



# OPERATIONAL GUIDANCE NOTE

## DEMOCRATIC REPUBLIC OF CONGO

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## 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in 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. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service DRC Country of Origin Information 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 API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## Source documents

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

## **2. Country assessment**

- 2.1** The DRC is a republic with a president as the head of state. The president can exercise legislative power by decree following consultation with the Council of Ministers. The president is the chief of the executive and of the armed forces and has the power to appoint and dismiss members of the Government, Ambassadors, Provincial Governors, senior army officers, senior civil servants and magistrates, in consultation with the other members of the Transitional Government. In December 2005, a national referendum to approve a revised constitution to assist with preparations for general elections returned a large majority in favour.<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** Joseph Kabila is the President of the DRC and head of the TNG. The TNG comprises the President, four Vice-Presidents, 36 Ministers and 25 Deputy Ministers 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 state institutions such as the army, police and local administrations are to be integrated following the election of a new government.<sup>3</sup> Following the presidential and parliamentary elections of 30 July and 29 October 2006, Joseph Kabila was provisionally confirmed by the Independent Electoral Commission as the winner on 16 November 2006 which set in motion the process for formally replacing the TNG.<sup>4</sup> On 27 November 2006 the Supreme Court rejected an appeal by Bemba and officially confirmed Kabila as President.<sup>5</sup>
- 2.4** A number of ministers and public officials were dismissed in November 2004 and January 2005 in connection with corruption allegations. The MLC element of the TNG threatened in January 2005 to withdraw its participation in protest at these dismissals. However the rift between Vice President Bemba, leader of the MLC, and President Kabila subsequently subsided.<sup>6</sup>
- 2.5** There were violent demonstrations in Kinshasa on 10 January 2005, and a general strike on 14 January, following reports that elections might be delayed to October 2005 instead of 30 June 2005. At least four people had been killed and 60 others arrested on the previous day. The Union pour la Democratie et le Progrès Social (Union for Democracy and Social Progress (UDPS) party denied suggestions by a government spokesman that they had organised the demonstrations and the general strike.<sup>7</sup> There were demonstrations and incidents in Kinshasa and other towns on and around 30 June 2005, after protest action on that day was called by the UDPS party against the decision to postpone the elections. Between 10 and 26 people were killed, scores wounded, and hundreds were arrested. The security forces were accused of responding to the demonstrations with unnecessary force.<sup>8</sup>
- 2.6** A new constitution for the post-transition state was adopted by the national assembly in May 2005. In late May 2005 important elements of the legislative framework were in place,

<sup>1</sup> COIS DRC Country of Origin Information Report October 2006 (History, Political System)

<sup>2</sup> COIS DRC COI Report (History, Political System)

<sup>3</sup> COIS DRC COI Report (Political System)

<sup>4</sup> COIS DRC COI Report (Elections, Political System) & BBC World News 16 November 2006

<sup>5</sup> BBC World News 28 November 2006

<sup>6</sup> COIS DRC COI Report (Political System)

<sup>7</sup> COIS DRC COI Report (History)

<sup>8</sup> COIS DRC COI Report (History)

including the laws on nationality and voter registration, however amnesty, referendum and electoral laws were still to be adopted. On 15 June 2005, the transitional parliament agreed the recommendation of the head of the electoral commission to extend the country's transitional period for at least 6 months, to allow more time for preparations for elections originally intended for 30 June 2005. On 9 March 2006 following further months of prolonged delays and logistical difficulties, President Kabila promulgated the electoral law for elections to enable the necessary preparations, such as registration of candidates and printing of ballot papers, to take place for the election to be held on 18 June 2006.<sup>9</sup>

