supporters identify all Ivoirians with northern or foreign origins as supporters of both the RDR and FN rebellion].”

56. On the risk to returnees perceived as oppositionists he writes:

“The risk to returnees – which I hold to be similar to the risk to those already residing in Ivory Coast – identified as supporting those opposition groups derives from the proliferation of pro-FPI street militia and parallel security forces, chiefly in Abidjan. Their attacks on opposition supporters have been sporadic and relatively infrequent but would be likely to escalate in the likely event that the current peace process goes off track. It is reasonable to believe that they have a good knowledge of the activity and residence of most opposition organisers, if not their movement to and from the UK.

The pro-FPI militia so far operate with complete impunity and the apparent complicity of the uniformed security services. It is not reasonable to believe that an opposition activist would seek to expect protection from them if persecuted. Similarly, the Ivorian judiciary is political, over-burdened and unlikely to provide protection.”

57. His report goes on to explain that in view of the various experiments in multi-party governments of national unity, which have seen the RDR, PDCI and small parties being given ministerial portfolios for brief periods, the term “current Government” is best understood as referring to President Gbagbo and the FPI, rather than through the de jure structures that have included the RDR and some other “opposition” parties and movements for most of the last four years. He subdivides opposition forces into unarmed political parties and the “armed opposition”. Of the latter the principal component, he says, is the Forces Nouvelles (FN). Of the former, the two major political parties are the PDCI and the RDR. The PDCI, which was in power between 1960 and December 1999, has its main support base among the Baoule people of the centre-east, as an area of the country which includes both the national political capital, Yamoussoukro and the FN's de facto northern capital, Bouake. Its head is still the former president, Henri Konan Bedie. Reeve said that the PDCI is generally seen as a more truly national party than its southern and northern rivals.

58. On the RDR and its relationship with the other unarmed parties Mr Reeve writes:

“The RDR was founded as a breakaway from the PDCI in 1994, reflecting a schism between Bedie (then President of the National Assembly) and Prime

Minister Alassane Dramane Ouattara (1990-1993) over the country's leadership after the death of founding President Felix Houphouët-Boigny. Whereas the FPI dominated the southwest and the PDCI held on to the centre-east, the RDR attracted support from the poor north, which felt discriminated against by Bedie's increasingly southern-based government. Like many others of northern parentage Ouattara was disenfranchised during the late 1990s when the authorities claimed he was Burkinabe rather than Ivorian and declared him eligible to contest the Presidency. Because of this, the RDR has boycotted every national election since 1996. Only the municipal elections of March 2001, which it won, indicate its likely support relative to the FPI and the PDCI.

Since May 2005, the RDR and PDCI have been joined in an opposition coalition known as the Rassemblement des houphouëtistes pour le développement et la paix (RHDP). This also includes two smaller parties: Union pour la démocratie et la paix (EDPCI) created by the late General Guei in 2001 after he was forced from power, and often seen to represent the interests of its native west (FN occupied); and the Mouvement des forces de l'avenir (MFA). However, Ouattara and Bedie are historic rivals, only united by a desire to unseat the FPI."

59. Mr Reeve does not consider that the armed opposition group FN seeks power in its own right; its policy positions have largely been borrowed from the established and political parties which most northerners support. It seeks, he says:

"a change in the political rules and an end to discrimination against northern Ivorians. As such, it is informally aligned with the RHDP through the G7 grouping, via which it usually coordinates its responses to major developments with the unarmed opposition."

60. He explains that many in the country have seen these links to show that Ouattara has been behind organising of the coup and coup attempts in December 1999, January 2001 and September 2000 – allegations which the RDR consistently denies.

61. Although Mr Reeve sees several of the important parties or movements in the Ivory Coast as having an ethno-regional basis, he stresses that Ivorian politics is not entirely divided on a north-south basis. The people in the north, who make up about a third of the population, are speakers of south-eastern Manding and Gur languages similar to those spoken in Burkina Faso, Mali and Guineau. The people of what he refers to as "the lush south", who comprise around 55% of the population, are speakers of Kwa, Akan and Kru languages related to those of Ghana and Liberia respectively. The remainder are Eastern Mande speakers of the centre-west, neither obviously northern nor southern, although most of the territory of the people speaking Eastern Mande languages is under the control of the FN. In addition there are an estimated 5 million residents of foreign origin, including a large proportion born in Ivory Coast as the children of immigrants and unable to naturalise or vote. About half of these non-Ivorians are of Burkinabe origin, one-quarter Malian and the rest from Guinea, Liberia, other West African states and Lebanon. The vast majority are from ethno-linguistic groups related to those of the northern Ivory Coast and use Dioula, a Manding-based lingua franca of northern Ivory Coast, Burkina Faso and Mali. He notes that : "Southern Ivorians often lump all northern Ivorians together with these immigrants

under the collective ethnic term 'Dioula'. which has inherently foreign connotations". He refers to the very contentious issue of the registration as citizens (and potentially as voters) of an estimated 3.5 million Ivorians disenfranchised over the last 14 years:

"Since most of them are believed to be of Northern origin, and most northerners appear to support the RDR, the southern-based parties that have ruled the country since independence fear a political/demographic shift that would cede power to northern interests. This also appears to be the thinking of the FN, in insisting that it will not disarm until the citizen identification programme is completed. The FPI has successfully mobilised southern supporters against the programme by alleging that the RDR is registering 'Dioula' immigrants as Ivorian citizens in order to tip the balance definitively".

62. As to religion and Muslims in particular he writes:

"Compared to ethnicity, the link between 'Northerners' or 'Dioula' and Islam is considerably weaker. About two-thirds of northerners regard themselves as Muslims, while there are many northern Christians. Traditional animist cultural and religious practices are strong among many Ivorian Muslim and Christian groups, north and south. However, there are few Muslims among southern ethnic groups. I am unaware of any specific connection between non-Dioula Muslims and support for the RDR or FN (there is no overt Islamic element to either group's policies) but I consider it credible that many in the south would consider a southern Muslim as at least likely to support the RDR or oppose the FPI in power. Muslim names serve as a common signifier of northern origins in the south, although the family names of almost all Ivorian Muslims are African (rather than Arabic) and commonly understood as representative of particular ethnic groups."

63. Reeve identifies the chief source of persecution facing "opposition activist or perceived opposition supporters (chiefly Northerners and immigrants)" as now being various street militias organised by the young supporters of the FPI. In May 2005 Human Rights Watch estimated the number of these pro-Gbagbo groups as about 20,000 strong, able to mobilise many tens of thousands and supporters more. The principal of these street militias were the Congres Panafricain des Jeunes et Patriotes (COJEP), Union pour la Liberation Totale de la Cote d'Ivoire (UPLTCI) and the Groupement Patriotique pour la Paix (GPP). These groups, which are organised into hierarchical structures much like parties are used to keep track of opposition organisation in the same areas and to respond accordingly; they are also known to use ad hoc roadblocks and checkpoints to monitor the movements of citizens, although this is not systematic. The great advantage these groups enjoy is being able to organise against opposition parties with apparent impunity. Mr Reeve also highlights the role of pro-Gbagbo 'hate media' in inciting anti-Northerner sentiment.

64. Mr Reeve's report also deals inter alia, with; the rule of law, formal and informal security forces and the judiciary. His conclusions are set out as follows:

"Those Ivorians who may be described as at risk because of their real or perceived opposition to President Gbagbo and his FPI inner circle are supporters of the other parties aligned in the RHDP, most notably the RDR because of the perceived overlap of its agenda with the FN insurgency. In the

eyes of many FPI activists, all Ivorians of northern or immigrant origins are potential supporters of the RDR and FN. However, it may be assumed that the extensive networks of the 'ruling party' and its supporters have already provided a good deal of accurate intelligence to the presidency on how the opposition parties are organised in Abidjan and who their chief local activists are.

On the one hand, continued attacks on 'Diouala' as regularly described by the UN and Human Rights Watch are evidence of a clear danger to Northerners in Abidjan, especially those who are affiliated with the political opposition. On the other hand, the incidence of recorded violence has been sporadic and not particularly high overall given the large population of the metropolis (an estimated 4 million) and its very large resident population of Northerners and immigrants. Persons of northern origin not engaged in political activism and with no past record of such activism may be considered relatively safe at present.

However, there is enormous uncertainty over the direction of events from this month forward with the alteration of the terms of the peace process, most likely to the detriment of President Gbagbo and the FPI. In the event of a return to on hostilities along the front line, another coup attempt in Abidjan or the imposition of international sanctions on the FPI leadership for obstructing the peace process, there appears to be a very considerable danger of generalised violence against Northerners and or the perceived opposition supporters in Abidjan due to the proliferation of hard line pro-Gbagbo militia there, the capacity of pro-Gbagbo media and youth organisations to mobilise support for violence, and the inability and/or unwillingness of the small local and UN police forces to provide protection should the situation deteriorate.

Mr G would appear not to be at risk because of his ethnic identity since he is not easily identifiable as a Northerner or immigrant, although his Muslim names could attract attention. However, he would appear to be at greater risk because of his acknowledged activism within the RDR. Indeed, it is credible that other members of his Bété ethnic group might be more aggravated by his perceived alignment with the northern opposition."

