

H-AM-V2

Heard at Field House  
On 6 May 2004  
Prepared 7 May 2004

**BB (MCDDI- known  
political opponent.) Congo  
Brazzaville CG [2004]  
UKIAT 00223**

**IMMIGRATION APPEAL TRIBUNAL**

Date determination notified:

13 August 2004

**Before:**

**Mr H J E Latter, Vice President  
Dr H H Storey, Vice President  
Mr G H Getlevog**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**and**

**RESPONDENT**

**Representation**

For the appellant:

Ms N Braganza of Counsel

For the respondent:

Mr J Morris, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Secretary of State appeals against the determination of an Adjudicator, Ms M E Lewis, who allowed the respondent's appeal against the decision made on 28 March 2003 giving directions for his removal following the refusal of his claim for asylum. The respondent is a citizen of Congo Brazzaville and in this determination the Tribunal will refer to him as the applicant.

**Background.**

2. The applicant claims to have left Congo Brazzaville on 26 December 2002. He travelled to the DRC and then on to Zambia and Kenya. He said that he arrived in the United Kingdom on 29 January 2003. He claimed asylum on 30 January 2003. His claim was refused for the reasons set out in the Secretary of State's reasons for refusal letter dated 27 March 2003. Removal directions were issued on 28 March 2003. The Adjudicator heard the appeal against this decision on 16 October 2003.
3. The basis of the applicant's claim can briefly be summarised as follows. He was born in Brazzaville on 30 November 1969. In 1993 he took employment as a French teacher in a private school in Bacongo. In August 1994 he joined the opposition party the Mouvement Congolaise pour la Democratie et la Developpement Integral (MCDDI) and until 1997 he was in charge of cultural affairs and youth activities in Bacongo. The youth section was known as the JMCDDI. In his witness statement the applicant describes his duties as educating the youth members to act peacefully without weapons and to have respect for each other. The party leader, Bernard Kolelas, went into exile in 1997. He was Prime Minister at the time when the government was overthrown and the new governing party, the PCT, took control following a military coup.
4. After Kolelas fled the MCDDI stopped functioning in its original form. Michel Mampuya appointed himself head of the party and to attract new members changed its aims. The appellant and those sharing similar views continued to consider themselves as members of the MCDDI but accepted only Kolelas as their leader.
5. On 10 April 2001 Kolelas was due to return to Brazzaville for a conference. This news was announced in the international media but not in the national news. The applicant was asked by Mampuya to convince the youth members that it was not true. On 10 April 2001 Kolelas did arrive at Kinshasa airport but was forced to return to Mali. Supporters had gathered and started to make their way to the airport but they were dispersed by the authorities. On 16 April 2001 the appellant received a summons from the main police station in Brazzaville. The summons also named Jacques Loubou, the President of the Association des Jeunes Congolais pour le Soutien de la Democratie Integral (AJCSDI) which the applicant had joined in 1998. They were both told not to organise any further marches. They were reminded that if they became stubborn they would "disappear" and that the police knew where they lived.
6. In June 2001 the applicant travelled to a music festival in Benin. Before boarding the plane he was questioned about his reasons for travelling to Cotonou and asked if his real reason for going was to meet Kolelas. He replied that he was going to a music festival. During his stay in Benin he was aware that he was followed by a man in civilian clothing whom he recognised from Brazzaville airport.
7. In March 2002 Denis Sassou-Nguesso was elected President. In the applicant's view the elections were corrupt. According to the national

news he received 80% of the votes whereas according to the applicant the population of Pool and the southern population of Brazzaville represented around 40% of the total population of the country and many people did not take part in the election because they were not provided with voting cards.

