

1105038 [2011] RRTA 922 (1 November 2011)

DECISION RECORD

RRT CASE NUMBER: 1105038

DIAC REFERENCE(S): CLF2010/62093

COUNTRY OF REFERENCE: Congo, Democratic Republic of

TRIBUNAL MEMBER: Vanessa Moss

DATE: 1 November 2011

PLACE OF DECISION: Perth

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Democratic Republic of Congo, arrived in Australia on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] January 2009 and applied to the Department of Immigration and Citizenship for the visa [in] May 2010. The delegate decided to refuse to grant the visa [in] April 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] May 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department’s file (CLF2010/62093) and the Tribunal’s file (1105038) relating to the applicant, and the Department’s file (CLF2010/60255) and the Tribunal’s file (1105042) relating to the applicant’s sister’s application for a protection visa. The Tribunal also has had regard to the material referred to in the delegate’s decision, and other material available to it from a range of sources.

Evidence on the Department’s file (CLF2010/62093)

20. The application form, completed with the assistance of a registered migration agent, states that the applicant was born on [date deleted: s.431(2)] in Likasi, Democratic Republic of Congo (“DRC”). He claims to be a Congolese citizen and not to have citizenship of, or a right to enter or reside in, any other country. He states that he speaks, reads and writes English and speaks Swahili and Nyanja. He describes his ethnic group as “Kasai” and he is a Catholic. He has never been married or in a de facto relationship. The applicant’s brother lives in Australia. His sister is also in Australia and she is an applicant for a protection visa. His widowed mother lives in the DRC. He has four brothers living in Zambia and two sisters living in the DRC. He has 3 half-brothers of unknown whereabouts and one half-sister of unknown whereabouts.
21. The applicant arrived in Australia [in] January 2009 on a Zambian passport issued [in] July 2008 and valid until [a date in] July 2018. He arrived on a Subclass 573 visa issued [in] December 2008 and valid until [a date in] March 2011. He has a UN Travel document numbered [number deleted: s.431(2)] from Zambia in his name and which he has in his possession. It is valid for travel to all countries except the DRC. He never applied for a passport in the DRC. He left illegally by paying a bribe and was guided into Zambia. He applied for and was granted refugee status in Zambia and was registered there with UNHCR [in] February 2000. He received assistance from the UNHCR in the refugee camp. He previously applied for refugee status from the Department [in] March 2006.
22. He gave two dates for his departure from the DRC in his protection visa application: [in] January 2000 (see folio 18) and [on a further date in] January 2000 (see folio 25). He is a citizen of the DRC. He lived in Zambia from [a date in] February 2000 to [a date in] January 2009. He lists 6 addresses in Zambia where he resided including the Mayeba refugee camp. He was in South Africa [in] November 2007 during which time he was interviewed at the Australian Embassy for a humanitarian visa.
23. He has had 9 years’ education, and does not list any qualifications.

24. He is seeking protection so that he does not have to return to the DRC and Zambia.
25. The applicant provided a statement in answer to questions 42-46 on the application form which states as follows:

I, [name] of [address], in the State of WESTERN AUSTRALIA, state as follows:
Biographical details

1. I was born in the town of LIKASI in the province of KATANGA in the DEMOCRATIC REPUBLIC OF CONGO (DRC) on [date].
2. I am a Congolese citizen. I do not hold any other citizenship nor do I have a right of residence in any other country.
3. My youngest sister, [Ms A], is currently in AUSTRALIA with me and is also applying for a Protection visa.
4. I am currently the holder of a false Zambian passport, which I obtained in ZAMBIA. I am in AUSTRALIA on a Student visa (subclass 573) which expires on [date] March 2011.
5. I arrived in AUSTRALIA on [date] January 2009. I am staying with my brother, [Mr B], at [address]. [Mr B] was granted an offshore Refugee and Humanitarian visa (Subclass 200) on [date] May 2004 and arrived in PERTH in June 2004.
6. I am enrolled at [university] and am in my first year of [course]. I commenced this course in second half of 2009 and am now in my second semester. From January until June 2009 I enrolled at [college] in [course] for an advanced diploma but only did only one semester. I wanted to do Nursing but was told the course was full and would have to wait until second semester 2010 for a place.

Family background

1. I am one of nine children. I have five brothers and three sisters. I also have three halfbrothers and a half sister.
2. My mother is [name] and she was born in [year] and is around [age]. She still lives in the DRC. My father was [name] and he was born sometime in [year]. He died sometime in 1993. I was [age] at the time.
3. My father had three wives. My mother, [name], was his second wife and bore him nine children. We lived in a house in a compound that was provided my father's company. I also have three half brothers and a half sister, who were born to my father's first wife, [name, who] lived just around the corner from our family also in a company house. His third wife, [name], did not bear him any children. She lived in LIKASI but not in the compound. My father lived between the houses.
4. The names of my five brothers and three sisters are: [Mr A] (DOB [date] [Mr C](DOB [date] [Mr D](DOB [date] [Mr E](DOB [date] twin [Mr F] (DOB [date] twin [Ms G] (DOB approx[date] [Ms H] (DOB approx. [date] [Ms A] (DOB [date] The names of my half-brothers and half-sister are: [names and dates of birth].
5. Two of my sisters, [Ms G and Ms H], are married and my mother lives with [Ms G] in the DRC. We are in occasional phone contact, but due to the situation in the DRC, it is difficult to speak very often. [Mr B], [Ms A] and myself are in AUSTRALIA. [Mr C] [Mr D], [Mr E] and [Mr F] live in ZAMBIA.
6. The last time I saw my half brothers and sister was before we left the DRC in 2000. As far as I am aware they are still in LISAKI.
7. The province of KATANGA is situated in the south-east of the DRC and borders with ZAMBIA. LIKASI is more or less a compound and is about 30 minutes to an hour's drive from the capital city of KATANGA which is LUBUMBASHI. It is a well known area as there are a lot of mines around there and a military camp. My family

are of LUBA KASAIAN. We are a minority tribe in KATANGA. The majority tribe is the KATANGESE.

8. My father worked for a company called [Company 1], I believe he was a contractor. He would get contracted out to work on the railways as well as other projects. My mother worked for a large mining company, [name]. She was responsible for distributing items to [name] employees. They would receive food and other household items as part of their wages.

9. In 1992, when I was around [age], there was violence between the KASAIANS and KATANGESE. KASAIANS were getting beaten and killed in LIKASI. My mother and father were forced to leave their jobs as they were threatened by KATANGESE. My father moved our families into a house provided by [Company 1] on the other side of LIKASI in KAKWONTWE. I believe my father thought to be safer as it was near the military camp which made it more secure. It was a bit difficult living all together, since there was not so much space. There were some troubles between the women, but they accepted the situation.

10. My father was sick with diabetes. I remember he used to drink lots of water. Even though we were relatively nearer to the military camp, most of the soldiers were KATANGESE and my father still must have felt vulnerable in KAKWONTWE. He couldn't get any work in KAKWONTWE. My father left to go to KASAI which is another province in DRC, and is dominated by KASAIANS. He left towards the end of 1993. He was hoping that we would be all able to move there as we would be safer. That was the last time our family saw him. We do not know when he died or where he is buried, I have been told that he died in December 1993. I grew up believing that my father had died from being ill with diabetes. However if my father had died from diabetes or in KASAI, his burial would have been official and we would have been told. [Mr B] believes that my father was killed by UFERI supporters [in] December 1993 which is why we have never received official news of his death.

11. After my father's death, my father's families separated. My oldest brother [Mr B] had already left in 1994 from the house in KAKWONTWE as he wanted to be a priest. We did not see him again in DRC. We no longer had the right to stay in the company's house. We moved back to LIKASI around 1995. We went with our mother to live in LIKASI, in our old house. We lived quietly We were told by our mother not tell anyone we were KASAIANS for fear of being persecuted or killed.

12. My mother was no longer working and became an invalid who suffered from diabetes and high blood pressure and she had limited use of her legs. In LIKASI, it was our second oldest brother, [Mr C], who supported the family, by buying and selling fruit and vegetables.

13. I attended the [school] in LIKASI, CONGO, for four years from 1995 -1999, when I was [age] until I was [age].

Reasons for fleeing DRC

1. I left DRC when I was [age] and have never returned. Some things I remember about what happened to our family and other incidents have been told to me by [Mr B] and [Mr C].

2. My second oldest brother [Mr C] was arrested in LIKASI, KATANGA in February 2000 by Congolese soldiers. I remember [name], coming to our house and telling my mother that [Mr C] had been arrested. [Name] was a friend of [Mr C]'s and attended the same university as [Mr C]. I also knew him well as he came around to our house a lot. I was frightened as I knew if you were arrested, you could be killed. I learned later that [Mr C] had been arrested due to an open letter he had written as a student representative against the government of President KABILA. Though the president

was KATANGESE, [Mr C] as the head of the student representatives and other students, some who were KATANGESE, had all signed a letter criticising KABILA's government. [Mr C] told me he was taken from [name] campus, which is part of the [university], and imprisoned and severely beaten. He was [age] at the time.

3. After [Mr C] was arrested, we were suddenly proclaimed to be KASAIANS in our town, and due to the tribal animosity that existed, it became a dangerous situation for our family.

4. I remember the soldiers coming to our house the next morning. We were all still asleep. I think there were about three of them. They searched through the house and broke things and searched the backyard. I remember them talking to [Mr D, who] was studying at the same campus as [Mr C]. He was the oldest male in the house at that time. They were questioning [Mr D] as to what was [Mr C] on about, is there some kind of connection with the rebels, who does [Mr C] talk to. They took [Mr D] with them. As soon as the soldiers left with [Mr D], my mother told us she was going to see the priest at our church for help. [Mr D] returned later in the afternoon by himself. He had been to see the priest before he came home. I remember he had a bandage wrapped around his arm. He told me later that he had been beaten. He had been tied up, his clothes were removed and the soldiers poured water on him to get him to say something. He was badly injured and was taken to the church hospital by our priest.

5. Over the next 10 days or so I saw soldiers on the property and their cars parked on the street. We knew we were being watched. They would come into the house any time, day or night. They would question [Mr D] and sometimes my mother. They would push us in a corner with their batons and the butt of their guns and order us to stay there. The soldiers came to our house every day for about 10 days. Nobody was allowed to leave the house during those 10 days. Most of the time they would put us in a bedroom for hours and wait for us to talk or for the rebels to arrive.

