Australian Government

Refugee Review Tribunal

Country Advice Democratic Republic of Congo

Democratic Republic of Congo – COD35823 – Asylum seekers – Returnees – Movement for the Liberation of Congo

12 December 2009

1. Please provide information on returnees and failed asylum seekers to DRC and in particular whether people associated with the Movement for the Liberation of Congo (MLC) would be subject to ill-treatment or harm.

The question of the safety or not of the return of failed asylum seekers to the Democratic Republic of Congo has been the subject of considerable interest and debate in recent years. The United Kingdom in particular has seen high levels of opposition to the government's contention that returned asylum seekers *per se* are not at risk of persecution.

A concise review of the events leading up to the re-commencement of returns to the country at the beginning of 2009, the basis for that decision, and other relevant reports follow.

In 2005, the UK Immigration Appeal Tribunal concluded that returned failed asylum seekers were not at risk of persecution 'for that reason alone'. The Tribunal accepted that returnees may be required to pay a fine (essentially a bribe). Only those asylum seekers with other characteristics or risk factors were seen to be of interest to the authorities, including those with a 'nationality or perceived nationality of a state regarded as hostile to the DRC, Rwanda in particular, those who were Tutsi or perceived to be Tutsi or Banyamulenge; and those who had or were perceived to have 'a military or political profile in opposition to the government'.[1]

In response to a BBC program aired in December 2005[2] the UNHCR issued a statement in view of the program's allegations that failed asylum seekers returned to the DCR were subject to ill-treatment. The UNHCR believed that such individuals would be questioned at the Kinshasa airport on arrival, as would any person travelling without full documentation, or who had been absent for a long period of time. They may be released after perhaps 1 to 3 hours, or they may be transferred to a city detention facility where further verification checks may be carried out. The NGO 'Voix des Sans Voix' (VSV –'Voice of the Voiceless') had provided information to suggest that Western countries were returning failed asylum seekers to DRC but had no reports that such persons were detained or tortured on arrival. Some individuals had claimed having to pay money amounts of US$5-10. The UNHCR report stated that the IOM Kinshasa, MONUC and NGO ASADOH (Association Africain de

[1] UK Immigration Appeal Tribunal 2005, *AB and DM (Risk categories reviewed – Tutsis added) DRC v. Secretary of State for the Home Department* CG [2005] UKAIT 000118, 21 July, 47, 51, - Attachment 1

[2] Jenny Cuffe 2005, 'Asylum questions for DR Congo, *BBC*, 1 December, http://news.bbc.co.uk/2/low/africa/4483364.stm - Accessed 30 November 2009 – Attachment 2

Defense des Droits de l'Homme) had no reports at that time of ill-treatment of failed asylum seekers.[3]

This is the most recent advice in relation to this matter issued by UNHCR.

In 2007, the UK Home Office was forced to suspend deportations of failed asylum seekers to the DRC in August of that year at the instruction of the High Court, pending a hearing by the Asylum and Immigration Tribunal (AIT) to be held the following month. The hearing was to be a country guidance case involving testimony by a number of witnesses, including Congo immigration and security staff. The action to prevent deportations was launched by 10 asylum seekers.[4]

The decision was eventually made and published in a judgement of over 140 pages, in which the Tribunal found against the applicant, and that 'DRC failed asylum seekers do not per se face a real risk of persecution or serious harm or treatment contrary to Article 3 ECHR.'[5]

In a decision made on 3rd December 2008, the Court of Appeal upheld the Tribunal's finding.[6]

In early 2009, the BBC reported that deportations were set to re-commence in early February. The decision was criticised by the Congolese community in the UK and others.[7]

The *Guardian* claimed in an article in May 2009 that a charter flight had flown to Kinshasa with 24 Congolese aboard, and other individuals had also been deported in March on other flights. The report claimed that one of those returned earlier had been taken to the police headquarters Kin Maziere, the general directorate of intelligence and special services in Kinshasa, where he had been tortured for three weeks.[8]

A Teesside Member of Parliament wrote to the Immigration Minister (Home Office) Phil Woolas after one of his constituents was deported – and subsequently imprisoned. According to one news report, the man deported had been looking after two younger sisters, who had been allowed to remain in the UK.[9] No further information on the fate of the man deported was found.

Current position – as outlined in the UK *Operational Guidance Note – Democratic Republic of Congo* (December, 2008).

