

ASYLUM AND IMMIGRATION TRIBUNAL

BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098

THE IMMIGRATION ACTS

Field House
3-5 July, 17- 25 September 2007

Before

**SENIOR IMMIGRATION JUDGE STOREY
SENIOR IMMIGRATION JUDGE WARR
IMMIGRATION JUDGE DAVEY**

Between

BK

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Jacobs & Miss J Frances, of Counsel, instructed by Biscoes Solicitors

For the Respondent: Miss L Giovannetti, of Counsel, instructed by Treasury Solicitors

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.

DETERMINATION AND REASONS

1. Lengthy as was the hearing of this case, it concerns essentially two matters only: the appellant's particular case and the issue of whether failed asylum seekers returned to the Democratic Republic of Congo

(DRC) against their will are at real risk of persecution or serious harm or ill treatment. Given the publicity it has received, here and in the DRC, it is important to emphasise what the case is *not* about. It is not concerned with the issue of treatment of failed asylum seekers by United Kingdom officials during the removal process. It is not concerned with the sending of any kind of political message to the DRC government as to what this country thinks of how it treats its citizens; that is not in any event a judicial function. Apart from deciding the appellant's case, it is concerned solely with the purely factual issue of what is likely to happen to failed asylum seekers when they arrive at N'Djili airport in Kinshasa and thereafter. Nevertheless resolution of this issue is of some moment for those concerned and indeed on 23 August 2007 the Administrative Court stayed any removals to the DRC pending the outcome of this case.

2. Quite exceptionally, much of the hearing of the case took place in camera. Hearings before this Tribunal must normally be in public and it is of cardinal importance that they should remain so. However, both parties in this case were agreed from the outset that, without prejudging any issues, we should have regard to concerns expressed by certain potential witnesses about their safety if their identities became known. In the event we have serious doubts that the veil of secrecy was justified in several cases and we have principally maintained our anonymity and confidentiality order because that is what we said we would do. It has proved convenient in any event for us in this determination to anonymise all the witnesses save for that from witnesses who expressly said they were happy to be named and save for that which concerns figures in the political life of the DRC whose names are already in the public realm. Given the length and complexity of the case (the documentation alone occupied 11 lever arch files), Senior Immigration Judge Warr and Immigration Judge Davey have made some contribution to the writing of this determination. Our findings and reasons, however, are the findings and reasons of all three. Below W=Witness and E=Expert.
3. In view of the very considerable body of evidence we have to deal with, covering both the appellant's case and the general issue of failed asylum seekers, it may assist to begin with a table of contents (paragraph numbers in brackets):

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The Appeal

4. The appellant is a citizen of the Democratic Republic of Congo born in November 1978. She arrived in the United Kingdom on 3 February 2006 and applied for asylum on that date. The Secretary of State considered the application but refused it in a letter dated 28 March 2006. The

appellant appealed. It is her appeal which falls for us to decide in this determination. Given the agreement of both parties that our determination of the appellant's appeal should encompass the general issue of risk to failed asylum seekers returned to the DRC, we shall deal first of all with this general issue, returning at the end to the appellant's particular case.

Procedural History

5. Prior to the first day of hearing on 3 July 2007 there were several case management hearings. We need only note the following details.
6. On 16 May 2006 the parties agreed before Immigration Judge Gillespie that there was "no reliance on Article 8".
7. Despite the respondent requesting the appellant's representatives several times, beginning as long ago as 20 June 2006, to ask their expert witness, E1, to use his extensive contacts in the DRC to confirm aspects of the appellant's account relating to her and her husband's and father's UDPS involvement, this was never done.
8. In a letter dated 29 June 2006 the Treasury Solicitor requested that the hearing set for 2 July be adjourned in view of repeated delays and late service by the appellant's representatives of various documents. That application was refused on 29 June 2007, but was renewed by Ms Giovannetti at the outset of the hearing on 3 July. She highlighted the fact that the evidence submitted by the appellant's representatives by the 27 June deadline set by the Tribunal included a statement from Ms Atherton which made reference to 10 case studies and a second report from E2 of which no prior warning had been given. There were some 1,500 pages of evidence which had been adduced. It was essential, in order for the respondent to prepare properly for what had been identified by the Tribunal long ago as an intended country guidance case on a generic issue, she submitted, that adequate time be given to investigate the particulars of the case studies mentioned, the files relating to which were currently in storage. She accepted, however, that the respondent was ready to proceed in relation to the appellant's evidence. Mr Jacobs objected to the application to adjourn as well as to the fall-back position of proceeding only with the evidence relating specifically to the appellant.
9. We decided that it would be unfair to proceed with the hearing on 3 July insofar as it had been set to deal with general issues relating to failed asylum seekers and UDPS involvement, but that neither party would be prejudiced by proceeding with the hearing of evidence specific to the appellant. The hearing was accordingly undertaken in two stages. The first stage in July dealt with the "subjective" element of the case – the evidence of the appellant, her mother, JK (Federal President of the UDPS in the United Kingdom) and the expert, E1. E1 had prepared reports dealing both with the individual facts of the appellant's case and the wider issues of returned asylum seekers and the hearing in July was only concerned with E1's report in respect of the personal features of the appellant's case. The proceedings in September 2007 were largely devoted to the "objective" evidence of a general nature.

10. In between July and the resumed hearing in September there were communications from the parties which we need not detail except to observe that both sought permission to adduce further evidence, some relating to the appellant's particular case, some to the general issue of returned failed asylum seekers.
11. Prior to the commencement of the resumed hearing in September we reminded ourselves of the entirety of the evidence that had been before us when he heard the case in July. At the outset of the September hearings we granted both parties permission to adduce the further evidence they had submitted. Mr Jacobs also raised the concerns of W1 that he had received death threats which he had reported to the police (we were subsequently given details of the police reference number). W1 was already covered by the Tribunal's Anonymity and Confidentiality Order, effective from the beginning of the hearing in July but, in view of this information, we took additional steps to ensure W1, W2 and W3 were able to give their evidence in camera. We also reviewed arrangements put in place for certain other parts of the hearing to be heard in camera.
12. Although we have maintained and still maintain our Anonymity and Confidentiality order in respect of W1, W2 and W3 [and certain others], we would emphasise that we have done so reluctantly. In the course of the hearing in September we learnt that commencing in early 2007 both W2 and W3 had been speakers at a number of public meetings held in several UK cities (including Birmingham) to raise awareness amongst the DRC diaspora about the failed asylum seeker issue in the context of this (pending) Tribunal case. Leaflets advertising these meeting had given their names. As for W1, his name had also appeared on a leaflet distributed for the meeting in Birmingham. Having heard from Miss Atherton we are prepared to accept that mention of his name in that leaflet was inadvertent on her part, but we also learnt during the September hearing that in July 2007 W1 had identified himself by name on a website covering DRC affairs underneath an entry criticising the current DRC regime as "looters". Given, as we shall come on to later, Mr Jacobs' reliance on the fact that there are DRC agents active in the UK, we consider it was unjustified for him to have suggested, that the threat to W1's life may "very likely" have been the result of the British Embassy mentioning him to DRC officials in the course of the Embassy's recent efforts to obtain more evidence on behalf of the respondent so as to check whether W1's evidence was reliable. He was someone whose name in connection with this case had already been put into the public realm within the Congolese community.
13. If we had been given the above information at the outset we might well have decided not to maintain our Anonymity and Confidentiality Order in respect of this witness and W2 and W3. In the event we have decided to maintain it in respect of all three, chiefly because we said we would and because we consider generally that in view of the publicity surrounding this case it is prudent that we should only refer by name to individuals who have expressly indicated that they are content for us to do so. The parties will be able to ascertain by reference to the agreed

bundles to whom we refer when we anonymise. The publicly disclosable evidence on which we have relied is listed in an appendix.

14. On the first day of the hearings in September (17th) the appellant's representatives also raised their concerns about the fact that recent correspondence from the British Embassy in Kinshasa revealed that one of their officials (whom we refer to throughout as X) had openly mentioned W1's name to DRC government sources, notwithstanding the Tribunal's Anonymity and Confidentiality Order prohibiting identification of this witness. Insofar as any question of admissibility of the relevant parts of the British Embassy correspondence is concerned, we are satisfied that it was evidence to which we should have regard. W1 in his witness statements of 16 May and 10 September 2007 had made a number of claims about his role at N'Djili airport in the period 1998-2002 and the respondent (without objection from Mr Jacobs) had specifically asked the Tribunal for adequate time to seek to verify and check these claims, which is what she did. We note further that none of the British Embassy enquiries related to evidence or details which W1 had given in the course of his asylum claim and, being a recognised refugee in the UK, W1 is not in any danger of being himself returned to the DRC against his will. Additionally W1 was by his own account a well known figure in the DRC government, both before and after his fall from grace in the eyes of the Kabila regime (we were shown a July 2006 news item from a Congolese website making reference to him); and, as already noted, W1's name as someone now in the UK with evidence to give exposing mistreatment of returned failed asylum seekers was already in the public realm within the DRC community, here and in the DRC, well before the hearing of this case.
15. Having said that, we think that the British Embassy enquiries made regarding him showed insufficient regard to the terms of the Tribunal's order. We acknowledge that the Embassy mentioned that W1 was among the witnesses expressing concern for his safety, specifying that as a result "special care was taken when making inquiries". Yet the Embassy's 13 September 2007 letter shows clearly that enquiries were made about W1 of certain ex-colleagues and former acquaintances, including senior figures within the DGM. It appears that that the Embassy was not fully informed about the terms of the Tribunal's order.
16. However, having reviewed all the correspondence we can find no evidence to indicate any wilful disregard by the respondent of our order. In AH (Sudan) [2007] EWCA Civ 297 (in a passage unaffected by the subsequent overturning of this judgment by the House of Lords), Buxton LJ emphasised the value of British Embassy assistance with information and evidence relating to intended country guidance cases. Whilst we have found no intentional breach by the respondent of the Tribunal's order, we would hope that in future the respondent would ensure that Embassy officials asked to assist with inquiries relating to country guidance issues are made fully aware of any anonymity and confidentiality implications and that, in a case where they consider that response to requests for information may entail some degree of disclosure, the respondent approaches the Tribunal for clarification beforehand.

17. One other matter arose during the September hearings which merits comment here. Prior to the September hearing Mr Jacobs informed us that the first witness he would call would be E1. On the morning of the first day's hearing he announced that it was now his intention to call E1 at the end of the week. It is clear that he had not informed Miss Giovannetti of this. We deprecate this lack of regard for the difficulties this obviously caused Miss Giovannetti for her preparation of questions for the witnesses who were in fact called first.
18. At the beginning of the hearing on Thursday 20 September we alerted the parties to the fact that we could not be sure we would finish hearing from previous witnesses before the beginning of Friday, when we were due to hear from E1. Mr Jacobs undertook to alert E1 straightaway to the real possibility that we might not be ready to hear him until the following Monday 24th. We heard nothing thereafter from Mr Jacobs to suggest that this would cause E1 any difficulties until the morning of 21 September, (the day when we were due to hear from E1), when Mr Jacobs advised us that E1 had e-mailed during the weekend to say he had a prior commitment and would be unable to attend.
19. Mr Jacobs proceeded to apply for an adjournment of the case until a date in late October. He drew attention to the fact that in the e-mail from E1 explaining why he could not attend on 24 September he went on to say that he was also in the process of examining some elements from the witness statements of W1, W2 and W3 and verifying some other matters including Voix des Sans Voix's (VSV's) monitoring capacity at N'Djili airport. He expected his final and additional report concerning these matters to be ready by 20 October and ended by saying he was prepared to give evidence to the Tribunal when this report was finished. We decided to refuse this application. No good reason has been shown to justify an adjournment and we are satisfied that it was just to refuse one. We do not know precisely what communications preceded this letter, but we are surprised if any suggestion was made to E1 that he might be able to produce a further report for this case. There have been a number of adjournments of this appeal already and the appellant's representatives have known for some considerable time that, having adjourned part-heard in July 2007, the Tribunal would not extend its hearing of this case beyond Tuesday 25 September. There has been more than ample opportunity for the appellant's representatives to obtain relevant, up-to-date evidence from E1 and to have him called as a witness on the general issues. E1 had confirmed in his very recent e-mail that he stood by his two reports produced for this appeal. We did not consider it appropriate in all the circumstances to adjourn the proceedings, which had already been protracted.

The "objective" parts of the case

20. As already noted we deal first with the general issue of returned failed asylum seekers, starting with a summary of the most important items of written and oral evidence.

(a) Witnesses who gave oral evidence

Witness W1

21. In his witness statement of 6 May 2007 W1 states that he had fled the DRC in December 2002 and claimed asylum. The basis of his asylum claim was that in the course of his work as a principal assistant to the chief prosecutor of the Military (or Marshal) Court, sometimes known as COM, during the prosecution of persons suspected of involvement in the assassination of President Joseph Kabila, he had helped his half-brother, one of the suspects, escape from detention. His appeal had been allowed by an Adjudicator in May 2003 and he had been recognised as a refugee. Since arrival in the UK he had kept in contact with colleagues and friends in the DRC. Due to the very high rank he held and the work he was involved in, he still had contacts, including high ranking contacts, who trusted him. He contacted his sources nearly every other day. His sources informed him that the situation is still the same at the airport as it was when he was there.
22. W1 states that from 1998 until he fled he had also worked as a liaison officer/standing magistrate for the Military Court in Kinshasa
23. He explained that despite its name the Military Court had a wide jurisdiction and his role as a liaison officer involved him in communication with all of the security and policing departments, including the Direction Generale de Migration (DGM), National Intelligence Agency (ANR), Detection Militaire des Activites Anti-Patrie/Military Detection of Anti-Patriotic Activities (DEMIAP), Police Special Service (including the IPK) and the Committee of State Security. He was required to work in other parts of the country as well as in Kinshasa. By 2001 he was appointed as personal assistant to the main prosecutor. As part of his liaison officer duties he was “based at Ndjili airport until the time that I had left the country”. This led to him becoming familiar with the way in which the regime treated failed asylum seekers and deportees, although he did not have great knowledge of the small day to day running of the DGM. He was a very high ranking official who outranked the DGM officers at the airport and had power to arrest an officer if there was cause, which on several occasions there was. For the most part he was only brought into the system when someone very high requested that he become involved or when the conduct of the DGM officers warranted that he become involved.
24. He explained the procedures failed asylum seekers went through from arrival: being checked against the passenger manifest list to see if they are on a wanted list, being taken to an office called Permanence where there is a cell. Here there is interrogation. The view of the relevant services at the airport is that failed asylum seekers have gone abroad to betray the regime and to say negative things about it. Additionally, because of things that had happened to presidential aides in the UK,

“[p]eople who come from the UK are seen with great suspicion and as the enemy number one”. From Permanence failed asylum seekers/deportees are taken to a hidden office at the airport, called Bureau Contentieux, a large spacious office, where interrogation continues. Interrogation covers, inter alia, where the deportees have come from, how long they have spent outside the country, why they have claimed asylum, why they were deported. For deportees/failed asylum seekers of Rwandan origin everything is that much worse.

25. From Bureau Contentieux deportees are usually transferred to Kin Maziere, a DGM detention centre. He had visited Kin Maziere on numerous occasions (it was part of his duties to control the cells there) and he observed the interrogations undertaken there. For failed asylum seekers/deportees this follows the same lines as at the airport. Torture is used: he witnessed deportees being slapped, punched and kicked. This was normal procedure so he did not interfere. Rape of women is common. He gave several examples of cases known to him. Conditions in Kin-Maziere are inhumane. Failed asylum seekers are detained there for, on average, 3 months. A bribe is often elicited from the detainee or his family. He had accepted bribes of around \$5,000 at a military court to help people leave. If not released at Kin Maziere, individuals go to Makala, the military court, ANR, IPK, DEMIAP or other detention centres, where they suffer greatly, particularly women.
26. He had on many occasions intervened when deportees had had money, clothes, or luggage taken from them by the immigration officers. He had often entered rooms and seen immigration officers punching deportees; he had also witnessed kicking and stamping and “numerous methods of torture” been used, including iron bars to squeeze fingers and electric shock guns. Beating and torturing people was “commonplace”. It was also commonplace for deportee women to be sexually abused and raped at the airport. The officers considered that as they had acted against the government, such women deserved to be raped, although ordinary female travellers could find themselves raped or abused also. “If you disagree with this then you could be seen as someone who is against the government and not interested in protecting the regime”. W1 gave an example of an incident which happened to a woman returned from Belgium in 1999. He had had the two immigration officers who had raped her arrested but one of them was the brother of an important airforce general and so he returned to work a few days later. By virtue of having high-placed relatives many officials at the airport knew they could act with impunity. Amongst several other examples he gave of ill-treatment was the case of a woman deported from the UK in 2002 who was raped. He ordered that the officer concerned be arrested and the latter was eventually convicted before the military court. There had also been the case of a woman due to travel by South Africa airways in 2000 who had been raped. The soldier he ordered to be arrested was sentenced to 20 years in prison. Summarising the general situation, W1 stated:

“From the time that I spent at the airport, each time there were deportees, I can say that there was never a possibility that any individual deportee would be exempt from ill-treatment. They will be physically and morally abused....In every office while the deportees are questioned or interviewed, their money or

belongings are taken by force and nearly all the time they are subjected to torture”.

27. It is very difficult for deportees to pay bribes to the officers because anything they have when they land is taken from them. In exceptional cases officers allow family members to pay bribes to secure the deportee's release. 2-4 thousand dollars is required. Even when this happens, if a woman is involved she can still be raped. He received a cut of the bribes that were paid. Human rights NGOs are not normally present at the airport and, when they are, the officials put on a show of everything being OK. He knew that DRC intelligence agents had used poison to kill a number of anti-Kabila individuals abroad.
28. His sources had informed him that during the operation surrounding the February 2007 charter flight from the UK to N'Djili airport, around a dozen people were detained [NB. Throughout this determination this charter flight is sometimes referred to as the “26 February 2007 charter flight” (the date it left the UK), sometimes as the “27th February 2007 charter flight” (the date it arrived in Kinshasa)]. Those who could afford to bribe their way out were released. Despite the presence of national TV, people still ended up in Kin Maziere, including two women. He mentioned two cases since then: deportations from the UK in April and May 2007. He had not met W2 or W3 in the UK until after the meeting in Birmingham in March 2007, but in Kinshasa he had seen W2 detained at the military court: he had authorised this. He had not been able to give evidence in W2 or W3's appeals as he was not in contact with them then.
29. Contained within the bundle there are photographs of W1 wearing military uniform and in the presence of well-known senior officials. There is also a witness statement from a Mr FL in support of W1's asylum claim, which confirms aspects of W1's account. The Adjudicator who allowed his appeal in May 2003 found W1 had given a truthful account. He found that W1 held an influential position in the military legal system in the DRC, being an assistant to the chief prosecutor in the Kabila assassination trial. W1 had become concerned at the way in which the trial was conducted and in particular the position of his half brother. He was able to obtain his half-brother's release with the help of a friend. All 3 fled the DRC to avoid retribution. The respondent adduced W1's SEF form and witness statement made for his asylum claim. In those documents he mentions, inter alia, that his wife had been able to leave the DRC whilst he was still in prison, that he had been able to organise his own escape via N'Djili airport because he had an identity card as part of his duties as military court liaison officer based at the airport. He had also been able to get help from some officials he knew there. In his asylum statement W1 stated:

“...that it is not safe for people to return to Kinshasa Airport, especially if they are wanted by the government and also if it is known that a person has claimed asylum. People are detained, tortured, killed. I know that this has happened on many occasions”.
30. The respondent also produced documents relating to the asylum claim made by W1's wife and a witness statement W1 had made dated 9

January 2007 relating in the main to the case of his former chief prosecutor boss, whose family were now asylum-seekers.

31. In a second witness statement dated 10 September 2007 W1 gave further details concerning his sources and about the current situation of his former boss. He said that there were ANR officers in the British Embassy in Kinshasa and he was worried that if they found out about him helping the court, they would inform the regime. He gave names. London, he said, was known to have a very high concentration of opponents to the regime: attacks on Kabila aides here had worsened the situation. Agents here and in the DRC monitored radio stations such as Radio Okapi. It was ridiculous to suggest that VSV had an office at the airport. RVA passes would not get people in to areas such as the ANR offices or Bureaux Contentieux. He gave further updating on several cases he had mentioned. He mentioned having given evidence in the case of a Mr TA, who was found credible in his asylum appeal.
32. At the hearing W1 largely reiterated his written evidence. Miss Giovannetti stated at the outset that the respondent accepted W1 had worked in the military justice system in the DRC and that he had been assistant to the chief prosecutor. Amongst the matters that were mentioned by W1 in the course of a cross-examination by Miss Giovannetti (which challenged many aspects of W1's evidence) were the following. He gave a list to the Tribunal of those with whom he maintained regular contact. They knew, he said, that there was a UK case intended to give country guidance on failed DRC asylum-seekers; there was a close regime interest in the case. One of them had specifically told him he wanted the Tribunal to know people sent back were not welcome. He agreed his contacts would know he had claimed asylum. He believed they told him what was going on, including for example about torture in Kin Maziere, because they were isolated individuals who wanted the DRC to become respectable. He agreed if it became known that they talked to him they could lose their jobs and would be punished. He did not accept the British Embassy claim that intelligence officers in the DRC tapped phones unless encrypted.
33. W1 said he had been responsible for the arrest of around three quarters of the 127 people arrested in the Kabila assassination investigations, which began straight after the assassination in January 2001. He accepted that he had been involved in having innocent people convicted and in detainees being left to starve, but that did not mean he agreed with it. He had intervened whenever he could to stop injustice. He had sometimes at risk to his life given information to human rights NGOs including Amnesty International: he agreed, however, that he had not mentioned that in his asylum claim or in his May 2007 statement.
34. Asked if he had accepted a bribe on more than one occasion, he stated he had accepted a bribe (for \$5,000) only once. The reference in one of his statements to acceptance of bribes in the plural (B2, para 79) was a mistake. Although his salary never rose above \$15 per month he was able to supplement that through payments he received for going on missions and certain court-related property transactions. He did not accept that he had been able to describe himself as a "wealthy man" (with 3

properties) because he had benefited from corruption. He agreed that shortly after his appointment to become principal assistant to the chief prosecutor, that man had appointed someone else to replace him as liaison officer, but as this man needed help doing the job he went with him to the airport quite often, for example when he had information that a military person was being deported back to the DRC or was trying to desert by leaving the country or when he had to organise tickets or clearances for military court personnel. As regards the wanted list held at the airport, he would be interested in deserters, escaped prisoners, bail jumpers, enemies of the state or persons involved in some judicial process. The result was that he went to the airport 3 or 4 times per week sometimes and to Kin Maziere 5-6 times a month.

35. In all he had given statements in support of 5 other asylum appeals; up to now he had forgotten to mention one he wrote in January 2007 for the family of his former chief. Asked why he had not intervened to stop the rape of women on more than a very limited number of occasions, W1 said he needed proof. He agreed, however that it was his evidence elsewhere that airport officers did not deny raping women. It was his job to make it clear that those engaged in rape would be punished. Sometimes, in relation to rape or torture, there was nothing he could do. He would intervene when he could. He could recall in his time complaints being made about mistreatment at the airport or in Kin Maziere around 20-30 times when he was in charge. Out of some 100 officials at the airport around 30 were protected by powerful relatives and so had impunity. Asked to comment on how he squared his statement that he had received a cut of bribes with his evidence that he was doing his best to stamp out the practice, he said that sometimes families would wish to thank him by giving money for his intervention. He was sure his information about the February 2007 charter flight was reliable: he had in fact spoken to one of his senior sources to tell them that this flight was going to arrive with failed asylum seekers. His information about one of the charter returnees having to pay an \$8,000 bribe came from two of that person's children in the UK. Their information source was Kinshasa. A senior source had told him. Asked why he had not claimed asylum on his own arrival, he said that he was traumatised. Asked why he would not have known from his dealings with many failed asylum seekers (including those from the UK) about the process of claiming, he said they never told. He stood by his evidence that he did not know where his wife lived when he arrived in the UK. He had not asked his solicitor to find out where she lived but he believed that it was the solicitor who found out. The information in the solicitor's letter did not come from him (W1).
36. Asked why if he was frightened of speaking out and being identified by DRC agents in the UK he had given his name and city on a Radio Okapi website when describing the current regime as "looters", he said he had felt it important to denounce evil. His name being used on the leaflet publicising the Birmingham meeting in March 2007 was a mistake; he had not approved it. He had never discussed his evidence with W2 or W3. He did not manifest hatred for the regime; the proof of that was that he was still talking to people running the DRC. He had never heard questions being asked by airport officials to failed asylum

seekers/deportees about illegal emigration networks. He was not well off in the UK but he had never been approached about his evidence for this hearing by any illegal network.

37. The submissions which we do not recite, essentially argued either way on the issue of the credibility of witness 1, and the reliability of the evidence that he gave concerning events at the airport.

Witness W2

38. W2 in a statement dated 15 May 2007 sets out the background to how he became involved and employed at the headquarters of the DGM in 1998. He was one of the protégés of a lawyer called MK. Other protégés included W3 and a person later introduced to him as W1 (at para 32 he states that this was whilst he was working in the DGM office).
39. W2 describes his career as falling into two stages: from 1998 – October 2001 he worked as an office/legal assistant at the DGM headquarters; from October 2001 he worked as an Immigration Officer at N'Djili airport. He outlines the nature of his training, instruction in the methods of interrogation and torture or ill-treatment, his general role under supervision in assessing and providing information, his involvement in checking those applying to leave and leaving the DRC, and working with many official documents. Whilst at DGM HQ he attended interviews of failed asylum seekers where it was his responsibility to take verbatim notes. From time to time he was also actively involved in the detention, interrogation and/or observation of persons in detention centres and elsewhere. He describes ill-treatment at Kin Maziere, the DGM detention centre, and of the repeated multiple rape of women, the use of humiliating ill-treatment and of taking bribes. He and his supervisor (MB) would hear accounts from these women but would not help by releasing them as it was just a reality in Congo that when people are detained they suffer. His superior at that time did not take bribes. In an attempt to discourage officials accepting bribes the regime sometimes tested its own staff with undercover officers offering fake bribes to see if they would be accepted. The person accepting the bribe would then be arrested and sent to the Marshal Court and charged. Detention at the detention centre could vary from between 3 weeks up to 6 months, sometimes longer. He stated that eventually (in October 2001, not October 2002 as was stated in his asylum determination) he was demoted and transferred to become an Immigration Officer at the airport: he adduced a transfer document bearing an October 2001 date. The new director of DGM could not trust the old staff and needed people like W2 whom he could trust.
40. Failed asylum seekers were, he stated, perceived as traitors and criminals and they would be reminded of that during interview. He gives a description of the reception of failed asylum seekers on return to the airport, the presence of ANR, DEMIAP, RVA and the Military Court (COM). He states that such persons are held in a cell known as Permanence, which was small (some 3 x 4m in dimensions) and in which up to twenty people or so would be kept. The WC facilities were exceptionally limited. He states that such persons have their monies and

possessions taken away from them. Particularly adverse interest is taken, he says, in those from Rwanda, Uganda and Burundi. Return involved an investigation into a person's background and it does not necessarily follow that because a person has obtained documents from the United Kingdom to enable return that they are accepted on return as being of DRC nationality. He described another restricted part of the airport building, called the Bureau Contentieux, where only DGM officers are allowed to go - apart from such as W1 who were very high ranking. A second stage of interrogation starts here, involving not just assessing what country the person might come from but also questions concerning identity, whether or not crimes had been committed, to what extent there had been a betrayal of the DRC regime, the nature of the asylum claim that had been made and the use of force if necessary to obtain information. He states:

"52. ... If the individual lies to us or if we feel that he is lying to us, we use force to get the person talk. We punch them to get them to talk, we kick them, slap them and threaten to send them to prison or threaten to kill them. We tell him that we will kill traitors and that if they did not want us to kill him then he should tell the truth. We beat them with batons, chairs, electrical wires and other things. A lot of the time when we finish with them they are severely beaten, bruised, cut, swollen and in pain. We record all of the information that we can get from the interrogation and give it to our team leader. An average interrogation lasts about two hours. I find that a lot of people do not talk and force is necessary..."

41. He continued at paragraph 52:

"It is commonplace at the airport during the interrogation process for women to be sexually abused and/or raped. Many of the Immigration Officers are not from good background and are from a background where it is acceptable to treat women that way."

42. In addition, W2 identified the locking of doors during interrogation and the real risk of women being raped, even when there was more than one interrogator. He states that there is a code of silence between the Immigration Officers that if they know that someone has raped a detainee, then it remains between them. It can and often does mean that officers group together to take over interrogations of female returnees, which effectively means that another officer wished to rape the woman after the previous one has finished. Particular examples of ill-treatment, both of men and women, are given and W2 particularly describes an event of a woman returnee being the subject of sexual abuse (paragraphs 58 and 59 by way of example). He states that Immigration Officers boast of what they have done. There is talk and banter about such matters as between seemingly different teams or certainly the same teams. He gives a description of regular abuse of women both at the airport and (following onward transfer, which the public is not allowed to observe) at Kin Maziere. No human rights organisations would get to see what happens in any interview/ interrogation setting at the airport.
43. He states that persons, if they are from Rwanda, Uganda or Burundi, simply go into the hands of ANR security forces. He describes the prevalence of bribery and release through bribery. The bribe had to be significant (400-\$1,000 dollars) and had to cover the superiors and the whole team. About 20% of detainees were lucky enough to use bribes to

be freed. W2 identifies his continued contacts (totalling some 20 persons), including officers in the ANR and certain officials in high government cabinet offices. It is said the information is that torture and rape continue at the airport and the procedures are the same in the process of moving through the building. He describes certain returns to the DRC. His informants had told him that the February 2007 charter flight from the UK had got a lot of publicity and there was pressure on the government: what happened that day was exceptional, with all the senior officers present including the British Embassy and senior representatives from human rights organisations. One of his contacts told him he was not against accepting the Congolese from abroad but in any modern society the infrastructure must take place before accepting that movement. He had learnt about an article by a man (IK) who was a DGM officer who worked at the airport at the same time he did; it mentioned W1, W2 and W3. He had heard that many had been detained and taken to Kin Maziere. W2 speaks of his friendship with W3. W2 said he did not feel he was properly advised in his asylum appeal. W2 also sought to clarify his presence at the time of the escape of W1.

44. In his second witness statement of 10 August 2007, W2 sought to clarify and give further details about some of his earlier evidence. He also mentioned been told since his last statement by a high-ranking source of his that the DGM wrote two letters to the Interior Minister asking him to cancel the February 2007 charter flight operation because DGM viewed asylum seekers as a security risk to the regime and needed to put procedures in place to deal with them. This led to an operation called "Operation de Recuperation" which relates to subsequent arrest of returnees. His belief is, from information given by a high ranking contact, that this method was in use in the DRC to pick up persons who had been admitted following return - in order to circumvent the monitoring of treatment of returnees.
45. Produced by W2 is a copy of the decision of Adjudicator, Mr A.G. O'Malley. At paragraph 12 the Adjudicator noted that W2 claimed to have been employed as an Immigration official in the DRC since 1998, being employed at N'Djili "[b]y October 2002". Although noting the respondent's concession that W2 had been employed as an Immigration Officer, the Adjudicator found W2 otherwise not credible and dismissed his Refugee Convention and ECHR claim.
46. W2 clarified some of his evidence in examination- in-chief and was subject to cross-examination, essentially challenging the extent of his involvement in the DGM and his knowledge of events at the airport, alleging that he had grossly exaggerated his account of ill-treatment and of abuse as put and generally challenging credibility. Among things covered in his examination were the following. Although he was now in regular contact with his sources in the DRC, some very high-ranking, he said that after he left the DRC in 2002 he had cut off all relations with the Congo and had no news about it. He only decided to renew contact in June/July last year when he learnt of the rape of his 11 year old daughter by an official he had accused of misconduct. Asked to give examples of what information he would "trade" with his contacts, he said he would tell them when Congolese in the UK were planning a march on the DRC

Embassy. His first contact with W1 in the UK was a month before the meeting in Birmingham in March 2007; he got his number from Miss Atherton. He had not discussed his evidence for this case with either W1 or W3.

47. W2 agreed that he had not been in contact with the UK immigration authorities and until this hearing had not given his address and that he was listed with them as an absconder since 6 April 2005. He had not contacted them because they had not written to him. He agreed that steps to crack down on bribery had been taken at N'Djili airport but the system was deep-rooted. Deportees/failed asylum seekers as part of a process called "first aid" would have all their possessions including suitcases taken from them. They were "all traitors. No one leaves the airport". Everyone has to go to Kin Maziere. People from Europe sometimes had family waiting, about one in 10 succeeded in getting an Immigration Officer to intervene by bribery. Deportees/failed asylum seekers were physically mistreated at the airport although that happened more in Kin Maziere or other detention centres. He had personally been involved in the torture of people at the airport not less than 12 times. Rape of women at the airport was automatic. He had witnessed about 3 rapes. He often tried to intervene to stop them. Generally you could not protest. If he had he would have been accused of desertion and punished. He (W2) did not agree that his account of mistreatment at the airport was a gross exaggeration. His DRC sources knew about his involvement in this case and have known since December 2006 that he (and W3) had spoken out publicly in the UK against the regime. His sources tried to "combat within the system". They knew he was a traitor in the eyes of the Kabila regime. He knew of several occasions – 3 at least - where complaints had been made and Immigration Officers had been arrested for mistreating deportees; some were released afterwards.
48. W2 stated that he was one of the co-authors (with W3) of a January 2004 letter/document entitled "A Report by Two Congolese Immigration Officers" about the treatment of asylum seekers once they are returned to the DRC. He also gave particulars of certain persons with whom he is still in touch.
49. The submissions made in respect of W2, on behalf of the appellant were that W2 was a reliable and coherent witness, giving evidence of clear levels of risk at the airport. The counter-submissions were that W2 was unreliable, not credible and was not a witness to whom weight should be given when set against the background evidence.

Witness W3

50. W3's statement of 20 May 2007 states that he fled the DRC in April 2003. At the time he had been working as an Immigration Officer at N'Djili airport. He stated that he was appointed to the DGM along with W2. He had been transferred to work as an Immigration Officer at N'Djili airport, along with W2, in around October 2001. He became a wanted person after authorising his cousin (who had helped a Rwandan to enter) to enter the country. He was detained for 21 days and suffered abuses before being released in April 2003 with the return of his uniform

and DGM ID card. On W3's release he went into hiding before an arranged departure from Ndolo Airport; which is a lesser airport and one where he was unlikely to attract significant attention. An internal flight to Lubumshi and a cross-border journey on foot into Zambia was the route of escape. Having left the DRC in May 2003 and arrived in the UK he had claimed asylum on arrival. Following refusal of his asylum claim, his appeal was unsuccessful.

51. We intersperse here that on 21 October 2003 although the first Adjudicator, Mrs N Bircher, accepted that W3 had been an Immigration Officer at N'Djili airport, she otherwise found him not credible and dismissed his appeal. Following remittal "for a fresh hearing" by the IAT on 30 July 2004, a second Adjudicator, Mr Neil Davison, in a determination of 7 October 2004, dismissed his appeal, finding W3 not credible.
52. In his May 2007 statement W3 sets out his involvement in the DGM. He had to go through training which lasted around a month and a half. He had public relations and administrative responsibilities. As part of his responsibilities he came across very sensitive documents concerning asylum seekers: files from the port would tell him why the person had been deported back to the DRC and whether they had claimed asylum. He described the procedure as being that failed asylum seekers were taken on arrival to a holding cell at a place called Permanence. There deportees were put through a process called "first aid" which consisted in taking away all of their jewellery and valuables. The next stage was to take them to a large office called Bureaux Contentieux where interrogation continued. Deportees were told, inter alia, that they had committed a crime by applying for asylum abroad and betraying their country. If someone was not forthcoming they would be threatened, violently slapped, punched and stamped on. Women suffered extremely. Rape and sexual abuse was commonplace. There was a code of silence between immigration officers about this. He gave examples of incidents from December 2001 and September 2002, 2002 and January 2003. Describing the 2002 incident, he stated that colleagues were joking that his boss had received a delivery of "fresh meat" from Europe. When his boss had finished raping the woman concerned and had come back out of the room, W3 and his colleagues shook his hand and joked with him. It was very difficult to release someone from the airport; to do so would lead to problems with the regime.
53. After being interrogated in the Bureaux Contentieux deportees were - within 24 hours - moved to Kin Maziere. His duty was to take verbatim notes while his boss did the interviewing. Questions covered such things as whether the person was a traitor and what was said when he claimed asylum. Primarily the interviewers were worried about people trying to overthrow the government.
54. People in detention were ill treated. He had observed an interview in Kin Maziere in 2000 when a woman deported from France had been raped and ill treated. He and his officers suspected that most people who fled and applied for asylum were likely to be involved in politics. Rape was a common occurrence in Kin Maziere as at all detention centres.

Conditions there were appalling. The length of time people remained at Kin Maziere varied. High level officials found it difficult to openly accept bribes. In his opinion it was difficult for officials to release people at the airport and Kin Maziere having accepted bribes. The government placed spies and tried to entrap people. But corruption at the airports was endemic; the bribe had to be significant and enough to cover the whole team including superiors. Even so, he estimated that “only 10% of the failed asylum seekers are able to use the bribes to be freed”. He had accepted bribes at the airport.

55. There were no human rights organisations at the airport, except when they first wrote stating that they wished to visit; then things were temporarily presented as if everything was OK. He had kept in touch with his colleagues from the DGM and other organisations and maintained contacts, even if not directly, with people with powerful contacts and friends. He gave names. W3 claimed that there were other and very serious high ranking sources who he would not disclose except in court. His contacts had told him that the situation had not changed. His sources had told him that the February 2007 charter flight operation was made to look good to observers but in fact DGM officers were told to go to the deportees’ addresses and arrest them afterwards. Those detained in Kin Maziere would have been tortured.
56. He described working at the airport in October 2002 when W2 was arrested. However, the day that W1 and W2 escaped from the airport, he was off duty.
57. W3 had first met W2 in the UK in 2003 and had first seen W1 at the March 2007 meeting in Birmingham.
58. W3 said he was in the process of “building a fresh claim for asylum”.
59. In his second witness statement of 2 September 2007 W2 explains that he had made a mistake in his original claim in stating that he had worked at the airport in 2000. His previous representatives had advised him not to change his story, so he had not. He also gave more details about his cousin (whose return had led to his own arrest) and the circumstances he faced when detained.
60. Together with the statements of W3 there was, inter alia, his asylum interview record (in which he said he had worked at N’Djili airport since 2000 to March 2003) a witness statement of NN, a Congolese refugee living in the United Kingdom. The latter claimed to have met W3 in 1998 at DGM headquarters (DGEM) when W3 was posted with that body’s legal adviser and then again dealt with him on a working basis in 2000 and thereafter at the airport when W3 was working at the checkpoints.
61. In cross-examination Ms Giovannetti challenged virtually all aspects of W3’s account. Among points made by W3 in his oral testimony were the following. He had not discussed his evidence with W2 or W1. His saying previously that he had started at the airport in 2000 was a result of bad advice by his then representatives. He decided to stick to the same claim when identifying the photos of him at the airport as being taken in 2000.

It was said that, in the light of that advice, to change the date would damage the credibility of the claim. Asked why NN had said in his statement that he met W3 working at the airport checkpoint in 2000, he said he was at the airport then on a temporary basis for 2 months due to the war, to collect money. “[W]e were posted near checkpoints”, he said. He and W2 had written the joint letter in January 2004 so as to alert human rights organisations in European countries to what was going on at the airport. He agreed it did not mention torture and rape at the airport but they had not set out to provide details and their focus was on specific risk categories. He did not know how it had happened that he had not produced the second Adjudicator’s determination (by Mr Davison) of his asylum appeal; he had asked his current solicitors to ask his previous solicitors to do that. He had attended around 100 interviews of failed asylum seekers at Kin Maziere between 1998-2001, sometimes with W2. His superior conducted all the interviews. He saw many women interviewed. Asked why then he had said in his May 2007 witness statement that he had only ever interviewed one woman in Kin Maziere, he agreed that his superior was present but said that on occasions, as had happened here, he had to conduct the interviews and leave a space for his superior to sign the record.

62. Torture and rape were rife at the airport. He had personally interviewed about 3 asylum-seekers; what he said in his May 2007 statement (e.g. at paragraph 53) was not based on his personal experience. He had never engaged in rape of passengers at the airport himself; he was a humanist. Asked why he had described shaking the hand of his boss after the latter had just raped a woman and joking with him, W2 said he had to hide his real thoughts; if he had disclosed those he would have been targeted. It was very rare for families of deportees/failed asylum seekers to come to the airport to await them.
63. W3 also gave some further information about his current contacts in the DRC: he said he was in touch with them about twice a month. His senior sources confirmed the situation at the airport had not changed.
64. Asked about his name appearing on leaflets produced for public meetings about this intended country guidance case, W3 said that it came as a surprise and “we told them (the organisers) about that and we were ready to boycott”. He agreed, however, that he had spoken in his own name at Birmingham and Cardiff meetings.
65. He had often heard about deportees/failed asylum seekers being asked about illegal emigration networks, in order to gain information designed to destroy such networks. His family had paid for his own departure, he had no idea how much it had cost, but it was not cheap. Fellow nationals of the DRC in the UK did not tell you what they were doing, but it was his understanding that the majority had made asylum claims.
66. In addition W3 produced various photographs showing him in uniform and one in front of (what was said to be) a machine for checking passports.

67. One of the main points dealt with by both parties in submissions was whether there had been any concession by the respondent arising out of previous proceedings as to W3's role as an immigration officer. Mr Jacobs contended that the first Adjudicator had accepted this and the second Adjudicator was equivocal and so the first findings should stand. Miss Giovannetti contended that the terms of the remittal to the second Adjudicator made clear that fresh findings were to be made and the second had not believed any aspect of W3's account.

