



DRC - Researched and compiled by the Refugee Documentation Centre of Ireland on Wednesday 5 August 2015

Seeking a copy of the following reports published by Justice First and any applicable commentary challenging the reports: Unsafe Return to the DRC (November 2011) & Unsafe Return to the DRC II (October 2013)

A report released in November 2011 by *Justice First* notes that:

“This report has been prepared in response to a growing concern for the plight of Congolese nationals who have sought asylum in the UK, whose appeals have been refused and who have been forcibly removed to the Democratic Republic of the Congo between 2006 and 2011. During this period, first hand reports which were received from nine people who had been living in the Tees Valley area alleged inhuman and degrading treatment at the hands of the Congolese authorities. These were clients of Justice First (Reg. Charity No. 1116388) which was set up in 2006 to work with people in Tees Valley whose asylum appeals had been refused” (Justice First (28 November 2011) *Unsafe Return, Refoulement of Congolese Asylum Seekers*, p.5).

A policy document issued in November 2012 by the *United Kingdom Home Office* points out that:

“15 Response to the recommendations in the Justice First report "Unsafe Return"
15.1 The UK Border Agency does not accept that the evidence published by Justice First in its report "Unsafe Return" supports their assertion that a change in the agency's policy on returns to the DRC is warranted. The courts have stated that country guidance case remains authoritative until it is replaced by a new CG case or there is a clear difference in country conditions, warranting a deviation from the existing law. The UK Border Agency believes the findings reached in BK to be significant and still relevant when the country evidence detailed in this bulletin is taken into consideration.

15.2 The report's principal recommendations were:

- That Country of Origin information be updated to reflect the report's findings;
Response: The agency's Country of Origin Report on DRC was published 9 March and the Operational Guidance Note in May 2012. Both documents refer to the Justice First report. The COI Fact Finding Mission into the position for returnees to Kinshasa has now been published and has informed this bulletin, which addresses the issues of safety of return.
- Removals should be suspended and the Agency's returns policy reviewed;
Response: Having considered all the evidence available and quoted in this bulletin, the agency does not consider that any change in the returns policy to DRC is warranted.
- There should be an effective monitoring system of returns after arrival in Kinshasa;
Response: As stated in this bulletin at 3.1.6 the agency only returns individuals to their home country when it is considered safe to do so. Monitoring of returns on foreign territory is impractical as outlined in section 13.
- No document relating to a returnee's asylum claim is given to Congolese authorities.

Response: See section 12.4 of this bulletin. Officials from foreign governments are only presented in the redocumentation process with personal details and bio data. All

referrals are screened by the agency to remove any references to claims for asylum/offences.

- UKBA and the FCO should have a dialogue with UK civil society groups and individuals who have remained in contact with those refouled to the DRC.

Response: The UK Border Agency is committed to working with the third sector in the UK, for example working closely with partners in the National Asylum Stakeholder Forum.

- Based on the experience with IOM, more robust procedures be put in place to ensure partner organisations do not facilitate voluntary returns without a verifiable reassurance of safe passage and without a functioning network on the ground to follow up the well being of returnees.

Response: Those who have voluntarily chosen to return to DRC through the agency's Assisted Voluntary Return Programme, work with Refugee Action, who will facilitate travel and assist returnees in deciding on the appropriate reintegration assistance to help them rebuild a life on return.

- Any investigation by FCO or UKBA should be done discreetly so as not to identify those who gave testimony for the report.

Response: As the testimonies are anonymous, there was no investigation into specific cases" (United Kingdom Home Office (29 November 2012) *Democratic Republic of Congo (DRC) Policy Bulletin 1/2012*).

