

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Field House **Determination Promulgated**
On 11 January 2007 and at Birmingham on 18 **On 13 March 2007**
October 2006

Before

**SENIOR IMMIGRATION JUDGE GOLDSTEIN
DESIGNATED IMMIGRATION JUDGE FRENCH
MRS G GREENWOOD**

Between

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Claire, Counsel
For the Respondent: Mr J Jones, Senior Home Office Presenting Officer

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.

DETERMINATION AND REASONS

1. The Appellant, born on 23 December 1962, is a citizen of the Democratic Republic of Congo (DRC). He appeals against the decisions of the Respondent, respectively dated 18 and 25 May 2006, refusing to him the grant of asylum under paragraph 336 of HC 395 (as amended) and leave to enter the United Kingdom.

2. The brief immigration history of the Appellant is that he arrived in the United Kingdom on 31 March 2006 and claimed asylum on arrival.

The Claim

3. The Appellant's claim, at its most extensive as revealed in his various accounts, can be summarised as follows. He was born in Kananga in the Province of Western Kasai, where he subsequently undertook a course in Nursing for a period of three years.
4. The Appellant is a Christian whose ethnic group is Muluba.
5. The Appellant met and married his wife according to traditional custom in 1995. She was from the same Province. The couple have three children. The Appellant's parents are now deceased. The Appellant's wife and children and two siblings, a brother and sister, were still living in the DRC at the time that he left the country.
6. He claims to be a member of the Union for Democracy and Social Progress (UDPS). He became involved with the UDPS's activities as a supporter in 2003 and became a member in 2005. As a supporter, his role involved taking part in various peaceful demonstrations to express his political views to the Government and the rest of the country.
7. It is the Appellant's claim that once he became a member in 2005, his role changed, in that he was involved in running a Party cell and that he was offered the post of Secretary of one of the Parties' local sub-cells, because he had the appropriate "militant" skills and was able to deliver what the Party expected. His role as a Secretary involved compiling reports on sub-cell activities of the Party in the Bandundu Province.
8. In that regard, the Appellant had moved from Western Kasai to Idiofa Territory, part of the Kawilu District, Bandundu Province in 1999, because his studies were more affordable in Bandundu.
9. The Appellant described his role as educating the population and Party sympathisers about political developments in the country and the Party's position in relation to the actions of the government in the DRC at the time. He also organised meetings and was involved in promoting the Party through speaking to people, as there were insufficient resources to pay for leaflets and other materials.
10. The Appellant claimed to have carried out his role within the Party until 30 June 2005, when he was arrested by agents of the authorities whom he believed were posing as policemen. He was making his way towards the meeting point of the demonstration that he claimed had received official sanction, when stopped by these agents. It was the Appellant's account that he and others were detained and arrested and he was forced to lie down inside a car. He had no clear idea as to how long he was detained or where he was being sent because the authorities:

“... had changed me from one cell to another every week or so”.

11. It is the Appellant’s account, that whilst in prison, he was told that he had no rights because he was disrupting the peace of the country. He was only allowed to have meals every other day and would on occasions go for days without food. Further, access to water was very limited. He was deprived of using the toilet when he needed it. Many of his colleagues were tortured and beaten to death.
12. The Appellant claims that on 15 January 2006, he escaped from prison and he described the circumstances of the account in his statement of 12 April 2006 as follows:

“On 15 January 2006 when I escaped from the prison, another prisoner tried to escape but was caught. The guards then came and asked, who did not have family in Kinshasa and as I did not and had also been a good prisoner, they assigned me to look after the others. This is because they believed that I would not cause any trouble like the other prisoners.

On the same day, I was asked by a guard to go and buy some drinks. The place where I was detained was just down the road from the shop where the guard wanted me to go. When I got there just by the kiosk, there was a man waiting for me who told me he was one of my people, from my political party. After querying where I was from, he took me to a car and we left towards a house where I was to spend the night.”

13. The Appellant crossed the Congo River and ended up in Brazzaville where he stayed for one and a half months, during which time:

“I could not get out of the house and I was told to be discreet”.

14. The Appellant left Brazzaville with the same person who had brought him there, and flew to Benin. At his Screening interview, the Appellant explained, that after a few days in Benin, he was taken on another flight to the Cote d’Ivoire where they stayed for about seven days before travelling to Tunisia. After remaining in Tunisia for a few hours he and the agent travelled to London.
15. It was the Appellant’s account that he tried to find out why he was being helped and who was providing the assistance with which he was provided. He was told he was better off not to ask any questions.
16. On arrival in the United Kingdom on 23 April 2006 the Appellant claimed asylum.
17. The Appellant claimed that if returned to the DRC, he feared that he would be killed by the DRC authorities as a member of the UDPS.
18. In his Letter of Refusal dated 18 May 2006, the Secretary of State stated that the numerous irregularities with regard to the Appellant’s account of events led him to believe that he had not come to the adverse attention of the DRC authorities

and was not detained by them prior to travelling to the United Kingdom. Such irregularities were largely predicated on what the Secretary of State mistakenly believed, (see post), was the Appellant's claim to have attended a UDPS march on 30 June 2005 in Kinshasa that the Appellant had wrongly claimed had the permission of the local Kinshasa authorities. The Secretary of State did not accept that the Appellant was a high profile active member of the UDPS or that he was involved with the UDPS in the manner he had claimed. This strengthened the Secretary of State's belief that the Appellant was of no interest to the DRC authorities due to his claimed political activities.

The Proceedings

19. The parties agreed it would be appropriate to consider the position as to the risk to UDPS members/supporters in light of the recent elections in the DRC. The run-off was due to take place on 29 October 2006 and it was thus agreed that we would proceed to hear the oral evidence, following upon which, the hearing would be adjourned part-heard for submissions only, for which purpose the Panel would sit at Field House and the parties would address us by video link from Birmingham. In this regard, we directed that the parties serve upon the Tribunal and each other, no later than twenty one days before the restored hearing, further skeleton arguments and any additional objective material on which they sought to rely, arising from the aftermath of the run-off elections in the DRC.
20. We informed the parties, that we would prepare a typed contemporaneous record of the day's hearing with copies provided to each Panel member, so as to ensure that our memories were fully refreshed of the day's proceedings prior to the reconvened hearing.
21. The Tribunal heard the oral evidence of the Appellant and subsequently at the reconvened hearing at Field House on 11 January 2007, oral submissions from both representatives, all of which are fully set out in our Record of Proceedings.
22. The Tribunal also took account of the following documents placed before us:
 1. The Respondent's bundle, which is described at PF.1;
 2. The Appellant's bundle, and a further bundle with updated background material served upon the Tribunal by the Appellant's solicitors with their letter of 21 December 2006 including; letters with translations purportedly from the UDPS and the Appellant's friend, respectively dated 15 July 2005 and 5 May 2006 together with certified translations; a further letter from the UDPS in London, dated 25 September 2006;
 3. Country of Origin Information Reports (COIR) on the Democratic Republic of Congo dated April and 27 October 2006.
 4. Tribunal determinations in:

VL (Risk-Failed Asylum Seekers) Democratic Republic of Congo CG [2004] UKAIT 00007

AB and DM (Risk Categories Reviewed – Tutsis Added) DRC [2005] UKAIT 00118

MK (AB and DM Confirmed) DRC CG [2006] UKAIT 00001.

23. We drew to the parties' attention copies of recent documents comprising:

The International Crisis Group Report 'Securing Congo's Elections: Lessons from the Kinshasa Showdown' dated 2 October 2006.

A Freedom House Report 'Freedom in the World: Congo, Democratic Republic of (Kinshasa)' dated 6 September 2006.

US Committee for Refugees and Immigrants Report 'World Refugee Survey 2006: Congo-Kinshasa' dated 14 June 2006.

The Amnesty International Report 2006 for the DRC dated 23 May 2006.

Two BBC News Reports dated respectively 25 July and 5 September 2006.

The UN Integrated Regional Information Networks Report 'Congo-Kinshasa: Counting the Casualties after Kinshasa Battle' dated 25 August 2006.

UK Foreign and Commonwealth Office Report 'Human Rights Annual Report: Democratic Republic of Congo' dated 12 October 2006.

The United Nations Mission Report – Democratic Republic of Congo (MONUC) 'Monthly Human Rights Assessment September 2006'.

A one page extract from a special report of OHCR dated 27 September 2006.

We arranged for copies of these documents to be provided to the parties' representatives.

24. We ascertained that the Appellant was satisfied with the interpreter through whom he gave his evidence in French.
25. The Appellant began his evidence by adopting his statement of 18 April 2006 and the answers that he gave at interview on 9 May 2006 as his evidence in chief.
26. Mr Claire handed to us a set of two original photographs, copies of which appeared in the Appellant's bundle. The Appellant claimed that they depicted him at a house in Idiofa on 30 June 2005 where the authorities had initially

taken him following his arrest. The photographs purportedly showed the Appellant, who was dressed all in white, about to be hit by a soldier holding in an upright hand what appeared to be a belt.

27. The Appellant was cross-examined by Mr Jones. There was a brief re-examination on the part of Mr Claire.

28. The Appellant told us that he could not remember the circumstances under which the photographs were taken. He did not know the identity of the photographer and continued:

“When I asked through talking to a friend who facilitated this evidence for me he told me this was facilitated by our party who sent this to me”.

29. The Appellant said that the photographs had been sent to him by his nephew who had received them from the UDPS. He did not enquire of his nephew as to how the Party had obtained the photographs; in fact it was through a friend that he had obtained this evidence who had contacted him because the Party would not provide evidence to anyone other than a member of the family. The Appellant was not in direct contact with his nephew save through his friend who could be reached on his telephone.

30. The Appellant told us that he was not in direct contact with his family as they had no telephone but:

“My friend goes to where they are”.

31. The Appellant’s friend had told him that:

“.. in any case the situation was not good since I had fled... I asked him to tell me about the situation and some details. I mean as my wife went back to her place there is no fixed abode and following the fire at my house my niece was burned’.

32. When cross-examined as regards the photographs, the Appellant was unable to explain why the date 15 January 1990 appeared on each of them. His friend who obtained the photographs had no idea as to how they came into the possession of the UDPS. Indeed, the Appellant told us:

“No, he cannot have an idea, I asked him for evidence, proof. I said I was arrested. He sent them to me.”

33. The Appellant told us that the UDPS had given the photographs to his nephew in June. In that regard, he referred us to his friend’s letter from Idiofa and the DHL envelope in which he claimed the letter was enclosed together with the photographs. When asked as to when the Appellant’s nephew obtained the photographs from the UDPS he responded:

“I do not know. I have the photographs. It is not up to me to ask about the date, time or place”.

34. The Appellant repeated that he had been demonstrating on 30 June 2005 in Idiofa. Following his arrest he was put in a house and was beaten.

35. He had been “grabbed” in the course of fleeing, brought to the house where the photographs were taken. Upon arrest he saw other people being put into similar vehicles. He was told:

“You are a leader, for everything you do with this movement you will pay. “

36. He was put in a vehicle on his own.

37. The Appellant was directed to the photographs and to the fact that the top photographs depicted a white chair at the top of the stairs, with nothing on it. In that regard the Appellant responded:

“Yes, I can see it is on its own. As for me I was not coming from the stairs but from another part there.

