



Home Office

Country Policy Bulletin

DEMOCRATIC REPUBLIC OF CONGO (DRC)

Democratic Republic of Congo (DRC) POLICY BULLETIN 2/2014

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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 provides up to date policy guidance and therefore replaces the DRC country policy bulletin 1/2014 published February 2014 (CPB 1/2014). [The DRC country policy bulletin 1/2012](#) published November 2012 (CPB 1/2012) provides relevant background information and should be read in conjunction with the other guidance on handling DRC claims.
- 1.3** Other relevant Home Office documents when considering applications from DRC nationals for protection in the UK 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 and available on request.

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 substantiated 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.

- 2.5 The Immigration and Asylum Chamber Upper Tribunal (UT) has now identified five cases (three FNOs and two FAS) to be jointly run as an appeal in which they will explore the issue of safety on return to the DRC as a country guidance case.
- 2.6 Rather than restricted consideration to safety on return purely for FNOs (not covered in existing CG caselaw), the UT concluded that it would be advantageous to update the existing country guidance for FAS (i.e. the CG case of BK) as this dates from 2007. However until such time as the new country guidance is promulgated, BK remains the law in accordance with [SG \(Iraq\) v Secretary of State for the Home Department \[2012\] EWCA Civ 940 \(13 July 2012\)](#).
- 2.7 Evidence is being gathered for the new CG case, which is expected to be listed for a substantive hearing on the first available date after 2 January 2015.

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 also section 6.1, Data from other asylum intake states

- 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 Observer published an article on 15 February 2014 which alleged that there was a 'top-secret document' circulating among 'senior police and security chiefs in the Democratic Republic of Congo advising security chiefs officials to track down and arrest opponents of the government... and suggests torture could be used with "discretion".' The top-secret document reportedly places emphasis '... on targeting political activists living in the UK and other parts of Europe who are forcibly removed to the Congolese capital,

Kinshasa.¹ However, the above mentioned document has not been released or made available to the Home Office.

- 3.6 **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. There is no substantiated evidence that FAS returns from the UK have been ill-treated on return.

See also section 10, for statistics on returns to the DRC

- 3.7 The Observer has produced no evidence to substantiate the claims made in its article of February 2014 and therefore no weight can be given to this. The DRC OGN recognises that certain categories of DRC national might be eligible for protection in the UK, including some political activists, and each application for protection will be considered on its individual merits.

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](#).
- 4.2 The basis of this finding were remarks attributed to the then DRC Ambassador in June 2012, set out 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.
- 4.3 In response to this finding further information has been obtained from the IGC and the DRC authorities as evidenced in this bulletin.
- IGC information:**
- 4.4 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 returned 79 FNOs since the beginning of 2012 (69 enforced and at least 10 voluntary) to the end of 2013.
- 4.5 Belgium stated that 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.

¹ The Observer, [Congolese asylum seekers face 'torture with discretion' after removal from UK](#), , 15 February 2014

4.6 As indicated in paragraph 3.4 above it is appropriate for the Home Office to give significant weight to the evidence from other returning states.

DRC Fact Finding Mission (FFM):

4.7 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.

4.8 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.

4.9 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 [i.e. in Kinshasa]”. 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 decision makers should 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).

4.10 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).

4.11 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 on return. Both countries returned to DRC at that time (pages 66 and 94).

FCO meeting with DGM of January 2014

- 4.12 At the request of the Home Office, a Foreign & Commonwealth Office (FCO) 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.²
- 4.13 The text of the questions asked and the replies given by the Directeur Central de la Chancellerie are provided at Appendix C. The Directeur clarified:
- That travel documents from the UK to the DRC will only be issued once the DGM are satisfied the individual is Congolese;
 - The questioning of a returnee in the redocumentation process is to establish nationality and 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
- At the time of the interview the DRC 'Ambassador [to the UK] plays no part in the [return] process" (answer 8).

FCO meetings with DGM officials in Kinshasa of September 2014

- 4.14 At the request of the Home Office, an FCO official in the DRC met with the Directeur Central de la Chancellerie at the Direction Generale de Migration (DGM) on 29 September 2014 in order to gather further information about the returns process. The Directeur was the same individual interviewed by the FCO in January 2014 (full text of the letter is attached at Annex D). The same FCO official also met with the DGM Director of N'djili airport on 11 September 2014 (full text of letter attached at Annex E).
- 4.15 The Directeur Central de la Chancellerie confirmed that:
- The 'DGM are not interested in an individual's [immigration or prison] detention or status as a FAS in the UK'
 - The 'DGM are not interested in crimes committed [by Congolese nationals] outside of the DRC' for the purpose of allowing an individual to enter the DRC
 - The primary role of DRC immigration officials in Kinshasa is to confirm a returnee's identity and not to determine if an individual has a criminal record in another country: 'The main role of the immigration officer is to ensure that the person who is being returned has the same identity as the person named on the papers for return. If somebody is using an Emergency Travel Document it is possible that they will ask why the person is being returned, but that is to make conversation only. The answer that is provided is not recorded anywhere'