- 2.7** Parliamentary elections and the first round of Presidential elections eventually took place on 30 July 2006. In the build up to and immediate aftermath of the vote, there was high tension and violent exchanges in urban areas between rival sets of supporters of the main candidates with accusations of serious irregularities in the administration of the election. Provincial elections and the second round of Presidential elections took place on 29 October 2006. The second round of Presidential elections was a run off between current President Joseph Kabila (44.81% of votes in round one) and Vice President Jean-Pierre Bemba (20.03% votes in round one).<sup>10</sup> On 16 November 2006 the second round outcome was provisionally confirmed by the Independent Electoral Commission with Kabila gaining 58.05% of the votes to Bemba's 41.9%.<sup>11</sup> On 27 November 2006 the Supreme Court rejected an appeal by Bemba and officially confirmed Kabila as President.<sup>12</sup>
- 2.8** The TNG has not been able to fully established its authority in the former rebel areas and outbreaks of fighting still occur in the east and north of the country. There have been serious human rights abuses in these areas including killings, rape, torture, the kidnapping of civilians and the recruitment of children as combatants. Violence continues in the Kivu provinces of eastern DRC and in Ituri district of north-eastern DRC. Fighting between Hema and Lendu militias as well as clashes between factions of the Congolese Army continue to cause large scale civilian casualties and displacement. The Banyamulenge ethnic group has been targeted violently, particularly in South Kivu.<sup>13</sup>
- 2.9** In all areas of the country the government's human rights record remained poor in 2005, and numerous serious abuses were committed; however there were some improvements during 2005. The incidence of severe human rights violations decreased, although press freedom deteriorated. Several of the human rights violations reported in previous years, including militia attacks on internally displaced persons (IDPs) were not reported in 2005. During 2005 there was also a significant reduction in the number of human rights violations in Ituri District and Orientale Province although numerous attacks on civilians continued to be reported.<sup>14</sup>
- 2.10** In 2005 few Congolese or outsiders worked effectively to curb ongoing violence against civilians or to address crucial post-conflict challenges, such as delivering justice for the many grave violations of international humanitarian law committed in Congo in the last decade. In 2005 and 2006, combatants from armed groups as well as government soldiers deliberately killed, raped, and abducted civilians and destroyed or looted their property particularly in eastern Congo. A feeble justice system failed to prosecute these recent crimes and did nothing to end impunity for war crimes and crimes against humanity committed during the previous two wars.<sup>15</sup>
- 2.11** The transitional government, crippled by continuing conflict among its four main component parties, ended two years in power in mid-2005 with much of the eastern region still not under its control. Serious human rights violations committed by the security forces (FARDC)

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<sup>9</sup> COIS DRC COI Report (History, Political System)

<sup>10</sup> COIS DRC COI Report (Political system; elections)

<sup>11</sup> BBC World News 16 November 2006

<sup>12</sup> BBC World News 28 November 2006

<sup>13</sup> COIS DRC COI Report (History & Human rights; Introduction, Security situation)

<sup>14</sup> COIS DRC COI Report (Human rights; Introduction, Security situation)

<sup>15</sup> COIS DRC COI Report (Human rights; Introduction, Security situation)

and national police personnel against civilians continue to be reported. Restrictions on freedom of expression have also continued.<sup>16</sup>

- 2.12** In 2005 and the first half of 2006 it was reported that human rights defenders in DRC continued to work in conditions of extreme danger. Congolese activists have previously been victims of torture, extrajudicial 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. The activists are frequently called in by the authorities for questioning or to settle so-called “administrative matters” that are in reality thinly disguised acts of intimidation; their offices are subject to unannounced arbitrary visits by security officials. In some cases, human rights activists have been threatened with death at gunpoint.<sup>17</sup>
- 2.13** Societal discrimination on the basis of ethnicity continued to be practised widely by members of virtually all ethnic groups in 2005 and 2006 and was evident in private hiring patterns in some cities; however, intermarriage across major ethnic and regional divides was common in large cities and a wide range of ethnic groups are represented in the transitional government. Ethnic conflict or friction is apparent in several areas of the country: between the Hema and Lendu around Bunia in Orientale province, between Congolese Tutsis (Banyamulenge) and other groups in the Kivus, and between the baLuba of Kasai and the Lunda of Katanga.<sup>18</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 the DRC. It also contains any common claims which may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant APIs, 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 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 API on Assessing the 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 their individual circumstances.
- 3.4** This guidance is not designed to cover all issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim)

