



BM and Others (returnees – criminal and non-criminal) DRC CG [2015] 00293 (IAC)

**Upper Tribunal
(Immigration and Asylum Chamber)**

THE IMMIGRATION ACTS

Heard at Field House, London
On 02, 03, 04, 12 and 13 March 2015
and 28 April 2015

Determination Promulgated:

Before

**The Hon. Mr Justice McCloskey, President of the Upper Tribunal
Upper Tribunal Judge Jordan**

Between

BM, DS, BBM, DK AND AA

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

- BM: Ms S Naik and Ms R Stickler (both of Counsel), instructed by Michael McGarvey Immigration Solicitors
- DS: Mr R Toal and Ms A Smith (both of Counsel), instructed by Sutovic and Hartigan Solicitors
- BBM: Mr R Toal and Ms Shazia Khan (both of Counsel), instructed by Ison Harrison Solicitors
- DK: Mr R Toal and Mr A Eaton (both of Counsel), instructed by Irving and Co Solicitors
- AA: Ms S Naik and Ms H Short (both of Counsel), instructed by Kate Ormsby of GMIAU

Respondent: Ms N Lieven QC, Mr D Blundell and Mr R Moules (both of Counsel), instructed by the Government Legal Department

1. *A national of the Democratic Republic of Congo ("DRC") who has acquired the status of foreign national offender in the United Kingdom is not, simply by virtue of such status, exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR in the event of enforced return to the DRC.*
2. *A national of the DRC whose attempts to acquire refugee status in the United Kingdom have been unsuccessful is not, without more, exposed to a real risk of persecution or serious harm or proscribed treatment contrary to Article 3 ECHR in the event of enforced return to DRC.*
3. *A national of the DRC who has a significant and visible profile within APARECO (UK) is, in the event of returning to his country of origin, at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers or spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.*
4. *The DRC authorities have an interest in certain types of convicted or suspected offenders, namely those who have unexecuted prison sentences in the DRC or in respect of whom there are unexecuted arrest warrants in the DRC or who allegedly committed an offence, such as document fraud, when departing the DRC. Such persons are at real risk of imprisonment for lengthy periods and, hence, of treatment proscribed by Article 3 ECHR.*

ANONYMITY

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 an anonymity order is made in respect of each of the Appellants. Unless the Upper Tribunal or other competent Court orders otherwise, no report of any of the proceedings herein or any form of publication thereof shall, directly or indirectly, identify any of the Appellants. This prohibition applies to, amongst others, all parties.

GLOSSARY OF TERMS

PARTIES AND OTHERS

- BM: The first Appellant.
- DS: The second Appellant.
- BBM: The third Appellant.
- DK: The fourth Appellant.
- AA: The fifth Appellant.
- BB: Husband of the Appellant AA.
- JM: APARECO office bearer.
- PL: Executive National Secretary of APARECO.
- XY: A person identified in the evidence of two witnesses who testified on behalf of the Appellant AA.

OTHER

- ADFL: Alliance of Democratic Forces for the Liberation of Congo (Alliance des Forces Démocratiques pour la Libération du Congo).
- AI: Amnesty International.
- ANR: The DRC National Intelligence Agency. (Agence National de Renseignements)
- APARECO: Alliance de Patriotes pour la Refondation du Congo (Alliance of Patriots for the Re-establishment of the Congo).
- BHC: British High Commission, Nairobi, Kenya.
- COI: County of Origin Information.
- DGM: Direction Generale de Migration (Directorate General of Migration) of the DRC.
- DRC: Democratic Republic of the Congo.

- ETD: Emergency travel document .
- FAS: Failed Asylum Seeker.
- FCO: Foreign and Commonwealth Office of the United Kingdom.
- FDLR: Democratic Forces for the Liberation of Rwanda (Forces démocratiques de liberation du Rwanda).
- FFM: Fact Finding Mission of the FCO.
- FNO: Foreign National Offender.
- HRW: Human Rights Watch.
- IGC: Intergovernmental Conference (an EU agency).
- IOM: International Organisation for Migration.
- JF: Justice First.
- LANM: Les Amis de Nelson Mandela (A DRC human rights organisation).
- OGN: Operational Guidance Note.
- PNC: Police Nationale du Congo (The DRC National Police).
- UDPS: Union for Democracy and Social Progress (Union pour la Démocratie et le Progés Social).
- UKBA: United Kingdom Border Agency.
- UN: United Nations.

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I. INTRODUCTION

1. These five appeals have been selected and conjoined for the purpose of determining the legality of the actions of the United Kingdom Government whereby certain persons are returned from this country to the Democratic Republic of Congo (“DRC”), their country of origin. All five Appellants are DRC nationals. There are two groups of Appellants:
 - (a) The members of the first group are the second, third and fourth Appellants DS, BBM and DK, who are united by the characteristic that each is a foreign national offender subject to automatic deportation to the DRC. In the case of BBM only one of the permitted grounds of appeal is Article 8 ECHR.
 - (b) The first and fifth Appellants, BM and AA, who challenge decisions to remove them to the DRC, have in common the characteristic that each is a failed asylum seeker. We shall examine in due course the significance of one further characteristic of the Appellant AA, namely her role in the organisation APARECO.

In all five cases the Secretary of State for the Home Department (the “*Secretary of State*”), the Respondent to these appeals, has initiated action to deport or remove the Appellants to the DRC.

2. The assorted ingredients identified above give rise to the following country guidance issues:
 - (i) Is a national of the DRC who is proposed for deportation or removal to his country of origin exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR by virtue of having been convicted of an offence in the United Kingdom?
 - (ii) Is a national of the DRC proposed for deportation or removal to his country of origin exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR or in need of humanitarian protection by virtue of having claimed asylum unsuccessfully in the United Kingdom?
 - (iii) Is a national of the DRC proposed for deportation or removal to his country of origin exposed to a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR or in need of humanitarian protection by virtue of having claimed asylum unsuccessfully in the United Kingdom and/or by virtue of having a prominent role in the organisation “APARECO”?

3. All of the Appellants challenged the Secretary of State's decisions by exercising their statutory right of appeal to the First-tier Tribunal ("*FtT*"). Their appeals were dismissed. In all of the appeals permission was secured to appeal to this Tribunal which, by its earlier decisions, ruled that the determinations of the FtT must be set aside as they are vitiated by error of law pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. In all of the appeals the Upper Tribunal has held that the FtT erred in its consideration and determination of the central issue of risk to the Appellants in the event of their enforced return to DRC. The individual errors of law consisted of applying the wrong test, failing to take into account material facts and factors and misunderstanding the evidence. In the case of BBM only, the determination of the FtT has been set aside on the further ground of error of law concerning his claim under Article 8 ECHR. We held that the approach of the FtT to the issues of risk on return and Article 8 was unsustainable in law. The decisions of the FtT are hereby re-made, in accordance with section 12(2)(b)(ii).
4. The fundamental question for this Tribunal is whether the deportation or removal of any of the Appellants from the United Kingdom to the DRC would expose them to a real risk of persecution within the framework of the Refugee Convention or serious harm within the compass of the Qualification Directive or a breach of Article 3 of the European Convention on Human Rights and Fundamental Freedoms ("*ECHR*"). If this Tribunal were to conclude that either of these risks is demonstrated in any of the Appellants' cases, the individual appeal would succeed as the Secretary of State's decision to deport would not be in accordance with the law, being in contravention of the ECHR and/or the Refugee Convention. The Appellants contend that such a risk exists by virtue of their status of failed asylum seeker or foreign national offender without more. In the particular case of the fifth Appellant, AA, reliance is placed on the additional factor of activity within and association with the organisation APARECO.
5. These appeals were presented and argued by reference to four main categories of evidence. Belonging to the first category was a reasonably substantial volume of evidence emanating from a broad spectrum of sources relating to the conditions prevailing in the DRC. The second category consists of various strands of evidence relating to the APARECO organisation and certain members and office bearers thereof. The third category, in contrast, has but a single component, namely the report of an expert witness, Dr Erik Kennes, upon which all Appellants relied. Finally, we have considered evidence, both oral and documentary, bearing on each Appellant individually. In essence, our determination of these appeals is based upon our evaluation of all of this evidence in the round.

II. THE DEMOCRATIC REPUBLIC OF CONGO

6. In common with certain other African nations the DRC has a turbulent history. In the more distant past of the 19th and early 20th centuries, it was a colony of the Kingdom of Belgium whose sovereign, King Leopold, pillaged its natural resources as he accumulated vast personal wealth. This was, famously, denounced in a report by the Irish patriot Roger Casement, then a United Kingdom diplomat. This is documented in the memorable work of Nobel Prize Winner Mario Vargas Llosa, *El Sueno del Celta* (The Dream of the Celt). The barbarism and brutality of the colonial power were manifested in the most appalling atrocities perpetrated against the indigenous population. The seeds were thus sown for many decades of instability, violence and abuse of power.
7. The country, then named the Belgian Congo, secured its independence in 1960, when it became the Republic of the Congo. Its names since then have included Zaire, which rose briefly to global fame by competing in the football World Cup in 1974. Independence was followed by political convulsions. DRC occupies a vast expanse of land in central Africa and has a population estimated in excess of 60 million. Its capital city is Kinshasa, where some 10% of the population resides. Within the population there are over 200 African ethnic groups. French is the official language and the dominant religion is Roman Catholicism. Notwithstanding its vast natural resources and mineral wealth, DRC is one of the poorest countries in the world. Food insecurity affects one third of the population and life expectancy is amongst the lowest in the world. Corruption is considered to be rampant.
8. Independence in 1960 was followed by some three decades of dictatorship under Colonel Mobutu, giving way to a degree of democratic reform between 1990 and 1993. The following four years were marked by the crisis in neighbouring Rwanda, civil war and the seizure of power by President Laurent Kabila and his party "AFDL" in 1997. A further war, in which the participants included the neighbouring countries of Rwanda and Uganda, ensued. Some four years later, in 2001, President Laurent Kabila was assassinated. A power sharing transitional government was installed and Joseph Kabila, the son of the deceased self-proclaimed former president, assumed the office of presidency ten days later. When a peace agreement was eventually negotiated in 2002, it was estimated that more than three million had been killed. A new constitution was adopted following a referendum in 2005 and national elections ensued. President Joseph Kabila retained power. The government then executed a peace agreement with 22 armed groups. However, hostilities between government sources and the FDLR militia group continued. This escalated in 2009 during a joint DRC/UN military operation. The UN peace keeping force ultimately withdrew from the DRC in 2011.

9. The country continued to suffer from the activities of militias, bandits and its official army. Widespread violence continued. By the same year, 2011, President Joseph Kabila's constitutionally permitted term of office of five years expired. The UN General Assembly reported that the "*overall human rights situation*" in the DRC continued to be "*of serious concern*". There were grave human rights violations by armed groups and members of the national security forces. These included acts of arbitrary execution, rape, arbitrary arrest and detention, torture, looting and cruel, inhuman and degrading treatment. This was especially prevalent in the eastern provinces of the country. State security forces were acting with impunity.
10. In very brief compass, the year 2011 was marked by elections in which President Joseph Kabila was victorious and the period 2011 - 2015 has been characterised by a relative cessation of military and other hostilities, social unrest and political instability. One of the major issues which has materialised concerns the permitted presidential term of office under the 2006 Constitution, which is five years multiplied by two terms. The President has evinced a determination to continue in office and various mechanisms for achieving this ambition have been canvassed. Taking into account both history and context, it may not be inaccurate to describe the present overall situation in the DRC as one of relative peace and stability. One quickly grafts on to this relatively bare analysis the undisputed factors of enduring human rights violations, which include in particular the repression of political opposition, deplorable prison conditions, the lack of accountability of state agents and a weak judiciary. These are all heavily documented in the extensive evidence. In short, the DRC is a state in which the rule of law is both fragile and fickle.

III. PREVIOUS COUNTRY GUIDANCE DECISIONS OF THE UPPER TRIBUNAL

11. There are several reported decisions of the Upper Tribunal which have considered conditions in the DRC and the legality of returning its nationals from the United Kingdom. All of these decisions belong to the period 2004 - 2007. In the first of these decisions, VL (Risk: Failed Asylum Seekers) Democratic Congo CG [2004] UKIAT 00007, the issue considered was the question whether a FAS, by virtue of this status alone, was exposed to a real risk of serious harm upon return to the DRC. The Tribunal decided that there was no such risk. In thus concluding, it placed particular weight on the evidence relating to the policies and practices of other countries, EU member states in particular: see [57] - [70]. This decision was affirmed three years later in BK (Failed Asylum Seekers) DRC CG [2007] UKIAT 00098.
12. In a trilogy of decisions, the Upper Tribunal considered the question of the risk pertaining to members of a particular political party, the Union for Democracy and Social Progress ("*UDPS*"), a group which is opposed to president Kabila's regime: see AB and DM Democratic Republic of Congo

CG [2005] UKIAT 00118, MK DRC CG [2006] UKIAT 00001 and MM (UDPS Members – Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023. These decisions identified the following risk categories:

- (a) Persons with a nationality or perceived nationality of a state regarded as hostile to the DRC and in particular those who have or are presumed to have Rwandan connections or are of Rwandan origins.
- (b) Those who are or are perceived to be Tutsis.
- (c) Those having or being perceived to have a military or political profile in opposition to the government.

Bearing in mind the additional factor raised in the case of the Appellant AA, we draw attention to two discrete passages in AB and DM (Risk Categories Reviewed – Tutsis Added) DRCCG [2005] UKIAT 00118. In [45], the Tribunal stated:

*“We would emphasise first of all that use of the word ‘profile’ highlights the fact that this category is intended to mark out those whose actual or perceived military or political activities or involvements are likely to have brought them or to bring them to the adverse attention of the Kabila regime. **Mere membership of an opposition political party will not demonstrate that a person has such a profile.**”*

[Our emphasis]

The Tribunal elaborated on this in [51](iii):

“We also confirm as an existing risk category those having or being perceived to have a military or political profile in opposition to the government. The risk fluctuates in accordance with the political situation. On the basis of the evidence before us, the current position is as follows. The Tribunal accept that there is a real risk at present for UDPS activists. In the eyes of the authorities in Kinshasa UDPS supporters are assimilated with supporters of the RDC/Goma movement because of the alliance reached in 2003 even if later officially ended. At present there is a lesser risk for PALU members. There is a potential risk for DSP members who are considered as potential or actual collaborators for JP Bemba and his MLC movement. The risk for those associated with the Mobutu regime has considerably lessened. It is clear from the background evidence that close relatives of Mobutu have returned to the DRC from exile: CIPU report paragraph 6.110-2. It is reported that those not suspected of collaboration with the rebels would no longer be at risk and affiliation to the MPR would not normally involve the risk of political persecution. No repression has been organised against PDSC members since the death of Laurent Kabila.”

This approach was re-affirmed in MM at [250], where the Tribunal adverted to the factor of the knowledge of state agencies:

“Mindful of the risk categories as identified in AB and DM, confirmed in MK and now re-affirmed by us, we recognise that had we found the Appellant to be credible, we would have concluded that as a person who had a role in the UDPS and who was known to the authorities and who had been detained and ill-treated by them for his political opinion and who had escaped from detention, he would arguably, not least to the lower standard of proof, be at risk on return to the DRC. Conversely, he would not be at real risk on return, if we found the Appellant to be no more than a mere member of the UDPS.”

13. The specific issue of prison conditions in the DRC has featured in the Upper Tribunal’s previous decisions. In particular, in BK, the following concession was recorded, in [177]:

“[Counsel] confirmed that it was conceded by the Respondent that for the purposes of this appeal conditions in DRC prisons and detention centres were contrary to Article 3 [ECHR].”

At this juncture, it is appropriate to outline a comparable concession made by Ms Lieven QC on behalf of the Secretary of State in the present appeals. This was to the effect that a period of detention in a DRC prison exceeding approximately 1 day would violate the detained person’s rights under Article 3 ECHR. We accept this concession, as it is clearly warranted by substantial and compelling evidence.

