

## **UNSAFE RETURN II**

**A report by  
Catherine Ramos**

**No decent country should deport people if they are going to be tortured.  
David Cameron  
25 January 2012 Speech to the Council of Europe**

Belgium and all the European Union say that they have fulfilled the promise they made to the Congolese government. All those who caused disturbances are arrested one by one with those without papers. Even if they change nationality, if they are arrested, they will be handed to the Congolese authorities. This operation is just the beginning, but the series will continue. Lingala Facile, Congolese State Television, March 2012

3 October 2013

<b><u>INDEX</u></b>	<b><u>Page</u></b>
Preface	6
Introduction	9
Methodology	11
Chronology of reports mentioned in this update	12
<b><u>SECTION A</u></b>	<b>12</b>
• Identification of failed asylum seekers	13
• Monitoring 2006 - 2013	14
• Voluntary returnees 2011 - 2013	16
• Post return ill treatment of individual returnees in 2012	17
• Returnees with a criminal record 2011 – 2013	20
• Information passed to MP	23
• Extortion (2012)	24
• Unsafe Return Returnees	25
<b>SECTION B</b>	<b>27</b>
Country of Origin Information Report (2012)	28
Operational Guidance Notes	30
• Low level activists	30
• Foreign National Offenders	32
Fact Finding Mission Report	33
(i) Identification	33
(ii) Detention	34
(iii) Treatment of returnees	35
(iv) UK Diaspora/Combatants - a risk category	36
(v) Inconsistencies in the recording of ill treatment in Home office documents	37
(vi) Media	38
Country Policy Bulletin	38
(i) Monitoring	39
(ii) Inaccurate data on returns	40
(iii) Documentation	40
(iv) Treatment of returnees – Amnesty International and Human Rights Watch	41
(v) IGC States	42
(vi) Torture	42
(vii) Anonymity	42
(viii) The United Nations (CPB Section 6)	43
<b><u>SECTION C</u></b>	<b>44</b>

Correspondence with Alex Cunningham MP	44
Letters from Africa Directorate to Tom Blenkinsop MP	45
<b><u>SECTION D</u></b>	47
CPB 15.1 The Response to Unsafe Return	47
(i) Anonymity	47
<b>Conclusion</b>	48
<b>Recommendations</b>	49
<b><u>ANNEXE A</u></b>	49
MEDIA - Translation of Congolese State Television broadcast	51
Headline from ‘Tempête des Tropiques’ newspaper	51
References	51

## **ACRONYMS**

AI	Amnesty International
AdNM	Amis de Nelson Mandela
ANR	Agence Nationale de Renseignements (National Intelligence Agency)
APARECO	Alliance des Patriotes pour la Refondation du Congo
ASADHO	African Association of Human Rights
AVR	Assisted Voluntary Return
CODHO	Comité des Observateurs des Droits de L'homme
COIR	Country of Origin Report
COIS	Country of Origin Information Service
CRC	Congolese Resistance Council
CROS	Country Returns Operations Strategy
CSLT	Country Specific Litigation Team
DGM	Direction Générale de Migration (General Directorate of Migration)
DRC	Democratic Republic of the Congo
DRG(S)	Direction de Renseignements Généraux et Services Spéciaux (General Information Directorate and Special Services)
FCO	Foreign and Commonwealth Office
FOI	Freedom of Information
FFM	Fact Finding Mission
HRW	Human Rights Watch
(I)NGO	(International) Non-Governmental Organisation
IOM	International Organisation for Migration
MONUSCO	United Nations Organization Stabilization Mission in DRC
OHRC	Office of the Human Rights Commissioner
OSISA	Open Society Initiative of South Africa
R	Returnee
RA	Refugee Action

RAS	Refused asylum seeker
RENADHOC	National Network of NGOs on Human Rights of DRC
UKBA	UK Border Agency
UNHCR	United Nations High Commission for Refugees
UNJHRO	United Nations Joint Human Rights Office
VSV	Voix des Sans Voix

## **PREFACE**

*'If specific allegations are made that any returnee, to any country, has experienced ill-treatment on return from the UK, then these are investigated through the Foreign and Commonwealth Office (FCO) as a matter of urgency.....The FCO will pass to the UK Border Agency any general information it may receive that suggests that returnees have been mistreated.'* Minister for Immigration, Damian Green to Alex Cunningham, 22 February 2012, (CTS Ref: M1407/12)

On 17 September 2013 the author received a call from R23/2012 who had been removed from UK to DRC on 7 June 2012. He had returned to the UK. The author arranged to meet him at a solicitor's office on 20 September and he was interviewed face to face about his removal from the UK and his lengthy imprisonment and torture in DRC. Every day he was told by armed officers that they were going to kill him. He had feared for his life and still does. The following is an account from notes taken during the interview with a solicitor.

R23/2012 was removed on 7 June 2012. UKBA had had difficulty securing travel documents for him from the DRC Embassy in London. UKBA told him that he would be taken to the DRC Embassy. His immigration history confirms he was to be interviewed. He had lived in the UK since childhood. He was asked by UKBA to write a letter to the Embassy giving personal details. The Embassy replied that there was no record of him. It was not accepted that he was Congolese. He had asked to see his travel document before removal. His lawyer had asked for proof that there was a travel document for him. The Immigration history states *'CROS also advised that we do not have to give a copy of ETD to the reps.'*

The DRC Embassy staff informed his father on 7 June that no Emergency Travel Document had been issued for him. R23/2012 spoke to his lawyer at about 18.30. She had had no response to further reps. Immigration history states on 7 June 2012 that *'OSCU refused further reps however faxed it to CCD after 5pm so not seen until 8 June. R23/2012 deported.'*

R23/2012 did not pack his belongings himself, these were packed for him at the UK immigration removal centre. Sensitive documents held in the immigration removal centre were put into his luggage.

After arrival at N'djili airport, a UK official who had travelled from UK with the returnees remained at the door of the plane and gave them envelopes. In front of DRC officials and armed officers who had boarded the plane he said that there were 100 US dollars in each envelope. The envelopes were taken from R23/2012 and the other returnees when they left the plane. The UK official did not get off the plane. On the tarmac R23/2012 saw a group of men and women to his right. The returnees were led away. A DRC official said in English, 'Welcome home.'

R23/2012 asked for his luggage and was told it would follow. The returnees were led to a building and put in a room. They were then separated. He was taken to a room with two armed officers near the door and two or three DGM officials in plain clothes. Two officials were going in and out of the room. There was a translator who spoke a little English. He was asked his name and where he was born. When asked, 'Are you

a Combatant?' He replied, "no", as he had not attended meetings. 'Are you a criminal?' He denied it because, surrounded by soldiers with AK47s, he feared for his life. All of the returnees did. He had heard stories before but had not believed them. He thought that if he admitted this he would not see day again.

He was asked how long he had been in the UK. He had left Kinshasa as a child. He was accused of being a criminal because he had lived all his life in UK. Documents relating to his criminal background had been held at the reception in the immigration removal centre. The papers, which must have been in his luggage, were in the hands of the Congolese officials. He was accused of having shamed the country and of being a spy. He was returned to the first room. The other returnees had been asked the same questions. Are you a Combatant? Are you a criminal? The men were in a panic as they knew that, if you are accused of being a Combatant, it is over for you.

The men were held in an office for several hours, the door was locked. They did not leave through the front entrance of the airport. They were taken to ANR (National Intelligence Agency) in a military vehicle with about ten armed soldiers. They were taken to a compound with a courtyard. Parts of it were like an office, parts like a prison. The ill treatment started from Saturday, 9 June at ANR.

The ANR officers asked the military who had taken him there for the documents but they were told that there were no documents. There was a tension. He was taken to a room where there was one official. R24/2012 helped to interpret for him. It was the same questions as at DGM. He was asked the name of his village. A photograph was taken. He could see people in cells around the courtyard. He spoke to a prisoner in a cell who, he believed, was not Congolese. The prisoner spoke English. He had been there five weeks. He asked R23/2012 if he had family there. When he replied no, the prisoner told him that he would be staying there. He still had his two mobile phones on him but his credit was finished. He gave them to a prison guard in exchange for being able to call his partner in UK.

He and a second 7 June returnee whom he believed to be Nigerian were transferred, as further verification was required. He was put into a cell with three or four others. There were more cells underground. He was interrogated in a small room about being a Combatant. He could hear shouting and screaming. Everywhere he had been taken, the first thing the Congolese authorities had wanted to establish was whether he was a Combatant. The second was whether he was a criminal. The officers doubted he was Congolese as he did not know his village.

The ill treatment was called 'discipline'. It happened early morning and evening. During transfers he hoped he would arrive after 'discipline' had happened. Heavy belts, wooden batons were used by two or three officers to beat the prisoners. The commander would be heard saying 'dix' (ten), 'vingt' (twenty), the number of blows. Prisoners waited for the officers to come to take them from their cells, not knowing when it would be their turn. Nobody helped. He saw how the Nigerian man, an older man, appeared to have been beaten to the point of death. He was taken away and R23/2012 never saw him again. The harshest treatment was when he was held by *Kin Mazière*. The officers said that belts did not do the job and they used thin wire to beat the prisoners. Officers spoke a little English. They were responsible for investigating serious crime. He was to be investigated because they did not believe he was

Congolese and he would stay until the investigation was completed. When accused of being a criminal he denied it. He had to give his name, background, family name. He was asked if he was a Combatant and where he had lived in the UK. He was beaten by guards who appeared to get a kick out of the beatings. R23/2012 was still in the same shorts, T shirt and trainers he had been wearing in the immigration removal centre in UK. After a week some detainees paid money for extraction from the prison but his situation was more difficult, as no record could be found of him.

The decision was made that he be taken to the British Embassy. Two armed officers accompanied him and a third drove the vehicle. (See note below). They were not allowed into the Embassy. They spoke Lingala to G4S employees and presented document 008PNC/DRG/2012. The soldiers wanted to leave him at the Embassy. He would be kept under surveillance until his return to UK. R23/2012 explained he had been deported on 7 June and been detained since then. He was asked if he was a British citizen and if he had a British passport. His appeal refusal was in his pocket. An employee took the document. He asked where R23/2012's family was and if he had a number for them. He gave the numbers of his father, stepmother and partner. The employee spoke to his stepmother. R23/2012 was told there was nothing anyone could do for him. He begged them, as he did not want to go back to prison. The employee gave him back his refusal decision and the document the soldiers had handed in. R23/2012 was taken back to *Kin Mazière*.

The official who spoke English told him they would have to wait for a decision about him. The routine of ill treatment continued. Prisoners would be given food once a day. Often it was not clear what the food was and it was impossible to eat. Prisoners who had family could receive food, if they paid for it. After Kin Mazière he was transferred to a massive compound where there were cells. He had to clean military equipment, boots, excrement. He was told his next destination was Goma. He had not understood until it was explained he would be going to fight with the Congolese Army.

A bus arrived with soldiers and civilians who, he was told, were secret service 'for the President'. A few spoke good English. He explained he was from UK. Some knew the UK well. They said that if he was from London he would have money and they could help him. By December they were more intense in their questioning, asking if he wanted help. He was asked for 10,000 dollars. He offered 3 - 4 thousand. In early January he was introduced to a person who could make arrangements with his family. He had phoned his father. Father was apprehensive, asking him if he was sure. R23/2012 felt he had no choice as it had been hell. Three or four others were also helped to escape but he did not know where to. He was in a room when his surname was called. He was bundled into a car in which he crossed the river to Brazzaville. R23/2012 arrived in UK in January 2013.

The evidence of R23/2012 contradicts information given to MPs by Ministers and the information given to a Fact Finding Mission delegation by a British Embassy official, who stated he oversaw the passage of five returnees through the immigration process at N'djili airport. The official states one hundred dollars were given to the returnees at the airport and transport home was not arranged for them as they did not provide UKBA or the Embassy with an address. The wording in the FFM report suggests contact with the returnees.



The letter handed in at the Embassy bears the seal of the DRGS (Direction des Renseignements Généraux et Services Spéciaux de la police). Amnesty International expressed grave concern for the safety of three human rights defenders held in March 2009 by DRGS ‘a special intelligence division of the national police force. The DRGS has been responsible for numerous arbitrary arrests of suspected opposition members and supporters, journalists and human rights activists, as well as acts of torture and other ill-treatment’ (<http://appablog.wordpress.com/2009/03/17/democratic-republic-of-congo-incommunicado-detention-fear-of-torture-and-other-ill-treatment-for-three-human-rights-defenders/>).

The letter indicates that the address of the Congolese National Police/DRG(S) is Avenue Dracena in Gombe, Kinhasa. Ivan Lewis MP, Minister of State at the Foreign and Commonwealth Office, stated in a letter to Fiona Hall MEP, (Our Ref: 79271), dated 20 January 2010, ‘Ms. Ramos also asked about the police headquarters and prison in Kinshasa and UK investment in private prisons in the DRC. The British Embassy in Kinshasa has investigated locally and confirmed that the Kin Mazière authorities have moved office location. The authorities are currently using an old building with no facilities for detention and, as such, are using two other temporary locations to house their detainees.

*The UK has a large police support programme in the DRC, but this does not include investment or support for prisons.’*

Kin Mazière appears to refer to both the police authorities and the prison and, though a building closed, the Kin Mazière authorities continued to detain and to operate.

R23/2012’s evidence corroborates information given over a period of weeks to the author by a guard in 2012. He stated that R23/2012’s situation was difficult because

- he had no family in DRC
- he did not speak a Congolese language
- he did not understand them and they did not understand him
- he was not believed to be a Congolese national and he was to be taken to the British Embassy for it to deal with him.

It was the ‘Chef’ (Chief) who was in charge of the case. When told that it had been alleged that the five returnees had been released, he replied that the author had been given a ‘*fausse information*’ (false information).

Most of the following report had been completed before the aforementioned interview. The information confirmed the author’s belief that R23/2012 and four others had been arrested on arrival at N’djili airport on 8 June 2012.

## **INTRODUCTION**

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. Since 2010 Home Office departments have been provided with evidence in order to inform policy, as recommended by the Independent Asylum Commission. This included the report *Unsafe Return – Refoulement of Congolese asylum seekers*<sup>1</sup> - which documented the post-return experience of people removed from UK to the

Democratic Republic of the Congo between 2006 and 2011.<sup>1</sup> The monitoring of returnees and the analysis of Home Office documents have continued since December 2011 to date and have raised concerns that

- the pattern of arrest, interrogation and ill treatment of refused asylum seekers continues
- foreign national offenders have been imprisoned and ill treated
- voluntary returnees have faced problems at N'djili airport
- Home Office documents which are used to determine asylum applications and relied upon in Court are inaccurate
- evidence in the possession of the FCO/Home Office/Country of Origin Information Service has been omitted from these current documents
- inaccurate information has been passed to Ministers/MPs from Government departments
- COIS has not demonstrated independence when selecting information for its reports

In 2003 the Immigration Advisory Service identified inaccuracies, lack of objectivity and misleading information in Country Information Policy Unit Assessments. (*IAS Research Unit, Home Office Country Assessments: An analysis; Editor: Natasha Carver*)<sup>2</sup>. The same flaws were found in 2013 in the current Home Office documents relating to DRC.

