

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	252
Land:	DR Congo
Kilde:	Refugee Documentation Centre of Ireland
Titel:	Democratic Republic of the Congo – Researched and complied by the Refugee Documentation Centre of Ireland on 15 February 2012. Information on the treatment of failed asylum seekers, including children, by the Congolese authorities on their return to Democratic Republic of Congo
Udgivet:	15. februar 2012
Optaget på baggrundsmaterialet:	28. marts 2012



Refugee Documentation Centre (Ireland)
LEGAL AID BOARD

Democratic Republic of the Congo – Researched and compiled by the Refugee Documentation Centre of Ireland on 15 February 2012

Information on the treatment of failed asylum seekers, including children, by the Congolese authorities on their return to Democratic Republic of Congo?

A Country Advice document published by the *Refugee Review Tribunal* of Australia comments on a decision by the UK Immigration Appeal Tribunal as follows:

“In 2005, the UK Immigration Appeal Tribunal concluded that returned failed asylum seekers were not at risk of persecution ‘for that reason alone’. The Tribunal accepted that returnees may be required to pay a fine (essentially a bribe). Only those asylum seekers with other characteristics or risk factors were seen to be of interest to the authorities, including those with a ‘nationality or perceived nationality of a state regarded as hostile to the DRC, Rwanda in particular, those who were Tutsi or perceived to be Tutsi or Banyamulenge; and those who had or were perceived to have ‘a military or political profile in opposition to the government’.” (Refugee Review Tribunal (12 December 2009) *Country Advice – Democratic Republic of Congo: Democratic Republic of Congo – COD35823 – Asylum seekers – Returnees – Movement for the Liberation of Congo*)

This Country Advice also states:

“In response to a BBC program aired in December 2005² the UNHCR issued a statement in view of the program’s allegations that failed asylum seekers returned to the DRC were subject to ill-treatment. The UNHCR believed that such individuals would be questioned at the Kinshasa airport on arrival, as would any person travelling without full documentation, or who had been absent for a long period of time. They may be released after perhaps 1 to 3 hours, or they may be transferred to a city detention facility where further verification checks may be carried out. The NGO ‘Voix des Sans Voix’ (VSV – ‘Voice of the Voiceless’) had provided information to suggest that Western countries were returning failed asylum seekers to DRC but had no reports that such persons were detained or tortured on arrival. Some individuals had claimed having to pay money amounts of US\$5-10. The UNHCR report stated that the IOM Kinshasa, MONUC and NGO ASADOH (Association Africain de Defense des Droits de l’Homme) had no reports at that time of ill-treatment of failed asylum seekers.” (ibid, pp.1-2)

A statement issued by the *UN High Commissioner for Refugees* on the treatment of asylum seekers returned to the DRC states:

“According to the DGM and CNR, the usual procedure for any person returning through the Kinshasa airport in case they do not hold proper documentation, including current DRC passports, and/or when they have been absent for a long time, is to be interrogated by immigration officials at the airport. In the best case scenario, they are freed within one to three hours. In the worst case, they are sent to a detention facility in the center of

town, and released after further verification.” (UN High Commissioner for Refugees (19 April 2006) *Response to Information Request: DRC - Treatment of rejected asylum seekers*, p.1)

This document also states:

“The Congolese human rights NGO ‘Voix des Sans Voix’ informed the office that rejected asylum-seekers are received upon arrival at the airport by agents of DGM, who question them why they left and applied for asylum. The NGO had an office at the airport and are closely monitoring the situation. They mentioned that there were many failed asylum-seekers who are sent back by western European countries, but they are not aware of any of these persons detained and/or tortured upon return. They reported that some of the failed asylum-seekers had to pay some money to the police (5 to 10 USD).” (ibid, p.1)

Paragraph 322 of the *UK Asylum and Immigration Tribunal* judgment referred to above states:

“We would emphasise that in reaching the above conclusions we have taken into account that there were items of (or parts of) the evidence before us indicating that bribes demanded can be prohibitively large sums and that returnees can be detained because they have no money, but taken as a whole we did not find those items (or parts of the evidence) reliable. Whilst we are prepared to accept that in rare cases prohibitive sums may be demanded and/or persons are detained because they cannot pay, the evidence as a whole does not demonstrate that this is generally happening or that it happens sufficiently to give rise to a real risk of it happening to returned failed asylum seekers as such.” (UK Asylum and Immigration Tribunal (18 December 2007) *BK (Failed Asylum Seekers) Democratic Republic of Congo v. Secretary of State for the Home Department*, CG [2007] UKAIT 00098, p.94)

Paragraph 323 of this judgment states:

