

Comments on the Operational Guidance Note on Democratic Republic of Congo prepared for Still Human Still Here by Christel Querton, Asylum Aid, and Stephanie Huber, Research Information and Policy Unit (RIPU) of the Immigration Advisory Service (IAS)

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1. This document has been prepared by members of the Still Human, Still Here campaign. It is being published, along with the COI referred to within it, to help legal practitioners representing asylum seekers. It is meant to be used as a guide to some of the COI available. It was prepared 15 April 2010 although amendments have been made to refer to recent events. There is, however, no guarantee that the COI referred is comprehensive and it should not be a substitute for case specific COI research.
2. **THIS DOCUMENT IS A GUIDE FOR LEGAL PRACTITIONERS OF RELEVANT COI, WITH REFERENCE TO THE OPERATIONAL GUIDANCE NOTE ON DRC ISSUED IN DECEMBER 2008. THIS DOCUMENT SHOULD NOT BE SUBMITTED**

TO UKBA, THE TRIBUNAL OR IN PROCEEDINGS. LEGAL PRACTITIONERS ARE WELCOME TO SUBMIT THE COI REFERED TO IN THIS DOCUMENT.

Introduction

3. The December 2008 Democratic Republic of Congo (DRC) Operational Guidance Note (OGN) is now 1 ½ years old. Given the fast changing situation in the DRC, it is not surprising that the country of origin information (COI) contained in the OGN is out of date.
4. The country information used throughout the December 2008 DRC OGN is problematic both for its lack of currency today and for its lack of currency at the time of publication. In addition there is the general trend of an over reliance on a limited amount of COI from a narrow range of sources, namely the Country of Origin Information Service (COIS) Report on the DRC published in May 2008, and news articles provided by the BBC. No additional international, regional or national news articles nor major human right/ humanitarian reports documenting the situation in the DRC were included, despite being useful sources of COI with regard to relevance of information and currency of reporting.
5. A further general observation relates to the lack of transparency and retrievability in the referencing of the information. Many paragraphs are either not at all or not clearly referenced, and one source is not available in the public domain (e.g. COIS Request Number 06/07-41).
6. Section 2 on the country assessment is two years out of date. Important historical events have not been included in this section. In particular, for Eastern DRC paragraph 2.7 and other references to Nkunda need updating, and the three military initiatives that have subsequently followed should be referenced. There is also a new rebellion based out of Equateur province.¹
7. This review specifically examines the use of COI in sections 3.6 *Opposition political activists or members of former rebel forces*, 3.7 *Members of non-governmental organisations (NGOs)*, 3.11 *North Kivu*, 3.12 *Prison conditions* and 5. *Returns* of the DRC OGN with regard to:
 - The selected COI in relation to the policy conclusion reached
 - The current availability of COI in the public domain and the policy conclusion reached.

¹ Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

This review also recommends including a section on the treatment of women in the DRC and an analysis to this effect has been given below. Two sections covering the general issues of internal protection and state protection are found at the end of this review and purports to give guidance and recommendation for all sections of this and other OGNs.

Opposition Political Activists

8. The first category covered in the OGN at paragraph 3.6 is “opposition political activists or members of former rebel groups”. We consider that these two categories face different types of persecution, by different actors and for different reasons. We therefore comment separately on each group. We also note that nowhere in the OGN are members of the Bundu Dia Kongo (BDK) or Movement for the Liberation of Congo (MLC) mentioned and their treatment by the Congolese authorities. We have therefore included a short analysis referring to objective country information to both the treatment of BDK and MLC members in the section on opposition political activists.

Treatment of opposition political activists and perceived political activists in general

9. Numerous sources have reported that President Joseph Kabila and his government cracked down on the political opposition² and arrested perceived opponents and critics of the government.³ Human Rights Watch said that Kabila and his government were “brutally restricting democratic space”.⁴ More specifically, it was reported that “the government of President Joseph Kabila has used violence and intimidation to eliminate its political opponents beginning in the immediate aftermath of the election's inconclusive July-August 2006 first round” and that “the brutal and repressive tactics used by President Kabila and his advisors are emblematic of the resort to violence to stifle opponents”.⁵ The organization also stated that:

According to many military and intelligence officials and others close to Kabila who were interviewed by Human Rights Watch, Kabila set the tone and direction of the repression. In giving orders, he spoke of "crushing" or "neutralizing" the "enemies of

² Freedom House, Freedom in the World 2009: Congo, Democratic Republic of (Kinshasa), 16/07/2009.

³ US Department of State, 2008 Human Rights Report: Democratic Republic of the Congo, 25/02/2009.

⁴ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

⁵ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

*democracy," "terrorists," and "savages," implying it was acceptable to use unlawful force against them.*⁶

Human Rights Watch reported a brutal crackdown by all government agencies against perceived political opponents and the systematic use of torture, in particular in Kinshasa.⁷ Also, hundreds of perceived government opponents were harassed and intimidation through various techniques, including anonymous phone calls and visits by police or the army in the middle of the night.⁸ Human Rights Watch described it as the systematic nature of political repression under Kabila.⁹

10. Intelligence agents and in particular the ANR (*Agence Nationale de Renseignement*) has been accused of arbitrary arrest and torture of detainees.¹⁰ The Institute of War and Peace Reporting (UK) reported that a man had been arrested and tortured by the ANR for criticising the President Kabila.¹¹ Amnesty International has received many testimonies of people being arrested and tortured by the security agency and has described them “amongst the most common torturers in DRC”.¹² Amnesty International has explained that “the ANR falls under the direct authority of Kabila with its mandate supposed to be limited to investigating crimes against the security of the state such as treason, espionage, political crimes or conspiracies”.¹³ Opposition and civil society activists are targeted and accused of violating state security.¹⁴ The United Nations Mission in DRC (MONUC) found that no ANR agents had been brought to account for allegations of torture of detainees.¹⁵

11. The United Nations Mission in DRC (MONUC) stated that:

The Republican Guard, the Special Services Branch of the Police in Kinshasa commonly referred to as Kin Mazière, the Agence Nationale de Renseignements (ANR) and the former DEMIAP, continued to act outside of their mandate and were

⁶ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

⁷ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

⁸ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

⁹ Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008.

¹⁰ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

¹¹ Institute for War and Peace Reporting (UK), Secret Police Accused of Torture, 02/07/2009.

¹² Institute for War and Peace Reporting (UK), Secret Police Accused of Torture, 02/07/2009.

¹³ Institute for War and Peace Reporting (UK), Secret Police Accused of Torture, 02/07/2009.

¹⁴ Institute for War and Peace Reporting (UK), Secret Police Accused of Torture, 02/07/2009.

¹⁵ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

*mostly responsible for politically-motivated human rights violations committed in a climate of total impunity.*¹⁶

*The Special Services Branch of the police in Kinshasa, commonly referred to as Kin Mazière, has functioned over the years as a highly politicised unit, allegedly reporting directly to the Présidence. Reports of arbitrary arrest and detention for political reasons, as well as the use of torture, cruel, inhuman and degrading treatment by its members are well documented by the UNHRO.*¹⁷

12. The US Department of State found that:

*Government security forces sometimes used the pretext of state security to arbitrarily arrest individuals and frequently held those arrested on such grounds without charging them, presenting them with evidence, allowing them access to a lawyer, or following other aspects of due process.*¹⁸

13. The report adds that, during the 2006 election campaign, police officers used [HRW English version] "excessive force against members of the political opposition," particularly against members of the Union for Democracy and Social Progress (Union pour la démocratie et le progrès sociale, UDPS) during a peaceful demonstration on 10 March 2006 in Kinshasa (ibid.). Police officers beat demonstrators and briefly detained some 15 of them (ibid.).¹⁹

14. MONUC described the first half of 2007 as:

*Marked by an attitude of political intolerance which manifested itself in the violent repression of demonstrators and political opponents and the harassment, intimidation, physical assault, arbitrary arrest and detention of journalists, human rights defenders and opposition figures.*²⁰

15. At paragraph 3.6.10 the OGN reviews the case law relevant for (perceived) members of the political opposition. The latest Country Guidance case on DRC BK (*Failed asylum seekers*) DRC CG [2007] UKAIT 00098 provides a helpful overview of prior Country Guidance case law on DRC. We quote the passage here for ease of reference:

¹⁶ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

¹⁷ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

¹⁸ US Department of State, 2008 Human Rights Report: Democratic Republic of the Congo, 25/02/2009.

¹⁹ 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, 23/03/2007.

²⁰ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

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).

[...]

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).” (Emphasis added).

Treatment of UDPS members

16. Paragraph 3.6.5 of the OGN states that “In a letter dated 7 June 2007, the British Embassy in Kinshasa noted that as a result of its detachment from the electoral process, the treatment of UDPS members was significantly better in 2007 than it was in 2005. The Embassy also noted that the number of human rights abuses of UDPS members reported to MONUC and Embassies in Kinshasa had diminished drastically”. The reference to this statement in the OGN refers back to the COIS DRC Country Report May 2008 (Background Information: Political System, Human Rights: Political Affiliation & Annexes: Annex A - Chronology of major events & Annex B – Political Organisations). The information preceding this sentence does not give the impression that the UDPS has detached itself from the electoral process. Although the UDPS decided not to participate in the elections and have not been part of the formal political process, the UDPS is still an active and significant party that undertakes regular demonstrations and actions against the current government. The letter from the British Embassy should also be made available to ensure that country information is transparent and reliable.

17. The Information and Refugee Board of Canada stated that:

The absence of democracy in the DRC means that, whether they are in the DRC or not, members of the UDPS are subjected to harassment and various types of persecution from armed and unarmed entities that are linked to those in power in the DRC.²¹

18. We provide some examples of sources reporting the treatment suffered by UDPS members:

A member of the political party Union Pour la Démocratie et le Progrès Social (UDPS) in Bukavu claimed to have been arrested and subjected to cruel, inhuman and degrading treatment by a RG soldier on 17 May 2007 because of remarks he made about the 17 May celebrations in Kinshasa in the presence of a RG soldier in civilian clothes. The victim was arrested, detained, beaten with rifle butts and placed in a holding cell in a RG Camp, where he was undressed and severely beaten again before being released the following day. He was warned that he would be killed if he spoke to anyone about the incident.²²

A member of the political party UDPS (Union for Democracy and Social Progress) in Bukavu claimed to have been arrested and subjected to cruel, inhuman and degrading treatment by soldiers of the Republican Guard on 17 May 2007 because of remarks he made about the 17 May celebrations in Kinshasa in the presence of a soldier of the Republican Guard in civilian clothes.

The victim was allegedly thrown into a pick-up truck where he was kicked and beaten with rifle butts by about twelve Republican Guard soldiers in uniform and subsequently taken to the home of a RG officer. He claimed that he was again beaten when the officer realized that he was from Kasai Oriental Province and then placed in a holding cell in a RG camp.