65. The final paragraph encapsulates Mr Reeve's assessment of the risk facing the appellant if he were to be returned to the Ivory Coast.

Home Office OGN, 14 November 2006

66. The Home Office Operational Guidance Notes v3.0 issued 14 November 2006 stated its conclusion on risk to RDR members at 3.6.8 as follows:

"The RDR is one of the main opposition groups to play a major role in opposition political activity. It is a registered party and therefore being a member is not illegal. In spite of the party's activities continuing to be subject to restrictions by the government during 2004 and 2005, RDR affiliates are not considered to be at risk of treatment amounting to persecution on the basis of their membership of, or association with, the party. Membership of, involvement in, or perceived involvement in the RDR at low or medium level is not likely to lead to the level of ill-treatment that would amount to persecution. The grant of asylum in such cases is therefore not likely to be appropriate. In cases where claimants are able to demonstrate that they are a high-level RDR director or leading activist, there may be a real risk that the

claimant will encounter ill-treatment amounting to persecution. The grant of asylum in such cases may therefore be appropriate.”

67. The OGN contains a separate subsection (3.7) on members of the Forces Nouvelles (FN), the opposition ex-rebel movement that controls the northern half of the country. It states that the FN is comprised of three former rebel groups: the Patriotic Movement of Ivory Coast (MPCI), the Ivorian Popular Movement of the Far West (MPIGO) and the Movement for Peace and Justice (MJP). The north and most of the west of the country is under the control of the FN. The FN has been involved in a number of transitional government arrangements, but these had all fallen apart: “Tense and fragile relations between the Government and the FN have continued into 2005 and 2006”. The OGN notes that perceived rebel (FN) sympathisers were believed to be particularly targeted. However, it does not consider that there has been a consistent pattern of ill-treatment of FN members or sympathisers. It further considers that, even where members or perceived members of the FN faced a real risk of persecution from the authorities or pro-government militias, “relocation to the FN-dominated rebel-held north would be an effective way of avoiding any risk of ill-treatment and would not be unduly harsh”.

68. At 5.2 the same OGN gives its reasons for not adopting the same conclusion as the UNHCR in its position papers of January 2004 and October 2006: the UNHCR position has been that no asylum seeker should be forcibly returned to Ivory Coast until such time as the security and human rights situation in the country concerned has improved sufficiently to justify it.

69. The OGN also deals with Non-Ivorians and/or Muslims from the north (3.8), FGM (3.9), prison conditions (3.10) minors, medical treatment and returns.

Country Guidance

70. In AZ (Risk on return) Ivory Coast CG [2004] UKIAT 00170, heard 4 May 2004, the Tribunal found that the background evidence did not show that there was a real risk of persecution or ill-treatment for returned (failed) asylum seekers to the Ivory Coast, notwithstanding its acceptance that the country conditions were difficult. It further found that ordinary or low-level RDR members and supporters would not be at real risk of persecution or ill-treatment on return. It concluded that for persons who faced a real risk of persecution or ill-treatment in Abidjan, there would be a viable internal relocation alternative. In DI (Ivory Coast) CG [2002] UKIAT 04437 the Tribunal found that in general protection would be available against the threat of FGM, or, where there was a real risk of FGM in a person’s home area, internal relocation would be available. Mention should also be made of two CG cases decided in 2002: VG (Coups) Ivory Coast CG [2002] UKIAT 04020 and TD-K JK (Relocation of ex-President Bedie) Ivory Coast CG [2002] UKIAT 03140.

Recent developments

71. In addition to country reports, the main ones which we have summarised above, we also had produced before us a number of news/press reports covering the period from January 2007 virtually up to the date of hearing before us. We have already noted the main events they chronicle, but consider

it useful to summarise their contents separately here. Early in April 2007, following the signing of the Ougadougou peace agreement the new Ivorian Prime Minister, former rebel leader Guillaune Soro, formed a government comprising thirty-one ministers, including eleven from President Gbagbo's FPI, seven from the FN and five from the two leading opposition parties (the RDR of Alassane Outtara and the Democratic Party of Cote D'Ivoire of Henri Bedle). The President and new Prime Minister jointly oversaw the removal of the 600 km-long buffer zone (or "confidence zone") separating the rebel-run north from the loyalist-controlled south. The eleven thousand French and UN peacekeepers who had patrolled the zone withdrew to seventeen observation posts. The loyalist and rebel armies began to mount joint patrols. Also in April President Gbagbo signed a law giving amnesty for crimes committed during the civil war. Any ongoing prosecutions were dropped and prisoners convicted of such crimes released. This amnesty applies to both the NF rebels and the armed forces loyal to the President. It is backdated to September 2000, so that it also covers crimes committed by loyalist soldiers before war broke out. Measures have been taken with a view to disarming fighters on both sides. Also under the Ougadougou peace agreement a date was fixed for free and fair elections within ten months and for a mass identification programme to give identity cards to the millions of Ivorians who do not have them.