“Accordingly we are not persuaded that for deportees or failed asylum seekers the difficulties they commonly face in being expected and required to pay a bribe amounts to treatment contrary to Article 3 ECHR or to serious harm.” (ibid, p.94)

Paragraph 324 states:

“The same cannot be said, however, for the nature of the requests/demands for bribes once a person is transferred to detention facilities elsewhere. We of course have not found that failed asylum seekers will be transferred in this way, but for individuals who will face such transfer because of specific risk factors (e.g. those who are on a wanted list), the preponderance of the evidence, at least as presented to us in this appeal and (with express concession by Miss Giovannetti for the purposes of this appeal), is that, once in detention away from the airport, they will be in an extremely vulnerable situation characterised by physical and verbal abuse of a serious kind. They are no longer involved in a process which can normally be negotiated by paying a bribe in circumstances which are not oppressive. They have lost their liberty and face targeted ill treatment.” (ibid, pp.94-95)

The most recent *UK Home Office* country report on the DRC, in a section titled "Treatment Of Failed Asylum Seekers On Return" (paragraph 34.04), states:

"An e-mail from the British Embassy in Kinshasa via the FCO dated 11 October 2007 stated that at a meeting with a Policy Officer of the Asylum and Migration Affairs Division of the Netherlands MFA, the officer told them that he had spent a week talking to NGOs, international organisations and Embassies, he said that MONUC, UNHCR, IOM and all the NGOs he spoke to said that, while there were obviously serious human rights issues in DRC, returned failed asylum seekers were not targeted, nor were they singled out as a particular group by the authorities. All of his interlocutors had said that the stories of abuse that they had heard had all come from Europe, and that their investigations had shown the allegations to be either false, or doubtful due to lack of evidence." (UK Home Office Border Agency (30 June 2009) *Country Of Origin Information Report: The Democratic Republic Of Congo*)

A Country Sheet issued by the EU-funded *Country of Return Information Project*, in section 1.3. "Entry procedure (proceeding authority, interrogation, control, detention, bribes, etc.)", states:

"Upon arrival at the airport, immigration agents will wait for the returnee and identify him before taking him to the litigation office of the DGM for the formalities before the hearing. The returning Congolese candidates are sometimes subject to hassle from the DGM agents (systematic searches and extortion of their private belongings : shirts, pants, shoes, watches, lighters and many others as well as money if for example the vaccination certificate isn't valid) This hunt continues in the parking as well, after leaving the passenger zone of the airport they risk hassle from zealous agents (police, military...) as they rightly or wrongly believe that returnees have a lot of money and goods with them." (Country of Return Information Project (June 2009) *Country Sheet: Democratic Republic of Congo (DRC)*, p.11)

An article published by *The Guardian* on the alleged treatment of asylum seekers returned to the DRC states:

"Nsimba Kumbi, 33, a refused asylum seeker, was removed from the UK on 13 March, following detention in the Campsfield immigration removal centre in Oxfordshire. He was then detained in the DRC capital, and taken to the notorious secret police headquarters Kin Mazière, the Kinshasa headquarters of the general directorate of intelligence and special services, where, he says, he was tortured for three weeks. Kumbi says that during his incarceration he was badly beaten, that he received burns and was forced to give a male guard oral sex while his hands were tied behind his back. He says he is now in so much pain he can only move his neck in one direction. The wounds on his back from beatings are gradually drying. He says that nerve damage means he can barely move his fingers. Another Congolese refused asylum seeker, Rabin Waba Muambi, 42, was also removed from the UK on 13 March on a separate flight. He arrived in Kinshasa the following day and was taken to Kin Mazière. Secret entries in the Kin Mazière log book, leaked to the Guardian, confirm the men's detention there. Muambi, who says he was beaten at Kinshasa airport, was later stripped, then continually beaten and forced to lie outside staring at the sun." (Guardian (UK) (27 May 2009) *Britain sending refused Congo asylum seekers back to threat of torture*)

An *Evening Gazette* article on the alleged treatment of a failed asylum seeker deported from the UK to the DRC states:

“Last week the Evening Gazette told how Blaise's supporters feared he had been arrested and tortured on his arrival at Kinhasa airport. Frank Cook MP for Stockton North, and Catherine Ramos, of Justice First, said their fears had been confirmed in a telephone conversation they held with Blaise. He told them he had been taken to the secret police headquarters Kin Maziere after his arrest. Catherine said: ‘When he left the airport he was arrested by plain-clothed agents. He tried to resist but was beaten, handcuffed and blindfolded. He was taken to a prison he later knew to be Kin Maziere and severely beaten.’ He was told he was arrested because he was from London, from the UK, and against the regime and had to be punished. He was left handcuffed and blindfolded until he was released around midnight. Release had been negotiated by a friend, who told him he was in danger and must leave the country.” (Evening Gazette (8 June 2009) *Campaigners claim asylum seeker is beaten on Congo return*)