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<sup>16</sup> COIS DRC COI Report (Human rights; Introduction, Security situation)

<sup>17</sup> COIS DRC COI Report (Human rights; Introduction, Security situation)

<sup>18</sup> COIS DRC COI Report (Ethnic groups; Ethnic issues)

**3.5** All APIs can be accessed via the IND website at:

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

**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 applicant'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, including pro-government Mayi-Mayi militia, the rebel forces (see para 2.3 above), unarmed political opposition and civil society.<sup>19</sup> The Government eased the right of political association on 29 September 2003, with the issue of a decree authorising all political parties to function legally. This decree also authorised former rebel forces (see paragraph 2.3) to function as political parties. There is no evidence of a systematic campaign of persecution against opposition party activists by the security forces and members of political parties are not at risk of persecution on the basis of membership alone.<sup>20</sup>

**3.6.4** 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 pour la démocratie et le progrès social (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. There are dozens of small opposition parties, but few are of significance, frequently being the vehicle for individuals some of whom have made it into the transitional government as ministers.<sup>21</sup>

**3.6.5** In August 2005, the United Nations Mission for Congo (MONUC) documented an increase in the number of violations of human rights associated with the forthcoming elections, including the arbitrary arrest and detention of members of political opposition parties in several provinces, in particular Katanga, the Kasais, Orientale and Bas-Congo, and in Kinshasa. There were also difficulties faced by MONUC in accessing political detainees held in several detention facilities. While the Presidency has since indicated that the Government will facilitate such access, the Mission is still frequently prevented from monitoring political detainees.<sup>22</sup>

**3.6.6** Security services committed election-related abuses throughout 2005 and 2006, including the January shooting in Kinshasa of dozens of demonstrators protesting elections delays and the later detention of political activists for months without charge elsewhere in the country. In January and June 2005, security forces killed dozens of men, women, and children protesting electoral delays in Kinshasa, Mbuyi Mayi, Goma and other towns.<sup>23</sup> However it was reported in 2005 that, unlike in 2004, there were no reports that security forces committed politically-motivated killings, nor were there politically-motivated disappearances by government forces or political prisoners in areas under government control. The government however required political parties to apply for permits to hold press conferences in 2005. According to local NGOs, such permits sometimes were denied.<sup>24</sup>

**3.6.7** 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

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<sup>19</sup> COIS DRC COI Report (Political system & Annex A)

<sup>20</sup> COIS DRC COI Report (Political affiliation)

<sup>21</sup> COIS DRC COI Report (Political affiliation)

<sup>22</sup> COIS DRC COI Report (Political affiliation)

<sup>23</sup> COIS DRC COI Report (Political affiliation)

<sup>24</sup> COIS DRC COI Report (Political affiliation)

was fully participating in the transition process.<sup>25</sup> 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.<sup>26</sup> 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 elections delays were dispersed by riot police and around 40 demonstrators were temporarily detained.<sup>27</sup> 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.<sup>28</sup>

**3.6.8** Parliamentary elections and the first round of Presidential elections eventually took place on 30 July 2006. In the build up to and immediate aftermath of the vote, there was high tension and violent exchanges in urban areas between rival sets of supporters of the main candidates with accusations of serious irregularities in the administration of the election. Provincial elections and the second round of Presidential elections took place on 29 October 2006. The second round of Presidential elections was a run off between current President Joseph Kabila (44.81% of votes in round one) and Vice President Jean-Pierre Bemba (20.03% votes in round one).<sup>29</sup> On 16 November 2006 the second round outcome was confirmed with Kabila gaining 58.05% of the votes to Bemba's 41.9%. On 27 November 2006 the Supreme Court rejected an appeal by Bemba and officially confirmed Kabila as President.<sup>30</sup> While fraught with disputes between candidates, their supporters and over the organisation of the elections, the first round results of the elections were accepted by all sides.<sup>31</sup> In the wider context, the information does not suggest that the rivalry between the competing camps in either the first or second rounds<sup>32</sup> amounted to more than highly-charged electioneering in closely-fought elections the like of which is unprecedented in DRC.

