



# OPERATIONAL GUIDANCE NOTE

## DEMOCRATIC REPUBLIC OF CONGO

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.4</b>
<b>2. Country assessment</b>	<b>2.1 – 2.10</b>
<b>3. Main categories of claim</b>	<b>3.1 – 3.5</b>
Opposition political activists or members of former rebel forces	3.6
Members of non-government organisations (NGOs)	3.7
Non-Banyamulenge Tutsis	3.8
Banyamulenge Tutsis	3.9
General situation in eastern regions: people of Hema or Lendu ethnicity	3.10
Prison conditions	3.11
<b>4. Discretionary Leave</b>	<b>4.1 – 4.2</b>
Minors claiming in their own right	4.3
Medical treatment	4.4
<b>5. Returns</b>	<b>5.1 – 5.5</b>
<b>6. List of source documents</b>	

### 1. Introduction

- 1.1 This document evaluates the general, political and human rights situation in Democratic Republic of Congo (DRC) 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. Caseowners 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 Democratic Republic of Congo Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](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 Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners 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 Democratic Republic of Congo (DRC) is a republic with a president as the head of state. Cabinet is appointed by the ruling party in the parliament and the prime minister is also elected by the parliament. In December 2005, a national referendum to approve a revised

constitution to assist with preparations for general elections returned a large majority in favour. The new constitution was promulgated in February 2006.<sup>1</sup>

- 2.2** The Transitional National Government (TNG) was formed on 30 June 2003 with the aim of ending the five-year conflict between the Government and the rebel forces that started in August 1998. There are also five 'citizens' institutions' an Observatory for Human Rights, a Truth and Reconciliation Commission, a High Authority for Media, an Ethics and Anti-Corruption Commission, and the Independent Electoral Commission. Forces of the United Nations Mission for Congo (MONUC) have been deployed in the country since 1999.<sup>2</sup>
- 2.3** President Joseph Kabila was the head of the TNG which also comprised four Vice-Presidents (Jean-Pierre Bemba, Azarias Ruberwa, Arthur Z'Ahidi Ngoma and Yerodia Abdoulaye Ndombasi), 36 Ministers and 25 Deputy Ministers. These were drawn from the previous administration, the Mayi-Mayi (Mai Mai) militia, the rebel forces (Congolese Rally for Democracy RCD-Goma, Congolese Rally for National Democracy RCD-N, Congolese Rally for Democracy – Liberation Movement RCD-ML and the Congo Liberation Movement MLC), unarmed political opposition and civil society.<sup>3</sup>
- 2.4** The three-year transitional period drew to a close with multi-party presidential and National Assembly elections in July 2006, and presidential runoff and provincial assembly elections in October 2006. Voters elected Joseph Kabila president and gave his Alliance for the Presidential Majority (AMP) coalition a majority of legislative seats in elections that international observers considered credible. Kabila was inaugurated on 6 December 2006 and nominated Antoine Gizenga as prime minister later that month. In January 2007, a 108 seat Senate was indirectly elected, in which the AMP holds more than half the seats, with allies of defeated presidential candidate Jean-Pierre Bemba holding 20 seats. In February 2007, President Kabila and Prime Minister Gizenga announced a government of 60 Ministers made up of six ministers of state, 34 ministers, and 20 deputy ministers.<sup>4</sup>
- 2.5** Violence broke out in the Bas Congo Province in February 2007 after supporters of the Bandu Dia Kongo movement protested against the results of the senatorial and gubernatorial elections in the province. Unhappy that the opposition dominated provincial assemblies in Kinshasa and Bas Congo elected members of the ruling party as state governors, the protesters alleged that the January election was rigged. The United Nations estimated that 134 people died as a result of the violence, including members of the security forces.<sup>5</sup>
- 2.6** Jean-Pierre Bemba accepted his 2006 presidential election defeat after an initial appeal to the Supreme Court. However, Bemba's armed guards refused to lay down their weapons and join the national army in accordance with the agreed deadline and this led to two days of intense clashes between them and government troops in Kinshasa in March 2007. The number of those killed is not known, but European Union diplomats estimated that up to 600 people died during the clashes. Mr Bemba's allies condemned what they described as the arbitrary arrest and intimidation of its members, but President Kabila insisted that his troops had put down an armed rebellion and threatened to issue a warrant for Bemba's arrest

<sup>1</sup> Home Office COI Service Democratic Republic of Congo (DRC) Country of Origin Information Report 2007 (Background Information: Constitution & Political System), Foreign and Commonwealth Office (FCO) Country Profile 2007: Democratic Republic of Congo & U.S Department of State Background Note: Democratic Republic of Congo

<sup>2</sup> COIS DRC Country Report 2007 (Background Information: Political System) & U.S. Department of State report on Human Rights Practices (USSD) - 2006: Democratic Republic of Congo (Introduction)

<sup>3</sup> COIS DRC Country Report 2007 (Background Information: Political System) & FCO Country Profile 2007: Democratic Republic of Congo

<sup>4</sup> COIS DRC Country Report 2007 (Background Information: Political System), FCO Country Profile 2007: Democratic Republic of Congo & USSD 2006: Democratic Republic of Congo (Introduction)

<sup>5</sup> COIS DRC Country Report 2007 (Background Information: Recent Developments & Human Rights: Freedom of Religion), British Broadcasting Corporation (BBC) News 'UN calls for DR Congo death probe' dated 8 February 2007, BBC News 'Congo sect in deadly poll clashes' dated 2 February 2007 & IRIN: DRC 'Up to 20 killed in political unrest' dated 9 May 2007

despite his immunity as a senator. Bemba initially took refuge in the South African embassy, but in April 2007 he was given permission to travel to Portugal for medical treatment on his leg. In Bemba's absence, the opposition boycotted parliament on the grounds of lack of safety and harassment, but later returned after being promised talks with President Kabila. Jean-Pierre Bemba has remained in Portugal since the end of the sixty day period he was given to seek medical treatment.<sup>6</sup>

