

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75543

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	1 July & 19 August 2005
<u>Date of Decision:</u>	1 August 2007

DECISION

INTRODUCTION

[1] The appellant, a national of the Democratic Republic of Congo (DRC), appeals against the decision of a refugee status officer of the Department of Labour (DOL) declining his application for refugee status.

[2] He claims that if he were to return to the DRC, he has a well-founded fear of being persecuted for reason of his Hutu ethnicity. This appeal turns upon whether his claim is well-founded.

[3] While the appeal was originally scheduled to begin in June 2005, the unavailability of an interpreter meant that it was rescheduled to commence in July. It was then adjourned part-heard in order to accommodate the availability of a witness who subsequently gave evidence before the Authority.

THE APPELLANT'S ACCOUNT

[4] What follows is a summary of the appellant's account as presented to the Authority at the hearing. His credibility is assessed later.

[5] The appellant described himself in his written statement as a “Hutu from the Bantu race”. He and his siblings were born and grew up in a small village not far from Bukavu, in the east of the DRC. His father ran a small business at the local market and his mother was a housewife.

[6] The appellant’s difficulties began one evening in mid-1998, when several Tutsi militia broke into the appellant’s family home. They demanded that the appellant and his older brother accompany them to join their army. When the appellant and his brother refused, they were severely beaten, as were the appellant’s younger siblings and his father. His mother was sexually assaulted.

[7] Three weeks later, the father arranged for his traumatised family to move to a rural area about 60 kilometres from Bukavu. While the soldiers did not return, the appellant’s family had to endure a similar incident in Ngweshe during mid-1999 when another group of 10-20 uniformed Tutsi militia entered the house one evening as the appellant’s family was preparing to eat their meal. They too demanded that the appellant and his brother accompany them to fight. When the appellant’s father objected to this he was shot and mortally wounded. The appellant was beaten and stabbed in the chest. The family members were all beaten and the appellant’s mother was again sexually assaulted.

[8] After the soldiers left, the family buried the father. The mother collected money owed by the father’s business debtors and divided the proceeds among her children. She told them to use it to escape and to find safety somewhere else. The appellant and two of his siblings then departed the DRC, leaving his mother and one sibling behind. He has had little contact with them since.

[9] The appellant crossed the border into Rwanda and then into Tanzania. For the next four years, until 2003, he lived in a succession of African countries. He managed to support himself with the help of expatriate Congolese, usually by buying and selling clothing. Eventually, he made his way to South Africa, where he lived for a year.

[10] After making his way to Namibia, the appellant then decided to leave Africa. He travelled to South America and then entered New Zealand in early 2004, using a false South African passport which he had obtained by bribing an immigration official in South Africa.

[11] Some time after arriving in New Zealand, the appellant learned that he

could apply for refugee status. He lodged an application on 2 November 2004. After interviewing the appellant on 10 December 2004, a refugee status officer of the DOL issued a decision dated 8 March 2005, declining the appellant's application for refugee status. He appeals against that decision.

[12] The appellant spoke to his mother twice after arriving in New Zealand. On the first occasion, his mother informed him that soldiers had returned to her home in mid-2004 and raped her again. In mid-May 2005, the appellant received an email from his previously estranged older brother to inform him that their mother had been killed by "soldiers" approximately one week earlier. He has had no further contact with his brother since then.

[13] The appellant fears that if he were to return to the DRC, he would be killed either by the government or by Tutsi soldiers because he is Hutu. He says that people from his region are blamed for allowing the Rwandan Tutsis to come into the DRC during the 1990s and he would be unable to settle outside the area from which he originated.

Evidence of witness YZ

[14] YZ is a former national of the DRC who came to New Zealand in the late 1990s, under the UNHCR refugee quota system. The Authority was provided with copies of correspondence from the DOL which verified his status, together with a copy of YZ's New Zealand passport. YZ confirmed the content of a written statement which he had signed for the purposes of the appeal, dated 19 May 2005.

[15] YZ is a minister for a Christian church in Auckland which the appellant attends. They did not know each other before they came to New Zealand, but YZ came from an area close to where the appellant lived. He confirmed that they speak the same dialect and said that in his opinion, he and the appellant are from the same tribe and the same geographical area.

[16] YZ said that the conflict in the geographical region from which they came had been complicated. He believed that Rwandan forces continue to harass and attack the local people when they need food. He provided copies of photographs depicting graphic violence perpetrated during the course of the conflict which has continued in the DRC for many years. YZ believed that the appellant would be at risk from Tutsi militia because he is not Tutsi, and said that the appellant would be

unable to settle elsewhere in the DRC because people would know he was from the east.

Material provided to the Authority

[17] Prior to the hearing, counsel for the appellant filed submissions under cover of a letter dated 25 May 2005. At the same time, he filed an additional statement signed by the appellant, together with a statement signed by YZ.

[18] Counsel also filed various additional items of country information on the morning of 1 June 2005, when the hearing was first scheduled to proceed, together with a letter from Auckland Hospital, dated 25 May 2005. Additional written submissions were lodged on 20 September 2005 and again, at the Authority's invitation, on 17 November 2006.