14. We are mindful of the passage of time since the various country guidance decisions of the Upper Tribunal relating to the DRC were promulgated. We are alert to our duties to consider with care all of the evidence adduced in these appeals and to make appropriate findings, taking into account the passage of time and any material altered conditions and circumstances. Our findings will dictate whether the previous decisions have enduring force and, if so, in what respects and to what extent.

III. THE MAIN EVIDENCE SUMMARISED

15. As indicated above, these appeals have generated a reasonably substantial quantity of evidence relating to conditions in the DRC, emanating from diverse sources. What follows is an outline, or summary, of this evidence with a particular focus on its salient features. We would emphasise that we have considered the evidence in its totality. In this context we draw attention to the various reports and sources enumerated in the Appendix to this judgment.

The DRC Ambassador’s Statements

16. We begin with this evidence, upon which all Appellants placed substantial reliance. This was confirmed in the submission of Mr Toal representing

three of the Appellants, in response to a question from the panel. Mr Toal stated that the core of the Appellant's cases was composed of this evidence, together with the FFM report (see [18]-[23] *infra*). We add the further comment that this evidence was obviously a major influence in the decision in R (P&R, DRC) - v - Secretary of State for the Home Department [2013] EWHC 3879 (Admin), (Phillip J).

17. By letter dated 11 July 2012, Mary Glendon MP, expressing concern about the deportation of any failed asylum seeker to the DRC, stated:

"Last week I attended a meeting organised by the All Party Parliamentary Group, which was addressed by the Ambassador I raised the issue of the failed asylum seekers' plight. He type cast all of these people saying they have come to this country as members of the former oppressive regime in the DRC, are here because we have a good benefit system and having committed terrible crimes in this country have to be suitably punished when they return to the Congo. As Ambassador, he signs the deportation papers!"

In a later passage, the correspondence claims that the Ambassador "... clearly has made up his mind about the asylum seekers en masse". The DRC Ambassador wrote to Ms Glendon the following month, by letter dated 16 August 2012, in these terms:

"It has come to my attention that I was misquoted on a statement I made during a meeting with some members of the APPG in Parliament that you attended. As a matter of fact, at your question regarding the return of asylum seekers to the Democratic Republic of Congo who allegedly are arrested, tortured and humiliated, I responded by saying that it was not the case. Congolese citizens who failed to acquire asylum in the United Kingdom are reunited with their families upon arrival. The British Embassy in Kinshasa does witness this at times. Nevertheless, people who are being deported for having committed crimes in the UK are held in custody for a period of time to allow the Congolese justice system to clarify their situation."

[Emphasis added]

The third piece of this discrete evidential jigsaw consists of the Ambassador's letter dated 15 May 2013 to Lord Avebury, a member of the House of Lords:

"After reading your letter dated April 3rd, I realise that the same way my statements were misquoted, once again you misunderstood what I meant in my letter to Mrs Glendon. For clarity, the policy for people who are being deported from the United Kingdom back to the Democratic Republic of Congo, officials have to determine, case by case, what led to that deportation. For that purpose, deportees are interrogated upon arrival in the Democratic Republic of Congo to allow the Congolese justice system to clarify their

situation. You will appreciate that, if an individual is deported from the United Kingdom for having committed a crime, the Congolese justice system will not just let him enter the country without taking the necessary measures to prevent him from his criminal activities. Needless to say that people who are sent back to the Democratic Republic of Congo simply because they failed to qualify as refugees in the UK are more than welcome back home. Finally, may I bring to your attention that often officials from the British Embassy in Kinshasa as well as representatives from human rights organisations are present at the airport when those people arrive in the Democratic Republic of Congo."

The Ambassador begins this letter by referring to Lord Avebury's letter, which did not form part of the evidence.

The UKBA FFM Report

18. This report was prepared by the United Kingdom Borders Agency (UKBA) in November 2012 following a fact finding mission to Kinshasa conducted between 18 and 28 June 2012. The information contained in this report is culled from a range of sources and providers. It is unnecessary to identify these contributors and we decline to do so in their interests. The purpose of this exercise was described in these terms:

"The purpose of the mission was to gather information about the treatment of Congolese nationals, about non-asylum migrants and failed asylum seekers, who have returned voluntarily or by force to the DRC from the United Kingdom (UK) and other western European states."

The specific topics of enquiry were the numbers of DRC nationals returned to their country of origin, the "process of return/treatment" at Kinshasa airport, the subsequent monitoring of such persons by western governments, UN Agencies and other organisations, the treatment of returnees and "the DRC Government's perception of returning Congolese". The report continues:

"The FFM delegation sought to interview a broad spectrum of informed sources in order to obtain accurate, relevant, balanced, impartial and up to date information"

19. The report documents conflicting information relating to the consequences of deploying a false or otherwise invalid passport in departing the DRC. Some sources suggested that this could give rise to the detention of some persons, while others asserted that this sanction would not arise. There was consistent evidence that returning nationals are interviewed by the DRC migration agency, the DGM, at Kinshasa airport. One source suggested the existence of a "black list" of "people who make demonstrations and disturb the DRC authorities in Europe". There was a substantial body of evidence that there are no detention facilities at the airport. On behalf of the Appellants, particular emphasis was placed on the information provided by an

organisation which we shall describe as “LANM” (“Les Amis de Nelson Mandela”). This agency receives advance notification of flights. It described how nationals being returned are in possession of an emergency travel document and are interviewed at the airport by the DGM, following which the ANR (the DRC national intelligence agency) then becomes involved. Returnees are transported to the main ANR prison in Kinshasa. The source continued:

“It is very dangerous to send back people from the UK because it is known that Congolese in the UK are against the government. The group of ‘combatants’ started in the UK

The organisation does not monitor returnees yet but they can do if there is a specific request

Those FAS (failed asylum seekers) who are arrested do not necessarily have a specific profile. Just the fact of having been in Europe. If someone has been in Europe, the authorities think the person actively opposes the current Government and are very much wanted by the authorities here. If they do not have an influential person to help them, they are going to be mistreated. If the authorities find anything against the Government (even a print out from the internet), this can be a problem. When irregular migrants return from Europe it is assumed they have money. It is also assumed that because they left in the way they did, they are looking to side with the opposition so they are going to be ill treated.....

If the DGM find a photo of President Kabila in a person’s luggage and that person says Kabila is good, the person is not ill treated

A person who returns with a criminal record or an outstanding arrest warrant will be arrested straight away. People in this position make a lot of noise in order not to be returned. Those who return from the UK are more ill treated than others. It is known there is more liberty of expression and stronger opposition to Kabila in the UK than in Belgium or France.”

This source further suggested that the DRC Government perceives DRC nationals who claimed asylum abroad as traitors. He also described the leader of APARECO as an “*enemy of the State*”.

20. Another organisation, which provides care to people who have been mistreated, distinguished between a “*mere*” failed asylum seeker and a person of this status who is “*wanted*” by the DRC authorities, for example on account of anti-government political activism. Only the latter type of failed asylum seeker is at risk of detention. The organisation had no reports of any failed asylum seeker or other returnee experiencing difficulties at the airport. Its representative continued:

“Returnees with a criminal record or an outstanding arrest warrant go straight to prison – the DGM do not waste time on an interview, they just take them there straight away

Returnees from Europe are sent to detention.”

The representative opined that the organisation APARECO is viewed by the DRC Government as its enemy.

21. The FFM report also records that the British Embassy in Kinshasa does not routinely monitor returnees. Embassy officials sometimes observe events at the airport. They reported nothing untoward. Furthermore:

“The British Embassy is accessible to FAS. It would be possible to phone, email or just turn up if there was a problem. Genuine complaints will be heard. There is a multiplicity of local and internal NGOs in Kinshasa and elsewhere who specialise in human rights issues who would take up the cases of returning Congolese nationals if they experience problems

The British Embassy is only aware of reports of returnees facing difficulties in the UK regional media. The official was not aware if those reports covered the situation at the airport and if the problems occurred at the airport or after. The Embassy is aware of unsubstantiated reports of returnees being detained.”

Notably, this official had heard of one case (only) of alleged detention and mistreatment of a returnee, elaborating:

“This is the only case which has been expressly communicated to the FCO in the 18 months that the official has been at the Embassy

The Embassy is not aware of any returnees being detained, and had no knowledge of the treatment faced by irregular migrants or failed asylum seekers who are returned.”

Another Embassy official confirmed that there is specific monitoring of persons returned from the United Kingdom upon their arrival at the airport. Nothing untoward was either observed or alleged. The Embassy is available to receive reports or allegations from returnees or their family members.

22. Also recorded in the FFM report is the suggestion of another DRC human rights organisation that most returnees who are detained belong to the so-called “black list”: such as “political militants who were abroad and had disturbed the Congolese authorities while in the UK.” This organisation carries out some monitoring at the airport and is accessible to returnees. Its representative was unable to provide any illustration of the alleged ill treatment of a

returnee. This was also the position of another organisation whose representative was interviewed. This representative continued:

“Those returnees who are detained and/or ill treated at the airport have a specific profile. ANR agents are on social media and have managed to infiltrate those networks (such as Facebook and Twitter) where political opponents exchange messages. ANR agents can easily get information on people’s profiles

With regards to how various groups are treated at [the] airport, there is not much difference between irregular migrants and failed asylum seekers because they do not know who is who. When people arrive, ANR want to know why people are returned, they take money from them.”

The representative added that charter flights are viewed by the security and other related agencies as a good source of illicit income. So-called “combatants” are considered to emanate from the United Kingdom and France. The French Embassy official confirmed that the only convicted offenders of interest to the DRC authorities are those known to have committed a very serious offence in the DRC. Its representatives monitor events at the airport. The official continued:

“Returnees are well treated and the Embassy could not see what type of difficulties there could be.”

If anyone desires to do so, reports can be made to a range of human rights and comparable organisations.

23. The Kinshasa city police commander informed the interviewers that both DGM and ANR operate at the airport. He suggested that simple questions are asked of returnees for the purpose of identifying Congolese nationals returning from London and Europe. He provided examples of the broad spectrum of reasons why Congolese nationals might depart their country. Finally a separate interview with the International Organisation for Migration (“IOM”) recorded the following:

“Many returnees are detained for 24/48 hours, but those with a criminal background would be detained longer. DGM may detain for migration problems, but IOM were not aware who would detain people in other circumstances ...

IOM were not aware how migrants and returnees other than the voluntary ones it assists, different ethnic groups, returnees with criminal records or those returning from the UK are treated at the airport.”

In passing, we draw attention to the terminology “a criminal background” upon which we shall comment *infra*. Returnees who interact with IOM receive financial assistance, ranging from £500 to £2,500.

The Amnesty International Report

24. Amnesty International (“AI”) prepared what is described as an “*independent, expert opinion*” in a litigation report, dated 13 February 2015, commissioned by the solicitors representing the Appellant DK. Each of the three foreign national offender Appellants relied on this report. Its author is one Tom Southerden, who describes himself as a member of the “Refugee Programme – Amnesty International UK”.
25. Setting the scene, the report documents that in 2003 a government of national unity was formed in the DRC following several years of armed insurgency, invasion and numerous attempted coups. The preceding conflict had been conducted in a brutal and indiscriminate manner by all sides, generating several million fatalities. Enduring concerns about sexual violence, including rape, afflicting both men and women, perpetrated by state security sources, are expressed. The use of torture as a weapon against civilians, particularly detainees and prisoners, is a further concern. The security forces are described as inadequately monitored and largely undisciplined. The phenomena of theft and bribes are mentioned. The judicial and penal systems do not satisfy international standards. The government is described as “*an authoritarian regime gravely concerned by perceived threats to its position and chronic underinvestment (both in financial and human terms) in the organs of the Congolese state*”. One of the consequences of this is “*a tendency to use judicial and penal procedures as tools for punishing and silencing perceived government critics*”.
26. The report also describes “*the prevalence of arbitrary arrest and detention of perceived regime opponents, perceived critics of the security forces and those perceived as connected to criminal activity*”. The government agencies engaged in these activities are the national police, the intelligence services, the national army and the migration police. Their activities include arbitrary arrests and the extortion of civilians. Corruption within these and other government agencies is one of the recurring themes of this report and others. The victims of arbitrary arrests have included perceived opponents of the regime, particularly during the post-electoral period in 2012. Some of these arrests have given rise to allegations of incommunicado detention and torture. The regime is described as fundamentally undemocratic and determined not to relinquish power. The report suggests the existence of “*a pervasive sense of arbitrariness and impunity*”. In [42] one finds the following encapsulation:

“The years of extreme violence and mass displacement across the country, resulting in economic crisis and a failure in human and social development,

have created an environment in which the rule of law is to a large extent absent."

Many, though not all, of the concrete instances and illustrations provided in the report are of some two to three years vintage.

27. The report addresses the specific issue of the likely fate of a returned foreign national offender. It acknowledges that it is "... difficult to speak with confidence about what procedure would occur in the hypothetical scenario of an FNO being returned". AI's "understanding" of the prevailing procedures is expressed thus:

"..... A person is likely to be interviewed by immigration officials on return in order to ascertain their identity, their residence and their family details ... If that information is not already known to the authorities as part of the deportation process, they are likely to be asked why they are being returned, if they have a criminal record or any criminal convictions in the UK Such interviews are intended to be for administrative purposes and (that) a deportee should therefore be released to their family once they have been completed. However, in view of the level of corruption and arbitrary conduct described above, Amnesty considers there to be a possibility that a person may be detained and/or potentially mistreated in such a context, either for the private gain of the officers concerned or as part of the authority's wider law enforcement or political agenda."

The next section of the report is prefaced with this statement:

"This being said, Amnesty is particularly concerned at the prospect of deportees with certain particular categories of offence and profile being returned to the DRC at the present time, owing to specific developments that have occurred in the DRC over the past 18 months."

The first element of this concern relates to a concerted police operation in 2014 against organised street gangs in an endeavour to eradicate all kinds of street crime, known as "*Operation Likofi*". This gave rise to several hundred arrests and detentions and the reported summary, extra-judicial execution of at least nine men in Kinshasa. No action was taken against the suspected police perpetrators. It appears that this particular operation had three separate phases. Having described it *in extenso*, the comment in the AI report is of note:

"It is in light of these events that Amnesty would raise serious concerns regarding the prospect of criminal deportees with relevant categories of offence, gender and age being returned to the DRC at the present time."

Elaborating, the author suggests that relevant offences would be those which "... could be characterised as street crime, including drugs, robbery and some forms of violence".

28. The AI report expresses the following main concerns:

“In light of the background human rights conditions described in the previous section, in Amnesty’s view any detention by the DRC authorities carries with it a real risk of serious mistreatment or other conditions that violate the standards required by Article 3 of the ECHR

Moreover, Amnesty considers that there is a likelihood that such individuals would be monitored by DRC police and other security agencies, as the DGM (the Congolese Immigration Service) will have noted their criminal history and informed the authorities of a criminal arriving in Kinshasa

In this regard we would emphasise the declaration by Interior Minister Muyej of the government’s intention to expand Operation Likofi into a third phase.”

The author acknowledges the inability of AI to ascertain whether this operation or something equivalent has in fact been instigated. Finally, in its omnibus conclusion, the report states:

“[83] In conclusion, after careful consideration based upon our expert understanding of the situation that prevails in the DRC and the patterns of human rights violations recorded by our organisation and others, Amnesty International wishes to express serious concerns as to the prospect of certain categories of foreign national offender being deported to the DRC at this time.

[84] In the considered opinion of our organisation, such individuals would face a real risk of serious harm or other ill-treatment including arbitrary arrest, incommunicado detention, torture and extra-judicial killing should they be returned to the DRC. Furthermore, detention conditions are dire and in themselves amount to cruel, inhuman or degrading treatment.”

