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Country Policy and Information Note

Country: Congo (Democratic Republic of) - Unsuccessful Asylum seekers.

Version 5.0

September 2023

Contents

Executive summary

Updated on 14 June 2023

Unsuccessful asylum seekers who return to the Democratic Republic of Congo – voluntarily or by force; using a passport or a travel document obtained through the redocumentation process – are **not** at risk of persecution or serious harm.

The Upper Tribunal of the Immigration and Asylum Chamber in the country guidance (CG) case of PO (DRC – Post 2018 elections) (CG) [2023] UKUT 00117, promulgated on 18 April 2023, affirmed the Tribunal's previous findings in the CG case of BM and others, promulgated 2 June 2015, that 'Failed asylum seekers are not at risk on return simply because they are failed asylum seekers'.

The Tribunal in PO also held that those who do not possess ID documentation used to access basic services are not likely to demonstrate that there are substantial grounds for believing that they would be subjected to treatment contrary to Article 3 of the European Convention on Human Rights (ECHR).

Decision makers must consider each claim on its facts.

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Assessment

About the assessment

This section considers the evidence relevant to this note – that is information in the country information, refugee/human rights laws and policies, and applicable caselaw – and provides an assessment of whether, **in general**:

- a person is reasonably likely to face a real risk of persecution/serious harm by the state because of his political association and/or opinion
- a person is reasonably able to relocate within a country or territory
- a grant of asylum, humanitarian protection or other form of leave is likely, and
- if a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

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1. Material facts, credibility and other checks/referrals

1.1 Credibility

1.1.1 For information on assessing credibility, see the instruction on Assessing Credibility and Refugee Status.

1.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

1.1.3 In cases where there are doubts surrounding a person's claimed place of origin, decision makers should also consider language analysis testing, where available (see the Asylum Instruction on Language Analysis).

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1.2 Exclusion

1.2.1 Decision makers must consider whether there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

1.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection (which has a wider range of exclusions than refugee status).

1.2.3 For guidance on exclusion and restricted leave, see the Asylum Instruction on Exclusion under Articles 1F and 33(2) of the Refugee Convention, Humanitarian Protection and the instruction on Restricted Leave.

Official – sensitive: Not for disclosure – Start of section

The information in this section has been removed as it is restricted for internal Home Office use.

Official – sensitive: Not for disclosure – End of section

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2. Convention reason(s)

2.1.1 Persons who have been refused asylum and/or have been convicted of a crime in the UK do not, for these reasons alone, fall within the scope of the Refugee Convention on grounds of imputed or actual political opinion, race, religion or nationality. Nor do they form a particular social group. This is because they do not share

- an innate characteristic or common background that cannot be changed or share a fundamental belief that they should not be forced to renounce **and**
- have a distinct identity which is perceived as being different by the surrounding society (which is not defined solely by persecution).

2.1.2 Persons, however, who are able to demonstrate that their claims are based on being, or perceived as being, in opposition to or critical of the government while in the DRC or the UK fall within the scope of the Refugee Convention on grounds of imputed or actual political opinion (see also country policy and information note: DRC: Opposition to the government).

2.1.3 Establishing a convention ground alone is not sufficient to be recognised as a refugee. The question to be addressed in each case is whether the particular person will face a real risk of persecution on account of the actual or imputed convention reason.

2.1.4 For further guidance on the 5 Refugee Convention grounds see the Asylum Instruction, Assessing Credibility and Refugee Status.

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3. Risk

3.1.1 Unsuccessful asylum seekers who return voluntarily or by force to the Democratic Republic of Congo are not at risk of persecution or serious harm.

3.1.2 In the country guidance case of BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 293 (IAC), heard in March and April 2015 and promulgated on 2 June 2015, the Upper Tribunal (UT) of the Immigration and Asylum Chamber held that '… there is no substantiated allegation of arbitrary arrest or ill treatment of any DRC national who is a failed asylum seeker or a foreign national offender returning to his or her country of origin.' (paragraph 76). The UT went on to hold:

'(i) DRC nationals who have been convicted of offences in the United Kingdom are not at real risk of being persecuted for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 [European Convention on Human Rights] ECHR in the event of returning to their country of origin.