He was undressed, made to lie on the ground and was severely beaten with an iron bar, sticks and rifle butts. He also claimed to have been extorted of his money. He was allegedly interrogated for four hours and released on 18 May by the RG Battalion Commander who threatened to kill him if he said anything to human rights NGOs or Radio Okapi.²³

On 22 January, two UDPS militants were allegedly subjected to cruel, inhuman and degrading treatment while in the holding cell of the "Police d'Investigation Criminelle" [Criminal Investigations Police] in Goma, North Kivu. The men were

²¹ Immigration and Refugee Board of Canada, Democratic Republic of the Congo: The number of members and offices of the Union for Democracy and Social Progress (UDPS); the importance of the UDPS compared with other political parties, 27/03/2008.

²² United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

²³ United Nations Mission in the Democratic Republic of Congo (MONUC), Monthly Human Rights Assessment: May 2007, 19/06/2007, paragraph 20.

arrested in connection with statements they had written on a blackboard concerning the possible consequences of the negotiations that were held between the FARDC [Armed Forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo)] and renegade General Laurent Nkunda. The hands of one of the victims were swollen as a result of the beating he had allegedly received. The other victim had been severely flogged in the presence of a Colonel and then placed in a holding cell in his underwear only. The Prosecutor released both men on 23 January. (20 Feb. 2007)²⁴

19. The Immigration and Refugee Board of Canada also reported that:

A recent report from the United Kingdom Home Office indicates that, leading up to the 30 July 2006 elections, members of the UDPS and the Congolese Rally for Democracy (Rassemblement congolais pour la démocratie, RCD) "were targeted for human rights violations because of their political affiliations" (UK 14 Feb. 2007, Sec. 3.11). Country Reports on Human Rights Practices for 2006 states that the National Intelligence Agency (Agence nationale de renseignements, ANR) [one of the country's security services] arrested a dozen UDPS party members on 27 June 2006 and arbitrarily detained them in a military camp in Mbuji Mayi (in the province of Kasai oriental) (US 6 Mar. 2007, Sec. 3). Although they were accused of arms possession, charges were never brought against them and all 12 were released by the end of July 2006 (ibid.).

The United Kingdom Home Office report also indicates that, on 12 June 2006, police used tear gas to break up a UDPS protest march organized to demand negotiations aimed at including the party in the election process (UK 14 Feb. 2007, Sec. 6.41). A report from Human Rights Watch (HRW) notes that, during the DRC election campaign, [HRW English version] "police officers used excessive force against members of the political opposition, including supporters of the Union for Democracy and Social Progress (UDPS)" (11 Jan. 2007). The same report indicates that the UDPS held a peaceful demonstration on 10 March 2006 in Kinshasa, which was broken up by the police, who beat demonstrators and detained some 15 of them (ibid.; see also UK 14 Feb. 2007, Sec. 3.07).²⁵

20. The information provided demonstrates that UDPS members are still at risk of persecution and ill-treatment by the state.

Treatment of Bunda Dia Kongo (BDK) members

²⁴ 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, 23/03/2007.

²⁵ 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, 23/03/2007.

21. The OGN at paragraph 3.6.7 notes that:

There were widespread allegations of corrupt practices in the conduct of the senatorial and gubernatorial elections of January 2007 and violence broke out in the Bas Congo Province in February 2007 after supporters of the BDK movement protested against the results of the elections in the province. The United Nations estimated that 134 people died as a result of the violence, including members of the security forces. Although Jean-Pierre Bemba accepted the 2006 presidential election result, the refusal of his armed guards to join the national army led to intense clashes between Bemba's supporters and government troops in Kinshasa in March 2007. Mr Bemba's allies condemned what they described as the arbitrary arrest and intimidation of its members, but President Kabila insisted that his troops had put down an armed rebellion. Mr Bemba travelled to Portugal after initially taking refuge in the South African embassy, and in his absence the opposition boycotted parliament on the grounds of lack of safety and harassment. During this period of unrest, the Presidential Guard reportedly seized and ransacked the MLC headquarters and targeted the homes of MLC politicians, robbing and threatening their families. However, opposition parties later returned to parliament after being promised talks with President Kabila and reports of politically-motivated harassment on all sides have diminished.

22. According to the evidence consulted, extensive human rights violations have occurred as a result of clashes between BDK adherents and the DRC state. With a characteristically disproportionate response from government authorities against BDK members, police used violence and intimidation to discourage political opposition (USSD, 11/03/2010).
23. Focus of abuse of the authorities fell to the BDK, identified as an oppositional group to the government due to their promotion of provincial autonomy. The UN Special Rapporteur called for an investigation into the deaths of over 205 BDK members, deeming that during the 2007-2008 period, police used excessive force and arbitrarily killed and raped civilians; for example, a woman died from injuries sustained after she was gang raped by FARDC soldiers within her home (USSD 11/03/2010).
24. The government rejected claims of the politically motivated killings of hundreds of BDK members and civilians, opting instead to conduct its own investigation. Despite this enquiry into violent clashes with BDK adherents, no investigation was made into police crackdown on BDK members and no individuals or agencies have been held accountable (USSD, 26/10/2009; OHCHR, 15/10/2009).
25. In August 2006, the BDK allied with Bemba and the MLC, bringing them important support in the second round of presidential polling. Since then the harshness of government forces toward the BDK increased. When BDK demonstrators protested, at times violently, against electoral corruption in early 2007, police and government soldiers shot or stabbed to death

104 BDK adherents as well as several others not affiliated with the movement. In March 2008 police made a preemptive strike in anticipation of further protests, in what MONUC investigators said appeared to be a deliberate effort to wipe out the movement by burning temples, razing churches and homes and carrying out arbitrary killings and assaults (Freedom House, 07/04/2010; USSD, 11/03/2010; HRW, 28/11/2008).

26. In February 2007, police and soldiers used unnecessary or excessive force to halt demonstrations being organized by the BDK to protest against corruption in the gubernatorial elections the month before. In ensuing clashes both sides were responsible for killings and injuries (HRW, 28/11/2008).
27. Also on January 31, 2008, 50 police officers in Matadi raided Nsemi's (the founder of BDK) house where BDK members were gathered, claiming that weapons were hidden there. BDK adherents set up a barricade and threw stones at the police. In an ensuing skirmish that continued into the following day, the police shot and stabbed to death 15 BDK adherents and injured 18 others. BDK supporters stoned one police officer to death and injured another. No weapons were found at Nsemi's house (HRW, 28/11/2008).
28. Following the events, the police and army rounded up scores of BDK supporters, including some who had not participated in the protests. They beat some detainees with rifle butts on the face and on their backs and kicked them repeatedly (HRW, 28/11/2008). According to an article in Associated Press, 17 BDK members were prosecuted on the grounds of undermining the security of the state. Amongst the 17, 9 were sentenced to death while 4 died in custody (AFP, 01/10/2008).
29. On January 5, 2008, six people, including one state agent, four BDK supporters and another civilian were killed during BDK protests against the arrest of two other BDK adherents in Seke-Banza territory. The protestors did not carry firearms, though some reportedly carried sticks and shouted abuse at the police. Police officers shot at the protestors and crushed and killed several BDK members with their vehicles when they attempted to flee the scene (HRW, 28/11/2008).
30. In the last days of February and the first week of March, 2008, truckloads of heavily armed police moved through towns in Cataracts district of Bas Congo attacking BDK adherents, most of whom were gathered in or around their zikua meeting places, and at improvised road blocks. The BDK had stones, nuts, sticks, and pieces of wood fashioned into the shape of weapons. Some of them refused to surrender to the police, chanting war cries and sometimes throwing stones, but did not present a serious and immediate threat to the numerically superior, heavily armed police units. With no adequate warning, the police fired at them,

killing over 200 and injuring scores of others during three weeks of police operations (Freedom House, 07/04/2010; USSD, 11/03/2010; HRW, 28/11/2008).

31. As in previous operations, in the various deadly encounters with BDK adherents during this period the police used excessive force and in some cases deliberately killed persons who were wounded, running away, or otherwise in no position to threaten them. On March 8, 2008, during their operation in Matadi, police entered the home of a family who lived near the BDK zikua, demanded money, and then shot two young children, one of whom later died. In some locations, such as at Sumbi village, the police called local residents to look at the bodies of the people they had killed, possibly in an attempt to intimidate others who were or might become BDK adherents. The police systematically burned meeting places, homes, and other buildings belonging to BDK adherents. They arrested over 150 suspected BDK followers, including those who had not participated in any actions against the police, and tortured or ill-treated some of them. One person, arrested at his home in Kinsundi, was transferred along with a group of BDK adherents and two corpses to Lemba village, where police beat the detainees and burned them with hot melted plastic (UKBA, 30/06/2009; HRW, 28/11/2008).
32. Police attempted to disguise the effects of this violence by systematically dumping bodies in mass graves or in the Congo river. Unidentified persons later dug up the bodies at one grave in Materne and moved them to an unknown location (HRW, 28/11/2008; AFP, 03/05/2008). According to information gathered in April by a provincial parliamentary commission, police ordered first-aid workers to bury 40 bodies in five mass graves in Sumbi, Nienge, and Lolo Bene, in the Seke-Banza territory. Local residents told the commission that some bodies had been removed from the largest of these graves a few days before parliamentarians gathered their information (HRW, 28/11/2008).
33. Among the victims were several people hit by stray bullets, including children. On March 21 the Congo government revoked the authorization of the BDK to operate as a social and cultural organization, effectively making the movement illegal (USSD, 26/10/2009; HRW, 28/11/2008).
34. In light of this, the government claimed that the police carried out their mission “to protect the population” with great professionalism, characterizing the BDK as a “militia” and their actions as a “rebellion”. (HRW, 28/11/2008)
35. The extent of the crackdown on BDK members by state authorities shows the need to include information regarding their treatment in the OGN. The violence and regularity with which the government and its agencies are killing, torturing and ill-treating BDK members and their supporters suggest that the grant of asylum is appropriate for such applicants.

Treatment of Movement for the Liberation of Congo (MLC) members

36. According to the sources consulted anyone believed to be or actually associated with Jean-Pierre Bemba or the MLC in one form or another seems to be at potential risk of being subjected to arbitrary arrest and imprisonment.
37. Two sources reported on the killing of an MLC politician in July 2008 by the Republic Guard [part of the security apparatus of the Congolese government], supposedly ordered by the Kinshasa governor (Freedom House 16/07/2009; USSD 25/02/2009). Another news article reported on the serious beating by police of a cameraman for the Canal Congo Television, which is owned by Jean Pierre Bemba (IFEE 24/06/2009).
38. Other sources reported in more general terms about the decline in freedom of political affiliation, freedom of expression and the attempt by the government to “stifle those critical of their policies” (OHCHR 02/04/2009). through intimidation, arbitrary arrests and imprisonment of political opponents (OHCHR 02/04/2009; HRW 25/11/2008). Particularly the “arbitrary arrests by state security forces, especially of military or police officers with suspected affiliations to the MLC [...] and its leader” (AI 28/05/2009) were noted (see also OHCHR 02/04/2009; HRW 25/11/2008). Many of these were held “incommunicado for weeks or months in unofficial military or intelligence service detention” (AI 28/05/2009; see also OHCHR 02/04/2009) and subjected to “torture and other forms of intimidation or repression” (OHCHR 02/04/2009).
39. According to a report by HRW that documents the violent repression and aftermath of the March 2007 clashes between Bemba supporters and the Congolese security forces,

“many military and intelligence officials and others close to Kabila who were interviewed by Human Rights Watch, Kabila set the tone and direction of the repression. In giving orders, he spoke of “crushing” or “neutralizing” the “enemies of democracy,” “terrorists,” and “savages,” implying it was acceptable to use unlawful force against them (HRW 25/11/2008).
40. According to reports by Human Rights Watch several hundreds of people were arrested and imprisoned (HRW 25/11/2008; MONUC 27/09/2008; AFP 04/01/2008), often arbitrarily (HRW 25/11/2008), summary executed (HRW 25/11/2008; MONUC 27/09/2008; AFP 04/01/2008), and most of the time because of their perceived or real association with Jean-Pierre Bemba, the leader of the MLC (HRW 25/11/2008; MONUC 27/09/2008). Moreover, several of the people who were imprisoned in March 2007 were still in prison without charges or trial by September 2008 (MONUC 27/09/2008).