The IK and the Observer 16 September 2007 evidence

68. Witnesses W1, W2 and W3 also referred to an article by a Mr IK which had appeared on a website called Congoscopie. We will return to this item and the evidence about it when we assess the evidence later. The same goes for the account given in the Observer of 16 September 2007 concerning a man claiming to have been part of the personal security corps for the former President Laurent Kabila with personal experience of torturing detainees at Kin Maziere, including, he said, many deported from the UK, France and Germany.

Miss Jenny Cuffe's BBC report and evidence

69. This witness was the author of the BBC World investigation of December 2005 dealing with the treatment of failed asylum seekers returned to the DRC. In her statement dated 18 May 2007 Miss Cuffe describes her career as a journalist spanning some thirty years during which she has worked for the BBC and two national newspapers and won several awards, including two for her radio documentary dealing with the DRC. She has made a number of programmes on Africa although the programme she did in 2005 was her first on the DRC. She explains that she became involved in the programme because she had heard from British solicitors and their clients that they were worried about what happened to asylum seekers on return to the DRC but "there was a lack of firm evidence". She decided the best way to find out was to see for herself. She describes the persons/bodies she contacted and met with in the DRC. She carried out her assignment (single-handedly) over a period of eight days in September 2005, although she had spent about three weeks researching the background to the issue beforehand. In her statement she says that "I was very careful not to see people whose credibility I doubt or to refer to information from sources that I am not satisfied with".
70. Whilst in the DRC she visited five persons she describes as failed asylum seekers, one from Belgium (who returned in April 2005), one from the Netherlands (who returned in 2003), one from Switzerland (no date given for her return) and two from the UK (returning in December 2004 and on January 11, 2005 respectively). She only used the Belgian, Dutch and one of the UK returnees in her programme. She also heard whilst in the DRC about several other returned asylum seekers who had had problems, one of whom she heard about from VSV. She also met and interviewed a senior official with the ANR, based at Ndjili airport: he told her that failed asylum seekers are questioned about why they left the country and what they told the authorities in the country abroad. If they

said “bad things” about the country whilst abroad, they were at risk. The ANR would know what had been said by returnees because it had spies in lots of embassies around the world. This man also confirmed that bribes were commonplace within the immigration services. He indicated that those with Rwandan connections were mistreated.

71. She also recounts her interview with a former DGM head, Mr Yamboua, whilst he was under house arrest. Yamboua told her he had been accused by the government for taking bribes from three European governments wanting to arrange special charter flights of asylum seekers. He explained, she said, “that the government did not want any asylum seekers returned”. He denied taking any money from European governments. She added:

“He denied any ill-treatment of returning asylum seekers under his watch, but he did confirm that the ANR was operating in the airport and he said that sometimes the DGM let returning failed asylum seekers leave the airport, only for the ANR to arrest them outside.” (Emphasis added)

72. She states that she did not use Yamboua’s account in her reports. She also mentioned visiting a member of VSV (Voix des San Voix) who emphasised to her that his organisation’s lack of resources made it difficult to monitor returnees. She did not see any VSV officer or individual at the airport when she used it and she had the sense that he was trying to give the impression that his organisation was doing more than it actually was.

73. We shall not detail the contents of the 1 December 2005 report, since it largely reflects her witness statement, although she does quote in it the Vice President of the DRC in charge of defence and security, accepting that there are some cases of abuses committed by security services against returning asylum seekers, but denying that there is any policy to harm them. She also reports the UK Home Office position.

74. The transcript of her BBC World Investigation report dated 1 December 2005 deals, inter alia, with her eventually successful efforts to contact one of the UK returnees (who she had been told by a UK solicitor had been returned at the beginning for 2006 as a failed asylum seeker and who appeared to her too afraid to say anything on the record about the “hard time” he had when he arrived), the account given by the returnee from Belgium, discussions with a European Commission official about monitoring of enforced returns from Europe generally and the affair in the Netherlands concerning allegations that the Dutch authorities has passed to DRC officials details of their asylum applications. Her report ends:

“While the European Commission plans for the future we discovered that there are failed asylum seekers in this city [who] were beaten and locked away in prison without trial or hiding in fear and no one seems to accept the responsibility for checking if they are safe.”

75. In her oral testimony Miss Cuffe said she had not formed a view before she began her assignment. She said that she had not asked or received from any of the failed asylum seekers she met any documents, nor could

she recall asking any of them for ID; she took them at their word (although in the Dutch case she had seen media reports about his case). However, she assessed them as credible, based on her years of experience as a journalist. She could not recall asking any for specific details of their asylum claim or their previous background in the DRC. She reiterated that from her interview with a VSV member she had formed the view that VSV's only current concern was Rwandan returnees. Asked what she thought the senior ANR official had meant by his reference to anyone who said "bad things" about the DRC government being at risk, she said she thought that meant anyone who when claiming asylum had said the DRC ill-treated them and/or said they were opponents. In reply to a Tribunal question she agreed that it would have been more scientific to have at least asked the failed asylum seekers she interviewed for documentation relating to their identity, their asylum claims, their flight departure and arrival dates, reference numbers etc and also, upon her return to the UK, to have followed up by way of enquiries with the Home Office and other European governments to check if these individuals' claims about being failed asylum seekers and being on certain flights checked out. She thought it was a great shame that a scientific study had not been done. She had worked to a seven day deadline to get the programme out and afterwards she had no ongoing brief to follow up any of these cases. She reiterated that in relation to what the failed asylum seekers and NGOs had told her, she "took people on trust". She had not heard about, or asked anyone any questions about, illegal emigration networks.

Evidence of Elizabeth Atherton

76. In her witness statements of 26 June and 5 September 2007 Miss Atherton described herself as the founder of the Congo Support Project which was officially founded in January 2007. Its aims were to support asylum seekers and refugees from the DRC in the UK. Her voluntary work for asylum seekers from the DRC had begun in early 2005, which she did in between her job as a freelance subeditor. She stated that in the course of her voluntary work she became:

“...particularly worried about the accounts I was receiving from people who had been removed to the DRC and tortured. I was particularly concerned that the people I met said that they felt that at the airport they would be harmed and arrested”.

77. She began to keep accounts of people who had been removed to the DRC and to try and find out what had happened to them. She heard that Trott and Gentry were helping to prepare a country guidance case and as a result she intensified her efforts to trace deportees. She emphasised that in her experiences it was very difficult to gather information from people. She spoke French but some of the time those she spoke with mixed Swahili and Lingala out of habit. Mostly she had to conduct interviews by telephone and she did not read back details given to her; however, she believed the notes she had taken were accurate.
78. Her statements then detail 14 cases of persons (numbered 1-15 but with no case 10) who said they were removed to the DRC, two of whom wished not to give their names to the Tribunal. Two were removed in

2005 (8 February 2005, 8 December 2005), two in 2006 (7 and 9 November 2006) and six in 2007 on the charter flight of 26 February 2007 (cases 5-11 and 13). Two of the accounts alleged suffering or witnessing mistreatment in the process of the detention and removal process in the UK or during the flight itself (Case 5, 9-11). Some said that although they had passed through the airport without any major problems, they were visited by security services at the places they were staying and were then arrested and detained (Cases 3, 5, 8, 9). Some said that on return they had been interrogated and then beaten at the airport (Ndjili) (Cases 1, 2, 4, 5, 13 14). Some identified, as questions they were asked, ones about their political affiliations or activities (Cases 1, 2, 5, 7), how and why they had left (Cases 2, 12), whether the returnee was a spy (Case 1), why they had returned and why they had betrayed their country (Case 1). Several referred to being transferred from the airport to another place (or other places) and being detained and ill-treated (Cases 1, 2, 4, 10, 12, 13). Two mentioned being able to escape (Cases 1, 5), some said that since release/escape they had been in hiding or were avoiding going out (Cases 3, 5, 7, 13, 14, 15). Case 8 (mentioned in an article which appeared in Le Malmores, 4 August 2007 as escaping a raid on the residential district of Mount Nafula, a commune) had disappeared. Three had managed to escape to another country (Case 2: Malawi, Case 5: Zambia; Case 9: South Africa). One had arranged to return to the UK (Case 1 was given admission to join his spouse and was granted a residence permit for five years) and another was not admitted but was returned to the UK on the same plane (Case 11).

79. In her oral evidence Miss Atherton identified the cases of hers whose names were on the list of charter flight “refoulés” submitted by E2 and gave brief updatings on some of her cases. Asked how sure she was the returnees she had spoken to were telling the truth, she said she went by how they expressed their emotions and she had no reason to disbelieve them. Since her second witness statement she had learnt that Case 15 had had further problems with the DRC security services; neighbours had said that men from “Bureau 2” had blocked off the road to look for him, he had gone into hiding. Of the roughly 150 people from the DRC she had got to know in the UK, most were failed asylum seekers. In some instances she had helped them make fresh claims. She could think of three or four returnees who had come back to the UK. She had put them in touch with Trott and Gentry (agents for the appellant’s solicitors) and three out of the four were at that stage willing to give evidence. She described how she had met W1, W2 and W3. it was only when she and colleagues began a series of consciousness-raising meetings in several UK cities commencing in January 2007 - meetings intended to discuss the forthcoming intended country guidance case and to find out if anyone knew of other returned failed asylum seekers - that she learnt about W1 and was able to make contact with him. W1 had been insistent from the beginning that he did not want to be named in any publicity.
80. She described the series of meetings which took place over several months as successful. The places and approximate numbers were: Manchester (200), Coventry (80), Glasgow (800), Newcastle (60), Birmingham (100), Bradford (50-60) and Cardiff (50-60). The speakers had varied but had included herself, Mr DW, someone from Trott and

Gentry and W2 and W3. W2 and W3 were quite open about being named: they felt they were doing something for the Congolese community. They knew they were taking a risk. The mention of W1's name in the leaflet for the Birmingham meeting was a huge oversight for which she felt responsible. She did not know if any of the cases she had collected of returned failed asylum seekers had attended the meetings. In terms of the number of DRC nationals in the UK, which she understood to be around 10,000, those who attended these meetings were only a small percentage. She agreed that in her experience most DRC nationals in the UK had not come to the UK through legal avenues under the immigration law and rules but had come as asylum seekers. She had heard and believed that there were DRC government agents present and active in the UK. She agreed that the failed asylum seekers she had had dealings with - as well as W1, W2 and W3 - were people she took on trust and she had never asked people about their asylum claims or whether they had had criminal records. Asked about human rights organisations in the DRC she had communicated with, Miss Atherton said that they were all in need of financial help: to get anything done by them one had to pay money.

Other evidence

Evidence of DW

81. In his witness statement of 19 May 2007 DW states that he is the Chairman and founder of Lazarus Refugee Concern, a voluntary organisation set up in June 2006 whose primary aim is to help asylum seekers, especially detained asylum seekers, get access to medical treatment or to legal advice. He often deals with detained individuals who have exhausted all legal avenues to stay in the UK.

“Often having assessed the claim we find out that the person (sic) asylum claim was invariably handled very poorly by non-specialist immigration solicitors.”

82. Since a lot of detainees expressed a fear to him that they were going to be tortured in N'Djili airport and might not be released, he decided to try and find out what happened to such people. His organisation, he stated:

“had sources that would place people that they knew and trust (sic) at the airport to find out what happened to the person, once they were returned. We would also contact the family members or friends and ask them to confirm the safety of the individual once they arrived in the DRC”.

82. Between July 2006 and December 2006 he was able to monitor the return of four people and was able to get monitors in place at N'Djili airport for three of them. His information was that all three were arrested. Since December 2006 he had sought to arrange monitors for 2 further persons being removed (one on the February 2007 charter flight) but that proved not possible. DW does not number his cases but for convenience we shall number them Cases 16-21 (so as to follow on from Miss Atherton's), taking them in the order he does. Case 16, returned on 20 July 2007, had been arrested by immigration at the airport and taken to Makala prison. He suspected he was still detained. He found hard to believe contrary information given to MP Jacqi Lait

that this man had been met by members of his family, as this man had told him his only living relative in the DRC was a brother in prison. Case 17, returned on 9 November 2006, had been seen at the airport being taken away by the "GDM". DW's inquiries established that he had been detained in Goma. Despite this man promising to contact DW once he had returned, this did not happen. He had not been able to arrange anyone to witness his arrival at the airport. As regards Cases 19-21, who were returned on 22 November 2006, 16 January 2007 and February 2007 respectively, he had not been able to arrange anyone to witness their arrival. Despite arrangements for them to call DW when they arrived, none had done so. DW notes:

"I have also used similar methods of asking people to contact me once removed or detained who are removed to Angola, Nigeria, Kenya and India. On the majority of occasions I receive communications from people removed to these countries. In relation to people removed to the DRC no one has contacted me."

Evidence Relating to AB (including that from Ms CC)

83. In response to an application from Mr Jacobs made on 14 September regarding AB, the Tribunal agreed that the latter could give oral evidence. AB was said to be the same person whose case Bail for Immigration Detainees (BID) had investigated in 2003 and about whom the Tribunal in VL (Risk-Failed Asylum Seekers) DRC CG [2004] UKIAT 00007 had commented (for that reason we employ the same initials as were used to describe this man in VL). He was said to have escaped the DRC for the second time and arrived in the UK on 29 March 2004. The documents relating to AB include a witness statement from AB dated 12 September 2007 and a witness statement from Ms CC, dated 11 September 2007. Ms CC is a worker at a London Law Centre who previously worked for BID. Her statement, related, inter alia, the fact that following a judicial review application the Home Office certification of his claim was withdrawn and he was registered as having made a fresh claim on 6 August 2004. As at 11 September, his claim remained outstanding. Despite Ms CC declaring in her statement that AB "has informed me that he is willing to give evidence in this Country Guidance case", he in fact chose not to do so and Mr Jacobs formally told us that in these circumstances he no longer sought to rely on AB's evidence. Ms CC's statement appends some documentation relating to AB some of which was before the Tribunal in VL and some of which is subsequent. There is a further unsigned and undated witness statement from Ms CC circa 19 September 2007 explaining that AB had now told her that on further reflection he did not wish to give oral evidence "for fear of damaging his own claim [if there were] negative credibility findings in the CG case", although he was happy for the evidence which predated his (new) asylum claim to be considered by this Tribunal, including the report from PT dated 3 November 2003. Miss CC's statement goes on to chronicle her involvement in and knowledge of AB's case and to comment on the Tribunal in VL's negative findings on AB. Finally we had produced at our request a statutory declaration from Ms CC dated 24 September 2007, in which she covers identical ground as in her statements save for a subhead, "Recent developments", which mentions her receiving several threatening phone calls on her mobile and reporting them to the police

who advised her “to regard it, at least until fresh investigation showed otherwise, as an attempt to intimidate a witness in the case”. She gives a crime reference number.

June 2004 VSV Report: “Narrative Report, Programme of Observation, Information and Reception of Persons Expelled from Europe and America”

84. Having described its history as an active NGO since 1994, this document (which we shall refer to in its translated version) explains that it consists in a report of its Programme of Observation and Reception of Person Expelled from Europe and America covering 1 January- 15 April 2004 during which period it recorded 50 cases of expulsion from foreign countries of Congolese citizens seeking to emigrate. The report is partly concerned with the conditions under which expellees say that they were taken on board their planes: it describes the procedures expellees said they commonly experienced – and does so in terms highly critical of the European authorities concerned. But it also deals with the procedures at the airport and what happens to expellees later on. The report emphasises that “[t]here are frequent reports of extortion of assets and personal belongings by officers who think that expellees are hiding money on them when they are repatriated”.

85. Describing its methodology it states that:

“With regard to the follow-up of persons expelled, the person in charge of the programme uses an information sheet on which he records all relevant information relating to this category of person, including their identity, address, date of repatriation, the country from which they are arriving, and the opinion and consideration of VSV.”

86. Later on the report notes:

“For the person responsible for the programme of observation, information and reception of expellees from Europe, contact is made straight after the immigration formalities (disputes service). Gaining the trust of the expellee is the primary objective before doing anything else. Once the bona fides of the observation and reception group have been presented and described, the head of the programme or other person involved has a conversation with the expellee in which he tries to find out the maximum amount of information on the reasons and conditions of the expulsion. Some people are so reserved that they are reluctant to open up easily”.

87. It states that the person in charge of the programme went to the airport “two or three times per week to meet international flights in order to perform his task of observation, information and reception of expellees arriving from Europe”. It mentions that “in order to provide better follow-up, VSV has just acquired a location where it is setting up an office or observation and reception point at N’Djili airport.”

88. The description the report gives of the returns procedure is as follows:

“Whenever an international flight arrives and passengers disembark, if a case of repatriation is announced, the immigration officers wait for the expellee alongside the aeroplane on the tarmac. After a brief exchange, they take delivery of the person in question and any documentation linked to the expulsion. The

expellee is then taken to the immigration bureau, where he is held in a room or cell, before being questioned by immigration officers. If he faces any charges, he is taken straight away to the police special services office, which has a branch at N'Djili airport, where he is also questioned and then transferred to another place to be detained, if required."

89. Further on it is noted that expellees from Europe are generally in very low spirits after their treatment at the hands of the immigration officers and are "overcome with fear and shame" in relation to what people might say about them in the areas where they are known. They prefer to settle elsewhere so as to avoid being subjected to all kinds of mockery. "[F]or this reason", it adds, "many people give false details when greeted at the airport"; and many generally do not manage to adapt to their new situation. Being expelled by force is described as being "very hard, bitter and difficult to accept", especially by those who have been in work for a period of time and find themselves suddenly deprived of income and other assets. "Almost all of them", the report adds, "express a desire to make an immediate return to Europe as soon as an opportunity presents itself."
90. The report goes on to express its opinion that "repatriation causes unprecedented prejudice to asylum seekers even if they do not run any risk of persecution in the case of being forced to return to their country of origin". It states:

"Expellees suffer degrading treatment as subjects without rights and have no sure way of recovering their assets and other personal belongings that have been wrongly taken. After spending time in the West, they sometimes feel disconnected and often lose their ability to adapt to the living conditions in their country of origin. The situation is particularly difficult in the case of forced repatriation. It should be stressed that family ties and other relationships count for little in large urban centres in countries rocked by political and socio-economic crises. Forced repatriation is a form of persecution because it obliges asylum seekers to return empty-handed, something which is seen as a serious failure not only by the individuals concerned but by their home countries."
91. In similar vein it later describes mass repatriation on charter flights as a "humiliating" practice. The report then puts the case for Western countries reforming their current removals practices and putting in place a "compensatory mechanism" to encourage voluntary repatriation based on incentives.
92. A substantial part of the report is taken up with furnishing particulars of 70 odd cases, being returns from European and non-European countries. Only 10 of these cases involve removals from the UK. The most common reason given for the expulsion is "irregular residence" or "clandestine entrant". Note is made of whether the individual was escorted and whether he or she was handcuffed or otherwise restrained during the flight. Slightly more detail is given of five "illustrative case studies". Of the 5, only in Case 1 is there any reference to difficulties at the airport: reference is made to "the little bit of money he had on him (roughly 9 US dollars) and his cigarettes" being taken from him. What these case examples also confirm is that this VSV monitoring exercise was not confined to the airport, as there is express reference in Cases 2, 3 and 4 to visits being carried out and in each of the 5 it is clear that VSV had

ascertained what has happened to the deportees after they had left the airport and gone to their homes or places of stay.

Evidence from Congolese Observatory on Human Rights (OCDH) etc

93. We had written evidence from the private secretary to the president of the Committee for Democracy and Human Rights (CDDH) (we shall refer to him as RK) who was also the chief of staff of the OCDH. He had discussed cases with Jenny Cuffe in late 2004 and (before and afterwards) with his contact E2 (Miss Cuffe's statement notes that two of the failed asylum seekers she met had been introduced to her by RK). As we shall see, E2's first report notes that his organisation was one of the DRC NGOs who had given evidence to UN bodies stating that systematic torture is taking place in the country and that she has known him since 2000 and regarded him as extremely trustworthy and honest and as someone who had a good reputation with international bodies.

94. After RK had given a speech to a Saturday 25 August 2007 meeting in Manchester on DRC failed asylum seekers in the context of this pending country guidance case, the appellant's solicitor wrote to him asking for his replies to a number of queries relating to a case he had mentioned. In his reply of 11 September 2007 RK explained that his involvement with the issue of the treatment of failed asylum seekers began in 2000 when he met E2 and her organisation. Around 2004 he also began liaising with a lady from the Churches Commission for Racial Justice regarding deportees from Great Britain. He did not wish to present himself as an expert on deportees, although he had very long experience. Time did not allow him to put forward all cases he had come across over many years, but he would mention several cases, relating them as they were given to him by the witnesses. He then listed seven cases, 1-7 (which for convenience we shall co-number in brackets Cases 22-29). All were cases he was made aware of by E2. Case 1 (22) experienced ill-treatment at the hands of Dutch officials prior to and during the removal, which took place on 26 October 2000. On arrival at N'Djili airport he was arrested and detained for three weeks in a cell in or near Kin Maziere, before being freed on reporting conditions. This man was able to produce two documents, which RK said he was able to verify, on a visit to DGM. Case 2(23) concerned someone deported from Holland on 23 August 2002. He was interrogated for six hours at the airport but later received a summons for him to attend DGM offices in 17 September 2002. He went into hiding but after contact with the Dutch Embassy was "brought back to Holland". Cases 3 and 4 (24 and 25) concerned two women said to have been deported from Holland to N'Djili airport in November 2002 and in August 2003 respectively and to have been beaten and detained for several hours by DGM agents. Case 5(26) was removed from Holland on 24 October 2003, and was mistreated at the airport and detained in a DGM cell there for a very long period because he did not have money. This man had given testimony during a TV interview with (Dutch company) TV IKON. Case 6(27) was deported from Holland on 21 January 2004; he had been able to avoid ill-treatment at the airport by pretending to be Ghanaian and then

persuading a DGM officer to take him to RK's office. The same officer told RK that when deportees arrive at the airport they are systematically arrested and taken to DGM cells in Kin Maziere in Gombe. They stay in detention for forty-eight hours and to be released have to pay \$250 per person. Case 7 was the same family who had been on the 27 February 2007 charter flight as reported by E2.

95. RK confirmed that there were DGM cells or detention facilities "behind Kin Maziere". The British Embassy had supported two of his organisation's projects (one relating to elections and one to public demonstrations). The outgoing ambassador, who knew his organisation well, had never contacted him about the treatment of returned failed asylum seekers, although he hoped that with the new ambassador there would be effective collaboration between them.

Evidence of E1

96. E1 is a renowned expert on the DRC. We have already explained the circumstances under which he submitted reports in support of this appeal but ultimately did not attend to give evidence as to the general issue of risk to failed asylum seekers. However, in his letter of 22 September 2007 addressed to Trott & Gentry, he confirms that the report he wrote and submitted in May 2007 "is still valid and reflects my current position on the subject of the returned failed asylum seekers".

E1's May 31, 2006 Report

97. We deal later with E1's first report dated May 31, 2006 insofar as it addresses the appellant's specific case. We chiefly confine our summary here to those parts which directly bear on the issue of returned failed asylum seekers, but his report also sets out a description and analysis of the general situation in the DRC in recent years. General matters he mentions include: the acute poverty in which the vast majority of population of 50 million people live on the equivalent of US\$ 0.2 per person per day and consume less than two thirds of the daily calories needed to maintain good health; approximately 70% of the population has little or no access to health care; 1.6 million Congolese have critical food needs; decades of armed conflict have resulted in 3.3 million deaths and have created a serious humanitarian situation with as many as 2.5 million internally displaced persons (IDPs); and the fact that the economy in the DRC is increasingly caught in the web of the international criminal economy and money-laundering circuits. As at May 31 he considered that:

"any return under the present circumstances means exposure to unbearable suffering for many Congolese. The country is simply in ruins".

98. Human rights violations are seen as widespread. The justice system lacks independence from the executive power. The security services do not respect legally binding procedures.
99. "All prisoners, to different degrees", he writes, "are the object of cruel, inhuman and degrading treatment (whipping, beatings, and torture)".

100. Rape of women is common practice in the detention centres. Torture is very common in detention. There is general insecurity in the country notwithstanding the end of the war (in 2003).

101. Section D of his report, which deals with failed asylum seekers returned to the DRC, begins with some general remarks. First he emphasises that because of the terrible economic and social situation in the DRC and the tightening of European border controls “a number of stories by asylum seekers are invented”. Second, he emphasises the unreliability of documentation emanating from the DRC: “There is little standardisation of the documents and most can be falsified”. The security services, he states, sometimes themselves sell authentic documents to persons who then adopt the names mentioned therein. He goes on to note that:

“Asylum seekers are, in a number of cases, sent by an ‘asylum seeker emigration network’ with the complicity of officials (even high level politicians) in the government administration, in the immigration services and officials in the embassies of foreign countries...”

102. Elsewhere, he explains that the composition of the immigration and security services is very much still in the hands of the groups around the President.

103. E1 goes on to distinguish between individual and collective (or group) deportations. Dealing with individual deportations, he says that individuals who travel using valid and ordinary travel documents (e.g. a valid passport) will, assuming there is no known charge against them, pass through unharmed. However, individuals with substitute documents issued by a DRC Embassy abroad will be easily identified as failed asylum seekers. Earlier his report had stated:

“When failed returned asylum seekers are not returned collectively, high level officials of the ministry for foreign affairs are in charge. At the international airport of N’Djili and at Beach Ngobila (entry points for travellers from Congo Brazzaville), their passports are confiscated and they are subjected to an official investigation made by the immigration services at the airport. Afterwards they are normally transferred to the central administration of the immigration services.

This category of person (i.e. failed returned asylum seekers without known political charges against them) is, in a sense, ‘held hostage’ by these services. They are kept in detention in irregular places of detention (often offices) and are released upon payment of ‘fines’ that disappear into the pockets of state officials.”

104. As regards failed asylum seekers who are sent back collectively, he considers they are even more in danger, since they are automatically transferred to the central office of the immigration services and are only released upon payment of a ‘ransom’ (which he defines as “a significant sums of money”).

105. One of the reasons failed asylum seekers (whether returned individually or collectively) are treated in this way is that they are seen to have ‘dishonoured’ the Congolese state. Even asylum seekers who are only motivated by reasons of survival, he adds, “are questioned by the immigration services”. He states:

“If these services have elements at their disposal about the particular case of the asylum seeker, they run a serious security risk and may even disappear”.

106. E1 sees it as important to understand that the procedures he describes cannot be considered as uniform and rigid rules:

“The rules are applied according to the “political conjuncture” and their effect may vary considerably. One element is permanent: because of endemic poverty, everything can be settled by paying money.”

107. A point E1 emphasises is that from his sources in Kinshasa he has learnt that sometimes the DRC Embassy in London writes individual reports on failed asylum seekers, which are transmitted to the authorities in Kinshasa. His report goes on to identify a number of risk categories: persons from Kivu or Kasai; Tutsis or anyone perceived to be Tutsi (this, he says, is “the category of persons most at risk”); UDPS members; members of Unified Lumumbist Party (PALU); DSP members or family members of DSP; high-ranking MPR officials or their families; and persons suspected of being part of the network that planned the assassination of President Kabila.

108. E1 then comments on the UNHCR position, pointing out that the UNHCR’s catalogue of risk categories fails to include Tutsis or ‘Tutsi-like’ persons. He states that otherwise:-

“The information given by the UNHCR and other sources confirms what I have been able to gather through my own research: namely those returnees without valid travel documents are at risk on return. When they have outstanding charges against them, they will be imprisoned and probably tortured. When they don’t have such a charge, they will be imprisoned by the security services who will try to get money from the family.”

109. The final section of this first report E1 comments on a previous (2005) Tribunal analysis of his expert evidence. Confining ourselves to matters salient to this appeal, he draws attention to a paragraph where he was recorded as saying that if there were no other factors “a person was likely to get out after paying money but this was speculative”. Commenting on this, he states:

“That risk of being detained and imprisoned in case of non-payment is a very real one and not just a hypothetical risk ...

...

... it is important to realise that a person is kept in a detention centre when he/she is not able to pay. This is a means to put pressure on the family and relatives of the returnee, to force them to collect the money to free their relative.”

110. To similar effect he seeks to clarify that his position in 2005 was that whilst failed asylum seekers ‘per se’ were not at risk of persecution, “they are at risk of cruel, degrading and inhumane treatment because of the risk of being detained in a detention centre when they are unable to pay a bribe to secure their release.”

111. Commenting on another paragraph in which the Home Office representative had alleged that there was a considerable vagueness about some of [E1's] evidence, such as his evidence about a particular flight where people were said to have been detained and also about his methodology for obtaining information, E1 comments, "I am currently in the process of gathering more precise information on this point".

E1's May 17, 2007 Report

112. That brings us to his latest report of May 17, 2007. Concentrating our summary on points not already made in his earlier report, he emphasises that the risk categories for failed refused asylum seekers are not always indicative as the political situation is in constant flux. The fact that the procedures at the airport are not unified or standardised gives the officials there an important scope for independent action and an ability to intervene and take advantage of the vulnerable position of the returnees and secure for themselves an additional source of income:

"A specific person who is a member of the ANR or the immigration services DGM when with a specific returnee's case may have a relatively important space for decision making. He /she will make a risk assessment as to the income he may generate from this particular case. *The normal course of action will be to ask for a bribe in exchange for letting the returnee go.* A part of the bribe will normally go to his/her hierarchal superiors. However, reliance [on] a returnee may entail a risk in some particular cases, if e.g. this person is specifically targeted for judicial or political reasons or both ... If this risk is too high, the ANR or DGM officer will not accept a bribe but put the returnee in detention. This signifies that it is very difficult to foresee the course of action from the DGM/ANR offices at the airport or Beach Ngobile". (emphasis added)

113. E1 explains that there are four different sources of evidence which he bases himself on: DRC officials (at different levels) with different knowledge of the airport procedures; interviews with some failed asylum seekers from Europe and other countries; human rights activists from VSV and Association Africaine de Defense des Droits de l'Homme (ASADHO); plus an airplane company contact.
114. E1 says that from the evidence he collected "the central (official!) preoccupation of the intelligence and immigration services is the struggle against the clandestine immigration networks". This is "in accordance with the demands coming from Western governments". In practice some members of the DGM are collaborating with these networks. In terms of written instruction to airport officials, "there is nothing very much specific on the failed returned asylum seekers, except the call upon the agents to audition [them] with the aim of detecting emigration networks". Other questions asked were about "the conditions of their departure were from the country abroad and to detect possible abuses from the European administration".
115. In the course of describing the procedures at the airport in relation to returnees whose expulsion has been "done with violence", E1 notes that "depending on the seriousness of the case, they are led to the head office of the DGM at Kin-Maziere before being redirected to the ANR, to the DEMIAP or to justice department within forty-eighty hours".

116. E1 emphasises that there is close collaboration between the various services at the airport, DGM and ANR in particular. They utilise wanted lists, one covering persons (or categories) prohibited from leaving the country, the other identifying those of interest on return.
117. Adverting to the opinions of VSV and ASADHO, he identifies four inconsistencies between his information and that given by VSV: no NGO has an official representative or observer at the airport; no “police station” is charged with the detention of returnees; any detention centres where returnees are held are in the city; the size of the payments of failed asylum seekers to bribe officials successfully is in fact larger. He ventures some “tentative” explanations as to VSV’s and ASADHO’s incorrect description (as he sees it) of certain matters: that their reports are not based on preliminary inquiries or serious completion of data; that they wish to preserve their image as serious NGOs; that their view on failed returned asylum seekers makes their opinions a little more credible in cases they themselves take up of political asylum seekers.
118. E1 next turns to the issues of “the level of risk on return” to failed returned asylum seekers:
- “It is essential to realise that failed returned asylum seekers are not ordinary travellers. When they are identified (and this is mostly the case); they constitute a group directly or indirectly engaged in a form of political activity. They are, in all cases, the object of careful scrutiny by the immigration or security services. In many cases, they are released against payment of a bribe; when a risk factor is involved they are detained for shorter or longer periods.”
119. Addressing the treatment of failed asylum seekers (other than those with valid travel documents such as passports) he states that:
- ‘The treatment of this category of persons is greatly determined by one element: money (however: see also the following sections). The DGM and/or ANR services at the airport will ask [for] money [from] any failed asylum seeker returning from Europe or the United States. Local belief holds it that anyone returning from those continents must have relatively considerable financial means at his/her disposal, making them an interesting prey for badly paid officials who also must ‘redistribute’ something to their hierarchical superiors. The requested sums may be considerable, varying from US\$200 to US\$1,000. The sum put forward by VSV in the UNHCR letter referred to above [US\$5 to US\$10] is not accurate.’
120. If the returnee refuses to pay, “all kinds of pressure including physical pressure” will be exerted so that he/she pays or asks his/her family to pay.
121. His report goes on to state that any transfer from the airport into any kind of detention centre will result in ill-treatment, including rape, for both males and females.
122. His report documents the offences for which some returnees may face punishment if they are considered to have fake documents, to have given false testimony, committed offences abroad or escaped from prison (in the DRC). It often happens, he says, that any offence is invented by the ANR/DGM officials to pressurise a returnee to pay the

requested sum of money. He considers that the situation for returnees from the UK “has currently specific characteristics linked to events happening in October 2006” (e.g. when a director of Kabila’s cabinet, She Okintundu, was physically attacked in London); there have also been attacks on prominent pro-Kabila individuals in Brussels and Paris. He adds:

“As the Congolese community in the UK is very active and aggressive, and because of the action taken against She Okintundu and Jaynet Kabila, all returnees from the UK is [sic] the object of a very specific attention from the relevant services at the airport. They are very thoroughly interrogated and run a higher risk that they would not be believed than returnees from other countries.”

123. His report then discusses specific risk categories, reaffirming, *inter alia*, that these include Tutsis or persons perceived as Tutsis. He interposes this observation:

“It is also important to stress that any failed asylum seeker from the UK will be treated with much suspicion as all returnees are considered to be anti-Kabila and adherents of N’Gbanda’s APARECO movement.”

124. The final section of this report is comprised of comments on some other documents. As regards the Jenny Cuffe BBC report published on the BBC website on 1 December 2005, he considers that what it says is consistent with his own report on several matters but inconsistent on two. Commenting on the fourth of six points of accord, he writes:

“There is indeed no evidence that asylum seekers as such are persecuted. But they all have to pay a bribe for their release. If they refuse to pay or are unable to pay, they are detained as a way of pressurising them. The authorities are concerned about emigration networks, whether a person has committed a crime and particular attention is currently paid to those from the UK. The authorities assume that people are lying and use the methods of obtaining information as described throughout the report ...”

125. E1 also deals with the Home Office COIS Report, 14 February 2007 at paragraph 36.03 [which states, *inter alia*, that it is considered by the FCO that there is no evidence that returned failed asylum seekers are specifically targeted for adverse treatment]. It is, he says:

“consistent with the contents of this report, although I have some doubts about the thoroughness of the mentioned sources of information ... I agree that there is no persecution of returned asylum seekers per se. On the other hand, all returnees are interrogated (on minutes) and the persons who may face criminal prosecution are those with individual travel documents or who are the object of criminal investigation/arrest warrant. It is important to note, however, that this is a general statement that does not exclude the existence of specific categories of person who are at risk ...”

126. He qualifies his endorsement of the whole of paragraph 36.03 with the following remarks:

“I do not think that there is any embassy or NGO that has undertaken an in-depth investigation of the fate of failed returned asylum seekers, including contacts with DGM/ANR officers on return. I also would like to stress the existence of specific risk categories.”

127. He next directs his attention to paragraph 36.08 of the same report which summarises the view expressed in the EU Report on Illegal Migration, April 2006, that there is no reliable evidence of failed asylum seekers being specifically targeted for harassment by the security services and concludes with the sentence: “harassment is experienced by the majority of travellers, both Congolese or foreign.”

128. To this EI responds:

“I totally disagree with this paragraph if it wants to assert that failed returned asylum seekers are as much or as little harassed as ordinary travellers. There is ample evidence that all failed asylum seekers are interrogated, some specific cases detained, and all subjected to the payment of bribes for their release.”

Evidence of E2

129. E2 was produced by the appellant as an expert who has close knowledge of the DRC and who has taken a particular interest in issues relating to DRC returnees for a number of years.

130. The first report of E2 is dated 12 March 2007 and is headed “Expert’s report on the issue of failed asylum seekers who are returned by force to the DRC”. E2 refers to the work of the Havermans Commission in Holland (whose initial report, dated 9 December 2005 concluded that the “reception committee” set up by the Dutch government in September 2003 to monitor the arrival and reception of returnees from Holland to the DRC was only intended to cover “group deportations” and had only been convened once in November 2002). She had no knowledge of any group deportations for the past five years.

131. Her first report describes the return procedures at N’Djili airport. Her information, she states, is drawn from reliable sources including persons who work as immigration officers at this airport. She describes the situation at N’Djili airport as characterised by “chaos and insecurity”. Failed asylum seekers are handed over to the DGM at the stairs of the plane and then face rough handling, enclosure in dirty claustrophobic rooms (“cells”) and “being accused of behaviour that undermines the state by virtue of claiming asylum abroad”. He or she is locked in a “cachot” (cell) and then interrogated in the offices of the DGM at the airport. After a brief interrogation all deportees (unless they are asked for and can pay a bribe) are taken to the DGM headquarters in the city for further investigation. There are only supposed to be five services at the airport but in fact there are seventeen. Sometimes the ANR wear DGM uniform. These different services are also there, she says, to spy on each other. For a number of years, she notes, the Congolese media have carried items exposing the fact that the situation at the airport is chaotic and the security services at the airport “bother” passengers and behave high-handedly.

132. In addition to the DGM the other government services at the airport include: RVA, Customs and Excise, Congolese Inspection Service, Public Health Service, the Special Services, the ANR, DEMIAP, DIVK ASA, Republican Guard, city security services, the state protocol service and “Bureau 2”. She considers it “highly likely” that a person being

repatriated is recognised by the airport authorities as a failed or former asylum seeker.

133. She had heard of two or three cases where deportees could not be traced several days after arrival. During interrogation by the DGM at the airport people are asked for their personal details, address in Kinshasa and from where they were deported. At DGM headquarters the interrogation is more in-depth and concerns the reasons for going to Europe, what they have done during their time in Europe, who they have associated with there and why they were forcibly repatriated.
134. In general, deportees continue to be considered as offenders and as a danger to the authorities. This is for two reasons: firstly because they assume the asylum seeker has said negative things about the country and secondly “because back in Congo he can stir unrest by criticising the people in power”. At the airport people can be assaulted and receive inhuman treatment. Any interrogation in the DRC is always accompanied by violence, beatings, insults and humiliation. Each asylum seeker who comes from Paris or London is suspected of being connected with APARECO or with the group who attacked high profile Congolese visitors in London. She stated that a year ago her organisation had traced a number of people in Kinshasa who were deported asylum seekers. Over a couple of weeks her organisation had amassed fifty contacts but few of them wanted to talk about what had happened. She mentions two examples.
135. Her first report contains several criticisms of VSV. Another DRC human rights organisation was unable to find an independent confirmation of VSV’s claim that it kept an office at the airport. As regards VSV’s report on monitoring of 16 April 2004, she points out that of the seventy cases it lists, four or five were duplicated. She then states that her organisation tried to visit as many of these people as possible:

“In 75% of cases we were successful and discovered that none of them had ever had contact with the VSV. In general people reacted very angrily to this malpractice.”
136. A third criticism was that it was strange that VSV had mentioned to UNHCR that the figure of US\$5 - US\$10 must be paid to “police” for corruption, as it was the DGM who settled things with deportees, not the police.
137. A further criticism was that the VSV version (not aware of any of those persons being detained and/or tortured) diverged from the version given to her by her DGM sources. In her view VSV management provided this “rather more reassuring picture” to secure financing for monitoring projects. VSV, she says, “has taken up the view of the government without having to mention this as such”. She adds that she could not understand why the head of VSV should say expellees would not face ill treatment on return when he himself was obviously aware of “the imprisonments”: she cites a VSV press release of 13 March 2005 which refers to the long term detention of JN said to have been deported back to the DRC from Germany in November 2004.

138. Her report goes on to deprecate some of the views UNHCR had expressed about rejected DRC asylum seekers in its letter of 19 April 2006. They arose, she says, because UNHCR is not actively involved with this issue. She points out that the UNHCR recommendation that no one is deported to Kinshasa if they do not have family there has been ignored by European countries. She criticised UNHCR for vagueness about sources and evidence and says it is not clear why they consulted the VSV and ASADHO but not other human rights NGOs.
139. Her first report mentions several human rights and/or lawyer contacts in Kinshasa who have expressed concerns to her organisation about the risks for returning asylum seekers. One of the lawyer's contacts had mentioned an incident in December 2005 concerning the family of someone who had been granted asylum in the Netherlands. This contact specified the articles of DRC legislation "under which people put on trial as former asylum seekers are accused". This contact also promised to try and obtain court judgments dealing with such persons, but after a number of fruitless attempts she had heard nothing more. She also mentions being told by another lawyer that many deportees were being arrested by the security services and imprisoned; however, she does not record his mention of any specific cases. She states that with the help of a DRC NGO she had obtained in December 2005 a list of the eight indictable offences set out in the Code de Competence et l'Organisation Judiciaire under which asylum seekers are "seized": offences against national security; offences against the Head of State, offence against Heads of State of another country and insults to foreign diplomatic agents; insult to the Head of State provided that he makes a complaint; and subversive propaganda.
140. Another section of her report dealt with Dutch investigations into whether the Dutch authorities handed asylum dossiers held on any DRC returnees to the DRC and the conclusions of the Dutch National Ombudsman regarding this in February 2007.
141. She states that the ANR have photographs of all Congolese people in the UK who have attended meetings of Congolese people. Currently the situation of Congolese people living in the UK was extremely dangerous as the result of recent attacks in London on Kabila aides:
- "The consequence at a lower level is that the Congolese people who were involved in these activities will undoubtedly lose their lives as they fall into the hands of the Congolese security service ... Their revenge will be terrifying."
142. Her report also deals with conditions in prisons and detention centres in the DRC. That is not per se an issue in this appeal, but it is relevant to note her reference to a Committee of Observers on Human Rights (CODHO) briefing of 5 September 2006 regarding nineteen people arrested and ill-treated by Detection Militaire des Activites Anit-patrie (DEMIAP) which said that all were "refugees and/or asylum seekers of Rwandan origin".