8. The President did not formally take up office until August 2002 and a large celebration was arranged for his inauguration which coincided with national Independence Day. The applicant wrote a short play entitled "Never Again in Congo". The intention was to demonstrate what the Pool population had been going through. It was hoped that the play would stop any further civil war amongst the population and was particularly aimed at the Pool population. The aim was to ensure that the leaders were aware of the kind of thing that had been happening in Pool: torture, destruction of homes, arbitrary arrests and kidnappings. The actors in the applicant's play were between the ages of 13 and 15. The idea was that if children played the parts it would be more hard-hitting.
9. Late at night on 18 August 2002 policemen arrived at the applicant's home. He was arrested, detained and put in a prison cell. He was asked why he had shamed the President. His hands were tied behind his back. A plastic bag was burnt and put on his legs. He still has the scars from the burns. He was detained until 6 November 2002. He was beaten, fed with what was called the dogs' diet, water, a tiny amount of meat and dry bread. He would be given an unopened can and was expected to open it with his own teeth. He was forced to perform oral sex on the guards.
10. On 6 November 2002 he was released. He was made to sign a piece of paper and then given a document which was a bail letter/warrant. This document said that he was charged with defamation, complicity and producing slanderous documents. He was then allowed to leave. When he arrived at his home he found that it had been burnt to the ground. He went to his parents' home where his wife and son were. He decided it would be safer to stay with a friend. He wrote a letter of protest to the President which was posted on 11 November 2002. Later he learnt that Jacques Loubou had disappeared. He later saw a newspaper which had his name in it accusing him of defamation against the President. Arrangements were made for him to leave Congo Brazzaville. He travelled across the river to the DRC by fishing boat. He spent a month in Kinshasa and travelled by lorry to Zambia. He then flew to Nairobi and took a further flight to the United Kingdom.

### **The Adjudicator's findings.**

11. The Adjudicator accepted the credibility of the account given by the applicant. It was supported by medical evidence and by documentary evidence and was consistent with the background reports. There is no challenge in the grounds of appeal to these findings. The Adjudicator accepted that the applicant had been persecuted in the past because of his political opinions. She then considered whether there would be a

risk of similar treatment on return. She commented that the background material showed that the Cobras were responsible for most human rights abuses during the conflict although there was also evidence that the security forces were responsible for extrajudicial killings, summary executions, rapes, beatings and physical abuse of detainees. The Pool region had been the target of widespread human rights abuses. The political and judicial institutions that should provide protection were not effective.

12. She accepted that there was a risk of arbitrary detention and vengeance attacks to those suspected of being connected with opposition or ethnic groups opposed to the government. There was also a risk from groups operating at arms' length from the official judicial and police process. The Cobras were now integrated into the security forces and had played a central role in a recent crackdown against the Ninjas who were associated with Kolelas and the MCDDI. Given the continuing hostility between the government and the Ninja militia and the targeting of those seen to be Kolelas supporters, the Adjudicator accepted that there remained a real risk that the applicant would face further ill-treatment and persecution by the security forces on return. His appeal was allowed on both asylum and human rights grounds.

### **The grounds of appeal.**

13. In the grounds of appeal the Secretary of State argues that the Adjudicator erred in law by failing properly to consider the objective evidence when assessing whether there would be a risk on return. The grounds refer to the objective evidence and in particular to paragraph 4.65 of the CIPU Report which said that there had been a break through in the drive for peace and that Ninja spokesman had agreed to end hostilities. There was an amnesty offer for rebels. In paragraph 6.24 the MCDDI were described as free to participate in the political arena. Many former opposition political figures had returned to Brazzaville and resumed their political activities. Paragraph 6.26 said that there were no reports of politically motivated harassment of political parties during the electoral process. Had these matters been taken into account, the Adjudicator would not have allowed the appeal.
14. At the hearing before the Tribunal Mr Morris relied on the CIPU Report October 2003. Ms Braganza produced a bundle of documents (A) paginated 1-116 together with a further report dated 7 November 2003 (A1), two further reports prepared by Paul Melly (A2/3) with a list of his qualifications (A4) and a further report from Ticky Monekosso dated 8 August 2003 (A5). Mr Morris produced the Tribunal determination in **MP (Congo Brazzaville) [2004] UKIAT 00002.**

### **Submissions.**

15. Mr Morris submitted that the Adjudicator had not taken proper account of the peace initiative and amnesty referred to in paragraphs 4.57-66 of the CIPU Report. He accepted that the facts were very different from those in **MP (Congo Brazzaville)** where there had been an adverse

credibility finding. The issue was whether there would be a risk on return. The Adjudicator had failed to consider the improvement in the situation in Congo Brazzaville. In these circumstances there would not be a real likelihood that the authorities would have any adverse interest in the applicant.

16. Ms Braganza submitted that the Adjudicator had reached a decision which was properly open to her on the evidence. She had considered the applicant's circumstances in the light of the background evidence. She submitted that the further evidence indicated that even though there may be some improvements, someone in the position of the applicant would still be at risk. She referred the Tribunal to the US State Department Report and to the supplementary reports from Paul Melly. There was also direct confirmation from Bernard Kolelas that the applicant would be at risk on return: A115-6.

