

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

**Heard at Field House
On 4 August 2008**

**Before
SENIOR IMMIGRATION JUDGE WARR
SENIOR IMMIGRATION JUDGE SPENCER
MS J A ENDERSBY**

Between

LM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe of Counsel instructed by TRP, Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

There have been improvements in the human rights position in the Republic of Congo since the determination of the Tribunal in BB (MCDDI - Known Political Opponent) Congo Brazzaville CG [2004] UKIAT 00223 was promulgated. The conclusion of the Tribunal in BB that past or present membership of an opposition party including the MCDDI would not lead without more to a real risk of persecution on return to Brazzaville remains valid. There continues to be a danger for some political opponents of the current regime. The test of whether there is a real risk continues to depend upon the individual's background and profile including in particular the extent of his political involvement and whether he has or is likely to come to the attention of the authorities.

DETERMINATION AND REASONS

1. The appellant is a citizen of the Republic of Congo (Congo-Brazzaville) born on 14 December 1978. She arrived in this country on 24 September 2002, applying for asylum on 2 October 2002. She claimed to support the Mouvement Congolaise pour la Democratie et la Developpement Integral (MCDDI). Her application was refused on 2 December 2002. She appealed and her appeal came before an Adjudicator on 10 April 2003. The Adjudicator dismissed the appellant's asylum appeal but allowed the

appeal on human rights grounds under Article 3. The Adjudicator accepted that, while conditions were improving in the Congo, there was a risk that the appellant would come to the attention of the authorities on her return and there would be a period of detention with the risk of rape. He had found that the appellant had been raped in 1997.

2. The matter came before the Immigration Appeal Tribunal on 21 May 2004. In its determination promulgated on 15 September 2004, the Tribunal allowed the Secretary of State's appeal, finding that there was no support from the objective evidence that there would be a real risk of rape for the appellant on return to the Congo.
3. The appellant renewed her claim for asylum which was accepted as a fresh claim following judicial review proceedings. The appellant's fresh claim was refused for reasons contained in a letter dated 14 November 2007. It is the refusal of the appellant's fresh claim that gives rise to the proceedings herein.
4. It is accepted by the representatives that our approach is governed by the case of Devaseelan [2002] UKIAT 000702. Our starting point is the findings of the original Adjudicator. The representatives before us further agreed that the Adjudicator's findings of fact were helpfully summarised in paragraph 13 of the Tribunal's decision, the material parts of which read as follows:-

"The [appellant] joined the MCDDI in February 1997. In February 1999 she became the secretary of that party. At paragraph 10 of her statement of 28 October 2002, she stated that she was elected secretary and that the aim of the branch was the improvement of the conditions of women by creating social and economic improvements. In August 1997 she had been raped in the family home by COBRA members. Her family had thereafter left for Gabon. In November 1998 they had returned to Congo - Brazzaville. Between February 1999 when she had become Secretary of the MCDDI and to 2002 there had been no further incidents or difficulties with the authorities or anyone else. In February 2002 her father had been arrested without reason but had been released seven days later without charge. On 27 April 2002, her parents had been arrested and detained. She was informed that she and her brother were wanted by the police and as a result they had fled to Gabon in June 2002. They had returned to Congo and in August 2002 decided to visit their parents who were in police custody. Whilst there her brother had been badly beaten and shot by the police and she had also been severely beaten and ill-treated. She had left and returned to Gabon and from there had travelled to the United Kingdom."

5. Although the principal focus in the arguments before us was on the appellant's *sur place* activities since the Adjudicator's determination, we were invited to revisit the Adjudicator's conclusions in the light of fresh material. Before the Adjudicator had been certain documents described in paragraph 22 of his decision as a mission order dated 12 July 2002, an arrest warrant dated 29 June 2002 and a wanted notice dated 3 July 2002. The Adjudicator (in paragraph 64 of his determination) found that the Secretary of State had been right to be suspicious of these

documents, the originals of which had not been produced. The Adjudicator considered that the dates did not square with the appellant's claims and such documents were all too easily obtained. The circumstances in which they had been allegedly given to the appellant's brother and then provided to the appellant before her departure for the United Kingdom were unpersuasive and the Adjudicator took the view that they had been created to bolster her asylum claim. Also placed before us was a psychiatric report compiled by Dr David Bell dated 14 May 2008 and a Medico-legal report by Dr Alison Callaway dated 5 January 2005. Dr Bell found that the appellant suffered from severe depressive disorder and post traumatic stress disorder, with a mild to moderate risk of suicide which would be exacerbated in the event of a negative determination. She was a solitary individual who seldom went out and was sensitive to noise. Following the rape she had conceived and the pregnancy had been terminated using an African remedy.

6. In Dr Callaway's report, the appellant was found to appear to be coping with life reasonably well with the help of medication and with the support of the health team. The appellant had multiple scars on her lower legs which were very consistent with being beaten as she had described, rather than having been accidentally acquired. Her account was, "detailed, believable in its details and consistent ...". Her psychological state matched the criteria for moderate chronic post traumatic stress disorder and the appellant also suffered from a degree of mild to moderate depression which was responding to antidepressants. Return to the Congo would be likely to cause a deterioration in her mental state.
7. According to the evidence before us, the MCDDI has a presence in countries outside the Republic of Congo. In particular, the President of MCDDI-France Maurille Louzala wrote on 16 January 2008 in support of the appellant's claim.
8. Mr Paul Melly and Ms Ticky Monekosso have been involved with the appellant's claim since 2005. Mr Melly has given expert evidence to the Tribunal before and is a journalist who has wide knowledge of the Congo. He has not interviewed the appellant. Ms Monekosso is also a journalist and indeed studied journalism at the University of Brazzaville. She has extensive experience of the region. A preliminary report appears in the bundle at page 69, dated 15 July 2005. To this report was appended a general country conditions report compiled in June 2005. A full report relating to the appellant was prepared on 5 September 2005. In a report dated 21 May 2008, Ms Monekosso found that the documents adduced in the appellant's case were genuine documents and Mr Melly produced an updated report in respect of the appellant dated 20 May 2008 as well as an updated report on the general country conditions, also dated 20 May 2008.
9. It is necessary briefly to set out the context in which the appellant's case is put. President Sassou-Nguesso (the President) seized power in 1997.

Michel Mampouya, was persuaded to establish a breakaway version of the MCDDI which supported the President's regime. However many supporters and members of the MCDDI rejected the decision to collaborate and remained steadfast in support of Mr Kolelas, the leader of MCDDI, former prime minister of Congo and former mayor of Brazzaville. Mr Kolelas fled the Congo in 1997 and he was accompanied by a senior member of the MCDDI, whom we shall refer to as Mr PM. This is because he shares the same surname as the appellant and it is the appellant's case that this is a potential risk factor for her on return. The appellant and Mr PM are not in fact related and it is coincidental that they share a surname. After the departure of Mr Kolelas and Mr PM the MCDDI operated in exile. However in 2005, Mr Kolelas returned to Congo after the death of his wife and he reached an accommodation with the President. In 2007 he allied the MCDDI with the President's PCT party for the legislative elections. This arrangement was deeply resented by many MCDDI members and supporters.