- 2.7** Government control of certain areas of the country remains weak, particularly in remote areas of the east, including North and South Kivu provinces, the Ituri District of Orientale Province, and northern Katanga Province, where a number of armed groups continue to operate. Armed groups in these areas continue to commit numerous, serious abuses including unlawful killings, disappearances, serious sexual abuses, torture, and the recruitment and retention of child soldiers. Frequent outbreaks of fighting in the east also continue to cause civilian casualties and displacement.<sup>7</sup>
- 2.8** In all areas of the country the Government's human rights record remained poor in 2006, and numerous serious abuses continue to be committed by the Congolese Army (FARDC). Unlawful killings, disappearances, torture, rape, and arbitrary arrest and detention by security forces increased during 2006. Harsh conditions in prison and detention facilities, prolonged pre-trial detention, and arbitrary interference with privacy, family and home also remained serious problems. In 2006, the Security forces continued to recruit and retain child soldiers and to compel forced labour by adults and children. They continued to abuse press freedom, particularly during the election campaign, whilst broadcast stations owned by Jean-Pierre Bemba promoted ethnic hatred. Government corruption also remained pervasive during 2006 and the security forces restricted Non-governmental organisations (NGOs).<sup>8</sup>
- 2.9** The law provides for an independent judiciary, however, in practice the judiciary remains poorly paid, ineffective, and subject to influence by government officials. Low salaries have compounded corruption and few citizens have access to legal representation. Justice for victims of human rights abuses is sparse, but in 2006 some trials were carried out and perpetrators of abuses sent to prison. In March 2006, the TNG transferred custody of Thomas Lubanga of the Ituri militia Union of Congolese Patriots (UPC) to the International Criminal Court on charges of war crimes and crimes against humanity for the conscription and recruitment of child soldiers.<sup>9</sup>
- 2.10** Societal discrimination on the basis of ethnicity continued to be practised widely by members of virtually all ethnic groups in 2006 and this was evident in private hiring patterns in some cities. There were no reports during 2006 of government efforts intended to address the discrimination. Ethnic conflict or friction is apparent in several areas of the country: between the Hema and Lendu around Bunia in Orientale province, between

<sup>6</sup> COIS DRC Country Report 2007 (Background Information: Recent Developments), BBC News 'DR Congo's Bemba to stay abroad' dated 10 June 2007, BBC News 'Opposition leader leaves DR Congo' dated 11 April 2007, BBC News 'Up to 600 dead in Congo clashes' dated 27 March 2007, BBC News 'Kabila warns Dr Congo's ex-rebel' dated 26 March 2007, BBC News 'Army regains control of Kinshasa' dated 23 March 2007 & IRIN: DRC 'Echoes of the past as Bemba guards fight government forces' dated 23 March 2007

<sup>7</sup> COIS DRC Country Report 2007 (Human Rights: Introduction & Security Situation – General), FCO Country Profile 2007: Democratic Republic of Congo & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

<sup>8</sup> COIS DRC Country Report 2007 (Human Rights: Introduction, Security Situation – General & Security Forces), FCO Country Profile 2007: Democratic Republic of Congo & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

<sup>9</sup> COIS DRC Country Report 2007 (Human Rights: Judiciary), USSD 2006: Democratic Republic of Congo (Introduction & Section 1), FCO Country Profile 2007: Democratic Republic of Congo & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

Congolese Tutsis (Banyamulenge) and other groups in the Kivus, and between the baLuba of Kasai and the Lunda of Katanga. In 2006, the FARDC and other security forces sometimes harassed, arbitrarily arrested, and threatened Tutsis, including the Banyamulenge ethnic group, in North and South Kivu provinces.<sup>10</sup>

### 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 Democratic Republic of Congo (DRC). 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 instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Opposition political activists or members of former rebel groups**
- 3.6.1** The majority of asylum and/or human rights claimants cite a fear of persecution by the DRC authorities because of the claimant's political activities or membership of, or association with a member of, a former rebel group.
- 3.6.2 *Treatment.*** The peace agreement and the establishment of the TNG in June 2003 embraced the range of interest groups in the country. Led by Joseph Kabila, the TNG was drawn from the previous administration, the Mayi-Mayi (Mai Mai) militia, the rebel forces (Congolese Rally for Democracy RCD-Goma, Congolese Rally for National Democracy RCD-N, Congolese Rally for Democracy – Liberation Movement RCD-ML and the Congo Liberation Movement MLC), unarmed political opposition and civil society. The transitional constitution stated that political pluralism should be recognised and that all Congolese

<sup>10</sup> COIS DRC Country Report 2007 (Human Rights: Ethnic Groups) & USSD 2006 (Section 5)

should have the right to create a political party or to become a member of a party of their choice. As a result, most former rebel groups are authorised to act as political parties.<sup>11</sup>

- 3.6.3** New legislation governing political activity was passed in 2004. Political parties are free to hold meetings and campaign, but must first register with the Ministry of the Interior. This last restriction, which has been in place since 1999, is contested by the main political parties, such as the Union for Democracy and Social Progress (UDPS), which argue that they have been registered as political parties since the national conference in the early 1990s, and do not need to do so again.<sup>12</sup>
- 3.6.4** There were reports of political prisoners and detainees during 2006 and the Government sometimes permitted access to them by international groups. During the year, political parties represented in the TNG could generally gain access to state radio and television, but security forces reportedly arrested, detained and harassed politicians and other high-profile figures for criticising the president or other members of the TNG. The constitution provides for the right of freedom of peaceful assembly, however in 2006 the security forces restricted the rights of several political party members to organise, hold protests, campaign, and publicise their views in the run up to the elections.<sup>13</sup>
- 3.6.5** Having initially refused to take part in the TNG formed in June 2003 an August 2004 party-issued statement indicated that although the UDPS is not part of the TNG, the organisation was fully participating in the transition process. On 30 June 2005, local authorities in Kinshasa denied the UDPS party permission to conduct marches protesting at the extension of the transition. The authorities cited public safety reasons for their refusal following statements by UDPS leaders encouraging citizens to overthrow the government. In November 2005, a senior UDPS official was found dead in mysterious circumstances and in December 2005 the party boycotted the referendum on the election and also missed the party candidate registration deadline in March 2006. On 10 March 2006, UDPS-organised demonstrations against election delays were dispersed by riot police and around 40 demonstrators were temporarily detained. On 22 March 2006, demonstrators again took to the streets of Kinshasa to demand that the UDPS be integrated into the country's election organisational structures. Throughout the campaigning, elections and post-election events from April to September 2006 the UDPS maintained its boycott, citing electoral irregularities and organised demonstrations and spoiling tactics against rival parties and the electoral process. As a result of its detachment from the electoral process, the treatment of UDPS members is considered to be significantly better in 2007 than it was in 2005 and the number of human rights abuses of UDPS members reported to MONUC and Embassies in Kinshasa has diminished drastically.<sup>14</sup>
- 3.6.6** Nearly 18 million of the 25 million registered voters participated in the July 2006 presidential and parliamentary elections and more than 15 million voters participated in the October 2006 presidential run-off and provincial elections. Following the elections, the National Assembly was installed in September 2006 and Joseph Kabila was inaugurated in December 2006. President Kabila appointed Antoine Gizenga as prime minister who announced his cabinet in February 2007. International observers identified some irregularities in the 2006 elections relating to the campaign period, voting procedures, and the collection of election materials. Still, the Supreme Court dismissed claims by presidential candidate Jean-Pierre Bemba that massive fraud had occurred and the elections were considered credible by international observers. There were reports of isolated cases of

