UT Neutral citation number: [2023] UKUT 00117 (IAC)

PO (DRC – Post 2018 elections) DRC CG

Upper Tribunal
(Immigration and Asylum Chamber)

Heard at **Field House**

THE IMMIGRATION ACTS

Heard on **13th, 14th and 15th June 2022**
Promulgated on **18th April 2023**

Before

UPPER TRIBUNAL JUDGE PLIMMER
and
UPPER TRIBUNAL JUDGE MANDALIA

Between

PO (DRC)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Bazini and Ms M Cleghorn, instructed by Collingwood Immigration Services
For the Respondent: Mr W Hansen, instructed by the Government Legal Department

Country Guidance

1. *The change in Presidency, following the elections held on 30 December 2018 and the announcement on 10 January 2019 that Felix Tshisekedi was the winner of the elections, has led to a durable change to the risk of persecution to actual and perceived opponents of former President Kabila and current President Tshisekedi, such that the following general guidance applies:*

    (i) Actual or perceived opponents of former President Kabila are not at real risk of persecution upon return to the Democratic Republic of Congo ("DRC").

    (ii) Generally speaking, rank-and-file members of opposition political parties or political opponents of President Tshisekedi and/or the Sacred Union are not reasonably likely to be at real risk. That must be distinguished from high-profile opponents who may be at risk in some circumstances.

2. *The assessment of those at real risk of persecution for reasons relating to [1(ii)] requires a fact-sensitive analysis of the individual's profile, wherein the following (non-exhaustive) factors will be relevant:*

    a. Whether an individual is a sufficiently high-profile opponent of President Tshisekedi having regard to their role and profile, including involvement in activity that is likely to have brought them to the adverse attention of the Tshisekedi regime.

    b. The political party of which the individual is an officer or member, or to which the views of the individual are aligned.

    c. The position of the political party or the views of the individual towards President Tshisekedi and the Sacred Union.

    d. The nature and frequency of the individual's activities in opposition to Tshisekedi's Sacred Union and to what extent the authorities know about him/her.

    e. It is unlikely that a rank-and-file member of any opposition party or group will have a sufficient profile such that they will be at real risk upon return without more.

3. *In particular:*

    (i) Members of the MLC and Ensemble pour le Changement are no longer at risk of being targeted.

    (ii) Members or supporters and activists of the UDPS are no longer at risk upon return to the DRC. The country guidance set out in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023, as far as it relates to the risk of persecution of UDPS members and activists, should no longer be followed.

(iii) Leaders, members and activists associated with the Congolese Support Group ("CSG") are not at risk upon return to the DRC on account of their actual or perceived political opinion or sur place activities in the UK.

(iv) Simply being a journalist, media worker or blogger is not likely to lead to a person facing treatment that amounts to persecution or serious harm unless they are considered to be a sufficiently high-profile opponent of President Tshisekedi.

(v) Persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) may be at risk upon return to the DRC. Rank-and-file members are unlikely to fall within this category.

4. *Failed asylum seekers are not at risk on return simply because they are failed asylum seekers and there is no basis in the evidence before us to depart from the guidance set out in BM and Others (returnees – criminal and non-criminal) DRC CG [2015] UKUT 00293.*

5. *There is no credible evidence that the current authorities in the DRC are interested in monitoring the diaspora community in the UK; nor is there is any credible evidence that the intelligence capability exists, even if there were the appetite.*

DECISION AND REASONS

INTRODUCTION

1. This is a country guidance decision regarding the risk on return to the Democratic Republic of Congo ("DRC"). For clarity, this decision is set out in 15 parts.

Part 1	The background
Part 2	The issues
Part 3	The current country guidance
Part 4	The legal framework
Part 5	A summary of the 2018 elections in the DRC
Part 6	The evidence before us
Part 7	The parties' submissions
Part 8	General observations upon the evidence of Dr Kodi
Part 9	**Issue 1:** Has there been a durable change following the change in Presidency in 2019 and, in particular, following the formation of the Sacred Union in April 2021 ?
Part 10	**Issue 1A** Are those having or being perceived to have a political profile in opposition to former President Kabila at risk on return ?
Part 11	**Issue 1B** Are those having or being perceived to have a political profile in opposition to President Tshisekedi at risk on return ?

Part 12 **Issue 1C** Whether the change in Presidency following the election on 30 December 2018 has led to a durable change in the risk of persecution of UDPS activists as previously held in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023.

Part 13 **Issue 1D** Whether in light of the new government, persons who have a significant and visible profile within APARECO (UK) and/or the CSG are at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR.

Part 14 **Issue 2** Whether failed asylum seekers are at risk of treatment amounting to a breach of the Refugee Convention or of Article 3 ECHR on return to DRC, simply because they are failed asylum seekers.

Part 15 **Disposal of this appeal**

Part 1 The background

2. The appellant is a national of the DRC. We are able to adopt much of the background to the appeal before us from the Agreed Statement of Facts that was filed at an earlier stage in the appeal.

a. The appellant arrived in the UK on 15 December 2016 and claimed asylum on 13 January 2017.

b. Her claim at that time was on the basis of her political opinion and events that had taken place in the DRC. She claimed to have been involved with AMATE, a human rights organisation protecting women's rights in the DRC, to have been the first President of her branch of AMATE, to have been arrested and detained as a result of her activities on three occasions and to have escaped from detention on the third occasion, following her conviction and a 15-year sentence.

c. That claim was refused and her appeal was dismissed on 18th December 2017.

d. On 29 January 2019, the appellant made a fresh claim on the basis of *sur place* activity, as a member of the Congo Support Group ("CSG"), which had not formed part of her original claim and had not been considered in the course of that appeal. The respondent accepts the appellant is currently a member of the CSG in the UK.

e. The respondent refused the appellant's asylum claim on the basis that her activity was considered to be low level and she was not high profile enough that her activities would have brought her to the attention of the DRC authorities.

f. The appellant's appeal was dismissed by First-Tier Tribunal Judge Devittie.

g. On appeal, Upper Tribunal Judge Kebede concluded that Judge Devittie materially erred in law in reaching the decision that he did, on risk on return to the DRC and set aside his decision. The preserved findings of First-tier Tribunal Judge Devittie in his decision dated 18 June 2019 are as follows:

> "14. I find that it is likely that the appellant has engaged in *sur place* activities solely to establish a basis for a protection claim. I do not therefore find that she holds convictions at such a level that she would upon her return to the DRC engage in active opposition to the regime.

15. I accept that she has taken part in *sur place* activity whose nature she has set out. Her evidence on this point is supported by the letter from the CSG office in London. I therefore accept that the appellant has taken part in the activities outlined and that she holds the office of President of the Women's Liverpool branch of the CSG. I accept the evidence of the expert that the CSG has a high and public profile known to the authorities for its opposition to the regime of Kabila.

16. I consider that in the ordinary course of events this protection claim would have stood real prospects of success notwithstanding my finding that she has contrived to be an activist in order to provide a credible basis for her claim."

Part 2 The Issues

3. The issues that we consider in this decision have been refined and are agreed by the parties.

1. Whether the change in Presidency following the election in January 2019, and in particular, following the formation of the Sacred Union in April 2021 has led to a durable change in the risk on return; **(Issue 1)**: and

   a. Are those having or being perceived to have a political profile in opposition to former President former President Kabila at risk on return **(Issue 1A)**

   b. Are those having or being perceived to have a political profile in opposition to President Tshisekedi at risk on return; **(Issue 1B).**

   In considering those issues, the Tribunal will consider:

   (a) Whether the change in Presidency following the election in January 2019 has led to a durable change in the risk of persecution of UDPS activists as previously held in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023; **Issue 1C)** and

   (b) Whether in light of the new government, persons who have a significant and visible profile within APARECO (UK) and/or the CSG are at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR. **(Issue 1D)**

2. Whether failed asylum seekers are at risk of treatment amounting to a breach of the Refugee Convention or of Article 3 ECHR on return to DRC, simply because they are failed asylum seekers. **(Issue 2)**

4. In readiness for the hearing before us, the parties provided the Tribunal with a wealth of background material that is set out in a Consolidated Hearing bundle that comprises of some 2705 pages. We were also provided with a further 'Addendum bundle' page numbered 2706 to 4364. We have had regard to all of the material relied upon by the parties when coming to our conclusions, whether referred to specifically in the body of this decision or not.

Part 3 The current country guidance

5. The risk on return faced by political opponents and failed asylum seekers has been considered by the Tribunal previously. As we are invited to depart from the extant guidance, it is helpful for us to set out the relevant guidance in chronological order.

6. The two appeals in AB and DM (Risk categories reviewed – Tutsis added) DRC CG [2005] UKIAT 00118 ("AB and DM"), raised common issues of fact relating to the situation in the DRC as to the risk categories at that time (July 2005) and in particular, whether and to what extent those of Tutsi ethnicity were at real risk of persecution and more generally what the current risks were for failed asylum seekers. The Tribunal concluded that essentially the risk categories were those with an ethnic, political or military profile in opposition to the government. The assessment of risk in an individual case will depend upon a careful analysis of that individual's origins, background and profile.

7. To put that guidance in context, as far as those with a political or military profile are concerned, the Tribunal said:

> "44. We confirm that there continues to be a real risk for those with a political or military profile. Each case must be judged on its own facts but it is possible now to provide a little more detail at least about those who fall within the "political profile" subcategory.
>
> 45. 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.
>
> 46. Bearing this point in mind, we accept that at the present time it is very dangerous to be an active member of the UDPS. The success of the ville morte action in bringing much of Kinshasa to a standstill in January 2005 has threatened the Kabila leadership. We accept Mr Kennes' evidence that UDPS militants abroad returning now would be at risk of detention. There is a much lesser risk for PALU members although this changes from time to time. According to Mr Kennes they tend to be released more easily than UDPS members. There is a potential risk for DPS members who are considered to be potential and actual collaborators or spies for Bemba and his MLC movement. The danger for high ranking MPR officials and their families has considerably diminished since the creation of the Transitional Government and depends on the position of persons held under the Mobutu regime. Those involved or believed to be involved in the assassination of President Kabila continue to be at risk of imprisonment and torture. The immigration and security services are still convinced that only part of the network that planned the assassination has been discovered and arrested."

8. As far as 'failed asylum seekers' were concerned, the Tribunal said:

> "47. The evidence presently before us does not satisfy us that there is any adequate evidential basis for taking a different view from current Tribunal jurisprudence that returned failed asylum seekers are not at real risk of persecution for that reason alone. We accept that while there might be attempts to extract money from returnees the authorities are only interested in those who have or are perceived to have an ethnic, military or political profile identifying them as opponents to those in power. Mr Kennes confirms in his evidence that a person returning with valid, ordinary travel documents will not be at risk unless of interest to the authorities for these reasons.
>
> 48. If someone is identified as a failed asylum seeker but there are no known political charges against him, there is a risk that they may be required to pay a "fine". Those who do not have charges against them or are otherwise not of interest to the authorities will be released upon payment of the fine…."

9. In MK (AB & DM confirmed) Democratic Republic of Congo CG [2006] UKIAT 00001 ("MK DRC"), the Tribunal concluded that reports of an announcement made by the Dutch Immigration Minister in June 2005 of a temporary halt of returns of failed asylum seekers to the DRC did not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in AB & DM.

10. In MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023 ("MM (UDPS members)"), the Tribunal summarised the guidance in its headnote in the following way:

> "Despite indications from recent political events in the DRC that the UDPS is perceived as less of a threat than previously, the guidance given in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118 and confirmed in MK DRC CG [2006] UKAIT 00001 remains correct."

11. The Tribunal was concerned, in particular, with what had happened in the DRC since the start of 2006 with particular regard to the activities of the UDPS. The Tribunal concluded that despite what appeared to be a dramatic change in the political landscape, it would be premature to conclude that the UDPS were no longer a political force or perceived as a threat to the regime. The Tribunal said:

> "202. … we continue to believe that low level members/sympathisers of the UDPS for that reason alone, will not be at real risk on return to the DRC in the current climate, but conclude that it is too early in the process of the transition of the DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists. As the Tribunal in AB and DM rightly observed, the risk category to those having or being perceived to have a military or political profile in opposition to the government is one that "fluctuates in accordance with the political situation." (See paragraph 51(iii)) of their determination).

12. Finally, in BM and Others (returnees – criminal and non-criminal) DRC CG [2015] UKUT 00293 ("BM and Others"), the Tribunal considered whether the deportation or removal of any of the appellants from the UK to the DRC would expose them to a real risk of persecution within the framework of the Refugee Convention or serious harm contrary to Article 3. The Tribunal summarised the guidance in its headnote:

> "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."

Part 4 The Legal Framework

13. The relevant legal framework was set out in the respondent's opening skeleton argument. Mr Bazini did not express any disagreement. We do not burden this decision with a recital of the 1951 Convention Relating to the Status of Refugees, Article 3 ECHR, and the relevant immigration rules. For present purposes it is now well established that the treatment of country guidance as a presumption of fact means that it is for the parties seeking to persuade the Tribunal to depart from it, to adduce the evidence justifying a departure. An assessment as to whether to depart from a CG decision is to be undertaken as to: (i) whether material circumstances have changed; and (ii) whether such changes are well established evidentially and durable.

14. We add for the avoidance of doubt that a genuine fear of persecution, subsisting at the date of determination, must be behind the asylum seeker's absence from their country of nationality. This is referred to as the subjective element. The fear of persecution must not only exist but must be objectively well-founded. In order for a fear to be well-founded for the purposes of the Refugee Convention, there must be a reasonable degree of likelihood that the applicant will be persecuted on return: R v SSHD, ex p Sivakumaran [1988] AC 958. We have throughout our consideration of the issues, adopted this lower standard.

Part 5 A summary of the 2018 elections in the DRC

15. We confirm that we have considered all the evidence before us in the light of the evidence available to previous Tribunals in the series of CG cases we have already referred to. For that reason it is not necessary to repeat the undoubtedly turbulent history here and observe that those at risk are likely to fluctuate in accordance with the political situation – see [202] of MM (UDPS members). Central to the issues before us are the 2018 elections in the DRC. The respondent's CPIN, Democratic Republic of Congo: Opposition to government, published in November 2019 provides a helpful summary:

> "4.2.1 The UNHRC in its May 2019 report on the situation of human rights in the Democratic Republic of the Congo before, during and after the elections of December 2018 stated that: 'On 30 December 2018, the Democratic Republic of the Congo held presidential elections and national and provincial legislative elections. The Independent National Electoral Commission [CENI] announced partial and provisional results on 10 January 2019, which the Constitutional Court confirmed on 20 January 2019.
>
> 4.2.2 The 3 lead contenders for the presidency were:
>
> • Felix Tshisekedi (opposition, UDPS and Cap pour la Changement platform)

- Martin Fayulu (opposition, Lamuka coalition)
- Emmanuel Ramazani Shadary (Minister of Interior, ruling Front commun pour le Congo (FCC) platform)

4.2.3 The May 2019 report of the Secretary General to the UN Security Council, 'The situation in Central Africa and the activities of the United Nations Regional Office for Central Africa', stated:

> '… the country's [DRC] presidential, national and provincial legislative elections of 30 December [2018] took place in a relatively calm atmosphere and resulted in its first peaceful transfer of power. On 10 January, the Independent National Electoral Commission announced the provisional results of the presidential election and declared the opposition candidate, Félix Tshisekedi, the winner. A legal challenge presented by the runner-up, Martin Fayulu, was rejected by the Constitutional Court and, on 24 January [2019], Mr. Tshisekedi was sworn in as President.'

4.2.4 The CIA Factbook, updated 21 August 2019, observed: 'Opposition candidate Felix Tshisekedi was announced the election winner on 10 January 2019 and inaugurated two weeks later. This was the first transfer of power to an opposition candidate without significant violence or a coup since the DRC's independence.'

4.2.5 The same source also reported the presidential and parliamentary election results: '[Presidential election] Felix Tshisekedi elected president; percent of vote - Felix Tshisekedi (UDPS) 38.6%, Martin Fayulu (Lamuka coalition) 34.8%, Emmanuel Ramazani Shadary (PPRD) 23.9%, other 2.7%...'

16. The question whether the change in Presidency following the election of President Tshisekedi has led to a durable change in the risk on return is at the heart of this decision. To that end, we have focused in particular upon the wealth of material before us regarding the events that have followed the election, but viewed that against the context of the DRC's turbulent political history.

Part 6 The evidence before us

Dr Muzong W Kodi

Written reports and expertise

17. To assist us to address the issues identified, the appellant instructed Dr Muzong W Kodi ("Dr Kodi"), a British citizen of Congolese origin to prepare a 'Country Expert Report'. Dr Kodi made himself available to provide oral evidence, albeit after a witness summons was served upon him requiring his attendance at the hearing before us. Dr Kodi has prepared three reports. The first is dated 23 March 2021. The second is dated 19 July 2021 and provides his written responses to questions raised by the respondent arising from his first report. The third report is dated 8 June 2022 and follows a review of three more documents, in particular:

i) Home Office, *Response to an information request – Democratic Republic of Congo: Political update: November 2021 to April 2022*, 4 May 2022;

ii) Home Office, *Response to an information request – Democratic Republic of Congo: Returns Update*, 5 May 2022; and

iii) Home Office, *Response to an information request – Democratic Republic of Congo: Documentation – voter card*, 5 May 2022.

18. Dr Kodi's background, qualifications and experience are set out in his first report and were confirmed in his oral evidence before us. In her closing submissions the respondent accepts Dr Kodi's general expertise in relation to the DRC, but she does not accept his opinions and conclusions on a number of the central issues in the appeal.

19. Dr Kodi conducted research missions to the DRC in October and December 2019 that pre-date his instructions to provide expert evidence in this appeal. The purpose of those missions in 2019 was to collect as much information as possible on the new regime of President Tshisekedi. Dr Kodi wanted to assess whether the new regime's practices in terms of upholding human rights, freedom of speech, freedom of association and the rights of the opposition parties were different from those of the previous regime. Dr Kodi told us in his oral evidence that through his work as an academic and as a manager in Continental and International Investigations, he maintains contacts in academic and government circles.

The first report

20. The first report of Dr Kodi is dated 23 March 2021 and was prepared a little over two years after the presidential elections and the confirmation of the elections results by the Constitutional Court on 20 January 2019. We mean no disrespect to Dr Kodi by setting out a summary of his first report below. He quite properly acknowledges there have been new developments on the political scene in the DRC between his first and second reports.

21. At the time of writing his first report Dr Kodi was of the opinion that in spite of the change of leadership in the DRC in December 2018, there had not been any significant change in terms of the political structure and state apparatus, with President Kabila and his supporters maintaining control and influence in all the institutions, the economy, the security apparatus and armed forces of the country. Dr Kodi said the role and practices of the police and security forces had not improved under President Tshisekedi. He cited the Amnesty International, "Democratic Republic of the Congo 2019 report' which documented some of the abuses that the police continued to commit after Tshisekedi was sworn in as President in early 2019. Dr Kodi said the violations of human rights by the police and other security forces, which was the norm under former President Kabila, had continued under the new regime of President Tshisekedi. He said the ability of political opponents to exercise free speech, to organise and to demonstrate, continued to be constrained by the Tshisekedi regime which was as intolerant of dissent and criticism as the previous regime.