Over the last decade there have been many reports of ill treatment of Congolese refused asylum seekers who have been forcibly removed back to the Democratic Republic of the Congo. UK Parliamentarians have on three occasions since 2007 proposed Early Day Motions, the most recent in 2012, asking for removals to be halted in view of the overwhelming evidence that returnees are persecuted. In April 2012 Alex Cunningham wrote to all Labour MPs in the North East of England asking that they discuss returns to DRC and how they might work together on the issue.

The Congolese authorities regard refused asylum seekers as having betrayed the President and their country. According to the Home Office Fact Finding Mission report, Congolese officials have described them as 'Waduwi wa inje', enemy of the state, (FFM P.72)<sup>3</sup>. They have breached national security in seeking asylum. Returnees have been interviewed by the National Intelligence Agency (ANR) to obtain evidence about their activities in the UK and the activities of Congolese nationals still in UK who oppose the regime. Reports have consistently referred to detention after arrival at N'djili airport or at a home address and interrogation and ill treatment by officers of ANR and the Congolese Immigration Directorate (DGM).

Refugee Action ranks DRC as a red flagged country. This means that those considering voluntary return should seek legal advice about risks before continuing with their application. It recommends that they read current Home Office documents and *Unsafe Return*. Refugee Action guidance documents state that: '*Clients and Choices staff who have recently visited the DRC Embassy have witnessed poor treatment of individuals at the Embassy. This includes both verbal abuse and the physical removal of people from the Embassy using unnecessary force. There is no suggestion that this treatment is specific to AVR clients or that travel documents have not been obtained but caseworkers should advise that the environment at the embassy*

*can be hostile.*'<sup>4</sup>

The Home Office and FCO reassure MPs that returnees and their families in the UK can contact the British Embassy in the DRC about any concerns/problems post return. Returnees have said they feel they cannot approach the British Embassy for help, as the British authorities have declared their account of persecution, which led to the initial application for asylum, not credible. The British Embassy is located very near the residence of President Kabila where dissidents have been imprisoned in cells and tortured. The British Embassy allowed R23/2012 to be taken back to prison, where he was subjected to torture. He had begged for help.

*Unsafe Return*, is cited in the current Home Office Country of Origin Information Report on DRC<sup>5</sup>. It is, therefore, part of evidence presented by the Home Office in asylum hearings. In 2012, a 'considered' response to the report was promised to Bishop Michael Scott-Joynt and the author of *Unsafe Return*, Catherine Ramos. A Fact Finding Mission was sent to Kinshasa in June 2012 to gather evidence. The Country Policy Bulletin on returns to DRC, which drew on the findings of the FFM report, states that the UK Border Agency continues to believe that the findings of the BK country guidance case are 'significant and still relevant' when the 'country evidence detailed in this bulletin is taken into consideration.'<sup>6</sup> The CPB is the considered response to *Unsafe Return*. This updated report will demonstrate that, due to omissions and inaccuracies, the Country Policy Bulletin is not a 'considered' response and its conclusions are not safe. If the evidence in it is inaccurate, the UKBA reliance upon such evidence to support its belief that the BK findings are still relevant may be ill founded.

This updated report is divided into four 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 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*

### **Methodology**

The monitoring of the post return experience of eleven returnees was carried out between November 2011 – September 2013 in the UK and in DRC. It included the monitoring of foreign national offenders. Contact was with the author unless otherwise stated. Contact with returnees, their family, friends and lawyers was by phone or e mail. Face to face interviews were carried out in UK with RAS21/2012, R23/2012 and with Congolese and British citizens. In DRC face to face interviews with the relatives of a 2012 returnee and with RAS 1 and RAS 17 (*Unsafe Return*) were carried out by a third party. Contact with RAS2 and the NGO AMERA-UK in relation to the granting of refugee status to RAS2 (*Unsafe Return*) was by e mail or

phone. Contact with the UN Special Rapporteur for Torture was through a face to face meeting with the Justice First Project Manager and e mail contact with the author. Contact with his office and UNHCR-London was by e mail and phone.

### **Chronology of the reports mentioned in this update**

March 17<sup>th</sup> 2010 Dari Taylor MP gives a copy of ‘*Wake up a Devil in the Dark*’ compiled by Catherine Ramos, to junior Home Office Minister, Meg Hillier. This is a compilation of e mails and statements from Congolese refused asylum seekers and support networks in the UK which included the late Frank Cook, MP, regarding post return imprisonment and ill treatment.

**November 24 2011** ‘*Unsafe Return*’ is published. It documents the post return imprisonment and ill treatment of Congolese refused asylum seekers and their children. Justice First clients suffered ill treatment at the hands of the authorities. This included nine children, six of whom were imprisoned with, or separated from, their mothers and one child whose mother was a voluntary returnee with the International Organisation for Migration. She did not return after her first visit to IOM to collect her reintegration money.

**March 2012** Updated Country of Origin Information Report is published. This indicates that evidence of post return ill treatment had been available in 2009 and 2011 to the Home Office but there had been no update to the June 2009 COIR.

**May 22 2012** At a meeting with Minister for Immigration, Damian Green, representatives of UKBA confirm that a fact finding mission will be sent to DRC. The ‘Minister’s official’ indicated to MPs Alex Cunningham and Mary Glendon, who had requested the meeting, that the Unsafe Return report was to be used as a basis to ‘challenge’ the DRC authorities.

**18 – 28 June 2012** A UKBA and FCO FFM delegation carries out interviews in Kinshasa. Its purpose is to gather information about the treatment of returnees. The Congolese authorities were not questioned about the treatment of returnees (FFM report Page 4, xi).

**September 2012** A draft FFM report is made available to legal representatives in the UK but is not available on the UKBA website.

**30 November 2012** The FFM report and Country Policy Bulletin are published.

### **SECTION A**

Section A will

- give information about the identification of returnees by the DRC authorities
- give an account of the monitoring of refused asylum seekers and foreign national offenders removed to DRC in 2012
- give an account of the experience of a refused asylum seeker who fled back to the UK for a second time to claim asylum
- give an update of the current situation of *Unsafe Return* returnees, where possible

## Identification of refused asylum seekers

Baroness Kinnock, in a letter to Robert Goodwill MP, (27 October 2009 Your Ref: 77044) stated that refused asylum seekers removed to Cameroon were ‘*distinguishable from normal travellers and identifiable to the Cameroonian Government.*’ Information from British Embassy staff and Congolese NGOs interviewed by the FFM indicates that the same applies to Congolese refused asylum seekers returned to DRC.

The British Embassy in Kinshasa does not monitor returnees but consults with local NGOs. Monitoring is considered to be impractical and people are returned only if it is safe to do so. The risk for Congolese NGOs who might meet returnees at the airport is highlighted by Oeuvres Sociales de Développement. ‘*It is too public and they would be seen as giving info against the government*’ (FFM P.80).

In 2012 the British Embassy official in charge of migration issues stated to the FFM:

- s/he had no knowledge of the treatment of returnees and failed asylum seekers.
- staff had recently begun to oversee returns again
- s/he believed there had been no returns for three years up until 2012
- s/he believed there were no removals in 2011
- problems faced by a particular ethnic group or women and children had not been witnessed (CPB 9.2).

The official in charge of human rights issues stated there were five removals in 2012.

According to the FFM report, the migration official does not answer certain questions for interlocutors.

### Question 7

Are the Congolese Immigration authorities able to identify returning failed asylum seekers? If so, How? (Questions for Interlocutors - FFM P.60)

The reply is limited to those failed asylum seekers who return voluntarily and foreign national offenders. ‘*The official was not aware of any way the Congolese authorities would be able to identify failed asylum seekers (FAS) who voluntarily returned.*’

The representative of the Police Commander of Kinshasa states that ‘*DGM are asked to identify Congolese from London and Europe.*’ The identification of returnees plus the verification of address is done by DGM, so that Congolese citizenship can be established before return.

### Question 4,

What are the penalties for leaving the DRC on a false or invalid passport?

The official limits the reply to British citizens and a specific visa offender, though the information had already been provided by the British Ambassador in a letter referred to in a COIR (January 2009).

‘*It is possible that some returnees may face prosecution upon their return to DRC if it were established upon their return to the DRC that they had departed the DRC with invalid travel documents.*’

The above source is not included in the June 2009 COIR. The latter refers to information provided to UNHCR by the Congolese Immigration authorities which states that anyone without a current DRC passport will be interrogated. 'The best scenario is release in one to three hours and the worst is to be sent to a detention facility in town for further verification'. The British Ambassador's information is confirmed in 2012 by a representative of the Inspectorate General of Justice who states, *'Travelling on a false passport is illegal with a sentence of 5 years'* (FFM 2.20).

Refugee Action advises voluntary returnees who travel back to DRC on an Emergency Travel Document that they are likely to be questioned and asked why they have no passport. The ETD may be retained by the authorities. Refugee Action staff must ensure returnees *'fully understand the risks around returning without a passport.'*

### **Monitoring 2006 – 2013**

*'Given the human rights record of the Congolese government detailed in various UN reports and the very arbitrary way of working of the security services, setting up a monitoring mechanism for returnees should be a minimal safety measure.'*

Thierry Vircoulon, Central Africa Project Director, International Crisis Group 7

### **Monitoring of returnees between 2006 – 2011 as documented in Unsafe Return**

6/15 returnees had been arrested at the airport.

2/15 returnees were arrested after leaving the airport building

3/15 returnees were arrested at home

1/15 returnee was arrested a second time after leaving the British Embassy

1/15 returnees has made no contact since his arrival at N'djili airport in 2008

### **2012 returnees**

The post return experience of eleven returnees was monitored between November 2011 and September 2013.

10 male / 1 female

9/11 returnees were detained on arrival

1/11 left N'djili airport but was arrested at home

1/11 failed to make contact with his UK lawyer after arrival at N'djili airport in 2012

8/11 were detained at the airport and taken to prison

3/11 were released by National Intelligence Agency the day after arrival

1/11 was deported the day after arrival (Sources: National Intelligence Agency and UN Joint Human Rights Office)

2/11 have died, 1 in Goma, 1 a few days after release from prison

(1/11 is believed to have died after severe beating – see Preface)

1/11 a female returnee was detained at the airport and released after payment of a bribe. She was assaulted twice in the street because she was from UK. She required medical treatment. She has fled DRC.

2/11 returnees were anxious about maintaining phone contact due to fears of phone tapping

According to the FFM report and CPB, ten returnees, who were removed in May

2012, were detained by DGM and released after payment of a ransom by families. Information about only one of this group is available to the author. Dates given below refer to month/year of removal.

### **February 2012**

Phone and e mail contact with RAS18/2012 began in January 2012 during her detention in Yarl's Wood. Contact with the British family which supported her has continued to date.

### **May 2012**

Contact was made with a lawyer in the UK whose client had removal directions in May 2012. Returnees on the flight are known to have committed criminal offences in the UK. In June 2013 the lawyer informed the author of the alleged death of one of the returnees. He (Name given) had been imprisoned for several months post return and had died a few days after his release from prison. The Congolese Resistance Council (CRC) in UK confirmed the detention and ill treatment and that the returnee had been a combatant, a member of CRC. The returnee had had a criminal record in the UK. On his arrival at N'djili airport a UK Immigration official had been at the airport. The returnee was released from the airport and arrested at home a few days later. He did not know in which prison he had been first held. He had been transferred to Makala prison. In the days following his release, Mr. Yoto of CRC spoke to him on more than one occasion by phone. On the last occasion he called, he was informed that the returnee had passed away. He had felt ill after leaving prison. The returnee has family in UK.

### **June 2012**

Five men were removed on 7 June 2012. Phone contact was made post return with two returnees, their family in the UK and with the UK lawyer of one returnee. Both returnees had had contact with Detention Action before removal. On the afternoon of 8 June Detention Action staff called R23/2012 at the request of the author in order to establish whether he had been removed. He said he was not being allowed to leave the airport and was being held in an office. With his permission DA passed on his mobile number to the author and contact was established with him later that afternoon. He claimed on 10 June 2012 that he thought one of the returnees was Nigerian. Phone and e mail contact was made with UN Joint Human Rights Office in Kinshasa.

Some of the following statistics are contained in the overall statistics given above.

(P.14)

5/5 returnees were not allowed to leave the airport

5/5 returnees were transferred to prison

5/5 were accused of being Combatants

1/5 was found not to be Congolese. He was detained and deported the following day (Source: ANR and UNJHRO).

2/5 returnees allege they did not see a British Embassy official in N'djili airport

3/5 returnees endured lengthy detention in prison

1/5 alleges that upon release there was hardly anything left of his personal belongings

1/5 informed his lawyer in UK that he had been taken to the British Embassy on 3 August 2012. The Embassy staff said they could not help as he did not have a British passport. His stepmother was given the same information by the Embassy according

to his UK lawyer. See Preface.

5/5 returnees are known to have committed criminal offences in UK (Source: Amnesty International)

1/5 stated he was forced to say things during interrogation that he did not want to say in order to save his life

### **July 2012**

Three men were removed on 5 July 2012. The author had maintained phone and e mail contact over a period of years with a friend of RAS20/2012. Prior to removal, RAS20/2012 passed on a relative's phone number to the friend, who called the author on 6 July 2012 to say the relatives were not being allowed to collect the returnees. The author called a relative who was waiting at N'djili airport.

Some of the following statistics are contained in the overall statistics given on P.14

3/3 returnees could not be collected from the airport by family and friends

3/3 returnees were seen being put into a government vehicle

3/3 returnees were transferred to DGM in Kinshasa and then to ANR for interrogation the following day

1/3 returnees alleges all his belongings were taken at the airport. Those at the airport to meet him were told the luggage had been '*lost*'.

1/3 returnees was not from Kinshasa. Traumatized after interrogation by ANR he returned to Goma. He was in the *brousse* (forest) with his grandfather. He was murdered by M23 rebels.

1/3 returnees is known to have received calls from ANR after he was released from prison

About 150 dollars are alleged to have been paid before the release from ANR of at least one returnee

### **Voluntary returnees 2011 – 2013**

In 2011 Refugee Action took over the contract for Assisted Voluntary Return from IOM. In June 2011 it confirmed for the *Unsafe Return* report that the information given by IOM about a female voluntary returnee from Tees Valley was not true. IOM had stated in January/February 2011 that she had received her reintegration package but could not be traced. In fact, she had not returned to the IOM office in Kinshasa after her first visit in 2010 and had not received the reintegration package. IOM was not able to trace her in 2011.

Since 2011 there have been seven voluntary returns to DRC through Refugee Action. It has no partner organisation in country. Refugee Action state that those who have no local assistance may face problems post return.

