



Country Policy Bulletin

DEMOCRATIC REPUBLIC OF CONGO (DRC)

Democratic Republic of Congo (DRC) POLICY BULLETIN 1/2012

CONTENTS

1. Introduction	1.1 – 1.2
2 Background	2.1 – 2.3
3 Management by UK Border Agency of applications for international protection	
3.1 Management of applications for international protection	3.1.1 – 3.1.6
3.2 Country of Origin Information	3.2.1 – 3.2.4
3.3 Country Policy	3.3.1 – 3.3.6
4 Case law	4.1
4.2 Country Guidance case law	4.2.1 – 4.2.4
5 Justice First	
5.1 Background	5.1.1 – 5.1.5
5.2 Unsafe Return report	5.2.1 – 5.2.6
6. Human Rights situation within DRC	
6.1 The United Nations	6.1.1 – 6.1.5
6.2 UNHCR Repatriations to DRC from African states	6.2.1 – 6.2.3
6.3 Foreign & Commonwealth Office	6.3.1 -6.3.2
7 Treatment of Returnees	
7.1 Amnesty International	7.1.1 – 7.1.6
7.2 Human Rights Watch	7.2.1 – 7.2.3
8 Other asylum intake states	
8.1 IGC (Intergovernmental consultations on migration, asylum and refugees)	8.1.1 – 8.1.3
8.2 Three European Embassies in Kinshasa	8.2.1 – 8.2.5
9 Treatment of Returnees	9.1 – 9.13
10 Extortion	10.1 – 10.6
11 Detention	11.1 – 11.8
12 Returns from the UK	12.1
12.2 Data on returns	12.2.1 -12.2.5
12.3 Charter flights	12.3.1 – 12.3.2
12.4 Documentation	12.4.1 – 12.4.5
13 Monitoring of returnees	13.1 – 13.3
14 Remarks attributed to DRC Ambassador	14.1 – 14.9
15 Response to the recommendations in the Justice First report “Unsafe Return”	15.1 – 15.2

1. Introduction

- 1.1** The purpose of this Bulletin is to confirm the policy of the UK Border Agency (hereafter referred to either in full or as “the agency”) on returns to the Democratic Republic of Congo (DRC) following allegations made of mistreatment, amounting to

torture, of returnees from the UK.

- 1.2** This bulletin must be read together with the Country of Origin Information (COI) report for the DRC (published 9 March 2012), the Fact Finding Mission of 18 to 28 June 2012 to Kinshasa and the DRC Operational Guidance Note (OGN) of May 2012. All three documents are available on the agency's web site:
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>

2. Background

- 2.1** In the case of BK (see case-law section 11.2) in December 2007 the then Asylum and Immigration Tribunal (AIT) considered evidence on return to DRC and concluded that returnees per se to DRC were not at risk of ill treatment or persecution simply because they were failed asylum seekers. The AIT's conclusions were reaffirmed by the Court of Appeal in December 2008.
- 2.2** In May 2009 the Guardian newspaper reported allegations that two returnees had been arrested and tortured. The Northern Echo newspaper then reported a third returnee as having been ill treated. No evidence was found to support the allegations.
- 2.3** See section 5.1 – Justice First.

3. Management by UK Border Agency of applications for international protection.

3.1 Policy on the management of applications for international protection.

- 3.1.1** All asylum and human rights claims are carefully considered by trained case owners on their individual merits in accordance with the UK's obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the European Convention on Human Rights. This is in accordance with the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, which states "refugee status must normally be determined on an individual basis" and "an applicant for refugee status must normally show good reason why he individually fears persecution"¹
- 3.1.2** The UK Border Agency closely monitors developments in all countries of return and will take decisions on a case-by-case basis in the light of international obligations and the latest available country information.
- 3.1.3** Where a decision has been made that a person does not require international protection, and there are no remaining rights of appeal or obstacles to their return, the UK Border Agency expects unsuccessful asylum seekers to return voluntarily to their home country. Return and reintegration assistance is available through Refugee Action.
- 3.1.4** If an individual does not leave the UK voluntarily, then it will become necessary to enforce their removal. Enforced removals are carried out in the most sensitive way possible, treating those being removed with respect and courtesy.

¹ [UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1979, re-edited Jan 1992 Paragraphs 44/45.](#)

3.1.5 The agency offers assistance to voluntary returnees through its Assisted Voluntary Return (AVR) schemes. This enables returnees to rebuild their lives in the country of origin and in many instances benefits not only the individual, but also their family and wider community. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in the 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.

3.1.6 The UK Border Agency does not remove unless it is safe to do so, with a safe route of return.

3.2 Country of Origin Information.

3.2.1 The agency's country information is published on the UK Border Agency's website: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>

3.2.2 Country information material is compiled by the agency's Country of Origin Information Service (COIS) from a wide range of reliable external information sources including the United Nations High Commission for Refugees, human rights organisations, inter-governmental organisations, non-government organisations, news media and the Foreign and Commonwealth Office. Other reliable sources are consulted where required.

3.2.3 COI Service reports are updated and published regularly with significant changes in country conditions being communicated to decision makers as required. UK Border Agency case owners also have access to an information request service, which provides rapid responses to specific country-based enquiries. This ensures that those involved in the decision making process have the most up to date information available to them.

3.2.4 Information on the return of failed asylum seekers, including the Justice First report "Unsafe Return", is referenced in the COI report for DRC dated March 2012.

3.3 Country Policy

3.3.1 Country policy, in the form of Operational Guidance Notes (OGNs) and country bulletins, is published on the UK Border Agency's web site: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>

3.3.2 Operational guidance notes (OGNs) provide a brief summary of the general, political and human rights situation in the country and describe common types of claim. They aim to provide clear guidance on whether the main types of claim are likely to justify the grant of asylum, humanitarian protection or discretionary leave. OGNs are an important tool in ensuring both quality and consistency in asylum decision making.

3.3.3 Country policy bulletins are issued on an ad hoc basis and aim to provide clear guidance on how to deal with particular country-specific issues arising in asylum and human rights applications.

3.3.4 Information in OGNs and country policy bulletins is sourced to the most recent country of origin information.

- 3.3.5** The agency's Country Specific Litigation Team (CSLT), who produce OGNs, considered the report "Unsafe Return," together with other objective evidence and in the OGN of May 2012 concluded that there was insufficient evidence to substantiate the allegations of ill treatment of returnees in general. This bulletin addresses the issues more fully following the fact finding mission undertaken to Kinshasa (see 9.1).
- 3.3.6** The OGN does conclude that certain categories of individual might risk ill treatment, amounting to persecution on return to DRC.

4. Case law

- 4.1** Up to date country guidance case law for the DRC is provided in the DRC Operational Guidance Note (OGN) of May 2012.² For ease of reference, the key case law is reiterated in 4.2 below.