22. Dr Kodi confirmed APARECO does not have an official presence in the DRC. It was for a long time, the most radical opposition political grouping against the regime of former President Kabila. It is one of the best organised of all the Congolese groups in the UK who oppose President Tshisekedi's regime. Its leader, Honoré Ngbanda, who died on 21 March 2021, had continued to speak and mobilize Congolese citizens against President Tshisekedi. Dr Kodi said the views of APARECO are regularly articulated on its website, its internet radio and on various media platforms, including Facebook and YouTube. Following the

death of Honoré Ngbanda, a new leader, Alphonse Djoko Ebama was elected on 27 June 2021. He has vowed to continue the work that Honoré Ngbanda undertook to liberate the DRC from Rwandan occupation.

23. Dr Kodi said the CSG had over many years campaigned for the removal of former President Kabila from power. He said that since Tshisekedi became President, the CSG has been campaigning against both Kabila and Tshisekedi. On their website, they clearly state: *"Tshisekedi must resign because he is working with Kabila, a criminal, he must be arrested with his regime."*

24. Dr Kodi expressed the opinion that the guidance provided by the Upper Tribunal in BM and Others, that persons who have a significant and visible profile within APARECO (UK) are at real risk of persecution or serious harm contrary to Article 3 ECHR, would apply equally to the members of the CSG who are equally hostile and opposed to the present regime in power in the DRC.

25. Dr Kodi referred to the report entitled "Unsafe Return III 'Removals to the Democratic Republic of the Congo 2015 – 2019 ("UR III")'" compiled by Catherine Ramos, a member of a UK-based NGO, Justice First. Drawing upon that report he said that the 'Direction Générale de Migration' ("DGM"), the National Immigration Authority in the DRC in Kinshasa, are informed about the *sur place* activities of returned failed asylum seekers by former UK residents, thus increasing the risk for returnees.

26. Dr Kodi also referred to an extract from the respondent's CPIN – Democratic Republic of Congo: Unsuccessful Asylum Seekers, Version 3.0, January 2019, which quotes a blog on the website of the Faculty of Law of the University of Oxford in November 2016 by Dr. Jill Alpes, a migration researcher at the Vrije Universiteit Amsterdam. The blog raises the possibility of leakages of information to the DRC authorities.

27. As far as the risk upon arrival is concerned, Dr Kodi stated failed asylum seekers ("FAS") are usually interviewed by the Immigration Attaché of the DRC Embassy in order to establish whether their claim of Congolese nationality is genuine. He claims that during the interview, the Immigration Attaché as an agent of the DGM, would be remiss if they did not ask about the political activity of the interviewee as the UK harbours some of most radical opposition parties to President Tshisekedi and former President Joseph Kabila. Dr Kodi stated it is quite reasonable to think that the Immigration Attaché would also ask about whether the interviewee has claimed asylum and the reasons for the failure of the claim.

The second report

28. In response to written questions put by the respondent, Dr Kodi accepted that since he had prepared his first report, there had been new developments on the political scene in the DRC. He accepted:

    a. Following the announcement on 6 December 2020 to put an end to the power sharing agreement, President Tshisekedi has succeeded in replacing the coalition with a new parliamentary majority in the National Assembly that would be favourable to him, and allow him to implement his vision for the DRC. He succeeded in attracting the

majority of FCC parliamentarians, which enabled him to replace Jeanine Mabunda, a close ally of former President Kabila, as the Speaker of the National Assembly, and Alexis Tambwe Mwamba, another ally of former President Kabila, as Speaker of the Senate.

b. President Tshisekedi was able to appoint Jean-Michel Sama Lukonde Kyenge as new Prime Minister ("Prime Minister Kyenge") on 14 February 2021 after Ilunga Ilunkamba resigned from this position on 28 January 2021. A new government was finally announced on 12 April 2021. In this new Government, UDPS and allied parties have the lion's share, taking several key ministries. Following the new government led by Prime Minister Kyenge, President Tshisekedi has strengthened his control over the Government at the expense of the former President Kabila's FCC. The programme presented by Prime Minister Kyenge was adopted by the National Assembly with 410 out of 412 votes. Prime Minister Kyenge's political allegiances lie with President Tshisekedi in spite of the fact that in the past, he has been an ally successively of Kabila and Moise Katumbi.

c. Dany Banza Maloba, the President of ACO, the political party of which Prime Minister Kyenge is a co-founder, is an important ally of President Tshisekedi particularly because of his origin in the Katanga region, a stronghold of former President Kabila. Dany Banza Maloba was rewarded with a key position in the President's inner circle, as Roving Ambassador.

d. An assessment reported on 4 February 2021 by the Africa Editor for BBC World Service, referred to the appointment of Christophe Mboso, a supporter of the President three weeks after a pro-Kabila appointee was voted out, as speaker of parliament, as the latest sign that President Tshisekedi is wrestling political power away from his predecessor. It was reported that President Tshisekedi is expected to get on with the promised reforms including ending the armed violence in the mineral rich eastern Congo.

e. President Tshisekedi released political prisoners and activists detained by the previous regime and encouraged the return of exiled opposition leaders. Political prisoners benefited from the President's move in the early days of his term in office. Political exiles, such as Moise Katumbi, have been able to freely return to the DRC in response to the President's call.

f. The risk faced by UDPS members and supporters has considerably diminished since President Tshisekedi took power and senior members of the party were appointed to posts in the government. There is no evidence of arrests of senior UDPS figures and rank-and-file members since January 2019 in the DRC generally, and in Kinshasa in particular. UDPS members are not at risk of being arrested since they do not oppose their own leader.

g. Dr Kodi has no personal information about the leakages of information about failed asylum seekers to the DRC authorities that is referred to by Dr Jill Alpes.

29. Dr Kodi also highlighted other developments in the DRC that demonstrate the difficulties faced by President Tshisekedi:

a) Just before the vote in the National Assembly *(in April 2021)*, about 200 parliamentarians, most of whom were from FCC and had joined the Sacred Union, signed a petition demanding that the proposed Government's composition be amended to take into account the promises of ministerial posts made to them by President Tshisekedi and his aides. President Tshisekedi and the Deputy Speaker of the National Assembly had to convene meetings with the 'rebels' to promise them positions in state enterprises.

b) While at the political level, President Tshisekedi has succeeded in putting an end to the previous power sharing agreement, there is a power struggle going on, with President Tshisekedi trying to free himself from the agreement with his predecessor. He has scored some successes but has some way to go as the security sector and the economy of the country, are still in the hands of former President Kabila's allies. Dr Kodi believes the major challenge will be managing the ambitions of the unwieldy Sacred Union of parliamentarians, in which about 200 members of the FCC make up the majority of the 390 members.

c) The fact that senior posts within the Government have gone to close allies of Moise Katumbi, a former governor of the Katanga province who himself had attempted to challenge the former President Kabila in 2018, shows President Tshisekedi's need to rope in some heavyweights of DRC politics, whose support will be important for counterbalancing the influence of former President Kabila and his FCC.

d) The on-going conflict in the Kasai region, which is at the centre of the DRC, leaves the potential for an impoverished Kasai region and a political fall-out. Dr Kodi states that while the conflict was at the beginning locally rooted in the Central Kasai Province, it quickly spread to the surrounding Kasai, Kasai-Oriental and Lomami Provinces. The fighting between various factions and the brutal repression by the State security forces has destroyed the already weak infrastructure, whole villages and their fields. In order to flee from destitution and famine, hundreds and thousands of people have migrated mainly to the Kwilu, Kwango and Kinshasa provinces in the west, as well as to the richer Katanga region. The arrival of displaced people has made an already difficult humanitarian situation in many of these provinces, even worse.

Political opponents

30. Dr Kodi maintained his view that the treatment of the opposition political leaders and rank-and-file members of their parties, has not improved since January 2019. He maintains that over the last two years scores of them have continued to be arrested, detained and prosecuted for exercising their rights to freedom of expression and peaceful assembly which are guaranteed by the Constitution of the DRC.

31. Dr Kodi said that in spite of the announcement by President Tshisekedi, in his inaugural speech, that his government will not tolerate human rights violations, there are reports that some peaceful demonstrators continue to be arbitrarily detained or beaten by security forces. He cites:

a. The Amnesty International report, "Democratic Republic of the Congo 2019" which reports that in January 2019, the government completely shut down the internet and banned several media outlets for 20 days, in an attempt to stop the publication of unofficial election results and to stem widespread protests over allegations of massive election fraud. The report went on to state that civil authorities and the police continued to ban and violently repress peaceful assemblies and demonstrations with impunity. The authorities imposed the requirement to obtain prior authorization for demonstrations, in breach of the Constitution.

b. The report by Amnesty International, 'DRC: One year since Tshisekedi took office, insecurity and impunity still imperil human rights", 24 January 2020, which noted that although President Tshisekedi had taken some positive steps, such as pardoning political prisoners and allowing exiled critics to return, his government's failures on accountability mean warlords and suspected perpetrators of appalling violations and abuses remain at large. Meanwhile a brutal crackdown on peaceful protests has continued to cast doubt on respect for the rights to freedom of expression and peaceful assembly in the DRC.

c. The US Department of State report, '2019 Country Reports on Human Rights Practices: Democratic Republic of the Congo', 11 March 2020, which states:

> "Security personnel arrested and detained civil society activists, journalists, and opposition party members and sometimes denied them due process... Throughout the year security forces regularly held protesters and civil society activists incommunicado and without charge for extended periods. The United Nations reported the SSF [State Security Forces] arbitrarily arrested at least 1,650 persons across the country as of July 31. Human rights defenders continued to be subject to arbitrary arrest and detention without a fair public trial.
>
> The United Nations reported that on January 5 in Goma, North Kivu Province, 79 persons, including seven women and 15 children, were arbitrarily arrested by PNC officers as they celebrated in the streets following rumors that Martin Fayulu had won the presidential election. On January 14, all were released after being charged with disturbing public order, destruction, and rebellion.

d. The Human Rights Watch, "Democratic Republic of Congo", World Report 2021, that reported in 2020 that dozens of people who criticized government policies, including on social media, were intimidated and threatened, beaten, arrested, and in some cases prosecuted. Particularly targeted by authorities across the country, journalists faced threats and harassment, and some broadcast programs or outlets were shut down upon instructions from officials.

e. The US Department of State, '2020 Country Reports on Human Rights Practices: Democratic Republic of the Congo, 31 March 2021' which states:

> "On July 28, PNC agents in Kisangani, Tshopo Province, arrested three members of the Filimbi citizen movement after they protested the refusal of Tshopo provincial Governor Walle Lufungula to resign after being censured by the provincial legislature. Filimbi and other civil society groups reported they had followed all appropriate legal requirements for organizing a public march. Local human rights defenders reported police tortured and mistreated the Filimbi activists while they were under arrest, with one sent to the hospital following their release on July 30.

Human Rights Minister Andre Lite publicly condemned the governors of Equateur, Mongala, Sankuru, Haut Uele, and Kasai Central Provinces for ordering the torture of political dissidents."

f. A statement issued by the Catholic Church issued on 1 March 2021 in which it deplored the increase in human rights violations by the security forces, arbitrary arrests of human rights activists, journalists and opposition party members and sympathisers since President Tshisekedi acceded to power in January 2019.

32. Dr Kodi states the exact number of leaders and rank-and-file members of political parties who have been arrested since 2019 is not available. He does not have the statistics for the arrests of members of opposition parties. Dr Kodi said that he does not have any evidence of the numbers of opposition parties' demonstrations stopped/dispersed by State security forces in Kinshasa and the DRC generally. However, well informed observers of the political scene in the DRC, including Amnesty International, Human Rights Watch and the US State Department note that a large number of demonstrations have taken place in Kinshasa and the rest of the country, and have been dispersed with disproportionate violence by the national State security forces since President Tshisekedi was inaugurated in January 2019.

33. Dr Kodi was asked how the level of arrests of actual or perceived political opponents now compares with 2018 and/or the period when Kabila was President. Dr Kodi states that there is generally a perception of a deterioration of the human rights situation since President Tshisekedi came to power in January 2019, and with this, at least a comparable level of arrests to the one that obtained under former President Kabila. Dr Kodi said that in spite of the change of leadership in the DRC there has been a deterioration in terms of the serious human rights violations committed by national security forces and militias in the country. This is due to the fact that there is no change but continuity in the leadership of the security forces, as former President Kabila's appointees continue to hold key positions in these institutions and have proven to be beholden to him.

34. When asked whether the treatment of opposition groups by state forces has stayed the same, regressed or improved since Jan 2019 under the Tshisekedi Presidency in the DRC generally, and Kinshasa specifically, Dr Kodi said that from the assessments made by the various *sources (e.g. Human Rights Watch, Amnesty International, official foreign government publications e.g. the Bureau of Democracy, Human Rights and Labour of the US Department of State, and assessments by Congolese politicians and civil society organisations, e.g. the Catholic Church)*, he believes the situation has remained the same. He states that all those sources, except the Bishops of the DRC Catholic Church (*who deplored the increase in human rights violations and observed that after an improvement in terms of the treatment of demonstrations in the early months of President Tshisekedi's rule, there has been a noticeable return to the practices of the former regime)*, state that the treatment of opposition groups has remained the same.

35. Dr Kodi was asked to identify the current targets of the state in terms of arbitrary arrest and detention and their political affiliation. He said the President of the Bill Clinton Foundation for Peace ("BCFP"), in an email sent to the research centre of the Belgian Commissioner General for Refugees and Stateless Persons dated 4 August 2019, was of the opinion that that the main targets of the State were the members of LAMUKA platform of opposition

political parties. Dr Kodi states the situation has evolved since then as LAMUKA has split and the state focusses now on those members of LAMUKA who have chosen to continue their opposition to President Tshisekedi and his Sacred Union. This group includes members of Martin Fayulu's ECIDé party and Adolphe Muzito's Nouvel Elan. Dr Kodi cites the following examples:

h. A LAMUKA recent sit-in in front of the US Embassy in Kinshasa on 18 June 2021 to protest against US support to President Tshisekedi was dispersed by the National Police who arrested seven members of LAMUKA who were detained for 24 hours.

i. On 23 June 2021, members of LAMUKA were beaten and dispersed by the National Police while they stood in front the National Assembly to protest against the new organic law on the National Electoral Commission which had recently been adopted by both houses of Parliament. Seventeen of the protesters were arrested and detained in a police cell in the Lufungula barracks in Kinshasa and many others were wounded, according to Prince Epenge, LAMUKA's spokesperson.

The MLC, and Ensemble pour le Changement

36. Dr Kodi addresses the other political parties in his report. He states that the other two leaders of LAMUKA, Jean-Pierre Bemba and his party, MLC, as well as Moïse Katumbi Chapwe and his party, *Ensemble pour le Changement* ("Ensemble"), have joined Tshisekedi's Union Sacrée and have had their party members appointed to key positions in the Government. Dr Kodi states MLC and Ensemble members are no longer at risk of being targeted.

The Front commun pour le Congo ("FCC")

37. Dr Kodi states that since the break-up of the FCC, some members of the FCC have been harassed and even arrested. For instance, Daniel Ngoy Mulunda, the former President of the National Electoral Commission (CENI) and a close ally of former President Joseph Kabila, was arrested on 18 January 2021 for having criticised President Tshisekedi and his followers. His sermon was considered seditious and a hate speech by a Tribunal which sentenced him to four years imprisonment.

38. Dr Kodi also cites the arrest of Henry Maggie, the Vice-President of the Youth League of former President Kabila's party, PPRD, the main component of the FCC. He was sentenced to 18 months imprisonment for insulting President Tshisekedi in a TV interview claiming President Tshisekedi did not win the 2018 presidential election. A third example is that of Ardent Kabambi, also a member of PPRD, who was arrested and detained in August 2019 on his return from Europe for having posted on social media a video in which he criticised President Tshisekedi in the presence of Boketshu Premier, a radical opponent and outspoken critic of the current regime. He was released in October 2019 without any charges.

Bundu dia Kongo ("BDK") or Bundu dia Mayala ("BDM")

39. A minor party called Bundu dia Kongo ("BDK") is described by Dr Kodi as a religious-cum-political party founded and led by Zacharie Ne Muanda Nsemi ("Nsemi"), and a constant critic of both former President Kabila and his successor President Tshisekedi. Following clashes with national security forces, the Government banned BDK. Nsemi renamed the movement Bundu dia Mayala ("BDM"). Dr Kodi cites incidents on 30th March 2020, 22nd April 2020 and 24th April 2020 when BDM members were targeted and on occasion, killed by the national security forces and the national police. Dr Kodi states that in January 2021, the Vice President of BDK, Ne Mpuna Nsosani, requested that scores of BDK members who continued to be arbitrarily detained for many months in prisons in Kinshasa and several locations in the Kongo Central Province, be immediately freed.

'Union Sacrée' ("The Sacred Union")

40. Dr Kodi states that at times, members of the Sacred Union have been arrested for criticising the President or his Government. The latest example is Jean-Bosco Assamba, a member of the Provincial Assembly of the Ituri Province and member of the RDPR party which has joined the Sacred Union. He was arrested on 27 June 2021 for calling President Tshisekedi a liar because he had not delivered on the numerous promises that he had made to the people of the province. Dr Kodi notes Jean-Bosco Assamba was arrested for a statement he made on 23 April 2021 well before the declaration of the state of siege in the Ituri and North Kivu Provinces.

The CSG

41. Dr Kodi was asked whether apart from one statement on the CSG website opposing President Tshisekedi, there is other evidence that the group is opposed to the current government. Dr Kodi responded that according to the website, the CSG organised a conference in London on 29 February 2020 at which its leader Okito Tongomo advocated for the end of impunity in the DRC and of what he called the "illegal gentlemen's agreement between Kabila and Tshisekedi". He urged the Congolese diaspora to save the country from the current regime.

Civil society activists, journalists and other media professionals

42. Dr Kodi states that according to United Nations Joint Human Rights Office (UNJHRO) in the DRC, besides opposition political parties and their members, civil society activists, journalists and other media professionals have also been targeted by the State. Between January and June 2019, it recorded 316 cases of human rights violations against members of civil society organisations, and 85 cases for journalists and other media professionals. Members of citizen movements, such as LUCHA and Filimbi have been harassed, beaten and even arrested during the peaceful marches or sit-ins they have organised to make demands of a political or social nature. According to LUCHA, for instance, its members were arrested at demonstrations organised in Mbuji-Mayi on 2 April 2019, in Tshitenge on 9 April 2019, in Beni on 14 August 2019, and in Rutshuru on 23 August 2019. Dr Kodi states that more recent instances of arrests of LUCHA members include the ones that took place in January 2021 in Beni where eight youths faced the prospect of spending 10 years in jail for

calling for peace and criticising the United Nations Peacekeeping Mission in Congo. They were released after spending one month in jail.

Monitoring and the risk for failed asylum seekers

43. Dr Kodi also states there is some evidence that political opponents are monitored by the Tshisekedi regime and are at risk on return. In support of that claim, Dr Kodi points to the arrest of Ardent Kabambi, a member of PPRD, who was arrested and detained in August 2019 on his return from Europe for having posted on social media a video in which he criticised President Tshisekedi in the presence of Boketshu Premier, a radical opponent and outspoken critic of the current regime. Dr Kodi states the judges who tried him, showed him the video which had been provided to them by DRC intelligence agents. According to media reports, Ardent Kabambi's wife has claimed the arrest was ordered by François Beya, the Special Adviser to President Tshisekedi, and former Director-General of DGM. Dr Kodi states François Beya's services might have provided the video to the judges.