[Emphasis added: and see [27] *supra*]

The report ends with an acknowledgement of the responsibilities of expert witnesses.

The HRW Evidence

29. The AI report, summarised above, quotes extensively from a report of Human Rights Watch (“HRW”) published in November 2014 relating to “Operation Likofi”. There is also some written evidence emanating from HRW in January 2015. This documents the use of government force in response to protests against proposed electoral law changes which, if implemented, could permit the incumbent President, Mr Kabila, to extend

his presidency beyond the mandated two terms. The adoption of this law reform would require a national census in advance of the scheduled next elections in 2016. The HRW report documents at least 21 fatalities perpetrated by shooting by government security forces during demonstrations. It also records the arbitrary arrest of certain opposition leaders and others in January 2015, apparently linked to the protests and demonstrations. Other evidently unaccountable abuses by members of the security forces are also described. Comparable evidence is contained in a report of The Guardian newspaper, dated 20 January 2015.

The Observer Newspaper Report

30. This newspaper report is dated 15 February 2014. Its theme is expressed in the opening paragraph in these terms:

“A top secret document circulating among senior police and security chiefs in the Democratic Republic of Congo suggests that individuals deported from Britain may face torture on their return to their home country.”

The document is described as *“highly sensitive”*. It is said to contain an instruction from the Ministry of the Interior to the national intelligence agency, the ANR:

“... to track down and arrest opponents of the government, including members of the main opposition party, the Union For Democracy and Social Progress, and suggests torture could be used with ‘discretion’. Emphasis is placed on targeting political activists living in the UK and other parts of Europe who are forcibly removed to the Congolese capital, Kinshasa. They are referred to as ‘combatants’, or traitors considered to be fighting against the government”.

According to the report, the UK Government, during the previous two years, had deported only a handful of DRC nationals to their home country *“due to concerns about the risk of torture”*. However, it was believed that the deportation of larger numbers was being planned.

The Freedom from Torture Report

31. Freedom from Torture (*“FFT”*), a United Kingdom based human rights organisation, published a report in June 2014 entitled *“Rape as Torture in the DRC”*. The material on which the report is based is 34 medico-legal reports prepared by the organisation, relating to women who claimed to have been tortured in the DRC from 2006. These women claimed to have suffered sexual violence following detention. The majority, according to the report –

“ ... were targeted for detention as a result of their political profile, or that of a member of their family, as members or supporters of a legitimate political or civil society organisation

23 of the 34 women were detained because of their political profile or that of a family member. The majority of these were associated with the Movement for the Liberation of Congo (MLC). Other named organisations included the Union for Democracy and Social Progress (UDSP) and Allianz of Patriots for the Refoundation of the Congo (APARECO)”.

All of the women reported that they had been detained by state military, police or intelligence services, arbitrarily and without due process. They described very poor detention conditions. All but one of them claimed to have been raped in detention and all of them alleged brutality. They recounted that they had previously campaigned for the organisation to which they belonged, recruited new members, stored and distributed publicity materials, attended demonstrations and protests and interacted with women in various ways.

UKBA COI Report of March 2012

32. In March 2012 the UK Border Agency (“UKBA”) published its Country of Origin (“COI”) report to DRC. This states, in its preface:

“The report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom

The report is compiled wholly from material produced by a wider range of recognised external information sources and does not contain any UKBA opinion or policy. All information in the report is attributed, throughout the text, to the original source materials”

In a later passage, the information sources are described as “reliable”. The report documents, *inter alia*, the political parties of the DRC, including the opposition parties. It makes no mention of the APARECO organisation. It records enduring concerns about the “overall human rights situation” in DRC, continuing human rights abuses perpetrated by the state security sources and the impunity within which they were acting is recorded. These include arbitrary arrests and detention in substandard incarceration facilities. Human rights violations against opposition party members and supporters in the year 2011 were noted. The composition of the state security forces consists of the DRC national police (“PNC”), the national intelligence agency (“ANR”), the armed forces (“FARDC”) and the border control agency (“DGM”). The lack of discipline and training of the state security forces is highlighted.

33. The report contains the following brief information relating to the return of refugees to DRC:

“The United Nations High Commissioner for Refugees (UNHCR) noted [in a 2011 publication] ‘In January 2011 there were 107,900 returnee refugees (whose country of origin was DRC) in the country of which UNHCR assisted 10,900. In December 2011 there were 145,500 of which UNHCR assisted 145,500.’”

It also contains some information relating to the return of failed asylum seekers, quoting from a report:

“The candidate does not get any assistance from the public services. Generally, he is not prosecuted unless he has earlier committed a crime for which he has not been pardoned or amnestied. However, the candidate can be hassled by agents willing to take some of his goods or personal effects.”

Information provided by the Belgian and French country information agencies contained no details of ill treatment of failed asylum seekers. However, one NGO documented the case of one returnee who apparently went underground and whose family was subjected to surveillance. Furthermore, the “*Guardian*” newspaper reported that two returnees had been detained and tortured. The International Organisation for Migration (“IOM”) in DRC reported that it had no information concerning the ill treatment of returned unsuccessful asylum seekers. Ditto a human rights organisation which specifically supervised events at the airport and reported only occasional extortion, such as the forced removal of belongings from returnees. Another organisation suggested that suspected activists are the subject of close attention from the state security services and are at risk of ill treatment or prosecution. These include particularly “*political opponents who made no secret of their political position in European cities*”.

34. The COI report also summarises a report prepared by the organisation Justice First (“JF”), a United Kingdom NGO which interacts with unsuccessful asylum claimants. The report was published in November 2011. It is the product of an examination of the cases of (*inter alios*) 15 adult returnees. It states:

“The returnees in this report were perceived or actual political opponents of the current DRC regime.”

Two of the 15 persons concerned were members of APARECO. Some six were allegedly arrested at the airport, two were arrested having left the airport, one was arrested after leaving the British Embassy in Kinshasa and three were arrested at home. Some alleged ill treatment and sexual abuse in prison. The report also contains information provided by “*CRIP*”, a collective organisation which operates as a network of NGOs for

the collection of information on reintegration possibilities for putative returnees. This organisation reported that previous illegal departure from DRC has no negative consequences, except in the case of those who left to avoid prosecution or (apparently) those convicted of serious crimes. Furthermore, those who have been convicted of crimes in foreign countries are not at risk of prosecution.

UKBA Operational Guidance Note of May 2012

35. In May 2012 UKBA published its Operational Guidance Note (“OGN”) relating to DRC. This contains a discrete section addressing the topic of suspected members of current or former rebel groups and treatment of perceived Government collaborators by rebel groups, which ends with this advice to case workers:

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

While this issue is not directly in point in these appeals, we draw attention to it nonetheless as it illustrates the importance of periodic reassessment of different types of risk and risk categories in changing circumstances with the passage of time. The OGN also considers the organisation APARECO. This (based on its website) is described as a political opposition organisation with various branches throughout the world, including the United Kingdom –

“..... A political framework for dialogue and action between political parties, NGOs and Congolese key figures who share the same patriotic vision.”

The report notes that there is no evidence that the organisation has an office in Kinshasa, inviting the comment “.... Therefore it is difficult to ascertain what they are trying to achieve in practice in the DRC”. There was no information suggesting that the organisation had been banned or that its members had suffered human rights abuses by the security forces. The report further observes:

“As regards political activity in the UK no evidence could be found to support the allegations that the DRC authorities have either the capacity or capability in the UK to monitor low level political opponents, including those participating in anti-Government rallies in the UK.”

Finally, the report notes this Tribunal’s decision in MM that the level of risk to those having, or perceived to have, a political profile in opposition to the

DRC Government is one which fluctuates in accordance with the political situation and, further, that low level members and/or sympathisers are not at real risk upon return.

36. The OGN also addresses the issue of prison conditions in DRC. It records concerns emanating from reliable sources that there is severe over crowding, a lack of medical facilities, poor maintenance, ill treatment and no, or inadequate, sanitation facilities. These severe shortcomings embrace both large prisons and smaller detention centres which have evolved from short term detention to prolonged incarceration. This is summarised in the following passage:

“Prison conditions in the DRC are severe and taking into account the severely decayed infrastructure, lack of meaningful control by the authorities, torture and abuses of inmates and extremely poor health facilities and sanitary conditions, prison and detention facilities in the DRC are likely to reach the Article 3 threshold

Where individual applicants are able to demonstrate a real risk of imprisonment on return to the DRC and exclusion [under Article 1F of the Refugee Convention] is not justified, a grant of humanitarian protection is likely to be appropriate.”

In this context and at this juncture, it is apposite to advert to the concession on behalf of the Respondent documented in [13] above.

UKBA COI Bulletin of February 2013

37. In February 2013 UKBA published the *“Bulletin: Statistics and Information on the Treatment of Returns (to Kinshasa)”*. This is a short report containing data relating to the return of DRC nationals to their country of origin from certain western European states, Canada and Australia. It draws on, *inter alia*, information provided by the Inter Governmental Conference on Migration, Asylum and Refugees (*“IGC”*). This organisation is an amalgam of 17 participating states, the UNHCR, the IOM and the European Commission. The data relates to the period 2009 – 2012 and was collated by the IGC in its survey of April 2012. Eleven of the participating states reported that they were unaware of any reports or allegations that voluntary or forced returnees had *“faced difficulties and/or been mistreated”* upon returning to Kinshasa. The report records that, pursuant to inter governmental agreement, the emergency travel document (*“ETA”*) issued by the DRC Embassy in the transmitting state is acceptable to the DRC authorities. Furthermore, the United Kingdom does not disclose whether those returning are foreign national offenders or unsuccessful asylum claimants. Active monitoring by British Embassy officials at Kinshasa Airport had disclosed nothing of an untoward nature.

38. The COI bulletin also documents information provided by AI (see [24] – [28] *supra*). This information confirmed that AI does not have an office in DRC and, further, is in possession of no specific information about the ill treatment of returned DRC nationals. The researcher was aware of the allegations of ill treatment contained in the JF Report (noted in [34] above). There is a brief reference to UNHCR:

“Officials should note that the UNHCR supports the repatriation of ‘refugees’ to the DRC predominantly from neighbouring African countries, not western Europe.”

It also notes the information provided by HRW that this organisation, due to resource constraints, had not been monitoring the treatment of returned DRC nationals. Finally, the report attaches a letter from the British Embassy in Kinshasa documenting the unremarkable events at the airport following the return of three “enforced returnees” from the United Kingdom.

UKBA Country Policy Bulletin Number 2 of 2014

39. In October 2014 the Home Office published “Democratic Republic of Congo (DRC) Policy Bulletin 2/2014” (“the Bulletin”). The purpose of this publication is expressed in the following terms:

“..... To update the policy of the Home Office on returns to the [DRC] in light of the judgment in R v SSHD, ex parte P (DRC) and R v SSHD ex parte R (DRC) in December 2013 and the further information referred to in this document.”

This report further states that it provides “up to date policy guidance”, superseding the February 2014 report. It contains some of the most recent evidence of its kind available to this Tribunal.

40. The Bulletin documents that various European and other states continue to return DRC nationals to their country of origin. It contains the following summary:

“These countries stated that they have no evidence that returnees are mistreated solely on the ground that they are returnees, or because of where they have travelled from. However, returnees might be questioned and there may be a short period of detention as part of normal immigration controls.”

It continues:

“The information from IGC states also noted that on arrival returnees to the DRC, as with other travellers, might be subject to harassment, including attempts at extortion, but there is no evidence of any serious mistreatment.”

[“IGC” denotes Inter Governmental Conference, an EU agency.]

And in the next passage:

“The information provided by Belgium through the IGC and to the DRC fact finding mission of June 2012 is especially important as this is the former colonial power for DRC, with continuing strong links to the country. The Belgium immigration authorities have returned significant numbers of Congolese FAS, have had allegations of mistreatment of returns which have been investigated and no substance to the claims have [sic] been found.”

This bulletin further contends, based on the evidence provided, that foreign national offenders returning to the DRC are not at risk *qua* this status and that those returning arouse the interest of the DRC authorities only if they are suspected of criminality in DRC or are the subject of an unexecuted arrest warrant there.

41. As regards the JF report of 2011, the Home Office maintains its earlier stance, summarised thus:

“ ... The report, when considered in the totality of country information, did not demonstrate that FAS per se were at risk of ill treatment on return to the DRC and therefore did not support the report’s recommendation that the Home Office needed to revise its policy on returns to the DRC.”

Annexed to the report are the various requests for information addressed to the participating states and their responses. These disclose nothing untoward.

42. The Bulletin also documents the British High Commission of Nairobi’s record of its meeting with the Director of the DGM in January 2014. In response to specific questions, the Director stated, inter alia:
- (a) As the DGM is concerned only with nationality and identity, the questioning of arriving returnees was confined accordingly.
 - (b) There are no recorded cases of the DGM detaining any returning DRC nationals.
 - (c) There is no record of any returning DRC national who had a warrant outstanding in the country.
 - (d) Any criminal conviction outside DRC is irrelevant: this is of no interest to DGM.

- (e) The entirety of the process of identifying the returning national, beginning with interviews in the United Kingdom and embracing document verification and the issue of ETDs in Kinshasa, is carried out by DGM. The DRC Ambassador in the United Kingdom has no role in this process.

This report also annexes a further interview of the DGM Director, in September 2014, together with a record of a meeting with a London based Congolese DGM official, to like effect.

British Embassy (Kinshasa) Evidence: November/December 2014

- 43. The first striking feature of this evidence is its vintage. Having been generated in November/December 2014, it constitutes the most recent evidence available to this Tribunal. The constituent elements of this evidence, all of it emanating from the British Embassy in Kinshasa, are multiple, which we summarise thus:
 - (i) On 14 November 2014, an Embassy official monitored the return of a DRC national at Kinshasa airport. Nothing untoward occurred and follow up enquiries were entirely positive.
 - (ii) On 18 November 2014 first hand information was obtained from the Belgium Embassy relating to the return of 23 DRC nationals by air from Belgium to Kinshasa. The information supplied, which is impressively detailed, yielded nothing untoward. The official described *"a very transparent relationship with both the DGM and ANR"*, added to which no family members had communicated any concerns or complications. Belgium had returned 172 DRG nationals since 2012, without any known problems. The informant was unaware of any harassment, detention or ill treatment of APARECO members. The interest of the DRC Government was confined to *"combatants"*. We interpose here an observation: it is apparent from this report and others - and we so find - that the term *"combatants"* denotes those who have actively opposed the regime both historically and by their activities overseas.
 - (iii) On 20 November 2014 the British Embassy in Kinshasa documented a discussion with the IOM Chef de Mission. *"IOM"* is the principal intergovernmental organisation in the sphere of migration, established in 1951 to manage and facilitate the resettlement of an estimated 11 million migrants in Western Europe. It was confirmed that the IOM has a scheme for monitoring voluntary returning DRC nationals, involving observations at the airport and embracing all types of returnees. The informant reporting nothing untoward. IOM

also undertakes contact with returning nationals subsequently. It provides support to some returnees. This discrete report continues:

“The DRC authorities are not interested in whether a returnee is a FAS. They maybe more interested in whether a returnee has committed a crime overseas, but they do not request this information from IOM Sometimes when a person has committed a crime, the authorities want to know its nature and the returnees are questioned by ANR

That process may take one to several hours, but they are released after being questioned. As far as IOM knows and from all information it has received from informal sources at the airport, returnees are not put in a detention facility.”

Finally, the Chef de Mission confirmed that IOM has no evidence of the ill treatment of any returning DRC national with whom IOM interacts as a result of providing reintegration assistance.

- (iv) Next, the “Swiss Premier Collaborateur” provided information to the British Embassy in Kinshasa on 20 November 2014. This official had responsibility for migration and human rights and had occupied his post since June 2013. He reported:

“The DRC authorities have an interest in those who pose a political risk, or who are a high level activist ... He did not think that the DRC authorities had an interest in those who had simply applied for asylum and he was unsure whether they would be interested in those who are FNOs as they had never asked him for these details.”