4.2 Country Guidance case law

- 4.2.1** The issue of allegations made about mistreatment on return was thoroughly considered by the then Asylum and Immigration Tribunal in 2007 in the case of [BK \(Failed asylum seekers\) DRC \(Rev 1\) CG \[2007\] UKAIT 00098 \(31 October 2008\)](#). This case was then upheld by the Court of Appeal in December 2008.
- 4.2.2** The Court concluded in **BK** that on return to the DRC failed asylum seekers do not per se face a real risk of persecution or serious harm or treatment contrary to Article 3 ECHR. In so finding this decision updates and reaffirms existing country guidance. The Tribunal found:

"Despite concerted efforts by a significant number of people - lawyers, NGOs and others - and despite there having been a long lead-in period to the hearing and conclusion of this case during which members of the UK's DRC Diaspora have been encouraged by leaflets and public meetings in over six cities to come forward with cases, we have found no evidence to substantiate the claim that returned failed asylum seekers to the DRC as such face a real risk of persecution or serious harm or ill-treatment." (paragraph 385)

The tribunal went on to comment on allegations: "

"Given the great deal of time and effort that the appellant's representatives have put into this case, it is appropriate that we make clear the following. In the event of any future investigations being conducted of returned failed DRC asylum seekers, those concerned should take steps to ensure that basic relevant particulars are sought. Public funds, not to mention valuable judicial resources, are involved and must not be expended uselessly. In particular, we consider that where someone is known to have been a failed asylum seeker in the UK, initial efforts should be directed to obtaining (with authorisation) details of that person's asylum claim and the outcome of any appeal. As vividly illustrated by the case of WY that would at least ensure that the investigations into their claims about abuse on return have some external reference point for gauging the truth of what is now claimed" (paragraph 386).

- 4.2.3** This case emphasises that for allegations of mistreatment on return, irrespective of

² [UK Border Agency Operational Guidance Note May 2012](#)

country, then to ensure the effective use of public funds, the details of failed asylum seekers should be obtained in order that claims about abuse on return have some external reference point for gauging the truth of what is now claimed.

- 4.2.4** The Court of Appeal in [SG & OR Iraq \[2012\] EWCA Civ 940](#) 13 July stated that a country guidance (CG) case remains authoritative unless and until it is set aside on appeal or replaced by a subsequent CG determination (paragraph 67). However the Immigration and Asylum Upper Tribunal noted in [TK \(Tamils – LP updated\) Sri Lanka CG \[2009\] UKAIT 00049](#) “(paragraph 6)... “country guidance is not inflexible; it must be applied by reference to new evidence as it emerges

5. Justice First

5.1 Background

- 5.1.1** On 26 January 2010 the then MP for Stockton South wrote to the Home Secretary requesting that a Minister meet with Justice First to hear their evidence on why asylum seekers should not be sent back to the DRC. Justice First are a registered charity set up in 2006 to work with people, whose asylum appeals had been refused, in the Tees Valley in NE England. Justice First assists its clients to re-engage with the legal process when necessary and offers practical support to those experiencing destitution. The meeting with a Home Office Minister took place on 17 March 2010 and at this Justice First presented the Minister with a report “Wake Up a Devil in the Dark”.³
- 5.1.2** Officials from the agency’s Country of Origin Information Service and the Country Policy Team met with Justice First on 27 July 2010 to discuss the “Wake Up a Devil in the Dark” report and the concerns about returns to the DRC. The report was a number of anonymous testimonies of 11 returnees, including two returned via the agency’s Assisted Voluntary Return (AVR) programme, managed at that time by the International Organization for Migration (IOM). Agency officials requested at the meeting the names and Home Office references of the individuals making the allegations in order that the asylum histories could be checked to establish any common factors shared by the cases. It was emphasised that in accordance with case law, past credibility was a factor which required consideration. Justice First agreed to approach the individuals to ascertain whether they would consent to the provision to the agency of their details.
- 5.1.3** No details were forthcoming and a new report “Unsafe Return” [see 4.2.below] on returns to the DRC, was compiled on 24 November 2011 by Catherine Ramos, a volunteer member of Justice First. This report was based upon her investigations, including visits to Kinshasa, into 14 enforced and three voluntary returnees in the period 2006 to 2011. It alleges that enforced and voluntary returnees to DRC are routinely detained, raped, tortured and generally seriously victimised on the grounds that they have, in seeking asylum, betrayed their country.
- 5.1.4** The “Unsafe Return” report was the subject of a meeting on 7 February 2012 between Bishop Michael Scott – Joynt (former Bishop of Winchester) and the Home Office Minister in the House of Lords. The Minister agreed that the report should be studied and a considered response sent to the Bishop.

³ Wake Up a Devil in the Dark report is available on request.

5.1.5 The Immigration Minister met on 22 May with North East MPs, Justice First and members of DRC Diaspora when concern about returns to DRC and the Justice First report were raised with him.

5.2 The “Unsafe Return” report:⁴

5.2.1 Following a visit to DRC in 2011 Justice First published a report, dated 24 November 2011, called “Unsafe Return: Refoulement of Congolese asylum seekers”. This report details the post return experience of 14 involuntary and 3 voluntary returnees removed to the DRC between August 2006 and June 2011. 11 of the 17 returnees lived in Tees Valley. Two lived in West Yorkshire, one in Hull, one in Lancashire and two in the Southampton area. The age range of the 11 men and 6 women is between mid-20s to mid- 40s. 9 children aged between 16 months and 8/9 years of age were removed with their parents. 6/9 children aged 16 months to 7 were removed with their mothers. The father of one child lives in the UK. In the introduction to the report Justice First state that it was only able to document data on the ill-treatment of 15 of the 17 rejected asylum seekers. All interviews were undertaken in the DRC by Catherine Ramos and returnees had requested anonymity.⁵ Given the structure of the report it is impossible to follow individual histories and rather it focuses on data conclusions and even these are difficult to align with the 15 /17 alleged cases (for example in 5.2.2 below the political affiliations appear to total 19 and in 5.2.3 arrests are 12).

5.2.2 The report states as regards political affiliation of returnees ⁶ that “The returnees in this report were perceived or actual political opponents of the current DRC regime. In UK Border Agency refusal letters Tees Valley returnees were described as low level activists of no interest to the authorities. Of the report’s returnees:

- 8/17 are members of the UDPS (Union pour la Démocratie et le Progrès Social – Union for Democracy and Social Progress)
- 1 is a member of MNC – Albert Onawhelo (Mouvement National Congolais - Congolese National Movement –Lumumba)
- 1 is a member of the MLC (Mouvement pour la Liberation du Congo - Movement for the Liberation of Congo)
- 1 is the President of an unregistered political opposition party
- 1 is a member of the RCD – Goma (Rassemblement Congolais pour la Démocratie - Rally for Congolese Democracy)
- Unknown political affiliation in 5 cases (two returnees are missing)
- 2 are members of APARECO”.

5.2.3 On detention the report states⁷ “The following violations were experienced by 15 of the 17 returnees. Periods of imprisonment were between one day and 3 months. Returnees were verbally abused and in some cases were threatened with death. Six men were detained in the ANR (Agence Nationale de Renseignements – National Intelligence Agency) prison, Kin Mazière. One escaped before reaching the prison he was being transported to. One female returnee was held in the ANR prison, Tolérance Zero, one in a cachot (small dugout cells) and one in the vicinity of the airport. Four women were threatened at the airport and one is known to have been threatened with death during her imprisonment.

