

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	328
Land:	DR Congo
Kilde:	UK Home Office
Titel:	Policy Bulletin 1/2014
Udgivet:	18. februar 2014
Optaget på baggrundsmaterialet:	29. juli 2014



Home Office

Country Policy Bulletin

DEMOCRATIC REPUBLIC OF CONGO (DRC)

Democratic Republic of Congo (DRC) POLICY BULLETIN 1/2014

CONTENTS	
1. Introduction	1.1 – 1.3
2. Background: Issue mistreatment of returnees to DRC	2.1 – 2.4
3. Return of failed asylum seekers (FAS)	3.1 – 3.7
4. Return of foreign national offenders (FNOs)	4.1 – 4.13
5. Justice First: Unsafe Return reports.	
“Unsafe Return [1] report”	5.1 – 5.4
“Unsafe Return 2 report”	5.5 – 5.12
6. Data from other asylum intake states:	
- IGC (Intergovernmental consultations on migration, asylum and refugees: Update on returns.	6.1.
- IGC: Questionnaire on FNO returns.	6.2.
- High Court of Ireland case on DRC returns	6.3.
7 High Court (England and Wales) case of R and P	
High Court judgment 10 December 2013 in cases of:	7.1 – 7.3
- R (Failed Asylum Seeker (FAS))	
- P (FAS & Foreign National Offender)	
8. Return of Women to the DRC	
Freedom from Torture submission to CEDAW	8.1 - 8.7
9. UNHCR returns to DRC	9.1 – 9.2
10. Returns from the UK	10.1
Statistics on returns to the DRC from the UK	10.2.
Documentation	10.3.
Appendix A: IGC Survey on Returns	
Appendix B: IGC Survey on FNOs	
Appendix C: FCO letter of 23 January 2014	

1. Introduction

- 1.1** The purpose of this Bulletin is to update the policy of the Home Office on returns to the Democratic Republic of Congo (DRC) in light of the judgments in [R v SSHD ex p P \(DRC\)](#) and [R v SSHD ex p R \(DRC\)](#) in December 2013 and the further information referred to in this document.
- 1.2** This bulletin supplements [the DRC country policy bulletin 1/2012](#) published November 2012 (CPB 1/2012), which should be read in conjunction.
- 1.3** Other relevant Home Office documents when considering applications from DRC nationals for the UK's protection are:
- [the Country of Origin Information \(COI\) report for the DRC](#) (published 9 March 2012);

- [the DRC Operational Guidance Note \(OGN\) of May 2012](#);
- [the Fact Finding Mission of 18 to 28 June 2012 to Kinshasa \(DRC FFM\)](#) and
- The COI bulletin: DRC: Statistics and Information on the Treatment of returns (to Kinshasa), published February 2013. This bulletin is currently not published on the Home Office web site, but is fully discloseable.

2. Background

- 2.1** For a number of years there have been various reports of allegations of ill treatment of returnees to the DRC. These have been investigated by the Home Office, working with the Foreign & Commonwealth Office (FCO), and no evidence has been found to substantiate the claims. The courts have similarly examined such allegations on a number of occasions.
- 2.2** In December 2007 the then Asylum and Immigration Tribunal (AIT) considered in the country guidance (CG) case of [BK \(Failed asylum seekers\) DRC \(Rev 1\) CG \[2007\] UKAIT 00098 \(31 October 2008\)](#) evidence on return to DRC. The Tribunal concluded that returnees to DRC were not at risk of ill treatment or persecution simply because they were failed asylum seekers. The AIT's conclusions were confirmed by the Court of Appeal in December 2008.
- 2.3** Since the confirmation by the Court of Appeal of the findings in BK, there have been continuing allegations as regards the risk on return to the DRC. Enquiries made by Foreign & Commonwealth Office (FCO) officials in Kinshasa have found no evidence that returnees being removed from the UK to the DRC have been mistreated.
- 2.4** The OGN for the DRC of May 2012 recognizes that there are specific categories of DRC national who may be able to demonstrate a risk on return to the DRC; such as those of Banyamulenge / Tutsi ethnicity, journalists, human rights activists and political opponents, subject to their level of profile. There is no evidence that all returnees are at risk of ill treatment on return.

3. Return of failed asylum seekers (FAS)

- 3.1** The consultations on returns with Intergovernmental consultations on migration, asylum and refugees (IGC) member states, undertaken in April 2012, August 2013 and December 2013, confirm that other countries in Europe and elsewhere continue to undertake returns to the DRC. These countries stated that they have no evidence that returnees are mistreated solely on the grounds that they are returnees, or because of where they have travelled from. However returnees might be questioned and there may be a short period of detention as part of normal immigration controls. See section 6.1.
- 3.2** The information from IGC states also noted that on arrival returnees to the DRC, as with other travellers, might be subject to harassment, including attempts at extortion, but there is no evidence of any serious mistreatment. Extortion is covered in the CPB 1/2012 and is recognised to exist for travellers to the DRC; however attempted extortion in general does not constitute persecution.
- 3.3** The information provided by Belgium through the IGC and to the DRC Fact Finding Mission of June 2012 is especially important as this is the former colonial power for DRC, with continuing strong links to the country. The Belgium immigration authorities have returned significant numbers of Congolese FAS, have had allegations of mistreatment of

returns, which have been investigated and no substance to the claims have been found.

- 3.4** In [R v SSHD ex p P \(DRC\) and R v SSHD ex p R \(DRC\)](#), commenting upon the information provided by the IGC, the court found (see section 7 of this bulletin- case of R&P) "... the UKBA was also entitled to give significant weight to the extensive experience of returns to the DRC reported by the United Nations and the 11 states participating in the Intergovernmental Consultation on Migration, Asylum and Refugees" (paragraph 41 of the judgment).
- 3.5** The High Court of Ireland found (see section 6.3) in September 2013, on a consideration of evidence including the Unsafe Return [1] report and DRC FFM report, that failed asylum seekers per se are not at risk on return to the DRC and that the redocumentation processes undertaken by Western nations would not identify any individual as a failed asylum seeker.
- 3.6** The High Court of Ireland's finding that failed asylum seekers per se are not at risk on return was supported in [R v SSHD ex p P \(DRC\) and R v SSHD ex p R \(DRC\)](#), promulgated in December 2013 (see section 7). The court found that the conclusions reached in the country guidance case of BK that failed asylum seekers per se are not at risk on return to the DRC remain valid.
- 3.7** **Conclusion:** The DRC CG case of BK (see 2.2) is still relevant and failed asylum seekers per se are not at risk on return to the DRC.

4. Return of foreign national offenders (FNOs)

- 4.1** In the case of P - see section 7 - the High Court of England and Wales found that there is a real risk of detention / ill treatment for a returnee if identified as having committed a criminal offence in the UK. The risk identified by the court was the unknown length of any detention period and the facility where this detention would take place, as general prison conditions in DRC are considered likely to breach Article 3 – see section 3.11.11 of the [DRC OGN of May 2012.](#)
- 4.1.1** The basis of this finding was remarks attributed to the DRC Ambassador in the CPB 1/2012. The Ambassador wrote on 16 August 2012 to Mrs Mary Glendon MP to clarify comments made at a meeting on 25 June 2012. 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.
- 4.1.2** In response to this finding further information has been obtained from IGC and DRC authorities as evidenced in this bulletin

IGC information:

- 4.2** The IGC responses (see section 6.2) indicate that other states do not differentiate between FAS and FNOs, some do return Congolese nationals who have committed crimes in the IGC state and that they have undertaken FNO removals without known difficulties on return. Germany in particular has returned 79 FNOs since the beginning of 2012 (69 enforced and at least 10 voluntary).