10. Mr PM decided to resign from the MCDDI in January 2007 and formed a new party Unis Pour Le Congo (UPC) (United for the Congo).
11. It is the appellant's case that she is working for Mr PM giving him secretarial and administrative support. She also says that she resigned from the MCDDI and that she sent a letter of resignation to that effect to Mr Kolelas dated 10 April 2007. Mr PM has been granted refugee status in the United Kingdom on 1 February 2002. We heard oral evidence from the appellant, Mr PM and Mr Melly.
12. The Home Office case is set out in the refusal letter of 14 November 2007 and objective evidence submitted under cover of a letter received on 11 June 2008. Much of the objective material is relied on by both parties - for example the US Department of State Report dated 11 March 2008, an Amnesty International Report dated 23 May 2007 and a Freedom House Report dated 26 June 2007. In addition, the Secretary of State lodged a Country of Origin Service response to information request dated 3 October 2007 and a UN integrated regional information networks article dated 13 August 2007 entitled "Opposition Protest as Government Wins Polls by Massive Majority". Finally, reliance was placed on a UN IRIN article dated 28 June 2007 entitled, "First Round Polls Marred by Poor Organisation".
13. The appellant was called to give evidence before us, Mr Melly remaining in court by agreement of the representatives. Counsel said that the emphasis would be on recent events and it was accepted that MCDDI members were not generally at risk - it was submitted that those who rejected the agreement reached by the President and Mr Kolelas could be at risk.
14. The appellant stood by her statements. She said she would be arrested on return and detained and persecuted. She was afraid to return

because of her current involvement with the UPC as well as her previous history.

15. She worked in a voluntary capacity as secretary for the UPC and wrote reports and also helped with administrative work. While the UPC was a new party, it was a growing movement which was opposed to the government in power. The current President was aware of the party and was aware that the party communicated with the Congolese diaspora.
16. In cross-examination the appellant said she had a high profile in the MCDDI. She had been the secretary for youth and had assisted in propaganda and mobilisation for the MCDDI. While the appellant had said in answer to question 18 in her SEF interview that there were quite a lot of secretaries for the youth movement, the appellant said that she had been the main secretary for youth. She disagreed with the expert who had said she was low profile. She had initiated policies as stated in answer to questions at her interview, although senior people had had to give permission in order for them to be implemented.
17. The appellant had no evidence that her photograph had been taken by the authorities. Apart from producing leaflets, she had organised meetings between the young women. Nothing had happened to the appellant between 1997 and 2002. The appellant acknowledged that she had not brought with her any copies of the leaflets that she said she had produced or distributed in the Congo, however she had produced evidence from Mr Louzala and Mr PM and other material.
18. The appellant was asked about the arrest warrants and how she had obtained them. The appellant said she had got them through a friend of her brother. One of the neighbours was a police officer who had been able to steal and copy the material. While the date was different on the warrant, the country's legal system was under the control of the party in power. People were arrested without just cause or kidnapped. Subsequently, it was necessary to produce documents to address the situation. The legal system was corrupt.
19. The appellant was asked why such an individual should help her and the appellant said there were always people who would help.
20. The appellant was asked why she had not mentioned the fact that she had conceived a child as a result of the rape before this fact was revealed in Dr Callaway's report. The appellant said it had not been so easy to speak about the matter previously. She had been traumatised.
21. The appellant could not explain why, if a warrant had been in existence, the police had released her after her return from Gabon. She confirmed that she had never known the taxi driver whom she claimed had assisted her. She had stayed with him for a few days, although he was a complete stranger. The appellant said that she had been suffering and

had nowhere to turn to – what could she do? She could not go to a hospital without any money.

22. She had been helped by the friend of her brother to travel to the United Kingdom. But she had had no passport – the brother’s friend had all the documents.
23. She had first met Mr PM in the United Kingdom in 2003. They had met at a conference in Birmingham. Mr PM had recognised the appellant straightaway and was very happy to see her. They had met on one or two occasions each month and she also spoke regularly to him on the telephone and communicated by e-mail. She did not have access to the internet at home, she went to the library.
24. The UPC party had started approximately two months after Mr PM had written his resignation letter in approximately March 2007. The appellant was asked why she had not mentioned the matter at all in her interview with the Home Office in October 2007. The appellant said she suffered from a lack of concentration and memory loss and she was in the middle of moving and she had been happy to give precise answers to the specific questions asked.
25. Ms Isherwood pointed out to the appellant that she had described herself as being fit and well at the interview. The appellant said that stress could happen at any time, it was like a crisis. It was further pointed out to the appellant that at the conclusion of the interview she had been given the opportunity to add anything she liked. The appellant repeated she had been stressed.
26. The appellant acknowledged that she had no proof of her resignation letter being published. There was no written evidence about the existence of the UPC, but the President of the Congo was aware of it. It was a growing movement. The appellant said she had written reports for the party, but these reports had not been put in evidence as she had not been asked about them.
27. The appellant was asked about how many members attended the meetings which occurred on one or two occasions each month. There was a meeting room in Kings Cross and at some of the meetings people had been standing and the room could get quite noisy. People came from the provinces. She went to the library to do her e-mails almost every day. It was pointed out to the appellant that in the medical reports it said the appellant disliked noise. The appellant said the meetings started well and people did not go to the meetings to shout at each other. It was also pointed out to the appellant that in the medical report she was described as socially isolated. The appellant said that she would go to the library to read books. There were times when she would shut herself up at home and there were times when she would get up and go to the library.

28. The appellant was asked how she got evidence from the Congo for her reports. The appellant said that her reports were about the UPC Movement in the UK. She got her material from members in the UK. The material could be circulated to other countries by e-mail. Occasionally there would be photographs taken after a meeting. She had not produced them as she had not been asked to do so.
29. In re-examination the appellant said she had not been able to give a figure for the number of members of the new party because it was a growing movement. She had not seen a passport when she had left the country. She had left with the help of her brother's friend. She had worked as secretary for youth - both young men and women - but she had concentrated on young women at her meetings.
30. In answer to questions from the Tribunal, the appellant was referred to question 17 at her October 2007 interview where she had been asked whether, as secretary for the youth movement, she had been responsible for the whole of Congo or just a region. The appellant had said in answer, "It was communal". She had been stressed at the time of that interview. She had been a communal secretary but had then progressed up the ladder to the national level.
31. The appellant was asked about the measure of support the UPC had in the United Kingdom. The appellant said there were more than 200 people and she had a lot of people on an address list and she maintained the e-mail list with Mr PM.
32. Mr PM was then called to give evidence. He had formed his new party because of the betrayal of Mr Kolelas. He had been number two to Mr Kolelas. He and Mr Kolelas had left in 1997. Since his resignation from the MCDDI, he had travelled round the world and had communicated with activists in Paris and elsewhere.
33. The appellant worked with him as a collaborator and drafted his letter of resignation. The party had approximately 100,000 members worldwide.
34. Mr PM said he had a visa for the Democratic Republic of Congo and had last travelled there a few months ago. He had met activists from Gabon. He had also met activists in Kinshasa. There were activists throughout the United Kingdom, possibly over 1,000. The UPC was a new party. The appellant assisted him. She was very intelligent, took notes, made reports and also put forward new ideas. In Paris Mr Louzala followed his position and the witness said he had last been in Paris the previous weekend. They were in the course of drafting an open letter which would be submitted to the President in the Congo. The President was well aware of their activities and they were anxious to take matters forward. There were a large number of activists in the Congo. There had been a 90% abstention level in the previous month's elections, however, as it

was a military government. The people who had abstained would vote for an opposition.

