



# OPERATIONAL GUIDANCE NOTE

## DEMOCRATIC REPUBLIC OF CONGO (DRC)

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## 1. Introduction

- 1.1** This document provides UK Border Agency (UKBA) case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of the Democratic Republic of Congo (DRC) including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the

situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

**2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

[www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/congo-democratic-republic](http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/congo-democratic-republic)

**2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

## **2.3 Actors of protection**

**2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

**2.3.2** The state security forces consist of the PNC [Congolese National Police], which operates under the Ministry of Interior and has primary responsibility for law enforcement and public order. The PNC includes the Rapid Intervention Police and the Integrated Police Unit. The ANR [National Intelligence Agency], overseen by the president's national security advisor, is responsible for internal and external security. Other agencies include the military intelligence service of the Ministry of Defence; the DGM [Directorate General of Migration], responsible for border control; the GR [Republican Guard], which reports directly to the presidency; and the [DRC armed forces] FARDC, which is part of the Ministry of Defence and generally responsible for external security, but which also carries out an internal security role. State security forces generally remained undisciplined, corrupt, lacked training, were grossly underfunded, and received little pay.<sup>1</sup>

**2.3.3** In all areas of the DRC, state security forces continued to act with impunity throughout 2010, committing many serious abuses, including unlawful killings, disappearances, torture, rape and engaging in arbitrary arrests and detention. The integration of ex-combatants and members of rebel and militia groups (RMGs) into state security forces and governance institutions was slow and uneven.<sup>2</sup>

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<sup>1</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d., Role of the Police and Security Apparatus, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>2</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011,

- 2.3.4** There were reports of disappearances caused by government forces. Authorities often refused to acknowledge the detention of suspects, and in some cases they detained suspects in secret detention facilities. There were no reports of government efforts to investigate disappearances and abductions, including those in which security force members were accused of involvement. RMGs and the FARDC units kidnapped numerous persons, generally for forced labour, military service, or sexual services and there were reports that some corporations facilitated such killings and other abuses by sourcing minerals from areas controlled by these armed entities. Many of these victims disappeared.<sup>3</sup>
- 2.3.5** MONUSCO (the United Nations Organization Stabilization Mission in the Democratic Republic of Congo) took over from an earlier UN peacekeeping operation on 1 July 2010. The new mission has been authorized to use all the necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts.<sup>4</sup> The MONUSCO forces are concentrated in eastern DRC, with a reserve force capable of redeploying rapidly elsewhere. The Security Council extended MONUSCO's mandate with the force scheduled to stay until 28 June 2012.<sup>5</sup>
- 2.3.6** At the beginning of 2010, the law did not specifically criminalise torture however, during the parliamentary session between March and June 2010 a law criminalising torture was adopted. Despite this reform, the government did not effectively enforce the law, and during 2010 there were many credible reports by informed sources that security services tortured civilians, particularly detainees and prisoners and employed other types of cruel, inhuman and degrading punishment. Most cases of torture were perpetrated by members of the police, the ANR and the FARDC, according to credible sources. There were very few reports of government authorities taking action against members of state security forces responsible for these acts.<sup>6</sup>
- 2.3.7** The law prohibits arbitrary arrest or detention; however, state security forces routinely arbitrarily arrested and detained persons.<sup>7</sup> State security forces generally remained undisciplined, corrupt, lacked training, were grossly short of funds and received a small wage. There were mechanisms available to investigate abuses by state security forces and to deal with internal discipline problems, although the mechanisms remained weak and ineffective, particularly for addressing misconduct by middle and high-ranking officials. However, some progress was made during 2010 relating to internal discipline of the PNC, as authorities charged eight PNC officers following the disappearance of human rights defender Fidele Bazana Edadi and the killing of his colleague, long-time activist Floribert Chebeya. Nevertheless, several rule of law experts in the country and almost 80 local and international human rights non-governmental organisations (NGOs) have expressed serious concerns about the credibility and independence of the investigation and the trial.<sup>8</sup>

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<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>3</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1b Disappearances, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>4</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 9.25) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>5</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (paras 9.26/28) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>6</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1c Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>7</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Arbitrary Arrest and Detention, <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>8</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

**2.3.8** Abuses by FARDC soldiers were dramatically reduced in areas where they were paid and fed. The government prosecuted and disciplined few security force personnel for abusing civilians during 2010 but established the Operational Military Court to address abuses committed by FARDC officers during military operations. The Court made some progress in prosecuting a small number of low-ranking perpetrators. However it lacked adequate staff, the ability to conduct its own independent investigations and the power to undertake high level prosecutions and there remained concerns about the Court's respect for due process.<sup>9</sup> During the year the government also took few significant steps to reform the state security forces, and three important pieces of legislation to reform the armed forces were drafted. The FARDC continued to co-operate with the EU Mission to provide assistance with improving the FARDC's salary distribution system, prevent fraud and embezzlement and ensure payments reached soldiers.<sup>10</sup>

**2.3.9** In July 2009, the government adopted a policy of "zero tolerance" for human rights violations by the state security forces following intense criticism by donor countries and international human rights groups. The FARDC disseminated instructions to all soldiers that protecting the population was their duty and warned that rape and other crimes against civilians would be punished. In December 2009 several members of the Universal Periodic Review Working Group (UPRWG) congratulated the government for adopting this policy, but expressed concern over severe deficiencies in its implementation.<sup>11</sup> In March 2012 the UN released a report detailing that, in the context of the 2011 presidential and legislative elections, members of the Congolese defence and security forces were "responsible for multiple cases of arbitrary executions and enforced disappearances of civilians and excessive use of force, in particular by firing live ammunition at civilians during demonstrations".<sup>12</sup>

**2.3.10** Some Progress has been made with regard to the reform of the police, including the adoption by Congolese authorities on 26 October 2009 of a 15 year strategic plan and a three year action plan to build the capacity of the National Police. During the second half of 2009 MONUC police with assistance provided by the Government of Japan, trained 8,625 National Police officers, including 666 women and 230 more were trained and deployed by MONUC along strategic axes in the east. A total of 709 police officers were also trained in Ituri, in addition to the training of 210 judiciary police officers.<sup>13</sup> More than a hundred PNC officers, including three female from the Mobile Intervention Group, received training from MONUSCO police on crowd control, restoration of public order, police code of ethics and human rights.<sup>14</sup>

**2.3.11** The UK Department for International Development (DFID) is funding a £60 million programme over five years to promote improved security sector accountability and police reform in the DRC. The programme is focussed on supporting the development of an effective police service that is responsive to the needs of the communities, acts with respect for human rights and within which officers are accountable for their actions.<sup>15</sup>

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<sup>9</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Role of the Police and Security Apparatus. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>10</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Role of the Police and Security Apparatus. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>11</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Role of the Police and Security Apparatus. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>12</sup> [MONUSCO/UN Office of the High Commissioner for Human Rights, Report of the United Nations Joint Human Rights Office on serious Human Rights violations committed by members of the Congolese Defence and Security Forces in Kinshasa in the DRC between 26 November and 25 December 2011., March 2012](#), paragraphs 49 and 50.

<sup>13</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 9.10)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>14</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 9.11))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>15</sup> UK Foreign and Commonwealth Office – Human Rights and Democracy 2010: The 2010 Foreign & Commonwealth Office Report Section V11 Human Rights in Countries of Concern, DRC 31/03/2011 [http://www.ecoi.net/local\\_link/157763/260149\\_en.html](http://www.ecoi.net/local_link/157763/260149_en.html)

- 2.3.12** Created in 2007, the Inspection General d'Audit (IGA) was the internal discipline system within the PNC. As an internal oversight mechanism, it aimed, among other things, to address police corruption and other types of police misconduct and human rights violations perpetrated by the police force. While the existence of the IGA was considered a positive legal step, at the end of 2010 it was not fully functioning, suffering from a lack of infrastructure, training and awareness regarding its role and existence.<sup>16</sup>
- 2.3.13** The law provides for an independent judiciary, however, the judiciary was inefficient, corrupt, and subject to influence. Judges, who were poorly compensated, remained subject to influence and coercion by officials and other influential individuals. Judicial corruption remained pervasive, particularly among magistrates. The judicial system was financed with less than 1 percent of the national budget and was poorly staffed, with a very limited presence outside of Kinshasa. A study by an international NGO concerned with justice reform identified a variety of challenges that continued to hinder the planning and execution of the judicial branch budget, including declining annual budgets allocated to the judicial branch; failure to pay salaries of court workforce on a regular basis; failure to allocate costs for court operations; and the lack of transparency in the use of funds allocated to the judiciary. In rural areas, where there were often no courts within a 300-mile radius, justice was administered on an ad hoc basis by any available authority, creating extraordinary opportunities for corruption and abuse of power. During 2010 some observers asserted that members of both the executive and legislative branches were content to keep the judiciary weak and ineffective because it protected their power and allowed them to engage in corruption and abuse of power without consequence.<sup>17</sup>
- 2.3.14** At the end of 2011, Amnesty International noted that “The judiciary is far from independent, and interference is common in both the military and civilian justice systems. In the military justice system, officers shield soldiers under their command from justice and the political and military hierarchy protects senior military figures. This is of particular concern in a country where the army is one of the main perpetrators of crimes under international law. Corruption and the widespread belief that the system is corrupt are endemic and affect every level of the judicial chain.”<sup>18</sup>
- 2.3.15** In addition, a report in 2012 from the UN Secretary-General stated that “a significant number of cases of sexual violence committed by armed groups and FARDC elements have not been followed up through judicial means. Some cases are not investigated, or if they are, trials are not held, or sentences are not served by the perpetrators. Of particular concern is the impunity enjoyed by high ranking officers responsible for human rights violations, including sexual violence”.<sup>19</sup> The January 2012 report of the UN High Commissioner for Human Rights (covering January to October 2011), concluded that: “The structural weaknesses of State institutions, in particular the judicial system and security forces, together with practices of corruption and the presence of armed groups, result in impunity and foster systemic human rights violations. These include arbitrary and summary executions, arbitrary and illegal arrests and detentions, ill-treatment, torture, sexual violence and looting.”<sup>20</sup>
- 2.3.16** If the applicant’s fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then it is improbable that they can apply to those authorities for protection. Consideration needs to be given as to whether the fear is based on a localised, random or national threat.

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<sup>16</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1d Role of the Police and Security Apparatus. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>17</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1e Denial of Fair Public Trial and Section 4 Official Corruption and Government Transparency. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>18</sup> [Amnesty International, The time for justice is now: New strategy needed in the Democratic Republic of the Congo, August 2011, section 1.](#)

<sup>19</sup> [UN General Assembly/Security Council, Conflict-related sexual violence: Report of the Secretary-General, 13/01/2012, paragraph 32.](#)

<sup>20</sup> [UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012, Summary.](#)



**2.3.17** If the ill-treatment/persecution is at the hands of non-state agents, then the provision of state protection is unlikely to be available due to the structural weakness of the security services and the criminal justice system, also the widespread existence of corruption in state institutions. Case owners should assess the availability of effective protection on a case by case basis taking into account the specific characteristics of the claimant, the area of operation of the particular group; and evidence of effective State intervention against any criminal activity or human rights violations perpetrated by these agents.

## **2.4 Internal relocation.**

**2.4.1** Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

**2.4.3** The DRC covers a total area of 2,344,885 sq km and has population estimated at 67.8million.<sup>21</sup> The law provides for freedom of movement within the country, foreign travel, emigration and repatriation; however the government sometimes restricted these rights. State security forces established barriers and checkpoints on roads, at ports, airports and markets, ostensibly for security reasons and routinely harassed and extorted money from civilians for supposed violations, sometimes detaining them until payment was received. The government forced travellers to pass through immigration procedures during domestic travel at airports, ports and when entering and leaving towns and implemented a \$36 fee for passengers travelling internally on MONUSCO flights.<sup>22</sup>

**2.4.4** There was no reliable public transportation system in the DRC. Congested vans and taxis, which often did not meet western safety standards, served as public transportation in Kinshasa. Few independent taxis were available and most did not meet safety standards. The DRC had few viable roads or railways, but does have several major waterways. Boat transport was widely used, however the vessels were often filled to capacity or badly maintained so accidents were commonplace. There were multiple accidents in 2011 on both rivers and lakes resulting in hundreds of fatalities. The only way to get around the country quickly was by plane.<sup>23</sup>

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<sup>21</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 1.02))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>22</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2 d Freedom of Movement . <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>23</sup> US Department of State Bureau of Consular Affairs – 12 January 2012 - [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_5645.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_5645.html)

- 2.4.5** The report by the UN Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo of January 2012 states that “Insecurity and clashes between armed groups and FARDC caused new population movements in the eastern provinces” with an estimate of “approximately 1.71 million internally displaced persons (IDPs) in the Uélé districts, Maniema, the Kivus, and northern and central Katanga province as at 1 October 2011. That included roughly 1 million IDPs in North and South Kivu provinces and approximately 500,000 in Orientale province”.<sup>24</sup> The same report noted that “Humanitarian access continued to be a major concern for United Nations and non-governmental humanitarian partners”.<sup>25</sup> UNHCR reported that renewed violence since late November 2011 in the eastern region has “forced over 100,000 civilians out of their homes”.<sup>26</sup> In February 2012, UNHCR further reported that “internally displaced people have been tortured and killed by armed elements in the IDP camps of North Kivu province”.<sup>27</sup> The organisation DARA noted high mortality rates in DRC due to food insecurity and epidemics of preventable diseases, but stressed that “the greatest concern continues to be protection of civilians. Violence and conflict are still widespread across many parts of the country. Poor transportation infrastructure, bureaucratic procedures and corruption make it costly and difficult to regularly access large parts of the country.”<sup>28</sup>
- 2.4.6** The significant risk of rape by soldiers and non-governmental armed entities, coupled with government inability to secure eastern territories, effectively restricted freedom of movement by women in many rural areas, particularly in the east of the country.<sup>29</sup>
- 2.4.7** It may be practical for applicants in some categories who may have a well-founded fear of persecution in one area to relocate to other parts of the DRC where they would not have a well founded fear and taking into account their personal circumstances, it would not be unduly harsh to expect them to do so. Where the applicant’s fear is of ill treatment / persecution by the DRC state authorities then internal relocation may not be possible.