He confirmed that all DRC nationals returning from Switzerland are met by an embassy official, normally the Consul, at Kinshasa airport, where there was appropriate liaison with the DGM officials.

- (v) On 02 December 2014 the French Immigration Officer based at the French Embassy in Kinshasa since 2012 provided information to the British Embassy in Kinshasa. He reported that during the period 2012 – 2014 France had returned some 150 DRC nationals to Kinshasa. Information relating to such persons is provided to the DRC authorities only if they have been convicted of serious crimes such as murder or rape. Otherwise, foreign national offenders and failed asylum seekers are of no interest to the DRC authorities. The French Embassy does not monitor events at the airport and has no substantiated evidence of ill treatment.
- (vi) On 10 December 2014 the Embassy compiled a report of a discussion with the Executive Director of a Kinshasa based human rights organisation which promotes and defends human rights and

democracy in DRC. This organisation monitors the return of DRC nationals to Kinshasa airport. The interviewee described a level of co-operation with DGM. Airport monitoring was carried out on two or three occasions in 2013. Some interviewed returnees may be extorted by DGM or ANR officials. The Executive Director considered that the DRC authorities have no particular interest in failed asylum seekers or foreign national offenders. Their interest would, rather, relate to returning nationals in respect of whom there is an unexecuted arrest warrant. DGM maintains a "black list" of persons who are subjected to further questioning by the ANR. The black listed categories are persons in respect of whom there are unexecuted arrest warrants in DRC and "*opposition political activists, for example those who had plotted a coup against the Government or who were believed to have been involved in attacks against Congolese authorities whilst visiting overseas.*" The Executive Director was not aware of any returning failed asylum seeker or foreign national offender having experienced problems upon arrival. He provided a brief description of the arrest and detention of three persons who did not belong to these categories. He described "*rare*" instances of returning nationals who contacted his organisation subsequently to report that ANR was displaying an interest in them. Finally, he suggested that the organisation APARECO operates clandestinely in DRC and that some of its members were amongst those who had recently been granted a pardon by the President.

- (vii) There is a further British Embassy (Kinshasa) report dated 12 December 2014 of a meeting with the UN Human Rights Co-ordinator who had been in DRC for two years. Asked whether the DRC authorities have any interest in returning failed asylum seekers or foreign national offenders, he replied in the negative. While there had been some reports of subsequent arrest or harassment of returning nationals, none of these persons had emanated from the United Kingdom. The interviewee believed that the interest of the DRC authorities was focused on "*those linked to radical opposition political parties*". His organisation had no substantiated reports of ill treatment of any returning DRC nationals. It does not carry out monitoring at the airport. He confirmed that APARECO does not operate openly in DRC and believed that one British national of DRC origin had been arrested while on holiday in DRC on the ground that he was a member of some radical opposition party.
- (viii) This collection of British Embassy (Kinshasa) reports is completed by one relating to a person who had been returned to DRC from the United Kingdom in October 2014. This person returned under the "*Facilitated Returns Scheme*". Prior to returning he had been interviewed by a DRC official in the United Kingdom and had disclosed information about his offending there, together with other

personal and family data. Upon arrival at Kinshasa airport he underwent an evidently routine DGM interview and experienced no problems. Since returning neither DGM nor ANR had displayed any interest in him.

V. EXPERT EVIDENCE

44. The Appellants relied on a report of Dr Erik Kennes, which bears the date 27 October 2014, updated on 04 February 2015. In an accompanying witness statement, Dr Kennes explains that he was unable to engage his first choice researcher. In his place, he recruited a researcher whom he describes as “*experienced in research about APARECO and other issues*”. This witness statement was compiled in the wake of a case management hearing when the Tribunal criticised Dr Kennes’ failure to produce his report on time.
45. Chapter 3 of Dr Kennes’ report is devoted to the subject of failed asylum seekers returning to DRC. The author acknowledges several difficulties in assembling qualitative and quantitative data on this topic. He recounts that the mechanism of “*undercover research*” was used for compiling a previous report, during the period November to December 2009. Thus it is now of over five years vintage. The author further acknowledges the inherent weaknesses in this research methodology. He asserts that the researcher is an expert in his field, one of the leading political scientists in DRC. Those interviewed were officials of DGM, ANR and ordinary functionaries at the airport.
46. Dr Kennes opines that, as regards returning nationals, the attention of the DRC authorities is focused on those who are “*currently perceived as a threat*”. This will fluctuate, according to changing circumstances. If a person is “*specifically targeted for judicial or for political reasons, or both*”, detention upon return is likely. If not, liberty will be guaranteed by the payment of a bribe. DGM officials receive, identify and verify the travel tickets, identity papers and resident’s permits of those arriving. They work in tandem with the ANR. Bribery is to the forefront of the officials’ minds. There is no evidence of ill treatment connected with questioning at the airport. Officials ascertain whether the name of the interviewee is on “*a list of persons wanted by the Country’s Justice or Security Services*”. This will include those who were prohibited from leaving the country. There is a further discrete group of those who used false documents when either leaving or entering the country, thereby committing an offence which can result in detention and prosecution. The authorities will also have an interest in identifying any returning national who had escaped from prison. Persons who commit the offence of false testimony are also at risk of prosecution.
47. Dr Kennes also provides the example of a national who publicised state secrets and then fled abroad. A further discrete group which he identifies is that of “*trouble makers in Europe*”. He gives the further example of a

participant in a demonstration abroad who “.... uses violence, destroys property or harms other persons”: such persons are at risk of prosecution upon returning to DRC. Another discrete group of persons at risk upon return are those who have engaged in attempted or actual attacks against visiting Congolese Government officials, or others perceived as supporters of the Government, abroad. In this context, the author describes the Congolese community in the United Kingdom as “very active and aggressive”, without particulars. Based on this unparticularised premise, he asserts that such persons are “very thoroughly interrogated” upon returning to DRC, without any supporting evidence. He also discloses an article in a pro-Congolese Government newspaper suggesting that in February 2011 armed assailants originating from the Congolese diaspora attempted to kill the Head of State. Strikingly, Dr Kennes acknowledges that this is the only example of its kind.

48. Dr Kennes also provides information and expresses certain opinions relating to the APARECO organisation, or movement. He suggests that it is perceived as “a serious threat” to the President as it is very influential in shaping the political opinion of the Diaspora and public opinion abroad. The movement was founded in 2005 by the former security advisor to the deposed President. The author suggests that the movement advocates a radical nationalism. It is difficult to assess whether the organisation has any “nuisance” capacity in DRC. It campaigns relentlessly against the present regime. The organisation is believed to have infiltrated the security and defence services, although this cannot be substantiated. At DRC ports of entry there are lists of APARECO activists in Europe. Dr Kennes opines that APARECO members and militants who are returned to DRC as failed asylum seekers –

“.... ranked among the category of people who run the highest level of risk for detention, arrest and cruel, inhuman and degrading treatment during interrogations.”

While this passage apparently refers to circumstances prevailing in 2009, the author adds that this is “.... still the case today and the situation seems to be worse now”: notably, without elaboration or particulars. Dr Kennes suggests that ANR holds data relating to the office holders of APARECO and kindred organisations and thinks it “likely” that there is also data about individual members. He is unable to provide any evidence to substantiate this belief. He refers to the arrest of two APARECO militants who had demonstrated against the arrival in Kinshasa of President Sarkozy. This occurred in 2009. The most recent newspaper excerpts in Dr Kennes’ report are dated 2011. In a later passage in his report, Dr Kennes repeats that the “most important” office bearers in APARECO are registered by the ANR. We note that this does not encompass rank and file members.

49. The ANR and DGM officials interviewed (in 2009) described APARECO as “the most dangerous opposition movement abroad”. The report continues:

“According to all interviewed persons, it is very risky for APARECO members or militants to return to the DRC as a failed returned asylum seeker. They are considered as dangerous and will be arrested on return to get as much information as possible about the movement, its membership and activities. I have been asked whether this is just the case for prominent members or whether low level members would also be at risk. APARECO involvement proven with pictures of participation in demonstrations or with formal membership is always a risk. The DRC Government evidently wants to neutralise this movement and needs to have as much information as possible.”

Dr Kennes acknowledges that it is impossible to ascertain how many failed asylum seekers have been arrested or detained in DRC on account of their actual or alleged membership of APARECO. While the ANR claimed to have arrested some “militants” who attempted to enter through other ports of entry for the purpose of organising undercover political activities inside DRC, there is no example of a comparable arrest or ensuing detention following arrival at Kinshasa airport from any foreign state. Having regard to Dr Kennes’ answer to one of the questions posed on behalf of the Respondent, it would appear that his most recent research concerning APARECO dates from early 2012.

VI. APARECO: FURTHER EVIDENCE

50. It is convenient to note at this juncture the feature of the fifth Appellant, AA, which distinguishes her appeal from the other four, namely her asserted role in APARECO (UK). This Appellant makes the case that she has been a member of APARECO (UK) since 2010 and has held, within the organisation, the portfolio of “*womens’ representative*” or “*womens’ adviser*” since 2012. We shall consider in greater detail the various ingredients of her case in Chapter VIII *infra*. We have outlined above those aspects of the reports already digested which touch on the topic of APARECO: see [18], [20], [43](iv) and (vi) [indirectly] and [48]. There is a separate body of APARECO evidence, constituted by and related to the testimony received from two witnesses during the appeal hearing. We consider this further evidence in the immediately following paragraphs. We also draw attention to our summary of the written evidence of the Appellant AA, in [97] – [98] *infra*.
51. The Tribunal heard evidence from a person whom we shall identify as JM, who had previously made two witness statements, in July 2012, in support of AA’s first instance appeal and, more recently, in January 2015. It is not in dispute that JM is a national of DRC and was granted asylum in the United Kingdom in January 2012. He avers that he has been involved in APARECO for several years and has been an office bearer of the organisation. He asserts that he has known the fifth Appellant since mid-2010 and she

became a member of the organisation quickly thereafter. She has attended monthly meetings in her region and has participated in various APARECO events throughout the United Kingdom. JM has been President of the North West Region since May 2012, at which stage he appointed this Appellant to a committee post of “*Womens’ Representative*”, which embraces recruitment responsibilities. The organisation has five urban regions in the United Kingdom. JM describes this Appellant as a committed member who mobilises women in the DRC United Kingdom Diaspora, encourages new members and raises awareness about events in their country. AA and a team of other women members organise events and meetings, which includes the display of banners and the distribution of information leaflets. Attached to one of JM’s witness statements is a schedule purporting to demonstrate that the Appellant AA participated in several public APARECO events in the United Kingdom in 2013 and 2014 and has also attended various internal committee leader’s meetings. JM also describes the Appellant’s spouse as a committed and active member of the organisation and someone whom he appointed as his North West Vice President.

52. In his evidence to the Tribunal, JM asserted that the DRC Government mistrusts APARECO and that anyone identified as a member of the organisation is arrested and imprisoned: without elaboration or particulars. APARECO operates underground in DRC and is supported by its United Kingdom branch. It has no membership list in DRC. In the United Kingdom, the organisation has an elevated security awareness, manifested by the non-publication of certain office bearers’ names, estimated at between 10 and 20 persons. He described an APARECO demonstration at the Savoy Hotel, London on 20 October 2014 which was attended by infiltrators (or “*spies*”) from President Kabila with the intent of attacking members, resulting in two or three arrests by the police. This witness referred to a letter, dated 21 November 2011, signed by a person describing himself as the President of APARECO (UK). This takes the form of a testimonial relating to the fifth Appellant, AA. It was evidently connected with AA’s claim for asylum, made at the same time. Stated succinctly, this testimonial corroborates many aspects of AA’s claims relating to her involvement in the organisation.
53. JM also claimed that the President of the Maryland (USA) branch of APARECO had been attacked by President Kabila’s guards and injured upon attempting to erect a protest poster. He explained that the organisation is cautious about admitting new members, for security reasons. There is a vetting process. Previously, the procedure entailed the completion of an application form with photograph and the issue of a membership card. In 2013 membership cards were discarded and, thenceforth, membership was simply recorded in internal census records. Only office bearers such as this witness are in possession of this material. He claimed that both the Appellant AA and her husband would be identified upon return to DRC

because their photographs are on the APARECO website and on YouTube. He confirmed that their names are not published anywhere on the APARECO website. He claimed to be unaware of the outcome of the asylum application of AA's husband. He was unable to say whether AA was a speaker at any of the public events allegedly attended by her. He suggested that APARECO members can be identified by spying or infiltration and from website photographs. He was unable to provide details, even an estimate, of the numerical membership of APARECO in the United Kingdom. He suggested that the organisation has a larger presence in the French speaking countries of Belgium and France. He confirmed that decisions about what is posted on the website are taken with care, for security reasons, by headquarters in France.

54. In what was to become the centrepiece of his evidence, JM, in the context of claiming that the DRC authorities do not permit APARECO members to return to their country of origin, asserted that the "*last example*" was the arrest of a male member on 02 October 2009, who was secretary of the UK Midlands Committee. [This person is identified as Mr "XY" henceforth.] JM testified that he learned of this only two days previously and that the source of his information was the Executive National Secretary, whom we shall identify as PL. He also referred vaguely to receiving some limited information from an APARECO member in DRC. He testified that the 2009 episode is not documented in any record.
55. Another witness, whom we shall describe as PL, also made a witness statement and gave evidence to the Tribunal. This witness is the person described in the evidence of JM as the Executive National Secretary of APARECO (UK). He gave evidence relating to XY, whom he said was Secretary of the Midlands Branch of APARECO (UK) at a time when this witness was its President. He asserted that XY was arrested at his United Kingdom home in September 2009 and deported to DRC on 02 October 2009. On returning to DRC he was arrested by the ANR and detained in Mahala Prison, from which he escaped, fleeing to Paris where he was granted either asylum or indefinite leave to remain. He described XY as an important, very active member, whose name was not published on the APARECO website. He suggested that any "*active*" member of APARECO is in danger.
56. Under cross examination, PL, elaborating, asserted that XY had contacted him from Paris about two months after his deportation from the United Kingdom, informing him of his arrest at the airport upon return to DRC. When asked why this was not recounted in his witness statement, he replied that he "*wasn't asked*" about this. He claimed that "*everyone in APARECO*" knew about XY's case. In response to questions from the Tribunal, PL stated that he had known JM since 2011, describing him as a very active member of the organisation. He testified unequivocally that he did not provide JM with information about XY's case, which he reiterated was a "*very notorious*"

one. He confirmed that the Savoy Hotel protest had been directed to both President Kabila and the Rwandan President, Mr Kagame, both of whom were described in a banner as "*War Criminals*". He agreed that those arrested could have been expatriate Rwandan nationals.

57. As the hearing progressed, a statement in the name of Mr XY was, belatedly, produced. The Tribunal admitted both this statement and a new bundle of Respondent's materials generated in response. We summarise his witness statement thus. XY describes himself as an unsuccessful asylum applicant who lived in the United Kingdom from 2003 to 2009. He was Secretary of the APARECO West Midlands Urban Committee for several years, during the Presidency of PL. He believes that his name was at no time published on the APARECO website. On 02 October 2009 he was deported from the United Kingdom to Kinshasa, where he was escorted from the plane by ANR officials. During subsequent interrogation they described him as an active combatant and claimed that they had intelligence about him and others. He was removed from the airport, following which he was tortured in Makala Prison, where he was detained for some two weeks. He escaped from prison with help from friends and, in due course, flew out of Kinshasa. He claimed asylum upon arrival in Paris at the end of 2009. The French authorities granted him asylum.