In December 2012 the *Refugee Council* states in a report that:

"Refused asylum seekers returning to the Democratic Republic of Congo are viewed as traitors and are treated as such. According to a Justice First report, Unsafe Return, returnees are accused of being political opponents of the president and of having betrayed the country, and are subjected to inhuman and degrading treatment to obtain confessions about their activities in the UK...The report states that refused asylum seekers removed to the Democratic Republic of Congo are at risk of: interrogation at the airport, arbitrary detention, being denied access to lawyers, torture, and rape in detention. The report also documents the detention and ill treatment of children removed with parents...The Guardian newspaper has reported on the detention and torture of two refused asylum seekers who were removed from the UK on 13 March 2009" (Refugee Council (10 December 2012) *Between a rock and a hard place: the dilemma facing refused asylum seekers (Democratic Republic of Congo excerpt)*).

An *IRIN News* report issued in March 2013 states:

"A year after the publication of Ramos' report, UKBA conducted a fact-finding mission in DRC that confirmed many of Ramos' findings. Several respondents noted that returnees from the UK are viewed as "against the government" and often arrested and detained by the intelligence services. Deportation of failed asylum seekers to DRC have nevertheless continued, with the latest country policy from the UKBA stating that "failed asylum seekers per se do not face a real risk of persecution or serious harm on return to the DRC" and that "monitoring of returns on foreign territory is impractical" " (IRIN News (13 March 2013) *New network monitors deportee abuses*).

In October 2013 a report issued by *Justice First* states:

"This report has been prepared in order to continue to inform the Home Office, FCO and government departments such as the Country of Origin Information Service of

new information relating to the post return experience of Congolese returnees to DRC” (Justice First (8 October 2013) *Unsafe Return Report 2*, p.9).

The Guardian in February 2014 notes:

“A top-secret document circulating among senior police and security chiefs in the Democratic Republic of Congo suggests that individuals deported from Britain may face torture on their return to their home country” (*The Guardian* (15 February 2014) *Congolese asylum seekers face 'torture with discretion' after removal from UK*).

This report also states:

“A report by Justice First monitored 11 returnees to the DRC from the UK for a period up to September 2013. Nine had been detained, of whom eight were imprisoned and two died, one apparently after receiving severe beatings from Congolese officials. The document passed to the Observer urges police, immigration and secret service officials to be on the lookout for asylum seekers who have been forcibly returned at the different border posts in Kinshasa, including Ndjili airport, Ngobila Beach on the border between Congo and Congo Brazzaville, and other secret entry points along the river which borders the two countries. The apparent confirmation that returnees from the UK could be tortured has emerged as the British government prepares to start removing failed asylum seekers to the DRC after a two-year period in which only a handful have been deported due to concerns about the risk of torture. The Observer has learned that failed Congolese asylum seekers throughout the UK have recently been arrested and detained in various immigration detention centres. One law firm has identified 13 recent arrests, while other lawyers have confirmed more cases” (Ibid).

In February 2014 the *Observer* points out that:

“A top-secret document circulating among senior police and security chiefs in the Democratic Republic of Congo suggests that individuals deported from Britain may face torture on their return to their home country. Details of the document have emerged as the Home Office begins to detain dozens of Congolese nationals for removal, despite concerns over human rights abuses. The highly sensitive document is an order from Congo's ministry of the interior, circulated to senior officials in the national intelligence agency, Agence Nationale de Renseignements, the police and the Direction Generale de Migration and leaked to the Observer. It instructs security chiefs to track down and arrest opponents of the government, including members of the main opposition party, the Union for Democracy & Social Progress, and suggests torture could be used with "discretion" “ (*The Observer* (16 February 2014) *Congolese deportees face 'torture with discretion': Secret orders in Kinshasa revealed as UK detains asylum seekers*).

This document also states that:

“A report by Justice First monitored 11 returnees to the DRC from the UK for a period up to September 2013. Nine had been detained, of whom eight were imprisoned and two died, one apparently after receiving severe beatings from Congolese officials. The document passed to the Observer urges police, immigration and secret service officials to be on the lookout for asylum seekers who have been forcibly returned at the different border posts in Kinshasa, including Ndjili airport, Ngobila Beach on the border between Congo and Congo Brazzaville, and other secret entry points along the river which borders the two countries. The apparent confirmation that returnees