---

<sup>11</sup> COIS DRC Country Report 2007 (Background Information: Political System & Human Rights: Political Affiliation) & FCO Country Profile 2007: Democratic Republic of Congo

<sup>12</sup> COIS DRC Country Report 2007 (Human Rights: Political Affiliation)

<sup>13</sup> COIS DRC Country Report 2007 (Human Rights: Political Affiliation)

<sup>14</sup> COIS DRC Country Report 2007 (Background Information: Political System, Human Rights: Political Affiliation & Annex B – Political Organisations) & letter from the British Embassy in Kinshasa dated 7 June 2007

violence during the election process, but there is no evidence to suggest that the violence was intended to prevent, or that it prevented, citizens from voting.<sup>15</sup>

**3.6.7** There were widespread allegations of corrupt practices in the conduct of the senatorial and gubernatorial elections of January 2007 and violence broke out in the Bas Congo Province in February 2007 after supporters of the Bandu Dia Kongo movement protested against the results of the elections in the province. The United Nations estimated that 134 people died as a result of the violence, including members of the security forces. Although Jean-Pierre Bemba accepted the 2006 presidential election result, the refusal of his armed guards to join the national army led to intense clashes between Bemba's supporters and government troops in Kinshasa in March 2007. Mr Bemba's allies condemned what they described as the arbitrary arrest and intimidation of its members, but President Kabila insisted that his troops had put down an armed rebellion. Mr Bemba travelled to Portugal after initially taking refuge in the South African embassy, and in his absence the opposition boycotted parliament on the grounds of lack of safety and harassment. During this period of unrest, the Presidential Guard seized and ransacked the MLC headquarters and targeted the homes of MLC politicians, robbing and threatening their families. However, opposition parties later returned to parliament after being promised talks with President Kabila and reports of politically-motivated harassment on all sides have diminished.<sup>16</sup>

**3.6.8 *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.

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

### **3.6.10 *Caselaw.***

**MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023.** The Tribunal found that despite indications from recent political events in DRC that the UDPS is perceived as less of a threat than previously, the guidance given in **AB and DM Democratic Republic of Congo (DRC) CG [2005] UKAIT 00118** and confirmed in **MK DRC CG [2006] UKAIT 00001** remains correct. The Tribunal found that low level members/sympathisers of the UDPS will not be at real risk on return to DRC in the current climate, but concluded that it is too early in the process of transition of DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists.

**AB and DM (DRC) CG [2005] UKIAT 00118.** Risk categories reviewed – Tutsis added. The Tribunal reviewed the risk categories established in **M (DRC) [2004] UKIAT 00075** and **VL (DRC) CG [2004] UKIAT 00007**.

'...We also confirm as an existing risk category those having or being perceived to have a military or political profile in opposition to the government. The risk fluctuates in accordance with the political situation. On the basis of the evidence before us, the current position is as follows. The Tribunal accept that there is a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasa UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. At present there is a lesser risk for PALU members. There is a potential risk for DSP members who are considered as potential or actual collaborators for JP Bemba and his MLC

<sup>15</sup> COIS DRC Country Report 2007 (Background Information: Political System & Human Rights: Political Affiliation), FCO Country Profile 2007: Democratic Republic of Congo, USSD 2006: Democratic Republic of Congo (Introduction & Section 3) & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

<sup>16</sup> Letter from the British Embassy in Kinshasa dated 7 June 2007, COIS DRC Country Report 2007 (Background Information: Recent Developments & Human Rights: Political Affiliation), COI Service Country of Origin Information Request: Request Number 06/07-41 & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

movement. The risk for those associated with the Mobutu regime has considerably lessened. It is clear from the background evidence that close relatives of Mobutu have returned to DRC from exile: CIPU report paragraph 6.110-2. It is reported that those not suspected of collaboration with the rebels would no longer be at risk and affiliation to the MPR would not normally involve the risk of political persecution. No repression has been organised against PDSC members since the death of Laurent Kabila. (para 51)

The evidence before us sought to identify a number of further potential risk categories: rebel movement members now in opposition to their own movement and those who come from the east (including Kivu) but are returned to Kinshasa without a political or military profile. However, these issues do not arise in the present appeal and we do not have sufficient evidence to make it appropriate to reach conclusions about them. (para 51)

**3.6.11 Conclusion. Non UDPS opposition parties/formal rebel groups.** There has been a recent upsurge in politically related violence in Kinshasa and the Bas Congo Province, and Jean-Pierre Bemba's allies have condemned what they described as the arbitrary arrest and intimidation of its members during the clashes of March 2007. However, there is no evidence of systematic persecution of opposition party activists by the authorities and since the events in Bas Congo Province and Kinshasa, reports of politically motivated harassment on all sides have diminished. Members of political parties are not at risk of persecution on the basis of membership alone. Cases in which the applicant has a record of political activity and of ill-treatment amounting to persecution, and establishes a well-founded fear of future persecution are therefore likely to be very rare. In such cases the grant of asylum will be appropriate. Members of political parties who have in the past encountered ill-treatment by the authorities will not necessarily have a well-founded fear of persecution in the future. Former rebel forces groups are represented in the recently elected National Assembly and the Senate having stood in DRC's first peacetime democratic elections. Accordingly, members or associates of these groups are not likely to be at risk of persecution by state authorities. The grant of asylum is not therefore likely to be appropriate in such cases.

**3.6.12 UDPS members or activists.** While mainstream political and former rebel groups represented in the National and Provincial Assemblies face no systematic risk of persecution based on party activity, the UDPS has, in recent years, been somewhat of an exception. In the build up to the July 2006 elections the party maintained its boycott of the electoral process and organised numerous demonstrations which were forcefully suppressed by the security forces. While the party has remained in self-imposed exile from mainstream politics, activists who have brought themselves to the adverse attention of the authorities have, on occasion, been liable to face a real risk of persecution. However, the treatment of UDPS members is considered to be significantly better in 2007 than it was in 2005. Since June 2006, the number of human rights abuses of UDPS members reported to MONUC and Embassies in Kinshasa has diminished drastically. As highlighted in **MM (UDPS members - Risk on return) CG [2007] UKAIT 00023**, the available information does not suggest that low level support or membership (i.e. no known activism) of the UDPS alone automatically constitutes grounds for the grant of asylum. Caseowners should, therefore, carefully assess the claimant's level of involvement before deciding on whether their particular circumstances meet the 'real risk' threshold.

### **3.7 Members of non-government organisations (NGOs)**

**3.7.1** Members of non-governmental organisations may make an asylum and/or human rights claim based on a fear of intimidation, harassment or ill-treatment by the DRC Government in order to prevent the full and accurate reporting of human rights issues. Some members of NGOs may claim a similar fear of rebel forces for the same reason.