35. In cross-examination Mr PM was asked when he had first met the appellant in Congo. He said he had met her in 1997 when he was campaigning. She had been mobilising for youth. She was a young girl and he, as a leader, was interested in young activists. He had met the appellant before he had left following the war in June 1997. He had been campaigning for the elections that were due to take place. He had met the appellant in Makelekele, a district in the south of Brazzaville.
36. He had met the appellant again in the United Kingdom in 2005 in Birmingham. He was then referred to his statement where he had said he had met the appellant in 2003. He had written on her behalf in 2005. He had been surprised to see her in Birmingham.
37. He had not referred to the appellant in his resignation letter. He said he had resigned as a leader. His resignation was a personal matter and not a group matter.
38. The party had been officially formed in April or May 2007. He had resigned in January or February 2007.
39. He saw the appellant on two occasions per month. They spoke on the telephone at any time. When he needed her he called her. They also communicated on the internet. He travelled on his own - there were financial problems. The appellant wrote reports and he had them but he had not brought them with him. There was no website as yet. They worked with friends and on the radio since the internet was a luxury in the Congo. It was suggested to the witness that there was no evidence that his party actually existed. The witness said he was in exile and they were faced with a dictatorship. They had written to the President more than once. They had to work secretly. They were working on an open letter which needed to be signed by various people in Paris and elsewhere.
40. It was suggested there was nothing to connect the appellant with the party. Mr PM said that Congo was different from the United Kingdom. People worked secretly. She had resigned from the party and he had read her letter and she had stated her position. She was really connected with the party and he was the leader. People had arrived from Paris the previous week. Work was being done. He had not been asked to bring any documents with him. He had given evidence in many cases and this was the first time he had been asked to produce material.
41. In answer to questions from the Tribunal, Mr PM said that the party had officers and he was the President and there was a governing body and below that there were party structures with people in place, for example

in Paris. The appellant had an official position – she was his secretarial assistant.

42. We then heard from Mr Melly. Mr Melly was asked whether the appellant would be characterised as high profile. Mr Melly said that in the Congo, grass roots activity was hugely important. This tradition had its origins in the 1970s and 1980s when there was a Marxist one party state. The whole administrative machine was controlled by the party and it was accordingly important to mobilise at the grass roots level. Meetings took place in small cells. People would come in from the countryside to the south east region of Brazzaville to the district of Bacongo and Makelekele and it was significant that this was where Mr PM had met the appellant. After the new President had taken over in 1997, the opposition relied totally on grass roots activity. It was not surprising that the appellant had not been arrested at that time as an accommodation had been reached between Mampouya and the President.
43. Kolelas had returned in 2005 for his wife's funeral and had done his deal with the President. Kolelas had been detached from the grass roots activists. There had been no process of consultation before he had made his switch. Ninety percent of the activists had gone underground.
44. The appellant had been assisted by a police officer but this was not surprising since there was a professional ethic in the police service which went back to the old Marxist system. There was a belief in the office. The security forces were more politicised.
45. The date on the documents adduced in the appellant's case could be explained because the arrests had taken place on an extra-judicial basis. Subsequently documents would be issued in justification for these actions.
46. Kolelas had been a very charismatic opponent to the Marxist party. The President drew his support from the northern regions whereas Kolelas' support came from the south and particularly the south east. He had been the leading opponent in exile and more prominent than the former President. The grass roots had been expecting him to lead civil resistance and had been taken by surprise. He had been isolated on arrival and had effectively been kept in custody and protected. He had not been able to re-engage with the activists. He had also been very traumatised by his wife's death. His confidence had been shaken.
47. It was also resented that while he had secured a personal amnesty, he had not made efforts on behalf of the members. He had not made his deal conditional on an amnesty being more widely granted. People like Louzala felt that they were leading the true tradition of the MCDDI and Mr PM's new party was part of that new tradition.

48. The UPC was not a formal organisation in the way that other parties were. It was traditional to have an overseas wing. It was not surprising the UPC had not reached the stages of other parties. Exiles were afraid of the government. It had been claimed that various individuals had been poisoned by the present regime. Mr Melly gave three examples. It might be appropriate to have a level of discretion in the circumstances. Mr Melly had heard through a longstanding contact that Mr PM had been forming a new party in early 2007. It was not that surprising that there was no secretariat or internet presence.
49. Concerning the specific risks for the appellant while there was a residual risk flowing from past MCDDI activities, she represented a hugely valuable source of information concerning Mr PM. She would know about the membership and about Mr PM's travel plans and how many people there were at meetings etc. The appellant was the personal assistant to the individual at the heart of the opposition. The government would want to know if he was a threat. She had drafted the party statement and there were 200 names on the e-mailing list. If she had the information she would be a key figure of interest for interrogation and questioning.
50. Mr PM had referred to 100,000 members. This was based on the aspiration that MCDDI members would support him. This was not implausible if one included all adult members of a family rather than just the head of the family.
51. The leader was very important in a country where there was a high level of illiteracy since it was the leader's photograph that would be emblazoned on t-shirts and appear on posters. The image of leader was very important.
52. Mr Melly was asked how the appellant would be known as a failed asylum seeker on return. Mr Melly said that he had examined a number of cases. Generally people were questioned on arrival. The similarity of the appellant's name to Mr PM would be noted. She would have come from the United Kingdom and she would be automatically questioned about her relationship. She would be transferred to the Security Directorate (DST). There was a culture of keeping an eye on exiled groups abroad. Every arrival was noted. It would not be surprising if the authorities were not already aware of what the opposition was doing in the United Kingdom. This was especially so given that she had publicly resigned and sent a letter of resignation.
53. There had been quite clearly some improvement over the years in the situation in the Congo. The old broad categories of risk were no longer applicable. Individuals could be still seriously at risk for particular reasons. For example there might be a family dispute dating back many years, or the risk might arise because of current political activity and it was in this latter class that the appellant fell. She had been helping to organise the new party and that was the core of the risk. She might

become a bargaining counter to blackmail Mr PM. She could be threatened in order to force him to do a deal with the government. She, however, was not a famous person and was not in a position to do a deal. Leaders were able to offer an endorsement and could be assisted to re-establish themselves. The low-level activists were not of public value. They had no bargaining power.