44. Dr Kodi states the findings made by the Upper Tribunal in paragraph [87] of BM and Others about the monitoring of political opposition, from his own experience and knowledge of the DRC, applies to "all radical opponents in the DRC and in the UK". Dr Kodi cites an extract from the report compiled by Catherine Ramos, UR III, and said that it has been alleged that DGM authorities in Kinshasa are informed about the *sur place* activities of returned failed asylum seekers by former UK residents, thus increasing the risk for returnees. Dr Kodi states he has no concerns about the reliability of UR III and in his view, Catherine Ramos used a sound methodology in her research and in writing up the results of her research.

45. Dr Kodi said that immigration officials and human rights activists he interviewed while doing research for his reports, reported that they had witnessed or were informed about cases of returnees. Each one of them separately advised that they knew of between 2 and 18 cases of arrests since January 2019. They, however, declined to share the names of the returnees for fear of reprisals for themselves and the returnees. He said that in November 2020, APARECO warned its members about 200 spies who had been recruited in the Congolese diaspora by the ANR to report on the activities of APARECO and other opposition parties abroad. The very popular YouTube channel TeleTshangu123 announced on 3 December 2020 that they had been informed that two Congolese who had returned on holiday to the DRC were arrested on arrival in Kinshasa. According to their relatives, the two arrested returnees were told by the ANR agents who arrested them that they had been informed about their anti-Tshisekedi activities and of their return flight by a UDPS member who had returned to work for President Tshisekedi's Office. Dr Kodi claims the continued monitoring of the Congolese diaspora by the Congolese authorities is evidenced by comments or threats made following political discussions or criticisms of President Tshisekedi and his government on the diaspora's numerous social media channels. Dr Kodi claims the social media forums on which these discussions take place make it easier for the Congolese national intelligence agencies to monitor the diaspora, and especially political opposition parties.

46. Dr Kodi confirmed that the two immigration officials he had spoken to, held the rank of Senior Inspector. The two individuals had been recommended by a friend of Dr Kodi who taught them at the University of Kinshasa and who had known them for many years. Dr

Kodi said that his friend whom gave him the names of the immigration officials, is a trustworthy person who he has known since secondary school. He did not therefore need to double-check the identities of the immigration officials. He asked them about the redocumentation process of failed asylum seekers and the role of the DGM Attaché to the DRC Embassy in London. Dr Kodi refers to the questions he asked and summarises their response:

> "What do you know about the redocumentation process of FAS and the role of the DGM Attaché to the DRC Embassy in London?
>
> *The redocumentation process has been agreed between the British and Congolese authorities and is mandatory for all returnees. It allows to establish the genuineness of the returnees' Congolese nationality and the collect related information on their asylum application, their involvement in opposition political activities and any criminal record. The DGM Attaché is the one who interviews all the FAS and sends a report on each one of them to the headquarters in Kinshasa.*
>
> What kinds of questions does the DGM Attaché ask the FAS?
>
> *He usually asks questions about the origin of the FAS in the DRC, where they lived, what schools they attended, crimes and convictions in the DRC, the reasons why they decided to leave the country and when, their asylum claim and the reasons for the failure.*
>
> Does he ask questions about the FAS's involvement in political activities in the UK?
>
> *Yes, he asks questions about the FAS' involvement in political activities, especially their participation in the activities of the radical opposition parties in the UK.*
>
> Does he ask questions about the reasons why they applied for asylum in the UK?
>
> *Yes, he asks why the FAS applied for asylum in the UK and what their claim was as well as whether they had any problems with the current regime. H also asks whether they had any pending legal cases before leaving the DRC.*
>
> Does he share the information so collected with DGM colleagues in Kinshasa?
>
> *Yes, this information is usually sent to the Director General who shares it with all the relevant DGM units, including those at ports of entry like Ndjili airport in Kinshasa where most FAS return."*

47. Dr Kodi said the information provided by the immigration officials was confirmed separately by the human rights activists he consulted. He said the human rights activists he consulted worked for well-known human rights organisations that he has worked with, for more than 20 years. He confirmed that all the conversations with the five people took place the same day, 3 March 2021 over the phone. He clarified that he had spoken to the same interviewees on two occasions, in January 2019 and in March 2021. He had taken notes but they had been discarded immediately.

48. Dr Kodi also referred to the January 2020 CPIN on the DRC – Unsuccessful Asylum Seekers, which summarises the redocumentation process and said that the information set out does not contradict the information provided by those he interviewed. Dr Kodi said the footnote in the CPIN indicates that Home Office staff do not attend redocumentation interviews and the respondent is not therefore aware of the type of information that is gathered and sent to his/her superiors in Kinshasa by the DGM Attaché. Dr Kodi refers to the information on the redocumentation process provided in Annex F of the CPIN which is a

Home Office note dated 15 October 2014 of meetings with the DGM secondee on 13 August and 15 August. The Secondee provided the following information:

> "1. When conducting interviews he refuses to speak in English and will try all Congolese languages to see which the subject speaks. It's usually Lingala or French.
>
> 2. He asks the interviewees to write their names down so that he can check the spelling with the Emergency Travel Document (ETD) application form and he asks them to explain the meaning of their names.
>
> 3. He also checks their date of birth and place of birth against the application form.
>
> 4. He asks when they came to the UK and how they travelled here and if they were helped to enter the UK. He asks if they hid their passports.
>
> 5. He asks them whether or not they are Congolese and asks for details of where they lived – the address / province / schools attended / first language of parents / tribe.
>
> 6. He asks why they are detained / in prison. He said some volunteer this information and others don't.
>
> 7. He added that he tries to convince interviewees that they should prepare to go home and says that if they have committed an offence and been sentenced to 12 months or more in the UK then they will not be allowed to stay in the UK. He tells them about DRC and that it's not a bad place to return to. All the information is fed back to DGM Head Quarters in Kinshasa including, where supplied by the interviewee, details of criminality in the UK."

49. Dr Kodi claims it is particularly noteworthy that an individual is asked why they are detained / in prison because it provides important information as far as foreign national offender ("FNO") returnees are concerned. He states that whilst the respondent has asserted time and again that they do not inform the DRC authorities about the criminal records of the returnees, the DGM Attaché, a highly trained professional in interrogation techniques (as he himself reveals in the Home Office note cited above), is likely to obtain valuable information from the returnee on the crimes they committed in the UK and the related convictions. Therefore, by the time the returnee FNO arrives in Kinshasa, this information is already in the hands of the DGM staff at Ndjili airport.

50. Dr Kodi states that social media, on which lively discussions of the diaspora take place on YouTube, WhatsApp, Facebook, etc., make it easier for the Congolese national intelligence agencies to monitor the diaspora, especially political opposition parties. He states the Covid-19 pandemic with all the related restrictions made it difficult for opposition groups in the diaspora to meet and organise protests, and they express their criticism of the current regime on social media.

51. When asked what evidence he has that the DRC government is capable of, and does monitor Congolese nationals online, Dr Kodi said that considering the fact that the DRC Government allocates substantial means to its intelligence services which are some of the best operating agencies of the country, it is quite reasonable to imagine that they would have the capacity to monitor Congolese nationals online. It takes just a basic computer or even a smart phone and basic knowledge of the internet to carry out monitoring on the web of the websites, social media accounts and internet radios and television channels.

The Third Report

52. In the third of his reports, 'Addendum 2 dated 8 June 2022', Dr Kodi reviewed a 'Response to an information request, Democratic Republic of Congo: Political update: November 2021 to April 2022', that was compiled and researched by the respondent's Country Policy and Information Team. The document includes a timeline of events between November 2021 to April 2022. In response, Dr Kodi states that several observers of the DRC political, economic and social scene, have already taken stock of President Tshisekedi's more than three years in power. He states one of the most recent examples is the statement made by the Head of the Catholic Church, Cardinal Fridolin Ambongo, the Archbishop of Kinshasa on 29 May 2022:

> "The situation is presently bad in the country, nothing is working. The Congolese are among the most miserable people on Earth. If you look closely at what is going on in our country, around us, the Congolese people, in spite of the immense wealth of the country's soil and sub-soil, of its waterways, of it trees and forests, in spite of all this, the Congolese people are classified among the most miserable people of planet Earth. In any case, the country is in dire straits, nobody should lie to you. Some people will tell you that you are in paradise. If today's Congo is paradise, I do not want to go to paradise. Should we then do nothing. No! We must act, we have to take ourselves seriously, we must take charge of ourselves. The sovereignty of our country is in danger. And while the country is in danger, we spend our time discussing posts, money and a few dollars."

53. Dr Kodi states this assessment of the performance of President Tshisekedi by Cardinal Ambongo is all the more important since the Catholic Church is the only institution in the country that is represented in the entire country and is able to give a reliable and accurate evaluation of the political, economic and social situation of the country.

54. Dr Kodi also refers to criticisms of the performance of President Tshisekedi and his government by Joseph Olengankoy, the President of the Conseil National de Suivi de l'Accord de la Saint Sylvestre (CNSA) or National Council for Monitoring the Agreement of Saint Sylvester. On 24 May 2022, Joseph Olengankoy published a press release which included, among others, the following remarks on the developments in the country which prevented President Tshisekedi to bring about the institutional changes and benefits expected by the people of DRC:

> "- the upsurge of political intolerance by the regime , which has driven opinion and political leaders to flee the country or hide;
>
> - the existence in the country of political and opinion prisoners, even those who have benefited from a presidential amnesty;
>
> - dysfunctional State institutions, characterised by among others, the re-appearance of illegal prison cells and detention centres;
>
> - brutal repression by the National Police of non-violent protest marches; and
>
> - lack of appropriate policies to re-establish people's trust in State institutions."

55. Finally, Dr Kodi considered material from a specialist in African affairs working for the US Congressional Research Service relating to the possibility of the survival of President Tshisekedi's coalition in the lead-up to the next elections in December 2023. Dr Kodi states there are signs that the next few months will see the dislocation of the Sacred Union coalition that President Tshisekedi has succeeded in putting in place with a majority made

up of defectors from President Kabila's FCC. He refers to Moise Katumbi having already announced his intention to stand in the Presidential election in 2023. Dr Kodi refer to the steps taken by President Tshisekedi to disqualify Moise Katumbi from running in the presidential election by tabling a bill in Parliament which would exclude all candidates who do not have a Congolese parent. Moise Katumbi, whose father was originally from Cyprus, would not therefore be eligible for the top office in the country. Dr Kodi states that in a move that clearly indicates a final break between President Tshisekedi and Moise Katumbi, the latter has recently reconciled with former President Joseph Kabila and most of the political leaders of the former Katanga Province.

56. Dr Kodi states that although President Tshisekedi has succeeded in placing his loyal allies in key positions in the institutions that will run, announce and confirm the provisional results of the elections, (i.e. the National Independent Electoral Committee (CENI) and the Constitutional Court), President Tshisekedi does not appear confident about his hold on power and there is evidence of nervousness in the presidential camp. Dr Kodi states the fear of losing fair and transparent presidential and parliamentary elections because of the mounting unpopularity of the President and his regime, has led the incumbent and his allies to the same tactics as the former President as noted by a Professor at the University of Mons in Belgium who was interviewed by the Research Directorate, Immigration and Refugee Board of Canada. The Professor observed that President Tshisekedi's regime has adopted the "logic of Kabila's government whereby non-supporters of the regime who raise sensitive issues are subjected to repression.". Dr Kodi states similar observations have been made by Cardinal Ambongo and Joseph Olengankoy. Both of them were subjected to retaliation by members of the UDPS, and other entities close to the President.

57. Dr Kodi also notes the security situation in the Eastern provinces of the DRC was dire last year (2021), prompting President Tshisekedi to call on the President of Uganda, Yoweri Museveni, to send troops to help defeat the numerous militia that roam the Ituri, North and South Kivu Provinces. Dr Kodi states that neither the state of siege declared in the region, nor the assistance of the Ugandan troops have succeeded in reducing the threat of the militias but have been used by the regime as an excuse to crush all dissenting voices in the region. Dr Kodi states that on the contrary, according to observers, the situation has significantly worsened, with more civilians being killed and displaced within and outside the country since the state of siege was declared in March 2021.

<u>The oral evidence of Dr Kodi</u>

58. In cross-examination Dr Kodi accepted that it is fair to say that since 2010 he has not spent more than two to six weeks in the DRC during each of his visits. He said that he does not consider himself to be a human rights advocate despite his professional career including a substantial period working for Amnesty International and Transparency International. He said his views are not unduly impacted by his previous experience in human rights advocacy, but are informed by that experience.

59. Dr Kodi accepted in his oral evidence that the DRC spans over 2 million square kilometres and has a population of about 105 million people. He accepts there are regional variations and the position in the east of the country is different to the position in the west. He accepted the mineral reserves are in the east of the country and that is where much of the

ongoing violence and human rights violations occur. He acknowledged there has been a state of siege in the area that is extended every 15 days. It was put to Dr Kodi that there were not only more human rights violations in the east, but about 90% of the violations occur in the conflict areas. He said the east is the area that is the most monitored but accepted that is where the vast majority of human rights violations take place.

60. In his oral evidence, Dr Kodi candidly accepted that in the four months between his first report *(23 March 2021)* and his response to written questions put by the respondent *(19 July 2021)*, there had been significant changes in the DRC as set out by him in writing. He accepted that although President Tshisekedi and his ally, the Deputy Speaker of the National Assembly had to convene meetings with the "rebels" to promise them positions in the State enterprises and in key jobs, that is part and parcel of 'politics'. He said that what was untoward here, is that 'bribery' was used, albeit, he accepted, he was unable to point to any hard evidence of that. Dr Kodi agreed President Tshisekedi has a Prime Minister allied to the UDPA and now controls a number of the key ministries including, the Interior, Finance and Defence such that the political landscape has been reshaped.

61. Mr Hansen referred Dr Kodi to the scepticism he had expressed in his first report and suggested Dr Kodi's track record in speculating is not a good one. Dr Kodi said that at the time he prepared his first report, the reality on the ground had led him and most political analysts to that conclusion. He accepted that opportunities have been opened and seized by President Tshisekedi but said that must be qualified because the majority of the Sacred Union parliamentarians are from the FCC, and still describe themselves as the FCC. Dr Kodi accepted François Beya, an ally of former President Kabila and appointed by President Tshisekedi as Special Adviser in charge of security and sensitive matters, has now gone. Dr Kodi accepted it is therefore important to focus upon recent sources of background information because even background material from 2019 and 2020 is now "old news".

62. Dr Kodi accepted that the evidence of violations against political opponents is limited. He was referred to the respondent's 'Response to an information request, Democratic Republic of Congo: Political update: November 2021 to April 2022'. At section 4.2 there is some evidence that Government authorities and the state security forces prevented opposition parties from holding public meetings, assemblies, and peaceful protests. Dr Kodi accepted that in a country of 105 million people, there are very few examples of human rights violations against political opponents. He said however that the reality is that those in the west of the DRC do not report the violations because they do not know where to go, and they see no action taken against culprits.

63. Mr Hansen suggested to Dr Kodi that the evidence of a crackdown against political opponents is such that it is almost non-existent. Dr Kodi disagreed and pointed to his addendum report in which he states that increasing numbers of journalists and political activists are being harassed, beaten, arrested and detained for expressing dissenting views. Mr Hansen pointed out that the focus in the addendum report is attacks upon journalists, and that apart from the data recording 116 cases of attacks against journalists, 75 cases of violation of press freedom, including 19 arrests of journalists and closure of 11 media outlets, there are no specific details of attacks on others, including political opponents. Dr Kodi responded that the problem with statistics in the DRC is that there are no centralised systems for recording such information. There are a number of secret detention centres that even consulate staff cannot access, so it is difficult to provide statistics. He accepted

however that organisations such as Amnesty International and Human Rights Watch would have a keen interest in those that are harassed, beaten, arrested and detained for expressing dissenting views, but he did not know whether they have any statistics.

64. Mr Hansen referred Dr Kodi to the analysis of the human rights situation in 2021 prepared by the United Nations Joint Human Rights Office in the DRC ("UNJHRO"). Mr Hanson suggested the analysis records a decrease of nearly 12% in human rights violations compared to 2020, and a reversal of the trend of the previous year, which recorded an increase of 21%. This decrease reflects a reduction in the number of cases documented in the provinces affected by conflict, particularly Maniema, South Kivu, Ituri, Tanganyika and North Kivu, where the UNJHRO recorded less violations committed by State agents and abuses committed by combatants of armed groups, including conflict-related sexual violence, than the previous year. Dr Kodi said that he agrees with that analysis.

65. Mr Hansen also referred Dr Kodi to the information set out in that update from the Armed Conflict Location & Event Data Project ("ACLED") that compiles and analyses data which is 'derived from a wide range of local, regional and national sources by trained data experts. It is said, at [4.3.6] and [4.3.7], that in total there were 1,860 events *(that is, protests (including peaceful protests, those where there is state intervention, and where excessive use of force was deployed against protestors) and riots, (mob violence and violent demonstrations)* - of all types of actors for the whole country over the period 1 January 2020 to 22 April 2022. Dr Kodi agreed that demonstrates a downward trend, and he has no other independent statistics to undermine what is said. He accepted that generally, there are more human rights violations in the east because of the on-going conflict in that area, although he is unable to point to any figures or statistics. He was prepared to accept that the vast preponderance (over 90%) of the violations take place in the east of the country. He accepted that he has not dealt with any of those positive developments in the DRC in his written reports. He maintained the situation in the DRC is not good, and even if there is a downward trend, large numbers of people continue to be killed.

66. Dr Kodi accepted that President Tshisekedi has now decisively broken ranks with the former president following the formation of the 'Sacred Union'. He accepted the net effect of the developments in the DRC since the end of the coalition, is that the influence of former President Kabila has diminished. It was suggested by Mr Hansen that at the moment, there is no credible sign of a political comeback by former President Kabila. Dr Kodi referred to the steps taken by President Tshisekedi to disqualify Moise Katumbi from running in the presidential election. He claims Moise Katumbi has recently reconciled with former President Joseph Kabila and most of the political leaders of the former Katanga Province. Dr Kodi said this may be a sign of former President Kabila coming back to the political scene, not to run as President, but to maintain some influence.

67. Mr Hansen suggested to Dr Kodi that his suggestion of a comeback by former President Kabila is based upon mere speculation. Dr Kodi referred to an article published in 'Africa Continental' on 4 March 2022. The article states:

> "…Tshisekedi has been treading cautiously in his dealings with ex-President Joseph Kabila, whose profile has diminished over the past year. Rarely attending meetings of the Senate in Kinshasa, Kabila has shown little interest in a political comeback. In law, he could stand for the

> presidency next year; the constitution's bar on multiple presidential terms applies only to consecutive terms.
>
> Yet Tshisekedi is taking nothing for granted, given the mutual distrust between him and his predecessor…"

Dr Kodi accepted however that there is evidence that former President Kabila's profile has diminished, that he has been marginalised and appears to have shown little interest in a political comeback.

68. When it was put to him by Mr Hansen that opponents of former President Kabila are not at risk upon return to the DRC, Dr Kodi agreed. He agreed that they are not at risk of persecution whether they are in the DRC or abroad.

69. Dr Kodi confirmed that the UDPS is now the ruling party and apart from those who have made dissenting remarks, UDPS members are safe and not at risk on return.

70. Dr Kodi accepted that following the death of Honoré Ngbanda, succession within APARECO has been problematic with internal squabbling. He accepted the diaspora that was previously active has now split, and that many members have now returned to the DRC and are part of the entourage of President Tshisekedi.

