

**OPINION No. 13/2006 (UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND)**

Communication: addressed to the Government on 4 October 2005.

Concerning: Mr. Paul Ikobonga Lopo.

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requested information.
3. (Same text as paragraph 1 of Opinion No. 38/2005.)
4. The Working Group welcomes the cooperation of the Government of the United Kingdom of Great Britain and Northern Ireland, which provided the Working Group with the requested information concerning the allegations of the source. The reply by the Government was brought to the attention of the source, which made comments on it.
5. Mr. Paul Ikobonga Lopo (formerly named “Lopo Ikobonga Emongo Mbuya Madu”) is a citizen of the Democratic Republic of the Congo, born on 25 October 1956. He has 12 children, several of them underage, all of whom are present and settled in the United Kingdom and have been granted indefinite leave to stay.
6. Mr. Lopo entered the United Kingdom illegally on 8 August 1988 at Dover using a French identity card in the name of Mbuya Madu to which he was not entitled. He applied for asylum in the United Kingdom on the same day. On 8 February 1989,

Ms. Ntalongeno Ikobonga, also a citizen of the Democratic Republic of the Congo, filed an asylum claim in the United Kingdom and Mr. Lopo was recorded as her dependent husband under the name of Weshti Ikobonga. On 7 July 1989, she was granted asylum and given leave to remain in the United Kingdom until 7 July 1993. Mr. Lopo (under the name of Weshti Ikobonga) was granted asylum in line with her.

7. On 26 March 1989, Mr. Lopo was caught while attempting to facilitate the illegal entry into the United Kingdom of two Congolese nationals using forged passports. On 25 November 1991, Mr. Lopo was convicted on five counts of obtaining property by deception. The court sentenced him to two years' imprisonment and recommended his deportation. However, the authorities did not pursue the deportation. On 1 June 1994, Mr. Lopo was again convicted of a property-related crime and sentenced to 40 hours community service. He was again convicted on 23 June 1994, this time of driving without a licence and without insurance.

8. By letter dated 13 November 1995, the Immigration and Nationality Department informed Mr. Lopo that his application for refugee status had been refused. He was, however, granted exceptional leave to remain in the United Kingdom for one year. On 23 December 1996, the Department granted Mr. Lopo and his family exceptional leave to remain until 13 November 1999.

9. On 22 May 1998, Mr. Lopo was convicted of drinking and driving as well as of assaulting a police officer and sentenced to six months imprisonment. On 20 August 1999, Mr. Lopo was caught while attempting to facilitate the illegal entry of five persons into the United Kingdom.

10. On 17 October 2001, Mr. Lopo submitted an application for indefinite leave to remain.

11. On 10 July 2004, Mr. Lopo arrived at London's Heathrow Airport with two children, one his son, the other the daughter of a cousin. Mr. Lopo was arrested and charged with attempting to deceive the authorities with regard to the identity of the children. On 12 July 2004, he was convicted on charges of using a false instrument, assisting illegal entry and obtaining leave by deception. On 27 August 2004, he was sentenced to 15 months imprisonment. The court recommended that he be removed after serving his sentence.

12. This time the Government decided to act on the recommendation to make a deportation order and on 9 November 2004 Mr. Lopo was served with a Notice of Decision to Make a Deportation Order. He lodged an appeal against this decision on 25 November 2004.

13. Upon completion of the prison sentence, on 4 March 2005, Mr. Lopo was detained by the Immigration Service under the Immigration Act 1971 as subject to deportation proceedings initiated against him following his conviction for serious criminal offences. A hearing concerning his appeal against the deportation order took place on 19 April 2005. On 25 April 2005, the Designated Immigration Judge rejected his appeal. In reaching this decision, the Immigration Judge balanced Mr. Lopo's claim that he should not be deported as his children lived in the United Kingdom and needed his continued guidance against his criminal record, and

reached the conclusion that Mr. Lopo's deportation was justified also from a human rights point of view. In doing so, the judge expressed doubts as to whether the 16 children were all in fact Mr. Lopo's offspring, a fact the Home Office had never challenged.