² [US State Department: Report on Human Rights Practices 2012: DRC: d Role of the Police and Security Apparatus.](#)

- It may become known to the DGM that an individual returning from the UK is an FNO, for example if the returnee volunteers this information at a re-documentation interview. However, this information is not relevant to immigration control in the DRC and the 'DGM are only interested insofar as the information on the crimes committed relates to investigations of other crimes committed in DRC.'
- The Directeur also observed that '[i]f an individual has committed a violent crime, for example sexual assault [outside of the DRC], DGM will record this information so that if a crime is later committed in DRC, an investigation can be carried out to determine whether it is linked to the person who was returned. Certain countries have data sharing agreements with [the DRC government]... in which they provide this information [criminal convictions] on those who they are returning. This will not prevent DGM from allowing that person back into the country. Because the person has not committed a crime in DRC, they are free to go.'
- FNOs (and FAS) are 'processed [as described in the letter] ... and allowed to enter the [DRC]. If there are concerns, for example about the papers provided, nationality, or identity, they would not be allowed to enter the country and would be returned to the UK.'
- Asked about circumstances when somebody might be detained, the DGM official reported, 'For example if they have an outstanding arrest warrant against them [in the DRC]. If they are arrested, they would be sent to the Tribunal because they are the ones with the outstanding arrest warrant. For people coming from Europe, this is very rare. Haven't seen one for a long time.'

4.16 Regarding the DGM official seconded to the DRC Embassy in the UK to re-document DRC nationals, the Directeur explained that:

- '... [the secondee's] job is to identify who is Congolese and who is not... he may choose to ask [why a returnee has been detained in a detention centre or prison in the UK]... in order to start a conversation with the person. It is difficult to get the relevant information about whether a person is Congolese or not, especially if they do not want to talk to you, and if he starts by asking "Are you Congolese" they are likely to reply "no". The secondee's reports will say whether the person is Congolese; not Congolese; or he has doubts whether they are Congolese. This is the information that DGM is interested in.'

4.17 Further clarifying that:

- 'If the secondee finds out that someone has committed a dangerous crime, he may include this information in his report if he thinks that it is important. This will not stop DGM from allowing that person back in the country, as they have not committed a crime in DRC. The information will only be recorded by DGM in case that person commits another crime in the DRC.'

4.18 The Director of N'djili airport observations were consistent with those the Directeur de la Chancellerie, noting:

- 'Airport management are aware if a charter flight is landing, but not if returnees are on a scheduled flight;
- 'Immigration Officers (IO), i.e. those at the immigration booths, are not made aware of any returnees, even on a charter;
- 'When a returnee arrives, the IO will establish their name and nationality and inspect their passport / Emergency Travel Document (ETD);
- 'The ETD will be retained by the IO;

- 'All information for all arrivals at the airport is stored on a central database (name, passport number, visa number, duration and location of stay etc);
- 'IOs are not instructed to ask why a person is being returned if they are presented with an ETD;
- 'There is a "stop list" in place for those who are not allowed to enter/exit the country i.e. those with an outstanding court case against them in the DRC.'

Home Office meetings with DGM secondee, London

4.19 A Home Official met with the DGM secondee to London on 13 August and 15 September 2014 to clarify his role and provide details about the redocumentation process in the UK. The full text of the note of these meetings is attached at Annex F. The secondee explained that:

- 'The sole purpose of his work is identification'
- 'He uses standard questions but he doesn't follow a set line of questioning. The interview flows by holding a conversation with the subject, to avoid the subjects "learning" the answers to the questions prior to interview.'
- He does not ask about criminality in the UK in all cases
- The secondee has not been asked by his DGM colleagues to ask about a returnee's criminal convictions in the UK
- However, he does ask what returnees '... did to end up in detention. He doesn't insist on getting an answer. He said that some want to answer and others don't. In his opinion a conversation puts people at ease and he tells detainees that the Congolese authorities are happy to see people go to the UK and Europe. He said that as he's not supposed to know why a person's in detention, he gives them the opportunity to tell him the reason why they're detained. He also tells them that they can't stay in the UK if they've committed a crime. He reiterated that if they don't want to give him their reasons for detention then that is fine.'
- The secondee thought that DGM officials in Kinshasa were not interested in information as to why a person had been arrested in the UK.
- As part of the redocumentation process, the secondee writes reports about returnees he has interviewed in which he sums up the facts relating to their identity which he sends back to DGM officials in Kinshasa. He also includes information about offences in the UK 'where the individual has provided this information.'
- In his reports, the secondee said he '... highlights the key information e.g. parents details, province, village and his conclusion on nationality' as his impression is that this is the information his DGM colleagues in Kinshasa are interested.
- The secondee did not think that the DGM officials in Kinshasa would be interested in those who'd committed serious offence such as sex crimes in the UK.
- The secondee 'stated that returnees aren't questioned on arrival as to the reason they've been in the UK.'