71. As far as the CSG is concerned, Dr Kodi said that the government in the DRC has had an interest in radical groups particularly those in the UK, and so it is likely that someone on the CSG website would be identified. He said organisations such as the CSG are keen to make themselves known and advertise widely. Time and again, the views set out are responded to by people who are close to the new regime in the DRC. These people are members of the President's party, the UDPS. Dr Kodi said that time and again, the regime post videos in response to what the world is saying about the regime. They label as "combatants" all those that are members of opposition parties.

72. Dr Kodi said the CSG has expressed 'strong views' about the collusion between former President Kabila and President Tshisekedi. He accepted the CSG is not referred to by any EU Member state as an 'opposition group', and that the CSG website and Facebook account is rarely used. Dr Kodi denied that the focus of the group was on the former President Kabila and maintained the group focuses upon the former President Kabila and President Tshisekedi. He said that there are videos to show the group was previously active, although he claimed that with the pandemic during 2020 and 2021, the group did not appear to have had any meetings. He is not aware of any evidence of any meetings in 2022 either.

73. Dr Kodi accepted the Belgians have very close ties to the DRC. He said that the diaspora in Belgium is one of the biggest and the CSG undertakes activities in Belgium. Mr Hansen referred Dr Kodi to a document drafted by the Documentation and Research Centre (Cedoca) of the CGRS in Belgium with a view to providing information for the processing of individual applications for international protection. Dr Kodi accepted there is no reference whatsoever to the CSG in that report.

74. Dr Kodi was also referred to the website of the CSG 'https://www.congolesesupport.com' that is referred to in his report. It was put to him that the CSG in fact has two websites, but

he refers only to one of them. The second is 'https://www.congalesesupport.org'. Dr Kodi said that he was not aware of the second website ending .org.

75. Mr Hansen referred Dr Kodi to extracts from the Facebook account of the CSG. The website for the group is said to be: www.congolesesupportgroup.org. Dr Kodi said that he was not even aware that a website ending .org existed for the CSG and he has not looked at that website. The profile picture appears to relate to a march in 2016. Dr Kodi said that the web pages do not appear to be up-to-date and that in videos, the CSG express views against President Tshisekedi.

76. Mr Hansen also referred Dr Kodi to extracts from the Twitter account of Okito Tongomo, the leader of the CSG. Dr Kodi accepted that Mr Tongomo tweeted:

> "**06 December 2020**
>
> Excellent Speech, DRC President Felix moving forward to correct direction. Beboulonner en action. Justice for voiceless.
>
> **06 February 2021**
>
> Congratulations to President Felix Tshisekedi, the first DRC Congolese and 19th African Union Chairman Chairperson…"

77. Dr Kodi accepted the 'tweets' are generally supportive of President Tshisekedi. Dr Kodi was unable to provide any information to us regarding the size of the membership of the CSG in the UK. Mr Hansen referred Dr Kodi to the appellant's membership card [45], which is numbered below 500, suggesting a small organisation. Notwithstanding the evidence, Dr Kodi maintained the CSG is a credible 'anti- President Tshisekedi' organisation. He said the fact that its website may not have been updated may be a sign of 'negligence', but it is not a sign of a lack of activity. He suggested that it was always possible that members exchange messages using 'WhatsApp'.

78. Dr Kodi accepted that the reference in his first report to monitoring continuing under the new regime of President Tshisekedi because of the presence in the UK of radical and hostile opposition groups like APARECO and the CSG, that are openly campaigning to topple President Tshisekedi's regime, is based upon the strapline as he described it, on the website of the CSG: *"Tshisekedi must resign because he is working with Kabila, a criminal, he must be arrested with his regime."*.

79. Dr Kodi maintained the CSG is the type of organisation that the government in the DRC would be concerned about. He said that judging by the way the current government has acted against individuals, an organisation like the CSG that is known to the UDPS, would be of interest to the current regime. He said that if one looks at the way in which other "combatants" that have returned home to the DRC are treated, they are in danger, and any person who is considered to have taken part in opposition activities abroad, will be of interest to the current regime.

80. Dr Kodi said he is not aware of the CSG having a presence in the DRC, although he said they claim to have branches all over the world. He accepted there is no evidence of the government in the DRC having made any adverse or critical comments about the CSG. He

also said that he is not aware of any member of the CSG that has returned to the DRC having been arrested on return.

81. Mr Hansen reminded Dr Kodi that in BM and Others, the Tribunal concluded that 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. Dr Kodi was asked whether he agrees with headnote [2] in BM and Others. His answer was "yes and no".

82. Mr Hansen referred Dr Kodi to his reports. He accepted, as he stated in his first report that on return, if the Immigration Officials and ANR agents have no information about the returnees' *sur place* political activities in the UK and consider them as mere failed asylum seekers, the individual will usually be released the same day. He went on to claim however that for the authorities in the DRC, all failed asylum seekers are considered to be traitors, and so they are at risk upon return. The risk will depend on the way the individual is treated by officers at the airport. Dr Kodi said the treatment of individuals is haphazard and does not respond to any kind of logic.

83. Dr Kodi accepted that in BM and Others, the Tribunal had considered the two reports prepared by Catherine Ramos, 'Unsafe Return I' and 'Unsafe Return II', but nevertheless concluded, at paragraph [76], that there is no substantiated allegation of arbitrary arrest or ill treatment of any DRC national who is a FAS or a foreign national offender returning to the DRC. Dr Kodi said that he had no doubt that the decision of the Tribunal was based on sound information that was available and valid at that time, but things have now moved on, and the risks he refers to, must be considered in that light.

84. Dr Kodi accepted that in BM and others the Upper Tribunal considered evidence from the British Embassy in Kinshasa dating back to November and December 2014. At paragraph [43(ii)], the Upper Tribunal referred to first-hand information obtained from the Belgium Embassy relating to the return of 23 DRC nationals by air from Belgium to Kinshasa. The Tribunal noted the interest of the DRC Government was confined to "combatants". Dr Kodi agreed with the conclusion of the Tribunal that the term "combatants" denotes those who have actively opposed the regime both historically and by their activities overseas.

85. Mr Hansen referred Dr Kodi to the request for information submitted to the IGC. Dr Kodi agreed that the response from Belgium is particularly important because of the large DRC diaspora living there, and the number of returns from Belgium, including FAS. The Belgian authorities confirmed that FAS are returned to the DRC using their passports and laissez-passers issued by the DGM. The documents do not identify the individuals as FAS. The Belgian authorities confirmed that they do not share any information on asylum procedures with the Congolese authorities. They confirmed they never share any information about international protection requests with the national authorities of a third country national, regardless of nationality. They were asked whether representatives of their government attend returnees' arrival in Kinshasa. The response was:

> "Yes, EURLO is always at the airport when there is a special flight or a JRO (Joint return Operation). If individual returns occur, EURLO is not present, unless it is a special needs case. For example a person who needs medical or other special assistance upon arrival."

86. Mr Hansen also drew Dr Kodi's attention to what is said in the IGC response regarding the treatment of failed asylum seekers and those involved in *sur place* activities, by other countries that responded. It was put to Dr Kodi that the responses do not support his assertion that returnees are routinely held or that all failed asylum seekers are at risk upon return to the DRC. Dr Kodi acknowledged the responses recorded from various countries, but maintained his opinion as expressed in his reports, that all failed asylum seekers are at risk upon return to the DRC. He said that none of the countries that responded have a presence at the airport in the DRC and they therefore have no way of knowing how failed asylum seekers are treated on return. He rejected the suggestion that he is very much a lone voice and relied upon the sources that he quotes in his reports to support his opinion. Nevertheless, Dr Kodi accepted the evidence before us from the IGC is evidence to which this Tribunal should attach some weight.

87. Mr Hansen also referred Dr Kodi to the response from the 'Projects and Migration Officer' at the British Embassy in Kinshasa dated February 2021 that is at Annex A of the respondent's 'DRC: returns note' prepared in respect of this appeal. The Projects and Migration Officer confirms he is not aware of any reports or allegations that voluntary or forced returnees have faced difficulties and/or been mistreated on return to Kinshasa. We asked Dr Kodi whether he accepts what is said by the Projects and Migration Officer that there have been significant changes to treatment on return of FAS since the change of presidency in January 2019. Dr Kodi said he could not accept that because he is not privy to the information provided by 'respondents'.

88. Mr Hansen referred Dr Kodi to the June 2019 update written by the Cedoca, covering the period 2018/19. Dr Kodi accepted that the report refers, at [5.3], to the problems said to be encountered during repatriation of Congolese nationals from Great Britain to the DRC between 2012 and 2018 by Catherine Ramos in her reports, including Unsafe Returns III. The report noted Catherine Ramos is the only source to mention detention and ill-treatment following a forced repatriation of Congolese nationals (from Great Britain). The other sources consulted did not mention any such problems. Dr Kodi accepted that is evidence that weighs against the opinions he has expressed.

89. Mr Hansen also referred Dr Kodi to the Cedoca update dated 20 January 2020 that is to the same effect. The report states, at [5.3]:

> "… When asked about possible problems which Congolese nationals may have encountered at the time of repatriations organised by Belgium in the past, Geert Verbauwhede from the Immigration Office replied on 2 December 2019 that there had not been any. He had also explained in a previous reply in April 2019 that there was no specific factor affecting the reception they are given on their arrival (for example, the possession of a type of travel document - temporary pass or standard passport, the return arrangements - with or without escort, compliance with the applicable migration laws, or the fact that Belgium was the country they had come from).
>
> The last repatriation of Congolese nationals from Brussels to Kinshasa took place on 26 March 2019 on a flight organised by FRONTEX54. The announcement of that collective repatriation

was published on the website of the organisation Getting the Voice Out on 24 March 2019 (the website also mentions the return on this flight of Senegalese nationals), but the organisation did not publish any information on how the repatriation went or on the reception they were given in Kinshasa. The immigration officer in charge of monitoring the reception in N'jdili confirmed that there had been no problem on their arrival:

> "After going through the Department of Migration procedures, they returned home […] there was no National Intelligence Agency control".

Three human rights associations working in the DRC had been contacted at the time of the previous COI Report on this subject. Those associations asked for their names and personal details not to be disclosed. The associations are well known for their human rights activities in the DRC. They said that they had not logged any problems at the time of repatriations made by the Belgian authorities."

Dr Kodi said that the content of that update does not alter his opinion that all failed asylum seekers are at risk upon return to the DRC, and that he prefers the information he received from the enquiries that he carried out.

90. Mr Hansen referred Dr Kodi to the further update written by the Cedoca dated 23rd July 2021 in which it is said:

> "On 3 May 2021, Cedoca contacted the Bill Clinton Foundation for Peace (FBCP), a Human Rights NGO based in Kinshasa. Its president Emmanuel Cole said his organization conducts monitoring of returnee arrivals at Ndjili airport. He claims that since the change of regime, persons whose asylum has been rejected and repatriated to the DRC no longer have problems upon arrival. Unlike during the previous regime, there are no more cases of arrests by the ANR of returnees and there is no one belonging to this category in Kinshasa's places of detention."

91. Dr Kodi said that the information that appears to have been provided by Emmanuel Cole, is not consistent with the information provided by staff of the Bill Clinton Foundation for Peace to him, and he has no reason to doubt anything that he has been told. The information has been provided to him by senior members of staff who he has known for a number of years, and who have no reason to lie.

92. Dr Kodi accepted his reference to allegations of difficulties/mistreatment on return only coming from persons who had been forcedly returned from the UK, is a reference to the claims made by Catherine Ramos in 'Unsafe Return III'. Dr Kodi maintained his opinion that all failed asylum seekers are at risk upon return to the DRC. He said he had not simply relied upon the reports of Catherine Ramos but had made his own enquiries from other sources too.

93. Mr Hansen referred Dr Kodi to the report of Catherine Ramos, Unsafe Return III that he relies upon. Dr Kodi accepted Catherine Ramos refers to the period 2015 to 2019 and considered the position of 18/19 returnees monitored during that period. He accepted that the last returnee that was referred to as 'case Study 18' in the report, was a female failed asylum seeker who had been removed on her own passport on 26 May 2018, before President Tshisekedi was elected. He accepted that in itself, is significant, but rejected the suggestion that Catherine Ramos is not an independent and dispassionate researcher.

94. Dr Kodi confirmed that in reaching his opinion in his first report that there have been no significant changes to the returns process and the risk to failed asylum seekers since President Tshisekedi came to power, he had had telephone conversations with two immigration officials and three human rights activists who had previously provided him with information about the treatment by immigration officials at Ndjili airport of returnees, while he was working on other DRC country expert reports. For fear of reprisals by the DRC authorities and given the sensitivity of the issue, they all talked on condition of anonymity. He had taken notes of the interviews but, consistent with the methodology adopted by many other researchers, he disposed of the notes to ensure the notes could not fall into the wrong hands. Dr Kodi claimed in paragraph [68] of his first report that as early as January 2019 he was informed that the treatment of returnees under the new Tshisekedi regime was a mere continuation of practices they had known under the former President Kabila.

95. When Mr Hansen suggested to Dr Kodi that the information he relies upon is already out of date because he has not returned to his sources for an update since March 2021, Dr Kodi said that he has no information that indicates there have been any changes since then. We asked Dr Kodi whether he had been provided with any information about the individuals that had been targeted or their profiles. Dr Kodi said that the view was that all people, whether leaders or rank and file members, are treated the same. Dr Kodi's sources did not refer to the individuals' activities.

96. We asked Dr Kodi to identify the risk now to failed asylum seekers and whether there is any evidence that he relies upon, that post-dates the information that was given to him in March 2021. Dr Kodi said he has not had any information that undermines or is contrary to what he had previously been told and so he believes the information provided to him is still valid. We asked Dr Kodi whether, having accepted that the formation of the Sacred Union and the side-lining of the former president is a significant development, which might impact on his assessment of the risk now. He said the culture in the security forces has not changed. He accepted the risk depends on the particular profile of an individual.

97. Dr Kodi accepted a FAS can return to the DRC using their passport and laissez-passers or emergency travel documents ("ETD") issued by the DGM. He accepted an ETD is issued after a face-to-face interview and that the authorities do not at that stage, identify the individual as a FAS or the basis of any protection claim. He was not prepared to accept that the focus of the interview is upon the nationality of the individual and relied upon what he has been told as to what really happens. He maintained that the reality is that the DGM Attaché who is seconded to the DRC Embassy, interviews the individual and asks about the individual's activities in the UK and the reason for any protection claim or any prison sentence imposed. He denied that his opinions are based upon speculation, and maintained his evidence is based upon the information provided by the sources that he consulted, which he takes seriously. He was prepared to accept that there is some distinction to be drawn between FAS and political opponents but maintained that all returnees who have claimed asylum are considered to be traitors. He said those with any political profile are at an increased risk.

98. Mr Hansen referred Dr Kodi to his evidence in his first report that the DRC scrutinises returnees from the UK more closely and treats them more harshly than those coming from other countries. Dr Kodi was referred to the reference in his first report to the Bill Clinton

Foundation for Peace confirming the existence of a "Wanted List" at the airport in Kinshasa against which the names of returnees are checked. It was put to Dr Kodi that although he confirms he is not privy to any information on how a DRC national can end up on a "Wanted List", how it is disseminated, who has access to it, and how long a person will remain on that list, he was prepared to speculate in response to written questions that from the information provided by BCFP, one can understand that it is the names of the persons who are considered as "dangerous" or "combatants" , i.e. persons who have actively opposed the Government that end up in the "Wanted List". He accepted he does not know how an individual might come to be on a 'wanted list'.

99. As far as the monitoring of the opposition and diaspora is concerned, Mr Hansen referred Dr Kodi to the evidence set out in his second report of Ardent Kabambi, a member of PPRD being arrested and detained in August 2019 on his return from Europe for having posted on social media a video in which he criticised President Tahisekedi. Mr Hansen asked whether Dr Kodi was able to provide any other examples of people abroad having come to the adverse attention of the authorities and targeted since President Tshisekedi was elected. Dr Kodi said that news on a YouTube channel announced that two residents of the UK that travelled back to the DRC were arrested in December 2021 on arrival. Their families had informed the media and appealed to various people to intervene. Dr Kodi said they were held incommunicado for 7 days. Asked whether he had evidence of other incidents, Dr Kodi said that he had not covered the entire period following President Tshisekedi coming to power, and they were the only three incidents for which he has any concrete evidence.

100. Dr Kodi said that the 'monitoring' of individuals is, he imagines, undertaken by several people. He said that the Embassy may have some capacity to undertake monitoring and that supporters of the current regime are very active on-line and react to any opposition views expressed. His evidence was that there are many YouTube channels that are critical of the regime and they regularly complain of attacks when they air criticism. He said that the DGM has a permanent presence at the Embassy and information is likely to be fed back to the authorities. Dr Kodi was unable to explain who it is that undertakes the monitoring, or how the targets for any monitoring are identified or chosen. He said that it would not surprise him if there was monitoring of the diaspora from the DRC. When pressed about his expertise to support his claim in his report that someone with a basic computer or even a smart phone and basic knowledge of the internet can carry out monitoring, Dr Kodi explained that when he refers to 'monitoring' , he is referring to an individual being able to watch an open forum like YouTube. He does not suggest that it is anything more sinister such as hacking of social media accounts or email.

101. Dr Kodi was questioned about his claim in his report that between July 2019 and June 2020, the Congolese diaspora was about 12,000 people, 8000 of whom live in London. He accepted that is difficult to reconcile with the figure of 20,000 referred to in the respondent's CPIN. He accepted however that there are five to ten members of staff at the DRC Embassy in London. When it was suggested by Mr Hansen that the staff would be unable to complete any large-scale monitoring of the diaspora in the UK, Dr Kodi said that there are only a handful of YouTube channels that are used by the diaspora. Dr Kodi confirmed that he is not aware of any recent demonstrations outside the Embassy. Dr Kodi said there have been demonstrations since President Tshisekedi came to power, but Dr Kodi did not have the dates.

Part 7 The parties' submissions

102. The parties' submissions are set out in the skeleton arguments that were provided to us in advance of the hearing. We were also provided with written closing submissions after we had heard the evidence and we heard brief oral submissions from Mr Bazini and Mr Hansen. We do not recite the submissions at any length in this decision and what follows is a summary.

The appellant

Issues 1, 1A and 1B

103. In summary, Mr Bazini submits the impact on political opponents (perceived or otherwise) following the change in Presidency is such that the risk of persecution is at least the same as it was under Kabila, if not greater. Relying upon the evidence of Dr Kodi, Mr Bazini submits there has been no actual, or durable change for the better in respect of the risk of persecution to actual or perceived political opponents of either Tshisekedi or Kabila:

a. The recent change in Presidency in January 2019, and the subsequent creation of the Sacred Union, has not led to any durable change in the risk of persecution to actual or perceived political opponents of either President Tshisekedi or former President Kabila. There is inherent instability which makes Kabila's position more effective and if any change has occurred, there is evidence that there has been an increase in human rights abuses committed against those opposing the government now led by President Tshisekedi.

b. It is accepted that President Tshisekedi's grip on power has strengthened since his creation of the Sacred Union and his dissolution of the power-sharing agreement with Kabila. However, this has only increased political tensions and created greater room for conflict. The manner in which Tshisekedi obtained the support required to wrest control away from Kabila creates an inherent instability that makes President Tshisekedi's position precarious. It is not unsurprising that promises were made to persuade a large majority of FCC parliamentarians to join the Sacred Union. In any event, former President Kabila continues to hold considerable power in key areas, in particular within the security and military apparatus of the country. Even those who apparently support President Tshisekedi have long histories as being allies to former President Kabila. President Tshisekedi also has had to bolster his position by entering into agreements with other politicians who may, in the future, choose to no longer support his tenuous control on power.

c. The key importance of the current precarious nature of President Tshisekedi's position is that there is little room for criticism without the risk of a loss of power. Dr Kodi makes reference to multiple reports identifying that, at best, the situation has remained the same and, at worst, there has been an increase in the level of oppression/violence against those critical of the government.

d. The background material supports the proposition that President Tshisekedi is happy for his opponents to be targeted.