2011 Refugee Action received reports of '*some problems post return*' but no information is recorded about whether there were problems passing through the airport.

2012 A returnee had no problem passing through the airport.

2013 There were five voluntary returns. Three people reported problems at the airport. Contact could not be established with the fourth returnee. The fifth gave no information about passage through the airport.

One returnee recommended that people should carry no papers on them to indicate



that they had claimed asylum. The returnee had been handed a IS96 before departure from UK. The returnee thinks that, if the Congolese authorities at N'djili airport had seen this, there would have been problems. One returnee reported closer scrutiny of papers and another was detained for five hours and released after payment of a £50 bribe. In these cases there was family at the airport to collect them.

### **Post return treatment of individual returnees in 2012**

In this updated report returnees are identified by numbers which follow on from numbers given to returnees documented in *Unsafe Return*. RAS denotes a refused asylum seeker. R denotes returnees who have a criminal record in the UK. Not all of the aforementioned eleven returnees could be located and interviewed. Unless otherwise stated, phone and e mail contact was with the author.

#### **RAS 18/2012**

RAS 18/2012 was removed in February 2012. She had been held in Yarls Wood Immigration Removal Centre prior to removal. Her family was granted asylum in the UK after her removal. She has since fled DRC.

RAS18 is referred to in the FFM report (P.73). There were fears that she would be at risk because she had demonstrated in the UK about the election in DRC and against the Congolese government and '*she had been seen on television doing this*'. RAS18/2012 was detained at the airport after being handed over by UK escorts.

The following is part of her statement in 2013. The questionnaire used is based on the Ugandan Refugee Law Project questionnaire facilitated by Dr. Matt Merefield. It was used by the NGOs OSISA and ACIDH in 2010 to interview *Unsafe Return* returnees in DRC. The responses were not used in *Unsafe Return*, as it had not proved possible for returnees to read and confirm input prior to publishing the report. RAS18/2012 refers to an 'aunt' in her statement. The 'aunt' is not a blood relative. She stressed that, as she did not know the different people with whom she stayed, she did not know who to trust.

*When I arrived at N'djili International airport in Kinshasa, the escort team handed me over to the immigration team. I was really scared as I didn't know what was to become of me. I was taken to a room where the officer took my details and was told to wait. When the officer came back, I was taken to another room where there were some other people [ ] I sat there for what seems like eternity, not knowing what was going on. After about an hour or so another officer came to the room and called my name. He said for me to follow him and I became very nervous and was told that someone was there to collect me. Before we left the room he whispered to me that "most people who go into this room don't get out on the same day and some never leave, you're lucky, make sure you go to church and thank God because this is grace[ .]*

1. After arriving at your final destination did you have problems in relation to:  
Safety:

*Yes, It was obvious in the neighbourhood that I was a foreigner. First of all, I didn't speak French very well and didn't understand lingala. My aunt lived in a complex along with other families in the compound. One day I*

*overheard one of the children telling the neighbours that I was from the UK. In DRC, Congolese people who live in London have a reputation of harassing and beating up Congolese officials..... News quickly spread in the neighbourhood that I was from London. My aunt was threatened by some youths in the neighbourhood and people were saying that she's keeping a "combatant" in her home. She was not only scared for my safety but also for her and her family so I was asked to leave. I went to stay with another family and once again rumours started that there was an English/Congolese girl in the neighbourhood. One Sunday, I went to the market with one of the children and on the way back a group of boys approached us. We asked them to allow us to pass but it was clear that they had no intentions of allowing us to pass unharmed, so they attacked us. . My cousin was slapped in the face and another say yes, she's the one and suddenly they all had something to say. Whilst I was been attacked I could hear them saying "you harass our brothers in Europe, now you know what it feels like". "You people think you're superior, you think that you're in heaven". I passed out and woke up in hospital.*

#### Financial issues

*[ ]After the attack, they people I was staying with could only afford to pay 1/3 of the hospital bills, so I spoke to my friend's mum in the UK who sent me some money which helped with the reminder of the hospital bills and kept me for a few days. I sold any valuable possession I had in order to buy personal items and food as the family could not feed me every day. Once again, I had to move, as it appeared that I had become a burden on the family.*

16. Did you contact any human rights group? If so, which?

What was the result of this contact. Please describe in detail.

*Yes, I contacted the Voice of the Voiceless and ASHADO. I explained my situation to them and they were sympathetic and they (VOV) agreed to write a letter stating that I was living a clandestine life. The lawyer who agreed to write the letter made an appointment with me to collect the letter from his office on a certain date, when I got there he said he hadn't had the chance to write the letter and to come back another day. When I went back he was making excuses, so in the end I never got the letter. On another occasion I was contacted by a Human Rights lawyer regarding a delegation coming from the UK, I decided that I didn't want to meet with them as I didn't think it was in my best interest and it was too risky and was afraid.*

17. Did you contact the British Embassy? If yes. Please give details. If no, please say why not.

*No, as I wasn't aware that I should. I was also scared and felt that the British government had let me down and didn't feel that the British Government had any interest in helping me now that they had remove me from the UK or cared about what had become of me.*

There is a reference to the return of RAS18/2012 in the FFM report but there is no reference to a request made through an NGO for RAS18/2012 to meet with the FFM delegation.

#### **RAS19/2012**

RAS19/2012 failed to contact his UK lawyer post return in March 2012. Attempts by his lawyer to call his mobile were unsuccessful.

### RAS 20/2012

Phone calls were made to a relative at N'djili airport who was waiting to collect RAS20/2012. He had been removed on the charter flight from UK to DRC via Nigeria and Ghana on 5 July 2012 with two other Congolese nationals. They were not allowed to leave N'djili airport freely. The relative stated in a phone call,

*' Je suis a l'aéroport. Le vol est arrivé en retard par Ghana.'*

*'J'ai vu trois personnes. RAS22/2012 et deux autres. Je voulais le prendre ..pas possible. C'est le Gouvernement. Les accords signés par les Britanniques et RDC.'*

(I am at the airport. The flight arrived late via Ghana. I saw three people. RAS22/2012 and two others. I wanted to take him but it was not possible. It is the government The agreements signed by the British and DRC).

The three men were observed being put into a government vehicle at the airport. They were transferred on 6 July to DGM in Kinshasa and then to ANR, where they were detained until the evening of 7 July. They were interrogated by ANR. *'Il ne pleurait pas. Un des autres qui pleurait.'* (He didn't cry. One of the others was crying). About 150 dollars was paid to officers before the extraction of RAS20/2012. After interrogation he was in shock. A risk, also highlighted by *Unsafe Return* returnees, was that *'Il n'a pas d'identité. On peut penser qu'il est un infiltré.'* (He has no ID. They might think he is a spy). There were fears that ANR was listening into phone calls. ANR had called, asking about RAS20/2012. He e mailed the author saying that he was frightened, that the security services were looking for him and that he had no means of supporting himself in Kinshasa. It was, subsequently, confirmed that he had fled back to Goma, Eastern Congo, from where he was originally. The murder of RAS20/2012 during an attack by M23 troops on *'la partie Rugari vers Kibumba'* (Rugari towards Kibumba) was communicated in an e mail.

Date: Sat, 17 Nov 2012

bonjour madame juste vous informer ..... mon frere exi[s]te plus dans ce monde il a etait victime a goma par le rebelle m23 ....

*(Good morning Madame, Just to inform you that ... my brother is no longer alive in this world. He was a victim of the M23 rebels in Goma ..')*

A statement by a relative was taken and signed during two separate face to face interviews in Kinshasa in 2012. The statement finishes:

*'Je declare que les anglais son vraiment mechant mon frere a perdu sa vie pour leurs incomrehension.'* (I declare that the English are truly bad my brother has lost his life because of their lack of understanding).

In the FFM report NGOs emphasise the danger of returning Congolese to Kinshasa if they have no family there or are from other areas of the country. With no support they can become mentally ill and die and may be at risk of being disappeared.

### RAS21/2012

RAS21/2011 arrived in UK in 1994 and was removed to DRC in 2006. He was detained, tortured and imprisoned for over two years. After further periods of imprisonment and ill treatment, which resulted in severe disability, he fled back to UK in 2011 and made a second claim for asylum. He was interviewed face to face in 2012.

### Arrival at airport in DRC

He was handed over to ANR at N'djili airport and asked why he had been sent back. He maintained his was not a political problem and he was released on bail for one month so that further investigations could be carried out.

### Interrogation and inhuman treatment

He returned to ANR. He was taken to an empty room with a single chair in it and told to strip. He was interrogated. "While you were in London were you among the anti-Kabilistes? Did you demonstrate against Mr. Kabila?" The interrogators had a copy of a magazine in which his photo, taken during a demonstration at Downing Street, appeared. He was accused of being a leader of the Combatants. He was asked to name others. He was tied to the chair and beaten and punched. He was kept in the room for one week and was beaten during interrogation. He had no access to a lawyer. He was taken to a court by officers and sent to prison by the Judge. At a later date his family was informed by a Judge that the matter was for ANR to decide.

### Detention and extortion

He was sent to Makala prison and, though a civilian, he was placed in the military wing. His money had been taken from him by ANR so he was unable to pay for a bed to sleep on. He was threatened with death by prisoners.

### Interrogation and torture

He was taken for questioning one night and subjected to severe abuse. He was imprisoned for over two years.

### Political activities

After release RAS21/2011 had become politically active with UDPS. At the beginning of 2011 Republican Guard arrived at a meeting and detained him and others. They were taken to the underground prison at the President's residence. He was beaten and ill treated for one month. He was put in a vehicle from which he was thrown. People who found him took him to hospital where it was found he had suffered a stroke. He was partially paralysed as a result of the beatings. He was unable to stay in hospital longer than three weeks as he did not have the financial means to pay. In September 2011 he was re-arrested. His name was on a list prepared by Joseph Kabila's office. With assistance he was extracted from prison and, in October 2011, he fled to UK and claimed asylum for a second time.

### **Returnees with a criminal record - June 2011 – 2013**

*Unsafe Return* documents the cases of 17 adults. None had committed crimes in the UK. This updated report contains information relating to foreign national offenders removed to DRC in 2012. Freedom of Information request 28313 indicates that in 2011 fifteen foreign national offenders were removed to DRC.

In May 2013 the DRC Ambassador to London indicated in a letter to Lord Avebury (Ref: 13246/A1/CMD/SLH/093/2013) that, with regard to returnees with a criminal record, the Congolese Justice system '*will not just let him enter the country without taking the necessary measures to prevent him from his criminal activities.*' (Ref:13246A1SLH/093/2013). Clarification was requested, but was not provided,

about which service of the justice system is responsible for this. A representative of the Police Commander in Kinshasa informed the FFM delegation that the police do not deal with returnees. The Federal Office of Migration for Switzerland stated that, under international law, it is necessary to inform DGM if a returnee has committed and served a sentence for a serious crime, for example rape (FFM 4.02). *‘But the person would remain free since she had already paid her debt to the society (FFM P.68).*

On 13 June 2012 COIS staff confirmed to the AI DRC researcher that the five returnees removed from UK on 7 June 2012 were criminal offenders. When contacted by phone on 8 June R23/2012 had alleged all five were being imprisoned. They were accused of giving the DRC a bad name. The UKBA Country Policy Bulletin for DRC, a publicly available document, identifies as foreign national offenders and failed asylum seekers those interviewed by Congolese officials as part of Operation Orbit. The CPB indicates that it is for DRC operational purposes that returnees are interviewed by DRC officials in the UK. Freedom of Information request FS50467452 reveals that it is the UK which pays the cost of flights, accommodation and a per diem. R23/2012 was not interviewed under Operation Orbit before removal (Source: Immigration History provided to Alex Cunningham MP).

### **R22/2011**

R22/2011, a DRC returnee, was removed to Brazzaville, Republic of Congo. Escorts went with him to Kinshasa but he travelled alone to Lubumbashi. A British friend claims that he travelled with a Home Office letter stating that it was believed he was a DRC national. A British citizen went to Lubumbashi airport to meet him and paid a bribe for his extraction from the airport. He does not have family in DRC. He had arrived in UK as a small child.

FOI request FS50467452 indicates that DRC officials did not carry out re-documentation interviews with potential returnees in 2011.

### **R23/2012**

The author of *Unsafe Return* was contacted by Detention Action about Congolese nationals to be removed on the 7 June 2012 charter flight to Nigeria with onward passage to DRC and Angola.

8 June At around 14.00 hours Detention Action phoned R23/2012 on his mobile in order to establish whether he was in DRC or in UK. He gave permission for DA to pass his number to the author, who called the returnee later that afternoon. The intention was to contact a Congolese NGO to request humanitarian assistance for him. Detention Action did not contact the UK authorities about this returnee.

### **8 June phone call to R23/2012**

*It is Catherine. I rang for your number for the NGO.*

- I'm in prison.

*How many of you?*

- Five. We were handed over by Immigration to DRC Immigration. We were handed over to soldiers. We were told we were going to be taken to another office. We were taken to prison.

*Which?*

- I don't know.

R23/2012 said that personal belongings were being taken from them. He was scared. He passed on his partner's telephone number in the UK and contact was established with his family.

### **10 June phone calls**

On 10 June R23/2012's partner passed a DRC number to the author. When she called, R23/2012 answered the phone. He had been given a phone to use so that he could contact his family. He alleged he was being held in a cell he would not keep a dog in. He had lost weight, was stressed and depressed. COIRs have recorded that food is not provided to prisoners, who depend on families providing food. R23/2012 claimed he did not have family in Kinshasa and did not speak French or Lingala. He believed he was going to be taken to the British Embassy as the authorities did not believe he was Congolese. R23/2012 had not been interviewed under Operation Orbit before removal from UK. Removal was agreed with DRC on a DRC pack (Source: Immigration history). He believed that one of the five returnees was Nigerian. This information was e mailed to Alex Cunningham MP on 29 June 2012

In a second call R23/2012 said he had spoken to his family in UK. He passed on information about his criminal record and the name and firm of his solicitor in the UK. He asked if the Embassy would take care of him. He had been asked, '*Why did you commit crime in England?*' '*Why did you give DRC a bad name?*'

In a third phone call he said that he was being put into a vehicle by men with AK47s. The phone went dead.

Until mid-July, contact was maintained with the owner of the phone who said that, as R23/2012 did not speak Lingala/French and they did not speak English, communication was not possible. He did not have family in Kinshasa. He was to be taken to the British Embassy. It was the '*Chef*' (Chief) who would determine what would happen in this case. When the author told him that, '*On a dit qu'il était relaché par DGM*' (They say he was released by DGM), the reply was, '*Vous avez une fausse information, il n'était pas relaché, ils étaient detenu et dès que ce matin ils étaient transférés.*' (You have false information, he was not released, they were detained and they were transferred this morning).