4.20 **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. Nor is there substantiated evidence that FNO returnees from the UK have been subject to ill-treatment on return to the DRC.

For statistics on returns, see section 10 below.

4.21 The DGM do not systematically seek information about a FNO's status, including criminal convictions, in the UK or elsewhere. However, the DGM may obtain this information by, for example, an individual volunteering this information at a re-documentation interview, or, for

returns from countries other than the UK, because returning states provide this information to the DRC authorities. In these circumstances, the information is retained by the DGM because it might be relevant to future investigations into crimes committed in the DRC. Significantly, DGM officials do not consider information about criminal convictions outside of the DRC as relevant for the purposes of immigration control, their primary purpose is in confirming an individual's identity, and therefore have no interest in detaining a FNO on return. Any returnee known by the DGM to have committed a crime outside of the DRC (and has no other reason to be stopped, for example because of an outstanding arrest warrant in the DRC) is allowed back into the country.

- 4.22 The DGM approach on returning nationals who have committed crimes outside the country is consistent with international immigration controls.
- 4.23 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.

See also section 10, Documentation

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 "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".³
- 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 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]",

³ [Justice First: Working with people in the Tees Valley who are seeking asylum.](#)

entitled: “Unsafe Return 2 Report”⁴ 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 found by the High Courts of England & Wales (7.3.1).
- 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).

⁴ Justice First, “Unsafe Return Report 2”, published 8 October 2013

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: IGC (Intergovernmental consultations on migration, asylum and refugees): Update on returns

6.1 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).

6.2 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.

6.3 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”.

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

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

6.5 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.

6.6 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).

6.7 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.

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:

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”..

7.4 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 ----)”.

7.5 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).

7.6 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).

7.7 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).⁵
- 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

⁵ [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.](#)

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 Freedom from Torture subsequently released the report, '[Rape as Torture in the DRC: Sexual violence beyond the conflict zone](#)', June 2014, which contains the same data submitted to the UN Committee on the Elimination of Discrimination against Women (CEDAW) for its examination of the DRC in July 2013, and to the UN Office of the High Commissioner for Human Rights (OHCHR) for the Universal Periodic Review of the DRC on 29 April 2014. In this report, FfT identified five women who had travelled abroad and were detained on or shortly after arrival. Of the three arrested on arrival at N'djili airport, all had claimed protection abroad but had been previously detained due to their political profile (see p32).⁶
- 8.7 **Conclusions:** Decision makers need to be aware of the FfT submission to the CEDAW and their June 2014 report. However the Home Office does not have substantiated evidence of any female returnee being mistreated – see also sections 6.1 and 6.2 for responses from other states on returns.
- 8.8 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 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.⁷

Return of Congolese refugees, 2004 – 30 November 2013 – recorded by UNHCR⁸

Province	2011	2012	2013	TOTAL
Equateur	12,388	46,318	61,160	119,866
Nord-Kivu	7,147	16,813	-	23,960

⁶ Freedom from Torture, [Rape as Torture in the DRC: Sexual violence beyond the conflict zone](#), June 2014

⁷ 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

⁸ 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%2013.pdf>

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.

Statistics on returns to the DRC from the UK

10.2 Data on the number of returns from the UK to the DRC are available in the [Home Office, Migration and Asylum – research statistics tables](#), which are released quarterly. Between 2009 and the first half of 2014 there were a total of 239 returns to DRC. Of these, 186 were enforced removals and of these 154 were failed asylum seekers (FAS). There were also 55 voluntary departures, of whom 32 were FAS.⁹ According internal figures which have been made publicly available, during the period 1 July 2012 and 31 December 2013 there were 16 Foreign National Offenders (FNO) removed to the DRC, six of whom were voluntarily removed under the [Facilitated Returns Scheme](#) (FRS)¹⁰.

10.3 There is no substantiated evidence that the returnees referred above, including FAS and FNOs, were ill-treated on return to the DRC.