- Arrested at the airport: 6/15

⁴ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#)

⁵ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#): Introduction/ Methodolgy

⁶ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#): Political Affiliation, page 18

⁷ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#); page 19.

- Arrested after leaving the airport building and transferred to Kin Mazière: 2/15
- Arrested after leaving the British Embassy in Kinshasa 1/15
- Arrested at home 3/15
- Threatened with death in Tolérance Zero by officers 1/15
- Threatened at the airport 4/15

5.2.4 As regards “Interrogation”⁸ the report states “Evidence about interrogation methods suggests that returnees were subjected to mis treatment and held in conditions that amount to torture. Nine returnees are known to have been interrogated about their activities in the UK, either at the airport or in prison, or both. Of these:

- 5/15 returnees were interrogated at the airport
- 5/15 were interrogated in Kin Mazière or Tolérance Zero
- 1/15 was interrogated in a cachot (small dugout cells)”

The refused asylum seekers were accused of being traitors, of having betrayed both the country and the President, of having said that there were no human rights in the DRC. They allege they were tortured to make them name others involved in perceived anti government activities in the UK.

5.2.5 The report’s principal recommendations (see section 15) were-

- Country of origin information should be updated to reflect the report’s findings;
- Removals should be suspended and the agency’s returns policy reviewed;
- There should be an effective monitoring system of returns after arrival in Kinshasa;
- No document relating to a returnee’s asylum claim is given to Congolese authorities.
- The UK Border Agency and the Foreign & Commonwealth Office (FCO) should have a dialogue with UK civil society groups.

5.2.6 Justice First have not provided the agency with the details of the individuals making the allegations, despite the fact they are stated to have been in the asylum process and therefore their personal information will be known to the agency. Given that each asylum application is determined upon its individual merits, with out these details, the UK Border Agency has only been able to reach conclusions on the allegations contained within the report based on evidence before it. See section 15.2 for the Agency’s response to the recommendations made in the Justice First report “Unsafe Return”.

6 Human Rights situation within DRC

6.1 The United Nations

6.1.1 The Office of the High Commissioner for Human Rights (OHCHR) established its presence in the DRC in 1996 with the creation of a stand-alone office. In 2000, a Human Rights Division within the United Nations Organization Mission in Congo (MONUC) was established with the mandate to monitor and report. On 1 February 2008, the Office and the Division were integrated creating the UN Joint Human Rights Office (JHRO) and tasked with improving the respect for human rights in the DRC by assisting the government and MONUC in implementing the mandate. With UN Security Resolution 1925 (2010) of 1 July 2010 (MONUC) became the UN Organization Stabilization Mission in Congo (MONUSCO).⁹

⁸ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#): Interrogation, pages 25-26

⁹ [OHCHR in Democratic Republic of Congo \(2010- 2012\)](#)

- 6.1.2** OHCHR in its report on Human Rights in DRC, 2010 to 2012, stated “The human rights situation in the Democratic Republic of Congo (DRC) continued to be of grave concern throughout 2011. Despite the renewed commitment of the government to improve the human rights situation throughout the country, its efforts remained limited and little progress was observed in the area of the structural reforms which are essential for achieving positive change. In general, high levels of impunity continued to be registered, and little progress has been made with regard to the implementation of the President’s zero-tolerance policy for violence committed by Congolese armed forces.”¹⁰
- 6.1.3** OHCHR went on to state “The last months of 2011 were characterised by a high number of human rights violations committed against opponents and their supporters, journalists and human rights defenders in the lead-up and aftermath of the presidential and legislative polls. Violations of the right to liberty and security of the person, of the right to freedom of opinion and expression including the freedoms of the press and the media and of the right to physical integrity were observed. The human rights situation in DRC was reviewed by the Universal Periodic Review (UPR) on 3 December 2009 and the list of recommendations adopted on 18 March 2010. Support has been provided to the government for the follow up of the implementation of the 132 UPR recommendations.”¹¹
- 6.1.4** The report of May 2012 by the Secretary General on the UN Organisation Stabilization Mission in the DRC echoed the OHCHR and added “While the cases of threats and human rights violations against political opposition parties and their perceived supporters, mainly by Congolese defence and security forces, have decreased following the 28 November 2011 polls, cases of arrest and ill-treatment of political opponents have continued”. The report reflected that the area of gravest concern is the conflict zones in the East, but noted human rights violations occur in Western provinces.¹²
- 6.1.5** In the same report the Secretary General “welcomed the close cooperation and enhanced dialogue between the United Nations and Democratic Republic of the Congo authorities that have accompanied the joint assessment process. It was noted that whilst “ Progress towards establishing adequate human rights institutions in the country remains limited, there has been some further progress by Congolese authorities in prosecuting a number of army and police elements suspected of having committed human rights violations, as well as the important support role that MONUSCO and other partners have played in this regard”¹³
- 6.2 United Nations High Commissioner for Refugees (UNHCR) Repatriations to DRC from African states.**
- 6.2.1** The UNHCR Fact sheet on repatriation to the DRC of 31 May 2010 indicates that UNHCR assisted with 206,541 repatriations in the period 2004 until 30 April 2010 from 8 African countries, plus an “other countries category.”¹⁴

¹⁰ [OHCHR in Democratic Republic of Congo \(2010- 2012\)](#)

¹¹ [OHCHR in Democratic Republic of Congo \(2010- 2012\)](#)

¹² [UN Security Council: Report of the Secretary General on the UN Organisation Stabilization Mission in the DRC, 23/05/2012](#)

¹³ [UN Security Council: Report of the Secretary General on the UN Organisation Stabilization Mission in the DRC, 23/05/2012](#)

¹⁴ [Repatriation Fact Sheet 31/05/2010 \(Democratic Republic of Congo\)](#)

6.2.2 The 2012 UNHCR country operations profile for DRC states “In 2010, some 16,600 DRC refugees returned to their homeland, including around 1,100 from Burundi, 9,200 from Zambia and 6,200 spontaneous returnees from Uganda. Crucial progress was achieved through tripartite negotiations which have paved the way for further substantial voluntary repatriation in 2012 from the Republic of the Congo, the United Republic of Tanzania and Uganda. More than 400,000 DRC refugees still remain in various asylum countries”¹⁵ The UNHCR forecast in the profile is for the period January 2012 to December 2013 to assist with 162,000 returns to DRC.¹⁶ UNHCR stated in an article of 2 October 2012 that it has helped more than 25,000 Congolese return to their homes in northern Democratic Republic of the Congo (DRC) from the neighbouring Republic of Congo under a voluntary repatriation programme launched in May this year.”¹⁷

6.2.3 Conclusions: The UN clearly has a well established presence within DRC and whilst it has confirmed that its remit does not continue the monitoring of returnees, they will investigate any allegations of mistreatment by the DRC authorities [see section 9.8]. The UN itself has facilitated over 206, 541 voluntary returns in the period 2004 to 2010 and has an aspiration to achieve a further 162,000 in the two years January 2012 to December 2013, a clear indication they have no concern about the general treatment of returnees. It is also pertinent that they are not aware of any mistreatment or detentions, nor have these issues been escalated to the UN’s attention.