This article includes a response from a UK Border Agency spokesman:

“A UK Border Agency spokesman said: “We are aware of these allegations and our investigations have found no substance to them.” (ibid)

The Lord Bishop of Winchester, the *Right Reverend Michael Scott-Joynt*, comments on the UK government's policy of returning failed asylum seekers to the DRC as follows:

“HMG has no programmes or resources to follow up returned asylum-seekers to discover how they have, in fact, been treated on return. But there is a great deal of evidence, gathered by those working with and in support of DRC asylum-seekers in many parts of the UK, that contradicts these findings of successive asylum and immigration tribunals. Sometimes those being returned are identified by their British escorts to one or another of the police or immigration forces at Ndjili Airport, Kinshasa. Sometimes 'authorities' there identify them immediately. Unless they have significant funds to pay for their safety, some are removed straight away into custody, separated from their families, and taken to this or that prison where they are ill-treated. Others are allowed to leave the airport, but are 'picked up' later if their addresses, or the addresses of relatives, are known. Women especially, but men too, are frequently subjected to sexual assault and rape. Children may be separated from their families – and children being returned may not speak a Congolese language if they have been born in the UK; and they will have no resistance to indigenous diseases, and no medication against them.” (The Right Reverend Michael Scott-Joynt (Lord Bishop of Winchester) (17th May 2011) *Government lacks evidence on returned asylum-seekers*)

The Lord Bishop also states:

“There is, too, a good deal of evidence that at least some of those being returned are treated not only with disrespect but with violence, and that children have been separated from their parents, while being transported to UK airports for return to the DRC, and some have been ill-treated in the aircraft. The Border Agency generally uses charter flights, where there are no ordinary passengers to witness this ill-treatment.” (ibid)

A detailed report compiled by the UK-based charity *Justice First*, in a section titled “Background to the Report”, states:

“UK citizens kept in contact with Congolese friends who were refouled after 2007 and began to document their experience. Between 2009 and 2011 Southampton and Winchester Visitors’ Group, Open Doors in Hull and two charities in West Yorkshire, Solace and Beacon, provided information about Congolese clients that had been refouled. A pattern of alleged inhuman and degrading treatment of returnees began to emerge. There is evidence that returnees were subjected to some form of ill treatment in the course of an interrogation process or during detention shortly after arrival at N’djili airport. In letters from UKBA refusing asylum, returnees had been assured that they were of no further interest to the Congolese authorities and that it was safe for them to return.” (Justice First (24 November 2011) *Unsafe Return: Refoulement of Congolese Asylum Seekers*)

In a section titled “Summary of the documented human rights violations” this report lists the following allegations:

“The following human rights of 9 children and 15 adults were violated after removal to the Democratic Republic of the Congo¹¹:

Article 3 – the absolute right not to be tortured or subjected to treatment or punishment that is inhuman or degrading.

- 13 returnees were subjected to some degree to interrogation, arrest, imprisonment, verbal, physical and sexual abuse, rape and torture
- 6 children were imprisoned for periods between 2 days and up to three months Article 5 – the right to liberty and security of person
- 9/15 returnees suffered imprisonment and 1 was arrested but escaped from officers
- 6/15 returnees have faced harassment forcing them to flee their homes and local environs for safety in other countries. 5 children fled with their mothers
- 5 /15 returnees’ family / friends were subject to threats and harassment in their homes or in the house where they were being sheltered
- 3/15 suffered both imprisonment and harassment and threats at home
- 3/9 children witnessed threats at home to their parents and abduction of their father
- 6/15 returnees spent time in hiding after release and 1/4 women before her arrest
- 1 returnee who suffered human rights violations following his arrival in DRC and during detention in Kin Mazière prison has not made contact with his family and friends in the UK since June 2009. (ibid, p.16)

This section also states:

“Article 7 – the right not to receive punishment without law

- 7/10 Justice First clients are known to have been imprisoned without access to a lawyer and without being judged. Three of the other returnees were also imprisoned without access to lawyers. A member of the legal profession has confirmed that one returnee was held in an underground cell in Kin Mazière without access to a lawyer

Article 8 – right to respect for private and family life, your home and correspondence