**3.7.2 Treatment.** During 2006, the TNG generally co-operated with international governmental organisations and NGOs and permitted international humanitarian and human rights NGOs access to conflict areas. A wide variety of domestic and international human rights organisations investigated and published findings on human rights cases during 2006 and the Human Rights Ministry and the National Observatory for Human Rights (ONDH) worked with NGOs and UN representatives responding to their requests and recommendations. The

main Kinshasa-based domestic human rights organisations included Voices for the Voiceless (VSV); Groupe Jeremie; the Committee of Human Rights Observers; and the Christian Network of Human Rights and Civic Education Organisations. Prominent organisations operating in areas outside Kinshasa included Heirs of Justice in South Kivu; Lotus Group and Justice and Liberation in Kisangani; and Justice Plus in Bunia. In 2006, the TNG's human rights bodies met with domestic NGOs and sometimes responded to their inquiries, but took no known actions.<sup>17</sup>

- 3.7.3** During 2006, prison officials sometimes obstructed NGO access to detainees, and the security forces harassed and arrested domestic human rights advocates. 9 UN peacekeepers were killed by armed groups during the year. In 2005 and 2006, NGO workers continued to work in conditions of extreme danger, especially in eastern regions. Congolese human rights activists have previously been victims of torture, extra-judicial execution and arbitrary arrest. In most areas the local political and military authorities are hostile to the activities of the local NGOs, which they fear may expose their involvement in human rights violations. In 2005 and the first half of 2006, it was reported that human rights activists were frequently called in by the authorities for questioning or to settle so-called "administrative matters" that were in reality thinly disguised acts of intimidation; their offices were reportedly also subject to unannounced arbitrary visits by security officials. In some cases, human rights activists have been threatened with death at gunpoint.<sup>18</sup>
- 3.7.4 *Sufficiency of protection.*** If this category of claimants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to these authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents in eastern and northern DRC, there is no evidence to indicate that such individuals would not be able to seek, and receive sufficient protection from the authorities in government-controlled areas.
- 3.7.5 *Internal relocation.*** The law provides for freedom of movement within DRC, however, the TNG occasionally restricted these rights in areas under its control in 2006 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Local authorities in North and South Kivu Provinces routinely required travellers to present official travel orders from an employer or TNG official during 2006 and armed groups in the east sometimes restricted or prevented freedom of movement. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the TNG took office. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.<sup>19</sup>
- 3.7.6** If a claimant's fear is of ill-treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.
- 3.7.7 *Conclusion.*** While activists may at times be subject to questioning or intimidation by the authorities, members of NGOs or human rights organisations are not at risk of mistreatment amounting to persecution on the basis of membership alone. Although some human rights activists in northern and eastern regions have been subject to mistreatment in the unstable

<sup>17</sup> COIS DRC Country Report 2007 (Human rights: Human Rights Institutions, Organisations and Activists)

<sup>18</sup> COIS DRC Country Report 2007 (Human rights: Human Rights Institutions, Organisations and Activists) & USSD 2006 (Section 4)

<sup>19</sup> COIS DRC Country Report 2007 (Human rights: Freedom of Movement) & USSD 2006 (Section 2)

regions of northern and eastern DRC, there is no evidence of such activists being at risk of persecution by the authorities in Kinshasa. A claimant who fears mistreatment at the hands of non-state agents will similarly be safe in Kinshasa or other government-controlled areas where they will also be able to seek protection from the state authorities. It is therefore unlikely that the grant of asylum will be appropriate in such cases.

### 3.8 Non-Banyamulenge Tutsis

**3.8.1** Some individuals will make an asylum or human rights claim based on their mistreatment by either the DRC authorities, or non state agents particularly in western DRC on the grounds of their actual or perceived Tutsi origin.

**3.8.2 *Treatment.*** At times of tension and anti-Rwandan feeling, numbers of people living in Kinshasa or other areas of western DRC have been assaulted or arrested by the authorities on grounds of their Tutsi ethnic origin, many because of their supposed Tutsi features. The most severe forms of anti-Tutsi feeling were demonstrated in August 1998 and in the succeeding months, after the Kabila Government broke with its erstwhile Rwandan supporters and incited hatred against Tutsis. At that time, many people of Tutsi origin living in western DRC left the area, sought asylum abroad or were resettled in other countries.<sup>20</sup>

**3.8.3** Members of former rebel groups dominated by Tutsis were appointed in the TNG and during the 2006 elections a Tutsi from North Kivu Province was elected to the National Assembly. There are Tutsi members of both houses of parliament, including Senator Moise Nyuragabo who was elected for Kinshasa province and there are also Tutsi members of provincial assemblies and provincial governments. Societal discrimination on the basis of ethnicity is practiced by members of virtually all of DRC's approximately 400 ethnic groups and in 2006 the FARDC and other security forces sometimes harassed, arbitrarily arrested and threatened Tutsis. Still, there have been no recent reports that Tutsis have been subjected to any serious abuses by either government authorities or citizens. A National Institute for Social Security (INSS) centre for Tutsis who were at risk was established in Kinshasa in 1998 with support from the Ministry of the Interior, ICRC, and international donors. However in the light of the greatly diminished risk of abuse and the increased tolerance of the local population the centre was closed in June 2003.<sup>21</sup>

**3.8.4** Unlike in 2004 when numerous anti-Tutsi articles and government-sponsored hate speeches and broadcasts were reported, anti-Tutsi sentiments - including appeals to force Tutsis into exile and practise discrimination towards Tutsis in regard to citizenship rights - were not expressed in private media or government-affiliated media in 2005. Also, there were no known reports that government members encouraged hate speeches or other any other intimidatory actions against Tutsis in 2005 or 2006.<sup>22</sup>

**3.8.5 *Sufficiency of protection.*** If this category of claimants' fear is of ill-treatment/persecution by the state authorities, they cannot apply to those authorities for protection. In October 2004, the Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups in eastern DRC.<sup>23</sup> The authorities have therefore demonstrated their capacity to protect Tutsis from rival ethnic groups. If the ill-treatment/persecution is at the hands of non-state agents there is no evidence that such individuals would not be able to seek adequate protection from the authorities.

**3.8.6 *Internal relocation.*** The law provides for freedom of movement within DRC, however, the TNG occasionally restricted these rights in areas under its control in 2006 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Local authorities in North and South Kivu Provinces routinely required travellers to present official

<sup>20</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>21</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups) & Letter from the British Embassy in Kinshasa dated 7 June 2007

<sup>22</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>23</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

travel orders from an employer or TNG official during 2006 and armed groups in the east sometimes restricted or prevented freedom of movement. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the TNG took office. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.<sup>24</sup>

**3.8.7** If a claimant's fear is of ill-treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.

### **3.8.8 Caselaw.**

**AB and DM (DRC) CG [2005] UKIAT 00118.** Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to DRC, specifically, the risk to ethnic Tutsis and to failed asylum seekers in general. The Tribunal reviewed the risk categories established in **M (DRC) [2004] UKIAT 00075 and VL (DRC) CG [2004] UKIAT 00007** to add those of Tutsi origin to the list. The current risk categories are:

“those with a nationality or perceived nationality of a state regarded as hostile to DRC and in particular those who have or presumed to have Rwandan connections or are of Rwandan origins” (para 51(i)).