58. There was no opportunity to probe XY's evidence as he did not attend the hearings. It is appropriate at this juncture to outline the Respondent's response to this aspect of the Appellants' case. It was emphasised in argument that there is no documentary corroboration whatsoever of either the relevant parts of the testimony of JM or PL or the belated witness statement of XY. The documents produced by the Respondent confirm that XY entered the United Kingdom on 14 December 2003 and applied for asylum the following day, unsuccessfully. On appeal, the Adjudicator found his claim of arrest, ill treatment and escape from detention in DRC implausible. The Asylum and Immigration Tribunal made the same conclusion. It is further documented that XY's spouse also claimed asylum in the United Kingdom, unsuccessfully and her appeal was dismissed by the Adjudicator. Her account was considered to be untruthful and unreliable. In July 2010 her solicitors made detailed written representations to UKBA on her behalf. One aspect of these was her asserted active membership of APARECO and a letter from the organisation was provided. These representations and letter post-dated XY's alleged arrest and torture in DRC by some nine months. These events are nowhere mentioned, notwithstanding the specific contention by XY's spouse that by virtue of her APARECO membership and activities she would be at risk of torture and death if returned to DRC. Mrs XY was granted indefinite leave to remain in the United Kingdom and, subsequently, in February 2012 applied for naturalisation. In her application she provided details of her husband, including his address in France.

VII. THE COUNTRY AND EXPERT EVIDENCE: DISCUSSION AND CONCLUSIONS

59. In [5] above we stated that our determination of these appeals is based upon our evaluation of all of the evidence adduced in the round. The Tribunal is concerned fundamentally with the relative strength, reliability, cogency, persuasiveness and vintage of the various components of the evidential jigsaw. That this is the central task for the Tribunal is confirmed by the submissions, both written and oral, of the parties. We have considered these in full and intend no disservice to able and industrious Counsel by not reproducing them *in extenso*. In very brief compass, the main sparring in the parties' respective submissions related to the accuracy, independence, reliability, objectivity, adequacy of methodology, consistency and corroboration of the various strands of evidence and the providers thereof. See TK (Tamils - LP Updated) Sri Lanka CG [2009] UKAIT 00049, at [5] and NA - v - United Kingdom [2009] 48 EHRR 15, at [132] - [135].
60. At this juncture, it is convenient to consider the decision of the Administrative Court in R (P and R - DRC) - v - Secretary of State for the Home Department [2013] EWHC 3879 (Admin). This involved two combined applications for judicial review whereby the Claimants challenged clearly unfounded certifications by the Secretary of State under section 94 of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"), in the case of P and, in the case of R, a decision under paragraph 353 of the Immigration Rules whereby further representations were not considered to constitute a fresh human rights or asylum claim. The two Claimants were, respectively, a foreign national offender (P) and a failed asylum applicant (R). The claim of P succeeded, whereas that of R was dismissed. Notably, Phillips J highlighted the desirability of a country guidance decision of this Tribunal on the subject of returns to DRC.
61. We agree with Ms Lieven QC that the narrow juridical context within which the P case was decided must be recognised. We do not need to embark upon an extensive analysis of whether [53] - [55] of the judgment of Phillips J are *obiter*. We consider it more important to acknowledge the litigation context and to highlight the obvious and substantial differences between the evidential matrix in Re P and R and its counterpart in these combined appeals. Furthermore, this Tribunal does not operate within the shackles of the purely supervisory jurisdiction of the Administrative Court. Rather, we are in the shoes of the FtT, re-making its decision in each of the conjoined appeals. We observe further that Re P and R entailed the application of the clearly unfounded standard. For these reasons, insofar as any of the Appellants contended that the outcome of any of these appeals is dictated by the decision in Re P and R, we do not agree. We have also considered the decision of the Administrative Court in R (BCT) - v - Secretary of State for the Home Department [2014] EWHC 4265. This decision highlights the intrinsically fluctuating nature of cases in which the conditions prevailing in

certain foreign countries at any given time fall to be considered by a court or tribunal. Correctly, none of the parties suggested that either of these first instance decisions is binding on this expert Tribunal.

62. We turn to consider the expert evidence of Dr Kennes at this juncture. The expertise and credentials of this witness are not in dispute. While it was pointed out on behalf of the Respondent that his evidence and opinions have not been universally accepted by the Upper Tribunal in previous appeals, we consider that this does not detract from his expertise in the field in question. Notwithstanding, we have concluded that his report does not qualify to be accorded substantial weight and lacks the force and cogency of other evidence, which we prefer, for the following reasons.
63. We take into account that Dr Kennes was not available for cross examination and that his sources are impossible to test. We note in particular that significant portions of his evidence relate to research which was carried out as long ago as 2009. In the fluid and fluctuating conditions in DRC, this research can only be considered outdated. Furthermore, we are concerned that Dr Kennes failed to make this clear in his report or accompanying witness statement: the marked antiquity of the research emerged only in response to a specific question posed by the Respondent in accordance with the Tribunal's directions. We are obliged to comment that this is unacceptable. Next, Dr Kennes fails to deal with the post-2012 evidence, of which there is a substantial quantity. There is no apparent reason for this failure. Insofar as Dr Kennes was unaware of this evidence, his expertise is undermined. Alternatively, if he was aware of the evidence, the strength of his report is compromised by this failure.
64. A further notable feature of Dr Kennes' report is the proliferation of, in short hand, "*risk opinions*" which are unsupported by empirical or other evidence and amount to little more than bare assertion and/or subjective opinion. This is illustrated by his claim, unsupported by any evidence, that failed returned asylum seekers are (seemingly) identified as such upon return and are handcuffed, followed by questioning at the airport. Another illustration is the author's failure to evaluate critically the February 2011 report in a newspaper considered to be pro-Government. Neither the source of the claim broadcast therein (that there was an armed attempt to kill the President) nor any supporting evidence is provided. Furthermore, Dr Kennes' ensuing claim that since this article was published "*the situation has not changed*" is made without particularisation or elaboration. In addition, significantly, Dr Kennes provides no supporting evidence whatsoever of his claim that all members of APARECO are at risk upon returning to DRC. His tried, trusted and experienced researcher uncovered no evidence whatever of this. This is not a criticism of either the author or the researcher. It is, rather, an objective evaluation which undermines the strength and cogency of the report. Furthermore, the Tribunal has no hesitation in accepting one of the central themes of Dr Kennes' evidence, namely that the focus of the

DRC authorities will be on persons who are, at the relevant moment in time, perceived to be a significant threat to the regime. However, one of the main weaknesses of the report is the absence of any evidence supporting the thesis that all, or certain, foreign national offenders and all, or certain, failed asylum seekers belong to this broad category.

65. Next, we turn to consider the evidence concerning the pronouncements of the DRC Ambassador to the United Kingdom: see [16]-[17] above. The Appellants place substantial reliance on the content of the Member of Parliament's letter. Our evaluation of this discrete package of evidence is as follows:-

- (a) There is no indication that the meeting in question had a formal agenda.
- (b) Considered in isolation, the comments attributed to the Ambassador appear to be impromptu statements, laced with some hyperbole and puff.
- (c) There is no agreed record of the meeting: in particular, the Ambassador was not given the opportunity to respond to any note or record thereof.
- (d) The Ambassador's letter of 16 August 2012 to the Member of Parliament has the character of a swift response to something coming to his attention, arising out of the meeting, which he was anxious to correct speedily.
- (e) The pre-penultimate sentence of the Ambassador's letter adverts to those deported from the United Kingdom to DRC "*for having committed a crime*". While this terminology is somewhat cryptic and the clause "*to prevent him from his criminal activities*" requires interpretation, we are satisfied that in this passage the Ambassador is referring to the administrative migration checks in respect of everyone, conducted by DGM officials at Kinshasa Airport, about which there is an abundance of consistent and credible evidence (see our summary in Chapter IV above). Furthermore, in this respect, the Ambassador expressed himself in entirely consistent terms in the two letters written by him.
- (f) Generally, the Ambassador's written response is consistent with a not insubstantial quantity of evidence pertaining to the issues which it addresses: see in particular [39]-[43] above.
- (g) There is no evidence that the Member of Parliament rejoined, challenging the Ambassador's letter.

- (h) Approximately nine months later, when the occasion arose, the Ambassador formally repeated his correction, again by letter and the analysis in (d) - (f) above applies.
66. Summarising, there are two conflicting versions of what the Ambassador stated on the occasion in question, in July 2012. The Tribunal, as arbiter of fact, takes into account the analysis set out above. We also weigh the consideration that neither of the two protagonists concerned gave evidence or was cross examined in these proceedings. Having regard to other evidence, we are also alert to the risk that the Ambassador may have been truthful in his initial remarks and has sought to cover his tracks subsequently. However, there is an abundance of evidence, credible and consistent, which indicates that even if the Ambassador expressed himself at the meeting in the terms alleged, his words were inaccurate and/or exaggerated, for whatever reason. If spoken, we consider it likely that his remarks were directed to persons who fled justice when they left DRC, in circumstances where they had been convicted of or were suspected of grave crimes. Plainly, the Ambassador does not sign the "*deportation papers*" in respect of any DRC national: if he did claim to do so, this was pure fiction. Thus if he uttered these words, they attract no weight. We consider it more likely, however, that he was referring to the role of the DRC United Kingdom Embassy in the provision of travel documents to proposed deportees. Finally, we note the consistency between the Ambassador's subsequent letters and certain other evidence to which we propose to attach substantial weight, particularly that digested in [37]-[43] above.
67. For the reasons elaborated above, we conclude that the evidence relating to the Ambassador's alleged statement at the Parliamentary meeting in July 2012 does not advance the Appellants' cases.
68. We consider next the AI report, summarised at [24]-[28] above. Whilst addressing the risks facing a returning foreign national offender this report acknowledges that it is difficult to speak '*with confidence*' about a *hypothetical* FNO being returned. Its view is accordingly tentative. We are not restricted to a consideration of a hypothetical return because there is evidence before us of actual returns. AI's "*understanding*" must be viewed in this light. Their opinion (we emphasise this word) that a person is likely to be interviewed by immigration officials on return in order to ascertain their identity, their residence and their family details has to be weighed against the fact that returnees (where necessary) will already have been provided with travel documentation which will have been issued in the United Kingdom by the DRC authorities which would, we infer, have been issued only after sufficient checks have been made. AI accepts these are '*for administrative purposes*', in other words, for the legitimate purpose of checking information without thereby implying a sinister motive that might lead to an individual being placed at risk. Whilst there is corruption and arbitrary conduct, this does not amount to a real risk of serious harm and

the *possibility* of detention and mistreatment is insufficient to violate an individual's Convention rights but is, in any event, not supported by the evidence to which we will turn in due course that there is little or not evidence of recorded examples of this occurring.

69. We turn at this juncture to consider the discrete issue of "*Operation Likofi*". This features with some prominence in the AI Report. In its report, AI advances a thesis. This is to the effect that, having regard to Operation Likofi, returning foreign national offenders who have committed offences comparable to those of the DRC criminals against whom this police operation was directed are at risk of serious harm or other ill treatment. This is how we construe the terminology "*deportees with certain particular categories of offence and profile*" quoted in [27] above. We reject this thesis for the following reasons.
70. The evidence concerning "*Operation Likofi*" makes clear that this was a crackdown, accompanied by significant violence, carried out in a concerted police operation in 2014 against organised street gangs in an endeavour to eradicate all kinds of street crime. Having studied the background material, it does not surprise us that the DRC authorities acted in this way. However, it is not possible to extrapolate from the circumstances of this operation a risk faced by returnees, whatever their background. It was clearly directed against criminal gangs then operating and did not entail a more widespread campaign against all those with a past criminal record. AI has devised a thesis, or has formulated a mere opinion, which, in our view, fails to engage with the nature, purpose, vintage and duration of this discrete police operation. We reject this thesis accordingly.
71. We further consider that the AI evidence suffers from readily identifiable frailties: the lack of detail, particularisation and concrete evidence of individual cases; the failure to engage with the post-2012 evidence; the vintage of the specific instances and illustrations provided; the candidly acknowledged shortcomings in some of the opinions expressed; the prevalence of pure opinion and the absence of supporting substantiation; and the disharmony between many of the assertions and opinions expressed (on the one hand) and the frameworks of the Appellants' cases (on the other). We take into account further that those assertions and opinions in the AI report which, superficially, support the Appellants' cases are undermined and confounded by more recent evidence to which we have determined to accord substantial weight.
72. As we have noted above, certain HRW evidence is incorporated in the AI report. This barely featured in the submissions on behalf of the Appellants and we find nothing in it lending support to their cases. Equally, we place no measurable weight on the report in *The Observer*, digested in [30] above. We consider this to be eclipsed by more persuasive evidence of recent vintage, especially that reviewed in [37]-[43] above, to which the tools of

judicial analysis and evaluation can be more readily applied. Furthermore, it is uncorroborated by other evidence.

73. We have summarised the UKBA FFM report in [18]-[23] above. As noted, this report is composed of material drawn from a collection of sources. We find it largely unpersuasive. Properly analysed, we consider that the material consists mainly of opinions and unsubstantiated assertions. We further consider that the persuasiveness and value of this report are limited by its vintage (November 2012), together with further evidence which is of considerably more recent vintage and, intrinsically, qualifying for greater weight (*infra*). We are satisfied that this report does not provide an adequate evidential foundation for any wider claim, for essentially the same reasons as those expressed in [71] above. Stated succinctly, we consider that the disparate sources of evidence on which this report is based do not establish, persuasively or at all, that those who have the status of failed asylum seeker or foreign national offender are, *ipso facto*, at risk of persecution or serious harm or treatment proscribed by Article 3 ECHR.
74. In one specific respect we find the UKBA FFM report persuasive. We accept the thesis of the report that returning DRC nationals who are either “*wanted*” or are considered to be “*combatants*” are likely to attract the interest of the state security agencies and, in consequence, are at risk of persecution and/or other forms of treatment proscribed by international law. This thesis has the value of consistency as it emanates from several of the providers of the material upon which the report is constructed. It also finds some support in certain of the narrower, less ambitious claims made by Dr Kennes, which we are disposed to accept: see [46] – [47] above. It gains further credence from the information provided by the Executive Director of a Kinshasa based human rights organisation: see [43](vi) above.
75. Subject to [74] above, we find the evidence of the non-governmental organisations and other agencies upon which the Appellants relied (cf. [18]-[19] and [21] above) largely unimpressive and unpersuasive, for essentially the same reasons as those rehearsed in [71] and [73] above. In addition to the critique contained in those two paragraphs, we observe that the sources upon which it is based are unattributed and, hence, immune from appropriate scrutiny. In addition, within this evidence there is much assertion and conjecture but no concrete proof or substantiation. We contrast this with the considered and focussed evidence of JF, digested in [34] above, which we accept.
76. Fundamentally, there is no substantiated allegation of arbitrary arrest or ill treatment of any DRC national who is a failed asylum seeker or a foreign national offender returning to his or her country of origin. We add that there is no suggestion, direct or inferential, that some or all of these agencies are, for whatever reason, incapable of providing concrete evidence of this kind. Moreover, insofar as the evidence of any NGO supports superficially

any of the Appellants' cases, we must not overlook that it emanates from organisations who are unlikely to have an entirely neutral or unbiased agenda, having regard to the realities of government and politics in the DRC. To this we add that such evidence is undermined and contradicted by more recent evidence to which we propose to attach substantial weight, particularly that considered in [37]-[43] above. Where there are conflicts between the two broad competing bodies of evidence, we have no hesitation in preferring the latter.