## 2.5 Country guidance caselaw

When considering the risk on return for **sur place activities** (see section 3.6; Perceived Political Activists) – reference should be made to:

[BA \(Demonstrators in Britain - risk on return\) Iran CG \[2011\] UKUT 36 \(IAC\) \(10 February 2011\)](#)

Factors to be considered when assessing risk on return having regard to sur place activities:

(i) Nature of sur place activity:

- Theme of demonstrations – what do the demonstrators want (e.g. reform of the regime through to its violent overthrow); how will they be characterised by the regime?
- Role in demonstrations and political profile – can the person be described as a leader; mobiliser (e.g. addressing the crowd), organiser (e.g. leading the chanting); or simply a member of the crowd; if the latter is he active or passive (e.g. does he carry a banner); what is his motive, and is this relevant to the profile he will have in the eyes of the regime?
- Extent of participation – has the person attended one or two demonstrations or is he a regular participant?
- Publicity attracted – has a demonstration attracted media coverage in the United Kingdom or the home country; nature of that publicity (quality of images; outlets where stories appear etc)?

(ii) Identification risk

- Surveillance of demonstrators – assuming the regime aims to identify demonstrators against it how does it do so, through, filming them, having agents who mingle in the crowd, reviewing images/recordings of demonstrations etc?

<sup>24</sup> [UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26/01/2012](#), paragraph 29.

<sup>25</sup> [UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26/01/2012](#), paragraph 30.

<sup>26</sup> [UNHCR, Renewed clashes and insecurity causing displacement in Eastern DRC, 20/01/2012](#).

<sup>27</sup> [UNHCR, UNHCR alarm at new reported atrocities against displaced Congolese, 03/02/2012](#).

<sup>28</sup> [DARA, The Humanitarian Response Index 2011: Focus On: Democratic Republic of the Congo – Leveraging donor support for long-term impact, 21/10/2011](#).

<sup>29</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2 d Freedom of Movement <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

- Regime's capacity to identify individuals – does the regime have advanced technology (e.g. for facial recognition); does it allocate human resources to fit names to faces in the crowd?
- (iii) Factors triggering inquiry/action on return
- Profile – is the person known as a committed opponent or someone with a significant political profile; does he fall within a category which the regime regards as especially objectionable?
  - Immigration history – how did the person leave the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated (overstayer; forced return)?
- (iv) Consequences of identification
- Is there differentiation between demonstrators depending on the level of their political profile/adversity towards the regime?
- (v) Identification risk on return
- Matching identification to person – if a person is identified is that information systematically stored and used; are border posts geared to the task?

**[In BK \(Democratic Republic of Congo\) v Secretary of State for the Home Department \[2008\] EWCA Civ 1322 \(03 December 2008\) the Court of Appeal upheld the AIT determination in BK \(Failed asylum seekers\) DRC CG \[2007\] UKAIT 00098.](#)**

**[BK \(Failed asylum seekers\) DRC \(Rev 1\) CG \[2007\] UKAIT 00098 \(31 October 2008\)](#)**

On return to the DRC failed asylum seekers do not per se face a real risk of persecution or serious harm or treatment contrary to Article 3 ECHR. In so finding this decision updates and reaffirms existing country guidance

At paragraph 385 of the determination the Tribunal concluded, "Despite concerted efforts by a significant number of people - lawyers, NGOs and others - and despite there having been a long lead-in period to the hearing and conclusion of this case during which members of the UK's DRC Diaspora have been encouraged by leaflets and public meetings in over six cities to come forward with cases, we have found no evidence to substantiate the claim that returned failed asylum seekers to the DRC as such face a real risk of persecution or serious harm or ill-treatment."

**[NA \(risk categories, Hema\) Democratic Republic of Congo CG \[2008\] UKAIT 00071 \(29 September 2008\)](#)**

1. The country guidance in [AB and DM \(Risk categories reviewed – Tutsis added\) DRC CG \[2005\] UKAIT 00118](#) is confirmed subject to adding that members of the Hema tribe are likely to be treated by the authorities in the DRC in the same way as Tutsis and Rwandans and may be at risk of persecution on return to the Ituri region. Tribal membership by itself is not determinative.
2. Whether a member of the Hema is at real risk of persecution or is able to relocate internally depends not only on his ethnicity but also on his profile, background and circumstances looked at in the light of the country evidence as a whole.

**[MM \(UDPS members, Risk on return\) Democratic Republic of Congo CG \[2007\] UKAIT 00023 \(13 March 2007\)](#)**

*Despite indications from recent political events in the DRC that the UDPS is perceived as less of a threat than previously, the guidance given in [AB and DM Democratic Republic of Congo CG \[2004\] UKIAT 00118](#) and confirmed in [MK DRC CG \[2006\] UKAIT 00001](#) remains correct.*

[...] 202. It follows that we continue to believe that low level members/sympathisers of the UDPS for that reason alone, will not be at real risk on return to the DRC in the current climate, but conclude that it is too early in the process of the transition of the DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists. As the Tribunal in [AB and DM](#) rightly observed, the risk category to those having or being perceived to have a military or political profile in opposition to the government is one that "fluctuates in accordance with the political situation."

**[MK \(AB & DM confirmed\) Democratic Republic of Congo CG \[2006\] UKAIT 00001 \(24 January 2006\)](#)**

The June 2005 HJT report concerning suspension by the Netherlands of the return of asylum seekers to DRC does not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in [AB & DM](#)

**[AB and DM \(Risk categories reviewed, Tutsis added\) Democratic Republic of Congo CG \[2005\] UKIAT 00118 \(21 July 2005\)](#)**



*The Tribunal broadly confirms the list of risk categories identified in M, VL and subsequent CG cases but finds that in view of the increase in anti-Rwandan feeling, Tutsis or those suspected of being Tutsi are at risk by reason of being associated with Rwandans. Essentially, the risk categories are those with an ethnic, political or military profile in opposition to the government. The assessment of risk in an individual case will depend upon a careful analysis of that individual's origins, background and profile.*

[...] Summary of the Risk Categories

51. Building on previous country guidance cases and in particular M and VL, the Tribunal would reformulate and summarise the current risk categories as follows:
  - (i) We confirm as continuing to be a risk category those with a nationality or perceived nationality of a state regarded as hostile to the DRC and in particular those who have or presumed to have Rwandan connections or are of Rwandan origins.
  - (ii) We consider that in light of recent developments there is now a risk category consisting of those who are Tutsi (or Banyamulenge) or are perceived to be Tutsi (or Banyamulenge). The only possible exception to it arises in relation to high-level officials of RCD/Goma. We accept that in practice there is considerable overlap with (i) since, as a result of the events of 2004 "Rwandan" and "Tutsi" are more often regarded as the same by the DRC authorities and civilian population and as a result Tutsis and those perceived as such face higher risks than before. However, they are distinct categories, one nationality-based, the other ethnicity-based.
  - (iii) We also confirm as an existing risk category those having or being perceived to have a military or political profile in opposition to the government. The risk fluctuates in accordance with the political situation. On the basis of the evidence before us, the current position is as follows. The Tribunal accept that there is a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasa UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. At present there is a lesser risk for PALU members. There is a potential risk for DSP members who are considered as potential or actual collaborators for JP Bemba and his MLC movement. The risk for those associated with the Mobutu regime has considerably lessened. It is clear from the background evidence that close relatives of Mobutu have returned to the DRC from exile: CIPU report paragraph 6.110-2. It is reported that those not suspected of collaboration with the rebels would no longer be at risk and affiliation to the MPR would not normally involve the risk of political persecution. No repression has been organised against PDSC members since the death of Laurent Kabila.
  - (iv) The evidence before us sought to identify a number of further potential risk categories: rebel movement members now in opposition to their own movement and those who come from the east (including Kivu) but are returned to Kinshasa without a political or military profile. However, these issues do not arise in the present appeal and we do not have sufficient evidence to make it appropriate to reach conclusions about them.
52. In the light of our findings this determination is to be read as replacing the existing country guidance cases on the DRC save for VL for what it says about the approach to the issue failed asylum seekers. It also replaces RK (obligation to investigate) CG [2004] UKIAT 00129, but we would emphasise that the latter remains as a legally important reported case in respect of what it says about the obligation to investigate.
53. The Tribunal would reiterate some earlier observations on the task of assessing whether a person falls within the new second risk category as now extended. There are two main aspects to this. Firstly on the evidence before us, most but not all Tutsis would be at risk. As noted in paragraphs 39-40, some Tutsis may be able to obtain the protection of MONUC albeit in practice they may be limited to those with wealth who are high-level officials within RCD/Goma and appear able to look to the authorities for protection.
54. Secondly, as with the military or political category, much depends on the perception of the authorities as to whether they view someone adversely. It is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be scrutinised carefully. Given that Tutsis are described as being physically distinct from other tribes (CIPU report October 2004 para 6.71) a person is more likely to be viewed as a Tutsi by the authorities if he or she has those distinctive characteristics. Similarly those whose dialect, tribal links and geographical origins link them closely to Tutsis such as the Banyamulenge would also appear to fall within the at risk category. However, the mere fact of coming from the East or being of mixed ethnicity is unlikely without more to give rise to a perception of being Tutsi. The assessment must be made on the basis of a careful analysis of an appellant's ethnicity, background and profile.

### **3. Main categories of claims**

- 3.1 This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by

those entitled to reside in the DRC. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

[www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/)

### **3.5 Credibility**

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 Political opponents and perceived political activists**

- 3.6.1** The majority of asylum and/or human rights applicants cite a fear of persecution by the Congolese authorities because of the applicant's perceived political activities or membership of, or association with the political opposition.
- 3.6.2** *Treatment.* The constitution provides citizens the right to change their government peacefully and citizens exercised this right in practice through credible presidential, parliamentary and provincial elections based on universal suffrage. However, during 2010 national and provincial governments continued to use criminal defamation and insult laws to intimidate and punish those critical of the government.<sup>30</sup> The DRC is not an electoral democracy; though the 2006 elections were a significant improvement over previous voting, serious problems remained.<sup>31</sup>

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<sup>30</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2 a Freedom of Speech and Press and Section 3 Respect for Political Rights, Right of Citizens to change their Government. <http://www.state.gov/documents/organization/160453.pdf>

<sup>31</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 16.05)) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 3.6.3** In 2009 the UNJHRO estimated that there at least 200 political prisoners in detention at end of the year. The government permitted access to some political prisoners by international human rights organizations and MONUC; however the authorities consistently denied access to detention facilities run by the GR and the ANR.<sup>32</sup>
- 3.6.4** The law on the status and rights of the political opposition recognised opposition parties represented in parliament as well as those outside it and provides for their right to participate in political activities without fear of retribution. During 2010 political parties were able to operate most of the time without restriction or outside interference however, there were notable exceptions. Opposition members were sometimes harassed. In 2008, police killed numerous Bundia dia Kongo (BDK) supporters during violent clashes in Bas-Congo and systematically destroyed BDK meeting places. The 2008 Human Rights Watch (HRW) report, *We Will Crush You: The Restriction of Political Space in the Democratic Republic of the Congo*, concluded that since the 2006 national elections, the government had used violence and intimidation to eliminate its political opponents and restrict democratic activity. The report drew from hundreds of interviews with government officials, diplomats, political detainees and members of civil society.<sup>33</sup>
- 3.6.5** Generally individuals could privately criticise the government, its officials, and private citizens without being subject to official reprisals. However, public criticism of government officials and government conduct, or decisions, regarding issues such as conflict and insurgencies, management of natural resources, or corruption, sometimes resulted in harsh responses, often from the ANR, the intelligence service under the president's control.<sup>34</sup> Opposition politicians and their supporters have increasingly faced violence and harassment. On a number of occasions in 2010, police beat or arrested members of the UDPS who engaged in unauthorized protests. The mounting pressure on opposition figures has raised concerns that Kabila is leading the DRC back toward a highly centralized presidential system that allows for no more than the formalities of representative governance.<sup>35</sup>
- 3.6.6** There were reports that the government or its agents committed politically motivated killings. During 2010 dissident elements of the FARDC, were allegedly implicated in at least eight politically motivated killings, as well as the arbitrary arrest and temporary detention of seven other individuals. Security workforce arrested and detained without charge perceived opponents and critics of the government during 2010, sometimes under the pretext of state security, often denying due process, such as access to legal representation.<sup>36</sup>
- 3.6.7** The laws of the DRC and the country's 2005 constitution provide for freedom of speech, information, and the press, but these rights were limited in practice by President Joseph Kabila's government and various non-state actors. Officials had used an array of regulations and laws to restrict free speech and suppress political criticism, including bringing criminal charges against journalists and shutting down broadcast operations.<sup>37</sup>
- 3.6.8** The constitution provides for freedom of peaceful assembly; however, the