- 4.3** Belgium state there is no specific procedure for returning FNOs. The DRC authorities would only be interested in a returnee if there was a criminal offence for which the Congolese authorities had still to proceed to criminal investigation, or where there was an outstanding arrest warrant, in the DRC. There is no indication of anything in the DRC's immigration process beyond the holding of an arrival commensurate with normal international immigration controls.
- 4.4** As indicated in paragraph 3.4 above it is appropriate for the Home Office to give weight to the evidence from other returning states.
- DRC Fact Finding Mission (FFM):**
- 4.5** Note: References in this section relate to paragraphs / pages in the DRC Fact Finding Mission report, released in November 2012 (DRC FFM), unless otherwise stated.
- 4.6** Section 4.7 of the DRC FFM report deals with the "Treatment of Returnees". Common threads identified were:
There are references by interlocutors to returnees with criminal records and / or an outstanding arrest warrant [in DRC] being of interest to the authorities if it is known that the person is returning. In those cases the individual will be detained. The police commander for Kinshasa added (4.14) that "If there are returnees with criminal records and or an outstanding warrant of arrest, the police cannot deal with this. It will be dealt with by the Ministry of Justice which is totally separate from the police". Representatives of Toges Noires (4.12) stated "...if they are small crimes it can be fine, i.e. not a problem". The General Inspectorate of Justice commented "...there had not been experience of that kind of case" [i.e. returnee with outstanding criminal record, including warrant] (4.16).
The category identified clearly as being of interest to the DRC authorities is those returnees with political profiles.
No organisation identifies any specific risk on return for FNOs.
- 4.7** In the DRC FFM report, representatives of the French Embassy in Kinshasa stated:
(a) "They [French authorities] do not tell the Government [of DRC] why people are sent back. They just say they were people who were in France irregularly" (2.56).
(b) "DGM [Direction Generale de Migration] do not detain people for immigration matters. This happens if you have committed crimes here [in DRC] or for example a returnee has committed a crime [example given was murder] in the country the person returned from. In which case the DGM will be looking out for their arrival. Therefore people are detained not for being returned but for the crimes". Detention is at "...their [DGM] headquarters in town" It is unclear whether the representative was talking of crimes for which individuals were still serving their sentence, or for spent offences in the country returning the individual. However the example given was of a very serious offence (2.70).
(c) In considering (b) above one also needs to take into account that the French representative stated "The embassy has not heard about returnees facing difficulties at the airport or being detained on or after arrival. They are not aware of any substantiated cases of returnees being ill treated on arrival or afterwards. Returnees are not detained, just interviewed and sent back to their families" (4.13).
- 4.8** An official of the Federal Office for Migration of Switzerland, interviewed in Kinshasa for the DRC FFM stated "If a serious criminal is returned – for example someone who has committed a rape and has already served the corresponding sentence in Switzerland, it would be necessary to inform DGM, but the person would remain free since already paid debt to the society" (4.02 DRC FFM report). The Swiss also stated that they "had no documented cases of ill treatment at the airport" (page 66).

- 4.9** The information gathered during the DRC FFM provides no substantive evidence of any mistreatment of FNO returns. Only the French and Swiss Embassies raised treatment of returning FNOs to the DRC FFM delegation and both stated that they were not aware of any problems. Both countries returned to DRC at that time (pages 66 and 94).

FCO meeting with DGM of January 2014

- 4.10** At the request of the Home Office, a Foreign & Commonwealth Office official responsible for migration issues met with the Directeur Central de la Chancellerie at the Direction Generale de Migration (DGM) on 15th January 2014. The DGM is responsible for border control and is part of the Ministry of the Interior.¹
- 4.11** The text of the questions asked and the replies given by the Directeur Central de la Chancellerie are provided at Appendix C. The Directeur clarifies:
- That travel documents from the UK to the DRC will only be issued once the DGM are satisfied the individual is Congolese;
 - The only questioning of a returnee in any redocumentation process relates to identity;
 - There have been no detentions on return of Congolese citizens;
 - DGM's interest in criminal activity arises only in those returning with an outstanding arrest warrant in the DRC. Identification is clarified before the issue of any travel document in the UK, however and "...to date there have been no cases where a Congolese national undergoing identification process in the UK has an outstanding warrant in DRC".

Most importantly the following points are made:

- "Any criminal conviction that has occurred outside the DRC is of no relevance to any [arrest] warrant process" (answer 3);
 - "There is no detention centre / facility for returning Congolese nationals" (answers 4 and 6);
 - "There is no monitoring process for any Congolese nationals who have returned from the UK or any other country" (answer 7); and
 - "The [UK] Ambassador plays no part in the [return] process" (answer 8).
- 4.12 Conclusions:** There is no evidence of any difference in the management of the returns process by the DRC authorities of FAS and FNO returnees. The DRC authorities have no interest in criminal convictions in countries outside of the DRC, only in outstanding criminal offences committed within DRC.
- 4.13** On the totality of the relevant evidence now available FNOs returned to the DRC are not at real risk of detention and ill treatment on arrival which would make their return a breach of Article 3 of the ECHR.

5. Justice First: Unsafe Return reports.

Unsafe Return [1] report.

- 5.1** The report "Unsafe Return; Refoulement of Congolese Asylum Seekers" (Unsafe Return [1] report) dated 24 November 2011 was compiled by Catherine Ramos, a volunteer translator and Trustee of Justice First. This organisation describes itself on its web site as

¹ [US State Department: Report on Human Rights Practices 2012: DRC: d Role of the Police and Security Apparatus.](#)

“a charity formed in 2006 working with people in the Tees Valley who are seeking asylum. We help those whose appeals have been rejected to re-engage with the legal system. We provide humanitarian aid for those who do not, at present, qualify for support from the state”.²

- 5.2** The report was based on investigations undertaken by Ms Ramos, including visits to Kinshasa, of the experiences of 14 enforced and three voluntary Congolese 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.
- 5.3** The “Unsafe Return [1]” report was considered and its recommendations addressed in the DRC Country Policy Bulletin 1/2012 published November 2012 (CPB 1/2012). The bulletin concluded that the report, when considered in the totality of country information, did not demonstrate that FAS per se were at risk of ill treatment on return to the DRC and therefore did not support the report’s recommendation that the Home Office needed to revise its policy on returns to the DRC.
- 5.4** For the findings by the High Courts of England & Wales and of Ireland on the Unsafe Return [1] Report, see:
- Section 6.3.2.1: High Court of Ireland: case of P.B.N. [DR Congo]-v- Minister for Justice Equality and Law Reform.
 - Section 7.3.1: High Court/QBD/Administrative Court - cases of R& P v Secretary of State for the Home Department, cases no CO/7194/2012(P) and CO/7141/2012 (R).
- “Unsafe Return 2” Report**
- 5.5** On 8 October 2013 Justice First published a follow up report to “Unsafe Return [1]”, entitled: “Unsafe Return 2 Report”³ On its web site Justice First describe this report as “The ‘Unsafe Return 2’ updates the original report by Catherine Ramos, which documents the post return experience of 17 Congolese men and women who were forcibly removed to DR Congo from the UK between 2006-2011. Eleven of these were clients of Justice First”.
- 5.6** The report refers to anonymous allegations of mistreatment and consequently it has not been possible to verify the identities of those making the claims, nor to establish any substance to these. This anonymous approach for allegations of mistreatment was criticised in the country guidance case of BK and in other country CG cases.
- 5.7** The report is divided into 4 sections:
- Section A: details the monitoring of refused Congolese asylum seekers removed between November 2011 and July 2013. It also gives an update of Unsafe Return returnees;
 - Section B: examines current Home Office documents and reports in order to identify inconsistencies in and between documents being put before Immigration judges.
 - Section C: illustrates through reference to a specific case, the lack of credibility of the Home Office, FCO and British Embassy information given to MPs and Ministers;
 - Section D: examines whether the CPB is a considered response to Unsafe Return.
- 5.8** The Home Office has considered the Unsafe Return 2 report and concluded that it provides no new evidence. It has the same flaws as the original Unsafe Return report, as

² [Justice First: Working with people in the Tees Valley who are seeking asylum](#). Accessed 13 January 2014.

³ [Justice First “Unsafe Return Report 2” published 8 October 2013](#).

found by the High Courts of England & Wales (7.3.1) and of Ireland (6.3.2.1).