R23/2012's UK lawyer e mailed the author on 3 August 2012. He was still being held in prison. He had been taken to the British Embassy. Staff had stated they could not help because he had no British passport. His stepmother also spoke to the lawyer. She had been told by Embassy staff that they could not help R23/2012 as he had no ID. On 22 June Embassy staff stated to the FFM that it was not aware that any returnee had been arrested (FFM P. 85). By 3 August 2012 it was aware of the detention of R23/2012. According to the family in the UK, this was a genuine complaint. The British Embassy official involved in human rights issues states, 'Genuine complaints will be heard' (FFM P.84). Letters to MPs in July, August and September 2012 state that all five returnees passed safely through immigration procedures. R23/2012 was denied the help he had begged for from the British Embassy and was sent back to imprisonment and ill treatment.

The Embassy did not correct the information it had given to the FFM delegation in June. It had become aware of substantiated evidence of lengthy detention of at least

one returnee. In a letter about R23/2012, sent to Alex Cunningham MP and dated 6 August 2012, Minister for Immigration, Damian Green MP, stated that FCO officials had been informed by the UN that *'none of the returnees from the UK of 8 June had been detained by the DRC authorities'*. The Consul, Ms. Fiona Butters, would be able to assist returnees with any issues (Ref: M10725/12).

### **Information passed to MP**

After his surgery on Friday, 8 June, Alex Cunningham MP was informed of the arrest by the author. He made enquiries of the Home Office and Foreign and Commonwealth Office but without success. He was *'passed from pillar to post.'* In June and July he was not informed that a phone call from London to report the alleged arrests had been made to a British official who was overseeing the returns at N'djili airport for about two hours after the plane landed (FFM 85 -86) and that the returnees had passed safely through the immigration process. Other MPs were given this information. The information did become available in the draft FFM report of September 2012, which was not available on the UKBA website, and the final report of November 2012. The British Embassy official involved with human rights issues, when interviewed by the FFM delegation on 22 June 2012, referred to a *'parliamentarian'* who had suggested a returnee had been arrested.

Mr. Cunningham received a reply from Damian Green, Minister for Immigration, dated 6 August 2012. By this date R23/2012 had been taken to the British Embassy by guards and returned to prison and torture. In this letter it is alleged that the FCO had been informed by the UN that none of the returnees had been detained. However, an e mail to the author (10 July 2012) from the UNJHRO contains, verbatim, part of an e mail sent to the FFM delegation between 5 July and 10 July 2012. It informed the delegation that the General Administrator of National Intelligence (ANR) confirmed *'one who claimed that in fact he was not Congolese but Burkinnee (from Burkina Faso) that in the UK he claimed to be Congolese because Congolese used to get quickly asylum status. We were told that he was sent back to Burkina Faso the following day.'*

The UN e mail and the e mail from the UK lawyer of R23/2012 also contradict a letter dated 4 September 2012, from Rob Whiteman, the then Chief Executive of UKBA, to Alex Cunningham MP, which states that the FCO had informed UKBA that *'none of those returned on 8 June were detained on arrival in the Democratic Republic of Congo.'* He goes on to say that, though this information had been passed to UKBA by FCO, *'The allegations have been passed to the relevant FCO department.'* It is not clear who was informing whom.

The FFM report makes no reference to the deportation or to R23/2012 having been taken to the Embassy in August 2012. FCO staff were aware that a 7 June returnee had been taken to the British Embassy on 3 August 2012. Written information provided by the Belgian Immigration Official in September 2012 was included in the FFM report. (See Section C).

### **R24/2012**

R24/2012 had lived in UK since he was a child. He was removed on 7 June 2012 and imprisoned post arrival. He was first contacted in DRC by the author in November 2012, through a friend in UK. He claimed that he had, recently, been released from

prison. In UK he was not being released from prison and he decided that he would 'go along with' removal in the hope that he would be able to work in DRC. During his imprisonment in DRC he claims that he was interrogated from time to time about who he was, where he was from, his activities in UK and whether he was a Combatant. He was forced to say things in order to save his own life. If he had not been able to convince them he was not a Combatant, he would not have been alive. He had been moved several times before his release. He described conditions in prison as 'horrible'. 'I'm scared. It's dangerous.' He said he had trusted the British Government. He had not seen a travel document and claims his lawyer had not seen one. R24/2012 felt more frightened after receiving this call from the UK. In 2013 R24/2012 changed his number. A relative in UK confirmed in September 2013 that R24/2012 did not leave N'djili airport freely and that he had been taken into detention. Life is difficult and precarious as he has no family to support him.

### **R25/2012**

COIS staff confirmed to Amnesty International DRC researcher that R25/2012 had a criminal record. Personal contact with him has not been possible. Information relating to his arrest and subsequent deportation to Burkina Faso comes from the UNJHRO and the General Administrator of National Intelligence (ANR).

### **R26/2012**

COIS staff confirmed R26/2012 had a criminal record. R23/2012 refers to being imprisoned with a returnee who, he believed, was from Nigeria. He had seen the returnee at the point of death following beatings. He was removed and was not seen again.

The fifth returnee who was removed on 7 June 2012 had a criminal record.

### **Extortion (2012)**

The risk of extortion at the airport is acknowledged in Home Office documents and the BK country guidance judgement.<sup>8</sup> Refugee Action advises voluntary returnees to DRC not to carry reintegration money with them on return due to this risk. A British Embassy official alleges that 100 dollars were given to each of the five 7 June 2012 returnees, thereby, putting the men at risk of extortion at N'djili airport (FFM P87). Congolese National Intelligence Agency (ANR) claims that R25/2012 was not released from the airport and was, subsequently, deported. At least one returnee would, therefore, have been detained with 100 dollars on his person

When asked about his luggage, the family of July returnee, RAS20/2012, stated, 'Valise'? 'Il n'a rien, absolument rien.' 'Portefeuille?' 'Il n'a pas. La valise a disparu.'

'Suitcase?' 'He has nothing, absolutely nothing.' 'Wallet?' 'He doesn't have it. The suitcase has disappeared.'

In the BK country guidance case it was judged that only loose change is required to secure release from the airport. If refused asylum seekers do not have access to cash, only the Azure card, they will not have loose change. BK recognises that, if a person is removed to prison, the amount of money required for extraction will be much higher. In the case of RAS18/2012 a large bribe was paid to extract her from the airport. The sum required to extract RAS20/2012 from ANR is a substantial sum in



DRC. The FFM report indicates that, in order to project a good image, ANR might release returnees, only to re-arrest them.

R23/2012 stated in September 2013 that a UK official told them that one hundred US dollars were in envelopes given to them at the door of the plane. The envelopes were immediately taken off the returnees by DRC officials. Why were five hundred dollars handed over in front of DRC officials when it is known money is taken off returnees? Were 2012 returnees without a criminal record given money?

### **Unsafe Return returnees**

Contact has been maintained with eleven of the fifteen returnees documented in *Unsafe Return*. At the time the report was published in 2011, it was not known whether two other returnees documented in the report were alive. This remains the case in 2013. In April 2012 a female returnee, RAS 2, who had been imprisoned, raped and tortured post return, was granted refugee status by UNHCR.

### **Children**

May 2013 A child referred to in *Unsafe Return* is now a British passport holder. He returned to UK. His father had had indefinite leave to remain in 2009 when his wife and child were removed to imprisonment and ill treatment in DRC. The mother continues to fear re-arrest and further ill treatment. In 2013 DGM alleged it had no record of their arrival in DRC. Father's travel document and his son's British passport were taken and they were prevented from leaving DRC. Father did not find the British Embassy helpful when trying to secure travel documents for himself and his son in order to leave DRC.

Of the nine children in *Unsafe Return* who were forcibly removed to DRC from Tees Valley:

- 1 child is now safely back in UK, without his mother
  - 2 siblings live precariously outside DRC with their mother who has been granted refugee status by UNHCR
  - 3 siblings now live outside the DRC with their parents
  - 3 siblings continue to live in harsh conditions and in poor health in DRC
- There is no news of a small child who returned in 2010 with his mother, an IOM voluntary returnee

### **RAS 1**

When interviewed face to face in DRC in September 2011, RAS1 was still living in fear of re-arrest. He had become suspicious of sounds on his mobile phone in 2011. He believed that the police were monitoring his calls and changed his number. During the pre-electoral crackdown, officers had beaten down the door where he was staying. He had escaped by jumping from a window. He had badly hurt his leg and he showed the interviewer the scars on his lower leg which had not fully healed. He had fled to Brazzaville, Republic of Congo. He had returned to Kinshasa after the explosion at the munitions factory in Brazzaville, which had caused death and injury in March 2012. After his return he had had nowhere to live. He had no ID. He has visited his family once since his return. Almost five years after his removal from the UK, RAS1 is unable to live in safety in DRC. He has no means of supporting himself and is unable to access medical care.

### RAS2

RAS 2 was granted refugee status by UNHCR in April 2012. She had been removed to DRC with her children in April 2009. She remained in hiding for 13 months but was arrested two days after seeking help from a Congolese NGO, Voix des Sans Voix. She was tortured and raped for three months and interrogated about her activities in the UK. She was accused of being a spy. RAS2 was extracted from prison in DRC after a large ransom was paid. In Egypt, she made a successful application for refugee status to the UNHCR. The NGO AMERA-UK assisted RAS2 before and after her UNHCR application. In a statement made following the granting of refugee status, Christopher Eades, Director of Legal Programming, AMERA-Egypt wrote *'In light of the treatment suffered by RAS2 on her forced return to the DRC, it seems that the UK authorities made a grave error in determining that RAS2 would not be at risk.'* According to a British citizen who has met with RAS2 in 2013, she is at risk as a black Christian.

### RAS3

RAS3 was imprisoned with her 23 month old son immediately after her arrival in Kinshasa. She was severely beaten. She was interrogated about her activities in the UK. In Kinshasa in September 2011 she was too scared to answer the phone until after the pastor who was sheltering her had met with the author of *Unsafe Return*. She then answered the phone to confirm she was still in hiding, as she feared for her safety. Contact was maintained in 2012 and 2013.

### RAS4

RAS4 was arrested after leaving N'djili airport and severely beaten. He was accused of being one of those against the Kabila regime from the UK and told he must be punished. Following his extraction from prison and flight from DRC, he made phone contact with friends and family in UK over two days. He did not call back, as agreed, on the third day. He has made no contact with his family in the UK since June 2009.

### RAS5

RAS 5 has left the country where she was living in 2011 with her family.

### RAS6

RAS6 still cannot find a job in order to support his family, which he had done before he fled DRC.

### RAS 8

RAS 8 cannot return to the family home in DRC. Life and health are precarious.

### RAS9

RAS 9 continues to live in exile. The latest e mail was received in September 2013.

### RAS 16

RAS 16 has left the area where she was interviewed in September 2011. She was being assisted by members of the Catholic Church but there are no more funds to facilitate her departure from DRC. She has no means to support herself and usually goes hungry. She continues to live in fear of arrest. She is in poor health.

## RAS 17

RAS 17 was interviewed for a second time in a face to face interview in September 2012 in DRC. He presented his ID card and his student card from the UK to his British interviewer. He continues to live in constant fear of re-arrest. He changes his address frequently and is unable to visit the neighbourhood in which he grew up as he would be recognised and be at risk of re-arrest. He is forced to sleep in a church and food and clothing are given to him. He stated during the interview that he was grateful for everything people did for him. He had recently suffered from influenza and from malaria. He suffers from depression.

One returnee found a job in 2011.

In June 2012 RENADHOC described returns as a '*secret operation now*'. ANR and DGM '*can do what they want*' (FFM P.75). Although it searches for information, '*there is no clear information*', '*no clear explanation as to where to find returnees.*' In 2011 an Immigration official interviewed in DRC had stated, '*A l'aéroport il n'y a pas un endroit secret. L'endroit secret, c'est réservé dans les services de sécurité.*' (At the airport there isn't a secret place. The secret place is at the Secret Services) (UR P.33).

The monitoring in this updated report clearly demonstrates that, for any effective monitoring of returnees, it is essential that the UK authorities liaise with UK civil society groups and with Congolese families and friends, both in the UK and DRC. The information they hold about the imprisonment, ill treatment and deaths of those removed from UK can contribute to better informed and safer decision making

## **SECTION B**

Section B will examine current Home Office documents relating to DRC in order to:

- evaluate whether the Country Policy Bulletin is safe and a considered response to *Unsafe Return*
- identify inaccuracies and inconsistencies between the Fact Finding Mission Report and Country Policy Bulletin
- examine the above reports to identify where there is evidence which supports the allegations of ill treatment made in *Unsafe Return*
- identify information from Congolese NGOs which supports the findings of *Unsafe Return* and the risk to returnees/refused asylum removed to DRC
- make reference to information provided to Ministers and MPs by FCO and Home Office

During a meeting with Lord Henley in February 2012 Bishop Michael Scott-Joynt and the author of *Unsafe Return*, Catherine Ramos, were told that there would be a considered response to the report. A UK Fact Finding Mission was in Kinshasa from 18 - 28 June 2012 and a draft report was made available to UK legal representatives in September 2012. The FFM report became available on the UKBA website on 30 November 2012. Published on the same day was a Country Policy Bulletin on returns to DRC which concluded that the evidence did not warrant a change to the agency's current policy on returns.

The FFM carried out interviews with local and international NGOs, the Congolese authorities and staff from European Embassies and Swiss/Belgian Offices of

Migration/Immigration. The Congolese authorities were given abbreviated Terms of Reference and 'written questions which did not cover the treatment of returnees' (FFM P.4, ix). Minister for Africa, Henry Bellingham, stated in a letter dated 20 February 2012 (Ref: MIN/26901/2012) to Alex Cunningham MP that 'We investigate any reports of mistreatment of returnees and we will not hesitate to raise concerns with the DRC Government should it be necessary.' It appears that the FCO did hesitate to raise such concerns with the DRC authorities in June 2012.

When questioned by the Home Affairs Select Committee on 20 December 2011 about the reports *Unsafe Return* and *Out of the Silence*, which allege post return torture of returnees to DRC and Sri Lanka respectively, Mr Rob Whiteman, Chief Executive, UKBA, 'conceded that *It is an area where because of the concerns that have been raised, we clearly do need to look at the conditions of what happens when we make returns. We think that returns are happening in a proper and humane way. We will, of course, review that in the light of new information.*'

The information given to the FFM that, '*The normal formalities to enter DRC are dealt with but returnees will be interviewed. No torture or mistreatment can happen at this stage*', underlines the difficulties for any NGO or Embassy in carrying out effective monitoring of the safety of returnees. The UN Joint Human Rights Office states it can intervene to stop violations but not hypothetical violations. This presumes the violations to have already been perpetrated. The British Embassy does not monitor post return treatment of Congolese nationals. It consults with local NGOs about the treatment of returnees. Two NGOs interviewed by the Fact Finding Mission delegation in Kinshasa did not allow their names to be revealed in the FFM report. One had been involved with monitoring but had ceased due to financial problems. A second has not allowed its information to be published. The NGO, Voix des Sans Voix, upon whose evidence the Home Office had based its claim that returns were being closely monitored at N'djii airport, is not one of the named NGOs in the FFM report.