- 6 returnees are known to have been forced to flee the DRC and 5 have been forced to move location due to fears for the safety of the returnee or family members and friends and 7 are known to remain in hiding in 2011 as they fear for their safety.
- 7/15 cannot live in their former homes or in the homes of relatives/friends due to harassment in the home.
- 1/4 women could not live in her home because she feared future harm having been followed from the airport by men in a Jeep. She was arrested subsequently
- One mother reports that the family home was destroyed in 2007. The mother of one child cannot establish contact with her family
- 3 children have not seen their father for four and a half years. The father of one child resides in the UK. 2/4 women live in precarious conditions with their children. One mother is living outside the DRC with her children and has had to move room twice. Another mother has had to move location in DRC with her children because of threats.” (ibid, pp.16-17)

In a recent article in *The Guardian* the author of the above report states:

“I travelled to DRC late last year to assess the safety of returnees who had not again fled the country. All feared re-arrest, as they had not been freed from prison but had been extracted from jail following payment of a ransom. One used a disguise to attend a meeting with me, another was met at night in a neutral place. A Congolese immigration official confirmed that when the service receives the names from UKBA of those to be removed, they check the returnee's file in order to see if there has been a problem with the Congolese government. If there has, the secret services will be informed and the person will be transferred to prison from the airport. There will be no excuse for the returnee and there will be no pity shown.” (The Guardian (16 January 2012) *Congo is torturing citizens who have been refused asylum in the UK*)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

References:

Country of Return Information Project (June 2009) *Country Sheet: Democratic Republic of Congo (DRC)*

http://www.ecoi.net/file_upload/470_1258195048_cs-congo-en.pdf

(Accessed 14 February 2012)

Evening Gazette (8 June 2009) *Campaigners claim asylum seeker is beaten on Congo return*

<http://www.gazettelive.co.uk/news/teesside-news/2009/06/08/beaten-handcuffed-and-blindfolded-84229-23805610/>

(Accessed 14 February 2012)

The Guardian (16 January 2012) *Congo is torturing citizens who have been refused asylum in the UK*

<http://www.guardian.co.uk/commentisfree/libertycentral/2012/jan/16/congo-torture-refused-asylum-uk/print>

(Accessed 15 February 2012)

The Guardian (UK) (27 May 2009) *Britain sending refused Congo asylum seekers back to threat of torture*

<http://www.guardian.co.uk/world/2009/may/27/drc-congo-deport-torture/print>

(Accessed 14 February 2012)

Justice First (24 November 2011) *Unsafe Return: Refoulement of Congolese Asylum Seekers*

<http://justicefirst.org.uk/wp-content/uploads/UNSAFE-RETURN-DECEMBER-5TH-2011.pdf>

(Accessed 15 February 2012)

Refugee Review Tribunal (12 December 2009) *Country Advice – Democratic Republic of Congo: Democratic Republic of Congo – COD35823 – Asylum seekers – Returnees – Movement for the Liberation of Congo*

<http://www.mrt-rrt.gov.au/ArticleDocuments/153/COD35823.pdf.aspx>

(Accessed 14 February 2012)

The Right Reverend Michael Scott-Joynt (Lord Bishop of Winchester) (17th May 2011) *Government lacks evidence on returned asylum-seekers*

<http://webcache.googleusercontent.com/search?q=cache:SO0nDpQ47q8J:www.epolitix.com/latestnews/article-detail/newsarticle/government-lacks-evidence-on-returned-asylum-seekers/+%22Government+lacks+evidence+on+returned+asylum-seekers%22&cd=1&hl=en&ct=clnk&gl=ie&source=www.google.ie>

(Accessed 14 February 2012)

UK Asylum and Immigration Tribunal (18 December 2007) *BK (Failed Asylum Seekers) Democratic Republic of Congo v. Secretary of State for the Home Department, CG [2007] UKAIT 00098*

<http://www.unhcr.org/refworld/pdfid/4767eb9d2.pdf>

(Accessed 14 February 2012)

United Kingdom Home Office Border Agency (30 June 2009) *Country of Origin Information Report: The Democratic Republic Of Congo*
<http://www.unhcr.org/refworld/pdfid/4a4cb8632.pdf>
(Accessed 14 February 2012)

UN High Commissioner for Refugees (19 April 2006) *Response to Information Request: DRC - Treatment of rejected asylum seekers*
<http://www.unhcr.org/refworld/pdfid/4459b53f4.pdf>
(Accessed 14 February 2012)

Sources Consulted

All Africa (English Version)
Amnesty International
Electronic Immigration Network
European Country of Origin Information Network
Forced Migration Review
Google
Guardian (UK)
Immigration and Refugee Board of Canada
Justice First
Lexis Nexis
Refugee Documentation Centre Query Database
Refugee Review Tribunal
United Kingdom Home Office
UNHCR Refworld