10.4 Between 13 and 16 October 2014 a further three Congolese nationals were returned to the DRC (this data is not yet available in published statistics). Their return to N'Djili airport, Kinshasa, was observed and documented by FCO officials in letters (full text of which are attached in Annexes G, H and I):

- On 13 October 2014 there was a voluntary, escorted return of a DRC national to N'djili airport. The returnee arrived in the DRC at 11.10am on the morning of 14 October. The individual's arrival, passage through immigration control, baggage claim and exit from the airport was observed and documented by an FCO official. The FCO official did not observe any ill-treatment during this time (letter attached at Annex G).
- On 15 October 2014, there was an enforced, escorted return and on 16 October 2014 a voluntary return to N'djili airport, Kinshasa. Both returns were observed and documented by FCO officials from arrival to passage through immigration. The FCO

⁹ Immigration Statistics, April to June 2014: data tables, released August 2014, Removals and voluntary departures data tables immigration statistics April to June 2014 volume 3, <https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2014-data-tables>

¹⁰ The purpose of the FRS scheme is to encourage FNOs to leave the UK at the earliest possible opportunity, so reducing the time and costs associated with time spent in prison and immigration detention. Subject to certain exceptions, FRS is open to all foreign nationals from non-European Economic Area countries who have been convicted of a crime, irrespective of their offence, and are currently serving, or have served, a custodial sentence of up to four years.

officials did not observe any ill-treatment of either returnee. (See FCO letters at Annexes H and I.)

Documentation

- 10.5 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 de Migration (DGM) in Kinshasa.
- 10.6 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.
- 10.7 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.
- 10.8 The Home Office does not disclose any details of criminality or failed asylum seeker status in re-documentation applications made to the authorities of the DRC. It is, however, a possibility that an individual might voluntarily disclose details of criminality or that he is a failed asylum seeker during the course of the interview with the UK-based DRC official if asked about reasons for his/her detention. The individual may or may not reply, but it is also possible that the DRC official may assume that a subject is a Foreign National Offender due to the place of detention, i.e., if the subject is detained in a prison establishment rather than an immigration removal centre. Additionally, immigration officials in Kinshasa may, in establishing a returnee's identity, ask about reasons for the return to the DRC but this information is not required for the purposes for immigration control. The DGM Kinshasa have confirmed that the role of the official seconded to the UK and immigration officials in Kinshasa are to establish nationality and identity and not in identifying whether that an individual has a criminal conviction in the UK, which is not of interest to the DGM for purposes of immigration control – see section 4, Return of foreign national offenders.

Country Policy and Information Litigation Team
Home Office
22 October 2014

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

Request by the United Kingdom

August 2013

Document1

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

Document1DRC

- 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.

Appendix C



British
High Commission
Nairobi

British High Commission

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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.

Annex D: FCO letter dated 14 October, Meeting with Directeur Central de la Chancellerie, Direction Generale de Migration (DGM)



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Kinshasa

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14 October 2014

I met with [deleted], Directeur Central de la Chancellerie, Direction Generale de Migration (DGM), at the DGM offices in Kinshasa on 24th September 2014. All information in response to the questions below was provided directly by the Directeur. The Directeur stated that he is content to be quoted, but not named.

What are your position, role and responsibilities in DGM, and who do you report to?

The Directeur is head of the Chancellery section of DGM. The Directeur is one of the seven central Directeurs within DGM, and reports directly to the Director General. The Directeur is responsible for visas for foreign nationals, primarily residence visas; and is also the main point of contact for a number of external partners, including many Embassies such as the UK, Swiss, South African, and Belgian.

Do DGM want to know about status as a failed asylum seeker on return to Kinshasa?

No. DGM are aware that only those people who have been found not to be at risk of persecution on return are returned to DRC. There are a range of reasons as to why people may wish to stay in the UK, for example to find a job, and in order to achieve this they may apply for asylum. DGM are not interested in any statements that have been made in the UK leading to the refusal of their asylum application.

Do DGM want to know about status as a foreign national offender on return to Kinshasa?

If an individual has committed a violent crime, for example sexual assault, DGM will record this information so that if a crime is later committed in DRC, an investigation can be carried out to determine whether it is linked to the person who was returned. Certain countries have data sharing agreements with DGM in which they provide this information on those who they are returning. This will not prevent DGM from allowing that person back into the country. Because the person has not committed a crime in DRC, they are free to go.

Is the secondee in London instructed to ask about reasons for detention (immigration and/or prison) in the UK?