Home Office letters to MPs repeatedly state that Human Rights Watch, Amnesty International and UNHCR do not have evidence of ill treatment. These organisations do not investigate the ill treatment of refused Congolese asylum seekers. The UNHCR office in Stockholm stated in January 2011 that it had not updated the information contained in response to information request CD001/06EN (Treatment of rejected asylum seekers) after 2006 (P. 245 Country of Origin Information Report 2012).<sup>9</sup>

## **COUNTRY OF ORIGIN INFORMATION REPORT - DRC**

One of the recommendations made in *Unsafe Return* was the updating of the June 2009 COIR. The House of Lords had been informed by Baroness Browning in 2011 that it had been updated in 2010. It had not.

The updated report of March 2012 refers to the *Unsafe Return* report over five pages. The COIR was updated before the Fact Finding Mission travelled to Kinshasa. The Amnesty International DRC researcher had visited Kinshasa in early 2012 and in April stated in a phone conference with Catherine Ramos and Peter Sagar, Amnesty UK Coordinator, North East and Yorkshire, that all information relating to DRC should be reassessed in view of the pre and post electoral violence. This postdates the

publishing of the COIR. The researcher stated that he had not been interviewed by the COIS before the preparation of the 2012 COIR. Robin Titchener wrote in response to Freedom of Information request 28313,

*'You have also asked whether an Agency or FCO official(s) has discussed the issue of 'refused asylum seekers' with Amnesty International (AI) and if so, when did this take place. I cannot comment on whether FCO officials have been in contact with AI but two Agency officials, the country of origin information service researchers for the DRC and Sri Lanka, met a country researcher in AI (UK) in June 2012. The issue of refused asylum seekers was discussed, amongst other things. At this meeting UKBA staff had told the researcher that they had not tried to meet with him prior to the June meeting.'*

It is of concern that the COIR has not been updated since March 2012 given the increased level of risk to opponents of the regime in power. Thierry Vircoulon, Project Director, Central Africa, International Crisis group, commented in May 2013, *'Moreover, repression against human rights activists and political opponents (mainly UDPS) has risen strongly since a year. The November 2011 presidential elections have definitely unveiled the arbitrary violence, abuses and heavy intimidation campaign they were capable of. In August 2012, in the Kasai Province, a so-called rebellion organized by dissidents condemning elections rigging has been followed by multiple arbitrary arrests, accused of breaching State security. The Bandundu Trial of twelve human right activists no later than April 2013 is a major example of the ongoing repression inside DRC.'*<sup>10</sup>

- (i) The COIR (2012) section relating to failed asylum seekers indicates that since December 2009 and February 2011 information had been available to UKBA from a French and Belgian Fact Finding Mission and the NGO Comité des Observateurs des Droits de l'Homme (CODHO) that failed asylum seekers were at risk on return to DRC. The Country of Origin Information Report (June 2009) was not updated to include this. Neither was there an update to record the closure at the beginning of 2010 of the Voix des Sans Voix office at N'djili airport. COIR stated up until March 2012 that VSV was *'closely monitoring'* the situation of returnees through its office at N'djili airport. Its closure had been noted in *Unsafe Return* (p.29). Shortly before he was murdered in 2010, Floribert Chebeya, the President of VSV, stated in a phone call that there was no office at the airport.
- (ii) The UNHCR consultation of 2006 (P.25), which supported the UK Government stance that there were no reports of ill treatment of refused asylum seekers, was included in COIRs until March 2012. The following information from a UNHCR position paper (2005) was removed from the COIRs after 2005:

*'UNHCR's information is that asylum seekers from the DRC whose claims are denied in fair procedures may still face problems on return. For example, a deportee could be at risk of arbitrary detention and ill treatment if, upon arrival in Kinshasa, he or she is discovered during interrogation to have a political or military background or to have sought asylum abroad owing to a political or military background.'*

*Country of Origin Information Report 2005.11*

The COIR (2012) records that, in January 2011, UNHCR's Stockholm office stated that the aforementioned UNHCR information from 2006 had not been updated. The CPB concludes at 6.2.3 that it is '*pertinent*' that the UNHCR is not aware of any mistreatment or detention of returnees. In 2010 UN officials, who had been asked on two occasions to meet returnees from UK, left N'djili airport before the plane landed. They were not allowed to see the passenger list.

- (iii) The COIR 2012 refers to risk to political activists from Europe. Information provided by Congolese NGOs to the FFM, three months after the COIR was published, confirmed this and indicated that UK returnees and Combatants were a risk category.

It is of concern that the COIS has omitted from the FFM report information provided by the United Nations Joint Human Rights Office. This raises concerns about the independence of the COIS and the omission of inconvenient evidence from its report for the Home Office.

**OPERATIONAL GUIDANCE NOTES 2012<sub>9</sub>**

The OGN were published one month before the FFM visited Kinshasa to gather information about the treatment of returnees. They were produced without an evaluation of interviews carried out after March 2010 for the report *Unsafe Return* and without an investigation into any of the specific cases (CPB 15). If, as is stated at CPB 3.3.2, OGN are '*an important tool in ensuring both quality and consistency in asylum decision making*' and on whether the main types of claim '*justify the grant of asylum, humanitarian or discretionary leave*', the lack of such independent evaluation and investigation will impact on the '*clear guidance*' the OGN should give to decision makers. The OGN do not provide the guidance needed to ensure that Congolese asylum seekers who require international protection can find said protection in UK.

**Low Level Activists.**

The OGN state at 3.6.22 '*As regards political activity in the UK no evidence could be found to support the allegations that the DRC authorities have either the capacity or capability in the UK to monitor low level political opponents, including those participating in anti government rallies in the UK.*'

In YB (Eritrea) and SSHD, Lord Justice Sedley concluded at Para. 18 that '*the tribunal, while accepting that the appellant's political activity in this country was genuine, were not prepared to accept in the absence of positive evidence that the Eritrean authorities had "the means and the inclination" to monitor such activities as a demonstration outside their embassy, or that they would be able to identify the appellant from photographs of the demonstration. In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate*

*oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups.* (29 February 2008)

<http://www.bailii.org/ew/cases/EWCA/Civ/2008/360.html>

In May 2013, Thierry Vircoulon, Project Director, Central Africa., International Crisis Group, gave the following assessment about DRC: *'The Congolese security services are much more effective than what is usually thought. They receive high-level training, advice and support from international private companies based in Kinshasa. Therefore, they are very well trained at identifying opponents, even those considered of "low-intensity.'* Theodore Trefon, Head of the Contemporary History Section of the Royal Museum for Central Africa, commented that ANR and DGM services are probably amongst *'the better equipped services'* and that Kinshasa has a *'very good understanding of dissident activities'* in UK and Europe.

DRC Embassy officials in London who sought asylum in 2012 were, initially, refused asylum and considered to be *low profile*. Staff were granted asylum in 2013. A letter from Home Secretary, Theresa May, to Shadow Home Secretary, Yvette Cooper dated 23 May 2012 (REF. M6271/12) states that, *'UKBA does not accept that low level activists are at risk on return to the DRC.'* Returnees whose ill treatment was documented in *Unsafe Return* had been categorised during the asylum process as low level activists of no interest to the DRC authorities who could be removed safely back to DRC. They were interrogated about their activities in the UK and the activities of Congolese in UK. In 2013 R24/2012 stated that, in order to save his life, he had been forced to say things during interrogation that he wished he had not said. The danger that interrogation which does not preclude ill treatment poses to future returnees to DRC is not recognised in Home Office documents.

According to the FFM report MONUSCO and ASADHO had produced a report relating to ANR operatives at Vodacom who were monitoring phone calls. According to ASADHO, special services within the police have the right to obtain any numbers they wish from Vodacom. ANR is also monitoring social networks (FFM P. 93). *'ANR agents are on social media and have managed to infiltrate those networks (such as Facebook and Twitter) where political opponents exchange messages. ANR agents can easily get information on people's profile.'* According to ASADHO, during anti-government demonstrations in Europe, images are shown in DRC and *'used to identify people'* (FFM P.74). RAS 21/2011 was tortured during interrogation to force him to name Combatants and those involved in a demonstration he had taken part in. Both he and RAS 9 (UR P.27) refer to their interrogators having photographs of them at a demonstration/march in the UK. R23/2012 and R24/2012 state they were all interrogated about being Combatants.

At CPB 2.80 the British Embassy comments that *'only high profile people'* are believed to be *'a threat to the State may be detained.'* At a meeting On 21 January 2013 Paul Dillane and Jan Shaw of Amnesty UK stated that there is no distinction between high and low level activists. A former member of the Congolese secret services stated in 2013 that low level activists will be interrogated in order to establish what information they have. They cannot be released until this is determined. The FFM records that strong interviews do not preclude torture. Congolese NGOs do not

refer to ‘*only high profile people*’ in the FFM report. The British Embassy does not monitor returnees but consults with NGOs. The source of the Embassy assertion is not stipulated. DRC Embassy staff in London sought asylum in 2012. They were, initially, refused asylum and described as ‘low profile’.

Research has indicated that there is a National Intelligence Agency presence in the DRC Embassy in London. (This information has been passed to AI). Its mission is to infiltrate Congolese communities throughout the UK. The activities of Congolese in the UK and the people they associate with are monitored. Nine people returned between 2006–2009 were interrogated about their activities in the UK (UR P. 25–27). In July 2012 ANR interrogated three returnees. RAS20/2012 stated they had been asked about their activities in UK. Several Congolese NGOs interviewed by the FFM delegation referred to a blacklist of Congolese who are to be targeted. There is a code for this group – code 32.

During the Congolese State TV broadcast showing the arrival of returnees from Belgium in March 2012, it is stated that the returnees had been deported because they had demonstrated against the DRC Government. Returnees are referred to as Combatants. They had held demonstrations at the time of the election in DRC. The Belgian Government and the European Union are said to have fulfilled their promise to the Congolese government. (Translation of broadcast in Annexe A)

### **Foreign National Offenders**

At 5.4 the OGN state that, ‘*In terms of the impact of crimes committed outside of the country, persons having purged their sentences in the asylum country after sentence do not risk prosecution from Congolese courts.*’ Para 32.03 Country of Origin Information Report March 2012.

Unsafe Return returnees, who had not committed a crime in UK, had no access to a lawyer whilst in prison and were not taken before a Judge.

In May 2013 the Ambassador for DRC, in a letter to Lord Avebury, stated that ‘*if an individual is deported from the United Kingdom for having committed a crime, the Congolese justice system will not just let him enter the country without taking the necessary measures to prevent him from his criminal activities*’ (13246/A1/MD/SLH/093/2013). This contradicts information from an official of the Federal Office for Migration of Switzerland who states that ‘*According to international laws, the Swiss authorities must inform the DGM if a person is known to be a danger to the Congolese state.*’ A ‘serious criminal’, who has served his sentence in Switzerland would remain free in DRC (FFM 4.02).

Two foreign national offenders removed from UK in June 2012 were not prosecuted before a Court in DRC but were detained in prison for months. R23/2012 was extracted from a military camp in January 2013. According to CPB (11.1) DGM are looking out for returnees who have committed ‘*a crime in the country the person has been returned from.*’ People are detained for crimes at DGM Headquarters in town (FFM 2.70).



## **FACT FINDING MISSION REPORT**

On 8 September 2013 a letter was sent from Justice First, Bishop Michael Scott-Joynt, Detention Action and civil society groups whose clients' post return experience had been documented in *Unsafe Return*. COIS was asked to respond to the inaccuracies that had been identified in the FFM report and CPB. A response was promised in two weeks but has not been received to date.

The FFM report is composed only of the approved notes from the interviews carried out. Two Congolese NGOs requested anonymity. Questions were usually provided in advance of the interviews. The abbreviated Terms of Reference and written questions which were given to the DRC authorities are not indicated in the report. However, the report does state that they '*did not cover the treatment of returnees.*' The mission was conducted by the Country of Origin Information Service (COIS) and Neil Roberts from the British High Commission in Nairobi. Interlocutors were considered to be informed sources which would provide up to date, impartial and accurate information. The reliable NGOs which are working on the ground in Kinshasa consistently provided information which indicates risk to UK returnees and which corroborates the monitoring carried out for *Unsafe Return* and this updated report.

The other informed sources interviewed by the FFM delegation cannot be considered to be informed because

- they do not monitor returnees (AI, HRW, UNJHRO)
- they are not involved with refused asylum seekers post return (IOM, French Embassy, Swiss Embassy)
- they were not questioned about treatment of returnees (Representative of the Police Commander in Kinshasa, Inspectorate General of Justice)
- s/he is not aware of any returns for three years up until 2012 (British Embassy official)
- does not answer the question asked about Congolese returnees but refers to illegal immigrants in DRC (Belgian immigration official)
- Intergovernmental Consultation states' answers recorded in the CPB appear not to be consistent with evidence recorded in the FFM report. A copy of the IGC answers is available on request, according to the CPB. The link was requested on 28 August 2013, however, access to the website is restricted. A hard copy was requested.

### **(i) Identification**

The interlocutors were questioned about the identification of refused asylum seekers and the detention facilities at N'djili airport.

Q. 7 Are the Congolese immigration authorities able to identify returning failed asylum seekers? If so, how?

5/7 NGOs

DRC authorities can identify failed asylum seekers

1/7 NGOs

Identification is through the documents

1/7 NGOs

*'through documents they receive from escorts'*.

The Police do not deal with returnees.

British Embassy

DGM is *'aware of forced returns through documentation process.'*

Belgian Immigration Official DRC authorities can identify them through interview  
French Embassy Returnees cannot be identified as the authorities are not  
given information about asylum applications

The Federal Office for Migration of Switzerland states it does not identify refused asylum seekers and that it is out of their hands if a returnee informs DGM that he claimed asylum and the reason for the claim. IOM does not deal with failed asylum seekers forcibly returned to DRC.

In the case of RAS17 (UR P.18) documents relating to his asylum case and his membership of APARECO were handed over to the Congolese authorities at N'djili airport. He was detained but escaped en route to prison. His documents were filmed in Kinshasa and subsequently sent to UK. A Congolese Immigration Officer stated in 2011 (UR P.33) that names were sent from the UK to Congolese Immigration before removal. The returnee's file was analysed by DGM to see if the returnee had a problem with the Congolese state. If so, the security services were contacted. In UK there have been four re-documentation exercises since 2009. The representative of the Police Commander of Kinshasa stated that the same team that interviews returnees in UK is the one which meets them at N'djili airport. Sensitive documents of R23/2012 appear to have been placed in his luggage at the UK immigration removal centre and were found by Congolese officials.

The DRC Ambassador's letter of May 2013 states that returnees will be interviewed case by case to determine the reasons for their removal.

ii) **Detention**

**Q.9 Are there detention facilities at N'djili airport?**

Several NGOs refer to a room/office at the airport which is used to detain people. RENADHOC states that ANR and DGM offices '*transform to detention place*' (P.76). Returnees between 2009 - 2013 spoke of being held in an office/room.