6. KATANGESE call KASAIANS Kilulu which means insect. The meaning behind the name is to say that KASAIANS are insects and that they are nothing and you can kill them. The soldiers in the house were calling us KILULU. Once the soldiers were at our house people also started gathering outside the property. They now knew we were KASAIANS and started shouting out KILULU and that we were causing trouble to President KABILA. When I heard that I became even more frightened as now they knew we were KASAIANS and could come into the house and kill my family.

7. [Priest I] was our priest from our [church] in LIKASI. He was also a friend of the family and would visit us regularly and often came over for meal. During those 10 days I remember [Priest I] coming to the house when the soldiers were not around. [Priest I] told my mother that [Mr C] had called him and that he was still alive and had escaped to ZAMBIA. We had thought he had been killed.

8. [Priest I] arranged for us to follow [Mr C] and meet him in the market at [Town 2] in ZAMBIA one week later. The next day my mother, [Mr E], [Mr F], [Mr D], [Ms A] and myself were picked up from our house by [Priest I] and a friend in a small van. It was still dark when the van came. I was asleep and my mother told me that it was time to go.

9. We took our mother to the church and she and [Priest I] remained. We could not leave her in our house and she was not well enough to survive the trip to ZAMBIA. [Priest I] took our mother to our sister [Ms G]'s house in KOLWEZI.

10. My mother still lives in KOLWEZI. It is not safe there but [Ms G] is married to a KATANGESE man and they pass themselves off as KATANGESE. [Ms H] is also married to a KATANGESE man. They both became pregnant and married

KATANGESE men and left home well before [Mr C] was arrested. My other sister, [Ms H], lives in [town]. We do not have much contact with [Ms H].

11. [Priest I]'s friend took us straight to [town], which is an official border to ZAMBIA. There are people who live around the border you can bribe who can take you around the official border into ZAMBIA. [Priest I]'s friend had arranged to pay a bribe to one of the guides who led us through the bush and into ZAMBIA. It took us two days to get into [Town 2], where [Priest I] and [Mr C] had arranged where we would meet. We were fortunate though as the guide provided us with food. What I remember about the two days was walking and sleeping. I remember walking during the night. When we came to a village we would sometimes rest for half an hour.

12. During this time, a soldier who was guarding [Mr C] in KASAPA prison took pity on him. The guard took [Mr C] in a car and he told [Mr C] that he was supposed to kill him. He let [Mr C] escape without [Mr C] having to pay any money. The guard told [Mr C] that the road they were on would lead to ZAMBIA. [Mr C] managed to get a ride on a truck. The truck driver drove [Mr C] to [town] which is close to the border of ZAMBIA and gave him some money. [Mr C] was in such a bad state after the beatings he endured that the truck driver felt sorry for him. In the DRC, you understand what has happened to someone who looked as bad as [Mr C]. The truck driver also arranged for a guide to lead [Mr C] into ZAMBIA without going through the official border. [Mr C] told us about his escape when we were reunited in ZAMBIA.

13. We met [Mr C] in the market at [Town 2]. The market is not that big so it was quite easy to find him. I was [age] at the time but I was shocked by the way his face looked. That memory still stays with me. His face was disfigured from the beatings he had sustained whilst imprisoned in the DRC. [Mr C] took us to NDOLA by bus using the money that was given to us by [Priest I], which is a large town in ZAMBIA, but is close to [Town 2]. It takes about half a day to drive from [Town 2] to NDOLA. We spent a day there, and from there we went to LUSAKA by bus. We struggled to find [Town 3] at night and spent the night at the bus station. The next day we asked for directions [Town 3] which is where the UNHCR office was located. We spent about a week in [Town 3], where we were registered as refugees and were all put on [Mr C]'s UNHCR card as dependants. His card is [number]. It listed that [Mr C]'s date of entry as [date] February 2000. [Mr D] was also issued a card from the UNHCR, [number]. His card states that his date of entry was [date] January 2000. I do not know why the dates of entry are different. [Mr D] was with us the whole time when we fled DRC. I believe that [Mr C]'s date is the correct date that we arrived. We were then transferred to MAYEBA refugee camp by lorry with other refugees. [Town 3] is about one hour drive from the MAYEBA camp. We stayed at this camp from February 2000 until we moved out in 2005.

14. My brother [Mr B] also ended up in ZAMBIA as a refugee and apparently arrived in February 2001. We thought that [Mr B] was still trying to be a priest in KINSHASA. It was not until late 2004 that we found out he was in ZAMBIA. The date and his reasons for claiming to be refugee are stated in his UNHCR resettlement form.

15. In 2004 my brother [Mr C] was selling [food] in the markets in LUSAKA. When he found out about [School 4], he went there to register for computer classes, and was told by the secretary [name] that a man with the surname [name] had been working at [School 4] in LUSAKA, but had just left for Australia. [School 4] is in the middle of the city in LUSAKA. It is about an hour or two's drive from the MAYEBA camp. By the time [Mr C] found out it was [Mr B, he] had already been accepted as a refugee and had moved to AUSTRALIA around June 2004.

16. As far as I know, [Mr B] never stayed at MAYEBA. In the DRC, he was studying with Jesuit priest, since he was trying to become a Jesuit priest himself. That is why when he arrived in ZAMBIA, it was easy for him to get a job at [School 4]. For refugees like us, we have no right to live in LUSAKA, and we cannot leave the MAYEBA camp unless we have a pass out. Due to his Jesuit connections, [Mr B] was able to obtain authorisation to stay in LUSAKA and work at [School 4]. After [Mr B] left for AUSTRALIA, someone from [School 4] sent him an email to let him know that [Mr C] was in ZAMBIA.

17. From early 2000 until early 2005, I lived with my sister and four brothers as refugees in the MAYEBA Refugee Camp in ZAMBIA. We have been registered as refugees by the UNHCR since February 2000.

18. Around January 2005 all six of us moved out of the MAYEBA refugee camp to [Suburb 5], a suburb in LUSAKA, ZAMBIA, in order to attend [School 4]. [Mr B] had taught at [School 4] and advised us to study there after our first email contact with him. We did not have access to education in the refugee camp which is why we moved to [Suburb 5]. It was very difficult to get a pass out from the camp to go to the town to study or leave as we had to pay a bribe. We were told that we had to spend 10 years in LUSAKA before we could get a study permit.

19. When we moved to [Suburb 5] the first time in January 2005, we managed to obtain a pass out for three to four months. We paid a bribe for this pass. [Mr B] sent the money to [MR C] to obtain this pass out. [Suburb 5] was about a one hour walk to [School 4], where we studied. Once the pass had expired, we decided to take the risk to stay on at [Suburb 5]. We had started going to [School 4], and felt much more hopeful than just being in the camp. At least we were studying something. In [Suburb 5] we rented out a one room house that was behind a bigger house. We risked being imprisoned for a period of time. It is unlikely that we would have been deported since the UNHCR or [School 4] would have intervened.

20. [Mr B] started sending money from the time we had email contact with him. [Mr B] sent money for all of us to support ourselves, to attend school and for me to be able to obtain the documents to come to AUSTRALIA.

21. All six of us were studying at [School 4] and we all lived in [Suburb 5]. [Mr C] was studying computer skills and English; I studied English initially, and then combined it with computer classes; [Mr D] was doing the same, and [Mr E], [Ms A] and [Mr F] were studying English. English classes were three days per week. The rest of us who studied computer classes attended five days week, doing one class in the morning and one class in the afternoon.

22. In early 2005, when I was around [age], not long after we have moved to [Suburb 5], [Mr C] was badly beaten when we were living there. I remember it was night time and we were about to fall asleep. Two people came inside, but I think there were some others outside, since we could hear noises, people speaking French and Swahili outside our room. We understood them to be Congolese. Two of them pushed in the door, and ended up asking "Who is [Mr C]? What are you doing here in LUSAKA?" They asked him if he was in contact with the rebels and trying to get into KABILA's way. They pushed the rest of us aside. One of them was trying to beat [Mr C] with some kind of military belt. He used his fists. The rest of us were pushed into a corner and the other attacker hit the belt down on the floor beside us to keep us quiet. It happened so fast. [Mr C] was not saying anything. They told him to stay away from KABILA. [MR C] kept on saying "I am not doing anything." They left and [Mr C] was lying on the floor. He was bleeding badly. [Mr D] and I took him to [hospital]. He received stitches in his face and his arms were bandaged. We reported the incident

to the police that night. The police asked for our refugee card. They did not ask for our pass out at that time. I have attached a photocopy of his medical report which was attached with his humanitarian visa application.

23. A day or two after the attack, we went back to the camp. We knew we had to move because the attackers would come back again. We lasted two or three weeks in the camp before we decided to leave the camp again. The camp was not all that secure either. People had been attacked in the camp at night. I'm not sure but I think that [Mr C] managed to get another pass out for several months. We were trying to organise our humanitarian visa application to AUSTRALIA, and still trying to go to school. We moved to another address in [Suburb 5]. It's quite a big area. This time we moved to the other side of [Suburb 5]. close to [Mr C]'s friend, [Mr J]. We rented and lived in one room that was part of house. The rent was around 200 000 kwacha a month. This is around \$20 or \$30 a month.

24. On [date] March 2006, my brother [Mr C] applied for refugee status for all six of us to come to AUSTRALIA and join [Mr B]. In 2007 all six of us went to the Australian embassy PRETORIA in SOUTH AFRICA for an interview. We took a bus from LUSAKA to SOUTH AFRICA. The bus passed through ZIMBABWE. Our travel documents were checked at the border. Normally people from ZAMBIA do not require documents to enter ZIMBABWE. As refugees we were required a transit visa and we did not have these visas. We spent the night at the border. We were provided with a mobile phone by the Zimbabweans and we contacted [Mr B] in AUSTRALIA. We were told it would cost \$100 for each transit so \$600 in total. [Mr B] also managed to reschedule our interview in PRETORIA. When we arrived at the SOUTH AFRICA border we were told that we did not require a transit visa to travel through ZIMBABWE.

25. [Mr C]'s application was rejected on [date] November 2007. We were interviewed by [name], a senior migration officer, who said that [Mr B] had indicated that he had seen us in ZAMBIA before he left for AUSTRALIA. This is incorrect. We never saw [Mr B] in ZAMBIA.

26. We were also told that there was a doubt as to whether we were all brothers and sisters. However we were never offered any chance to prove otherwise through DNA testing. At the time our application was rejected, the Department wrote to [Mr B] informing him of the reasons we were rejected.