When they grabbed me they made me come out from the stairs underneath from the cellar and this is the door I was coming through” (the Appellant pointed to the door depicted in the upper photograph). “When I was arrested they opened it and pushed me in, made me go in. By now when I was coming out they were dragging me to make me go up the stairs”.

38. The Appellant’s attention was drawn to the bottom photograph that was taken from a different angle, from the bottom of the steps. Mr Jones put the following question to the Appellant:

Q. “There are three white chairs in the bottom photograph. Each chair is covered with something. It is from a different angle. Let me spell it out. You say these were the same event. The top photograph shows a chair with nothing on it. The bottom photograph shows the chair with something on it. I say these (photographs) have been stage-managed and taken at different times. What do you say?”

A. “I did not take the photographs. I did not go there to take the photographs I received. What can I say?”

39. The Appellant told us he was taken by a vehicle to a house seven hundred to eight hundred metres away and whilst in the vehicle was beaten up. He explained:

“First, I was made to lie down on my belly in the vehicle. The military police were sat down with their feet on my back, beating me with belts on the head, calves, back.”

40. The Appellant indicated that he had been beaten on the back of his head and his back.

41. The Appellant claimed that his head did not bleed:

“I only had a nosebleed and swelling on my head, body and buttocks”.

42. The Appellant told us that at the house he was locked up, and that:

“Before locking me up they were insulting me.

In the house they locked me up and went away. When they came back they put me in a vehicle.”

43. The Appellant told us, that the place where he and others were living in “was not clean”. When asked if he was further beaten in the house again he repeated:

“When they came they took me and beat me on the head, grabbed me by the hand on my polo shirt.”

Q. “Did they make your nose bleed again?”

A. “No my nose did not bleed again, it was only when they were taking me there.”

44. When asked by Mr Jones as to whether the clothes that the Appellant had worn for the demonstration were the same clothes he wore when he was put in the vehicle at the house to take him to Kinshasa, the Appellant responded:

“No, the clothes I had, the polo shirt inside the shirt was taken.

Shirt and trousers and the polo shirt you see in the photo. The polo was underneath the shirt”.

Q. “The shirt was taken? When?”

A. “Before being put in the vehicle. In fleeing the shirt was ripped from me. It remained in their hands”.

Q. “The shirt was ripped from you at the demonstration?”

A. “When I was arrested.”

Q. “In the van were you wearing the white polo shirt?”

A. “Yes”.

Q. “When you left the house were you still wearing the white polo shirt?”

A. “Yes the same”.

45. Mr Jones invited the Appellant to look at the photograph, and continued:

Q. “You say this was taken as you came out of the house. There is no marking, no blood on the shirt. There is nothing to support your contention that you had a nosebleed, that you were held in a dirty house for hours. I suggest it is wholly implausible for you to leave the house in a whiter than white shirt after your experiences.”

- A. “No, when I was arrested my nose was bleeding. I noticed more bleeding when I was in the vehicle. I was in that position (the Appellant bent forward) so when in that position it is after when wiping myself with my hands I noticed that my tears were mixed with blood. That does not mean that there was blood pouring down”.
- Q. “If you were beaten, kicked, held in a dirty house, blood was drawn, why does the shirt in the photographs have not a blemish?”
- A. “I say clearly if you have not noticed bloodstains on my polo shirt I noticed blood when wiping myself. It was mixed with tears.”
46. The Appellant was questioned as to the difference between joining and becoming a member of the UDPS and in particular, about discrepancies in his account as to the role that he played in the UDPS notably, as between what he said in his witness statement of 12 April 2006 and subsequently at interview.
47. The Appellant maintained that his membership card was taken from him following his arrest.
48. The Appellant was cross-examined as to the varying descriptions he had given as to the exact role he played in the Party and as described in the letters from the UDPS in Idiofa and subsequently in London.
49. With regard to the circumstances under which the Appellant obtained the letter from the UDPS of 25 September 2006, the Appellant explained that he had attended their offices in London on the same date because he had to be identified. The letter was prepared after his interview and he received it two days later. He had been interviewed by a party member, Albert Mukendi, who was “in charge of the immigration of UDPS members in the UK”.
50. When asked if he had made any request for a member of the party to attend the hearing to give evidence, the Appellant told us he had not thought about that and suggested that Mr Mukendi:
- “... would have been the one who would have told me. When I met him he did not mention it”.
51. When asked as to what evidence the Appellant took with him for the interview with Mr Mukendi, the Appellant responded:
- “The evidence came two days later. He (Mr Mukendi) said he would now see the President and send me a letter, you have it”.
- Q. “When you went for the interview did you take any documents about your membership or activities in the DRC?”
- A. “To present to him?”
- Reply: ‘Yes’.

- A. “No I talked to him about the situation. He checked my name. He interviewed me. After the interview I had to wait.”
- Q. “When you were interviewed by Mr Mukendi on 25 September, when asked about documents you said there were none?”
- A. “Yes”.
- Q. “Is it that you wanted the UDPS in London to support your application?”
- A. “No it was simply a way to present myself to the party here so as to be known.”
- Q. “You wanted to be known as a member of the party here?”
- A. “Yes with the authority of the party here”.
- Q. “If that was the reason, why did you take no documentary evidence to prove your membership of the DRC?”
- A. When the evidence letter came I then looked to photocopy it and I could not find a place to do so. I sent it to the solicitor. After I asked if I could be sent a photocopy of this evidence. It was so with that I could prove as I went to see the authorities of the party and up till then I did not have a copy which could facilitate presenting myself to the party.”
- Q. “What prevented you going to the solicitor and getting a copy to take to the party in London?”
- A. “I thought it was not pertinent to bring such evidence as I had not been told that I had to bring such evidence”.
- Q. “Evidence you have had since June included a note from the President of the branch in Idiofa saying that you were a party member and Deputy Secretary? What more pertinent evidence could there be for you to produce to the UDPS in London?”
- A. [No response].
- Q. “You said you did not think it pertinent to bring the letter. It was with your solicitors. Why did you not go to the solicitor’s office and take it to the Party?”
- A. “I have replied. I said I asked those in contact with the authorities of the Party here so I would be known to them. It is then I went there. They did not ask for evidence”.
- Q. “Did you not think it would be a good idea to take evidence?”
- A. “Which evidence?”
- A. “From the President in the DRC which you said you had received in June of 2006”.
- A. “I do not understand”.

- Q. "I will have one more go. You wanted the DPS in the UK to know of your membership in the DRC is that correct?"
- A. "Yes to be known".
- Q. "You were interviewed on 25 September 2006 in London is that correct?"
- A. "Yes I went according to the call".
- Q. "You did not know the man who interviewed you before, is that correct?"
- A. "I talked to him".
- Q. Did you know him before?"
- A. "Not face to face – he had given me his name".
- Q. You had received in June documents from the DRC, is that correct?"
- A. "Yes".
- Q. "In those documents was a letter from the President about your position in the Party."
- A. "As secretary."
- Q. "The letter from the President, why did you not take it with you when you went for interview on 25 September at UDPS in London?"
- A. "I did not have the photocopy. I have explained. I said this in London."
- Q. "The letter was at the solicitors."
- A. "The letter from June I sent him. I did not have a copy."
- Q. "Why did you not go to the solicitors to get the letter for the interview with the UDPS?"
- A. "I would have gone to do so if through the telephone conversation the other person had asked for it."
52. When cross-examined as to the circumstances of his claimed detention and escape, the Appellant was referred to his statement of 12 April 2006 in which he stated that he had no idea how long he was detained. Mr Jones put the following to him:
- Q. "You now tell us that you knew you were detained from 30 June 2005 until 15 January 2006. You earlier relied on and adopted that statement. Why did you adopt it if it was partly wrong?"
- A. "Part of the statement was not wrong. The version I have here does not reflect what you are putting forward. In the French version I said I did not know for how long I had been detained or how long it would be if I did not escape."
- Q. "The statement in the Home Office bundle, to whom was it given?"

- A. "My solicitor in Dover."
- Q. "The solicitor who still represents you?"
- A. "No"
- Q. "Did the solicitor bring a French interpreter?"
- A. "Yes, a lady..."
- Q. "The French statement in your possession was typed for you by the solicitor?"
- A. "Yes".
- Q. "The statement was read over to you in French before you signed the English version".
- A. "There was an oral translation. Asking me questions, typing on a computer. After the paper was in French the interpreter got me to read it and I received the French copy two or three days later. Later on I tried to get in touch to correct mistakes. He said I had to see the interpreter. From the given date the interpreter was not available."
- Q. "To be clear, you were aware of mistakes in the statement?"
- A. "Yes."
- Q. "In the French version?"
- A. "I found many mistakes. The solicitor called. I went to see him. He told me he could not see me because of the interpreter. At reception I was asked to correct some mistakes. I put these mistakes on a piece of paper so as to mention them so they could be corrected. He told me by that time it was too late. He had already sent things. I needed to come before. I had come before and there was in interpreter. As evidence I tried to correct such matters as names of children. They had been put backwards. The place of my marriage was also wrong. "
53. The Appellant maintained that mistakes in the English version of his statement did not appear in the French version.
54. As regards the circumstances of his detention, the Appellant told us that he was moved to various places of detention on an almost weekly basis between June 2005 and January 2006 and detained in Kinshasa. It was by chance that on 15 January 2006, "I was placed in charge of a group of prisoners the prisoners previously held there having escaped that day but later been recaptured".
55. Each week there were different guards.
56. The Appellant told us that on 15 January "Others had been asked to indicate which of them had no family in Kinshasa. The question was asked in the cell". The Appellant continued:

"I put my hand up. I did not see the others do it."

57. Mr Jones continued his cross-examination in this regard as follows:

Q. "The same day you were put in charge you were asked to go and buy drinks?"

A. "Yes".

Q. "Was that the first time you had been asked to do something like that by a guard?"

A. "Yes".

Q. "You went out of the cells on your own to buy drinks?"

A. "He took me with the empty bottles. We went up some steps to a particular level. He showed me a door. He pointed to the shop with his finger."

Q. "You went to the shop on your own?"

A. "A kiosk rather than a shop."

Q. "Did you go on your own?"

A. "He opened the door and said 'there' and I went".

Q. "What happened to the guard whilst you were on your way to the kiosk?"

A. "I do not know. I was looking forward."

Q. "How far was the kiosk from the place you were held?"

A. "The kiosk was somewhere there, distance is quite difficult to estimate, like before that corner". (The Appellant looked out of the hearing room window to a corner on the adjacent road).

Q. "How long was the walk?"

A. "At least two minutes. Not far. When I gave the bottles whilst he was looking for some sugary drink, cola. During that time I was waiting."

Q. "What happened?"

A. "I saw someone who said "Are you the prisoner coming from inside?" He said 'I am one of yours come'."

Q. "What did you understand him to mean".

A. "Someone from my Party."

[Question repeated].

