

OPERATIONAL GUIDANCE NOTE

RWANDA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Rwanda and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Rwanda Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

- 2.1** Rwanda is a constitutional republic dominated by a strong presidency. It was led by a succession of Hutu-dominated governments following independence from Belgium in 1962 after a Hutu uprising (1959-61) and large scale massacres of Tutsis. In 1985, Tutsi exiles in

Uganda formed the Rwandan Patriotic Front (RPF). Having failed to negotiate their return to the country, the RPF invaded Rwanda from Uganda in October 1990, demanding representation and equality for all Rwandans. A civil war in the border area ensued. Each incursion by the RPF was followed by reprisal massacres, largely of Tutsis, by government forces. A peace agreement was brokered in 1993, the Arusha Peace Accords, which among other things provided for a power-sharing arrangement involving all political forces and the RPF.¹

- 2.2** Unwilling to share power, a group of extremist Hutu politicians planned to consolidate their hold on the country by wiping out all the Tutsi, along with moderate Hutu leaders. They prepared the largely illiterate population through ethnic propaganda, armed extremist youth militia (known as the Interahamwe) and drew up lists of those to be targeted. The killing was sparked by the assassination of President Habyarimana in April 1994. The genocide and massacres lasted until July 1994 and cost the lives of around one million Rwandans. It was halted by the RPF taking control of the country. The extremist politicians and over two million Hutu fled the country together with many members of the Rwandan Armed Forces (FAR) and the Interahamwe, both with their weapons, to neighbouring countries. The majority went to Zaire (now the Democratic Republic of Congo). The largely Tutsi RPF took power in 1994 and formed a Government of National Unity.²
- 2.3** The RPF has remained the dominant party in Rwanda since July 1994 sharing power with other parties, under the formula agreed at Arusha in 1993. This arrangement, together with a nominated 70-member multi-party Transitional National Assembly, lasted until 2003. During that period the RPF ensured domestic security, put in place programmes for economic reconstruction, justice and community reconciliation, and ended any official distinction between Hutu and Tutsi. Under a new constitution agreed by referendum in May 2003, presidential and parliamentary elections took place in August and September 2003. Paul Kagame was elected president with 95% of the vote for a 7-year term, and the RPF won 73.8% of the votes in the parliamentary elections.³
- 2.4** Although voting in the 2003 elections was generally well run and orderly, international observers reported irregularities in the electoral process, including intimidation of voters. There are also continued questions over political freedoms in Rwanda as all alternative parties have to join the Forum of Political Parties, chaired by the RPF, and do not, therefore, provide a strong opposition. In 2002, former president Pasteur Bizimungu was sentenced to fifteen years imprisonment for a variety of offences after trying to establish a political party. Bizimungu's appeal against the sentence was turned down in February 2006, but he was granted a presidential pardon and released in April 2007. Parliamentary elections were held in September 2008, but were contested mainly by movements allied to the RPF. The next presidential election is set for 2010.⁴
- 2.5** Political progress has reportedly been marred by military engagement in the neighbouring DRC. Although Rwandan troops withdrew from the DRC in 2002, allegations persist that Rwanda has maintained a presence in eastern DRC fighting alongside General Nkunda (see also the DRC OGN dated 23 December 2008).⁵

¹ Home Office Country of Origin Information (COI) Service Country of Origin Information Key Documents November 2008: Rwanda (Background Information About Rwanda: Recent History), Foreign and Commonwealth Office (FCO) Country Profile 2008, British Broadcasting Corporation (BBC) News Country Profile: Rwanda, BBC News Timeline: Rwanda & U.S. Department of State report on Human Rights Practices (USSD) 2008: Rwanda (Introduction)

² COI Key Documents: Rwanda (Background Information About Rwanda: Recent History) & FCO Country Profile 2008

³ FCO Country Profile 2008

⁴ FCO Country Profile 2008, USSD 2008: Rwanda (Section 3) & Agence France Presse (AFP) 'Rwanda votes in election without opposition' dated 15 September 2008

⁵ COI Key Documents: Rwanda (Background Information About Rwanda: Recent Events and Political Development), FCO Country Profile 2008 & USSD 2008: Rwanda (Introduction)