14. On 28 April 2005, Mr. Lopo filed an application for reconsideration against this decision to the Asylum and Immigration Tribunal. He based his application on two grounds: (a) that as a former soldier and deserter he would be at risk of persecution, killing, torture and arbitrary detention if deported to the Democratic Republic of the Congo; and (b) that, having been living in the United Kingdom for more than 16 years and having a large family stably resident in the United Kingdom, under article 8 of the European Convention on Human Rights, his right to respect for his family life overrides any reasons for his removal, as he has not been found guilty of any violent crime.

15. On 6 May 2005, Mr. Lopo applied for bail, arguing that he has an address in the United Kingdom, that he has strong family and community ties and that there is no indication that the immigration authorities will resolve the question whether he should be removed quickly.

16. The source alleges that the continued detention of Mr. Paul Ikobonga Lopo is arbitrary because he has fully served all prison terms imposed on him for the offences he was found guilty of. He is currently detained pending removal, but there is no prospect that such removal will take place within a reasonable delay. The source notes that negotiations between the United Kingdom and the Democratic Republic of the Congo regarding a Memorandum of Understanding concerning the removal of Congolese citizens have been ongoing for years without success. The source adds that numerous cases of citizens of the Democratic Republic of the Congo currently to be removed from the United Kingdom show that the practical obstacles preventing involuntary return to the Democratic Republic of the Congo are intractable. There is no evidence that this will change in the foreseeable future. The source submits that the case law of United Kingdom courts clearly establishes that removal detention should not be maintained where removal is not realistically practicable within a reasonable period.

17. The Government, in its response, says that Mr. Lopo was not arbitrarily detained. It said that he employed at least 17 different aliases in his dealings with the British immigration authorities. The Government insists that Mr. Lopo entered the United Kingdom illegally on 8 August 1988, using a French identity card and claiming asylum under the name of "Mbuya Madu"; on 8 February 1989 his wife submitted a further asylum claim for herself with Mr. Lopo as her dependant under the name of "Wetshi Ikobonga". On 26 March 1989 under the identity of "Mbuya Madu Nana Okitungu", he attempted to facilitate unlawful entry to two citizens of Zaire travelling on forged passports and was refused entry to the United Kingdom. He was removed the same day.

18. The Government states that on 7 July 1989 Mr. Lopo's wife was recognized as a refugee. He was given leave, as "Wetshi Ikobonga", to remain in the United Kingdom until 7 July 1993 as her dependant. On 11 January 1990 Mr. Lopo applied for asylum in the identity of "Ndinga Lopo". On 1 May 1990 Mr. Lopo said that he wished to withdraw his asylum claim in the identity of Mbuya Madu, but later in 15 August said he wished to continue to seek asylum in the United Kingdom.

19. The Government says that on 25 November 1991 he was convicted on five counts of “Obtaining property by deception”. He was sentenced to two years’ imprisonment and recommended for deportation by the Court. The Court recommendation was not pursued. He was detained at the end of his sentence and was released on bail. On 1 June 1994 he was convicted on a charge of “Attempting to obtain property by deception” and sentenced to community service of 40 hours and given a fine. On 23 June 1994 he was convicted for “Possession of a listed false instrument”, “Using a false instrument”, “Driving without a licence and insurance” and fined and disqualified from driving for six months.

20. The Government informs that on 13 November 1995 Mr. Lopo and his family were granted leave to remain in the United Kingdom on an exceptional basis, outside the immigration rules for 12 months, which was further extended until 13 November 1999. On 22 May Mr. Lopo was convicted for driving with excess alcohol and for assaulting a police officer. He was sentenced to three months’ imprisonment and disqualified from driving for three years.

21. The Government keeps telling different offences Mr. Lopo kept committing, such as assisting illegal entries, using a false instrument, obtaining leave by deception (12 July 2004), which sentenced him to 15 month’s imprisonment and gave him a recommendation by the Court to be deported; driving with excess alcohol, common assault, destroying or damaging property, failing to surrender to bail at the appointed time (12 August 2004) which sentenced him to four months’ imprisonment. Meanwhile, Mr. Lopo’s wife and children, whom he stated in 1999 he was separated from, requested in that year and on 4 August 2004 were granted indefinite leave to remain in the United Kingdom.