41. The treatment of Bemba supporters and members of the MLC can be said to amount to ill-treatment and persecution. The numerous reports on the torture and killings of MLC members, including perceived supporters of Bemba provided above demonstrate that such applicants have a well-founded fear of persecution for their (perceived) political opinion. We therefore recommend that the OGN section on opposition political parties contain a section on the treatment of MLC members which concludes that such applications may warrant the grant of asylum.

Members of Former Rebel Forces

42. As will be shown in the following paragraphs, the country information suggests that real or perceived former rebel group members/ supporters are at heightened risk of ill-treatment and even death at the hands of the FARDC. Country information also suggests that rebel groups, particularly the Democratic Forces for the Liberation of Rwanda (FDLR) target civilians and accuse them of collaborating with the FARDC – making it almost impossible for the victims to seek redress and access effective protection if they are fearing both, the army and the rebel groups.

43. Please note that the following analysis focuses both on the treatment of ‘real’ members and perceived collaborators, e.g. civilians.

44. Most reports mention reprisal attacks by the Congolese army against civilians who are accused of having collaborated in one form or another with the FDLR, whether willingly or unwillingly.²⁶ In these attacks, it is noted that the Congolese army has committed “serious human rights violations against civilians”²⁷, including killing, raping, beating, looting, arbitrarily arresting and forcing “into labour innocent civilians”²⁸. Oxfam notes that “returnees are particularly at risk in parts of North Kivu” facing violence and extortion from the FARDC, intelligence services or other state authorities “who accuse them of being FDLR supporters, or from members of the host community who suspect them of theft and collaboration with various armed groups”.²⁹ According to Human Rights Watch, the

²⁶ See amongst others Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009; Human Rights Watch, Eastern DR Congo: Surge in Army Atrocities, 02/11/2009; Human Rights Watch, DR Congo: Civilian Cost of Military Operation is Unacceptable, 13/10/2009; Oxfam, Waking the devil: the impact of forced disarmament on civilians in the Kivus, 15/07/2009; and Oxfam UK, Rape, forced labour, reprisal attacks and torture surge in eastern Congo, says new Oxfam survey, 14/07/2009.

²⁷ Christian Aid (UK), Congo crisis made worse by UN-backed military operation, 02/11/2009.

²⁸ See amongst others Human Rights Watch, DR Congo: Complaint Against Lt. Col. Innocent Zimurinda, 01/03/2010; Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009; Inter Press Service News Agency (IPS), DR-Congo: Rights Groups Urge U.N. to Rein in Army, 14/10/2009; and Human Rights Watch, DR Congo: Hold Army to Account for War Crimes, 19/05/2009..

²⁹ See Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009 and Oxfam, Waking the devil: the impact of forced disarmament on civilians in the Kivus, 15/07/2009.

Congolese army has also targeted Rwandan Hutu refugees living in eastern Congo, “whom they often accuse of being FDLR combatants or ‘wives’”.³⁰ The country information suggests that the army does not make a clear distinction between combatants, civilians, or perceived aides.

45. Several reports have also documented reprisal attacks against civilians committed by rebel groups who view them as collaborators with the FARDC.³¹ A local chief from Masisi territory summarised the problematic situation to Human Rights Watch as follows:

*The FDLR say we are the ones who told the FARDC to come and chase them out of eastern Congo, while our soldiers blame us for having lived with the FDLR and say we're their brothers. We've become the enemies of all sides and don't understand anymore what to think.*³²

46. Along similar lines, the Human Rights Watch South Africa office chief was quoted as saying “many atrocities [...] have been conducted by both sides and basically paints a picture for the civilian population in which there is nowhere to turn [...] The government forces are also targeting them and accusing them of being collaborators with the FDLR. And the FDLR obviously accuses them, vice versa”.³³
47. Consequently, civilians and former members of the rebel groups are trapped in a non-win situation, being accused and targeted from all sides, state and non-state actors, with no recourse to effective protection. We also refer you to our section on state protection in the Kivu.
48. As for internal relocation, we refer you to our section on internal relocation in the Kivu and the general section on internal relocation.

Members of Non-Governmental Organisations (NGOs)

49. This section is inadequate and very limited in addressing the treatment of NGO members, particularly human rights activists, both at the time of publication and today.
50. At the time of the OGN publication, 23 December 2008, the main source relied upon for this section was the COIS DRC report of 21 May 2008, which by then was 7 months old. In

³⁰ Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009.

³¹ See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010; Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009; and Oxfam UK, Rape, forced labour, reprisal attacks and torture surge in eastern Congo, says new Oxfam survey, 14/07/2009.

³² Human Rights Watch, DR Congo: Hold Army to Account for War Crimes, 19/05/2009.

³³ Voice of America News, More Than 1,400 Civilians Reportedly Killed in DRC Conflict in Nine Months, 14/12/2009.

addition, it was the only source referred to in this section, despite additional COI material being available in the public domain that was published between May and December 2008³⁴.

51. With regard to relevance of information, the COI contained in the paragraphs describing the treatment of NGO members (paras. 3.7.2 and 3.7.3) is not sufficient and does not adequately address the issues, since it only lists a number of NGOs that are operating in the DRC and only briefly and in very general terms notes the harassment, intimidation and arrest of local human rights advocates, NGO workers and MONUC investigators. However, it fails to mention additional human rights violations committed against NGO members, as well as the perpetrators and main locations of such abuse. Listing some NGOs that operate in the DRC does not mean that they can operate freely and without intimidation, harassment and arrest. Instead, it would be beneficial to include information and contact details of such organisations in the COIS DRC report so that case owners can access their respective websites and if necessary contact the NGOs directly for accurate and up-to-date information and country/ situation assessments.³⁵
52. The paragraph on *Sufficiency of protection* (para. 3.7.4) fails to document the numerous human rights abuses committed by state authorities in general and in particular against NGO members. Even if the perpetrators are non-state agents, some human rights activists who have received threats and been victims of acts of violence by these groups, might not want to attract the unnecessary attention of the state authorities to their activities, in particular if their NGO also exposes government-sponsored human rights violations. Consequently, this

³⁴ The following sources are just an example of the kind of COI that was available in the public domain in the period May to December 2008 documenting and reporting on the treatment of NGO members, including human rights activists, by both state authorities and non-state actors: United Nations High Commissioner for Refugees (UNHCR), DRC: UNHCR deplores murder of Italian NGO staffer; rebels reportedly pressuring IDPs to return, 16/12/2008, <http://www.unhcr.org/cgi-bin/texis/vtx/newsitem?id=494788f24>; Office of the United Nations High Commissioner for Human Rights (OHCHR), UN human rights experts concerned about serious human rights violations in eastern Democratic Republic of the Congo, 28/11/2008, http://www.brookings.edu/projects/idp/RSG-Press-Releases/20081128_drcongo.aspx; Human Rights Watch, "We Will Crush You": The Restriction of Political Space in the Democratic Republic of Congo, 25/11/2008, Section IV, <http://www.hrw.org/en/reports/2008/11/25/we-will-crush-you-0>; United Nations, Fourth special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 21/11/2008, para. 31; http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/728; Amnesty International, Democratic Republic of Congo: North Kivu: No End to War on Women and Children, 29/09/2008, <http://www.amnesty.org/en/library/info/AFR62/005/2008/en>; World Organisation Against Torture (OMCT) / International Federation for Human Rights (FIDH), Steadfast in Protest: 2007 Annual Report of the Observatory for the Protection of Human Rights Defenders (Democratic Republic of Congo), 19/06/2008, http://www.omct.org/pdf/Observatory/2008/annual_report_...pdf; United Nations Mission in the Democratic Republic of the Congo (MONUC), Monthly Human Rights Assessment: April 2008, 17/06/2008, paras. 9, 17, 21, <http://allafrica.com/stories/200806171165.html>; Amnesty International, Amnesty International Report 2008: Democratic Republic of the Congo, 28/05/2008, <http://www.amnesty.org/en/region/congo/report-2008>; Front Line (Ireland), Democratic Republic of Congo: Killing of human rights defender Wabiwa Kabisuba, 27/05/2008, <http://www.frontlinedefenders.org/node/1449> (all last accessed 05/05/2010).

³⁵ Good practice in the COIS DRC report could include, presenting both the original, likely to be French, name of the organisation, as well as the English translation, e.g. La Voix des sans Voix (VSV - Voices for the Voiceless), Le Comité des Observateurs des Droits de l'homme (Committee of Human Rights Observers) etc.

paragraph fails to acknowledge the difficulties victims of human rights abuses will have in accessing effective and adequate protection.

53. With regard to the COI contained in the paragraphs as part of an assessment of the possibility of *Internal relocation* (paras. 3.7.5 – 3.7.7), the selected information does not adequately address freedom of movement and its related potential difficulties, obstacles and insecurities. It also fails to provide a comprehensive picture of the current humanitarian situation and conditions in displacement, which could render an internal relocation option impossible. Please also refer to the general section on internal relocation below.
54. This demonstrates a clear lack of currency, balance and relevance in the COI material presented for this particular group of asylum claimants and explains the inadequate conclusion reached in paragraph 3.7.8.
55. Current and relevant COI that postdates the publication of the OGN (December 2008) note the deterioration of the situation for human rights activists, documenting incidences of:
- threats and acts of intimidation and violence³⁶,
 - Arbitrary arrests³⁷,
 - Detention³⁸,

³⁶ See amongst others United Nations, Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 30/03/2010, para. 62, http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/164; UK Foreign and Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: The Democratic Republic of Congo, 17/03/2010, http://www.ecoi.net/local_link/135805/235931_en.html; US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 39, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; Human Rights Watch, World Report 2010: Democratic Republic of Congo (DRC), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586cf5c.html>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, 28/01/2010, para. 30, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-64.pdf>; Front Line (Ireland), DRC: Death threats against four human rights organisations in Goma, 26/11/2009, <http://www.frontlinedefenders.org/en/node/2267>; Amnesty International, Urgent Action 249/09 DRC: Four human rights defenders threatened, 22/09/2009, <http://www.amnesty.org/en/library/asset/AFR62/017/2009/en/55944651-2ff6-4705-8422-477a7fbfc331/af620172009en.html> (all last accessed 05/05/2010).