- 2.6** In 1994, the United Nations Security Council established an International Criminal Tribunal (ICTR) to try the main leaders and planners of the genocide. Its progress has been slow, but according to the Foreign and Commonwealth Office the ICTR has now convicted 27 people. Given the large number of Rwandans involved in the genocide and the inability of the local Judicial system to cope, the Rwandan Government set up in 2002 a modern version of the traditional justice system, called gacaca, which tried lesser offenders within their own communities. Gacaca courts began operating nationwide in July 2006. In an attempt to ease prison overcrowding, an estimated 60,000 prisoners accused of involvement in the 1994 genocide have been released since 2003.⁶
- 2.7** Members of the Rwandan security forces have reportedly been responsible for human rights abuses including arbitrary arrests, detentions, and killings. There were reports of torture and abuse of suspects in 2008, although significantly fewer than in previous years. Official corruption also remains a problem and there continue to be limits on freedom of speech and association. Legislation has been passed that has significantly expedited the gacaca process, though instances of faulty procedure; judicial corruption; and false accusations reportedly continue to undermine trust in gacaca jurisdictions among victims as well as the accused.⁷

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Rwanda. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.

⁶ COI Key Documents: Rwanda (Background Information About Rwanda: Gacaca System), FCO Country Profile 2008, BBC News Timeline: Rwanda, Human Rights Watch (HRW) World Report 2009: Rwanda & USSD 2008: Rwanda (Section 1)

⁷ COI Key Documents: Rwanda (Background Information About Rwanda: Human Rights), USSD 2008: Rwanda (Introduction & Section 1), HRW World Report 2009: Rwanda, Amnesty International Report 2008: Rwanda & Freedom House – Freedom in the World 2008: Rwanda

3.5 In dealing with applications from Rwandan applicants who may have been involved in war crimes or crimes against humanity, case owners must also refer to the Asylum Instruction on Identifying, Handling and Considering Asylum Claims Made by Suspected War Criminals and Perpetrators of Crimes Against Humanity, Including Genocide before making a decision on their applications.

3.6 All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.7 Members of opposition political parties

3.7.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment at the hands of the state authorities due to their membership of, involvement with, or perceived involvement with opposition political parties.

3.7.2 *Treatment.* Rwanda has a multiparty system of government. In accordance with the constitution, independents and members of other political parties hold key positions in government and parliament, including that of the prime minister and the speaker of the Chamber of Deputies. Still, the political arena continues to be dominated by the ruling RPF. Political parties are reportedly not able to operate freely and face legal sanctions if accused of engaging in divisive acts. The Government also restricts political party activities by requiring membership of the Political Party Forum. Whilst there were no reports that the Government denied registration to any political party in 2008, there were no reported efforts to form a party opposed to the Government. Despite a June 2007 law allowing political parties to open offices at every administrative level, local government officials on occasion reportedly prevented opposition meetings and rallies preceding the September 2008 parliamentary elections.⁸

3.7.3 There were no reported political killings by the Government or its agents during 2008 and there were no reports of politically motivated disappearances within the country during the year.⁹

3.7.4 *Sufficiency of protection.* As this category of applicants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.7.5 *Internal relocation.* Although this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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

⁸ USSD 2008: Rwanda (Sections 2 & 3)

⁹ USSD 2008: Rwanda (Sections 1)

3.7.6 Conclusion. Whilst the Government monitors and restricts the activities of political parties, there is no objective evidence to show that members of political parties are at risk of mistreatment by the state authorities. Applicants who express a fear of being targeted by the authorities on the basis that they are, or were, low or medium-level members of opposition political parties are unlikely to be able to establish a well-founded fear of persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate. Still, case owners should assess on an individual case by case basis whether there may be a real risk that a high-level political opponent or activist will encounter ill-treatment amounting to persecution. The grant of asylum may therefore be appropriate in some cases.

3.8 Ethnicity/mixed marriages

3.8.1 Some applicants may make an asylum and/or human rights claim based on societal discrimination due to their ethnicity, either Tutsi or Hutu or because they're involved in a mixed marriage. Some Hutu applicants may allege state-sponsored discrimination or harassment on account of their ethnicity.

3.8.2 Treatment. Prior to the 1994 genocide, citizens were required to carry identity cards that indicated ethnicity. Following the genocide, the Government banned all identity card references to ethnic affiliation as divisionist or contributing to genocide ideology. As a result, the Batwa were no longer designated as an ethnic group. The Batwa, survivors of the Twa (Pygmy) tribes of the mountainous forest areas bordering the DRC, exist on the margins of society and reportedly continue to be treated as inferior citizens.¹⁰

3.8.3 Large scale inter-ethnic violence between Hutus and Tutsis has erupted on three occasions since independence in 1962, resulting on each occasion in tens or hundreds of thousands of deaths. The most recent and severe outbreak of such violence, in 1994, involved genocidal killing of much of the Tutsi population under the direction of the Hutu-dominated government and in large part implemented by the Hutu-dominated FAR and Interahamwe. The genocide ended later the same year when the largely Tutsi RPF took power and established the Government of National Unity, which ruled until the elections in 2003.¹¹