(ii) DRC nationals who have unsuccessfully claimed asylum in the United

Kingdom are not at real risk of persecution for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR in the event of returning to their country of origin.' (paragraph 119)

3.1.3 In the country guidance case of PO (DRC – Post 2018 elections) (CG) [2023] UKUT 00117, heard 13 to 15 June 2022, promulgated on 18 April 2023 and published on 22 May 2023, the UT held that

'1. The change in Presidency, following the elections held on 30 December 2018 and the announcement on 10 January 2019 that Felix Tshisekedi was the winner of the elections, has led to a durable change to the risk of persecution to actual and perceived opponents of former President Kabila and current President Tshisekedi, such that the following general guidance applies:

(i) Actual or perceived opponents of former President Kabila are not at real risk of persecution upon return to the … "DRC").

(ii) Generally speaking, rank-and-file members of opposition political parties or political opponents of President Tshisekedi and/or the Sacred Union are not reasonably likely to be at real risk. That must be distinguished from high-profile opponents who may be at risk in some circumstances.

[…]

2. The assessment of those at real risk of persecution for reasons relating to [1(ii)] requires a fact-sensitive analysis of the individual's profile […]

3. In particular:

(i) Members of the MLC and Ensemble pour le Changement are no longer at risk of being targeted.

(ii) Members or supporters and activists of the UDPS are no longer at risk upon return to the DRC. The country guidance set out in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023, as far as it relates to the risk of persecution of UDPS members and activists, should no longer be followed.

(iii) Leaders, members and activists associated with the Congolese Support Group ("CSG") are not at risk upon return to the DRC on account of their actual or perceived political opinion or sur place activities in the UK.

(iv) Simply being a journalist, media worker or blogger is not likely to lead to a person facing treatment that amounts to persecution or serious harm unless they are considered to be a sufficiently high-profile opponent of President Tshisekedi.

(v) Persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) may be at risk upon return to the DRC. Rank-and-file members are unlikely to fall within this category.

4. Failed asylum seekers are not at risk on return simply because they are failed asylum seekers and there is no basis in the evidence before us to depart from the guidance set out in BM and Others (returnees – criminal and

non-criminal) DRC CG [2015] UKUT 00293.

5. There is no credible evidence that the current authorities in the DRC are interested in monitoring the diaspora community in the UK; nor is there is any credible evidence that the intelligence capability exists, even if there were the appetite.'

3.1.4 The UT in PO also considered the impact, after their arrival, of not having ID required to access basic services and (at para 177) held:

'As set out by Lord Wilson in AM (Zimbabwe) v SSHD [2020] UKSC 17, it is for an appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he/she would be exposed to a real risk of being subjected to treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold for an applicant. His or her evidence must be capable of demonstrating "substantial" grounds for believing that it is a "very exceptional case" because of a "real" risk of subjection to "inhuman" treatment. We find that the evidence before us does not even begin to demonstrate that a FAS will face treatment contrary to Article 3 generally, as a result of being unable to obtain the necessary ID to access basic services. It is clear that a DRC national who meets the relevant requirements is able to obtain a "voter card" in the DRC using a range of documents as a means of identification and to prove their age. A replacement is available if the original is lost or stolen.'

3.1.5 The is no information published/made available since PO was heard in June 2022 and referred to in this note to indicate that there are very strong grounds supported by cogent evidence to depart from the UT's findings in that case (see Treatment on return and Documentation required to access basic services).

3.1.6 For further guidance on assessing risk, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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4. Protection

4.1.1 Where the person has a well-founded fear of persecution from the state, they are unlikely to be able to avail themselves of the protection of the authorities.

4.1.2 For further guidance on assessing state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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5. Internal relocation

5.1.1 Where the person has a well-founded fear of persecution from the state, it is unlikely that they will be able to relocate to escape that risk.