72. Although the fact that this peace agreement has been struck between the two main protagonists in the era of civil war affords more cause for optimism that it will have a lasting beneficial effect, the reaction of most international commentators have been one of cautious optimism. The UN, the AU, ECOWAS, the French and other key regional and international organisations have welcomed the developments. However, the former Prime Minister, Charles Konan Banny, has warned that Gbagbo and Soro may have "hidden agendas". The withdrawal of the UN and French peacekeepers from the buffer zone has led to a sharp increase in attacks on civilians in and about the western town of Bongola. The road between the town of Duekoue, in the government-controlled south, and Man, which is in NF hands, is considered to be particularly dangerous. Armed bandits are said to be mainly responsible. The BBC News report of 26 April comments that if the loyalist and rebel troops cannot provide security, the value of some of the recent steps taken in the peace process will be called into question.

The legal framework

73. The burden of proof rests on the appellant to prove his case on the lower standard of a reasonable degree of likelihood, which we take to be the same as "substantial grounds for believing" or "real risk". We have to consider all of the evidence in the round and, so far as the assessment of the appellant's case is concerned, place it in the context of all of the background evidence. We must apply the Refugee or Person in Need of International Protection (Qualification) Regulations SI 2006/2525 (hereafter the "Protection Regulations") and the Statement of Changes in Immigration Rules, Cm6918. These Regulations together with amendments to the Immigration Rules in part implement EU Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, (OJ L304/12 of 30.9.2004). By virtue of

para 23 of the President's Practice Directions, we are obliged to apply these Regulations and amended Immigration Rules to all pending appeals, of which this is one.

74. The Protection Regulations set out, inter alia, definitions of acts of persecution (Regulation 5), actors of persecution or serious harm (Regulation 3) and actors of protection (Regulation 4).

75. Of particular relevance to part of the guidance given in this case is paragraph 339O headed "Internal Relocation". This states:

"(i) The Secretary of State will not make:

(a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

76. In considering the proper approach to the issue of internal relocation we have also to apply the principles set out in the recent House of Lords case of Januzi [2006] UKHL 5 which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance.

77. The new Regulations and Rules also identify the right of a person to be considered as to his or her eligibility for humanitarian protection. Paragraph 339 C (in its first part) provides:

" A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;

(ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

(iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and

(iv) he is not excluded from a grant of humanitarian protection".

78. The same paragraph in its second part gives a definition of serious harm:

"Serious harm consists of:

(i) the death penalty or execution;

(ii) unlawful killing;

(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or

(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".

79. Where below we refer to "risk" or "real risk", this is to be understood as an abbreviated way of identifying: (1) whether on return there is a well-founded fear of being persecuted under the Refugee Convention; (2) whether on return

there are substantial grounds for believing that a person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and (3) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 ECHR.

Our assessment: (1) General

80. As already noted, there are indications that the Ougadougou peace accord and subsequent steps taken under it during March-May 2007 may result in significant changes in the political situation in Ivory Coast and may seal the end of the period of armed conflict and a north-south division which has engulfed the country since 2002. However, it remains that there is as yet no hard evidence to show previous patterns of violence and wide scale human rights abuses have abated and setbacks of some kind in the peace process can be expected. Hence, an assessment of current risk must continue to assume that these pre-March 2007 patterns continue.

81. Even discounting likely recent improvements, however, we do not consider that there is any proper basis for taking a different view of risk categories from those taken by the Tribunal in AZ in 2004.

Failed asylum seekers

82. The issue of risk on return to failed asylum seekers was not specifically raised before us but in any event it is clear to us that the more recent background country reports confirms the view taken of this category in AZ.

Political oppositionists

83. In this decision we have concentrated primarily on the issue of risk to RDR members and supporters (or sympathisers) or persons perceived as such. However, we think it is sensible (because we had much evidence relating to the subject) to deal more broadly with claims made by persons who are members or supporters of the FN or who are perceived as such, together with claims made by political oppositionists in the south such as those involved in RDR. Both can be classified as political oppositionists. There are, of course, important differences between the two groupings, not least that those who are members or sympathizers of the FN (or are perceived as such) are part of the armed political opposition and so it may be in certain cases extremely relevant to have regard to possible issues of exclusion. That is a point which is properly emphasised in the current Home Office OGN.