A. "*I understood it must be someone who knew me. I did not know him. I thought it must be someone from my Party.*"

- Q. “The man at the kiosk pointed to a car. It was one of yours. Did you get into the car on your own?”
- A. “He came also”.
- Q. “Was someone else already in the car.”
- A. “Someone. I did not know him.”
- Q. “Was there someone in the driver’s seat when you got in?”
- A. “At some point, yes.”
- Q. “Who was driving the car when you got in by the kiosk?”
- A. “I do not know – the person was there already.”
- Q. “How long were you driving for, before the car stopped at the house referred to in the statement?”
- A. “In any case I have no idea. It is a big city.”
- Q. “The time?”
- A. “I do not know”.
- Q. “Did you enquire of either of the men why you were being helped?”
- A. “To the person outside, yes. I asked him afterwards.”
- Q. “What did he say?”
- A. “He did not want me to ask him questions he said not to.”
- Q. “Did you ever discover why you were helped to escape?”
- A. “Yes, the fact I was outside, he took me to his place.”
- Q. “Have you since discovered how it was he was waiting for you?”
- A. “I do not know. He did not want me to ask questions.”
- Q. “Have you never had an answer why you were being helped or by whom?”
- A. When I asked him the first question who he was his reply was ‘I am one of you’. He did not want me to ask him questions.”

58. The Appellant continued that he had travelled from Kinshasa to Brazzaville with the two men who had helped him to escape. For the avoidance of doubt, this included the man he had met at the kiosk. The Appellant stated that he had stayed in Benin, “A few days, I don’t remember”.

59. At this point, Mr Jones referred the Appellant to his screening interview at A9, where he had indeed stated, that he had stayed a few days in Benin. Mr Jones put to the Appellant the following:

Q. "You also said that in your statement at paragraph 10. Please explain why at the Screening interview on 31 March 2006 you told the Interviewing Officer that you arrived in Benin on 23 March and left the same day for the Ivory Coast."

A. "On the same day I arrived in Benin I went to the Ivory Coast."

Q. "Why did you say that if now you say you stayed a few days?"

A. "Maybe through having forgotten. I know that I went to Benin. I stopped a few days and after the Ivory Coast where I stayed for about a week."

Q. "Did the man accompany you to Brazzaville and then to the Ivory Coast?"

A. "Yes."

Q. "Did he accompany you to Tunisia?"

A. "No."

60. The Appellant told us that since his arrival in the United Kingdom, he had no direct contact with any UDPS members in the DRC. He could not, for example, write to the President Mr Ibungu, who wrote the Idiofa letter of support, claiming that it was, "difficult to send a letter there unless I know someone who has a post box for letters to be sent".

61. When re-examined, the Appellant told Mr Claire that he was not aware the photographs in question were being taken. Mr Claire reminded the Appellant that in cross-examination, the top photograph showed nothing on the chair depicted, whilst the bottom, second, photograph showed clothes upon each of three chairs. When asked to further explain the Appellant responded:

"It is difficult to know the circumstances because I am at the front of the photos. I do not know the moment they were taken".

62. Mr Claire asked the Appellant to read in French the letter purportedly from the UDPS in Idiofa dated 15 July 2005. The Appellant was asked if in the course of his interview with the member of the UDPS in London, informed him as to how he would corroborate or confirm the account that he had given. The Appellant responded:

"No he did not tell me how. I simply did the interview. He had to check and sent me a copy. I sent it to the solicitor".

63. The Appellant continued that he was not told the nature of those checks.

64. The Appellant was reminded that in his statement he referred to the fact that his "militant skills" made it possible for him to do the work of a Secretary and was asked what he meant by "militant skills". He replied:

“I mean election. People are elected, members who lead. The means of designation is through election. On that day normally a member of the cell above has to be present. For example, a member of the section or his representatives, they have to be present. That day, one of them will not be present so when the election takes place the sub-cell assembly is sovereign. So now there are administrative procedures, one of the members had to be present but in the meantime I arrived in my function.

During elections as there was nobody from the higher level, then the decision of the sub-cell assembly by now, it had to be done. The assembly was right to elect me because of the quality of my work.”

65. The Appellant concluded his evidence by confirming the photographs showed him being taken from the cellar of the house to a vehicle to go to Kinshasa.
66. At the resumed hearing at Field House on 11 January, we began by informing the Parties’ representatives that we had read our typed and contemporaneous record of the proceedings at Birmingham so as to fully refresh our memories as to the evidence given on that occasion. As a matter of prudence, we decided that the parties should first address us on matters specifically relating to the substantive appeal, followed by their further submissions in relation to country conditions.
67. Before us, Mr Claire argued that the Appellant was credible.
68. Mr Claire referred us to paragraph 25 of the Secretary of State’s Letter of Refusal, who maintained, that as the Appellant was unaware that the UDPS demonstration on 30 June 2005 was not permitted by the local Kinshasa authorities for safety reasons, the Appellant’s claim that the march on that date was allowed and permitted by the relevant Government department was inconsistent with such information and thus contradicted the Appellant’s claim to be an active member of the UDPS involved in the demonstration.
69. Mr Claire reminded us, that Mr Jones now accepted that the Appellant had made no mention of having participated in a UDPS demonstration in Kinshasa on that date. His account was that he took part on the same day in a UDPS demonstration in Idiofa. He thus invited us to attach no weight to the Secretary of State’s contentions in that regard.
70. Mr Claire maintained that there was no inconsistency in the core element of the Appellant’s account, that he had been a supporter and subsequently an active member of the UDPS. At paragraph 10 of his statement of 12 April 2006 the Appellant had explained that he got involved with UDPS activities as a supporter in or around 2003 and became a member in 2005. In that regard the UDPS letter from their office in London of 25 September 2006 was clear that the Appellant joined the Party on 2 January 2002 and was appointed an Administrative Secretary in charge of the campaign of propaganda for the local Idiofa branch in Bandundu Province on 25 April 2005.

71. Mr Claire, mindful that there was evidence elsewhere that suggested inconsistencies with this claim, asked us not to adopt a strict literal approach and to make a comparison between a person who was a sympathiser and a member of the organisation. It was the Appellant's evidence that he became involved with the party for some years before becoming a member. Mr Claire submitted that a sympathiser or supporter might well feel part of the organisation, but until such a person was given an official role or official membership, he might not see himself as officially recognised. It was clear that the Appellant had no duty to assist the UDPS in any form whilst he saw himself as a supporter and it was only when he was appointed as a Secretary/Deputy Secretary that he saw himself as a fully fledged member of the organisation.
72. Mr Claire referred to various documents in which the Appellant's role in the Party had been variously described as "Deputy/Administrative/ Designated Secretary".
73. Mr Claire referred us to the letter from the President of the UDPS District Kwilu in Idiofa, Celestin Ibungu, and dated 15 July 2005. The letter as translated described the Appellant as a Party member and "Deputy Secretary of the Idiofa Branch from June 2005".
74. Mr Claire reminded us, that in the course of cross-examination, the Appellant maintained that this was an incorrect translation and that "Deputy" was not written in the original French version. In that version the Appellant was described as 'Secrétaire Sous Cellulaire' which had been helpfully translated by the interpreter as "Secretary Sub-cell". Mr Claire submitted that the Appellant should not be penalised for what appeared to be an incorrect translation.
75. Mr Claire reminded us, that the Appellant had been asked as to whether he had ever been a Deputy Secretary and he had explained that he could only be a Secretary in a cell. The Appellant described his role as a Secretary in that sub-cell in particular, taking care of local administrative matters. Mr Claire submitted there was little difference that could be made out as to the Appellant's description of himself as Secretary or Administrative Secretary. The Appellant had described the structure and hierarchy of the local sub-cells. The sub-cell was lower in rank to the main cell and where nobody from the main cell was present at a meeting, the sub-cell assembly was sovereign.
76. Mr Claire continued, that the Appellant had given a detailed account of the hierarchy of the organisation and the layers between each cell and branch. It was in that context that he invited us to consider whether or not the Appellant was seeking to mislead us as to his exact role in the Party. Little could turn on the actual definition of the role that the Appellant played. The particular title of the Appellant may have been incorrectly described, but Mr Claire submitted, that in view of the Appellant's knowledge, he had discharged the burden of proof upon him as required, to show that he was a local UDPS Secretary of a sub-cell in Idiofa.
77. With regard to the Appellant's account of his imprisonment, it was his evidence that there were problems in translation. Mr Claire submitted that the Appellant

had been consistent with regard to at least one particular matter. He had been clear as to the dates of his arrest, imprisonment and period of detention. The Appellant had always maintained that it was 30 June 2005 until some time in January 2006.

78. The Appellant explained, that due to translation difficulties with his previous solicitor in Dover, there had been some misunderstandings, and this should not be a matter that was held adversely against him.
79. Notably, Mr Claire accepted that “of course, these matters had not been put (by the Appellant or his present representatives) to the solicitor in Dover whom I recognise would have had the right to respond to this allegation”. Nonetheless, Mr Claire asked us to consider that the Appellant had said that it was sometime in January 2006. The date of his escape was stated as 15 January 2006 but it was “not necessarily inconsistent with (the Appellant’s) account”.
80. Mr Claire submitted, that it was a possibility that the Appellant might be trying “to place a date on an event – a date that he cannot necessarily recall. If he is inaccurate, it does not follow from that, that his entire account is a fabrication”.
81. As regards the photographs that the Appellant had produced in evidence, Mr Claire asserted that there was a real possibility that someone in the police authority who would have been sympathetic to the UDPS would have forwarded the documents to them. In this regard, it was noteworthy that Mr Claire accepted that his suggestion was indeed, no more than speculative.
82. As to the factual existence of the photographs and whether they were manufactured for the Appellant’s asylum claim, Mr Claire asked us to consider the photographs of prisoners being abused in the Abu Ghraib Prison in Iraq. He further speculated as to whether the purpose of the author of these photographs was to keep a record of the actions of the DRC authorities in the treatment of their prisoners, “knowing full well that if such photographs ever came into the hands of the press or senior military officials, they would be brought to account”. Mr Claire continued, “here we have some officials of which the Appellant doesn’t know, having taken photos of his ill-treatment at the hands of the police authorities and if persons can take photographs of incidents occurring in Abu Ghraib there is a possibility also that this practice could have been repeated by officials in the DRC”.
83. Mr Claire submitted that it would be wrong to treat the mere existence of these photographs as evidence of their fabrication.
84. As regards the contention that the Appellant wore a clean shirt in the photographs when in fact his evidence was that he was suffering a nosebleed and had, prior to the photographs, been kept in a dirty basement, Mr Claire asked us to consider the Appellant’s evidence in cross-examination.
85. The Appellant had claimed that he wore two shirts, a polo shirt and another shirt. The outer shirt was torn away from him at the time of his arrest before he was placed in the vehicle. The Appellant had claimed that when he was arrested he had noticed that his nose was bleeding and that he was face down but the blood was not pouring.