- 5.9** The author has no experience or training in the subject areas which she is commenting on and has approached the issue from an emotive basis, with no attention to due reporting techniques. The author has accepted the stories from applicants/returnees, their families and lawyers without validating the evidence to support their allegations. She does not accept the findings in the country guidance case for the DRC of [BK \(Democratic Republic of Congo\) v Secretary of State for the Home Department \[2008\] EWCA Civ 1322 \(03 December 2008\)](#) that “ In all but one case those whose asylum claims have been traced --- disclose that they were persons whose credibility about past treatment was rejected by adjudicators”, [First Tier judge of the Immigration and Asylum Chamber] (paragraph 381) and “They [failed asylum seekers] have a vested interest in claiming that they were mistreated on return” (paragraph 383).
- 5.10** The report presents both vague and out dated points in its main body and in its recommendations. The role of the Independent Advisory Group on Country Information (IAGCI) established by the Independent Chief Inspector of Borders and Immigration is ignored by the author.
- 5.11** The report alleges that failed asylum seekers are seen as “having betrayed the President and the country” but this contention was rejected by the court in the country guidance case of BK (paragraphs 191 to 194). Nor does the author take into account the information that many nations rely heavily upon remittances sent by their nationals working in other countries. The Tribunal in BK found that “the DRC authorities are well aware that many of their nationals who go abroad to Europe do so for reasons of economic betterment” (paragraph 194) and that “the government sees many of them [asylum seekers] as benefitting the economy” (paragraph 195).
- 5.12** When both Unsafe Return reports are considered against the totality of country information, there is no substantive evidence that conditions have changed since the country guidance case of BK, which found there is no risk to returnees per se to the DRC.
- 6. Information from Other Asylum Intake States**
- 6.1 IGC (Intergovernmental consultations on migration, asylum and refugees): Update on returns**
- 6.1.1** Information regarding the treatment of failed asylum seekers and others to DRC and awareness of any difficulties and / or allegations of ill treatment faced by returnees was obtained through the Intergovernmental consultations on migration, asylum and refugees (IGC). This organisation includes 17 member states, the United Nations High Commissioner for Refugees, the International Organization for Migration and the European Commission (see CPB 1/2012).
- 6.1.2** A follow up survey, via the IGC, on returns to DRC was undertaken in July 2013 (collated in August 2013) – see Appendix A. The information was sought as an update to the data from the IGC of April 2012 published in the CPB 1/2012.
- 6.1.3** Data was gathered from eight IGC participating states (Australia, Belgium, Finland, Germany, Netherlands, Norway, Sweden and the United States). Eight questions were asked about the returns process (a ninth asked if states would disclose the information provided):

Q1: Do you return (by force or voluntarily) rejected (failed) asylum seekers (FAS) to the DRC?

A1: All eight countries undertake voluntary and enforced returns.

Q2: If you do not, why not?

A2: Not applicable - see answer 1.

Q3: If you do, how many FAS have been returned to the DRC since March 2012: by force? voluntarily?

A3: a) Minimum 134 enforced returns 2012 to June 2013 (Belgium: 91 and Norway: 27) 41 voluntary (though this includes German data for 2010 to 2013 – 10 returns)

Q4: Have you received any allegations of returnees being subject to problems on return?

A4: Only one country (Belgium) replied in the affirmative.

Q5: If so, what problems (in particular incidents of harassment, ill-treatment, arrest and detention)?

A5: Belgium stated it had received allegations relating to all these problems.

Q6: Have any of these allegations been substantiated?

A6: Belgium stated that “the Immigration liaison officer in Kinshasa has investigated the allegations and found there is no truth in them”.
Germany replied “it cannot be ruled out that returnees have been subject to harassment by governmental agencies upon entry; however all persons entering the country risk being treated in this way”.

Q7: Do you have representatives who oversee returnees through N'Djili airport in Kinshasa (from arrival to departure from the airport)?

A7: Only Belgium and only for special flights and on request in individual cases.

Q8: Do you monitor returnees once they return to DRC?

A8: There is no monitoring of enforced returns. Australia succinctly summarises the position as “Australia is bound by the customary international law principle of non interference in the internal affairs of other sovereign states”.
Germany reported that after checks at the airport “they [the returnee] may travel on to their families. Reports to the contrary by some human rights organisations ---were examined thoroughly, but none of them was confirmed. Staff members of human rights organisations in specific cases go and see returned persons at their residences on behalf of the German Embassy. So far cases of repression by the authority against these persons were not reported”.

6.1.4 Two additional states provided non discloseable information which did not conflict with that provided by the other states.

6.2 IGC (Intergovernmental consultations on migration, asylum and refugees): Information on FNO returns.

6.2.1 In December 2013 the Home Office Country of Origin Service approached the IGC for information from member states on the return of foreign national offenders (FNOs) to the DRC.

6.2.2 Discloseable replies were received from 8 states (Australia, Belgium, Canada, Finland, Germany, New Zealand, Norway and Sweden) and are attached at Appendix B. 10 specific questions were asked, an eleventh referred purely to whether the replies could be disclosed.

Q1: Do you deport (by force or voluntarily) FNOs to the DRC?

A1: All except Canada return, with no differential between failed asylum seekers (FAS) and FNOs.

Q2: If you do not, why not?

A2: Canada has a “temporary stay of removal” on enforced returns – seemingly in view of the ongoing conflict in eastern DRC. Voluntary returns continue.

Q3: If you do, how many FNOs have been returned to the DRC since 2012:

- by force?
- voluntarily?

A3: Belgium and Finland do not always differentiate between FAS and FNOs.

(a) Belgium: 108 enforced (general) returns from 2012 to 30 November 2013

- 3 known FNOs
- 87 returned by special flight and difference FAS/FNOs not noted.

(b) Finland: 4 DRC nationals (3 enforced)

(c) Canada : 28 Voluntary returns 2008 to 2012

(d) Germany: 69 FNOs (enforced) returned 2012 to 30 September 2013.

10 FNOs returned through an assistance programme; total voluntary not known.

Q4: How do the DRC authorities process FNOs arriving at N’djili airport in Kinshasa?

A4: Limited information, mainly from Belgium which states “There is no specific procedure for FNO’s – Belgium does not announce that the returned person is a FNO. This said, the authorities may know that the person is a FNO, since this information can be communicated during the identification process at the Embassy [redocumentation].

- Both Belgium and Norway comment that the process is identical for FAS and FNOs.
- Finland comments that the process works “very well”.
- Sweden comments “an interview with the returnee can take place if it is deemed necessary – it rarely happens”.

Q5: Are FNOs questioned, if so what are they asked?

A5: Belgium comments

- “We do not know all types of questions, but typical is: identity check, questions about the reasons of staying in Belgium (it happens frequently that the DEPA says he has applied for asylum – this has never any consequence), political allegiance, ... As far as we know, no-one has been detained longer than 24 hours for these questionings, unless there was a criminal offence for which the Congolese authorities had still to proceed to criminal investigation or because of outstanding criminal sentences or warrants in DRC”.
- Norway was not aware of questions and
- Finland states “some questions about the home town and address”.

Q6: Are FNOs detained on arrival, if so why?

A6: Belgium “only for questioning – as indicated in A5.

Finland: no

Norway: Have no experience of detention after an enforced return is handed over to the DRC authorities. The procedure is the same whether the deportee is an offender or not.

Other countries: no information.

Q7: If FNOs are detained, where and for how long?

A7: Belgium: max 24 hours (mostly even less than 12 hours) at the airport or nearby.

Canada: not aware of detention.

Others no information; though Sweden states "To our knowledge the persons returning with the Swedish Migration Board are not detained".

Q8: Do you have information about detention conditions?

A8: None

Q9: Do you have representatives at N'djili airport who oversee FNOs through immigration process (from arrival to departure from the airport)?

A9: In general no. Canada has a regional officer who occasionally makes country visits; however Canada works with international partners and NGOs to monitor countries.