84. We consider that taken as a whole the background evidence does not bear out that political oppositionists in the Ivory Coast in general face a real risk of persecution or serious harm or ill-treatment on return. However, where a person is able to establish a political profile as an activist political oppositionist (whether as a member from a southern political party (e.g. the RDR) or as a member from the northern-based FN), the position may well be different, at least so far as risk in that person's home area is concerned. For the sake of clarity we emphasise here that by activist or militant we mean something more than being someone with an official position in a local branch of a party. Likewise, a person who is not a member but merely a supporter of

the RDR or the FN (or other oppositionist party or organisation) may, depending on the circumstances, be able to show a real risk if he or she is also an activist. Once again, however, that leaves the issue of whether he or she would have a viable option of internal relocation.

85. In reaching the above conclusions we acknowledge that there were more incidents of threats and violence directed against certain political opposition parties (including the RDR) in 2006 than in 2005. However, as before, it was primarily directed at oppositionist (especially RDR) leaders and activists and those closely involved with them. While the background evidence (including Mr Reeve's report) does bear out a continuing real risk of persecution or ill-treatment to high-level opposition party members or to activists, it does not demonstrate that low-level or medium-level members or supporters are at risk: the principal thrust of his report is that there is a serious risk on return to active members or supporters, not to low-level or medium-low-level oppositionists.

86. So far as the RDR is concerned (and in this regard its experiences appear typical of the other oppositionist parties), we find it significant that the reports of difficulties facing RDR members or those involved with the RDR predominantly relate to RDR leaders or activists or militants. Whilst there are also references in the main reports which identify difficulties for RDR members and supporters generally, these are far from showing a consistent pattern of violence or adverse treatment meeting the threshold of persecution or serious harm or ill-treatment contrary to Article 3.

Internal relocation

87. For those oppositionists able, by virtue of their actual or perceived profile as a leading member or activist, to establish that they face a real risk in their home area, there remains the further issue of whether they would have a viable internal relocation alternative. There are some continuing restrictions on internal freedom of movement and there remain hazards such as ad hoc roadblocks manned by government forces or pro-government militias and there has been a recent increase in violence around the Zone of Confidence. However, it is equally clear that there is still an extensive degree of internal free movement, including free movement between north and south. The fact that such movement for the most part appears on the evidence to take place without apparent difficulty, satisfies us that internal relocation will often be a viable option to the following extent. Political oppositionists and FN members or supporters who are able to give a credible account of risk in their home area will in general be able to avoid a real risk of further persecution or serious harm or ill-treatment by relocating. However, we emphasise that both when assessing whether there would be a continuing risk of persecution (serious harm, ill-treatment) and when assessing whether relocation would be reasonable (or unduly harsh), much will depend on the particular circumstances of the individual case.

Additional risk factors

88. In the context of deciding cases involving persons claiming to be at risk because of their actual or perceived membership of, or support for, political opposition parties or groups, we consider that the existence of certain other factors may raise the level of risk, although whether they raise it enough to cross the threshold of persecution or serious harm or ill-treatment will depend

on the particular facts of the case. The factors we have in mind are: being of a particular ethnic or ethnographic background, being a northerner, being a Muslim and being a perceived (West African) immigrant. However, it seems to us that the background evidence (including Mr Reeve's expert report) reflects the fact that none of these is sufficient in itself to give risk a real risk. Even in combination with a low or medium-level political profile as an oppositionist, we do not think that such factors will normally give rise to a real risk; but we do not rule out that they may sometimes operate as additional risk factors of some significance. What we say below about the appellant's circumstances serves to illustrate this. Even when several factors relating to ethnicity, being a Muslim and a northerner are taken into account (alongside a finding that a person is a low-level political oppositionist), the threshold of real risk may still not be reached.

89. (We have not in this case dealt with the potential risk factor of being or being perceived as an Ivorian of (West African) immigrant origin and we think it prudent to reserve our position on that. Bearing in mind that the numbers of such persons are estimated at several millions, we certainly do not think that being in such a category would be sufficient in itself to give rise to a real risk of persecution or serious harm). But equally we do not rule out that, combined with other factors, this factor may give rise to a real risk.

The 2006 UNHCR Position Paper

90. It will be apparent from what we have said earlier that in the light of recent significant changes in the Ivory Coast during 2007 – encompassing among other things loyalist and rebel army co-operation in the Zone of Confidence, in place of the previous UN and French peace-keeping patrolling – the November 2006 UNHCR Position Paper cannot be taken to describe the present situation accurately.