³⁷ See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Human Rights Watch, World Report 2010: Democratic Republic of Congo (DRC), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586cf5c.html>; Voice of America News, Human Rights Activist Arrested in Congo, 29/09/2009, <http://www.globalsecurity.org/military/library/news/2009/09/mil-090929-voa18.htm>; Front Line (Ireland), DRC: Continued judicial harassment of Messrs Nginamau Malaba, Tony Israel Kaminbaya Yambasa and Richard Kambale Ndayango, 12/05/2009, <http://www.frontlinedefenders.net/ru/node/1918> (all last accessed 05/05/2010).

- Ill-treatment in detention³⁹,
- Killing/ Murders⁴⁰.

56. Some reports have particularly highlighted the specific risk faced by women human rights defenders of being subjected to sexual and gender-based violence, including rape.⁴¹

57. With regard to the perpetrators of violence against NGO workers, the 2009 US Department of State report, amongst others, that security forces and other state authorities were involved in the above named abuses and thus often did not investigate allegations of such violations.⁴² Human rights activists were regularly accused of publishing false information or even of more serious crimes such as instigating a rebellion or civil disobedience, defamation, threats against national security, when reporting on or supporting victims of abuses by the army or

³⁸ See amongst others UK Foreign and Commonwealth Office (FCO), Annual Report on Human Rights 2009 - Countries of Concern: The Democratic Republic of Congo, 17/03/2010, http://www.ecoi.net/local_link/135805/235931_en.html; Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 40, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; Human Rights Watch, World Report 2010: Democratic Republic of Congo (DRC), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586cf5c.html>; Front Line (Ireland), DRC: Detention of trade union member and human rights defender, Mr Nginamau Malaba, 10/02/2009, <http://frontlinedefenders.org/en/node/1806> (all last accessed 05/05/2010).

³⁹ See amongst others Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, 28/01/2010, para. 34, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-64.pdf> (last accessed 05/05/2010).

⁴⁰ See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 40, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; Human Rights Watch, World Report 2010: Democratic Republic of Congo (DRC), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586cf5c.html> (all last accessed 05/05/2010).

⁴¹ See amongst others Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 43, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; World Organisation Against Torture (OMCT) / International Federation for Human Rights (FIDH), Steadfast in Protest: The Observatory for the Protection of Human Rights Defenders Annual Report 2009 (Democratic Republic of Congo), 19/06/2009, http://www.omct.org/pdf/Observatory/2009/obs_annual_rep....pdf; Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations expert on human rights defenders concludes visit to the Democratic Republic of the Congo, 03/06/2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7SNNTC?OpenDocument> (all last accessed 05/05/2010).

⁴² See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 47, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, 28/01/2010, paras. 31 and 36, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-64.pdf> (all last accessed 05/05/2010).

police, documenting corruption, and writing on the illegal exploitation of national resources.⁴³

58. It appears that any interest shown, questions asked and criticism raised against potential human rights abuses committed by the government, businessmen with connections to the government or anyone else who has links to the people in power, is going to attract the adverse attention of the authorities. The OHCHR specifically reports that “[T]he Congolese authorities, as well as non-State actors, have continued to stigmatize defenders, labelling them as “enemies” or “opponents [...] “humanitarian terrorists””.⁴⁴ Often family members and or anyone else perceived to be supporting human rights activists in their work were targeted or threatened with violence as well.⁴⁵

59. All of the above was corroborated by the Special Rapporteur on the Situation of Human Rights Defenders on her mission to the DRC in May/ June 2009. In her report, published in February 2010, she summarises her findings as follows:

[...] While the legal framework for the protection of human rights has been progressively strengthened over the years, it remains marred by severe gaps and shortcomings that result in the diluting of any benefits that human rights defenders could draw from positive developments.

[She further points to the] stigmatization and the related insecurity suffered by defenders, who are killed, disappeared, tortured, threatened, arbitrarily arrested and detained, under surveillance, banned from travelling, displaced or forced into exile.

Another cause of great concern is the widespread impunity for violations committed against defenders by State authorities and members of armed groups.

⁴³ See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, paras. 42, 45 and 46, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument>; Voice of America News, Human Rights Activist Arrested in Congo, 29/09/2009, <http://www.globalsecurity.org/military/library/news/2009/09/mil-090929-voa18.htm>; Front Line (Ireland), DRC - UPDATE - Sentencing of human rights defender, Mr Golden Misabiko, 23/09/2009, <https://frontlinedefenders.org/node/2176> (all last accessed 05/05/2010).

⁴⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010, para. 44, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-83DNLM?OpenDocument> (last accessed 05/05/2010).

⁴⁵ See amongst others US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010, section 5, <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135947.htm>; Human Rights Watch, World Report 2010: Democratic Republic of Congo (DRC), 20/01/2010, <http://www.unhcr.org/refworld/docid/4b586cf5c.html>; Front Line (Ireland), DRC: Rape and death threats against human rights defender, Ms Rebecca Agamile, 09/10/2009, <http://www.frontlinedefenders.org/case/0/53> (all last accessed 05/05/2010).

*[Finally she expresses concern] about illegitimate restrictions on the exercise of the right to association, the right to peaceful assembly and the right to freedom of opinion and expression.*⁴⁶

60. The following reports also provide useful and current information regarding the treatment and situation of human rights activists, some of which document specific cases of state-sponsored violence:

- a. Amnesty International, Human rights defenders under attack in the Democratic Republic of Congo, 17/02/2010,
<http://www.amnesty.org/en/library/asset/AFR62/001/2010/en/46d7ad48-b7cc-461f-a716-43a1c9809d06/afr620012010en.pdf>
- b. Office of the United Nations High Commissioner for Human Rights (OHCHR), Concluding observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of the Congo, 16/12/2009, para. 12,
<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/89e6367c3ac1ba6fc12567b70027d9fb/42f82fdc87018100c125768200401b2b?OpenDocument>
- c. World Organisation Against Torture (OMCT) / International Federation for Human Rights (FIDH), Steadfast in Protest: The Observatory for the Protection of Human Rights Defenders Annual Report 2009 (Democratic Republic of Congo), 19/06/2009,
http://www.omct.org/pdf/Observatory/2009/obs_annual_rep....pdf
- d. Front Line – Protection of Human Rights Defenders: The Democratic Republic of Congo webpage has useful and up to date information
<http://www.frontlinedefenders.org/democraticrepublicofcongo>

61. The above mentioned human rights violations against human rights activists were documented particularly in Eastern DRC, but also in the capital, Kinshasa.⁴⁷

62. With regard to non-state agents, the OHCHR, as well as the Special Rapporteur on the Situation of Human Rights Defenders also single out “armed groups” as committing human

⁴⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on the situation of human rights defenders on her mission to the Democratic Republic of the Congo, 25/02/2010, Summary, http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.22.Add.2_English.pdf (last accessed 05/05/2010).

⁴⁷ See amongst others Front Line (Ireland), DRC: Death threats against four human rights organisations in Goma, 26/11/2009, <http://www.frontlinedefenders.org/en/node/2267>; Amnesty International, Urgent Action 249/09 DRC: Four human rights defenders threatened, 22/09/2009, <http://www.amnesty.org/en/library/asset/AFR62/017/2009/en/55944651-2ff6-4705-8422-477a7fbfc331/afr620172009en.html>; Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations expert on human rights defenders concludes visit to the Democratic Republic of the Congo, 03/06/2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7SNNTC?OpenDocument>; Amnesty International, Urgent Action 78/09 – DRC: Incommunicado detention/ Fear of torture and other ill-treatment (human rights activists arrested in Kinshasa), 16/03/2009, <http://www.amnestyusa.org/actioncenter/actions/uaa07809.pdf?rss=iar> (all last accessed 05/05/2010).

rights violations against human rights activists.⁴⁸ Front Line notes that parts of rebel factions could be responsible, especially those who oppose NGOs fighting against impunity and cooperating with the International Criminal Court.⁴⁹ However, less information could be located about particular abuses committed by armed/ rebel groups, which should not imply that such instances do not occur but rather that they are underreported and that non-state perpetrators are often harder to identify.

63. On 2 June 2010, Mr. Chebeya, the founder of “Voix des Sans Voix” (Voice of the Voiceless), a human rights advocate since the regime of Mobutu Sese Seko, was found assassinated. Mr Chebeya had often been arrested, detained and threatened by the government due to his activities. The US Department of State stated that:

*We are concerned about the killings of other human rights defenders in the DRC in recent years, and note that Congolese human rights groups remain particularly vulnerable to harassment, arbitrary arrest and detention, and other abuses by security forces.*⁵⁰

The UN Special Rapporteur on extra-judicial killings, Mr Philip Aston and the High Commissioner for Human Rights have called for an enquiry into his death.⁵¹

Non-Banyamulenge Tutsis and Banyamulenge Tutsis

64. We note the lack of objective information in the public domain on the treatment of non-Banyamulenge Tutsis and Banyamulenge Tutsis.
65. In the concluding paragraph 3.8.10 the OGN notes that “there is no current evidence of deliberate attacks or systematic ethnic discrimination which might suggest that someone of Tutsi origin would be at risk of discrimination or ill-treatment amounting to persecution at the hands of state authorities in Kinshasa or other government-controlled areas on the basis of their ethnic origin alone”. We note however that there is no country information in the

⁴⁸ See Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the United Nations High Commissioner for Human Rights on the situation of human rights and the activities of her Office in the Democratic Republic of the Congo, 28/01/2010, para. 32, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-64.pdf>; Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations expert on human rights defenders concludes visit to the Democratic Republic of the Congo, 03/06/2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/EGUA-7SNNTC?OpenDocument> (all last accessed 05/05/2010).

⁴⁹ Front Line (Ireland), DRC: Death threats against four human rights organisations in Goma, 26/11/2009, <http://www.frontlinedefenders.org/en/node/2267> (last accessed 05/05/2010).

⁵⁰ US Department of State, Statement on Death of Floribert Chebeya Bahizire, U.S. extends condolences to family, friends of Congolese rights leader, 04/06/2010, <http://www.america.gov/st/texttrans-english/2010/June/20100604171830SBlebahC0.8006207.html>.

⁵¹ International Service for Human Rights, Killing of human rights defender Floribert Chebeya Bahizire, 07/06/2010, <http://www.ishr.ch/council-news/773-killing-of-human-righst-defender-floribert-chebeya-bahizire>.

OGN or the COIS Report that would suggest such an assertion. The absence of easily accessible and publicly available information on the treatment of Tutsis does not mean that they are not at risk of ill-treatment.