3.8.4 In its effort to prevent incitement of violence and discrimination and to encourage reconciliation, the Government has pursued a policy of non-recognition of ethnic identities. The Government has eliminated all references to ethnicity in written and non-written official discourse, and there is no government policy of ethnic quotas for education, training, or government employment. Some organisations and individuals continue to accuse the Government of favouring Tutsis (particularly English-speaking Tutsis) in government employment, admission to professional schooling, recruitment into or promotion within the army, and other matters. However, there is no evidence suggesting that the Government practises ethnic favouritism. In January 2006, Rwanda's 12 provinces were replaced by a smaller number of regions with the aim of creating ethnically-diverse administrative areas.¹²

3.8.5 Information from U.S. Citizenship and Immigration Services indicates that whilst harassment is not unheard of, there is little opportunity for systematic targeting of intermarried couples by government authorities or society. There is no such thing as a child of mixed ethnicity because a child will always belong to his or her father's ethnic group.¹³

3.8.6 Sufficiency of protection. Since 1994, the Government has called for national reconciliation and abolished policies of the former government that were perceived to have created and deepened ethnic divisions. The constitution also provides for the eradication of

¹⁰ USSD 2008: Rwanda (Section 5)

¹¹ COI Key Documents: Rwanda (Background Information About Rwanda: Recent History), FCO Country Profile 2008 & USSD 2008: Rwanda (Section 5)

¹² USSD 2008: Rwanda (Section 5) & BBC News Timeline: Rwanda

¹³ U.S. Citizenship and Immigration Services (USCIS) Resource Information Center: Would a Tutsi woman married to a Hutu man in 1990 currently be at risk of harm in Rwanda? (dated 21 March 2000).

ethnic, regional, and other divisions and the promotion of national unity. The Rwandan National Police lacks basic resources, but officers receive training on human rights, proper use of force, and professionalism. During 2008, there were reports of corruption, arbitrary arrest, and lack of discipline within the police force, but the police's office of internal affairs investigated and addressed many of them.¹⁴ There is no evidence that the state authorities discriminate against any particular group and Hutus, Tutsis and those in mixed Hutu/Tutsi marriages who face societal discrimination are able to seek and receive sufficient protection from the authorities.

3.8.7 Internal relocation. The constitution provides for freedom of movement within the country and the Government generally respects this right in practice.¹⁵ Ethnic groups and people in mixed marriages, who face social pressures in some parts of the country, may internally relocate to another region in order to escape this threat.

3.8.8 Conclusion. The Rwandan Government is strongly committed to national reconciliation and there is no evidence of any state-sponsored or societal discrimination on ethnic grounds that would amount to persecution. Claims based on membership of a particular ethnic group are therefore unlikely to engage the UK's obligations under the 1951 Convention. Persons in mixed marriages may face social discrimination or unequal and adverse treatment. However, this is unlikely to amount to persecution and the authorities are generally able to provide sufficient protection to those at risk. The grant of asylum in such cases is not likely to be appropriate.

3.9 Rebel militia groups in the DRC

3.9.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment at the hands of the state authorities due to their membership, involvement with or perceived involvement with Hutu rebel militia groups (the Interahamwe or Democratic Forces for the Liberation of Rwanda - FDLR) based in the Rwanda-DRC border region.

3.9.2 Treatment. The Interahamwe, an unofficial civilian militia force comprised of Hutu rebels, carried out much of the killing in Rwanda during the 1994 genocide. Its members fled to the DRC following their defeat by the RPF and combined with the army of the defeated Hutu regime to create the Army for the Liberation of Rwanda (ALIR). During the war in the DRC the ALIR was allied with the DRC Government against the Rwandan army. ALIR is now called the Democratic Forces for the Liberation of Rwanda (FDLR). Rwanda has in the past accused the Congolese army of aiding Hutu rebels in the North Kivu region of the DRC, but after a resumption of violence in the region in August 2008, the Rwandan and DRC Governments have agreed to work together to end the presence of the Hutu militia operating there.¹⁶ (see also section 3.11 of the DRC OGN dated 23 December 2008)