86. As regards the Appellant's account of his escape from detention, Mr Claire submitted that the account of a person's escape was usually the most difficult factual aspect to reconcile with an asylum claim. The Appellant's evidence was that he was regarded as a model prisoner and therefore it was not by chance that he was given the role of supervising other prisoners. Indeed, it was common practice that where political prisoners were detained there was a hierarchy between the prisoners.
87. when we asked Mr Claire if he had any objective material to which he could refer us to support that suggestion, he responded that he had no such material but suggested that this had been the case as regards "prisoners in the H block in Northern Ireland who had their own structure".
88. Mr Claire submitted even if we were to find that the Appellant's account of his escape was "exaggerated", this was not fatal to his claim.
89. Mr Claire turned to the Appellant's Screening Interview, where he accepted that there was a discrepancy in the Appellant's account, in that on the one hand he had claimed to have stayed in Benin for a few hours, whereas on the other hand, he stated that it was for a few days. Mr Claire fairly reminded us that in summary, the Appellant's evidence before us on this point was that "maybe he forgot something". In any event, continued Mr Claire, such a discrepancy was "extremely minor and could have no bearing on the core relevance of the Appellant's claim for asylum". He continued, "Even if you find that such evidence does affect the Appellant's credibility it is not a matter to which disproportionate weight should be attached." It was said Mr Claire, "a peripheral matter".
90. As regards the London UDPS letter of 25 September 2005, Mr Claire reminded us that the Appellant was asked in cross-examination as to how the author of the letter who in fact interviewed the Appellant, would have been able to confirm his identity and the Appellant had responded that Mr Mandangi, a UDPS Senior Representative in the United Kingdom, had been making enquiries. Asked if the Appellant had received the letter on the same day as the interview, the Appellant was clear that he had not received it until two days later. In that regard, Mr Claire submitted, that there was clearly a gap in time between the Appellant's interview and his receipt of the letter although he accepted it was "a short gap".
91. Mr Claire submitted that the Tribunal should couple that letter with that of the UDPS letter from Idiofa. Taken together with the Appellant's evidence regarding his knowledge of the UDPS, they were "sufficient to allow you to conclude the Appellant was a member of the UDPS in the capacity that he has said".
92. Mr Claire concluded, by clarifying, that in terms of the Appellant's human rights appeal, our findings under Article 3 of the ECHR would inevitably dovetail with our conclusions as to the Appellant's asylum appeal. He further confirmed to us that there were no Article 8 issues that he intended to raise as they were not relevant in the context of this Appellant's circumstances and this appeal.

93. Mr Jones explained that there were two aspects to his submissions. Firstly, that the Appellant was not a credible witness at all. The Appellant's historical account was not true and therefore it could not possibly be the case that the Appellant would be at any risk for a Refugee Convention reason for having a well-founded fear of persecution on his return to the DRC. Secondly, if what the Appellant said was true, Mr Jones would rely on the background material before us to demonstrate that as a low level member of the UDPS, the Appellant would not in any event be at risk upon return.
94. Mr Jones proceeded to make extensive submissions to the effect that the Appellant was lacking in all credibility, insofar as his core claim was concerned. We shall refer to these later in the determination, when setting out our own findings.
95. It was common ground at the hearing on 18 October 2006 that the further question to be decided by the Tribunal was the issue as to risk to UDPS Members/Supporters on return to the Democratic Republic of Congo not least in the aftermath of the Presidential run-off elections that resulted in a victory for President Joseph Kabila over the former rebel leader Jean-Pierre Bemba after the results were formally announced on 16 November 2006. Indeed, it was for that reason that the hearing was adjourned part heard on 18 October for the purpose of submissions only.
96. Prior to the restored hearing we received from Mr Jones the following additional documents:
- Home Office Operational Guidance Note (Democratic Republic of Congo) issued on 30 November 2006.
 - The 2006 Year Review: Democratic Republic of Congo July to December published by the Great Lakes Centre for Strategic Studies.
97. The Tribunal's attention was specifically drawn to passages within each of those documents.
98. The Tribunal received from the Appellant's solicitors a revised bundle of documents that now included:
- Amnesty International Report on the DRC sub-headed "Overview-Covering Events from January – December 2005".
 - Second Carter Centre Post-Election Statement on the October 29 Presidential Elections dated 15 November 2006.
 - Inter Press Service News Agency (IPS) Report that though dated 21 December 2006 related to an IPS Report of 23 August 2006 concerning an outbreak of hostilities in Kinshasa that appeared to be drawing to an end in the run-up to a second round of Presidential Elections.

- A series of articles released by the South Africa Press Association (SAPA) the first of which was dated 29 October 2006 sub-headed “DRC Election Marred by Violence” and followed by three further articles all dated 30 October 2006.
99. The parties’ representatives proceeded to address us on the situation in the DRC following the elections and how it might impact upon our assessment as to the real risk if any to the Appellant on return to the DRC.
100. At the end of the hearing we reserved our decision.

The Legal Framework

101. The provisions of SI 2006 No 2525 “the Refugee or Person in Need of International Protection (Qualification) Regulations 2006”, now bring into United Kingdom domestic law the Council of the European Union Directive 2004/83/EC of 29 April 2004 on ‘*minimum standards*’ for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need protection and the content of the protection granted”, normally referred to in the United Kingdom as the Qualification Directive. Changes were made in the Immigration Rules by means of a Statement of Changes in the Immigration Rules also taking effect on 9 October 2006.
102. The determination that we have made has approached the issues in this appeal from the perspective of the 2006 Regulations and in particular has applied the definitions contained there in deciding whether the Appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended Immigration Rules. These have permitted us to consider whether the Appellant is in need of humanitarian protection as being at risk of serious harm, as defined in paragraph 339C of the Rules. Finally, we have gone on to consider, inter alia, whether the Appellant is at risk of a violation of his human rights under the provisions of the ECHR.
103. The burden of proof is upon the Appellant. The standard of proof has been defined as a ‘reasonable degree of likelihood’ sometimes expressed as ‘a reasonable chance’ or a ‘serious possibility’. The question is answered by looking at the evidence in the round and assessed at the time of hearing the appeal. We regard the same standards as applying in essence in human rights appeals although sometimes expressed as ‘substantial grounds for believing’. Although the 2006 Regulations make no express reference to the standard of proof in asylum appeals, there is no suggestion that the Regulations or the Directive were intended to introduce a change in either the burden or standard of proof. The amended Immigration Rules, however, deal expressly with the standard of proof in deciding whether the Appellant is in need of humanitarian protection.
104. Paragraph 339C of the Immigrating Rules defines a person eligible for humanitarian protection, as a person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of suffering serious harm.

It seems to us that this replicates the standard of proof familiar in the former jurisprudence and, by implication, applies the same standard in asylum cases.

105. Accordingly, where below we refer to ‘risk’ or ‘real risk’ this is to be understood as an abbreviated way of identifying respectively:
- (i) Whether on return there is a well-founded fear of being persecuted under the Geneva Convention;
 - (ii) Whether on return there are substantial grounds for believing that the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and
 - (iii) Whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 of the ECHR.
106. In reaching our conclusion as to whether the Appellant would be at real risk on return, we have been further mindful that the amending Immigration Rules (Cm6918) contain among other provisions, paragraph 339K which deals with the approach to past persecution and paragraph 339O headed ‘Internal Relocation’.
107. The Tribunal are mindful were we to find that internal relocation is indeed pertinent to this appeal, that the proper approach to the issue would require us to apply the principles set out in the recent House of Lords judgment in **Januzi [2006] UKHL 5** that adopts the criteria now contained in paragraph 339O but also contains more detailed guidance.

The Objective Evidence and Current Country Guidance

108. As to the question of current risk on return to the DRC, the Tribunal in **MK** (AB and DM Confirmed) Democratic Republic of Congo CG [2006] UKAIT 00001 were concerned with an HJT Research News Reporting Service Item of 27 June 2005 concerning suspension by the Netherlands of the return of asylum seekers to the DRC. The Tribunal concluded that it did not afford a sufficient basis for modifying the conclusions on failed asylum seekers reached in **AB and DM** (Risk Categories Reviewed - Tutsis added) (Democratic Republic of Congo) CG [2005] UKAIT 00118.
109. The Tribunal in **AB and DM** indeed broadly confirmed the list of risk categories identified in the earlier Country Guidance decision in **VL** (Risk – Failed Asylum Seekers (Democratic Republic of Congo)) CG [2004] UKIAT 00007, namely, those with an ethnic, political or military profile in opposition to the government, but found that in view of the increase in anti-Rwandan feeling, Tutsis, or those suspected of being Tutsi, were at risk of being associated with the Rwandans. Further, that the assessment of risk in an individual case, would depend upon a careful analysis of that individuals origins, background and profile.

110. The issue of ‘profile’ was a matter that the Tribunal in AB and DM referred to at paragraph 34 of their determination. There continued to be a real risk for those with a political or military profile. Each case was to be judged on its own facts, but it was possible now to provide a little more detail at least about those who fell within the ‘political profile’ sub-category. The Tribunal continued at paragraph 45 as follows:

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

111. We would emphasise in that regard, the Tribunal’s reference to those whose actual perceived military or political activities or involvements were ‘likely to have brought them’ or to bring them in the future to the adverse attention of the Kabila regime.

112. The Tribunal reminded us in AB and DM, that the evidence emphasised the primary risk to returnees, who had a political military or ethnic (Tutsi) background, that made them of adverse interest to the authorities. The risk arose, because of a Claimant’s background and not because he was a returnee. The issue for the Tribunal, in any particular case, was whether the position was such that there was a real risk to an Appellant in his particular circumstances on return, both in terms of the Geneva Convention and Article 3 of the ECHR.

113. The conclusions of the Tribunal in VL and AB and DM and MK provide the context, in addition to the further background material before us, in which we have assessed this appeal.

114. In terms of that further background material, we have taken account of those aspects on which the parties’ representatives relied.

115. The Tribunal in AB and DM summarised the background to the situation in the DRC as it then stood, and we bear in mind, that this was a determination promulgated on 21 July 2005. They noted that the five year conflict in the DRC that began in August 1998 between the various rebel groups and the DRC Government, was effectively brought to an end by the December 2002 Peace Agreement and the setting up of the Transitional National Government (TNG) in June 2003. This comprised the President and four Vice Presidents from different political groups. The new National Assembly Senate was opened in August 2003. The National Assembly was made up of five hundred members from the numerous political parties to the inter-Congolese dialogue, the former government, the unarmed political opposition, civil society and four more rebel groups. The Senate was made up of one hundred and twenty members from the various parties to the National Power Sharing Accord. It had to be viewed in the context and complexity of the previous conflict.

116. Tribunal continued at paragraph 24:

“There were three main groups involved, the government, army, the rebel group controlled by Rwanda, the Congolese Rally for Democracy – Goma (RCD/Goma), and the rebel group controlled by Uganda, the Congo Liberation Movement (MLC) lead by J-P Memba. Further, within the RCD movement there have been dissident factions. The peace agreement has been made on a political front but according to Mr Kennes, lasting peace would depend upon it being accepted by the various military factions. In April 2002, there was a partial agreement involving the MLC and the government but excluding the RCD. This was not implemented”.

117. The Tribunal noted, that Mr Kennes in his reports, recognised that the UDPS, the Unified Lumumbist Party (PALU) and the Forces for Union and Solidarity (FONUS) refused to join the MLC-Government Agreement. The RCD signed an alliance with the UDPS and others. There were then further negotiations in South Africa that led to a global agreement in December 2002, leading to power sharing between RCD/Goma, the MLC and the Government with some lesser responsibilities going to other parties.

118. It was noted by Mr Kennes, that the installation of the Transitional Government did not have any significant impact on the human rights situation in the DRC and he described the general situation as “government by warlords jockeying for power”. The UDPS were presently refusing to participate. There continued to be a risk of a coup. The overall picture was one of generalised chaos.

119. The Tribunal noted at paragraph 28 of their determination, that Mr Kennes in identifying the category of people most at risk on return to the DRC, included UDPS members.