Issue 1C

104. Mr Bazini submits that though there has clearly been a change to the treatment of UDPS activists, at this point in time, it cannot be found to be a lasting durable change. As such, the previous CG in relation to the risk to UDPS activists etc remains binding. There can be no presumption of any lasting stability in respect of the UDPS' hold on power. A shift towards former President Kabila could result in the UDPS losing their position as a ruling party, resulting in their classification, once again, as an opposition party. Although UDPS activists are not "opposition activists", should former President Kabila attempt to wrest control from President Tshisekedi they would be in a particularly vulnerable position.

Issue 1D

105. Mr Bazini submits the position remains as it was in BM and Others, that those with a significant and visible profile within APARECO (UK) are at real risk of persecution and/or serious harm or treatment proscribed by Article 3 ECHR. Nothing in the evidence suggest a change in risk to members of APARECO.

106. Mr Bazini submits the same consideration should be given to the CSG due to its consistent and continued commitment to challenging both former President Kabila and President Tshisekedi. Through its leader, Okito Tongomo, the CSG has attracted support from what would be considered powerful actors to the DRC. He has been pictured with both Nick Clegg and Jeremy Corbyn; both are prominently displayed on the home page and website of the group.

107. Mr Bazini submits there is clear evidence that those who do not support the regime are at real risk of persecution. President Tshisekedi has shown that he will continue to attempt to silence the opposition, whether through the military and police or through the violent actions of UDPS supporters. He submits, given the military and police are still controlled by former President Kabila, it is likely that they will continue to target those who oppose him.

Issue 2

108. Mr Bazini submits an individual returning as a FAS would face a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR. He submits it is not the act of physically returning which creates the risk, but the act of identifying the returnee as someone of possible interest. He submits the risk upon return can broadly be separated into three categories: (i) identification of past/present opposition activity; (ii) presumption of past/present opposition activity; and, (iii) exposure to the risk of extortion or similar. Irrespective of which of the categories an individual falls under, there is a very real risk they will, and at the very least, be interrogated and detained. Additionally, he submits, a FAS may also face Article 3 mistreatment generally as a result of being unable to obtain the necessary ID to access basic services.

109. Mr Bazini submits that as the Tribunal accepted in BM and others, at [87(v)], in common with many comparable regimes throughout the world, the DRC Government has a strong interest in opposition organisations and such organisations are monitored and data is recorded. He submits that position remains accurate today. In addition, there is evidence before the Tribunal to suggest that the DRC also recruits individuals to report back on those involved in anti-regime activity. He submits it is difficult to imagine that consistent and widespread monitoring of the diaspora is not undertaken.

110. Mr Bazini submits actual involvement in "opposition" activities is not necessarily required as there is a general presumption that FAS will have disgraced the DRC in making an asylum claim. Due to the inherent presumption of anti-government activities, it is of little assistance that pre-return investigations by the DRC may show no documented participation in such groups. He submits it is not only those who are perceived to be prominent members of the opposition who are at risk.

111. He submits that as a result of the re-documentation process necessary for returns, a FAS is pre-identified by the DRC and thus immediately identifiable upon arrival in Kinshasa. That process includes a mandatory face-to-face interview before an ETD can be issued. The interview is conducted in the absence of 'the Home Office', and as a result, the DGM can ask any questions they wish of the FAS. The evidence of Dr Kodi is that he interviewed two immigration officials who had been employed by DGM for 25 and 30 years respectively, and he was told individuals are usually asked the reasons why they left the DRC and this is an opportunity to establish the genuineness of the person's Congolese nationality and to collect related information about their asylum application and the reasons for the claim failing. Mr Bazini relies upon the evidence of Dr Kodi that the Immigration Attaché, as an agent of DGM, would be remiss if they did not ask about the political activity of the interviewee as the UK harbours some of most radical opposition parties to President Tshisekedi and former President Joseph Kabila'. It is now well established that an individual cannot be expected to lie during that interview in order to avoid persecution or serious harm. Furthermore, an individual incurs greater risk of harm should they lie and then be exposed as having lied. The mere act of lying may result in the authorities assuming the individual has been undertaking activities against the regime and is attempting to hide it. Mr Bazini submits that in addition, there is an additional risk posed as a result of the rampant corruption found within DRC.

112. Mr Bazini submits that when UR III is considered alongside the report of Jill Alpes, there is highly persuasive evidence of the risk to failed asylum seekers. He submits neither Catherine Ramos nor Jill Alpes has anything to gain from reporting impartially and it follows that their reports should be given considerable weight. On the other hand, the respondent simply relies on an absence of evidence from government sources.

113. Finally, Mr Bazini submits that even in circumstances where a FAS is able to travel through the airport without being detained, those who have returned with an ETD will, as such, be at real risk of Article 3 harm due to their inability to access basic services. They would not have a 'voters card' which serves as the national identity card and is required to obtain housing, employment, and to travel internally in the country. Voters' cards are only issued during the registration of voters by the National Independent Electoral Commission (Commission Electorale Nationale Indépendante or CENI).

The respondent

114. On behalf of the respondent, Mr Hansen accepts the political landscape continues to change and develop, and there is a further general election scheduled for 2023 to be mindful of. Mr Hansen submits the Tribunal should focus on the present position, and not (as Dr Kodi does) speculate about the future. He submits Dr Kodi's past prediction (e.g. that Tshisekedi would not be able to form a majority in the National Assembly) was wrong and his current predictions are likely to be equally unreliable, and have no place in a country guidance case. He invited us to apply little weight to Dr Kodi's evidence, which was unreliable and littered with speculation and assertion, unsupported by cogent evidence. He reminded us that much of his analysis was either out of date or unsustainable in the light of changes in the DRC. He noted that Dr Kodi had relied upon anonymous sources that he had failed to return to in the light of developments. He invited us to prefer the evidence relied upon by the respondent in her CPIN and COIRs.

115. Mr Hanson submits the evidence before the Tribunal establishes:

a) As to issue 1, there has been a durable political change following the change in Presidency in 2019, and in particular, following the formation of the Sacred Union in April 2021. As a result:

i. As to issue 1A, actual or perceived political opponents of former President Kabila are not at risk on return, whatever their profile. Former President Kabila is no longer in power, is no longer in a power-sharing arrangement with President Tshisekedi, has been effectively side-lined and has shown no interest in, or ability to mount, a political comeback.

ii. Whether a person is at risk on return as a result of their political activity now depends on whether they have demonstrated credible, and visible high-level opposition to the current President and the Sacred Union, not the former President.

iii. As to issue 1B. there is no real risk to political opponents of President Tshisekedi other than to those with a profile involving significant, visible and active opposition to Tshisekedi and the Sacred Union.

b) As to issue IC, UDPS activists are no longer at risk (as previously held in AB and DM, endorsed in MK DRC CG and re-affirmed in MM (UDPS members) and there has been a durable change that warrants a departure from those cases.

c) As to issue 1D, there is a lack of clear information or cogent evidence as to (i) what (if any) anti-Tshisekedi opposition activity APARECO (UK) is currently engaged in, (ii) how APARECO (UK) is currently viewed by the DRC authorities (iii) whether there is any continuing attempt by the DRC authorities to monitor that group's activities and (iv) whether the means and/or will still exists to conduct any effective monitoring and/or identification of those within APARECO (UK) with a significant profile. The risk will depend on whether the person has a visible and significant profile within APARECO (UK) in opposition to the current government. There is no basis in the evidence to warrant a finding that leaders, office bearers or

spokespersons of the CSG (still less rank and file members) would be at risk on return.

d) As to issue 1, FAS are not at risk on return simply because they are failed asylum seekers and there is no basis in the evidence to depart from BM and Others.

Part 8

General observations upon the evidence of Dr Kodi

116. Before we address the issues, we make some general observations about the evidence of Dr Kodi that we have read and heard. We have set out Dr Kodi's evidence in detail because in many respects it represents the high water mark in the appellant's case. The parties invited us to approach this evidence in a starkly different manner. Overall, whilst the respondent accepts Dr Kodi's general expertise in relation to the DRC, she does not accept his opinions and conclusions on a number of the central issues in the case. Mr Hansen submitted the evidence of Dr Kodi is not reliable, based as it is on assertion, anonymous sources (or anonymised evidence about ill-treatment on arrival), out-of-date material (as old as 2012) and unreliable evidence. By contrast Mr Bazini submitted that Dr Kodi had given his evidence in a genuine and straightforward manner and his opinions should be given significant weight.

117. We will return to the evidence of Dr Kodi as far as it is necessary to do so in considering the issues before us. We have no doubt that Dr Kodi was doing his best to assist the Tribunal. However, we note from the outset that having had the opportunity of hearing the evidence of Dr Kodi, and of observing his opinions comprehensively tested in cross examination, we agree with the submission made by Mr Hansen that Dr Kodi was prone to speculate and make (invariably) adverse assumptions, and that his general approach substantially undermines his evidence and the weight we attach to his opinions. Much of the evidence set out in his written reports predates the formation of the Sacred Union. He relies on anonymous or unreliable sources and his opinions are not grounded in concrete, credible or current examples. We did not find Dr Kodi to be objective in his evidence and although he made some concessions when he was bound to, he did not appear to be prepared to attach due weight to credible background material that pointed in the other direction to the unsubstantiated and vague claims made by sources that he consulted. We therefore prefer the submissions made by Mr Hansen regarding the correct approach to Mr Kodi's evidence.

Part 9

Whether the change in Presidency following the election on 30 December 2018, and in particular, following the formation of the Sacred Union in April 2021 has led to a durable change in the risk on return; (Issue 1)

118. Before we embark upon our assessment as to the risk upon return and the extent to which, if any, we should depart from the extant country guidance, we have considered whether the material circumstances in the DRC have changed; and whether such changes are well established evidentially and durable.

119. We reject the claim by Mr Bazini that the recent change in Presidency has not led to any durable change in the risk of persecution to actual or perceived political opponents of either President Tshisekedi or former President Kabila. We do so, fully bearing in mind the fluid nature of the DRC political landscape. In his first report, Dr Kodi refers to the key political events following the presidential elections, including:

a. The Senate Elections between March and May 2019;

b. The power sharing agreement announced in August 2019 between former President Kabila's 'Front Commun pour le Congo' ("FCC") and President Tshisekedi's 'Cap pour le Changement' ("CACH");

c. The announcement on 6 December 2020, by President Tshisekedi of his intention to put an end to the coalition between CACH and the FCC. Dr Kodi states President Tshisekedi was seeking to replace the coalition with a new parliamentary majority in the National Assembly that would be favourable to him, and allow him to implement his vision for the DRC. President Tshisekedi and his allies had been trying to attract – allegedly using bribes - FCC parliamentarians to form this new majority called Sacred Union, which would allow him to appoint a new and more amenable Prime Minister and a new government. Dr Kodi was however sceptical whether President Tshisekedi would succeed given the dominance of the FCC in the National Assembly. He was of the view that even if he did succeed, President Tshisekedi's new allies would expect financial rewards and prominent positions in the government. He doubted whether President Tshisekedi would be able to implement his vision with the Sacred Union. He said that he and other analysists believe that Kabila's camp will not go down without fighting.

120. Dr Kodi accepted in cross-examination that his scepticism has not been borne out and opportunities have been opened and seized by President Tshisekedi, albeit the majority of the Sacred Union parliamentarians are from the FCC, and still describe themselves as the FCC. He accepted allies of former President Kabila such as François Beya, have now left. The evidence before us clearly demonstrates that the Sacred Union formed in early 2021 is now the majority governing coalition composed of 24 political groups, including President Tshisekedi's UDPS.

121. Dr Kodi accepted, as he was bound to do, given the preponderance of the evidence, that the net effect of the developments in the DRC since the end of the previous coalition, is that the influence of former President Kabila has diminished. In our view Dr Kodi's evidence that there are signs of former President Kabila coming back to the political scene, not to run as President, but to maintain some influence is based upon nothing more than speculation. In his oral evidence, as we have set out at paragraph [67] above, Dr Kodi referred to an article published in 'Africa Continental' on 4 March 2022 that states *"…Tshisekedi has been treading cautiously in his dealings with ex-President Joseph Kabila, whose profile has diminished over the past year…"*. The article does not support Dr Kodi's view that there are signs of former President Kabila coming back to the political scene. In fact, the paragraph referred to by Dr Kodi goes on to say, "*..Rarely attending meetings of the Senate in Kinshasa, Kabila has shown little interest in a political comeback..* ". In the end, Dr Kodi accepted in his evidence before us that there is evidence that former President Kabila's

profile has diminished, that he has been marginalised and appears to have shown little interest in a political comeback.

122. The respondent properly acknowledges that the political landscape in the DRC continues to change and develop, and that must be borne in mind together with the further general election scheduled for 2023. We accept, as does the respondent, that the background material demonstrates that President Tshisekedi has not delivered on all his promises. As the Head of the Catholic Church, Cardinal Fridolin Ambongo, the Archbishop of Kinshasa said in his statement on 29 May 2022, the DRC is not paradise. That must however be viewed in light of events between the Presidential Elections held on 30 December 2018 and a gradual decline in the power and influence of the former President Kabila since then. Our focus is upon the present position in the DRC.

123. In his addendum report, Dr Kodi refers to the resurgence in North Kivu of the M23 rebel group that was defeated in 2012 by the Congolese army with the assistance of the UN forces. Dr Kodi claims this new development has the potential to dent President Tshisekedi's popularity even further, since protesters have accused him of mishandling the crisis and of having given Rwanda a big share of the minerals of the Maniema, and North and South Kivu. Dr Kodi claims it is likely that if this crisis persists, opposition parties would become even more critical of the regime, which could again provoke a brutal repression of the critics of the regime. Opposition party activists would likely be targeted by the security forces. That in our judgement is again nothing more than speculation. As Mr Hansen was able to effectively demonstrate Dr Kodi's track record in speculating about the future of the DRC is not a good one, as the passage of time has demonstrated.

124. Dr Kodi maintained the situation in the DRC remains volatile and in the way things changed between March and July 2021, things can change again. Whilst that is always a possibility, we did not find Dr Kodi to be entirely objective or focussed when addressing the evidence in this respect. A useful summary of the main trends in human rights violations and abuses in the DRC is set out in the analysis of the human rights situation in 2021 prepared by the United Nations Joint Human Rights Office in the DRC ("UNJHRO"). The analysis states:

> "In 2021, the UNJHRO documented 6,989 human rights violations and abuses throughout the DRC, which represents an average of 582 human rights violations per month. This is a decrease of nearly 12% compared to 2020 and a reversal of the trend of the previous year, which recorded an increase of 21%. This decrease reflects a reduction in the number of cases documented in the provinces affected by conflict, particularly Maniema, South Kivu, Ituri, Tanganyika and North Kivu, where the UNJHRO recorded less violations committed by State agents and abuses committed by combatants of armed groups, including conflict-related sexual violence, than the previous year. The military operations against armed groups carried out by the Forces armées de la République démocratique du Congo (FARDC) with support from MONUSCO in accordance with the Human Rights Due Diligence Policy (HRDDP), which subjects the support provided by the United Nations to the Congolese defense and security forces to certain conditions, in particular respect for international human rights, humanitarian and refugee law as well as the implementation of risk mitigation measures, may help to explain this trend.".

125. He agreed with that analysis. Dr Kodi also accepted the update from ACLED that is set out in the respondent's CPIN, Democratic Republic of Congo: Political update: November 2021 to April 2022. It is said, at [4.3.6] and [4.3.7], that in total there were 1,860 events (that is,

protests *(including peaceful protests, those where there is state intervention, and where excessive use of force was deployed against protestors)* and riots, *(mob violence and violent demonstrations)*) - of all types of actors for the whole country over the period 1 January 2020 to 22 April 2022. Dr Kodi agreed that demonstrates a downward trend, and he has no other independent statistics to undermine what is said. He accepted that generally, there are more human rights violations in the east because of the on-going conflict in that area, although he is unable to point to any figures or statistics. He was prepared to accept that the vast preponderance (over 90%) of the violations take place in the east of the country. He accepted that he has not dealt with any of those positive developments in the DRC in his written reports, and failed to provide a plausible cogent explanation for this omission.

126. In his closing written submissions Mr Bazini referred to background country evidence suggesting that President Tshisekedi was happy for opponents to be targeted. We address this evidence in more detail below. Having considered the wealth of background material before us, and the evidence of Dr Kodi, we are left in no doubt, and find that there has been a durable political change following the change in Presidency in 2019, and in particular following the formation of the Sacred Union in April 2021 marking the end of what began as a power sharing agreement between President Tshisekedi and the former President Kabila. We find the change in Presidency following the elections held on 30 December 2018 and the announcement on 10 January 2019 that Felix Tshisekedi was the winner of the elections, has led to a durable change in the risk on return.

Part 10 Are those having or being perceived to have a political profile in opposition to former President former President Kabila at risk on return (Issue 1A)

127. When it was put to him by Mr Hansen that opponents of former President Kabila are not at risk upon return to the DRC, Dr Kodi agreed. He agreed that they are not at risk of persecution whether they are in the DRC or abroad. Having considered all the evidence in the round we are satisfied that the durable change that we refer to following the elections held on 30 December 2018 is such that actual or perceived opponents of former President Kabila are not at real risk of persecution upon return to the DRC.

Part 11 Are those having or being perceived to have a political profile in opposition to President Tshisekedi at risk on return; (Issue 1B).

128. In response to written questions, Dr Kodi provided examples to illustrate what he describes as the consistent targeting and arrests of leaders and rank-and-file members of opposition political parties. However, the focus of the examples he relies upon is not upon political opponents but rather the Bundu dia Kongo, which means 'The Church of Assembly of the Kongo people', a politico-religious movement founded in 1986 by Zacharie Badiengila, (alias Ne Muanda Nsemi).

129. In support of his submission that President Tshisekedi is happy for his opponents to be targeted, Mr Bazini cites a number of reports and articles:

    a. "…Human rights in the Democratic Republic of Congo under President Felix Tshisekedi took a downturn in 2020, against the backdrop of the gains made during his first year in office. Congolese authorities cracked down on peaceful protesters, journalists, and

politicians, while using state of emergency measures temporarily imposed due to the Covid-19 pandemic as a pretext to curb protests": ***Human Rights Watch; DRC Events of 2020***

b. "…The administration of President Felix Tshisekedi in the Democratic Republic of Congo has taken a serious downturn in respect for human rights in 2020. Congolese authorities have cracked down on peaceful critics, journalists, and political party members, while using state of emergency measures imposed due to the Covid-19 pandemic as a pretext to curb political protests

…

Human Rights Watch interviewed 36 people in Congo, including victims of abuse, lawyers, human rights and pro-democracy activists, and journalists. Since January, Human Rights Watch has documented at least 39 cases of threats and harassment related to free speech and media freedom across half of the country's 26 provinces. In 17 of the cases, people were arrested, including 2 who remain behind bars. At least 11 people were arrested on charges of "contempt toward officials," including provincial governors, parliament members, and, in one case, the president. Of the 19 journalists facing harassment, 8 were arrested.