91. Be that as it may, since we have taken the view that we should assess risk on the basis that pre-March 2007 levels and patterns of conflict may well continue, it is necessary for us to address the implications of this position paper. We recognise that UNHCR's conclusion is that "No asylum seeker from Cote d'Ivoire should be forcibly returned until such time as the security and human rights situation in the country has improved sufficiently to justify it". However, it seems very clear to us that this is a conclusion which is based to a significant extent on UNHCR's institutional concerns about the problems of mass returns and their impact on Ivorian infrastructures. As the Tribunal has been at pains to point out in a number of cases, our task (by contrast) is confined to deciding whether a person can show he meets the requirements for eligibility as a refugee or as a person entitled to humanitarian protection or as a person whose removal would be contrary to Article 3 of the ECHR. We are not concerned with the mode of return or with the volume of returns. Secondly, this Position Paper expressly recognises that "not all asylum seekers from Cote d'Ivoire may qualify for refugee status under the 1951 Convention"; indeed it instructs that claims from asylum seekers from Cote d'Ivoire must be the subject of individual, not group, examination. Thirdly, although it says that in relation to those who are found not to qualify for refugee status under the 1951 Convention, "they should be accorded a complementary form of protection unless excluded...", the paper clearly employs the term "complementary protection" in a broad sense. We say this because the only reason they give for considering that persons who do not qualify as refugees

might nevertheless be entitled to “complementary protection” is because of the “security and human rights situation in the country”. It cannot seriously be suggested - and UNHCR does not suggest it in this Position Paper - that the security and human rights situation alone suffices to show for humanitarian protection purposes (as defined by paragraph 339C of the Immigration Rules (Article 15 of the Qualification Directive)) that there exist substantial grounds for believing that a Ivorian asylum-seeker is at real risk of suffering serious harm or suffices to show for Article 3 ECHR purposes that he faces a real risk of ill treatment: see Vilvirajah v UK (1991) 14 EHRR 248. It is certainly within the remit of UNHCR to recommend that states consider according some residual form of complementary protection, but in the UK the AIT only have jurisdiction to deal with refugee protection, humanitarian protection and Article 3 protection – none of these forms of protection is as broad as what this Position Paper invokes.

Country guidance

92. Where does our decision leave Tribunal country guidance? Whilst we consider that the very comprehensive assessment contained in AZ remains valid as country guidance for the period up to February 2004, we think that the present decision is now to be seen as the only source of guidance on the situation from February 2004 to the present. The DI decision, too remains a relevant source of guidance on FGM-related claims, the other two CG cases, VG and TD-KJK, no longer hold value as guidance.

Our assessment: (2) the Appellant’s Evidence

93. We have not found the appellant’s evidence easy to evaluate and there are a number of areas which have caused us particular concern. The first relates to the appellant’s evidence about the level of his involvement with the RDR. He has produced a membership card (2A10-11). He said in his original statement and at interview that he was a treasurer in the Treichville District. In support of his claim he produced the certificate from CG dated 23 June 1996 (A6) describing the appellant as the president of local committee 8 of section 16 Habita Autoroute. It could be that the appellant later became treasurer of a local district but it is surprising that there has been no further evidence from the RDR about the appellant’s position in the party, particularly in the light of the fact that he has been able to produce letters dated December 2003 (2A41-42) confirming that the party has given help to his family by moving them to a safer place and giving them money. One letter stated in general terms that close comrades of the RDR are being actively sought by the authorities and are living in hiding, but nothing is said about the appellant’s doings.

94. So far as the appellant’s detention in 2000 is concerned, he has supported that with a notice of release. This describes him as being “sentenced to conditional release for breach of public peace by a judgment on 30 October 2000 of Abidjan Magistrates’ Court of the Court of Appeal of Abidjan Plateau.” The appellant told us in evidence that he had not appeared before a court but confirmed that he had been given this document on his release. We accept that it could be the case that following a release caused by international pressure detainees were given a document to give a legal veneer to their detention. We have concerns about the appellant’s chronology: if he was

detained for 45 days from 23 October, that would mean that he would have been released around the beginning of December, not 14 December, as shown in the document, but we bear in mind that the document may be primarily confirmatory of release rather than intended to date its commencement. Nevertheless, it was the appellant's own case that following his release he was able to return both to work and to his political activities.

95. It was the appellant's evidence that because his shop was located in Cocody he came under suspicion and in early and mid 2001 he was visited by the judicial police (on more than one occasion) who questioned him about whether he was storing arms. He does not say that he was arrested or ill-treated on any of these occasions. In support of his claim about these events, the appellant has produced a document purporting to be an arrest warrant issued on 28 December 2000 (A31-2). We have serious concerns about this document. One is its date, which, if correct, would have pre-dated even the judicial police visits. Another concern is that even assuming this warrant was issued soon after their visit (which appeared to be the appellant's fall-back position), it is quite unclear why the appellant was not arrested immediately, particularly as on his own account he continued to be the subject of suspicion by the authorities.