“those who are Tutsi (or Banyamulenge) or are perceived to be Tutsi (or Banyamulenge)” with the possible exception of high-level officials of RCD/Goma (para 51(ii)).

“those having or perceived to have a military or political profile in opposition to the government” (para 51(iii)).

“In assessing the risk for Rwandans or Tutsis, much depends on the perception of the authorities. A person is more likely to be viewed as Tutsi if he or she shares that groups distinctive physical characteristics. Dialect, tribal links and geographical origins will also be relevant. The assessment must be made on the basis of a careful analysis of an appellant's ethnicity, background and profile“[emphasis added] (para 54 in full below).

“In the light of our findings this determination is to be read as replacing the existing country guidance cases on DRC save for **VL** for what it says about the approach to the issue failed asylum seekers. It also replaces **RK (obligation to investigate) CG [2004] UKIAT 00129**, but we would emphasise that the latter remains as a legally important reported case in respect of what it says about the obligation to investigate.” (para 52)

“The Tribunal would reiterate some earlier observations on the task of assessing whether a person falls within the new second risk category as now extended. There are two main aspects to this. Firstly on the evidence before us, most but not all Tutsis would be at risk. As noted in paragraphs 39-40, some Tutsis may be able to obtain the protection of MONUC albeit in practice they may be limited to those with wealth who are high-level officials within RCD/Goma and appear able to look to the authorities for protection.” (para 53)

“Secondly, as with the military or political category, much depends on the perception of the authorities as to whether they view someone adversely. It is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be scrutinised carefully. Given that Tutsis are described as being physically distinct from other tribes (CIPU report October 2004 para 6.71) a person is more likely to be viewed as a Tutsi by the authorities if he or she has those distinctive characteristics. Similarly those whose dialect, tribal links and geographical origins link them

<sup>24</sup> COIS DRC Country Report 2007 (Human rights: Freedom of Movement) & USSD 2006 (Section 2)

closely to Tutsis such as the Banyamulenge would also appear to fall within the at risk category. However, the mere fact of coming from the East or being of mixed ethnicity is unlikely without more to give rise to a perception of being Tutsi. The assessment must be made on the basis of a careful analysis of an appellant's ethnicity, background and profile. [emphasis added] (para 54)

The appeal of the first appellant was allowed. The Tribunal found that he would be at risk by dint of his perceived Tutsi ethnicity and his previous political activity (paras 55-57). The appeal of the second appellant was dismissed on credibility grounds. The Tribunal found that he did not fall into one of the known risk categories (para 58).

**MK (DRC) CG [2006] UKAIT 00001 heard 29 November 2005. AB & DM** confirmed. The June 2005 HJT report concerning suspension by the Netherlands of the return of asylum seekers to DRC does not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in AB & DM.

**R (on the application of MUKENDI) v SSHD [2006] EWHC 4565 (Admin)**

The Secretary of State was entitled to reject an asylum seeker's further representations as not constituting a fresh claim for asylum, and the mere assertion by an asylum seeker that she was a Tutsi and as such at risk of persecution if removed to the Democratic Republic of Congo was of itself insufficient to found a claim for asylum.

In the circumstances, the Secretary of State had been entitled to treat the further representations as not constituting a fresh claim. No fresh evidence or fresh material had been adduced by M to take her claim beyond the matters that had been before the adjudicator and rejected. A mere assertion by M that she was, or was likely to be perceived in DRC as being, a Tutsi and therefore in danger if returned there was not sufficient to support a claim for asylum. **AB and DM (Risk categories reviewed-Tutsis added) DRC CG (2005) UKIAT 00118** considered. Application refused.

**3.8.9 Conclusion.** While the situation for Tutsis deteriorated somewhat during 2004 with increased instances of sporadic anti-Tutsi media campaigns, no such incidents were reported in 2005 or 2006 to date and there is no current evidence of deliberate attacks or systematic ethnic discrimination which might suggest that someone of Tutsi origin would be at risk of discrimination or ill-treatment amounting to persecution at the hands of state authorities in Kinshasa or other government-controlled areas on the basis of their ethnic origin alone. Moreover, there is no evidence that those fearing persecution by non-state agents would not be able to seek and receive adequate protection from the state authorities or internally relocate to escape this threat. The grant of asylum in such cases is therefore not likely to be appropriate.

**3.8.10** The **AB and DM** and **MK** Country Guidance caselaw (summarised above) adds Tutsis to the 'at risk' categories and the judgments indicate that most Tutsis and those perceived as Tutsis are likely to be at risk of mistreatment. The judgments do not however imply that all individual claimants accepted as Tutsis will automatically be at risk of persecution simply on the basis of their ethnicity, rather that ethnicity in addition to other factors such as political activity are likely to bring such individuals to the adverse attention of the authorities resulting in mistreatment which may amount to persecution. Caseowners should assess each claim on the basis of a careful analysis of an individual's ethnicity, background and profile, with well-connected, more affluent Tutsis being unlikely to encounter / in a better position to avoid any risk of mistreatment.

### **3.9 Banyamulenge Tutsis**

**3.9.1** Some claimants will make an asylum and/or human rights claim based on their mistreatment by either the DRC authorities and/or non-state agents on the grounds of their Banyamulenge ethnic origin.

**3.9.2 Treatment.** The Banyamulenge is a group of primarily ethnic Tutsis who before independence migrated from Burundi and Rwanda into the Mulenge Mountains of South Kivu. Like the Banyarwanda living in North-Kivu, the Banyamulenge were drawn into the

inter-ethnic violence that spilled into Zaire (now DRC) from Rwanda and Burundi in the 1990s.<sup>25</sup>