…

The following cases of threats, harassment, and arbitrary arrest since the beginning of 2020 involve individuals exercising their basic rights to freedom of expression or peaceful assembly. A number were charged with "contempt" of authority. They are drawn from the 39 cases Human Rights Watch documented. However, Human Rights Watch believes there are many more incidents that have not been investigated.."; ***Human Rights Watch; DR Congo - Authorities Foundering on Rights***

c. "…The Congolese bishops deplored the regression observed in the fields of respect for human rights and justice under the regime of Tshisekedi in a statement made public"; ***La Libre Afrique; DRC: the episcopate deplores the "regression" in terms of human rights and justice***

d. "…One year since Tshisekedi took office, insecurity and impunity still imperil human rights - one year after President Tshisekedi took office insecurity and impunity continue to threaten human rights progress in the DRC Amnesty said…..several instances where peaceful protests were banned or violently dispersed…..violently dispersed in Kinshasa.."; ***Amnesty International: January 24 2020 - DRC: One year since Tshisekedi took office, insecurity and impunity still imperil human rights***

e. "…In North Kivu and Ituri provinces, attacks and other violations and abuses against civilians by armed groups and government forces increased by 10% between May and November according to the UN…

… Bans on, or other suppression of, peaceful demonstrations were common once again. The authorities frequently banned rallies and protests organized by opposition leaders and activists, trade unions and civil society groups, while security forces violently suppressed those that went ahead. In April, demonstrations against civilian killings in North Kivu, including a peaceful sit-in by schoolchildren and a women's march in Beni, were violently dispersed by the army and police. Similar tactics were also used in other areas, in particular against peaceful demonstrations by University of Kinshasa students in July and August

…Rallies and protests organized by opposition parties or civil society deemed to be critical of the government were often banned or violently suppressed…"; ***Amnesty International, Democratic Republic of Congo 2021***

f. "…Significant human rights issues included credible reports of arbitrary or unlawful killings including extrajudicial killings ….substantial interference with freedom of peaceful assembly…… Security personal arrested and detained civil society activists, journalists and

opposition party members and sometimes them due process…"; ***US State Department, 2021 Country report on Human Rights Practices, Democratic Republic of Congo***

g. "…In 2021, the authorities often cracked down on dissenting voices, including human rights and democracy activists, journalists and peaceful protesters and tensions escalated in the capital. Kinshasa, with the establishment of a controversial new electoral commission, due to alleged political interference, and debates over a proposed new law known as the 'Congolite Bill" that would ban Congolese citizens with a parent of foreign origin from higher office…"; ***Human Rights Watch; DR Congo – Events of 2021, (published December 21 2021)***

130. Mr Bazini also referred to the UNJHRO analysis of the human rights situation in the DCR in 2021 which, he submits, documents appointments to command positions, including for military operations, of FARDC and PNC officers against whom there were serious allegations that they bore responsibility for human rights violations. We accept the reports referred to by Mr Bazini do provide some examples, albeit limited, of some targeting of peaceful protestors who have no significant profile. However, the reports are in very general terms and where a particular individual or group has been targeted, it is clear that they have come to the adverse attention of the authorities for their involvement in a particular cause.

131. In his addendum report Dr Kodi refers to increasing numbers of journalists and political activists being harassed, beaten, arrested and detained for expressing dissenting views. The report he relies upon, published by Journaliste en Danger (JED) on 3 May 2022 refers to journalists being subjected to increased pressures, censorship, threats and even arbitrary arrests by the political and administrative authorities, with no evidence of violations against political opponents. There is we find, as Mr Hansen suggested to Dr Kodi, an absence of evidence to support Dr Kodi's hypothesis that there are an increasing number of arrests amongst *political* opponents.

132. The focus of paragraph [12] of the addendum report of Dr Kodi is upon the security situation in the eastern provinces of the DRC. As we have already noted, Dr Kodi accepts there are regional variations and the position in the east of the country is different to the position in the west. Furthermore, the respondent's 'Response to an information request, Political update dated 4 May 2022, which we accept, records at paragraph [4.3.1] that the HRW report 2021 also documented a number of demonstrations banned by the state, all of which took place in eastern DRC.

133. Having considered the background material before us, we do not accept that the risk upon return to the DRC for actual or perceived opponents of President Tshisekedi is anywhere near as broad as that submitted by Mr Bazini. Although we acknowledge there is some evidence that political opponents are targeted, Mr Bazini's submissions are undermined by the evidence of Dr Kodi himself. Dr Kodi was right in our judgment to accept in his oral evidence before us that looking at the background material as a whole, political opponents of President Tshisekedi, actual or perceived, are not at risk unless they have a profile of significant and active opposition to President Tshisekedi.

134. We reject the submission made by Mr Bazini that the profile of any individual does not need to be significant.

a. The Human Rights Watch Report, DRC – Events of 2021 published on 21 December 2021 refers to the authorities often having cracked down on dissenting voices in 2021 including democracy activists, journalists and peaceful protests, and to tensions having escalated in the capital with the establishment of a controversial new electoral commission. We acknowledge that the report does not indicate that those detained had any significant profile. However, the report refers to the arrest and detention of individuals following demonstrations or events that occurred on the whole, in the east of the country, which has been the subject of military rule imposed in May 2021 to address insecurity in that area.

b. The US State Department, 2021 Country report on Human Rights Practices, Democratic Republic of Congo states security personnel arrested and detained civil society activists, journalists and opposition party members and sometimes denied them due process. The report refers to political prisoners and detainees during the year, consisting primarily of individuals arrested under defamation laws for criticising the actions of government officials. The report refers to the arrest of Jean-Bosco Assamba, the Ituri provincial parliamentarian, who was arrested in June for criticising President Tshisekedi for allegedly making false promises. He was detained in Bunia prison for two days before being released. The report also refers to the President of the youth league of the 'Together for the Republic Party', Jacky Ndala, being sentenced to 2 years imprisonment for his rhetoric against a proposed bill that would restrict eligibility for senior officials, including the presidency, based on the nationality of an individual's parents. It is said that "local press reports reported that Ndala was accused of inciting rebellion and civil disobedience after asking persons in eastern Kinshasa to oppose the bill." On appeal, the sentence was reduced to 22 months in prison. The report also refers to the arrest in January of Daniel Ngoy Mulunda, the former chairman of the Independent National Electoral Commission, in Lubumbashi for antagonising tribal tensions. It is clear in our judgement from the arrests cited in this report that those arrested and detained had a significant political profile.

135. The respondent submitted a request for information to the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) for the purposes of this appeal and the issues that arise in this country guidance [2401]. 78% of IGC States responded. Member States were asked; "Whether and if so how the change in Presidency in Jan 2019 and developments subsequent thereto (with the new President Tshisekedi trying to consolidate his own power and move away from his coalition with Kabila) affects the risk on return to actual or perceived opponents of Tshisekedi and/or Kabila." The response was:

> "The dynamics within the opposition evolved since the end of the alliance between Tshisekedi and Kabila.
>
> Whether an opposition supporter is at risk will depend on the nature and frequency of his/her activities in opposition to the Tshisekedi's Sacred Union and to what extent whether he/she is known about by the authorities. It's necessary to take into account the profile of the person, the role and activities in the opposition party. It's really important to know the position of his/her party towards the Tshisekedi's Sacred Union. For the time being (March 3, 2021), the rival opposition leader Fayulu (ECIDE) has not joined the Sacred Union => the supporters of Fayulu are likely to be viewed adversely. It is difficult to know the position of the other opposition parties (The Research and Documentation Department (CEDOCA) of the General Commissariat for Refugees and Stateless Persons – www.cgrs.be - closely monitors the political situation).

> During the elections there were numerous cases of threats and intimidation against human rights defenders and other civil society activists, including members of the Church, Filimbi, Lucha [youth civil society movement]… Some members of civil society have been arrested, detained and subjected to acts of torture or ill treatment. Simply being a member of the Church, a human rights defender or of civil society group (apart from Lucha) is not likely to result in the person being at risk. They have to show that their profile, activities and/or past treatment at the hands of the state are such that the authorities are likely to view them adversely and subject them to treatment amounting to persecution or serious harm. Regarding Lucha, members have been arrested in January (2021) à a particular prudence/attention is necessary for supporters of Lucha. Being a journalist, media worker or blogger is not likely to lead to a person facing treatment that amounts to persecution or serious harm. However, some persons who are critical of the authorities may face a risk of serious harm and each case must be considered on its facts taking into account the subject matter of the published material, the reach and frequency of the publication…"

136. The response from the ICG is consistent with the background material that we have been referred to, and indeed the evidence of Dr Kodi that looking at the background material as a whole, political opponents of President Tshisekedi, actual or perceived, are not at risk unless they have a profile of significant and active opposition to his regime.

137. We find, as Mr Hansen submits, that the risk that an individual is exposed to will continue to depend on the person's political affiliations, profile, actions and attitude towards the current government taking into account, as the Upper Tribunal has previously observed at [51(iii)] in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118 that risk 'fluctuates in accordance with the political situation'.

138. We find, as Dr Kodi accepts, members of MLC and Ensemble pour le Changement members are no longer at risk of being targeted.

139. We find that the durable change that we refer to following the elections held on 30 December 2018 is such that generally speaking, rank-and-file members of opposition political parties or political opponents of President Tshisekedi and/or the Sacred Union are not reasonably likely to be at real risk. That must be distinguished from high-profile opponents who may be at risk in some circumstances. The assessment of those at real risk of persecution as actual or perceived opponents of President Tshisekedi requires a fact-sensitive analysis of the individual's profile, wherein the following (non-exhaustive) factors will be relevant:

    a. Whether an individual is a sufficiently high-profile opponent of President Tshisekedi having regard to their role and profile, including involvement in activity that is likely to have brought them to the adverse attention of the Tshisekedi regime.

    b. The political party of which the individual is an officer or member, or to which the views of the individual are aligned.

    c. The position of the political party or the views of the individual towards President Tshisekedi and the Sacred Union.

    d. The nature and frequency of the individual's activities in opposition to Tshisekedi's Sacred Union and to what extent the authorities know about him/her.

e. It is unlikely that a rank-and-file member of any opposition party or group will have a sufficient profile such that they will be at real risk upon return without more.

140. Simply being a journalist, media worker or blogger is not likely to lead to a person facing treatment that amounts to persecution or serious harm unless they are considered to be a sufficiently high-profile opponent of President Tshisekedi.

Part 12 Whether the change in Presidency following the election on 30 December 2018 has led to a durable change in the risk of persecution of UDPS activists as previously held in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023; (Issue 1C)

141. The change in Presidency following the election on 30 December 2018 has clearly had an impact upon the risk on return of UDPS members to the DRC. There is an absence of evidence to establish that UDPS members and activists continue to be at risk on return. The evidence of Dr Kodi himself is that the risk faced by UDPS members and supporters has considerably diminished since President Tshisekedi took power and senior members of the party were appointed to posts in the government. He states:

> "…One could even say that they enjoy a favourable treatment compared to members of other parties. UDPS supporters have repeatedly invaded Parliament every time decisions that they did not agree with, were about to be taken. They have done this with impunity even when they destroyed property and threatened parliamentarians. They have been allowed to organise marches and meetings while other political parties, especially those considered belonging to the opposition, were forbidden to do the same. The latest instances are the two marches and meetings organised by UDPS gathering tens of thousands of people to welcome President Tshisekedi in Lubumbashi and Kolwezi on 12 and 13 May 2021 respectively. Marches organised by Martin Fayulu and Adolphe Muzito, the two leaders of LAMUKA, the coalition of opposition parties, have been brutally dispersed and their followers severely beaten. After the march organised by his party was forbidden by the National Police on 15 May 2021 in order to conform to the Government's Covid-19 guidelines, Adolpe Muzito complained about the discrimination of the opposition political parties and the preferential treatment given to UDPS by the authorities…".

142. The evidence of Dr Kodi himself is therefore that he has no evidence of the arrest of senior UDPS figures and rank-and-file members since January 2019 in the DRC generally and Kinshasa, in particular. In response to questions put by the respondent, Dr Kodi said UDPS members are not at risk of being arrested since they do not oppose their own leader. We accept his evidence in that respect and find that members or supporters and activists of the UDPS are no longer at risk upon return to the DRC.

143. We are entirely satisfied that the change in Presidency following the election on 30 December 2018 has led to a durable change in the risk of persecution of UDPS activists as previously held in AB and DM. We accept the evidence before us that the risk faced by UDPS members and supporters has considerably diminished since President Tshisekedi took power and senior members of the party were appointed to posts in the government. It follows that the country guidance set out in AB and DM Democratic Republic of Congo CG [2005] UKAIT 00118, endorsed in MK DRC CG [2006] UKAIT 00001 and re-affirmed in

MM (UDPS members – Risk on return) Democratic Republic of Congo CG [2007] UKAIT 00023, as far as it relates to the risk of persecution of UDPS members and activists should no longer be followed.

Part 13 Whether in light of the new government, persons who have a significant and visible profile within APARECO (UK) and/or the CSG are at real risk of persecution for a Convention reason or serious harm or treatment proscribed by Article 3 ECHR. (Issue 1D)

144. The respondent acknowledges there is limited information about the number, size, aims and activities of Congolese groups in the UK. We have been provided a note titled 'CG case DRC: Sur place activity, update November 2021' prepared by the respondent for the purposes of this appeal.

APARECO

145. In BM and Others, as far as APARECO is concerned, the Tribunal had before it the expert evidence of Dr Erik Kennes, and also had regard to a broad range of background material including evidence relating to the APARECO organisation and certain of its members and office bearers. The Tribunal said:

> "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."

146. The Tribunal was addressing 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. As we have already set out, the evidence of Dr Kodi, which we accept, is that opponents of former President Kabila are not at risk upon return to the DRC. That however is not the end of the matter.

147. We note that in response to the request for information submitted to the ICG, the Belgian authorities said:

> "For the diaspora political groups that operate in Belgium, persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) could still be at risk. Mere rank and file members are unlikely to fall within this category. Persons who support Boketshu (and have a significant and visible profile) could be at risk. We have no more recent information about the other diaspora political groups (CEDOCA is working on this matter)
>
> Their activities are limited due to the COVID pandemic => APARECO meetings are organised via skype, FB; demonstrations are not possible in Belgium (but they have organised limited demonstrations in Brussels in the Summer)."

148. We accept, as Mr Hansen submits that there is a lack of clear information or cogent evidence as to what, if any, opposition to President Tshisekedi APARECO UK is currently engaged in and how the organisation is viewed by the authorities in the DRC. Whilst we acknowledge that the overall political environment has improved in the DRC, we cannot rule out the possibility that a member of APARECO may still be at risk on return depending on their role, profile and activities on behalf of the group. We accept the information available from the Belgian authorities as being credible and we find that persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) may be at risk upon return to the DRC. Rank-and-file members are unlikely to fall within this category.

The CSG

149. Although we accept the government in the DRC may continue to have an interest in radical groups that are particularly critical of the government, we do not accept the evidence of Dr Kodi that it is likely that someone on the CSG website would be identified. Dr Kodi's evidence that the CSG has expressed 'strong views' about the collusion between former President Kabila and President Tshisekedi is unsupported by cogent evidence and is in fact undermined by the evidence before us of the organisation's various social media platforms. Dr Kodi accepted the CSG is not referred to by any EU Member state as an 'opposition group', and that the CGS website and Facebook account is rarely used. Although Dr Kodi was not prepared to accept that the focus of the group was on the former President Kabila, we find that it is. Beyond the strapline *"Tshisekedi must resign because he is working with Kabila, a criminal, he must be arrested with his regime"* on one of its websites, there is little evidence before us of a concerted effort to voice any strong opposition to President Tshisekedi. The videos Dr Kodi refers to, in which he claims the CSG express views against President Tshisekedi, are themselves now dated. The strapline is also dated and predates more recent political events in the DRC. Dr Kodi accepted there is no reference whatsoever to the CSG in the report drafted by the Documentation and Research Centre (Cedoca) of the CGRS in Belgium (with its large DRC diaspora). Dr Kodi accepted the

'tweets' from the Twitter account of Okito Tongomo, the leader of the CSG, are generally supportive of President Tshisekedi.

150. Dr Kodi is not aware of the CSG having a presence in the DRC, and he accepted there is no evidence of the government in the DRC having made any adverse or critical comments of the CSG. He also said that he is not aware of any member of the CSG that has returned to the DRC and been arrested on return.

151. Dr Kodi was unable to provide any information to us regarding the size of the membership of the CSG in the UK. We do not accept the evidence of Dr Kodi that the fact that its website may not have been updated may be a sign of 'negligence', but it is not that the CSG is not active. His evidence in this respect is again indicative of his inability to provide independent objective evidence without resorting to conjecture or assumptions. He cannot possibly know why the CSG has not updated its website. He suggested that it was always possible that members exchange messages using 'WhatsApp'. That may be so, but there is not a shred of evidence before us that members of the CSG articulate opposition to the authorities in the DRC such that they would be viewed adversely for doing so, even if that were possible via WhatsApp.

152. Against the evidence of Dr Kodi, we have considered, in particular, the information set out regarding the CSG in section 1.2 of the note titled 'CG case DRC: Sur place activity, update November 2021' prepared by the respondent. That we find is a balanced and accurate reflection of the CSG website, its Facebook page and the Twitter account of the CSG President, Okito Tongomo.

153. We make the following findings regarding the CSG and its activities:

a. We accept the reference by Dr Kodi in his first report that the website of the CSG (www.congolesesupportgroup.com) included a strapline *"Tshisekedi must resign because he is working with Kabila, a criminal, he must be arrested with his regime"*. That statement is not linked to any further articles or information regarding President Tshisekedi. It is a vague and ambiguous claim without elaboration. It is not even clear whether the CSG is calling for the arrest of President Kabila, who is described as 'a criminal' or for the arrest of President Tshisekedi.

b. The Facebook account of a Congolese Support Group that carries similar photographs to that which appear on the www.congolesesupportgroup.com website does not express any opposition to President Tshisekedi, either directly or indirectly. The Facebook page is rarely used.

a. The Twitter account of Mr Okito Tongomo, the leader of the CSG, expressly congratulated President Tshisekedi in December 2020 and February 2021, over a year after his election. The Twitter account was created in March 2012 and had 1,349 followers as of May 2021.

b. The last known conference and/or public event organised by the CSG in the UK was on 29 October 2020.

c. The CSG is not identified by any EU Member state to be a credible opposition group, opposing President Tshisekedi since his election as President.

d. The CSG is a small organisation operating in the UK and is not a credible opposition group that has actively published any significant opposition or criticism of President Tshisekedi such that it is likely to be of interest to President Tshisekedi or the current regime in the DRC.

e. There is no evidence of either President Tshisekedi or anyone connected to his government making any adverse comment or taking any adverse action regarding the CSG, its office bearers, its members, or its activities.

154. We find that the leaders, members and activists associated with the CSG are not at risk upon return to the DRC on account of their actual or perceived political opinion or sur place activities in the UK.