The secondee's only job is to identify who is Congolese and who is not. That is his mission, and he has no other mandate within it. He may choose to ask the question in order to start a conversation with the person. It is difficult to get the relevant information about whether a person is Congolese or not, especially if they do not want to talk to you, and if he starts by asking "Are you Congolese" they are likely to reply "no".

The secondee's reports will say whether the person is Congolese; not Congolese; or he has doubts whether they are Congolese. This is the information that DGM is interested in.

If the secondee finds out that someone has committed a dangerous crime, he may include this information in his report if he thinks that it is important. This will not stop DGM from allowing that person back in the country, as they have not committed a crime in DRC. The information will only be recorded by DGM in case that person commits another crime in the DRC.

If DGM are interested in an individual's detention / status as an FNO in the UK, why are they?

DGM are only interested insofar as the information on the crimes committed relates to investigations of other crimes committed in DRC. DGM are not interested in crimes committed outside of DRC.

If DGM are interested in an individual's detention / status as a FAS in the UK, why are they?

DGM are not interested in an individual's detention or status as a FAS in the UK.

Are DGM officials at the airport in Kinshasa aware of a returnee's detention history / status as an FNO / FAS in the UK?

The Director at the airport is made aware of some returns, for example charter flights or through the flight manifest, in advance of the plane landing at the airport. This information is not widely shared. Immigration Officers, including those at the immigration desks, are not told that somebody is being returned.

How do DGM process returns from the UK at the airport in Kinshasa?

That depends on what type of return is being carried out.

If the person is a voluntary returnee, DGM have no way to know that they are being returned from the UK. They will be treated like any other person on the flight, and go through the normal immigration process.

If it is an enforced removal without escorts, all travel documents will be handed to the pilot in advance of the plane arriving in Kinshasa. The pilot will alert airport officials in advance of landing that they have people on board who are enforced returnees. There is an immigration officer on duty who is stationed on the tarmac. This immigration officer will meet the pilot at the plane and take the papers. They will check the identity of the person against the papers to confirm that it is the same person. If the papers have been issued by DGM, for example an Emergency Travel Document, the immigration officer will check the DGM immigration database to confirm that the papers have genuinely been issued by DGM. The arrival information is recorded in the DGM immigration database as normal, for example name, passport number, date of arrival. If the papers are in order, the person will be allowed to proceed as normal.

If it is an enforced removal with escorts, the escorts will take the returnee to the immigration officer and hand the papers over to the immigration officer. The immigration officer will check the identity of the person against the papers to confirm that it is the same person. If the papers have been issued by DGM, for example an Emergency Travel Document, the immigration officer will check the DGM immigration database to confirm that the papers have genuinely been issued by DGM. The arrival information is recorded in the DGM immigration database as normal, for example name, passport number, date of arrival. If the papers are in order, the person will be allowed to proceed as normal.

If the immigration officer is not satisfied that the papers are genuine or that the identity of the person matches those of the papers, they will not allow them to enter DRC and the person will be returned to the UK.

What information does the DGM ask returnees at the airport in Kinshasa?

The main role of the immigration officer is to ensure that the person who is being returned has the same identity as the person named on the papers for return. If somebody is using an Emergency Travel Document it is possible that they will ask why the person is being returned, but that is to make conversation only. The answer that is provided is not recorded anywhere.

Are there any circumstances under which somebody would be detained when arriving at the airport?

For example if they have an outstanding arrest warrant against them. If they are arrested, they would be sent to the Tribunal because they are the ones with the outstanding arrest warrant. For people coming from Europe this is very rare, haven't seen one for a long time.

What would happen to a returnee who had been detained / was an FNO / FAS in the UK on return to the airport in Kinshasa?

They would be processed as described above and allowed to enter the country. If there are concerns, for example about the papers provided, nationality, or identity, they would not be allowed to enter the country and would be returned to the UK.

[deleted]

Second Secretary (Migration)
British Embassy, Kinshasa

This letter has been compiled by staff of the British Embassy in Kinshasa, Democratic Republic of Congo, entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author nor any policy of the Foreign and Commonwealth Office. The author has 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.

Annex E: FCO letter dated 14 October 2014, Meeting with Director of N'dhili airport



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14 October 2014

I made an introductory call on 11 September 2014 to the Director of N'djili airport in Kinshasa [name redacted].