66. Furthermore this policy position does not accord with the Country Guidance case of *AB and DM (Risk Categories Reviewed - Tutsis added) (Democratic Republic of Congo) CG [2005] UKAIT 00118*. This case added those who are Tutsis (or Banyamulenge) to the current risk categories.
67. In the absence of publicly available information we sought the expert opinion of Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, in April 2010. Her comments and analysis are provided in paragraphs 70 and 71 below.
68. We also recommend combining **sections 3.8 and 3.9** (and 2.10 and elsewhere) because the distinctions made throughout between non-Banyamulenge Tutsis and Banyamulenge Tutsis are virtually meaningless in the context of asylum claimants. We suggest that these two entire sections be rewritten with a focus on the situation of Banyarwanda Congolese in general (and indeed Rwandan refugees in Congo), with distinctions between Tutsi and Hutu groups within the larger Banyarwanda group. The meaning and somewhat specific situation of the Banyamulenge should be explained, but it does not make sense as a separate category of asylum applicant; and their nationality problems are shared by the larger group, not specific to them.⁵²
69. In brief, the Banyarwanda group as a whole, Hutus and Tutsis, face severe problems in establishing their nationality since they are popularly understood not to fulfil the criteria established by the current constitution and nationality code giving nationality to ‘every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence.’ The understanding by the authorities and on the street is that the Banyarwanda did not ‘form what became Congo at independence’ but arrived since then – and many still believe that the date is more properly 1885, which was the law for many years. The fundamental understanding of nationality is based on a concept of ethnicity rather than fulfilment of legal criteria. Although the recent nationality reforms have eased restrictions in the law, in practice, the Banyarwanda still face major difficulties in establishing their claim to be Congolese. Within the Banyarwanda group, there are various distinctions that are relevant in theory for the nationality question (based on date of arrival in the country) and on the ground in the conflict, since armed groups are operating on both the Tutsi (CNDP – formerly headed by Nkunda) and Hutu (FDLR) sides, in conflict with each other and also with the FARDC state forces (consistently for the CNDP; in the case of the FDLR the army has fought with them in some cases). Efforts to integrate former rebel combatants into the army have been highly problematic. The CNDP has had major backing

⁵² Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

from the Rwandan government—which is Tutsi dominated, and has on its agenda the eradication of former *genocidaires* and other possible Hutu armed threats to the Rwandan government operating out of eastern DRC. The Banyamulenge are a group of Tutsi in South Kivu who can claim that they were present in Congo from before 1885 or indeed earlier, thus they should have an unequivocal claim to nationality, but this is still denied by many. In practice, Banyamulenge is often used as a synonym for Congolese Tutsi in general. Please refer to the section on the DRC in *Struggles for Citizenship in Africa*.⁵³

70. In relation to paragraph 3.8.5 on sufficiency of protection specifically, there is ample material showing that government forces are not only unable to protect but are also involved in committing atrocities against all or any resident of Eastern Congo. We refer you to our section on the Kivus below for examples of those materials. Paragraph 3.8.5 states that “in October 2004, the Government deployed 5,000 troops to protect displaced Tutsis threatened by other ethnic groups in eastern DRC. The authorities have therefore demonstrated their capacity to protect Tutsis from rival ethnic groups”. We do not consider that because in one case, under pressure, the army deployed in protection of Tutsis, the state can be relied on in general for protection. As Ms Manby suggests, with recent attempts to integrate the FDLR into the army this is even more problematic as a statement in relation to the situation of Tutsi Banyarwanda.⁵⁴
71. In parallel to our recommendation to combine section 3.8 and 3.9, we note that at paragraph 3.9.6 it is inexplicable that insufficiency of protection is recognized for Banyamulenge but not for other Banyarwanda, especially Tutsi Banyarwanda.⁵⁵
72. Paragraphs 3.8.6 /7 and 3.9.7 on internal relocation suggest that this is a viable option. As is well known the risk of rape did not begin or cease in 2007. The issue of sexual violence deserves far more attention. According to Ms Manby, ability to move around is severely compromised for those without money, vehicles etc, and especially for women.⁵⁶ In relation to the extent of sexual violence and rape we refer you to our section on women below and with regard to internal relocation we refer you to the sections on the Kivus and on internal relocation at the end of this document.

⁵³ Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010. *Struggles for Citizenship in Africa*, by Bronwen Manby, Zed Books, 2009.

⁵⁴ Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

⁵⁵ See also information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

⁵⁶ Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

Women

73. We note the absence of a specific section on women in the DRC OGN. This is especially worrying in light of the extensive objective evidence on the prevalence of sexual violence and the absence of state protection for victims of sexual violence. Human Rights Watch has stated that “humanitarian workers and other observers have in recent years labeled Congo as “the worst place to be a child” or “the worst place on earth to be a woman”.”⁵⁷
74. The second war in DRC from 1998 to 2003 saw the use of sexual violence as a widespread weapon of war. Sexual violence continued in the DRC throughout the peace process and the elections in 2006. In Eastern Congo, new armed groups were created and rape and sexual violence has continued with impunity.⁵⁸
75. Most of the country information available reports the extent of rape in Eastern DRC. However, although the information on rape and sexual violence concentrates mainly on the East, this does not suggest it is not prevalent elsewhere in the country. Indeed, the sources note the symptomatic, widespread and government condoned or lead sexual violence on women.
76. In April 2010, UNHCR expressed alarm at the prevalence of sexual violence in DRC and noted that the problem of rape was “endemic”.⁵⁹ More specifically, the agency reported that “at least 200,000 cases of sexual violence have been recorded since 1996”. UNHCR said that the problem may be even worse as many women chose not to report the attacks.⁶⁰ The United Nations Population Fund reported that 15,996 new cases of sexual violence were registered in 2008 throughout the country⁶¹ and that more than 8000 women had been raped in the East of the country during 2009.⁶² The numbers are believed to be higher however since it is believed that many victims do not come forward.⁶³ Both the mainly ethnic Hutu rebel militia, known as the Forces démocratiques de libération du Rwanda (FDLR), and members of the

⁵⁷ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁵⁸ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁵⁹ United Nations High Commissioner for Refugees (UNHCR), *UNHCR condemns endemic rape in DRC, helps survivors*, 23/04/2010

⁶⁰ United Nations High Commissioner for Refugees (UNHCR), *UNHCR condemns endemic rape in DRC, helps survivors*, 23/04/2010

⁶¹ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁶² United Nations News, *More than 8,000 women raped last year by fighters in eastern DR Congo – UN*, 08/02/2010.

⁶³ United Nations High Commissioner for Refugees (UNHCR), *16 Days of Activism: The forgotten victims of conflict in the Congo*, 26/11/2009. International Rescue Committee (USA), *Eastern Congo: “Women are afraid that they could be raped any night here”*, 25/11/2009. Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

national army (FARDC) have been held responsible for the rapes.⁶⁴ Human Rights Watch said the FARDC was the single biggest group of perpetrators of sexual violence⁶⁵ and also reported that other rebel groups such as the National Congress for the Defence of the People (CNDP) and the Coalition of Congolese Patriotic Resistance (PARECO) participated in sexual crimes through the integrated brigades.⁶⁶

77. A detailed survey by Oxfam and Harvard Humanitarian Initiative (HHI) showed that more than 60% of women raped had been gang-raped.⁶⁷ The report also demonstrated that very few perpetrators are brought to justice.⁶⁸ This shows the lack of state protection for victims of sexual violence in DRC. The authorities and the UN mission are unable to prevent and limit the number of attacks or to bring the perpetrators to justice, often because they are themselves involved in rape allegations.

78. Describing the extent of the risk of sexual violence and treatment of women and girls in DRC, the Oxfam and HHI Report found that:

Several international organizations, including Amnesty International, Human Rights Watch, Médecins Sans Frontières (MSF) and Malteser, have reported their observations from working with rape survivors in Eastern DRC (38, 39, 41, 42, 44-46). Collectively, they describe the extraordinary brutality of sexual violence in DRC, which includes gang rape, instrumentation, kidnapping, forced "marriages" and genital mutilation.(38, 39, 41, 43, 45) MSF reported that over half of all victims were raped while working in the fields and concluded that, "Sexual violence has been so clearly linked to the military strategy of warring parties [in DRC] and has occurred in such a systematic way that it is wrong to think of it as a side effect of war."(42) Human Rights Watch described the extraordinary brutality of rapes in DRC – girls as young as five and women as old as 80 were reportedly shot in the vagina or mutilated with knives and razor blades.(45) Anneke Van Woudenberg, the Human Rights Watch specialist for Congo, believes that rape has been so widespread that "it [rape] has become a defining characteristic" of the DRC war.(47)⁶⁹

⁶⁴ United Nations News, More than 8,000 women raped last year by fighters in eastern DR Congo – UN, 08/02/2010. International Rescue Committee (USA), Level of Brutality Against Women and Girls in Congo Increasing; UN Must Do More to Protect Them, 10/12/2009. International Rescue Committee (USA), Eastern Congo: "Women are afraid that they could be raped any night here", 25/11/2009.

⁶⁵ Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

⁶⁶ Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

⁶⁷ Oxfam International, New report shows shocking pattern of rape in eastern Congo, 15/04/2010

⁶⁸ Oxfam International, New report shows shocking pattern of rape in eastern Congo, 15/04/2010

⁶⁹ Oxfam International, New report shows shocking pattern of rape in eastern Congo, 15/04/2010

79. Human Rights Watch reported that:

In the Democratic Republic of Congo, tens of thousands of women and girls have suffered horrific acts of sexual violence. The government army, the Forces Armées de la République Démocratique du Congo (FARDC), is one of the main perpetrators, contributing to the current climate of insecurity and impunity in eastern Congo. FARDC soldiers have committed gang rapes, rapes leading to injury and death, and abductions of girls and women. Their crimes are serious violations of international humanitarian law. Commanders have frequently failed to stop sexual violence and may themselves be guilty of war crimes or crimes against humanity as a consequence. Although other armed groups also commit brutal acts of sexual violence against women and girls, the sheer size of the Congolese army and its deployment throughout the country make it the single largest group of perpetrators.⁷⁰

Human Rights Watch looked at the 14th brigade of the FARDC in particular and found that they had been responsible for many crimes of sexual violence, abductions, killings, torture, lootings and extortions of civilians.⁷¹ The sexual violence has continued, including after former opposition armed groups were integrated into the FARDC without formal training.⁷²

80. The violence with which rape is perpetrated by armed groups in DRC has led to the denomination of a new pathology called Rape with Extreme Violence (REV). It was reported that “current gaps in the provision of care for REV survivors include a lack of health care infrastructure, insufficient number of qualified psychotherapists, and challenges associated with socioeconomic reintegration”.⁷³ The International Rescue Committee has stated the UN is failing in its mission to protect women and girls from sexual violence.⁷⁴ More specifically, it said that:

The Security Council has identified the protection of civilians as the top priority for the UN peacekeeping mission in Congo. However MONUC, as the force is known, has not been able to sufficiently safeguard vulnerable civilians. Equally troubling, the UN itself has become directly involved in the conflict through its support of the Congolese army in Kimia II, a military operation against the rebel group, FDLR. This operation, which began in early 2009, has continued despite widespread reports of atrocities being committed by government soldiers. Indeed, recent UN reports

⁷⁰ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁷¹ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁷² Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁷³ PloS Medicine, *Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo*, 22/12/2009.

⁷⁴ International Rescue Committee (USA), *Level of Brutality Against Women and Girls in Congo Increasing; UN Must Do More to Protect Them*, 10/12/2009.