### **The background evidence.**

17. The background to the current situation in Congo Brazzaville is set out in paragraphs 4.1-66 of the CIPU Report and paragraphs 3.1-13 of Paul Melly's generic background report dated 27 February 2002. The country has a history of political violence and deep ethnic division and experienced a brutal civil war in 1993-4 and from 1997 to 1999.
18. In August 1992 following multi-party presidential elections, Pascal Lissouba was elected President defeating Denis Sassou-Nguesso. The political conflict between Lissouba and his opponents including Bernard Kolelas spilled over into civil war. The 1997 conflict was triggered by Lissouba's attempt to neutralise the militia of his political rival Sassou-Nguesso. Kolelas was appointed Prime Minister by Lissouba. The civil war continued until Sassou-Nguesso's forces captured Brazzaville and Pointe Noire. In October 1997 Sassou-Nguesso was sworn in as President and Lissouba and Kolelas fled the country. Violent clashes continued through 1998 between the Ninja militia who are loyal to Kolelas and government forces loyal to Sassou-Nguesso. In December 1998 there was a full-scale battle for Brazzaville. In November 1999 the government announced that it had reached an agreement with the militia loyal to Lissouba and Kolelas for a ceasefire and a general amnesty but this did not include opposition leaders in exile.
19. There was a national dialogue in March/April 2001. According to Paul Melly some opposition members were allowed to attend but their views were ignored. A referendum in January 2002 paved the way for the restoration of nominally constitutional rule. Presidential elections were held on 10 March 2002. The first round of elections to the National Assembly took place on 26 May 2002 and the second round on 14 June 2002. By this stage there was a resurgence of violence. Ninja forces launched a series of attacks around the Pool area and fighting between them and the government army escalated to encompass large areas of the Pool province. There was an attack on Brazzaville in June 2002. Fighting continued in the Pool area. In January 2003 the United

Nations reported that 60,000 people had fled their homes in Pool as a result of the conflict. In November 2002 a plan was presented to the government to end hostilities. On 19 November 2002 the President ordered the military to create a humanitarian corridor to enable Ninja rebels to leave the forests in Pool and pass safely through Brazzaville in order to disarm. In January 2003 the President's party said it was willing to meet with Pasteur Entoumi, the leader of the Ninjas, on condition that he lay down his weapons and abandon violence. On 17 March 2003 the government and the Ninjas issued a declaration in Brazzaville. The Ninja spokesman agreed to end hostilities, disarm fighters and to enable the state to restore authority in Pool. On 26 March 2003 the government and Ninjas exchanged prisoners as part of an agreement to restore peace to the country.

20. The CIPU Report confirms that the Congolese government's human rights record is poor and that security forces have been responsible for extrajudicial killings as well as summary executions, rapes, beatings and the physical abuse of detainees and citizens: paragraph 6.1. There are credible reports that the government deployed undisciplined forces during 2002 in the Pool region. In January 2003 the National Assembly adopted a law to create a National Human Rights Commission. This is a requirement of the Constitution that came into force in August 2002: paragraph 6.8. Human rights NGOs have cautiously welcomed this Commission but wait to see how effectively it will work. In the section dealing with freedom of assembly and association, it is said that the government generally respects the freedom to hold demonstrations and public meetings. The law permits associations and political parties to form freely and no political parties were banned or suspended in 2002. The MCDDI was free to participate in the political arena but it failed to win any seats in Parliament and only four in the local elections. From exile, both Kolelas and Lissouba called on their respective parties to boycott the legislative elections although that call was rejected by party leaders in Brazzaville who decided to contest the election. Many former opposition political figures have returned to Brazzaville and have resumed their political activities.
21. Writing in February 2002 Paul Melly describes the risks to individuals in paragraph 9 of his report dated 27 February 2002 A65. He said the greatest risk to returning individuals suspected of connections to the opposition or ethnic groups thought to be opposed to the current government lies in the risk of arbitrary detention and revenge attack possibly by groups operating at arm's length from official judicial and police process. Because of the highly ethnicised nature of Congolese politics, natives of regions such as Pool are perceived by the authorities as potential supporters of opposition parties. He says that it is not certain that returnees of MCDDI persuasion will be killed or detained but there is no clear evidence that they would be safe: paragraph 9.6. Returnees who are not prominent political figures in their own right but are known to have party connections to the opposition do remain a potential target for unofficial revenge action by Cobras or other "deniable" pro-government elements: paragraph 9.8.