Part 14 Whether failed asylum seekers are at risk of treatment amounting to a breach of the Refugee Convention or of Article 3 ECHR on return to DRC, simply because they are failed asylum seekers. (Issue 2)

155. We accept that as found in BM and Others, the DRC authorities have a strong interest in opposition organisations, and that such organisations are likely to be monitored, but that finding must now be considered in the context of the significant change in the political landscape in the DRC. We have already found that persons who have a significant and visible profile within APARECO (leaders, office bearers and spokespersons) may be at risk upon return to the DRC. That is the organisation that was the focus of the Tribunal's findings in BM and Others.

156. We reject the submission made by Mr Bazini that a FAS is pre-identified by the authorities in the DRC and immediately identifiable as such, upon arrival in the DRC. There is no doubt that a FAS can return to the DRC using their passport and laissez-passers or an ETD. We are satisfied that as part of any redocumentation process an individual will usually be interviewed by the Immigration Attaché of the DRC Embassy in order to establish whether their claim of Congolese nationality is genuine.

157. Dr Kodi claimed in his first report that "it would be remiss" if the Immigration Attaché, as an agent of the DGM, did not ask about the political activity of the interviewee as the UK harbours some of the most radical opposition parties to President Tshisekedi. Dr Kodi said it is quite reasonable to think that the Immigration Attaché would also ask about whether the interviewee has claimed asylum and the reasons for the failure of the claim. He claims the Congolese Immigration Officers he interviewed by telephone on 6 March 2021, confirmed this information regarding the Immigration Attaché's behaviour during the interviews of failed asylum seekers.

158. In his evidence Dr Kodi also referred to the January 2020 CPIN on the DRC – Unsuccessful Asylum Seekers, which summarises the redocumentation process and said that the information set out, does not contradict the information provided by those he interviewed. We note that although that CPIN broadly outlines the redocumentation process, nowhere

does it even hint at an individual being asked about information regarding any protection claim or the person's political beliefs or activities.

159. We reject the claims that the Immigration Attaché, during interview, collects information about any asylum claim, why it has been rejected, or of an individual's political activities. We are not concerned with whether it would be remiss for the Immigration Attaché to adopt a certain course, but to identify what, to the lower standard, might happen. Dr Kodi's evidence on this is contradictory. In cross-examination Dr Kodi accepted an ETD is issued after a face-to-face interview and that the authorities do not at that stage, identify the individual as a FAS or the basis of any protection claim. Having accepted that, he also maintained, based upon information provided by sources he consulted that the reality is that the DGM Attaché interviews individuals and asks about the individual's activities in the UK and the reason for any protection claim or any prison sentence imposed.

160. We accept that given that the DGM's role is to manage migration, it is unsurprising that DGM officials will wish to establish the identity of a returnee but we do not accept the claim made by Dr Kodi that the enquiry is wider ranging or that an individual is asked about any claim for international protection or their political activity. The fact that an individual might be asked why they are detained or in prison, is not to say that any wider enquiry is made about the individual's presence in the UK. True it is, as Dr Kodi claims, that the Home Office staff do not attend redocumentation interviews, but neither do human rights activists, and so we are left with the claims made by the Immigration Officers Dr Kodi interviewed and the background material.

161. In his first report, Dr Kodi addressed the returns process. He said:

> "67. … I had telephone conversations with two immigration officials and three human rights activists who had previously provided me with information about the treatment by immigration officials at N'Djili airport of returnees, while I was working on other DRC country expert reports.."

162. When addressing the interview at the DRC Embassy, Dr Kodi expressed his view that "it would be remiss" if the Immigration Attaché, did not ask about the political activity of the interviewee. He went on to claim the Immigration Officers he spoke to on 6 March 2021 *"confirmed this information on the Immigration Attaché's behaviour during the interviews of failed asylum seekers"*. He did not elaborate upon the information he was provided. Unsurprisingly, in written questions put to Dr Kodi, the respondent asked Dr Kodi to identify the questions he actually asked the immigration officers and when. In his response dated 19th July 2021, he set out the questions asked and answers he was given. In his evidence before us, Dr Kodi said that he had taken notes of the interviews but, consistent with the methodology adopted by many other researchers, he disposed of the notes to ensure the notes could not fall into the wrong hands. The evidence of Dr Kodi is that the information was gathered for the purposes of other expert reports he was preparing at the time. We have not been provided with copies of those reports that may have cast further light upon what Dr Kodi was told nearer the time. In the absence of any contemporaneous notes of the interviews we do not accept that what is recorded by Dr Kodi is in fact an accurate reflection of the information he was provided. We do not accept that Dr Kodi would have been able to recollect with such precision, the questions that he asked and the responses that he received, some months after the conversations took place. We find that

although he is doing his best to assist the Tribunal, his recollection is clouded by his lack of objectivity and his own views as to what he considers the Immigration Attaché was likely to ask about.

163. We do not accept the claim made by Dr Kodi that the DGM authorities in Kinshasa are informed about the *sur place* activities of returned failed asylum seekers. Neither do we accept his claim that all failed asylum seekers are at risk because the DRC authorities suspect them of having betrayed their country of origin by telling lies about human rights and the political situation of the country. To support his claims Dr Kodi relies principally upon four sources: first, the report Unsafe Returns III compiled by Catherine Ramos; second, the blog on the website of the Faculty of Law of the University of Oxford in November 2016 by Dr. Jill Alpes; third the email from the President of the Bill Clinton Foundation for Peace, Emmanuel Cole, sent to the research centre of the Belgian Commissioner General for Refugees and Stateless persons dated 4th August 2019; fourth, the telephone interviews that he conducted with two immigration officials and three human rights activists.

164. The reliance by Dr Kodi upon the reports of Catherine Ramos and Dr Jill Alpes is in our view entirely misplaced. The report Unsafe Returns III refers to the period 2015 to 2019 and considered the position of 18/19 returnees monitored during that period. The last returnee that was referred to as 'case Study 18' in the report, was a female failed asylum seeker who had been removed on her own passport on 26 May 2018, before President Tshisekedi was elected. The Blog by Dr Jill Alpes now dates back as far as November 2016, again, before President Tshisekedi was elected. That alone diminishes the weight that can properly be attached to that material when this Tribunal is concerned with the risk upon return after President Tshisekedi was elected.

165. The email from the President of the Bill Clinton Foundation for Peace, Emmanuel Cole, dated 4th August 2019 is undermined by the January 2020 update written by the Cedoca in which it is recorded that in May 2021, Emmanuel Cole confirmed his organization conducts monitoring of returnee arrivals at Ndjili airport, and, since the change of regime, persons whose asylum have been rejected and are repatriated to the DRC no longer have problems upon arrival. He confirmed in May 2021 that unlike during the previous regime, there are no more cases of arrests by the ANR of returnees and there is no one belonging to this category in Kinshasa's places of detention.

166. As to what happens on arrival in the DRC, Dr Kodi claims that the Immigration Officials and human rights activists he interviewed while doing research for his reports, reported that they had witnessed or were informed about cases of returnees. Each one of them separately advised that they knew of between 2 and 18 cases of such arrests since January 2019. They declined to share the names of the returnees for fear of reprisals for themselves and the returnees. We attach very little weight to Dr Kodi's bold claim that the view was that all people, whether leaders or rank-and-file members are treated the same, without any information regarding specific events or an individual's activities. Whilst we understand that his sources may have declined to share the names of any specific individuals, the evidence of Dr Kodi is lacking in material respects. We have no evidence at all of any of the "2 to 18" cases of arrests since January 2019, the background of the individuals, the events leading to the arrests, or indeed any information as to how those individuals were treated. The evidence of Dr Kodi is also undermined by his failure to return to any of his

sources in order to attempt to establish a more up-to-date picture of how events are unfolding in the DRC following the change in regime. Dr Kodi said in cross-examination that he has no information that indicates there have been any changes since then. That is to miss the point. It must be obvious to Dr Kodi that the situation in the DRC has remained fluid with major changes in the political landscape and the treatment of opponents.

167. Against the evidence of Dr Kodi, is the more recent evidence relied upon by the respondent that that we find to be more objective. We accept what is said in the respondent's CPIN, DRC Unsuccessful asylum seekers, January 2020:

> "2.4.10 No western government that has provided publicly available information about returns - including Belgium, Canada, Estonia, Finland, France, Germany, the Netherlands, Norway, Sweden and Switzerland - has reported a substantiated account of detention and ill-treatment of a voluntary or involuntary returnee. Nor is the second secretary political (SSP) at the British Embassy (BE) in Kinshasa contacted by the Home Office in September 2019 aware of substantiated accounts of arrest, detention or ill-treatment on return. The SSP was aware of the allegations of detention on return of Aristote Monsego in October 2016, whose case is documented in UR3. These were, however, investigated by BE officials at the time but they were unable to confirm the allegations (and no other source has been able to provide a full account of what happened on return or the current whereabouts of Mr Monsego) (see Reports published 2015 to 2018 and Reports/information released in 2019).

168. We accept, as the respondent submits, there is no substantiated evidence of ill-treatment on arrival of FAS returned to the DRC in the more recent period 2019 to 2021 or subsequently. The ICG records that the Belgian authorities confirmed that they are not aware of any reports or allegations that voluntary or forced returnees have faced difficulties and/or been mistreated on return to Kinshasa. They also confirmed that in recent years there have been no allegations of bribes being asked for by the local migration services. The following questions and answers are also recorded:

> "5) If there have been allegations of difficulties/mistreatment, have these been substantiated with credible evidence?
>
> *The only allegations came from persons who had been forcedly returned from the UK, they have been verified by the EURLO [European Liaison Office] in the past years and all of them were false allegations. EURLO reported back to the UK on these cases.*
>
> 6) Are you aware of any changes to treatment on return of FAS since the change of presidency in January 2019?
>
> *No, no changes at all.*
>
> 7) Do you monitor FAS returns on and/or following their arrival in the DRC?
>
> *Almost all returns of DRC citizens are FAS returns. There are no problems with these returns. Local authorities feel sorry for them that they have been send back and are often blaming the European countries to be too strict.*
>
> 8) What organizations in the DRC monitor human rights generally and returns in particular?
>
> *Human Rights are monitored by a lot of organizations in the DRC; for example Human Rights Watch, Monuso… but returns in specific are monitored by the EURLO who is working with the local authorities of migration, DGM."*

169. The 'Projects and Migration Officer' at the British Embassy Kinshasa in a note dated February 2021 that is at Annex A of the respondent's 'DRC: returns' note prepared in respect of this appeal confirms he is not aware of any reports or allegations that voluntary or forced returnees have faced difficulties and/or been mistreated on return to Kinshasa. He confirms that since the last Country Policy Information Note was published January 2020, nothing has been reported in the media and he has not heard of any speculation about them being mistreated or facing any significant challenge caused by local authorities. He is not aware of returnees being required to pay bribes, although he accepts that that does not necessarily mean that returnees are not harassed for money on arrival. He states, "bribery is kind of high at the airport – sometimes even individuals with the right documentation are asked to voluntarily leave a small token.". Asked whether he is aware that returnees have been detailed/imprisoned, he responds:

> "No – my local NGOs contacts who do sometimes monitor returnees are not aware of any detention/ imprisonment of recent. However, they do not monitor returnees regularly due to lack of funding. It may be that something happened that we are not all aware of. Those contacts and the organisations they represent are:
>
> - Norbert Ilunga – executive director - Les amis de Nelson Mandela pour la défense des droits humains
>
> - Rostin K – la voix de sans voix(Floribert Tchebeya's organisation)
>
> - I also talked to 2 DGM staff … separately but they requested not to be cited in any report as we did not go through the official route (Note Verbale). Note that in 2019 DGM refused to answer our questions though we followed the process as it should had been."

170. The Projects and Migration Officer was asked whether he is aware of any changes to treatment on return of failed asylum seekers since the change of Presidency in January 2019. The response was:

> "Yes – it has improved significantly. During the last investigation conducted in June-July 2019 ahead of the publication of the 2020 CPIN, results showed that Tshisekedi's regime is less hostile to returnees than his predecessor. Most respondents (local NGOs interviewed: la voix de sans voix, ASADHO, Les amis de Nelson Mandela, etc… whereas UN agencies and western embassies were sent a questionnaire through mail) reported that the since the current president took in, returnees were no longer maltreated on arrival and even after settling back. Returnees are not targeted during this regime as compared to when Kabila was in power (combattants)."

171. The Projects and Migration Officer confirmed he does not monitor failed asylum seeker returns on and/or following their arrival in the DRC because it is too risky. However organisations such as the UN Joint Human Rights office, Human Rights Watch, BCNDUH and some local organisations (les amis de Nelson Mandela, la voix de sans voix, ASADHO, etc) function only if they have funding.

172. The update written by the Cedoca, the Documentation and Research Department of the Office of the Commissioner General for Refugees and Stateless Persons in Belgium dated 23 July 2021 states, at [5.3]:

> 5.3 Three human rights associations active in the DRC were contacted during research for the previous COI Focus on this subject. These associations requested that their names and contact details not be made public. They are renowned NGOs active in the field of human rights in the

DRC. They had indicated that they had not recorded any problems relating to the repatriations carried out by the Belgian authorities.

…

In the summary it is said:

…

Upon arrival at Njdili airport, persons forcibly returned to Kinshasa from Belgium are identified. The authorities present at the airport are the Directorate-General for Migration (DGM), the National Police, the Border Police and the National Intelligence Agency (ANR).

The sources consulted did not report any problems encountered by Congolese nationals repatriated voluntarily or forcibly from Brussels to Kinshasa during the period covered by this update."

173. Furthermore, in the respondent's response to an information request dated 4th May 2022 which provides an update of political events between November 2021 to April 2022, and a review of material published since November 2021, it is noted:

"4.4 Sur place activity

4.4.1 The USSD human rights report 2021 in its section on 'politically motivated reprisal against individuals located outside of the country' observed: 'In August HRW reported that a few days after Jean-Jacques Lumumba, a whistleblower exiled in France, spoke to a gathering of Congolese activists in Belgium about impunity and fighting corruption, his bag was stolen on his return train trip and his car was burned in its parking place on the outskirts of Paris. Police in Kinshasa also threatened his tenants with eviction if they did not provide documents containing personal information about Lumumba.'

4.4.2 However, the USSD, nor other sources consulted in this response, refer to further incidents of threats, violence or other abuses against members of the Congolese diaspora outside of the DRC."

174. Having examined the wealth of background material, we do not accept the claim made by Dr Kodi that the monitoring of political opposition is such that all FAS are considered by the authorities in the DRC to be 'traitors' and are therefore at risk upon return to the DRC. The background material that we refer to above establishes there is no "consistent pattern" of evidence of mistreatment of returnees and as regards the current situation, Dr Kodi is very much a lone voice. The weight of the more recent evidence is flatly against Dr Kodi's opinion that all failed asylum seekers are at risk upon return to the DRC. That is so, whether it is based upon the identification of past/present opposition activity, or a presumption of past/present opposition activity. The background material we have referred to also establishes that a FAS is not at exposure due to the risk of extortion or bribery.

175. We accept Dr Kodi's claims that the use of social media platforms such as YouTube, WhatsApp, and Facebook, make it easier for the DRC national intelligence agencies to monitor the diaspora, and political opposition. We accept however, as Mr Hansen submits, there is no credible evidence that the current authorities in the DRC are interested in monitoring the diaspora community in the UK; nor is there is any credible evidence that the intelligence capability exists, even if there were the appetite. Having considered the wealth of background material before us, we find the entirety of Dr Kodi's evidence on this topic is based on nothing more than speculation. We prefer the evidence of the respondent set out in the 'CG case DRC: Sur place activity, update November 2021**:**

"1.5 Congolese state monitoring of diaspora in the UK

…

1.5.2 The USSD 2020 human rights report stated: 'The government did not restrict or disrupt access to the internet or censor online content, and there were some reports that the government monitored private online communications [in the DRC] without appropriate legal authority.'

1.5.3 The DRC Embassy in the UK is a small mission with 7 diplomatic staff in London including the Ambassador plus an Honorary Consul in Birmingham

1.5.4 The DRC diaspora in the UK was estimated to be in 2006 between 20,000 –

40,000 people.

1.5.5 At the time of compiling this response, CPIT was not able to find specific information on state monitoring of persons involved in sur place activity in the sources consulted."

176. Finally, we address the claim made by Mr Bazini that a FAS may also face treatment contrary to Article 3 generally, as a result of being unable to obtain the necessary ID to access basic services. In his first report, Dr Kodi noted that the essential documentation that a person needs to obtain housing, employment, and to travel internally in the country is the voter's card, which serves as the national identity card; it is usually issued before a general election. In his evidence before us, Dr Kodi accepted that a national of the DRC would, in principle, qualify for a 'voter card'. His evidence is that it can be difficult to get one. Ideally, one would have their voter card from the last election (2018). Without that, there are a number of documents that an individual would have to provide and that would have to be accompanied by the testimony of three individuals. Dr Kodi confirmed that he accepts what is said in the respondent's 'Response to an information request, Democratic Republic Congo: Documentation – voter card, 19 May 2022' which sets out the procedure for obtaining a voter card, and the process for obtaining a replacement card if the original was lost or stolen. As to the impact of not having a voter card, it is said:

"2.6.3 The USSD in its human rights report covering events in 2021 stated: 'Authorities do not issue national identification cards for citizens. A voter card or passport serves as an identifying document. Most citizens did not have a passport, and only citizens 18 and older are eligible for a voter registration card. The lack of identification documents could hinder the ability to register at university, obtain a passport, or gain certain employment.'.

2.6.4 The FCDO email of 12 April 2022 noted the voter card is used 'for the bank process: creating a bank account and access to public services.' Adding that the government '… have not provided alternatives [forms of ID to the voter card]. One of the main attraction[s] of registering to vote is to have a valid form of ID.' The WFD email of 19 May 2022 similarly observed that 'The card serves as an identity card'.

2.6.5 On the effect of not having a card the FCDO observed 'the impact is limited because there are several alternatives including the passport, the driver's licence. There is no punishment for not having a card.'

2.6.6 The WFD email noted 'Those who do not have a card find it difficult to prove their identity, and in some cases to travel. There is no punishment for not having it'. Adding in response to a question of whether there are alternatives form of ID to the voter card, 'The passport can be used to prove identity as well as the driving licence and the birth certificate'."

177. As set out by Lord Wilson in AM (Zimbabwe) v SSHD [2020] UKSC 17, it is for an appellant to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if removed, he/she would be exposed to a real risk of being subjected to

treatment contrary to Article 3. The Supreme Court confirmed that that is a demanding threshold for an applicant. His or her evidence must be capable of demonstrating "substantial" grounds for believing that it is a "very exceptional case" because of a "real" risk of subjection to "inhuman" treatment. We find that the evidence before us does not even begin to demonstrate that a FAS will face treatment contrary to Article 3 generally, as a result of being unable to obtain the necessary ID to access basic services. It is clear that a DRC national who meets the relevant requirements is able to obtain a 'voter card' in the DRC using a range of documents as a means of identification and to prove their age. A replacement is available if the original is lost or stolen.

178. We remind ourselves that we should only depart from the extant country guidance where we conclude that (i) material circumstances have changed; and (ii) such changes are well established evidentially and durable. Standing back, we do not accept that FAS are at risk on return simply because they are failed asylum seekers and there is no basis in the evidence before us to depart from the guidance set out in BM and Others.

Part 15

DISPOSAL

179. As we set out at the outset, there are preserved findings that the appellant has engaged in sur place activities solely to establish a basis for a protection claim. She has been found not to have political beliefs at such a level that she would, upon her return to the DRC, engage in active opposition to the regime. There is a preserved finding that the appellant has taken part in the activities and that she holds the office of President of the Women's Liverpool branch of the CSG.