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<sup>32</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1e Political Prisoners and Detainees <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>33</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 3 Elections and Political Participation <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>34</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2a Freedom of Speech and Press <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>35</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 16.11)) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>36</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1a Arbitrary or Unlawful Deprivation of Life and 1d Arrest Procedures and Treatment whilst in Detention. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>37</sup> Freedom House, Freedom of the Press 2011 Congo, Democratic Republic of (Kinshasa) 01/09/2011 <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=printdoc&docid=4e5f71b14>

government sometimes restricted this right. The government required organisers of public events to register with local authorities in advance and to deny authorisation, authorities must do so in writing within five days of being notified of the planned event. State security forces often acted against unregistered protests, marches or meetings. On occasion, permission to hold demonstrations was denied, for example in June 2010 domestic NGOs, that had intended to hold a demonstration related to the killing of leading activist Floribert Chebeya, were not allowed to do so.<sup>38</sup>

**3.6.9** State security forces occasionally arrested demonstrators. For example, on 12 April 2010, police arrested five members of the opposition party UDPS who were protesting the anticipated constitutional revision. In addition, on 24 April 2010, police beat UDPS members who were gathered to celebrate the 20th anniversary of the government's decision to abolish the one party system. Furthermore, on 26 September 2010, in Kinshasa, police arrested 27 members and supporters of the UDPS, citing public disorder during an unauthorised political gathering. On 30 September 2010, all 27 were released.<sup>39</sup>

### Elections 2011

**3.6.10** Following the Presidential and parliamentary elections on 28 November 2011, there was a general risk of further political demonstrations and politically motivated violence.<sup>40</sup> Politically motivated human rights violations increased as the elections approached. UN investigators reported 188 cases before the official campaign began in October 2011. Violence perpetrated by police and other state security services consisted of restrictions on political activities, unnecessary force against demonstrators and arbitrary arrests primarily directed toward opposition parties, their supporters, and journalists.<sup>41</sup> In September 2011 an opposition activist was shot dead during clashes with police in Kinshasa following the setting alight of the offices of the opposition Union for Democracy and Social Progress (UDSP) and the attack of an opposition TV station.<sup>42</sup> On 6 October 2011 the police violently trampled a demonstration by the Union for Democracy and Social Progress (UDPS) opposition party in Kinshasa. One person was killed and at least 10 others were wounded. Some candidates and their supporters also used inflammatory language and hate speech, inciting youth groups and others to use violence against their opponents.<sup>43</sup> In November 2011 the UN Joint Human Rights Office issued a report on the pre electoral period and found that “in spite of constitutional guarantees, those seeking to express their opinions and their fundamental freedoms of assembly and association were often subjected to abuse by State agents and saw their right to physical integrity violated.” It particularly highlighted concerns regarding the situation in the East of the country where many members of political parties were “deprived of their liberty or subjected to ill-treatment and threats”.<sup>44</sup>

**3.6.11** The United Nations peacekeeping mission in the DRC called on the country's electoral authorities to review the issues raised by independent observers about the recent DRC presidential and parliamentary polls, saying there were “significant irregularities” in the results process. The UN Organisation Stabilisation Mission in DRC (MONUSCO) said in a press release that it strongly urged the DRC's Independent National Electoral Commission (CENI) to undertake “a timely and rigorous review” of the issues raised, particularly regarding the counting and tabulation of votes. MONUSCO's statement noted that the Carter Centre International Election Observation Mission in the DRC and other

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<sup>38</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2b Freedom of Peaceful Assembly and Association <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>39</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 2b Freedom of Peaceful Assembly and Association <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>40</sup> FCO Travel and Living Abroad DRC – 27 January 2012 – DRC <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/sub-saharan-africa/congo-democratic-republic>

<sup>41</sup> Human Rights Watch 2012 World Report – DRC 22/01/2012 Presidential and Legislative Elections <http://www.hrw.org/world-report-2012/world-report-2012-democratic-republic-congo>

<sup>42</sup> BBC News Activist dies in Democratic Republic of Congo 06/09/2011

<sup>43</sup> Human Rights Watch 2012 World Report – DRC 22/01/2012 Presidential and Legislative Elections <http://www.hrw.org/world-report-2012/world-report-2012-democratic-republic-congo>

<sup>44</sup> MONUSCO/UN Human Rights Office of the High Commissioner, [Report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms during the pre electoral period in the DRC November 2011](http://www.unhcr.org/refugees/refugees/4d4d4d4d.html), I. Summary.

observer missions had issued statements stating their concern about the management process. The Mission also called on the CENI to ensure that all counting, compilation and verification operations were under way to determine the results of National Assembly elections were conducted in a fully transparent manner and to undertake corrective measures for future elections. It also reiterated its call for all parties to settle election disputes peacefully through the country's established institutions, including the National Mediation Committee, and for the Supreme Court of Justice to thoroughly and transparently handle all formal challenges.<sup>45</sup>

- 3.6.12** In response to the threat of election-related violence, MONUSCO also called upon all members of the political establishment to refrain from inciting confrontation against opponents and urged law enforcement agencies to exercise restraint when dealing with public demonstrations. The UN Joint Human Rights Office (UNJHRO) in the DRC, which has been monitoring election-related violence, was investigating reports that more than 10 people had allegedly been killed by security forces and supporters of political parties, and many more injured through the use of live ammunition, in the capital, Kinshasa, since 26 November 2011.<sup>46</sup> At the end of 2011, Human Rights Watch reported that Congolese security forces "killed at least 24 people and arbitrarily detained dozens more since President Joseph Kabila was announced the winner of the disputed presidential elections on December 9, 2011".<sup>47</sup> In March 2012, the UN released a report detailing how, during the 2011 elections they "documented the arrest and detention by members of the defence and security forces in Kinshasa of 265 people, in particular members and supporters of opposition parties, mainly from UDPS, as well as street children and simple passers-by or citizens taken from their homes because of their proven or suspected support to the opposition".<sup>48</sup>
- 3.6.13** President Joseph Kabila won the DRC's election of 28 November 2011 but the opposition leader of the UDPS party, Etienne Tshisekedi, rejected the results and unilaterally declared himself president, raising fears of violent protests.<sup>49</sup> On 17 December 2011, the Supreme Court in Kinshasa confirmed Kabila's re-election, "amid allegations by the opposition and the international community that the elections were not free and fair".<sup>50</sup>
- 3.6.14** African observers say the Democratic Republic of Congo's elections have been 'successful', despite opposition calls for the polls to be annulled. In a joint statement, observer missions of the African Union, the Southern African Development Community (SADC) and three other groups said they had noted the logistical difficulties but welcomed the 'successful holding of the elections'. Voter turnout was high, the observers said, adding that they regretted 'isolated' incidents of violence.<sup>51</sup>
- 3.6.15** Catholic bishops in the Democratic Republic of Congo denounced the elections. A statement from 35 bishops complains of "treachery, lies and terror" and called on the election commission to correct "serious errors". The archbishop of Kinshasa called for a campaign of disobedience and for the results to be annulled.<sup>52</sup> Numerous observer missions, including the Carter Center, the Election Observation Mission of the European Union (EU-MO) and RENOCEC, have declared that the conduct of presidential and legislative elections was marred by significant irregularities and attempted cheating, planned or not, in several constituencies. Several Congolese civil society organizations, including La Voix des sans Voix (VSV), one of the most important and oldest

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<sup>45</sup> UN News Service, Democratic Republic of the Congo: UN mission urges review of issues raised by election observers, 12/12/2011

<sup>46</sup> UN News Service, Democratic Republic of the Congo: UN mission urges review of issues raised by election observers, 12/12/2011

<sup>47</sup> [Human Rights Watch, 24 Killed since Election Results Announced, 22/12/2011.](http://www.hrw.org/news/2011/12/22/congo-24-killed)

<sup>48</sup> [MONUSCO/UN Office of the High Commissioner for Human Rights, Report of the United Nations Joint Human Rights Office on Serious Human Rights violations committed by members of the Congolese Defence and Security Forces in Kinshasa in DRC between 26 November and 25 December 2011, March 2012,](http://www.unhcr.org/refugees/refugees/4a5c1e1e.html) paragraph 28.

<sup>49</sup> BBC News – Africa – Analysis: DR Congo Elections Open New Wounds – 20 December 2011 <http://www.bbc.co.uk/news/world-africa-16251401> and BBC News - Africa – DR Congo Election: Joseph Kabila 'Re-elected' – 9 December 2011 <http://bbc.co.uk/news/world-africa-16114824?print=true>

<sup>50</sup> [Institute for War and Peace Reporting \(IWPR\), DRC Army's Loyalties Uncertain Around Election, 27/01/2012.](http://www.instituteforwarandpeace.org/)

<sup>51</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 4.24)) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>52</sup> BBC News 17 Feb 2012 <http://www.bbc.co.uk/news/world-africa-16540780>



Congolese human rights organizations, have already called for the cancellation of the polls.<sup>53</sup>

**3.6.16** Katumba Mwanke, one of the key advisers to the president, Joseph Kabila, was killed in an air crash that also injured the country's finance minister, Matata Ponyo, and the governor of South Kivu, Marcellin Chisambo. The accident—the latest example of the Democratic Republic of Congo's appalling air-safety record—could affect the formation of the next coalition government, currently being negotiated...Although Mr Mwanke was reluctantly removed from his position as special adviser after he was cited in a 2002 UN Panel of Experts report investigating the illegal seizure of state mining assets (November 2002, The political scene), Mr Kabila kept him close and very little of significance done by the Congolese government in recent years has taken place without Mr Mwanke's knowledge and consent. “Most immediately, the loss of Mr Mwanke is likely to slow the formation and affect the make-up of the next government. Mr Kabila has barely been seen in public since his inauguration, but Mr Mwanke is believed to have played a key role concerning which members of the president's Parti du peuple pour la reconstruction et la démocratie (PPRD) and which representatives of allied political parties to bring into a new administration. These discussions were ongoing when Mr Mwanke died and the president now has the difficult task of concluding them without a key adviser. At the same time, Mr Mwanke's death may also call into question the future employment and loyalty of many senior government and party officials, as well as ministers who owe their positions to him, potentially adding to policymaking uncertainty”.<sup>54</sup>

L'Alliance des Patriotes pour la Refondation du Congo (Alliance of Patriots for the Reform of Congo) APARECO

**3.6.17** APARECO, otherwise known as L'Alliance des Patriotes pour la Refondation du Congo (Alliance of Patriots for the Reform of Congo) is according to its web site a political opposition organisation with various branches throughout the world including the UK. Its headquarters is located in Paris. The party presents itself as being a political framework for dialogue and action between political parties, NGOs, and Congolese key figures who share the same patriotic vision.<sup>55</sup>

**3.6.18** According to the APARECO web site there are several committees throughout the world, amongst which an APARECO UK, whose regional president is Amisi Kilosho. Reference is made to a second fake APARECO in the UK led by KiKaya Bin Karubi.<sup>56</sup>

**3.6.19** The President of APARECO is Honoré Ngbanda Nzambo Ko Atumba. He has been living in exile in France.<sup>57</sup>

**3.6.20** No evidence that APARECO has an office in Kinshasa could be found and therefore it is difficult to ascertain what they are trying to achieve in practice in the DRC. Information to indicate whether APARECO has been banned or is recognised by the DRC government, and whether its members have suffered human rights abuses by the security forces, could not be found from Internet sources.

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

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<sup>53</sup> OSISA “No end in sight to DRC post election crisis” 25 January 2012 <http://www.osisa.org/hrdb/drc/no-end-sight-drc-post-election-crisis>

<sup>54</sup> Economist Intelligence Unit, Presidential adviser, Katumba Mwanke, killed in plane crash, 1 March 2012

<http://country.eiu.com/article.aspx?articleid=128858997&Country=Congo>

<sup>55</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 16.26) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>56</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 16.25) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>57</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 16.27) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**3.6.21 Conclusion:** As the Tribunal in MM and AB and DM observed the level of risk to those having, or perceived to have a political profile in opposition to the government is one that “fluctuates in accordance with the political situation” and low level members / sympathisers are not at real risk on return. However following the elections of November 2011 there are heightened political tensions and each case must be assessed on its individual merits, The credibility and accepted level of any political profile of the applicant must be carefully considered, together with up to date country information, to determine whether the DRC authorities are likely to view the applicant adversely.

**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.

### **3.7 Suspected members of current or former rebel groups and treatment of perceived government collaborators by rebel groups.**

**3.7.1** Some applicants will make an asylum and/or human rights application citing a fear of persecution by the Congolese authorities because of the applicant’s membership of, or association with a member of, a former rebel group. They may also make an application citing fear of persecution by rebel groups because of their imputed support of the Congolese authorities.