3.9.3 The Government continues to accept former combatants who return from the DRC. By the end of 2008, a total of 6,812 former combatants from armed groups in the DRC, including 699 former child soldiers, had been demobilised and peacefully resettled in Rwanda since the beginning of the disarmament, demobilisation, and reintegration programme in 2001. The Government's Demobilisation and Reintegration Commission places such persons in a two-month re-education programme at demobilisation and reintegration centres in the Northern Province. There is also a centre solely for former child combatants in the Eastern Province. After the two-month re-education period, each adult former combatant is given 50,000 Rwandan francs and allowed to return to his village. Returnees who are accused of committing genocide and who are over 28 years of age (or 14 years old at the time of the genocide) are subject to gacaca trials.¹⁷

¹⁴ USSD 2008: Rwanda (Sections 1 & 5)

¹⁵ USSD 2008: Rwanda (Section 2)

¹⁶ FCO Country Profile 2008, BBC News Country Profile: Rwanda, BBC News Timeline: Rwanda, BBC News 'Congo to help fight Rwanda rebels' dated 14 November 2008

¹⁷ USSD 2008: Rwanda (Section 2)

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

3.9.5 Internal relocation. Although this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in *Januzi* ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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

3.9.6 Conclusion. The Government has established a programme to demobilise and reintegrate ex-rebel militia members and has reaffirmed that FDLR members are welcome to return to Rwanda once disarmed. As such, it is unlikely that disarmed members of rebel militia groups based in the Rwanda-DRC border region will encounter persecution by the authorities. The grant of asylum in such cases is therefore not likely to be appropriate.

3.9.7 Various Rwandan rebel forces in the Rwanda-DRC border region have been responsible for human rights abuses either during the Rwandan genocide in 1994 or since they fled to the DRC (see also section 3.11 of the DRC OGN dated 23 December 2008). If it is accepted that the applicant was an active operational member or combatant for one of these groups then case owners should consider whether to apply one of the Exclusion clauses. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.10 Genocide survivors/witnesses

3.10.1 Some applicants may make an asylum and/or human rights claim based on societal discrimination amounting to persecution due to them being survivors of, and/or having given evidence about, the 1994 genocide to the gacaca justice system or the ICTR.

3.10.2 Treatment. Gacaca courts, which began conducting trials nationwide in July 2006, serve as the Government's primary judicial process for adjudicating hundreds of thousands of genocide cases and were created to ensure that those who participated in the genocide are brought to trial. The law provides for cooperation with individuals accused of genocide-related crimes and the Government has used incentives such as lessening overall sentences and increasing community service in order to elicit confessions from those accused of less severe crimes. Lawyers are not permitted to participate officially in gacaca but can testify as private citizens. Defendants in gacaca courts can present witnesses and evidence on their own behalf, although witnesses are sometimes reluctant to testify for fear of reprisals. By the end of 2008, gacaca officials reportedly claimed that more than 99% of the genocide-related cases dating back to 2002 had been completed, though human rights organisations have expressed concern at the increased pace of adjudication and due process problems inherent in a traditional system of justice run by non-professionals. In addition to gacaca courts, genocide-related cases continue to be tried by

the ICTR and by the Government in conventional courts.¹⁸

- 3.10.3** Most gacaca hearings are held without incident, but violence and threats of violence against genocide witnesses remain serious problems. Some citizens are reportedly too frightened to testify in gacaca courts. Since 2006, witnesses to the genocide and judges involved in gacaca jurisdictions have been murdered, while, others have suffered damage to their property. According to Government figures, 16 genocide survivors and witnesses were killed in attacks during 2008.¹⁹
- 3.10.4 *Sufficiency of protection.*** The Government investigates and prosecutes individuals and organised groups accused of threatening, harming, or killing genocide survivors and witnesses or of exhibiting “genocide ideology”. In 2008, the special protection bureau in the Prosecutor General’s Office investigated 794 cases, 269 of which were filed in court; nearly all cases involved gacaca proceedings. Conventional courts are also handling the cases of hundreds of persons accused of participating in the killing of witnesses, survivors, and judges.²⁰
- 3.10.5** In addition, the Government holds local communities responsible for protecting witnesses and relies on local leaders, police, and community members to ensure the safety of witnesses. During 2008, a task force to monitor genocide survivors continued efforts to enhance surveillance of genocide survivors deemed most at risk and genocide suspects considered most likely to commit violent attacks; increase joint patrols in rural areas by survivors and security personnel; use preventive detention of genocide suspects to prevent attacks deemed imminent by security officials; expand hot lines; and expedite gacaca hearings for those cases deemed most likely to involve the risk of violence against survivors and witnesses.²¹
- 3.10.6 *Internal relocation.*** Organised groups have targeted and killed genocide witnesses in certain provinces. Still, the constitution provides for freedom of movement within the country and the Government generally respects this right in practice.²² As the threat from these organised groups is generally localised, it is practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Rwanda where they would not have a well-founded fear and except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.