22. On 1 October 2004, Mr. Lopo was refused leave to enter the United Kingdom and on November 2004 was noticed of a Decision to make a deportation order against him. He appealed against it and this was dismissed on 25 April 2005. On 4 March 2005 Mr. Lopo completed custodial sentence and was taken into Immigration Service Detention. On 6 September 2005 his application for a High Court review was refused and this exhausted all his available avenues for appeal. On 14 September 2005 a Deportation Order was served on Mr. Lopo and arrangements were made for a removal on 24 October 2005. These were deferred after it was discovered that Mr. Lopo had lodged a late application with the Criminal Cases Review Commission, which requires the presence of the applicant.

23. The Government says that several bails were withdrawn by Mr. Lopo and others were denied to him by the judge on the basis of having ignored the conditions of his bail in the past, taken together with his poor immigration history.

24. The Government states that removal of Mr. Lopo is not an unrealistic prospect, that he would have been removed to Democratic Republic of the Congo on October 2005 had he not lodged a late application for his criminal case, which is to be expedited, and once concluded, he will be removed using his valid national passport. As the Criminal Cases Review Commission issued a provisional decision not to refer Mr. Lopo’s sentence to the Court of Appeal, his removal remains imminent.

25. The Government finally states that Mr. Lopo had entered and re-entered the United Kingdom on several occasions, in a number of different identities and he has returned of his own volition to the Democratic Republic of the Congo, that he has shown a blatant disregard for the both Immigration and Criminal Law of the United Kingdom, employing at this 17 known different aliases. His detention has been reviewed on a regular basis and was maintained due his exceptionally poor immigration history, his previous failure to comply with conditions of release, his use of verbal and documentary deception to gain leave to enter and remain in the United Kingdom, or evade removal, his illegal and attempted illegal entries to the United Kingdom, and the strong likelihood that he would not comply with any conditions attached to his release if he were freed from detention.

26. The source, in its reply to the Government, says that Mr. Lopo only used three aliases and that the others were parts of his same larger name. He recognizes the allegations of the Government in respect to his offences, but states that he already has paid for them. It states that he was refused at least 10 bails. It states that he has been in Brazzaville and not in the Democratic Republic of the Congo. It states that he might already be deported when the response from the source arrived to the Working Group.

27. The Working Group believes that it is in a position to render an Opinion, based on the allegations expressed by the Government and the source. Both Government and source agree on the offences Mr. Lopo had committed, in that the Court issued a recommendation to deport him after serving his sentence, and that since completing his sentence, on March 2005, he was held in administrative detention by the Immigration Service to be further deported. Then it is not contested that Mr. Lopo exercised numerous remedies against deportation, while his detention continued without giving him bail, due to his poor immigration and criminal record.

28. The Working Group's mandate does not enable it to examine the procedure which results in deportation, it can only examine the character of the deprivation of liberty of the individual concerned. The Working Group in that sense is concerned that detention of asylum seekers or non-status persons who are detained for purposes of deportation, comply with the requirement of reasonable time, as stated in previous reports (E/CN.4/2003/8/Add.2).

29. The question is if in his detention, Mr. Lopo has benefited from the standards of a fair trial, which includes being detained for a reasonable time period. The Working Group takes notice that Mr. Lopo had been through administrative and judicial procedures in which he could challenge his detention. During his detention period, he was able to use all the remedies available to him to not to be deported, and meanwhile he was not released as a result of the lack of commitment to the bail requirements that he had to follow.

30. The Working Group considers that the detention was neither indefinite nor unreasonably prolonged, given the duration of the various procedures involved. Since one deportation date had already been postponed on account of an appeal by Mr. Lopo, which entailed his remaining in the country, and, as the source acknowledges, a new time limit was set for his deportation on completion of the appeal proceedings. There does seem to have been a time limit set for the period of detention.

31. That said, the Working Group believes that in this particular case, the period of detention, due to the circumstances above mentioned, does not amount to violations of international standards of a fair trial such as to confer on the deprivation of liberty an arbitrary character.

32. Therefore, the Working Group issues the following Opinion:

The detention of Mr. Paul Ikobonga Lopo is not arbitrary.

Adopted on 11 May 2006.