77. The evidence which we find most persuasive and upon which we place substantial weight emanates from the IOM, a series of IGC states who co-operated actively in the recent survey and the British Embassy in Kinshasa. Having examined all of this evidence critically we find it cogent, consistent and persuasive and readily prefer it to the body of evidence espoused by the Appellants. We have summarised this superior body of evidence in [37]-[43] above. We are satisfied that it is not tarnished by bias, conjecture or inattention. It builds a picture of reliability and consistency. It is un glossed and unvarnished. It suffers from no objectively demonstrable inaccuracy or other material flaw. We also consider that this assessment applies fully to the British Embassy, one of the contributors, whose contribution we have examined with particular scrutiny, given its links with the Respondent in these proceedings. We are impressed by the survey which the Embassy devised and proceeded to carry out amongst various respondents and interlocutors. There is no evidence warranting a finding that the methodology of information collation suffers from any significant flaw. We consider that this body of evidence as a whole does not suffer from any material imperfections.
78. We comment at this juncture on one specific aspect of the UKBA FFM report. This relates to the first part of the passage quoted in [23] above, which attributes to IOM the twofold suggestion that many returning DRC nationals are detained for 24/48 hours and those with a criminal background would be detained for longer. We do not accept this claim, save insofar as it is capable of being construed in a manner harmonious with our finding in [74] above or our further finding, based on all the evidence, that the DRC authorities have an interest in returning nationals in respect of whom there are uncompleted prison sentences, unexecuted arrest warrants or the suspected commission of criminal offences, such as document fraud, when leaving the country. This claim is unparticularised and unsubstantiated, as we have emphasised in our general observation in [76] above. Furthermore, it cannot be based on monitoring by IOM representatives at Kinshasa Airport since IOM does not carry out this activity. Finally, it is irreconcilable to the evidence which the Tribunal finds most persuasive and upon which we have determined to place substantial weight.

79. We have subjected the evidence emanating from the DGM to close scrutiny, given the potential for bias and distortion of the truth. We find that this evidence is supported by the other body of evidence to which we have referred. Furthermore, much of this evidence lends support to our earlier assessment of the weight to be attributed to the alleged public statements of the DRC Ambassador in the United Kingdom: see [65] –[67] above. One aspect of this body of evidence which is striking is the information provided to the Embassy by a foreign national offender who returned to DRC on 11 December 2014. Notwithstanding that this person had disclosed to the DRC authorities in London, pre-departure, his criminal history and was accompanied by two escorts throughout the journey and during the first phase post-arrival, his passage thereafter was entirely uneventful. The state agencies operating at the airport had no interest in his previous criminality, he has attracted no unwanted attention subsequently and, indeed, it appears that he was not even required to pay a bribe upon disembarking.
80. We juxtapose this evidence, which we accept, with that of the eleven IGC states who participated in the survey and provided “*returns*” data in respect of the years 2012, 2013 and 2014 which we also consider persuasive. Making due allowance for the manner in which the data has been compiled and provided, it seems uncontroversial to find that in excess of 700 persons have been returned from the states in question to DRC during a period of just under three years, up to late 2014. We have no reason to find that the states in question were other than assiduous in providing the figures and, indeed, the contrary was not suggested. The significance of this discrete segment of evidence is that only one complaint was made out of this cohort of returning nationals. The recipient state was Belgium and, upon investigation, no substantiation was established. We consider it compelling that there is no substantiated evidence that any member of this large group has been persecuted or ill treated or arbitrarily detained. The consistency of experience of the eleven IGC states concerned is a matter of obvious moment and, further, entirely harmonious with the data and other information provided by the United Kingdom.
81. In our evaluation of this body of evidence, we take into account also that the two states who returned the highest number of DRC nationals, Belgium and France, both contain a substantial DRC diaspora, for historical and other reasons. We find nothing in the evidence to counter the suggestion that the members of these groups in particular would be expected to communicate relevant complaints to the communities to which they belonged in the returning states and/or the Embassies of those states in Kinshasa. While we note that Dr Kennes disagrees with this assessment, it appears to us logical, realistic and consistent with the evidence of high levels of activity, much of it organised and concerted, among members of the DRC diaspora.
82. In their critique of the evidence emanating from the IOM and the IGC states highlighted immediately above, the Appellants draw particular attention to

the limited monitoring of returned nationals which is carried out and the intrinsic limitations thereof. This submission is well made. However, there is no counter punch. We consider that this submission neither mitigates the frailties in the Appellants' preferred evidence which we have identified nor undermines our assessment of the Respondent's body of evidence which we prefer. While we accept the evidence that the IOM is involved only in the cases of voluntarily returning DRC nationals, we find nothing in the evidence to support the submission that the DRC authorities pay attention to the distinction between those nationals who return voluntarily and those who do so under compulsion, subject to the limited exceptions of those who have an unexecuted prison sentence or an outstanding arrest warrant in DRC or who committed an offence such as document fraud when leaving DRC: see our finding in [74] above.

83. While we take into account that the various interlocutors (see para [43]) did not answer the various questions posed in absolutely identical terms, we have identified no material inconsistency. Furthermore, we construe certain aspects of the Appellants' submissions as tantamount to the proposition that there is an onus on the Respondent to establish that failed asylum seekers and foreign national offenders have not been subjected to persecution or proscribed treatment following their return to DRC. This we consider misconceived.
84. The submission on behalf of the Appellants DS, BBM and DK that it is "*astounding*" that the Respondent has not adduced evidence from the DRC Ambassador to the United Kingdom or some other DRC government spokesperson is, in our estimation, positively hyperbolic and unrealistic. This Tribunal, with its feet firmly rooted on the ground of the prevailing real world, does not share this astonishment. We have, rather, chosen to subject the actual evidence emanating from DRC government sources to the most careful scrutiny. In so doing, we have noted the various distinctions between the state agencies concerned – the DRC Ambassador, the ANR and the DGM. While these are distinct agencies, there is much evidence of a sufficiently cogent and reliable nature to support the finding that they do not operate in hermetically sealed compartments: rather, quite the reverse. To this we add that we find nothing in the evidence relating to Operation Likofi which fortifies the cases of these particular Appellants, confounds the evidence on which the Respondent relies or undermines the evaluative assessments of all the evidence which we have set out above. The nexus which it is sought to make between Operation Likofi and the foreign national offender Appellants is, in our estimation, flimsy, speculative and fallacious.
85. Finally, we return to the evidence of the witnesses JM and PL relating to the "XY issue": see [49] – [55] above. We find this aspect of the testimony of these witnesses wholly unpersuasive. It is quite implausible for the assortment of reasons contained in the Respondent's riposte, as elaborated

in the submissions of Ms Lieven QC, which we have digested in [58] above. We concur fully with the Respondent's critique. This assessment and conclusion do not necessarily contaminate certain other aspects of the evidence of these two witnesses, to which we shall return *infra*.

86. In this context and at this juncture, it is appropriate to make certain findings in relation to the organisation APARECO. We have devoted a specific section of this judgment – Chapter VI – to this organisation and we refer also to [18], [20], [43], (iv) and (vi) and [48] above.
87. We address the discrete question of risk to those who are considered to be opponents of the Kabila regime by reason of their *sur place* activities in the United Kingdom. In addressing and determining this question, we make the following specific findings:
- (i) APARECO is a cohesive, structured organisation which has its main base in France and strong basis in certain other European countries, including the United Kingdom. It also operates in Canada and the United States.
 - (ii) APARECO is implacably opposed to the regime of President Kabila which has governed DRC during the past decade. Its overarching aims are the defeat of this regime and the re-establishment of the state on a different basis.
 - (iii) APARECO has no overt presence in DRC, where it operates underground.
 - (iv) The external opposition of APARECO to the governing regime of DRC is overt and visible. Its highest profile activities unfold in public places, accessible to all. Activities of this nature are accompanied by advance publicity.
 - (v) In common with many comparable regimes throughout the world, both present and past, the DRC Government has a strong interest in opposition organisations, including APARECO. Such organisations are monitored and data is recorded. This includes information about the identities of the most prominent members of such organisations, that is to say their leaders, office holders and spokespersons.
 - (vi) The monitoring of APARECO (UK) is likely to be undertaken by and on behalf of the DRC Embassy in London. This is the agency with the most obvious motivation to carry out and co-ordinate such scrutiny. Such scrutiny is likely to generate periodic reports to the DRC Government, in particular its ANR and DGM agencies.

- (vii) It is likely that the leaders, office bearers and spokespersons of APARECO (UK) are known to the DRC UK Embassy and the DRC Government, in particular ANR and DGM.

VIII. COUNTRY GUIDANCE

88. Giving effect to the analysis, findings and conclusions above, by this decision we provide the following country guidance in respect of DRC nationals returning from the United Kingdom to their country of origin.
- (i) Those who have been convicted of offences in the United Kingdom are not at real risk of being persecuted for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR.
 - (ii) Those who have unsuccessfully claimed asylum in the United Kingdom are not at real risk of persecution for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR.
 - (iii) Persons who have a significant and visible profile within APARECO (UK) are at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members - Risk on Return) Democratic Republic of Congo CG [2007] UKAIT 00023.. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers and spokespersons. As a general rule, mere rank and file members are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.
 - (iv) The DRC authorities have an interest in certain types of convicted or suspected offenders, namely those who have unexecuted prison sentences in DRC or in respect of whom there are unexecuted arrest warrants or who supposedly committed an offence, such as document fraud, when departing DRC. Such persons are at risk of imprisonment for lengthy periods and, hence, treatment proscribed by Article 3 ECHR.

IX. THE INDIVIDUAL APPELLANTS

(i) The Appellant DS

89. This Appellant, together with the Appellants BBM and DK, makes the case that his compulsory return to DRC would expose him to a real risk of persecution for a Convention reason or treatment proscribed by Article 3 ECHR by reason of the fact that he has been convicted of offences during his sojourn in the United Kingdom. Each of these three Appellants possesses

this characteristic. This is the sole ground upon which these three cases are advanced.

90. This Appellant, who is aged 28 years, entered the United Kingdom in 1993, accompanied by his sisters, where they joined their mother who made an unsuccessful asylum claim. Her subsequent appeal was dismissed. In 2001 all of the family members were granted indefinite leave to remain in the United Kingdom and the others subsequently became naturalised as British citizens. In 2003 and 2006 this Appellant was convicted of two counts of robbery, one of possession of an imitation firearm and conspiracy to commit robbery with intent to conflict grievous bodily harm. For the first group of sentences, he was punished by four years imprisonment and for the last offence the punishment was an indeterminate sentence of imprisonment for public protection with a minimum term of four years. In 2010 the Respondent intimated to this Appellant that he was liable to suffer automatic deportation under the UK Borders Act 2007. In 2012 he responded by claiming asylum, unsuccessfully and in 2013 a decision was made to deport him to DRC. His ensuing appeal was dismissed by the FtT in December 2013. Having secured permission to appeal, in February 2014 the Upper Tribunal found that the FtT had erred in law by failing to engage sufficiently with the background evidence relating to the Article 3 ECHR risk applying to foreign national offenders returning to DRC.

(ii) **The Appellant BBM**

91. The Appellant BBM, a national of DRC aged 42 years, entered the United Kingdom in September 2003 and claimed asylum, unsuccessfully. His appeal against the asylum refusal decision was dismissed. Subsequently, a fresh asylum claim was rejected, on 16 October 2006. In 2008 this Appellant was convicted of possessing a false identity document and was sentenced to six months imprisonment, suspended for two years. His case was reported in a local newspaper which disclosed his identity, his nationality, his failed asylum application and his offence. In January 2010 having been convicted of three further comparable offences, this Appellant received a total sentence of 16 months imprisonment and the sentencing Judge recommended that he be deported.
92. In February 2010 this Appellant was formally notified by the Respondent that he was liable to be deported on account of his offending. This signalled the beginning of a regrettably protracted period during which the Appellant made a fresh asylum claim which was refused, the Respondent made a decision to make a deportation order and this Appellant's appeal to the FtT was dismissed. Permission to appeal having been granted, on 12 March 2015 this constitution of the Upper Tribunal set aside the decision of the FtT on the basis that it had erred in law on the two grounds advanced, namely its assessment and conclusions in respect of (a) the issue of risk upon return

to DRC and (b) this Appellant's case under Article 8 ECHR. As noted above, Article 8 arises in this Appellant's appeal only.

(iii) **The Appellant DK**

93. This Appellant, a DRC national aged 42 years, entered the United Kingdom in 1992. He submitted an asylum application which did not yield any determination. Following the grant of temporary admission, in 1999 he was granted indefinite leave to remain. Between 2006 and 2011 this Appellant was convicted of an eclectic mix of offences, mainly summary in nature: failing to surrender to custody, theft by shop lifting, assaulting a police officer, racially aggravated common assault and breach of a community order. His offending then escalated somewhat to possession of heroin and, ultimately, intimidating a witness (his former partner), an indictable offence for which he was punished by 15 months imprisonment.
94. In April 2012 this Appellant claimed asylum. In January 2013 the Respondent rejected this claim and, simultaneously, made a deportation order against the Appellant. His ensuing appeal to the FtT was dismissed in June 2013. Following the grant of permission to appeal, in August 2013 the Upper Tribunal decided that the FtT had erred in law on the issue of risk upon return to DRC, specifically as regards Article 3 ECHR.

(iv) **The Appellant BM**

95. This Appellant, a DRC national aged 40 years, entered the United Kingdom in July 2013 and promptly claimed asylum. He based his claim on his asserted membership of one of the opposition political parties in DRC, the Union for Democracy and Social Progress ("*UDPS*"). In September 2013 the Respondent refused his claim. On appeal, the FtT found that this Appellant's claimed membership of UDPS and the related aspects of his story had been invented. On appeal he made no challenge to these findings. In March 2014 the Upper Tribunal ruled that the FtT had erred in law in its treatment of the Appellant's alternative case, which was that in the event of compulsory return to DRC he would be exposed to a real risk of persecution for a Convention reason and/or treatment proscribed by Article 3 ECHR solely on account of being an unsuccessful asylum claimant.

(v) **The Appellant AA**

96. As we acknowledged at the outset of this judgment, this Appellant has two relevant characteristics. The first is that she has unsuccessfully claimed asylum in the United Kingdom. The second is that she has engaged in *sur place* activities in the United Kingdom as an active member and office bearer of the organisation APARECO. Thus prefaced, our resumé of the material facts bearing on her appeal follows. In common with the other four

Appellants, many of these facts are uncontentious. Insofar as any factual issue is controversial, we shall resolve this by specific findings.

97. This Appellant, accompanied by her husband ('BB'), entered the United Kingdom in 2009. Her husband made an asylum claim which was refused and his ensuing appeal was dismissed by the FtT, in May 2010. In November 2011 this Appellant claimed asylum, unsuccessfully. In two successive FtT determinations, between which was sandwiched an error of law finding by the Upper Tribunal, her appeal was dismissed. There were specific findings that this Appellant had joined APARECO (UK) in July 2010 and, subsequently, participated in APARECO activities. The FtT noted the absence of any evidence of the Appellant's name appearing on the APARECO website as an official of the organisation. Similarly, there was no evidence indicating any awareness of her activities by the DRC authorities. There was a specific finding that these activities were "*at a relatively low level*". There were no specific findings about certain aspects of the Appellant's asserted APARECO activities or her claim to have been appointed to a position in one of the regional committees, as "women's representative". Ultimately, by its decision dated 30 July 2013, the Upper Tribunal found that the FtT had erred in law in its consideration of the issue of risk on return. The FtT's findings of fact were preserved.
98. This Appellant's appeal has generated a substantially greater quantity of evidence than the appeals of the other Appellants in combination. This is unsurprising, given that this Appellant has a rather longer and more detailed story to tell. We have considered the extensive documentary evidence, the witness statements of this Appellant and others, the photographic evidence and the paper descriptions of "*YouTube*" videos, together with the oral testimony of the witnesses called on behalf of this Appellant, JM and PL. In [51] - [55] above we have summarised some of the salient aspects of the testimony of these two witnesses. In [57] we have conducted a critical evaluation of their evidence in relation to the discrete issue relating to XY. Further, in [78], we have made findings rejecting the evidence of these two witnesses on this issue.
99. We have considered the totality of the evidence relating to AA. We have also taken into account what seems to us a far from vigorous challenge on behalf of the Respondent to this sphere of the evidence. Having conducted this exercise, we consider that there is a consistent and convincing body of evidence relating to this Appellant's activities on behalf of and designated role in APARECO. We tabulate our specific findings thus:
 - (i) This Appellant, following a considered vetting exercise, became a member of APARECO in 2010.
 - (ii) Thereafter, she held a membership card until 2013, when membership cards were replaced by the new census mechanism.