THE ISSUES

[19] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[20] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[21] Before addressing the principal issues, it is necessary to determine whether the appellant is a credible witness. With the exception of one aspect of his

account, which is outlined below, the Authority finds that his account is credible.

[22] Because the appellant entered New Zealand on a South African passport (which he claimed to be false), some doubt existed as to whether he is truly from the DRC. The Authority is satisfied, however, that the appellant speaks the dialect and languages of a person from the part of the DRC from which he claims to have come. He is accordingly granted the benefit of any doubt in that regard.

[23] The Authority notes that the appellant's account of random assaults perpetrated by Tutsi militia in 1998 and 1999 is consistent with country information relating to that period. Further, in giving that part of his account, the appellant provided a level of detail which was consistent with earlier accounts that he had given in connection with his claim for refugee status.

[24] There was, however, one specific aspect of the appellant's evidence which is demonstrably false.

News of his mother's death

[25] The appellant received an email from his brother in mid-May 2005, informing him that his mother had been killed by soldiers the previous week. The Authority does not accept that the content of that email is genuine.

[26] The appellant said that this email was the first contact which he has had with his brother since they parted company in mid-1999. When asked how his brother had managed to find his email address, the appellant claimed that he had provided it to his mother during one of two telephone conversations which he had with her after arriving in New Zealand.

[27] The appellant was asked to explain why he provided his mother with an email address, given that she was said to be living in a village with no electricity and no telephone. The appellant said that he had provided it in the hope that his siblings would eventually make contact with him. However, the appellant's subsequent actions do not accord with his explanation.

[28] The appellant was asked whether he had made any contact with his brother after receiving the email informing him of his mother's death. He said that he had tried to telephone once, without success. The appellant had not tried again since then because he could not afford to do so. He said that telephone contact is expensive, and he has little money. When the appellant was then asked why he

had not tried to contact his brother by email, he replied that he wanted to talk to his brother in person, and that emailing was unsatisfactory.

[29] The Authority does not believe him. If true, this incident would be directly relevant to the appellant's claim for refugee status. What is more, the appellant claimed that his brother was himself in difficulties in the DRC. If true, the brother's difficulties would also be potentially relevant to the appellant's claim.

[30] The appellant claimed to have provided an email address to his mother so that he could resume contact with his siblings. If he had truly learned of his mother's death by email, it is inevitable that he would have wanted to make contact with his brother by any means available. If he was unable to afford a telephone call, it is implausible that he would refrain from seeking further information by the simple expedient of a return email.

[31] In all the circumstances, and given the clearly convenient timing of the receipt of the email just prior to the scheduled commencement of the appeal interview, the Authority does not believe that the email is a genuine communication. It finds that the mother's alleged death is a fabrication aimed at bolstering the appellant's claim for refugee status.

Summary of Credibility findings

[32] The Authority therefore finds that the appellant:

- (a) is a national of the DRC, of Hutu ethnicity, from a village in the east of the DRC.
- (b) has no political profile in the DRC;
- (c) was, during the late 1990s, twice the victim of random assaults by Tutsi militia, at two different locations more than 50 kilometres apart; and
- (d) left the DRC in 1999 following the second of those attacks, spending some years in various African nations prior to arriving in New Zealand in 2004.
- (e) is a resourceful individual who has adapted to life in several different countries since leaving the DRC at the end of the 1990s.

[33] It is on that basis that the appellant's claim is assessed.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the DRC?

[34] For the purposes of refugee determination, persecution has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996).

[35] The Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real chance of such persecution occurring. Even a low likelihood of harm can be enough to afford an appellant the benefit of the protection conferred by the Refugee Convention, provided that the chance is real rather than remote, and provided that there is a Convention reason for that harm.

The main risk factors referred to by the appellant

[36] In his supplementary statement dated 23 May 2005, the appellant referred to the primary source of his concerns as the “Banyamulenge”. They are defined in an extract from the United Kingdom Home Office *Country Report: Democratic Republic of Congo* (October 2006) (UKHO Report), relied upon by counsel in his written submissions, as:

“A group of primarily ethnic Tutsis who before independence migrated from Burundi and Rwanda into the Mulenge Mountains of Sud-Kivu.” [para 22.12]

[37] The appellant asserted in his statement that:

“The ones that I really fear are the ones that came to our house to torture and kill my father “the Banyamulenge”. It has been a real problem between Hutus and Tutsis. The Rwandan government is supporting the Banyamulenge and used them or come through them to fight the rebels ... so that in the process they kill, torture, rape the civilians mainly Hutus.”

[38] In addition to the perceived risks posed by the Banyamulenge, counsel submits that there is a risk to the appellant arising out of the poor human rights record of successive governments in the DRC; risk arising from the attitudes of the populace as a whole in the DRC towards people from the east; and also that he is at risk of serious harm in returning to the DRC as a failed asylum seeker.

[39] In addressing these issues, the Authority notes that there is a degree of overlap between the appellant’s assertions.