54. In cross-examination, Mr Melly accepted there was no objective evidence to support the party in its present level of operations. However he had been aware of Mr PM's activities since the previous year. His activities had been fairly common knowledge.
55. Mr Melly was asked what would connect the appellant and Mr PM. Mr Melly said that there was independent evidence of Mr PM's activities and he had been informed about that about a year and a half ago. He had not been informed about the appellant's role until dealing with this case. However, he would not have expected to know the details of individual leader's personal secretaries. She did not have a front of stage political role.
56. Ms Isherwood asked Mr Melly why the authorities in the Congo would be aware of the appellant. Mr Melly said that intelligence services would have more detailed knowledge of activism. They would see visa applications and would monitor movements of those entering the country. One of the first actions of the President in 1997 had been to seize the MCDDI records of members. While he could not be sure, he would be very surprised if there was no suspicion of the appellant's involvement. While the appellant's surname was not unique, the appellant and Mr PM would be linked through the name. They had the same surname and came from the same country of exile. If the appellant's letter had been sent to Mr Kolelas, it would have come to the attention of the authorities since Kolelas was living under the observation of the authorities.
57. Mr Melly had last visited the Congo in 1995, but had worked on the country extensively since. He got his evidence by interviewing Congolese, members of the government and human rights groups as well as independent organisations. He had the normal range of contacts of a working journalist. He was able to talk to a wide range of sources. He had not interviewed the appellant. Ms Monekosso had worked on aspects of the case and he had concentrated on the implications of recent circumstances.
58. Mr Melly was asked about the US State Department Report. It was pointed out that the security forces had established a joint police and military unit known as COMUS under the Ministry of Security and Public Order responsible for patrolling the frontiers. This matter had not been mentioned in his expert's report. Mr Melly acknowledged that he had not mentioned the creation of COMUS. It was not clear who would meet

failed asylum seekers at the airport. It was difficult to get detailed information about this. While the situation had generally improved, there were still cases of individualised repression and some cases of officially organised abuse.

59. We then heard submissions. Ms Isherwood relied on the refusal letter. The initial claim had been based on membership of the MCDDI and now reliance was placed on a newly formed party and her health. The approach of the Tribunal was governed by Devaseelan. The facts had been found in paragraph 13 of the Tribunal's earlier decision but there were still credibility issues. In the interview in September 2007 the appellant had never mentioned the new party. She could not claim that she had not been asked. There was also a discrepancy about when the appellant and Mr PM had met. The appellant was slightly evasive and had kept turning the questions round. The documentation concerning the arrest warrants was unsatisfactory and it was accepted that they were post-dated. The appellant's account was implausible. Why should a friend of a friend help the appellant and why would a complete stranger take her in? There were hospitals in Brazzaville where she could have gone for treatment. It was implausible that she had not been in possession of a passport on leaving the country. Reference was made to the 2002 Country Information Report, although this had not been lodged.
60. In relation to the arrest warrants, the experts had not seen the originals. The problem about the dates on the documents had been accepted by the appellant. The appellant's position was different from the position of the appellant in the case of BB (MCDDI - Known Political Opponent) Congo Brazzaville CG [2004] UKIAT 00223. The appellant in that case had written a short play which had a political purpose. The present appellant, on the other hand was simply one of many secretaries. Mr PM had only seen her on two occasions before his departure in 1997. The 2005 experts' reports gave a general overall view. The conditions in Pool were described as generally calm at page 72 of the bundle. Human rights abuses appear to have become less frequent since the end of the 2002 - 2003 war, but not all individuals had been persecuted and a claim could no longer be made out on the basis of the appellant's ethnicity. The Congo had launched its enquiry into the Beach affair. The Congo authorities were actively trying to improve things. A peace accord had been signed in March 2003 - this had been referred to in paragraph 22 of BB. Even at that time things had been improving in the Congo.
61. Ms Isherwood referred to the appellant's *sur place* claim. Apart from the oral evidence there was nothing to support the claim. The burden of proof was on the appellant. Even the expert could not confirm that the party existed, or that there would be any connection between the appellant and the party. The appellant's resignation letter was simply a standard typed letter on the file. The documents submitted by the appellant had been taken at face value in the expert's report. There was no evidence that the appellant would be known. Neither the e-mails nor

the reports that the appellant said she had written had been produced. There was a lack of objective evidence to support the claim. It was said in the expert's report that the government had mounted a concerted drive to reach deals with exiled opponents over the previous three years yet it was claimed the appellant could not get home. There was no reason why the appellant should be of interest given the improved situation. The appellant's report was simply based on an assumption that the authorities would know of the appellant and Mr PM. The government had reached an agreement with the guerrilla leader, Frederick Bitsangou and he had been made the head of Humanitarian Affairs. The government was moving forward. According to the US State Department Report published in March 2008, there were no political killings and the appellant would not be at risk on return in the light of the improved situation and the fact that there would be no knowledge of her association with Mr PM. Opposition parties enjoyed wider freedom of activity nowadays as was apparent from the expert's report at page 216 of the bundle and there was no reason why there should not be evidence of the new party.

62. The appellant's picture had never been taken by the authorities. There would be no connection between her and Mr PM.
63. The appellant could not base a claim on a fear because of her ethnicity. This claim could not be made out in the light of the country guidance. Mr Melly's report was diminished in value by the fact that he had failed to mention the joint police and military unit known as COMUS.
64. In relation to the medical issues, it was to be noted that the appellant had only mentioned her pregnancy in one of the recent reports. Not all the scars had to do with the beatings and that had not been acknowledged by Dr Bell. A high threshold was to be applied in such cases - see N v UK [2008] ECHR 453. It was odd that the appellant was said not to like noise but could cope with the noisy meetings. She could not be socially isolated and yet go to the library every day. A large sum of money had been invested in the healthcare system as appeared from an article entitled "State urged to improve disastrous healthcare system (IRIN report dated 12 December 2007)."
65. Mr Pipe confirmed that the appellant's case was based on political opinion rather than ethnicity - ethnicity did not alone create a risk. However the Lari (who populate the Pool region and south-western districts of Brazzaville) largely supported the MCDDI. Counsel acknowledged that he could not argue the appellant's case on medical grounds in the light of the authority of N v UK. He did rely, however, on the positive findings that had been made by the Adjudicator which should be preserved applying Devaseelan.
66. The current country guidance - BB - was to the effect that not all oppositionists were at risk. Mere MCDDI members would not be at risk,

but specific individuals with profile would be. A significant development since BB had been the return of Kolelas. His agreement would protect an individual as long as that individual acquiesced in the status quo.