143. Her report also deals with the risk to women of rape at the hands of the prison guards.
144. As regards the second stage after the release of deportees at the airport, she notes the concerns of one reputable government source as well as Amnesty International (AI refers to 2 “possible problems”) regarding reports of visits by security agents made to the addresses of deportees some weeks after they have been released.
145. She next gives an overview of what certain EU governments have done by way of monitoring the returns of deportees to the DRC. She adverted to an entry in the British COIS Report of 14 February 2007 stating that the Belgian Embassy in a July 2003 letter had said that the Belgian Immigration Department monitored the treatment of returned failed asylum seekers to the DRC. That information, she states, has been refuted by a study conducted by the Flemish Refugee Council. The same Council in a separate November 2005 study had described two cases of imprisonment in the former Makala prison which occurred immediately after deportation. Having returned to the subject of the VSV monitoring and her doubts about the reliability of VSV’s 16 April 2004 reports, E2 concludes that neither systematic nor incidental monitoring is being carried out by any European country.
146. Referring to the existence of an extremely large number of registered and unregistered NGOs in the DRC, she states that information on the treatment of deported asylum seekers cannot easily be obtained from those sources. She identifies three NGOs which should be consulted about this issue because “each of them has knowledge of concrete cases of Failed Asylum Seekers (FAS) who have experienced problems after being deported”: the Observatoire Congolais des Droit Humains (OCDH); International Society for Human Rights/Congo (ISHR/Congo) and Committee of Observers on Human Rights (CODHO).
147. She then refers to a “fact-finding mission” taking place in December 2005 – beginning February 2006. In this time, she says, “we traced and spoke to a large number of people”. In an appendix this is said to have been “at least fifty people in about twenty meetings”. Their experiences (despite not knowing each other) were generally similar: threatened, roughly handled by the Congolese authorities at the airport, detained, houses vandalised, living in hiding. She notes that it was particularly difficult to gain the confidence of these people so as to obtain audio and DVD evidence. Strangely, she said, after first contact from her organisation none made any further contact to see if it could offer them any help or support. (We have seen the DVDs/ transcripts).
148. Her appendices include a copy of the proceedings of a 26 July 2005 meeting which took place in Kinshasa between the OCDH and a Dutch delegation in which the OCDH representatives referred to “two cases [of returned failed asylum seekers] among others”: details are given.
149. E2’s second report dated 23 June 2007, although entitled “A Report about Congolese who have been removed to Kinshasa”, is largely devoted to one case: that of WY. E2 explains that her organisation had been

asked by Trott & Gentry Solicitors to undertake investigations in Kinshasa as regards the fate of the Congolese who were removed to Kinshasa from London on the 26 February 2007 charter flight. As regards the arrival of the charter plane, she stated that they had received a witness statement from a “reliable partner” who had observed the arrival from beginning to end. The formalities at Ndjili airport took place without the obvious rough treatment, though those concerned were much stressed. She then refers to her follow-up on information given to her by a colleague in the form of the name and telephone number of “the leader of a Congolese NGO with whom one of the victims of removal of last February was staying in hiding”: JP. She then recounts unsuccessful attempts to meet with WY and having to make do in the end with a telephone interview. She annexes her record of this interview in an appendix. WY's account speaks of he and his wife and child being three of the deportees who were returned on the 26 February charter flight, the house where he and his family were staying being raided by security services several hours later, he being taken off in a jeep and then beaten up with barbed wire somewhere in the Mount Nabula area, then finding himself in a “cachot” (cell) with two other prisoners facing further beatings and interrogations, being confronted with photos of himself at demonstrations in London and, in between further beatings, being accused of assaulting a Kabila aide (She Okitundu), being taken off in a jeep and being dumped in the bush and finding himself being taken to a Red Cross dispensary and being cared for there for three days. Several weeks later, he goes to the British Embassy to apply for an NGO job advertised via the Embassy. On his way out of the Embassy gates (having been interviewed about this application), he is abducted by DRC security men in two jeeps and taken to Kin Maziere where he faces further interrogation, before being eventually allowed, on payment of a bribe, to phone and receive a visit from his brother. During this visit WY asks his brother to “alert JP from the NGO as well as the Red Cross”. Three days later he is released.

150. The report also mentions trying to follow up on “snippets” of alarming information from a number of sources [in Britain] between March and June 2007 and events subsequent to 26 February 2007. It proved impossible to follow this up because her organisation had not received information on how to make contact with the victim or their nearest relatives.
151. Before us there were also several further letters and e-mails from E2. One dated 11 September 2007 was partly devoted to a response to the criticism made to the British Embassy of her organisation by a Dutch Embassy in Kinshasa source who had said that her organisation often takes “a very activist approach on behalf of Congolese asylum seekers who (then) turn out to be fraudulent during the procedure”. That criticism, she said, was wrong, since her organisation is concerned only with information-gathering at the request of legal representatives of asylum applicants. She explains that her organisation's assistance has often led to asylum seekers initially disbelieved succeeding in their claims. She then gives several case examples. On 13 September 2007 she reports on her contacting three names sent to her by Trott & Gentry of persons thought to have undergone abuse after the arrival on the charter

flight of 27 February 2007. One, she says, she could not contact because she was told he had disappeared. Another, a woman, described being threatened by male officials at N'Djili airport threatening to have her detained in Makala, but being rescued by a woman who bribed these officials to let her recover her handbag and other luggage and go free. This woman considered she had a lucky escape as in her handbag was her Home Office refusal. She described having to live in difficult conditions under another identity. The other person E2 spoke to described spending two periods of detention in Kin Maziere during which he was interrogated and ill-treated before being released on the intervention of a relative who paid a bribe. This other person also described being asked about his activities in the UK and accused of dishonouring his country by saying things against it abroad. He was also asked about how he had got out of the country.

152. E2's further letter also details other contact with WY and with JP in which she is told WY is now living in hiding having left Kinshasa. WY was adamant the Red Cross could provide a letter and photograph of him. She had asked WY by phone about his reference to "passports" which he had earlier told E2 had been taken from him by the DRC authorities. She records him as confirming in reply that they took all his documents. He added that just before putting him on the plane in the UK the British "had handed him his complete asylum file". He also mentioned his wife complaining at N'Djili airport to a British Embassy official and the fact that the DRC authorities had stolen everything of his. In reply to his wife the British Embassy official had said he would record the complaint and that his Embassy would write to the DRC government.
153. A further 16 September letter from E2 to Trott and Gentry describes further communication with JP about WY as well as her having phoned the number of a person in charge of the Red Cross in Limete (she gives his name) who had confirmed that his organisation knew of her organisation's concern about WY's case and said that he was happy to furnish a letter and to provide confirmations if necessary.

Tribunal Country Guidance

154. The Tribunal in AB and DM (Risk Categories Reviewed - Tutsis added) (Democratic Republic of Congo) CG [2005] UKAIT 00118 broadly confirmed the list of risk categories identified in the earlier country guidance decision in VL (Risk – Failed Asylum Seekers (Democratic Republic of Congo)) CG [2004] UKIAT 00007, namely, those with a political or military profile in opposition to the government, but found that in view of the increase in anti-Rwandan feeling, Tutsis, or those suspected of being Tutsis, were at risk of being associated with the Rwandans. It found further that the assessment of risk in an individual case, would depend upon a careful analysis of that individual's origins, background and profile.
155. The issue of 'profile' was a matter that the Tribunal in AB and DM referred to at paragraph 34 of its determination. It reiterated that there continued to be a real risk for those with a political or military profile and that each case was to be judged on its own facts. But it was possible

now to provide a little more detail at least about those who fell within the 'political profile' sub-category. The Tribunal continued at paragraph 45 as follows:

"We would emphasise first of all that the use of the word 'profile' highlights the fact that this category is intended to mark out those whose actual perceived military or political activities or involvements are likely to have brought them to the adverse attention of the Kabila regime. *The mere membership of an opposition political party will not demonstrate that a person has such a profile*". (Our emphasis).

156. In MK (AB and DM Confirmed) Democratic Republic of Congo CG [2006] UKAIT 00001 the Tribunal was concerned with an HJT Research News Reporting Service Item of 27 June 2005 concerning suspension by the Netherlands for a period of the return of asylum seekers to the DRC. The Tribunal concluded that it did not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in AB and DM.

157. At paragraph 51(3) the Tribunal confirmed as an existing risk category:

"... those having or being perceived to have a military or political profile in opposition to the government.

158. It stated that:

" 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 there is a real risk at present for UDPS activists."

159. In MM (UDPS members-Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023 the Tribunal stated that:

"201. Looking at the objective situation as a whole, and mindful of the past history of the DRC, we have concluded that despite what appears to be a dramatic change in the political landscape, that carries with it the hope that it will result in much needed stability in this vast and previously divided country, it would be premature to hold that these prospects have yet translated to adequate improvements on the ground, so as to justify a revision at this stage of the Tribunal's view of risk to UDPS members, as held in AB and DM , endorsed in MK and which we thus re-affirm.

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." (See paragraph 51(iii)) of their determination).

The background evidence

160. Since there is no real dispute between the parties about the basic country conditions in the DRC, we shall confine what we say here to summarising what background sources tell us about: (1) the different police and security services which exist in the DRC; (2) the latest situation in the

country following the recent Presidential elections; (3) the evidence about asylum-related returns to the DRC; and (4) evidence of specific relevance to the appellant's case.

161. Describing the different government agencies involved in security and policing, the Home Office COIS Report for July 2007 states that:

“10.01 The US State Department Report on Human Rights Practices in 2005 published on 8 March 2006 (USSD 2005) reported as follows:

“The security forces consist of a national police force, including the Rapid Intervention Police unit, which the Ministry of Interior oversees; an immigration service under the Ministry of the Interior; the National Intelligence Agency (ANR) overseen by the National Security Advisor; the military intelligence service overseen by the Ministry of Defense; and the GSSP, which reports directly to the presidency. The national police have primary responsibility for law enforcement and maintaining public order. The ANR is responsible for internal and external security. The FARDC was responsible for external security but also had domestic security responsibilities.”

10.02. A Fact-Finding Mission Report on the DRC by the Documentation and Research Service, Refugee and Nationality Commission of Belgium (CEDOCA) dated October 2002 noted that there are a number of security agencies. **[24a] (p9)** These include DEMIAP (Detection Militaire des Activités Anti-Patrie / Military Detection of Anti-Patriotic Activities). DEMIAP is formally answerable to the staff of the Congolese armed forces (Forces Armées Congolaises/Congolese armed Forces (FAC)) [renamed FARDC in 2003] It is subdivided into internal and external departments. The internal section has a prison known as Ouagadougou. **[24a] (p9)**

10.03. The same report advised that the ANR was set up in 1997 to replace SNIP (National Service for Intelligence and Protection) and has made efforts to remedy the worst abuses. Most of the ANR's illegal prisons have been closed in recent years, except for those at ANR/Fleuve and ANR/Lemera. This service is subdivided into a Department for Internal Security (ANR/DSI) and a Department for External Security (ANR/DSE), both run by a Director General... **[24a] (p9)**

10.04. Regarding the GSP (Garde Spéciale Présidentielle/Special Presidential Guard, also known as GSSP), the CEDOCA report stated “This special department consists of President Kabila's Praetorian Guard and was set up to replace the no less infamous Special Presidential Division of former President Mobutu. Starting off with the name GSSP, this Guard has had several name changes.” **[24a] (p9)**

10.05. CEDOCA also stated that the General Migration department (Direction Générale de Migration) (DGM) was responsible for border control, among other things. It succeeded the former National Immigration Agency (ANI). **[24a] (p10)**

10.06. CEDOCA also stated that the Special Intervention Forces (Forces d'Intervention Spéciale) (FIS) were formed from part of the GSP and part of the former 50th Brigade, now the 7th Military Region and their headquarters were in the military camp of Kokolo. **[24a] (p10)**

10.07. A situation report issued via the Institute for Security Studies in January 2005 titled ‘Summary Overview of Security Sector Reform Processes in the DRC’ detailed plans for the reform and restructuring of civilian and military security forces and stated that police reform was an integral part of SSR [Security Sector Reforms] efforts in the DRC. **[27f] (p11)”**.

162. So far as the police are concerned, the same COIS Report states:

“10.08 A Fact-Finding Mission Report on the DRC by the Documentation and Research Service, Refugee and Nationality Commission of Belgium (CEDOCA) dated October 2002 stated that the Congolese National Police (Police Nationale Congolaise) (PNC) was formed on 7 June 1997 to replace the National Guard and the Gendarmerie, and was run by the Police General Inspectorate (l’Inspection Générale de Police). **[24a] (p9)** The PNC is made up of Communal Police (Police Communale) (PC); Rapid Intervention Police (Police d’Intervention Rapide) (PIR); Internal Police (Police des Polices) (PP); Special Transport Police (Police Speciale de Roulage) (PSR). The uniform of the PNC and the PIR was reported as all blue or all black, and the uniform of the PP and PSR as yellow shirt and blue trousers (often with a yellow line). **[24a] (p10)**”

10.09. The US State Department Report on Human Rights Practices in 2005 published on 8 March 2006 (USSD 2005) reported as follows:

“by year’s end the national police force was increasingly integrated. On November 8, the government—with financial support from foreign governments—opened a \$1.3 million police facility in Kinshasa to bring the country’s disparate police units under central command and control. In addition during the year the government worked with MONUC and members of the international community to train police. There was some police improvement, specifically among the rapid police force, following the training by a foreign country of three thousand officers for riot control and emergencies. These officers were properly armed with tear gas and rubber bullets to handle volatile situations and significantly reduce human rights violations. At year’s end the international community was training and professionalizing traffic police.”

The report continued, “...although the overall level of professionalism increased during the year, police forces generally remained ineffective and corrupt. During the year members of the police, military, and security forces attacked, detained, robbed, and extorted money from civilians. The government prosecuted and disciplined some abusers; however, the vast majority acted with impunity. Although there were mechanisms available to investigate human rights violations by police, they were used sporadically.” **[3h] (1d)**

10. 10. A report by the International Crisis Group titled ‘Security Sector Reform in the Congo’ dated 13 February 2006 states in relation to the police:

“The Congo police have never been able to provide basic law and order and have themselves ranked among the top abusers of citizens’ basic human rights. **[39f] (page 4)** It continues, police reform has gone forward on an ad hoc basis driven by what individual donors are willing to provide rather than on the basis of a long term strategic plan. These reforms have not been without success; for example, when the elections were postponed in June 2005, demonstrations in Kinshasa were handled well for the most part. However there is little co-ordination among the main donors – France, EU, South Africa, Angola and MONUC police – on the training and nature of the force. The bulk of the effort has focused on Kinshasa, and there is virtually no long term plan. A police reform reflection group (groupe de reflexion) was only recently established to improve co-ordination between MONUC, the European Commission, The EU police mission (EUPOL) and bilateral donors.” **[39f] (page 6)**

...

10.13. The twenty-first report from the UNSG in June 2006 reported that while the national police in Kinshasa had demonstrated an ability to control political demonstrations without violating human rights, there was a tendency to use excessive force. **[54i]**

10.14. In June the UNSG's special representative Mr. William Swing announced that 46,000 police officers had been trained so far 14,000 of them by MONUC. The majority were trained by partners such as South Africa, Angola, France, the European Union and Japan. According to Mr. Swing the aim was to train 50,000 police by the date of the election. [71d]

i. ...

10.16. On 16 December 2006, Radio France International reported that a police academy, funded by France, had been inaugurated in Kinshasa. The academy will receive 270 trainees each year. [95ak]

10.17. On 15 January 2007, Angola Press reported that over 2,700 DR Congo policemen had been trained by the Angolan National Police (PN) since 2004. Since 2004 the PN have organised the Mbakana Training Centre, and trained a police battalion and other units in anti-riot, and anti-terrorism. In Angola, they have held a course for trainers in public order, and trained 80 staff in the motorbike brigade for special anti-terrorism units. [34a]".

163. The COIS Report also includes the following entries on arrest and detention.

"14.01 Articles 19 and 20 of the current draft transitional constitution of 23 March 2003 (published by the Institute for Security Studies) provided for all citizens to have the right to be detained or arrested only in accordance with the law and within 24 hours, to be permitted contact with their family and a legal adviser, informed of the reason for the arrest, their legal rights, and any charges. Article 20 also states that police custody should not exceed 48 hours; after this period the detainee should be brought before a competent judicial authority. The same Article states that treatment should be in accordance with maintaining life, physical and mental health, and dignity. [27a]

14.02. A report compiled by the Canadian Immigration and Refugee Board in February 2005 also stated that in theory, the Congolese constitution guarantees impartial justice, defendants have the right to appeal in most cases, and the right to defence is recognized by all courts. [43s]

14.03. Several reports indicated that although the law provides for a speedy process, access to family and lawyers, and prohibits arbitrary arrest and detention, these provisions were not followed in practice. [3h] (Sections 1d, 1e, 1f) [11f] (Torture and Illegal detention) [55b] [56a] They included the US State Department Report on Human Rights Practices in 2005 published on 8 March 2006 (USSD 2005) [3h] which also stated:

"Police often arbitrarily arrested and detained persons without filing charges, often to extort money from family members. When authorities did press charges, the claims were rarely filed in a timely manner and were often contrived or overly vague. Reportedly security forces regularly held alleged suspects for varying periods of time before acknowledging that they were in custody or allowing the detainees to have contact with family or legal counsel." [3h] (Section 1d)

and

"Throughout the country, there were credible reports that authorities sometimes arrested or beat a close family member of the person they sought but were unable to locate. For example on August 5, police in Lubumbashi arrested and severely beat Mimi Balela Mbayo in place of her husband, who was wanted for stealing 24 thousand dollars from a former employee. Ms. Mabyo's buttocks were flayed, tearing off large pieces of flesh and muscle. At year's end no action had been taken against OPJ Donat Atwena, the police officer who ordered the beating." [3h] (Section 1f)

14.04. A report in April 2004 by the United Nations Mission for Congo (MONUC) on Detention in the Prisons and Detention cells of the DRC, based on a series of visits in 2002 and the first six months of 2003, stated that:

“The lawfulness of the arrest and detention is often an infringement of the law linked to the serious disfunctions [sic] in the police force and in the legal system. It is clear that the fundamental rights of persons arrested are not respected, in particular:

The period in police detention, which may not exceed forty-eight hours,

The right for any person arrested to be informed immediately or at the latest within twenty-four hours of the reasons for his/her arrest and of any accusation made against him,

The right to a just and fair trial within the legal periods.”

[56a] (p4)

14.05. The MONUC report recommended a number of measures to improve the situation of illegal detention, and to reduce the number of people held in preventive detention and limit its duration. **[56a] (p39-44)**

14.06. The Amnesty International (AI) Annual Report in 2005, reporting on events in 2004, stated that “Arbitrary arrest and illegal detention remained frequent across the DRC. Many people spent long periods in detention without charge or trial. A number were reportedly ill-treated or tortured. Human rights defenders and journalists engaged in legitimate investigation and criticism were also threatened and unlawfully detained.” **[11f] (Torture and Illegal detention)**

A report by the United Nations (UN) Special Rapporteur for the DRC in March 2004 also stated “Crime generally goes unpunished in the Democratic Republic of the Congo and arbitrary detention is practised on a wide scale.” **[55b] (p16)** The same report also stated “The lack of security for the civilian population is one of the impediments to the realization of human rights in the Democratic Republic of the Congo. The civilian population is subject to violence by the military and police, often for financial reasons; most such offences go unpunished. Since bribery is ubiquitous, the guilty parties can buy off the justice system and the police, and justice officials often help victims and perpetrators to make deals in exchange for part of the compensation paid...”

164. As regards general conditions in the DRC, the UN Office for the Coordination of Humanitarian Affairs stated in a briefing to the Security Council on 11 September 2007 that:

“Last year's successful national elections and the establishment of democratic institutions are important steps on the road to recovery, and to the re-establishment of state and government authority. The successful completion of the local elections planned for next year should be a vital next step. This progress, and the end of major fighting in most of the country, has had a positive effect on the humanitarian situation. Over the last four years, the total number of internally displaced has decreased from 3.4 to 1.2 million. In Katanga Province alone, some 350,000 people returned home last year. Most of the country is beginning to experience greater calm and stability, even if MONUC should not yet even start to contemplate leaving.

Nevertheless, serious humanitarian problems remain, particularly in the east, for hundreds of thousands of civilians are still displaced and more continue to flee fighting and violence, and where illegal armed groups terrorise large parts of the population. While the position in Ituri has improved significantly, continuing insecurity in north and south Kivu has particularly severe humanitarian consequences. These two provinces account together for close to 1,000,000 of the internally displaced, or 90% of the total national caseload. North Kivu alone

represents almost two-thirds of this number, including about 300,000 more since November last year.”

165. From the Amnesty International Report, May 2007, it is clear that torture and ill-treatment committed by government forces and armed groups continue to take place as do attacks on human rights defenders with impunity and diminished risk of arrest and being put on trial.
166. So far as asylum-related returns to the DRC which have taken place under UNHCR auspices, the same COIS Report states:

“32.26 On 10 January 2007 the UNHCR reported that although the long-standing refugee crises in the Great Lakes region continued to ease last year, problems still remain. The DRC remains the UNHCR’s biggest Great Lakes operation. The refugee agency helped more than 26,000 of last year’s almost 37,000 Congolese returnees go home. Slightly more than 47,200 people were repatriated to DRC in 2005, including some 14,000 assisted by UNHCR. DRC also hosts some 220,000 refugees from neighbouring countries; some 30,000 of them went back last year, 13,200 helped by UNHCR. **[21ah]**

...

32.38...On 13 April 2007 Relief Web quoting the UNHCR as a source...said that so far 7,000 refugees had returned in 2007 and 96,000 in total since 2004.”

The report records repatriation in significant numbers of refugees back to the DRC from Angola, Rwanda, Burundi, Uganda, Sudan, Tanzania, the Central African Republic, Mozambique, Malawi and Zambia.

In response to a request from the Tribunal for figures of asylum-related returns from the UK to the DRC, the respondent furnished us with figures covering the period January 2004 – September 2007. The covering letter stressed that whilst figures from January 2004 to June 2007 are from published information, those from July-15 September 2007 have yet to be verified by auditing processes. Headed “Unsuccessful Asylum Seekers”, these figures are broken down into A (“enforced removals, persons departing voluntarily after enforcement action has been initiated against them and those who have left the UK without informing the immigration authorities”); and B (“persons leaving under Assisted Voluntary Return Programmes run by the International Organisation for Migration [and which may include cases where enforcement action has been initiated]”). The total of unsuccessful asylum seekers given for 2006 is 105 and for Jan-15 September 2007 it is 97. The information on returns also states that in the period January 2004 until December 2006 there were 45 non-asylum cases concerning nationals of the DRC removed to the DRC.

167. Since it has been the subject of specific commentary by E1, we need also to set out the July 2007 COIS Report’s entry on failed asylum seekers:

“36. TREATMENT OF FAILED ASYLUM SEEKERS RETURNED TO THE DRC

36.01. In comments to the Advisory Panel on Country Information on 8 March 2006, UNHCR stated a BBC report published on 1 December 2005 completely contradicted the COI report of October 2005, and operational guidance. **[15y]**
[6of]

36.02. The USSD Country Report on Human Rights – 2005 published on 8 March 2006 gave an account of the BBC programme but concluded: “During the year there were no other reports that corroborated the accounts contained in the BBC article.” **[3h] (Section 2d)**

36.03. The view of the Foreign and Commonwealth Office (FCO) was given in two letters dated 6 February 2006 from the British Ambassador to the DRC. The first letter confirmed the letter of 9 December 2004 which stated that the FCO had no evidence that DRC nationals face persecution from DRC authorities on being returned to Kinshasa after a failed claim for political asylum in a third country. It stated: "Our sources in researching the treatment of failed asylum seekers include local non governmental organisations, press and lawyers, Ministers from all parties forming the transitional government and colleagues in other Embassies based in Kinshasa." The same letter noted that "other EU governments continue to make regular supervised returns of failed asylum seekers to Kinshasa, for which DRC Immigration requires a suitable identification document. Flights carrying returnees from Schengen countries are met by a French Airport Liaison Officer who ensures that, on arrival, the returnee holds a satisfactory document before passing them on to be landed by DRC Immigration officials." It also stated: "All passengers arriving at N'djili airport are liable to be questioned by DRC immigration officials. We have no evidence that returned failed asylum seekers are specifically targeted for adverse treatment." The letter continued: "It is possible that some returnees may face criminal prosecution upon their return to the DRC if it were established on their return that they had departed the DRC with invalid travel documents or were already the subject of an arrest warrant or criminal investigation." **[221]**

36.04. The second letter from the embassy states that the Ambassador had met with the Vice-Minister for the Interior in late December 2005 to discuss the return of failed asylum seekers from the UK to the DRC. During the discussions the Ambassador relayed concern over reports that failed asylum seekers, on return to the DRC, had been investigated or persecuted by the DRC authorities and enquired what the DRC Government's official position was. According to the letter the Vice Minister "said categorically that there was no official policy to target failed asylum seekers upon their return to the DRC. He could not guarantee that individual failed asylum seekers had not been harassed by individual members of immigration or security services. But they had definitely not been ordered to do so by the Interior Ministry." **[22m]**

36.05. In response to an information request on the subject of the treatment of rejected asylum seekers in the DRC the UNHCR stated on 19 April 2006, that after the press coverage following the BBC programme their officials in Kinshasa had contacted various organisations and institutions in an attempt to gather more information. This included organisations such as the Congolese Immigration Authorities (DGM), the National Committee for Refugees (CNR), IOM, MONUC, and national human rights NGOS. In addition, it sent staff to the airport on days of arrival of flights from Europe. The following were its findings:

1. According to the DGM and CNR, the usual procedure for any person returning through Kinshasa airport in case they do not hold proper documentation, including current DRC passports, and/or when they have been absent for a long time, is to be interrogated by immigration officials at the airport. In the best case scenario, they are freed within one to three hours. In the worst case, they are sent to a detention facility in the centre of town, and released after further verification.
2. The Congolese human rights NGO 'Voix des Sans Voix' informed the office that rejected asylum-seekers are received upon arrival at the airport by agents of DGM, who question them about why they left and applied for asylum. The NGO have an office at the airport and are closely monitoring the situation. They mentioned that there were many failed asylum seekers who are sent back by western European countries, but they are not aware of any of these persons detained and/or tortured upon return. They reported that some of the failed asylum seekers had to pay some money to the police (5 to 10 US\$).
3. IOM Kinshasa advised the office that they have no information of returnees who were mistreated and/or tortured upon return.

4. According to MONUC's human rights section, which is also monitoring the prisons in the DRC, they did not receive concrete indications that individual failed asylum-seekers were arrested upon their return.

5. According to ASADOH (Association Africaine de Defense des Droits de l'Homme), no cases of detention, abuse or torture of failed asylum-seekers were known to their office.

6. As reported above, UNHCR staff were at times present at the airport, but they have not witnessed arrests made at the airport. However, it has to be kept in mind that arrivals at the airport are difficult to monitor, and UNHCR does not have a regular presence at the airport. The UNHCR Kinshasa office has only details on the forced return of three persons, of whom two were from African countries and one from Sweden. The latter person was, upon arrival, interrogated for some three hours and then released without further problems.

7. In general, the situation in the prisons and detention centres in DRC are extremely dire, and detainees have to rely on relatives to bring them food.

8. With the limited information available to UNHCR, it does not have evidence that there is systematic abuse, including detention and mistreatment, of failed asylum seekers returned to the DRC through Kinshasa airport. It wishes to highlight, however, that it advises against the forced return to Kinshasa of persons of Banyamulenge ethnic origin. **[60h]**

36.06. An EU Report on Illegal Migration published in June 2006 dealing with the subject of returned asylum seekers states that the majority of failed asylum seekers (particularly in the UK) do not take up the offer of voluntary repatriation. Member states therefore mostly rely on forcible repatriation.

36.07. The report goes on to state that no EU member state has run charter flights of failed asylum seekers to the DRC since 2003. The DRC authorities have resisted attempts by member states to restart them. However, many member states have signed or are hoping to sign agreements to allow charter flights and guarantee a minimum level of service from Congolese embassies and immigration directorate. Some who have signed agreements have not been satisfied with their results.

36.08. The report continues to say that there is no reliable evidence of failed asylum seekers being specifically targeted for harassment by the security services. Although some returnees have been harassed, this is seen as part of a trend of opportunistic crime against random civilians by unpaid or underpaid officials. Harassment is experienced by the majority of travellers, both Congolese or foreign. **[22n]**

36.09. The Belgian and Dutch governments stated that, like the FCO, they have not seen any evidence to indicate that returned failed asylum seekers are persecuted. A letter from the Belgian Embassy in London of July 2003 stated that the Belgian Government enforced the return of failed Congolese asylum seekers to the DRC. Both the Belgian Embassy in Kinshasa and the Belgian Immigration Department monitored the treatment of returned failed asylum seekers to the DRC from Belgium and had not seen any evidence to indicate that returned failed asylum seekers were at risk of persecution. **[25]**

36.10. A letter from the Dutch Embassy in London of July 2003 stated that the Dutch Government also enforced the return of failed Congolese asylum seekers to the DRC, and that the Dutch Embassy in Kinshasa had not seen any evidence to indicate that returned failed asylum seekers were at risk of persecution. The Dutch Government did not monitor the treatment of returned failed asylum seekers to the DRC. **[26]** Further information about the return of failed asylum seekers from The Netherlands was reported by a BBC News report of 24 June 2005 which stated that, following a media programme report, "The Netherlands

[had] suspended the return of failed asylum-seekers to the Democratic Republic of Congo following reports of documents being leaked. Congolese officials are reported to have obtained confidential documents on several deportees and then abused them.... She said an independent inquiry would investigate how Dutch files may have ended up with Congolese immigration.... On a number of occasions in the past she has reassured parliament that failed asylum-seekers' files were kept secret. Dutch media reports that human rights organisations had also warned that deportees faced the serious risk of imprisonment, extortion and assault if unmasked as asylum-seekers." [15r]

36.11. A report from Justitie Netherlands reported on 9 December 2005 that "The Dutch Government has concluded that the Havermans Committee report indicates that no information on the content of asylum files was provided to the Congolese authorities. The report also shows that the current affairs programme Netwerk did not find any such information in the Democratic Republic of Congo". ... "The findings of the report prove that the relevant executive bodies did not supply any detailed data from the asylum files to the country of origin, something that Immigration Minister Rita Verdonk repeatedly told the Lower House of Parliament in its debate of 23 February 2005." [78]

36. 12. Further information about the attitude of European countries on this subject was set out in a country report of January 2004 by the Netherlands Ministry of Foreign Affairs as follows:

"4.3 Policy of other countries:

United Kingdom

"All applications for asylum from Congolese are dealt with on an individual basis. Asylum is generally granted to Tutsis, but not to persons of mixed origin. In principle, failed Congolese asylum seekers are returned to the DRC.

Belgium

"Most applications for asylum from Congolese are dealt with in the usual way. There is a freeze on taking decisions on applications by persons giving their place of origin as Ituri. In principle, failed Congolese asylum seekers are returned to the DRC.

Germany

"Applications for asylum from Congolese nationals are assessed individually. Congolese asylum seekers who have exhausted all legal remedies are returned to Kinshasa.

Denmark

"All applications for asylum from Congolese are assessed individually. Congolese asylum seekers who have exhausted all legal remedies are de facto deported.

Switzerland

"Asylum is granted to Tutsis in some cases. Tutsis and persons who were in close contact with the Mobutu government are not deported. Congolese asylum seekers who have exhausted all legal remedies are deported to Kinshasa." [42] (p22)

36.13. During the course of a country of origin information seminar in June 2002, sponsored by UNHCR and the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), which was addressed by representatives from Amnesty International and UNHCR, the subject of the involuntary return of unsuccessful asylum seekers was discussed at length. It was stated that caution should be exercised and a case-by-case approach was necessary in dealing with these individuals. [52] (p122-127)

36.14. In a report by the Danish Immigration Service in 1999 a spokesman for the NGO, TOGES NOIRES, Association Internationale des Avocats et Magistrats Défenseurs des Droits de l'Homme, Kinshasa, (BLACK TOGAS, International Association of Lawyers and Magistrates Committed to Defending Human Rights, Kinshasa) offered the cooperation of his organisation in helping refused asylum seekers who were to be repatriated to return home safely without difficulty [104]

36.15. On 26 February 2007 the UK sent a charter flight to the DRC with 40 failed asylum seekers (FAS) on board. The plane arrived in Kinshasa at 0600 hrs local time. All 40 FAS had been certified as Congolese by the DRC Embassy in London prior to departure. Despite this two of the FAS were declared non-Congolese by the Congolese migration authorities (DGM) following interviews, in which they said they were respectively Mozambican and Senegalese. After about half an hour of processing, the remaining 38 of the FAS were allowed to leave, where the majority were met by family and/or friends. Two of the FAS even reached the embassy to enquire about appeals and visas later that morning. The Embassy who observed the process stated that there were no obvious abuses of human rights. [22w]”

168. Turning to background evidence of specific relevance to the appellant, we confine ourselves here to noting (as being of particular relevance to the appellant's case) that the July 2007 COIS Report contains the following reference to the killing of journalist Franck Kangundu:

“18.10 The journalist killed was Franck ‘Ngyke’ Kangundu, 52, who headed the political section of the independent Kinshasa-based daily La Référence Plus. He and his wife were shot outside their home in Kinshasa. [7d] Three policemen and two accomplices were arrested for the killings. During a news conference the suspected ringleader, Second Lieutenant Mungande Kimbao Joel, denied having any part in the murders and said he only confessed under torture. [18bw] Subsequently members of the Congolese NGO, Journaliste En Danger (JED) received death threats following an article about their investigations into the killings. [74c] During a meeting with Reporters sans Frontieres (RSF) on 9 March 2006 President Kabila gave an undertaking that a ‘public trial’ would be held “before the presidential election.” [74d] The trial of three suspects, two policeman and a soldier, commenced on 12 July 2006 before a military tribunal. The six judges did not read out the charges. One of the lawyers representing Ngyke's family said it was just the opening of the trial which involved the presentation of the three suspects who had refused to recognise the lawyers assigned to them, saying they had no earlier contact with them. A spokesman for Journaliste en danger (JED) alleged that Ngyke was killed because of an article on embezzlement of government funds. [18cr]”.

169. It is also worth adding what is said in the same section of this report about the media in Kinshasa:

“18.51 Freedom House stated in the Freedom in the World report 2005 that “At least 30 independent newspapers are published regularly in Kinshasa but are not widely circulated beyond the city.” [66] (Political Rights and Civil Liberties) The EIU 2005 Country Profile also stated:

“There are many newspapers in Kinshasa, but only a handful are regularly printed and read. The main opposition newspapers are Le Potentiel, Le Phare, Tempête des Tropiques and La Référence Plus. Le Palmares and L'Avenir are the two main pro-government newspapers. Le Potentiel has the largest circulation, at 4,000 copies a day. There are few newspapers in the rest of the country. However, since the resumption of national air traffic, the Kinshasa newspapers are getting to cities in the rest of the country, if only in small quantities.” [30b] (p21)

18.52. The USSD 2006 report further reported:

“A large and active private press functioned throughout the country, and a very large number of daily newspapers were licensed to publish. The transitional government required each newspaper to pay a \$500 ...licensing fee and complete several administrative steps before it could publish legally. While many newspapers remained critical of the transitional government, many showed bias towards it or particular political parties. Although there was no official newspaper, the government press agency published the Daily Bulletin, which included news reports, decrees and official statements” [3i] (Section 2a)”.

Submissions

170. Since we deal with the main points raised by each side in submissions on the general issues in our assessment below, we need only briefly outline their main thrust here.
171. Partly with reference to his skeleton argument Mr Jacobs submitted that there was now a significant body of compelling fresh evidence placed before the Tribunal, which necessitated a major change in its existing country guidance on the DRC, so as to accept that returned failed asylum seekers (FAS) generally are at risk. The risk they faced on return amounted to a consistent pattern and so met the “generally or consistently happening” test set out in Harari [2003] EWCA Civ 807 as approved in AA (Zimbabwe) [2007] EWCA Civ 149. There were 4 categories of risk to FAS on return to the DRC: risk of ill treatment at the airport; risk of ill treatment at Kin Maziere; risk of ill treatment at Makala prison or other detention facilities; and inhuman and degrading prison conditions throughout the DRC. We should accept the first-hand evidence that W1, W2, W3 (reinforced by their current airport contacts) were able to give about abusive conditions at the airport. This was reinforced by the written account given by a former DRC security agent in the 16 September Observer article and other sources. Cases investigated by Miss Cuffe, Miss Atherton, Mr DW, E2 and others confirmed that even at the interrogation stage at the airport, the immigration officials (DGM) and/or ANR nearly all the time use violence and/or detention. FAS are regarded by airport officials as traitors for having gone abroad and said negative things about their country. Most FAS are ransomed and money is extorted from them. An offence is often invented by the ANR/DGM officials to pressurise a returnee to pay the requested sum of money. The norm is for FAS to be transferred to Kin Maziere or other detention centres, where the likelihood of torture and other forms of ill treatment is even greater. The ANR/DGM also make house visits to addresses of deportees some days or weeks after they have been released. Such visits often lead to re-arrest, imprisonment in dire conditions and further ill-treatment. Rape, more prevalent in the DRC than any other country in the world, is endemic in DRC prisons and detention centres.
172. Mr Jacobs said that the situation for returnees sent back from the UK has currently specific characteristics arising out of events in October 2006 when there were attacks in London on Kabila aides. So there was an added risk for UK expellees. Such persons are considered as traitors and as involved with APARECO and/or other anti-Kabila groups. The Kabila regime has many agents who spy on the Congolese community in

the UK. Contrary to what UNHCR, VSV and the British Embassy have suggested, there is no NGO who is an official representative at the airport. Neither systematic nor incidental monitoring is being carried out by any European country. FAS would not be safe until proper monitoring safeguards were put in place.

173. Both the experts, he submitted, should be accepted as balanced, objective and highly informed about their subject.
174. The various case dossiers Miss Atherton and others had been able to assemble disclosed many accounts on similar lines of ill treatment at the airport or thereafter. They had a powerful corroborative effect. Of the 40 people who returned on the February 2007 charter flight, we had information in respect of 10 and all 10 have accounts of being ill treated at the airport. In relation to one of them, WY, we had, inter alia, ICRC photographic confirmation of his injuries sustained shortly after security agents had raided his home within hours of his arriving off this flight.
175. The accounts given by VSV and ASADHO should be regarded as unreliable and we should attach weight to the telling criticisms made of their position (as described in the April 2006 UNHCR Response) by E2 and E1. We should prefer the account given by Mr RK of CDHH /OCDH who was a highly respected and credible source, in addition to other informants (who included a pastor).
176. The British Embassy evidence should be treated with caution. The Embassy correspondence betrayed an unwillingness to investigate and a willingness to disbelieve. The Embassy was wrong at one stage to refer to having “no evidence” of problems facing returned FAS. There had not been frank and full disclosure from the Embassy of a number of matters. Why, instead of asking VSV if it had an office at the airport, did not the Embassy official go to the airport to check for himself?
177. Miss Giovannetti asked that we consider the issues in this case in the context of the country evidence as a whole. She confirmed that it was conceded by the respondent that for the purposes of this appeal conditions in DRC prisons and detentions centres were contrary to Article 3. She contended that the new evidence adduced by the appellant’s representative was in the main confused and contradictory and/or had been served too late to enable any proper investigation and response. E2 for example, had made reference to a report from a “reliable partner” in the DRC that nothing alarming had happened to the February 2007 charter flight returnees, whom he had observed from beginning to end. That man’s account contradicted that of some of her own case examples. The appellant’s representatives had failed to deal with the very significant report made public by EU HoM in April 2006 which concluded that expellees were not at risk of ill treatment at the airport. This report’s findings were also consistent with much of E1’s reports (although he seemed not to know of the report directly), both emphasising in particular that illegal emigration networks were active in the DRC and sometimes worked in collusion with airport officials. E1’s point about the miserable conditions for many living in the DRC giving people a motive to tell false stories, was important. Given that NGOs

needed money to do their work, it was very hard to be confident about individual stories. Those working in or with the illegal migration networks would have a motive for lying about what happened to FAS on return, because if returns were problem-free they would not be able to tell customers that their network had done what it promised them - establishing themselves in the UK/Europe. Failed asylum seekers would also have a motive to lie since they would know that if their stories of ill treatment on return were accepted, they might succeed in a future asylum claim.