27. When we returned to MAYEBA Refugee Camp we were told that some people had broken in to a house in the camp, not our house, and asked where [Mr C] was and where was he living.

28. In early 2008, [Mr C] was badly beaten again and our house was vandalised. Just after we came back from SOUTH AFRICA, [Mr C]'s friend, [Mr J], told us that some people speaking French and Swahili were looking for [Mr C]. [Mr C], [Mr D] and I had just come home from [School 4] at 6pm. The other three were visiting with neighbours. There were three or four men who followed us into the house. It was still day time. They asked similar questions as in the 2005 attack about what [Mr C] was doing, why he was against KABILA, that he should stop trying to get into KABILA's way and was he trying to get in contact with rebels. [Mr C] kept on telling them he was not doing anything against KABILA. They were trying to hold him in choke hold. [Mr C] was not fighting back. [Mr D] was being held by one of them. I managed to get away before they came inside. This time, they didn't beat [Mr C] too badly. They were there for less than 10 minutes, and then they were gone. I do not think that the people were the same people that attacked [Mr C] in 2005. We believe that the men who attacked [Mr C] both times were doing so under orders, directly or

indirectly, from EDDIE KAPENDE who was high in the military in KATANGA and is KATANGI himself.

29. That night we slept at [Mr J]'s house, and the following day we went to another suburb called [name] in LUSAKA. It's another compound. We stayed at [name] house for a few days. He was a senior teacher at [School 4]. Then all six of us moved back to the camp in MAYEBA. We had no problems getting back into the camp. In the camp, getting in is not a big deal. The main problem is getting picked up by the police when you are travelling as a refugee, especially if we were all travelling together.

30. After we moved back to MAYEBA refugee Camp we no longer formally studied at [School 4]. We would sometimes go to [School 4] to use the computer and the internet. It took around around one and a half hours to get to [School 4] by bus.

How I came to AUSTRALIA

31. After our refugee visa application was refused in SOUTH AFRICA, I felt really bad. I went to ZAMBIAN immigration in LUSAKA to make inquiries about obtaining a legal study permit to study in LUSAKA. Immigration refused to speak to me and I was detained for not having a pass out to be in LUSAKA. Immigration told me they were going to send me to prison. They allowed me to call [Mr B] in AUSTRALIA [Mr B] spoke to them, [Mr B] was able to contact one of his friends who worked at [School 4] in LUSAKA to come to immigration and pay the \$500 AU for me to be released.

32. I found out about a Zambian migration agency, [Agency 6] in LUSAKA, that sent students overseas to study. It was located in [address]. I said I wanted to study nursing in AUSTRALIA and inquired about what was required in terms of passport, the English test, bank statements and money for the visa. I was told by one of the secretaries that I could not travel using my UN Travel Document and that if I had a Zambian passport I would be able to study in AUSTRALIA.

33. The name of the man who supplied me with the passport was [Mr K]. He is a Zambian. He did not work for [Agency 6]. He is known in LUSAKA for obtaining false passports. You had to call him and organise a meeting place. I met [Mr K] at [School 4] in LUSAKA. I had to pay him \$200US and give him photos and my details.

34. My real date of birth is [date], but on my passport it is written as [date]. My UNHCR card, the date provided on [Mr B]'s Resettlement Registration Form and on [Mr C]'s UNHCR card record my correct date and year of birth. [Mr K] changed the year of my birth on the passport because he said I was too young and that it would be easier to be accepted for study in AUSTRALIA if I was older.

35. When I presented my passport at [Agency 6] in LUSAKA I didn't have a bank statement. You were required to show that you had a certain amount of money to study in AUSTRALIA. I paid an extra \$700 US to obtain a bank statement from [Mr K] to provide to [Agency 6]. It took two months to get the bank statement and then I went to the office to [Agency 6]. [Mr K] also obtained the required Year Twelve Zambian school results. [Agency 6] then sent me for medicals which were on the same street as their agency. I sat the English test at the British Council and had to show my Zambian passport. I passed the English test the first time. I was then granted a student visa to study in AUSTRALIA.

36. I was frightened about coming to AUSTRALIA as I knew I could be caught with false documents. As my documents were not questioned [Mr B] and I thought that [Ms A] might be successful in applying to study in AUSTRALIA as well. About a month after I arrived I contacted [Mr C] and asked him to contact [Mr K] to organise a passport [Ms A]. [Mr C] has a mobile phone but there is no coverage in the camp.

He has to be in LUSAKA to speak on his mobile phone. Another way of contacting the family is that they call from a pay phone in LUSAKA and then we will call them back. In about April or May 2009 [Mr B] applied to Freedom of Information to find out why [Mr C]'s application had been rejected. It took about five months for it to arrive. The people at Freedom of Information had given us [Mr B]'s UNHCR application and so we had to apply again for [Mr C]'s application. This took about three months.

Reason for delay in applying for protection

37. I waited for until [Ms A] was safely in AUSTRALIA before we applied for protection and the wait made me very anxious. If I had applied for protection before [Ms A] had arrived then there would have been absolutely no hope of her ever leaving ZAMBIA. If I waited until she arrived then I knew there could be some hope. [Ms A] arrived in January 2010. We both attended [agency] for an initial appointment in March 2010 after waiting a couple of weeks to get an appointment and [agency] assisted me in preparing my application for protection.

Fear of returning to DRC and ZAMBIA

38. Our family cannot go back to the DRC because of what happened to [Mr C] and also to [Mr B]. I was only [age] at the time we left but I still remember the soldiers at our house in LIKASI and how we were treated. The same soldiers are still in the town. If we went back to the DRC we would not survive. Unlike our sisters, who are married to KATANGESE men and left home before [Mr C] was imprisoned, we could never be secure.

39. Even in ZAMBIA we are not safe. People from the DRC are sent to check on us in ZAMBIA. Even where we study in ZAMBIA, there are strange people who speak Swahili and French asking for [Mr C]. This is how we know they are from DRC. These same people even come into the refugee camp and so we must always be vigilant. We are frightened in the camp and targeted if we live illegally outside of the camp.

40. There is nowhere for us to stay. I am so anxious about my situation and I am always concerned whether we have a future. This is why I am seeking protection in AUSTRALIA.

26. The applicant provided with his application certified copies of his Zambian passport, his UN travel document which expired [in] October 2009, and a copy of a medical report in respect of his brother [Mr C].
27. The delegate accepted that on the basis of the country information a person with a political/human rights profile is in danger of persecution by the DRC government authorities and non-state agents, but found that given that the applicant was never questioned or harmed by the DRC authorities, it was questionable whether he was of any interest to the DRC authorities. The delegate noted that the sole act that resulted in his brother's political profile occurred in 2000 and the last attack on him was in 2008, that it could be argued that he no longer had a profile with the DRC authorities. The delegate questioned whether the DRC authorities ever imputed a political profile on the applicant. The delegate did not accept that the applicant had any political/human rights activist profile which would lead to persecution.
28. On the basis of the country information and the applicant's profile, the delegate did not accept that the applicant would stand out as ethnic Kasaian if he returned to Katanga, and that the country information does not support the hypotheses that harm would result

from this fact alone. He did not accept that there was a real chance that the applicant would be persecuted for his nationality upon return to the DRC.

Evidence on the Tribunal's file (1105038)

29. The applicant appeared before the Tribunal [on two dates in] August 2011 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr B], [Ms A], and [Mr J]. The witnesses gave evidence with the assistance of a Swahili interpreter (Katangan dialect).
30. The applicant was represented in relation to the review by his registered migration agent.
31. [In] August 2011 the applicant's representative forwarded to the Tribunal a lengthy detailed submission. The submission set out the legal framework in respect of the criterion for the grant of protection visas, background information on the DRC, details relating to the basis of the applicant's claim for protection, and a response to the delegate's reasons for decision. The Tribunal has read the submission and taken it into account in its assessment of the applicant's claims.

Applicant's evidence

32. The applicant confirmed that the information given in his application was all correct. He added that he did not know how he would survive in the DRC today, and that his life will be at risk if it is found out who he is. He indicated that his family has been chased in Zambia, and twice they have found them. The Chief of the DRC Police John Numbi completed his studies at the same university as his brother, and knows the applicant's family since he lived in the same area as them, and the applicant fears for his safety if John Numbi finds out who he is, since he knew of his brother [Mr C]'s involvement in politics. He indicated that John Numbi will harm him because he believes he and his family are in contact with the rebels, and that they are against President Kabila, and because they are Kasaians, and Kasaians are regarded as being against the regime. He indicated he would have problems because he is Kasaian, and he fears tribal animosity against him. With the elections coming up anyone who is against President Kabila is in trouble, and people are being oppressed, and that Kasaians are not supposed to vote in the forthcoming election.
33. The applicant confirmed the details of his family of origin, and their current whereabouts. He indicated that as he was growing up he had been told that his father was sick and had died, but that the truth is that his father was killed after he left for Kasai as he was on the same train as others who were persecuted and killed on account of their being Kasaian.
34. The applicant's two sisters live in the DRC, and his mother lives with one of them. They live in Kolwezi and are married to Katangans, who protect them. He last had contact with them 5 months ago. He is not aware that they are experiencing any difficulties in the DRC. The applicant's four brothers are presently in Lusaka, Zambia. They live there illegally, their passes having expired a long time ago. The applicant is not aware of the whereabouts of his half siblings. His brother [Mr C] now suffers from TB and the applicant is in contact with him through his brother [Mr D]. He is not aware of his brother [Mr C] having experienced any problems since 2008, and does not

believe he is politically active in Zambia. His brothers in Lusaka have not experienced any problems as they do not talk with anyone or tell anyone their names.