120. The Tribunal at paragraph 41 of their determination concluded that:

“... we do not find very helpful Mr Kennes’ suggestion that the category of Tutsi should be seen as including anyone who is a member or sympathiser of the RDC/Goma Rebel Movement *or even anybody who was a member of the UDPS...*”.(Our italics).

121. The Tribunal continued at paragraph 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.” (Our italics).

122. At paragraph 51, the Tribunal summarised the risk categories. In so doing they were clear that they built on previous country guidance cases and in particular VL. It was necessary for the Tribunal to reformulate and summarise the current risk categories.

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

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

124. It stated that:

“ the risk fluctuates in accordance with the political situation. On the basis of the evidence before us, the current position is as follows. The Tribunal accept there is a real risk at present for UDPS activists.” (Our italics).

125. We must of course look at what has happened in the DRC since the start of 2006 with particular regard to the activities of the UDPS.

126. Before so doing, it is important to bear in mind, that following the Peace Agreement and the establishment of the TNG in June 2003, new legislation governing political activity was passed in 2004. Political parties were free to hold meetings and campaign but were required to first register with the Ministry of the Interior.

127. As identified at paragraph 3.6.4 of the Home Office Operational Guidance Note (OGN), issued 30 November 2006:

“This last restriction, which has been in place since 1999, is contested by the main political parties, such as the Union pour la Democratie et le Progress Social (UDPS), which argue that they have been registered as a political party since the National Conference in the early 1990s and do not need to do so again.”

128. The OGN at paragraph 3.67, records that:

“Having initially refused to take part in the TNG formed in June 2003, an August 2004 part-issued statement indicated that although the UDPS is not part of the TNG the organisation was fully participating in the transition process. On 30 June 2005, local authorities in Kinshasa denied the UDPS Party permission to conduct marches protesting the extension of the transition. The authorities cited public safety reasons for their refusal following statements by UDPS leaders encouraging citizens to overthrow the government. In November 2005 a senior UDPS official was found dead in mysterious circumstances and *in December 2005 the party boycotted the referendum on the election and also missed the party candidate registration deadline in March 2006.* On 10 March 2006 UDPS-organised demonstrations against elections delays were dispersed by riot police and around forty demonstrators were temporarily detained. *On 22 March 2006 demonstrators again took the streets of Kinshasa to demand that the UDPS be integrated into the country’s election organisational structures. Throughout the campaigning, elections and post-election events from April to September 2006, the UDPS maintained its boycott, citing electoral irregularities and organised demonstrations and spoiling tactics against rival parties and the electoral process.”* (Our italics).

129. Paragraph 17.20 of the COI Report of October 2006 records, that the UDPS had estimated the number of demonstrators who took to the streets of Kinshasa on 22 March 2006, at five thousand.

130. It is apparent therefore, that as a consequence of the stance taken by the UDPS, they had not only isolated themselves from any political influence within the TNG, but as a consequence of boycotting the subsequent referendum on the Election in December 2005, were unable to register their Party by the deadline in March 2006 following a belated change of mind.

131. Parliamentary Elections and the first round of the Presidential Elections eventually took place on 30 July 2006. The DRC OGN records at paragraph 3.6.8 that:

“In the buildup to and immediate aftermath of the vote, there was high tension and violent exchanges in urban areas between rival sets of supporters of the main candidates with accusations of serious irregularities in the administration of the election.”

132. The COI Report of 27 October 2006 records at paragraph 4.07, that in July 2006, respect for civil and political rights in the DRC drastically decreased as the 30 July election approached and that: “UDPS and RCD members were targeted for human rights violations because of their political affiliations”.

133. The COI Report records at paragraph 6.30:

“One of the main opposition parties, the UDPS, boycotted the polls. The UDPS had boycotted the December 2005 referendum and the registration exercise which had taken place in November 2005 and only announced its intention to participate in January 2006 after both exercises were closed. It demanded that registration should be reopened to allow them to take part in the polls. This was refused by the Electoral Commission which led to demonstrations”.

134. The COI records, that on 12 June 2006, the UDPS held a protest march demanding negotiations that would see the Party included in the election process. The protest turned violent with police firing tear gas after demonstrators threw stones. A further march was held on 30 June 2006, when police again used tear gas.

135. It is recorded in the COI at paragraph 6.55 that on 18 July 2006 in the capital, Kinshasa:

“Police fired tear gas at opposition supporters who ran riot in the streets, assaulting supporters of other parties and pulling down election posters and banners. They were protesting on what they call the irregularities in the electoral process and many were believed to be supporters of the UDPS”.

136. At paragraph 6.77, the COI records events that took place in or around September 2006 as follows:

“... meanwhile, several opposition politicians, including fifteen of the thirty three other presidential candidates, joined Vice President Bemba’s Union for the Nation *but he failed to gain the support of Etienne Tshisekevi or his Union for Democracy and Social Progress (UDPS) which again renewed its unwillingness to accept the electoral process by refusing to back either candidate*”. (Our italics).

137. It is thus apparent that by September 2006, the UDPS had further isolated themselves politically, in that not only were they unwilling to accept the electoral process but had now decided not to back either of the Presidential candidates.
138. Such then, was the situation as it related to the UDPS, as a consequence of their political stance and activities, both prior to the Provincial elections and subsequently the second round of Presidential elections that took place on 29 October 2006.
139. The second round of Presidential elections was a run-off between the current President, Joseph Kabila, who had gained 44.81% of votes in round one; and Vice President Jean-Pierre Bemba, who had acquired 20.03% of the votes.
140. On 16 November 2006, the second round outcome was confirmed, with Kabila increasing his winning vote share to 58.5% to Bemba's 41.9%.
141. On 27 November 2006, the Supreme Court rejected an appeal by Bemba and officially confirmed Kabila as President.
142. Paragraph 3.6.8 of the DRC OGN of November 2006 records:
- “While fraught with disputes between candidates, their supporters and over the organisation of the elections, the first round results of the elections were accepted by all sides. In the wider context, the information does not suggest that the rivalry in the competing camps in either the first or second rounds amounted to more than highly-charged electioneering in closely-fought elections the like of which is unprecedented in the DRC.”
143. We note from paragraph 3.6.13 of the OGN issued on 30 November 2006, (that in effect supplemented the COI October report), that there appears under the sub-heading, “UDPS members or activists”, the following:
- “While mainstream political and former rebel groups integrated into the TNG and electoral process face no systematic risk of persecution based on party activity, the UDPS is somewhat of an exception. In the build up to the July 2006 elections, the party maintained its boycott of the electoral process and organised numerous demonstrations which were forcefully suppressed by the security forces. *While the party remains in self-imposed exile from mainstream politics, activists who had brought themselves to the adverse attention of the authorities are liable to face a real risk of persecution. However, the available information does not suggest that low level support or membership (i.e. no known activism) of the UDPS alone automatically constitutes grounds for the grant of asylum. Caseworkers should carefully assess the claimant's level of involvement before deciding on whether their particular circumstances meet the 'real risk' threshold.*”(Our italics).
144. Mr Jones referred us to a comprehensive report prepared by the Great Lakes Centre for Strategic Studies (GLCSS) entitled “2006 Year in Review: Democratic Republic of Congo: July to December”. The report, in effect, could properly be described as a form of diary continually updated in terms of the [GLCSS's]

monthly coverage of the political landscape in the DRC over the course of the last six months of 2006 and which thus covered the situation on the ground as the Election campaign intensified.

145. The GLCSS describes itself as a London-based organisation:

“dedicated to providing accurate and timely political, economic and military information about the African Great Lakes countries.”

146. It describes its “*mission*” as:

“To improve reporting capacity in the region, GLCSS provides training and investigative journalism techniques to African journalists and provides access to its political, economic and military databases.

GLCSS is not a policy organisation; its overarching aim is to encourage transparency in reporting about African Great Lakes issues and provide a single source of accurate information about the region.

The GLCSS website, when finished, will provide the only consolidated news site focused on economic, political and military information in the African Great Lakes.”

147. Mr Jones informed us that he had obtained their report via the GLCSS website. He regarded it as the only objective evidence that could be found to cover the events towards the back end of last year.

148. Having read the report, we would agree with Mr Jones that:

“It is formatted like a Diary. It revisits its concerns as events unfold on a month by month basis”.

149. Mr Jones pointed out, that the views of this organisation, were considered by the Home Office to be helpful and authoritative. He referred us to passages within the COI reports of April and October 2006 on the DRC, that were clearly sourced from GLCSS reports.

150. The report begins in July 2006 and opens with the observation that the political landscape of the DRC had reached a critical moment. The report continues:

“Official campaigns for the historic elections at the end of July have started. This week, GLCSS attempts to assess the election mood vis-à-vis the security situation.”

151. The report goes on to record, that in July 2006, there were many cases of people who had fallen prey to violence. The circumstances were caused by a lack of tolerance among the politicians and their supporters. The report continued:

“Previously, GLCSS has asserted that political attention will increase ahead of elections and had also predicted that if other parties joined UDPS to boycott elections, the situation would get worse. This scenario started to unfold barely a few days into the campaigns. Apart from UDPS calls for the withdrawal of the

1+4 formula (President and his four Vice Presidents) the Independent Electoral Commission (CEI), the High Media Authority (HAM) and a group of nineteen presidential candidates seconded another idea on 4 July, to stop the ongoing campaign to first solve what they called ‘irregularities’ in the electoral process....

GLCSS believes, despite UDPS’s claims as well as requests from other quarters to have the elections postponed, the campaign will continue and the elections will be on schedule. However, the protests are likely to continue and will cause more human and material loss. UDPS members will increasingly receive defectors from FONUS, RCD/N and RSF.”

152. Under the sub-heading, “UDPS Continues Anti-election Protests” the following is reported:

“In another development, UDPS continued its anti-election protest in Kinshasa. Diplomatic sources in the Congolese capital revealed that the protest was aimed at destroying any election poster or other materials and to send hostile messages to the international community whom they accuse of having imposed elections on the Congolese population. Protestors who were singing slogans supporting Etienne Tshisekedi reportedly tore up candidates’ posters and burnt the CEI’s banderols. The protestors not only attacked passers-by wearing T-shirts printed with candidates’ portraits but they also tried to smash cars bearing candidates’ posters while throwing bricks and burning bottles at the police.

A group of ten UDPS and Ngbanda’s Aparicot supporters are said to have carried out similar acts of protest at the DRC Embassy in Paris because the Embassy’s reception hall was not accessible for them to mourn the passing of Bakuwa Mwamba, a journalist assassinated at his home during the night of 8 July....

GLCSS has repeatedly pointed out that the political error made by Etienne Tshisekedi and his militants of not registering to participate in the forthcoming elections would lead to a dramatic end of his party – long considered as the main opposition party. In addition, Tshisekedi’s hostility towards the international community was seen as another error that will systematically weaken the veteran politician as well as his party. GLCSS maintained the protest being organised by the UDPS, indicate its last strong grip on the DRC political scene.” (Our italics and underlining).

153. We would agree with Mr Jones, who submitted that the above referred passage only served to exemplify the negative role played by the UDPS in the election process. We can appreciate in such circumstances, the reasons why Mr Jones was motivated to submit that the UDPS could properly be described in the circumstances “as something of a busted flush”.