- (iii) Neither this Appellant's name nor her photographic image has been published on the APARECO website at any time.
- (iv) The APARECO website is accessible in the DRC.
- (v) This Appellant has at all material times been a dedicated and active member of APARECO.
- (vi) Reflecting (v) above, in 2012, she became a member of the APARECO North West Committee, having been allocated the specific portfolio of womens' adviser (or representative).
- (vii) This portfolio is an active one, involving (*inter alia*) proselytising activities, promoting the organisation, recruiting new members and, as the photographic evidence demonstrates, having a visible profile at public events. It extends to the hosting of all of the organisation's events in the North West region.
- (viii) While this Appellant's membership of and portfolio within the organisation have had a public dimension from time to time, quantitatively these entail a greater number of internal activities, such as committee and other meetings, not visible externally.
- (ix) This Appellant continues to hold her portfolio.

X. THE INDIVIDUAL APPELLANTS: CONCLUSIONS

DS, BBM AND DK

100. We decide the appeals of all five Appellants on the basis of our evaluation of the country and expert evidence, together with the undisputed material facts pertaining to their individual cases and the further findings which we have made above. Giving effect thereto, we conclude that the appeals of DS, BBM and DK, the three foreign national offenders, must fail. We decide that there is no real risk that DRC nationals who have been convicted of offences in the United Kingdom and are to be returned to their country of origin will be persecuted for a Refugee Convention reason or exposed to a risk of serious harm or subjected to treatment proscribed by Article 3 ECHR. The interest which the DRC government has in certain returning nationals does not extend to persons belonging to this category. It matters not whether the relevant agencies of the DRC government have knowledge that such persons have committed offences in the United Kingdom.
101. Thus the question – one of law – whether such persons could be expected or required, upon return, to prevaricate about their offending in the United Kingdom in an attempt to avoid persecution or ill treatment does not arise.

We find in any event that there is no likelihood of such questioning being undertaken since the issue of foreign offending is of no interest to the DRC authorities. In the alternative, and in any event, the responses to questioning of this kind will not generate a real risk of persecution or ill treatment. Accordingly, the debate about the impact of the decision of the Supreme Court in RT (Zimbabwe) - v - Secretary of State for the Home Department [2013] 1 AC 152 is purely theoretical. We would merely add that, as the findings of the FtT in the appeal of BBM in particular demonstrate, resort to substantial and elaborate mendacity could well occur without any form of compulsion, propelled by strong self interest and self survival motivation.

BBM: Article 8 ECHR

102. This Appellant's appeal under Article 8 ECHR requires separate consideration. The uncontentious facts relating to this Appellant include his age, now 42 years and the duration of his sojourn in the United Kingdom, now approaching 12 years. His relationship with his spouse, HM, dates from 2006 and they were married in 2012, after she had completed her university studies. His wife is pregnant, expecting to give birth to a girl in the near future. This Appellant claims to have a degree in mechanical engineering. In recent years he has engaged in charitable activities, including acting as a volunteer for the British Red Cross, assisting immigrants. We have considered the several positive testimonials submitted on his behalf. We note that some of the authors make no mention of this Appellant's convictions.

103. In January 2010 this Appellant was imprisoned for 12 months having pleaded guilty to three offences, namely possession of an identity document with intent, dishonestly making a false representation to make gain for himself and dishonestly failing to disclose information to make gain for himself. Simultaneously, the Court activated a suspended sentence of four months imprisonment imposed on 30 September 2008 for the offence of document fraud. It is clear that the three index offences were closely associated with each other, all of them linked to the Appellant's acquisition of a driving licence in a false name. This enabled him to work unlawfully during a period of some three years, acquiring total wages of around £14,000. During this period the Appellant continued to receive, illicitly, basic living allowance and vouchers and his wife had her own income as an events manager. The sentencing Judge evidently accepted that the Appellant's central motive was to secure employment, something which the Appellant repeated in his evidence to us. When cross examined, he sought to downplay the gravity of his offending, refused to accept that his offences were crimes of dishonesty and insisted that he had committed one offence only. While his claim that he had apologised in court was not challenged,

we are bound to conclude that he displayed no real insight into his offending and no true remorse. While it is common case that the Appellant's convictions will become "*spent*" within 10 years viz by 2020, he will, of course, have to disclose them to possible employers in the interim.

104. In common with the FtT, we heard evidence from both the Appellant and his spouse. It is clear that he concealed his offending from her. She first discovered it when the police arrived to arrest him at home. Furthermore, he did not disclose his immigration status to her until their relationship had been of some two years duration, in 2008. His spouse acknowledged that from then she has been aware of the possibility of this Appellant's deportation/removal from the United Kingdom. The evidence points decisively to the availability of strong family support for the Appellant's spouse and we find accordingly.
105. We accept that the Appellant and his spouse are in a committed, stable and loving relationship. We further accept that the Appellant is likely to be a loving and responsible father and, if permitted to work, will do his utmost to secure employment. We balance this with the undisturbed findings of the FtT that in both the pursuit of his asylum claim and his offending, this Appellant practiced continuous deception, considered to be "*engrained in his personality and character and unlikely to stop*": [66]. This, linked to his refusal to accept responsibility for his criminal behaviour and the findings which we have made in [97] above, underpins the further finding of the FtT that there is a real risk of the Appellant reoffending: [67]. We further concur with the FtT that the providers of the testimonials "*... sought to see the good in him but do not have the full picture of his background and behaviour*": [68]. We note also the specific finding that the Appellant's spouse "*would be at real risk of coming to physical harm in the DRC*": [70]. This predictive judgment underpinned the FtT's evaluative assessment that it would not be appropriate to require her to leave the United Kingdom and that this Appellant's deportation "*will inevitably destroy the family life he has with [her]*": [71].
106. In both his written and oral evidence this Appellant asserted that he had obtained a degree in mechanical engineering during his sojourn in the United Kingdom. This issue was highlighted specifically by one of the panel judges at the hearing. This stimulated a direction that the Appellant provide written evidence of this matter. This in turn generated a letter from his solicitors confirming that the Appellant does not possess this qualification. The letter suggests that he simply began the course at some unspecified institution and discontinued his studies on account of the withdrawal of NASS support and accommodation and the need to pay foreign student fees. This issue was raised specifically and clearly during the hearing. The Appellant could not conceivably have misunderstood it, not least because of his plainly excellent command of the English language. The truth was not disclosed until approximately one week later, under

compulsion. We find, without hesitation, that this Appellant brazenly attempted to deceive the Tribunal on an issue of some significance. He told a deliberate, calculated and blatant lie. This is consistent with and confirms everything recorded in [103] and [105] above. To the extent that his credibility was not already decimated by what is there recorded its destruction is now complete.

107. The parties' submissions, appropriately, focused on the new regime in the Nationality, Immigration and Asylum Act 2002, recently introduced by the Immigration Act 2014. This provides the framework for our findings and conclusions:

- (i) Section 117B(1): the starting point in the exercise is the Parliamentary declaration that the maintenance of effective immigration controls is in the public interest.
- (ii) Section 117B(2): the Appellant is clearly fluent in English and is well integrated in United Kingdom society. However, we acknowledge Mr Moules' submission that this talent was misused by the Appellant in the commission of his offences. It is not disputed that his convictions complicate his prospects of employment during the next five years. In the longer term, he will predictably continue to experience difficulties in this respect, not least because of our finding of mendacity above. Thus there is a real possibility that he will be a burden on taxpayers by reliance on public benefits during a substantial part of this period.
- (iii) Section 117B(3): the Appellant has not been financially independent during most of his sojourn in the United Kingdom. During the most recent phase, of some five years duration, he has been dependent exclusively on his wife's income. As regards the future, we repeat our finding above.
- (iv) Section 117B(4): it is undisputed that this Appellant has had limited leave to remain in the United Kingdom since his arrival in September 2003. In this sense and to this extent, the relationship established with his spouse, dating from 2006, began and continued when his presence was lawful. We accept the submission of Mr Toal that there is a distinction between unlawful presence - in section 117B(4) - and precarious immigration status, in section 117B(5).
- (v) Section 117B(5): we find that this Appellant's immigration status in the United Kingdom was at all material times precarious. All of his attempts to establish a stable, secure status in the United Kingdom were unsuccessful. It follows that the private life which he has developed in the United Kingdom qualifies for the attribution of little weight.

- (vi) Section 117C: as regards subsection (2), Mr Toal submitted that the gravity of the Appellant's offending belongs to the lower, rather than the upper, level of the notional scale. It was further contended that, per subsection (5), "*Exception 2*" applies since the Appellant's spouse is a qualifying partner (being a British citizen), their relationship is genuine and subsisting and the effect of the Appellant's deportation on her will be unduly harsh.

Mr Toal's overall submission was that the public interest favouring the expulsion of the Appellant is positioned towards the bottom of the imaginary scale.

108. We give effect to the findings and evaluative assessments set out in the foregoing paragraphs as follows. It is now well established that the public interest favouring the deportation of foreign offenders is a potent one, having the stamp of Parliamentary approval and being enshrined in primary legislation: see in particular SS (Nigeria) – v – SSHD [2013] EWCA Civ 550. We balance this with the various findings and factors rehearsed above. Some of these are favourable to those asserting their rights under Article 8 ECHR viz the Appellant and his spouse, while others are not. We begin with the Appellant's offending, which we consider to have been of intermediate gravity, given especially the factor of the extant suspended sentence, which did not deter him from reoffending.
109. Given the invocation of "*Exception 2*", we must assess the likely impact of the Appellant's deportation on his spouse. In order for the exception to apply, the impact must qualify as "*unduly harsh*". We consider that this does not equate with uncomfortable, inconvenient, undesirable, unwelcome or merely difficult and challenging. Rather, it poses a considerably more elevated threshold. "*Harsh*", in this context, denotes something severe, or bleak, the antithesis of pleasant or comfortable. Furthermore, the addition of the adverb "*unduly*" raises an already elevated standard still higher. The members of the family unit in question are but two. We acknowledge the likelihood of this changing in the very near future, while adding that section 55 of the Borders, Citizenship and Immigration Act 2009 has no application to a child *en ventre sa mère*.
110. We accept that life will be very difficult for a young, single mother who will have the additional burden of grieving her husband's departure abroad in circumstances where the prospects of future reunification are unfavourable. However, these we consider to be typical effects of a husband's deportation and Parliament has decreed that cases of this kind are insufficient to outweigh the public interest. Furthermore, we take into account the availability of strong family support to the Appellant's spouse, as we have found above. To this we add that she is a graduate who has evidently been in regular employment and it is, therefore, predictable that she will be able to support herself and her child. We do not overlook the duration of this

relationship or its various qualities, all of which we have acknowledged above. However, our conclusion is, balancing all of the relevant facts and factors, that the statutory public interest must prevail by some measure. Accordingly, this Appellant's appeal under Article 8 ECHR fails.

The Appellant BM

111. In light of a belated and overdue submission received on behalf of this Appellant, a further hearing directed exclusively to the factual issue of whether this Appellant made use of a false passport in departing the DRC will be convened. A separate determination or a supplement to this determination will then be issued.

The Appellant AA

112. We turn, finally, to the appeal of AA. The stand out feature in this Appellant's case is her association with and position within APARECO (UK). As appears from our findings in [78] above, we have found the evidence of two witnesses called on behalf of this Appellant, JM and PL, unpersuasive in relation to what we shall describe as the "*Mr XY issue*". This, however, does not *per se* render other aspects of their evidence unreliable. Both witnesses gave evidence relating to this Appellant's role and activities in the APARECO organisation. We have considered this evidence in tandem with this Appellant's written evidence, the photographic and related evidence and the findings of the FtT. Having done so, we accept the claims made by and on behalf of this Appellant concerning her membership of, role in and activities on behalf of APARECO (UK). We refer to our specific findings in [88] above.

113. We must also give effect to our further findings in [87] above relating to APARECO. This Appellant is not one of the leaders or main office bearers of the organisation and, hence, we find that her identity is not published on its website. Nor is she a spokesperson. However, she is no mere rank and file member. We find that she holds an important portfolio (as women's representative, or adviser) in the organisation and, further, that she discharges the duties of this post with enthusiasm and energy. She has been overt and visible in her conduct. The central theme and rationale of this conduct is its trenchant opposition to the prevailing DRC regime.

114. In this context, the APARECO protest outside the Savoy Hotel, London on 20/21 October 2014 assumes significance. We find that this was a meticulously organised and well publicised event in a public place. The mechanics of the event, as the photographic evidence demonstrates, included large, striking posters broadcasting clearly legible slogans which identified APARECO (UK) as the organiser and President Kabila as a main target of the protest. This Appellant is prominent in many of the photographs. She is one of the most visible protesters and clearly had a

leading role. The immediate stimulus for this protest was the attendance of President Kabila at the world leaders energy summit in London. The protest was of sufficient profile and importance to attract security measures, including the presence of police officers and the erection of police barriers.

115. We consider it highly likely that this event was monitored by agents of the DRC government. Such monitoring will probably have resulted in this Appellant being identified, or confirmed, as a leading APARECO (UK) activist - or, in the language found in many places scattered throughout the documentary evidence, a "*combatant*". We thus find on the basis of all the material evidence: her prominence in the various photographs, the APARECO website contents and the Google Search in particular. We are satisfied that the DRC Government does not make fine and subtle distinctions relating to roles, designations and portfolios within the organisation. Its main interest is those members and associates who appear to and/or are perceived to threaten the DRC regime and who occupy positions of prominence. Substance, rather than form, is what matters in this context. We must graft onto these findings certain other pieces of evidence which we accept. These include photographs which depict the Appellant in prominent positions at certain APARECO (UK) meetings. There is also the print out of the first page of the Google search results in respect of this Appellant, which links her to a high profile petition accusing President Kabila of (*inter alia*) crimes against humanity and demanding appropriate international action against him. Furthermore, there is evidence that the APARECO website, accessible to all, contains photographs and videos of this Appellant attending demonstrations and meetings of the organisation's leadership. To all of this we add our findings in [87] and [99] above. None of the evidence which we have summarised above is seriously challenged and we find that it is both plausible and credible.
116. Taking into account all of the foregoing, we make the further specific finding that the identity of this Appellant is probably known to the relevant agencies of the DRC Government, DGM and ANR and that its agents will identify her upon or following return to the country. Further, this Appellant is perceived as a threat to the DRC Government. She is precisely the kind of person who will attract the interest and attention of its agents with the likely adverse consequences flowing therefrom. The conclusion that she will be at real risk of persecution for a Convention reason and/or treatment proscribed by Article 3 ECHR follows inexorably.
117. It follows that the appeal of AA succeeds. This is based on the significant and visible profile which she holds in APARECO (UK). Her status of unsuccessful asylum applicant is also relevant, but only to the limited extent that this is the impetus for her return to the DRC which, in turn, is likely to alert the relevant DRC agencies, specifically DGM and ANR, to her presence. This Appellant, by virtue of having and/or being perceived to have a political profile in opposition to the DRC government, falls within

one of the risk categories identified by the Upper Tribunal in MM: see [12](c) *supra*.

Footnote

118. Finally, we take the opportunity to remind Judges and practitioners of the following statement in R (SG Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940, at [46] – [47]:

“The system of country guidance determinations enables appropriate resources, in terms of the representations of the parties to the country guidance appeal, expert and factual evidence and the personnel and time of the tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the Appellants in the country guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination

It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take country guidance determinations into account and to follow them unless very strong grounds, supported by cogent evidence, are adduced justifying their not doing so.”

We also draw attention to this Tribunal’s overview of the status and effect of country guidance judgments in MOJ and Others (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) at [8] and the reporting arrangements for country guidance judgments in Upper Tribunal Immigration and Asylum Chamber Guidance Note Number 2 of 2011, at [9].

