

Position Paper on return of rejected asylum seekers to the Democratic Republic of Congo

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Asylum seekers from the Democratic Republic of Congo who have been rejected after going through fair eligibility procedures and application of correct eligibility criteria may still face problems upon deportation to their country of origin. Issues such as the individual's place of origin, last place of habitual residence, family relations, ethnic group and profession are to be considered before the person is deported. An individual approach is therefore required on the basis of the circumstances of each case and careful consideration of the changing political and security context in the DRC.

General situation

Despite efforts and negotiations that are going on in the DRC in order to implement the Lusaka Peace Agreement and bring peace and reconciliation among opposition parties, armed movements and the government, the security situation is still a matter of concern to the local community and the international community. Although the situation has improved somewhat due to the deployment of the first contingent of MONUC forces and the retreat of foreign armies from the frontline, as well as the agreement signed between the DRC and the Republic of Congo to monitor the traffic on the Congo river, fighting still continues between rebels and governmental forces in the eastern and south-eastern regions as well as in the Equateur province, along with serious human rights violations. As a result, influxes of asylum seekers from the DRC are reported in the neighbouring countries.

Kinshasa, Lubumbashi and the Western provinces of Bas-Congo, Bandundu and Kasai are generally calm, but isolated security incidents provoked by uncontrolled elements of the Forces Armées Congolaises or agents of the security services are still reported from time to time.

As far as the humanitarian situation is concerned, in areas outside the control of the government, there is a serious problem of access for humanitarian workers and timely delivery of relief supplies to needy populations. A recent report by the International Rescue Committee indicates that tens of thousands of people are out of the reach of aid agencies and individuals are dying of severe malnutrition. Living conditions in the overcrowded city of Kinshasa (whose population is estimated to have reached six millions) are increasingly dire and desperate, to the point that even the traditional networks of solidarity and support provided by the extended family appear to be affected from this situation.

The denotation procedure

The denotation procedure is a process by which a person who has been rejected as an asylum seeker is returned to their country of origin. The person is first interviewed by the police in a detention centre. If the person is found to be a genuine refugee, they are allowed to remain in the country. If the person is found to be a fake refugee, they are deported. The person is then accompanied to the immigration office in the center of the capital to complete immigration formalities. The authorities reiterate that the deportee, while he or she is completing immigration formalities, is not a detainee and that as soon as Congolese nationality is confirmed the person is allowed to leave immigration premises.

The problem arises when the deportee is in fact a non-Congolese national. DRC immigration authorities have indeed reported to UNHCR and the local office of the UN High Commissioner for Human Rights (UNHCHR) in Kinshasa that in several instances deportees holding identity/travel documents issued by the DRC diplomatic missions turn out to be Angolans after a thorough interview. As an example, the DRC immigration authorities were "hosting" in their premises for over a year an Angolan national who was deported as Congolese by the Swiss authorities, but who had departed to Switzerland from Angola and not from the DRC. It is therefore recommended that States very carefully ascertain the nationality of rejected asylum seekers before they are processed for return to the DRC.

While the DRC authorities maintain their position as to the procedure in place to receive deportees, the UNHCHR has received reports on deportees transferred to the DRC intelligence services such as ANR (Agence Nationale des Reinseignements), DEMIAP (Detection Militaire des Activites Anti Patrie) or GSSP (Garde Spéciale de Sécurité Présidentielle) for interrogation. The DRC authorities deny such procedure.

Against this background, it can no longer be said that only those deportees who are discovered by the authorities to have sought asylum abroad undergo interrogation sessions upon arrival at Kinshasa airport. In fact, reports from local human rights NGOs, victims and eye witnesses show that certain groups of individuals who are deported (having or not sought asylum), or repatriate voluntarily, may face serious problems following possible interrogation conducted by security services upon arrival to Kinshasa. Should the authorities in Kinshasa discover that a deportee has a political or military profile, or has sought asylum abroad owing to a political or military background, such person may be at risk of arbitrary detention and ill-treatment.

Categories at risk

Below we have indicated the categories of DRC asylum seekers who are most likely to face protection problems upon return to Kinshasa. However, the existence of categories of persons who are particularly at risk does not imply that other individuals falling outside these categories would be automatically safe if returned to the DRC against their will, and regard should be had to the circumstances of each case before proceeding with deportation.

1. Persecution with respect to civilians originating from rebel-held territory or whose relatives collaborate or are suspected to collaborate with the rebel groups MLC, RCD-Goma or RCD-ML.

UNHCR estimates that risk of persecution may exist with respect to persons whose relatives are suspected to be well-known figures of the rebel groups Mouvement pour la Libération du Congo (MLC), Rassemblement pour la Démocratie Congolaise (RDC - Goma) or Mouvement pour la Libération du Congo (MLC) - Mouvement pour la Libération (MLC).