*confirm that members of the Congolese army have been responsible for acts of sexual violence.*⁷⁵

81. The Catholic Relief Services and Human Rights Watch reported an alarming growing trend of rape of women by civilians.⁷⁶ Research has shown that most rapes now occur during the day and that many women targeted live in internally displaced camps.⁷⁷
82. Women who are raped are often abandoned by their husbands and are left alone to fend for themselves and take care of their children.⁷⁸ When women and girls who have been raped are rejected by their families they are at risk of further abuse.⁷⁹ Unemployment, poverty, homelessness and the ravages of war has meant more young girls are forced into prostitution to survive.⁸⁰
83. Perpetrators of sexual violence and rape are not brought to justice and account for their crimes but can be released after paying the equivalent of US\$3 to prison wardens.⁸¹ Impunity for such treatment appears from the objective country information available to be widespread and that the lack of enforcement encourages the phenomenon to spread further.⁸²
84. The military justice system is a weak institution and only very few cases of sexual violence crimes committed by the army have been prosecuted.⁸³ Human Rights Watch attributed the high level of sexual crimes and violence to the poor conditions in the army and the level of impunity with the fact that only low level soldiers are being prosecuted while high-ranking soldiers are not being investigated.⁸⁴
85. Human Rights Watch reported that insufficient efforts were made to protect women and girls from sexual violence and noted more specifically that:

⁷⁵ International Rescue Committee (USA), Level of Brutality Against Women and Girls in Congo Increasing; UN Must Do More to Protect Them, 10/12/2009.

⁷⁶ Catholic Relief Services, Rape in Congo: Grim Statistics, Tender Victims, 17/11/2009. Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

⁷⁷ Catholic Relief Services, Rape in Congo: Grim Statistics, Tender Victims, 17/11/2009.

⁷⁸ United Nations Children's Fund (UNICEF), UNICEF Executive Director Ann M. Veneman decries continued rape and violence against women and children in the DRC, 27/08/2009.

⁷⁹ Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

⁸⁰ Institute for War and Peace Reporting (UK), Grim Fate of Street Girls, 30/07/2009.

⁸¹ United Nations High Commissioner for Refugees (UNHCR), 16 Days of Activism: The forgotten victims of conflict in the Congo, 26/11/2009.

⁸² International Rescue Committee (USA), Eastern Congo: "Women are afraid that they could be raped any night here", 25/11/2009. Catholic Relief Services, Rape in Congo: Grim Statistics, Tender Victims, 17/11/2009.

⁸³ Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

⁸⁴ Human Rights Watch, Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo, 16/07/2009.

*According to a 2008 inventory on donor funding on sexual violence produced by MONUC, the focus of funding has been on medical treatment, legal assistance, and capacity-building for government and NGOs. In contrast, only 11 percent of funds were destined to protect women and girls from sexual violence, for example through army training.*⁸⁵

86. The war in the DRC has led to an increasing number of household led by women widows, forced prostitution as a means of survival and an increase in domestic violence as unemployment is on the rise.⁸⁶
87. The United Nations have reported that many girls have been used as sex slaves in the East of DRC and that programmes for the rehabilitation of child soldiers failed to address their specific needs and they were therefore less likely to be freed.⁸⁷
88. The Institute for War and Peace Reporting (UK) have looked at the treatment of children born as a consequence of rape and the discriminatory treatment they face by their families and the community.⁸⁸ Children born of rape will often not be sent to school and may be left on the street homeless.⁸⁹
89. The Institute for War and Peace Reporting (UK) reported that Women's rights groups in the DRC denounced traditional practices, such as widows having to sleep with their husbands' brother, as making women more vulnerable to sexual abuse.⁹⁰ The Institute also reported that as soldiers returned home from war, domestic and sexual violence was brought back to the home.⁹¹
90. Discrimination against women in DRC society is widespread and laws and traditional practices are made by men to their advantage.⁹² The Institute for War and Peace Reporting (UK) has noted that domestic violence is much less reported but that it is a serious problem affecting many Congolese women.⁹³ Marital rape is criminalised but appears to be raised very rarely as women are ashamed of bringing domestic matters to the courts.⁹⁴ Illiteracy and

⁸⁵ Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo*, 16/07/2009.

⁸⁶ PloS Medicine, *Rape with Extreme Violence: The New Pathology in South Kivu, Democratic Republic of Congo*, 22/12/2009.

⁸⁷ United Nations News, *Girls less likely than boys to be freed from DR Congo's ranks of child soldiers – UN*, 12/02/2010.

⁸⁸ Institute for War and Peace Reporting (UK), *Children Born of Rape Face Dismal Future*, 22/12/2009. Catholic Relief Services, *Rape in Congo: Grim Statistics, Tender Victims*, 17/11/2009.

⁸⁹ Institute for War and Peace Reporting (UK), *Children Born of Rape Face Dismal Future*, 22/12/2009.

⁹⁰ Institute for War and Peace Reporting (UK), *War, Tradition Feeds Sexual Violence Against Women*, 01/10/2009.

⁹¹ Institute for War and Peace Reporting (UK), *War, Tradition Feeds Sexual Violence Against Women*, 01/10/2009.

⁹² Institute for War and Peace Reporting (UK), *War, Tradition Feeds Sexual Violence Against Women*, 01/10/2009.

⁹³ Institute for War and Peace Reporting (UK), *Women "Prisoners" in Their Own Homes*, 29/05/2009.

⁹⁴ Institute for War and Peace Reporting (UK), *Women "Prisoners" in Their Own Homes*, 29/05/2009.

lack of education was identified as further factors making it extremely difficult for women to seek justice and protection.⁹⁵

North Kivu

91. This section is inadequate and very limited in addressing the situation in North Kivu, both at the time of publication and today. It further ignores the situation in South Kivu, despite the fact that spill-over effects of what is happening in North Kivu are being felt in South Kivu with major implications for its local and IDP population.
92. Despite referring to BBC news articles published between October and December 2008 (11 out of 17 footnoted references), the July 2008 UN Secretary-General report (1/17 footnoted references), the May 2008 DRC COIS report (3/17 footnoted references), the March 2008 published annual US Department of State report (1/17 footnoted references), and the March 2008 FCO report (1/17 footnoted references), this section has not included more current COI as it relates to the situation in December 2008 and did not include additional country material from more relevant sources documenting the political, human rights and humanitarian situation in the Kivu.⁹⁶

⁹⁵ Institute for War and Peace Reporting (UK), Women "Prisoners" in Their Own Homes, 29/05/2009.

⁹⁶ The following sources are just a selection of the kind of COI that was available in the public domain in the period May to December 2008 documenting and reporting on the humanitarian situation in the Kivus. Please note that due to the vast amount of information available, only some of the major reports have been noted here: United States Institute of Peace (USA), Disaster in the DRC: Responding to the Humanitarian Crisis in North Kivu, 22/12/2008, <http://www.usip.org/resources/disaster-in-the-drc-responding-the-humanitarian-crisis-in-north-kivu>; United Nations, Final report of the Group of Experts on the Democratic Republic of the Congo, 12/12/2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=s/2008/773>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights Council opens special session on human rights situation in the east of the Democratic Republic of the Congo, 28/11/2008, <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/8/index.htm>; Institute for Security Studies (South Africa), Assessing Security Sector Reform and its Impact on the Kivu Provinces, 26/11/2008, http://www.ssrnetwork.net/document_library/detail/4479/assessing-security-sector-reform-and-its-impact-on-the-kivu-provinces; Amnesty International, Democratic Republic of Congo: Crisis in North Kivu, 21/11/2008, <http://www.unhcr.org/refworld/country,,AMNESTY,,COD,456d621e2,492bb7e7c,0.html>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Focus on North Kivu Province: IDPs on the move face grave human rights violations, 21/11/2008, <http://www.unhcr.org/refworld/country,,IDMC,,COD,456d621e2,492abfe82,0.html>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Escalating displacement in North Kivu despite ceasefire agreement, 30/09/2008, <http://www.unhcr.org/refworld/country,,IDMC,,COD,456d621e2,48e31fd52,0.html>; Amnesty International, Democratic Republic of Congo: North Kivu: No End to War on Women and Children, 29/09/2008, <http://www.amnesty.org/en/library/info/AFR62/005/2008/en>; Human Rights Watch, Congo Advocacy Coalition: Update on Protection of Civilians in Eastern Congo's Peace Process, 29/07/2008, http://www.globalwitness.org/media_library_detail.php/653/en/update_on_protection_of_civilians_in_eastern_cong

93. With regard to relevance of information, the COI contained in the paragraphs describing the situation in North Kivu (paras. 3.11.2 – 3.11.4) is insufficient and does not adequately address the issues, since it only touches on violence, insecurity, human rights violations, the peace process, displacement and humanitarian situation, in very general and brief terms. The section fails to inform on the situation of girls and women, and that children in general are subject to sexual violence and slavery, rape, forced recruitment, forced labour and other forms of serious human rights violations. It further does not deal with important humanitarian issues, such as freedom of movement, access to food, health care, as well as the situation for IDPs and returnees.
94. The paragraph on *Sufficiency of protection* (para. 3.11.5) fails, as noted previously, to document the numerous and serious human rights abuses committed by state authorities in the Kivu, particularly the police and the army.
95. The COI contained in the paragraphs as part of an assessment of the possibility of *Internal relocation* (paras. 3.11.6 and 3.11.7) are the same as those contained in section 3.7 and analysed previously. These two paragraphs do not adequately address freedom of movement and its related potential difficulties, obstacles and insecurities, as well as failing to provide a comprehensive picture of the current humanitarian situation and conditions in displacement, which might make an internal relocation option impossible. We also refer you to our general section on internal relocation below.
96. This demonstrates a clear lack of currency, balance and relevance in the COI material presented. The conclusion reached in paragraph 3.11.8 for this group of applicants is therefore very narrow and does not take into consideration personal circumstances that might make an internal relocation option to Kinshasa not appropriate or reasonable.
97. The following analysis on the current human rights, security and humanitarian situation in the Kivu is based on a selection of the main reports published on these issues since the publication of the December 2008 OGN. In addition to the COI provided below further additional information may be found in national and international news agencies articles and reports, which have not been included.

Internal displacement

98. The Internal Displacement Monitoring Centre (IDMC) reported that in 2009 alone, around a million people were displaced in the Kivu due to “[F]ighting between militia groups and Congolese armed forces supported by the UN, as well as attacks and violence against

o; Refugees International (USA), Democratic Republic of Congo: Break the Routine on Humanitarian Assistance, 21/05/2008, <http://www.refintl.org/policy/field-report/dr-congo-break-routine-humanitarian-assistance> (all URLs last accessed 07/05/2010).

civilians”.⁹⁷ Due to these and earlier episodes of displacement, over 2.1 million people were displaced in North and South Kivu and Orientale Province at the end of 2009⁹⁸, of which 1,215,00 have been displaced since April 2009.⁹⁹

Humanitarian situation in displacement

99. Many of the displaced have sought shelter in camps and spontaneous settlements, as the host villages in surrounding areas have reached their capacity. These makeshift settlements are often unsafe, badly structured, usually located in insecure areas where “displaced women and children are extremely vulnerable to abuses”, or built on private land, causing land disputes with the land owner, as reported by the IDMC.¹⁰⁰ This has led to a dramatic humanitarian situation where access to basic necessities “has deteriorated” and the “vast majority of IDPs and returnees have no access to health centres [...] schools, clean water, food, seeds, tools, clothes or building materials”.¹⁰¹ The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported on a similar note that approximately 30% of people in need cannot be reached “due to insecurity and logistical constraints.”¹⁰²

Situation of returnees

100. The IDMC estimated that “a million people or more returned home, half of them in North Kivu”, but that many had to flee again due to land occupation by other IDPs or rebel groups,

⁹⁷ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo> (last accessed 07/05/2010).