**General Inspectorate of Justice** – FFM 4.16 People may be detained at the airport until they '*can be detained*'. There is a magistrate in N'djili district. A person can be detained for up to 5 days before being taken before a Judge.

NGOs refer to people being transferred to DGM provincial prison/headquarters in Kinshasa and on to ANR detention. In June 2012 returnees were detained by DGM and taken to ANR. In July 2012 three returnees were taken to DGM detention in Kinshasa and then to ANR, where they were held overnight and interrogated. ANR officers are described in Amnesty reports as the most '*common torturers*.' ANR is under the '*direct authority*' of Joseph Kabila. The CPB concludes there are no detention facilities at N'djili airport. This does not address the issue that returnees are detained in offices/rooms. There are military barracks next to the airport.

It is recorded in the FFM report that ASADHO has no specific information about detention at the airport. ASADHO goes on to say that people may be detained after interview and sent to ANR, if there are political reasons for an asylum claim. This suggests that, at some stage after arrival at N'djili airport, detention does take place.

The Congolese Immigration official interviewed in Kinshasa in 2011 stated that, '*Il*

*n'y a pas un endroit secret pour garder a l'aéroport, c'est en dehors, dehors de l'aéroport.'*

(There is not a secret place to keep people at the airport, it is outside, outside the airport).

When asked about returnees who have a problem with the Congolese state, he replied, *'En tout cas vraiment cette personne n'aura pas d'excuses. On va directement l'acheminer ou l'ammener aux services à la Tolérance Zero.* (This person will really have no excuse. He will be taken straight to the services in Tolérance Zero).(UR P.33)

### **iii) Treatment of returnees**

15/17 *Unsafe Return* returnees claim they were ill treated. They were called traitors and accused of being against the President. They had to be punished.

In 2012:

7/8 Congolese NGOs refer to the ill treatment of returnees and UK returnees specifically and to the Congolese services involved in said ill treatment

1/8 NGO Église du Christ has no information about ill treatment. It monitors returnees from Germany in order to prevent ill treatment.

French and British Embassies, the Belgian Immigration Office and Federal Office for Migration of Switzerland, are not aware of ill treatment. (See *Inaccurate recording of ill treatment* - P.13 -16). The FFM provides evidence that IGC countries have received information about ill treatment from Congolese NGOs.

**Human Rescue** – FFM 4.01 *'Illtreatment of returnees is done on purpose for political reasons.'* *Detention can last one month. Release is possible only through people in power.'*

**AHRO** – FFM 4.03 *'A person who has demonstrated against the government while abroad .....can face problems.'* Forcibly removed asylum seekers will face problems at N'djili airport. Those who have had problems in past in DRC *'can face problems when returned.'*

**Les Amis de Nelson Mandela** – FFM 4.04 It is aware of ill treatment at the airport. *'It often happens.'* Just the fact of having lived in Europe leads to the perception that the returnee is against the government. Returnees from Europe are *very much wanted*. Those who have been absent a long time will be mistreated.

**ASADHO** – FFM 4.05 The situation is seen as *difficult* because of the demonstrations in Europe. Due to the action of the *'combatants/diaspora, people from abroad are seen as part of them.'* Failed asylum seekers are considered to have given the government a bad image. Asylum seekers will be asked why they sought asylum. If political connections are discovered, the returnees will be sent to ANR.

**RENADHOC** – FFM 4.06 Treatment of returnees is very bad. *'Strong interviews'* means torture is not excluded. It claims that March returnees *'were left to the mercy of the intelligence services, the DGM and the ANR.'*

**OSD** FFM 4.07 It is aware of four Schengen and two UK cases of ill treatment. Some had belonged to activist organisations. Schengen returnees were beaten with

truncheons, slept on the floor and had no food to eat. *Unsafe Return* documented similar treatment. DGM cannot release returnees connected with political activism or who had a problem with the government. It is aware of a new code, 32, which is used for a certain group which will be ill treated and *receive no pity.*'

**AHRO** – FFM 4.11 Some returnees, mostly those who have been blacklisted, will be sent to ANR prisons. These will be political activists.

**Toges Noires** – FFM 4.12 Almost all returnees are detained. S. African returnees who were returned to Katanga are still detained. With regard to group returns, everyone is viewed as a combatant. Those who are '*real*' combatants receive '*different treatment*'.

**IOM** – FFM 4.15 Many returnees are detained 24 – 48 hours

**French Embassy** – FFM 4.13 Returnees are not ill treated.

**British Embassy** – FFM 4.09 4.10 It is believed only high profile people thought a threat to the state may be arrested.

**UNJHRO** – FFM 4.17 The UN office states that a reason for detention is being well known as political '*partisans accused to be involved in 'some subversive activities.'*'

**Belgian Immigration Official** – FFM 4.18 It is not aware of reports of difficulties at the airport or substantiated cases of ill treatment. (Congolese State TV broadcast the arrival in March 2012 of returnees from Belgium. The broadcaster declared that they would be imprisoned in Makala prison and ill treated). (See Annexe A).

The FFM did not discuss treatment of returnees with the Congolese authorities.

#### iv) **UK Diaspora/Combattants – a risk category**

The CPB records at 11.1 that the '*weight of evidence is that detention occurs only under certain circumstances.* Congolese NGOs indicate that opponents of the Kabila regime and Combatants from the UK are at greater risk of detention and are on a blacklist.

**Human Rescue** FFM 4.01 - The UK diaspora is seen as being '*against the government so 'FAS (failed asylum seekers) are greeted as members of the opposition who tarnish the government's image, so the authorities want to take revenge.'*' 'The '*greatest focus*' is on Congolese in UK, as it is known Congolese there oppose the government and the Combatants began in UK. There is '*stronger opposition to Kabila.*' UK returnees '*are more ill treated than others.*' (FFM P.64).

**OSD** FFM 4.07 - It is aware of two cases of ill treatment of UK returnees. Two cases are referred to in the CPB but the name of the country is omitted.

**Toges Noires** FFM 4.12 - Combatants from UK/Europe are on a blacklist (See CPB 11.1).

**AHRO** FFM 4.11 - Some returnees are detained by ANR. There is a blacklist of

political activists and those who disturb the Congolese authorities in UK. France and UK are countries where opponents are 'active' and where 'Combatants' are (See CPB 11.1)

**Église de Christ** The 'DGM number one of Protocol' is a member of the church 'It is not favourable to return people from the UK (FFM 3.08).

(v) **Inconsistencies in the recording of ill treatment in Home Office documents**

The inaccurate recording of data from the FFM report in the CPB raises concern that conclusions reached in the CPB are flawed.

**UK and Schengen returnees**

- Two cases of ill treatment of returnees in 2008 and 2010 were recorded by OSD. Both returnees were from the UK. CPB 9.4 fails to mention the country was the UK. Both returnees were detained at DGM Provincial prison and one required medical assistance as a result of ill treatment. OSD provided a psychological report in one case and a medical report in the other for legal representatives in UK. The name of one returnee is known to the Home Office.

Two Schengen returnees were detained and ill treated in 2009 and two in 2010. The CPB states that two Schengen returnees were detained 2009/2010. This is inaccurate or is a misleading way of presenting the figures. Returnees were beaten with truncheons in DGM prisons. The Schengen authorities approached OSD to investigate whether the people were being tracked by the authorities and were 'still wanted people'. Some had belonged to activist groups and taken part in demonstrations in the UK and Europe.

- The FFM (P. 93 and 41) and CPB (10.5.2) record the detention in May 2012 of ten returnees from the UK. NGO Toges Noires states they were 'detained by DGM and released only on payment of money.'

The following cases recorded in the FFM Report contradict both the answers provided by states participating in Intergovernmental Consultations at CPB 8.1.2 and the conclusion reached at CPB 8.1.3.

**Sweden**

The NGO Amis de Nelson Mandela investigated the case of a returnee (name given to FFM delegation) from Sweden who was imprisoned and tortured by ANR. At the prison someone let him call his family. He was returned to Sweden (FFM P.71). The case of a Congolese pastor removed from Sweden in 2012 and, allegedly, tortured following arrival in DRC was reported on the Internet.

**Ireland**

A resident, not a returnee, who went to DRC with a project was 'taken from Kinshasa and detained for nine months without access and tortured. He is now in Makala (Kinshasa) prison accused of funding a movement who was supposed to kill the President in February 2011.'

**France and Belgium**

Belgian and French authorities asked the NGO, Oeuvres Sociales pour le Developpement, to monitor specific returnees. There were ten such cases in 2011. Names and addresses were provided and the NGO was asked to ascertain whether returnees were ‘*still in trouble*’ (FFM 3.07).

Human Rescue state that a DRC national removed from France was returned to Brazzaville, Republic of Congo (FFM 4.01). ‘*He was in prison for two weeks after that...*’ The sentence is not finished in the FFM report. R22/2011 was also removed to Brazzaville, though he was from DRC.

ASADHO is ‘*frequently contacted*’ by foreign partner organisations and ‘*even government department like the French OFPRA (Office Français de Protection des Réfugiés et Apatrides)*’ to investigate allegations (FFM 3.05).

### **Germany**

There is an agreement between Église du Christ and an associated church in Germany, which is informed of returns by the authorities. At the border returnees are handed over by DGM to the church. The church reports back to Germany. ‘*The monitoring is done to avoid ill treatment of returnees*’ (FFM P. 82). The number one of Protocol for DGM is a member of the church.

### **S. Africa**

AI was made aware of a returnee from S. Africa who was detained whilst administrative matters could be looked into (CPB 7.1.5). ASADHO refers to about fifty returnees who had demonstrated after the 2011 election and were sent to Buluwo prison, Katanga, and ‘*are still there*’. Buluwo is described as a *high security political prison*. S. African returnees are mentioned in an article about UK returnees in the newspaper, ‘*Tempête des Tropiques*’, on 8 June 2012. ‘*This reminds us of the fate of the Congolese expelled from S. Africa, some of whom are still imprisoned illegally in Kasapo prison in Katanga without trial.*’

The answers given by IGC states and quoted in the CPB appear not to accord with the above information.

### **Media**

The issue of the return of failed asylum seekers does not attract media attention, according to the FFM report. DRC State TV broadcast the arrival and transfer to Makala prison of Combatants removed from Belgium in March 2012.<sup>13</sup> The broadcast refers to an agreement between the Congolese government and the European Union to arrest and remove Combatants and those who have demonstrated against the Congolese government which is in power after the disputed 2011 election result.

The front page of the newspaper, ‘*Tempête des Tropiques*’, No 4416, Friday 8 June 2012, referred to the arrival that morning of returnees from UK. (Translation in Annexe A).

## **COUNTRY POLICY BULLETIN – DRC**

The CPB is the ‘*considered*’ response to *Unsafe Return*. However, it appears that six months earlier the Country Specific Litigation Team which produces OGNs had

considered *Unsafe Return* and other objective evidence and, according to the OGN (May 2012), had ‘concluded that there was insufficient evidence to substantiate the allegations of ill treatment of returnees in general’ (CPB 3.3.5). This conclusion was reached without reference to information provided in June 2012 which supported *Unsafe Return* findings.

The CPB indicates a risk of *extra scrutiny* of returnees from the UK. They will be questioned at the airport and then transferred to DGM and ANR facilities for further interrogation. Returnees are not free to leave the airport. This corroborates information from UK returnees and their families in UK and DRC between February 2012 and September 2013.

**(i) Monitoring of returnees**

CPB 13.1 states: ‘*The UK is under no obligation to monitor the treatment of individual unsuccessful asylum seekers who have returned to their country of origin. They are, by definition foreign nationals who have been found as a matter of law not to need the UK’s protection and who had no legal basis of stay in the UK.*’

In June 2012 the AI DRC researcher stated that it was his understanding that there was no monitoring mechanism in place within the British Embassy in Kinshasa to follow up on the cases of Congolese returned to the DRC. In letters to Sheila Gilmore MP and the late Stuart Bell MP, the Minister for Immigration, Damian Green, wrote (7 Feb 2012 (M835/12), ‘*There have been various previous reports of allegations of ill treatment of returnees to the DRC and these have been investigated, including by the United Nations High Commission for Refugees, and no evidence has been found that returnees forcibly removed from the UK to the DRC have been mistreated.*’

On 3 August 2012 R23/2012 was taken to the British Embassy as the Congolese authorities believed he was not Congolese. He was told he could not be helped. He had begged for protection from torture and inhuman treatment. The UN Rapporteur in his report to the Human Rights Council on 9 February 2010 stated that if detainees are ‘*kept in conditions of hygiene not consistent with human dignity, these conditions of detention are equivalent to cruel, inhuman or degrading treatment or punishment.*’

It is misleading to state in documents and letters to MPs that UNHCR has no substantiated evidence of ill treatment. In 2010 the author had contacted UNHCR-London about RAS 2 (Unsafe Return) who had been forcibly removed from UK. She had fled DRC for a second time and was to attend an interview with UNHCR. UNHCR-London spoke to RAS2 and to UNHCR-Egypt. RAS2 was granted refugee status by UNHCR. In 2012 the author asked that information relating to her post return ill treatment in DRC and the grant of refugee status be passed to the Home Office. UNHCR staff stated it was not possible as:

- there was no system to inform the Home Office that refugee status had been granted to UK returnees such as RAS2.

Also,

- UNHCR London does not share information with UNHCR-Egypt
- UNHCR London would not have been informed of the grant of refugee status to RAS 2

In a letter to Shadow Home Secretary, Yvette Cooper, dated 23 May 2012 (Ref: M6271/12), Home Secretary, Theresa May, wrote that: *'At no time has either the UKBA or the UK Mission received any allegations from international organisations such as UNHCR of any mistreatment of returnees to the DRC.'*

This underlines the importance of the post return monitoring by returnees' friends and family and by UK civil society groups. This alleged lack of a channel for the UNHCR to communicate substantiated reports of torture to the UK government is of concern. The lack of such a channel could be used to indicate an absence of ill treatment and of substantiated reports of ill treatment.

**(ii) Inaccurate data on Returns**

At CPB 12.2.4 a table indicates that there were twenty five asylum removals and seven non asylum removals to DRC in 2011. There were forty four enforced and voluntary returns to DRC in the eighteen months up until June 2012. The information provided by British Embassy staff to the FFM is that there were no removals in 2011, no removals for three years up until 2012 and five removals in 2012. CPB 10.5.2 refers to ten returnees removed in May 2012 from London. There appears to be an inconsistency in the bulletin, as the table at 12.2.4 refers to a total of seven removals in Quarter 2. Fifteen foreign national offenders were removed in 2012 according to Home Office statistics. May and June returnees had a criminal record.