35. The applicant indicated that in Katanga a person would know that he was of Kasaian ethnicity by his name, and by the way he speaks Swahili. They would not be able to identify him as Kasaian by his physical features.
36. The applicant provided details of why his family left the DRC in 2000 and the details accorded with his written statement. He was only [age deleted: s.431(2)] at the time his brother [Mr C] was arrested, however he clearly remembers soldiers coming into their house, and he remembers leaving the DRC about one week after [Mr C]'s arrest as he left his mother behind, and this was the last time he saw his mother. He recalls that men in jeeps kept their house under surveillance, coming and going, and that he watched them from the window. He stated that his brother [Mr D] was mistreated at the time of [Mr C]'s arrest because the soldiers were trying to get information out of him. He gave details of the family's journey to the Zambian border, and their reconciliation with his brother [Mr C] who was waiting for them in Zambia.
37. The applicant provided details of the family's experiences in Zambia, which details accorded with his written statement. He spoke about the beating of his brother [Mr C] in 2005, and that President Kabila had people in Lusaka oppressing people. He indicated that when the family returned from their immigration interview in South Africa in 2007, they were told by [Mr C]'s friend [Mr J], that soldiers wearing bayonets and soldiers belts, had been to the house asking for [Mr C], [Mr D] and the applicant. He provided details of the assault on his brother [Mr C] by men in civilian clothes, in January 2008, which accorded with his written statement. The family realised that it was not safe for them to stay in Lusaka, and that the security forces from the DRC operated in the Mayeba refugee camp.
38. The Tribunal asked the applicant why, in circumstances where President Laurent Kabila was assassinated in 2001, he feared harm as a result of his brother [Mr C]'s arrest in 2000, due to an open letter he wrote as a student against the government of President Laurent Kabila. He responded that President Laurent Kabila's son is now the President and they are still the same people in power.
39. When asked if he could relocate to the central provinces of Kasai he indicated that he did not know anyone there and that he could still be harmed there, and that in the capital city of Kinshasa, things would be worse for him there. He indicated that if he could be found in Zambia, he could be found in the DRC.
40. The applicant gave evidence about how he obtained his Zambian passport and his evidence was consistent with his written statement. He never applied for a passport in the DRC.
41. The applicant has never been involved in politics in the DRC, Zambia or in Australia.

Evidence of [Mr B] (applicant's brother)

42. The witness gave evidence regarding the family's life in the DRC, before he left for Kinshasa to study to be a Jesuit in 1994. He outlined the nature of the ethnic conflict in 1992, and the impact of this on Kasaians who were forced to leave their homes and go

to different cities. He indicated that in December 1993 his father was forced to leave his job at [Company 1]. His family were not safe and they too had to leave their home and find refuge in another place. He believes that his father was killed [in] December 1993 as many people were killed that day and his father never returned home. He believes that if his father had been alive he would have returned home.

43. The witness did not have any communications with his family from the time he left home in 1994 until he came to Australia in 2004. He described how he resumed contact with his family, through a friend of his [name], who was the secretary at [School 4] in Lusaka, Zambia and which he had attended. He then outlined the ensuing communications he had with his family from that time. He learned about the attack on his brother [Mr C] at [Suburb 5], Lusaka, and that people who spoke Swahili had been asking about things that had happened in the DRC and why he ([Mr C]) was against Kabila. He described the lack of security in the Mayeba refugee camp and how people from the DRC would attack refugees in the camp.
44. As a result he lodged an application for his family to come to Australia, and subsequently they went to South Africa for an interview. Whilst the family were in South Africa [Mr J] told [Mr C] that some people had come looking for him. They knew the names of [Mr D] and [the applicant] and spoke Swahili. They were security people and had big knives. On returning from South Africa [Mr C] was attacked a second time, in 2008.
45. When the Tribunal enquired what prompted the witness to leave the DRC he provided details of the circumstances leading to his imprisonment which was as a result of two articles he wrote for the university magazine, one critical of President Laurent Kabila and one critical of Joseph Kabila. The Jesuits paid for him to go to Zambia and he arrived in Zambia in 2001.
46. The witness indicated that he had been attacked by Congolese security people on two occasions in Zambia, once in 2002 and once in 2003.

Evidence of [Ms A] (applicant's sister)

47. The witness gave evidence with the assistance of an interpreter.
48. The witness gave evidence of the first attack on her brother [Mr C] in their house in [Suburb 5] in Lusaka. The details accorded with paragraph 43 of her written statement in support of her own application for protection (CLF2010/60255). She indicated that men had broken into their house without knocking and asked her to sit in the corner, and yelled at her to keep quiet, whilst her brother [Mr C] was taken outside and beaten. She described the attire of the perpetrators and that they had belts like soldiers and guns. In respect of the second attack on her brother [Mr C] she confirmed that she did not witness this, but indicated that it was after they returned from their trip to South Africa, and that it happened after her brother had left his English classes and she was playing at neighbours. Her brothers told her about it, that her brother [the applicant] had run away and her other brothers were arrested whilst [Mr C] was attacked.

Evidence of [Mr J]

49. The witness gave evidence by telephone with the assistance of an interpreter.

50. The witness was born in [year deleted: s.431(2)] and lives in Lusaka, Zambia. He knows the applicant through his brother [Mr C], who he has been friends with since the end of 2005. They met at [School 4] and studied English together.
51. The witness indicated that when [Mr C] and his family went to South Africa in 2007, they had no one to look after their house and so left their house key with him. He knew that they had a brother in Australia who was sponsoring them and that they had to attend an interview in South Africa.
52. After they left for South Africa he went round to check on the house and he found people standing beside the house. They spoke to him in the Zambian language and asked after [Mr C], and then [Mr D] and [the applicant]. Initially he thought they were friends of [Mr C]. They asked if they were at home, and he told them that they were in South Africa. The men were in civilian clothes however he then noticed they had police belts, and big knives. When he saw the knives he was scared and started to run away because he thought these people very suspicious. The men then began using Swahili. After that he stopped coming to the house to check on it since he was too scared.
53. When he relayed this incident to [Mr C] when he returned from South Africa he told him that this was not the first time. [Mr C] then told him of the attack on him in 2005 by Congolese people.
54. The witness then provided details in relation to the 2008 attack on [Mr C]. The witness and [Mr C] and his brothers returned home from their English classes. They dropped the witness off at his place and then went on to their home. Later that night (at 22.30 hours) [Mr C] and his family arrived at the witness' house, wanting to stay the night, and [Mr C]'s leg was bleeding and his younger brother was crying. [Mr C] then told him what had happened. The same people as before attacked him. [Mr D] had tried to put up a defence, and was pushed up against the wall, and [the applicant] ran away.
55. The witness indicated that [Mr C] now suffers from TB and has blocked ears and cannot hear. They are no longer able to understand each other.

COUNTRY INFORMATION

General information

56. According to Minority Rights Group International (MRG), the DRC continues to experience a series of ongoing violent conflicts, which are often driven by the competition for lucrative natural resources and competing ethnic agendas, and which involve the military and numerous armed groups.¹
57. The United Nations Organisation Stabilisation Mission in the DR Congo (MONUSCO) consists of 39,000 staff, including approximately 17,000 military personnel. MONUSCO's mandate was due to expire in June 2011; however, the United Nations (UN) Security Council has extended the mandate until 30 June 2012. The *UN News Service* states that while the security situation in the DRC has improved in recent years,

¹ Minority Rights Group International 2011, 'State of the World's Minorities and Indigenous Peoples', July

“many challenges remain before stability can be restored in conflict-affected areas, especially in the north and east”.²

58. Groups of armed rebels are active in the DRC, and have been a continuing source of instability. To illustrate the extent of the problem, in January 2008, the DRC government signed a peace agreement with 22 armed groups.³ In DRC conflict areas, unlawful killings, torture, recruitment of child soldiers and sexual violence are reportedly widespread.⁴ Additionally, the US Department of State cited several examples of state forces operating with impunity, including carrying out unlawful killings of civilians.⁵ Military high command does not have full control over its ranks, as demonstrated by some commanders’ noncompliance with orders to release child soldiers.⁶
59. Subsequently, the DRC faces significant humanitarian challenges. As of 31 March 2011, there were approximately 1.7 million internally displaced persons (IDPs) in the DRC. An additional 817,250 former IDPs returned to their homes during the period October 2009-March 2011.⁷ The DRC has also suffered from outbreaks of measles and cholera. According to the Catholic Information Service for Africa, there were 115,484 registered cases of measles, including 1,145 deaths between September 2010 and 15 July 2011.⁸ In April 2010, the DRC health minister was quoted as stating that at least 700 children under five years of age were dying each day, due to hunger and malnourishment, in five provinces: Equateur, Kasai, Kasai West, Katanga and Maniema.⁹
60. In the context of security concerns as noted above, sources report concerns that political violence may escalate ahead of presidential elections scheduled for November 2011.¹⁰
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² ‘Security Council extends mandate of UN mission in DR Congo’ 2011, *UN News Service*, UNHCR Refworld website, 28 June <http://www.unhcr.org/refworld/docid/4e1c04962.html> – Accessed 26 July 2011

³ Ultimately, this agreement was not respected. See: Internal Displacement Monitoring Centre & Norwegian Refugee Council 2010, *Democratic Republic Of The Congo: Over 2.1 million IDPs in the context of deteriorating humanitarian conditions*, 24 February p. 3 <http://www.unhcr.org/refworld/pdfid/4b8794d12.pdf>- Accessed 5 March 2010

⁴ Minority Rights Group International 2011, ‘State of the World’s Minorities and Indigenous Peoples’, July

⁵ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Democratic Republic of the Congo*, 8 April

⁶ US Department of State 2011, *Trafficking in Persons Report – Country Narratives A-C*, 27 June, p. 132

⁷ Office of the Coordination for Humanitarian Affairs 2011, ‘Democratic Republic of the Congo: Insecurity and Displacement’, Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_oc_ha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_oc_ha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

⁸ ‘Hundreds Infected With Cholera and Measles’ 2011, *All Africa Global Media*, source: *Catholic Information Service for Africa* <http://allafrica.com/stories/201107190140.html> – Accessed 26 July 2011

⁹ ‘700 children die a day from hunger: DR Congo minister’ 2010, *StarAfrica.com* website, source: *Agence-France Presse*, 6 April <http://www.starafrica.com/en/news/detail-news/article/700-children-die-a-day-from-hunger-drco-38484.html> – Accessed 26 July 2011

¹⁰ Internal Displacement Monitoring Centre 2011, ‘Democratic Republic of the Congo: Displacement, abductions and looting continue’, IDMC website, 26 May [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/554559DA500C8588802570A7004A96C7?opendocume nt](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/554559DA500C8588802570A7004A96C7?opendocume nt) – Accessed 26 July 2011

¹¹ Human Rights Watch 2011, ‘DR Congo: Strengthen Civilian Protection Before Elections’, UNHCR Refworld website, 9 June <http://www.unhcr.org/refworld/docid/4df1e7802.html> – Accessed 26 June 2011

¹² ‘Security Council extends mandate of UN mission in DR Congo’ 2011, *UN News Service*, UNHCR Refworld website, 28 June <http://www.unhcr.org/refworld/docid/4e1c04962.html> – Accessed 26 July 2011