178. E1, in his comments on the Tribunal country guidance case of AB, had had every opportunity to disavow his earlier position, as put to the Tribunal in AB (that there was no violence or ill treatment at the airport), but had not done so, despite other criticisms. Closer inspection of E1's sources in the annex to his second report revealed that he had not taken into account the 2004 VSV report cases and his own information was far too dependent on questionable sources.
179. E2, despite her ability to obtain one or two documents verifying certain matters (e.g. the list of those on the February 2007 charter flight) essentially relied on good faith research. Significantly none of her 50 cases covered during her December 2005 - February 2006 investigations, made any complaint of torture at the airport. Although they referred to rough handling, out of the 50 cases, only one punch was specified. E2 seemed to have made no critical analysis of WY's evidence. WY's evidence was utterly implausible.
180. The criticisms of VSV raised by E2 and E1 in particular were, she submitted, largely unfair.
181. One of E2's criticisms was that the head of VSV was obviously aware of imprisonment of the FAS, since it had written about in one of its own press releases and so should not have "avoided mentioning them in his monitoring report". Yet, she pointed out, the individual concerned was described in that VSV press release dated 13 March 2005 as having been imprisoned on arrival in November 2004. That was a date falling outside the period covered by the VSV report. As for E2 having managed to trace three quarters of those expellees VSV interviewed in its 2004 report, only for all of them to deny any contact with VSV, they had been approached over two years later and it was hardly surprising they were cautious about saying anything regarding VSV to E2 and her organisation. On E2's evidence, yet totally ignored by her own assessment of that evidence, none denied being FAS and none raised with her any complaints of ill treatment.
182. The Tribunal should reject the evidence of W1, W2 and W3 as badly flawed. There were, she said, very significant discrepancies and implausibilities.
183. The February 2007 charter flight took place at a time when Miss Atherton and others had already begun holding consciousness-raising meetings within the DRC community in the UK. In January 2004 W2 and W3 had also written a paper. In any event, all the "cases" put

forward of those on the charter flight were second or third hand accounts and some were inherently implausible on their face. These accounts were not consistent with those from the British Embassy, VSV and MONUC and others. If FAS were regarded as traitors, you would have expected these bodies to have heard about it. Key witnesses have failed to attend to give evidence.

184. Miss Giovannetti emphasised that she was not suggesting there were no cases of ill treatment at the airport on return, but there was no reliable evidence to show a consistent pattern. She accepted that some of those involved in this case who had tried to find out what had happened to returned FAS (such as Miss Cuffe, Miss Atherton, DW) genuinely believed there were causes for concern, but the evidence did not stand up.
185. Among the observations made by Mr Jacobs in reply was that the points made by Miss Giovannetti about the likely motives of illegal emigration networks and FAS appeared to rely on the idea of a conspiracy theory.

Legal Framework

186. The provisions of SI 2006 No 2525, the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted” (the “Qualification Directive”). Changes were also made in the Immigration Rules by means of a Statement of Changes in the Immigration Rules also taking effect on 9 October 2006 (Cm 6918).
187. The burden of proof is upon the Appellant. The standard of proof has been defined as a “reasonable degree of likelihood”. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. When considering the “objective” parts of the case we have taken into account the appellant’s “subjective” evidence. Similarly, when considering the “subjective” evidence we have done so in the context of the “objective” evidence. Where below we refer to ‘risk’ or ‘real risk’ this is to be understood as an abbreviated way of identifying respectively:(i) whether on return there is a well-founded fear of being persecuted under the Geneva Convention; (ii) whether on return there are substantial grounds for believing that the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and (iii) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to treatment contrary to Article 3 of the ECHR.

Our Assessment: Specific Matters

Identification as failed asylum seekers

188. It was common ground between the parties that persons involuntarily returned or expelled from the UK to the DRC will not be seen as normal returnees. They will be questioned with a view to establishing what type of expellee they are; and in particular whether they are either a failed asylum seeker or a deportee. (It will have already been observed that much of the evidence in this case does not always distinguish between these two categories. Sometimes the term “deportee” is used to cover both a failed asylum seeker and a person expelled or deported for non-asylum reasons - such as that his or her presence has been deemed uncondusive to the public good in the UK - whereas sometimes it is used to cover the latter category only. In certain contexts, as we have already had cause to see, it can be of importance to distinguish between different categories of involuntary returnees/ expellees).
189. The fact that a person’s identity as a failed asylum seeker will become known at the point of return reflects the main thrust of the evidence; and we are prepared to accept that for the purposes of this appeal this is the case. The fact that failed asylum seekers have substitution documents (a laissez passez) will suffice to arouse initial interest. In respect of those who have travelled with escorts, the fact that they are not ordinary returnees will be known to the DRC airport officials in any event, from the flight manifest. Those who are handed over to DRC airport officials by UK immigration officials (as happened on the February 2007 charter flight), will observably not be normal returnees.

Asylum seekers as traitors

190. At the heart of the case put by the appellant's representatives is the contention that failed asylum seekers on return to the DRC are perceived as traitors, or persons who have dishonoured, or said ‘bad things’ about, their country and as a result are seen by the DGM and security services at the airport (or afterwards) as deserving of ill-treatment.
191. For a number of reasons we consider that this contention fails. We note first of all that the DRC is a full party to the 1951 Refugee Convention and its 1967 Protocol as well as to the 1969 OAU Convention governing the specific aspects of refugee problems in Africa. Manifestly the DRC is also a country which is very familiar with the problems of refugees and displaced persons: the latest MONUC report, as well as a number of other reports, refer to the large numbers of former Congolese refugees who have returned to the DRC since the end of the war in 2003. The UNHCR reports that refugees who had fled from the DRC to Zambia, Tanzania, Burundi, Uganda, Angola and Sudan have returned in their thousands, in reaction to the improved security and economic conditions in many areas of the DRC. As already noted, UNHCR has been heavily involved in these voluntary repatriations “to all parts of the DRC”. It is difficult to follow why, if the DRC authorities regarded the mere act of fleeing the DRC to claim asylum abroad as a betrayal (legitimising reprisal), these large-scale returns would be taking place with UNHCR approval and without in general any adverse reaction on the part of the DRC authorities. We note in this regard that the DGM together with the ANR (in common with most of the other security personnel who have a

presence at the airport) are national organisations and the DGM controls the DRC borders generally.

192. Secondly, it is difficult to understand why DRC officials involved in the airport returns process would seriously think that asylum seekers had said 'bad things' about their country in any public way, unless they had become politically active or vocal in the host country. Leaving aside the fact already noted that they work as part of a state which is a full party to the Refugee Convention and the OAU Convention, it is clear that the DGM has a number of dealings with its counterparts in European government with responsibility for removing asylum seekers (we also note from the 2006 EU Report that France, Belgium, Netherlands and the UK have run training programmes for officers from the DGM and provided equipment for immigration services over the past few years). The experts also tell us that there is a network of DRC agents in the UK who keep a close eye on the Congolese community here and feed back to the DRC authorities anything of interest. We think it reasonable to assume, therefore, that the DRC airport officials know that asylum seekers make their claims for asylum in host countries (certainly in European countries) in a relatively confidential setting and that it will only be when asylum seekers have become politically active that what they have said about the DRC is known more widely. Knowing that those they were dealing with were failed asylum seekers, they would also very likely presume that what such persons have told their examiners in such relatively confidential settings, has been disbelieved.
193. Allied to this, it is abundantly clear from the evidence we have heard that the current Kabila regime has serious anxieties about the activities of all DRC nationals abroad who involve themselves in political activities or organisations opposed to it. It was E2's evidence that the ANR has officials in the UK who conduct surveillance activities and have photographs of every DRC national involved in anti-regime activities. Miss Atherton emphasised the need for care when doing her work to ensure those she spoke to were not in truth government agents. The high-ranking airport official interviewed by Jenny Cuffe made plain that one of the reasons why failed returning asylum seekers were interrogated was to *find out* what they had said about the DRC government. If the DRC authorities believed that the mere act of claiming asylum was traitorous, such lines of questioning would be largely superfluous. We also think that it is naïve to suggest that the DRC intelligence and security services would take such a blanket view of a sizeable section of the UK's DRC diaspora. If the regime is extremely paranoid about its position vis-à-vis opposition organisations and about possible plots/coups d'état, then we think it safe to infer that the principal task of its intelligence and security agents will be to focus on those who are politically active in mobilising or plotting against the regime.
194. Further, there is ample evidence to show that the DRC authorities are well aware that many of their nationals who go abroad to Europe do so for reasons of economic betterment. They are clearly well aware too that legal routes of migration to Europe are very restricted. The media in the DRC is said to report sympathetically on the situation of those who leave for economic reasons and, in view of the fact that the DRC is 167th in the

UN's Development Index, with a life expectancy of around forty years and with half of the country subsisting on around \$1 a day (US) or less (see the 2006 EU Report), it must be apparent to anyone in the DRC, that claiming asylum abroad can sometimes, if not often, be for purely economic motives. We have also had very considerable evidence about the increasingly active and sophisticated role played by 'Ngulu' ('pig') organisations in Kinshasa and elsewhere and about the fact that some individual officials in the DRC (including those who work at N'Djili airport) are complicit. The 2006 EU Report states:

"The 'Ngulu' networks organising unofficial migration from the DRC to Europe benefit from complicity by individuals with the Congolese authorities. This problem is exacerbated by the low and irregular salaries received by civil servants, who seek to supplement their income by taking bribes from "Ngulu" networks or individuals seeking to leave the DRC.

'Ngulu' networks are generally seen in a positive light by the Congolese population, as despite their exorbitant fees, they are helping people to achieve a widely held dream. Naturally the government is reluctant to take what would be unpopular action against them. Likewise remittances sent back from Europe by Congolese form an important part of the DRC's economy, and the government is reluctant to interrupt this flow."

195. Fifthly, there have been no official government or pro-government (or indeed any) public statements or reports brought to our attention which portray asylum seekers as traitors. If the DRC authorities seriously believed that the generality of DRC asylum seekers in Europe or the UK were traitors, then we would have thought they would have sought to publicise the fact, so as to deter further acts of betrayal. As the above information indicates, the position would seem to be quite to the contrary, that the government sees many of them as benefiting the economy.

Risks specific to failed asylum seekers from UK/ Europe

196. Another prominent feature of the appellant's case was that failed asylum seekers returned from the UK would run a risk *additional* to that facing those returned from other countries because of the fact that the ruling group in Kinshasa perceives the Congolese community in the UK as aggressively anti-regime. Various witnesses have referred to the fact that there have been a number of incidents in the UK in which Kabila aides have been attacked, the principal incident being an attack in London on 11 October 2006 on She Okitundu, director of President Kabila's cabinet. The aggressors were said by E1 to be "properly trained people". The significance of these (acknowledged) incidents is put most forcibly by E1 who considers that as a result "all returnees from the UK is [sic] the object of a very specific attention from the relevant services at the airport". More than one returned failed asylum seeker whose cases were given in some details by E2 and others, spoke of airport officials accusing them of being involved in the attack on Okitundu.
197. However, we consider that such concerns and claims are not borne out by a critical approach to the available evidence. The incidents affecting Kabila aides have not been confined to the UK. E1 himself mentions an incident in Brussels and an incident in Paris around the same time. The

size of the DRC diaspora in the UK is said by Miss Atherton to be around 10,000. Numbers from France and Belgium would add significantly to that figure. If the Kabila regime considered that the UK's or Europe's DRC diaspora was generally anti-regime, we would have expected some evidence of problems at the airport affecting ordinary DRC national travellers visiting the DRC (on British or European passports or DRC passports), whereas E1 specifically said there were no problems for such travellers. Furthermore we come back to the point that elsewhere in his evidence E1 (like E2) emphasises that the Kabila regime has a number of agents in the UK who pay particularly close attention to the political activities of DRC nationals in the UK and who are said to have photographs of everyone who has attended demonstrations or other anti-Kabila events. Viewed against this background, we consider it naïve to suggest that the DRC authorities are unable to differentiate between those in the DRC diaspora who are anti-regime and those who are either loyal or apolitical.

The “airport witnesses”

198. We turn now to consider the three “airport witnesses”.

199. In looking at W1, W2 and W3's evidence individually it is important that we do not put to one side the totality of their evidence nor must we overlook the background and other evidence concerning the nature of DGM and other security forces' activities at the airport.

Witness 1

200. W1 is a person who was found credible in his asylum appeal. As such we take the account he gave then as a starting-point when assessing his evidence in this case. We remind ourselves, however, that we are not bound by findings of fact previously made, where there is new or further evidence which casts a different light: see Ocampo [2006] EWCA Civ 1276 (and now AA (Somalia) [2007] EWCA Civ 1040).

201. In his recent written evidence and oral testimony W1 has presented a picture of himself as someone who regularly visited N'Djili airport in a supervisory capacity and had developed a close knowledge and understanding of airport procedures in relation to deportees/failed asylum seekers. Although he did seek to qualify this at certain points by emphasising that he did not have knowledge of “small day to day matters”, it was central to his evidence that he was in a position to describe what generally happened at the airport based on his own experience between 1998- December 2002 (and since, through high-level and airport contacts). As we have seen, W1 described the wide use of physical ill treatment against returned failed asylum seekers and deportees and the risk to women (even those who were not deportees or failed asylum seekers) of being raped - on such a regular basis as to be fairly described as commonplace. Bribery and extortion were also said to be routine. It was said that these events took place in either a holding cell called ‘Permanence’ or offices called ‘Bureau Contentieux’ and such treatment was likely to occur thereafter away from the airport at holding detention centres or prisons.

202. We have considerable difficulty with this portrayal for a number of reasons.
203. First of all, from his recent witness statements and oral evidence it was clear that W1 considered it accurate to describe himself as a high-ranking official with a key role in the Military Court as principal assistant to the chief prosecutor. Furthermore, for much of the last year or so in this post he was heavily involved in the prosecutions mounted against those (and there were many of them) suspected of involvement in the assassination of President Kabila in January 2001: there can hardly have been a more intensive and high-profile job in the DRC at that time. He further spoke of having an ongoing, wide-ranging, multiple set of liaison responsibilities covering both military and civilian government services, all of which fell under the jurisdiction of the Military Court. He was also a standing magistrate. He spoke of various missions taking him elsewhere in the country on numerous occasions during his period of employment there. Yet at the same time, he wished to present himself (in his 2007 evidence) as someone with close working knowledge of N'Djili airport matters and able to speak knowledgeably about what happened there on a "day to day basis" (para 37 of his May 2007 statement). He claimed to visit there several times a week. In our view, W1 could not realistically have had the involvement at the airport which he claimed and his attempt to enhance the extent of his airport (and Kin Maziere) knowledge and involvement is a deliberate embellishment designed to bolster his efforts to have his evidence on airport (and Kin Maziere) procedures treated as empirically based. We noted that in his oral testimony it transpired that following his appointment as principal assistant to the chief prosecutor sometime in 2001, the latter had given W1's liaison officer job to someone else. When asked how he could therefore have continued his claimed work base at the airport, W1 said that his successor was not up to the job and so he needed to go with him often. In our view that explanation did little to enhance the credibility of his original claim.
204. Secondly, the recent portrayal of himself as someone closely involved with airport matters is very different from the portrayal he gave of himself in the context of his asylum claim. In that claim he made no specific reference to the Immigration Service's DGM. Nor was there any reference in it to the DGM's involvement or his own involvement in interrogations or beatings at Kin Maziere detention centre. We take into account that W1 appears not to have been asked any questions about his airport or Kin Maziere role. It is also true that he did mention being "based at" the airport and that he knew of ill treatment meted out to people on return, "especially if they are wanted by the government and also if it is known that a person has claimed asylum". He also mentioned people being "detained, tortured, killed". However, his claim of risk on return solely related to having helped his half-brother to escape, his desertion and of his been recognised on return on account of his high profile. Furthermore, two other witnesses, FL and TA, made no reference to his airport role. The statement of FL (29 April 2003) confirmed the role of W1 as part of the Military Court prosecution team and as personal assistant to a high ranking officer, but made no reference to W1 being involved in Kin Maziere or Makala Prison or in any role supervising the

DGM at the airport. TA, in a statement dated 29 April 2003, dealing with his having entered the United Kingdom in company with W1, makes no reference to W1 having a role in the airport. Witness W2 in his AIR refers to W1 as a magistrate, a soldier and Secretary to the Military Court and chief prosecutor. It is also far from clear to us, although we lack evidence on this, that W1's supervisory role could have been as direct as he described. The chief of the DGM would surely, in our view, have had routine responsibility for disciplinary matters involving DGM officers.

205. Thirdly, the portrayal W1 presents (in common with that of W2 and W3) is extremely discordant with that indicated by other weightier sources, including, the EU HoM in their April 2006 report and E1. Whilst even E1, at least in parts of his report (which we deem below to embody "Position A") described ill treatment at the airport, there is nothing in those parts to suggest anything like the scale and extent of ill treatment described by W1: a consistent pattern of torture, rape and dispossession. If there was anything remotely suggested by E1's own body of sources (as assessed by him) to indicate such a pattern, we believe that E1 would have said so. Indeed, if W1 is right, then E1 has been misinformed for several years. W1's portrayal is also not borne out by what we know about the media in the DRC, which includes many organs who are openly critical of the government and who often carry reports of abuses by government officials in other aspects of life in the DRC (particularly in prisons and detention centres). We find it inconceivable that they would have failed to have come to learn of such an appalling and long-standing pattern of abuses. On W1's account literally several hundred (if not thousands of) deportees/failed asylum seekers would have either been killed or disappeared or received torture or been raped over the past decade or so, yet the media has been silent about all this. To say that airport officials kept these abuses away from view and maintained a code of silence does not answer the problem with the evidence here. All or most victims would have had family or friends - many desperate, we think it safe to infer, to tell the media what was going on, in the same way as family and friends of detention victims have done.
206. Fourthly, W1's account of immigration officials on the one hand collectively (and openly between themselves) participating in routine acts of torture, rape and dispossession against deportees/failed asylum seekers and on the other hand banding together in a code of silence is very difficult to square with certain aspects of W2's and W3's (and sometimes his own) evidence and that from other quarters, for example from E2. Such factors include: the intense rivalry between different services at the airport, the frequent changes in the top office-holders, the various efforts by Kabila's own security officials to catch out airport officials involved in taking bribes. On W1's own account he himself had taken steps to charge and prosecute several DGM officers. Even assuming a significant number had protection from high-placed relatives, W1 did not suggest that this prevented him from arresting them; only from them been sentenced and dismissed from their posts. Yet on his general account the patterns of torture, rape and dispossession were openly displayed and practised.

207. Fifthly, we do not consider that W1 gave a truthful account of the nature of his own involvement in wrongdoings at the airport. Although he sought to convey that he spent a considerable amount of time at the airport trying to prevent abuses and in several cases taking action to arrest and punish wrongdoers, he was unable to explain to our satisfaction why he would only have accepted a bribe on one occasion. Indeed even on that point his evidence was inconsistent, since in his May 2007 statement he referred to “bribes” and elsewhere said that corruption took place at every level and “I received a cut of the bribes that were paid” (paras 49,51). If, on his account everyone was doing it routinely, why would he confine himself, as he maintained before us, to just one occasion? We cannot overlook, either, that even on his own (somewhat coy) account, he had practised torture. We accept that W1 has recently sought to say that since arrival in the UK he had more fully recognised how appalling the conduct of officials at the airport (and in Kin Maziere) was and now wishes to do what he can to help stop it. But we do not accept that at the time his own role was an enlightened as he now seeks to say it (for the most part) was.
208. A further difficulty we have with W1’s evidence concerns the claims he has made about his current contacts with various high-ranking officials in the DRC. Of course, since W1’s last claimed direct knowledge of airport procedures was nearly 5 years ago (in December 2002), his evidence might have been thought of historical value only. However, he has insisted that his portrayal continues to describe the current situation, because he has a number of reliable sources who have been and are keeping him up-to-date. In our view why someone in W1’s position would have been involved in so many exchanges of information readily conducted by DRC officials holding positions very high up in the government in the DRC has not been adequately explained, particularly as on W1’s account such exchanges involve open communication through unencrypted means on a regular weekly/monthly/sometimes slightly longer basis. We remind ourselves that his sources would be well aware that these exchanges would be with someone regarded by the Kabila regime as a deserter and (he agreed) a betrayer of his country, a man willing to tell ‘bad stories’ about the conduct of the DRC security forces and immigration services. Whilst we take fully into account the complex dialectics of DRC politics, with e.g. rebel involvement in the previous transitional government and the likelihood that top-ranking officials are sometimes persons who are intent on working against rather than for the interests of the Kabila inner circle, we consider W1’s evidence about his contacts largely a contrivance. We can accept that given his previous high rank he may well be someone with whom some current high-ranking officials would want to contact discreetly, but his account of a significant number of such sources ready to up-date him through unencrypted means about airport abuses even knowing he was involved in this case as a potential witness, is not credible. We did not find credible W1’s explanation, when challenged about this matter, that they were all secret opponents of the regime, particularly given their high ranks and responsibilities in the present regime.
209. In addition we do not find W1 to be a credible and reliable witness in connection with his coming to the United Kingdom. In largely

unexplained circumstances it is claimed that W1's wife was found in their DRC home in or about April 2002 to have been in possession of materials associating her with 'rebels'. This led to W1 and his wife being detained in Lubumbashi and his wife being released in circumstances that simply are not explained in any adequate way, she leaving the country, without W1's knowledge of her whereabouts or even departure plans. W1 was in due course released, returning to his work, presumably in or about May 2002 through to December 2002. He says he did so without material difficulty or any adverse inferences arising from his wife's absence. How that could be so remains unexplained. We find that the arrangements for the departure of W1's wife were in fact of a very different nature than W1 has described. If W1 was a high official as he claims of the significance that he was in the Military Court, we are also puzzled as to why he would have been taken from Kinshasa to Lubumbashi, a very substantial distance to be held or interrogated about rebel involvement as claimed: it is simply not credible as presently explained. We find it far more likely that W1 was not detained in the way he claimed and knew his wife had left and that he was very probably involved in the arrangements for her to do so. It is apparent that if she was of any interest, her conduct in the way she departed did not give rise thereafter to any adverse consequences for W1.

210. W1 also gave quite inconsistent evidence regarding his knowledge of his wife's whereabouts when he arrived in the UK. On the one hand he has claimed not to know the whereabouts of his wife. On the other hand there is the supporting letter to his asylum application through his solicitors, which shows that, within two days of his arrival, the whereabouts of his wife and her Home Office reference number had been notified to the Home Office. W1 sought to explain this in terms of his solicitors having found out this information from their own inquiries. Even disregarding the fact that for the Home Office to have given details of W1's wife's address without her authorisation would have been contrary to Home Office policy, this claim is unsupported by any other evidence and, given that on W1's own evidence he had not asked his solicitors to find his wife's address, it is one which strikes us as implausible.
211. In the light of the above considerations we have considerable doubt whether the same view of W1's credibility would have been taken by the Adjudicator in May 2003 if W1 had voiced then the much wider claim he now has. This wider claim covered not just being principal assistant to the chief prosecutor and heavily involved in prosecuting Kabila assassination suspects but also being engaged in diverse liaison duties, missions, actions throughout the country, assisting various high level individuals and having a prominent role and base at the airport. Given the stance the Secretary of State had taken in the Reasons for Refusal letter and the absence of cross-examination through the respondent failing to provide a Presenting Officer, there was in any event no full testing of W1's claim. We thus have no idea what view would have been taken of W1's credibility had the totality of his story, as now presented, fallen for consideration. But the omission of those various matters which are now claimed to have taken place at the same time seriously affects the reliability of that decision so far as we are concerned. On the fuller

evidence before us, we are prepared to accept that he was principal assistant to the chief prosecutor and that he may well have had occasion to visit N'Djili airport and Kin Maziere, although it was notable that when pressed in cross-examination as to what caused him to visit the airport the examples he gave were purely military matters (apprehending deserters etc).

212. We should mention that in assessing W1's credibility we have taken into account E1's assessment that, having met and discussed matters with W1, he was a credible source; however, in the light of our analysis we found ourselves unable to attach any weight to this assessment.

Witness W2

213. We did not find W2 a credible witness. In his screening interview W2 gave a largely incoherent explanation for his presence, but in the SEF statement he claimed that he had been a DGM immigration official at the airport in 2000 and gave as his reason for leaving that in October 2002 he had been involved in dealing with two arrivals at the airport on a UN flight of two individuals who he later learnt were brothers of Joseph Kabila. He had had them held in a holding cell ('Permanence') at the airport as he was unable to check their immigration position there and then. Discovery of his error led to him being denounced for his insulting conduct, and being detained in Makala Prison for two months. W2 claimed that on or about 20 December 2002 he had been taken to the airport, having been provided with his DGM uniform. There he found inside his pair of socks and shoes his DGM identity card for use at the airport, this property having been mixed up apparently with the property of other detained people. The reason W2 was taken to the airport was to open W2's personal safe which contained the two strangers' documents, which other officers interrogating him had been unable to open. Coincidentally at this time a problem arose at the airport involving steps being taken to try and prevent W1's departure from the DRC. W2's two guards were distracted and W2 was able to slip away unnoticed, using his DGM identity card to make his escape. Thereafter W2 left the DRC (on a business class ticket) wearing his DGM uniform from a different airport at the end of December 2002. Having arrived in the United Kingdom, he made a claim for asylum based only on the above stated circumstances relating to the detention of the two individuals, and on 11 August 2003 Mr A.G. O'Malley (Adjudicator) accepted W2 had held the role of Immigration Officer and had been in charge of a team of some twenty officers at the airport (N'djili), but rejected the entirety of his claim otherwise. The adverse decision was not the subject of an appeal.
214. That brings us to the first reason why we did not find W2 credible. Save in one limited respect, his asylum claim was found not credible by an Adjudicator. We, of course, have further evidence relating to his claim, but in our view it only reinforces the adverse view taken of W2's credibility earlier. His account was found implausible in a number of respects and we would observe that his escape account also relied on a quite remarkable number of fortuitous events (e.g. being given back his DGM uniform, finding his ID card in socks) happening in rapid succession.

215. Furthermore, W2 cannot be said to have no personal interest in the portrayal he has given of the situation at the airport being believed. He is an absconder who for several years has failed to notify the Home Office of his address or whereabouts. He stated that he has made (or is in the process of making) a fresh claim. As a failed asylum seeker he has considerable self-interest in seeking to maintain a further claim on the basis of being a refugee sur place. He has also been openly involved in publicising the claimed misconduct of the DGM and others at the airport. These are said to be matters of interest to the DRC authorities who keep close watch on the activities of DRC nationals in the UK.
216. We also consider it significant that W2's more recent accounts (in his January 2004 joint letter and in his 2007 statements) are markedly different from that he gave in the context of his asylum claim. In that claim it had been no part of his case that he had been (reluctantly or otherwise) involved in or present whilst there were abuses at the airport practised on deportees/failed asylum seekers, including rape, torture, extracting bribes, stealing property (passengers luggage and personal possessions), nor had he given any inkling of his objection to such matters as having any bearing on his reasons for leaving the country or on the nature of the risks he would face on return. It is therefore only recently that W2 claims to have possessed revelatory knowledge of the airport and the activities of the DGM.
217. As with W1 and w3's more recent evidence we also consider significant the fact that W2 presents a picture of treatment of deportees/failed asylum seekers at the airport which is at wide variance with that given in other more reliable sources. The claims for example that "no" deportee leaves the airport, that torture and general brutality by DGM officers is widespread and routine and that this has been the pattern for many years are not supported by evidence from, for example, the EU HoM 2006 report. As already noted in relation to E1, even his most pessimistic position (Position A) does not remotely suggest such a picture of pervasive iniquity. As already noted in relation to W1's claims, we consider that if W2's claims were true this would have become known to the DRC media - not to mention local and international NGOs and embassies. We do not accept that this can be such a well kept secret.
218. Moreover W2's own portrayal is at odds with some aspects of his own evidence. For example, having said that "all" deportees/failed asylum seekers are subjected to onward detention, he elsewhere estimates that (in his time) 20% whilst still at the airport were "lucky enough to use bribes to be freed" (see para 66). Before us he said that family interventions succeeded in "one out of 10" cases. Curiously the two Rwandan foreigners, despite what he said elsewhere about the especial hatred felt for persons in this category, were not said by him to have been mistreated. Having described immigration officers and members of other services as boasting openly about the rape of women returnees, he refers to the distrust felt by differing DGM airport directors of their predecessor's colleagues and several cases where officers had been arrested for misconduct and also to efforts by the Kabila inner circle

and/or top officials at the airport to catch officers out in misconduct. The joint letter he wrote in January 2004 with W3 makes no mention of torture or rape at the airport and the reference in it to “liquidation” would appear to refer to a post-detention context.

219. We also find implausible W2’s claims about his airport contacts. To begin with, the account he gave about them in his May 2007 statement gave no clue to the important qualification he made before us, namely that there had been a 4 year period since he left the DRC during which he cut off all contact with persons from the DRC. At paras 71 and 72 of his first statement he said: “[s]ince arriving in the UK, I have been in touch with my colleagues in the DRC...I have been in regular contact with my DGM officers.” There is further the highly dubious nature of his claim to have high level connections in the DRC (even after a 4 year gap). Given the illegal nature of his departure from the DRC and the fact that he readily agreed his contacts knew that he was openly anti-regime and was regarded by the Kabila regime as a traitor (they were also said to know about this country guidance case), we do not find it credible that they would expose themselves (through unencrypted phone connections) and others to the risk of disclosure, especially given the widely claimed presence of DRC security services in the United Kingdom. We do not find satisfactory his explanation that they were prepared to do this as they were themselves against the regime. Not just one but several of his sources as named to us were high-level. We do not accept the suggestion that several such high level informants are likely to be opponents of the present regime. We also find it hard to understand why such high-level sources would wish to enter into contact with W2 (even before any talk of a new Tribunal country guidance case) when W2 was a relatively minor official himself (in charge of 20 men only): he spoke of his transfer to the airport as a “demotion”. According to W2, different heads of the DGM at the airport deeply distrusted all staff who were not ones they had chosen themselves. W2 did not seek to suggest that all his current contacts had historic loyalties of this kind.
220. Nor do we find that W2 gave a credible account of his own degree of involvement in airport wrongdoings. For the most part he sought to minimise his own involvement in such wrongdoings and to highlight the attempts he made to intervene: he said in evidence before us that he sought to intervene without success “often” and he maintained that as a team leader he was appalled by the abuse and would not take part in it. Yet elsewhere he claimed to have been present near an office and taken some passing interest in some of the particular events of rape and laughing at a colleague seen with his trousers down. We do not find the claim of such systematic abuse is credible and we consider his attempt to try and explain his non- involvement in it as an artifice to avoid the fact that those events did not occur during his time at the airport.
221. Leaving aside that before us he also accepted that he had used torture more than 10 times and that he had witnessed women being raped 3 times, we also find his claim elsewhere to have sought to prevent such wrongdoings very hard to reconcile with his own claim that anyone who did not go along with the pattern of abuse stood out as someone who was not playing his part and who would risk been seen as disloyal by his

colleagues. He made no mention of been regarded by his colleagues when working at the airport prior to the Rwandan incident as disloyal.

222. Nor do we find credible W2's claim that on arrival, when returnees' luggage might contain evidence, clues and/or indications of their history and connections, it would simply be taken away without examination. (On W2's evidence all baggage is taken away and either its contents, if of worth, are shared out or alternatively its contents are sold and the proceeds form part of a general pool for that particular team on duty to share out amongst themselves as agreed.)
223. Further, we do not accept W2's claimed involvement in interrogations in Kin Maziere detention centre as true. We find that his claim to have knowledge of those matters is simply fiction.

Witness 3

224. For reasons already given, we do not find that the consistency between W3, W2's and W1's evidence weighs in favour of any of them.
225. Like W2, W3 is someone whose asylum claim ended in failure. In October 2004 the second Adjudicator, Mr N Davison, found him not credible. It is clear in our view that, so far as previous findings of fact on this individual are concerned, those we should take as a start-point are Mr Davison's. When finding the previous Adjudicator's determination unsustainable, the IAT had ordered remittal for a "fresh hearing". In any event, even the first Adjudicator had not believed W3's account in major respects. She found at para 18 that he was an Immigration Officer but that "he has created an account around his job". She went on to reject the truth of his claim as to the events which caused him to leave and the circumstances of his departure. Be that as it may, when the appeal of W3 came to be reheard by Mr Davison, W3 was not believed. He took the view that gaps in W3's knowledge of critical issues, such as false documents relevant to Immigration Officers and other related matters, demonstrated that W3 was not an Immigration Officer, and had not been, since 1998, in the immigration service. Mr Jacobs may be right that Mr Davison's findings do not specify rejection of all aspects of W3's claim, but what can be said with certainty is that they contain no positive findings. (We also note that before Mr Davison W3's account of his detention experiences had changed so that the sexual relationship with the lady was described as consensual.). There was no appeal against the Tribunal's refusal of permission to appeal this decision.
226. Even if we had found there was some earlier concession which somehow survives, it went no further than acceptance that W3 had been an Immigration Officer at N'Djili airport. And even if we assume (as we are prepared to do for the purposes of the analysis which follows) that he was such, that does not lead us to accept the truth of the account W3 has given of procedures at the airport and Kin Maziere. We continue to count against him that he is someone who was not believed previously in most material respects. He is a failed asylum seeker.

227. W3 is also someone who clearly has a vested interest in his portrayal of procedures at the airport being believed, since, as he noted in his May 2007 statement, he is “building a fresh claim for asylum”. He is also someone who has been actively involved sur place in the campaign around this case, addressing at least two public meetings about this intended country guidance case in his own name.
228. We are not satisfied by W3’s attempted explanations as to the change in his story about his presence at the airport in 2000. It is noticeable that W3 had originally claimed to have been working (and photographed working) for the DGM at the airport in 2000. As set out above, W3 now says that claim was wrong and that he had been advised by his then representatives not to correct it. Yet at his asylum interview, when he was specifically asked if he wished to make any changes on 16 June 2003, he did not do so. He maintained that falsehood when conducting his appeal through legal representation in July 2004 before an Adjudicator, Mrs N. Bircher. He continued it before Mr Davison despite having changed his original legal representation. We can find no reason why the matter could not have been corrected then if the correction was true. The willingness to deceive stands as a factor against W3’s credibility.
229. We also reject W3’s explanation of his earlier presence at the airport that somehow he was at the airport in 2000 temporarily, collecting monies for charity. We note the witness statement of NN lodged in support of an appeal by W3, dated 21 October 2004 and postdating the hearing before Mr Davison, stating that NN was a regular visitor to the airport, had met W3 in 1998 and had subsequently seen W3 in 2000 at the airport where “he was working at the checkpoints”. NN describes fleeing the DRC in 2001 and says of W3: “ I further confirm that since 2000 to the time I fled the country I saw him (W3) at the airport and that I often liaised with him for the proper facilitation of paperwork.” It appears that the statement of NN was written to buttress W3’s original claimed presence at the airport in 2000. As regards W3’s recent claim that he had in fact been at the airport in 2000 as a temporary measure for two months collecting for charity as part of the war effort, we find this difficult to square with NN’s account of seeing W3 “often” during this period and we did not find satisfactory W3’s attempt to explain why, if he was collecting money for charity, that would have been at checkpoints. NN described W3 facilitating immigration, not charity, paperwork.
230. For the sake of clarity we do not mean by the above to imply that we found the statement of NN reliable evidence of W3’s employment as an Immigration Officer. Its principal significance for us is its lack of consistency with W3’s more recent evidence.
231. So far as W3’s recent evidence is concerned, we consider that, as with W1 and W3, the picture he presents is significantly at variance with that given in other more reliable sources.
232. We also note that the account W3 has given in his recent statements is notably different in certain respects from that he gave in the course of his asylum claim and appeal. He made no mention then of torture and rape

at the airport as being commonplace and he did not seek to base his fear on return upon what would happen to him as a failed asylum seeker. Strangely, despite feeling impelled (along with W2) to write an open letter in January 2004 to European governments about abuse at the airport, he did not deem it important enough to mention to Mr Davison in the context of his own appeal. And, so far as this document is concerned, the account it gives does not extend to describing routine torture or rape at the airport. In translation this letter is said to be “For the attention of countries of the European Union and human rights organisations concerning the repatriations of Congolese nationals to the Democratic Republic of Congo”, and to throw light on the ways in which deported asylum seekers are treated on their arrival in the DRC. It purports to set out categories of deportees who have made ‘declarations’ which call into question the credibility of the regime in the DRC. It is said the returnees are arrested directly at the foot of the plane, stripped of everything they have of value, watches, telephone, jewellery, shoes, money and clothes, and after interview are transferred to specialised security services such as the ANR/DEMIAP or the Military Court in order to be interviewed and punished. However, we note that this document, which purports to recite the dangers faced, makes no reference whatsoever to rape at the airport, nor to torture. Nor does it mention as normal procedure that deportees/failed asylum seekers are transferred to Kin Maziere.

233. Despite very close resemblance between most of W3’s and W2’s recent evidence, there are some significant differences. In particular, whereas W2 had never heard of questions being asked about illegal emigration networks, W3 said it was common.
234. There are also significant internal inconsistencies in W3’s evidence regarding procedures at the airport and at Kin Maziere. On the one hand he describes deportees/failed asylum seekers as being routinely tortured and raped and having all their money and possessions taken from them. He also points out how hazardous it is for airport staff to seek to release anyone on a bribe. Yet elsewhere he estimates that around 10% can succeed in passing through the airport unharmed by use of bribery. Originally in evidence before us he said that he had attended (as a primarily note-taking assistant to his superior who would conduct the interviews) around 100 interviews of failed asylum seekers at Kin Maziere including many with women. Yet in May 2007, when describing his work together with his superior at Kin Maziere he stated at para 25 that: “I only ever interviewed one woman during my time attending Kin Maziere.” When asked to explain the apparent difference W3 was evasive: on the one hand accepting that the interview in question was conducted with his superior present, on the other hand suggesting (for the first time and in direct contradiction to what he had said earlier) that on occasions, as here, he, not his superior, conducted the interview. W3’s claims in several places about torture and rape being endemic and airport officials doing all this brazenly are also somewhat at odds with his statements elsewhere that officials at the airport had to watch their back as the government tries to catch them out in wrongdoing. W3’s claim of the systematic seizure of all returnees’ property (baggage, personal possessions, jewellery and so forth) belies what is otherwise

said to be the case, namely releases can be secured from the airport on payment of a bribe, bearing in mind it was also part of W3's evidence that few relatives are present at arrivals. We note too that W3 appeared to us to have limited knowledge of what is revealed on an aircraft manifest and the extent of his knowledge on who is returning appears to be a variance with the generally understood position.

235. We did not find W3's explanation of the nature of his own involvement in wrongdoings at the airport satisfactory. In his May 2007 statement he clearly described himself as laughing and joking with his boss after the latter had just raped a woman returnee. He made no mention of any reservations he felt or expressed. Yet before us he said that he was a humanist and had only behaved in this way so as not to stand out and be considered disloyal. We find it most unlikely, if W3 was one of many teams that worked at the airport, that he would have been able not to participate in the routine abuses he described, without it coming to the attention of his team and giving rise to doubts about his motivation and/or reliability in the job. We find (even on the assumption he was an Immigration Officer at the airport) that the claimed activities did not occur.
236. We do not find W3's evidence of significant DRC 'contacts' credible. We do not accept that someone at his (relatively lowly) level of claimed employment should have high level of contacts still in the DRC. Nor do we find credible his explanation for why high ranking officials would wish to risk contact -openly communicating by ordinary mobile phone-with someone regarded by the Kabila regime as a traitor.

The IK Article and the Observer 16 September 2007 evidence and additional comments on W1,W2 and W3

237. In their evidence W2 and W3 referred to the evidence of IK who in the article which appeared on the Congoscope website on 4 July 2006 described himself as having been an Immigration Officer at N'Djili airport until 2005. IK's article refers to W1 arresting people at the airport "...until the days his conscience was awoken and become himself a target of his masters". IK also refers to the arrest of a relative of the sometime head of DGM at the airport, Mr Yamboua, for assisting W1's departure from the DRC. IK claims to have assisted at the arrest of W2 by the COM service for refusing to stamp entry visas in the passports of two Rwandans who were claiming to belong to President Kabila's family despite the intervention of a MONUC official accompanying them. IK goes on to say that in October 2002 W2 was "...again accused of assisting W1 to escape to exile". W2 claimed that IK, a DGM officer, and W3 were in one of the photographs he produced.
238. We do not find this article's contents are reliable and we find the comments on it by W2 and W3 only create further difficulties regarding the reliability of their own evidence. There are significant differences between IK's account and that given by W2 and W3. IK refers to the arrest of a man, JM, for assisting W2's escape; whereas W2 makes no mention of this man's involvement in his escape. In contrast to IK's account of W2 refusing to stamp entry visas in the passports of the two

Rwandans claiming to be Kabila relatives and being accompanied by a MONUC representative, W2 denies knowing that the two men's arrival was on a UN or MONUC plane or that they had told him they were relatives of Kabila. W2 makes no reference to any MONUC representative. W2 does not refer to IK's presence at his own arrest. W2 claims to have no knowledge of being implicated in the escape of W1 and his sources in the DRC had not told him he was charged for helping W1 escape. Yet IK states that W2 was convicted and sentenced in absentia for this. Whereas IK refers to W2 being arrested for a second time in October 2002 (for assisting W1 to escape to exile), W2 refers to being arrested only once. IK says that he witnessed the arrest of W3 in March 2003, who was accused of being in connivance with the rebellion in the east. W3, somewhat differently, said his arrest was over the admission in Kinshasa of a relative who was on a wanted list and another person of Rwandan origin. (We deal below with the man who identified himself as a Kin Maziere torturer in the 16 September 2007 Observer article).

239. In reaching our conclusions on the evidence of the airport witnesses, W1, W2 and W3 in particular, we have taken into account the fact that, although they differed on certain matters, there was a significant degree of consistency between the accounts they gave of descriptions of the layout of the airport buildings for use by the DGM, the presence of other security services, the procedures for expellees upon disembarkation, the perception of failed asylum seekers as "traitors", the nature of the ill treatment said to be meted out to failed asylum seekers at the airport and at Kin Maziere and the use of bribery taking oppressive form. W2 and W3 also described in very similar terms the training they received as DGM officers. What are we to make of these similarities, bearing in mind the existence of serious shortcomings in the account each has given and the fact that their evidence about abuses at the airport (along with that given by the Observer interviewee) was strikingly at odds with that contained in other reliable sources? Mr Jacobs submitted that the fact that the three witnesses agreed on so many elements of their evidence showed that, whatever shortcomings we might find in it, it might well be true. In other words, he relies on the similarities between the evidence of the three sources as an additional factor in his favour.
240. We have, of course, given that submission the most anxious consideration. We accept without hesitation the proposition that if three witnesses who are, and whose evidence is, independent of one another, give similar accounts of an events or events, that is a factor pointing to the truth (or basic truth) of what is described. But the suggestion of the existence of an alternative reason for the similarity destroys much of the basis of that argument unless the alternative reason is excluded. Here, despite the witnesses' vigorous claims to have had no discussions with one another about the evidence they were to give, we have reached the view that any similarities between their accounts is overwhelmingly likely to be the result of such discussions rather than a pointer to the truth of what they said. In short, we do not believe the claim of non-collaboration. Indeed, the very fact that they chose to make that claim in the circumstances which we describe below suggests to us that not only was there collaboration, but that the witnesses knew that, if admitted, it would affect our view of their evidence.