**3.7.2** The rapid and chaotic incorporation of former rebel groups into the military has resulted in competing chains of command and factional conflicts.<sup>58</sup> The Congolese national army, created in 2003, has an estimated strength of 120,000 soldiers, many from former rebel groups that incorporated following various peace deals. About half of the Congolese army was deployed in eastern Congo. Since 2006 the government has twice attempted, and failed, to integrate the 6,000-strong rebel National Congress for the Defence of the People (CNDP). In early 2009 a third attempt was made to incorporate the CNDP and remaining rebel groups in a process known as “fast track accelerated integration.” However, many of those who agreed to integrate remained loyal to former rebel commanders, raising serious doubts about the sustainability of the process.<sup>59</sup>

**3.7.3** The Mai Mai militia groups are local defence groups often organised on an ethnic basis. They have traditionally fought alongside the government army against “foreign invaders,” including the CNDP and other Rwandan-backed rebel groups. In 2009 there were over 22 Mai Mai groups, ranging in size and effectiveness, in both North and South Kivu. Some joined the Congolese army as part of the rapid integration process in early 2009, while others refused, angry at the perceived preferential treatment given to the CNDP and unwilling to join the army unless they were able to stay in their communities. The various Mai Mai groups are estimated to have some 8,000 to 12,000 combatants.<sup>60</sup>

**3.7.4** The FDLR—which the UN estimated in early 2010 to be about 3,200-strong— claims to be seeking greater political representation for ethnic Hutus in Rwanda. The CNDP is the most recent of three different Rwanda-backed Congolese rebel groups that have agreed to fight the FDLR and other Rwandan Hutu militias, but which have all also sought to overthrow the Congolese government in Kinshasa. Until January 2009 the CNDP was led by a former Congolese Tutsi general, Laurent Nkunda, whose 4,000 to 7,000 fighters controlled large swathes of North Kivu.<sup>61</sup>

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<sup>58</sup> Freedom House - Freedom in the World 2011- Congo Democratic Republic of (Kinshasa) May 2011

[http://expression.freedomhouse.org/reports/freedom\\_in\\_the\\_world/2011/congo-democratic-republic-of-kinshasa](http://expression.freedomhouse.org/reports/freedom_in_the_world/2011/congo-democratic-republic-of-kinshasa) .

<sup>59</sup> Human Rights Watch -Always on the Run, The vicious cycle of displacement in Eastern Congo 14/09/2010 <http://allafrica.com/download/resource/main/main/00020245:f36ea4fe833836838562d6bd291804ea.pdf>

<sup>60</sup> Human Rights Watch Always on the Run, The vicious cycle of displacement in Eastern Congo 14/09/2010 <http://allafrica.com/download/resource/main/main/00020245:f36ea4fe833836838562d6bd291804ea.pdf>

<sup>61</sup> Human Rights Watch Always on the Run, The vicious cycle of displacement in Eastern Congo 14/09/2010

- 3.7.5** Alliances between government forces and various rebel groups continued to foster loyalties that have prompted government officials to try to prevent the prosecution of some of the leaders and members of these armed entities. For example, according to the International Bar Association's Human Rights Institute (IBAHRI) and the International Legal Assistance Consortium (ILAC), in a letter from the minister of justice obtained by NGOs, the minister ordered that no action be taken against members of the CNDP and that ongoing proceedings were to be discontinued. The date of the letter, 9 February 2009, was shortly before the March 2009 peace agreement in which the CNDP formally agreed to cease hostilities against--and integrate into—the FARDC and assist in operations against the FDLR.<sup>62</sup>
- 3.7.6** According to MONUSCO, between 30 July and 2 August 10, 303 women, children, and men were raped in 13 villages in Walikale, North Kivu by a coalition of the FDLR, Mai Mai Cheka, and combatants lead by Colonel Emmanuel Nsengiyumva, a former member of the CNDP and the FARDC. The perpetrators also pillaged more than 1,000 homes and abducted 116 civilians, whom they subjected to forced labour. The UN reported that from late July to early August, rebel groups raped an additional 260 individuals in several isolated incidents in South Kivu. According to the UN, one of the villages attacked, Luvungi, where more than 100 persons were raped, was a lucrative target for looting because it was a mining hub located only four miles from gold mines. A UN investigation in August 2010 found that the perpetrators sought to block off the transport of minerals to Goma and Bukavu, as well as force the return of FARDC troops from the mining areas.<sup>63</sup>
- 3.7.7** Reports published by Human Rights Watch and Oxfam during 2009 documented reprisal attacks by the Congolese army against civilians who were accused of having collaborated in one form or another with the rebel group Democratic Forces for the Liberation of Rwanda (FDLR), whether willingly or unwillingly in Eastern DRC.<sup>64</sup> In these attacks, it was noted that the Congolese army committed “serious human rights violations against civilians”<sup>65</sup>, including killing, raping, beating, looting, arbitrarily arresting and forced labour.<sup>66</sup> In July 2011, Oxfam noted that FARDC continued to accuse civilians of collaborating with rebel groups, specifically the Lord Resistance Army (LRA).<sup>67</sup> One individual interviewed by Oxfam in South Kivu stated “We are all going to flee from here. We are forced to sell to the FARDC on credit, and the day you dare to demand payment, they accuse you of being Mai Mai [self-defence groups/militia] and arrest you”.<sup>68</sup> The UN Secretary-General in his annual report on conflict-related sexual violence noted that “Acts of sexual violence, including a series of mass rapes, took place in North and South Kivu” in several such incidents they appear “to have been perpetrated as a form of retaliation by elements of the Armed Forces of the Democratic Republic of the Congo (FARDC) against the population for their alleged collaboration with the “enemy.”<sup>69</sup>
- 3.7.8** Human Rights Watch World Report 2012, stated that efforts to integrate armed groups into the national army were hampered by former rebel leaders, such as Bosco Ntaganda, who flouted orders from the army's central command and pursued their own interests. The Congolese army's attempts to restructure and integrate former armed groups into its ranks continued to be fraught with problems. The creation of new regiments mixing government soldiers with former rebels caused confusion and

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<http://allafrica.com/download/resource/main/main/idatcs/00020245:f36ea4fe833836838562d6bd291804ea.pdf>

<sup>62</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1e Denial of Fair Public Trial <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>63</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 1g Use of Excessive Force and Other Abuses in Internal Conflicts <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>64</sup> See amongst others [Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009](#); [Oxfam, Waking the devil: the impact of forced disarmament on civilians in the Kivus, 15/07/2009](#).

<sup>65</sup> [Christian Aid \(UK\), Congo crisis made worse by UN-backed military operation, 02/11/2009](#).

<sup>66</sup> [Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009](#).

<sup>67</sup> [Oxfam, 'We are entirely exploitable': The lack of protection for civilians in eastern DRC, 28/07/2011](#).

<sup>68</sup> [Oxfam, 'We are entirely exploitable': The lack of protection for civilians in eastern DRC, 28/07/2011](#).

<sup>69</sup> [UN General Assembly/Security Council, Conflict-related sexual violence: Report of the Secretary-General, 13/01/2012](#), paragraph 27.

weakened command and control. It further permitted former rebel leader Bosco Ntaganda to increase his power base by expanding his parallel command over parts of the army and local administration.<sup>70</sup>

**3.7.9** Former rebel leader Ntaganda continued his brutal campaign against perceived opponents, both military and civilian, by ordering assassinations, arbitrary arrests, and other forms of intimidation. The government did not enforce the International Criminal Court (ICC) arrest warrant against Ntaganda. Officials said they feared his arrest could disrupt the integration of former rebel groups into the army and harm diplomatic relations with Congo's neighbour, Rwanda, which supported Ntaganda. Failure to arrest Ntaganda further harmed peace and stabilisation efforts.<sup>71</sup>

**3.7.10** The UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that "Evidence from a variety of sources indicates that rape and related killing are particularly vicious when either the FARDC or FDLR retaliate against communities they suspect of collaborating with the opposing force. FDLR attackers have also engaged in a campaign of rape, repeatedly telling victims the rape was "punishment" for alleged cooperation with MONUC or the Government".<sup>72</sup> In August 2010, more than 300 women and children were raped in North Kivu by "a coalition of about 200 members of three rebel groups as a punishment for colluding with the Congolese army".<sup>73</sup> More recently, in February 2012, UNHCR reported on the torture and killing of IDPs in the camps of North Kivu who were accused "of collaborating with one armed group or another". In January 2011, the BBC reported that at least 26 people had been killed in attacks by the FDLR in South Kivu who accused them of supporting another local militia.<sup>74</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

**3.7.11 Conclusion** Case owners must assess the level of any involvement of the applicant with any rebel group / group member and whether such involvement would now attract the adverse interest of the DRC authorities given the integration of many groups into the DRC armed forces.

**3.7.12** Civilians and former members of rebel groups may be targeted by non state agents on the basis of their perceived collaboration with the FARDC or another rebel group. Case owners should consider whether effective protection is available to the individual in their local area. If not case owners should assess whether internal relocation would be an effective way to avoid ill treatment and whether it would be unduly harsh to expect that person to internally relocate (see also Section 2.4).

**3.7.13** Case owners should note that some members of current of former rebel forces have been responsible for numerous serious human rights abuses, some of which amount to war crimes. If evidence suggests that the applicant has been involved in such actions, case owners should consider whether one of the exclusion clauses is applicable. The individual circumstances of joining the particular rebel group should also be taken into account, such as experiencing coerced or forced recruitment. Further guidance on Article

<sup>70</sup> Human Right Watch World Report 2012 <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>

<sup>71</sup> Human Right Watch World Report 2012 <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>

<sup>72</sup> [UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Mission to the Democratic Republic of the Congo, 14/06/2010](#), section IV, para. 65.

<sup>73</sup> [Institute for War and Peace Reporting: No End to DRC Rape Cases, 08/10/2010](#). For more information on this mass rape and other human rights violations committed in August 2010, please consult the following report: [UNO Stabilization Mission in the Democratic Republic of the Congo \(formerly MONUC\), Final Report Of The Fact-Finding Missions Of The United Nations Joint Human Rights Office Into The Mass Rapes And Other Human Rights Violations Committed By A Coalition Of Armed Groups Along The Kibua-Mpofi Axis In Walikale Territory, North Kivu, From 30 July To 2 August 2010, July 2011](#).

<sup>74</sup> [BBC News, Rwandan FDLR rebels 'kill 26 in DR Congo', 05/01/2012](#).



1F can be found in the asylum policy instruction on 'Exclusion- Article 1F and 33(2) of the Refugee Convention'. In such instances case owners should refer all cases to a senior case worker.

### **3.8 Members of non-governmental organisations (NGOs), human rights activists and journalists.**

**3.8.1** Members of non-governmental organisations (NGOs), human rights activists and journalists may make an asylum and/or human rights claim based on fear of intimidation, harassment or ill-treatment by the Congolese Government in order to prevent the full and accurate reporting of human rights issues. Some members of NGOs may claim a similar fear of rebel forces for the same reason.

**3.8.2 *Treatment.*** A wide variety of domestic and international human rights organisations investigated and published findings on human rights cases. However, state security forces continued to harass, beat, intimidate, and arbitrarily arrest and detain local human rights advocates and NGO workers. Government intimidation of domestic human rights defenders worsened. In addition, prison officials consistently denied access by NGOs and UN officials to detainees in certain types of facilities. The government continued to allow international humanitarian agencies access to conflict zones, permit many UN human rights officers to investigate abuses, and invited UN special rapporteurs and representatives to visit the country during 2010 to assess the human rights situation and provide technical assistance. However, the government took no significant steps to implement their recommendations. In addition, there was an increase in instances in which authorities, particularly state security forces, obstructed the work of UN human rights monitors and special rapporteurs, and in some instances, FARDC units in North Kivu made death threats against UN personnel.<sup>75</sup>

**3.8.3** The main independent Kinshasa-based domestic human rights organisations incorporated L'Association Africaine de défense des Droits de l'Homme (ASADHO), Voice of the Voiceless, Committee of Human Rights Observers, JED, and the Christian Network of Human Rights and Civic Education Organisations. Prominent independent organisations operating in areas outside Kinshasa incorporated Heirs of Justice in Bukavu, Lotus Group in Kisangani and Plus in Bunia, Ituri District.<sup>76</sup>

**3.8.4** Officials from the Ministry of Justice and Human Rights met with domestic NGOs and sometimes responded to their inquiries. On 29 March 2010, the Minister announced the creation of a liaison organisation for consultation between the government and human rights NGOs to monitor human rights and devise strategies to improve the situation. Scheduled to meet every two weeks, the first session was convened for September 2010.<sup>77</sup>

**3.8.5** The report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on his mission to the DRC, published on 14 June 2010 noted that "Human Rights defenders have been routinely harassed and intimidated because of their work on human rights violations and impunity. Those working in the eastern part of the DRC appear to be particularly vulnerable to attack, as are those supporting the work of the International Criminal Court. Government officials have stigmatized human rights defenders for their advocacy, especially where it concerns violations by State actors and officials have been implicated in a number of cases of harassment, death threats and killings of activists. The