61. Eastern DRC – North and South Kivu .Together, North Kivu, South Kivu and Orientale provinces comprise the most unstable areas of the DRC. The neutralisation of armed groups in the Kivus has remained limited.¹³ In 2010, there were 198 attacks reported against humanitarian actors in the Kivus.¹⁴ The north-eastern DRC also includes the volatile Ituri district, where armed groups have been active since 1999.¹⁵ Rwandan Hutu rebels known as the *Forces Democratiques de Liberation du Rwanda* (FDLR) are active in the Kivu provinces. In July 2011, over 100 people reportedly fled a joint Congolese-Rwandan military operation in eastern Congo, and crossed into neighboring Uganda. The aim of the operation was to rout rebels from the area.¹⁶ 10,000 people were displaced in South Kivu during FDLR attacks during May 2011.¹⁷

While the *UN News Service* reports that the FDLR has been weakened and some senior figures repatriated to Rwanda¹⁸, the rebels committed numerous human rights abuses in the Kivus, including mass rape.¹⁹ Sexual violence in the Kivus is reportedly committed by both foreign and Congolese armed rebel groups, as well as by some FARDC elements.²⁰ A United Nations assessment found that in June 2011, DRC government troops committed mass rape of 121 women, other ill treatment of civilians, and pillaging in several remote villages in South Kivu province.²¹ Similar attacks, involving the rape of 47 women, occurred in North Kivu during December 2010.²²

¹³ United Nations 2011, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, United Nations website 12 May, p. 1
http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/298 – Accessed 27 July 2011

¹⁴ Office of the Coordination for Humanitarian Affairs 2011, ‘Democratic Republic of the Congo: Insecurity and Displacement’, Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_ocha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_ocha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

¹⁵ Office of the Coordination for Humanitarian Affairs 2011, ‘Democratic Republic of the Congo: Insecurity and Displacement’, Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_ocha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_ocha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

¹⁶ ‘Uganda: More than 100 refugees flee Congo violence’ 2011, *The Seattle Times*, source: *The Associated Press*, 25 July http://seattletimes.nwsources.com/html/nationworld/2015721646_apafugandacongoviolence.html – Accessed 26 July 2011

¹⁷ ‘Democratic Republic of the Congo: Displacement, abductions and looting continue’ 2011, Internal Displacement Monitoring Centre website, 26 May [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/554559DA500C8588802570A7004A96C7?opendocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/554559DA500C8588802570A7004A96C7?opendocument) – Accessed 26 July 2011

¹⁸ ‘DR Congo: UN envoy tells Security Council of improving security, remaining threats’ 2011, UNHCR Refworld, source: *UN News Service*, 9 June <http://www.unhcr.org/refworld/docid/4df20a0c2.html> – Accessed 26 July 2011

¹⁹ Office of the Coordination for Humanitarian Affairs 2011, ‘Democratic Republic of the Congo: Insecurity and Displacement’, Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_ocha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_ocha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

²⁰ United Nations 2011, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, United Nations Website 12 May, p. 1
http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/298 – Accessed 27 July 2011

²¹ ‘UN team confirms mass rapes occurred in remote villages in eastern DR Congo’ 2011, *UN News Service*, 1 July <http://www.unhcr.org/refworld/docid/4e20005f2.html> – Accessed 26 July 2011

²² United Nations 2011, Report of the Secretary-General on the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, United Nations Website 12 May, p. 1
http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/298 – Accessed 27 July 2011

In June 2011, the *UN News Service* noted that former rebels who had not been absorbed into the army also presented a security risk for Kivu civilians.²³

Eastern DRC – Katanga

Katanga province, in eastern DRC, is rich in copper, cobalt and uranium. In Katanga, as well as in the Kivus, state army troops and rebel forces have reportedly “routinely” forced men and children to mine for minerals and turn over their production.²⁴ Whilst the area appears to be more stable than its Kivu neighbours²⁵, sources report a history of armed activity in Katanga. Lubumbashi airport, in the provincial capital, was attacked by a group of approximately 20 armed men in February 2011. The men were reportedly attempting to gain control over a nearby munitions base.²⁶ The eastern areas of the province in particular remain subject to rebel violence.²⁷ Key groups include the Katangan Tigers and the Mai-Mai militia. The Katangan Tigers are descendants of Moise Tshombe’s forces, who fled to Angola when Tshombe’s secession movement was put down by Mobutu in the 1960s.^{28 29} The Mai Mai of northern Katanga were originally recruited in the late 1990s to prevent Rwandan troops from reaching the army base and Lubumbashi, which were of strategic importance to the then president. In 2006, the International Crisis Group (ICG) named the Mai-Mai as Katanga’s greatest security threat, and the cause of 310,000 internal displacements.³⁰

The UK Home Office reported that some Katangan rebel groups were disarmed in 2007.³¹ The International Crisis Group (ICG) reported that at the same time, local conflicts in Katanga were “disconnected from the national power struggle and reduced to marginal, albeit brutal, theatres of competition between local warlords”.³² Additionally, the UK Home Office reported that without assistance to re-enter civilian

²³ ‘DR Congo: UN envoy tells Security Council of improving security, remaining threats’ 2011, UNHCR Refworld, source: *UN News Service*, 9 June <http://www.unhcr.org/refworld/docid/4df20a0c2.html> – Accessed 26 July 2011

²⁴ US Department of State 2011, *Trafficking in Persons Report – Country Narratives A-C*, 27 June, p. 129

²⁵ Manson, K. 2011, ‘Gunmen attack Congo’s copper capital airport’, *Financial Times*, 4 February <http://www.ft.com/intl/cms/s/0/cdf9a920-3043-11e0-8d80-00144feabdc0.html#axzz1TM6Asx11> – Accessed 28 July 2011

²⁶ Manson, K. 2011, ‘Gunmen attack Congo’s copper capital airport’, *Financial Times*, 4 February <http://www.ft.com/intl/cms/s/0/cdf9a920-3043-11e0-8d80-00144feabdc0.html#axzz1TM6Asx11> – Accessed 28 July 2011

²⁷ Manson, K. 2011, ‘Gunmen attack Congo’s copper capital airport’, *Financial Times*, 4 February <http://www.ft.com/intl/cms/s/0/cdf9a920-3043-11e0-8d80-00144feabdc0.html#axzz1TM6Asx11> – Accessed 28 July 2011

²⁸ International Crisis Group 2006, *Katanga, the Congo’s Forgotten Crisis*, Africa Report N°103, 9 January, p. 6

²⁹ International Crisis Group 1998, *Congo at War, A Briefing on the Internal and External Players in the Central African Conflict*, International Crisis Group website, ICG Congo Report N°2, 17 November, p. 8 <http://www.crisisgroup.org/~media/Files/Congo%20At%20War%20A%20Briefing%20of%20the%20Internal%20and%20External%20Players%20in%20the%20Central%20African%20Conflict.pdf> – Accessed 28 July 2011

³⁰ International Crisis Group 2006, *Katanga, the Congo’s Forgotten Crisis*, Africa Report N°103, 9 January, p. 2

³¹ UK Home Office 2009, *Country of Origin Information Report – Democratic Republic of the Congo*, 30 June, p. 35

³² International Crisis Group 2007, *Congo: Consolidating the Peace*, Africa Report N°128, 5 July, p. 2

life, demobilised fighters became a source of insecurity for locals,³³ implying that some turned to criminal activity.

Northern DRC

The Lord's Resistance Army (LRA) is a major armed rebel group, initially formed as a movement against the government of Uganda. The LRA have reportedly been committing attacks on civilians in Province Orientale since 2005.³⁴ In June 2011, the *UN News Service* reported that the LRA continued to threaten civilians, "using brutal tactics", as they moved between the DRC, the Central African Republic and Southern Sudan. However, according to the UN, the total number of LRA attacks against civilians has fallen, and the rebels themselves are poorly equipped.³⁵ According to a survey conducted by Oxfam, LRA attacks in the DRC resulted in 26 deaths and 23 kidnappings during June 2011.³⁶ The LRA reportedly attacked two villages in May 2011, looting humanitarian assistance and abducting 25 people, including 14 children.³⁷

Western DRC

Inter-communal clashes in western DRC's Equateur Province has also contributed to the number of displaced persons from within the DRC. On 2 February 2010, *BBC Monitoring Africa* reported that rival ethnic communities had clashed over fishing territory. The report stated that "more than 200 people have died and another 150,000 have fled to the neighbouring Republic of Congo since 2009, when fighting erupted between the Lobala and Boba clans in Dongou, Equateur Province".³⁸ According to the Office for the Coordination of Humanitarian Affairs (OCHA), over 120,000 displaced people from Equateur were residing in the neighbouring Republic of Congo as of December 2010.³⁹

62. The US State Department's Bureau of Democracy, Human Rights and Labor's *2010 Country Report on Human Rights Practices in the Democratic Republic of Congo* states that :

³³ UK Home Office 2009, *Country of Origin Information Report – Democratic Republic of the Congo*, 30 June, p. 35

³⁴ Office of the Coordination for Humanitarian Affairs 2011, 'Democratic Republic of the Congo: Insecurity and Displacement', Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_ocha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_ocha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

³⁵ 'DR Congo: UN envoy tells Security Council of improving security, remaining threats' 2011, 2011, *UN News Service*, UNHCR Refworld website, 9 June <http://www.unhcr.org/refworld/docid/4df20a0c2.html> – Accessed 26 July 2011

³⁶ 'War crimes trial may affect LRA defections – analysts' 2011, *IRIN News*, 29 July <http://www.irinnews.org/report.aspx?reportid=93377> – Accessed 1 August 2011

³⁷ Internal Displacement Monitoring Centre 2011, 'Democratic Republic of the Congo: Displacement, abductions and looting continue' IDMC website, 26 May [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/554559DA500C8588802570A7004A96C7?opendocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/554559DA500C8588802570A7004A96C7?opendocument) – Accessed 26 July 2011

³⁸ 'UN mission terms conflict in northwestern DR Congo as "power keg"' 2010, *BBC Monitoring Africa*, 2 February

³⁹ Office of the Coordination for Humanitarian Affairs 2011, 'Democratic Republic of the Congo: Insecurity and Displacement', Internal Displacement Monitoring Centre website, 20 April [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/E1288C1CED644ECDC125788800350FF0/\\$file/drc_ocha_insecurity-displacement_mar11.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/E1288C1CED644ECDC125788800350FF0/$file/drc_ocha_insecurity-displacement_mar11.pdf) – Accessed 26 July 2011

In all areas of the country, state security forces continued to act with impunity throughout the year, committing many serious abuses, including unlawful killings, disappearances, torture, rape and engaging in arbitrary arrests and detention. Severe and life-threatening conditions in prison and detention facilities, prolonged pretrial detention, lack of an independent and effective judiciary, and arbitrary interference with privacy, family, and home also remained serious problems.