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[3] UNHCR 2006, 'Response to Information Request – DRC – Treatment of rejected asylum seekers', 19 April, Attachment 3

[4] 'Judge halts DR Congo deportations' 2007, *BBC*, 23 August, http://news.bbc.co.uk/2/hi/uk_news/6960801.stm - Accessed 7 December 2009 - Attachment 4

[5] UK Asylum and Immigration Tribunal 2007, *BK (Failed Asylum Seekers) Democratic Republic of Congo v. Secretary of State for the Home Department*, CG [2007] UKAIT 00098, 18 December - Attachment 5

[6] United Kingdom: Court of Appeal (England and Wales) 2008, *BK (Democratic Republic of Congo) v. Secretary of State for the Home Department*, [2008] EWCA Civ 1322, 3 December - Attachment 6

[7] 'Campaigners fight DR Congo removals' 2009, *BBC*, 29 January, http://news.bbc.co.uk/nolpda/ukfs_news/hi/newsid_7857000/7857857.stm - Accessed 7 December 2009 - Attachment 7

[8] 'Britain sending refused Congo asylum seekers back to threat of torture' 2009, *The Guardian*, 27 May, http://www.guardian.co.uk/world/2009/may/27/drc-congo-deport-torture - Accessed 27 November 2009 - Attachment 8

[9] 'Stockton North MP challenges Government Immigration Minister' 2009, *Evening Gazette*, 30 May, http://www.gazettelive.co.uk/news/teesside-news/2009/05/30/stockton-north-mp-challenges-government-immigration-minister-84229-23744519/2/ - Accessed 4 December 2009 - Attachment 9

This advice relies on the previous UK AIT judgement to conclude that membership of an opposition party alone does not provide risk of persecution. The advice states that;

> Cases in which the applicant has a record of political activity and of ill-treatment amounting to persecution, and establishes a well-founded fear of future persecution are therefore likely to be very rare…Members of political parties who have in the past encountered ill-treatment by the authorities will not necessarily have a well-founded fear of persecution in the future. Former rebel group forces are represented in the recently elected National Assembly and the Senate having stood in the DRC's first peacetime democratic elections.[10]

In lengthy discussion of expert and applicant witness evidence presented in the BK (AIT) case, the issue of the payment of bribes is discussed at length. The Tribunal noted in relation to this issue the very important difference between those returnees who were likely to be in a position to be able to leave the airport having paid some kind of bribe, any level of which would be 'modest by Western European standards' and those with other risk factors;

> 322. We would emphasise that in reaching the above conclusions we have taken into account that there were items of (or parts of) the evidence before us indicating that bribes demanded can be prohibitively large sums and that returnees can be detained because they have no money, but taken as a whole we did not find those items (or parts of the evidence) reliable. Whilst we are prepared to accept that in rare cases prohibitive sums may be demanded and/or persons are detained because they cannot pay, the evidence as a whole does not demonstrate that this is generally happening or that it happens sufficiently to give rise to a real risk of it happening to returned failed asylum seekers as such.
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> 323. Accordingly we are not persuaded that for deportees or failed asylum seekers the difficulties they commonly face in being expected and required to pay a bribe amounts to treatment contrary to Article 3 ECHR or to serious harm.
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> 324. The same cannot be said, however, for the nature of the requests/demands for bribes once a person is transferred to detention facilities elsewhere. We of course have not found that failed asylum seekers will be transferred in this way, but for individuals who will face such transfer because of specific risk factors (e.g. those who are on a wanted list), the preponderance of the evidence, at least as presented to us in this appeal and (with express concession by Miss Giovannetti for the purposes of this appeal), is that, once in detention away from the airport, they will be in an extremely vulnerable situation characterised by physical and verbal abuse of a serious kind. They are no longer involved in a process which can normally be negotiated by paying a bribe in circumstances which are not oppressive. They have lost their liberty and face targeted ill treatment.[11]

In discussion and answer to a question in the UK House of Lords on 18 June 2009, the Parliamentary Under-Secretary of State, Home Office, Lord West of Spithead, defended the robustness and strength of the work of the Country of Origin Information Group, the breadth of sources on which it drew in making its decisions, and the measures taken by it and the Home Office to constantly monitor and update relevant country information, in particular reference to a question concerning the safety of failed asylum seekers returned to DRC. The particular circumstances of each individual were taken into account in arriving at a decision, and if there were a risk of harm, 'we will not return the person', the Parliamentary Under-

[10] UK Home Office 2008, *Operational Guidance Note – Democratic Republic of Congo*, 23 December, 3.6.11, p. 5 - Attachment 10

[11] UK Asylum and Immigration Tribunal 2007, *BK (Failed Asylum Seekers) Democratic Republic of Congo v. Secretary of State for the Home Department*, CG [2007] UKAIT 00098, 18 December - Attachment 5