3.10.7 *Caselaw.*

K (Rwanda) [2004] UKIAT 00054 promulgated 25 March 2004. Hutu female minor able to return – protection available. The IAT found that a returning Hutu female minor whose parents were both killed in the 1994 genocide would be able to access sufficient protection provided by the IBUKA, the Rwandan Genocide Survivors Organisation. The Tribunal also found that the claimant would be able to receive adequate protection more generally from the Rwandan judicial system and that internal relocation was a viable option in such a case.

- 3.10.8 *Conclusion.*** While there have been continued reports of harassment, intimidation and even murders of genocide survivors/witnesses testifying to the gacaca system or the ICTR, the state authorities have demonstrated a willingness and ability to protect the genocide survivors and witnesses. Instances of societal discrimination tend to be isolated and regionalised, so relocating to other parts of Rwanda to escape such threat will generally be a viable option. Applicants who cite their status as genocide survivors/witnesses in an asylum application are therefore unlikely to encounter persecution within the terms of the

¹⁸ USSD 2008: Rwanda (Section 1), FCO Country Profile 2008, BBC News Timeline: Rwanda, HRW World Report 2009: Rwanda & HRW World Report 2008: Rwanda

¹⁹ USSD 2008: Rwanda (Section 1), HRW World Report 2009: Rwanda & HRW World Report 2008: Rwanda

²⁰ USSD 2008: Rwanda (Section 1)

²¹ USSD 2008: Rwanda (Section 1)

²² USSD 2008: Rwanda (Section 2)

1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.11 Prison conditions

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

3.11.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.11.3 *Consideration.* Conditions in prisons and detention centres are reportedly harsh with overcrowding remaining a problem. The Government is committed to improving conditions, however, and reports of abuse of prisoners and detainees continue to decline. The Government has increased its prison food budget and has also improved healthcare, though it remains unable to provide adequate medical treatment. The International Committee of the Red Cross reported unimpeded access on an unannounced basis to Rwanda's fourteen prisons in 2008 and local human rights non-governmental organisations also reported similar ease of access to all prisons during the year.²³

3.11.4 *Caselaw.*

AG (Rwanda) CG [2004] UKIAT 00289 promulgated 28 October 2004. Returnees – deserters – prison conditions. The IAT found that even with regard to civilian prisons there is no consensus that conditions in them were life threatening. The worst type were the Cachots but they had been closed down in all but two provinces. As a 26 year old man without any medical problems, the appellant would not suffer an Article 3 breach by reasons of imprisonment. (paras 21, 23 & 26)

3.11.5 *Conclusion.* Whilst prison conditions in Rwanda are reportedly poor with overcrowding and a lack of medical care being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Rwanda a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Rwanda the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific

²³ USSD 2008: Rwanda (Section 1)

circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Rwanda.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favorable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Rwanda due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The Government has adopted a primary health care approach for its health system. The Government's allocation of resources to health has increased in recent years and in 2005 the total expenditure on health was 7.2% of gross domestic product. A shortage of human resources in the health sector has reportedly been a problem. In order to fill the gaps, the Government has invested resources in pre-service training institutes and established the Kigali Health Institute, which is charged principally with training nurses and technicians for the health sector.²⁴
- 4.4.3** Mental health is part of the primary health care system and actual treatment of severe mental disorders is available at the primary level. The World Health Organization reported in 2005 that there are 0.2 psychiatric beds per 10,000 population and 0.03 psychiatrists per 100,000 population. Therapeutic drugs are generally available at the primary health care level.²⁵ An estimated 150,000 live with HIV in Rwanda and the prevalence rate for adults aged 15 to 49 is 2.8%. There has been a high level of investment on HIV/AIDS in recent years by the Rwandan authorities and international actors. Anti-retroviral treatment is available²⁶
- 4.4.4** Where a case owner considers that the circumstances of the individual applicant and the situation in Rwanda reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of

²⁴ World Health Organization (WHO): Rwanda

²⁵ WHO Mental Health Atlas 2005: Rwanda

²⁶ UNAIDS: Rwanda Country Profile, Médecins Sans Frontières, International Activity Report 2007: Rwanda & Department for International Development Key Facts: Rwanda

State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.2** Rwandan nationals may return voluntarily to any region of Rwanda at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Rwanda. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of source documents

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