**3.6.9 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.

**3.6.10 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.

**3.6.11 Caselaw.**

**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

<sup>25</sup> COIS DRC COI Report (Annex B)

<sup>26</sup> COIS DRC COI Report (Political affiliation)

<sup>27</sup> COIS DRC COI Report (Political affiliation)

<sup>28</sup> COIS DRC COI Report (Elections)

<sup>29</sup> COIS DRC COI Report (Political system; elections)

<sup>30</sup> BBC World News 28 November 2006

<sup>31</sup> BBC World News 16 November 2006

<sup>32</sup> COIS DRC COI Report (Political system; elections)

members. There is a potential risk for DSP members who are considered as potential or actual collaborators for JP Bemba and his MLC 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 the 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)

**3.6.12 Conclusion.** Non UDPS opposition parties/formal rebel groups. There is no evidence of systematic persecution of opposition party activists by the authorities. 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 TNG and many stood in DRC's first peacetime democratic elections for president and parliament in July 2006. Accordingly, members or associates of these groups are not likely to be any longer at risk of persecution by state authorities. The grant of asylum is not therefore likely to be appropriate in such cases.

**3.6.13 UDPS members or activists.** While mainstream political and former rebel groups intergrated into the TNG and electoral process face no systematic risk of persecution based on party activity, the UDPS is 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 remains in self-imposed exile from mainstream politics, activists who have brought themselves to the adverse attention of the authorities are liable to face a real risk of persecution. However 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. Caseworkers should 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.** The government co-operated with international governmental organisations and NGOs and permitted international humanitarian and human rights NGOs access to conflict areas in 2005. A number of UN representatives and international NGOs visited the country during 2005. International NGOs, including Amnesty International (AI) and Human Rights Watch (HRW), and international organisations such as the UN published several reports on the human rights and humanitarian situation. The main Kinshasa-based domestic human rights organisations included Voices for the Voiceless (VSV); Groupe Jeremie; the Committee of Human Rights Observers; The Christian Network of Human Rights and Civic Education Organisations; Observatoire; and the African Association for the Defense of Human Rights. 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.<sup>33</sup>

- 3.7.3** During 2005, prison officials sometimes obstructed NGO access to detainees, and security forces' personnel harassed and arrested domestic human rights workers. In 2005, domestic human rights activists self-censored reports about corruption and human rights abuses committed by certain government officials because they feared arrest. In eastern areas of the country, domestic human rights NGOs and civil society members were subjected to frequent harassment and abuse, particularly in Ituri. Unlike in 2004, there were no reports that armed groups in the east killed or raped humanitarian workers. However, 11 UN peacekeepers were killed by armed groups during 2005. Armed groups frequently imposed travel restrictions on persons who provided humanitarian aid, human rights NGOs, and journalists.<sup>34</sup>
- 3.7.4** In 2005 and the first half of 2006 it was reported that human rights defenders in DRC continued to work in conditions of extreme danger, especially in eastern regions. Congolese 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. Activists are frequently called in by the authorities for questioning or to settle so-called "administrative matters" that are in reality thinly disguised acts of intimidation; their offices are subject to unannounced arbitrary visits by security officials. In some cases, human rights activists have been threatened with death at gunpoint.<sup>35</sup>
- 3.7.5** *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.
- 3.7.6** *Internal relocation.* The law provides for freedom of movement. However, the Government at times restricts this right in areas under its control by for example the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG, the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. 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 Transitional Government 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.<sup>36</sup>
- 3.7.7** 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.
- 3.7.8** *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

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<sup>33</sup> COIS DRC COI Report (Human rights; Human rights institutions...)

<sup>34</sup> COIS DRC COI Report (Human rights; Human rights institutions...)

<sup>35</sup> COIS DRC COI Report (Human rights; Human rights institutions...)