6.3 Foreign & Commonwealth Office (FCO)

6.3.1 The FCO in its 2011 Human Rights and Democracy report stated “In 2011, security forces and illegal armed groups in the Democratic Republic of Congo (DRC) continued to commit human rights violations and abuses against the country’s civilian population. The main underlying factors remain the ongoing conflict in the east of the country, a lack of state authority in many areas, and weak institutions. There is generally strong legislation covering human rights issues but implementation is weak and impunity remains a major problem. The DRC authorities took some positive steps to address this in 2011, with successful prosecutions and long sentences handed down for serious offences including mass rape and the murder of human rights defenders.”¹⁸

6.3.2 FCO also noted that “While it is not officially sanctioned, there are widespread anecdotal reports of the security forces using torture in DRC. In July [2011] President Kabila passed a law criminalising torture. This is a welcome step but will require attention to ensure that it is properly implemented.”¹⁹

7 Treatment of Returnees

7.1 Amnesty International

7.1.1 In an interview on 13 June 2012 with a researcher from the agency’s Country of Origin Information Service (COIS)²⁰, Amnesty International (AI) stated that they did not have an office in DRC, nor the resources to consider the allegations of

¹⁵ [2012 UNHCR country operations profile – DRC, accessed 22/10/2012.](#)

¹⁶ [2012 UNHCR country operations profile – DRC, accessed 22/10/2012.](#)

¹⁷ [UNHCR “More than 25,000 refugees return home from Republic of Congo since May,” 2 October 2012,](#)

¹⁸ [FCO Human Rights & Democracy, Countries of Concern, DRC, published April 2012.](#)

¹⁹ [FCO Human Rights & Democracy, Countries of Concern, DRC, published April 2012.](#)

²⁰ Transcript of the COIS interview with AI of 02/06/2012 is available on request.

mistreatment of returnees, which they were aware of via Justice First and media coverage in Belgium. AI added that failed asylum seekers may be perceived to favour the opposition because they claimed asylum and because the Diaspora abroad is known to be strongly against the current regime.

- 7.1.2** AI had documented the elections of November 2011 and noted an increase in human rights violations against political opponents and women. AI stated there had been little progress in the investigations into the abuses carried out during the election.
- 7.1.3** AI is aware that “the new DRC Minister of Transport had issued a statement announcing that all unnecessary security details, such as the ANR (National Intelligence Agency), Republican Guard and other intelligence services should leave the airport. Only the Directorate General Migration and the PNC (Congolese National Police) would remain. Sometimes the security services act without the authority of the Ministry”
- 7.1.4** There is a high level of crime in Kinshasa but no active armed groups, however the PNC and the ANR in PNC uniforms, commit abuses.
- 7.1.5** AI clarified that because they do not document the detention of returned refused asylum seekers does not mean that detention does not take place. They were aware through an NGO of a failed asylum seeker returnee from South Africa who was detained whilst administrative matters could be looked into.
- 7.1.6 Conclusion:** AI have no evidence that returnees are subject to detention / mistreatment on return to the DRC.

7.2 Human Rights Watch

- 7.2.1** In a telephone interview on 2 June 2012 with a researcher from COIS,²¹ Human Rights Watch (HRW) stated that they document abuses on specific categories, such as political and human rights activists and journalists. They had noticed an increase in politically motivated attacks in the run up to the November 2011 elections and an increase in attacks around particularly important political issues.
- 7.2.2** HRW added that they have not considered the issue of returns because of the need to focus attention on other issues within DRC.
- 7.2.3 Conclusion:** HRW have no evidence that returnees are detained / mistreated on return to the DRC.

8 Other asylum intake states

8.1 IGC (Intergovernmental consultations on migration, asylum and refugees)

- 8.1.1** A request was sent in April 2012 to IGC participating states for information regarding the return of failed asylum seekers and others, to DRC and awareness of any difficulties and / or allegations of ill treatment faced by returnees.²² The “Unsafe Return” report was cited as background to the request.

²¹ Transcript of the COIS interview with HRW of 02/06/2012 is available on request.

²² The IGC response will be published shortly by the UKBA Country of Origin Information Service, in the meantime a copy is available on request.

8.1.2 Data was gathered from 11 IGC participating states (Australia, Belgium, Canada, Germany, Ireland, Netherlands, New Zealand, Norway, Sweden, Switzerland, and United Kingdom). Nine states undertook enforced returns to DRC in the period 2009 to 2012. Four specific questions were asked:

Q1: Do you enforce returns of rejected (failed) asylum seekers (FAS) to Kinshasa (N'djili Airport), DRC? If you enforce returns of FAS to Kinshasa, how many were returned in 2009, 2010, 2011 and in 2012 to date?

A2: 2009: at least 209 enforced returns (from nine countries)

2010: at least 95 enforced returns (from seven countries)

2011: at least 83 enforced returns (from nine countries)

2012: at least 32 enforced returns (from four countries up till early May)

Q2: Are you aware of any reports or allegations that voluntary or forced returnees have faced difficulties and/or been mistreated on return to Kinshasa? If so, what were these difficulties and/or mistreatment.

A2: None of the states were aware of any returnees facing mistreatment on return to DRC.

Q3: Are you aware that returnees have been subject to bribes and if so at what cost?

A3: [See section 10: Extortion]

Q4: Are you aware that returnees have been detained/imprisoned, if so why and where?

A4: One state was aware (forced) returnees are held for a short period of time for questioning.

8.1.3 Conclusion: 11 IGC states have undertaken over 419 enforced returns in the period 2009 to 2012, yet none are aware of any mistreatment of returnees and know of only short term detentions. This is a clear indicator there is no general mistreatment or lengthy detention of returnees.

8.2 Three European Embassies in Kinshasa

8.2.1 The agency's fact finding mission to Kinshasa of June 2012 (see 9.1) conducted interviews with representatives of the embassies of Switzerland and France and received written submissions from the Belgium Immigration Officer in Kinshasa

8.2.2 Belgium: The Belgian Immigration Officer²³ confirmed that Belgium undertakes enforced returns to DRC. In 2011 18 DRC nationals were deported and 30 to-date in 2012. They state that whilst returnees are subject to identity checks and that during this process, the individual might be identified as a failed asylum seeker, they are not aware of any individual being detained. Belgium does not disclose the individual's status; does not monitor returnees and is not aware of any facing difficulties either on arrival at the airport or afterwards. One flight on 19 March [2012] was monitored, and contrary to media reports, returnees were not ill treated. Seeking asylum in any western country is seen as a way to get legal status (i.e. emigrate) and is not of interest to the authorities.