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<sup>75</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>76</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>77</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>



intimidation aims to silence individual activists, prevent investigations and instil widespread fear amongst civil society. Threats and attacks against human rights defenders have gone largely unpunished, as local authorities often fail to adequately investigate and prosecute those responsible".<sup>78</sup>

- 3.8.6** There were reports that local officials required domestic NGOs seeking to register to pay bribes. During 2010 several domestic NGOs were denied authorisation to operate, and NGOs required authorisation to hold demonstrations, despite constitutional provisions providing for freedom of peaceful assembly. Domestic human rights NGOs were particularly vulnerable to harassment, arbitrary arrest and detention and other abuses by state security forces when reporting on, or supporting victims of abuses by the FARDC, ANR, or other state security forces and when spotlighting the illegal exploitation of natural resources in the east.<sup>79</sup>
- 3.8.7** In June 2010 one of the country's most prominent human rights activists, Floribert Chebeya Bahizire, was killed, after having been summoned to the police headquarters in Kinshasa. Chebeya's colleague, Fidele Bazana Edadi, who reportedly drove Chebeya to the meeting went missing the same day. The killing, which some foreign diplomats deemed "an assassination," prompted widespread public condemnation by the UN Secretary-General, the country's foreign assistance donors, and international and Congolese civil society, accompanied by calls for a joint commission of inquiry. The UN special rapporteur for extrajudicial killings judged that Chebeya was "killed in circumstances that strongly suggest official responsibility."<sup>80</sup>
- 3.8.8** The government generally co-operated with international NGOs that published reports on human rights and humanitarian issues and permitted their investigators access to conflict areas however, the government did not take adequate steps to protect international human rights NGOs from violence or harassment in the east. In January 2010 FARDC soldiers attacked a UN vehicle; however, no additional information was available. In March 2010 gangs of young men issued threats against an international human rights organisation in Nort Kiku, causing the organisation to suspend their activities in the region. On 9 April (10) Mai Mai Yakatumba members kidnapped eight members of an international human rights NGO before releasing them a week later.<sup>81</sup>
- 3.8.9** The government co-operated with multilateral organisations in many instances. However, there were some notable problems. While authorities continued to permit international humanitarian agencies access to conflict areas, authorities denied the agencies access to certain prisons located in these areas. They also continued to consistently deny UNJHRO officers access to detainees in facilities run by the ANR and the GR in numerous areas. In addition, there was an increase in cases of members of state security forces obstructing human rights work by MONUSCO and the UN human rights country team. During 2010, FARDC units in the east, comprised mainly of ex-CNDP members consistently denied UNICEF child protection officers access to children in their ranks and sometimes threatened them.<sup>82</sup>

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<sup>78</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 18.03))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>79</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 18.04))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>80</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>81</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>82</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

**3.8.10** Human rights defenders continue to face serious threats, intimidation, and violence throughout 2010 and 2011. Human Rights Watch reported that Congolese human rights defenders continued to be targeted throughout 2011.<sup>83</sup> The UN High Commissioner for Human Rights noted that in the run-up to the elections in 2011, political opponents, journalists and human rights defenders continued to face “various threats and are victims of human rights violations, including arbitrary and illegal arrest and detention”.<sup>84</sup> On 15 March 2012, Mr. Mbatswe Mushunju, a member of the Kibati Center for Environmental Research, Democracy and Human Rights (CREDDHO), who was particularly active in documenting human rights violations committed by FARDC and the FDLR, was assassinated in North Kivu by three unidentified armed men wearing military uniforms.<sup>85</sup> Also in March 2012, the UN Committee on the Rights of the Child expressed concern “that human rights defenders, notably those who support victims of sexual violence and the work of the International Criminal Court (ICC), are subjected to threats and attacks by State and non-State agents.”<sup>86</sup>

#### Journalists

**3.8.11** Journalists and NGOs have also reported that freedom of expression has deteriorated as they continue to face threats and violence from local and state authorities. This trend was confirmed by the UN Joint Human Rights Office in Kinshasa.<sup>87</sup> During 2011, Journalist In Danger (JED), the partner organization of Reporters Without Borders in the Democratic Republic of Congo, recorded 42 arrests, 57 cases of threats or assault, 43 cases of censorship or restrictions on the flow of information and 17 cases of intimidation on news media.<sup>88</sup> The Committee to Protect Journalists noted in its 2011 report that attacks on the press hit a five-year high ahead of the November presidential elections and, for the fifth consecutive year, a journalist was murdered in eastern DRC.<sup>89</sup> According to the UN High Commissioner for Human Rights, in February 2011, the president and vice-president of the Association africaine de défense des droits de l’homme (ASADHO) were threatened with death following a press conference, during which they denounced the intolerance of the Government towards the political opposition.<sup>90</sup> On 21 June 2011, Witness-Patchelly Kambale Musonia—a journalist and talk show host at Radio Paysanne, a community radio station in Kirumba, North Kivu—was shot dead by unidentified armed men following a broadcast about the trafficking of weapons. On 6 September, unidentified armed men threw gasoline and incendiary grenades into RTLTV, a private television station favourable to opposition candidate Etienne Tshisekedi.<sup>91</sup> In 2012, Amnesty International published a report describing acts of torture, ill treatment and arbitrary and illegal arrests by the security forces, carried out with the purpose of intimidating journalists and other perceived opponents.<sup>92</sup>

**See also:**     [Actors of protection](#) (section 2.3 above)  
                  [Internal relocation](#) (section 2.4 above)

<sup>83</sup> [Human Rights Watch, World Report 2012: Democratic Republic of Congo, 22/01/2012](#), Journalists and Human Rights Defenders.

<sup>84</sup> [UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012](#), Summary.

<sup>85</sup> [World Organisation Against Torture, Assassination of Mr. Mbatswe Mushunju, 21/03/2012](#)

<sup>86</sup> [UN Committee on the Rights of the Child, Concluding observations: Democratic Republic of Congo, 07/03/2012](#) paragraph 40.

<sup>87</sup> Foreign and Commonwealth Office, – Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Section VII: Human Rights in Countries of Concern Democratic Republic of the Congo, 31/03/2011, <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/democratic-republic-of-congo/>

<sup>88</sup> [Reporters Without Borders, Journalist In Danger annual report urges authorities to "rescue press freedom, 30/12/2011](#).

<sup>89</sup> [Committee to Protect Journalists, Attacks on the Press 2011 Democratic Republic of Congo, 22/02/2012](#).

<sup>90</sup> [UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012](#), paragraph 31.

<sup>91</sup> [Human Rights Watch, World Report 2012: Democratic Republic of Congo, 22/01/2012](#), Journalists and Human Rights Defenders.

<sup>92</sup> [Amnesty International, Democratic Republic of Congo: The Congolese government must put an end to impunity for serious human rights violations committed by the defence and security forces during the electoral process, 23/03/2012](#).

**3.8.12 Conclusion** The risk of ill treatment exists for members of NGOs, human rights activists and journalists by both state and non state agents and includes harassment, abduction, arbitrary arrest, violence and death. Domestic human rights NGOs are particularly vulnerable to abuse by state security forces when reporting on, or supporting victims of abuse by the FARDC, ANR or other state security forces and when spotlighting illegal activities. Likewise journalists covering sensitive subjects such as corruption, extortion of the population by security forces or the elections are especially prone to harassment and ill treatment by State authorities.

**3.8.13** Caseowners will need to take into consideration the particular profile and activities of the claimant in order to assess whether they are at risk and if so whether effective protection would be available and whether it would be possible for the claimant to relocate to escape the risk of persecution. A claimant who has a localised threat and who is unable to acquire protection in their local area may be able to relocate to an area where the localised threat does not exist. However, for claimants who can demonstrate a well-founded fear of persecution on account of a Convention reason, and are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

### **3.9 Banyamulenge Ethnicity**

**3.9.1** Some applicants will make an asylum and/or human rights claim based on their mistreatment by either the Congolese authorities and/or non-state agents on the grounds of their Banyamulenge ethnic origin.

**3.9.2 Treatment.** The term 'Banyarwanda' means, in effect, 'people from Rwanda', whereas the term 'Kinyarwanda' refers to the spoken language; both the Hutu and Tutsi ethnic labels are subsumed by the term Banyarwanda. 'Banyamulenge' refers to Banyarwandans who arrived in Congo towards the end of the nineteenth century settling in the Itombwe plateau lands of South Kivu.<sup>93</sup> The terms Tutsi and Banyamulenge cannot be used interchangeably.<sup>94</sup>

**3.9.3** The political and military conflict in the Kivu provinces has long been heavily ethnicised, as military and political leaders have used identity politics to contend for power, land ownership and access to resources. This contention for power is deeply rooted in history; until the 1885 Berlin Conference, the Kivu region of eastern Congo was under the influence of the Rwandan kingdom.<sup>95</sup> The 1994 genocide in Rwanda had dramatic consequences on the situation in eastern DRC. Prior to the genocide, approximately half of the more than four million people in North Kivu were of Banyarwandan descent, of which the majority were Hutu concentrated in the territories of Masisi and Rutshuru. Importing their Hutu-power ideology, the Rwandan militias gathered local support in their attacks on the Tutsi population living in Rutshuru and Masisi territories, killing their cattle and occupying their land.<sup>96</sup>

**3.9.4** Despite a 2004 citizenship law granting citizenship to the Banyamulenge community, it was doubtful whether the 300,000 to 400,000 of them living in the DRC could obtain nationality documents or their rights as citizens in the ongoing conflict in eastern DRC. The Banyamulenge are ethnic Tutsis who came to the territory of the DRC from Rwanda centuries ago and settled in the hills called Mulenge, found between the towns of Uvira and Bukavu in what is now South Kivu. In the name of defending Tutsis against oppression in North Kivu, a rebel army consisting primarily of Banyamulenge and ordered

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<sup>93</sup> UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 21.08), <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>94</sup> UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 21.17), <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>95</sup> UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 21.09), <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>96</sup> UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 21.16), <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

by General Laurent Nkunda had been fighting the government. Violence from this conflict had displaced hundreds of thousands of people. In early 2009, General Nkunda was arrested, a development with uncertain implications for conflict in the region.<sup>97</sup>

- 3.9.5** Reports indicate that Banyamulenge and ethnic Tutsis were subject to discrimination in the DRC. The Banyamulenge suffered more generally due to their residence in the eastern DRC, which is an area of ongoing violent conflict and civilian casualties. A 2009 report by Freedom House reported that societal discrimination based on ethnicity was practiced widely among the country's 200 ethnic groups, particularly against the various indigenous Pygmy tribes and the Congolese Banyamulenge Tutsis. The ongoing fighting in the eastern Kivu region was driven in part by ethnic rivalries.<sup>98</sup>
- 3.9.6** During a 9 March 2010 telephone interview with the Research Directorate of the Immigration and Refugee Board of Canada, a journalist from the Brussels daily *Le Soir*, stated that, according to one of the chiefs of the Banyamulenge community whom she met in the DRC in February 2010 the Banyamulenge were not bothered in the eastern part of the country in general, or specifically in the two Kivu provinces and a human rights NGO in the Great Lakes region, explained that, the Banyamulenge, who were concentrated mainly in the east of the DRC, particularly in the provinces of North and South Kivu, were not subject to any hostility or resentment in particular. According to a representative of Heirs of Justice (Hj), some Banyamulenge occupied important positions, including those of provincial deputies and ministers, NGO directors and school principals with others being successful business people. However, correspondence sent to the Research Directorate in February 2010, stated that the Banyamulenge were bothered in the Kivu region by the presence of the FDLR that created suspicion, particularly in South Kivu. Moreover, according to the Hj Representative, during sporadic attacks, Hutu rebels with the FDLR targetted mainly the Banyamulenge, committing rape, massacres, theft and veritable manhunts, forcing civilians to flee their homes, which were subsequently burned.<sup>99</sup>
- 3.9.7** Freedom House, in its 2011 annual report, stated that societal discrimination based on ethnicity is practiced widely, particularly against the Congolese Banyamulenge Tutsis.<sup>100</sup> It further noted that the "ongoing fighting in the eastern Kivu region is driven in part by ethnic rivalries".<sup>101</sup> The Internal Displacement Monitoring Centre (IDMC), noted at the end of 2010 that the return of ethnic Tutsi refugees from Rwanda to areas of North Kivu continued to lead to tensions with other ethnic groups over resources.<sup>102</sup> In particular, their return has played into the fears of other ethnic groups that these arrivals are "part of a coordinated effort by the CNDP to seize lands and shift the demographics" of the area. A further source of land conflict occurs when IDPs return to their villages, to find their lands sold by relatives or occupied by armed groups. This affects women particularly as, according to customary law, they do not inherit land.<sup>103</sup>
- 3.9.8** In October 2011, The Guardian reported on the death of a Banyamulenge teacher in South Kivu who was killed by the Mai Mai who wanted to kill any Banyamulenge whom the "indigenous" Congolese Mai Mai consider incomers (though Banyamulenge have inhabited the plateau for centuries).<sup>104</sup> In January 2012, the UN Secretary-General reported that in South Kivu "new ethnic tensions emerged between the Babembe and Banyamulenge communities in the Hauts Plateaux territories of Fizi district".<sup>105</sup>

<sup>97</sup> Refugee International – Nationality Rights for All: A Progress Report and Global Survey on Statelessness March 2009, DRC [http://www.refintl.org/sites/default/files/RI%20Stateless%20Report\\_FINAL\\_031109.pdf](http://www.refintl.org/sites/default/files/RI%20Stateless%20Report_FINAL_031109.pdf)

<sup>98</sup> Australian Government Refugee Review Tribunal – Country Advice DRC (ex Zaire) COD36387 Banyamulenge tribe Zimba tribe Communal violence 29/03/2010, Discrimination of Banyamulenge. <http://www.unhcr.org/refworld/pdfid/4f13dda42.pdf>

<sup>99</sup> Immigration and Refugee Board of Canada The treatment of the Banyamulenge, or Congolese Tutsis, living in Kinshasa and in the provinces of North Kivu and South Kivu March 2010 [http://www.ecoi.net/local\\_link/138127/252108\\_de.html](http://www.ecoi.net/local_link/138127/252108_de.html)

<sup>100</sup> Freedom House, *Freedom in the World: Congo, Democratic Republic of (Kinshasa) (2011), May 2011*.