- 3.9.3** In 2004, Government forces and armed groups targeted civilians on the basis of ethnicity for extra-judicial killings, rape, looting, and arrest. For example, the seizure of Bukavu by ex-RCD/G combatants in late May and early June 2004 and the forced deportation of Congolese of Rwandan origin in July 2004. The Bukavu revolt and the Gatumba massacre sharply increased fear and hatred between Tutsi and Banyamulenge peoples and other ethnic groups in eastern DRC.” In June 2004, killings and other abuses of Banyamulenge people by pro-government forces were claimed as the reason why rebel forces took control of Bukavu in June 2004.<sup>26</sup> In October 2004, there were violent protests in the eastern town of Uvira against returning Banyamulenge refugees. UNHCR and World Food Programme (WFP) had aided 1,500 families who returned via the Uvira transit centre. That same month, the Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups. In 2006, the FARDC and other security forces sometimes harassed, arbitrarily arrested, and threatened the Banyamulenge ethnic group in North and South Kivu provinces.<sup>27</sup>
- 3.9.4** The draft post transition constitution addresses the extremely touchy question of the Banyamulenge Tutsis long-settled in the region whose status as Congolese citizens has been heavily politicised and manipulated over the past 25 years. The draft constitution recognises: “as Congolese citizens all those that were resident in DRC at independence in 1960.” In November 2004 a law effectively granting citizenship to the Kinyarwanda speaking communities in the east (including the Banyamulenge) was passed. The law grants citizenship upon individual application to those whose tribes were present in the Congo at independence in 1960.<sup>28</sup>
- 3.9.5** The issue of statelessness of the Banyamulenge might appear to have been solved by the 2004 nationality law however this has not yet produced tangible results. In practice there are no examples of cases of Banyamulenge who have successfully obtained Congolese nationality. During the registration of electors in 2005 there were some “incidents” reported over the registration in the Kivus by “Tutsis” being Banyamulenge or otherwise “alien Tutsis” whose nationality was reported to be unclear.<sup>29</sup>
- 3.9.6** **Sufficiency of protection.** If the claimants’ fear is of ill-treatment/persecution by the state authorities, they cannot apply to those authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents, the hostile and suspicious view of Banyamulenge by the state authorities means that such individuals are unlikely to be able to receive adequate protection from the authorities.
- 3.9.7** **Internal relocation.** The law provides for freedom of movement within DRC, however, the TNG occasionally restricted these rights in areas under its control in 2006 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Local authorities in North and South Kivu Provinces routinely required travellers to present official travel orders from an employer or TNG official during 2006 and armed groups in the east sometimes restricted or prevented freedom of movement. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the TNG took office. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its

<sup>25</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>26</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>27</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>28</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

<sup>29</sup> COIS DRC Country Report 2007 (Human rights: Ethnic Groups)

inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.<sup>30</sup>

**3.9.8** As the claimants' fear is of either ill-treatment/persecution by the state authorities, or the authorities unwillingness to provide sufficient protection against action taken by non-state agents, in-country relocation to a different area to escape this threat will not normally be a viable remedy.

### **3.9.9 Caselaw.**

**AB and DM (DRC) CG [2005] UKIAT 00118.** Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to DRC, specifically, the risk to ethnic Tutsis and to failed asylum seekers in general. The Tribunal reviewed the risk categories established in **M(DRC) [2004] UKIAT 00075 and VL (DRC) CG [2004] UKIAT 00007** to add those of Tutsi origin to the list. The current risk categories are:

“those with a nationality or perceived nationality of a state regarded as hostile to DRC and in particular those who have or presumed to have Rwandan connections or are of Rwandan origins” (para 51(i)).

“those who are Tutsi (or Banyamulenge) or are perceived to be Tutsi (or Banyamulenge)” with the possible exception of high-level officials of RCD/Goma (para 51(ii)).

“those having or perceived to have a military or political profile in opposition to the government” (para 51(iii)).

“In assessing the risk for Rwandan’s or Tutsi’s, much depends on the perception of the authorities. A person is more likely to be viewed as Tutsi if he or she shares that groups distinctive physical characteristics. Dialect, tribal links and geographical origins will also be relevant. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile” [*emphasis added*] (para 54).

“In the light of our findings this determination is to be read as replacing the existing country guidance cases on DRC save for **VL** for what it says about the approach to the issue failed asylum seekers. It also replaces **RK (obligation to investigate) CG [2004] UKIAT 00129**, but we would emphasise that the latter remains as a legally important reported case in respect of what it says about the obligation to investigate.” (para 52)

“The Tribunal would reiterate some earlier observations on the task of assessing whether a person falls within the new second risk category as now extended. There are two main aspects to this. Firstly on the evidence before us, most but not all Tutsis would be at risk. As noted in paragraphs 39-40, some Tutsis may be able to obtain the protection of MONUC albeit in practice they may be limited to those with wealth who are high-level officials within RCD/Goma and appear able to look to the authorities for protection.” (para 53)

“Secondly, as with the military or political category, much depends on the perception of the authorities as to whether they view someone adversely. It is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be scrutinised carefully. Given that Tutsis are described as being physically distinct from other tribes (CIPU report October 2004 para 6.71) a person is more likely to be viewed as a Tutsi by the authorities if he or she has those distinctive characteristics. Similarly those whose dialect, tribal links and geographical origins link them closely to Tutsis such as the Banyamulenge would also appear to fall within the at risk category. However, the mere fact of coming from the East or being of mixed ethnicity is unlikely without more to give rise to a perception of being Tutsi. The assessment must be made on the basis of a careful analysis of an appellant’s ethnicity, background and profile.” [*emphasis added*] (para 54)

The appeal of the first appellant was allowed. The Tribunal found that he would be at risk by dint of his perceived Tutsi ethnicity and his previous political activity (paras 55-57). The appeal of the second appellant was dismissed on credibility grounds. The Tribunal found that he did not fall into one of the known risk categories (para 58).

**MK (DRC) CG [2006] UKAIT 00001 heard 29 November 2005.** **AB & DM** confirmed. The June 2005 HJT report concerning suspension by the Netherlands of the return of asylum

<sup>30</sup> COIS DRC Country Report 2007 (Human rights: Freedom of Movement) & USSD 2006 (Section 2)

seekers to DRC does not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in AB & DM.

**3.9.10 Conclusion.** In spite of the introduction of citizenship legislation in November 2004, the new measures have yet to bring any meaningful improvement to the situation for the Banyamulenge which in practice remains unchanged. Banyamulenge are in a vulnerable and insecure position in the eastern Kivu provinces, and face discrimination amounting to persecution throughout DRC. If it is accepted that the claimant is of Banyamulenge origin, a grant of asylum is likely to be appropriate.

### **3.10 General situation in eastern regions: people of Hema or Lendu ethnicity**

**3.10.1** Claimants from the Ituri region of DRC may make an asylum and/or human rights claim based on mistreatment by the Lendu ethnic group because of their Hema ethnic origin and vice versa.