Members of the state security forces continued to abuse and threaten journalists, contributing to a decline in press freedom. Internally displaced persons remained a major problem, and the integration of ex-combatants and members of rebel and militia groups (RMGs) into state security forces and governance institutions was slow and uneven. Government corruption remained pervasive, and some corporations purchased minerals from suppliers who financed mining activities by armed entities that committed serious human rights abuses. Elements of the state security forces were charged in the death of one of the country's leading human rights defenders and at times beat or threatened local human rights advocates and obstructed or threatened UN human rights investigators. State security forces retained and recruited child soldiers and compelled forced labor by civilians. Societal discrimination against women and ethnic minorities, trafficking in persons, child labor, and lack of protection of workers' rights continued to be widespread throughout the country.⁴⁰

..

There were reports that the government or its agents committed politically motivated killings. For example, during the year members of the police allegedly killed a leading human rights activist and disappeared his colleague.⁴¹

..

Security personnel arrested, and detained without charge perceived opponents and critics of the government during the year, sometimes under the pretext of state security, often denying due process, such as access to an attorney.⁴²

...

Generally individuals could privately criticize the government, its officials and private citizens without being subject to official reprisals. However public criticism of government officials and government conduct or decisions regarding issues such as conflict and insurgencies, management of natural resources or corruption sometimes resulted in harsh responses, often from the ANR, the intelligence service under the president's control.⁴³

⁴⁰ US State Department's Bureau of Democracy, Human Rights and Labor's *2010 Country Report on Human Rights Practices in the Democratic Republic of Congo*, p1, <http://www.state.gov/documents/organization/160453.pdf>

⁴¹ US State Department's Bureau of Democracy, Human Rights and Labor's *2010 Country Report on Human Rights Practices in the Democratic Republic of Congo*, p2, <http://www.state.gov/documents/organization/160453.pdf>

⁴² US State Department's Bureau of Democracy, Human Rights and Labor's *2010 Country Report on Human Rights Practices in the Democratic Republic of Congo*, p21, <http://www.state.gov/documents/organization/160453.pdf>

⁴³ US State Department's Bureau of Democracy, Human Rights and Labor's *2010 Country Report on Human Rights Practices in the Democratic Republic of Congo*, p51, <http://www.state.gov/documents/organization/160453.pdf>

On the current situation for Kasaians in Katanga

63. Limited recent information was located explicitly discussing ethnically-motivated conflict between Kasaiian immigrants and other Katangese residents.
64. That said, sources do report a long history of conflict, and violence, between the Kasaiian Luba and the Katangese Lunda. The Belgian colonial administration encouraged the Congolese to identify with 'rigid' tribal homelands. This made it easier for the administration to control the labour market; "[r]ecruitment to mines, plantations, civil service and the army became based on tribal identity" There was mass migration to resource-rich Katanga; ethnic identities became fragmented between the immigrant Luba, from neighboring Kasai, and the Lunda, who were considered indigenous Katangese.⁴⁴ Many Kasaiian Luba reached senior positions in mining companies and Katangese administration, causing tensions between them and other Katangese. These tensions became even more pronounced in the early 1960s when the Kasaiian community sided with the state against the Katangese secession movement.⁴⁵
65. The ICG argues that in 1992-1993, the state "adopted an explicit policy of ethnic cleansing against the Luba in Katanga's major mining cities, in particular Kolwezi". Katanga's governor blamed the Luba for economic decline and accused them of attempting to steal power at the provincial level. The ICG reports that during 1992-993, state-supported youth militia killed over 5,000 people, and displaced 1,350,000. Security forces detained 75,000 people who were eventually evacuated by humanitarian organisations to their 'homeland' of Kasai. In 2006, ICG reported that there was "remarkably little" public discussion of the violence, and added that "[o]ver the past few years, tensions have decreased and many Kasaiians have returned to Lubumbashi and Likasi, though not to Kolwezi where most killings took place".⁴⁶ In 2008, the UK Home Office reported that some 750,000 Kasaiians who fled Katanga during the war had not returned to the province.⁴⁷
66. Some sources refer to recent Luba-Lunda 'conflict' or 'tensions', however few of these sources sufficiently elaborate of how this conflict manifestss. The late president Laurent Kabila, father of the current president Joseph Kabila, reportedly managed to bridge these tensions in the late 1990s as his father was Luban and his mother Lunda.⁴⁸ However, as mentioned previously, Laurent Kabila was assassinated in 2001.⁴⁹ In 2005, a United Nations High Commissioner for Refugees (UNHCR) report noted that ethnic conflict was "apparent" between the Kasaiian Luba and Katangese Lunda.⁵⁰
67. In 2006, the Luba-Lunda conflict reignited in the lead up to presidential elections; opposition parties in Katanga often comprised Luba members, and there were reports

⁴⁴ Ndlvou-Gatsheni, S. 2011, 'The Logic of Violence in Africa', Ferguson Centre for African and Asian Studies, Working Paper No. 2, February, p. 11-12 <http://www.open.ac.uk/Arts/ferguson-centre/working-papers/working-paper-2pdf> – Accessed 27 July 2011

⁴⁵ International Crisis Group 2006, *Katanga, the Congo's Forgotten Crisis*, Africa Report N°103, 9 January, p. 4

⁴⁶ International Crisis Group 2006, *Katanga, the Congo's Forgotten Crisis*, Africa Report N°103, 9 January, p. 5

⁴⁷ UK Home Office 2008, *Country of Origin Information Report – Democratic Republic of Congo*, 21 May, p. 39

⁴⁸ Turner, T. 2001, 'The Death of Laurent Kabila', Foreign Policy in Focus website, March

⁴⁹ 'Congo sentences 26 to death for Kabila plot' 2003, *The Independent UK*, 8 January

⁵⁰ UK Home Office 2009, *Country of Origin Information Report – Democratic Republic of the Congo*, 27 January, p. 91

that opposition parties were intimidated by government-supported youth militia.⁵¹ At the time, ICG reported that Katanga province was divided by “tensions between southerners and northerners, between outsiders and natives, and between Mai-Mai militias and the national army”⁵²

68. Little additional information was located regarding the current situation for Kasaiian Luba living in Katanga. In 2011, Minority Rights Group International (MRG) listed the Luba as a minority group under threat in the DRC, meaning that they are considered to be at future risk of “genocide, mass killing or other systematic violent repression”. The MRG noted that the DRC is one of seven countries that have consistently remained near the top of its watch list.⁵³

On Eddy Kapend, a senior military figure in Katanga

69. Eddy Kapend was a senior figure and army leader in President Laurent Kabila’s government, which ran from 1997 until the president’s assassination in 2001. Kapend was Kabila’s cousin, and presidential *Aid-de-Camp* (chief of staff).^{54 55}
70. Of Lunda ethnicity,⁵⁶ Kapend is a former Katangan Tiger.⁵⁷ The Katangan Tigers are descendants of Moise Tshombe’s forces, who fled to Angola when Tshombe’s secession movement was put down by Mobutu in the 1960s.^{58 59} According to the ICG, approximately 2,000 Katangan Tigers fought in support of Laurent Kabila during the 1996-1997 ‘war of liberation’.⁶⁰ Former Tigers subsequently became some of the most influential personnel in Kabila’s security forces.⁶¹ As a former Katangan Tiger, Kapend

⁵¹ UK Home Office 2008, *Country of Origin Information Report – Democratic Republic of Congo*, 21 May, p. 71-72

⁵² International Crisis Group 2006, *Katanga, the Congo’s Forgotten Crisis*, Africa Report N°103, 9 January, p. I, p. 5

⁵³ Minority Rights Group International 2011, *Peoples Under Threat 2011*, 28 June, p. 234

⁵⁴ International Crisis Group 2000, *Scramble for the Congo, Anatomy of an Ugly War*, ICG Africa Report Number 26, 20 December, p. 49

⁵⁵ ‘DRC: Joseph Kabila Faces difficult Job, Choices in Seeking Peace’ 2001, *Open Source Centre*, source: *Jeune Afrique-L’Intelligent*, 13 February

https://www.opensource.gov/portal/server.pt/gateway/PTARGS_0_0_200_203_121123_43/content/Display/AF P20010219000004 – Accessed 28 July 2011

⁵⁶ International Crisis Group 2000, *Scramble for the Congo, Anatomy of an Ugly War*, ICG Africa Report Number 26, 20 December, p. 49; 51

⁵⁷ International Crisis Group 2006, *Katanga, the Congo’s Forgotten Crisis*, Africa Report N°103, 9 January, p. 6

⁵⁸ International Crisis Group 2006, *Katanga, the Congo’s Forgotten Crisis*, Africa Report N°103, 9 January, p. 6

⁵⁹ International Crisis Group 1998, *Congo at War, A Briefing on the Internal and External Players in the Central African Conflict*, International Crisis Group website, 17 November, p. 8

<http://www.crisisgroup.org/~media/Files/Congo%20At%20War%20A%20Briefing%20of%20the%20Internal%20and%20External%20Players%20in%20the%20Central%20African%20Conflict.pdf> – Accessed 28 July 2011

⁶⁰ International Crisis Group 1998, *Congo at War, A Briefing on the Internal and External Players in the Central African Conflict*, International Crisis Group website, 17 November, p. 8

<http://www.crisisgroup.org/~media/Files/Congo%20At%20War%20A%20Briefing%20of%20the%20Internal%20and%20External%20Players%20in%20the%20Central%20African%20Conflict.pdf> – Accessed 28 July 2011

⁶¹ International Crisis Group 2000, *Scramble for the Congo, Anatomy of an Ugly War*, ICG Africa Report Number 26, 20 December, p. 59

was Angolan-trained⁶², had served as an officer in the Angolan army, and according to one source was later “seen as Angola’s man in the Congo”.⁶³