<sup>101</sup> Freedom House, *Freedom in the World: Congo, Democratic Republic of (Kinshasa) (2011), May 2011*.

<sup>102</sup> Internal Displacement Monitoring Centre (IDMC), *Global Overview 2010 - Democratic Republic of the Congo, 31/12/2010*.

<sup>103</sup> Internal Displacement Monitoring Centre (IDMC), *IDPs pay an unacceptable price: A profile of the internal displacement situation, 21/12/2010*, p. 47.

<sup>104</sup> *The Guardian*, *How the teachers of hope I met in the Congo were brutally killed, 16/10/2011*.

<sup>105</sup> *UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the*



See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

- 3.9.9 Conclusion.** At present Banyamulenge remain in a vulnerable and insecure position in the eastern Kivu provinces, and face discrimination amounting to persecution throughout DRC. If it is accepted that the applicant is of Banyamulenge origin, a grant of asylum is likely to be appropriate.
- 3.9.10** The AB and DM and MK Country Guidance caselaw (summarised in section 2.5 above) added Tutsis as an ethnic group to the 'at risk' categories and the judgments indicate that most Tutsis and those perceived as Tutsis are likely to be at risk of mistreatment. In paragraph 51 (ii) the court identifies as at risk: those who are Tutsi (or Banyamulenge) or are perceived to be Tutsi (or Banyamulenge) with the possible exception of high-level officials of RCD/Goma (para 51(ii)).
- 3.9.11** However it is not sufficient for an appellant simply to state that he is Rwandan or Tutsi or would be perceived as such. Evidence as to ethnicity will need to be considered carefully. A person is more likely to be viewed as a Tutsi or Banyamulenge if he or she has the appropriate physical characteristics and/or a dialect, tribal or geographic origin which links them closely with Tutsis. Case owners should assess each claim on the basis of a careful analysis of an individual's ethnicity, background and profile.

### **3.10 Security Situation: Eastern DRC (including Orientale Province and the Kikus)**

- 3.10.1** Applicants from Eastern DRC may make an asylum and/or human rights claim based on the political, human rights and/or humanitarian situation in the region.

#### **The Kivus**

- 3.10.2 Treatment.** Internal conflicts, mainly in the east, continued to significantly affect the human rights situation and challenged the government's limited ability to effectively control its territory, which was particularly the case in North and South Kivu provinces. The conflicts permitted armed entities to commit violent abuses against civilians, with little chance that the government would be able to hold the perpetrators accountable. These entities included rebel and militia groups (RMGs, such as the FDLR and the Mai-Mai (community-based self-defence groups), as well as dissident elements of the state armed forces, including former members of the CNDP and some "regular" units of the FARDC.<sup>106</sup> *In this regard it is important to also read the "Treatment" sub section in section 3.7.*
- 3.10.3** The Kabila administration identified five areas requiring particular attention: education, health, infrastructure, water/electricity, and job creation. These five areas were often referred to as "les cinq chantiers" in French ("The Five Pillars"). The government had made limited progress in these areas, however, due in large part to continuing insecurity and intermittent returns to armed conflict in several eastern provinces, particularly North and South Kivu and the Ituri, Bas-Uele, and Haut-Uele Districts of Orientale Province. A number of illegal Congolese and foreign militias had operated largely with impunity in these areas since before the overthrow of Mobutu in early 1997. Their relative strength and influence have waxed and waned over time, but two are of particular importance to the current situation: the FDLR, led by individuals involved in perpetrating the 1994 genocide in Rwanda, and the CNDP, which ostensibly agreed to integrate into the FARDC. These groups--the first predominantly Hutu, the second predominantly Tutsi--have fought each other and the FARDC, illegally exploited and exported DRC natural

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[Democratic Republic of the Congo, 26/01/2012](#), paragraph 23.

<sup>106</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Background <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>



resources to fund their weapons, and committed gross human rights violations (including indiscriminate killings, sexual and gender-based violence - including mass rapes, mutilations, and forced child soldier recruitment) in the areas under their control.<sup>107</sup>

**3.10.4** MONUSCO maintain several thousand soldiers and civilian personnel in the country to assist the government in establishing and maintaining peace and security, particularly in the east. Despite the presence of MONUSCO, armed entities, including ex-CNDP FARDC units in the east, continue to kill, abduct, torture, and rape civilians and burn and destroy villages. All parties use mass rape and sexual violence with impunity, often as weapons of conflict, and to humiliate and punish individuals, victims, families, and communities.<sup>108</sup>

**3.10.5** Civilian population continued to be subjected to grave atrocities by the regular army and armed rebel groups that clashed in several regions in the east and the north of the country. Operation Amani Leo, launched on 1 January 2010 in the Kivu provinces and led by the FARDC to fight against the FDLR, led to deterioration in the security of civilians, who were victims of the atrocities committed by both FDLR and FARDC. Human Rights Watch reported in 2011 that the east of the DRC remained volatile and was “marked by frequent attacks on civilians, particularly sexual violence against women and girls”, as well as killings, forced labour and looting.<sup>109</sup> The UN Secretary-General noted that “Acts of sexual violence, including a series of mass rapes, took place in North and South Kivu” by both FARDC members and rebel groups.<sup>110</sup> Similarly, another UN report issued in 2012 expressed concern that in the east of the country, especially in Orientale and Kivu provinces, FARDC soldiers “continued to subject the local population to arbitrary executions, sexual violence, arbitrary and illegal arrests and detentions, torture and ill-treatment, extortion, looting and forced labour.”<sup>111</sup>

**3.10.6** During 2011 Human Rights Watch reported on the continuing attacks, killings and rapes against civilians by armed groups.<sup>112</sup> Similarly, the UN noted that “Combatants of various armed groups also continued to commit serious human rights abuses against civilians, including murders, rapes and abductions.”<sup>113</sup> In the eastern provinces of North and South Kivu, the illegal exploitation of natural resources continued to contribute to conflict. Many armed entities in the east, including some FARDC units, engaged in the illegal exploitation and trade of natural resources. Some RMGs, had co-operated with criminal networks within the FARDC that have militarised the mineral trade and continued to compete for control over mineral-rich areas.<sup>114</sup>

**3.10.7** Some observers expressed concern over the government's decision in September 2010 to suspend indefinitely all mining activities in the three eastern provinces. There were reports that, following the suspension, the military's control of the mines intensified and that some FARDC elements increased their use of forced labour in the mines since mine activity had dropped following the suspension.<sup>115</sup> The law specifically prohibits the involvement of the FARDC in mining and the mineral trade. The law also prohibits non-state armed actors from engaging in mining. However, the government did not effectively enforce the law. According to the UNGOE, in the Kivu provinces, it appeared that almost every mining deposit was controlled by an armed group. The armed groups consisted of regular

<sup>107</sup> U.S. Department of State, Background Note: Democratic Republic of the Congo – 30 September 2011, Eastern Challenges <http://www.state.gov/r/pa/ei/bgn/2823.htm>

<sup>108</sup> US Department of State (USSD) Human rights Report 2010: Democratic Republic of Congo, 08/04/2011 section (g) Use of Excessive Force and Other Abuses in Internal Conflicts <http://www.state.gov/g/drl/rls/hrrpt/2010/index.htm>

<sup>109</sup> Human Rights Watch, *World Report 2012, 22/01/2012*, Attacks on Civilians.

<sup>110</sup> UN General Assembly, *Conflict-related sexual violence: Report of the Secretary-General, 13/01/2012*, paragraphs 27-34.

<sup>111</sup> UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012*, paragraph 3.

<sup>112</sup> Human Rights Watch, *World Report 2012, 22/01/2012*, Attacks on Civilians.

<sup>113</sup> UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012*, paragraph 3.

<sup>114</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Background <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>115</sup> US Department of State (USSD) Human rights Report 2010: Democratic Republic of Congo, 08/04/2011 section (g) Use of Excessive Force and Other Abuses in Internal Conflicts <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

FARDC units. Criminal involvement by some FARDC units, as well as by RMGs, ranged from protection rackets (including protection fees paid by mining pit managers to avoid pillage or to facilitate smuggling) to indirect commercial control (including the use of illegal tax revenues to buy and sell minerals near mining sites) and direct coercive control (including pillage). In addition, FARDC units and RMGs routinely forced civilians to work for them or relinquish their mineral production and extorted illegal taxes.<sup>116</sup>

**3.10.8** The plan to resolve the conflict in the Kivu by emphasizing a military solution was failing. Two years after the rapprochement between Congolese President Joseph Kabila and his Rwandan counterpart, Paul Kagame, government soldiers were still battling militias for control of land and mines. Neither side had the strength to win, but both have the resources to prolong the fighting indefinitely. Meanwhile, civilians suffered extreme violence, and the humanitarian situation was deteriorating. Ethnic tensions had worsened in anticipation of the repatriation of tens of thousands of Congolese refugees who fled to Rwanda during the 1990s. The UN Security Council has witnessed the deterioration of security in eastern Congo without opposing the decisions of Kagame and Kabila.<sup>117</sup>

**3.10.9** Oxfam reported that despite the scaling down of military operations against rebel groups in the Kivus and the military weakening of the FDLR, “violence continues to be a reality in the form of militia attacks, sexual violence, torture, beatings, and abductions. Civilians often get caught in the middle as each side to the conflict withdraws from – or retakes – their villages [...] Armed groups that are fragmenting and losing cohesion commit violent and desperate attacks against the civilian population, often for survival, stealing food and clothing”.<sup>118</sup> Since the beginning of 2012, UNHCR reported that “more than 3,000 Congolese civilians have fled into Uganda from North Kivu province” following the “more than 100,000 civilians” who left the area since late November 2011 following fighting involving “government troops, rebel forces and local defence groups”.<sup>119</sup> In February 2012, UNHCR was “alarmed by recent reports that internally displaced people have been tortured and killed by armed elements in the IDP camps of North Kivu [...] violating their civilian character”.<sup>120</sup> The head of the International Committee of the Red Cross (ICRC) sub-delegation in Bukavu was quoted as saying that “We [ICRC] are very concerned about the worsening humanitarian situation in South Kivu” due to “a sharp increase in attacks on civilians” that “has caused massive displacement”.<sup>121</sup>

### **Oriental Province (including the Ituri region and treatment of people of Hema or Lendu ethnicity)**

**3.10.10** A separate conflict involving the Lord’s Resistance Army (LRA) in the Haut Uele and Bas Uele districts of Orientale Province in the northeast continued to have an extremely negative effect on human rights during 2010, resulting in deaths, injuries, abductions, forced labour, looting and general insecurity.<sup>122</sup> The LRA continued to attack local villages and forced citizens to flee in Ango, Dungu, Niangara, and Faradje Territories, Orientale. The UNHCR estimated that there were more than 390,000 internally displaced persons in the territory as of 31 August 2010.<sup>123</sup>

<sup>116</sup> US Department of State (USSD) Human rights Report 2010: Democratic Republic of Congo, 08/04/2011 section (g) Use of Excessive Force and Other Abuses in Internal Conflicts <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>117</sup> International Crisis Group – No stability in Kivu despite Reapproachment with Rwanda – 16 November 2010 <http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/165-congo-pas-de-stabilite-au-kivu-malgre-le-rapprochement-avec-le-rwanda.aspx>

<sup>118</sup> Oxfam, ‘We are entirely exploitable’: The lack of protection for civilians in eastern DRC, 28/07/2011.

<sup>119</sup> UNHCR, More than 3,000 Congolese flee insecurity, suffering in North Kivu, 09/03/2012.

<sup>120</sup> UNHCR, UNHCR alarm at new reported atrocities against displaced Congolese, 03/02/2012.

<sup>121</sup> International Committee of the Red Cross (ICRC), Democratic Republic of the Congo: humanitarian situation worsening in South Kivu, 04/04/2012.