96. It is the appellant's case that the events of September 2002 finally caused him to leave the Ivory Coast and that his premises were targeted because he was a member of the RDR and was suspected of storing arms. He has described the crowd outside his premises and described how he learned that one of his employees was injured and one killed. There are discrepancies in his evidence as to who went to see what was happening and in relation to whether his employee was killed at the scene or later died in hospital. We found the appellant's evidence on those issues to be confused and contradictory.

97. It was the appellant's evidence that within days on his father's advice he had left for his home village where he remained until 20 October 2002. When he left it was because the people from the village alleged that he had helped the rebel troops. No reason was put to us as to why the villagers would take that view. We regard this as an untruthful attempt to explain why the appellant did not remain in his village rather than move away and leave Ivory Coast.

98. The appellant says that the reason he did not remain in Ghana was because there was an extradition agreement between Ivory Coast and Ghana and he feared that he would be returned. We have very real doubts about this explanation, particularly as Ghana is a signatory to the 1951 Convention. We are not satisfied that the appellant would have been unable to claim asylum there and, if able to show to the authorities there that he had a well-founded fear of persecution, we do not consider there would have been any real risk of extradition.

99. We also taken into account that he arrived in this country using false documentation which was then, he claims, lost and that he also delayed, albeit for a relatively limited period, in claiming asylum.

100. Assessing the appellant's evidence in the light of these concerns we make mixed credibility findings. We are satisfied that there is a reasonable degree of likelihood that the appellant is a member and supporter of the RDR. We accept he has been an office holder in his local area in Treichville and to this extent has been active in his support of the RDR. We also accept that he did take part in the demonstrations on 23 October 2000 in which large numbers were involved. In the light of the objective evidence about the violence following the presidential elections and the number of people involved, we cannot rule out the possibility that the appellant was arrested, and, despite the doubts we have about the release document and the appellant's own chronology and/or history, we are prepared to accept that he was detained and more than likely ill-treated. However, we note that he was released when there was an amnesty of political prisoners following international pressure and that, following release, he was able to return to his business and to his involvement with the RDR.

101. We do not accept that in 2001 he was the subject of any suspicion that he was storing arms at his business premises. If he was, we believe that he would have been arrested and detained and we see no reason why the warrant would not have been put into immediate effect. We do not find that this document is either genuine or reliable. There is no adequate explanation why this warrant would have been issued in December 2000, nor, even if we take the appellant to be claiming it was issued soon after the judicial police visits during the first three quarters of 2001, then it is not plausible they would not have enforced it against the appellant straightaway.

102. We also do not accept the appellant's account of the events of September 2002. It is clear from the background evidence that following the attempted coup there was a period of disorder and disruption with incidents of indiscriminate violence. The appellant may well have been caught up in such incidents, but we do not believe that he was targeted because of his membership of the RDR or because he was suspected of storing arms. We do not believe that he left the Ivory Coast because of any specific risk to him, but rather because of the general risk arising from the situation in the country at that time.

103. So far as the various documents the appellant has produced are concerned, save for the limited weight we feel able to give to the document relating to his court appearance in 2000, we do not consider we can place any reliance on them. When assessing the credibility of the appellant's evidence we have, of course, taken into account Mr Reeve's report both as regards general risk categories and his assessment of risk facing the appellant. However, it is notable that in very large part Mr Reeve's assessment of risk to the appellant is based on the assumption that the appellant's account was wholly credible and that, in particular (to use the term Mr Reeve employs in the final paragraph of his summary) the appellant was someone of "acknowledged activism within the RDR". For the reasons we have given above, we found ourselves unable to accept that the appellant, albeit holding some position within the RDR in his local area, was a person who was an activist or militant party member.

104. In summary we accept that the appellant has been an active member of the RDR but we do not accept he is someone who could reasonably be

described as in a high- level or senior position or as someone who at least since 2000) has been an activist or militant member. With some hesitation we are prepared to accept that he was detained and ill-treated following the demonstrations in October 2000, but we are not satisfied that after that time he did anything by way of organising or demonstrating that made him of any specific interest to the authorities. Contrary to what he claimed, we do not accept that he was the subject of any adverse interest from the judicial police or other authorities in 2001, nor do we accept that either he or his shop were personally targeted in September 2002. Notwithstanding that he may in the past have suffered persecution or serious harm (being detained and ill-treated), the authorities did not seek to harm him further.