from the UK could be tortured has emerged as the British government prepares to start removing failed asylum seekers to the DRC after a two-year period in which only a handful have been deported due to concerns about the risk of torture. The Observer has learned that failed Congolese asylum seekers throughout the UK have recently been arrested and detained in various immigration detention centres. One law firm has identified 13 recent arrests, while other lawyers have confirmed more cases. One Congolese asylum seeker who is five months pregnant is being held at Yarl's Wood Immigration Detention Centre in Bedfordshire. She said: "I won't survive if they send me back. I was arrested last week when I went to sign on in Cardiff." A Home Office spokesman said: "The courts have ruled that failed asylum seekers who are returned to the Democratic Republic of Congo (DRC) are not at risk of treatment contrary to article three of the European Convention on Human Rights." " (ibid).

The *United Kingdom Home Office* in February 2014 notes in a policy document that:

"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) and of Ireland (6.3.2.1).

5.9 The author has no experience or training in the subject areas which she is commenting on and has approached the issue from an emotive basis, with no attention to due reporting techniques. The author has accepted the stories from applicants/returnees, their families and lawyers without validating the evidence to support their allegations. She does not accept the findings in the country guidance case for the DRC of *BK (Democratic Republic of Congo) v Secretary of State for the Home Department* [2008] EWCA Civ 1322 (03 December 2008) that " In all but one case those whose asylum claims have been traced ----- disclose that they were persons whose credibility about past treatment was rejected by adjudicators", [First Tier judge of the Immigration and Asylum Chamber] (paragraph 381) and "They [failed asylum seekers] have a vested interest in claiming that they were mistreated on return" (paragraph 383)" (*United Kingdom Home Office* (18 February 2014) *Democratic Republic of Congo (DRC) Policy Bulletin 1/2014*).

The cases cited above:

BK (Democratic Republic of Congo) v Secretary of State for the Home Department [2008] EWCA Civ 1322 (03 December 2008);

P.B.N. (DR Congo) -v- Minister for Justice Equality & Law Reform [2013] IEHC 435 (16 September 2013);

P (DRC), R (On the Application Of) v Secretary of State for the Home Department [2013] EWHC 3879 (Admin) (09 December 2013),

are included below in the references and attachments below.

Other cases:

(BM and Others (returnees – criminal and non-criminal) (CG), [2015] 00293 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber);

P.B. N. (DR Congo) -v- Minister for Justice and Equality, [2014] IESC 9 (2014); are also included below.

In October 2014 the *United Kingdom Home Office* states in a policy document that:

"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” (United Kingdom Home Office (22 October 2014) *Country Policy Bulletin: Democratic Republic of Congo (October 2014)*).

A paper issued in July 2015 by the *United Kingdom Home Office* utilising secondary sources states:

“In the IGC surveys, a number of states reported that returnees may be questioned on arrival as part of the immigration process to determine identity and nationality...Only Belgium stated that DRC nationals returned on a charter flight might be held up to 24 hours for general questions, which may include those on the returnees immigration status...Belgium...Germany...and the Netherlands...stated that returnees may be questioned by the Agence Nationale de Renseignements (the National Security Agency)” (United Kingdom Home Office (July 2015) *Country Information and Guidance, Democratic Republic of Congo: treatment on return*, p.10).

This document also points out that:

“The following sources reported FAS and / or FNO returnees would face difficulties on return:

- DRC Ambassador (regarding FNOs)...
- Kinshasa-based NGOs interviewed in the Home Office fact finding mission of June 2012...
- The Observer...
- Dr Kennes in his expert report...
- Amnesty International expert report...” (ibid, p.11).