<sup>122</sup> US Department of State (USSD) Human Rights Report DRC 2010 Introduction <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>123</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section g. Use of Excessive Force and Other Abuses in Internal Conflicts, Lord’s Resistance Army (LRA) <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

**3.10.11** Attacks against civilians were the most severe in northern Congo, where the LRA continued its brutal campaign. A further 604 people were killed and 473 abducted, bringing the death toll in Congo to over 2,000 and the number abducted to 2,600 since the LRA began its latest campaign of violence in 2008. The LRA also attacked civilians across the border in the Central African Republic and Southern Sudan. The largest attack in Congo was in the remote Makombo area of Haut Uele District, where in December 2009 LRA combatants clubbed to death at least 345 civilians and abducted 250 others. The attack was one of the worst ever perpetrated by the rebel group in its bloody 24-year history. The LRA also carried out widespread abductions in Bas Uele District, deliberately targeting children whom the group forced to serve as soldiers. The Ugandan army, in coordination with the Congolese, Central African, and Southern Sudanese armed forces continued its military campaign against the LRA. The operation had some success in weakening the rebel group, but the LRA's ability to attack civilians remained undiminished. No progress was made on apprehending three of the LRA's top leaders sought by the ICC for crimes committed in northern Uganda. Congolese army and MONUSCO efforts to protect civilians in LRA-affected areas remained inadequate, with limited resources directed to address the threat.<sup>124</sup>

**3.10.12** The United Nations Security Council noted in October 2011 that the armed forces continued military operations against LRA with the support of MONUSCO and in coordination with the Ugandan People's Defence Force.<sup>125</sup> At the end of 2011, the International Crisis Group considered that the LRA remained a "deadly threat to civilians in three Central African states". It considered that in the three years since 2008, military operations have failed to stop the LRA from killing more than 2,400 civilians, abducting more than 3,400 and causing 440,000 to flee".<sup>126</sup> The UN High Commissioner for Human Rights noted in January 2012 that "LRA combatants in Orientale Province often attack villages with the aim of looting supplies for the group but also abducting adults and children to carry stolen goods. Most of the abducted girls and women are subjected to sexual slavery during their captivity, including being forcibly married to LRA commanders".<sup>127</sup> The LRA reportedly committed 284 attacks in 2011, a 32% decrease from those reported in 2010.<sup>128</sup> However, despite the decrease in attacks, the UN noted that the LRA "retained a capacity to mount attacks".<sup>129</sup> Similarly, in February 2012, IRIN News highlighted analysts' assessment that to believe the LRA no longer posed a threat "underestimates its resilience and overestimates the unity and capability of the forces ranged against it".<sup>130</sup> Furthermore, UNHCR reported in March 2012 that it was "very concerned at the recent displacement of several thousand people as a result of renewed attacks by the Lord's Resistance Army (LRA), in the Democratic Republic of the Congo's Orientale province. After a lull in the second half of last year, which resulted in improved security conditions for the population in the north of the province, fresh attacks on civilians have been reported during the past few weeks in the territories of Dungu, Faradje, Watsa, Niangara, Bondo and Ango, causing 3,000 people to flee. There have been 20 new attacks since the beginning of this year."<sup>131</sup> Reporting on the situation in Orientale Province, Oxfam noted that "The absence of effective state presence and protection, which attracted the LRA to this area in the first place, allows them to continue to operate freely".<sup>132</sup>

**3.10.13** In the Ituri region of Orientale Province remnants of the militia groups involved in the conflict

<sup>124</sup> Human Rights Watch World Report 2011: Democratic Republic of Congo, 24/01/2011, Attacks by the Lord's Resistance Army in Northern Congo <http://www.hrw.org/world-report-2011/democratic-republic-congo>

<sup>125</sup> UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 8.09) COIS DR Congo country report March 2012 (para 8.09) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>126</sup> International Crisis Group, The Lord's Resistance Army: End Game? 17/11/2011, Executive Summary and Recommendations <http://www.crisisgroup.org/~media/Files/africa/central-africa/182%20The%20Lords%20Resistance%20Army%20--%20End%20Game.pdf>

<sup>127</sup> UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012, para 30

<sup>128</sup> Invisible Children, Resolve, LRA Crisis Tracker Annual Security Brief, 09/02/2012, Executive Summary

<sup>129</sup> UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26/01/2012, paragraph 26

<sup>130</sup> IRIN News, The LRA - not yet a spent force, 03/01/2012

<sup>131</sup> UNHCR, UNHCR concerned at displacement caused by LRA attacks in DR Congo, 06/03/2012

<sup>132</sup> Oxfam, We Are Entirely Exploitable: The lack of protection for civilians in eastern DRC, 28/07/2011 Attacks in LRA-affected areas of Province Orientale

between the Ugandan backed Hema and Kinshasa backed Lendu remain active, carrying out sporadic attacks against civilians. Banditry and human rights abuses have reportedly been carried out by the Front for Patriotic Resistance in Ituri (FRPI), a militia group previously linked to the Lendu-dominated National Integrationist Front (FNI), and a new group that emerged in 2008, the Popular Front for Justice in Congo (FPJC).<sup>133</sup> These militia groups, estimated to have no more than 100 people within their ranks, were responsible for 52 deaths in 2010, prompting a military operation by the DRC army, FARDC, to neutralize their activities and move populations to protected areas.<sup>133</sup> Despite the signing of a 2006 ceasefire agreement between militias in the Ituri District of Orientale, including the Front for National Integration (FNI), the Congolese Revolutionary Movement, the FRPI, and the government, the FRPI refused to participate in the peace process and was implicated in abuses committed against civilians in Ituri District during the year.<sup>134</sup> The UN Report of the Secretary General noted that “In Ituri district, the threat posed by militia groups, in particular the Front populaire pour la justice au Congo (FPJC) and the Front de résistance patriotique de l’Ituri (FRPI), persisted. On 2 December 2011, a militia group attacked a MONUSCO patrol in the Bunia area. On 22 December 2011, MONUSCO launched “Operation Santa Claus-Ituri” to ensure the protection of civilians during the Christmas to New Year period”.<sup>135</sup> Oxfam reports that “in Irumu (Province Orientale), villages are looted and individuals are targeted for rape, abduction, and murder by the local militia if they are thought to be collaborating with the FARDC.”<sup>136</sup>

**3.10.14** A UN reported briefing in June 2011 noted that there was some residual militia activity, but apparent recent attempts to recruit new militia elements or form new groups had not been very successful and increased cooperation by the population with Congolese security forces and MONUSCO was an encouraging sign.<sup>137</sup>

**3.10.15** In March 2012 the International Criminal Court (ICC) found Thomas Lubanga guilty of recruiting and using child soldiers between 2002 and 2003. In a unanimous decision the three judges said as head of the Union of Congolese Patriots (UPC) and its armed wing, Lubanga bore responsibility for the recruitment of child soldiers under the age of 15, who had participated actively on the frontline. Three other men are accused of war crimes committed during ethnic strife in Ituri district 10 years ago.<sup>138</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

**3.10.16 Conclusion.** In the Kivus, internal conflict continued to affect the human rights situation and both rebel groups and members of the Congolese army committed gross human rights abuses against civilians, including mass rapes, mutilations, forced child soldier recruitment, indiscriminate killings, sexual and gender-based violence. In northern Congo, civilians continue to be at risk of death, injuries, abductions, forced labour, looting, forced displacement and general insecurity from the Lord’s Resistance Army. Persons are also at risk of human rights abuses by the FPJC and FRPI.

**3.10.17** A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason. The claimant must demonstrate a well-founded claim for asylum where he or she is at risk of persecution on Convention grounds, however, consideration must be given to the up to date country of origin information.

**3.10.18** Each case must be considered on its individual merits to assess whether effective

<sup>133</sup> IRN Africa: <http://www.irinnews.org/report.aspx?reportid=93025>

<sup>134</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section g. Use of Excessive Force and Other Abuses in Internal Conflicts, Ituri District Militia Groups  
<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>135</sup> [UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26/01/2012](#), paragraph 28

<sup>136</sup> [Oxfam, We Are Entirely Exploitable: The lack of protection for civilians in eastern DRC, 28/07/2011](#) Attacks Looting and violent theft

<sup>137</sup>: UKBA/COI Service, The Democratic Republic of Congo: Country of origin (COI) Report, 09 March 2012 (para 8.02), <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>138</sup> BBC News: ICC finds Congo warlord Thomas Lubanga guilty 14 March 2012: <http://www.bbc.co.uk/news/world-africa-17364988>



protection is available. In those cases where effective protection is not available, then careful consideration must be given as to whether internal relocation would be an effective way to avoid a real risk of ill-treatment and whether it would not be unduly harsh to expect the applicant to internally relocate to another part of the DRC. The areas of conflict are approximately one thousand miles from Kinshasa and there is no evidence that those who make a claim based on the violence and/or humanitarian situation in an area of conflict would not be able to relocate to Kinshasa or other government-controlled areas where they will, should the need arise, be able to seek protection. It is therefore unlikely that the grant of asylum or Humanitarian Protection will be appropriate in most cases.

**3.10.19** The Courts found in **NA** that members of the Hema tribe are likely to be treated by the authorities in the DRC in the same way as Tutsis and Rwandans and may be at risk of persecution on return to the Ituri region. Tribal membership by itself is not determinative. Whether a member of the Hema is at real risk of persecution or is able to relocate internally depends not only on his ethnicity but also on his profile, background and circumstances looked at in the light of the country evidence as a whole.

**3.10.20** Case owners should note that some members of current or former rebel forces have been responsible for numerous serious human rights abuses, some of which amount to war crimes. If evidence suggests that the applicant has been involved in such actions, case owners should consider whether one of the exclusion clauses is applicable. Account should be taken of the individual circumstances of joining a particular rebel group, such as experiencing coerced or forced recruitment. Guidance on Article 1F can be found in the asylum policy instruction on 'Exclusion- Article 1F and 33(2) of the Refugee Convention'. In such instances case owners should refer all cases to a senior case worker.

### **3.11 Prison conditions**

**3.11.1** Applicants may claim that they cannot return to the DRC due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the DRC are so poor as to amount to torture or inhuman treatment or punishment.

**3.11.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.11.3 *Consideration.*** According to the U.S Department of State, conditions in most large, central prisons were severe and life-threatening. During 2010 the UN Secretary-General, Ban Ki-moon, reported to the UN Security Council that the prison system required urgent reform, as it continued to be characterised by catastrophic conditions of detention, including severe overcrowding and lack of medical facilities, and that in several instances, detainees died from starvation, as no budget had been allocated to cover operational costs, including food and other basic needs. The penal system was underfunded and most prisons were overcrowded, poorly maintained and lacked sanitation facilities. In all prisons except the Kinshasa Penitentiary and Re-education Centre, the government had not given food for years. Prisoners' friends and families supplied the only available food and necessities. Malnutrition was widespread and some prisoners starved to death. Prison staff often forced family members of prisoners to pay bribes for the right to bring food to prisoners. Larger prisons sometimes have separate facilities for women and juveniles, but the others generally do not. The 2010 U.S. State Department report noted that "during the year there were many credible reports by informed sources that security services tortured civilians, particularly detainees and prisoners, and employed other types of cruel, inhuman, and degrading punishment".<sup>139</sup> In January 2012, the UN High

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<sup>139</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions.

Commissioner for Human Rights noted that, although the law penalizing torture has been adopted, "inmates remain vulnerable to torture and ill-treatment by penitentiary personnel".<sup>140</sup>

- 3.11.4** The country's Justice Minister called the prisons "death houses" in a plea to the international community for immediate assistance. According to ASADHO's April 2009 report *Rule of Law Put to the Test*, medical equipment and medicines were absent in virtually all the prisons and detention centres. In 2009 the UN Secretary General reported that prison populations was beyond capacity by 600 percent and expressed concern about lack of food and health care, outdated prison laws and regulations and severe shortcomings in infrastructure and training for prison guards.<sup>141</sup>
- 3.11.5** According to Amnesty International, the prisons did not have the resources to meet the international minimum standards. Prisoners were not guaranteed even one meal a day and had inadequate access to health care. Dozens died in prison as a result of the poor conditions, and many more died in hospital after undue delays in being transferred. Prison facilities were in a state of decay that hampered the effective separation of women from men and of detainees from convicted prisoners. Cases of rape within prison and police detention facilities were reported.<sup>142</sup>
- 3.11.6** Even harsher conditions prevailed in small detention centres, which were extremely overcrowded; had no toilets, mattresses or medical care and supplied detainees with insufficient amounts of light, air, and water. These centres were originally intended to house short-term detainees but were often used for prolonged incarceration. They generally operated without dedicated funding and with minimal regulation or oversight. Informed sources stated that detention centre authorities often arbitrarily beat or tortured detainees. Guards frequently extorted bribes from family members and NGOs for permission to visit detainees or provide food and other necessities.<sup>143</sup>
- 3.11.7** Despite President Kabila's 2006 decision to close illegal jails operated by the military or other state security forces, there were no reports of such closures during 2010. According to MONUSCO, the security services, particularly the intelligence services and the GR, continued to operate numerous illegal detention facilities characterised by harsh and life-threatening conditions. Authorities routinely denied family members, friends, and lawyers access to these illegal facilities.<sup>144</sup>
- 3.11.8** Violence, particularly sexual violence, continued to be a serious problem in prisons, along with life-threatening diseases such as HIV/AIDS. Death of detainees was common due to deplorable living conditions, malnutrition and lack of medical care. For example, on 12 February 2010, 191 persons were detained in a 36-by-23-foot cell in Tshikapa's prison, Kasai Occidental Province, without ventilation resulting in the death of three detainees due to suffocation.<sup>145</sup> According to the January 2012 Report of the UN Secretary-General, "The pre-election period was marked by prison unrest, including strikes by prison staff, prisoner riots and mass escapes" and that on 1 January, a prison break attempt at the

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<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>140</sup> UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office in the Democratic Republic of the Congo, 13/01/2012, paragraphs 14 and 9.