5.1.2 For further guidance on internal relocation and factors to be considered, see the Asylum Instruction on Assessing Credibility and Refugee Status.

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6. Certification

6.1.1 Where a claim is refused which is based solely on fear of being persecuted

and/or facing serious harm as a result of being an unsuccessful asylum seeker it is likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

6.1.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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Country information

About the country information

This contains publicly available or disclosable country of origin information (COI) which has been gathered, collated and analysed in line with the research methodology. It provides the evidence base for the assessment.

The structure and content of this section follow a terms of reference which sets out the general and specific topics relevant to the scope of this note.

Decision makers must use relevant COI as the evidential basis for decisions.

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section updated: 09 June 2023

7. Source information

7.1 Timeframe

7.1.1 This note only includes information from June 2022, post dating the hearing of 13 to 15 June 2023 of the country guidance case of PO (DRC – Post 2018 elections) (CG) [2023] UKUT 00117, which was subsequently promulgaged on 18 April 2023 and published on 23 May 2023.

7.1.2 The Upper Tribunal in PO considered a large body of evidence, including that relevant to unsuccessful asylum seekers. For a list of the source material considered in PO see the Appendix of the determination.

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7.2 Limits on available information

7.2.1 There is limited publicly available information about the number and treatment of returns from the UK and other western states to the DRC (see Bibliography).

7.2.2 There is some information about the numbers and circumstances of Congolese asylum seekers and refugees from countries in the region (see Bibliography). However this material has not been included in this note as it is not considered relevant to the consideration of risk of return from the UK and western states more generally.

7.2.3 Background information on the returns process, numbers of returns, monitoring of returns and treatment of returnees upto the end of 2019 is available in the archived country policy and information note, Democratic Republic of Congo: Unsuccessful asylum seekers (January 2020) available on ecoi.net.

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8. Numbers of returns: 2022

8.1.1 There were no asylum-related[1] forced or voluntary returns from the UK to the

[1] Asylum-related returns relate to cases where there has been an asylum claim at some stage prior to the return

DRC in 2022. There were, however, 2 non-asylum related returns in 2022[2].

8.1.2 The COI research unit (Cedoca) of the Belgium Commissioner General for Refugees and Stateless Persons (CGRS) compiled a COI focus, The Treatment By National Authorities Of Their Nationals Who Return To The Country, dated 27 September 2022 which was published in French but an English translation has been obtained using Microsoft Bing's translation tool (Cedoca report 2022). The summary of this report stated that it '… focuses on the attitude of the Congolese authorities towards their returning nationals after having left the country illegally and/or having lodged and/or stayed in Belgium for international protection. It covers the period from June 2021 to August 2022. Cedoca closed the search for this update on 27 September 2022.' The report noted: 'Between January and June 2022, nine Congolese nationals were repatriated to Kinshasa from Belgium.'[3]

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9. Legal right to leave and return

9.1.1 The US State Department human rights report covering events in 2022 (USSD report 2022) does not comment on Congolese nationals seeking asylum generally or in the UK and Europe specifically but noted:

'The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, but the government sometimes restricted these rights… Due to inadequate administrative systems, passport issuance was irregular and at times prevented citizens from leaving the country. Officials accepted bribes to expedite passport issuance, and there were reports the price of fully biometric passports varied widely. Sitting and former senior government officials were required to seek authorization from the ANR for foreign travel. In some instances, the ANR either did not respond in a timely fashion or denied requests for authorization, including of political figures viewed as critical of the government.'[4]

9.1.2 No other source consulted in this note indicate that DRC law or policy sanctions Congolese nationals seeking asylum (see Bibliography).

10. Treatment on return

10.1.1 As noted above, there is limited information on the treatment on returns from western Europe in publicly available sources (see Bibliography for sources consulted).

10.1.2 The Cedoca report 2022 noted

' A 2019 Justice and Peace report estimated that about 80,000 Congolese live in Belgium. Congolese come to Belgium mainly for studies, family reasons and because of the ongoing conflicts in the DRC. In 2020 and 2021 and 2022, migration movements decreased sharply due to the COVID-19 pandemic.