154. Indeed, a further passage within the report under the sub heading “*Ballot Problems*”, does in our view serve to further exemplify the negative role of the UDPS in the recent elections, in that it observes:

“As it had been predicted by GLCSS in its previous analysis, a serious and violent election boycott was reported in Kasai Provinces. Those who boycotted

were widely believed to be loyal to UDPS leader Etienne Tshisekedi, and burnt polling stations and voting materials”.

155. The report demonstrates that there was an initial association with Jean-Pierre Bemba and, at its page 16, (the report is unfortunately devoid of paragraph numbering), there is reference to the fact that Bemba was being supported by most of the opposition parties including the UDPS, that was reported at the time to be determined to challenge Kabila as it did with Mobutu; and further, at page 18 the report notes as follows:

“Bemba’s association with Mobutu-loyalists and Etienne Tshisekedi’s Union for Democracy and Social Progress (UDPS) supporters elevated him above other likely contenders.”

156. The report, however, wrongly forecast at page 19, a possible coalition of Bemba supported by the UDPS that in fact did not come to fruition.

157. The report, in covering the DRC political situation in September 2006, noted that the Independent Election Commission (CEI) had begun publishing the legislative elections results, the final count of which was expected to be published on 4 September 2006. The report noted that as had been the case in the Presidential elections, the results published so far, indicated that Kabila’s Alliance for Presidential Majority (AMP) led in the poll followed by Bemba’s Rally of Congolese Nationalists (RENACO). The AMP was leading with one hundred and sixty one of three hundred and twenty four seats already published whereas RENACO had forty six seats.

158. Under the sub-heading “Lists of New Parliament members Published” on page 28, the GLCSS noted the published final list of five hundred Parliamentarians from the 30 July elections. Neither of the two major parties had gained a majority of the seats. This had confirmed the GLCSS’s analysis that the new Government would be ruled by a coalition. In reality the Election results mirrored the Presidential voting, in that the AMP came first with approximately 227 seats, whereas RENACO came second with some 114 seats.

159. Interestingly, the Report, as far as September 2006 was concerned, noted that at stake was the appointment of the Prime Minister:

“who is appointed from the ranks of Parliament’s majority party, and possibly the future of the DRC”

160. In that regard the reporter noted that Antoine Gizenge’s Unified Lumumbist Party (PALU) came third with some thirty four seats.

161. We pause here to note, that at the end of December 2006, President Kabila named Antoine Gizenge, leader of PALU and a former opposition figure, as the country’s Prime Minister. Interestingly, we have further noted from a BBC News On-line Report of 30 December 2006, that Mr Gizenge’s support was concentrated in Bandundu Province, (indeed the Province of the Appellant in the instant appeal), and Kinshasa where President Kabila was weaker.

162. It is apparent, from our consideration of the background material, that the appointment of Gizenge has forestalled indications (not least in the GLCSS report – see page 30) that the fact that PALU secured 34 seats without being in any coalition, might, (but for the appointment of Gizenge as Prime Minister), otherwise have influenced the Party to form another alliance in the Parliament and provide a challenge to both Kabila and Bemba.

163. Indeed, at page 31 of the report, there is reference to the fact that Kabila’s AMP continued to gain ground and indications pointed to a win in the second round. The report continued:

“The support of Antoine Gizenge and Nzanga Mobutu, who came third and fourth respectively in the first round, explains the shift. On the other hand, Bemba, who reportedly received some support from UDPS supporters in the first round, especially in Kinshasa, has not yet managed to officially secure Tshisekedi support.”

164. At page 33 of the report there is reference to the following:

“Bemba has also been strengthening his coalition, which is called the National Union (UN). ...

As previously reported by GLCSS, Bemba supporters are mainly Mobutists, and the new alliance is seen as an extension of RENACO. *As for the UDPS-Bemba coalition it is still obscure and RENACO would lose a key supporter if Etienne decided not to support any candidate in the run-off. Commenting on the alliance, UDPS Secretary General Remy Masamba stated: ‘we have been contacted by Bemba’s people but have not reacted yet. We are talking to our grass root supporters so a decision is still pending. We still call for talks between the political actors to calm the tensions.’*

GLCSS believe that some UDPS members who supported Bemba in the western provinces in the first round cannot be taken as a guarantee that the UDPS Party would automatically support Bemba in the run-off. Moreover, even though it supports him, it would not bring many votes to him as most of the UDPS members are not registered voters.” (Our italics).

165. The above observations simply further exemplify the emerging picture of a former major political opposition party whose influence has now become severely limited by its political negativity.

166. Having initially formed an alliance with Bemba, the UDPS in the event withdrew its support. Indeed, at page 44 of the GLCSS report the following is noted:

“Some opposition parties said they would not support either candidate... Etienne Tshisekedi’s UDPS has officially said it would not support either candidate in the run-off.

However, some reports indicate that some of its cadres like Gaston Dondo and Fern Kaman have reportedly called on UDPS supporters to support Jean-Pierre Bemba. GLCSS would not be surprised if some UDPS supporters vote for

Bemba because this also happened in the first round especially in Kinshasa; therefore GLCSS expects many UDPS members to vote for Bemba.”

167. The GLCSS report in terms of its coverage of the election process as at October 2006, noted that Kabila’s probable victory was also based on the support from political leaders from Western DRC such as Antoine Gizenge and Mobutu Nzanga (the latter being the son of the late former President Mobutu and Chairman of the Union of Mobutust Democrats (UDEMO).

“With a PALU-led government, Kabila will be able to control Kinshasa, Bandundu and Bas Congo. Also many of the nationalists/Lumumbists will reinforce their support to Kabila because of Gizenge. In addition, with the participation of Nzanga Mobutu, Kabila will have more access to Equatur, Bemba’s stronghold. *More so, Etienne Tshisekedi’s announcement that his UDPS will not support either candidate increases Kabila’s chances of winning*”. (Our italics).

168. Page 47 of the GLCSS Report, records an increase of political intolerance and clashes that resulted in violence. Interestingly at page 48 of their report, the GLCSS, in the event correctly, predicted (see the OGN of 30 November 2006), that:

“The most likely scenario is that Kabila wins the elections and Bemba files a formal complaint about the election irregularities and then decides to co-operate with Kabila”..

169. Significantly, President Kabila’s hand was strengthened, probably unintentionally, in the Presidential run-off, by the negative attitude of the UDPS.

170. Neither representative was able to provide us with evidence of what had transpired on the ground since November 2006. There was nothing before us to indicate evidence of civil or political disruption in the DRC since the Presidential run-off election result was confirmed

171. It is, however, to be noted, that what is described as the world’s biggest peacekeeping force, approximately 17,000 strong, remains in the DRC to prevent possible unrest.

172. We have noted reports that show that international observers, including the Carter Centre Mission, generally praised the elections, as being well run despite some disruptions in the North East of the country. Indeed, the Carter Mission said that they believed fraud was virtually impossible after ballots had been counted at each polling station.

173. The fact is, that President Kabila was confirmed as President with a very healthy majority of almost sixty percent of the popular vote.

174. In that regard, we can appreciate the reasoning behind Mr Jones’ submission, that it is difficult to see in such circumstances, what motive Kabila or his Party would have in currently seeking to persecute UDPS members or activists in the

DRC particularly as they, albeit inadvertently, provided assistance to him in his establishment of power through the electoral system and would arguably appear to be a politically spent force.

175. Furthermore, the negative approach of the UDPS, historically, in terms of their refusal to play their political part in the former TNG, and subsequently in the electoral process including their consequent alienation from other political opposition groups, may well, as Mr Jones put it, leave them at present to be regarded politically as a “busted flush”, who are now internally and internationally politically isolated and thus perceived as posing no further threat to President Kabila or his Government.

176. Mr Jones submitted that the UDPS were no longer the force that it once was in the DRC, not least because of its negative approach throughout the electoral process and he echoed the GLCSS observation that such protests were indicative of their “last strong grip on the political scene.”

177. Mr Jones was clearly mindful that page 8 of the GLCSS report, referred to the political error made by the UDPS leader Etienne Tshisekedi and his militants in not registering to participate in the elections, that:

“... would lead to a dramatic end of his party – long considered as the main opposition party. In addition, Tshisekedi’s hostility towards the International Community was seen as another error that will systematically weaken the veteran politician as well as his political party. GLCSS maintains, *the protest being organised by the UDPS indicate its last strong grip on the DRC political scene.*” (Our italics).

178. Mr Jones submitted that on that evidence, it was certainly arguable that following President Kabila’s success in the second round of the Presidential elections, “there was *some evidence* to argue there was no longer any risk to any members or activists involved with the UDPS. It is difficult to see what motive President Kabila would have to persecute UDPS or its members or supporters if their very negative actions played a positive part in his eventual electoral victory. The preponderance of evidence now is that these people will no longer be at risk, *although I accept the position in the Operational Guidance Note reflects the Tribunal’s position in AB and DM and endorsed in MK*”. (Our italics).

179. Notably, Mr Jones ended his submissions by accepting that there was:

“... a gap in the evidence since President Kabila secured his victory”.

180. It is clear to us that the UDPS are currently politically marginalised, if not arguably neutered. The question is, does this mean that neither the Party nor its members are at continued risk?

181. Mr Claire opened his submissions by placing reliance on the risk categories identified by the Tribunal in AB and DM and MK. He pointed out the Operational Guidance Note at paragraph 3.6.13 was clear that:

“While the party remains in self-imposed exile from mainstream politics, activists who have brought themselves to the adverse attention of the authorities are liable to face a real risk of persecution”.

182. It is noteworthy, that in the same paragraph, the Tribunal pointed out, that the available information did not suggest that low level support or membership of the UDPS alone automatically constituted a ground for the grant of asylum.
183. Mr Claire rightly observed that as acknowledged by Mr Jones, the OGN was clear that Home Office caseworkers were still required to carefully assess a Claimant’s level of involvement in the UDPS, before deciding on whether their particular circumstances met the “real risk” threshold.
184. Mr Claire invited us to conclude that the new evidence, not least in light of the GLCSS Report, whose credentials he notably did not challenge, was insufficient to enable the Tribunal to find that the UDPS as a Party and its members and supporters were no longer at risk.
185. Mr Claire continued, that there was nothing in the COI Report of October 2006 and in the Operational Guidance Note of November 2006, that took issue with the findings of the Tribunal in the above referred Country Guidance cases.
186. Mr Claire maintained that the GLCSS Report amounted “to an opinion which may or may not be borne out by future events. I submit that insufficient time has elapsed and there is insufficient objective material, upon which a submission can be mounted to the extent that UDPS members at whatever level are not at (continued) risk”.
187. Notably, Mr Claire accepted that as indeed found by the Tribunal in AB and DM, ordinary UDPS members were not at risk and that there was no evidence that the situation in that regard had subsequently changed.
188. Mr Claire did not however, accept that the objective material demonstrated that the UDPS were no longer a political force in the DRC. He notably accepted that the recent material indicated that the UDPS “were certainly at least initially, at the forefront of the opposition to the elections”.
189. Mr Claire did not accept that as a consequence of President Kabila’s election victory, the UDPS’s inadvertent contribution to that victory would mean that they were no longer perceived as a political threat. He maintained that the senior members and activists of the UDPS in the past were treated in a most brutal fashion by the authorities and continued:

“If we now accept they are no longer going to be viewed as a threat – it is a reasonable inference to draw they will be treated more favourably than they have been in the past.