He clarified some information around the process when receiving returnees. In brief, the information he provided is as follows:

- Airport management are aware if a charter flight is landing, but not if returnees are on a scheduled flight;
- Immigration Officers (IO), i.e. those at the immigration booths, are not made aware of any returnees, even on a charter;
- When a returnee arrives, the IO will establish their name and nationality and inspect their passport / Emergency Travel Document (ETD);
- The ETD will be retained by the IO;
- All information for all arrivals at the airport is stored on a central database (name, passport number, visa number, duration and location of stay etc);
- IOs are not instructed to ask why a person is being returned if they are presented with an ETD;
- There is a "stop list" in place for those who are not allowed to enter/exit the country i.e. those with an outstanding court case against them in the DRC.

The Director strongly emphasised that there are no detention facilities at the airport. He named the Immigration Liaison Manager equivalents from the French and the Belgian Embassies and said I should check with them for confirmation. If there is an issue with an arrival i.e. they are on the stop list or are suspected of carrying drugs, they will be "interrogated" in an office which is normally used for work. If there is a need to detain the person, they will be transferred to DGM headquarters [in Kinshasa]. If the arrival is at night, they will have to sleep in the office overnight and are then transferred the next morning.

[deleted]

Second Secretary (Migration)
British Embassy, Kinshasa

DRC Policy Bulletin 22 October 2014

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Annex F: Home Office note of meetings with the DGM secondee on 13 August and 15 September 2014, dated 15 October 2014



Immigration
Enforcement

15 October 2014

I met with the London-based seconded Congolese official from the Directeur Generale de Migration (DGM) responsible for redocumenting Democratic Republic Congo (DRC) nationals in the UK (“the Secondee”) on 13 August 2014 for information on how he conducts redocumentation interviews.

The Secondee provided the following information:

1. When conducting interviews he refuses to speak in English and will try all Congolese languages to see which the subject speaks. It's usually Lingala or French.
2. He asks the interviewees to write their names down so that he can check the spelling with the Emergency Travel Document (ETD) application form and he asks them to explain the meaning of their names.
3. He also checks their date of birth and place of birth against the application form.
4. He asks when they came to the UK and how they travelled here and if they were helped to enter the UK. He asks if they hid their passports.
5. He asks them whether or not they are Congolese and asks for details of where they lived – the address / province / schools attended / first language of parents / tribe.
6. He asks why they are detained / in prison. He said some volunteer this information and others don't.
7. He added that he tries to convince interviewees that they should prepare to go home and says that if they have committed an offence and been sentenced to 12 months or more in the UK then they will not be allowed to stay in the UK. He tells them about DRC and that it's not a bad place to return to.
8. All the information is fed back to DGM Head Quarters in Kinshasa including, where supplied by the interviewee, details of criminality in the UK.

I met the Secondee again on 15 September 2014 for further information about the redocumentation process in the UK. All questions below were answered directly by the Secondee; notes of his responses are provided following the questions. The Secondee stated that he is content for the information to be publicly disclosed but did not want to be named.

1. Brief description of duties and position within DGM.

The sole purpose of his work is identification. Before coming to the UK he was in charge of visa control for the DRC. He holds the position of Director.

2. Does he have specific instructions on what to do and questions to ask in UK?

As a trained immigration officer he said that he's been trained how to question people to establish their identity. Before taking up his post he received refresher training to bring him up to date. He has also worked as an instructor within the DGM.

3. Does he report directly or indirectly to Directeur Central de la Chancellerie?

He does not report to [the Directeur Central de la Chancellerie; name redacted] as they are the same grade. He reports to the Director General [name redacted] who reads his reports first and then passes them down to [name redacted] for consideration. He then passes them on to other senior officials, including the Directeur Central de la Chancellerie. They all analyse the report and send it back up the chain for the final agreements. The Director General notifies the Secondee of the final outcomes.

4. Are there other secondees in Europe, or similar posts?

His secondment is a pilot/test posting. If it works the DGM will replicate the model. They have spoken about doing this in South Africa, France and the US.

5. Does he use standard questions (for DGM officials) or does he devise his own in interviews?

He uses standard questions but he doesn't follow a set line of questioning. The interview flows by holding a conversation with the subject, to avoid the subjects "learning" the answers to the questions prior to interview.

6. Does he ask for information about criminality in all cases?

No.

7. Why does he ask about reasons for detention?

He asks what they did to end up in detention. He doesn't insist on getting an answer. He said that some want to answer and others don't. In his opinion a conversation puts people at ease and he tells detainees that the Congolese authorities are happy to see people go to the UK and Europe. He said that as he's not supposed to know why a person's in detention, he gives them the opportunity to tell him the reason why they're detained. He

also tells them that they can't stay in the UK if they've committed a crime. He reiterated that if they don't want to give him their reasons for detention then that is fine.

8. Who, if anyone, has asked him to do this?

He stated that he's not asked to gather this information, he uses his own initiative. He feels that it convinces them that they have to accept they have to go home.