241. We have in mind the following circumstances in particular. First, it is clear that all three knew each other in the DRC. They all agreed about that and we know that not only had W2 and W3 been work colleagues in the DRC but also that all three shared the same influential mentor from university/college days. Secondly, despite each of them basing their own accounts of why they had fled the DRC to claim asylum on quite distinct and different grounds, the evidence they have adduced has each of them present at key incidents in their escape stories. Thus IK said that W2 was accused of assisting W1 to escape. W3 said he was at the airport the day that W2 escaped. Thirdly, all three have been involved in one or more meetings convened mainly within the Congolese community in the UK in late 2006/early 2007 whose specific aims included discussing and collecting evidence about airport abuses for this appeal. As already noted W1 was identified in a publicity document handed out at one of these meetings in Birmingham in March 2007 and both W2 and W3 have quite openly paraded their willingness to speak out on the issue central to this appeal, regarding the claimed abuses at N'Djili airport and thereafter. Fourthly, none of them (save for W1 in the briefest of comments) mentioned anything specific about airport abuses in the course of his own asylum claim, despite ample opportunity for them to have done so and despite the obvious relevance of evidence of such abuses to their claim to fear risk on return. Fifthly, none of them can be said to be disinterested in the outcome of this appeal insofar as it affects his own position: W2 and W3 are failed asylum seekers who have expressed a specific interest in making a fresh claim; W1 continues to give evidence in the asylum appeals of others and he has held himself out to certain others, e.g. E1, as having reliable direct (pre-departure) knowledge of abuses of failed asylum seekers as well as reliable indirect knowledge from high-level sources. Sixthly, since arrival in the UK all three have identified themselves publicly as being critics of the Kabila regime.
242. Thus we do not consider that the similarities in the evidence of W1, W2 and W3 reflect a true state of affairs. On the contrary, we think they tend to suggest that their evidence prepared for this case concerning abuses at the airport (and at Kin Maziere) has been orchestrated and organised to support a false case about risk at the airport and at Kin Maziere for failed asylum seekers.
243. For the above reasons, looking at the evidence of W1, W2 and W3 together with all the other evidence, we do not find credible their claims of ill-treatment of returnees or deportees at the airport or the real likelihood of routine onward transfer of failed asylum seekers or deportees to DGM's Kin Maziere or other security services detention as claimed by them.

Miss Jenny Cuffe's Evidence

244. With one caveat we considered Miss Cuffe a generally impressive witness. We are not judges of journalistic performance, but we can well see why her account of her trip to Kinshasa in 2005 and her intrepid efforts within a short time-frame to contact a range of individuals and groups there won her accolades. However, as she very candidly said to us

at the hearing, she had not sought to ask a number of questions pertinent to any scientific or properly empirical investigation of the issue. She had not asked to see the ID of any of the failed asylum seekers nor could she recall asking any for any document or details of their asylum claims and reference numbers. She had worked to a tight deadline and had not done any follow-up with the Home Office in the UK or any of the equivalent government departments in other European countries where failed asylum seekers said they had been returned from (so as to check, for example, whether such persons had left the UK/other European states when they said they had). Of course, her subjects may not have had any documentation and may not necessarily have been able or willing to help with such details, but it remains that she did not ask.

245. Although in her statement she said she was very careful not to use people whose credibility she doubted (and she records finding one or two individuals she questioned -including one failed asylum seeker - untrustworthy), she agreed with the Tribunal that her general approach to all those she interviewed was to take what they said “on trust”. Bearing in mind the opinion of one of the leading experts on the DRC (E1) that asylum seekers often invent their stories, that there are strong economic incentives for people to lie and that there is a significant ‘illegal’ emigration network in the DRC, we do not think that Miss Cuffe’s approach to her interviewees was sufficiently rigorous. She said she had not heard of anything about illegal emigration networks in the DRC, something which E1 described as the central preoccupation of DGM questioning and which the April 2006 EU report described as a significant aspect of the problems relating to expellees of all kinds. We do not seek to criticise her unduly for adopting a trusting approach and ignoring a key aspect of the problem she was investigating. Given the limited information she had to go on before she went to Kinshasa and the remarkable number of individuals she managed to meet, talk to and in some cases record in a very short space of time, it could fairly be said that as a journalist she covered her subject as well as could be expected. But in terms of reliable evidence, we find very little in her report which assists. The cases she identified remain essentially unsubstantiated.
246. We would also observe that, insofar as Mr Jacobs sought her help in interpreting what she thought the senior ANR official meant by returnees who said ‘bad things’ about the government being at risk, her answer at the hearing is difficult to reconcile with the rest of her interview with him. If this man had considered that the mere fact of being a failed asylum seeker meant they had said bad things, then it does not make sense that he would have given the answer he did as set out in paragraph 21 of her statement (“I asked him how he would know what had been said [by way of ‘bad things’] about the DRC and he told me that the ANR had spies in lots of embassies around the world...”). It may also have shown more balance to have at least used this man’s evidence in her programme, since it was quite specifically to the effect that ill treatment of failed asylum seekers had not happened on his watch.
247. That brings us to the caveat we noted at the beginning of our assessment of her as a witness. As much as we admire her journalistic endeavour, we consider that the concluding words of her BBC World report exceeded

the boundaries of her own fact finding. Although mentioning in her statement that she set out to try and get “hard evidence” her concluding statement, that “we discovered that there are failed asylum seekers in this city [who] were beaten and locked away in prison without trial or hiding in fear...”, went well beyond anything that she was able to substantiate. Having said she set out to get “hard evidence”, she should have acknowledged that what she obtained was not such.

248. The limitation of her reports as evidence in a judicial setting were encapsulated for us in her statement that it is a great shame that a more scientific study has not been done.

Miss Atherton’s Evidence

249. We found Miss Atherton a straightforward and sincere witness. She did not seek to hide the fact that she was a campaigner committed to the cause of halting removals to the DRC because of her own concerns about the process and results based on her own information and opinions. However, as she readily accepted, she had largely taken people on trust. It is plain that she has taken very considerable trouble to try and obtain particulars about when individuals were returned and what had happened to them during the removal process, on arrival at N’Djili airport and afterwards. However, for the most part she did not know or had simply assumed that all were failed asylum seekers. In the light of that knowledge we find it unhelpful that she nowhere addresses the question of why she was prepared to take people’s stories on trust notwithstanding that their asylum claims had been rejected. Miss Giovannetti contends that given the indications in the background that many DRC asylum seekers appear to have got to the UK with the help of illegal immigration networks and to have told untruths in the context of their asylum claims, assessment of their accounts of what has happened to them on and since return cannot be accepted uncritically. We agree. We note that of the 14 cases Miss Atherton presented, four have since returned to the UK - an apt reminder (underlined by the VSV view expressed in its 2004 report that virtually every failed asylum seeker wishes to try again) that on return failed asylum seekers do not necessarily cease to try returning and will know that, in order to succeed in any claim for asylum made on re-entry, they will have to establish that they have been persecuted or suffered serious harm and ill-treatment in the DRC since returning there. Whilst we take into account the evidence they have related directly or indirectly to Miss Atherton and whilst we accept that there is a degree of similarity between many of their narratives, we consider that ultimately none of these accounts of ill-treatment on return has been substantiated. As we shall return to below, many are second, third or fourth hand accounts. Even those which are relatively detailed raise as many questions as they seek to answer.

DW’s Evidence

250. We did not hear from DW but we have no reason to doubt his personal integrity. It remains that we find Mr DW’s written evidence of limited assistance insofar as determining the principal issue in this case is concerned. It may be true that the cases of DRC asylum seekers are sometimes handled poorly by non-specialist immigration solicitors

(although we think to use the word ‘invariably’ suggest a desire to overstate the real position). But, even assuming that is correct, it does not necessarily follow that they are prevented thereby from presenting their claim adequately to Home Office officials or that, if refused, they are not afforded a proper opportunity to present their case before an immigration judge. That DW says that he had arranged in 3 cases for persons he knows and trusts to attend N’Djili airport to find what has happened to returnees, is of little assistance to us without knowing who these people are and on what basis their word is to be accepted. In the one case in which there was any kind of evidence apart from the returnees or his sources or friends and family – that of Case 16 – that evidence (from the British Embassy Kinshasa) was quite contrary to the individual’s own claims about his family in the DRC. We come back to the point, which we have emphasised when analysing Miss Atherton’s evidence, that, so far as we know, all of the six cases he has presented are failed asylum seekers whose credibility may well have been rejected. Not even to address the issue of whether or in what circumstances it is justifiable to regard them nonetheless as credible in respect of a fresh claim – based on alleged abuses during the airport return process - was a serious weakness in his approach.

E1’s evidence

251. For reasons already mentioned, the Tribunal did not have the opportunity to hear E1’s evidence in relation to the general issues in this case tested in oral evidence. He is someone whose past reports on the DRC this Tribunal has accorded considerable weight, although it is fair to say that the Tribunal has sometimes made important qualifications. One of the reasons why the Tribunal takes E1 seriously as a country expert is that for the most part he recognises the need for an approach of critical enquiry. He acknowledges that there are special difficulties involved in researching the issues and that it is important not to take all that one is told at face-value. As we have seen, it is his finding that there is an active “illegal emigrant network” operating in the DRC which colludes with at least some N’Djili airport officials. Taken together with his finding that the very poor economic and social conditions in DRC provide a strong incentive for people to emigrate to affluent countries for economic reasons, it makes very good sense to us why he would find, as he said his research did find, that “in many cases” stories told by asylum seekers were invented. It is a point which we have counted against the views expressed in certain other witness statements in this case, that they appeared to overlook these considerations and to take most of what they were told on trust.
252. We also consider E1 to be generally an impartial expert. He has shown in the past that his position on the issue of failed asylum seekers can change over time. The emphasis he places on the importance of taking full account of fluctuating circumstances reinforces our confidence that he has no preconceived or fixed notions. We would also reiterate the point made by previous Tribunal panels, that he possesses an impressive in-depth knowledge of the DRC. Perhaps we should also mention that we take into account that E1’s reports for this case were prepared in response to time-limits. Hence we do not count against

them that certain parts of them merely regurgitate older analyses, and that some passages do not seem to follow on from ones before.

253. Having said that, we do have a number of concerns about the two reports which he has prepared for this appeal. First, on the key issue with which we are concerned in this case – the treatment of failed asylum seekers at N'Djili airport – his reports are deeply equivocal.
254. On the one hand he states on more than one occasion that returnees without valid travel documents are at risk on return because “they are normally transferred” to the central administration of the immigration service and in this way “held hostage” by virtue of cruel, inhuman and degrading treatment or punishment. We shall call this “Position A”.
255. On the other hand he states on more than one occasion that an airport official’s “normal course of action” will be to ask a returned failed asylum seeker for a bribe in exchange for letting him go and that “everything can be settled by paying money”. It is only if the returnee refuses to pay that “all kinds of pressure, including physical pressure” will be exerted. We shall call this “Position B”. Typifying this position is a passage where he contrasts failed asylum seekers with ordinary travellers. He states that “[i]n many cases, they are released against payment of a bribe; when a risk factor is involved, they are detained for shorter or longer periods”.
256. Having examined these two reports very carefully, we are unable to find that this equivocation is isolated or incidental; although he shows no express awareness of the fact, the two positions co-exist throughout his report.
257. This fundamental schism in his reports is clearly discernible in his treatment of the Jenny Cuffe BBC report, recent UNHCR documents, the Home Office COI Report of February 2007 and the April 2006 EU report on Illegal Migration. As we have seen, UNHCR’s position on rejected asylum seekers has consistently been that they are not as such at risk. In his first report, in a passage we have already highlighted, he states that UNHCR’s information “confirms” that “returnees without valid travel documents are at risk on return” because they will be imprisoned. In actual fact the position he here describes as his position (Position A), and UNHCR’s position, are poles apart.
258. The Cuffe report, as noted elsewhere, concludes that failed asylum seekers are at risk on return by virtue of the procedure at N'Djili airport or subsequently. Yet in his second report E1 described his report as “consistent” with hers insofar as:

“There is indeed no evidence that asylum seekers as such are persecuted. But they all have to pay a bribe for their release. If they refuse to pay or are unable to pay they are detained as a way of pressurising them.”

259. Once again, the position he takes here (Position B) is not in fact consistent with Cuffe’s report, whose concluding paragraph (as we saw

earlier) clearly implies that failed asylum seekers as such do face ill-treatment.

260. When dealing with the Home Office COIS Report he states that its paragraph 36.03 is “consistent with the contents of this report ...”; yet, as already noted, paragraph 36.03 states that there is no real risk of failed asylum seekers being specifically targeted for adverse treatment. He goes on to leave uncriticised several other paragraphs of this report which repeat the same position as set out in paragraph 36.03. Once again his position as described here (Position A) is *not* consistent with paragraph 36.03.
261. We find it surprising that E1’s second report should only address the April 2006 EU Report in a concluding section commenting on other matters recently drawn to his attention as a result of this case (and then only indirectly by reference to a passage from it cited in the COIS Report). Leaving that to one side, however, despite that report’s clear conclusion that there was “no reliable evidence” of failed asylum seekers being specifically targeted for harassment by the security services, the only point E1 takes issue with in this report is the suggestion that harassment is “as much or as little” as ordinary travellers face.
262. Miss Giovannetti sought to argue that E1’s two reports for this case are inconsistent with the position E1 took before the Tribunal in December 2005 when he said that he “had not heard of violence being used at the airport during interrogations” (see AB and DM, paragraph 17). We do not think that is wholly correct. As we have just seen, there are many passages in his reports for this case in which he adopts or says things consistent with Position B and his Position B is also in line with his 2005 position. According to Position B, physical violence is only resorted to if the returnee refuses to pay (or cannot pay) a bribe but that, except when there is a risk factor specific to an individual, returnees can and do pay. So the divergence from his earlier position only arises in those passages where he adopts Position A.
263. Mr Jacobs at one point sought to argue, by cross reference to E2’s definition in her first report (at p.19) of “interrogation” in the DRC as always being accompanied by ill-treatment of some kind, that any reference by E1 (or indeed anyone) to “interrogation” at N’Djili airport entails an acceptance of ill-treatment in the course of questioning. However, even in respect of E1’s Position A, it does not seem to be his view that the interrogation carried out of failed asylum seekers at the airport amounts to any kind of ill-treatment. We accept that some of his terminology can be read as meaning that in isolation - e.g. his reference to failed asylum seekers being “held hostage”. The crux of his Position A is that, whilst being pressured to pay a bribe is harassment, it is only at the point arising if a person *refuses to pay* a bribe, or at the point when he is transferred to a detention centre – or both – that this pressure takes a physical form or becomes what he elsewhere refers to as “cruel, inhuman or degrading treatment”.
264. The principal concern we have about E1’s reports relates to the fact that insofar as he adopts Position A, he appears (contrary to his avowed

objective of pursuing a critical inquiry) to base himself heavily in uncritical fashion on just one type of source. Despite saying that he has drawn his reports' main conclusions on the basis of a reference to several different types of sources (his second report mentions four different types), it is evident that when it comes to what he says in passages enunciating his Position A about processes at the airport, he relies heavily, if not exclusively, on contacts who have worked or are working there in the past two years. In one respect it would seem very logical to seek information (discreetly) from the organisation whose staff are said to include *perpetrators* of ill treatment against returned failed asylum seekers, especially as he elsewhere highlights the difficulties in accepting what alleged "*victims*" of mistreatment by airport officials have to say at face value. But in another respect such heavy reliance is troubling, since on his own account corruption on the part of DRC officialdom is rife and there is a degree of collusion between some airport officials (including at a senior level) and illegal emigration networks. He also mentioned that the inner circle of the Kabila regime has had to fight hard to maintain its control over airport personnel and over the direction of airport affairs. He depicts the sacking of Yambua as the result of adverse reaction to his attempts to combat airport corruption. He highlights too that there is administrative chaos at the airport and a number of services co-exist. Although they collaborate over information relating to failed asylum seekers, they appear on his account (as on E2's) to jealously guard their own roles. We note that neither his 2006 nor his 2007 report takes into account as a source the April 2006 EU HoM report and, when commenting on the summary given of this report in the Home Office May 2007 COIS Report, E1 did not express any major disagreement with the views expressed by the EU HoM in that report. Bearing in mind the above factors, we find it very surprising that he nowhere appears to question any of the information he has received from his airport sources about ill treatment of failed asylum seekers generally. In respect of them his normally critical approach appears to have deserted him.

265. Then there is the matter of E1's treatment of VSV and ASADHO in the context of what they told UNHCR (as reported by UNHCR in their response paper April 2006). Miss Giovannetti sought to make much of shortcomings in E1's treatment of the VSV and ASADHO evidence. If her criticisms were intended to imply that both of these NGOs should be regarded as wholly objective and wholly reliable, we would consider they went too far. We simply do not have enough facts to reach such a categorical view and, in relation to ASADHO, we know that one of E1's sources reports that on at least two occasions a member of ASADHO has taken a bribe in return for helping supply documentation: see E1's second report footnote 8. That information at least raises a question-mark. However, where we do agree with her is that the criticisms largely miss their mark. It is far from clear to us that when he wrote either of his reports E1 had actually read VSV's 2004 report. One would certainly have expected any researcher professing expertise on the topic of returned failed asylum seekers to have studied such a report carefully. But, leaving that difficulty to one side, we think it highly unlikely that the VSV 2004 report's reference to "police special services" being charged with the detention of returnees was anything other than a simple mistake. As to the average size of the bribes, E1 himself (in common

with a number of other sources) gives varying amounts, so there is clearly a margin of difference involved in any estimates. The figures given by VSV still amounted to very significant amounts as compared to the pay levels of airport officials.

266. What about E1's criticism of UNHCR's 19 April 2006 statement that "VSV has an office at the airport"? It has to be considered in the context of the other evidence, parts of which are in conflict. On the one hand we have items such as E2's first report in which she says that a journalist asked to investigate was unable to confirm that VSV had an office at the airport and a post-hearing e-mail from E2 saying she was told by a senior government official that there is definitely no such office). On the other hand, we have items as the British Embassy confirmation that a VSV office does exist. In weighing up this evidence we think it important to look first at what the 2004 VSV says about this in its 2004 report. That report casts considerable light on the matter because it shows very detailed knowledge of airport topography (which is consistent with what we have from other sources) and because it makes clear that what VSV itself has laid claim to is having had a presence at the airport in order to undertake monitoring and (such that someone from VSV attends there on a part-time basis: on average three times a week in the course of his monitoring duties. This report also talks about concrete plans for an office to be opened soon, but not about such an office existing at the time of the report.
267. So far as the situation since VSV wrote its report is concerned, we are satisfied that there is no valid reason to conclude that VSV has not secured some kind of office at the airport. Bearing in mind that we learn from E1 and E2 that some of the DRC government's negotiations with EU governments over returnees have been treated sensitively, we would be surprised if arrangements made by it with a human rights NGO such as VSV regarding monitoring would have been made widely known even to most airport officials. Nevertheless we do not rule out that VSV may have exaggerated its monitoring role post-2004 in some quarters; and its own concern (expressed to Jenny Cuffe) about lack of resources tends to support the view that it has not been able to sustain its monitoring activities in the way it envisaged. But even treating VSV in this way as having only a part-time monitoring function, its report's conclusions about what they found are in our view extremely relevant evidence. Neither E1 nor E2 nor any of Mr Jacob's submissions persuades us otherwise.
268. Insofar as E1 seeks to query VSV's motives and integrity, we find it very odd (i) that his first report refers to VSV as a "very active and reputed human rights NGO" and (ii) that both of his reports are replete with references - in the main text and footnotes - relying on VSV reports/information for assessment of detention conditions in the DRC. ASADHO materials are also heavily relied on. It is not in dispute that VSV and ASADHO are two of the four main human rights NGOs operating in the DRC and that both are taken seriously by international organisations as well as by a number of embassies in Kinshasa. Furthermore, inasmuch as E1 ventures the opinion that VSV may have been tempted for financial reasons (to obtain funding) to portray a view

about the treatment of failed asylum seekers close to that of the DRC government, that is very hard to square with E1's own recognition elsewhere that VSV has been an outspoken critic of the government and has continued to speak out in strong terms about a wide range of human rights abuses. The fact that E1 himself chose to go for NGO information about failed asylum seekers only to VSV and ASADHO, out of a very large number of NGOs active in Kinshasa, itself suggests that he must have been satisfied hitherto that they had relevant evidence. It is also difficult to see why VSV would have wished to have avoided finding failed asylum seekers were at risk (if they were), when their funding source has consistently been a French charity. There is nothing at all to suggest that this charity is pro-Kabila. Or to suggest that VSV would have any political motives for avoiding such a finding if the evidence had warranted it. Regarding E1's suggestion that VSV has not done any serious compilation of data, it is difficult to understand why E1 thinks his sources should be in a position to decide this, since he himself records that they were refused access to VSV files on this topic (VSV told them it considered these confidential information). Whether or not E1's sources were aware of the contents of VSV's 2004 report (it would appear not and perhaps this is the same file to which they were refused access), we have seen it and it clearly does contain a detailed documentation of data. As made clear in our analysis of E2's evidence, we do not feel we have enough information to be sure that the VSV's investigation of the cases listed in its 2004 report was as thoroughgoing as portrayed, but, equally certainly, we see no valid reason to consider it was manufactured. The VSV report highlights the fact that the returnees it interviewed were very worried about talking to anyone about their situation. None of the persons detailed in the VSV report who were visited by E2's organisation denied that they were failed asylum seekers. We have also been told that there is great "fear and shame" felt by failed asylum seekers who face being mocked by neighbours and that people in the DRC are generally suspicious about inquiries made by strangers into their histories. We also know that VSV is well known to be a thorn in the government's side. Bearing these matters in mind, it is not as such a strong point to raise against VSV's report that none of those approached by E2 and her organisation (over 2 years after the event) acknowledged having been visited by VSV.

E2's Evidence

269. We find it necessary to exercise a degree of caution when evaluating E2's reports. We have no concerns about her personal integrity and it is clear she has put a great deal of time and effort into seeking to get to the truth about what happens to deportees refouled to the DRC. However, for someone put forward as an expert, her language is often tendentious and, read in isolation, one can find a number of sweeping generalisations. For example, she states early on in her report that "all deportees are taken to the DGM headquarters in the city" and in another item of evidence she states that "Everyone who sought asylum abroad" is "punish[ed]" hard". Yet later on in her report she herself points out that some deportees can pass through the airport unharmed on payment of a bribe by relatives. Whereas in some places her position is that all deportees are punished, in others her position is that such punishment

could (at least occasionally) be avoided if they have family members at the airport to receive them. In one place in her first report her position appears to be that any form of questioning by a government official anywhere in the DRC will be an interrogation having ill treatment as one of its components. The empirical basis for this sweeping generalisation is not identified. Although describing herself as someone who seeks to investigate and find facts, she appears much of the time to have her mind made up already. Thus, purely on the strength of contact with an individual from an NGO she has never heard of before, regarding a person reported to her by a UK source as being a failed asylum seeker who had suffered ill-treatment on return (WY), she straightaway concludes (in her second report) that WY's case was "typical of the manner in which the current regime treats Congolese who have been refouled from the UK". Most worryingly, she appears not to have asked any of the persons she has spoken to who claim to be returnees suffering ill-treatment a number of important basic questions such as whether they were ordinary deportees (e.g. with criminal records) as distinct from failed asylum seekers and whether, if failed asylum seekers, they had been found credible by European authorities dealing with their asylum claims and whether they could help with reference numbers and permission to call for their asylum files. More generally there is little anywhere to suggest that she has applied a critical scrutiny to the accounts she has been given (by way of example see our analysis below of her treatment of WY's case).

270. We find her main criticisms of VSV and UNHCR somewhat unsatisfactory. To say that UNHCR is not actively involved with the issue of rejected DRC asylum seekers is unfair, since it is apparent that since the mid-1990s UNHCR has regularly issued specific position papers/letters on the return of failed asylum seekers to the DRC and in them made reference to specific local inquiries having been made on this very issue. To state that "UNHCR exists for refugees and not for the safety of rejected asylum seekers" shows serious ignorance of UNHCR's own policy and practice. So far as sources are concerned, it is clear that her underlying criticism is not that UNHCR is vague about them but that it was at fault not to have consulted with certain other human rights NGOs apart from VSV and ASADHO. Given, however, that it is clearly her own view that it is futile consulting organisations that are not actively involved in this issue, it is not obvious why such wider consultation would have helped. We deal below with our doubts as to the depth of OCDH's and CODHO's experience of this issue. In any event, the evidence before us indicates that both VSV and ASADHO interact with the other main human rights NGOs: indeed her own (first) report at footnote 40 comments that ASADHO together with the OCDH and Female Action Network (RAF) provided a joint report for the UN Anti-Torture Commission held on 7-25 November 2005.
271. We also find it odd that E2 should rebuke UNHCR for lack of information and consultation, when it is clear her own reports sometimes do the same. Neither her first report of March 2007 nor her second report of September 2007 nor her subsequent updating by way of letters and e-mails make any mention of the April 2006 EU report, despite the fact that much of it deals with the very topic her reports seek

to investigate. We remind ourselves here that it is one of the basic duties of an expert that he or she makes known opinions to the contrary (see AIT Practice Direction 8A.5).

272. Given the depth of experience E2 says she has in producing fact-finding reports on individual asylum cases, we find it curious that she was not able to refer us to any court or tribunal approval of any of her reports (even if she had, we would have expected her to state whether there were cases in which her evidence was not approved as well as cases in which it was). The only reference to her by the Tribunal which she notes is VL, which in fact was clearly sceptical about the case particulars provided by her organisation on that occasion.
273. In general terms E2's reports are too ready to draw inferences and conclusions from individual case examples, often overlooking quite basic difficulties with them. For example, she makes much of the criticism of Belgian government claims about past monitoring of deportees. Yet the only example relating to the DRC which she mentions concerns the case of Tabita, a five year old Congolese girl said to have been deported to Kinshasa on 18 October 2002 all on her own. We do not have enough information to assess whether that it is correct, but even assuming that it is and that she was not just returned on her own but without there being adequate reception arrangements made for her, then it would indeed be a flagrant breach of international standards relating to the need for adequate reception arrangements for unaccompanied minors: see e.g. Nsona v Netherlands (2001) 32 EHRR 170. But this example scarcely proves anything about the deportation of adults or of families with an adult.
274. We underline our concern that E2's reports nowhere address the question of to what extent the deportees her organisation interviewed or heard about could be considered credible given their history as failed asylum seekers. Of course, someone who is a failed asylum seeker may not necessarily have been disbelieved about everything or anything, but, in general terms, if a person is a failed asylum seeker there is absolutely no reason (absent evidence to the contrary) to assume that they have been found credible in the course of their asylum claim. Hence any approach to evidence from a failed asylum seeker which treats it as truthful simply on trust is exceedingly problematic. E2 was asked about this in cross-examination and said that she and/or her organisation brought their considerable experience to bear when assessing what she/they were doing. We are bound to say we see very little evidence of any real scrutiny. On her own account, the main priority of her and her organisation when contacting such people is to win their trust. That is entirely understandable, but, in the absence of an indication in E2's reports of the issue of an individual's past credibility or lack of it being addressed, even with those individuals she and her organisation were able to interview thoroughly, this is a serious flaw in her methodology. This is not to say that she has not shown real diligence in some respects, for example in writing down telephone interviews and in video-recording some interviews. In Appendix B of her first report she refers to being able in February 2006 to interview a number of people in a "special setting" in which statements were taken in their presence of two persons

and a local group attempting to “provide help to people forced to return from Europe and unable to survive”. But unfortunately she does not match these measures with other basic empirical steps and, as a result, we are left with a body of evidence with very little substance.

275. Despite the claim in her reports that she has maintained an objective approach to the evidence, we consider that quite frequently she appears to rely on bare assertions. For example in Appendix B of her first report, when describing the approach her organisation took when interviewing deportees she writes:

“Our approach was as follows: we wanted to listen to people who had themselves been expelled. To do this we had to overcome their mistrust of us, as up to this point, they had been only bullied, first in Europe, then again during the journey and finally yet again in the Congo.”

276. Whilst she does refer in her reports to some complaints of mistreatment by officers in different European cities of deportees during the removal process, she nowhere analyses these as to whether they are objectively established. Yet from the above it is clear that, to her mind, “bullying” by officials of EU governments is the norm.
277. Insofar as E2 relies in her reports on sources who are persons working at the airport or with contacts who work at the airport, we have the same difficulty as we identified when analysing E1’s evidence. We are not persuaded that she has applied a critical assessment to all that they have told her or her organisation; she does not appear to have considered whether, or to what extent, their evidence could be coloured by involvement with illegal emigration networks.
278. In summary we are not persuaded by E2’s reports and updating letters and e-mails that her main conclusion - that deportees face a consistent pattern of ill-treatment or serious harm at the hands of DRC authorities either when they return to the airport or at a later date – is justified.

Overview

279. In order to assist our task of deciding the issue of whether failed asylum seekers are at risk on return to the DRC, we ask the same question as the Tribunal posed in VL: what sources amongst the many placed before us can we attach most weight to and why? We consider that the following sources merit very considerable weight being placed upon them.

DRC: EU Report on Illegal Migration, 12 April 2006

280. This report was written by the EU Heads of Mission (EU HoM) in the DRC and was made public on 12 April 2006. We earlier referred to the summary given of it in the COIS Report for November 2007. However, a full copy of the report was furnished to us by the respondent. Its Executive Summary states:

“The principal reasons for migrating from the DRC remain economic. The shattered economy and lack of employment opportunities mean that there are large numbers of Congolese who wish to seek a better life in Europe.

Whilst cases of genuine asylum do exist on occasions, for the most part this is used as a cover for economic migration.

Some resort to increasingly sophisticated and desperate measures to enter the EU in order to claim asylum, including forgery, using clandestine migration networks and overland travel to North Africa and attempting to cross the Mediterranean.

The Congolese authorities are not able to rein in this problem, and in some cases individual migration officials are complicit. High level contacts do show though those senior Congolese politicians are aware of the issue's importance to EU states.

Voluntary repatriation is not widely taken up by failed asylum seekers. Current methods of forcible repatriation are unsatisfactory.

Charter flights of failed asylum seekers back to the DRC have not taken place since 2003 [NB. This was written before the UK's February 2007 charter flight]. The DRC authorities have resisted attempts by member states to restart them. However many member states have signed or are hoping to sign agreements to allow charter flights and guarantee a minimum level of service from Congolese embassies and immigration directorates. Some who have signed agreements have not been satisfied with their results.

There is no reliable evidence of failed asylum seekers being specifically targeted for harassment by the security services. Some returnees have been harassed, this is seen as part of a trend of opportunist crime against random civilians by unpaid or underpaid officials. Harassment at N'Djili airport is experienced by a majority of travellers, both Congolese and foreign.

Some claims of abuse have been manufactured by so-called NGOs linked to clandestine migration networks and then picked up by more reputable NGOs."

281. From the body of the report it is clear that EU HoM were closely aware of allegations made about the treatment of failed asylum seekers and had done something about investigating them. At section 5 they note that some European media, as well as some Congolese NGOs, have recently reported failed asylum seekers to the DRC experiencing ill-treatment on arrival. The report states:

"EU embassies present in Kinshasa have investigated those allegations and have found no objective evidence of those returning to the DRC being specifically targeted for abuse simply because they sought asylum. In investigating these allegations, members of EU embassies spoke to lawyers, human rights activists and members of the local press as well as members of the political parties represented in government. They also paid visits to detention facilities and N'Djili airport.

Allegations of arbitrary detention were found to be false, and in some cases, the NGOs that made the allegations of ill-treatment and detention had links to the Ngulu ("pig") networks that facilitate illegal immigration."

282. What is clear from this report is that, in response to allegations conveyed to them, EU HoM took active steps to investigate, in the course of which they consulted widely. We observe that this is a document signed by all EU HoM in Kinshasa, each of whom can safely be inferred to have their own local services and contacts on the ground. The report is also self-critical, e.g. the Executive Summary and the report's section 4 notes problems with the current strategies governing charter flight returns and

enforced individual returns and at section 6 it makes a number of recommendations, including that EU HoM:

“continue to monitor the conditions experienced by returning failed asylum seekers through airport and prison visits, contacts with NGOs and sharing information with local embassies.”

283. The contents of this report also confirm what we know from other sources about specific steps taken by certain EU Member State governments to investigate allegations of ill-treatment on return.

UNHCR Position Statements

284. In previous country guidance cases on the DRC the Tribunal has set considerable store by UNHCR position papers, in view of the fact that they have been sourced directly from the field office in the DRC and cleared by UNHCR Headquarters in Geneva (see e.g. VL paras 53-54). Turning to the most recent UNHCR position as expressed in the 19 April 2006 “Response to Information Request”, we think it particularly significant that this was written in specific response to the Jenny Cuffe BBC report. This response states:

“... after the press coverage in the UK late November 2005 about the reported problems faced by failed asylum seekers who were forcibly returned to the DRC, the UNHCR Office in Kinshasa contacted various organisations and institutions in an attempt to gather more information. This included organisations such as the Congolese Immigration authorities (DGM), the National Committee for Refugees (CNR), IUM, MONUC and national human rights NGOs. In addition, it sent staff to the airport on days of arrivals of flights from Europe”

(see also UNHCR comments to the Advisory Panel on Country Information on 16 October 2005 Home Office Country Report for DRC, 8 March 2006 www.apci.org.uk).

285. The response went on to state that UNHCR was not aware of failed asylum seekers being detained or tortured at the airport.
286. Criticism has been levelled at other passages in this response which refer, inter alia, to VSV having an office at the airport and closely monitoring the situation and which also place reliance on ASADHO’s assessment. We have explained above why we think these criticisms are largely misplaced, but, even if we leave to one side this response’s reliance on VSV and ASADHO sources, it makes clear that UNHCR has also consulted other sources as well and at certain times has actually sent UNHCR staff to the airport on days of arrival of flights from Europe. The response is careful not to exaggerate its findings – it emphasises that arrivals at the airport are “difficult to monitor and the UNHCR does not have a regular presence at the airport” and it is quick to qualify its specific conclusions with the words “[f]rom the limited information available to the UNHCR ...”. In view of the very close attention UNHCR has given to the issue of the treatment of failed asylum seekers in the DRC over a number of years, and the active way in which it sought to have checks made once it learnt of the adverse BBC report, we think that it is a weighty source. We also remind ourselves that the UNHCR is

heavily involved in assisting the voluntary returns of former refugees from the DRC (from such countries as Zambia, Tanzania, Burundi, Angola and Sudan) back to their home villages to all parts of the DRC since the end of the war in 2003. We are confident that when UNHCR has any concerns about the way any category of asylum-related returnees is being received, it makes this known.

Individual Embassy and EU Government Assessments

287. We have already highlighted the EU HoM report of April 2006 which clearly represents a unanimous view. We have from this report or in separate form evidence of some individual Embassy or national government assessments.

288. The EU Report at section 4B refers to the Dutch position:

“Following investigation, the updated ‘Ambtsericht’ (the Dutch MFA’s, general country information on the DRC) of September 2005 confirmed that, according to independent and reliable sources, returned Congolese asylum seekers from Europe, whose request for asylum was rejected and whose judicial appeals were exhausted, have encountered no problem with the DGM upon arrival in Kinshasa.”

289. The British Embassy letter of 28 July 2007 confirms that the Dutch government position remains to similar effect.

290. The EU Report refers to the work of the French “Airport Liaison Officer” at N’Djili airport who meets flights carrying returnees from Schengen countries to ensure returnees hold a satisfactory travel document.

291. We have a great deal of evidence about the British Embassy in Kinshasa’s activities in relation to the issue of returned failed asylum seekers. Given that Mr Jacobs has made a number of criticisms concerning the handling of matters relating to this case by one particular Embassy official (who we shall refer to as Mr X), it is noteworthy that Embassy correspondence (which includes the TSol letter of 14 September 2007) on the issue of failed asylum seekers includes a letter from the former Ambassador as well as from another current Embassy official and there is nothing to suggest that the correspondence we have does not represent the view of the FCO. The contents of the former British Ambassador’s letters written on 6 February 2006 are summarised at 36.03 of the July 2007 COIR Report on the DRC. We also had more recent correspondence before us, some passages to which we have already made reference. This correspondence confirms, inter alia, that the Embassy has taken an active interest in the issue of the treatment of failed asylum seekers. Prior to 4 April 2007 the only allegations it had received of abuses of returned failed asylum seekers were the Jenny Cuffe BBC report, an e-mail from a political party of expatriate Congolese and two cases raised by MPs (the allegation in respect of one of these was described by the Embassy as an obvious fabrication). Subsequent to 4 April 2007 the Embassy had received other allegations. They were mostly connected to the February 2007 charter flight, although one related to 2005. These allegations were said to “have not been substantiated by the investigations conducted by the Embassy”. The correspondence also

includes an e-mail dated 28 February 2007 giving details of the charter flight of 27 February 2006. Its conclusion was that there were no obvious abuses of human rights, but that the Embassy would continue to “keep our ears to the ground” for any allegations that members of the returned group have suffered abuse since their return.

292. This last comment typifies, in our view, another feature of the Embassy’s approach, namely that the Embassy maintains a significant range of contacts in Kinshasa in a position to comment relevantly on issues relating to returned failed asylum seekers, including individuals within other Embassies and local NGOs. It is also in a position to raise matters of concern with the DRC authorities involved in the airport return process at a high level.

VSV and ASADHO Evidence

293. The Tribunal’s view is that considerable weight should attach to the factual information given by the VSV as well as to the general VSV and ASADHO assessments of the treatment of failed returned asylum seekers as conveyed to the UNHCR. Whether or not both organisations have sometimes exaggerated or (in the case of ASADHO) sometimes provided documents for money, there is almost unanimous consensus between the British Embassy evidence, the evidence of E1 and E2 and other background sources that these are two of the four main active and committed human rights NGOs in the DRC. Their work in exposing human rights abuses committed by the DRC authorities in detention facilities has been commended at UN level and we note that E1 draws heavily on it for its own assessment of human rights abuses in the DRC. It is well-documented that the VSV leader has faced arrest and detention at the hands of the DRC authorities on several occasions, yet has carried on his exposure of government shortcomings. We see no basis for E1 and E2’s speculation that VSV may have ulterior motives for taking what it considers to be a similar view to the DRC government on the issue of failed returned asylum seekers. We have some criticisms of the 2004 report on the treatment of expellees, but think it most unlikely that it was fabricated.

294. As already indicated, however, we are prepared to accept that VSV’s monitoring activities are not as full or as continuous as may sometimes have been suggested or thought: to that extent the UNHCR Response’s reference to VSV “closely monitoring” the situation may be incorrect. However, we do not find that the absence of any independent corroboration of the existence of a VSV office at N’Djili Airport –and the categorical claim to the contrary by one of E2’s sources - establishes that there has not been such an office. The British Embassy information given in the 28 July 2007 letter on this is very specific:

“VSV say they are paying a rent of \$96 pcm to the RVA (Congolese airport authority) to maintain a small office on the first floor of the airport building above the check-in area (known as “la rotunde”). They also have an access pass given by the RVA to enable them to carry out the monitoring more effectively.”

295. This information also accords with what VSV itself says in its June 2004 report. From the 2004 report it is clear that this office had yet to open in June 2004 and it would appear from what the organisation has said more recently that it is not manned or used all the time. It is very likely, we think, that what the VSV representative interviewed in 2005 by Jenny Cuffe said was correct, that its ability to monitor returnees at the airport was hampered by “a lack of resources”. It would appear that not all its projects have gone ahead year on year. Yet there has been nothing said to suggest that VSV advertises itself to travellers, although there is reference in its 2004 report to reception of expellees and it is clear the NGO wanted to have a more visible role at the airport. We do not know anything about the local investigative journalist said by E2 to have found no evidence of such an office, but without more knowledge of who this journalist is and what inquiries he or she made and of whom, we are not persuaded that this investigation should be treated as at all conclusive, especially given that the UNHCR and British Embassy sources appear to have discussed the matter with other local sources. We acknowledge that E2’s latest e-mail of 26 September 2007 raises further doubts based on what a high-level source working in a different government department says he was told by the commander of the RVA, but for reasons given earlier we have reservations about the reliability of her sources.
296. In the same letter of 28 July the British Embassy official reports speaking to VSV about the 26 February 2007 charter flight. He writes:
- “... they gave an account of the return process which matched my own recollections, so personally I believe that they were monitoring on that particular day ...”
297. We note that the Embassy official making this assessment showed in the same letter that he took into account VSV’s:
- “tendency to exaggerate some abuses for maximum impact in its initial declarations before being able to verify whether they are true or not. This has led to some climb-downs on their part in the past. All respondents also noted that VSV automatically take a *de facto* position of opposition against the government despite its stated independence.”
298. Such an assessment does not suggest that the Embassy has relied on an uncritical assessment of VSV work; yet it has still been satisfied that VSV is doing some real monitoring of failed asylum seekers.
299. As regards E1’s tentative suggestion that VSV might be hiding the truth about the treatment of failed asylum seekers in order to “make their opinions all the more credible in case they defend a political asylum seeker themselves”, we find this difficult to square with the fact that we could find only two references to the VSV taking up the case of a failed asylum seeker (that mentioned by Jenny Cuffe in her 18 May 2007 statement and that referred to by E2 in the form of a VSV press release about a JN). The British Embassy official in his 28 July 2007 letter states that VSV had told him in meetings he had had with them that they:

“occasionally receive threats and criticisms from other NGOs and people connected to clandestine migration, because VSV refuses to help asylum claims by writing human rights appeals on behalf of paying individuals.”