²³ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: Pages 105 to 107](#)

- 8.2.3** Switzerland: The Swiss Embassy ²⁴ confirmed that Switzerland undertakes enforced returns to DRC and the documentation used does not identify status. They normally return around 10-20 people per year and returned 7 on a charter flight on 4 July 2012. Voluntary but not enforced returns are monitored, the former purely by follow up to ascertain how reintegration projects are progressing. The Swiss have no documented cases of ill treatment on return. The Swiss do notify the DRC authorities of the return of serious foreign national offenders.
- 8.2.4** France: The French Embassy ²⁵ confirmed that France undertakes returns to DRC, both by scheduled flights and occasionally by charter, the Embassy did not know numbers. However France operates five scheduled flights per week to Kinshasa and an embassy official is always present, irrespective as to whether there are immigration returns on the flight or not. The DRC Immigration authorities would not detain returnees, unless they were a known foreign national offender. The French authorities do not disclose status of returnees. Representatives from the French Embassy meet returnees but there is no monitoring after departure from the airport. The Embassy is not aware of any returnees being mistreated, including being detained. The Director General Migration will assist returnees with being reunited with family in DRC and there is no difference in the handling of returnees, irrespective of where they have come from.
- 8.2.5** The French added that “There are always problems in the aircrafts [with returnees]. Frequently returnees have to be restrained. Sometimes other people on the flight support them with some protest and are taken off the flight.” ²⁶

9. Treatment of Returnees (In country data –see also section 8.2)

- 9.1** A fact finding mission (FFM) was conducted to Kinshasa in the DRC 18 – 28 June 2012 to gather information about the treatment of Congolese nationals, both non-asylum migrants and failed asylum seekers, who have returned voluntarily or by force to the DRC from the United Kingdom (UK) and other western European states.²⁷ Comments from the FFM are contained within specific categories of this bulletin. See FFM for details of the organisations interviewed.

9.2 British Embassy officials ²⁸ stated“

- The British Embassy is only aware of reports of returnees facing difficulties in the UK regional media [or reports through London]. The Embassy is not aware of any substantiated cases of failed asylum seekers (FAS) or other returnees being ill-treated on arrival at the airport or afterwards.
- The Embassy is aware of unsubstantiated reports of returnees being detained.
- The Embassy is able to access places of detention.
- The Embassy is not aware of any returnees being detained. The official has not witnessed any problems faced by a particular ethnic group or by women upon return and had no knowledge of the treatment faced by irregular migrants or failed asylum seekers who are returned.

²⁴ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: Pages 66 to 68](#)

²⁵ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: Pages 93 to96](#)

²⁶ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 95](#)

²⁷ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012:](#)

²⁸ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 39 -40 \(4.09/4.10\)](#)

- The issue of returned FAS from the west doesn't get a lot of attention here."

- 9.3** The Swiss have no documented cases of ill-treatment at the airport.²⁹ A human rights organisation said "it is not aware of FAS or other returnees facing difficulties' at the airport" they added that "there is no different in treatment of returnees from the UK and other countries, all returnees are returnees"³⁰ Les Amis de Nelson Mandela states " it is very dangerous to send people back from the UK because it is known that Congolese in the UK are against the government "; yet go on to say " The organisation have not heard about returnees from the UK disappearing".³¹
- 9.4** ASADHO stated "ASADHO does not have specific information about ill-treatment."³² Renadhoc stated "The way you are treated does not depend on where you return from but rather on your profile, especially political allegiance and on the province from which you originate in DRC."³³ OSD was only aware of two cases of returnees who have been ill treated, in 2008 and 2010; but also spoke about two Schengen cases of 2009 / 10. OSD also said "There is no real difference between the treatment received by returnees from the UK and Europe – but there is a difference between those and West African countries".³⁴
- 9.5** The Eglise du Christ au Congo stated "The church is not aware of any reports of FAS or other returnees facing difficulties at N'djili airport. The church receives returnees and efforts are made to send them back to their families. Some of them prefer to stay in Kinshasa for work. Between their arrival and the time a job is found, they face a difficult situation which sometimes they consider as mistreatment. Some Congolese asylum seekers in Europe say they are ill-treated in DRC in order not to be returned."³⁵
- 9.6** An un-named human rights organisation highlighted that people believed to be combatants are mistreated once returned and that some asylum seekers use this to justify the fact they should not be returned to DRC. South African returnees were cited as an example. They identified political militants as those who were abroad and had disturbed the Congolese authorities whilst in the UK. Also that origin plays a part as people from the Equateur province may have a problem. "Returnees with a criminal record / and or outstanding arrest warrant would be arrested and may disappear. Returnees from the UK, other western European or African countries all receive the same treatment, if they are not on the black list."³⁶
- 9.7** Representatives from Toges Noires stated that "returnees with a small crime are not at risk as the judiciary is not strong enough to follow each case. The interest will be if someone is on the black list." They talked of UK and France being centres of active opposition and where "combatants" are; however they also refer to 10 returnees in May 2012 who the media had mentioned as combatants, but were found to be just irregular migrants.³⁷
- 9.8** Office of the High Commissioner for Human Rights (OHCHR) / United Nations Organization Stabilization Mission in the DR Congo (MOUNOSCO) joint Human

²⁹ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 32, \(4.02\)](#)

³⁰ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 32, \(4.03\)](#)

³¹ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 33-34, \(4.04\)](#)

³² [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 35 \(4.05\)](#)

³³ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 37, \(4.0\)](#)

³⁴ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 37,\(4.07\)](#)

³⁵ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012, page 38, \(4.08\)](#)

³⁶ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 40-42 \(4.11\).](#)

³⁷ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 41-43 \(4.12\).](#)

Rights Office does not deal specifically with returnees; however it will follow up on a case if notified that a failed asylum seeker returnee was detained by the Congolese authorities. The office was not aware of any problems faced by returnees at the airport and did not see why illegal asylum seekers expelled should be detained by the authorities unless they were well known as political partisans accused of involvement in some subversive activities.³⁸

- 9.9** Members of Human Rescue said “Ill-treatment of returnees is done on purpose, for political reasons. The Diaspora in the UK is seen as being against the government, so FAS are greeted as members of the opposition, who tarnish the government’s image, so the authorities want to take revenge. All returnees are taken by a waiting car to the DGM Provincial prison for ‘enquiry reasons’. Sometimes this detention can last one month. It is only possible to get free from this if you know someone in power. However this organisation does not monitor returnees or met FAS on arrival”.³⁹
- 9.10** Except in the case of people leaving the country to avoid prosecution, the illegal exit from the country of origin has no negative consequence per se.⁴⁰
- 9.11 Conclusion:** When the totality of evidence in sections 6, 7, 8 and 9 of this bulletin are considered, the agency maintains its position as stated in the OGN at paragraph 5.8: “In accordance with the current country guidance in **BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098** the UK Border Agency maintains that failed asylum seekers per se do not face a real risk of persecution or serious harm on return to the DRC. However BK does accept that returnees are likely to be questioned and case owners should review each case to determine whether the applicant falls into the risk categories identified in Country Guidance, whilst taking into consideration appropriate evidence which post dates BK.”
- 9.12** Based on the information provided by other asylum intake countries and from embassies and other sources within DRC, we do not accept that return from the UK / Europe is in itself a risk category. There may be extra scrutiny of returnees from countries within Western Europe, in particular from known centres of active Diaspora communities such as the UK, Belgium and France, however there is no evidence that returnees will be detained indefinitely and / or mistreated purely on account of where they have travelled from.
- 9.13** As stated in 9.11 above, the agency’s OGN already recognises that there are specific categories of individual, who based upon a political, human rights or ethnicity claim might be at risk on return to DRC. The categories within the OGN are those which form the basis of the majority of asylum applications made in the UK.