Belgium: only if a charter flight.

Q10: Do you monitor returnees once in the DRC?

A10: No, though Belgium will do so if requested before departure (in specific individual cases).

6.2.3 Two additional states provided information which did not conflict with that provided by the other states. The information was not discloseable as one state had not undertaken any recent FNO returns and the second state whilst confirming they return FNOs, did not differentiate these from failed asylum seekers in it's statistics.

6.3 **High Court of Ireland: case of [P.B.N. \[DR Congo\]-v- Minister for Justice Equality and Law Reform \[2013\] IEHC 435](#)**

6.3.1 On 16 September 2013 the High Court of Ireland delivered its judgment in a case challenging removal to the DRC. The court considered evidence, largely from UK sources and including the "Unsafe Return [1]" report. In this case the court found "the Minister's [Eire Government] conclusion that she [the appellant] is not at risk of treatment contrary to Article 3 ECHR has been found to be reasonable and rational and grounded in objective COI" (paragraph 54).

6.3.2 The High Court main findings are:

6.3.2.1 On the Justice First "Unsafe Return [1]" report:

- "The allegations raised in the Unsafe Return report were not substantially different to previous allegations raised", (paragraph 38).
- "The Court was satisfied that it was reasonable --- to question the reliability of the Unsafe Return report" (paragraph 39).
- "It is beyond doubt that the author acted with a genuine sense of concern for persons deported from the Tees Valley area" (paragraph 39).
- "However the report is confusingly presented and persistently confounds the legal concepts of refoulement and involuntary return. Further it clearly is a vehicle for a particular point of view" (paragraph 39).
- "The report displays neither objectivity nor neutrality" (paragraph 39).

- “Refers to selected passages from COI reports” giving “no indication its investigations were carried out in accordance with independent guidelines, terms of reference or autonomous supervision” (paragraph 39).

6.3.2.2 On the UK’s DRC Fact Finding Mission:

- “It is based on a far wider spectrum of opinion and experience than the Unsafe Return report” (paragraph 42).
- ““dispels the generalised conclusion drawn in the Unsafe Return report that failed asylum seekers per se are at risk” (paragraph 46).
- “The UKBA report [the DRC FFM] records Renadhoc, the Coalition for Congolese human rights NGOs as saying “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 originated in DRC”. This seems to the Court to be generally representative of the information collected by the UKBA” (paragraph 49).

6.3.2.3 On redocumentation:

- “Depending on the travel documents on which she will travel, the applicant may well face questioning upon return to the DRC in order to establish her identity. This is common across the world and is part of a functioning system of immigration control” (paragraph 50).
- When the Irish authorities make arrangements to repatriate persons to DRC, no mention is made of their failed asylum status. This is consistent with the information provided by various embassies to the UKBA fact finding mission and is not displaced by suppositions made in the Unsafe Return report” (paragraph 50).

7. High Court England and Wales - Case of R and P

7.1 On 15 October 2013 the High Court of England and Wales heard two applications [R & P] challenging removal on the grounds of a real risk of ill treatment contrary to article 3 of the European Convention on Human Rights (ECHR) by reason of their status as either (a) failed asylum seeker (FAS) or criminal deportees [Foreign National Offenders (FNOs)]

7.2 On 9 December 2013 the High Court gave its judgment in the two cases:
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/3879.html>

7.3 The court found:

7.3.1 Unsafe Return [1] report: (paragraph 35):

- “It is unclear what expertise or qualification Ms Ramos [the author] has, if any, in relation to investigating, interviewing and reporting on matters in issue”
- “What is clear is that her report approached matters from a subjective and even emotional perspective”.
- “There was no attempt to assess the credibility of the accounts provided or to obtain evidence from other sources [save one]”.
- Commenting on the anonymous accounts “Far from addressing the warning given in BK [paragraph 386 – referenced in paragraph 3 of this determination] about the need to provide relevant particulars of failed asylum seekers so that the truth of their claims could be gauged, the report provides neither the defendant nor the court with any basis for assessing the veracity of the anonymous accounts which it collated”..

7.3.2 Fact Finding Mission [of June 2012] (paragraph 360)

- “It was an objective and transparent attempt to obtain facts from identified sources (with the exception of two Congolese human rights organisations ----)”.

7.3.3 Existing country guidance caselaw

- Comments on the status of country guidance decisions (paragraph 30-31).
- Finds the submission on BK by the appellant “amounts to an invitation to view country guidance cases as having an explicit expiry date some (unspecified) period after they are published. I see no basis in principle or in the Court of Appeal’s reasoning ---for accepting such a limitation” (paragraph 31).
- “the elapse of time is only a factor in assessing a challenge to the continuing reliability of an extant country guidance case, not a basis for ignoring it altogether” (paragraph 31).

7.3.4 Failed Asylum Seekers (FAS)

- Commenting on the eight NGOs relied upon by the appellant as providing evidence to the FFM of ill treatment of returning asylum seekers (paragraph 38), the judge found “all eight recognise that the real and substantial risk is to persons perceived to be opponents of the DRC government” (paragraph 40).
- The conclusion (in the CPB 1/2012) as to the consensus appearing from the FFM would seem to be justified and certainly not irrational” (paragraph 40).
- “the UKBA [UK Border Agency] was also entitled to give significant weight to the extensive experience of returns to the DRC reported by the United Nations and the 11 states participating in the Intergovernmental Consultation on Migration, Asylum and Refugees---” (paragraph 41).
- The decision to act in accordance with the country guidance in BK is difficult to fault. That decision ----far from being irrational, appears entirely reasonable” (paragraph 41).
- Referring the High Court of Ireland decision in the case of PBN (Congo) – see section 4 of this bulletin, the judge found “ --- concluding ---that the relevant Minister’s decision that a failed asylum seeker being returned to the DRC was not at risk of treatment contrary to Article 3 ECHR was reasonable and based on objective Country of Origin Information. My conclusion in relation to the Defendant’s [the Home Office] decision in R’s case [the appellant] is to the same effect” (paragraph 43).

7.3.5 Foreign National Offenders (FNO):

- “criminal deportees to the DRC, if identified as such, will be detained on arrival for an indeterminate period” (paragraph 44 (i)).
- “Such detention is likely to be in conditions which contravene Article 3 of the ECHR” (paragraph 44 (ii)).
- In the case of criminal deportees to the DRC, it is clear that they will be interrogated on arrival, no doubt by professional, skilled and experienced immigration officials. There would seem to be an obvious and serious risk that a criminal deportee ---would not be able to hide the fact of his convictions in the face on interrogation designed to elicit that very fact” (paragraph 52).
- “It must be assumed that immigration officials in the DRC are able to conduct internet searches in relation to a person they are interrogating. There must be a real and substantial risk that an offence which attracted a custodial sentence of 12 months or more will have been reported in some form, even if the case did not generate substantial publicity” (paragraph 53).
- “There is a real and substantial risk that ---criminal deportees (who have served the sentences imposed on them for their crimes in this country), would be subjected to further imprisonment and ill treatment if returned to the DRC” (paragraph 54).