The CPB (8.2.2) refers to a Belgian flight carrying returnees on *19 March 2012*. The Belgian immigration official refers to returnees, sent back on *6 March 2012*, who were not opponents of the regime. Yet, the official states that one returnee had been arrested in Belgium during the anti-Kabila demonstrations after the 2011 election (FFM P.107). They were *identified* by DGM and ANR and released the following day. Allegations of detention/mistreatment by the Belgian Diaspora were not correct (FFM 3.17). It is stated that the arrival was monitored and *'contrary to media reports'* returnees were not ill treated.

Congolese State TV programme, *Lingala Facile*, broadcast the arrival on 6 March 2012 of returnees described as Combatants.<sup>14</sup> It refers to Belgium and the European Union having fulfilled their promise to the Congolese government and, also, to the search for combatants in Europe. See Annexe A. IOM states in the FFM report that the Red Cross *'were supporting some rejected returnees from Belgium'* (FFM 3.15).

**(iii) Documentation**

Conclusion 14.7 states *'There is no evidence the Ambassador, or Embassy officials are involved in the re-documentation process.'*

There have been four re-documentation processes since 2009. In 2011 examination of the travel document of RAS17 showed that it had been signed by the DRC Ambassador. There were no re-documentation exercises in 2011, when RAS17/2011 and R22/2011 were removed. The Immigration History of R23/2012 states *'CROS advise that (R23/2012) be interviewed by DRC Embassy under Op Orbit.'* He was not interviewed. In September 2013 DRC officials are in the UK interviewing Congolese detainees in immigration removal centres, despite the FCO being aware of the lengthy imprisonment and ill treatment of R23/2012.



Freedom of Information request FS50467452 was made about the visits of DRC officials to immigration removal centres in UK to re-document Congolese refused asylum seekers and foreign national offenders who were threatened with removal to DRC. Certain information was withheld, particularly that relating to the officials' report of the outcome of their visit. When weighing up the public interest arguments in favour of disclosure and of exemption, the Commissioner recognised that it was very much in the public interest *'that the UK's ability to promote and protect its overseas interests, including with DRC, is maintained'* (Para 26). The Commissioner decided that there was an *'overriding need'* for UK and DRC officials to have a *'good working relationship'* and to *'foster trust between them'* (Para 28).

An article in the New Statesman in March 2013 by Rebecca Omonira-Oyekanmi raised the issue of the interviews in immigration removal centres. 'In March last year the UKBA wrote to the Direction Generale de Migration (DGM), a government department in the Democratic Republic of Congo, inviting officials to visit Britain (all expenses paid) to help "redocument" 80 people held in detention centres in and around London. The interviews would take place over a four day period, with decisions on the nationality given within 24 hours of each interview.'<sup>15</sup>

It is of concern that the lack of documentation from the UK authorities for R23/2012 put him at risk of prolonged detention in prisons which breach Article 3 and the reality of torture and inhuman and degrading treatment.

**(iv) Treatment of returnees - AI and HRW (CPB 7.1)**

In a refusal letter in 2012, (name withheld), a caseworker stated that *'Examination of the reports of organisations such as the US State department, UNHCR, Amnesty International and Human Rights Watch reveal the scarcity of substantiated claims.'* Three of these organisations do not monitor the post return experience of refused asylum seekers to DRC. A letter from AI to Justice First states that *'we are not in a position to provide UKBA with our own documented evidence.'* In an e mail (04/09/2013) from Amnesty UK it is stated that the issue of returnees cannot be *'actively researched.'* However, although it does not have its own evidence base, the evidence *'may well be out there, there may well be a problem.'*

CPB 7.1.5 records that AI stated that *'because they do not document the detention of refused asylum seekers does not mean that detention does not take place.'* AI was aware of the detention of a S. African returnee. In 2009 Andrew Philip, DRC Researcher, was unable to meet four UK returnees in Kinshasa due to time constraints but he arranged interviews between two returnees and an Amnesty partner organisation, ASADHO, (UR P.8). These interviews which refer to post return ill treatment were forwarded to AI and were held on file. It is not clear why these UK returnees were not mentioned to COIS staff in June 2012 and a South African returnee was (CPB 7.1.5). AI had been provided with statements by a credible Congolese partner. A DRC researcher in the UK identified which of the two interviews would be more useful for lawyers in the UK.

The conclusion at 7.1.6 that AI has no evidence that returnees are subject to detention/mistreatment is misleading to decision makers and parliamentarians.

(v) **IGC States**

Information in this report refers to the ill treatment of returnees from Europe and S. Africa which has been documented by Congolese NGOs. Eleven IGC states were asked in April 2012 if they were aware of reports or allegations of difficulties and ill treatment of voluntary or forced returnees. None of the states were aware of such reports or allegations (CPB 8.1.2). To question 4:

**Are you aware that returnees have been detained/imprisoned, if so why and where?**

A4. One state was aware (forced) returnees are held for a short period of time. The conclusion at CPB 8.1.3 is that, as no states are aware of mistreatment and short term detention, this indicates there is no lengthy detention nor general mistreatment.

The conclusion at 9.12 is *'Based on the information provided by other asylum intake countries and from Embassies and other sources within DRC, we do not accept that return from the UK/ Europe is itself a risk category.'* The credibility of the answers provided by IGC states is called into question by information provided by Congolese NGOs relating to the ill treatment of returnees.

(vi) **Torture**

**CPB 6.3.2** The FCO noted that *'While it is not officially sanctioned, there are widespread anecdotal reports of the security forces using torture in DRC.'* CPB 11.4 states that it is OHCHR and MONUSCO which have noted *'there are less cases of torture or ill treatment in Kinshasa's prisons.'* According to Andrew Philip, former AI DRC researcher, ANR depend directly on the Presidency (UR P.25). AI reports refer to ANR as being the *'most common torturers'*. ANR officers have not been brought to account, even though the use of torture is well documented by the UNJHRO. A March 2013 MONUSCO/OHCHR report records that *'211 deaths were identified by the UNJHRO as human rights violations between January 2010 and December 2012.'*<sup>16</sup> Deaths in DRC prisons had doubled in 2012 compared to 2011 and 2010. The true figures could be higher as these figures only relate to cases which could be confirmed as resulting from human rights violations. AI and UN reports are not anecdotal.

CPB 8.1.3 concludes that there is no evidence of *serious* harm or lengthy detention. The level of harm and length of detention which the Home Office considers acceptable are not given. The FFM contains references to torture, beating with truncheons, lack of food and lengthy periods of detention. On the 3 August 2012 the British Embassy was made aware of the lengthy imprisonment of R23/2012. The document (008/PNC/DRG/2012) handed in at the Embassy by DRG officers is dated 3 August 2012. When asked about an alleged deportation from DRC in November 2012, David Becker of UKBA stated that the Congolese authorities *'were aware that the UK would accept back any returnee that they were not satisfied was a DRC national.'* However, the British Embassy staff stated they could not help this returnee.

(vii) **Anonymity**

The CPB states that, as the names of returnees making allegations of ill treatment in *'Unsafe Return'* had not been given to UKBA, the latter can only *'reach conclusions*

*on the allegations contained within the report based on evidence before it.* In a letter from Minister for Immigration, Mark Harper, to Deputy Prime Minister, Nick Clegg, (CTS Ref. M18730/12), dated 14 March 2013, it is stated that the UKBA has been unable to check histories of individuals in *Unsafe Return* to determine their reliability. *'The policy response is therefore based on a number of sources, including from the Fact Finding Mission'* and *'conclusions have been reached based upon this evidence viewed in the context of the issues highlighted in the 'Unsafe Return' report.*

UKBA officials requested the names of ten returnees referred to in the report 'Wake up a devil in the dark' at a meeting in Croydon in July 2010. At that time authorisation was not given to the author to disclose names. AI had advised anonymity for returnees who made statements in 2009. *'Unsafe Return'* documents the experience of seventeen individuals. Six have since agreed to their names being disclosed to the UN Rapporteur for torture and inhuman and degrading treatment.

At CPB 15.2 it is stated that, *'As the testimonies are anonymous, there was no investigation into specific cases.'* UKBA did have the means to identify at least ten returnees from Tees Valley and two IOM returnees. The British Embassy in Kinshasa checked in prisons for at least four *Unsafe Return* returnees. Names were, therefore, in the possession of the FCO. The late Frank Cook MP and Ruth Kelly MP were contacted in relation to Embassy investigations into the arrest of their constituents. A British Embassy official checked in prisons for returnees identified in the Guardian and Northern Echo articles of 2009. There is no reference number on the copy of the letter from the Chargé d'Affaires, Terence Robins, to Mark Walsh of UKBA in 2009 regarding these cases.

*'Wake up a devil in the dark'* contains e mails and statements which indicate in several cases not only the year of removal but the month of removal and in one case the date of removal. It is maintained that identities of returnees are known to Home Office, which could have carried out an investigation into these *'specific cases'*.

**(viii) The United Nations (CPB - Section 6)**

The FFM report states that the UNJHRO is planning to speak to partner NGOs to identify one which would monitor returnees and be prepared to fund the monitoring itself. The wording appears to suggest that this is at the instigation of the UNJHRO. In a phone call and e mail to the author, UNJHRO staff indicated that the UK FFM delegation had asked them to oversee a return and reintegration monitoring system. The British High Commission would be involved. UNJHRO declined to do so, citing lack of staff and resources, but it agreed to speak to its partner organisations. Alex Cunningham MP was informed by the author that establishing a monitoring system was under discussion. He was informed that the author was mistaken.

The CPB concludes at 6.2.3 that the UN *'has a well established presence within DRC'* and will investigate allegations of mistreatment. This is misleading. The FFM report states that the UNJHRO field office in Kinshasa is a team of six with one vehicle. It has limited resources to *'efficiently'* cover the twenty four communes of Kinshasa. The CPB also refers to the 206,541 'voluntary returns' facilitated by the UN between 2004 – 2010 and to plans for further returns. It does not state whether returnees are refused asylum seekers or persons displaced by attacks on Eastern Congo.

CPB 6.2.3 states that issues of ill treatment and detention have not been ‘escalated’ to the United Nations. This is incorrect.

- There has been contact since 2010 with UNHCR-Kinshasa, which referred the author to the UNJHRO. It was contacted after an allegation of arrest was made on 8 June 2012. Three requests were made for returnees to be met at N’djili airport. Two by the author and a third by BEACON staff in 2011.
- RAS2 approached UNHCR in 2010 and was granted refugee status in 2012.
- The UN Special Rapporteur on Torture, Professor Juan Mendez, and the author were in contact on 22 July 2012. The Project Manager of Justice First met Professor Mendez in September 2012. His office requested the names of returnees. Since September 2012 seven returnees in total (including one who was not documented in *Unsafe Return*) have given permission for their names to be passed to the UN Special Rapporteur.

When making decisions in asylum applications, case workers may refer to conclusions reached in the CPB. It is considered that several conclusions in the CPB are inaccurate and, therefore, not safe.

## **SECTION C**

### **Correspondence with Alex Cunningham MP**

Alex Cunningham MP contacted FCO and UKBA about the alleged arrest of R23/2012. Correspondence was by e mail and by phone. His calls were not returned and e mails not replied to. Rob Whiteman apologised for the lack of a reply on 4 September 2012.

29 June 2012 Mr. Cunningham asked the FCO official to call him back about the alleged arrest.

11 July 2012 He was told by FCO the matter was ‘one for the UKBA’. He informed an official that he planned to raise the issue on the floor of the House.

11 July 2012 Home Office stated in an e mail that it was an issue for the FCO.

An Embassy official was aware, when interviewed in Kinshasa on 22 June by the FFM, that a parliamentarian had raised a question regarding arrests. However, Mr Cunningham was not informed during June or July about the alleged call from London on 8 June to an Embassy official who was overseeing the passage through immigration procedures of five returnees from UK.

6 August 2012 – Mr. Cunningham was informed by Minister for Immigration, Damian Green, that the returnees had passed through immigration procedures. In July MPs Mary Glendon and Paul Blomfield had been informed that the returnees had passed ‘safely’ through immigration controls.

4 September 2012 – Mr Cunningham was informed by Rob Whiteman that none of the returnees had been detained. It was inconsistent for UKBA to assume an ongoing

responsibility for returnees who had been found not to require international protection.

### **Letters from Africa Directorate to Tom Blenkinsop MP.**

When interviewed by the FFM delegation on 22 June 2012, a British Embassy official responsible for matters relating to migration stated *'At the time the official was at the airport overseeing the transit through the airport of the 5 returnees a call was received from London saying that there have been allegations that the 5 returnees had been arrested.'*

9 January 2013 Tom Blenkinsop MP wrote to the Foreign Secretary, William Hague, to ask who had made the call to the official.

13 February 2013 Mark Simmonds MP, Minister for Africa, confirmed the phone call in question was made by *'an official in the Africa Directorate in the Foreign and Commonwealth Office'* following *'allegations made by a non governmental organisation that arrests had been made.'*

8 March 2013 Mr. Blenkinsop asked for the name of the NGO.

4 April 2013 He was informed that on 8 June an NGO had contacted another NGO which had contacted a government department which had contacted the Africa Directorate, which had made the call to DRC. The Embassy official who was contacted by phone at N'djili airport was present at the airport for about two hours after the plane landed, according to the FFM report.

Detention Action and the author were in contact during the afternoon of 8 June. Neither contacted a Government department or agency on that date.

24 May 2013 Mr. Blenkinsop requested the names of the two NGOs.

28 June 2013 (MIN/50671/2013) The Minister for Africa states that, after examining records in detail, it had been discovered that there had been a discrepancy in dates. In relation to *'the incident'* which took place at N'djili International Airport on 7 June 2012 *'the exchange at the airport could not have taken place as I described. The official at the airport recalls receiving a phone call from a government department or agency in London while at the airport but cannot confirm who called or from which department.'* The British Embassy official had stated one year earlier to the FFM delegation that the call was about the alleged arrest of five returnees. He left N'djili airport after the returnees had passed through the documentation process and saw *'no ill treatment during that time.'* The official did not state that the returnees had left the airport freely but refers to a call made *'since'* to the Congolese authorities to ensure the returnees *'were ok'* (FFM 4.10 – Interview on 22 June 2012).

According to the Minister, *'An examination of the dates, however, shows the information was passed to us only on 13 June 2012, by which time the returnees had already been in DRC for six days.'* This assertion on 28 June 2013 is not borne out by the information provided by the Embassy official two weeks after the arrival of the five returnees (FFM 4.10). The Minister's letter contradicts evidence which has been placed before Immigration Judges since 30 November 2012.

The Minister names the organisations involved in the messages passed on 13 June 2012 as Justice First and AI. There was a meeting between COIS staff and the AI DRC researcher on 13 June. The Minister's letter refers to *'the information about the arrests and deportation'* as coming from AI. It had been passed to AI by Justice First.

The author did not receive information about the onward deportation from DRC of a June returnee on 13 June. It was passed on by the National Intelligence Agency (ANR) to the UN Joint Human Rights Office in Kinshasa at a meeting on 5 July 2012. The Fact Finding Mission was emailed this information by UNJHRO. The information does not appear in the FFM report. Neither Justice First nor Catherine Ramos had informed AI of the onward deportation on 13 June 2012.