10. Extortion

- 10.1** “Upon arrival at the airport, immigration agents will wait for the returnee and identify him before taking him to the litigation office of the DGM for the formalities before the hearing. Returning Congolese are likely to be interviewed by DGM officials and subjected to systematic searches and extortion of their private belongings, e.g. shirts, pants, shoes, watches, lighters, as well as money) if for example the

³⁸ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 47 \(4.17\)](#)

³⁹ [UK Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 30/31, \(4.01\)](#)

⁴⁰ UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (32.01)
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

vaccination certificate isn't valid. This may continue in the parking area, after leaving the passenger zone of the airport, as individuals from the security forces rightly or wrongly believe that returnees have a lot of money and goods with them".⁴¹

10.2 In an interview on 13 June 2012 with a researcher from COIS, Amnesty International stated that "the Congolese abroad are perceived as having money whether they were failed asylum seekers or not."⁴²

10.3 A request was sent in April 2012 to IGC participating states for information regarding the return of failed asylum seekers and others, to DRC and awareness of any difficulties and / or allegations of ill treatment faced by returnees. The "Unsafe Return" report was cited as background to the request. Data was gathered from 11 IGC participating states (Australia, Belgium, Canada, Germany, Ireland, Netherlands, New Zealand, Norway, Sweden, Switzerland, United Kingdom and the specific question was asked:

Q: Are you aware that returnees have been subject to bribes and if so at what cost?

A: Three states replied that returnees may be subject to bribes, or other forms of corruption, just like any other traveller between Europe and DR Congo.

10.4 Justice First in its report "Unsafe Return" stated when commenting on "extortion and ransom"⁴³ of the 15 returnees that:

- 1/15 ransom was paid from the UK
- 3/15 ransom was paid by family and friends in DRC
- 2/15 bribe was paid before removal
- 2/15 money stolen from returnees in prison
- 4/15 returnees had money or belongings stolen from them at the airport
- 1/3 voluntary returnees was given money in the UK to assist passage through the airport

10.5 The fact finding mission of June 2012 (see 9.1) reported that:

10.5.1 The Oeuvres sociales pour le developpement (OSD) stated "If there is a return the DGM [Migration Directorate] has to check him to take his money – this is a source of revenue for the DGM"⁴⁴

10.5.2 Representatives from Toges Noir commented that "There is not a lot of difference between FAS returned voluntarily or forced or FAS returned on a charter or schedule flight. The difference is that when there is a charter flight, DGM and all the other security services – ANR and the Republican Guard as well are getting ready for the opportunity to get more money – they know it will be a good revenue – better than from the government." They also cite "in May 2012 ten Congolese sent back from London, were detained by DGM and released only on payment of money –"⁴⁵

10.5.3 ASADHO stated "returnees are intimidated in order to get money from them (the DGM and the ANR know the returnees have money with them). This is not only the

⁴¹ UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (32.02)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴² COIS Interview with AI of 13 June 2012 available on request

⁴³ [Unsafe Return: Refoulement of Congolese asylum seekers, 24/11/2012](#); page 27, extortion and ransom.

⁴⁴ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 37 \(4.07\) / 79.](#)

⁴⁵ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 93and 41 \(4.12\)](#)

case of returnees and FAS but also for normal passengers. For FAS it is just worse. Those with financial means, pay money in DRC for those who are detained to be released.”⁴⁶

10.6 Conclusion: It is evident that extortion and bribery of all returnees from Western Europe takes place within DRC by officials. This is not an uncommon occurrence across the globe and there is no evidence that in the DRC this constitutes serious mistreatment. The courts concluded in BK (see case-law section 14.2) in paragraph 323 that in general the treatment faced by returnees required to pay a bribe will not breach Article 3.

11 Detention (of returnees) (Refer also to 8.2.2 and 8.2.4)

11.1 In the fact finding mission of June 2012 the weight of evidence is that detention occurs only under certain circumstances; for example the French Embassy stated “DGM do not detain people for immigration matters. This happens if you have committed crimes here or for example if a returnee has committed a crime [the example given was murder] in the country the person has been returned from. In which case, the DGM will be looking out for their arrival. Therefore people are not detained for being returned but for the crimes. DGM does not have detention facilities at the airport. They detain people in town at their headquarters”.⁴⁷ A human rights organisation stated “At the airport there are no facilities to detain people, just an office where returnees are interviewed. If they have to be detained, they will be brought to the DGM headquarters. It is difficult to say whether the authorities detain returnees at the airport. Congolese returnees from South Africa were detained, but not all returnees are detained, only those who are supposed to belong to the ‘combatants’”.⁴⁸ Representatives from Toges Noire stated that “There are persons on the black list, they [DGM + ANR] have a list of people who make demonstrations and disturb the DRC authorities in Europe.” A Congolese human rights organisation stated “Usually those coming back without documents are not detained. They are interviewed and identified but not detained or mistreated. The treatment depends on what the person has done. If [he] has caused some trouble in DRC or used forged documents, or is perceived to be against the government may experience problems”. IOM said “many returnees are detained for 24/48 hours, but those with a criminal background would be detained longer. DGM might detain for migration problems –”⁴⁹

11.2 In the fact finding mission there is a general consensus that there is no detention facility at N’djili airport.⁵⁰ IOM state that “There are no detention facilities at the airport. A few years ago (before 2008) the UK and Belgium looked into the possibility of funding a detention place that the DGM could use for people accused of migration offences – to avoid them being put in other places of detention with mainstream criminals. However nothing ever became of this. There are detention facilities but the organisation didn’t know the exact location – but possibly at the DGM headquarters.”⁵¹ OHCHR/MONUSCO joint Human Rights Office said “There may be detention facilities at the airport – like everywhere else in the world, but

⁴⁶ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 35 \(4.05.\)](#)

⁴⁷ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 18 \(2.70\)](#)

⁴⁸ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 17, \(2.61\)](#)

⁴⁹ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 12, \(2.26/2.30\); page 20: \(2.84\)](#)

⁵⁰ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 16 to 19 \(2.59 to 2.74\)](#)