105. Can the appellant nevertheless succeed on the basis of our limited positive credibility finding that he is a low level RDR member who was arrested along with many others in 2000 in the course of the demonstrations which took place after the presidential election on 22 October 2000 was won by Laurent Gbagbo of the FPI? Our answer is a definite no. In the light of our findings on the current situation in Ivory Coast and our findings on the categories of those likely to be at real risk of persecution or serious harm or ill treatment on return, we are not satisfied that the appellant falls into any such category nor are there any particularly features of his background and circumstances which would put him at such risk of persecution on return. So far as paragraph 339K of the Immigration Rules is concerned, this means that in our view there are good reasons for considering that there will not be a repetition of the adverse treatment the appellant received in 2000.

106. In this regard we take into account that Mr Reeve expressly did not consider that the appellant's Bete ethnic identity would give rise to any risk from the government or others. Mrs Ojutiku also conceded that his ethnic identity would not be as a risk factor. If the appellant's perceived alignment with the northern opposition (through his membership of RDR) was a factor which might aggravate fellow- Bete's, that comes to much the same thing as his being perceived as a northerner and in any event does not demonstrate that he would be at real risk of persecution or serious harm.

107. We do not glean from Mr Reeve's report or from any other background source that the appellant's Muslim identity would operate as a significant risk factor: for the most part Ivorian politics does not split on religious lines. At most the appellant's Muslim identity would lead many in the south to consider him, by virtue of his being a southern Muslim, as someone likely to support the RDR or oppose the FPI in power: but that was and is a feature about the appellant which was already known to his fellow-Ivorians.

108. The fact that the appellant would be perceived as closely linked to northerners, by virtue of his RDR involvement, is clearly a factor of considerable importance. The north-south divide remains the major fault-line in Ivorian politics, even today. However, even disregarding the apparent improvements in the situation since March/April 2007, the background evidence falls well short of demonstrating that the appellant on return would face a real risk of persecution or serious harm simply because he was a low level RDR member and was perceived as closely associated with northerners.

109. Accordingly, we do not see any real indication that the above factors, taken singly or in combination with others, placed the appellant at any risk from 2001-2003 (when he left Ivory Coast). Nor do we see that these factors would place him at real risk on return now, even considered cumulatively and on the basis that his involvement with the RDR would be known.

110. For the above reasons we conclude:

The Adjudicator materially erred in law. The decision we substitute is to dismiss the appellant's appeal on asylum and human rights grounds. The appellant is not entitled to the grant of humanitarian protection.

Signed:

DR H H Storey (Senior Immigration Judge)

Annex: Background Materials before the Tribunal

Home Office Cote d'Ivoire Country Assessment October 2001

UN Office for the Coordination of Humanitarian Affairs, Crisis in Cote d'Ivoire, report no.23, 15 March 2004

Human Rights Watch: Cote d'Ivoire: Security Forces Violently Suppress Protest, 26 March 2004

US Committee for Refugees, World Refugee Survey: Cote d'Ivoire, 24 May 2004

Amnesty International Annual Report: Cote d'Ivoire, 26 May 2004

COIS Country Information Bulletin 2/2004 on Ivory Coast, June 2004

UN Office for the Coordination of Humanitarian Affairs: Crisis in Cote d'Ivoire, report no. 29, June 2004

IRIN news report, 27 July 2004

COIS Country Information Bulletin 3/2004 on Ivory Coast November 2004

COIS Country Information Bulletin 1/2005 on Ivory Coast, 22 June 2005

Foreign & Commonwealth Office Annual Report ch 5, 2005

Home Office OGN on Ivory Coast, 21 March 2006

US State Department Report on Cote d'Ivoire, March 2006

Expert Report of Richard Reeve, 9 October 2006

Freedom House: 'Freedom in the World 2006: Cote d'Ivoire', 6 September, 2006.

CIA-The World Factbook: Cote d'Ivoire, 5 October 2006
Expert report dated 9 October 2006 from Mr Richard Reeve
Library of Congress website entries on Ivory Coast dealing, inter alia, with ethnic diversity and cultures
UNHCR, "Update on International Protection Needs of Asylum Seekers from Cote d'Ivoire", November 2006
Home Office OGN, 14 November 2006
Home Office Country of Origin Service: Ivory Coast, 14 November 2006.
Foreign and Commonwealth Travel Advice for the Ivory Coast, 15 November 2006
US State Department Report on Cote d'Ivoire March 6, 2007
COI Service Response to a Request of 21 May 2007 (from the respondent).
Amnesty International Report 2007: Cote d'Ivoire, 23 May 2007

Various news reports dated 6 July 2004, 27 April 2005, 7 August 2006, 3 September 2006, -15 September 2006 Various BBC News Reports 4 March 2007-26 April 2007

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