<sup>36</sup> COIS DRC COI Report (Freedom of movement)



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 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>37</sup>

**3.8.3** Members of former rebel groups dominated by Tutsis (see paragraph 2.3) have been appointed in the TNG. 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>38</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 to date.<sup>39</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>40</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. However, the Government at times restricts this right in areas under its control by for example the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted.<sup>41</sup>

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<sup>37</sup> COIS DRC COI Report (Ethnic groups; Tutsis in Kinshasa)

<sup>38</sup> COIS DRC COI Report (Ethnic groups; Tutsis in Kinshasa)

<sup>39</sup> COIS DRC COI Report (Ethnic groups; Tutsis in Kinshasa)

<sup>40</sup> COIS DRC COI Report (Ethnic groups; Tutsis in Kinshasa)

<sup>41</sup> COIS DRC COI Report (Freedom of Movement)

**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.<sup>42</sup> 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 promulgated 21 July 2005.** Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to the 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 the 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 the 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 seekers to DRC does

<sup>42</sup> COIS DRC COI Report (Freedom of Movement)

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 the 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 so 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. Caseworkers 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 Nord-Kivu, the Banyamulenge were drawn into the interethnic violence that spilled into Zaire (now DRC) from Rwanda and Burundi in the 1990s.<sup>43</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

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<sup>43</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge)

people by pro-government forces were claimed as the reason why rebel forces took control of Bukavu in June 2004.<sup>44</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.<sup>45</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 the 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>46</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>47</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. However, the Government at times restricts this right in areas under its control by for example the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. 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 Transitional Government took office.<sup>48</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 promulgated 21 July 2005.** Risk categories reviewed – Tutsis added. The appeals raised common issues of fact as to the current risk categories on return to the 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:

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<sup>44</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge & Human Rights other issues; South Kivu)

<sup>45</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge)

<sup>46</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge)

<sup>47</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge)

<sup>48</sup> COIS DRC COI Report (Ethnic groups; Banyamulenge)

“those with a nationality or perceived nationality of a state regarded as hostile to the 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 the 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 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. The conflict continues but has become less intense in recent months. 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 the DRC since 1 July 2002, focussing initially on Ituri.<sup>49</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 government's failure to integrate some of them into the national army. The disarmament programme had been hindered both by local militia leaders, and by the government's failure to integrate some of them into the national army. Executions and torture carried out by FAPC (Forces Armées du Peuple Congolais/People's Armed Forces of Congo) followers of General Jérôme Kakwavu were reported.<sup>50</sup>
- 3.10.4** The security situation in Ituri in mid-2005 was volatile, despite robust measures taken by FARDC with MONUC support since March 2005 to disarm combatants the Transitional Government has yet to take the necessary measures to extend its authority, particularly security and administrative services, throughout the district.<sup>51</sup> 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 Mouvement révolutionnaire congolais (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>52</sup>
- 3.10.5** Despite the gains on the military front in the second half of 2005, the overall security situation in Ituri at the beginning of 2006 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 are reportedly continuing to recruit in Djugu and Irumu territories.<sup>53</sup> 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 hinder the delivery of critical assistance to vulnerable populations. Moreover, outbreaks of minor armed insurgencies continue to displace thousands of civilians in the region in 2006.<sup>54</sup>
- 3.10.6 Sufficiency of protection.** The TNG is seeking to establish its authority throughout the entire country, but has not yet fully done so. 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. However, the Government at times restricts this right in areas under its control by, for example, the erection of temporary roadblocks for night-time security checks and to protect government installations. Since the establishment of the TNG, the incidents of such restrictions have reduced and the previous requirement to obtain a routine written document from the Ministry of Interior for travel within government-controlled territory has also been lifted. Movement between areas under central government control and areas not under central government control can be

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<sup>49</sup> COIS DRC COI Report (Security situation; Ituri)

<sup>50</sup> COIS DRC COI Report (Security situation; Ituri)

<sup>51</sup> COIS DRC COI Report (Security situation; Ituri)

<sup>52</sup> COIS DRC COI Report (Security situation; Ituri)

<sup>53</sup> COIS DRC COI Report (Security situation; Ituri)

<sup>54</sup> COIS DRC COI Report (Security situation; Ituri)

hazardous but is possible by river or air. Commercial flights between former government-controlled territory and former rebel-held areas resumed after the Transitional Government took office.<sup>55</sup> 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.<sup>56</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 the second half of 2005, the security situation in Ituri 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 the 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.