180. At the outset of the hearing before us, our attention was drawn to further evidence from the appellant, albeit without any application having been made to adduce further evidence. The appellant seeks to rely upon a witness statement dated 20th May 2022 in which she confirms that she continues to be an active member of the CSG. She identifies the meetings that she has attended between 17th March 2017 and 22nd January 2022, and her role. She confirms she is still the "President of Women of CGS *(sic)*". We have also been provided with what is described as an "Updated Letter of Support from Okito Tongoo *(sic)*" that is dated 22nd May 2022. That letter is signed off by Okito Tongomo as 'Chairman and President' but does not appear on official stationery of the CSG. It is on the letterhead of the appellant's solicitors. It is also unsigned.

181. The respondent has provided a noted titled 'CG case DRC: Sur place activity, update November 2021', which at [1.2.6], provides an organogram of senior figures in head office and UK and International representation within CSG, and at [1.2.7], provides the names of representatives and other positions held within the organisation. The appellant's name does not feature in either list.

182. We have found the CSG is not identified by any EU Member state to be a credible opposition group, which has actively published any significant opposition or criticism of President Tshisekedi such that it is likely to be of interest to him or the current regime in the DRC. There is no evidence of either President Tshisekedi or anyone connected to his

government making any adverse comments about the CSG, its office bearers, its members, or its activities.

183. It follows that in our judgement, there is no credible evidence before us, even to the lower standard, that the appellant will be at risk upon return to the DRC on account of her actual *sur place* activities in the UK.

V. Mandalia

Upper Tribunal Judge Mandalia **13th April 2023**

APPENDIX

DOCUMENTARY EVIDENCE BEFORE THE UPPER TRIBUNAL

Item	Date	Document	Source
1.	19 May 2022	Response to an information request Democratic Republic of Congo: Documentation Voter Card	Home Office
2.	13 May 2022	DRC: President Tshisekedi Visits Lubumbashi, capital of Katanga	AFP
3.	8 May 2022	Lamuka's march was dispersed	Topcongo.fm
4.	5 May 2022	Response to an information request Democratic Republic of Congo: Returns update	Home Office
5.	5 May 2022	Response to an information request – Democratic Republic of Congo: Documentation – voter card	Home Office
6.	4 May 2022	Response to an information request Democratic Republic of Congo: Political update: November 2021 to April 2022	Home Office
7.	May 2022	Democratic Republic of Congo – April 2022	International Crisis Group, "CrisisWatch"
8.	Updated 24 April 2022	World Factbook (DRC)	US Central Intelligence Agency
9.	12 April 2022	2021 Country Reports of Human Rights Practices: Democratic Republic of Congo	US State Department
10.	April 2022	Democratic Republic of Congo – March 2022	International Crisis Group, "CrisisWatch"
11.	25 March 2022	Democratic Republic of Congo: Background and US Relations	US Congressional Research Service
12.	23 March 2022	Democratic Republic of Congo: prevalence and availability of fraudulent identity, administrative and legal documents (2020 - March 2022)	Immigration and Refugee Board of Canada
13.	30 January 2022	Analysis of the human rights situation 2021	UN Joint Human Rights Office in the Democratic Republic of Congo, MONUSCO - OCHR
14.	21 March 2022	United Nations Organization Stabilization Mission in the Democratic Republic of Congo –Report of the Secretary-General (S/2022/252)	UN Security Council

15.	March 2022	Amnesty International Report 2021/2022 (Democratic Republic of Congo)	Amnesty International
16.	March 2022	Democratic Republic of Congo –February 2022	International Crisis Group, "CrisisWatch"
17.	4 March 2022	Spymaster's arrest heralds purge	Africa Confidential
18.	Updated 24 February 2022	Returns and detention datasets	UK Home Office
19.	Updated 26 May 2022	User Guide to: Immigration Statistics	UK Home Office
20.	February 2022	Democratic Republic of Congo –January 2022	International Crisis Group, "CrisisWatch"
21.	3 January 2022	DRC: After Consultations, Katumbi remains in the Sacred Union by following "the path of the majority"	Politico
22.	January 2022	Democratic Republic of Congo – Events of 2021	Human Rights Watch
23.	January 2022	Democratic Republic of Congo –December 2021	International Crisis Group, "CrisisWatch"
24.	2022	Democratic Republic of Congo	Reporters Without Borders
25.	30 December 2021	Martin Fayulu accuses Félix Tshisekedi of having "mortgaged" the sovereignty of the DRC by signing agreements with Uganda and Rwanda	Mediacongo.net
26.	26 December 2021	Tshisekedi – Katumbi - Bemba: a renewed but unequal alliance within the Sama government	Congo Study Group
27.	23 December 2021	RDC: Le Remaniement dans l'armee congolaise se fait attendre	Afrikarabia
28.	21 December 2021	DRC 2023 Elections: JP Bemba Reframes Andre Tshimanga	Info Congo Virtuel
29.	19 December 2021	Ground Floor: Katumbi in the Trap of the Union Sacred	Afrikarabia
30.	13 December 2021	RDC: de nouveaux dirigeants a la tete de l'ANR	La Libre Afrique
31.	9 December 2021	Congo's President has not kept his word	The Economist
32.	7 December 2021	Ground Floor: Freedom Provisional for Kamerhe	Afrikarabia
33.	6 December 2021	Albert Yuma removed as president of Gécamines	Let Go
34.	3 December 2021	DRC-Uganda: Civilians must be protected during joint military operations	Amnesty International
35.	December 2021	Democratic Republic of Congo – November 2021	International Crisis Group, "CrisisWatch"
36.	29 November	CENI -Denis Kadima confirme proche de	Mediacongo.net

	2021	l'UDPS (Albert Moleka)	
37.	19 November 2021	Podcast – Congo Hold-up	Le Soir
38.	3 November 2021	State of Headquarters in ground floor.	Afrikarabia
39.	23 October 2021	DRC: Félix Tshisekedi confirms Denis Kadima at the head of Ceni	Jeune Afrique
40.	10 September 2021	Human Rights Abuses Intensifying in Eastern DR Congo	United Nations
41.	26 August 2021	[RDC, l'année de la rupture] Sama Lukonde Kyenge nommé Premier ministre : les raisons du choix de Tshisekedi	Jeune Afrique
42.	20 August 2021	DRC: Moise Katumbi threatens to leave Union Sacree	Digital Congo.net
43.	18 July 2021	Justice: Félix Tshisekedi nomme trois nouveaux membres a la Cour Constitutionnelle	Radio Okapi
44.	18 June 2021	In front of the United States Embassy young people of Lamuka protest against the law on the CENI	Mediacongo.net
45.	16 June 2021	DRC: Francois Beya, former close to Kabila who became Tshisekedi's advisor for sensitive issues	Jeune Afrique
46.	15 June 2021	Matadi: 64 prisoners die each quarter, according to Minister Puela	Radio Okapi
47.	2 June 2021	"The Basis of the Sacred Union is Corruption", Ados Ndombasi	Mediacongo.net
48.	21 May 2021	The unusual diplomatic tone (Editorial)	Digital Congo
49.	16 May 2021	DRC: Opponent Muzito protests against a policy of "double standards"	RFI
50.	13 May 2021	President *Félix* Tshisekedi arrived in Kolwezi in Lualaba Province	Politico
51.	13 May 2021	Lubumbashi: Felix Tshisekdi Denounces "Wizards" who have secessionist speeches	Politico
52.	11 May 2021	Is the "State of Siege" a Step in the Right Direction?	Kivu Security Tracker
53.	24 April 2021	DR Congo police arrest leader of separatist cult after deadly clashes	Reuters
54.	21 April 2021	DRC: a relative of Tshisekedi elected president of the Constitutional Court	La Libre Afrique
55.	21 April 2021	DRC: Dieudonné Kaluba elected President of the Constitutional Court	Financial Afrik
56.	16 April 2021	National Assembly: deputies "frustrated" after the publication of the government seize Felix Tshisekedi	Actualite
57.	12 April 2021	DRC: Here is the List of the 56 Members of the Sama Lukonde Government!	Zoom Eco
58.	10 April 2021	DRC: Adolphe Muzito takes over the rotating presidency of Lamuka	Radio Opaka

59.	8 April 2021	DRC – New Government: What Kabund promised to deputies	Jeune Afrique
60.	11 March 2021	DRC Political Tensions make hate speech flourish	Afrikarabia
61.	2 March 2021	DRC: the episcopate deplores the “regression” in terms of human rights and justice	La Libre Afrique
62.	2 March 2021	RDC l’épiscopat deplore la regression en matière de droits de l’Homme et de justice	La Libre Afrique
63.	15 February 2021	DRC: Sama Lukonde Kyenge Appointed Prime Minister, Head of Government	Zoom Eco
64.	15 February 2021	RDC: Un Nouveau Premier Ministre	Afrikarabia
65.	13 Feb 2021	DRC – Did Moise Katumbi refuse the post of Prime Minister?	Jeune Afrique
66.	10 February 2021	DRC/ACO: “Du Wenge Musica”. Who of Patrick Bologna and Danny Banza is the real boss of this political party?	Le Grand Congo
67.	30 January 2021	Kongo Central Bundu Dia Mayala activists buried in Songololo	Ouragan.cd
68.	29 January 2021	Stabilising the Democratic Republic of Congo after an Apex Power Struggle	Crisis Group
69.	21 January 2021	Youth Activists Acquitted in Congo	Human Rights Watch
70.	20 January 2021	DRC -what justice reproaches Daniel Ngoy Mulunda	Jeune Afrique
71.	19 January 2021	DRC: The Judgement of the Constitutional Court which weakens Kabila	Jeune Afrique
72.	12 January 2021	What to Watch in Sub-Saharan Africa in 2021	Centre for Strategic & International Studies
73.	2 January 2021	2022: Tshisekedi hyper-président?	Afrikarabia
74.	2021	World Report 2021: Democratic Republic of the Congo	Human Rights Watch
75.	14 December 2020	Félix Tshisekedi moves to take charge	Institute for Security Studies
76.	26 November 2020	Albert Yuma reelected at the head of FEC	Actualite
77.	23 November 2020	DRC: Clandestine Dungeon Case	Zoom Eco
78.	23 November 2020	RDC: affaire cachot clandestin, Kankondesuspend le Directeur général de la DGM	Zoom Eco
79.	23 November 2020	Signing of the Nairobi Accord between Vital Kamerhe and Felix Tshisekedi	GL News
80.	15 October 2020	DRC: appointments to the Constitutional Court are "legal" according to the Attorney General	RFI
81.	12 October 2020	Malnutrition Stalks Congo’s Overcrowded Prisons	Reuters

82.	1 October 2020	Democratic Republic of Congo	UN Geospatial
83.	2 September 2020	RDC: Sur Les Reseaux Sociaux	Jeune Afrique
84.	6 August 2020	Inauthentic Facebook Pages Rebranded to Promote DRC Politician	DFR Lab
85.	22 July 2020	DRC Congo: Authorities Foundering on Rights	Human Rights Watch
86.	19 July 2020	DRC: under pressure from the United States, Felix Tshisekedi carries out a cautious reshuffle in the army	Jeune Afrique
87.	19 July 2020	RDC : sous pression des États-Unis, Félix Tshisekedi procède à un prudent remaniement dans l'armée	Jeune Afrique
88.	13 July 2020	The LAMUKA march dispersed by the police in Kananga	Radio Okapi
89.	13 July 2020	Lamuka march: in Kindu, the police dispersed the demonstrators on the grounds that they would not have respected the itinerary	Actualite
90.	9 July 2020	UDPS March: the police allow the Taliban to pass and disperse the PPRD Militants	Ouragan
91.	30 June 2020	Mineral Concessions: Avoiding Conflict in DR Congo's Mining Heartland	Crisis Group
92.	27 June 2020	DRC: Albert Yuma back in Command of Gecamines with the mission of reaffirming sovereignty of the states over mines	Financial Afrik
93.	23 June 2020	DRC: The National Assembly condemns storming of sacred enclosure of Peoples Palace	Radio Okapi
94.	24 April 2020	Kinshasa 8 dead and 35 wounded during the operation to arrest Ne Muanda Nsemi	Radio Okapi
95.	24 January 2020	DRC - One year since Tshisekedi took office, insecurity and impunity still imperil human rights	Amnesty International
96.	23 January 2020	Averting Proxy Wars in the Eastern DR Congo and Great Lakes	Crisis Group
97.	2020	Country Report on Human Rights Practices: DRC	US State Department
98.	2020	Democratic Republic of the Congo 2020	Amnesty International
99.	2020	World Report 2020: Democratic Republic of the Congo	Human Rights Watch
100.	4 December 2019	A New Approach for the UN to Stabilise the DR Congo	Crisis Group
101.	9 October 2019	Ardent Kabambi discharged by the prosecutor	Mediacongo.net
102.	30 August 2019	Ardent Kabambi Boketshu video the family seizes the CNSA	Congo Profound
103.	26 August 2019	The DRC finally endowed with the Government of democratic alternation	Digitalcongo.net

104.	11 July 2019	Why do DRC citizens report such high levels of corruption	Voices of Transparency
105.	16 June 2019	DRC: Francois Beya, former close to Kabila who becomes Tshisekedi advisors for sensitive issues	Jeune Afrique
106.	16 June 2019	RDC : François Beya, ancien proche de Kabila devenu conseiller de Tshisekedi pour les dossiers sensibles	Jeune Afrique
107.	20 March 2019	DRC: Justin Inzun Kakiak, the new boss of the ANR, will he embody a real change?	Jeune Afrique
108.	20 March 2019	RDC : Justin Inzun Kakiak, le nouveau patron de l'ANR, incarnera-t-il un vrai changement ?	Jeune Afrique
109.	2 March 2019	Arrest of Vital Kamerhe in the DRC	TV 5 Monde
110.	25 January 2019	DRC: Vital Kamerhe Appointed Chief of Staff to President Felix Tshisekeidi	Matininfos
111.	2019	Country Report on Human Rights Practices: DRC	US State Department
112.	17 July 2018	Democratic Republic of Congo: Voter cards, their appearance, security features and uses; requirements and procedures for obtaining a voter card (2014 - July 2018)	Immigration and Refugee Board of Canada
113.	21 March 2017	Kamuina Nsapu Insurgency Adds to Dangers in DR Congo	Crisis Group
114.	28 February 2017	Report on Human Rights violations in the DR Congo in the context of the events of 19 December 2016	Monusco
115.	11 August 2016	Is Cleaning "Bilulu" out from the Bedrooms to Living Room Back Again?	The Eastern Congo Tribune
116.	22 November 2015	Democratic Republic of Congo -treated like criminals	Amnesty International
117.	22 October 2014	Country Policy Bulletin - DRC	Home Office
118.	June 1993	Zaire, Inciting Hatred, Violence Against Kasaiens in Shaba	Africa Watch
119.	Undated	Congo's Tshisekedi Appoints new PM, further sidelining Kabila	Reuters
120.	Undated	DR Congo police arrest leader of separatist cult after deadly clashes	Reuters
121.	Undated	DRC: Here is the history of the duplication of the ACO "Avenir duCongo" party of ambassador Dany Banza	www.7sur7.cd
122.	Undated	How we work – ISS Africa	Institute for Security Studies
123.	Undated	Staff and consultants – ISS Africa	Institute for Security Studies
124.	Undated	Preventing War. Shaping Peace	Crisis Group
125.	Undated	Everything you need to know about human rights in Democratic Republic of the	Amnesty International

		Congo	
126.	Undated	Human Rights Report	Monusco
127.	Undated	DRC: A. Kabambi's wife claims her husband's innocence and calls on the authorities to release him because his health is deteriorating	www.7sur7.cd
128.	Undated	Youtube Links	https://youtu.be/2JWdfrCmHBc
129.	Undated	Au Congo-Kinshasa, la bataillepour les primes empoisonnel'armée	Afrique XX1
130.	Undated	Complete Database: managed migration 1.First permits by reason 2.All valid permits by reason on 31 December of each year 3.Enforcement of Immigration Legislation: (a)Third country nationals refused entry at the external borders annual data (rounded) (b)Third country nationals found to be illegally present annual data (rounded) (c)Third country nationals ordered to leave -annual data (rounded) (d)Third country nationals ordered to leave by citizenship, age and sex quarterly data (rounded) (e)Third-country unaccompanied minors ordered to leave, by citizenship, age and sex of the minor quarterly data (rounded) (f)Third country nationals returned following an order to leave annual data (rounded) (g)Third-country nationals returned following an order to leave, by type of return, citizenship, country of destination, age and sex quarterly data (h)Third-country unaccompanied minors returned following an order to leave, by type of return, citizenship, country of destination, age and sex of the minor quarterly data (rounded) (i)Third-country nationals who have left the territory by type of return and citizenship (j)Third-country nationals who have left the territory by type of assistance received and citizenship (k)Third-country nationals who have left	Eurostat

		the territory to a third country by type of agreement procedure and citizenship (l)Third-country nationals who have left the territory to a third country by destination country and citizenship 4.Residence permits by reason, length of validity and citizenship: (a)First permits by reason, length of validity and citizenship (b)First permits issued for family reasons by reason, length of validity and citizenship (c)First permits issued for education reasons by reason, length of validity and citizenship (d)First permits issued for remunerated activities by reason, length of validity and citizenship (e)First permits issued for other reasons by reason, length of validity and citizenship (f)Change of immigration status permits by reason and citizenship (g)All valid permits by reason, length of validity and citizenship on 31 December of each year (h)Long-term residents by citizenship on 31 December of each year (i)Single Permits issued by type of decision, length of validity (j)Long-term residents among all non EU citizens holding residence permits by citizenship on 31 December (%) (k)Long-term residence permits issued during the year (l)First permits issued for family reunification with a beneficiary of protection status (m)Permits valid at the end of the year for family reunification with a beneficiary of protection status 5.Residence permits by reason, age, sex and citizenship (a)First permits by reason, age, sex and citizenship (b)All valid permits by age, sex and citizenship on 31 December of each year (c)Long-term residents by age, sex and citizenship on 31 December of each year	

		6.EU Blue cards (a)EU Blue Cards by type of decision, occupation and citizenship (b)Admitted family members of EU Blue Cards holders by type of decision and citizenship (c)EU Blue Cards holders and family members by Member State of previous residence 7.Residence permits for intra-corporate transfer (a)Intra-corporate transferee permits issued, renewed and withdrawn by type of permit, length of validity and citizenship (b)Intra-corporate transferee permits issued by type of permit, economic sector and citizenship (c)Intra-corporate transferee permits issued by type of permit, length of validity, transferee position and citizenship 8.Authorisation for the purpose of the seasonal work (a)Authorisations for the purpose of seasonal work by status, length of validity, economic sector and citizenship (b)Authorisations issued for the purpose of seasonal work by economic sector, sex and citizenship 9.Residence permits Students and Researchers (a)Authorisations for study and research by reason, type of decision, citizenship and length of validity	
131.	Undated	Reciprocity Schedule - Democratic Republic of Congo	US State Department
132.	Undated	Codebook – date for protests/riots for 01 January 2020 – 29 April 2022	Armed Conflict Location & Event Data Project (ACLED)
133.	Undated	Dashboard –Protests and riots for DRC and each of the 26 provinces	Armed Conflict Location & Event Data Project (ACLED)