[2] UK Home Office, Migration statistics, Email, 23 June 2023, copy on request
[3] CGRS, 'The Treatment By National Authorities Of Their Nationals Who Return..' 27 Septembr 2022
[4] USSD, Human rights report 2022 (section 5), 20 March 2023

‘Politically, relations between the two [Belgium and the DRC] countries were very tense during the last years of Kabila's government. They have steadily improved since the swearing-in of the new president in early 2019 and his visit to Belgium in September 2019.

‘Cedoca found no information indicating that Congolese nationals were sanctioned for illegal departure from the country, for the submission of an application for international protection abroad or for having stayed abroad…The authorities present at the airport are the Directorate General of Migration (DGM), the National Police, the Border Police and the National Intelligence Agency (ANR).Upon arrival at Njdili airport, persons forcibly returned to Kinshasa from Belgium are identified by the DGM, like ordinary passengers. They are no longer interviewed by the ANR, as was sometimes the case until 2019.The sources consulted do not report any problems encountered by Congolese voluntarily or forcibly repatriated from Brussels to Kinshasa during the period covered by this update.’[5]

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[5] CGRS, ‘The Treatment By National Authorities Of Their Nationals Who Return..’ 27 Septembr 2022

Research methodology

The country of origin information (COI) in this note has been carefully selected in accordance with the general principles of COI research as set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), Researching Country Origin Information – Training Manual, 2013. Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

All the COI included in the note was published or made publicly available on or before the 'cut-off' date(s). Any event taking place or report/article published after these date(s) is not included.

Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information
- whether the COI is consistent with and/or corroborated by other sources

Wherever possible, multiple sourcing is used and the COI compared and contrasted to ensure that it is accurate and balanced, and provides a comprehensive and up-to-date picture of the issues relevant to this note at the time of publication.

The inclusion of a source is not, however, an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a footnote.

Full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

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Terms of Reference

A ‘Terms of Reference’ (ToR) is a broad outline of the issues relevant to the scope of this note and forms the basis for the country information.

The Home Office uses some standardised ToR, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal right to return
- Treatment of returnees
- Documentation to access services.

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Bibliography

Sources cited

Belgium Commissioner General for Refugees and Stateless Persons (CGRS), COI research unit, 'The Treatment By National Authorities Of Their Nationals Who Return to the Country' 27 September 2022. Last accessed: 14 June 2023

EU Agency for Asylum, COI Query, 'Statelessness', 15 February 2023. Last accessed 28 June 2023

UK Home Office, Migration statistics, Email to CPIT, 23 June 2023, copy on request

US State Department,'2022 Country Reports on Human Rights Practices: Democratic Republic of the Congo', 20 March 2023. Last accessed 27 June 2023

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Sources consulted but not cited

Amnesty International, 'Democratic Republic of the Congo 2022', 27 March 2023. Last accessed 28 June 2023

Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), ecoi.net, search using phrases 'failed asylum seeker' and 'return' of sources post June 2022. Last accessed: 27 June 2023

Freedom House,'Freedom in the World 2023 – Democratic Republic of Congo', 2023. Last accessed 28 June 2023

Human Rights Watch, 'Democratic Republic of Congo - Events of 2022', 13 January 2023. Last accessed 28 June 2023

Immigration and Refugee Board of Canada,

'National Documentation Package', updated 28 April 2023. Last accessed: 27 June 2023

'COD201249.FE, [DRC]: Passports, including their contents, appearance and security features; requirements and procedures for obtaining them within the country and abroad, including documents required and verifications carried out by authorities before issuing a passport (2000–February 2023)', 16 March 2023. Last accessed 28 June 2023

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Version control and feedback

Clearance

Below is information on when this note was cleared:

- version **5.0**
- valid from **4 September 2023**

Official – sensitive: Not for disclosure – Start of section

The information in this section has been removed as it is restricted for internal Home Office use.

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Changes from last version of this note

Updated assessment section.

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Feedback to the Home Office

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The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the gov.uk website.

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