⁵¹ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 18, \(2.71\)](#)

since the office doesn't deal with the returnees, it cannot confirm this".⁵²

- 11.3** ASADHO state that "DGM has a small prison in Kinshasa" Human Rescue and Renadhoc also refer to a DGM prison. The British Embassy notes different prisons depending on the level of crime, but states "It is believed that only high profile people who were believed to be a threat to the State may be detained." A human rights organisation, the French Embassy and Toges Noire refer to the DGM detaining people in their offices/ headquarters; whilst the Belgium Embassy refers to a DGM transit centre.⁵³
- 11.4** OHCHR/MOUNOSCO noted "there are less cases of torture or ill treatment in Kinshasa's prisons – but the conditions of prison need attention. The cells are not appropriate" for example in early June [2012] the office was informed that three people from opposition parties were arrested and detained in one of a well-known military cell. The office was informed that they had been tortured but after investigation the office found that this was not true."⁵⁴ OHCHR in its report on Human Rights in DRC, 2010 to 2012, stated "The management of prisons and detention centres raised major concerns, since the lack of food and health care has led to an alarming number of malnutrition cases and deaths in detention"⁵⁵
- 11.5** The report of May 2012 by the Secretary General on the UN Organisation Stabilization Mission in the DRC stated "MONUSCO continued working with the Ministry of Health and the Ministry of Justice to integrate the prison medical system into the general public health system, to enable prisoners to access medical care. In addition, MONUSCO continued to support UNOPS and IOM to construct and refurbish prisons under the International Security and Stabilization Support Strategy. On 7 May, a six-month on-the-job training by MONUSCO began for 150 military officers on prison management."⁵⁶
- 11.6** The British Embassy and some others interviewed for the FFM indicated there is accessibility to detention centres, though this likely to be DGM establishments rather than ANR ones.⁵⁷
- 11.7 Conclusion:** The consensus within the FFM is that returnees per se do not face a risk of detention, unless they committed a known offence, or have a recognised profile of opposition to the DRC government. There are conflicting views as to the treatment of long term detainees and UNCHR comment on false allegations of torture, but recognise the very poor general conditions within DRC prisons.
- 11.8** There is no evidence that detention facilities exist at the airport, although as accepted by the UN it would be no surprise if the DGM did, in common with immigration authorities through out the world, have some detention facilities in Kinshasa. A distinction needs to be made between those cases which might require a short administrative detention for immigration purposes and those which warrant a longer term incarceration. Whilst in general prison conditions in the DRC are severe and are likely to reach the Article 3 threshold [see OGN section 3.11] ;

⁵² [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 19. \(2.73\)](#)

⁵³ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 19/20. \(2.75 – 2.88\)](#)

⁵⁴ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 21. \(2.87\)](#)

⁵⁵ [OHCHR in Democratic Republic of Congo \(2010- 2012\)](#)

⁵⁶ [UN Security Council: Report of the Secretary General on the UN Organisation Stabilization Mission in the DRC, 23/05/2012.](#)

⁵⁷ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 22-22. \(2.89 – 2.99\)](#)

consideration needs to be given to the individual facts, in particular (a) the reasons for any possible detention, (b) the likely length and type of detention and the individual's gender, age and state of health.

12 Returns from the UK

12.1 The UK Border Agency recognises in its country information that there is an ongoing conflict in the East of DRC which has caused severe humanitarian problems. However returns are made to Kinshasa which is a considerable distance from the conflict zones. This assessment is confirmed by UNHCR in its 2012 country operations profile for DRC, which states "While most of the Democratic Republic of the Congo (DRC) is now stable, the security situation remains volatile in the east of the country"⁵⁸

12.2 Data on returns

12.2.1 Asylum applications by national of the DRC in the period January 2006 to June 2012.⁵⁹

Year (A)	Total Applications (B)	Total Grants (C)	Grants as % of applications	(Grants Asylum) (D)	(Grants HP) (E)	(Grants DL) (F)
2006	572	128	22.4%	46	0	82
2007	371	138	37.2%	82	1	55
2008	333	77	23.1%	52	1	24
2009	204	61	29.9%	37	0	24
2010	188	63	33.5%	49	0	14
2011	169	59	34.9%	35	0	24
2012 Qtr 1	61	24	39.3%	19	0	5
2012 Qtr 2	54	16	29.6%	12	0	4

12.2.2 This data indicates that in the years 2006 to Qtr 2 2012 the average grant rate for applications from DRC nationals for international protection is 31%.

12.2.3 Since 2006 there has been a decrease in applications from DRC nationals which is consistent with the decrease in asylum claims from all nationalities. It is also considered that the promulgation of BK in 2007/08 has had an impact,

12.2.4 Removals and Voluntary Departures (including port departures) of nationals of DRC to DRC in the period January 2011 to June 2012.⁶⁰

Year	Total removals and voluntary departures.	Asylum removals	Non asylum removals
2011	32	25	7
2012 Qtr 1	5	3	1

⁵⁸ 2012 UNHCR country operations profile – DRC, accessed 22/10/2012.

⁵⁹ Statistics are published on the Home Office web site: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/>

⁶⁰ Statistics are published on the Home Office web site: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/>

2012 Qtr 2	7	2	4
------------	---	---	---

12.2.5 This data indicates that in the 18 month period January 2011 to June 2012, there were 44 enforced removals and voluntary departures to DRC.

12.3 Charter flights

12.3.1 Charter flights allow the UK Border Agency to carry out volume returns to countries where asylum intake is high or where there are a significant number of foreign national prisoners awaiting return. This also makes charter flights a cost effective option in some circumstances, DRC is such a country and the agency removes by both scheduled and charter flights, though with the decrease in DRC applications some charters have been multi drop (i.e. travel to more than one country)

12.3.2 There have been four Charter flights to DRC from the UK since May 2009 and the UK has participated in two Belgian and one Dutch flights.

12.4 Documentation

12.4.1 Redocumentation is undertaken when the individual has no valid passport / valid means of entry to the home country. In the case of DRC Emergency Travel Documents (ETDs) are issued. For many countries the Embassy based in the UK will issue these after confirming the individual is a national of the stated country. However for some countries, for their own operational reasons, ETDs are issued by officials visiting the UK for this purpose. DRC is such a country.

12.4.2 There is currently no agreed documentation process in place. Redocumentation of DRC nationals has been undertaken by DRC officials from the Office of the Director General Migration and from the Ministry of Foreign Affairs, who travelled to the UK specifically for this purpose. Both failed asylum seekers and foreign national offenders were interviewed. The officials were only presented with personal details and bio data. All referrals were screened by the agency's Country Returns, Operations & Strategy Team (CROS), who co-ordinated the redocumentation exercise, to remove any references to claims for asylum/ offences.

12.4.3 There have been four redocumentation exercises since 2009, with the most recent being in May 2012.

12.4.4 In the FFM⁶¹ testimonies from other European states (see sections 8.2.2 to 8.2.4 of this bulletin) confirm that a country's redocumentation process in itself does not identify failed asylum seekers / offenders, only that the individuals have no legal basis for remaining in the country seeking to remove them. The British Embassy stated "The official was not aware of any way the Congolese authorities would be able to identify failed asylum seekers (FAS) who voluntarily returned. The Embassy does not discuss details of Foreign National Offenders (FNOs). Returnees are just referred to as 'returnees' – not FNOs".⁶²

12.4.5 Conclusion: The evidence on redocumentation indicates that the DRC authorities are not informed as to the individual's status in the UK and consequently this indicates that returnees from the UK to the DRC, purely on account of travel

⁶¹ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012:](#)

⁶² [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: page 40, \(4.10\).](#)

documentation, are not at risk of ill treatment by the authorities.