A review of e mails from the author to Amnesty International reveals that a call was made to AI offices immediately after the allegation of arrest on 8 June 2012 but the offices were closed. E mail contact was made with Paul Dillane, who was out of the country. He replied on 13 June 2012, suggesting that the DRC researcher be contacted. The author e mailed him on 13 June 2012. The researcher replied on 15 June to apologise for not having been in contact before. He informed her that, at a meeting on 13 June with the prospective FFM delegation, he had asked them to investigate the allegations of arrest during their mission to Kinshasa. They had informed him that the returnees were criminal offenders. The DRC researcher informed the author that he would ask ASADHO to investigate the allegations. There was no further response from AI to requests for information about the outcome of the ASADHO investigation. ASADHO had expressed concerns about the planned June flight during the week beginning 28/05/2012.

The aforementioned letter from the Minister for Africa refers three times to the incident on 7 June 2012. The five returnees in question were not in Kinshasa on 7 June 2012. The Minister states it is not possible to '*trace any further information.*' On 22 June 2012 the British Embassy official who had received the call from London relating to the arrest of five returnees was interviewed in Kinshasa by Amanda Wood and Eugenio Bosco from the FFM delegation. He informed them of the actions taken by the Embassy following the call which had alleged the arrest of returnees.

- a call had been made to Congolese Immigration (DGM) to '*ensure the returnees were ok.*'
- Makala, Demiap and N'Dolo prisons were to be contacted to see if any returnee had been detained.
- family could contact the Embassy if there was a problem.
- 100 dollars had been given to each returnee for onward travel. The Embassy had not been provided with an address, so could not arrange transport for the returnees. An address must be given during the immigration process in DRC which the official was overseeing.

The Minister does not refer to R23/2012 having been taken to the British Embassy nor to the phone call Embassy staff made to his stepmother in UK.

In November 2012 an e mail was sent to Mr. David Becker of UKBA to ask for information about the onward deportation from DRC of a UK returnee. He replied that they had no evidence of the return to DRC by the UK of a non DRC national. The DRC authorities had confirmed that they had not been involved in any process to remove any incorrectly documented returnee. He later clarified that colleagues in the Home Office who deal with returns had received the information from DGM through FCO. This contradicts the information ANR (National Intelligence Agency) gave to the UNJHRO at a meeting on 5 July 2012.

## **SECTION D**

### **CPB 15.1 – 15.2 The Response to Unsafe Return**

Due to inconsistencies between the Country Policy Bulletin, Operational Guidance Notes and letters to MPs, it is unclear at what point the decision was made that *Unsafe Return* held insufficient evidence to substantiate allegations of ill treatment. The CPB states that the UKBA Country Specific Litigation Team had considered *Unsafe Return* and other objective evidence and, according to the OGN (May 2012), had concluded that ‘*there was insufficient evidence to substantiate the allegations of ill treatment of returnees in general*’ (CPB 3.3.5). This is contradicted in the OGN at 5.7 where it is stated that ‘*The UK Border Agency is considering the findings of this report.*’ Also, Rob Whiteman stated in a letter to Paul Blomfield MP (31 July 2012 CTS REF: M10242/12) that ‘*our enquiries into the treatment of failed asylum seekers on return to the DRC are ongoing.*’

When MPs met with Minister for Immigration, Damian Green, on 22 May 2012, to raise concern about returns to DRC and the issues raised in *Unsafe Return*, the conclusion that there was insufficient evidence to substantiate allegations of ill treatment appears to have already been reached, before COIS staff left for Kinshasa.

In the BK country guidance case judges advised that ‘*Public funds, not to mention valuable judicial resources, are involved and must not be expended uselessly.* It goes on to state that in future ‘*to ensure the effective use of public funds, the details of failed asylum seekers should be obtained.*’<sup>17</sup> Public money was expended when a FFM delegation was sent to Kinshasa seven months after the publication of *Unsafe Return*. I maintain that the Home Office could identify the majority of returnees in *Unsafe Return*. If the guidance of the judges in BK was followed before public funds were expended on a Fact Finding Mission, details of failed asylum seekers were presumably obtained (CPB 4.2.2 – 4.2.3). The findings of *Unsafe Return* were clearly considered to warrant expenditure during a time of economic crisis.

CPB Paragraph 5.2.1 states that all interviews with *Unsafe Return* returnees in DRC were carried out by Catherine Ramos. This is also stated in the COIR March 2012. A UKBA senior caseworker has stated in refusal letters in 2012 that the identity of the interviewer is unknown. This would suggest caseworkers have not read with scrutiny the COIR report. The CPB refers to Catherine Ramos as being a voluntary member of Justice First. The charity has no members. It does have volunteers. Catherine Ramos acts as a volunteer translator and is a Trustee of Justice First.

It is stated that it is difficult to align data conclusions in *Unsafe Return* with 15/17 alleged cases of ill treatment. The CPB cites one example, a reference to political affiliations which, it alleges, appear to total 19. On P. 18 of *Unsafe Return* the political affiliation of twelve returnees is given. The lack of information regarding the remaining five returnees is then stated. Total 17 returnees. It is further stated that two returnees were members of APARECO. The COIS would be aware that APARECO is not a political party which presents itself for election.

(i) **Anonymity**

- The Home Office relies on the argument that the anonymity of returnees in *Unsafe Return* has prevented any investigation into cases. The FFM report

includes information from an anonymous NGO which is quoted in the CPB. A second anonymous NGO was interviewed and did not allow its information to be published in a publicly available document. From information known to the Home Office, the identities of *Unsafe Return* returnees should have been apparent to Home Office officials charged with providing a ‘*considered*’ response to *Unsafe Return*.

- One family was removed from Tees Valley to DRC on the 27 February 2007 charter flight.
- A client of the Southampton and Winchester Visitors’ Group was found, during research in 2011, to be one of the returnees mentioned in the Guardian article of May 2009. His arrest was investigated by British Embassy.
- Only two males were removed from Tees Valley in 2009. Details in e mails and statements from RAS1 and RAS4, given to the Home Office junior minister, Meg Hillier, in March 2010, indicate the year of removal and that negotiations for the extraction from prison of RAS 1 were taking place between June and August 2009. The case of RAS4 attracted regional attention and his MP was in contact with the Home Office before removal. The then Home Secretary, Alan Johnson, was contacted by the family in UK of RAS4, to ask for help in finding him.
- Embassy enquiries about RAS4 and the Guardian returnees were mentioned in correspondence between Terence Robins, Chargé d’Affaires at the British Embassy and Mark Walsh of UKBA dated 23 June 2009. There is no reference number on this letter. Enquiries were also made by the British Embassy in Kinshasa about a fourth returnee.
- Three women were forcibly removed from Tees Valley. One had one child, one had three children and one was removed in a wheelchair with two children under five.
- Only one Tees Valley mother with a child took voluntary return to DRC in 2010.
- *Unsafe Return* refers to a male IOM returnee. Names of the IOM staff who dealt with the allegation of arrest and theft of reintegration money and who liaised with Mrs. Norton over arrangements for him to access IOM, Kinshasa, are given on  
P. 10 of *Unsafe Return*’

## **Conclusion**

In 2003 the Immigration Advisory Service Research and Information Unit published ‘Home Office Country Assessments: An Analysis’.<sup>18</sup> IAS found that a significant amount of material in these assessments was ‘*inaccurate, wrongly sourced and/or did not give information of key relevance to assessing asylum claims.*’ The assessments were found to contain basic inaccuracies; out of date material; omission of detail potentially relevant to an asylum claim; misleading presentation of material; lack of analysis leading to a falsely positive outlook; plagiarism; inappropriate use of source



material. The report concluded that the assessments were frequently misleading and inaccurate, leading to poor decision making, including at appeal stages. A recommendation was made for an independent documentation centre to be set up. *'Decision making will never be accurate, reliable and above all independent without country information which reflects these attributes.'*

The analysis in this updated report of the Home Office documents relating to DRC leads to the conclusion that these same criticisms are pertinent in 2013 and that the CPB on returns to DRC is unsafe.

The monitoring of returnees up until September 2013 indicates that returnees from the UK have been detained at N'djili airport or at home and have been interrogated and ill treated by the Congolese authorities. As many as three out of eleven returnees whose post return experience was monitored in 2012 are feared dead and a fourth has made no contact following arrival at N'djili airport. Voluntary returnees have also encountered problems at the airport.

### **Recommendations**

- A moratorium on removals to DRC
- Setting up an independent document centre as recommended by IAS
- Home Affairs Select Committee to have access to all the evidence from the FFM to Kinshasa and information not disclosed under FOI requests
- Home Office and FCO to engage with Congolese families in UK whose relatives were imprisoned and ill treated after removal or who have died
- All Home Office documents relating to DRC to be reviewed
- Home Office to engage meaningfully with Congolese and UK organisations which hold evidence of ill treatment of returnees
- British Embassy knowledge of the circumstances surrounding the imprisonment of June 2012 returnees to be investigated
- The re-documentation of returnees be investigated by a parliamentary committee
- All subsequent lines of enquiry and investigation as a result of the above recommendations to be totally independent, transparent and accountable.

### **ANNEXE A**

#### **MEDIA**

##### **Translation of broadcast on Congolese State Television**

The arrival of the Belgian returnees was filmed and broadcast on Lingala Facile on Congolese State Television.<sup>13</sup> A translation was made from Lingala to French and then to English.

La Belgique vient de refouler 19 combattants, ceux-là qui frappaient et faisaient souffrir les gens là-bas. Suivez ce reportage. Ils sont arrivés à la nuit d'aujourd'hui. Etonnant ! Nous sommes minuit ici à l'aéroport international de N'Djili Airbus A330-200, Nouvelle génération de L'armée belge vient de s'annoncer à la tour de

contrôle, sur un vol irrégulier. Là dedans 90 policiers belges, ils sont de leur Kin-Maziere (service de renseignements congolais). Dans ces services de renseignements, ils y a des médecins, psychologues et ils étaient au grand complet pour accompagner les combattants qui ont fait du désordre en Belgique. Parmi eux, il y a des sans papiers qui ont fait du désordre après les élections et ceux qui ont menacé le président du Senat, le gouverneur moise Katumbi et d'autres autorités congolaise qui entaient parti au Schengen.

Regardez comment ils descendent, Mes frères et sœurs regardez bien, peut-être vous verrez la face de votre frère, il peut être parmi eux. En bas, les propriétaires de loyer, les gens de la Direction Générale de Migration (DGM) qui les accueillent très bien et les identifient un par un pour savoir s'ils sont bien arrivés. Regardez leur bagage ici, Ces sacs sont appelés en Kingwandi Mogwenagara, c'est-a-dire les sacs qu'on amène au marché.

C'était, peu importe là-où on vous trouve, il n'y a pas d'explication, on vous amène directement dans l'avion, retour au bercail. Par ce que « Mwanza (trop parlé) », par ce que vous parlez beaucoup et vous dites des choses que vous ne comprenez pas. Voila, aujourd'hui vous venez ajouter encore une charge à la famille. La Belgique et toute l'Union Européenne disent qu'ils ont accompli leur promesse à l' egard du gouvernement congolais. Tous ceux qui font du désordre soient arrêtés un par un, avec les sans papiers. Et même s'il change de nationalité, si on l'arrête, qu'on l'amène auprès des autorités congolaises.

Cette opération est juste le début, mais la série continue, c'est-a-dire, retour au pays avec Mogwenagara qui est le sac qu'on amène au marché, comme le disent Ngwandi. Lorsqu'ils ont quitté l'aéroport de N'djili « eh Nga eeh (exclamation de regret) » direction, à la prison de Makala, ils sont parti au CPRK, soyez les bienvenues. Là dedans, ils vont écouter la musique de Bolondo Musica et ils vont manger « Vungule » avec impact et idéologie. Eeeh, les belges, vous êtes méchants, un grand nombre d'agents juste pour repatrier un petit nombre de congolais.

La mission accomplie dans son entièreté. Ils sont entrés dans l'avion, et rentrés en Belgique pour chercher d'autres combattants. Papa et Maman, tes frères et sœurs qui sont en Europe qui font du désordre, voici leur fin. Donnez les conseils.

Belgium has just refouled 19 combatants. Those who assaulted and made people suffer there. Listen to this report. They arrived tonight. Amazing. It is midnight here at Ndjili international airport. Airbus A330-200, the new generation of the Belgian army, has just announced its arrival to the control tower, a non—scheduled flight. Inside ninety Belgian police officers, from their equivalent of Kin Mazière. In these secret services there are doctors, psychologists, the whole team, to accompany the Combatants who have caused disturbances in Belgium. Amongst them, those without papers who caused trouble after the election and who threatened the President of the Senate, Governor Moise Katumbi and other Congolese dignitaries who had gone to Schengen. Look how they get off the plane. Brothers and sisters look carefully, perhaps you will see the face of your brother, he may be amongst them. At the foot of the plane, the owners of the house, DGM (Congolese Immigration Authorities) who *welcome* them so well and identify them one by one, to know they have arrived safely. Look at their luggage here. These bags are called in Kingwandi

‘Mogwenagara’, that is, bags which are taken to market. It does not matter where you are found, no explanation, you will be taken straight to the plane, back to where you came from. Because you talk nonsense, you talk too much. And you talk about things you do not understand. Here you are, another burden on your family,

Belgium and the whole European Union say that they have fulfilled the promise they made to the Congolese government. All those who cause disturbances are arrested one by one with those without papers. Even if they change nationality, if they are arrested, they will be handed to the Congolese authorities. This operation is just the beginning, but the series will continue, that is, removal back with Mogwenagara, the bag they take to the market, as the Ngwandi say.

When they left N’djili airport, (exclamation of regret) in the direction of Makala prison, they left for CPRK. Welcome. In there they will listen to the music of Bolondo Musica and they will eat ‘vungule’ with passion and discipline. Belgians, you are wicked, such a great number of officers to repatriate just a few Congolese. The mission has been accomplished. They returned to the plane and to Belgium to search for other Combatants. Mother and fathers your brothers and sisters who are in Europe, who cause trouble, see their fate. Give them advice

(ii) The headline on the front page of the newspaper, ‘Tempête des Tropiques’ on 8 June 2012 was :

**WHEN DRC IS AT WAR AND IN THE MIDDLE OF A POST ELECTORAL CRISIS  
A CHARTER FLIGHT BRINGS BACK CONGOLESE EXPELLED FROM LONDON**

**The aircraft chartered by the British Government landed this morning at N’djili airport, in violation of the International Convention on refugees.**

**This reminds us of the fate of the Congolese expelled from South Africa,  
{ }**

**On their arrival at Loano airport, in Lubumbashi, they were put into lorries by police and taken directly to Kasapa prison where they were held for several days without knowing the charges against them.**

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