⁹⁸ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo> (last accessed 07/05/2010).

⁹⁹ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (last accessed 07/05/2010).

¹⁰⁰ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo (DRC): Massive displacement and deteriorating humanitarian conditions, 12/08/2009, <http://www.alertnet.org/thenews/newsdesk/IDMC/89af248e9adccfafa4ef15e834a8c0f8.htm> (last accessed 07/05/2010).

¹⁰¹ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo (DRC): Massive displacement and deteriorating humanitarian conditions, 12/08/2009, <http://www.alertnet.org/thenews/newsdesk/IDMC/89af248e9adccfafa4ef15e834a8c0f8.htm> (both last accessed 07/05/2010).

¹⁰² United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (last accessed 07/05/2010).

and renewed violence.¹⁰³ Refugee International, basing itself on UN estimates, reports that 525,000 people have returned to North Kivu in 2009, but that at the same time 600,000 people have been newly displaced due to the ongoing insecurity and two major military operations, 'Operation Kimia II' and 'Amani Leo'.¹⁰⁴ Refugees International, in an earlier report, noted that the impact of the military operations have led to new displacements in South Kivu and cautious against returns in North Kivu with an overall assessment that these operations have done "more harm than good".¹⁰⁵

101. OCHA reports that "[T]he increasing dispersion of IDPs, and regular multiple displacements, make it difficult to produce reliable estimates of the total number of IDPs, newly displaced IDPs, re-displaced IDPs, returnees, etc".¹⁰⁶ The IDMC has tried to record the number of people on the move in North and South Kivu in its August 2009 report, but acknowledges that "[A]ll figures are estimates of varying precision, as most IDPs cannot be registered, and many are constantly on the move."¹⁰⁷

Freedom of movement

102. OCHA reports that armed fighting, rampant banditry, poor roads and infrastructure make it very difficult to move around the Kivu and provide the necessary humanitarian

¹⁰³ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo>. Similar figures were reported by United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (both last accessed 07/05/2010).

¹⁰⁴ Refugees International (USA), DR Congo: Unstable Areas Endanger Returns, 20/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900sid/MINE-84PS9U?OpenDocument>. More information about these military operations can be found in these reports: Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009, <http://www.hrw.org/node/87151>; Enough Project (Center for American Progress), An Uneasy Alliance in Eastern Congo and its High Cost for Civilians: Operation Kimia II, 28/09/2009, <http://www.connectusfund.org/resources/enough-project-report-uneasy-alliance-eastern-congo-and-its-high-cost-civilians-operation-kimia-ii>; Oxfam, Waking the devil: the impact of forced disarmament on civilians in the Kivus, 15/07/2009, <http://www.oxfam.org/policy/drc-waking-the-devil> (all last accessed 07/05/2010).

¹⁰⁵ Refugees International (USA), DR Congo: Protect Civilians & End Military Operations, 15/09/2009, <http://www.refugeesinternational.org/policy/field-report/dr-congo-protect-civilians-end-military-operations> (last accessed 07/05/2010).

¹⁰⁶ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (last accessed 07/05/2010).

¹⁰⁷ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo (DRC): Massive displacement and deteriorating humanitarian conditions, 12/08/2009, <http://www.alertnet.org/thenews/newsdesk/IDMC/89af248e9adccfafa4ef15e834a8c0f8.htm> (last accessed 07/05/2010).

assistance.¹⁰⁸ Ms Manby, the expert we instructed to comment on the DRC OGN, further stated that “the ability to move around is severely compromised for those without money, vehicles etc., and especially for women [...] the author [of the OGN] has clearly never tried to move around the Kivus”.¹⁰⁹

Availability and ability to protect

103. The IDMC noted that the “protection of IDPs and other civilians [...] remained an urgent concern”, since state authorities and rebel groups continue to commit and engage in serious human rights violations, including killing, rape, sexual exploitation, abduction, forcible conscription of children, looting, plundering of crops, illegal taxation and general harassment of civilians.¹¹⁰ OCHA similarly reports that Congolese armed forces, rebel groups, local armed groups and bandits operate throughout the Kivu and concludes that due to weak control by the national authorities and widespread instability in several parts of the Kivu this situation is compounded, with “most areas of the Kivu provinces [...] remain[ing] unstable, and the security situation [...] highly volatile”.¹¹¹ Human Rights Watch has documented major human rights abuses committed by both state and non-state actors in the Kivu against civilians and summarises its findings as such:

The attacks against civilians have been vicious and widespread. Local populations have been accused of being "collaborators" by one side or the other and deliberately targeted, their attackers saying they are being "punished." Human Rights Watch has documented the deliberate killing of more than 1,400 civilians between January and September 2009, the majority women, children, and the elderly. The attacks have been accompanied by rape. In a region already known as the "worst place in the world to be a woman or child," the situation has deteriorated even further. Over the first nine months of 2009, over 7,500 cases of sexual violence against women and girls were registered at health centers across North and South Kivu, nearly double that of 2008, and likely only representing a fraction of the total.

¹⁰⁸ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (last accessed 07/05/2010).

¹⁰⁹ Information taken from an email exchange with Bronwen Manby, Senior Program Advisor of AfriMAP, Open Society Foundation London, April 2010.

¹¹⁰ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo>. See also United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (both last accessed 07/05/2010).

¹¹¹ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation in the Kivus and Maniema Province - Snapshot report, 19/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900SID/VDUX-84NS8K?OpenDocument> (last accessed 07/05/2010).

In addition to killings and rapes, thousands of civilians have been abducted and pressed into forced labor to carry weapons, ammunition, or other baggage across the treacherous terrain by government forces and FDLR militia as they deploy from place to place. Some civilians have been killed when they refused. Others have died because the loads they have been forced to carry were too heavy. Between January and September, the attacks forced more than 900,000 people to flee for their lives, seeking safety in the remote forests, with host families, or in displacement camps. During the attacks or as they fled, FDLR combatants or Congolese army soldiers pillaged their belongings and then burned their homes and villages. Over 9,000 houses, schools, churches and other structures have been burned to the ground in North and South Kivu. Many civilians, already poor, have been left with nothing.

*Civilians have been targeted by all sides: the FDLR, the Congolese army and, in some instances, the Rwandan army.*¹¹²

104. Moreover, as mentioned previously, the military operations, that initially were meant to alleviate the situation, had a negative impact on the security and humanitarian situation for civilians in the Kivu. Oxfam carried out a protection assessment in the latter half of May 2009 amongst 569 civilians across 20 communities in North and South Kivu and found that:

- *The operations have resulted in increased violence against civilians in all affected areas, including where there had as yet been no military engagement at the time of the survey.*
- *This violence is often a direct result of the operations, with widespread reprisal attacks on communities from both sides and a spike in abuses from the mass military deployment.*

¹¹² Human Rights Watch, "You Will Be Punished": Attacks on Civilians in Eastern Congo, 13/12/2009, <http://www.hrw.org/node/87151>. Similar findings were made by the Enough Project, the Internal Displacement Monitoring Centre, and the Office of the United Nations High Commissioner for Human Rights, amongst others: Enough Project (Center for American Progress), An Uneasy Alliance in Eastern Congo and its High Cost for Civilians: Operation Kimia II, 28/09/2009, <http://www.connectusfund.org/resources/enough-project-report-uneasy-alliance-eastern-congo-and-its-high-cost-civilians-operation-kimia-ii>; Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo (DRC): Massive displacement and deteriorating humanitarian conditions, 12/08/2009, <http://www.alertnet.org/thenews/newsdesk/IDMC/89af248e9adccfafa4ef15e834a8c0f8.htm>; Office of the United Nations High Commissioner for Human Rights (OHCHR), Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country, 05/03/2009, <http://www.unhcr.org/refworld/country,,UNHRC,,COD,456d621e2,49d357fb2,0.html> (all last accessed 07/05/2010).

- *It is compounded by problems linked to the fast-track integration of militia fighters into the army which has run parallel to FARDC deployment for the operations, and by the failure of justice and protection mechanisms.*
- *There are also significant indirect consequences, as the operations have generated new opportunities for abuse by a range of actors.*¹¹³

105. In addition, despite the fact that the DRC government is trying to integrate former militia members into its armed forces, as well as to disarm and repatriate members of Rwandan armed groups, “the integration process has been marred by corruption and by conflicts between soldiers”.¹¹⁴ The Enough Project report, a project of the US Center for American Progress to end genocide and crimes against humanity, notes that “tensions are mounting within and between the armed groups that feel badly served by the hasty integration process and the broader diplomatic machinations. Meanwhile, militias that have refused integration are aligning themselves against the Congolese government. The result is constantly shifting alliances between various armed groups”.¹¹⁵ Moreover, according to Refugees International “most areas of return in North Kivu continue to be controlled by the CNDP [a political armed militia]”.¹¹⁶

106. The following reports, just to name a few, deal with specific issues affecting civilians in the Kivu:

Sexual violence committed by both state and non-state agents

- Harvard Humanitarian Initiative / Oxfam, Now, The World Is Without Me: An Investigation of Sexual Violence in eastern Democratic Republic of Congo, 15/04/2010, http://www.oxfam.org.uk/resources/policy/conflict_disasters/sexual-violence-drc.html
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¹¹³ Oxfam, Waking the devil: the impact of forced disarmament on civilians in the Kivus, 15/07/2009, <http://www.oxfam.org/policy/drc-waking-the-devil> (last accessed 07/05/2010).

¹¹⁴ Internal Displacement Monitoring Centre (Norwegian Refugee Council), Democratic Republic of the Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions, 24/02/2010, <http://www.internal-displacement.org/countries/drcongo> (last accessed 07/05/2010).

¹¹⁵ Enough Project (Center for American Progress), An Uneasy Alliance in Eastern Congo and its High Cost for Civilians: Operation Kimia II, 28/09/2009, <http://www.connectusfund.org/resources/enough-project-report-uneasy-alliance-eastern-congo-and-its-high-cost-civilians-operation-kimia-ii> (last accessed 07/05/2010).

¹¹⁶ Refugees International (USA), DR Congo: Unstable Areas Endanger Returns, 20/04/2010, <http://reliefweb.int/rw/rwb.nsf/db900sid/MINE-84PS9U?OpenDocument> (last accessed 07/05/2010).

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Forced recruitment of children by both state and non-state agents

- Coalition to Stop the Use of Child Soldiers (UK), Democratic Republic of the Congo: Mai Mai Child Soldier Recruitment and Use: Entrenched And Unending, 26/02/2010, www.child-soldiers.org/Mai_Mai_child_recruitment_and_use_in_the_DRC_-_February_2010.pdf
- Office of the United Nations High Commissioner for Human Rights (OHCHR), Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country, 05/03/2009, <http://www.unhcr.org/refworld/country,,UNHRC,,COD,456d621e2,49d357fb2,0.html>

Prison Conditions

107. The OGN notes in its concluding paragraph on prison conditions that prison and detention facilities in the DRC are likely to reach the Article 3 threshold (paragraph 3.12.7).