67. Dealing with credibility issues, the first and foremost problem was the appellant's failure to mention her association with Mr PM in her interview. She had explained that she had been stressed and had other problems. Her case was supported by Dr Bell in a powerful and compelling report.
68. The new party was a fledgling organisation built around Mr PM. The evidence given at the hearing had been credible. The appellant's escape had been supported by Good Samaritans in the Congo. There might have been confusion about the date of the meeting with the appellant in the United Kingdom. Mr PM had met the appellant in 2003 according to his statement. The point that had troubled the Adjudicator about the dates on the documents could be explained by reference to the objective evidence.
69. The expert had explained how certain police officers would assist people out of a sense of duty to their office.
70. Mr PM was an individual of high profile. The appellant would be associated with him and therefore at risk. While senior figures were returning, grass roots activists were not.
71. The Home Office had lodged material about the 2007 elections. There had been widespread chaos and malpractice at these elections. The situation in Pool had remained unstable and corruption remained a significant problem.
72. Mr Melly had given a very balanced report. The position had improved but problems remained for those who were not prepared to acquiesce.
73. The appellant's claims could be reassessed in the light of the recent material. Furthermore she was connected with Mr PM who was mobilising the diaspora. While the party had no profile as was accepted, Mr PM had publicly repudiated the deal and his surname was the same as the appellant's. She would be vulnerable as a woman and because she was the source of information. It was not suggested that all Lari or all opposition members were at risk, but it was those who were not prepared to compromise. The case of BB was perhaps slightly out of date.
74. At the conclusion of the submissions we reserved our determination. In reaching our conclusions we bear in mind the totality of the material before us including the skeleton argument. The burden is on the appellant to establish her asylum claim. The standard of proof is that of a reasonable degree of likelihood or real risk: see Sivakumaran v Secretary of State [1988] Imm AR 147; Karanakaran [2000] Imm AR 271.

It is necessary to evaluate the claim in the light of the objective evidence and country guidance.

Country guidance

75. The starting point for the consideration of the background material is the determination of the Tribunal in BB. The historic situation was dealt with in paragraphs 17 to 20 of the determination. The Tribunal said that Congo Brazzaville had a history of political violence and deep ethnic division and experienced a brutal civil war in 1993-1994 and from 1997 to 1999. In August 1992 following multi-party presidential elections, Pascal Lissouba was elected President, defeating Denis Sassou-Nguesso. The political conflict between Lissouba and his opponents including Mr Kolelas spilled over into civil war. The 1997 conflict was triggered by Lissouba's attempt to neutralise the militia of his political rival Sassou-Nguesso. Kolelas was appointed Prime Minister by Lissouba. The civil war continued until Sassou-Nguesso's forces captured Brazzaville and Pointe Noire. In October 1997 Sassou-Nguesso was sworn in as President and Lissouba and Kolelas fled the country. The violent clashes continued through 1998 between the Ninja militia who were loyal to Kolelas and government forces loyal to Sassou-Nguesso. In December 1998 there was a full-scale battle for Brazzaville. In November 1999 the government announced that it had reached an agreement with the militia loyal to Lissouba and Kolelas for a ceasefire and a general amnesty but this did not include opposition leaders in exile.
76. There was a national dialogue in March/April 2001. According to Mr Melly, some opposition members were allowed to attend but their views were ignored. The referendum in January 2002 paved the way for the restoration of nominally constitutional rule. Presidential elections were held on 10th March 2002. The first round of elections to the National Assembly took place on 26th May 2002 and the second round on 14th June 2002. By this stage there was a resurgence of violence. Ninja forces launched a series of attacks around the Pool area and fighting between them and the government army escalated to encompass large areas of the Pool Province. There was an attack on Brazzaville in June 2002. Fighting continued in the Pool area. The United Nations reported that 60,000 people had fled their homes in Pool as a result of the conflict. In November 2002 a plan was presented to the government to end hostilities. On 19th November 2002 the President ordered the military to create a humanitarian corridor to enable Ninja rebels to leave the forests in Pool and pass safely through Brazzaville in order to disarm. In January 2003 the President's party said it was willing to meet with Pasteur Entoumi, the leader of the Ninjas, on condition that he lay down his weapons and abandon violence. On 17th March 2003 the government and the Ninjas issued a declaration in Brazzaville. A Ninja spokesman agreed to end hostilities, disarm fighters and to enable the state to restore authority in Pool. On 26th March 2003 the government and Ninjas

exchanged prisoners as part of an agreement to restore peace in the country.

77. The Tribunal said that the CIPU report confirmed that the Congolese government's human rights record was poor and that security forces had been responsible for extra judicial killings as well as summary executions, rapes, beatings and the physical abuse of detainees and citizens: paragraph 6.1. There were credible reports that the government deployed undisciplined forces during 2002 in the Pool region. In January 2003 the National Assembly adopted a law to create a National Human Rights Commission. That was a requirement of the constitution that came into force in August 2002: paragraph 6.8. Human rights NGO's had cautiously welcomed this commission but waited to see how effectively it would work. In the section dealing with freedom of assembly and association, it was said that the government generally respected the freedom to hold demonstrations and public meetings. The law permitted associations and political parties to form freely and no political parties were banned or suspended in 2002. The MCDDI was free to participate in the political arena but it failed to win any seats in parliament and only four in the local elections. From exile both Kolelas and Lissouba called on their respective parties to boycott the legislative elections although that call was rejected by party leaders in Brazzaville who decided to contest the election.
78. In paragraphs 21 and 22 of their determination the Tribunal dealt with reports from Mr Melly. The greatest risk to returning individuals suspected of connections to the opposition lay in the risk of arbitrary detention and revenge attacks possibly by groups operating at arms length from official judicial and police process. Significant warfare had stopped although some renegade Ninja groups had been slow to abandon arms. Mr Kolelas had recently appealed for the right to return home for reconciliation talks but the response from the President was that he would have to face the judicial authorities if he returned.
79. In paragraph 24 of their determination the Tribunal said looking at the background evidence as a whole they were not satisfied that past or present membership of an opposition party, including the MCDDI, would lead without more to a real risk of persecution on return to Congo Brazzaville. Those parties continued to function although it seemed equally clear that they were effectively excluded from any real chance of obtaining power and influence. In the judgment of the Tribunal, however, the evidence did support Mr Melly's view that there continued to be a danger for some political opponents of the current regime. They considered that the assessment of whether there was a real risk depended upon the individual's background and profile, including in particular the extent of his political involvement and whether he had or was likely to come to the attention of the authorities. In paragraph 26 they said that it was too early to draw any firm conclusions about the peace agreement which in reality was a cessation of hostilities. The

political situation in Congo Brazzaville had been exceptionally volatile since 1992 and there was no indication in the background evidence that the current government was becoming more tolerant of effective political opposition.