Secretary stated. Lord West also referred to the *Guardian* article whose claims had been investigated but found to be without substance.[12]

Other reports

In a report published in June 2009 as part of a project funded by the European Community on country return information (part of a larger EU funded project covering a number of countries), the process for returning arrivals is described in detail. Arrivals of deportees who are Congolese nationals are monitored by NGO VSV and it is has been able to operate at the N'djili airport since 2004. The returnee will be questioned by the Directorate General of Migration and returnees will be subject to a high level of searching of belongings and extortion of money, 'for example if the vaccination certificate isn't valid', and this can continue by other police and military in other areas of the airport, based on the belief that returnees have some wealth. The report states in respect of those with an unsuccessful asylum claim that such individuals are 'not prosecuted unless he has earlier committed a crime for which he has not been pardoned or amnestied. However the candidate can be hassled by agents willing to take some of his goods or personal effects'.[13]

Amnesty International in its 2009 submission to the UN UPR Working Group of the Human Rights Council commented on the treatment of political prisoners and others detained without trial, and the strong likelihood those originating from Equateur province would be at higher risk of such detention. The submission stated that it was concerned that

> many if not all of these individuals are detained solely because they share Jean-Pierre Bemba's ethnicity or geographical origin in Equateur province, and has repeatedly called for their prompt trial or release. Four of them have died in pre-trial detention from preventable illnesses and ill-health allegedly aggravated by torture. In July 2008, the government ordered the release of 258 military and civilian detainees from Kinshasa's central prison. The detainees had been held unlawfully without trial for long periods, some since 2004. While welcome, the releases appear to follow no organized or transparent judicial processes.[14]

As noted in the UN Security Council report of 4th December 2009, the MLC lost control of Equateur province in November when the MLC Governor was removed after embezzlement charges were brought against him:

> 23. On 13 November, following elections organized in Equateur province by the Commission Electorale Indépendante, the former Mouvement pour la libération du Congo (MLC) Governor of Equateur, who had been dismissed by the Supreme Court on charges of embezzlement, was replaced by an independent candidate, Jean-Claude Baende. Equateur was the only remaining province under the leadership of the opposition MLC party. [15]

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[12] (United Kingdom, Parliamentary Debates, House of Lords, 18 June 2009, Column 1175, (Lord Bishop of Winchester), http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90618-0001.htm - Accessed 27 November 2009 – Attachment 11

[13] Country of Return Information Project 2009, *Country Sheet – Democratic Republic of Congo (DRC)*, June, http://www.cri-project.eu/ - Accessed 3 December 2009, para 1.3.1, p. 11; para 1.4.2, p. 12 – Attachment 12

[14] Amnesty International 2009, 'Democratic Republic of Congo - Submission to the UN Universal Periodic Review' 13 April, http://www.amnesty.org/en/library/asset/AFR62/009/2009/en/28861dee-1df4-4f4d-af4f-bc9f53bae608/afr620092009en.html - Accessed 1 December 2009 - Attachment 13

[15] UN Security Council 2009, *Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, 4 December - Attachment 14

The UN Human Rights Council Universal Periodic Review report incorporating information from other bodies (submitted General Assembly September 2009) included the statement;

> 36. The High Commissioner stressed that other political groups such as the Mouvement de Libération du Congo (MLC) of former Vice-President Bemba were the targets of threats, arbitrary arrests, incommunicado detention, torture and other forms of intimidation or repression.138 The Secretary-General and MONUC reported on the March 2007 events in Kinshasa, when security forces assaulted the Bemba security detail and about 300 persons were killed.139 The High Commissioner indicated that in 2008, dozens of new cases of arbitrary detention of persons affiliated with MLC were reported.[16]

The US State Department provided a summary of the general conditions of the country's prisons:

> Conditions in most prisons remained harsh and life-threatening.
>
> In all prisons except the Kinshasa Penitentiary and Reeducation Center (CPRK), the government had not provided food for many years--prisoners' friends and families provided the only available food and necessities. Malnutrition was widespread. Some prisoners starved to death. Prison staff often forced family members of prisoners to pay bribes for the right to bring food to prisoners.
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> Temporary holding cells in some prisons were extremely small for the number of prisoners they held. Many had no windows, lights, electricity, running water, or toilet facilities.
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> According to the UNJHRO, on January 17, inmates took the director of Kalemie Central Prison in Katanga Province hostage in protest against the chronic food shortage in the prison. The inmates had not eaten for three days. They released him the same day.
>
> During the year many prisoners died due to neglect. For example, the UNJHRO reported in February that over a two-month period, 21 prisoners died from malnutrition or dysentery in prisons in Uvira, Bunia, and Mbuji-Mayi.
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> On April 17, local judicial authorities visiting Bunia Central Prison in Orientale Province observed that three prisoners had died that month due to malnutrition.
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> Between June 21 and 25, five inmates died of malnutrition in Mbuji-Mayi Central Prison in Kasai Oriental Province. The UNJHRO stated 12 other inmates were in critical condition.
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> …
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> According to MONUC, fewer than 90 of the country's 230 prisons actually held prisoners; while there were no reports of the government officially closing prisons during the year, dozens of prisons that had not functioned for years remained closed. In some cases security personnel who were detained or convicted for serious crimes were released from prison by military associates or by bribing unpaid guards. Most prisons were dilapidated or seriously neglected. Prisoners routinely escaped from prisons in all provinces.
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> …Despite President Kabila's 2006 decision to close illegal jails operated by the military or other security forces, there were no reports of illegal jails being closed during the year.

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[16] UN Human Rights Council 2009, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Democratic Republic of the Congo*, 18 September 2009, A/HRC/WG.6/6/COD/2 - Attachment 15

According to MONUC the security services, particularly the intelligence services and the GR, continued to operate numerous illegal detention facilities characterized by harsh and life threatening conditions. Authorities routinely denied family members, friends, and lawyers access to these illegal facilities.

During the year the UNJHRO confirmed cases of torture in detention centers run by security services. For example, in April, six inmates in Musenze Central Prison in Goma, North Kivu, claimed that ANR agents tortured them in an ANR holding cell from March 29 to April 1, before transferring them to the prison. UNJHRO officers observed marks on their bodies that were consistent with their claims.[17]

List of Attachments

1. UK Immigration Appeal Tribunal 2005, *AB and DM (Risk categories reviewed – Tutsis added) DRC v. Secretary of State for the Home Department* CG [2005] UKAIT 000118, 21 July. (REFINFO)

2. Jenny Cuffe 2005, 'Asylum questions for DR Congo, *BBC*, 1 December, http://news.bbc.co.uk/2/low/africa/4483364.stm - Accessed 30 November 2009.

3. UNHCR 2006, 'Response to Information Request – DRC – Treatment of rejected asylum seekers', 19 April. (REFINFO)

4. 'Judge halts DR Congo deportations' 2007, *BBC*, 23 August, http://news.bbc.co.uk/2/hi/uk_news/6960801.stm - Accessed 7 December 2009.

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

6. United Kingdom: Court of Appeal (England and Wales) 2008, *BK (Democratic Republic of Congo) v. Secretary of State for the Home Department*, [2008] EWCA Civ 1322, 3 December. (REFINFO)

7. 'Campaigners fight DR Congo removals' 2009, *BBC*, 29 January, http://news.bbc.co.uk/nolpda/ukfs_news/hi/newsid_7857000/7857857.stm - Accessed 7 December 2009.

8. 'Britain sending refused Congo asylum seekers back to threat of torture' 2009, *The Guardian*, 27 May, http://www.guardian.co.uk/world/2009/may/27/drc-congo-deport-torture - Accessed 27 November 2009.

9. 'Stockton North MP challenges Government Immigration Minister' 2009, *Evening Gazette*, 30 May, http://www.gazettelive.co.uk/news/teesside-news/2009/05/30/stockton-north-mp-challenges-government-immigration-minister-84229-23744519/2/ - Accessed 4 December 2009.

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[17] US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Democratic Republic of the Congo*, February, Attachment 16

10. UK Home Office 2008, *Operational Guidance Note – Democratic Republic of Congo*, 23 December.

11. United Kingdom, Parliamentary Debates, House of Lords, 18 June 2009, Column 1175, (Lord Bishop of Winchester), http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90618-0001.htm - Accessed 27 November 2009.

12. Country of Return Information Project 2009, *Country Sheet – Democratic Republic of Congo (DRC)*, June, http://www.cri-project.eu/ - Accessed 3 December 2009.

13. Amnesty International 2009, 'Submission to the UN Universal Periodic Review' 13 April, http://www.amnesty.org/en/library/asset/AFR62/009/2009/en/28861dee-1df4-4f4d-af4f-bc9f53bae608/afr620092009en.html - Accessed 1 December 2009.

14. UN Security Council 2009, *Thirtieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, 4 December. (REFINFO)

15. UN Human Rights Council 2009, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1 - Democratic Republic of the Congo*, 18 September. (REFINFO)

16. US Department of State 2009, *Country Reports on Human Rights Practices 2008– Democratic Republic of the Congo*, February, Section 1c.