300. We remind ourselves here of the evidence from a number of sources that there are very large numbers of NGOs, official and unofficial, in the DRC and that getting anything done by any of them requires money. The EU governments and international bodies with a presence in Kinshasa have clearly made a judgment that not all of them are bona fide. Additionally the 2006 EU Report states:

“Allegations of arbitrary detention [of failed returned asylum seekers] were found to be false, and in some cases the NGOs that made the allegation of ill-treatment and detention had links to the Ngulu networks that facilitate illegal immigration.”

301. In our view the above indicates that there are good reasons why the British Embassy (in common with other foreign government and international organisations) in Kinshasa prefers to limit their dealings to NGOs with a proven reputation. Below we set out our reasons for considering that an NGO heavily relied upon by E2 appears to have made a blatantly false statement in a letter of complaint addressed to Kin Maziere about the case of WY. In cross-examination E2 admitted that she had not heard of this NGO previously and with hindsight the way it explained why it was only helping one person from the 27 February 2007 charter flight was odd. In our view E2’s readiness nevertheless to rely on such an NGO’s evidence demonstrates the need to attach weight primarily to NGOs that EU HoM and international organisations have found to be active, effective and generally reliable.

302. The suggestions made by Miss Cuffe and E2 that VSV is only concerned with Rwandan failed asylum seekers are far too tenuous.

303. It remains important to pay close attention to what VSV actually says in its 2004 report. It does not specifically deal with failed asylum seekers, although it would appear from its 5 “illustrative case studies” of “expellees” that the “irregular residence” of many of them in a Western country has been accompanied by an unsuccessful claim for asylum. It deals with enforced returns of all kinds. So far as methodology is concerned, its recording of individual cases shows that clear particulars were sought of identity, address, date of repatriation, the country from which the person is arriving and flight details and they are also asked the reason for their expulsion. It goes on to give specific details of the 70 odd cases. That reflects a much more empirical approach than we have seen taken by CDHH, OCDH and CODHO. It is also clear from the report that some care is taken to gain the confidence of expellees so as to furnish VSV with details. From what is said the monitoring process VSV described extends to follow-up visits.

304. However, there are discernible shortcomings in the report. The report is somewhat tendentious in clearly wanting to urge particular reforms on the part of Western governments to their procedures for dealing with involuntary returnees. It appears to argue from a set view – that forced repatriations by Western countries are oppressive. Obviously VSV is

entitled to its own value judgments, but it weakens its claim to provide an objective account. It is not a criticism of VSV that it does not distinguish between failed asylum seekers and other types of expellees, since it did not set out to do so. But its failure to do so reduces to some degree its value to us as evidence. In the same way as we have noticed with the reports from UK NGOs, there is no indication that when assessing the evidence given by the expellees interviewed who were failed asylum seekers (and the proportion the latter comprised is left unclear), VSV has examined whether they are failed asylum seekers found not credible in respect of their asylum claims and whether that has implications for the credibility of their claimed experiences during the airport return process. It is not made sufficiently clear how many of the expellees listed faced demands to pay a bribe: the report describes this as frequent, but of the 5 case examples given in any detail, only one makes that allegation. The statement that it has recorded “around 50 cases of expulsion” is difficult to square with the attached schedule which gives basic details of around 70 expulsions. It does not specify anywhere that follow-up visits are made in every case. There are also the points noted by E1 and E2, that there is an odd reference to “the police special services office, which has a branch at N’Djili airport” and there are 4 or 5 cases of double-counting.

305. To a degree we think that in respect of some of these shortcomings we can make allowances for them: the reference to “police special services” appears likely to be inadvertent; whether or not different figures of expulsion cases recorded are given, the report contains a precise list of cases. We also know the specific conclusions which UNHCR drew from information provided by VSV regarding risk to rejected failed asylum seekers. And, in respect of the February 2007 charter flight, we also know what VSV said to British Embassy official Mr X about this flight.
306. Miss Giovanetti has submitted that the contents of this report support her case. Mr Jacobs, by contrast, has consistently seen it as inimical to his central contention that failed returned asylum seekers to the DRC receive ill-treatment. In point of fact the report is somewhat more nuanced than either party has mentioned. As already noted it does at one point contend that expellees suffer “degrading treatment” as “subjects without rights” who have no sure way of recovering their assets and other personal belongings that have been “wrongly taken”. (It is hard to say whether the latter is a reference to what happens on return - the lack of any reference to this happening except in one of the 5 illustrative case studies suggests not; or whether it refers to the fact, emphasised elsewhere, that expellees are often said to be picked up in the expelling country for removal “without having the opportunity to return to their home to collect their belongings”). At another point it refers to the forced repatriation of expellees as “a form of persecution”.
307. However, so far as its own recording of what happened in around 70 cases is concerned, the only clear mention of any difficulties is when it refers to there being “frequent reports of extortion of assets and personal belongings by officers who think the expellees are hiding money on them when they are repatriated”. We also know that when UNHCR asked them as to their view, either they summarised it as being that rejected failed

asylum seekers do not face ill treatment on return or UNHCR, applying legal criteria, considered that this is what the facts of their report and other investigations showed.

308. It is difficult to follow what the report means to say about “persecution” of returned expellees, since in one place it categorically says they are not persecuted, yet in another it says that they are. In any event, the references the report makes to “degrading treatment” and to “persecution” are plainly made in the context of the particularly dim view this organisation has of forced repatriations from Western countries in general. VSV may well have been justified on the evidence it had in describing the plight of expellees as a sorry one, but what they describe as “persecution” – “being “obliged to return empty-handed, something which is seen as a serious failure not only by the individuals concerned but by their home communities” - is clearly not sufficient to amount to persecution for Refugee Convention purposes (or serious harm for humanitarian protection purposes or ill treatment for Article 3 purposes). Insofar as the report appears to refer to expellees having no sure way of recovering their assets and other personal belongings in the countries expelling them and to them “not having the opportunity to return to their pre-departure home to collect their belongings”, however, the empirical basis for these generalisations is significantly lacking.
309. Overall, we think that even though VSV’s report is somewhat partisan in its approach to its subject-matter, and its methodology leaves something to be desired, it does contain a very significant amount of basic factual information concerning its monitoring over the period 1 January 2003 - 15 April 2004. Very significantly, it records around 70 cases of returnees without making any mention of physical violence being used and the only specific misconduct it notes relates to the demanding of money and the taking of possessions. Taken together with other pieces of evidence, e.g. the UNHCR Response and the British Embassy correspondence, it is also apparent that VSV has continued to play some kind of monitoring role, including in respect of the February 2007 charter flight. Despite its own view that the problems of forced repatriation can amount to persecution or ill treatment, what it describes is not something which meets the legal criteria for persecution, serious harm or ill treatment.
310. We would emphasise that E2 and others may well be correct to point out that there are deficiencies in the current procedures for monitoring of returned failed asylum seekers at the N’Djili airport and afterwards. However, we do not agree with E2 that there is not even any “incidental” (as opposed to systematic) monitoring. We have seen that monitoring has been done periodically by VSV, UNHCR and officials from various Embassies. And the fact that such incidental monitoring has not discovered any ill treatment remains a highly significant fact, since what is being contended for by Mr Jacobs (and some of his witnesses) in this case is that at the airport and thereafter there is a “consistent pattern” of abuse in the form of physical mistreatment. In our view the available evidence points strongly to a conclusion that there is no such pattern.
311. It is time to say that we did have evidence from two other NGOs whose reputation and integrity appears to be as well-regarded as VSV and

ASADHO. In particular, reference was made by Jenny Cuffe to the head of the Observatoire Congolaise de Droits l'Homme. We were also told by E2 that CODHO was another NGO with a sound reputation and relevant evidence. However, for reasons we shall come to we have serious doubts that these two NGOs had the experience they claimed about the cases of failed asylum seekers who have suffered ill treatment. In our view the cases mentioned by these two organisations (some of which on inspection were not about returned failed asylum seekers in any event) amounted at best to unsubstantiated stories: CODHO's head was essentially reliant on the credibility of the accounts given to him. E2 stressed that she believed that this NGO head would have taken care to satisfy himself that the cases he referred to had substance, but if that were so, we would have expected that we would have been able to supply greater particulars and some corroborative evidence. We also noted that every case raised by the OCDH official he had first learnt about from E2, not from his own "long" (indigenous) experience.

Evidence of E1 (Position B)

312. At first sight it may seem odd to include E1's evidence in the section detailing the sources to which we attach considerable weight, since we have earlier said that his reports are deeply equivocal and we have noted our disagreement with some parts of E1's assessment in his two reports (the parts taking Position A). However, as explained earlier, this reflects the fact that although E1's assessment is equivocal, it is only in respect of his Position A that his reasoning and sourcing appears fallible and the preponderance of his evidence otherwise is that it is only failed asylum seekers who (because of specific risk factors such as a criminal history) are transferred to detention facilities elsewhere who are at risk of ill-treatment. Consistent with his earlier reports on this topic since 2004, E1 considers that, absent any specific reasons for interrogating failed asylum seekers more closely (such as the existence of a criminal record), the main interest of airport officials is in trying to obtain a bribe from them. Generally speaking, his position is that (1) it is only if such a bribe (which he says can be paid either by the returnee himself or by relatives at the airport) cannot be paid that this type of harassment can take a physical dimension and lead to a transfer into detention; and (2) generally returnees are able to pay such bribes.

313. We consider that E1's evidence as to the risk of being asked to pay a bribe (his Position B) is reasonably likely to be true. It marches closely with the April 2006 EU Report comment that some returned failed asylum seekers:

"... do face low-level harassment at N'Djili airport, such as being asked for bribes and having items 'confiscated' (stolen) from their luggage. However, such behaviour from the authorities is not confined to this particular group – most regular travellers through N'Djili experience this at some time. Travellers arriving from Europe are sometimes assumed to be better off financially and therefore an easy target. There are also some security agents who abuse their power and target civilians, this generally has opportunist crime as its primary motivation."

314. In his latest report E1 takes issue with the apparent equation made in the above passage between the situation of travellers and returned failed

asylum seekers. However, we do not think that this is what the above passage asserts. It states that seeking to extract bribes is not “confined” to failed asylum seekers; it does not state that ordinary travellers are subjected to demands to pay a bribe to the same degree. (If this passage was purporting to suggest the treatment was routinely the same for both categories, we agree with E1 that it appears far more common – indeed virtually routine – in respect of returned failed asylum seekers.) In any event, E1 does not challenge the findings of the 2006 EU Report otherwise.

315. It is convenient at this point to address the issue of whether this type of harassment amounts to ill-treatment. Ms Giovannetti is quite right to point out that the case she has had to meet has been put principally on the basis that returned failed asylum seekers are routinely targeted for ill-treatment, indeed ill-treatment of a particularly egregious kind: amounting to a widespread administrative practice of routine torture, rape and wholesale dispossession. The appellant’s case has not been put on the basis that, even if we do not accept that this is the case, failed asylum seekers are still at risk because of the oppressive nature of the procedure in which airport officials on (and sometimes after) entry pressurise such people for bribes. Nonetheless the topic is one which we need to address.
316. The topic has three interrelated aspects. One concerns the extent to which failed asylum seekers are likely to face demands for bribes. Another concerns the nature of the bribe-asking and bribe-taking involved. The other concerns whether failed asylum seekers are in general able to negotiate the bribe-asking process (if and when they encounter it) by paying a bribe sufficient to ensure that they pass through airport controls unharmed.
317. As regards the extent to which returned failed asylum seekers are likely to face requests/demands for bribes, the evidence in our view points to the conclusion that they may very commonly find that they face such requests/demands. Even the effect of the British Embassy official’s evidence was that this was the norm except when there was some special situation which might make airport officials less likely to make such demands, e.g. the presence of a foreign embassy official in the context of a charter flight return. We would accept, therefore, that in general failed asylum seekers (and to a lesser degree ordinary travellers) are faced with pressure to pay a bribe.
318. So far as the nature of the bribe-asking and bribe-taking process is concerned, we would first of all observe that it does not seem to us that the mere seeking of a bribe can itself amount to inhuman or degrading treatment, even if the request/demand itself is illegal. Furthermore, we take it as uncontroversial that bribe-asking is a significant problem in a number of airports around the world, including some in developed countries. Turning to the situation in the DRC generally, it is clear from the background evidence that corruption, especially in the form of low-level bribe-taking or bribe-giving, is endemic and many transactions faced by citizens and their families and friends in their everyday lives involve having to pay bribes. The COIS Report of 31 July 2007 in a

subsection headed “Corruption” refers to a number of sources identifying the need to pay bribes to officials in the state and private sector. Among the examples given is that of a commission set up to combat customs fraud being disbanded after it was discovered charging an illegal tax on all traffic passing across the border with Zambia. The US State Department Report covering 2006 is quoted as stating:

“...weak financial controls and lack of a functioning judicial system encouraged officials to engage in corruption with impunity. Many civil servants, police and soldiers had not been paid in years, received irregular salaries, or did not earn enough to support their families, all of which encouraged corruption. For example, local authorities continued to extort “taxes” and “fees” from boats travelling on many parts of the Congo River.”

By contrast with developed states such as the countries of Western Europe, therefore, it can be seen that there is often a blurred line drawn by state officials between official and unofficial taxes and fees and this is understood by citizens and others who have dealings with them.

319. Secondly, in our view the evidence does not demonstrate that the bribe-asking which takes place at N’Djili airport is generally accompanied by threats of violence or the actual use of violence. The 2006 EU HoM report found that “harassment” at N’Djili airport is experienced by a majority of travellers, both Congolese and foreign, but it does not describe this harassment as being of an oppressive character. If the requests/demands for bribes were oppressive in nature we consider this would have been identified in this report and in the other sources which we have found reliable, in particular the assessments made by individual embassies, the UNHCR evidence, the VSV evidence and E1’s evidence.
320. The final, interrelated, aspect concerns whether failed asylum seekers are in general able to negotiate the bribe-asking process (when they encounter it) by paying a bribe sufficient to ensure that they pass through airport controls unharmed. In our view the main body of reliable evidence indicates that normally failed asylum seekers (and ordinary travellers) do not have their money and jewelry or other personal effects taken from them on arrival and also indicates that normally they are able to negotiate passing through airport controls by paying a bribe in circumstances which are generally not oppressive. Much of the contents of E1’s reports are consistent with this, seeing the motivation of airport officials as being principally directed at assessing what amount it will be practicable to extract from the individual returnee. The only one of VSV’s five illustrative case studies which mentioned bribes referred to officials accepting the “little amount of money he had on him (roughly 9 dollars) and his cigarettes”. E1 (although differing strongly with VSV as to the amounts involved) does not indicate that the amounts requested/demanded normally present any particular problem for the returned failed asylum seekers except where there are special risk factors. Additionally, we had no evidence to indicate that failed asylum seekers facing removal from the UK are prevented from travelling back to the DRC with their own personal effects (including monies). We have no reason to think, therefore, that they will be unequipped to deal with requests/demands for bribes should they be faced with such. Here we bear in mind that, notwithstanding the lack of consensus in the reliable

sources of evidence as to the levels of bribes asked for at the airport, it is clear that the earnings of most DRC government officials, including airport officials are extremely low. In the context of a country in which the vast majority of the population live on the equivalent of \$US 0.2 a day, even what in Europe would be regarded as “spare change” would amount to a very considerable amount in the eyes of such officials. We reiterate the evidence contained in E1’s first report that even a judge at the Court of Appeal earns a monthly salary of 20 US dollars and a clerk of the court earns 8 US dollars (there is no supplement for lodging, health care or transport). Thus there is no basis for supposing that any traveller from the West - even failed asylum seekers - will be unable to satisfy the requests/demands for a bribe, which are exceedingly modest by Western European standards. Therefore it is unnecessary to inquire into whether failed asylum seekers returned to the DRC by the UK would have significant sums on them when they return: even loose change will do.

321. We cannot rule out that there may be isolated instances where the demand for a bribe takes an oppressive form or where the sum demanded is sufficiently significant to render that demand oppressive in effect (because of what is threatened if the bribe is not paid). However, bearing in mind the lack of any satisfactory evidence of bribe-asking taking oppressive forms, we consider that such instances will be rare. There is no reason to think that, in relation to the bribe-asking and bribe-taking process, returned failed asylum seekers are at any significantly different level of risk than ordinary travellers.
322. We would emphasise that in reaching the above conclusions we have taken into account that there were items of (or parts of) the evidence before us indicating that bribes demanded can be prohibitively large sums and that returnees can be detained because they have no money, but taken as a whole we did not find those items (or parts of the evidence) reliable. Whilst we are prepared to accept that in rare cases prohibitive sums may be demanded and/or persons are detained because they cannot pay, the evidence as a whole does not demonstrate that this is generally happening or that it happens sufficiently to give rise to a real risk of it happening to returned failed asylum seekers as such.
323. Accordingly we are not persuaded that for deportees or failed asylum seekers the difficulties they commonly face in being expected and required to pay a bribe amounts to treatment contrary to Article 3 ECHR or to serious harm.
324. The same cannot be said, however, for the nature of the requests/demands for bribes once a person is transferred to detention facilities elsewhere. We of course have not found that failed asylum seekers will be transferred in this way, but for individuals who will face such transfer because of specific risk factors (e.g. those who are on a wanted list), the preponderance of the evidence, at least as presented to us in this appeal and (with express concession by Miss Giovannetti for the purposes of this appeal), is that, once in detention away from the airport, they will be in an extremely vulnerable situation characterised by physical and verbal abuse of a serious kind. They are no longer involved

in a process which can normally be negotiated by paying a bribe in circumstances which are not oppressive. They have lost their liberty and face targeted ill treatment.

Other Evidence

325. Having identified and given our reasons for attaching considerable weight to certain sources, we need to explain why we have decided not to attach significant weight to other sources or other parts of the evidence which have been relied upon by the appellant's representatives. Since we have already analysed the main sources/evidence falling into this category, we can for the most part simply note them here very briefly.
326. Evaluating E1's evidence has proved problematic: as already noted, his reports contain support for two contrasting viewpoints: one indicative of a practice of ill-treatment of failed asylum seekers on return, the other not. What we found significant when analysing E1's statements in support of the former position (Position A), is that they appear to rely unduly on what he has learnt, directly or indirectly, from officials working, or with recent experience of working, at N'Djili airport. In this regard we find it difficult to see the basis on which he is as prepared, as much as he plainly is, to take what these sources say about mistreatment of failed asylum seekers at face-value, notwithstanding his recognition elsewhere of complicity between some airport officials and illegal emigration networks. We note that these sources did not furnish documents or particulars to support their claims, even though we know from other reports in the past (and E2's reports) that such documents or particulars can sometimes be produced: E2, for example, was able to get hold of the airport record of the names and details of persons on the 27 February 2006 charter flight from London.
327. The evidence of E2 we have found to have significant shortcomings and we do not find that she was an expert who properly fulfilled the requirements of impartiality and readiness to address the existence of evidence pointing to the contrary in an appropriate way. We are prepared to accept that E2 (at least on some occasions) has been found to furnish very helpful and reliable evidence in the context of individual asylum claims she has been asked to investigate; and nothing we say is intended to deprecate such work. But researching individual asylum cases based on adverse experiences whilst living in the DRC and seeking to research the issue of risk arising from the return process to broad categories of persons (collective and individual returnees as a group) are very different matters and, in relation to the latter type of research, there are a number of glaring shortcomings in E2's methodology and approach. Whilst admiring the painstaking work done by E2 in her efforts to investigate concerns expressed about returned failed asylum seekers, we find that much of her evidence is marred by a lack of empirical inquiry and the taking of a fixed partisan position.
328. As regards the airport witnesses, we have found the bulk of their evidence extremely unsatisfactory. We did not consider that we could attach any significant weight to the IK article or to the Observer story from the man who said he had worked as a torturer at Kin Maziere and

who, even though happy to have his name and picture printed therein, was not prepared to have his evidence tested in cross-examination before us.

329. Concerning the evidence of Jenny Cuffe, Elizabeth Atherton and DW, we have no concerns about their sincerity and good faith, but we have not found the ways in which they have gone about collecting the evidence and seeking to test it, to have yielded any substantiated cases of ill-treatment of any returned failed asylum seeker.
330. As regards the two main NGOs which have identified particular cases of concern to them – CDHH/OCDH and CODHO – we have serious doubts as to their claimed experience of cases of concern made known to them in the past and we observe that in general they have simply relied on the truth of what has been told to them, without showing any awareness of the surrounding circumstances which indicate that stories can be invented and purely economic motives may sometimes be involved. That is particularly striking in relation to RK's account of his "Case 6" in which he describes receiving a visit from a failed asylum seeker/deportee from Holland in the company of a DGM officer who wished to help the man. RK then recounts as fact this officer's account to him that at the airport "when deportees arrive at the ...airport, they are systematically arrested and taken to DGM cells in Kin Maziere in Gombe" where they stay in detention for 48 hours.
331. We also remind ourselves that RK of CDHH/OCDH is reported as having attended as a speaker at one of the UK meetings organised by Miss Atherton and others in early 2007 to raise awareness amongst the Congolese community of the issues involved in this case and to seek out anyone with relevant evidence. Whether or not that means that he sees himself as an advocate rather than a fact-finder on this issue we cannot say, but it is a cause for caution. We find it very hard to understand what RK could mean in his letter of 11 September when he writes of having "long experience" in relation to deportees and their experiences on return to the DRC. All of the cases he furnishes some details of were ones which were, he says, brought to his attention by E2's organisation. Furthermore he mentions that the British Embassy in Kinshasa knows the OCDH very well. He then notes that the Embassy "never contacted us in regard to deported failed asylum seekers". By the same token, we infer that he never contacted the British Embassy about such cases, nor does he mention contacting the embassies of other European countries responsible for deporting the cases he mentions. Why not is far from clear.
332. As regards CODHO, aside from the fact that the information it gave was extremely vague and sketchy, we note that Miss Cuffe in her statement identified the representative she met from this NGO as one of only two people she interviewed whom she found untrustworthy.
333. Perhaps the main case dossier on which the appellant's representatives relied was the case of WY. We have not as yet dealt specifically with it so it is necessary that we do so now.

The Case of WY

334. In her second report E2 explained that she was requested by solicitors Trott & Gentry to undertake investigations in Kinshasa as regards the fate of the Congolese who were removed to Kinshasa from London on the 26 February 2007 charter flight. She did the work during 27-28 June 2007. As already noted, she received a witness statement from a “reliable partner” who had observed the arrival from beginning to end and had assessed that the formalities at the airport took place without obvious rough treatment. However, her efforts to establish the validity of “alarming information from a number of sources in Britain” were in vain, “since we did not receive any directions/information on how to make contact with the victims or their nearest relatives”. We pause to observe that this does not suggest that the briefing Trott and Gentry gave was very much help, but we shall assume there were good reasons for that. In any event she states that the only information she was able to gather from “primary sources” concerned WY. It is clear from the final two paragraphs of E2’s report that she regarded WY’s account as truthful: indeed it led her to say that WY’s case was “typical of the manner in which the current regime treats Congolese who have been refouled from the UK”.
335. We take a very different view of WY’s case. To be fair to E2, she made the assessment in her report on the basis of limited evidence and acknowledged during cross-examination that the NGO who put her in touch with WY was one which was not previously known to her and she agreed that it was odd it was not acting on behalf of any of the other charter flight returnees. Nevertheless we are surprised that she should have been so ready to validate it.
336. Our reasons for finding WY unreliable are various. There is first of all the nature of the communication with him upon which E2 relied. She never met him face-to-face. She only met the NGO intermediary, JP, President of the Congolese Commission against Torture. Initially this man had agreed E2 could meet WY at a location to be indicated later. However, on the agreed day the intermediary refused two proposed venues. Although E2 was then able to arrange to telephone WY and conduct a telephone interview, she records that at the end of this interview WY “told me he would be prepared to meet me, if that were useful”. Yet nothing more was then arranged, nor does E2 give any clear explanation why it was not.
337. Second, despite E2 emphasising that WY was able to tell her “in good chronology and in detail” what had happened to him, his chronology is markedly different from that given by the intermediary (JP) in his letter dated 28 February 2007. According to WY (as recorded by E2) he had arrived at N’Djili in the early hours of 27 February 2007. After passing through controls, he and his family were met by his younger brother who took them to his house. Around 3-4 in the morning, men in uniform (and some in civilian clothes) raid his brother’s house and take him (WY) away. They stop in a dark part of Mount Nafula and beat him with barbed wire. He then refers to suffering further beatings in a cachot (private, secret detention cell) the “next morning”. “That evening”

(which cannot have been earlier than the evening of 28 February) he is interrogated by a commander, shown photos of himself at demonstrations in London and then beaten further. He is then put back in the cell with two other prisoners. “During the night” he is taken out of the cell, driven off in a jeep and thrown into the bush. When he regains consciousness he is taken by some people to a Red Cross dispensary, where he is taken care of for three days. He then rings his wife who comes and fetches him. Several weeks go by and on or around 24 March he goes to the British Embassy to submit an application for an NGO vacancy to do voluntary work. He submits his application and leaves them a copy of his diploma. After listening to him, they promise to “study the file”. He then leaves the Embassy premises. Barely:

“... two steps outside the gate, under the eyes of the Embassy staff, I was abducted. A jeep came after me and another one from the other side, and they blocked the road, and I was picked up and thrown into one of them. The staff at the Embassy can tell you what they saw.”

338. He is then taken to Kin Maziere. “If you meet with me”, he says, I [will] describe the space to you in exact detail”. He says that two more days pass. They ask him for money, which (conveniently) he is able to produce from a pocket where it was sewn inside. He phones his brother. He continues:

“My brother arrived. I said: Alert that J.P. from the NGO, and alert the family. Explain also to the Red Cross what has happened.”

339. Three further days pass and he is released.
340. There is no mention in this account of any visit, whilst he is in detention, from an NGO and, indeed, the clear impression he gives is that his own first contact with an NGO was not until several days *after 24 March* when he asks his brother to “Alert that J.P. from the NGO.”
341. By contrast, the 28 February 2007 letter from JP states that his NGO:

“hereby wishes to convey you its indignation on the issue of the case of [W], expelled from Great Britain and detained in your institution at Kin Maziere since yesterday 27/02/07 ...

Our organisation objects forcefully to the (use of) torture you apply in your institution, *because this unfortunate (individual) bears traces of torture on his body.*” (emphases added).

342. This letter plainly implies that this NGO or someone known to them had either seen WY or heard from WY so as to know he “bears traces of torture on his body”. Yet, as we have seen, there is no mention by WY of anyone from outside having contact with him until very late on 28 March or 29 March at the earliest. Mr Jacobs sought to argue that WY simply forgot to mention that JP must have visited him on 27 or 28 February. But (leaving aside that JP’s letter clearly identifies the appellant’s detention in Kin Maziere as being on the 27th, not the 28th February) there is no mention of that by either WY or JP in his letter. For WY to have been visited by an NGO would have been a momentous event which he would not have omitted to mention. Furthermore, to have gained

access on 27 or 28 February JP would have had to have had some information as to WY's whereabouts; yet (to repeat) on WY's own account there is no mention of any contact being made with JP until his second claimed period of detention, weeks later.

343. Thirdly, WY's claim to have spoken with someone at the British Embassy and to have had his abduction by men in two jeeps who "blocked the road" witnessed by Embassy staff is flatly contradicted by the British Embassy who were specifically asked to check their records. The Embassy letter of 2 July 2007 says that there was "no record of any interview being conducted as stated by the claimant known as [WY]" and no knowledge of any alleged abduction that took place outside Embassy grounds sometime after 23 March 2007. It adds:

"Movements and events directly outside the Embassy grounds are monitored 24 hours a day by CCTV and by Ghurkha Guards. Any such events would have been reported to the post security manager."

344. Fourthly, if WY had indeed gone to the British Embassy a few weeks after having been picked up and tortured in the way he described, it is very difficult to understand why he did not mention these horrific experiences to anyone to whom he spoke at the British Embassy. We know from other sources that there was at least one British Embassy official monitoring the charter flight returnees. WY plainly knew this because he refers to his wife making a specific complaint to the British Embassy official present at the airport, regarding theft of her luggage and to this official promising to look into it. Yet WY says nothing either about his wife's complaint or, more tellingly, about his own traumatic experiences within hours of leaving the airport. We consider that if WY's account were true, he would surely have felt it important to tell British officials what suffering their forced return had caused him. We also know from the Adjudicator's determination of his asylum claim on 16 December 2004 that he had worked for the US Embassy. On his own account, although it was not accepted by the Adjudicator, he had asked that Embassy for, and it had produced a report saying that he had departed the post because of political threats and the Embassy had even intervened to secure his release from detention. Plainly WY was well aware, therefore, of the possibility of asking for help with troubles from an Embassy.
345. Fifthly, as regards the letter purporting to be from someone in the ICRC facility based at Ceite in Mt Nafula, Kinshasa, dated 2 March 2007 we consider we can place no reliance upon it. The part of the form which requires the details of sender and addressee are blank, the correct signature space is unused and there is no independent evidence that the person who has signed it in the "date" section is from the ICRC and was present at the Mt Nafula Ceite on the date claimed. In her letter of 16 September 2007, E2 mentions obtaining the number of the person in charge of the Red Cross, regional section Limete [a name is given] who confirmed to her that the Red Cross has correspondence and photos of WY's case and that if the British Red Cross wanted further confirmation, that would be no problem at all. However, there has been no further confirmation. We are bound to say, given other concerns we have with

WY's account, that in any event we would have required very precise and corroborated confirmation from ICRC of their dealings with WY and what WY had told them before.

346. Sixthly, the photograph which has been produced to us as being a photograph of WY when he was in the care of the ICRC at Mt Nafula has not been authenticated by anyone in the ICRC at Mt Nafula as being a true likeness of the person known to them as (if in fact he was) WY. There is also the problem that the only photograph that has been produced to us of the WY who claimed asylum in the UK does not obviously match the photos said to have been sent (originally) by the ICRC Ceite.
347. We note further that despite Trott & Gentry asking E2 to conduct some further inquiries of WY (and others) in September, very few of the evident difficulties with his account were conveyed to E2 for her to comment on or put to WY.
348. In any event the very most that the Red Cross evidence (even if genuine) would show is that WY was beaten up and ill-treated. It is not suggested that the Red Cross could verify who his attackers were.
349. WY's account of the charter flight return process is also at odds with that given by the two British Embassy officials, one of whom (X) was present throughout the whole operation, the other for the first part. In X's letter of 28 July 2007 he points out that, contrary to what WY states, none of the returnees had passports, water was not handed out by British Embassy staff; and there were no military in the room in which the DGM interviews took place. X's letter states further that he checked the Kinshasa Field Office of MONUC's Human Rights Division and was told they had no record of the only 27 February deportee called WY. He also checked the prison register for Kin-Maziere for 27 February (the day WY alleges he was detained) and found the names of no-one who was on the 26 February charter flight. He also comments that the number of security service personnel described by WY as detaining him was "uncharacteristically excessive in relation to the manner in which similar arrests have been made and documented by the UN and others".
350. There is another aspect of WY's account of the charter flight operation which does not ring true. It arises from his latest conversation with E2 in which he asserted that his "asylum file" was handed over to the DRC authorities. For that to have happened there would have had to be a serious breach of Home Office procedures. Mr Jacobs has wisely not sought to argue that such a breach must have happened in this case, but in any event we find that such a breach did not happen.
351. The last reason we have for finding WY's account unreliable is that the accounts he and his wife gave of difficulties with the authorities in respect of his original asylum claim were rejected by an Adjudicator on 16 December 2004 for want of credibility. Save for accepting that he was employed by the US Embassy in Kinshasa for two periods, one in 1993, another from 1995 until he left the DRC and that he and his wife may have been low-level UDPS members, the Adjudicator disbelieved

virtually everything else. The Tribunal upheld the Adjudicator's determination on 22 January 2005. The fresh evidence we have been presented with regarding his case and experiences since, have not stood up to scrutiny.

The Appellant's Central Submissions

352. Although we have of course to consider all of the available evidence, we also think it right to draw attention to the fact that we have found the central planks of evidence on which the appellant's representatives have relied replete with shortcomings. As is evident both from the campaigning publicity surrounding this case (which Ms Atherton and at least two other witnesses have been involved in) and from the correspondence we have seen from the appellant's solicitors and from Mr Jacobs' submissions from the outset of this case, they regarded this as a country guidance case in which key airport witnesses would be able to demonstrate from their own experience patterns of abuse of failed asylum seekers during the return process and in which there would also be failed asylum seekers who had got back to the UK willing and ready to give oral evidence. They also considered that they had a dossier of other cases which either individually or cumulatively would corroborate their central contentions.

Witnesses Who Did Not Materialise

353. As will be apparent, in the event there were no failed asylum seekers among the witnesses giving evidence at the hearing of this appeal. At first sight it might seem surprising that anyone should be talking about individuals who have been removed to the DRC as witnesses before a UK Tribunal. However, at the end of the first two and a half days of hearing in July, the appellant's representatives had given notice of their intention to call one witness said to be a failed asylum seeker who, having been returned, was back in the UK (his asylum appeal having been dismissed and he having been removed from the UK to the DRC on 25 January 2005): he had managed to return to the UK on 5 October 2005 (Bundle 2, Tab 5). In the event this witness did not attend and the statements the appellant's representatives had submitted relating to his case were not relied upon.

354. The same proved to be the case with a second witness, AB. At the beginning of the second phase of the hearing (in September), Mr Jacobs made an application that he be able to call this further witness. Given that we had been faced with the withdrawal of evidence relating to the only other witness said to be a failed asylum seeker back in the UK, we decided, exceptionally, to grant Mr Jacobs' application. Miss Giovannetti said she was content that we take this step, notwithstanding the difficulties it put in her way by way of preparation. However, the day before AB was due to give evidence Mr Jacobs said he had been instructed that this individual did not wish to give evidence as he had an outstanding (fresh) claim and did not wish to jeopardise that by possibly having his evidence in his new claim made the subject of prior judicial findings. We had written evidence from Miss CC to similar effect. Insofar as we had some evidence concerning AB over and above that which was before the Tribunal in VL, it has not caused us to

change our view that his account lacked coherence and is essentially unsubstantiated.

355. As already noted, it was Ms Atherton's evidence before us that in the lead-up to this hearing she knew of the cases of four failed asylum seekers who had managed to return to the UK having been deported and three of them had told her they were prepared to give evidence to this Tribunal. We do not know for certain if two of them were the same two just described but we shall assume so. The evident effort which had gone into preparing statements and supporting evidence in respect of these two witnesses demonstrates that at one point both must have been advised (properly in our view) that it would not be detrimental to their pending fresh applications/appeals to give evidence before us. Although we had evidence from W1 about death threats made to him and evidence from Miss CC about death threats made to her, it was not submitted by Mr Jacobs that either of the aforementioned potential witnesses had been the subject of threats. The first had earlier been placed on our list of persons protected by our Anonymity and Confidentiality order and we had indicated that the order would be amended to include the second.
356. We are none too impressed, therefore, with their last-minute withdrawals. It is not for us to speculate as to why they decided not to give evidence. All we can observe is that two opportunities to assist this Tribunal by having evidence in person as to alleged mistreatment on return to N'Djili airport subjected to cross-examination, were lost.
357. We should also mention another airport witness who Mr Jacobs had told us in July would be providing a statement and would be called to give evidence. At the beginning of the September hearing on 17 September Mr Jacobs said that this man would not be giving evidence and no statement from him was forthcoming. Yet this potential witness, we note, had been ready to give his story to the Observer on 16 September 2007; his story as reported was that he had been a member of the personal security corps of the former President Laurent Kabila and had himself been involved in or a witness to many acts of torture carried out at Kin Maziere, "many" of whose inmates "have been deported from the UK, France and Germany". This article carried his name and picture, captioned as "a repentant secret policeman". That this individual, despite feeling able to give his name and have his photo appear in a national newspaper, proved unready to give evidence, did little to enhance the weight we felt able to attach to his account as set out in this article. In our view his evidence therein, being unsubstantiated and untested, does not assist us.

27 February 2007 Charter Flight

358. Although we have dealt with several aspects of the evidence we had relating to what happened to the failed asylum seekers returned on the 27 February 2007 charter flight, it is right that we set out separately our reasons for finding that considered as a whole it does not support Mr Jacobs' principal submissions about failed asylum seekers facing ill-treatment on return.

359. Mr Jacobs has very properly drawn our attention to various items of evidence in support of his contention that those returned on this charter flight met with ill-treatment. The most detailed account we were presented with (via E2) concerned WY, whose evidence we have dealt with separately and need not repeat here save to reiterate that we find it seriously flawed. Ms Atherton's statements contain details of seven persons said to be on the 27 February 2007 charter flight. RK of the NGO CDDH, mentions a family that was on the flight, but gives no details. DW refers to another person on this flight ("Case 21"), whose friend had not contacted him (DW) as he had promised he would. However, as, Ms Atherton agreed, she took what she was told by the returnees she spoke to or contacted "on trust". She did not appear, when giving their stories, to consider the relevance of the fact that all but one were found not credible by adjudicators after a careful and detailed assessment of their evidence (the only exception was Case 8 who was believed in relation to being a UDPS member and having been arrested and detained after a demonstration in January 2005, but was not believed about his claims to an incident of arrest and detention in June 2005 or any further incidents). Of course, as already noted, the fact an asylum seeker has been untruthful in one process does not necessarily mean that he is untruthful when in another process, but it is well-established that, in the absence of special circumstances, past lack of credibility is relevant to assessment of current credibility.
360. Nor, as noted earlier, did Ms Atherton ask any of her charter flight returnees about whether they had criminal records or whether they were persons whose removal was deemed to be uncondusive to the public good.
361. Despite Miss Atherton's best efforts, several of the accounts she has furnished lack important details. Generally speaking we find all of the cases she identified (including those removed individually on other dates) to raise as many questions as they are said to answer. Why, in particular, did none of the seven or any relative or friend not seek to report what they say happened to them to the British Embassy or a local human rights NGO or sections of the media in Kinshasa who are critical of the government? It will have been visibly apparent to all that there was at least one British Embassy official in attendance at the airport and it is reasonable we think, to assume that at least the adults among the 40 returnees would be well aware that any story of troubles experienced by any of them on this flight would be of potential interest to the British Embassy or human rights NGOs or the media in Kinshasa/DRC. We do not accept that all would be too fearful to take such steps, since it is clear from the background evidence that many individuals who have suffered ill treatment at the hands of the current regime have felt able to complain and have their cases taken up by NGOs, the media and in some cases international bodies.
362. It cannot be overlooked either that the evidence obtained is from persons whose identities could not be confirmed because the only contact was over the telephone and in some cases the account given of ill treatment is not even first hand.

363. Counterposed to the evidence Ms Atherton and others have assembled about the 27 February charter flights, are a number of items of evidence which we consider possess considerably greater weight.
364. There is first of all the British Embassy evidence.
365. Significantly we have as part of this a copy of the internal e-mail sent by the British Embassy official (X) by way of report to other FCO officials in London, the very next day. So it is a near-contemporaneous account, written before there was any indication of complaints. He reports that he was present throughout the entire operation and it is clear from what he goes on to say that he was able to witness the DGM interviews at close hand. He describes the outward flight as “generally calm save for a few disruptive individuals”. Upon arrival the documents of all of the 40 failed asylum seekers (“FAS”) were checked by the Director of N’Djili airport and found to be in order. The FAS were then taken to an ante-room away from the main arrivals hall to be interviewed by DGM staff. He states:
- “The interviews were mercifully free of the extortion that is sometimes a reality for ordinary Congolese returning to N’Djili after foreign trips. DGM staff mainly sought to confirm the nationality of the returnees.
- They also asked questions about the returnees’ time in the UK and their treatment during the return. All of the Congolese complained about the security before and during the flight, particularly the use of handcuffs and pre-flight detention times. Many said they had been forced to leave large quantities of personal belongings in the UK. Some of the DGM staff, though remaining helpful, questioned UK policy – referring to alleged cases within the 40% of children who had been sent back with one parent whilst the other remained in the UK and two (confirmed) cases of children born in the UK.
- After about an hour and a half processing, 38 of the FAS were allowed to leave, where the majority of them were met by family and/or friends. We were not able to witness all of them departing, but at least 25 of the group were definitely able to leave the airport terminal unmolested. DGM staff assured us that all 38 were at liberty. Two even reached this Embassy to enquire ambitiously about appeals and visas before midday.”
366. He then describes the circumstances surrounding the two persons who the DGM staff did not accept were DRC nationals and were then returned. His e-mail ends by saying that the Embassy “will continue to keep our ears to the ground for any allegations that members of the returned group have suffered abuses since their return”.
367. By the time of the next Embassy communication dated 28 July 2007 the same official has learnt of some allegations having been made about the 27 February charter flight in relation to the case of WY. He notes three contradictions between WY’s account and his own recollection: some of the returnees had passports, only A4 [laissez passez] documents were provided by the Congolese Embassy in London; British Embassy staff did not hand out water; and there were no military in the room in which the DGM interviews took place. He also says that he checked the prison register of Kin-Maziere for 27 February “and found the names of no-one who was on the 26 February charter flight”.

368. In his 13 September letter the same official comments:

“In my time in Kinshasa, the vast majority of evidence I have seen suggests that returnees to the DRC are not abused – and the only claims we ever receive that this is not the case from the UK, not from within the DRC.”

369. We also know that when subsequent allegations from UK sources regarding the 27 February charter flight were referred to the British Embassy, they were investigated but found to be unsubstantiated (see 14 September letter).