The report before us of Mr Melly dealing with country conditions

80. In his report dated 20th May 2008 Mr Melly dealt with the return of Mr Kolelas. On 7th October 2005 President Sassou-Nguesso published a degree permitting him to return to Congo on humanitarian grounds to bury his wife, who died suddenly in Paris on 29th September 2005. He arrived on 14th October and his wife was buried on 15th October. From then onwards he was under effective house arrest, being kept in a building in the centre of the city near the cathedral, under the guard of government soldiers, prevented from going to South Brazzaville and effectively banned from engaging in any political activity, meeting political colleagues or having any access to the media. On 23rd December 2005 he was reported as staging a dramatic U-turn and publicly endorsing Mr Sassou-Nguesso's leadership and withdrawing from the opposition, although his family had said that his remarks were misinterpreted by pro-government media and in effect he had simply called for support for national reconciliation and not endorsed the government. His action, however, provoked anger and dismay among many of his supporters who felt that he had abandoned them. The result was that during 2006 deep rifts opened up within the MCDDI with many members and senior party cadres being in total disagreement with his action; they regarded themselves as still part of the Espace républicain pour la défense de la démocratie et l'unité nationale (ERDDUN) opposition alliance with the Union Panafrican de la Démocracie Sociale (UPADS) party of ex-president Lissouba - who remained in exile.
81. On 24th April 2007 Mr Kolelas, as leader of the MCDDI Party and Ambroise Noumazaly, Secretary General of the President's ruling Parti Congolais Du Travail (PCT), signed an agreement to co-operate in the legislative elections and form joint administrations at national and local level should they win. Many grass roots members and senior activists in the MCDDI believed that Mr Kolelas had betrayed the party's heritage especially in the light of the severe repression that many activists endured since Mr Sassou-Nguesso captured power in the 1997 civil war. In late April 2007 the government said it had reached an agreement with the guerrilla leader Fredrick Bitsangou - also known as Pasteur Entoumi. Bitsangou, the leader of a long running Ninja/Nsiloulou rebellion in the Pool region, was appointed Head of Humanitarian Affairs. This did not bring a complete end to violence; the Pool region remained highly unstable, with civilians at risk of attack or harassment by both rebel fighters and the government security forces. In May 2008 it was still unclear how solid the reported agreement was and whether Bitsangou was really prepared to trust the government. He remained in his camp in rural Pool although he had renamed the CNR (Conseil/Comité National

pour la Résistance) to make it more like a conventional party which participated in the 2007 elections.

82. Mr Melly stated that the first round of the legislative elections which took place on 24th June 2007 were characterised by numerous errors and omissions in the electoral roll and wide-spread irregularities and although the second round of voting on 5th August appears to have been less badly organised than the first neutral observers noted failings in most constituencies. The final results for the PCT (Parti Congolais du travail -the ruling party) and its allies awarded 124 of the 137 seats. Of the opposition parties UPADS gained only 10 while the Union for Democracy and the Republic (UDR-Mwindi) was left with just 1 seat – compared with 8 in the last parliament. Mr Kolelas, now allied with UPADS claimed the election had been rigged. Certainly many of the results were surprising: UPADS did not even win seats in some of its traditionally strongest areas while Mr Milongo lost his seat representing Boko, in Pool, an area where he was known to enjoy huge personal local support. Overall the election could not be seen as a free and fair test of opinion of the Congolese people, because of the widespread flaws and the authorities' refusal to allow the establishment of a genuinely independent electoral commission to run the poll. Mr Melly expressed the view that opposition leaders and their parties participated in the political system on terms dictated by Mr Sassou-Nguesso and the PCT. Mr Sassou-Nguesso had not been prepared to engage in any substantive negotiation or dialogue that might require general significant compromises over the exercise of power. Certain elements of opposition parties were now accorded a degree of freedom to operate at grass roots level but none was allowed to develop a serious challenge because leaders were neutered by being co-opted into understandings with Mr Sassou-Nguesso. In Congo the government now allowed opposition parties to operate, so long as they did not pose a serious challenge to its hold on power. A Report from one of his main Congo opposition sources indicated that the authorities continued to take a repressive stance towards those members of the MCDDI who remained firmly committed to opposition and had refused to follow Mr Kolelas in accepting the legitimacy of the government.

83. In dealing with his overall assessment of the current situation in his report Mr Melly conceded that it was clear that human rights conditions in Congo had improved to some extent. The government had substantially moved away from the extreme levels of repression seen during the earlier years after Mr Sassou-Nguesso's return to power in 1997. There was no doubt that the opposition parties enjoyed wider freedom of activity than was the case until the end of 2002 although Congo was still far from being a freely functioning democracy. There was still a serious risk to many individuals because of their own past actions or those of family members. Those suspected of connections to the armed opposition to the government were at particular risk. There remained a serious risk for individuals who had acted in ways that could spark the antagonism or suspicion of the authorities or of members of the

pro-government security forces and their families were also at some risk. The individuals most at risk were not senior politicians or public figures but low profile individuals with a history of committed opposition activity or suspected past links to armed rebel groups as they were not well-known and their safety could not be monitored.

The background material

84. The US Department of State Country Report on Human Rights Practices 2007 on the Republic of Congo dated 11th March 2008 stated that the parliamentary elections for the Senate and National Assembly in June and August were marred by irregularities and were widely viewed as poorly run and highly disorganised. The government's human rights record remained poor; although there were few documented abuses during the year, serious problems remained. Citizens' right to peacefully change their government was limited. In addition the following serious human rights problems were reported: killing of suspects by security forces; mob violence, including killing of suspected criminals; security force beatings, physical abuse of detainees, rapes, looting, solicitation of bribes, and theft; harassment and extortion of civilians by uncontrolled and unidentified armed elements; poor prison conditions; impunity; arbitrary arrest; lengthy pre-trial detention; an ineffective judiciary; infringement on citizens privacy rights; limits on freedom of the press; restrictions on freedom of movement; official corruption and lack of transparency; domestic violence and societal discrimination against women; trafficking of persons; discrimination on the basis of ethnicity, particularly against pygmies; and child labour. Although there were no reports that the government or its agents committed any politically motivated killings security forces killed persons and although there were no reports of politically motivated disappearances during the year arbitrary arrest continued to be a problem.
85. The Amnesty International Report on Congo dated 23rd May 2007 stated that political detainees and criminal suspects were allegedly tortured and ill-treated. There was no progress in bringing to justice those responsible for the enforced disappearance in mid -1999 of more than 350 refugees who were returning from the DRC.
86. A Freedom House report on the Republic of Congo dated 26th June 2007 stated that the political opposition was weak and fragmented and the National Assembly was dominated by the Democratic and Patriotic Forces (FDP) coalition. Freedom of assembly and association were generally respected in practice, although public demonstrations were rare. NGOs operated freely, though two prominent Congolese activists working on behalf of the Publish What You Pay Coalition, which advocates greater transparency in the oil industry were intimidated and detained by the government in 2006. The government did not fully control all members or units of the country's overlapping and poorly co-ordinated security forces, which include the police, gendarmerie and military. Members of these forces acted with impunity in committing human rights abuses and

there were reports during the year that security forces killed people during apprehension and in police custody.

87. A Country of Origin Information Request made on 28th September 2007 asking “is there any evidence that the government of the Republic of Congo or its agents are committing human rights abuses against opposition party members. Is there any evidence of restrictions on political activities/political opposition/membership of opposition parties” was answered on 3rd October 2007 in the following terms:

“We can find no evidence that human rights abuses are being committed against political opponents in recent years. The recent elections were contested by a number of parties, and boycotted by others, and although there were a number of irregularities which the opposition protested about, we can find no evidence of restrictions on them.”