9. Does he send all the information obtained, including about detention, etc, to DGM (in Kinshasa), in what form does he send it (e.g. as a report)?

He stated that he does not go into great detail. He sums up the facts relating to their identity. I asked if he reports on the offences and initially he replied not at all but went on to say that he does on occasion and where the individual has provided this information.

10. Is he interested in the applicant's status as a failed asylum seeker (FAS)?

He advised that sometimes people will tell him they applied for asylum and sometimes this will be included in the report but that he's not interested in this.

11. What he understands the DGM to do with the information once received (is it used for anything other than redocumentation)?

When he was in Kinshasa earlier this year he had the impression that the DGM were not interested in the information as to why a person had been arrested in the UK. He was advised that he goes into too much detail in his reports. He said that he highlights the key information e.g. parents details, province, village and his conclusion on nationality. He has the impression that this is all they're interested in. I asked if, in his opinion, they would be interested in those who'd committed serious offence such as sex crimes and he said not.

12. What he understands the DGM to do with people who they know to be foreign national offenders (FNOs), i.e. those with criminal convictions in the UK (or elsewhere, on return at the airport in Kinshasa)?

Unable to answer.

13. What he understands the DGM do with people who they know to be FAS on return at the airport in Kinshasa?

Unable to answer. But he stated that the Immigration Officers don't have copies of his reports.

14. What happens to those returnees who do not provide any information about their reasons for 'detention' in the UK (or elsewhere) on arrival?

He stated that returnees aren't questioned on arrival as to the reason they've been in the UK.

Country Manager

Returns Directorate
18th floor, Lunar House
40 Wellesley Road
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Annex G: FCO letter dated 14 October 2014, Home Office return 13/14 October 2014



British Embassy
Kinshasa

Second Secretary Migration
British Embassy Kinshasa
83 Roi Baudouin
Gombe, Kinshasa
Democratic Republic of Congo

Tel: [deleted]
Fax: [deleted]
www.fco.gov.uk

14 October 2014

Dear Colleague,

Re: Home Office Return 13/14 October 2014

One voluntary returnee was returned on 14th October 2014 on a Kenya Airways flight via Nairobi. The flight landed in Kinshasa at approximately 11:10am, and the return was witnessed by [deleted], Migration Delivery Assistant, British Embassy Kinshasa.

It had originally been planned that there would be an escorted removal on the same flight, but this was cancelled at the last minute the previous evening when the flight departed Heathrow. There were therefore three escorts on board the flight, who accompanied the returnee to Kinshasa.

When the flight landed, the returnee was met by two DGM officials at the foot of the plane, and they escorted him to the immigration arrivals area, followed by the UK escorts. The escorts entered the immigration arrivals area and handed their passports to a DGM official so that they could be stamped with arrivals stamps. The escorts received their passports back and returned to the plane.

The DGM official handed the Emergency Travel Document to an Immigration Officer so that the details could be registered on the immigration system. The returnee was then taken to the office of a DGM employee off the main arrivals area, along with the observer from the British Embassy Kinshasa. In the office, a DGM official took his name, DOB and address in Kinshasa, to which he replied that he did not know where he would be staying as he does not know anything about Kinshasa. These details were written on a piece of paper due to difficulties understanding pronunciation. These details were then recorded on a paper form. After 5-10 minutes, the IO returned and provided the returnee with a photocopy of his ETD, and informed him that he could use it in order to apply for a Congolese passport.

The returnee was then allowed to enter the baggage collection hall, alongside the observer from the BEK. He collected his luggage within 5 minutes and the returnee exited the building alongside the observer at approximately 12pm. When the observer left, the returnee was asking bystanders for information on hotels and how to call a taxi.

[deleted]

Second Secretary (Migration)
British Embassy, Kinshasa

DRC Policy Bulletin 22 October 2014

This letter has been compiled by staff of the British Embassy in Kinshasa, Democratic Republic of Congo, entirely from information obtained from the sources indicated. The letter does not reflect the opinions of the author nor any policy of the Foreign and Commonwealth Office. The author has 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.

Annex H: FCO letter dated 16 October 2014, Home Office return 15/16 October 2014



British Embassy
Kinshasa

Second Secretary Migration
British Embassy Kinshasa
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16 October 2014

Dear Colleague,

Re: Home Office Return 15/16 October 2014

One Congolese national was returned on 16th October 2014 on a Kenya Airways flight via Nairobi. The flight landed in Kinshasa at approximately 09:05am, and the return was witnessed by [deleted], Migration Delivery Officer; [deleted], Migration Delivery Assistant; and [deleted], Regional Overseas Security Manager, British Embassy Kinshasa.