<sup>141</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>142</sup> Amnesty International Annual Report 2011: DRC 13/05/2011 Prison Conditions <http://www.amnesty.org/en/region/democratic-republic-congo/report-2011>

<sup>143</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>144</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>145</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions.

<http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

Bukavu Central Prison, in South Kivu, resulted in the death of 8 prisoners and the injury of 47 others. The same source reported that “health conditions also remain a grave concern, with 22 deaths of inmates recorded in November and December 2011”.<sup>146</sup>

- 3.11.9** Authorities denied some prisoners and detainees access to visitors and did not permit them to have contact with or submit complaints to judicial authorities. The government had not established an effective or reliable system to monitor detention facilities and authorities very rarely investigated allegations of inhumane prison or detention centre conditions. There were no government ombudsmen serving to protect the rights of prisoners and detainees. There were no reports of authorities preventing prisoners or detainees from practicing their religion.<sup>147</sup>
- 3.11.10** In general, the government allowed the International Committee of the Red Cross, MONUSCO, and some NGOs access to all official detention facilities; however, it did not allow these organisations access to illegal government-run detention facilities, including those run by the ANR, the GR, and units of the FARDC, including ex-CNDP FARDC units in Masisi territory, North Kivu.<sup>148</sup>
- 3.11.11** Prison conditions in the DRC are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, torture and abuse of inmates and extremely poor health facilities and sanitary conditions, prisons and detention facilities in the DRC are likely to reach the Article 3 threshold. Where case owners believe that an individual is likely to face imprisonment on return to the DRC they should also consider whether the applicant’s actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where case owners consider that this may be the case they should contact a Senior Case worker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to the DRC and exclusion is not justified, a grant of Humanitarian Protection is likely to be appropriate.

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to the DRC the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied

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<sup>146</sup> [UN Security Council, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, 26/01/2012](#), paragraph 67.

<sup>147</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

<sup>148</sup> U.S. Department of State, 2010 Human Rights Report: Democratic Republic of the Congo, 08/04/2011, Section c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Prison and Detention Center Conditions. <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154340.htm>

that there are adequate reception, support and care arrangements in place for minors with no family in the DRC. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to the DRC due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** Medical care in the DRC is extremely limited. The Centre Prive d'Urgence clinic in Kinshasa is able to cope with basic health problems and to stabilise a patient after most serious accidents. Outside Kinshasa, western standard medical facilities were practically non-existent. Malaria, rabies, polio, meningitis and cholera were common in DRC.<sup>149</sup>

**4.4.3** Access to health care services is open provided that the patient has the financial means to be treated. Health care is expensive.<sup>150</sup> There is no discrimination in the health care system in DRC. However there are different categories for patients in hospitals: (a) destitute; (b) assignees, member of the hospital or the clinic community, the assignees of the State, i.e. the army, the police and assignees from companies and (c) institutions bound by an agreement and Insurers of medical expenses or rich or average independent workers (average in the sense of they can afford to pay health care by themselves).<sup>151</sup>

**4.4.4** In 2010, thousands more people were displaced from their homes by violence. Throughout the country, decades of neglect of the health system has resulted in a rise in infant and maternal mortality rates and, according to the World Health Organisation (WHO), life expectancy was among the lowest in the world. In 2010, Medecins sans Frontieres (MSF) staff carried out more than one million medical consultations, performed more than 10,000 surgeries and assisted 19,200 births. Staff treated patients for HIV/AIDS, tuberculosis, cholera, haemorrhagic fevers, measles, malaria, African trypanosomiasis and more. Teams carried out vaccination campaigns and emergency surgery ran nutrition programmes and offered paediatric care. Mental healthcare was also offered, as well as women's healthcare, including specialised assistance to victims of sexual violence.<sup>152</sup>

**4.4.5** Since the 1980s the US Government has worked with the DRC Ministry of Health to develop HIV/AIDS programming. USAID supports HIV/AIDS prevention, treatment and care activities in the high – prevalence areas of Kinshasa, Matadi, Lubumbashi and Bukavu, as well as 57 health zones through the Primary Health Care program.<sup>153</sup> MSF teams started more than 850 new patients on antiretroviral treatment (ARV) in MSF's HIV/AIDS project in Centre Hospitalier de Kabinda in the centre of Kinshasa in 2010, bringing the total number of patients receiving the medication to 2,631. MSF also began supplying medication, financial and technical assistance to "Postes de Distribution". These were community-based ARV distribution points that give patients responsibility for their own care. The centres were set up and were managed by people living with HIV/AIDS who were members of the Réseau National d'Organisations Assises Communautaire (RNOAC), a nationwide patient support group.<sup>154</sup>

**4.4.6** The FCO's Embassy in Kinshasa confirmed that, according to their most recent research,

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<sup>149</sup> UK FCO Travel and Living Abroad DRC 23 December 2011 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/sub-saharan-africa/congo-democratic-republic>

<sup>150</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.07))<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>151</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.09))<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>152</sup> Medecins sans Frontieres – Focus on DRC – Accessed 26 January 2012 <http://www.msf.org.uk/drc.focus>

<sup>153</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.018)  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>154</sup> Medecins sans Frontieres – Focus on DRC – Accessed 26 January 2012 <http://www.msf.org.uk/drc.focus>



the following information provided by the Embassy in August 2006 was still true: “chemotherapy and other related treatments are available (at a cost to the patient and not all of the time) in 5 medical centres, all of which are in Kinshasa.”<sup>155</sup>

- 4.4.7** WHO recorded: Mental health is a part of primary health care system. Actual treatment of severe mental disorders is available at the primary level. ... Regular training of primary care professionals is carried out in the field of mental health. The Government also partially supports some charitable organisations like the Soins de Santé Mentale (SOSAME) that provide mental health services.<sup>156</sup>
- 4.4.8** UNICEF was providing improved health care and vaccination campaigns in emergency affected areas reaching about 500,000 people. Two emergency projects were implemented in North Kivu during the first four months of 2010 improving access to good quality and entirely free health care for the total population. The emergency immunisation campaign in South Kivu had resulted in improved vaccination coverage. Approximately 30,000 people were reached and consequently protected against diseases such as diphtheria, whooping cough, tetanus, hepatitis B, meningitis. The emergency primary health care project supported by UNICEF had significantly improved the accessibility to high quality and free health care for 115,000 people in Ituri/Haut Uele –both displaced and hosts populations. The total population covered by these emergency health projects supported by UNICEF was estimated to be more than 400,000 people amongst which were 85,000 children under 5 years of age and almost 43,000 pregnant women in three provinces in eastern DRC.<sup>157</sup>
- 4.4.9** The 2010 Annual Report of the International Committee of the Red Cross (ICRC) recorded: Victims of sexual violence received psychological support at 37 counselling centres supplied and supported by the IRCC. Women heard about the services offered in such centres during six awareness raising campaigns, which also aimed to prevent social stigma linked to sexual assault. In response to a peak in needs in North Kivu in August, five temporary counselling centres were set up and supported. Another three improved their services following ICRC rehabilitation work, helping them accommodate some 240 people.<sup>158</sup>
- 4.4.10** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** There is no policy which precludes the enforced return to the DRC of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Except in the case of people leaving the country to avoid prosecution, the illegal exit from the country of origin has no negative consequence per se.<sup>159</sup> Upon arrival at the airport, immigration agents will wait for the returnee and identify him before taking him to the litigation office of the

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<sup>155</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.28))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>156</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.35))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>157</sup> UNICEF – Humanitarian Action Update – DRC – 1 June 2010

[http://www.unicef.org/infobycountry/files/UNICEF\\_Humanitarian\\_Action\\_Update\\_-\\_DRC\\_-\\_1\\_June\\_2010.pdf](http://www.unicef.org/infobycountry/files/UNICEF_Humanitarian_Action_Update_-_DRC_-_1_June_2010.pdf)

<sup>158</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 26.16))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>159</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.01))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

DGM for the formalities before the hearing. Returning Congolese are likely to be interviewed by DGM officials and subjected to systematic searches and extortion of their private belongings, e.g. shirts, pants, shoes, watches, lighters, as well as money) if for example the vaccination certificate isn't valid. This may continue in the parking area, after leaving the passenger zone of the airport, as individuals from the security forces rightly or wrongly believe that returnees have a lot of money and goods with them.<sup>160</sup> The Tribunal concluded in BK (see caselaw) – paragraph 323 that in general the treatment faced by returnees required to pay a bribe will not breach Article 3.

- 5.3** In terms of the impact of crimes committed outside of the country; persons having purged their sentence in the asylum country after sentence do not risk prosecution from Congolese courts.<sup>161</sup>
- 5.4** The United Nations High Commissioner for Refugees (UNHCR) noted in 2011 “In January 2011 there were 107,900 returnee refugees (whose country of origin was DRC) in the country of which UNHCR assisted 10,900. In December 2011 there were 145,500 of which UNHCR assisted 145,500.<sup>162</sup>
- 5.5** In May 2009, the ‘The Guardian’ revealed that two Congolese returnees had been detained and tortured after arrival. One of the returnees declared that ‘The government in Congo views Congolese people deported back home from the UK as enemies [...]. The guards who beat me kept saying to me ‘You are a spy, give us information, why are you doing this to your country. The International Organization for Migration (IOM) was asked whether it had been informed of returnees (whether forced or voluntary) being ill-treated upon return to DRC, the IOM contact declared that they are not aware of such problems. IOM added that returnees are heard by DGM and kept by DGM only if they are criminals. Otherwise, DGM let them go.<sup>163</sup>
- 5.6** In February 2011, the president of the ‘Voix des Sans Voix’ (VSV or ‘Voice of the Voiceless’), a Congolese Human Rights NGO stated: we continue going to the airport in order to monitor the arrivals of returnees. Since we have been present in the airport, we have established good contacts with agents of DGM and security services. We go to Ndjili roughly once a week, especially when they are international flights, like Air France or SN Brussels, landing in Kinshasa. In the last year or so, we have not observed any ill-treatment of returnees. Of course, extortion is still practiced, even though more rarely now. Airport agents may take clothes or other belongings from returnees. Another Congolese NGO representative, the president of the ‘Comité des observateurs des droits de l’Homme’ (CODHO or Committee of Observers of Human Rights) provided a somewhat different light on the situation of returnees : ‘Returnees are placed in the hands of the DGM agents who interrogate them on their departure from DRC and the reasons they asked for asylum in Europe. They are then kept a few hours in the airport while DGM agents report to their hierarchy and wait for further instructions. Those who do not represent a problem are immediately released. For the returnees who represent a problem - amongst whom political opponents who made no secret of their political position in European cities - after they are interviewed by DGM, it may occur that they are taken to the city centre, to the DGM national office for more questioning and possibly, to be handed over to the Public Prosecutor’s office to be charged. Only the Public Prosecutor’s office may decide on such charge. In other words, activists who are well-known for their position against authorities, who are failed asylum-seekers, are obviously exposed to ill-treatments when arriving in Ndjili’.<sup>164</sup>

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<sup>160</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.02))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>161</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.03))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>162</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.08))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>163</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.12))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>164</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.12))

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 5.7** A report by Justice First, UK-based Non Government Organisation set up to work with people whose asylum claims had been refused, '[Unsafe Return, Refoulement of Congolese Asylum Seekers](#)', compiled by Catherine Ramos, dated 24 November 2011 (JF Report 2011), stated in its introduction: This report has been prepared in response to a growing concern for the plight of Congolese nationals who have sought asylum in the UK, whose appeals have been refused and who have been forcibly removed to the Democratic Republic of the Congo between 2006 and 2011. During this period, first hand reports which were received from nine people who had been living in the Tees Valley area alleged inhuman and degrading treatment at the hands of the Congolese authorities.<sup>165</sup> The JF Report provided a summary of its findings, "documented that the human rights of 9 children and 15 adults were violated after removal."<sup>166</sup> The returnees in this report were perceived or actual political opponents of the current DRC regime.<sup>167</sup> The UK Border Agency is considering the findings of this report.
- 5.8** In accordance with the current country guidance in **BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098** the UK Border Agency maintains that failed asylum seekers per se do not face a real risk of persecution or serious harm on return to the DRC. However BK does accept that returnees are likely to be questioned and case owners should review each case to determine whether the applicant falls into the risk categories identified in Country Guidance, whilst taking into consideration appropriate evidence which post dates BK.
- 5.9** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.10** Nationals of the DRC may return voluntarily to any region of the DRC at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.11** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in the DRC. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Congolese nationals wishing to avail themselves of this opportunity for assisted return to the DRC should be put in contact with Refugee Action. Details can be found on Refugee Action's web site at:

[www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

Country Specific Litigation Team  
Immigration Group  
UK Border Agency  
May 2012

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<sup>165</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.13))  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>166</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.15))  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>167</sup> UKBA/ COI Service: DRC Country of Origin (COI) Report 09/03/2012 (para 32.16))  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>