370. We also have a statement of a JC, a Senior Executive Officer of the Border and Immigration Agency (BIA) stating that he observed the first part of the operation at N’Djili airport in DRC following the charter flight of February 2007 (up to the point when the returnees had embarked on a bus after an initial documentation check by the Director of N’Djili airport). The remainder of his account reports what X had told him about the operation thereafter in more detail, following it becoming known that there was to be a Tribunal case dealing with the charter flight operation. It is in very similar terms to what X himself recorded in his e-mail the day after the charter flight’s arrival.

371. We mention next an item of evidence which is of unproven value but which gains significance from the fact that it was from one of the sources whom E2 considers reliable. As already noted she stated in her 23 June 2007 report that:

“About the arrival of the charter plane we received a witness statement from a reliable partner of ours who observed the arrival from beginning to end. The formalities at N’Djili airport took place without obvious rough treatment, though those leaving the plane were very stressed, according to his report.”

372. We asked E2 to produce a copy of this report, which she said she had received in e-mail form. In a letter of 26 September 2007 she apologised for being unable to locate it, although she had asked the person who sent it to her to look for it and send it. We mention it here because it highlights one of the difficulties facing Mr Jacobs in seeking to rely on what evidence the appellant’s representatives had been able to obtain about the 27 February charter flight. A report from one of these sources, said by E2 to be reliable, gave an account which does not easily match that given by several other informants.

373. Then there is the monitoring by the VSV of this charter flight. We do not have any statement from VSV confirming this directly, but in his 28 July letter the British Embassy official who was also present throughout the operation describes a recent meeting with this NGO at which he discussed this charter flight with them. He states that they gave an account of that return process which matched his own recollection, so personally he believed they were monitoring on that particular day.

374. To summarise, we consider that viewed as a whole the allegations regarding the ill treatment of failed asylum seekers on return to N’Djili airport on 27 February 2007 either have not withstood closer scrutiny or remain unsubstantiated. (It has not been our purpose in this determination to analyse what will happen on return to persons who

are not mere failed asylum seekers but have a particular military or criminal history that is known, or is likely to become known, to the DRC authorities on return – e.g. persons who are deserters or persons who have a criminal record or who for other specific reasons may be on the “wanted” list held at the airport. However, we see no reason to take a different view regarding such persons than that taken by previous Tribunal country guidance, which is essentially that the claims of such persons would need to be looked at on a case by case basis.)

375. In passing we would observe that the pros and cons of EU States carrying out collective removals in the form of charter flights is not for us. The subject is a controversial one. Nevertheless we are far from persuaded that E1 is right to maintain that collective removals to the DRC are “more dangerous” than individual removals. At least as regards the 27 February charter flight, we have accepted that the version given by the British Embassy (consistent with what was said by the source who wrote E2 a report about it) is not reasonably likely to be untrue. That being so, it would appear that the presence of the British Embassy staff during the return operation and the knowledge that there is high-level contact involved between British Embassy staff and the Head of the airport worked to lessen the degree of harassment which the failed asylum seekers faced from airport officials wanting money. We have not been able to attach credence to the various claims made about ill-treatment by security service agents after the airport stage, whether outside the airport or at the places where returnees go to stay.

Evidence of Specific Cases of Abuse of Returnees Generally

376. Although we have dealt immediately above with the 27 February charter flight returnees (which account for seven of Ms Atherton’s cases and also include WY), it is salient to consider the body of evidence about abuses of returnees on various dates collectively. In addition to the charter flight cases we had a further 7 cases identified by Ms Atherton, 6 identified by DW (although his Case 21 is the same as Ms Atherton’s Case 12) and 6 identified by CDHH in its letter of 11 September 2007. In addition to the individuals mentioned by Jenny Cuffe in her 2004 BBC report, she briefly mentions in a 14 September 2007 letter two or three more which she had retrieved from her notes. We also had communications from a DRC barrister, PM, mentioning two cases and an OCDH letter identifying two cases. E2’s first report at Appendix B mentions another 14 or so cases. Her second report mentions two others. Some of the cases also refer to other individuals. So although we have stopped our own numbering at Case 29, there were further cases before us, albeit mostly in very skimpy form.
377. Some of the above cases are persons said to have been refouled in the 1990s but most are persons said to have been refouled between 2000-2005, although a lesser number give a date in 2006-2007. Apart from the Atherton and DW cases almost all are persons said to have been refouled by Dutch, Belgian or French authorities.

378. Evidence relating to some of these cases – that of AB in particular - has already been considered by the Tribunal in previous country guidance cases.
379. Extremely few of these cases have been ones identified by local NGOs or other sources in the DRC: indeed the largest number of cases mentioned by any DRC NGO – the six described in the CDHH letter of 11 September 2007 – are all said to have been brought to their attention by a European source (E2).
380. This leads us to reiterate our earlier comment that we find it significant that so few cases appear to have been raised directly by the said victims or their families or friends with anyone in the DRC in a position to possibly assist. Not as far as we know with any of the Embassies of the countries who refouled them and certainly not the British Embassy, despite the fact that all would have been told by the authorities of these countries that the return process would be safe for them. Not with any of the active human rights NGOs. Not with any of the international bodies such as UNHCR, MONUC, IOM and the Red Cross. Not with the media despite there being a variety of media outlets who regularly report stories critical of the government and its actions.
381. Many of the accounts given about these cases are exceedingly scant and so take matters very little further. As already noted, those which do give some degree of detail leave many important unanswered questions and at best amount (with one or two exceptions) to evidence at second, third or fourth hand. There has been no procedure made apparent on the part of any person taking down these case details for testing the accounts or for asking the individuals concerned for material particulars about their immigration histories, any criminal record or (with one or two exceptions) for any supporting documents. In all but one case those whose asylum claims have been traced and produced by the respondent (despite being given very little by way of proper notice about most of the UK-related cases) disclose that they were persons whose credibility about past ill-treatment was rejected by adjudicators.
382. We have considered whether, notwithstanding the lack of substance to each of the cases considered individually, there is nevertheless a cumulative weight which should be attached to them. The argument for so considering them is that they evidence a persistent voicing of concerns by NGOs and others in several European countries over a considerable period of time and that there is a significant degree of consistency between their accounts. The difficulty we have with attaching cumulative weight to this body of evidence, apart from their individual forensic shortcomings, is that we consider there are surrounding circumstances which cast serious doubt on the motives of those who have alleged they have been victims. The vast majority (certainly the UK cases) are persons who have been found not credible in their appeals and who, we know from other sources, are likely to have made their way from the DRC in the first place with the help of illegal migration networks.
383. Having made personal ties in European countries and experienced a far higher standard of living than obtains in the DRC, it is very likely that some (if not many) of these people will want to return to the UK or

Europe. They may well, therefore, have a vested interest in claiming that they were mistreated on return. Of course, ulterior motives of this kind may be absent, but what we have to bear in mind is the general context in which evidence of this kind is sought and obtained in untested and undocumented form. As regards the claimed consistency, these accounts disclose as many divergencies as they do points of agreement.

384. As can be seen, therefore, the central planks of the case mounted by the appellant's representatives have proved not to bear the weight they sought to put on them; in some cases they have collapsed very badly.
385. 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.
386. Given the great deal of time and effort that the appellant's representatives have put into this case, it is appropriate that we make clear the following. In the event of any future investigations being conducted of returned failed DRC asylum seekers, those concerned should take steps to ensure that basic relevant particulars are sought. Public funds, not to mention valuable judicial resources, are involved and must not be expended uselessly. In particular, we consider that where someone is known to have been a failed asylum seeker in the UK, initial efforts should be directed to obtaining (with authorisation) details of that person's asylum claim and the outcome of any appeal. As vividly illustrated by the case of WY, that would at least ensure that the investigations into their claims about abuse on return have some external reference point for gauging the truth of what is now claimed.

The “subjective” parts of the case

387. We turn now to the particular circumstances of the appellant's case, beginning with a summary of her claim. A screening interview took place on 3 February and additional questions were asked on 14 February. She lodged a statement dated 22 February and completed a statement of evidence form (SEF) dated 28 February. There was a full asylum interview on 21 March 2006.
388. The Secretary of State decided to refuse the appellant's application on 28 March 2006. The appellant's claim was summarised in paragraph 7 of the refusal letter as follows:

“You were born in Lumbumbashi and are of Muluba ethnicity. You are a practising Catholic.

Both of your parents were active members of the Union for Democracy and Social Progress (UDPS). Your father was President of the Yolo district of Kinshasa. Your parents were kidnapped by soldiers and detained. In 2001 your father was killed and your mother released.

After being arrested a second time your mother decided to flee and came to the United Kingdom (UK) and the family went into hiding. As far as you know, you are the only member of your family supporting the UDPS now, although you were all brought up with the beliefs.

You were married with a traditional wedding in December 2002. You have two step daughters.

When you left school in 2001 you enrolled at University to study for a nursing degree, but you did not have the opportunity to complete it.

You joined the UDPS in 2003 as an active member, before that you only attended meetings on a weekly basis. Your role was to work with and mobilise the young female members in your section. Your husband was President of the district of Makala where you lived. His role was to report to the National President Mr Tshisekedi. He was often away dealing with party activities.

You and your husband were arrested on 30 June 2005 during a march. You were both taken to IPK [Inspection de police de Kinshasa] (formerly Circo). Lots of people were arrested from different political parties. You were detained until 4 July 2005 as the National President of UDPS and other groups put pressure on the government.

You were told to stop your activities by the authorities. On 7 July 2005 you attended a huge meeting in the second stadium called Tata Raphael in Kinshasa and you continued your activities.

On 3 August 2005, 8-10 men entered your house, you assumed they were soldiers as they carried guns. They knocked on the door, and said if you did not let them in they would kill you. You hid in a room under the bed, but when your step daughter cried they found you and started to beat you, with their guns and long batons.

You and your sister were stripped and raped, whilst your husband was beaten as he was attempting to prevent the rape. Your husband collapsed and did not move. You and your husband were taken away to IPK detention centre, you knew your husband was dead. You have not seen him since.

You were detained for four days, on the second day you were questioned by the Police Chief in charge of IPK about your husband and Frank Kangundar [sic]. After four days you were taken to another prison and raped again, you then became ill from the treatment you had received and the lack of food and bad hygiene.

At the beginning of October 2005 you were taken to Mama Yemo Hospital and you had two guards accompany you at all times. On 6 November 2005 you escaped with help from the UDPS members. You asked for a nurse you knew [] to help you. You went for a test in the laboratory and on the way back to your room, [the nurse] and other members of the UDPS created a disturbance, and as the guards went to sort it out you got taken outside to a car, and you were driven to Kinsuka.

You remained in hiding. Your brother in law arranged for you to flee the DRC via an agent. You left Kinshasa on 1 February 2006 and you landed in Congo Brazzaville and stayed in the airport with the agent. You fled to the UK via an unknown African country. You arrived in the UK on 3 February 2006. You claimed asylum at the Home Office in Croydon on 3 February 2006.

You have stated that if you return you fear the government, because you are wanted by them.”

389. The Secretary of State considered that the appellant would not be of interest to the authorities because she was such a low level member. It

was not accepted that the appellant had been detained alone in the second detention centre in the light of the background material. It was not believed that the appellant was taken to hospital because medical treatment was not free of charge and the appellant's family were, on her account, not aware where she was.

390. Even if the appellant had been arrested, as she had been released after a few days, this confirmed she was of no interest to the authorities.
391. No evidence had been provided of any connections that the appellant's husband had with Franck Kangundu or Tshisekedi.
392. In paragraph 14 of the letter the Secretary of State believed that the appellant came to the United Kingdom to join her mother and that she was aware that she was coming to the United Kingdom.
393. A point was taken on s.8 of the Asylum and Immigration (Treatment of claimants etc) Act 2004 as the appellant's agent had produced a forged passport apparently with the appellant's own picture to a Home Office official as if it were a valid passport. The appellant was served with a notice of the decision on 29 March 2006 and a notice of appeal was lodged by Biscoes Solicitors on 13 April 2006. The grounds of appeal are not particularly informative but take points on asylum, humanitarian protection and human rights grounds.

The Appellant's case

The Appellant

394. The appellant was called and gave evidence through an interpreter in Lingala. She adopted her statements. At the interview she had given the date of the death of Franck Kangundu as 2/3 August 2005. That date had been given to her by a relative but she now understood the correct date was 3 November 2005.
395. The appellant had joined the UDPS in 2003 and she came from a political family. UDPS meetings were held at the family home every Saturday and as the appellant grew up she started taking an interest. She married her husband in 2002 and his position was President of the Makala district branch of the UDPS. The appellant said her husband visited President Tshisekedi quite often, two or three times a week. He was also in contact with Remy Masamba (the Secretary General of the UDPS) and Alexis Mutamba (the National Secretary of the UDPS). The appellant's husband would see these people quite often, sometimes meeting at the President's house.
396. The appellant was first arrested on 30 June 2005 at a demonstration about the elections. Everyone was arrested on the march. The appellant was taken to IPK where she remained for four days. The detainees were released after the Presidents of the various parties met.
397. The second detention was on 3 August 2005. The appellant was arrested at her house and taken again to IPK. She was asked if she knew Franck

Kangundu. The conditions in the cell were very bad and she was given no food or medical treatment. She was given food in the second jail where she fell ill. She was raped on several occasions by the Chief of the Prison. She was beaten up and the food was not good and the water was dirty and the conditions were deplorable.

398. She was ill-treated because she was being questioned about Kangundu and her husband. The appellant denied knowledge of Kangundu. Her husband knew Kangundu well because they were friends. They would meet at their house or elsewhere.
399. One day the appellant became ill with a pain in her stomach. When she asked to go to the toilet she collapsed and found herself in the Mama Yemo Hospital where she had been a trainee nurse in 2001. On arrival she was in bad shape but was given injections and antibiotics.
400. She was helped by a nurse, with whom she had worked as a trainee nurse. This nurse was also a UDPS activist. She was Head of Care. The appellant explained her predicament to her and she said she would assist the appellant to get out of the hospital.
401. On the day she escaped the appellant was going to the hospital laboratory for tests. In the corridor a group of about twenty people created a disturbance and the appellant was taken out of the hospital and she went into hiding outside the capital in Kinsuka for two and a half months. She then crossed over to Brazzaville by canoe and the arrangements were made by her younger sister's husband. She had had no contact with other family members at that stage. She got a plane and transited to another country and she did not know what country it was because she remained at the airport. She then took a plane to the UK.
402. In the UK the agent who had accompanied her left. The appellant telephoned a number she had been given and she spoke to her mother who was surprised because she was not aware of the appellant's whereabouts. She had last seen her mother in 2002 when she had been arrested and she did not know that she was in the United Kingdom. She had been given her number by her younger sister who had got it from her mother's friend, AN, where her younger siblings were staying.
403. After her mother's arrest in 2002 she had taken her younger siblings and stayed with AN but after an argument they left, leaving the younger sisters with AN.
404. The appellant said her husband died on 3 August 2005. He had been beaten up when the soldiers raided their house. She had heard from her cell in Makala that he had never been seen again. In Makala there was one girl – two girls including the appellant.
405. The appellant denied that she was no more than a low level member of the UDPS. She mobilised young mothers and girls so they could join the party. She recruited people. She said she recruited many people but was not specific about numbers.

406. Reference was made to the UDPS cards in the appellant's bundle. She referred to her own UDPS cards, and said that her husband's card had been sent to her younger sister who had taken them to DHL. There were also her mother's UDPS card and identity card as well as arrest warrants.
407. The address on the warrants was number 3 although the appellant's address was in fact number 5. The documents had nevertheless reached her correct address. It was plain that the authorities had searched her accommodation.
408. The appellant had two stepchildren who were staying with her younger sister in Kinshasa. The appellant's mother and younger sisters lived together in the UK. Although the appellant lived on her own she was not far away and saw them each day. If she were to be returned to the DRC she would be killed because she had escaped. The appellant confirmed that Kangundu had died on 3 November 2005 and said she had recruited some twenty to thirty people for the UDPS.
409. The appellant was cross-examined and asked about her family circumstances. She said she had one brother and a sister (NK) born on 5 May 1982. She had two other sisters born in 1987 and 1992 respectively. The younger sisters did not have the same mother as the appellant.
410. The appellant was asked about when the younger sisters had come to the United Kingdom and said she did not know. They had come years before her. She had last seen them in the DRC at a party in December 2003. The appellant was referred to the respondent's bundle at page 32 and it was suggested that she had given a different account. The appellant said that in referring to the party in December 2003 she remembered that it had been in December but she did not know which year. It must have been December 2002. The party had been for Christmas and it was after she had left AN's house. She had left AN's house in 2002 although she did not remember the month. She had had no contact with her two younger sisters after she had got married.
411. After her mother's arrest in January or February 2002 she had stayed with AN but had not stayed long, for perhaps two or three months. She had gone to join her husband and stayed with him and she had not seen her siblings but she had invited them to the Christmas party in December 2002. The appellant was asked why, at her screening interview she had said she had last seen her sisters in May 2004. The appellant said she did not know.
412. The appellant explained how she had obtained her mother's number. Her mother had found someone in the United Kingdom to make enquiries and she had given her AN's number and that person had given the mother's number. She had had no contact with her mother between 2002 and 2006. The appellant's sister had got the number when she had gone to look for her other sisters – when she had got to AN's she had not found them but she had been given the number. She did not know whether AN had had the number by 2004. Her sisters had come to the United Kingdom between 2004 and 2005. Although the appellant's sisters knew where she was they did not come back or let her know her

mother's telephone number and she had not very much contact with them.

413. The appellant said she had last seen her sister, NK, when she had fled to Kinsuka. She had given someone NK's address and someone had told NK where the appellant was.
414. The appellant was alone in Kinsuka and UDPS members had found her sister. She had travelled to Kinsuka in a minibus and the UDPS members had not told her their names. One member had brought her sister to her on one occasion and that had been the last time she had seen her. This was roughly a month before she had left the country. The appellant was reminded that at her screening interview she had said she had last seen NK on 30 January 2006 somewhere in Kinshasa. The appellant said that this was roughly a month after she escaped. It was pointed out that it was the night before she said she had left the DRC. The appellant said she had last seen her the month before she had left, not the night before she left. She had escaped from the hospital in November and had not seen her in December. She had forgotten the date. It was suggested to the appellant that she would remember seeing her sister the night before her departure.
415. The appellant said it had not been many days before her departure that she had seen her sister and she had seen her sister in Kinsuka rather than Kinshasa.
416. The appellant was asked about her interview and how it had arisen that two mistakes about her staying in a hotel had been made. The appellant said that in Brazzaville she had not stayed in a hotel as recorded. She had remained at the airport and was waiting for an aircraft. She had gone by canoe to Brazzaville. The interview had been read back to her and the appellant had corrected the reference to the hotel. She had stayed in a restaurant at the airport. It was pointed out that the appellant had not corrected the reference to seeing her sister in May 2004. The appellant said she had not known if she had met with them in May 2004.
417. The appellant agreed that she spoke Lingala, French, a bit of English, and Swahili. However, she had not known the name of the airport where she had stayed for only a few hours. She had stayed in the waiting room. If there had been announcements on the aircraft she had not heard them and there were no signs at the airport. Any announcements at the airport had not been heard by her. She had no idea of the country where she was. When she had got off the aircraft it was possible they were talking in a language, possibly English, but at that time she did not know any English.
418. The appellant agreed that she had said that Franck Kangundu had been killed in August 2005 – the day her house had been raided. It was pointed out that E1 had said that Kangundu had been killed in November and not in August whereas on being questioned by Mr Jacobs the appellant had said November and that a relative had told her that it had been in August. The appellant said that when she had verified the matter

she had been told it was November not in August. She had not been told the day she was arrested. She had been told when she was about to leave the country by her sister, NK.

419. party in his district when she had met him. When they had first met they had hidden their relationship from her parents. She had been aged between 17 and 19 when she had first met her husband in about 1996 although she could not be specific. He had come to meetings at their house two or three times a month from 1996/1997 approximately. The appellant's father was President of Yolo Sud and her husband was President of Makala, a sub-division of the Funa section of the UDPS in Kinshasa. Her father had gone to Makala but, although they are neighbouring districts in Kinshasa, it was a little bit far away. Only the Presidents would go from one district to the other. The Secretary of State had not been able to identify her husband but this was because it had been the Yolo district that had been checked.
420. The appellant denied that she was a low level member. She gave the name of a man (Emma) whom she said was the UDPS secretary for the Makala district. She also referred to the name of her husband's deputy [PS] but she had no contact details.
421. The appellant was asked to give details of the structure of the UDPS in Kinshasa. The appellant said there were three local branches. She referred to Funa and Mohambu. Yolo Sud was a branch in Yolo. The Federation was Yolo which was part of Funa. Makala was within Yuhuele. The appellant's husband was responsible to the President of the Yuhuele Federation. The President of Yuhuele was called [A]. The appellant was asked whether there could be three or more federations and she replied "there could be five to seven. In the Makala area there was Ngaba and the environs." She did not know any other Presidents apart from [A].
422. The appellant was asked why she could not explain the motto, emblem and slogan of the UDPS at interview. The appellant said she had been unable to explain because she was still in shock. She was, however, aware of the slogan because she repeated it at all the meetings. The appellant was reminded that she was being asked about these matters at her main interview in March and not at her screening interview.
423. The appellant was asked whether she had requested the UDPS to organise the release of her mother or find out what had happened to her. The appellant said that at the time of her mother's arrest she did not know that her husband was in regular contact with UDPS leaders because she did not know everything about him. She came to know everything about him only when she lived with him. The appellant was reminded that she had said that she had left AN's house and lived with her husband. The appellant agreed that when she lived with him he had told her. The appellant said she had attended some UDPS meetings and asked about her parents but they were never found. The appellant had joined the UDPS in 2003 but had found no trace of her parents.

434. During the course of the appellant's second arrest she was held with other prisoners but had not spoken to them. She had not been held in a cell on her own. There had been another girl there. However, after two days the girl had been taken away and the appellant remained on her own. She had been raped in this prison not the IPK prison and had been taken to hospital from this prison. This was in September/October 2005. She had had a scar because of an earlier appendicitis operation which had gone wrong in the mid-1990s.
425. She had not sought medical attention on her arrival in the UK – it had taken some time to arrange. She secured accommodation in April and then was able to make arrangements to find a doctor. No medical evidence had been produced.
426. The arrangements for the appellant's departure from the DRC had been made by the husband of her younger sister. The appellant was reminded that at interview she had said that the agent had been arranged through the UDPS. The appellant said that the financial arrangements had been made by her sister's husband and UDPS members had arranged the agent. The UDPS had not known that the appellant was coming to the UK only that she was coming to a country where she could get protection. There had been one UDPS member called [ER] who had been in contact with the agent.
427. The appellant's sisters had come to the UK on their own passports arranged by the embassy and paid for by her mother.
428. The appellant was asked why her landlady kept the accommodation in Kinshasa available to the appellant. The appellant said this was because the door had been damaged and her belongings were inside and so it was not possible for her landlady to rent out the accommodation. In re-examination the appellant was asked about the date her sisters had come to the United Kingdom. It was possible, she said, that she had last seen NK on 30 January 2006. She had many problems and it was the first interview she had had. She was asked why she had not changed various mistakes at the interview and said that sometimes she had not read it through. The Home Office interpreter had not been good at Lingala. At the fuller asylum interview on 21 March 2007 the appellant said she understood the interpreter but some questions she could not follow.
429. She had left AN's house with NK. She had gone to her husband and NK had gone to live with her husband. She had last seen her sisters at the Christmas party. They had not yet known about their mother. They would have told the appellant had they known.
430. She had last seen NK in Kinsuka not many days before she left Kinsuka. She had arrived in Brazzaville on 1 February 2006 and stayed in Brazzaville for some hours. The flight to the other African country had not taken very long.
431. Some forty to fifty people attended the meetings in her house and she would not describe herself as a high level UDPS member – she mobilised the mothers and the young girls – Counsel referred to his note of the

appellant's earlier evidence "I was not only low level I was mobilising the mothers and the young girls."

432. Miss Giovannetti said there was a line of enquiry which she had omitted and she asked the appellant some further questions. The appellant confirmed she had been raped in her cell and no one else apart from the Chief of the Prison had been present. Guards were there when the chief had come in. The chief had raped her and asked about Kangundu and if the appellant wanted him to protect her, the appellant should be his wife. She did not know whether anyone else had seen the rape but she thought the guards might have seen.
433. The appellant was referred to page 12, paragraph 12, of the appellant's bundle where she had said she had been raped on three occasions and on each occasion she had been raped by two men. The appellant then said that the Chief had raped her first and also the guard who came during the night. This was not the guard who had been present when the commander had come in but the night guard. She had been raped on three occasions, once by the Chief and twice by the night guard. The appellant was asked why she had not said this in her statement. The appellant said there had been guards.
434. In re-examination by Mr Jacobs it was put to the appellant that her evidence at the hearing was not exactly the same. She said it was difficult to talk about, but accepted that there was an inaccurate account in the statement. The appellant said that her present account was the accurate one.
435. The appellant was asked by the Tribunal about details of her journey. She had stayed in a restaurant not at a hotel. They had gone to a hotel in Brazzaville just to get changed. They had travelled by night by canoe to get to Brazzaville. They had not checked into a hotel. The journey from Kinsuka to Kinshasa was not that long a journey and could possibly take some one and a half hours. Kinsuka was on the way to Bas Congo.

The appellant's mother

436. The appellant's mother gave evidence and confirmed that she had been granted refugee status following a successful appeal to an Adjudicator (Mrs D Witts) and produced the photographs including photographs of her with the President Tshisekedi. There was also a photograph of her attending a demonstration at Parliament.
437. The appellant had been able to make contact with her family in the Congo after her interview when she had got in touch with the Congolese committee. She had met a woman called VK with whom she had lived in the same area in the Congo and VK had telephoned her mother to try and find AN. VK's mother went to see AN and told her that the appellant's mother was in London. The witness learned that only the two younger children were with AN and the grown ups had left. AN said that life was quite hard and the witness had agreed to help. AN said that she did not know the whereabouts of the appellant and NK. The younger girls did not know where the appellant was. The younger children were now with

the witness after the witness had applied for family reunion and they had arrived on 30 March 2004. The witness described how the children were not her natural children and their father had had them outside of wedlock.

438. She had next had contact with the appellant when she had come to London Airport. She did not know that the appellant was coming. She asked the appellant how she had got her number and she said that NK had given it to her. She was now in contact with NK. She did not know the appellant's husband – he was someone who had come to party meetings.
439. The witness said that she was involved in the UDPS in the UK. She had attended two meetings, one when Kabila had been in the UK. She had attended three protests. She was in the Portsmouth Branch of the UDPS as was the appellant. They attended meetings once a month in the home of one of the members in Portsmouth. She saw the appellant almost every week and helped her as she had back pain. She had her own accommodation from NASS otherwise they would live together.
440. In cross-examination the witness was asked about the children and she said she had brought them up as their mother. They were born in 1987 and 1992 and had come to her in 1988/1990 and 1993/1994 respectively. Her husband had died in 2001 after Kabila's death and that was when they had problems.
441. They had been brought up as a close family unit. She considered that the eldest daughters should have been looking after the young ones and was shocked to learn they had abandoned them.
442. She had joined the UDPS before her husband and before he had held the position of President of Yolo Sud. In her own appeal she had described his position as Vice Secretary. The witness said that her husband had not been a secretary. At first he had been and later on he had become a President. The appellant came from a UDPS family – the UDPS was like a church. The appellant had already been actively involved when the witness had left the DRC. She had been going to a lot of meetings and special events and had issued invitations to those events. She had contacted the UDPS in Sheffield.
443. The witness was asked if she had requested the UDPS to trace her family in Kinshasa. She replied that during that time she had been more interested in the younger children. Miss Giovannetti put it to the witness that her blood daughters did not know whether she was alive or dead and she had taken no steps to contact them. The witness replied that she had done everything possible. She had had a lot of problems. She thought she would look for the young ones first and then she would search for the grown ups. She had waited for a five year period and had then got UK citizenship “but with God's help the appellant came herself and so now I am reunited with all of them.”
444. The young daughters had arrived on 30 March 2004. She described how the appellant had telephoned from the airport. She told the appellant to

stay where she was and she would telephone a friend to collect her. VK picked her up, took her to the Home Office and then the witness came to meet the appellant.

445. The appellant was not in a good physical condition when she arrived. The witness said that she had told the appellant they should finish the asylum procedure and then she would be given accommodation. The appellant had had an operation as a young child. She had tried to register the appellant with a GP but the GP had refused to take her. The appellant had arrived on Friday and the witness had taken her home on Sunday 5 February. She had not taken her to a hospital as she had not collapsed. They had a GP at a dispensary.
446. The witness said she was in contact with NK since the appellant's arrival. She had only telephoned the witness after the arrival of the appellant. They had the telephone number of the witness but they never telephoned because they had no money. It was pointed out that it was said that NK's husband had financed the journey. The witness said that her husband was not there. If her husband had been there it would have been easy for her to make the call.
447. The witness said in re-examination that the younger children's' father had died in 2001. AN had looked for the appellant and her sister but could not find them. She would have looked around the local area. NK's husband was in South Africa and had left some food for his wife in the fridge but she could not afford to spend \$10 on a telephone call.
448. In questions from the Tribunal the witness said that the appellant had telephoned her from the airport in the morning. She had given her friend the details about her address and so on and these had been written down and given to the appellant for her to reproduce in the interview. The young children were 14 and 9 respectively in 2001 and they had been living with the witness since they were 2.

JK

449. The next witness to be called was JK, President of the UDPS in the UK. He produced his letter dated 27 June 2006 and relied on his statements dated 18 June 2007 and 26 June 2007. He had got the information from the Kinshasa Headquarters and had spoken to the National Secretary. He had spoken to the UDPS National Secretary in Kinshasa, Alexis Mutamba. He had then spoken to the UDPS Branch Secretary for Makala – Emma Kuna. Mr Kuna had got the information about the appellant from persons who had been arrested with the appellant. The witness had not asked any more questions. He spoke to President Tshisekedi once a month. Remy Masamba was the UDPS General Secretary and Maitre Mukendi was a solicitor, the National Adviser. He would not hold information in his role – the membership information was held by the National Secretary. Alexis Mutamba was the official person who could confirm the details.
450. In reference to the British Embassy letter, the witness said the appropriate person to talk to was Marie Nzeza who was the National

Secretary who dealt with UDPS diplomacy. The witness did not know of the other individuals mentioned in the letter.

451. The witness was asked about the slogan the appellant had referred to in answer to question 46 at her interview (Progres Unité Amour). The witness said the first two words were familiar to him and not the third. There were various mottos for the UDPS such as “Be strong the UDPS will win” or “Carry on fighting you will be freed” or “UDPS will govern”.
452. It was not surprising that the appellant would have little knowledge because the UDPS were persecuted and did not have time to teach the members properly.
453. The structure of the UDPS was (from the bottom up) cell, sub-section, section, federation. In Kinshasa there was formerly one federation but it was now divided and there were four – 1. Funa, 2. Tshangu, 3. Mont Amba and 4. Lukanga.
454. In cross-examination JK said that the initial letter had been written at the request of the appellant who had come to raise an immigration issue and she had asked the UDPS to support her case. He had sent the letter to her solicitor as the UDPS dealt with third parties. It was pointed out that the initial letter had been addressed to “whom it might concern” rather than a solicitor. This contrasted with a later letter sent directly to the solicitors.
455. The witness said he had originally spoken to the National Secretary Alexis Mutamba and then had spoken to Emma Kuna. Alexis Mutamba did not know of the appellant. As the solicitor had wanted to know more that was why he had been permitted to speak to Mr Emma Kuna. The appellant had not told the witness about her husband’s activities – about giving information at a high level. As to his being in personal contact with President Tshisekedi, Tshisekedi received all sorts of people – any Congolese could say they were in contact with Tshisekedi.
456. As far as information from the UDPS in the DRC, the witness said he was trying his best. If possible he would get information from the National President. With reference to paragraph 8 of his statement dated 18 August 2007 Emma Kuna had told JK that the information came from two ladies but he did not know that included the appellant. It was pointed out that the appellant said no ladies were present and no person could have seen. JK said that the security forces detained and used sexual methods to dishonour people and maybe it was presumed that she had been raped. He would not like to guess.
457. He agreed with E1’s evidence that anything could be achieved with money. However, the UDPS was special and run by volunteers. Efforts were made to fight against the issuing of false documents purporting to have been issued by the UDPS.
458. Emma Kuna was the right person to give information about the appellant and her husband. Emma Kuna had told him about two women who knew the appellant had been raped. When asked whether all the

information had come from Emma Kuna the witness said that Alexis Mutamba had made a lot of enquiries and had used the network to get information. The official UDPS slogan had never been “Progres Unité Amour”. The official slogan was “Liberté Justice Travail”. However, most members had no good knowledge of this slogan.

459. In the UK the UDPS had 350 paid up members and another 1,000 members in the community. Some 50 to 100 members had contacted him in 2007. People who used the motto described by the appellant would know something about the UDPS. They could accept the motto. There were no doubts in the case about the appellant’s and her husband’s honesty – Alexis Mutamba had given Emma Kuna’s number and Alexis trusted Emma.
460. In answer to questions from the Tribunal the witness said that Kalamu and Makala were next to each other. He thought Kalamu was in Fona and Makala was in the Mont Amba Federation. Alexis Mutamba was not responsible for membership. The membership was for the Branch Secretary in charge of the membership. Much of the information would have come from the Makala district.

Evidence of E1 Regarding the Appellant’s Case

461. The Tribunal heard from E1 on the parts of his report dealing with the appellant’s case. The issues of returned failed asylum seekers generally were to be dealt with at the adjourned hearing. E1 referred to his report dated 31 May 2006. The position as set out there was still valid. Despite small initiatives that had no bearing on the overall situation of human rights, the current state of the DRC was as lacking in organisation as it had always been. The composition of the government lacked direction and the Prime Minister was not capable of executing his task.
462. E1 spoke about the Kangundu affair. The newspaper “La Référence Plus” was one of the better newspapers and distributed mostly in the urban areas. Mr Kangundu had been murdered on 3 November 2005 with his wife at home. E1 referred to his report at pages 80 and 114 of the appellant’s bundle.
463. There had been a personal rivalry between the Interior Minister, Mbemba, and the Deputy Secretary General of the People’s Party for Reconstruction and Democracy (PPRD), Lukiana. The situation was very tense in the run-up to the elections in 2005 and both parties needed funds but it was not in the interests of either or any party to reveal the state of corruption. This issue was swept under the carpet and President Kabila was involved in the embezzlement too. Some journalists published articles on the corruption issues. Kangundu was collaborating with politicians very close to Kabila and he had obtained information about the embezzlement of funds and there was a threat that he would publish the information and accordingly he was killed before he did so. There was a threat to all journalists implicit in his death that they should not publish any more information about embezzlement in the presidential party. The information is set out at page 50 of the consolidated bundle at paragraphs 18.09 and 18.10. The evidence about

the affair at page 220 was also correct as at the date of publication although there had now been a trial of those involved in Kangundu's death. Although there had been convictions one person had been convicted in absentia having been miraculously liberated before the trial. One could deduce that he knew too much. There had been no mention at the trial of those behind the murder and the whole issue was still very sensitive. In August 2005 the UDPS constituted a real threat to the government because it had mobilised Kinshasa against the postponement of elections and there was a real fear the transitional government would break down and any information that would have been transmitted would have been explosive and all involved in the transmission of information would have been very closely monitored. The appellant's account was plausible.

464. E1 said that the perception of involvement with the Kangundu affair might constitute an element of risk on return. Regarding the appellant's escape, the Prison Director would notify an escape to the judicial authorities to avoid being accused of complicity. Information would be passed to the Prosecutor General who would issue a search warrant and a list would be kept at the airport. Escapees would be arrested on return and might not leave the country.
465. If the appellant was perceived to be a threat to a key person in the regime she would be at risk from the regime.
466. With reference to the embassy letter in the respondent's bundle at page 3, the appropriate person to ask for information would be Remy Masamba as he was responsible for membership.
467. E1 was asked about the appellant's husband's name. The last name was a common name – like Jones. The middle name was also very typical. E1 had no particular knowledge of the other individuals specified in the letter.
468. Makala and Kalamu were part of Funa district. Yolo was part of Kalamu. There were four districts and four federal Presidents. Reference was made to page 3 of the respondent's bundle. The appellant's surname was a typical Lubu Kasai name. There was Lubu Kasai and Lubu Katenga. The Lubu Kasai were UDPS while Lubu Katenga supported Kabila. The Lubu Kasai had no physically identifying characteristics to identify them as such.
469. E1 was taken to his comments on the appellant's witness statement at page 114 of the bundle and confirmed what he said there. Politics tended to be a family affair. If a person's father was involved all the family would be considered to be sympathisers and activists. It was suggested to E1 that the appellant's claim that she mobilised the female members to the party – was that something daughters would do? E1 replied "you could not say it was automatic – it was plausible." It was not implausible that the appellant would be kept alone in a cell in detention. He was referred to what he had said about a transfer to a medical centre being something which could be done without payment "but mostly in a situation where the sick prisoner is agonising" – see page 115 of the

bundle. That meant when a person was on the brink of death. The only rule was one of arbitrariness.

470. While rape was common in the DRC that was less so in Makala. In Makala it was a question of sexual harassment. A person was asked to provide services of a sexual nature. Rape happened less in ordinary prisons and was more prevalent in obscure detention centres.
471. The risk factors for the appellant were her connection with the Kangundu affair, her perceived involvement with activists and her escape which would have been recorded. There was also the question of the generalised risks facing failed asylum seekers which would be dealt with at the adjourned hearing.
472. E1 was then cross-examined. On the Kangundu affair, it had been considered shocking nationally and internationally. E1 was asked whether in any of the coverage it had been suggested that the UDPS had been involved.
473. E1 said that Kangundu's contacts with Mbemba dated back to the UDPS period. He had no current link with the UDPS. There was a perception that information had been passed but no proof. Mbemba could keep personal relationships with UDPS members. It could be deduced that sensitive information had not been passed to the UDPS because the UDPS would have published it particularly at the sensitive time of the events. Was it plausible, E1 was asked, that Mr Kangundu would provide information to the UDPS. E1 replied that it was certainly risky. They would not have discussed explosive issues otherwise those issues would have been published. President Tshisekedi would have several networks and Mukendi would have been one network.
474. E1 could not confirm whether or not the appellant's father was UDPS President for Yolo District (see page 114 of the bundle). He had never been asked to undertake the research. He had been asked to provide details in other cases but not in this case. He had not been asked to check about detainees following the arrest on 30 June. It was, however, a matter that could be checked.
475. E1 was asked whether someone like the appellant would know the four federations in Kinshasa. E1 said that many activists who were not officials did not have a deep knowledge of the party's structures. Female members were often kept out of politics as politics was regarded as a man's affair.
476. E1 was referred to questions that had been posed by the Home Office. E1 said he had never been instructed by the solicitors to do the research.
477. Mr Jacobs intervened to say that the appellant's representatives had decided to obtain the material from the UDPS directly. The Tribunal asked Mr Jacobs why there had been no response to the Home Office letter. Counsel said that the solicitors had taken the view that the expert would cover the point generally and that the UDPS could deal with the evidence directly. The letter from the Home Office read like a cross-

examination of the expert. There was no need to do local research when the material was available from the horse's mouth. The Tribunal asked whether the effect of the evidence so far was that the horse's mouth was Mr Kuna. Reference was made to an e-mail from the solicitors dated 23 June 2006 which strongly suggested that they were going to instruct the expert and an Immigration Judge had made directions that a response from E1 was to be served on all the parties.

478. Counsel said that the point could be dealt with in submissions.
479. E1 commented that the report had been compiled under pressure of time. Appearances and impressions were more important than reality.
480. In answer to questions from the Tribunal, E1 confirmed that Makala was a neighbouring commune to Kalamu. They were both fully urban areas. The appellant's husband went to meetings in Kalamu and Makala and that was plausible. The President of an area such as Makala would be a person of note and respect. The appellant's husband's name would probably have been known in other parts of the Federation. However, in the DRC people liked titles and it was not always very clear what the title covered. People might not therefore know. To some extent activism might extend their profile at a local level. As these were big urban districts it was possible someone would not know all the officials. It was possible that ordinary UDPS members did not know the Presidents of neighbouring communes. He would expect Mukendi to know but his official function was not clear.
481. Regarding escapes, the question was tied to the importance of the person who escaped. However, the general rule was one of arbitrariness.
482. Miss Giovannetti asked whether, if everything could be settled by money, the UDPS was immune? E1 said it was a question of risk assessment. If a bribe was accepted a person might be dismissed or arrested. It might be a question of asking a higher bribe or refusing the request. This was a general rule.
483. Counsel asked whether the appellant's escape would be reported and E1 said he presumed so.
484. When the hearing was adjourned until September to deal primarily with evidence going to the risks on return for failed asylum seekers, among the documentary evidence presented to the Tribunal at the September hearing was material relevant to the appellant's individual circumstances. In a letter dated 30 July 2007 to an official at the British Embassy Aka Mantsia wrote on behalf of the National Presidency of the UDPS, that the Makala section of the UDPS had confirmed that the appellant's husband had been the President of the Makala Section and that the appellant "was also a member of that section tasked with mobilising mothers." Mr Mantsia continued that both the appellant and her husband had been arrested on account of their UDPS activities, on 30 June 2005 (after which they were released) and then again in August 2005 at their home. The appellant's husband had since been reported missing while the appellant "was forced to leave the country." The

appellant's husband had worked "on sensitive documents" as a Section President. Further details were withheld on grounds of confidentiality or security.

485. In an undated letter to the appellant's representatives Mr Mantsia said that he had been present at a meeting between the same British Embassy official and President Tshisekedi on 26 July 2007 when the President had been asked whether the names of the appellant or her husband had mean anything to him. The President answered that the party had many members and it would therefore be difficult to answer these questions with precision without an enquiry. He never denied [infirmé] knowing the names (the text had originally been translated as "He never *confirmed* knowing the names, but this was said to be explained by an interpreter's mistake). Mr Mantsia had no reason to doubt the information provided by the Makala branch, and it would be contrary to the ideals of the party to lie to the President. His colleague Mr Mukendi could not recall a meeting with the British Embassy official although he had given someone the name of the current President of Yolo.