When the flight landed, the returnee was met by two DGM officials at the foot of the plane, and they escorted him to the immigration arrivals area at 09:19am, alongside the UK escorts. The returnee was taken to one side to sit on a bench whilst the other passengers queued for immigration, accompanied by one DGM official and the Migration Delivery Assistant. At 09:22am, the escorts left. They commented that the returnee had been compliant and extremely quiet throughout the flight.

At 09:39am the returnee was taken to the immigration queue accompanied by one DGM official. At 09:44am, he was taken away from the immigration queue before he had reached the immigration booth, and led by DGM officials to an office near the departures lounge, accompanied by the observers. He remained in the office until 10:19am, accompanied by one observer and several DGM officials who were attempting to take his personal details (name, date of birth, and address in Kinshasa). He refused to answer questions during this process.

When he was taken out of the room, the DGM officials approached the observers and raised concerns about his state of mind given his lack of communication, and in particular whether he had received any medication during the flight which may have had a sedative effect. The Migration Delivery Officer and Migration Delivery Assistant explained that he was not under sedation, and that he had been medically assessed prior to his departure as fit to travel.

At 10:25am, the returnee and observers exited the airport accompanied by two DGM officials. The returnee had brought only hand luggage with him and therefore did not need to collect his luggage. When outside, the DGM officials continued to raise concerns about his state of mind, as he would generally not answer questions, or would provide conflicting and vague information in answer to questions. The Migration Delivery Officer called [deleted], Country Manager, Returns Directorate in the Home Office, who confirmed that the returnee had been psychologically assessed prior to his removal, and that it had been concluded that he was feigning mental illness in order to avoid deportation. This information was provided to the DGM officials with the consent of the Country Manager. Throughout the process, the DGM officials demonstrated continued and strong concern for the welfare of the returnee, and asked for help from the

British Embassy officials present in ensuring that he would proceed to a place where he had friends or family.

The returnee was asked whether he had money or an address in Kinshasa that he could go to, but did not provide any information in answer to these questions. He did provide a telephone number for his grandmother in the UK, which the Migration Delivery Assistant called at regular intervals until it was answered. She provided a phone number for another family member in Kinshasa, who agreed to come and collect the returnee but then said that she lived 1-2 hours away. In the meantime the Migration Delivery Assistant provided the returnee with money so that he could buy a drink and a snack, as he said that he had not eaten anything during the flight and it was unclear whether he had any money available on him as he would not provide a clear answer to the question.

When it was established that the family member lived some distance away, it was agreed that the British Embassy officials would pay for a taxi in order to take the returnee to her address. A police officer associated with the airport staff accompanied him, as the DGM officials and the family member expressed concerns over allowing him to proceed unaccompanied given his uncommunicative state. The taxi left the airport observed by the British Embassy officials at 12:14pm. The Migration Delivery Assistant received a call from the returnee's family member at 12:50pm confirming that he had arrived safely at her house.

[deleted]

Second Secretary (Migration)
British Embassy, Kinshasa

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Annex I: FCO letter dated 17 October 2014, Home Office return 16/17 October 2014



British Embassy
Kinshasa

Second Secretary Migration
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17 October 2014

Re: Home Office Return 16/17 October 2014

One voluntary returnee was returned on 17th October 2014 on a Kenya Airways flight via Nairobi. The flight landed in Kinshasa at approximately 11:10am, and the return was witnessed by [deleted], Migration Delivery Assistant (MDA), British Embassy Kinshasa.

Prior to the flight landing, DGM officials instructed the MDA to remain in the back DGM office whilst the returnee was in the immigration area.

Around 11:20am, a smartly-dressed gentleman entered the DGM office flanked by two DGM officers who introduced him to the MDA as the returnee from London. The returnee was cooperative all the time. He provided his name, DOB, address in Kinshasa (same as the one sent by Home Office via email), and stated that he was well treated during the trip.

At 11:30am, a Lieutenant-Colonel, in the Congolese National Police (PNC) uniform, bearing a resemblance with the returnee entered the DGM office. He hugged the returnee, and introduced himself as the returnee's relative. At that point, a DGM official instructed both the MDA and the Lieutenant-Colonel to leave the room and wait in the adjacent departure area. After 15 minutes, an Immigration Officer emerged in the Departures Area to ask the Lieutenant-Colonel to go back to the office to fetch the returnee, whereas the MDA was told to vacate the airport facilities since the returnee was already with his family.

The MDA left the airport facilities at 11:50am.

[deleted]

Migration Delivery Assistant
British Embassy, Kinshasa

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