8. Return of Women to the DRC

- 8.1** In July 2013 Freedom from Torture (FfT) submitted to the Committee on the Elimination of Discrimination against Women (CEDAW) for its examination of the Democratic Republic of the Congo (DRC).⁴
- 8.2** The Executive summary states that “It is a forensic study of 34 reports prepared by Freedom from Torture’s Medico Legal Report Service for individual victims. The submission shines a spotlight on torture of women by a variety of state actors in the DRC mainly in non conflict contexts. It demonstrates the extensive use of rape and other forms of sexual torture against women detained in the DRC mostly for political reasons; a variety of other torture methods used against women including blunt force trauma, burning and a range of psychological and environmental forms of torture; the lack of access to justice, including due process and appropriate health services for women victims of torture in the DRC and impunity for perpetrators”.
- 8.3** The report states “Eight of the ten women who travelled outside the DRC were arrested at the airport on return and subsequently detained”. “Two women who had unsuccessfully applied for asylum abroad (in the UK and in another European state respectively) were arrested at the airport and detained on this basis following removal to the DRC by the respective states” (page 3).
- 8.4** “The most common reason for detention across the sample was the political profile of the women and / or her family members (page 3).
- 8.5** The conclusions are contained at page 10 of the report and FfT urge the Committee to
- “Examine the extent of arbitrary detention and torture – including sexual torture – of women by state actors in both conflict *and* non-conflict contexts in the DRC, with an explicit focus on those targeted in non-conflict contexts for their personal or family political profiles or involvement in women's rights groups; and
 - Recommend that the DRC take all effective measures to prevent torture – including sexual torture – as a form of violence against women and take vigorous steps to ensure that: all women detained in the DRC have access to justice including due process and to appropriate health care; detention conditions comply with the UN Minimum Rules for the Treatment of Prisoners including the segregation of women from men; all women victims of torture have access to remedies including compensation and rehabilitation; and impunity for perpetrators is brought to an immediate end”.
- 8.6** **Conclusions:** Decision makers need to be aware of the FfT submission to the CEDAW. However we have no substantiated evidence of any female returnee being mistreated – see also sections 6.1 and 6.2 for responses from other states on returns.
- 8.7** Factual information on the situation for women in DRC is available in the COI report. Gender is not however commonly raised by DRC nationals as the basis of their asylum application and each case must be considered upon its individual merits. Caseworkers should refer to the Operational Guidance Note (OGN) for the DRC as this provides guidance on handling the common basis of application from nationals of the DRC and on internal relocation. Decision makers also have access to non country specific guidance on the handling of asylum applications based upon gender and to the rapid response country

⁴ [Freedom from Torture submission to the Committee on the Elimination of Discrimination against Women for its examination of the Democratic Republic of Congo \(DRC\), July 2013: Torture of women in the DRC 2006-2011.](#)

information service.

9. UNHCR returns to the DRC

- 9.1** In 2012 and 2013, UNHCR assisted with the return of over 100,000 Congolese nationals to DRC who had sought refuge in the Republic of Congo.
- 9.2** In 2014, UNHCR anticipates facilitating the voluntary return of 36,000 refugees to the DRC, again from the Congo. However, due to continued instability in the East, it is estimated that in the region of 450,000 Congolese remain in other neighbouring countries seeking refuge.⁵

Return of Congolese refugees, 2004 – 30 November 2013 – recorded by UNHCR⁶

Province	2011	2012	2013	TOTAL
Equateur	12,388	46,318	61,160	119,866
Nord-Kivu	7,147	16,813	-	23,960
Sud-Kivu	537	327	285	1,149
P.Orientale	837	8,317	-	9,154
Katanga	67	47	-	114
Kinshasa	57	21	24	102
Total	21,033	71,843	61,469	154,345

10. Returns from the UK

- 10.1** The Home Office recognises in its country information the 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.

10.2 Statistics for returns to the DRC from the UK

- 10.2.1** Figures are published by the [Home Office, Migration and Asylum – research statistics tables](#)

- 10.2.2** Removals and Voluntary Departures data tables Immigration Statistics July - September 2013⁷, section titled Removals and voluntary departures, Volume 2 in tables rv0.6 and rv.06.q, published 29 November 2013 provided a breakdown of asylum and non-asylum returns by country of destination between 2004 and up to and including the third quarter in 2012. The data for returns to the DRC is available at tables rv0.6 and rv.06q.

10.3 Documentation

- 10.3.1** Redocumentation is undertaken when the individual has no valid passport / valid means of entry to the home country. The authorities in the DRC will only accept returns by way of a valid passport or an emergency travel document (ETD) issued by the Directeur Generale

⁵ Office of the United Nations High Commissioner for Refugees (UNHCR), <http://www.unhcr.org/pages/49c3646c2.html> 2014 UNHCR country operations profile - Democratic Republic of the Congo, Overview, <http://www.unhcr.org/pages/49e45c366.html> undated, accessed on 6 January 2014

⁶ UNHCR, D.R.Congo Fact Sheet, Return of Congolese refugees, 2004-30 November 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20DRC%20Fact%20sheet%20as%20of%2030%20Novembre%202013.pdf>

de Migration (DGM) in Kinshasa.

- 10.3.2** Since April 2013 an immigration attaché from the DGM has been based in the DRC's UK Embassy. This official undertakes detained interviews and reports back to the DGM in Kinshasa who then issue the ETD. In the redocumentation process the DRC official is only presented with an individual's personal details and bio data.
- 10.3.3** An ETD will ordinarily have a photograph of the returnee attached which removes any need for an identity check having to take place on return to the DRC.
- 10.3.4** The High Court of Ireland supported in their findings (see 6.3.2.3) that
- (a) in making arrangements to repatriate persons to DRC, no mention is made of their failed asylum status and that this is consistent with the information provided by various embassies to the DRC FFM.
 - (b) An individual may be questioned on return and this is consistent with immigration controls world wide.

Country Specific Litigation Team
Immigration & Borders Policy Directorate
Home Office
18 February 2014.

Appendix A

**Request for Information
Return of Rejected Asylum Seekers
to DR Congo**

Request by the United Kingdom

August 2013

Comp_DRC_Return_Rejected_Asylum_Seekers

Request

- Requesting State: United Kingdom
- Focal point: [redacted]

Background information

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, has written to the UK government asking for a response to allegations made to him that eight Congolese nationals, whose asylum claims had been rejected in UK and who subsequently returned to the DRC, faced ill-treatment on or after their return.

While the UK government is aware of allegations of ill-treatment on return of rejected Congolese nationals who sought asylum in the UK, it has not found these allegations to have been substantiated. However, before responding to the Special Rapporteur it would be helpful to know the practice and experiences of other IGC participating states.

Questions

1. Do you return (by force or voluntarily) rejected (failed) asylum seekers (FAS) to the DRC?
2. If you do not, why not?
3. If you do, how many FAS have been returned to the DRC since March 2012:
 - a. by force?
 - b. voluntarily?
4. Have you received any allegations of returnees being subject to problems on return?
5. If so, what problems (in particular incidents of harassment, ill-treatment, arrest and detention)?
6. Have any of these allegations been substantiated?
7. Do you have representatives who oversee returnees through N'Djili airport in Kinshasa (from arrival to departure from the airport)?
8. Do you monitor returnees once they return to DRC?
9. Can we publicly disclose all or part of the above information?

Use of Information

We would like to make any information provided public if possible. Responses will be used to inform a written reply by the UK government to the UN Special Rapporteur and possibly as background information for use in considering asylum applications. However, we'd welcome information even if it is not disclosable and which we will put to internal use only.

Answers to Question 1

Do you return (by force or voluntarily) rejected (failed) asylum seekers (FAS) to the DRC?

Australia

People who have exhausted all outstanding avenues to remain in Australia and have no lawful basis to remain are expected to depart. Australia is under a general legal obligation to remove all unlawful non-citizens as soon as reasonably practicable.

Belgium

Yes.

Finland

A rejected asylum seeker is normally granted a time period during which he/she can return voluntarily. After that period the return is carried out by force by the Police. All asylum applications are assessed individually.

Germany

Yes, on principle there are both voluntary returns and forced returns to COD. There is a total of 355 persons whose deportation is suspended (as of 31st December 2012).

Netherlands

Yes. Some regions of the DRC however are defined as “15c” (Haut and Bas Uélé and the Kivu provinces). In principle asylum seekers originating from a 15c region can be returned to Kinshasa to settle there (under certain preconditions). However, in cases of Tutsi's originating from the 15c regions, the NL do not take decisions and do not send applicants back to DRC (Kinshasa), awaiting information from the ministry of Foreign Affairs about the situation of Tutsi's.

Norway

Yes, by 30 of June, there have been 14 forced returns to DRC from Norway. There have been 4 voluntarily returns (IOM) up to 30th of June 2013.

Sweden

Yes.