References

BK (Democratic Republic of Congo) v Secretary of State for the Home Department [2008] EWCA Civ 1322 (03 December 2008)
[http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2008/1322.html&query=title+\(+Bk+\)&met hod=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2008/1322.html&query=title+(+Bk+)&met hod=boolean)
Accessed Wednesday 5 August 2015

BM and Others (returnees – criminal and non-criminal) (CG), [2015] 00293 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber)
<http://www.refworld.org/docid/556dd2734.html>
Accessed Wednesday 5 August 2015

The Guardian (15 February 2014) *Congolese asylum seekers face 'torture with discretion' after removal from UK*
<http://www.theguardian.com/uk-news/2014/feb/16/congo-torture-asylum-seekers>
Accessed Wednesday 5 August 2015

IRIN News (13 March 2013) *New network monitors deportee abuses*
<http://www.irinnews.org/report/97637/new-network-monitors-deportee-abuses>
Accessed Wednesday 5 August 2015

Justice First (8 October 2013) *Unsafe Return Report 2*

<http://justicefirst.org.uk/unsafe-return-report-2/>

Accessed Wednesday 5 August 2015

Justice First (28 November 2011) *Unsafe Return, Refoulement of Congolese Asylum Seekers*

<http://justicefirst.org.uk/category/publications/>

Accessed Wednesday 5 August 2015

The Observer (16 February 2014) *Congolese deportees face 'torture with discretion': Secret orders in Kinshasa revealed as UK detains asylum seekers*

http://www.lexisnexis.com/uk/legal/results/docview/docview.do?docLinkInd=true&risb=21_T22434787703&format=GNBFULL&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29_T22434787707&cisb=22_T22434787706&treeMax=true&treeWidth=0&csi=143296&docNo=5This is a subscription database

Accessed Wednesday 5 August 2015

P.B. N. (DR Congo) -v- Minister for Justice and Equality, [2014] IESC 9 (2014)

<http://app.vlex.com/#vid/494325706>

Accessed Wednesday 5 August 2015

P.B.N. (DR Congo) -v- Minister for Justice Equality & Law Reform [2013] IEHC 435 (16 September 2013)

<http://www.bailii.org/ie/cases/IEHC/2013/H435.html>

Accessed Wednesday 5 August 2015

P (DRC), R (On the Application Of) v Secretary of State for the Home Department [2013] EWHC 3879 (Admin) (09 December 2013)

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/3879.html>

Accessed Wednesday 5 August 2015

Refugee Council (10 December 2012) *Between a rock and a hard place: the dilemma facing refused asylum seekers (Democratic Republic of Congo excerpt)*

<http://www.ein.org.uk/members/country-report/between-rock-and-hard-place-dilemma-facing-refused-asylum-seekers-democratic->

This is a subscription database

Accessed Wednesday 5 August 2015

United Kingdom Home Office (July 2015) *Country Information and Guidance, Democratic Republic of Congo: treatment on return*

<https://www.gov.uk/government/publications/democratic-republic-of-congo-country-information-and-guidance>

Accessed Wednesday 5 August 2015

United Kingdom Home Office (22 October 2014) *Country Policy Bulletin: Democratic Republic of Congo (October 2014)*

<http://www.ein.org.uk/members/country-report/country-policy-bulletin-democratic-republic-congo-october-2014>

This is a subscription database

Accessed Wednesday 5 August 2015

United Kingdom Home Office (18 February 2014) *Democratic Republic of Congo (DRC) Policy Bulletin 1/2014*

<http://www.ein.org.uk/members/country-report/democratic-republic-congo-drc-policy-bulletin-12014#toc8>

This is a subscription database
Accessed Wednesday 5 August 2015

United Kingdom Home Office (29 November 2012) *Democratic Republic of Congo (DRC) Policy Bulletin 1/2012*

<http://www.ein.org.uk/members/country-report/democratic-republic-congo-drc-policy-bulletin-12012#toc9>

This is a subscription database
Accessed Wednesday 5 August 2015

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

Sources Consulted

Amnesty International
BBC News
Electronic Immigration Network
European Country of Origin Information Network
Freedom House
Google
Human Rights Watch
Immigration and Refugee Board of Canada
Internal Displacement Monitoring Centre
International Crisis Group
IRIN News
Lexis Nexis
Minority Rights Group International
Online Newspapers
Refugee Documentation Centre E-Library
Refugee Documentation Centre Query Database
Reliefweb
Regional Surveys of the World
Reuters
United Kingdom Home Office
United States Department of State
UNHCR Refworld