71. Regarding Kapend’s character more generally; one source states that he was “one of the most feared men in the [Laurent Kabila’s] administration”.⁶⁴
72. Despite familial ties, Kapend was arrested and detained by security forces for four days in July 2000, for “embarrassing the President”.⁶⁵
73. On 16 January 2001, President Kabila was assassinated at his desk in the presidential palace.⁶⁶ Kapend appeared on television shortly afterwards, ordering that the country’s borders be sealed. This appearance raised suspicions that Kapend intended to seize power; an allegation which he later denied.⁶⁷ Kapend was arrested by security forces as a key suspect in Laurent Kabila’s assassination. He was formally charged in March 2002, and convicted in a military court in January 2003 and sentenced to death.⁶⁸ Twenty-six people were convicted and sentenced to death for their roles in the assassination; however, Kapend was thought to be the mastermind.⁶⁹ He is alleged to have killed the gunman who actually shot Kabila, thereby eliminating the possibility of interrogation⁷⁰ and covering up an attempted coup.⁷¹
74. It appears that Kapend has remained on death row since 2003. In 2007, he was reportedly a high profile prisoner in CPRK prison (Centre pénitentiaire et de rééducation de Kinshasa), Kinshasa. Kapend shared a cell with between one and three other people. These “deluxe” cells were equipped with individual beds and electricity. Kapend reportedly had access to television in his cell.⁷² In March 2011, *CongoOne* reported that Kapend was still imprisoned, and that the incumbent government had no plans to release him.⁷³

On John Numbi, Police Inspector General

⁶² International Crisis Group 2000, *Scramble for the Congo, Anatomy of an Ugly War*, ICG Africa Report Number 26, 20 December, p. 49; 51

⁶³ Turner, T. 2001, ‘The Death of Laurent Kabila’, Foreign Policy in Focus website, March

⁶⁴ International Crisis Group 2000, *Scramble for the Congo, Anatomy of an Ugly War*, ICG Africa Report Number 26, 20 December, p. 48

⁶⁵ US Department of State 2001, *Country Reports on Human Rights Practices for 2000 – Democratic Republic of Congo*, February, Section 1(d)

⁶⁶ ‘Congo sentences 26 to death for Kabila plot’ 2003, *The Independent UK*, 8 January

⁶⁷ ‘Congo sentences 26 to death for Kabila plot’ 2003, *The Independent UK*, 8 January

⁶⁸ UK Home Office 2009, *Country of Origin Information Report – Democratic Republic of the Congo*, 27 January, p.184

⁶⁹ ‘Congo sentences 26 to death for Kabila plot’ 2003, *The Independent UK*, 8 January

⁷⁰ US Department of State 2002, *Country Reports on Human Rights Practices for 2001 – Democratic Republic of Congo*, 4 March, Section 1(a)

⁷¹ ‘26 sentenced to death for killing Kabila’ 2003, *Sydney Morning Herald*, source: *The Guardian UK*, 9 January

⁷² UK Home Office 2009, *Country of Origin Information Report – Democratic Republic of the Congo*, 27 January, p. 57; 58

⁷³ ‘DRC: Commentary Fears Popular Revolt over Extreme Social Poverty’ 2011, *Open Source Centre*, source: *CongoOne*, 8 March

https://www.opensource.gov/portal/server.pt/gateway/PTARGS_0_0_200_203_121123_43/content/Display/AF20110309678010#index=3&searchKey=5708797&rpp=10 – Accessed 28 July 2011

75. John Numbi began public life as the commander of the youth militia of Laurent Kabila's Union of Federalists and Independent Republicans (UFERI) in the Katanga region of the Democratic Republic of the Congo (DRC). In eastern DRC, Numbi helped Kabila establish a number of militant groups which fought in the 1998-1999 war to oust the regime of Mobutu Sese Seko, including the Popular Self-Defence Forces (FAP), the Hearts of Steel (Moyo wa Chuma) and the Mai-Mai. Numbi was later promoted to military commander of Katanga and then air force commander of the DRC.⁷⁴
76. Upon his appointment to air force commander, one of Numbi's roles was to help disband the FAP and absorb the Mai-Mai into the DRC army; something he was either unwilling or unable to do. Numbi was subsequently removed as air force commander in June 2007; however he was quickly appointed the head of the National Police.⁷⁵ Numbi reportedly has close family connections with senior Mai-Mai commanders and has been implicated in illegal arms transfers to the Mai-Mai, in contravention of a United Nations embargo.⁷⁶
77. After the death of Laurent Kabila in 2001, John Numbi became a member of 'La Présidence', the inner circle of advisers surrounding Kabila's son and successor as President, Joseph Kabila.⁷⁷ In 2007, the International Crisis Group (ICG) described John Numbi as a member of a group of 'hardliners' within this inner circle. The ICG argues that a 'mostly impotent' government has allowed Numbi, as well as Raymond Tshibanda, Samba Kaputo, Denis Kalume and Marcellin Cishambo to control "the security apparatus and mining concessions" in the DRC, using "coercion and corruption as the main tools of governance, putting the fragile foundations of the nascent Congolese democracy in peril".⁷⁸
78. In 2009, Numbi was accused of engineering a conflict in Dongo to help eliminate members of the DRC's main opposition party, the Movement for the Liberation of the Congo (MLC).⁷⁹ However, a May 2011 report for the Council on Foreign Relations suggests that his role does not necessarily extend to preserving the presidency of Joseph Kabila. The author of the report, Joshua Marks, argues that "[t]he government of the Democratic Republic of the Congo (DRC) led by President Joseph Kabila faces the prospect of collapse". However, Marks identifies John Numbi as a possible participant in any potential coup to depose Kabila and preserve the power of the DRC for himself and his Katangan allies:

⁷⁴ International Crisis Group 2006, *Katanga: The Congo's Forgotten Crisis*, Crisis Group Africa Report N°103, 9 January, pp.2-3

⁷⁵ International Crisis Group 2007, *Congo: Consolidating the Peace*, Crisis Group Africa Report N°128, 5 July, p.13, p.21, footnote 123

⁷⁶ International Crisis Group 2006, *Katanga: The Congo's Forgotten Crisis*, Crisis Group Africa Report N°103, 9 January, pp.2-3

⁷⁷ Justaert, A. 2011, 'The Governance of Police Reform in the DR Congo: Reform Without Alignment?', The Nordic Africa Institute, June, p.14 <http://www.nai.uu.se/ecas-4/panels/101-120/panel-104/Arnout-Justaert-full-paper.pdf> – Accessed 25 October 2011

⁷⁸ International Crisis Group 2007, *Congo: Consolidating the Peace*, Crisis Group Africa Report N°128, 5 July, p.9

⁷⁹ Snow, K.H. 2009, 'Belgian Paratroopers to Crush Rising Congo Rebellion?' Beni-Lubero Online, 8 December http://www.benilubero.com/index.php?option=com_content&view=article&id=1730:belgian-paratroopers-to-crush-rising-congo-rebellion&catid=31:english-version&Itemid=67 – Accessed 25 October 2011

79. In Katanga province, for example, Katangan members of the Republican Guard that is tasked with protecting the president and his premises could initiate a revolt that spreads to other Katangan police and military units. Encouraged by presidential ally John Numbi or another politically ambitious elite with influence in the security forces, these elements could then launch a violent coup in Kinshasa, throwing into disarray President Kabila's personal security detail and possibly deposing him.⁸⁰
80. In 2009, John Numbi was described by one source as "one of Congo's most dangerous men" The source also states that Numbi has strong connections to the Rwandan military, including Defence Minister James Kabarebe, and Rwandan President Paul Kagame.⁸¹
81. In 2010, while still head of the National Police, Numbi was named in connection with the murder of Floribert Chebeya, head of the Congolese non-government organisation (NGO) Voice of the Voiceless (VSV) in June of that year. Mr Chebeya's driver, Fidele Bazana, is still missing and is presumed dead. Chebeya was reportedly last seen alive on his way to a meeting with Numbi in Kinshasa. Four policemen have since been found guilty of Chebeya's murder and sentenced to death, including "Col Daniel Mukalay, the chief of police intelligence at the time of Mr Chebeya's death". A fifth policeman was sentenced to life in prison, while a further three were acquitted. Numbi has not faced charges, however is currently suspended as police chief while further investigations take place.⁸² *Aljazeera* reported that "an adviser at the interior ministry" told *Reuters* that General John Numbi was suspended to prevent any obstructions to an investigation into the killings; "[Inspector-General] John Numbi was suspended so that the attorney-general can focus on his enquiries smoothly and make sure nothing gets in the way of the investigations".⁸³
82. According to *Agence France Presse (AFP)*, Chebeya's VSV group argues that Numbi "is the chief suspect in the death and has accused the government of 'denial of justice' by placing the case with a military court which does not have jurisdiction to try the police chief. The court can only try officers from the rank of colonel down." *AFP* relays the VSV belief that "leading business and political figures have promised that Numbi will be protected from prosecution in the affair."⁸⁴
83. The US Department of State (USDOS) reported in April 2011 that 80 NGOs and "several rule of law experts" have "serious concerns about the credibility and independence of the investigation and the trial". USDOS also added that "dozens of

⁸⁰ Marks, J. 2011, *Crisis in the Congo*, Council on Foreign Relations, Contingency Planning Memorandum No.11, p.1 http://i.cfr.org/content/publications/attachments/CPA_contingencymemo_11.pdf – Accessed 25 October 2011

⁸¹ Snow, K.H. 2009, 'Belgian Paratroopers to Crush Rising Congo Rebellion?' Beni-Lubero Online, 8 December http://www.benilubero.com/index.php?option=com_content&view=article&id=1730:belgian-paratroopers-to-crush-rising-congo-rebellion&catid=31:english-version&Itemid=67 – Accessed 25 October 2011

⁸² 'DR Congo: Floribert Chebeya killers sentenced to death' 2011, *BBC News*, 23 June <http://www.bbc.co.uk/news/world-africa-13895771> – Accessed on 30 June 2011

⁸³ 'DR Congo suspends police chief' 2010, *Aljazeera*, 6 June <http://english.aljazeera.net/news/africa/2010/06/201066151023866458.html> – Accessed 8 June 2010

⁸⁴ 'DR. Congo police to appear in court over killing' 2010, *Agence France Presse*, 10 November

civil society members alleged that Numbi continued to perform official duties despite the official suspension”.⁸⁵