That ignores a fundamental point – the politics and philosophy of the UDPS has not changed. Their aims and objective remain primarily the overthrow of the Kabila regime. No doubt they will be fully aware that when one abstains from the electoral process your political opponents may well benefit, but that is not the

end of the process as far as the UDPS are concerned in bringing about political change in the DRC.”

190. Mr Claire posed the rhetorical question:

“Is one to assume that the current regime will now give up their political opposition or is it more likely that the regime will be emboldened in view of the electoral success, to seek out its previous political opponents and pursue them with a new zeal? There is no evidence that the UDPS will moderate their position and unlikely they will abandon their political involvement”.

191. We would not entirely agree with Mr Claire, that there is no evidence that the UDPS would moderate its position, given that albeit too late, and despite their previous opposition to the election, the Party eventually made a failed attempt to register itself in order to participate in the election process.

192. As we have earlier observed, Mr Claire did not challenge the expertise of the GLCSS and Mr Jones commended its findings to us.

193. It is apparent from previous COI Reports that the views and observations of the GLCSS are repeatedly sourced and thus relied upon. We find their current report, to be helpful and reliable to the extent that we can attach weight, not least to those passages in the Report to which we have above referred.

194. The current GLCSS Report has been carefully prepared. It did contain some predictions that in the event were wrong, but then again, the formatting of the Report necessarily involved foresight as well as hindsight, the latter being by its very nature a more exact science. Overall, the Report’s forecasts of events proved to be correct.

195. Although Mr Jones argued that the UDPS could now properly be described as “a busted flush”, by the end of his submissions, he had to some extent modified his position by referring to the UDPS as a party that was “no longer the force that it once was in the DRC...” and that it was “certainly arguable following President Kabila’s success in the second round of the Presidential Elections that there (was) *some evidence* to argue (that the UDPS were) no longer any risk to any member or activist involved with the UDPS.” (Our italics).

196. Mr Jones further accepted that there was a “gap” in the objective evidence since President Kabila secured his victory.

197. For the reasons above canvassed, we would certainly agree, that the UDPS would appear to have boxed themselves into a political corner, in terms not least of their stance in the DRC election process, that included their initial refusal to register as one of the opposition political parties who wished to take part, and their belated and unsuccessful attempt to subsequently register and their later decision not to support either of the Presidential candidates in the election run-off.

198. We nonetheless find, that it would be premature, despite the current indications to the contrary, to conclude that the UDPS are a spent political force in the DRC

or one that is no longer perceived by the current regime to pose a continued political threat.

199. We would agree, with Mr Claire that insufficient time has elapsed to enable us to reach such a firm conclusion and there is no evidence before us, that provides any indication as to the present or indeed future political intentions of the UDPS.
200. In such circumstances, it would indeed be premature for us to conclude that the UDPS were no longer a political force or perceived as a threat to the regime, and Mr Claire was right to point out, that the Tribunal could not safely rule out the possibility, that the consequences of President Kabila's resounding victory, could in the alternative, lead him to pursue his political enemies with renewed zeal in order to settle old political scores.
201. Looking at the objective situation as a whole, and mindful of the past history of the DRC, we have concluded that despite what appears to be a dramatic change in the political landscape, that carries with it the hope that it will result in much needed stability in this vast and previously divided country, it would be premature to hold that these prospects have yet translated to adequate improvements on the ground, so as to justify a revision at this stage of the Tribunal's view of risk to UDPS members, as held in AB and DM , endorsed in MK and which we thus re-affirm.
202. It follows that we continue to believe that low level members/sympathisers of the UDPS for that reason alone, will not be at real risk on return to the DRC in the current climate, but conclude that it is too early in the process of the transition of the DRC to democratic rule, to find that there is no continuing threat on the part of the current Kabila regime to persecute UDPS activists. As the Tribunal in AB and DM rightly observed, the risk category to those having or being perceived to have a military or political profile in opposition to the government is one that "fluctuates in accordance with the political situation." (See paragraph 51(iii)) of their determination).

The appeal of the Appellant

203. We have assessed the account given to us by the Appellant in the context of the evidence as to conditions in the DRC, as set out in the previous section. We find that the Appellant was not a credible witness for the reasons that we shall now put forward.

The Appellant's claimed membership and activities on behalf of the UDPS in the DRC.

204. Mr Jones accepted that paragraph 21 of the Letter of Refusal dated 18 May 2006 contained some errors.
205. The Secretary of State had referred to background material before him to show that there were demonstrations and incidents in Kinshasa and other towns around 30 June 2005. The letter continued in paragraphs 22 and 23 by

referring to extracts from a Human Rights Watch Report (see also COI Report of April 2006 at paragraphs 4.11 and 6.54) which continued to refer to incidents in Kinshasa on 30 June 2005, following protest action on that day called by the UDPS against the Government's decision to postpone the elections.

206. The evidence showed that the local authorities in Kinshasa denied the UDPS permission to conduct a march on that day and at paragraph 24 of the Refusal letter, there was reference to "numerous irregularities with regard to (the Appellant's) account of events" that led to the belief that the Appellant had not come to the adverse attention of the authorities and to the belief that he was not detained by the authorities prior to travelling to the United Kingdom.
207. At paragraph 25 of the letter, the Secretary of State stated that the fact that the UDPS administration on 30 March 2005 was not permitted by the local authorities in Kinshasa and the fact of the Appellant's failure to be aware that the march was not permitted, were illustrative that the Appellant was not a high profile active member of the UDPS and provided support for the Secretary of State's view, as set out in the letter, that he was never detained for his political activities.
208. Mr Jones accepted that the Appellant had always stated that the UDPS march in which he participated on 30 June 2005 took place in Idiofa in Bandundu Province. There was nothing that Mr Jones could take us to, that would show that on 30 June 2005 the march in Idiofa was prohibited. However, the COI of April 2006 at paragraph 4.11 pointed out that:

"There were demonstrations and incidents in Kinshasa and other towns on and around 30 June 2005, after protest action on that day was called by the UDPS Party against the decision to postpone the elections. Reports indicated that between 10 and 26 people were killed, scores wounded and that hundreds were arrested". (Our italics).

209. We note that at paragraph 6.54 of the COIR, reference is made to the US State Department Report 2005 that:

"On June 30, local authorities in Kinshasa denied the UDPS Party permission to conduct marches protesting the extension of the transition. The authorities cited public safety reasons for their refusal following statements by UDPS leaders encouraging citizens to overthrow the government".

210. It follows, that there were clearly demonstrations in other towns and not just in Kinshasa. Although the author of the Refusal letter thus appeared to have misunderstood what the Appellant had said about his march, the Appellant had given oral evidence before us, and irrespective of the Secretary of State's failure to properly evaluate evidence on this point, it is for the Tribunal to come to their own independent view of the Appellant's credibility.
211. In so doing we accept that there is nothing else about the Refusal Letter to show disbelief other than the reasons set out at paragraph 25. However, we have to come to our own independent view and we are not bound by the Secretary of State's views as expressed in his letter.

212. We have carefully considered the Appellant's witness statement of 12 April 2006, where at paragraph 10 the Appellant provided his account as to how he became involved with UDPS activities as a supporter and subsequently became a member and in which he described his role as a supporter. The Appellant said that he was initially a supporter of the UDPS "three years ago" in about 2003 and became a member "*last year*", namely 2005. Indeed, the Appellant's Chronology of Events at page 1 of the Appellant's bundle, also stated that the Appellant became involved with the UDPS in approximately 2003 and officially joined the UDPS in approximately 2005.
213. Such evidence however, needs to be compared with the UDPS (London) letter dated 25 September 2006 where, in the first paragraph, it was clearly stated that the Appellant had joined the Party on 2 January 2002 and was appointed an Administrative Secretary on 24 April 2005.
214. We would agree with Mr Jones, who submitted that the evidence in this regard was thus contradictory, relating to the date the Appellant joined or became a member of the Party, upon a comparison of those documents. Indeed, Mr Jones had asked the Appellant in cross-examination about these various discrepancies and as Mr Jones rightly submitted, his response was lacking in clarity. At one juncture, the Appellant appeared to say that one joined the Party by writing a letter and that he wrote such a letter in January 2002 and joined in January 2002. In contrast, in cross-examination, the Appellant said that he became a member in December 2004 to January 2005.
215. In such circumstances, when we compare the evidence before us on this point with those documents, it is apparent to us that there is a clear conflict.
216. As regards the role the Appellant claimed that he played in the UDPS; in his witness statement at paragraph 11, the Appellant described how his role as a member had changed. He was offered the position as "Secretary" of the Party's sub-cell and such position was due to be officially confirmed after he had been assessed as having the right "*militant*" skills and being able to deliver what the Party expected.
217. At interview on 9 May 2006, the Appellant described his title (Q.51) "Designated Secretary". Thus, so far, the Appellant had claimed this title and that he was a "Secretary". There was information provided in the UDPS letter of 24 September that the Appellant was appointed an "Administrative Secretary" in charge of the campaign and propaganda for the UDPS local branch of Idioba on 25 April 2005.
218. We find there to be a clear difficulty on the face of it about his being "Secretary/Designated Secretary/Administrative Secretary". Furthermore, the letter from the UDPS in London insofar as one can make out, makes no reference to the Appellant's position being subject to any confirmation.
219. In this regard, the Appellant was clear in his statement, that his position was subject to confirmation when he established the proper skills, but the letter from

the UDPS does not say at all that the Appellant's position was subject to any confirmation whatsoever.

220. The Appellant's bundle contained documents and translations relating to the Appellant's involvement with the UDPS. That included a letter purportedly from the UDPS in Idiofa dated 15 July 2005 together with a translation. The translation described the Appellant as "Deputy Secretary of Idiofa Branch".

221. As Mr Jones rightly observed to us:

"Yet another title – but the Appellant's explanation was that this document was wrongly translated when it described him as 'Deputy Secretary'. The Appellant told you the document in French did not refer to the word "Deputy" and that the translation should have been 'Secretary for the level below the cell of the party in Idiofa' – that's what the Appellant put forward as the correct translation. That translation was confirmed by the Court Interpreter. So even if the translation is initially wrong on 'Deputy Secretary' and the translation given in evidence before you is correct, there is a difference in the Appellant's title as put forward in his amended translation when compared with the title put forward by the UDPS in their letter of 25 September and with the information provided by the Appellant in his statement of 12 April and what he said at interview, was his title.

So there are discrepancies as to what standing and what position he had in the Party. Again, I say, affecting adversely his credibility."

222. We would agree and for like reason.

223. Our finding in this regard has been re-enforced by our consideration of the UDPS documents put forward by the Appellant in support of his account and claims.

224. The Appellant claimed to have received documents in June 2006 from the DRC but that his solicitor had the documents, so he could not take them to his interview in September. The solicitor was in Dover. We note in that regard that significantly, there was no evidence from them about this matter.

225. We have concluded that if the documents were sent in June and left in the possession of the Appellant's former solicitors, then surely the Appellant would have arranged to collect them, if as he maintained they were reliable, in readiness for his UDPS London interview and in order to establish his Party credentials.

226. We have not considered the July 2006 UDPS letter from Idiofa in isolation, but as part of the whole evidence before us. Having done so, we have concluded that it is not a reliable document, as upon our consideration of the Appellant's evidence in its totality, nothing in that letter could possibly be true.

The Appellant's claimed arrest, detention and escape.