United States

U.S. Immigration and Customs Enforcement (ICE) executes removal orders to many countries, including the DRC. Foreign nationals who receive removal orders unsuccessfully pursued a protection claim in the United States prior to their removal.

Answers to Question 2

If you do not, why not?

Australia

Not applicable.

Belgium

Not applicable.

Finland

Not applicable.

Germany

Not applicable.

Netherlands

See answer to question 1.

Norway

Not applicable.

Sweden

Not applicable.

United States

Not applicable because ICE does not track these data.

Answers to Question 3

If you do, how many FAS have been returned to the DRC since March 2012:

by force?

voluntarily?

Australia

a. by force?

Since March 2012, no clients have been involuntarily removed from Australia to the Democratic Republic of Congo (DRC).

b. voluntarily?

Since March 2012, no clients have been voluntarily removed to the DRC.

Belgium

a. by force?

55 in 2012; up to 28/06/2013: 36 (mixed number, since we do not count separately the failed asylum seekers from the others, but in general, most DRC nationals have previously applied for asylum)

b. voluntarily?

12 in 2012; 8 in 2013 (until 31/05) → for specifications who was a failed asylum seeker see [deleted]

Finland

a. by force?

One (1).

b. voluntarily?

One (1).

Germany

The return of (rejected) asylum-seekers is not recorded in separate statistics in Germany. There are records on returns according to nationality irrespective of whether the foreigner has gone through an asylum procedure. From March 2012 to May 2013 a total of 53 nationals of the Democratic Republic of the Congo were returned or deported from Germany, of these 8 (by air) to the Democratic Republic of Congo.

Data on voluntary returns are available only to a limited extent, namely referring to assisted returns (REAG:

Reintegration and Emigration Programme for Asylum-Seekers in Germany): In the period from 2010 to 2013 a total of 10 nationals of the Democratic Republic of the Congo who returned on a voluntary basis, have received assistance under the REAG programme financed by the Federal Government and the Länder.

Netherlands

a. by force?

Approximately 5 Congolese nationals have been returned to the DRC by force between 1 March 2012 and 30 June 2013. The Dutch Repatriation and Departure Service (R&DS) does not register if a returnee is a failed asylum seeker.

b. voluntarily?

The R&DS has registered no voluntary returns to the DRC between 12 March 2012 and 30 June 2013. According to information from IOM in the Netherlands 1 person voluntarily returned to the DRC with the assistance of IOM.

Norway

a. by force?

In total for January 2012 – June 2013, there were 27 forced returns from Norway to DRC.

b. voluntarily?

In the period January 2012 – June 2013 there were 7 voluntarily returns from Norway to DRC with IOM.

Sweden

a. by force?

2

b. voluntarily?

2

United States

Not applicable because ICE does not track FAS information for removed aliens.

Answers to Question 4

Have you received any allegations of returnees being subject to problems on return?

Australia

Australia is not aware of any reports of ill-treatment of failed asylum seekers who have been removed from Australia to the DRC.

Belgium

Yes.

Finland

No.

The Finnish Immigration service does not monitor the situation of individual asylum seekers after return. However up to date COI is used to assess how failed asylum seekers are treated upon return.

Germany

See answer 6.

Netherlands

No.

Norway

As far as we know, we do not have any information available regarding this.

Sweden

No, not to our knowledge.

United States

Unknown at this time.

Answers to Question 5

If so, what problems (in particular incidents of harassment, ill-treatment, arrest and detention)?

Australia

Not applicable.

Belgium

All of the above.

Finland

Not applicable.

Germany

See answer 6.

Netherlands

Not applicable.

Norway

See answer to question 4.

Sweden

Not applicable.

United States

Unknown at this time.

Answers to Question 6

Have any of these allegations been substantiated?

Australia

Not applicable.

Belgium

None --> all have been controlled by our immigration liaison officer in Kinshasa: This means the Immigration liaison officer in Kinshasa has investigated the allegations and found there is no truth in them.

Finland

Not applicable.

Germany

Answer to questions 4 to 6:

No. However, it cannot be ruled-out that returnees have been subject to harassment governmental agencies upon entry; however, all persons entering the country risk to be treated in this way.

Netherlands

Not applicable.

Norway

See answer to question 4.

Sweden

Not applicable.

United States

Unknown at this time.

Answers to Question 7

Do you have representatives who oversee returnees through N'Djili airport in Kinshasa (from arrival to departure from the airport)?

Australia

If the client is escorted either by an immigration official or a contracted security officer, they may accompany the client on arrival at the destination airport. However, the immigration officials or a contracted security officers accompanying the client must abide by any directions given on arrival by officers at the destination airport. If the client was an unescorted removal, no Australian officials would oversee their arrival at the destination airport.

Belgium

Yes, but only for special flights or on request in individual cases.

Finland

No.

Germany

See answer 8.

Netherlands

No. The involvement of the R&DS and/or the Royal Netherlands Military Constabulary ends when the forced returnee is handed over to the receiving authorities. The IOM often oversees returnees through the airport of destination in case of voluntary return, depending on the wishes of the returnee.

Norway

Norway does not have any representatives present in Kinshasa that oversee returnees. IOM might be and are expect to be present at the airport.

Sweden

No.

United States

No, ICE does not have a representative who oversees returnees upon arrival at the N'djili airport in Kinshasa.

Answers to Question 8

Do you monitor returnees once they return to DRC?

Australia

Australia is bound by the customary international law principle of non-interference in the internal affairs of other sovereign states. Australia's consular obligations and entitlements under international law do not extend to monitoring the welfare of non-nationals offshore.

Belgium

Yes, if requested; automatically if there is a re-integration package

Finland

No.

Germany

Answer to questions 7 and 8:

Rejected asylum-seekers and asylum-seekers returned to the Democratic Republic of the Congo as well as Congolese with German and other foreign passports are interviewed by officers of the immigration authority "Direction Générale de Migration" (DGM) upon arrival at the International Airport N'Djili/Kinshasa. Moreover, all incoming passengers who travel with a substitute passport or have been announced as returned persons are accompanied to the DGM offices next to the departure hall of the airport building where their personal data are recorded and an entry protocol is drafted. The focus of the check is on nationality. In addition, there is a cross-search of wanted lists. If there is reason to doubt the Congolese nationality or the authenticity of the foreign passport, entry is refused. According to experience the persons concerned remain without challenge and, upon check by the DGM, the customs authority and the health authorities and, in specific cases by the ANR ("Agence Nationale de Renseignement", civil intelligence service) they may travel on to their families. Reports to the contrary by some human rights organizations and alleged reference cases were examined thoroughly, but none of them was confirmed. Staff members of human rights organizations in specific cases go and see returned persons at their residences on behalf to the German embassy. So far, cases of repression by the authority against these persons were not reported. However, this situation may change rapidly and dramatically in cases where returnees try to engage in political activities in the Democratic Republic of Congo. Especially if they are members or sympathizers of opposition movements, they may swiftly become the objects of security services' surveillance.

In the framework of the REAG programme funded by the Federal Government and the Länder voluntary

returnees may obtain travel costs (reimbursement of costs of travel by plane, rail or bus, fuel costs amounting to 250,- Euros per car) and travel assistance of up to 200,- Euros per adult/youth, 100,- Euros for children under twelve. There are no specific or other reintegration projects.

Netherlands

No. The responsibility of the Dutch Government ends when the forced returnee is handed over to the receiving authorities or when the alien has voluntarily left the Netherlands.

Norway

We do not monitor returnees after they return to DRC. Returnees returning from Norway to DRC, will receive reintegration support, in one instalment in cash, upon arrival. IOM are handling this operation.

Sweden

No.

United States

No, ICE does not monitor removed aliens following their arrival into the DRC.

Answers to Question 9

Can we publicly disclose all or part of the above information?

Australia

This information can be released.

Belgium

Yes.

Finland

Yes.

Germany

Yes.

Netherlands

Yes.

Norway

Yes.

Sweden

Yes, all.