**3.10.2 Treatment.** Serious incidents of violence between the Lendu and Hema ethnic groups in the Ituri area in Orientale province, north-eastern DRC, have occurred since 2002. Serious human rights abuses have been perpetrated by both sides. Government forces and MONUC soldiers have been deployed to the area. In May 2004, 30 militia groups in the region signed a disarmament agreement with MONUC and the TNG and in June 2004 the International Criminal Court opened an investigation into alleged war crimes committed in DRC since 1 July 2002, focussing initially on Ituri.<sup>31</sup>

**3.10.3** The Ituri situation deteriorated sharply in the second half of 2004 with the disarmament programme hindered both by local militia leaders, and by the TNG's failure to integrate some of them into the national army. The security situation remained volatile in mid-2005, despite robust measures taken by FARDC with MONUC support since March 2005 to disarm combatants. However, the security situation improved significantly during the second half of 2005. The mid-October 2005 deployment of the FARDC integrated brigade to the goldmining areas of Kilo and Mongwalu, supported by MONUC, yielded immediate results against elements of the Congolese Revolutionary Movement (MRC). By the end of November 2005, 1,200 militia elements had surrendered to MONUC and FARDC, handing over several hundred weapons and ammunition.<sup>32</sup>

**3.10.4** Despite the gains on the military front in the second half of 2005, the overall security situation in the Ituri region remained fragile. Demobilised combatants who were not receiving their stipends under the disarmament, demobilisation and reintegration programme and had not been reintegrated into civilian life were susceptible to rejoining militias, which reportedly continued to recruit in Djugu and Irumu territories. There was an encouraging return of IDP's and refugees to the region in the second half of 2005, and thanks to the improved security situation there was increased access to vulnerable groups. However, the continued presence of uncontrolled armed groups in the east, coupled with harassment of civilians by unpaid government soldiers, often hindered the delivery of critical assistance to vulnerable populations.<sup>33</sup>

**3.10.5** In 2006, MRC, the Nationalist and Integrationist Front (FNI), and the Front for Patriotic Resistance in Ituri (FPRI) militia continued to commit abuses against citizens, including killings, abductions, rapes, and child soldier recruitment. The armed insurgencies also continued to displace thousands of civilians in the region. The Government reached provisional disarmament, demobilisation and reintegration agreements with the three remaining Ituri armed groups in 2006 and by the end of the year more than 4,800 combatants in Ituri District had voluntarily disarmed. Despite those agreements, sporadic

<sup>31</sup> COIS DRC Country Report 2007 (Human rights: Security Situation)

<sup>32</sup> COIS DRC Country Report 2007 (Human rights: Security Situation)

<sup>33</sup> COIS DRC Country Report 2007 (Human rights: Security Situation)

fighting continues between the FARDC and the FNI and the Government's control of certain areas in the east of the country remains weak.<sup>34</sup>

**3.10.6 Sufficiency of protection.** The Government is seeking to establish its authority throughout the entire country, but the Government's control in certain areas of the east of the country remains weak. As such the state is as yet not fully able to provide sufficient protection to either the Lendu or Hema in the Ituri region. The Government can however provide sufficient protection within areas fully under its control.

**3.10.7 Internal relocation.** The law provides for freedom of movement within DRC, however, the TNG occasionally restricted these rights in areas under its control in 2006 by establishing barriers and checkpoints on roads, at ports, airports and markets for security reasons. Local authorities in North and South Kivu Provinces routinely required travellers to present official travel orders from an employer or TNG official during 2006 and armed groups in the east sometimes restricted or prevented freedom of movement. Movement between areas under central government control and areas not under central government control can be hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the TNG took office. A newly paved road is being constructed between Goma and Kisangani provided by the German Agro Aid group and in mid-2006 only 30 miles remained to be built. This means that the east of the country will be linked to the capital via the road and the river Congo for the first time since the 1998-2002 civil conflict. In February 2007, Bravo Air Congo launched its inaugural flight from Kinshasa to Bakavu and intends to fly between the two cities twice a week.<sup>35</sup>

**3.10.8** Although there are practical difficulties in moving between areas under government control and areas which are not under government control relocation by river or air is possible and is not unduly harsh. Those who are in fear of non-state agents in areas dominated by rebel forces are able to safely relocate to a different area to escape this threat.

**3.10.9 Conclusion.** Despite tangible improvements in the Government's anti-rebel offensives and disarmament programmes in 2005 and 2006, the security situation in the Ituri region remains unstable and serious human rights abuses of the civilian population continue to be reported. Nevertheless, claimants who cite a serious risk of ill-treatment at the hands of non-state agents in the Ituri region as a consequence of their ethnic origin are able to escape that ill-treatment by relocating to Kinshasa or other government-controlled areas where they will, should the need arise, also be able to seek protection from the state authorities. It is therefore unlikely that the grant of asylum will be appropriate in such cases.

### **3.11 Prison conditions**

**3.11.1** Claimants may claim that they cannot return to DRC due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in DRC 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.

---

<sup>34</sup> COIS DRC Country Report 2007 (Human rights: Security Situation) & United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo

<sup>35</sup> COIS DRC Country Report 2007 (Human rights: Freedom of Movement) & USSD 2006 (Section 2)

- 3.11.3 Consideration.** Conditions in most large, central prisons were harsh and life threatening in 2006. The penal system continued to suffer from severe shortages of funds in 2006 and most prisons were severely overcrowded, in a poor state of repair, lacked sanitation facilities, or were not designed to detain persons. Healthcare and medical attention remained inadequate in 2006, and infectious diseases were a problem. In some cases, prison doctors were available; when they were however, they lacked medicines and supplies. Food remained inadequate and malnutrition was widespread in 2006. Women and juveniles sometimes were held separately from men in larger prisons but were not separated in other detention facilities. In 2006, there were credible reports that male prisoners raped other prisoners, including men, women and children.<sup>36</sup>
- 3.11.4** Conditions in smaller detention facilities were harsher than in larger prisons in 2006. These facilities were overcrowded and generally intended for short-term pre-trial detentions, but in practice were often used for lengthy detentions. Authorities often arbitrarily beat or tortured detainees. There usually were no toilets, mattresses, or medical care, and inmates often received insufficient amounts of light, air, and water. Such detention centres generally operated without a budget and with minimal regulation or oversight. Local prison authorities or influential individuals frequently barred visitors or severely mistreated particular detainees. Prison guards frequently required bribes from family members and NGOs to visit or provide detainees with food and other necessities.<sup>37</sup>
- 3.11.5** In 2006, the security services continued to operate numerous illegal detention facilities characterised by extremely harsh and life-threatening conditions. Military detention facilities had makeshift cells, including some that were located underground, that held military and sometimes civilian detainees. These facilities lacked adequate food and water, toilets, mattresses, and medical care. Members of the security services regularly abused, beat and tortured detainees and the authorities routinely denied access to family members, friends and lawyers.<sup>38</sup>
- 3.11.6** In general, the Government allowed the International Committee of the Red Cross (ICRC), MONUC, and many NGOs access to all official detention facilities in 2006. However, these organisations did not have access to the illegal detention facilities maintained by security forces.<sup>39</sup>
- 3.11.7** In March 2006, MONUC reported that very many people are arrested even though they have not committed any offence against Congolese criminal law. The limit on the time period for being kept under arrest without charge should not exceed 48 hours, but it is not observed in many cases, both in Kinshasa and in the provinces. The most shocking violation of human rights of people arrested are reports of instances of detainees being denied life saving treatment and treatment for physical or mental health conditions as well as violations of dignity which implies that a person may have been subjected to cruel, inhumane or degrading treatment, or to torture. Poor treatment remains common throughout the country and torture also takes place. These happen more frequently during arrests by those authorities who have no power to do so, and during illegal detention in police cells. Moreover there are more and more places countrywide where arrest and illegal detention are carried out, and that serious violation of human rights take place in the premises and cells of the Intelligence Service (ANR), the Directorate of General Migration (DGM), the National Security Council (CNS) and the Republican Guard (GR) where the report gives details of widespread abuse and accounts of torture for reasons ranging from illegal arrest, extortion of money, and political reasons.<sup>40</sup>
- 3.11.8 Conclusion.** Prison conditions in DRC are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, widespread abuse of