FINDINGS AND REASONS

84. The applicant claims to be a citizen of the DRC and not to have citizenship of, or a right to enter or reside in, any other country. The applicant travelled to Australia on a Zambian passport he claims to be false. He has provided a copy of his UN travel document which is valid for all countries except DRC, and expires [in] October 2009. The UN travel document allowed his return to Zambia on or before the expiry date. On the basis of the evidence before it the Tribunal finds that the applicant is a citizen of the DRC and does not have a legally enforceable right to enter and reside in any country other than his country of nationality, DRC. Therefore the Tribunal finds that the applicant is not excluded from Australia’s protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).
85. The applicant claims to be is a [age deleted: s.431(2)] ethnic Kasaian male from Katanga, DRC.
86. The applicant claims that, as part of the ethnic Kasaian minority, his parents were forced to leave their [jobs] in 1992 during ethnic violence at the hands of the majority Katangese. The applicant claims that while his family attempted to conceal their Kasaian ethnicity, this was disclosed following a raid on their home in Likasi, Katanga, in February 2000. The applicant’s elder brother [Mr C] was arrested by Congolese soldiers. He had reportedly written/co-signed an open letter as a student representative against President Laurent Kabila, and was taken from his university, imprisoned and beaten. Soldiers reportedly searched their house the next day, and detained another older brother, [Mr D], who he claims was also beaten. The applicant claims that following these incidents his family fled to Zambia.
87. He claims that whilst in Zambia in 2005, his brother [Mr C] was beaten by Congolese, who asked his brother if he was in contact with rebels. This allegedly happened again in early 2008; the applicant thinks that the assailants were under orders from Eddy Kapend, a senior military figure in Katanga. Neither the applicant nor other family members were threatened or harmed. Further when the family returned from their immigration interview in South Africa in 2007, they were told by [Mr C]’s friend [Mr J], that soldiers wearing bayonets and soldiers belts, had been to the house asking for [Mr C], [Mr D] and the applicant.
88. He claims to fear that soldiers are still in his town in the DRC, and that he would be at risk of harm due to the historical treatment of his brothers. He claims that the Chief of the DRC Police John Numbi completed his studies at the same university as his brother, and knows the applicant’s family since he lived in the same area as them, and the applicant fears for his safety if John Numbi finds out who he is, since he knew of his brother [Mr C]’s involvement in politics. He indicated that John Numbi will harm him because he believes he and his family are in contact with the rebels, and that they are

⁸⁵ US Department of State 2011, *Country Reports on Human Rights Practices 2010: Democratic Republic of the Congo*, 8 April Section 1.d

against President Kabila, and because they are Kasaians, and Kasaians are regarded as being against the regime. He believes his sisters, some of whom are still in DRC, are more secure as they are married to Katangese men. The applicant further claims to fear DRC agents in Zambia, even in the refugee camps.

89. The applicant's oral evidence at the Tribunal hearing was consistent with the detailed statement he provided to the Department and the Tribunal found him to be a credible witness. In respect of some aspects of his claims there was corroborating evidence provided by his sister [Ms A], his brother [Mr B] and a third party, [Mr J]. Further, there was independent documentary evidence in respect of the attack on his brother [Mr C] in 2005.
90. The Tribunal accepts that the applicant is an ethnic Luba Kasaiian. He gave evidence, which is accepted by the Tribunal, that he was born on [date deleted: s.431(2)] in Likasi, in the south eastern province of Katanga, DRC, where the Kasaiians are a minority tribe. He gave oral evidence that in Katanga a person would know that he was of Kasaiian ethnicity by his name, and by the way he speaks Swahili, but that they would not be able to identify him as Kasaiian by his physical features.
91. The Tribunal accepts the oral evidence of the applicant, which was corroborated by his brother [Mr B]'s oral evidence, regarding the impact upon his family of the violence that erupted in 1992 between the Kasaiians and the Katangese. It accepts that as a result his parents were both forced to leave their jobs at this time and leave their home, and that his father may have been killed in the ensuing violence in December 1993 as he has not been heard of since.
92. The Tribunal accepts the applicant's account of the circumstances that led to his family's departure from DRC in February 2000 when he was only [age deleted: s.431(2)]. It accepts that the catalyst for their departure was the arrest of his brother [Mr C] following the publication of a letter written by him as a representative of the students at his university that was critical of the government of President Laurent Kabila. It accepts that soldiers visited their family house, searched it, and took away his brother [Mr D] for questioning, and mistreated him. It accepts that following [Mr C]'s arrest the police came to their house every day and that the family were not allowed to leave. The Tribunal accepts that [Mr C]'s arrest also triggered ethnic tensions, and that following this incident his family were taunted for being Kasaiians, and accused of being trouble for President Kabila. Further, it accepts the evidence of the applicant's brother [Mr B], who fled DRC with the assistance of the Jesuits, following his imprisonment resulting from the publication by him of two articles he wrote for a university magazine critical of President Laurent Kabila and his son Joseph.
93. The Tribunal accepts the applicant's evidence of the family's experiences in Zambia. It accepts that following their arrival in Zambia they were registered as refugees and this is corroborated by his UN Travel document numbered [number deleted: s.431(2)] from Zambia a copy of which is on the Department's file. On the basis of this evidence the Tribunal accepts that the applicant was recognised as a refugee in Zambia and registered there with UNHCR [in] February 2000, and that subsequently he received assistance from the UNHCR in the Mayeba refugee camp.
94. The Tribunal accepts that the applicant lived with his family in the Mayeba refugee camp in Zambia from early 2000 until early 2005, and that they left the camp to live in

[Suburb 5], a suburb in Lusaka, in order to attend [School 4] there. It accepts that not long after the family moved to [Suburb 5] his brother [Mr C] was beaten by Congolese who asked his brother if he was in contact with rebels. The applicant and his brother [Mr D] took [Mr C] to the [hospital deleted: s.431(2)] and a photocopy of a medical report dated February 2005 is on the Department's file. It notes that [Mr C] sustained injuries following an assault on him by unknown people. The applicant's evidence of the attack on [Mr C] in 2005 was corroborated by the oral evidence of his sister [Ms A] to the Tribunal (which was consistent with her written statement on her Department file CLF CLF2010/60255). The Tribunal accepts that a similar incident happened in early 2008 and it accepts the evidence of the witness [Mr J] who corroborated the applicant's account of this second attack on [Mr C]. The applicant has claimed that the men who attacked his brother [Mr C] were doing so under orders, directly or indirectly, from Eddie Kapend who was high in the military in Katanga and is Katangi. Given the country information above regarding Eddy Kapend, who has been incarcerated and on death row since 2003 the Tribunal does not accept the applicant's claim, which is in any event supposition.

95. The Tribunal accepts the applicant's oral evidence that when the family returned from their immigration interview in South Africa in 2007, they were told by [Mr C]'s friend [Mr J], that soldiers wearing bayonets and soldiers belts, had been to the house asking for [Mr C], [Mr D] and the applicant. The applicant's evidence was corroborated by the evidence of the witness [Mr J].
96. The Tribunal accepts the applicant's claim that soldiers are still in his town in the DRC, and that he would be at risk of harm due to the historical treatment of his brothers. On the basis of the applicant's oral evidence the Tribunal accepts that the Chief of the DRC Police John Numbi completed his studies at the same university as his brother, and knew of his brother [Mr C]'s involvement in politics. It accepts his claim that John Numbi will harm him because he believes he and his family are in contact with the rebels, and that they are against President Kabila, and also because they are Kasaian, and Kasaian are regarded as being against the regime. The Tribunal accepts that in all areas of the DRC the state security forces are involved in the commission of serious human rights abuses including unlawful killings, disappearances, and torture against perceived opponents and critics of the government of the governments.
97. The Tribunal accepts that the applicant delayed lodging his protection visa application until after the arrival of his sister [Ms A]. It accepts that he was concerned that if he had applied for protection before his sister arrived he may have jeopardised her chances of obtaining a student visa for Australia and leaving Zambia.
98. The applicant fears for his life if he returns to DRC, because of what happened to [Mr C] and [Mr B]. The Tribunal considers that the persecution which the applicant fears, namely the ultimate threat to his personal safety, death, clearly involves "serious harm" as required by paragraph 91R (1)(b) of the Act in that it involves a threat to his life or liberty or a significant physical harassment or ill treatment. The Tribunal notes that the applicant has not himself suffered any past harm, however it accepts that his brothers [Mr C] and [Mr B] have suffered harm in the form of beatings and imprisonment due to their political activism. It accepts that [Mr C] and [Mr B] both experienced ongoing physical harassment by the Congolese security forces in Zambia. The Tribunal accepts that the applicant's brother [Mr D] also suffered beatings, physical mistreatment and questioning by the authorities in respect of [Mr C]'s political activism.

99. The applicant's claims raise two overlapping Convention grounds, namely race and imputed political opinion.
100. The country information referred to above supports the applicant's claims to fear persecution on grounds of his ethnicity as a Kasaian. It indicates that the DRC continues to experience a series of ongoing violent conflicts, which are often driven by competing ethnic agendas, and which involve the military and numerous armed groups. There is a long history of conflict between the Kasaian Luba and the Katangese Lunda and in a 2011 report of the Minority Rights Group International (MRG) the Luba were listed as a minority group at future risk of "genocide, mass killing or other systematic violent repression" The Tribunal notes that in 2006, the Luba-Lunda conflict reignited in the lead up to presidential elections; opposition parties in Katanga often comprised Luba members, and that presidential elections are scheduled for 28 November 2011. The country information, which is accepted by the Tribunal, predicts that political violence in the DRC may escalate ahead of presidential elections scheduled for 28 November 2011.
101. The Tribunal accepts the applicant's claim that he has not been politically active in DRC, Zambia or Australia. However, the Tribunal accepts, on the basis of the country information, that there is a real chance that the applicant may be harmed by the authorities of DRC due to his imputed political opinion arising from the political activism of his two brothers.
102. The Tribunal accepts that there is a real chance the applicant will be physically harmed for reasons of his imputed political opinion and his race or ethnicity now or in the reasonably foreseeable future. The Tribunal considers that the applicant's imputed political opinion and ethnicity are the essential and significant reasons for the persecution which he fears, as required by s.91R(1)(a) of the Act. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c) of the Act, in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his political opinion and ethnicity.
103. The Tribunal finds that the serious harm capable of amounting to persecution that the applicant would face upon his return to DRC would be inflicted by the State, and thus effective State protection to an international standard is not available to the applicant.
104. The Tribunal has considered whether the applicant could relocate to some other part of the DRC where he would be safe from the persecution which he fears. However the Tribunal finds that relocation is not reasonable in the applicant's case given that the harm he fears emanates from the authorities of the DRC.
105. The Tribunal finds that the applicant is outside his country of nationality, DRC. For the reasons given above, the Tribunal finds that he has a well-founded fear of being persecuted for reasons of imputed political opinion, and ethnicity if he returns to that country now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the government of DRC.

CONCLUSIONS

106. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

107. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.