486. The British Embassy commented on Mr Aka Mantsia's letter in a letter to the Treasury Solicitors dated 3 August 2007. In addition to the points raised in the letter the same official had not been able to obtain confirmation that the appellant's father had been President of Yolo Sud or other matters pertaining to the appellant's parents. The official commented that:

"I have some reason to doubt the credibility of these answers, as none of the UDPS members that I or my colleagues spoke to had ever heard of these names before now – at which point the Makala branch became involved. The members we spoke to (prior to this point) have frequent dealing with many UDPS branches, particularly in Kinshasa (Makala is a suburb of Kinshasa) and would be in an excellent position to know branch Presidents; The fact that four middle-ranking and senior interlocutors did not know these names at all suggests to me that this could be an entirely local initiative."

487. In an email dated 14 September 2007 the Embassy official gave further details of the enquiries he had undertaken. He stated that at no point was Tshisekedi in the same room with him when he (the Embassy official) met Aka Mantsia. Aka Mantsia's letter was inaccurate.

Submissions Relating to the Appellant

488. We set out here the submissions relevant to the "subjective" element of the appellant's case. We do this for convenience although we should make it clear that we have set the appellant's evidence in the context of the entirety of the objective evidence and made our credibility assessment taking into account all the material before us.

489. Mr Jacobs referred to his skeleton argument. He noted that it was not in dispute that were the appellant to suffer imprisonment, the conditions would be such as to infringe her Article 3 rights. Accordingly, evidence that could have been adduced on that matter from the expert had not been.

490. It was also not in dispute that the country guideline case of MM was not challenged by the Secretary of State – it was still too soon to conclude that the UDPS was not perceived as a threat.
491. Mr Jacobs submitted that the credibility of the appellant should be accepted, her bearing and demeanour were to be taken into account. She was nervous and emotional and distressed when recalling the traumatic details. Where there were any inconsistencies, the low standard of proof should be borne in mind. Furthermore, giving evidence was not a memory test and the appellant was a victim of rape who had witnessed the murder of her husband. She required hospital treatment.
492. The paranoia of the Kinshasa government was heightened because of the evidence relating to She Okitundu and there would be an enhanced interest because of the appellant's coming from the United Kingdom. Paranoia was indeed an important element in the appellant's case which centred around Franck Kangundu who had known her husband for some time. The expert evidence about Kangundu was endorsed by the Journalistes en Danger Report.
493. The appellant had given the name and address of the Référence Plus newspaper at interview. The background material supported the appellant's case that she would be of interest since, following the death of her husband, she would be the remaining conduit of compromising information.
494. If the appellant's account were credible she would be at risk on asylum and Article 3 grounds and her past ill treatment bore upon future risk (Demirkaya [1999] Imm. A.R. 498).
495. The Secretary of State had sought information about the appellant from the wrong UDPS branch. Counsel referred to the British Embassy official's letter of 3 August 2007 and the enquiries made by those instructing him of Aka Mantsia – we were referred to the letter of 6 September 2007. The point about Tshisekedi not having heard about the appellant and her husband had been clarified.
496. The Secretary of State had failed to disclose information that he obtained. Enquiries had been made of the wrong district and in the light of the information received had tried to put forward adverse credibility points which did not stand up. The British Embassy official had not been frank with the court and instructing solicitors had reservations about his conduct.
497. The official in an email expressly denied Tshisekedi's presence at the meeting and the letter that he did not disclose (but which the solicitors had managed to lodge) made it quite clear that the request was made of Tshisekedi. The appellant's evidence had been confirmed and corroborated by the UDPS leadership and lent considerable weight to the appellant's account.
498. Further support was given by the appellant's mother's evidence. The appellant's mother had been found credible by an adjudicator in her

asylum appeal and she confirmed the background of the appellant's account and the fact that she had been from a politically active family where there had been frequent political meetings. The determination confirmed the appellant's father's ill treatment and death and the mother's relationship to President Tshisekedi. This relationship was confirmed by the photographs.

499. The appellant's mother had been held in detention on her own as had the appellant, contrary to the point made by the Secretary of State.
500. JK had spoken to Emma Kuna and had been able to establish the facts through local officials. There were the letters from Aka Mantsia.
501. E1 in his first report specifically referred to the appellant's case and confirmed that political allegiance was a family affair. He confirmed that the situation in the DRC was explosive and the country was rife with corruption. The prison conditions were appalling and the security service considered themselves to be above the law. Rape was prevalent.
502. The background material (emphasising that the UDPS were carrying out a show of force in January 2005) set the appellant's arrest in context. The UDPS had a significant chance of destabilising the government. There was evidence about Franck Kangundu.
503. The appellant would face risks on return being viewed as having brought dishonour on the country. She would be interrogated about the facts that gave rise to the original asylum claim. If returned as part of a collective return that would give rise to the greatest risk.
504. The appellant's escape would be recorded and would aggravate the risk on return. It was clear she would suffer ill treatment at the airport.
505. Miss Giovannetti acknowledged that the giving of evidence was not to be regarded as a memory test but inconsistency and vagueness about matters of great personal significance could properly be taken into account. An example was the account of the rape and Mr Jacobs had asked the appellant which account was true. Another example was the date when she had last seen her younger sisters – was it May 2004 or Christmas 2002. There were also inconsistencies about the circumstances in which she had last seen NK. The account of her travels contained implausibilities.
506. The appellant had not been taken to hospital in the United Kingdom despite her claimed serious illnesses and had just got paracetamol from her mother.
507. She was a claimed high level UDPS activist who could not even describe the UDPS logo. In relation to the slogans, JK had said no more than that the appellant might say these things.
508. The Secretary of State did not accept that the appellant was a high level activist. It was accepted that the appellant was a low level some time member of the UDPS.

509. In relation to the appellant's mother's evidence there were no documents to show that the younger sisters had been brought to the United Kingdom legitimately. This was an important point. The documents had been requested since July. Why had the alleged high level UDPS connections not been used to help to find the family? There was also the question of why NK had not telephoned her mother in the United Kingdom – it was said she could not afford to telephone, yet her husband was said to be wealthy. She had not taken the appellant to get medical treatment and no one had heard of her father, claimed to be President of Yolo Sud.
510. In relation to the evidence concerning the membership of the UDPS, E1 had not been asked to confirm the involvement of the appellant and her husband. Despite regular contact with Tshisekedi and the giving of explosive information regarding government corruption there was nothing direct from senior figures, the information had come from branch level.
511. It was not disputed that Franck Kangundu had been shot but it was not accepted that the appellant or her husband had any connection with Kangundu.
512. The evidence of the appellant's rape was said to be confirmed by the evidence of 2 women witnesses but the appellant had said that the rape had not been observed.
513. Tshisekedi himself had not confirmed knowledge of the appellant or her husband whichever version of the translation was accepted.
514. The British Embassy official had denied speaking to Tshisekedi. Either he or Aka Mantsia was not telling the truth. The former was a career diplomat who had confirmed he had not seen Tshisekedi.
515. Aka Mantsia had been used to keep Tshisekedi at a distance it was said. It was all very murky. There was no clear explanation.
516. Mr Jacobs, in reply on the personal aspects of the appellant's case, submitted that the appellant may have found matters difficult to recall but she was a rape victim who had been traumatised. Reference was made to the IAA Asylum and Gender Guidelines. There had been confusion about when she had last seen her sisters and NK.
517. She had escaped hospital after her treatment had been concluded and was therefore no longer in need of medical treatment in the United Kingdom.
518. Most asylum seekers were unaware of airport procedures and so her ignorance of such matters should not be held against her (reference was made to the case of R (SD & T) v Secretary of State [2003] EWHC 1941 Admin (per Maurice Kay J)).

519. It was said she was unaware of mottos and slogans but Mr JK had confirmed that different slogans could be used.
520. The appellant's mother did not know the appellant's husband very well and had made attempts to contact the appellant's through a friend.
521. E1 had not been asked to confirm the story of the appellant – instructing solicitors had gone straight to the party itself. The matter had been pursued down to branch level and Aka Mantsia's letter clarified matters.
522. The appellant had clarified the question of the witnesses to the rape in re-examination.
523. While the Embassy official was a career diplomat his precise position at the Embassy was not known (Miss Giovannetti pointed out this was incorrect).

Our assessment: the appellant's case

524. In considering the evidence before us the Tribunal bears in mind that the appellant was giving evidence under stressful circumstances. She was also telling us about events that had taken place some time in the past. We bear in mind that it is not possible for asylum seekers to prove every aspect of their case and allowance must be made for this. We also take into account that some of the evidence related to highly personal matters and it was important to bear in mind that women can have valid reasons for giving unclear evidence about rape. In approaching the evidence we bear in mind the observations of the Court of Appeal in Karanakaran v Secretary of State [2000] Imm AR p.271 in particular pp.293-294 of the judgment of Brooke LJ and we approach the questions in this case, "as a unitary process of evaluation of evidential material of many kinds and qualities against the Convention's criteria of eligibility for asylum." – see Sedley LJ at p.305. As already noted, both parties were agreed that when assessing risks arising out of the appellant's UDPS involvement, the Tribunal case of MM should be treated as the applicable country guidance.
525. We deal first with the appellant's oral evidence. We found her a difficult witness. Her answers were vague and having given the matter careful consideration we did not attribute this vagueness to lapses of memory or stress or similar cause. We formed the clear impression that the appellant was attempting to avoid difficulties that more clarity might expose her to.
526. There are difficulties with the appellant's account of her past experiences in the DRC. Her account of her husband's death lacked consistency. In her screening interview she last saw him at their house. Elsewhere she said she last saw him in the back of a jeep when they were taken to the IPK centre.
527. In our view the accounts she has given about the rapes have differed very significantly. In the appellant's statement of 9 May 2006 at paragraph

12 she refers to being raped on three occasions and each time by two men. The first man was the Commander of the Prison (the “Chief”) and the second was an ordinary guard. It was the same guard on each of the three occasions. The appellant did not give the same account to us at the hearing. Her attempts to reconcile the two accounts in cross-examination in our view failed completely. There was also the problem about whether she was on her own or with another person. At interview the appellant stated that she was the only prisoner detained in the second detention centre (in her answers to questions 65 to 67 at Annex E 26 – page 121 of the respondent’s supplementary bundle number 1). In her statement dated 21 May 2006 the appellant said there was a woman in the cell initially and she was alone once this woman was taken away. She blames the problem on a “misunderstanding”. We do not accept this. The appellant was attempting to deal with a point made in the refusal letter that it was unlikely on the objective evidence that she would have been detained alone. In our view she realised she had to adapt her account and did so. The discrepancy has not been satisfactorily addressed in our view. Making every due allowance, we cannot accept the appellant’s evidence as reliable on these important aspects of her case.

528. The appellant said she went to AN’s house but then left it after an argument. She was very vague about dates and the appellant’s mother accepted a suggestion from Miss Giovannetti that she was shocked when she heard that the appellant and her sister had abandoned the young ones. We are not at all satisfied that we were given a truthful account. There are difficulties about the dates when the appellant says she last saw her younger sisters. In her screening interview she said she had last seen them in May 2004, whereas in her evidence before us the appellant was sure it was at a Christmas party in (after some prevarication) 2002. There is a particular difficulty about when the appellant last saw NK. Was it the night before her departure from the DRC in Kinshasa or was it sometime previously in Kinsuka? The appellant struggled to overcome the difficulties faced by the dates. There was, in our view, a further problem about who had made the arrangements for the agent to assist in the appellant’s departure. The appellant was recorded as saying in the screening interview in answer to the “What was the name of the agent and how did you meet?” [q.7.18 page 51, respondent’s bundle] “Name: I don’t know. Through my UDPS party.” In paragraph 21 of her statement dated 22 February 2006 [page 73 of the respondent’s bundle] the appellant stated that her sister’s husband arranged for her to escape and flee the DRC; “He made contact with an agent and obtained the finances to pay the agent.” In cross examination the appellant was asked who arranged the agent and the appellant said this was the husband of her younger sister and when she was referred to her answer at screening interview she said that he had been responsible for the finance and the UDPS had arranged the agent. We found the appellant’s attempts to reconcile her accounts about how she had met the agent unpersuasive. We are not satisfied we had heard a clear or consistent or reliable version of events.

529. There are other matters that we felt were somewhat problematic: for example. The fact that the appellant’s accommodation had not been re-

let and had been left empty by her landlady. We also found it implausible that the appellant's sister had not got enough money to telephone the appellant's mother. We were not satisfied with the appellant's explanation for not using her husband's high level UDPS connections to locate her long-lost mother – she claimed that she was not aware of the extent of her husband's contacts until she lived with him.

530. On political matters, the slogan put forward by the appellant was not, as far as we could divine, the UDPS slogan although the appellant claimed to have chanted it at meetings. She was not able to mention very many political names. This was perhaps surprising from someone who claimed to be a mobiliser and whose husband was claimed to be in contact with high level members. On the appellant's account she had had large meetings at her house for a number of years on a regular basis. Her information about the date of death of Kangundu was wrong. Bearing in mind her claimed experience and active role as a mobiliser, she did not appear to have sufficiently accurate or satisfactory knowledge of the political organisation of the UDPS in Kinshasa. For example, she thought there were 5-7 UDPS federations in Kinshasa whereas it was common ground that as a matter of fact there were only 4.
531. We find the appellant's account of her departure from the DRC to raise significant difficulties. On the appellant's account she left the DRC by canoe arriving in Congo Brazzaville where she stayed in either a hotel or a restaurant. We did not find the appellant's explanation for the reference to a hotel compelling. There was also in our view a clear discrepancy about where she had gone. She had then travelled to another country. She claimed she did not know which country it was and there were either no announcements on the aeroplane or signs at the airport or if there were she did not hear them or understand them or see them. She waited for some time at the unknown airport and did not know where she was. Again, though we bear in mind the observations of Maurice Kay J in *R (SD & T) v Secretary of State* (cited above), we do not find that the appellant's professed lack of awareness of her situation and destination can be explained by a lack of awareness of airport procedures, reliance on an agent or similar cause identified in paragraph 9 of the judgment in that decision. We do not accept that the appellant has told us the truth about her travels.
532. It has been the appellant's case throughout that she left the DRC not knowing where she was going to. It has been the appellant's case throughout that she did not know whether her mother was alive or dead. She did not know that her mother was alive in the United Kingdom. She was not coming to join her mother. Despite this, she was able to ring her mother on arrival.
533. The appellant seeks to explain this by saying she was given a number (not knowing it was her mother's) before her departure from the DRC by her sister. We regard it as astonishing that the appellant would have made no enquiry about the number. We simply do not believe this evidence. We do not believe either the appellant or her mother about the issue of how the mother's number was communicated to the appellant

and about the claim that neither knew about the whereabouts of the other.

534. Turning to events within the United Kingdom, we find both the appellant's and her mother's evidence about medical treatment difficult to follow. We were not satisfied we were being told the truth about this.
535. We take into account that the appellant's mother was found credible and granted refugee status following a successful appeal to an Adjudicator and we take her evidence then as a starting-point when assessing her evidence in this case. We remind ourselves again, however, that we are not bound by findings of fact previously made, where there is new or further evidence which casts a different light: see Ocampo [2006] EWCA Civ 1276 (and now AA (Somalia) [2007] EWCA Civ 1040). We found the mother's evidence about the two young children vague and unhelpful. We are not at all satisfied that we heard the truth about how the appellant was able to give her mother's details at the screening interview. (In addition, despite repeated requests from us to the appellant's solicitors, which they said they passed on, the appellant's mother has not been able to adduce documentation to show the basis on which her children were admitted to the UK and still remain here.)
536. We note the photographs of the appellant's mother with President Tshisekedi but it appears from the evidence of JK that being in contact with the President is not particularly remarkable as the President received all people and anyone could claim to have been in contact with him. We also take into account the claimed arrest warrants but we note that the addresses are incorrect and this diminishes the weight that can be placed upon them and they need to be looked at in the context of the evidence of E1 at pages 103 to 104 of the appellant's bundle (pages 56-57 of his report of 31 May 2006) that documents are not always what they seem.
537. So far as the evidence relating to the appellant's husband's role within the UDPS in Kinshasa is concerned, we remind ourselves first of all that prior to the first hearing in July the appellant's representatives were directed by the Tribunal to instruct E1 to make specific DRC-based inquiries about this matter. This direction was made after the appellant had expressly sought and been granted an adjournment for this purpose. This direction was never complied with. We have set out earlier the procedural history concerning this matter. In our view the appellant's representatives failed to explain adequately why they never instructed E1 to make such inquiries. Mr Jacobs says it was decided that such inquiries could be more easily made via the UK-based UDPS witness, JK, but self-evidently such evidence could not be independent. The fact that in between July and September the appellant's representatives saw fit to make inquiries in Kinshasa, once again, of UDPS themselves, underlines the resulting problem, which is that we lack independent corroboration of some of the key claims made by the appellant and certain UDPS sources.
538. JK's evidence about the appellant and her husband was in our view principally conveyed to him by Emma Kuna in the DRC. JK refers in

paragraph 8 of his witness statement dated 18 June 2007 to Emma Kuna stating that the appellant “has been raped, beaten and tortured by two women members of the UDPS who have been in detention with her.” The evidence conveyed is not consistent in our view with the appellant’s evidence about the circumstances when she was raped. We have had no statement from Emma Kuna, although we can see no reason why not. In any event he does not profess to have any personal knowledge of the events he recounts and largely accepts what he has been told.

539. As we have already observed, the appellant’s evidence to us about the rape was inconsistent in itself with her own account. We take into account the evidence of Aka Mantsia and the comments of the British Embassy official (X). We do not accept the challenge to the official’s integrity in this matter. We reject the suggestion that he was being other than frank with the court. In respect of the claimed meeting with Aka Mantsia and Tshisekedi we prefer the evidence of the Embassy official. The general tenor of the latter’s evidence, which we accept, is that there was a lack of awareness of the identities of the appellant and her family at a senior level and such evidence as there was as a result of a “local initiative.”
540. In evaluating the appellant’s evidence we also of course take into account the evidence of E1. He is able to place the appellant’s claimed account in its proper context. The assistance to be given to a case such as the appellant’s by an expert report is perhaps lessened by the evidence that anything can happen in the DRC since the general and prevailing rule was one of arbitrariness. We note that transfers to a medical centre without payment are mostly done in a situation where the sick prisoner is on the point of death – that was how the expert described the word ‘agonising’ at page 115 of the appellant’s bundle. We note his evidence that politics in the DRC appears to revolve around the men of the household and we did not get the impression that E1 was altogether endorsing the appellant’s case that she mobilised female members to join the party – when he was asked whether that was what daughters would do, he replied to the effect that one could not say that such a thing was automatic – it was plausible.
541. While we take into account the evidence of E1, he himself acknowledged that his risk assessment was based on the assumption that what the appellant told him was the truth and we do have considerable misgivings about the story told by the appellant to him. We take into account that the appellant was able to volunteer part of the address of the Référence Plus and of Franck Kangundu at interview as well as certain details about the UDPS, but these were matters in the public realm and, in any event, they do not dispel the general reservations that we have about the appellant’s account.
542. We find it surprising that the appellant’s mother should be more concerned about the young children than her own daughters. She concluded her evidence by saying “It was a great surprise and good fortune that the appellant arrived, so to speak, out of the blue.” We simply do not accept this. We believe that the appellant’s arrival in the United Kingdom was planned and organised.

543. It has been accepted in this case that the appellant's UDPS cards are genuine. We take into account the points made by Mr Jacobs in his oral submissions and his skeleton argument. However, we find that the appellant's activism for the UDPS was at the lowest possible level and that her claim to mobilise women and girls is a gross exaggeration. We find her generally to be an unreliable and evasive witness. We find that she and her mother concocted a plan and this reflects adversely on the mother's credibility as well. While we accept that the mother had a determination in her favour, and we take into account the positive findings then made, we have additional relevant evidence concerning some aspects of her account which were not known to the previous adjudicator and we do not accept that the evidence that she gave before us was credible. We find that her level of activism in the United Kingdom is of a low order. For the reasons we have given above, we reject the appellant's claim to have been arrested, ill treated and raped and we do not believe the account given of her claimed escape and travels. We do not accept the claimed connection with Franck Kangundu or that the appellant has any profile whatever. In short, we do not accept the appellant's evidence save in so far as it has been conceded by the respondent.
544. For the above reasons we conclude that the appellant has not discharged the onus of proof on her to show that she has a well-founded fear of persecution or that there are substantial grounds for believing that she faces a real risk of serious harm or treatment contrary to Article 3 of the ECHR. The appellant's appeal stands to be dismissed.
545. Her appeal on asylum grounds is dismissed.
546. She is not eligible for humanitarian protection.
547. Her appeal on human rights grounds is dismissed.

Signed:

DR H H Storey, Senior Immigration Judge

Approved for electronic distribution

APPENDIX: BACKGROUND MATERIALS

- 1) January 2004 *Report By Former Congolese Immigration Officers About Treatment Of Asylum Seekers Once They Are Returned To The DRC.*
- 2) 16 April 2004 *Voix des Sans Voix (VSV) Report: Programme Of Observation, Information And Reception Of Persons Expelled From Europe And America.*
- 3) 2 December 2004 *Institute of Race Relations News (UK): The Grim Fate That Awaits Those Deported To Congo.*
- 4) 14 January 2005 *Human Rights Watch: DR Congo: Army Should Not Appoint War Criminals.*
- 5) 7 March 2005 *Human Rights Watch: DR Congo: Tens of Thousands Raped, Few Prosecuted.*
- 6) 18 May 2005 *HJT Research: Dead And Injured Reported At UDPS Demonstration In Mbuji Mayi.*
- 7) 18 May 2005 *Integrated Regional Information Networks News (IRIN): DRC: Police Impose Curfew On Mbuji-Mayi After Protests.*
- 8) 28 June 2005 *Amnesty International: Democratic Republic Of Congo: Further Violence Feared As Clashes Erupt.*
- 9) 30 June 2005 *Inter Press Service News Agency (IPS): Politics-DRC: Bullets, Not Ballots.*
- 10) 30 June 2005 *Integrated Regional Information Networks News (IRIN): DRC: Seven Killed In Demonstrations, Hundreds Arrested.*
- 11) 1 July 2005 *Voice of America News: Congo Opposition Maintains Pressure.*
- 12) 3 July 2005 *Radio Okapi net: Dialogue Entre Congolese.*
- 13) 4 July 2005 *Reporters Sans Frontieres (Reporters Without Borders): Several Privately-Owned Stations Suspended; Journalists Rounded Up, Harassed And Assaulted: Reporters Without Borders And Journaliste En Danger Write To Kabila.*
- 14) 1 August 2005 *Human Rights Watch: DR Congo: Prominent Human Rights Defender Assassinated.*
- 15) 12 August 2005 *Immigration and Refugee Board of Canada: Treatment By Government Authorities Of People Sent Back To The Democratic Republic Of Congo After Their Application For Asylum Abroad Has Been Rejected.*
- 16) 1 November 2005 *UK Home Office Science and Research Group Country of Origin Information Service: Democratic Republic Of The Congo COI Report October 2005.*

- 17) 30 November 2005 Joint Council for the Welfare of Immigrants (JCWI): *New Evidence Of Abuse, Halt All DRC Deportations Campaigners Tell Home Office.*
- 18) 1 December 2005 BBC News (report by Jenny Cuffe): *Asylum Questions For DR Congo.*
- 19) 1 December 2005 BBC News (World Service transcript): *Assignment – Message From Mavembo.*
- 20) 1 December 2005 HJT Research: *BBC Reports On The Fate Of Asylum Seekers Returned To The Democratic Republic Of Congo.*
- 21) circa 2006 Journalist in Danger: *Franck Ngyke: The Mystery.*
- 22) 3 January 2006 Integrated Regional Information Networks News (IRIN): *DRC: Opposition Politician Ends Boycott Of Upcoming Polls.*
- 23) 6 January 2006 Voice of America News: *Congo Conflict Called Deadliest In The World.*
- 24) 26 January 2006 UK Parliament House of Commons: *Commons Hansard Written Answers Thursday 26 January 2006: Democratic Republic Of The Congo (Prison Conditions).*
- 25) 10 February 2006 United Nations High Commissioner for Refugees (UNHCR): *Civilians Caught Up In DRC Fighting Tell UNHCR Of Atrocities Committed Against Them.*
- 26) 15 February 2006 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Report Submitted By The Independent Expert On The Situation Of Human Rights In The Democratic Republic Of The Congo.*
- 27) 17 February 2006 Immigration and Refugee Board of Canada: *The Constitutional Referendum From 18 To 19 December 2005, Particularly The Conditions Of The Referendum, Its Results, And The Reactions Of Independent Observers And Opponents.*
- 28) 21 February 2006 Human Rights Watch: *DR Congo: End Illegal Exploitation Of Natural Resources.*
- 29) 22 February 2006 Amnesty International: *Democratic Republic of Congo (DRC): Time To End Threats Against Human Rights Defenders.*
- 30) 27 February 2006 United Nations High Commissioner for Refugees (UNHCR): *High Commissioner Guterres Warns Of Huge Risk For Conflict Again In DRC.*
- 31) 1 March 2006 Integrated Regional Information Networks News (IRIN): *DRC: Hundreds Flee Fighting In Ituri District.*
- 32) 8 March 2006 US Department of State: *Country Reports On Human Rights Practices 2005: Congo, Democratic Republic Of The.*

- 33) 11 March 2006 HJT Research: *UDPS Protestors Beaten, Arrested.*
- 34) 20 March 2006 Immigration and Refugee Board of Canada: *The Union For Democracy And Social Progress (UDPS), Particularly Whether Internal Factions Exist; The Attitude Of Government Authorities Toward UDPS Leaders And Members.*
- 35) 22 March 2006 Integrated Regional Information Networks News (IRIN): *DRC: Tshisekedi Supporters In Demo For Inclusion In Electoral Bodies.*
- 36) 30 March 2006 Voice of America News: *Congo Militias Regroup, Recruit And Attack Army, UN.*
- 37) April 2006 UK Home Office Country of Origin Information Service: *Democratic Republic Of The Congo COI Report April 2006 [extracts].*
- 38) 13 April 2006 Amnesty International: *Urgent Action 91/06 – Democratic Republic Of Congo: Fear For Safety (Human Rights Activist Receives Death Threat).*
- 39) 19 April 2006 United Nations High Commissioner for Refugees (UNHCR): *Response To Information Request: Subject: DRC - Treatment Of Rejected Asylum Seekers.*
- 40) 21 April 2006 Voice Of America News: *Congo Election Date Slips As Officials Wade Through Tasks.*
- 41) 25 April 2006 Voice of America News: *Situation Deteriorates in Congo's Lawless Northeast.*
- 41) 26 April 2006 HJT Research: *Daily Telegraph: DRC National Army Soldiers Are A Threat And A Liability.*
- 43) 27 April 2006 International Crisis Group: *Congo's Elections: Making Or Breaking The Peace.*
- 44) 8 May 2006 Amnesty International: *Urgent Action 126/06 - DRC: Ill-Treatment And Torture/Harsh Conditions Of Detention / Medical Concern (Detainees At The Kinshasa Provincial Inspectorate Of Police Ill-Treated, Conditions Inhumane).*
- 45) 18 May 2006 United Nations High Commissioner for Refugees (UNHCR): *A 'Tsunami' In The Democratic Republic Of Congo Every Six Months: Guterres Urges Help For One Of The World's Most Under-Funded Emergencies.*
- 46) 9 June 2006 Human Rights Watch: *DR Congo: Journalists And Human Rights Defenders Under Fire.*
- 47) 12 April 2006 European Union Heads of Mission: *DRC: EU Report on Illegal Migration.*
- 48) 4 July 2006 Amnesty International: *Democratic Republic Of Congo (DRC): Acts Of Political Repression On The Increase.*

- 49) 4 July 2006 *Congoscopia: A Former DGM Officer Accuses Kanambe.*
- 50) 21 July 2006 *Human Rights Watch: DR Congo: As Vote Nears, Abuses Go Unpunished In Katanga.*
- 51) 28 July 2006 *Human Rights Watch: DR Congo: Violence Threatens Elections In North Kivu.*
- 52) 16 October 2006 *Human Rights Watch: DR Congo: Army Abducts Civilians For Forced Labor.*
- 53) 30 November 2006 *UK Home Office Immigration and Nationality Directorate (IND): Operational Guidance Note: Democratic Republic Of Congo.*
- 54) 4 December 2006 *UK Home Office Immigration and Nationality Directorate (IND): Removals To The Democratic Republic Of Congo.*
- 55) 6 December 2006 *Voice of America News: Kabila Sworn In As DRC's Elected President.*
- 56) 3 January 2007 *Financial Times: Transparency Fears Lead To Review Of Congo Contracts.*
- 57) 11 January 2007 *Human Rights Watch: World Report 2007: Democratic Republic of Congo.*
- 58) 24 January 2007 *Amnesty International: Further Information On Urgent Action 319/06 - DRC: Prisoner Of Conscience/Fear Of Torture Or Ill-Treatment And New Concerns: Possible Death Sentence/Unfair Trial/Health Concern (Marie-Therese Nlandu And Associates Put On Trial).*
- 59) 25 January 2007 *Amnesty International: Democratic Republic Of Congo: Disarmament, Demobilization And Reintegration (DDR) And The Reform Of The Army.*
- 60) 1 February 2007 *Integrated Regional Information Networks News (IRIN): DRC: Up To 20 Killed In Political Protest.*
- 61) 1 February 2007 *United Nations Mission in the Democratic Republic of Congo (MONUC): Violent Unrest In Matadi Leaves 10 Dead And Many Injured.*
- 62) 5 February 2007 *Committee to Protect Journalists: Attack On The Press 2006: Democratic Republic Of Congo.*
- 63) 5 February 2007 *HJT Research: Election Violence Leaves Nearly 100 Dead.*
- 64) 5 February 2007 *United Nations News: UN Steps Up Police Presence In Troubled Province Of DR Congo Following Violence.*
- 65) 7 February 2007 *United Nations Mission in the Democratic Republic of Congo (MONUC): MONUC Demands Of The Authorities To Respect The Law.*

- 66) 8 February 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *The Human Rights Situation In The Democratic Republic Of Congo (DRC) During The Period Of July To December 2006.*
- 67) 13 February 2007 Integrated Regional Information Networks News (IRIN): *DRC: Prisoners Endure Appalling Conditions.*
- 68) 14 February 2007 UK Home Office Science and Research Group Country of Origin Information Service: *Democratic Republic Of The Congo COI Report February 2007.*
- 69) 16 February 2007 Oxfam: *A Fragile Future: Why Scaling Down MONUC Too Soon Could Spell Disaster For The Congo.*
- 70) 20 February 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment: January 2007.*
- 71) 21 February 2007 United Nations News: DR Congo: Army And Police Continue To Violate Civilians' Human Rights, Says UN Mission.
- 72) 21 February 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Report Of The Independent Expert On The Situation Of Human Rights In The Democratic Republic Of The Congo.*
- 73) 22 February 2007 Amnesty International: *Urgent Action 43/07 - DRC: Death Threat/Fear For Safety/Fear Of Arbitrary Arrest (Lawyer Threatened With Death After Calling For A Judge To Be Removed From A Case).*
- 74) 27 February 2007 Refugee Council (UK): *Colin Firth Voices Outrage At Deportations To Congo.*
- 75) 6 March 2007 US Department of State: *Country Reports On Human Rights Practices 2006: Congo, Democratic Republic Of The.*
- 76) 8 March 2007 Amnesty International: *Democratic Republic Of Congo: No Justice For Rape Victim Bitondo Nyumba.*
- 77) 12 March 2007 UK Parliament House of Commons: *Commons Hansard Written Answers Text 12 March 2007: Democratic Republic Of Congo: Asylum.*
- 78) 19 March 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment: February 2007.*
- 79) 20 March 2007 UK Parliament House of Commons: *Commons Hansard Debates 20 March 2007: Democratic Republic Of The Congo.*
- 80) 20 March 2007 United Nations: *Twenty-Third Report Of The Secretary-General On The United Nations Organization Mission In The Democratic Republic Of The Congo.*

- 81) 22 March 2007 Voice of America News: *Gunbattles Rage In DRC Capital.*
- 82) 22 March 2007 World Organisation Against Torture (OMCT)/International Federation for Human Rights (FIDH): *Steadfast In Protest: 2006 Annual Report Of The Observatory For The Protection Of Human Rights Defenders (Democratic Republic Of Congo).*
- 83) 23 March 2007 HJT Research: *Second Day Of Fighting Between Government Troops And Forces Of Ex-Rebel Leader In Kinshasa.*
- 84) 23 March 2007 Immigration and Refugee Board of Canada: *Democratic Republic Of Congo: The State Security Forces, Including Their Name, Mandate And Organization; Whether Members Of These Forces Are Involved In Human Rights Violations.*
- 85) 23 March 2007 Immigration and Refugee Board of Canada: *Democratic Republic Of Congo: The Union For Democracy And Social Progress, Particularly Its Current Status, Its Relationship With The Government And The Treatment Of Its Members By The Government Authorities And Security Forces.*
- 86) 23 March 2007 Integrated Regional Information Networks News (IRIN): *DRC: Echoes Of The Past As Bemba Guards Fight Government Forces.*
- 87) 24 March 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Calm Returns To Kinshasa.*
- 88) 27 March 2007 HJT Research: *EU Believes That Up To 600 May Have Died In Kinshasa Fighting.*
- 89) 28 March 2007 Reporters Sans Frontieres (Reporters Without Borders): *Bemba-Owned Media Ransacked, Broadcasts Suspended, Staff Gone Into Hiding.*
- 90) 29 March 2007 Voice of America News: *Former VP Bemba Expected To Leave DRC.*
- 91) 4 April 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *MONUC: One Must Not Establish A Climate Of Persecution Against The Opposition.*
- 92) 11 April 2007 Voice of America News: *Congo's Bemba Leaves For Portugal While Supporters Feel Persecuted.*
- 93) 12 April 2007 Voice of America News: *Congo Prosecutors Ask For Removal of Bemba's Immunity.*
- 94) 16 April 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment - March 2007.*
- 95) 1 May 2007 Amnesty International: *Democractic Republic Of Congo (DRC): Marie-Therese Nlandu Case Demonstrates Need For Urgent Reform Of Police And Security Sector.*

- 96) 8 May 2007 UK Home Office Country of Origin Information Service: *Democratic Republic Of The Congo COI Report.*
- 97) 9 May 2007 United Nations High Commissioner for Refugees (UNHCR): *UNHCR Fears For Congolese Civilians Caught In Violence.*
- 98) 10 May 2007 Committee to Protect Journalists: *In DRC, Journalist Jailed After Seeking Comment From Official.*
- 99) 17 May 2007 Integrated Regional Information Networks News (IRIN): *DRC: Accelerate Prison Reforms, Urges UN Human Rights Commissioner.*
- 100) 17 May 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment: April 2007.*
- 101) 17 May 2007 United Nations News: *Intimidation Hampers Probe Into Post-Election Violence In DR Congo – UN.*
- 102) 23 May 2007 Amnesty International: *Amnesty International Report 2007: Democratic Republic Of Congo.*
- 103) 24 May 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Preliminary Note Of The Special Rapporteur On The Independence Of Judges And Lawyers On His Mission To The Democratic Republic Of The Congo.*
- 104) 28 May 2007 Integrated Regional Information Networks News (IRIN): *DRC: Massacred Villagers Found Dead In Their Beds.*
- 105) 31 May 2007 United Nations News: *UN Human Rights Chief 'Appalled' By Sexual Violence In DR Congo, Burundi.*
- 106) 1 June 2007 Committee to Protect Journalists: *In DRC, Police Disrupt Media Group Meeting, Assault Journalists.*
- 107) 11 June 2007 Voice of America News: *Congo Opposition Wants Solution To Bemba Problem.*
- 108) 14 June 2007 Le Potential (Allafrica.com): *The Lieutenant Kayembe General Bandaged Kulu, New Chief Of Staff General Of The FARDC.*
- 109) 14 June 2007 Reporters Sans Frontieres (Reporters Without Borders): *Leading Congolese Journalist Employed By UN-Backed Radio Gunned Down In Bukavu.*
- 110) 15 June 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *MONUC And Radio Okapi Condemns The Murder Of Its Bukavu Journalist Serge Maheshe.*
- 111) 15 June 2007 Voice of America News: *Congo Soldiers Charged With Killing UN Journalist.*
- 112) 18 June 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Tshikapa Prison - A Mortuary.*

- 113) 19 June 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment: May 2007.*
- 114) 23 June 2007 Docu Congo: *A Report About Congolese Who Have Been Refouled To Kinshasa.*
- 115) 27 June 2007 Committee to Protect Journalists: *In DRC, A Nationwide Pattern Of Attacks Raises Alarm.*
- 116) 28 June 2006 Le Potential Le Palmores News Item.
- 117) 4 July 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *High Commissioner For Human Rights Concerned At Kilwa Military Trial In The Democratic Republic Of The Congo.*
- 118) 10 July 2007 United Nations News: *DR Congo: UN Envoy Deplores Murder Of Politician In Volatile East.*
- 119) 24 July 2007 Speech to UK APPG GL Parliament by Ms Marie Therese Nlandu.
- 120) 13 July 2007 United Nations High Commissioner for Refugees (UNHCR): *DR Congo: UNHCR Increasingly Concerned By Spiralling Displacement And Atrocities.*
- 121) 27 July 2007 United Nations News: *DR Congo: UN Report Deplores Excessive Use Of Deadly Force, Impunity In Poll Clashes.*
- 122) 30 July 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *UN Expert On Violence Against Women Expresses Serious Concerns Following Visit To Democratic Republic Of Congo.*
- 123) 31 July 2007 UK Home Office: *Country Of Origin Service Report: Democratic Republic Of Congo.*
- 124) 2 August 2007 Integrated Regional Information Networks News (IRIN): *DRC: Calm Returns After Anti-Banyamulenge Demo - UN.*
- 125) 2 August 2007 United Nations News: *Continuing Attacks On Congolese Journalists Draw Concern From UN Mission.*
- 126) 3 August 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *MONUC Concerned About The Incitement Of Inter-Communitarian Hatred In DRC.*
- 127) 6 August 2007 Integrated Regional Information Networks News (IRIN): *DRC: Starving Detainees Escape South Kivu Prison.*
- 128) 6 August 2007 Journal of Humanitarian Assistance: *Hell On Earth - Systematic Rape In Eastern Congo.*
- 129) 6 August 2007 United Nations Children's Fund (UNICEF): *V-DAY, UNICEF Call For End To Rape, Sexual Torture Against Girls In Eastern DRC.*

- 130) 6 August 2007 United Nations Mission in the Democratic Republic of Congo (MONUC): *Monthly Human Rights Assessment: June 2007.*
- 131) 7 August 2007 Committee to Protect Journalists: *In DRC, Journalist Jailed For Not Airing Politician's Interview.*
- 132) 7 August 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Committee On Elimination Of Racial Discrimination Considers Report Of Democratic Republic Of Congo.*
- 133) 10 August 2007 Committee to Protect Journalists: *In DRC, Photojournalist Assassinated.*
- 134) 21 August 2007 [S] Family Must Stay: *Campaign Open Letter.*
- 135) 24 August 2007 HJT Research: *UK Court Orders Halt On Returns Of Failed Asylum Seekers To DRC.*
- 136) 29 August 2007 Voice of America News: *Journalist Rights Group In DRC Outraged Over Death Sentences.*
- 137) 31 August 2007 Amnesty International: *Health Professional Action: Enforced Disappearance Of Medical Doctor: Democratic Republic Of The Congo (DRC).*
- 138) 31 August 2007 United Nations News: *Spiralling Violence In Far Eastern DR Congo Leads UN Mission To Send Troops.*
- 139) 2 September 2007 Voice of America News: *Dissident Congolese General Warns Of War As Troops Move.*
- 140) 4 September 2007 Office of the United Nations High Commissioner for Human Rights (OHCHR): *Written Statement Submitted By The Society For Threatened Peoples (Democratic Republic Of Congo: No End To Sexual Violence Against Women And Children).*
- 141) 5 September 2007 Voice of America News: *Congolese Accuse UN Of Failing To Halt Fighting.*
- 142) 6 September 2007 United Nations Office for the Coordination of Humanitarian Affairs (OCHA): *DR Congo: UN Humanitarian Chief - "Stories That Go Beyond The Imagination".*
- 143) 7 September 2007 United Nations News: *As Tens Of Thousands Flee In Eastern DR Congo, Fighting Hampers UN Food Aid.*
- 144) 8 September 2007 Voice of America News: *Humanitarian Group Says Tens Of Thousands Displaced By Violence In Eastern Congo.*
- 145) 9 September 2007 All African com: *British Justice Will Rule On Fact Of The Congolese Immigrants.*
- 146) 10 September 2007 Amnesty International: *Democratic Republic Of Congo (DRC): Escalating Violence In North-Kivu Deepens Risk Of Mass Ethnic Killings.*

- 147) 10 September 2007 HJT Research: *Washington Post: UN Official Says Rape Is Worse In DRC Than Anywhere Else In The World.*
- 148) 11 September 2007 United Nations Office for the Coordination of Humanitarian Affairs (OCHA): *Briefing To The Security Council By John Holmes, Under-Secretary-General For Humanitarian Affairs And Emergency Relief Coordinator On Mission To DR Congo, 03 - 08 Sept 2007.*
- 149) 13 September 2007 Institute for War and Peace Reporting (UK): *Storm Gathers Over Eastern Congo.*
- 150) 13 September 2007 Voice of America News: *AIDS Activist Accuses UN, Western Nations Of Ignoring Congo Sexual Abuse.*
- 151) 16 September 2007 The Observer: *Torture Fate Awaits UK Deportees.*