---

<sup>36</sup> COIS DRC Country Report 2007 (Human rights: Prison Conditions)

<sup>37</sup> COIS DRC Country Report 2007 (Human rights: Prison Conditions)

<sup>38</sup> COIS DRC Country Report 2007 (Human rights: Prison Conditions)

<sup>39</sup> COIS DRC Country Report 2007 (Human rights: Prison Conditions)

<sup>40</sup> COIS DRC Country Report 2007 (Human rights: Prison Conditions)

inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in DRC are likely to reach the Article 3 threshold. Where caseowners believe that an individual is likely to face imprisonment on return to DRC they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseowners consider that this may be the case they should contact a Senior Caseworker for further guidance. Where individual claimants are able to demonstrate a real risk of imprisonment on return to DRC and exclusion is not justified, 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 DRC the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and 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.

**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 favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to DRC 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 public health care system in DRC has been seriously degraded as a result of years of civil war and neglect. Hospitals and other health infrastructure suffer from serious shortages of medical staff and supplies. Patients must often provide or pay for their own medical supplies. Private clinics operate in most of the large urban areas. Aid organisations and Christian charities provide some health care services. Facilities are better in Kinshasa compared with the rest of the country.<sup>41</sup>

#### **4.4.3 *Caselaw.***

**G (DRC) [2003] UKIAT 00055 Promulgated 22 August 2003.** The situation of an appellant with HIV fell far short of the threshold for breach of Article 3.

**4.4.4** Where a caseowner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making

<sup>41</sup> COIS DRC Country Report 2007 (Human rights: Medical Issues)

removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## 5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules. In particular, paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Following BBC coverage in late 2005 about the treatment of failed asylum seekers returned to DRC, the UNHCR Kinshasa Office consulted a number of domestic and international human rights organisations and other relevant NGOs based in the capital about the authorities' treatment of returning failed asylum seekers. The UNHCR Kinshasa Office found that apart from encountering questioning and possibly temporary detention, there is no evidence to suggest that returning Congolese nationals face systematic mistreatment or that returning failed asylum seekers are at greater risk of scrutiny by the authorities than any other profile of Congolese national returning home.<sup>42</sup>

5.3 In a letter dated 4 April 2007, the British Embassy in Kinshasa stated that it is not aware of any evidence that DRC nationals face adverse treatment from the DRC authorities after being returned to Kinshasa following a failed asylum claim to a third country. In researching the treatment of failed asylum seekers, Embassy staff are regularly in contact with a wide range of domestic and international sources in Kinshasa including Congolese and international NGOs, the United Nations mission in DRC (MONUC) and other United Nations agencies, media groups, Congolese civil servants, and colleagues from other Embassies in Kinshasa. Staff from the British Embassy have also undertaken visits to detention facilities and to Ndjili airport.<sup>43</sup>

## 5.4 *Caselaw.*

**K [2003] 00032; N [2003] UKIAT 00050; M [2003] UKIAT 00051; L [2003] UKIAT 00058; M [2003] 00071; L [2004] UKIAT 00007; JT (DRC) [2005] UKIAT 00102; AB and DM (DRC) CG [2005] UKIAT 00118 and MK (DRC) CG [2006] UKAIT 00001** have all held that returned failed asylum seekers are not at risk of persecution per se on account of having claimed asylum.

5.5 DRC nationals may return voluntarily to any region of DRC at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration 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 DRC. 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. DRC nationals wishing to avail themselves of this opportunity for assisted return to DRC should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

## 6. List of source documents

- Home Office COI Service Democratic Republic of Congo (DRC) Country of Origin Information Report dated 31 July 2007. [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

<sup>42</sup> UNHCR letter about the treatment of failed asylum seekers returned to the DRC, April 2006

<sup>43</sup> Letter from the British Embassy in Kinshasa dated 4 April 2007

- Home Office COI Service Country of Origin Information Request: Request Number 06/07-41.
- Foreign and Commonwealth Office (FCO) Country Profile 2007: Democratic Republic of Congo (last reviewed 20 February 2007).  
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020281605460>
- Letter from the British Embassy in Kinshasa dated 7 June 2007.
- Letter from the British Embassy in Kinshasa dated 4 April 2007.
- United Nations Security Council: Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo dated 20 March 2007. <http://www.un.org/Docs/sc/sgrep07.htm>
- United States Department of State report on Human Rights Practices (USSD) – 2006: Democratic Republic of Congo (released on 6 March 2007).  
<http://www.state.gov/g/drl/rls/hrrpt/2006/78728.htm>
- British Broadcasting Corporation (BBC) News ‘Opposition leader leaves DR Congo’ dated 11 April 2007 <http://news.bbc.co.uk/1/hi/world/africa/6542165.stm>
- BBC News ‘DR Congo’s Bemba to stay abroad’ dated 10 June 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6738427.stm>
- BBC News ‘Up to 600 dead in Congo clashes’ dated 27 March 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6499729.stm>
- BBC News ‘Kabila warns DR Congo’s ex-rebel’ dated 26 March 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6496623.stm>
- BBC News ‘Army regains control of Kinshasa’ dated 23 March 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6487889.stm>
- IRIN: DRC ‘Echoes of the past as Bemba guards fight government forces’ dated 23 March 2007. <http://www.irinnews.org/Report.aspx?ReportId=70903>
- IRIN: DRC ‘Up to 20 killed in political unrest’ dated 1 February 2007.  
<http://www.irinnews.org/Report.aspx?ReportId=69866>
- BBC News ‘Congo sect in deadly poll clashes’ dated 2 February 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6341731.stm>
- BBC News ‘UN calls for DR Congo death probe’ dated 8 February 2007.  
<http://news.bbc.co.uk/1/hi/world/africa/6321083.stm>