Omnibus Conclusion

119. The country guidance enshrined in this decision is as follows:
- (i) DRC nationals who have been convicted of offences in the United Kingdom are not at real risk of being persecuted for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR in the event of returning to their country of origin.
 - (ii) DRC nationals who have unsuccessfully claimed asylum in the United Kingdom are not at real risk of persecution for a Refugee Convention reason or serious harm or treatment proscribed by Article 3 ECHR in the event of returning to their country of origin.
 - (iii) DRC nationals who have a significant and visible profile within APARECO (UK) are, in the event of returning to their country of origin, at real risk of persecution for a Convention reason or serious harm treatment proscribed by Article 3 ECHR by virtue of falling within one of the risk categories identified by the Upper Tribunal in MM (UDPS Members – Risk on Return) Democratic Republic of

Congo CG [2007] UKAIT 00023. Those belonging to this category include persons who are, or are perceived to be, leaders, office bearers and spokespersons. As a general rule, mere rank and file members of APARECO are unlikely to fall within this category. However, each case will be fact sensitive, with particular attention directed to the likely knowledge and perceptions of DRC state agents.

- (iv) The DRC authorities have an interest in certain types of convicted or suspected offenders, namely those who have unexecuted prison sentences in DRC or in respect of whom there are unexecuted arrest warrants or who supposedly committed an offence, such as document fraud, when departing DRC. Such persons are at risk of imprisonment for lengthy periods and, hence, treatment proscribed by Article 3 ECHR.

120. In the result, we remake the decisions in each of the five cases in the following way:

- (a) the appeals of DS, BBM and DK are dismissed on all grounds;
- (b) the appeal of AA is allowed on asylum and Article 3 ECHR grounds; and
- (c) the appeal of BM will be completed in accordance with[111] above as soon as possible.

Seamus McCloskey

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Date: 30 May 2015

Appendix: Source Materials

Source Materials before the Upper Tribunal

<u>Date</u>	<u>Source</u>	<u>Description</u>
Unspecified / Various Dates		
Undated	<i>Print out of the first page of Google search</i>	Results for 'AA', which include a link to the petition of Marie Therese Nlandu entitled 'Mise en accusation du president Joseph Kabila'
Undated	<i>Print out of the first page of Google search</i>	Results for 'BB', which include a link to the petition of Marie Therese Nlandu entitled 'Mise en accusation du president Joseph Kabila'
Undated	<i>Extract from the petition 'Mise en accusation du president Joseph Kabila'</i>	Accessed by clicking on the link that comes up when searching for AA or BB on Google, along with translation into English.
Undated	<i>Emails from National President (NP) Honeore Nghanda</i>	FOA BB offering condolences following the death of his mother
Undated	<i>PIRS</i>	The International Organisation for Migration's Personal Identification and Registration System
2011-2014	<i>Photographs (annotated)</i>	Reflecting AA's and BB's activities in the UK
2005		
June 2005	<i>APARECO</i>	Who are we? Resistance until Freedom (English translation of French Article)
4 June 2005	<i>APARECO</i>	Social Project (English translation of French Article)
2008		
25 Nov 2008	<i>Human Rights Watch</i>	We Will Crush You: The Restriction of Political Space in the Democratic Republic of Congo [Excerpt(s)]
2009		
27 May 2009	<i>The Guardian</i>	Britain sending refused Congo asylum seekers back to threat of torture
23 June 2009	<i>Foreign Office</i>	Letter in relation to allegations of detention of two returnees in May 2009
12 Dec 2009	<i>Australian Government Refugee Review Tribunal</i>	Country Advice Democratic Republic of Congo
14 Dec 2009	<i>Refugee Documentation Centre (Legal Aid Board, Ireland)</i>	Democratic Republic of Congo - Treatment of BDK including if any differentiation between ordinary and active members; Treatment of BDK/anyone who escapes prison

2010		
8 March 2010	<i>Second joint report of seven United Nations experts</i>	On the situation in the Democratic Republic of the Congo
4 Oct 2010	<i>BBC News Online</i>	DR Congo: Joseph Kabila critic's 'suicide' doubted
8 Oct 2010	<i>U4 Anti Corruption Resource Centre</i>	Overview of corruption and anti-corruption in the Democratic Republic of Congo
12 Oct 2010	<i>APARECO</i>	DRC: Armand Tungulu's "legacy" to the Congolese people, Honore Ngbanda-Nzambo ko Atumba
28 Nov 2010	<i>APARECO</i>	Reconciliation between APARECO & Kantangan gendarmes (Tigers) Audio: Message from H Ngbanda to the Congolese (English translation of French Article)
2011		
29 Mar 2011	<i>Saturday</i>	RDC Ambassador returns to Brazzaville: Kin-Brazza condemned to peaceful coexistence, L'Avenir (English translation of French Article)
6 April 2011	<i>Immigration and Refugee Board of Canada</i>	Democratic Republic of the Congo: Information on the Bundu dia Kongo (BDK) movement
16 April 2011	<i>The People's Party for the Reconstruction of Democracy (PPRD)</i>	France asks pseudo warriors and crypto-fighters to halt their violence (English translation of French Article)
29 Sept 2011	<i>Digital Congo website</i>	Body of Ambassador Mira Ndjoku returned to Kinshasa on Tuesday (English translation of French Article)
9 Nov 2011	<i>US Department of State</i>	2012 Country Reports on Human Rights Practices: Democratic Republic of the Congo 19/04/2013 [Excerpt(s)]
9 Nov 2011	<i>Office of the United Nations High Commissioner for human Rights (OHCHR)</i>	Report of the United Nations Joint Human Rights Office on Human Rights and Fundamental Freedoms during the pre-electoral period in the Democratic Republic of Congo
24 Nov 2011	<i>Justice First</i>	Unsafe Return
2012		
9 March 2012	<i>Home Office UK Border Agency</i>	Democratic Republic of Congo: Country of Origin (COI) Report
1 May 2012	<i>Home Office UK Border Agency</i>	Operational Guidance note: Democratic Republic of Congo
15 June 2012	<i>Kongo Times</i>	Liberation of the DRC: Joint statement UDPS - APARECO - ARP (English translation of French Article)
July 2012	<i>Foreign Office</i>	Information for British Nationals imprisoned in

		the DRC
7 July 2012	<i>Letter</i>	From Marie Therese Nlandu
Nov 2012	<i>Home Office</i>	Country Policy Bulletin: Democratic Republic of Congo (Nov 2012 version)
1 Nov 2012	<i>Home Office UK Border Agency</i>	Democratic Republic of Congo: Report of Fact Finding Mission to Kinshasa conducted between 18 and 29 June 2012
3 Dec 2012	<i>APARECO website</i>	Nouvelle Mise en Place Generale de L'Apareco a partir du 3 Decembre 2012, accessed 03 Feb 2015, giving details of the current leaders of APARECO including APARECO UK
2013		
2013	<i>Amnesty International Report 2013</i>	Democratic Republic of the Congo
2013	<i>United States Government</i>	Country Report on Human Rights Practices for 2013 Democratic Republic of the Congo
Feb 2013	<i>Home Office UK Border Agency</i>	Democratic Republic of Congo: Bulletin: Statistics an Information on the Treatment of Returns (to Kinshasa)
Mar 2013	<i>United Nations Joint Human Rights Office</i>	Report on Deaths in Detention Centres in the Democratic Republic of Congo
May 2013	<i>Amnesty International</i>	The State of the World's Human Rights (extracts)
15 May 2013	<i>Immigration and Refugee Board of Canada</i>	Democratic Republic of the Congo: The Alliance of Patriots for the Refoundation of the Congo (APARECO) in Kinshasa
23 May 2013	<i>Amnesty International</i>	Annual Report 2013: Democratic Republic of the Congo
5 June 2013	<i>Letter</i>	from APARECO UK
29 July 2013	<i>Article from the APARECO website</i>	Appointment and promotions within FARDC (the armed forces of the Democratic Republic of Congo): a reward from "Kabila" for disloyalty, impunity and cronyism, Candide Okeke, L'Oeil Du Patriote (English translation of French Article)
3 Oct 2013	<i>Justice First</i>	Unsafe Return II
Dec 2013	<i>Report by the United Nations Joint Human Rights Office (Monusco-Ohchr)</i>	On the violations of Human Rights and Fundamental Freedoms committed during the Electoral Period in the Democratic Republic of the Congo, as well as on the actions taken by Congolese Authorities in response to these violations: October 2011 – November 2013
2014		
2014	<i>The Fund for Peace</i>	Fragile States Index 2014
2014	<i>Transparency International</i>	Corruption by Country / Territory
2014	<i>Freedom House Report</i>	Congo, Democratic Republic of (Kinshasa)
14 Jan 2014	<i>Digital Congo Website</i>	Targeted attacks on 30 th December 2013: a

		connection between the 'Ngbanda-Mbumba-Mukungublia' trio? (English translation of French Article)
21 Jan 2014	<i>Human Rights Watch</i>	World Report
Feb 2014	<i>Home Office</i>	Country Policy Bulletin: Democratic Republic of Congo (Feb 2014 version)
6 Feb 2014	<i>UN Human Rights Council</i>	Summary prepared by the Office of the United Nations High Commissioner for Human Rights for the Working Group on the Universal Periodic Review: Democratic Republic of Congo
15 Feb 2014	<i>The Guardian</i>	Congolese asylum seekers face 'torture with discretion' after removal from UK
27 Feb 2014	<i>US Department of State</i>	2013 Human Rights Report: Democratic Republic of the Congo
April 2014	<i>Office Francais de protection des refugies et apatrides (OFPRA)</i>	Report of a mission to the Democratic Republic of Congo, 30 June to 7 July 2013 (translated extracts)
21 April 2014	<i>Digital Congo Website</i>	List of first fifty beneficiaries of amnesty law announced! (English translation of French Article)
23 April 2014	<i>Press Release from APARECO</i>	"Amnesties" in the name of APARECO are "unknown" to Nganda's group: Manipulation of Amnesty lists exposed, FSDDC (English translation of French Article)
30 April 2014	<i>Juene Afrique website</i>	DRC: Who are the 100 new beneficiaries of the amnesty law? (English translation of French Article)
1 June 2014	<i>Freedom From Torture</i>	Rape as Torture in the DRC
2 June 2014	<i>Le Potential Online</i>	Kabila deems the resurgence of the defunct CIAT (International Transition Support Committee) unacceptable (English translation of French Article)
5 June 2014	<i>Reuters</i>	US envoy urges Congo's Kabila to respect law, step aside in 2016
7 July 2014	<i>UN Human Rights Council</i>	Report of the Working Group on the Universal Periodic Review: Democratic Republic of Congo
22 July 2014	<i>Eye of the Patriot</i>	Joseph Kabila begins a huge operation of purification in the DRC army (English translation of French Article)
7 Aug 2014	<i>US Time Online</i>	Congo's Presidential Entourage Investigated for Beating Protesters in US
8 Aug 2014	<i>APARECO website official statement</i>	The APARECO firmly condemns the brutal assault of Jacques Miango
18 Aug 2014	<i>Direct DC: commentary on video</i>	Entitled 'Jacque Miango, the man who lost six teeth in his assault by Kabila Guards, discusses the facts'
22 Aug 2014	<i>Freedom House</i>	Freedom in the World 2014 - Congo, Democratic Republic of (Kinshasa)
Sept 2014	<i>Home Office</i>	Foreign National Offender returns statistics
1 Sept 2014	<i>United Nations High Commissioner for Human</i>	Report on the Human Rights situation and the activities of her Office in the Democratic

	<i>Rights</i>	Republic of Congo
12 Sept 2014	<i>Afrique</i>	DRC: One year in prison for Jean-Bertrand Ewanga (English translation of French Article)
24 Sept 2014	<i>United Nations</i>	Report of Secretary General on the implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of Congo [S/2014/679]
25 Sept 2014	<i>United Nations</i>	Report of the Secretary General on the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo [S/2014/698]
Oct 2014	<i>United Nations Joint Human Rights Office</i>	Report on Human Rights violations committed by agents of the Congolese national police during operation Likofl in Kinshasa between 15 November 2013 and 15 February 2014
16 Oct 2014	<i>Foreign Office</i>	Human Rights Report: DRC country of concern
20 Oct 2014	<i>The Voice of Congo</i>	Video: Exclusive Story: Pro-Kagame Rwandans arrested for possession of knives in London (English translation of French Article)
22 Oct 2014	<i>Home Office</i>	Country Policy Bulletin: Democratic Republic of Congo
Nov 2014	<i>Home Office</i>	Migration Data Tables: Democratic Republic of Congo
Nov 2014	<i>Home Office</i>	Witness Statements filed on behalf of the Secretary of State for the Home Department in the case of <i>BCT v SSHD (CO/4012/2014)</i>
Nov 2014	<i>Human Rights Watch</i>	Operation Likofi: Police Killings and Enforced Disappearances in Kinshasa, Democratic Republic of Congo
14 Nov 2014	<i>Foreign Office</i>	Letter in relation to return of 13 November 2014
18 Nov 2014	<i>Foreign Office</i>	Letter of interview with Belgian Embassy official
20 Nov 2014	<i>Foreign Office</i>	Letter of interview with Swiss Embassy official
20 Nov 2014	<i>Foreign Office</i>	Letter of interview with IOM
Dec 2014	<i>Intergovernmental Consultation on migration, asylum and refugees</i>	Request for information from the UK on monitoring by DRC authorities
Dec 2014	<i>Intergovernmental Consultation on migration, asylum and refugees</i>	Removal of DR Congo Foreign National Offenders
8 Dec 2014	<i>Foreign Office</i>	Letter in relation to return of 5 December 2014
10 Dec 2014	<i>Foreign Office</i>	Letter of interview with domestic NGO
11 Dec 2014	<i>Foreign Office</i>	Letter of interview with DRC FRS returnee
11 Dec 2014	<i>Foreign Office</i>	Letter of interview with French Embassy official
11 Dec 2014	<i>Home Office</i>	Facilitated Return Scheme statistics
12 Dec 2014	<i>Foreign Office</i>	Letter of interview with UNJHRO official
30 Dec 2014	<i>United Nations</i>	Report of the Secretary General on the strategic review of the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo [S/2014/956]
30 Dec 2014	<i>United Nations</i>	Report of the Secretary General on the strategic

		review of the United Nations Organisation Stabilisation Mission in the Democratic Republic of Congo submitted pursuant to paragraph 39 of the Security Council resolution 2147 [S/2014/957]
2015		
Jan 2015	<i>Human Rights Watch</i>	World Report 2015: Democratic Republic of Congo
Jan 2015	<i>United Nations High Commissioner for Refugees</i>	2015 UNHCR country operations profile: Democratic Republic of Congo
6 Jan 2015	<i>Cedoca (Belgian Government Country of Origin Information Unit)</i>	Response to country of origin information (COI) request in relation to APARECO
20 Jan 2015	<i>BBC</i>	Deadly DR Congo clashes over Joseph Kabila's future
20 Jan 2015	<i>The Guardian</i>	Protests in Congo over President's future
22 Jan 2015	<i>UN News Service</i>	DRC Congo: Ban urges calm in Kinshasa; peacekeeping chief backs gradual drawdown of UN mission
23 Jan 2015	<i>United Nations News Centre</i>	UN human rights office urges probe into excessive use of force in DR Congo protests
24 Jan 2015	<i>Human Rights Watch</i>	Deadly Crackdown on Protests
25 Jan 2015	<i>International Crisis Group</i>	DRC Protests: The Government's Election Law Must be Revised - or Withdrawn
26 Jan 2015	<i>Screen shots of websites featuring photos of AA and BB (annotated).</i>	These screen shots correspond to the ULRs set out in the list of activities in the witness statements of EB and JD and also the statements of Mr Maklilo and Mr Mpanie
29 Jan 2015	<i>Human Rights Watch</i>	World Report 2015 (Events of 2014)