88. An allAfrica.com news report dated 28th June 2007 reported that the turnout at the elections was very low though the African observers noted that the security had improved and those that voted were largely not intimidated, unlike in previous elections marred by violence. An allAfrica.com news report dated 13th August 2007 reported that opposition parties in Congo had protested against the outcome of general elections held on 24th June and 5th August after the government was returned to power by a landslide victory.

Decision

89. This claim has already been the subject of an adjudication. It is accepted that our approach is governed by Devaseelan. In paragraph 37 of *Devaseelan*, the Tribunal said that the first Adjudicator’s determination stood as an assessment of the claim the appellant was then making. While it was not binding on the second Adjudicator, “[a]s an assessment of the matters that were before the first Adjudicator it should simply be regarded as unquestioned.” A second Adjudicator must however be careful to recognise that the issue before him is not the issue that was before the first Adjudicator, in particular time would have passed and the situation may be shown to be different from that which obtained previously – see paragraph 38 of the determination. The first Adjudicator’s determination should always be the starting point, but facts happening since the first Adjudicator’s determination can always be taken into account by the second Adjudicator. The Tribunal gives guidance as to matters that could have been before the first Adjudicator but were not in paragraph 40 and gives further guidance in the ensuing paragraphs – it is recognised that not every circumstance could be provided for in paragraph 42(8).
90. We have carefully considered the report by Ms Monekosso on the documentary evidence that was before the Adjudicator. The expert deals with the arrest warrant which states that the appellant’s family has been

indicted for “persistence of the betrayal information”. The expert found that such an accusation in the Congolese context was entirely normal. While it was not possible to verify the issue date and number, there was no feature of the document that caused the expert to question its authenticity.

91. The wanted notice accused the family of threatening affiliation to the former leaders in exile. The document was signed by an individual who is now the head of the Congolese Armed Forces. There was also an “Ordre de Mission” – an order to search and carry out the implementation of the wanted notice and arrest warrant. The documents were dated June and July 2002, after the arrest of the appellant’s parents who were detained in April 2002 and who were still in detention when the documents were released and dated. However this should be understood in the context of Congolese troubles at that time and many cases were matters of arbitrary arrest and security forces were not allowed to release documents before arrest. In paragraph 4.9 of the report it is stated:-

“[The appellant’s] arrest warrant and wanted notice read as letters, where they explain the reasons why the documents are issued. A typical wanted notice or arrest warrant should contain the nature of the document as a title and in capital letters. However, if the official templates have run out, the security forces can type their own documents, which may not be in the official format.”

92. The documents should have been issued by the court and not by the security forces. Papers such as “Ordre de Mission” should be internal security forces documents. However, the security forces used such documents to intimidate the population. Security forces could even use the “Ordre de Mission” to arrest people instead of an arrest warrant. The expert concluded that the documents were genuine documents.
93. In our view the Adjudicator had proper reasons for doubting the authenticity of the documents adduced by the appellant. While we take into account the evidence of the experts before us – the oral and written evidence of Mr Melly and the written evidence of Ms Monekosso – we do not feel it would be right, applying the guidance in Devaseelan on the question of the reception of fresh evidence, to revisit the Adjudicator’s conclusions on these matters. He gave reasons for his decision and was entitled to conclude as he did on the material before him. For the sake of completeness we should mention an article that is said to have appeared in *l’Observatoire*, a weekly newspaper published in Congo-Brazzaville. This article, published in November 2004, mentions the disappearance of the appellant, her MDCCI activism, rape and murder of her brother. Mr Melly and Ms Monekosso state in their 2005 report that there was no reason to doubt the authenticity of the article. The appellant says in her statement of 14 May 2008 that it was sent to her by Mr Louzala. She

could not account for how the journalist had obtained her photograph but there were many photographs taken of her when she was politically active in Congo. We do not consider that the article advances the appellant's case given the points that are accepted and are summarised in paragraph 13 of the Tribunal's decision.

94. We also take into account the medical evidence that was not available to the Adjudicator. This medical evidence supports the appellant's claim to have been raped, a matter that is not in dispute before us. We accept that the medical evidence indicates that the appellant was beaten and suffered non-accidental injuries. The findings of fact in the Tribunal's determination include the appellant's claim that she had been beaten. Having given the matter the required careful scrutiny, we do not consider that the material justifies us revisiting the Adjudicator's findings of fact as summarised in paragraph 13 of the Tribunal's decision.
95. It appears to us that the crucial aspect of the appellant's case is her *sur place* activities on behalf of Mr PM. On the appellant's account she had resigned from the MCDDI and was working for Mr PM and his new party in the first part of 2007. However, she made no reference to this whatsoever in her interview with the Home Office later that year.
96. The appellant says that she was not asked specific questions and that she was stressed. While we accept that the appellant was no doubt stressed by the interview, a stress exacerbated by her medical condition, the failure to mention what is a central plank of her current claim is troubling.
97. There are other matters rightly relied on by Ms Isherwood. On the appellant's account she is preparing reports, sending e-mails and such like. Yet nothing was produced before us. There is no evidence of the existence of the party apart from the oral evidence. The expert himself cannot verify the existence of the new party.
98. Against all this there is Mr PM himself. We have no doubt that he is whom he claims to be and that he was a significant player in the political arena in Congo. He has been granted refugee status. Although there was an initial confusion about when he had met the appellant in the United Kingdom, we do not consider that his evidence about that meeting is unreliable. We find that he did meet the appellant on more than one occasion when she was a young supporter of the MCDDI in the Congo. He met her in Makelekele and Mr Melly remarked that this was not an implausible place for a meeting.
99. The appellant's account is also supported by Mr Louzala. Although we did not hear from Mr Louzala, we accept Mr PM's evidence about him. We accept that Mr PM is attempting to create interest in his new party throughout the diaspora.

100. That said, there are significant gaps in the evidence. We have already commented on the fact that the appellant's reports and e-mails have not been adduced. There is no documentary evidence of the existence of the party. There is no evidence that the appellant's letter of resignation was sent, let alone received. Evidence of photographs of the appellant - for example on her leaflets - is distinctly lacking. In short, there is a dearth of documentary evidence where one might reasonably expect it.
101. The Adjudicator who heard the appellant's appeal some time ago also had considerable reservations about the evidence. Yet he was prepared to accept that there was a kernel of truth in the appellant's case. We find ourselves in the same position. We cannot speculate as to why the appellant failed to reveal her current association with Mr PM at interview. It may be because she felt that to reveal that she had resigned from the MCDDI would damage her case. We are not confident we have heard the truth about this.
102. Another significant difficulty in the way of the appellant is the picture painted of her in the medical evidence as being something of a recluse, living on her own and going out only seldom. This account, it has to be said, is somewhat difficult to reconcile with the intelligent political activist going out daily to the library, attending meetings, e-mailing and so on.
103. Certainly, if the appellant was depressed she exhibited no sign of it at the hearing. She came across as an intelligent individual who would not hesitate to correct the interpreter and had no difficulty in getting her case across. We could well understand that she could be a useful secretarial assistant to Mr PM.
104. However, taking into account all the forceful points made by Ms Isherwood, we feel, as the Adjudicator did, that there still remains a kernel of truth in the appellant's story. We were impressed by the evidence of Mr PM. Apart from the confusion about the date when he met the appellant in the United Kingdom, he and the appellant gave consistent evidence. We accept that he is genuinely committed to his new party and in carrying matters forward. Importantly, we accept that the appellant assists him in this cause. Although the witnesses were somewhat reluctant to disclose numbers, we accept that there may be reasons for this - Mr PM refers to reasons of security in his statement. There may be reasons of confidentiality inhibiting them from putting forward e-mails or reports which might disclose membership details. We accept that while the expert had not heard details of the new party, he had been aware of Mr PM's plans for some period of time prior to its launch. The appellant has been vouched for by Mr Louzala and Mr PM. Mr Melly confirmed that MCDDI leaders will only provide a statement confirming that an individual is or was a member where they have themselves been able to verify this - the experts are aware of a recent