**3.11.3 Treatment.** Conditions in most large, central prisons were harsh and life threatening in 2005. The penal system continued to suffer from severe shortages of funds and trained personnel. 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 2005, 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 2005. Women and juveniles sometimes were held separately from men in larger prisons but were not separated in other detention facilities. In 2005, there were numerous credible reports that male prisoners raped other prisoners, including men, women and children.<sup>57</sup>

**3.11.4** Conditions in smaller detention facilities were harsher than in larger prisons in 2005, and an unknown number of persons died. 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

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<sup>55</sup> COIS DRC COI Report (Freedom of Movement)

<sup>56</sup> COIS DRC COI Report (Freedom of movement)

<sup>57</sup> COIS DRC COI Report (Prison conditions)

bribes from family members and NGOs to visit or provide detainees with food and other necessities.<sup>58</sup>

- 3.11.5** Prison conditions in the east were extremely harsh and life-threatening in 2005. Armed groups operating in these areas imprisoned persons in numerous facilities, including personal residencies and hastily constructed shacks that were not designed as prisons. Detainees often were kept in overcrowded rooms with little or no light or ventilation. Detainees typically slept in small, overcrowded cells on cement or dirt floors without bedding and had no access to sanitation, potable water, toilets, or adequate medical care. Infectious diseases were widespread in 2005. Detainees were provided very little food, and guards demanded bribes to allow family members or friends to bring food to prisoners. Prisoners frequently were subjected to torture, beatings, and other abuse with no medical attention.<sup>59</sup>
- 3.11.5** In general the Government allowed the International Committee of the Red Cross (ICRC), MONUC, and many NGOs access to all official detention facilities in 2005; however, these organisations did not have access to illegal detention facilities maintained by security forces.<sup>60</sup>
- 3.11.6** MONUC reported in early 2006 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>61</sup>
- 3.11.7 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 inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in DRC are likely to reach the Article 3 threshold. Where caseworkers believe that an individual is likely to face imprisonment on return to the 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 caseworkers 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 API on Discretionary Leave) Where the claim includes dependent family members

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<sup>58</sup> COIS DRC COI Report (Prison conditions)

<sup>59</sup> COIS DRC COI Report (Prison conditions)

<sup>60</sup> COIS DRC COI Report (Prison conditions)

<sup>61</sup> COIS DRC COI Report (Prison conditions)



consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

**4.2** With particular reference to 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 API on Discretionary Leave and the API on Article 8 ECHR.

### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or where there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate 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 not 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 of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to the 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 the 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>62</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 caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment, making removal contrary to Article 3 or 8, a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a SCW 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

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<sup>62</sup> COIS DRC COI Report (Medical issues)

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 the 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>63</sup>

**5.3 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.

**5.4** DRC nationals may return voluntarily to any region of the DRC at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in the DRC. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. DRC nationals wishing to avail themselves of this opportunity for assisted return to the DRC should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

**6. List of source documents**

- British Broadcasting Corporation (BBC) World News 'Kabila calls for calm in DR Congo' 16 November 2006 <http://news.bbc.co.uk/1/hi/world/africa/6153184.stm>
- BBC World News 'Kabila confirmed as Congo leader' 28 November 2006 <http://news.bbc.co.uk/1/hi/world/africa/6190006.stm>
- UK Home Office RDS-IND DRC Country of Origin Report October 2006 at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- UNHCR Letter about the treatment of failed asylum seekers returned to the DRC April 2006

**Asylum and Appeals Policy Directorate  
30 November 2006**

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<sup>63</sup> UNHCR letter about the treatment of failed asylum seekers returned to the DRC, April 2006