United States

Yes. Neither the ICE Privacy Office nor the ICE Office of the Principal Legal Advisor (including the Government Information Law Division) has any objection to disclosing this limited information.

Appendix B

**Request for Information
Return of foreign nationals with a conviction to
the Democratic Republic of Congo**

Request by the United Kingdom

December 2013

Comp_return_of_criminals_to_DRC

- Requesting State: the United Kingdom
- Focal point: Redacted

Background: The UK government usually seeks to deport foreign nationals who have been convicted of an offence and sentenced to a minimum of 12 months in custody in the UK. In the [High Court case of P against the Secretary of State for the Home Department of 9 December 2013](#), the judge found that a foreign national offender deported to the DRC would be at risk of detention and ill-treatment.

The UK Home Office has permission to appeal the judgement and is in the process of seeking further evidence. It would be very helpful to know if IGC participating states deport foreign national offenders (FNOs) to the DRC and what information they have about the returns process for FNOs, including any evidence of detention and ill-treatment.

Questions:

10. Do you deport (by force or voluntarily) FNOs to the DRC?
11. If you do not, why not?
12. If you do, how many FNOs have been returned to the DRC since 2012:
 - a. by force?
 - b. voluntarily?
13. How do the DRC authorities process FNOs arriving at N'djili airport in Kinshasa?
14. Are FNOs questioned, if so what are they asked?
15. Are FNOs detained on arrival, if so why?
16. If FNOs are detained, where and for how long?
17. Do you have information about detention conditions?
18. Do you have representatives at N'djili airport who oversee FNOs through immigration process (from arrival to departure from the airport)?
19. Do you monitor returnees once in the DRC?
20. Can we publicly disclose all or part of the above information (if only part, please identify which)?

Use of questions

We would like to make any information provided public if possible. Responses will be used to inform our approach to appealing the judgment and possibly as background information for use in considering FNOs cases. However, we'd welcome information even if it is not disclosable, which we will put to internal use only.

Answers to Question 1

Do you deport (by force or voluntarily) FNOs to the DRC?

Australia

People who have exhausted all available avenues to remain in Australia and have no lawful basis to remain are expected to depart. Australia is under a legal obligation to remove all unlawful non-citizens as soon as reasonably practicable.

Belgium

Yes – we do not make differentiation between removal and deportation in our return statistics. Every-one is “removed”. A voluntary deportation is for me also a “contradiction in terms” – we talk about voluntary returns.

It is important to know that we deport everybody regardless their background, there is no distinction between a rejected asylum seeker or an FNO.

Canada

In principle, the CBSA removes all persons who are found inadmissible to Canada. However, as noted above, under section 230(1) of the *Immigration and Refugee Protection Regulations* (IRPR), the Public Safety Minister may impose a temporary suspension of removals (TSR) when the general conditions of a country could seriously endanger the lives or safety of the entire civilian population of a particular country. The Minister has imposed a TSR to the Democratic Republic of Congo (DRC) in 1997, therefore, Canada does not remove to the DRC, except for individuals who are inadmissible on grounds of criminality, war crimes, crimes against humanity or who constitute a risk to the security of Canada. In addition to these individuals, despite a TSR, individuals may wish to return to their country voluntarily

TSR - Temporary Stay of Removal Under section 230(1) of the Immigration and Refugee Protection Regulations, the Minister of Public Safety (PS) may impose or lift a TSR when the entire civilian population of a country faces a generalized risk as a result of a catastrophic event, such as a natural disaster, armed conflict or other extraordinary disruption.

Finland

Finland deports only DRC nationals to DRC (no other nationals). DRC nationals are deported to DRC both voluntarily and by force.

Germany

Germany's policy includes both enabling voluntary returns and carrying out forced returns. On 30 November 2013 a total of 367 FNOs lived in Germany whose deportation had been temporarily suspended.

New Zealand

Persons who have been sentenced to 12 months imprisonment or more are subject to a statutory ban from the grant of a further visa or entry to New Zealand. New Zealand would deport DRC nationals who have failed to comply with voluntary departure requirements, including those who may have been sentenced to 12 months imprisonment or more. Note that no DRC nationals have been deported in 2012/13. A voluntary or custodial departure may be effected depending on the circumstances. Each case is determined on a case-by-case basis.

Norway

Yes, we do but no FNOs from the DRC have been returned since 2012

Sweden

Specific data regarding FNOs cannot be provided but generally persons from DRC can be returned.

Answers to Question 2

If you do not, why not?

Australia

Not applicable.

Belgium

-

Canada

Please see above

Finland

-

Germany

Not applicable.

New Zealand

N/A

Norway

-

Sweden

-

Answers to Question 3

If you do, how many FNOs have been returned to the DRC since 2012:

- a. by force?
- b. voluntarily?

Australia

- a. by force?

Since 1 January 2012, no detainees have been involuntarily removed to the Democratic Republic of Congo (DRC) from Australia.

- b. voluntarily?

Since 1 January 2012, no detainees have been voluntarily removed to the DRC from Australia.

Belgium

- a. by force?

general number of forced removals:

2012: 55 – 2013 (30.11): 50

number of forced removals of FNOs (we cannot determine if the offence for which they have been condemned was punishable for more or less than 1 year):

2012: 1 – 2013 (30.11): 3

number of forced removals by special flight / JRO (indistinctively irregular migrants and FNO's):

2012: 33 – 2013 (included SF of 04.12): 54

- b. voluntarily?

We do not have these specific data for FNOs, since voluntary return is organized by another State Agency and IOM (who do not have the possibility to consult databases, to control whether a person is a FNO or not). The policy of the Immigration Office is not to give AVRR to FNOs, but it is possible that some obtain it after having been released from prison (since they do not have the obligation to say to IOM whether they have committed an offence. → general number of AVRR for DRC is :

2012: 17 – 2013 (30.11): 17

Canada

- a. by force?

Currently as noted above all removals are due to serious inadmissibility under the Immigration Act – normally criminality).

- b. voluntarily?

Despite the TSR being in place, an individual may choose to leave voluntarily. Our system does not capture who may choose to leave voluntarily.

2008 – 3

2009 – 3

2010 – 0

2011 – 6

2012 – 16

2013 – 7

(NOTE – These stats reflect DRC Nationals removed directly to the DRC)

Finland

a. by force?

3 DRC nationals

b. voluntarily?

1 DRC national

Germany

In 2012, a total of 38 FNOs was returned or removed, in 2013, the total was 31 (as at 30 September 2013). Statistics on voluntary returns are limited and refer solely to returnees who received assistance under the Reintegration and Emigration Programme for Asylum-Seekers (REAG). Between 2010 and 2013 (as at 30 June 2013) a total of 10 FNOs returned voluntarily to the DRC with assistance from the REAG programme. [Source: Federal Police]

New Zealand

N/A

Norway

a. by force?

So far, none

b. voluntarily?

-

Sweden

a. by force?

-

b. voluntarily?

-

Answers to Question 4

How do the DRC authorities process FNOs arriving at N'djili airport in Kinshasa?

Australia

Australia does not have information regarding the processing of FNOs arriving at FNOs at N'djili Airport in Kinshasa.

Belgium

There is no specific procedure for FNO's – Belgium does not announce that the returned person is a FNO. This said, the authorities may know that the person is a FNO, since this information can be communicated during the identification process at the Embassy. The procedure for all arrivals at the airport of DEPU's and DEPA's is identical. Removed persons may be questioned by the DGM (Direction Générale de Migration), which is not always the case (mainly the case for DEPA's – on regular flights or on charters). If a charter is organized, it is also possible that the DEPA's are questioned by the ANR (Agence Nationale de Renseignements – State Security).

Canada

Clients are presented to DRC Immigration Authorities upon arrival – to have their citizenship verified. Once advised that the client is a national, and will be admitted, the escorts depart the country.

Finland

Concerning DRC nationals process seems to work out very well.

Germany

No information.

New Zealand

Not known

Norway

The procedure is the same whether the deportee is an offender, or not. We notify the authorities prior to each forced return, and they are met by the immigration authorities at the airport.