case where MCDDI leaders refused to provide confirmation because of discrepancies in the supposed membership documentation – see page 89 of the report. It is pointed out that the appellant belonged to the mainstream of the MCDDI loyal to Kolelas and not to the faction of the party led by Mampouya.

105. The appellant's profile is not a high one and yet she is linked by her current work with a prominent political activist. She works as his administrative assistant. As such she is aware of the place of meetings, the membership list and other matters. She is aware of Mr PM's movements. She is aware of whom he meets.
106. Ms Isherwood makes the point that if the appellant were to be returned, no one would be aware of her association with Mr PM. We have given anxious consideration to this point.
107. The first factor we bear in mind is that although the appellant eventually lost her first appeal, she did not emerge with a totally negative credibility assessment. Various aspects of her claim were accepted. It was accepted that she was a secretary for the MCDDI in the Congo and that she had campaigned for the improvement of conditions for women. It was accepted that she had been raped in August 1997 and that the family had left for Gabon. While there had been a period where she had worked for the MCDDI without difficulties, there had followed the problems to which we have made reference earlier in this determination. Mr Melly has explained why there might have been a period where the appellant did not suffer problems between 1999 and 2002. We accept his evidence.
108. The appellant would accordingly be returned to the Congo with this background. She would be returned from the United Kingdom after a number of years and shares the same surname as Mr PM.
109. We accept Mr Melly's evidence that returned asylum seekers are questioned. It would be surprising if they were not. Ms Isherwood submitted that Mr Melly's report was undermined by his failure to mention the establishment of a joint police and military unit known as COMUS in his summary of the US State Department Report. However, we feel that his summary was fair and impartial and we have no reason to doubt his objectivity.
110. We cannot discount the possibility that the authorities would have some record of the appellant or her family. It is established that the authorities have an interest in the MCDDI databases – the President seized the headquarters in 1997, taking away all paper records, computers and discs in order to try and secure the lists of its members (page 91 of the appellant's bundle).

111. We do feel that the appellant would be in a sensitive position on return. We have no reason to doubt that she would be questioned about what she had been doing since she had last been in Congo. The Secretary of State, we understand, does not expect returnees to lie when questioned. We acknowledge that there may be cases where an individual has been found to be so lacking in credibility that it would be surprising that if on return he was suddenly to volunteer the truth. However the appellant has not been found to be totally lacking in credibility. The Adjudicator found a kernel of truth in her story and so do we. We also find it by no means unrealistic to suppose that the authorities in the Congo would have some information about the appellant either from past records or from their contacts. Their suspicions would be likely to be aroused by the co-incidence of the appellant having the same surname as Mr PM. Further, although we found the medical report about the appellant difficult to reconcile with her political activism as we have explained above, we do accept that she would be a somewhat vulnerable individual on return, having been raped and having lost her brother and other members of her family. It cannot be supposed that she would be resilient under interrogation on return.

Our conclusion in relation to the current situation in the Republic of Congo

112. We take the view that there have been improvements in the human rights position in the Republic of Congo since the determination of the Tribunal in BB was promulgated. We share the view of Mr Melly, however, that this has been achieved largely as the result of the neutralisation of opposition leaders by absorption into a government alliance. The conclusion of the Tribunal in BB that past or present membership of an opposition party including the MCDDI would not lead without more to a real risk of persecution on return to Brazzaville remains valid. The Tribunal's view was that these parties continued to function although it seemed equally clear that they were effectively excluded from any real chance of obtaining power and influence. The background material and opinion of Mr Melly show that that remains the case. We accept, as did the Tribunal in BB, Mr Melly's view that there continues to be a danger for some political opponents of the current regime. The test of whether there is a real risk continues to depend upon the individual's background and profile including in particular the extent of his political involvement and whether he has or is likely to come to the attention of the authorities.

113. Given the attempts of President Sassou-Nguesso to neutralise the opposition and the absence of completely free and fair elections we take the view that someone who would be seen by the authorities in Congo Brazzaville to be involved in the creation of a new political party opposed to the current regime and whose aim was the establishment of true democracy in Congo Brazzaville would be seen as a threat by the

authorities in Congo Brazzaville and would be at a real risk of serious harm on return there.

Our conclusion in respect of the appellant

114. We have come to the conclusion that on return the appellant faces a real risk of being identified as someone associated with Mr PM and his current political aspirations. She will be viewed as a potentially valuable source of information, given that we accept that she has knowledge about the party's membership, details of meetings and numbers of members etc. We accept that the President is anxious to do deals with parties to broaden his power base and a challenge to the accommodation he reached over the MCDDI would be highly unwelcome. We therefore find that there is a reasonable degree of likelihood that the authorities would impute to the appellant on return an opinion and they would treat the appellant with suspicion and hostility. The appellant has been seriously violated in the past, although it was not found that there was a political dimension to this. We do feel that there is a real risk of something similar happening to her on return and that on this occasion she would be at risk of suffering serious ill treatment for a political reason.
115. It is accepted that the appellant's medical condition would not reach the threshold established in N.

For the reasons we have given we reached the following decision:-

- (1) The asylum appeal is allowed.
- (2) The claim for humanitarian protection is accordingly dismissed.
- (3) The appeal is allowed under Article 3 for the same reasons as we have allowed the asylum appeal.

Signed

Date 14 August 2008

Senior Immigration Judge Warr

Appendix

Background Country material

COI Report Republic of Congo, 20 April 2007.

US State Department report on the Republic of Congo, 11 March 2008.

Amnesty International 2007 report on Congo (Republic of), 23 May 2007.

Freedom House 'Freedom in the World 2007: Congo, Republic of Brazzaville)', 26 June 2007.

COI Service Country of Origin Information Request no. 09/07-125, reply 3 October 2007,

allAfrica.com news report "First-Round Polls Marred By Poor Organisation", 28 June 2007,

allAfrica.com news report, "Opposition Protests as Government Wins Polls by Massive majority "13 August 2007,