227. An important question arises as to when the Appellant, as he claimed, left prison.
228. Mr Jones referred us to paragraph 15 of the Appellant's statement, where he claimed that he had been kept in prison until 'around' January 2006. The Appellant had no idea how long he was detained or where he was being sent as the authorities changed him from one cell to another every week or so.
229. Mr Jones rightly submitted, that the content of paragraph 15 needed to be compared with paragraph 18 of the same statement in that just a few lines later, the Appellant was saying that he was kept until 'around January 2006' whereas he now gave a definite date, namely 15 January 2006 as to when he escaped.
230. We find that when he asked the Appellant about this apparent inconsistency, the Appellant responded that the statement on file was a translation of the original statement he had made in French and that he was aware that this contained some mistakes. Further, that he had gone to see a solicitor in Dover to tell him about these matters who told him that it was too late, as the statement had already been submitted in English.
231. We would agree with Mr Jones, that there had been ample opportunity prior to the hearing before us in October 2006 to amend any part of the Appellant's statement. We would add that there was ample opportunity to obtain evidence in this regard from the solicitor in Dover.
232. The Appellant told us, that the content of his statement of 12 April 2006 was true and he had adopted it as part of his evidence in chief. Then, in the course of evidence, the Appellant stated that there were errors. We find that if the Appellant knew that there were errors, his failure to amend them and his acknowledgement that the contents were true, can but only reduce his credibility, in circumstances where he knew that some of that content was incorrect. It was notable that these protestations only emerged in the course of cross-examination.
233. As regards the original photographs produced by the Appellant that purported to show that the Appellant was led from a house in Idiofa on 30 June 2005 and that he was taken in a vehicle to be driven to Kinshasa, we find it to be significant that:
- i. There was no evidence at all as to who actually took the photographs. The evidence was that they were obtained from the UDPS but no evidence was given as to how they came into the possession of the UDPS and it was difficult to understand how they could have come into the hands of the Party.
 - ii. Mr Jones in the course of cross-examination had made specific reference to white chairs shown at the top of the stairs on the bottom photograph. It showed items that looked like clothing visible on two of the chairs. The top photograph showed only one chair with nothing on it. Mr Jones had asked the Appellant about this and

indeed he had made a point of ensuring that both Mr Claire and the Appellant were shown the photographs in order that he might identify the differences between them before putting these matters to the Appellant.

- iii. Mr Jones had referred the Appellant to “the very white and clean shirt in pristine fashion, that the Appellant was wearing in the photos’. There appeared, looking at the original, no visible marks on that white shirt and yet, the Appellant’s evidence to the Tribunal, was that he had been badly beaten up on the way from the demonstration to the house in which he had been detained for some hours. He had been so badly beaten in the army van that took him from the demonstration to the house, that he had a nosebleed. He also said the cellar in which he was held had been filthy dirty.

234. It is apparent to us, that if the Appellant, as he claims, had been put into an army van, beaten up, such that it caused his nose to bleed, held in a filthy cellar for some hours, and then brought out, it is extraordinary that nonetheless the photographs show no visible signs of marks, stains or anything on the Appellant’s white shirt or clothing in general.

235. In cross-examination, the Appellant was specifically asked about this shirt and he had stated that the shirt he had worn in the photographs was the same shirt he had worn at the demonstration and the same shirt that he had been wearing in the Army van that took him from the demonstration and the same shirt he was wearing when he was beaten up.

236. In such circumstances it is clear to us that these photographs were manufactured/staged photographs and that their production as evidence in his support affects adversely the Appellant’s credibility.

237. Mr Jones referred us to what he described as “the inherent implausibility of the Appellant’s account of his escape from detention”. In that regard, we recognise that where an account is in a particular aspect inherently unlikely, that it does not necessarily follow that it is untrue. Whilst mindful of the Court of Appeal’s observation in HK [2006] EWCA Civ 1037, that does not mean that the Tribunal should accept the Appellant’s account as to the circumstances of his escape from detention, however unlikely and especially within the context of our overall findings and conclusions.

238. According to his evidence, the Appellant was moved from various places of detention on an almost weekly basis between June 2005 and January 2006 and detained in Kinshasa. Purely by chance, on 15 January 2006 he was placed in charge of a group of prisoners and that scenario arose when the former leader of the prisoners had escaped but had later been recaptured.

239. We observe that on the very first day that this dubious honour was effectively thrust upon him, the Appellant would have us believe that he was allowed to leave his cell unescorted by any warden and obtain drinks from a local kiosk.

Purely by chance, a man was waiting at the kiosk specifically for the Appellant with a car waiting for the Appellant to run to nearby.

240. We find it to be a truly remarkable coincidence, that on the same day as the escape of a prisoner who had been sufficiently trusted as to have been made responsible for a group of prisoners that included the Appellant, and which led to the Appellant being appointed in his place, that he should have been allowed in such circumstances, to leave the prison unescorted, to go and buy drinks at a local kiosk and to surprisingly find someone waiting there specifically for him with a waiting car for his escape. It is difficult on the evidence to understand how this could possibly have been arranged so quickly and in so little time.
241. We find it to be further remarkable, that at the present time, according to his oral and documentary evidence, the Appellant knew nothing about who arranged his escape and as to who was responsible for the undoubted considerable expense of arranging his various flights to several countries before coming to the United Kingdom.
242. Our disbelief in the Appellant's escape account is further re-enforced by the fact that the UDPS (London) letter of 25 September 2006, said nothing about the Party's involvement in the Appellant's escape or as to any arrangements for him to leave the DRC in order to travel to London.
243. We would thus agree with Mr Jones, who maintained that "all this strains credibility".
244. We find therefore, that on the evidence, the Appellant's account of his escape was indeed, implausible. It is simply not true.
245. We now turn to aspects of the Appellant's Screening Interview of 31 March 2006 that have caused us concern. In oral evidence, the Appellant told us that he arrived in Benin on 23 March 2006 and left there on the same day for the Ivory Coast. That account also notably appeared in the Appellant's Chronology of Events.
246. However, in the Appellant's witness statement of 12 April 2006 at paragraph 20, the Appellant was clear that having left Brazzaville with the same person who had brought him there, they "went towards Benin for *a few days* before taking another flight towards Cote D'Ivoire...". (Our italics) The Appellant had said very much the same in oral evidence, namely that he was in Benin for a few days.
247. There is however, a clear difference between a few days and arriving and departing Benin on the same day. We find that the discrepancy on this point is a further indication of the Appellant's lack of reliability and an indication of his inability to tell the truth.
248. As regards the UDPS letter of 25 September 2006, it was said that the Party was able to confirm that the Appellant was a member. But it is difficult to understand the basis upon which the UDPS letter on that date, the same date as

the interview, was able to confirm the Appellant's membership of the Party. In addition:

- i. The Appellant was unable to produce any membership card when interviewed by the UDPS in London; and
 - ii. The Appellant had told us in oral evidence that he took no documents at all with him to his interview with the UDPS on 25 September.
249. Viewed as a whole, and not least for the proper reasons above observed, we have thus concluded that the UDPS (London) letter is not reliable. Further, the information contained in it, as to the date the Appellant joined the Party and his role within it in the DRC, is at variance with the account of the Appellant and therefore sheds further doubt upon the reliability of its content.
250. Mindful of the risk categories as identified in AB and DM, confirmed in MK and now re-affirmed by us, we recognise that had we found the Appellant to be credible, we would have concluded that as a person who had a role in the UDPS and who was known to the authorities and who had been detained and ill-treated by them for his political opinion and who had escaped from detention, he would arguably, not least to the lower standard of proof, be at risk on return to the DRC. Conversely, he would not be at real risk on return, if we found the Appellant to be no more than a mere member of the UDPS.
251. It was conceded on behalf of the Appellant that, as a mere failed asylum seeker, he would not be exposed to a real risk of persecution were he now to be returned.
252. For the above various reasons, we find that the Appellant was not a credible witness. He was not credible in relation to any of the core elements of his accounts and claims.
253. We find that the Appellant was never a member of the UDPS and never undertook the political role and activities on their behalf as he claimed. He was never brought to the adverse attention of the authorities in the DRC on account of such claimed membership and activities on behalf of the UDPS. His account of arrest, detention and escape were a fabrication as were the photographs he produced and upon which he relied. The Appellant has no political profile in the DRC and his historical account is simply untrue.
254. We would add for the sake of completeness that we do not find that the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 apply in this case. It was not a matter raised by Mr Jones in the course of his submissions, and it is not disputed that the Appellant claimed asylum immediately upon arrival in the United Kingdom.
255. It was common ground at the hearing on 11 January 2007, that were the Appellant not to be regarded as a refugee, it would follow that he was not a person whose return to the DRC would violate Article 3 of ECHR. For like

reason, it was recognised that humanitarian protection did not arise because there would be no substantial grounds for believing that the Appellant would, if returned, face a real risk of serious harm.

256. For the above reasons, the Appellant has thus not shown that he would be at real risk of being subjected to persecution for a Geneva Convention reason on return to the DRC or of being subjected to ill-treatment in breach of his human rights. The Appellant is not entitled to the grant of humanitarian protection.

Decision

We dismiss the asylum appeal.

We dismiss the appeal under the Immigration Rules because the Appellant is not entitled to Humanitarian Protection.

We dismiss the human rights appeal.

Signed

Date

Senior Immigration Judge Goldstein

**APPENDIX: LIST OF BACKGROUND MATERIALS BEFORE THE
TRIBUNAL**

- 1) 2006 2006 Year in Review: Democratic Republic of the Congo – July to December 2005.
- 2) March 2006 US State Department Report on the Democratic Republic of Congo – 2005.
- 3) April 2006 Country of Origin Information Report on the Democratic Republic of Congo.
- 4) 23 May 2006 Amnesty International Report on the Democratic Republic of Congo for 2006.
- 5) 14 June 2006 US Committee for Refugees and Immigrants Report – World Refugee Survey 2006: Congo – Kinshasa.
- 6) 2006 Amnesty International Report: “Overview – Covering Events from January- December 2005”.
- 7) July 2006 BBC News Report: “DR Congo’s Kabila and his Kingdom”.
- 8) August 2006 UN Integrated Regional Information Networks Report ‘Congo – Kinshasa: Counting the Casualties after Kinshasa Battle’.
- 9) September 2006 BBC News Report: “Arrests Delay Congo Poll Results”.
- 10) September 2006 Freedom House Report: “Freedom in the World: Congo, Democratic Republic of (Kinshasa)”.
- 11) September 2006 United Nations Mission Report – Democratic Republic of Congo (MONUC): “Monthly Human Rights Assessment September 2006”.
- 12) October 2006 International Crisis Group Report: “Securing Congo’s Elections: Lessons from the Kinshasa Showdown”.
- 13) October 2006 United Kingdom Foreign and Commonwealth Office Report: “Human Rights Annual Report: Democratic Republic of Congo”.

- 14) October 2006 Country of Origin Information Reports – Democratic Republic of Congo.
- 15) October 2006 South Africa Press Association (SAPA) Reports of 29 and 30 October 2006 relating to reported incidents of violence in the DRC in the course of the elections.
- 16) November 2006 Home Office Operation Guidance Note (OGN) – Democratic Republic of Congo.
- 17) November 2006 Second Carter Centre Post-Election Statements on the October 29 Presidential Elections.