For the MLC, the risk of persecution is high for individuals who are not controlled members of the group, but who are suspected to be well-known figures of the group in the province and Kinshasa, although it is not on an individual basis. During the individual assessment, factors such as status (military/civilian), profession and political affiliations must be considered.

In the wake of the November 2000 extra-judicial execution of General Masusu, a senior security officer suspected to plot the overthrow the Kabila regime, any person suspected to be

close to him or to have been trained by him or collaborating with him within the security services would be at high risk of persecution. In April 2001, 19 DRC asylum seekers originating from the eastern provinces, who were said to be members of the ANR affiliated to General Masusu, were expelled from the Republic of Congo and returned forcibly to their country of origin. UNHCR has received information that this group is arbitrarily detained in the Makala prison of Kinshasa, not having been charged with any criminal offence.

Following the January 2001 assassination of late President Laurent Désiré Kabila, allegedly by a bodyguard originating from the eastern provinces, currently under rebel control, local human rights NGOs have reported arbitrary arrests and disappearances of persons originating from North and South Kivu and Maniema provinces. A recent comprehensive report has been compiled by the reliable local NGO Codho describing human rights violations perpetrated against this group both in Brazzaville and Kinshasa. These events have also resulted in increased security checks at arrivals in Kinshasa. The UNHCHR has been able to corroborate most of the allegations in their monthly reports.

2. Persecution of individuals belonging to the Banyamulenge ethnic group or the group of Kinyarwanda expression

It is well known that membership of the "Banyamulenge" ethnic group (Tutsi ethnic origins), or the group of Kinyarwanda expression (both Tutsi and Hutu ethnic origin), may subject the affected individuals to persecution. This problem became particularly acute in the wake of the 1998 intervention of the national armies of Uganda, Rwanda and Burundi in DRC to overthrow the regime of the late President Kabila. Accordingly, the individuals concerned were collectively described as a group-at-risk. Members of these groups were subjected to arbitrary detention and ill treatment, and in certain instances tracked down and killed in Kinshasa by angry mobs. UNHCR and the international community, principally the United States and Belgian authorities, were requested to arrange for the relocation of members of the group to third countries since the authorities in Kinshasa could not guarantee their security or protection.

3. Military profile/background

Security agencies (Agence pour la Sécurité des Aéroports et Aéroports-ASAA) as well as immigration authorities arrest systematically former militaries who return to the DRC involuntarily and in some instances those who return voluntarily, where previous negotiation with Ministry of Defence has not taken place. Following interrogation these persons have in some instances been arbitrarily detained and subjected to ill-treatment. Those who have no family in Kinshasa to support them have many difficulties to feed themselves while in detention.

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Internal Relocation Alternative

The concept of "internal relocation alternative" has been formulated by certain countries to refer to the theoretical possibility for rejected cases to settle in different areas within their

country of origin after they have been returned there, in most cases against their will. However, application of the "internal relocation alternative" in the DRC situation presents very serious conceptual and practical problems.

The DRC has been at war since 1998 and six out of the nine countries bordering the DRC are also involved in this war, namely Angola, Burundi, Rwanda, Sudan and Uganda, or are in a post-conflict recovery phase (Republic of the Congo) or afflicted by continuing political instability (Central African Republic). To further complicate the situation, there is an intricate network of alliances among the various governments, rebel movements and other insurgent groups, as well as ethnic conflict, which undermines the effective implementation of the Lusaka peace process and cease-fire agreements in remote areas. Although a cease-fire agreement was signed in Lusaka in July 1999 by the main belligerent parties (Angola, DRC, Namibia, Rwanda, Uganda and Zimbabwe) it is yet to be fully implemented.

Furthermore, regard must be had to the fundamental fact that in the DRC, and indeed in most of Africa, human settlements are generally based on common ethnic origin and socio-economic background which lie at the very basis of the social fabric.

Within the present context in the DRC, if people are compelled to settle in an environment which is not their own, they will not only be unable to integrate, but would also put their lives and physical safety at risk if there is ethnic animosity in the place of settlement or suspicions of involvement with rebel groups because of the origin of the individual in question or family links with rebel leaders.

In addition to the above, internal relocation alternative in the rebel controlled areas is not an option. The fact that the country is at war, and the decay of infrastructure such as roads and railways, makes it almost impossible to travel from one part of the country to another by ground transport. Air transport is itself unreliable, and would not in any event be available to the rebel-held areas.

Finally, in UNHCR's experience individuals availing themselves of the option of an internal relocation alternative have traditionally chosen Lubumbashi, the capital of Katanga province in the south. However, for persons originating from Kinshasa who had claimed to be at risk of persecution from government agents this is not an option, as Lubumbashi is a stronghold of the deceased Congolese president where the same agents of persecution would be present.

In view of the above, UNHCR considers that the "internal relocation alternative" is not a feasible option for rejected Congolese asylum seekers returned to the DRC against their will.

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