108. Yet, this section should contain more up to date information. This section also fails generally to highlight the prevalence of rape and sexual violence in prisons. The evidence demonstrates that the ineffective justice system and the lack of coordinated management of prisons in the DRC have led to many arbitrarily detained in extremely dire conditions.

109. Freedom House noted in April 2010 that prison conditions in the DRC are amongst the worst in Africa. More specifically they said that:

*Nearly all facilities are characterized by harsh and even life-threatening conditions, including severe overcrowding, inadequate or nonexistent health care, and abuse by guards. Family members and friends are generally the only source of food and other necessities for inmates, leading to malnutrition and occasional death. Small prisons generally do not have separate facilities for women and juveniles.*¹¹⁷

110. The UN Special Rapporteur on Extrajudicial Executions described prison conditions in the DRC as atrocious after a fact finding mission to the DRC in October 2009.¹¹⁸ The United Nations found that some prisoners had died of starvation due to the absence of management of the prison system by the government in a report dated March 2010.¹¹⁹ Prisoners have also died due to neglect.¹²⁰ MONUC reported that the lack of access to medical care, overcrowding, malnutrition and ill-treatment in prisons had lead to many deaths.¹²¹

111. The United States Department of State found in its annual report that “conditions in most prisons remained severe and life-threatening”.¹²² Further, the UN High Commissioner for Human Rights (UNHCHR) reported that, between March 2008 and March 2009, at least 65 prisoners died in prisons and concluded that confinement in a Congolese prison in itself often amounted to cruel, inhumane, or degrading treatment.¹²³ Amnesty International has also on the basis of extensive evidence argued that prison conditions in the DRC amount to cruel, inhuman or degrading treatment.¹²⁴

¹¹⁷ Freedom House, Countries at the Crossroads 2010: Congo, Democratic Republic of (Kinshasa), 07/04/2010

¹¹⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), Press statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions. Mission to the Democratic Republic of the Congo, 5-15 October 2009, 15/10/2009

¹¹⁹ United Nations, Thirty-first report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo, 30/03/2010

¹²⁰ Refugee Documentation Centre (Legal Aid Board, Ireland), Information on condition of prisons, 04/03/2010

¹²¹ United Nations Mission in the Democratic Republic of Congo (MONUC), The Human Rights Situation in the Democratic Republic of Congo (DRC) During the period January to June 2007, 12/05/2008.

¹²² US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010

¹²³ US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010

¹²⁴ Refugee Documentation Centre (Legal Aid Board, Ireland), Information on condition of prisons, 04/03/2010

112. Many prisoners die due to lack of food or lack of access to medical treatment. “According to UNHCHR, almost 80 percent of inmates were pre-trial detainees. Prison records remained grossly inadequate, and authorities kept individuals in prison even after their sentences had been served.”¹²⁵
113. The USSD found that rape and sexual violence in prisons were prevalent and affected both men and women. Moreover there was often a failure to separate men, women and children within the penitentiary facilities.¹²⁶ The UN Special Rapporteur on Violence against Women had received information about the widespread use of sexual violence against women in prison throughout the country.¹²⁷ UN Secretary General Ban Ki-Moon made a public statement expressing his grave distress at the rape and sexual assault of about 20 women in a prison in Goma in June 2009.¹²⁸ The widespread rapes and sexual violence in prisons led to many women giving birth in prisons and having children born and raised in prison.¹²⁹ It was reported that male inmates paid prison guards to have sex with the female detainees.¹³⁰
114. There were also reports of the lack of investigation into the torture of detainees by the ANR (*Agence Nationale de Renseignements*).¹³¹ For more information on ill-treatment in detention see the section on the treatment of political opposition above.

Returns

115. This section does not take into account any country information, though limited, that might impact on the possibility of a safe, dignified and sustainable return of refused asylum seekers to the DRC since the promulgation of *BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098*.
116. The available country information that post-dates *BK* suggests that refused asylum seekers are likely to be interrogated by national security forces when returned to the DRC, who have a very good and wide network throughout the country. There have been reports of failed asylum seekers who were tortured on return to DRC simply because of having claimed asylum in the UK.¹³² One article reports that refused asylum seekers returned from the UK

¹²⁵ US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010

¹²⁶ US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010

¹²⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, 08/03/2010

¹²⁸ Refugee Documentation Centre (Legal Aid Board, Ireland), Information on condition of prisons, 04/03/2010

¹²⁹ Institute for War and Peace Reporting (UK), New Evidence of Abuse of Women Prisoners, 05/11/2009

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¹³¹ US Department of State, 2009 Human Rights Report: Democratic Republic of the Congo, 11/03/2010

¹³² Voice of America News, Protesters Gather in London to Stop Expulsion of DRC Refugees, 21/11/2008. HJT Research, The Observer: Former DRC secret policeman says returned asylum seekers face torture, 26/09/2007. The

have been interrogated, arrested, subjected to torture, and disappeared.¹³³ Voice of America News similarly quoted a Congolese refugee, who helped compile evidence for lawyers representing DRC asylum seekers, as saying “We have evidence of failed asylum seekers who were sent back to the Congo and who have been arrested, detained and many of them have disappeared”.¹³⁴ This was confirmed in a radio interview with a former Congolese police officer who worked at a police station in Kinshasa: “We have politicians, people who are active against the government, who had to be brought there [police stations] for interrogation, and there were military deserters, criminals, people who have been sent back from Europe, who also had to be interrogated”.¹³⁵

117. The Country Guidance of case of *BK (Failed asylum seekers) DRC CG [2007] UKAIT 00098* accepted that failed asylum seekers forcibly returned to DRC were questioned at the airport¹³⁶ and we consider that this should be made clear in the OGN for case owners to adequately consider whether there is a real risk of ill-treatment and persecution on return.

118. It is recommended that more country information research is conducted on the safe, dignified and sustainable return of refused asylum seekers to the DRC and that such information, including the above, is included in the section on returns.

Internal Relocation

119. We note that the OGNs are concentrating on only one part of the internal relocation legal test and fail to adequately reflect and consider all the elements necessary to assess whether internal relocation is a viable option for applicants.

120. Paragraphs 3.6.9, 3.7.7, 3.8.8 and 3.9.8 of the OGN contain a paragraph on internal relocation that reads:

Internal relocation. Although this category of applicants’ fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners

Institute of Race Relations, The grim fate that awaits those deported to Congo, 2/12/2004,

<http://www.irr.org.uk/2004/december/ak000003.html>.

¹³³ The Guardian, Britain sending refused Congo asylum seekers back to threat of torture, 27/05/2009,

<http://www.guardian.co.uk/world/2009/may/27/drc-congo-deport-torture> (last accessed 06/05/2010).

¹³⁴ Voice of America News, Protesters Gather in London to Stop Expulsion of DRC Refugees, 21/11/2008,

<http://www.voanews.com/english/archive/2008-11/2008-11-21->

[voa56.cfm?CFID=328534040&CFTOKEN=29125702&jsessionid=de30eca813d52d27977d19446917317c352c](http://www.voanews.com/english/archive/2008-11/2008-11-21-voa56.cfm?CFID=328534040&CFTOKEN=29125702&jsessionid=de30eca813d52d27977d19446917317c352c)

(last accessed 06/05/2010).

¹³⁵ BBC Radio 4 FM, The Torturer’s Tale, 27/10/2008, 8.00-8.30pm, <http://www.bbc.co.uk/radio4/factual/pip/bniqc/>

(last accessed 06/05/2010). Unofficial transcript by Giulia Tranchina, Human Rights Research Intern in the Country Information Centre at the Immigration Advisory Service, of two main passages of the programme led by Jolyon Jenkins. This transcript can be requested by the Country Information Centre of the IAS.

¹³⁶ Paragraphs 188-189.

should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

“The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts.”

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

121. We give the following information in relation to the concept of internal relocation which should either be reflected in the APIs on Internal Relocation and Gender in the Asylum Claim and inform the drafting of internal relocation paragraphs in the OGNs if specific and objective country information is available for certain categories of claimants.
122. The paragraph relating to internal relocation under each category of claimants refers to the case of **Januzi v Secretary of State for the Home Department [2006] UKHL 5** before the UK House of Lord in 2006. The quote in the OGN fails to reflect the complete test required in assessing the viability of the application of the internal flight alternative in asylum or humanitarian protection claims. The quote simply states that IFA should be considered even if the actor of persecution is the State.
123. The legal test established by Courts in the UK as to whether IFA is a viable option is to examine whether relocation would be unduly harsh.¹³⁷ Lord Hope stated in **Januzi** that "*the words 'unduly harsh' set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there.*"
124. The guidance offered by the UNHCR suggests a standard to assess the reasonableness of relocation by examining whether the claimant can “lead a relatively normal life without

¹³⁷ Paragraph 41. This was re-iterated in *CM (Kenya) v Secretary of State for the Home Department [2007] EWCA Civ 312* (13 February 2007) at paragraph 8.

facing undue hardship".¹³⁸ The UNHCR Guidelines of 2003 state that "conditions in the area must be such that a relatively normal life can be led in the context of the country concerned".

125. The Court of Appeal noted that some conditions are unreasonable even if they are widespread in the place of relocation.¹³⁹

126. What decision-makers should consider when determining whether relocation would be unduly harsh for refugees is the cumulative effects of relocation itself in terms of social, cultural, economic, legal and psychological aspects. Protection in the area of relocation must be effective and of a durable nature. Decision makers should also ensure that access to the area of relocation is safe.

127. Decision-makers should refer to the Asylum Policy Instructions on Gender and in particular note that:

*In considering the reasonableness of relocation the decision-maker may need to take into account gender issues. For example, in certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be particularly the case for widows or single parents. Women may have family ties i.e. children who are not able to relocate, they may face a particular form of discrimination in the place of relocation, or be unable to work such that they cannot survive in the place of relocation.*¹⁴⁰

State Protection

128. As a generic point that applies across all OGNs we consider that guidance should refrain from using the language of "sufficiency of protection". The UK Border Agency accepts that protection must be effective and the applicant must be able to access it,¹⁴¹ if a claim for international protection is to be refused on these grounds. The language in all OGNs should therefore be amended to reflect the current policy position.

¹³⁸ UNHCR *Guidelines on International Protection* of 23 July 2003, in paragraph 7 II(a).

¹³⁹ *AA (Uganda) v. Secretary of State for the Home Department* [2008] EWCA Civ 579, para. 17.

¹⁴⁰ APIs on Gender in the Asylum Claim.

¹⁴¹ See, for example, the letter from Amelia Wright, Head of Asylum Policy to Alasdair Mackenzie, Acting Chair of ILPA and Nuala Mole, Director of the AIRE Centre dated 08/02/10 headed Response to ILPA and the AIRE Centre comments to the UK Border Agency on the recast Procedures and Qualification Directives.

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