22. There are further reports from Paul Melly dated 15 July 2002 and 7 August 2003 dealing with specific claimants. There is a further general background report dated 5 August 2003. In the 7 August 2003 report Paul Melly refers to the Peace Accord signed in March 2003. This confirmed that significant warfare had stopped although some renegade Ninja groups had been slow to abandon arms. He commented that it remained to be seen whether this peace would endure over a longer period. Bernard Kolelas had recently appealed for the right to return home for reconciliation talks but the response from the President was that he would have to face the judicial authorities if he returned. This report at pages 2-4 accepts that the March 2003 peace agreement between the government and the Ninjas may gradually defuse tensions and improve the treatment of ethnic groups and individuals regarded as sympathetic to the opposition but this was likely to be a gradual process. It is his view that, despite government talk of reconciliation, the authorities have not undertaken serious efforts to protect the rights of people or to crack down on human rights abuses by the Cobras, the pro Sassou-Nguesso militia whose members are partially integrated into the official forces. The peace agreement is also referred to in the report from Ticky Monekosso. She said that recent events in Pool have offered signs that violence in Congo may be waning but sustaining peace in such a ravaged country would be a challenge of considerable measure. Many Ninjas have refused to relinquish arms and those who have demobilised are complaining that they have yet to receive tools or seed for farming: see paragraph 6.1.
23. The Tribunal have been referred to the determination in **MP (Congo Brazzaville)**. That appeal related to a claimant who was not likely to be regarded as an individual with a history of grassroots political activity and he had had only very limited involvement with the MCDDI. The Tribunal was not satisfied that in the light of the amnesty and the peace agreement that there was any serious likelihood that being a member of the Lari ethnic group would lead to persecution or ill-treatment. There was no reason to believe that the claimant's previous activity with the MCDDI and his family connection with someone who was a bodyguard of President Lissouba would increase the risk for him. The claimant's activities with the MCDDI had been between June 1996 and October 1997 when he was aged 16-17. The Tribunal did not believe that the low level activities with which he had been involved would have led to him being noticed by either the authorities or opposition groups. However, the facts of the present appeal are very different and the Tribunal has more recent background evidence to consider.

### **The Tribunal's conclusions.**

24. Looking at the background evidence as a whole, the Tribunal is not satisfied that past or present membership of an opposition party including the MCDDI would lead without more to a real risk of persecution on return to Congo Brazzaville. These parties continue to function although it seems equally clear they are effectively excluded from any real chance of obtaining power and influence. However, in our

judgment the evidence does support Paul Melly's view that there continues to be a danger for some political opponents of the current regime. Framing this in terms of the principles we have to apply under the refugee and human rights conventions we consider that the assessment of whether there is a real risk depends upon the individual's background and profile including in particular the extent of his political involvement and whether he has or is likely to come to the attention of the authorities.

25. The applicant is someone who has been the victim of persecution by the present regime in Congo Brazzaville. He was detained on 18 August 2002 and was the victim of ill-treatment and torture until his release on 6 November 2002. This was followed by an accusation that he had defamed the President. This accusation and his detention arose from the play he had put on at the inauguration ceremony. The implied criticism of events in Pool did not go unnoticed and led to his detention and ill-treatment. The appellant followed this up after his release by writing a letter to the President. The response to this appears to have been renewed interest in him by the authorities evidenced by the newspaper article and the search warrant.
26. It is argued that the peace initiative and declaration issued in March 2003 have changed the situation so that the applicant would no longer be at risk on return. In our judgment it is too early to draw any firm conclusions about this peace agreement which in reality is a cessation of hostilities. The political situation in Congo Brazzaville has been exceptionally volatile since 1992 and there is no indication in the background evidence that the current government is becoming more tolerant of effective political opposition. The problem for this applicant is that his activities have come to the attention of the Congolese authorities at the highest level. He is not just someone who has supported or had connections with the MCDDI but he has known anti-government views because of the play at the inauguration ceremony and his subsequent letter. Looking at the evidence as a whole, the Tribunal is satisfied that the Adjudicator was fully justified in her findings that the applicant would be at real risk of persecution on return to Congo Brazzaville
27. For these reasons, this appeal by the Secretary of State is dismissed.

**H J E LATTE  
VICE PRESIDENT**

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