Sweden

Specific data regarding FNOs cannot be provided but generally they secure that the returnee has a valid travel document before they let the returnee pass through. An interview with the returnee can take place if it is deemed necessary – it rarely happens.

Answers to Question 5

Are FNOs questioned, if so what are they asked?

Australia

Not applicable.

Belgium

We do not know all types of questions, but typical is: identity check, questions about the reasons of staying in Belgium (it happens frequently that the DEPA says he has applied for asylum – this has never any consequence), political allegiance, ... As far as we know, no-one has been detained longer than 24 hours for these questionings, unless there was a criminal offence for which the Congolese authorities had still to proceed to criminal investigation or because of outstanding criminal sentences or warrants in DRC)

Canada

Unknown.

Finland

Some questions about the home town and address.

Germany

No information.

New Zealand

Not known

Norway

The deportees have not been subject to questioning, according to our knowledge.

Sweden

We have no information regarding this.

Answers to Question 6

Are FNOs detained on arrival, if so why?

Australia

Not applicable.

Belgium

Only for questioning (see above)

Canada

The CBSA is unaware of clients being detained upon arrival.

Finland

No.

Germany

No information.

New Zealand

Not known

Norway

The deportee is handed over to the authorities shortly after arrival. We have not experienced anything indicating that the deportee is detained after the hand-over. This procedure is the same whether the deportee is an offender or not.

Sweden

We have no information regarding this.

Answers to Question 7

If FNOs are detained, where and for how long?

Australia

Not applicable.

Belgium

Max 24 hours (mostly even less than 12 hours) at the airport or nearby

Canada

The CBSA is unaware of clients being detained upon arrival.

Finland

-

Germany

No information.

New Zealand

Not known

Norway

N/A

Sweden

We have no information regarding this. To our knowledge, the persons returning with the Swedish Migration Board are not detained.

Answers to Question 8

Do you have information about detention conditions?

Australia

Not applicable.

Belgium

n/a

Canada

No.

Finland

-

Germany

No information.

New Zealand

No.

Norway

N/A

Sweden

No.

Answers to Question 9

Do you have representatives at N'djili airport who oversee FNOs through immigration process (from arrival to departure from the airport)?

Australia

In general terms, if a detainee is escorted either by a departmental officer or a contracted security officer, they may accompany the detainee on arrival at the airport in the detainee's destination country. However, these officers must abide by any directions given on arrival by officers at the airport. If the detainee was an unescorted removal, no Australian officials would oversee their arrival at the airport.

Belgium

General rule: only present if requested before and present at arrival of charters (ILO at embassy, Mrs Katarina Smits)

Canada

No. Canadian representatives for that region are based in Nairobi, Kenya, and on occasion make country visits. The CBSA has an overseas liaison network, and work closely with international partners and non-governmental agencies to monitor countries in their areas of responsibility.

Finland

No.

Germany

No information.

New Zealand

No.

Norway

No.

Sweden

No.

Answers to Question 10

Do you monitor returnees once in the DRC?

Australia

Australia is bound by the customary international law principle of non-interference in the internal affairs of other sovereign states. Australia's consular obligations and entitlements under international law do not extend to monitoring the welfare of non-nationals offshore.

Belgium

Only if requested before departure (in specific individual cases)

Canada

As part of its removal program, Canada regularly monitors general country conditions but does not monitor individual cases in foreign countries, as such; post-removal monitoring is not a routine or required practice for the Canadian removals program.

Finland

No.

Germany

No.

New Zealand

New Zealand has no resettlement arrangements or monitoring capabilities in the DRC.

Norway

No.

Sweden

No.

Answers to Question 11

Can we publicly disclose all or part of the above information (if only part, please identify which)?

Australia

This information can be released.

Belgium

Yes.

Canada

Yes – you may release the information provided.

Finland

Yes.

Germany

Yes, all.

New Zealand

Yes, information can be disclosed.

Norway

Yes.

Sweden

Yes.



British
High Commission
Nairobi

British High Commission

Upper Hill Road
PO Box 30465
Nairobi
Kenya
Tel: [deleted]
Email: [deleted]

23 January 2014

I met with [deleted], Directeur Central de la Chancellerie, at the Direction Generale de Migration (DGM) in Kinshasa on 15/01/2014. All questions below were answered directly by the Directeur; notes of his responses are provided following the questions. The Directeur stated that he is content to be quoted, but not named.

1. What is the process for UK returnees/deportees arriving at Kinshasa airport with Emergency Travel Documents (ETDs) issued by the DGM or passports?

All arrivals from the UK have been authorised to return before they leave the United Kingdom. They undergo a process of identification which starts with an interview and examination of supporting documents, by the DGM attaché in London. The documents and interview notes are then sent to Kinshasa for DGM to undertake enquiries. If they are satisfied that the person referred is Congolese, they will issue an ETD in Kinshasa, which is then sent to London to facilitate the travel to Kinshasa. At N'Djili airport in Kinshasa, DGM officials check the ETD against the person returning, to ensure that identity corresponds to the returnee. They are then allowed to enter the Democratic Republic of Congo (DRC).

2. Are returnees questioned on arrival? If so what questions are they asked?

Any questions put to returnees are related to identity only. No other questions are asked, as DGM are concerned only with nationality and identity.

3. In what circumstances may a returnee be detained? What action does DGM take?

There are no recorded cases of detention upon return. All enquiries that seek to determine a DRC national's criminality are conducted prior to their documentation as a Congolese national. DGM receive regular lists of Congolese nationals who have a warrant outstanding against them in the DRC, and are therefore subject to travel restrictions. If there are any Congolese nationals that are thought to be outside of the country, then Interpol are contacted. If any Congolese nationals that are undergoing a documentation process in the UK are on the list of those with outstanding warrants, then DGM would inform the Immigration attaché in London. To date there have been no cases where a Congolese national undergoing the identification

process in the UK has an outstanding warrant in DRC. Any criminal conviction that has occurred outside of the DRC is of no relevance to any warrant process.

4. What is DGM's immigration detention procedure?

There is no detention centre for returning Congolese nationals. There is an immigration detention centre in Kinshasa, but this facility is for non-Congolese nationals who have transgressed Immigration rules in DRC. There is bed space for 60-80 people, but occasionally it can hold over 100 Immigration offenders. About 80% of Immigration offenders are from West Africa, although there are sometimes offenders from Europe.

5. If detained, how long will a) an ordinary returnee and b) a Foreign National Offender (FNO) be held?

Congolese nationals who return have already been identified as such (see answer to question 1), so there is no need for detention. All Congolese returnees are checked against their respective travel document and then allowed to enter. There is no separate process for Congolese nationals who have committed offences outside of the DRC – DGM have no interest in criminal convictions outside of DRC.

6. If detained, where are a) ordinary returnees and b) FNOs held?

There is no detention facility for returning Congolese nationals.

7. Is there a monitoring process for released FNOs and, if so, how does it work?

There is no monitoring process for any Congolese nationals who have returned from the UK, or any other country. DGM have primary responsibility for identity and nationality and are not involved in monitoring of any Congolese nationals in or outside of the country.

8. The Congolese Ambassador to the United Kingdom, HE Barnabe Kikaya-bin-Karubi, stated in a letter in August 2012 that “people who are being 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”. Is that true?

This is not the case. All enquiries are conducted prior to any Congolese national returning to the DRC. Any crimes committed outside of DRC are of no interest to DGM and are not part of the DGM identification process. There is no detention facility at N'Djili airport and no returnees are placed in custody. DGM control the whole process of identity, from interviews in the UK, documentation verification and ETD issue in Kinshasa. The Ambassador plays no part in the process.

[Deleted]

1st Secretary Political Migration (MDO) East and Central Africa & Somalia

This letter has been compiled by staff of the High Commission in Nairobi entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author(s), nor any policy of the Foreign and Commonwealth Office. The author(s) have compiled this letter in response to a request from the Home Office and any further enquiries regarding its contents should be directed to the Home Office.