13 Monitoring of returnees

- 13.1** The UK is under no obligation to monitor the treatment of individual unsuccessful asylum seekers who have returned to their country of origin. Nor does the UK have any ongoing responsibility for monitoring returnees. They are, by definition, foreign nationals who have been found as a matter of law not to need the UK's protection and who had no legal basis of stay in the UK. It would be inappropriate for the UK to assume any ongoing responsibility for them when they return to their own country. Active monitoring of returnees in many countries could, of itself, place the individual at risk.
- 13.2** The Foreign & Commonwealth Office (FCO) follows the human rights situation through its network of posts around the world, including in the countries to which we return unsuccessful asylum seekers. They will pass to the agency any general information suggesting that returnees have been mistreated. Such information will always be taken fully into account in country policy formulation and hence in the decision whether it is safe to return an individual. If the UK Border Agency receives any specific allegations that a returnee has experienced ill-treatment on return to their home country, then these would be checked, including through the FCO who where necessary will make discreet enquiries, often through NGOs or other third parties.
- 13.3** No organisation or Embassy interviewed for the FFM routinely monitors returns; except for the Eglise du Christ au Congo, which states that it "meets returning FAS at the airport, such as recent returnees from South Africa". Members of the church's congregation are in the migration service, including the DGM number one of Protocol. The church will also assist returnees to reintegrate back into society.⁶³

14 Remarks attributed to the DRC Ambassador

- 14.1** On 25 June 2012 a meeting of the All Party Parliamentary Group (APPG) on the Great Lakes Region met with HE Barnabe Kikaya – bin Karubi, the Ambassador for the DRC to the UK. This was an informal meeting and consequently no minutes were taken.
- 14.2** After the meeting, MPs stated that the Ambassador had type cast DRC nationals who had come to the UK as (a) members of the former oppressive regime, (b) had come to the UK because of the good benefit system and (c) having committed crimes in the UK should be punished on return to DRC. This was interpreted as meaning asylum seekers and foreign national offenders (FNOs) were at risk on return to DRC.
- 14.3** It was also alleged that the Ambassador stated that he signs the deportation papers. [Note; no foreign officials have any involvement in the signing of a deportation order (DO)]
- 14.4** Since then reference to the Ambassador's alleged remarks has been quoted in injunctions by DRC nationals to prevent removal.
- 14.5** The Ambassador wrote on 16 August to Mrs Mary Glendon MP to clarify his

⁶³ [UK, Fact Finding Mission to Kinshasa 18 -28 June 2012: pages 23 -30; Monitoring of Returnees](#)

comments of 25 June. In the letter he stated that failed asylum seekers are not at risk of arrest and torture on return and are reunited with their families on arrival [in Kinshasa] He stated people deported for having committed crimes in the UK are held in custody for a period of time to allow the Congolese justice system to clarify their situation. The Ambassador has confirmed that this is a discloseable letter.⁶⁴

14.6 In terms of the impact of crimes committed outside of the country; persons having purged their sentence in the asylum country after sentence do not risk prosecution from Congolese courts.⁶⁵

14.7 Conclusions: See sections 12.4 on redocumentation and 11.7 to 8 on detention. There is currently no agreed documentation process in place and no evidence that returnees in general risk detention on arrival in Kinshasa. Recent redocumentation exercises have been undertaken by officials from the Office of the Director General Migration and from the Ministry of Foreign Affairs who travelled to the UK specifically for this purpose. There is no indication the Ambassador, or Embassy officials, are involved in the redocumentation process.

14.8 The Ambassador has indicated in his letter of 16 August that failed asylum seekers in general are not at risk of arrest and detention on return to the country.

14.9 As regards his comments on those who commit offences in the UK, this is a viewpoint taken by many countries, who understandably want to be aware of serious crimes committed by their nationals abroad and by other nationals entering the country. The reality is as stated in paragraph 12.4.2 that no indication of status is given in the redocumentation process. The only potential for the DRC authorities to learn of a serious crime committed in the UK by one of its nationals is if the crime attracted significant media publicity and the offender was identified as a DRC national.

15 Response to the recommendations in the Justice First report “Unsafe Return”

15.1 The UK Border Agency does not accept that the evidence published by Justice First in its report “Unsafe Return” supports their assertion that a change in the agency’s policy on returns to the DRC is warranted. The courts have stated that country guidance case remains authoritative until it is replaced by a new CG case or there is a clear difference in country conditions, warranting a deviation from the existing law. The UK Border Agency believes the findings reached in BK to be significant and still relevant when the country evidence detailed in this bulletin is taken into consideration.

15.2 The report’s principal recommendations were:

- That Country of Origin information be updated to reflect the report’s findings;

Response: The agency’s Country of Origin Report on DRC was published 9 March and the Operational Guidance Note in May 2012. Both documents refer to the Justice First report. The COI Fact Finding Mission into the position for returnees to Kinshasa has now been published and has informed this bulletin, which addresses the issues of safety of return.

⁶⁴ Copy of the Ambassador’s letter to Mrs Glendon is available on request.

⁶⁵ UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (32.03))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- Removals should be suspended and the Agency's returns policy reviewed;

Response: Having considered all the evidence available and quoted in this bulletin, the agency does not consider that any change in the returns policy to DRC is warranted.

- There should be an effective monitoring system of returns after arrival in Kinshasa;

Response: As stated in this bulletin at 3.1.6 the agency only returns individuals to their home country when it is considered safe to do so. Monitoring of returns on foreign territory is impractical as outlined in section 13.

- No document relating to a returnee's asylum claim is given to Congolese authorities.

Response: See section 12.4 of this bulletin. Officials from foreign governments are only presented in the redocumentation process with personal details and bio data. All referrals are screened by the agency to remove any references to claims for asylum/ offences.

- UKBA and the FCO should have a dialogue with UK civil society groups and individuals who have remained in contact with those refouled to the DRC.

Response: The UK Border Agency is committed to working with the third sector in the UK, for example working closely with partners in the National Asylum Stakeholder Forum.

- Based on the experience with IOM, more robust procedures be put in place to ensure partner organisations do not facilitate voluntary returns without a verifiable reassurance of safe passage and without a functioning network on the ground to follow up the well being of returnees.

Response: Those who have voluntarily chosen to return to DRC through the agency's Assisted Voluntary Return Programme, work with Refugee Action, who will facilitate travel and assist returnees in deciding on the appropriate reintegration assistance to help them rebuild a life on return.

- Any investigation by FCO or UKBA should be done discreetly so as not to identify those who gave testimony for the report.

Response: As the testimonies are anonymous, there was no investigation into specific cases.

Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Intelligence Directorate
UK Border Agency
November 2012