[40] The appellant gave evidence about the difficulties which he and his family encountered as a result of the conflict which enveloped the DRC during the late 1990s, when Laurent Kabila marshalled various dissident groups in a revolt which overthrew the incumbent dictator, Mobutu Sese Seko.

[41] The nature of the conflict has changed considerably since the appellant left the DRC. This is summarised at para 3.01 *et seq* of the UKHO Report, recounting the involvement of foreign troops from neighbouring countries which first assisted Kabila in his coup, then subsequently hindered his assumption of untrammelled nationwide power.

[42] A transitional national government (tng) was formed at the end of 2003, bringing to an end five years of civil war (UKHO Report para 3.04). Multiparty Presidential and general elections, were conducted in a “generally peaceful” manner in 2006 (UKHO Report para 6.61). President Joseph Kabila, who came to power after the assassination of his father in 2001, was elected President.

[43] Foreign forces officially left the DRC around the time the tng was formed in 2003. However, even since then, both Rwanda and Uganda have reportedly provided backing to armed groups which continued to operate and commit human rights abuses in the country (United States Department of State *Country Reports on Human Rights Practices for 2006: Democratic Republic of Congo* (6 March 2007) section 1 g: “the 2006 DOS report”). This has led to continuing tension between government and rebel forces.

[44] Counsel submitted generally that successive governments in the DRC have had a poor human rights record. In his submissions dated 25 May 2005, counsel refers to the United States Department of State *Country Reports on Human Rights Practices for 2004: Democratic Republic of Congo* (28 February 2005) (“the 2004 DOS report”). The DOS reports for 2004, 2005 and 2006 all indicate that government security forces committed unlawful killings, torture, beatings, acts of rape and other abuses.

[45] Much of the specific country information provided by counsel focused upon conditions in the eastern region of the DRC, where the appellant lived before he left the DRC in 1999. For example, the 2004 DOS report chronicled ongoing exchanges between Hutu and Tutsi:

“Government forces and armed groups targeted civilians on the basis of ethnicity for extra-judicial killings, rape, looting, and arrest ... the [rebel] Forces targeted non-Tutsis for attack, and the [government force] in turn targeted Congolese Tutsis

when it re-occupied [Bukavu] in June” (section 1.a.)

[46] Other references also indicate that the civilian population has, on occasion, been caught in the cycle of ongoing violence and reprisals between government forces and rebel-backed militia. For example, according to a United Nations Secretary-General report dated 28 December 2005, government troops recaptured two localities in South Kivu which had been held by rebels for two months. Immediately after the operation, civilians were attacked in reprisal by the ousted rebels (Twentieth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo S/2005/832 28 December 2005, as cited in the UKHO Report para 8.82).

[47] Under cover of his submissions dated 20 September 2005, counsel provides copies of several articles which refer to the deaths of Congolese civilians at the hands of militia on various sides of the fighting in the east since May 2005; for example: *The New Times (Kigali) When will the Interahamwe Extremism End?* (31 August 2005); *Massacre of about forty civilians to the South-Kivu: the UNO is investigating in the field* Digitalcongo.co (3 September 2005); *BBC DR Congo rebel threatens invasion* (29 July 2005).

[48] The UKHO Report also outlined “a number of security incidents in South Kivu” (para 8.81) and draws together many different sources of information. These include a BBC News report, dated 12 July 2005, of the killing of 50 people, most of them women and children, who were reported to have been burned alive by Hutu militia in South Kivu (para 8.80). Further reports were noted of separate incidents on 30 May, 6 June, and 20 & 25 July 2005 (para 8.80).

[49] This ongoing conflict has created a continuing problem of internal displacement with villagers leaving their homes at various times in search of security. However, on a positive note, the UKHO Report noted more recently that there had been “a gradual improvement in security”:

“A report from Refugees International (RI) in April 2006 stated that the gradual improvement in security had now allowed some of the 153,000 refugees in Tanzania to return. The report states that between January 2004 and October 2005, roughly 20,000 returned on their own, and that since then UNHCR had facilitated the return of a further 12,000 more, with 900 to 1,000 refugees returning each week by boat through Baraka. The RI report goes on to detail how those that return have little to help them restart their lives and become self-sufficient and calls for a series of reintegration programmes. A later report from MONUC on 28 September 2006 states that more than 20,000 people had been assisted with repatriation to South Kivu. It also stated that every week the UNHCR office in Baraka receives and escorts two convoys – about 1,000 registered returnees.” [paras 8.89-8.90].

[50] Further, according to the 2006 DOS report “Unlike in the previous year”, there was no confirmation of Rwandan or Ugandan support for the armed groups, “or of the presence of Rwandan soldiers in the country” (section 1 g). This is significant in light of the assertions made by the appellant of the risk posed to him by the Banyamulenge, as outlined at para [37] above. In reality, as will be outlined below, during the period since the appellant left the DRC it is Banyamulenge (Tutsi) themselves who have for some time been at risk of being persecuted.

[51] The Authority has not overlooked that the appellant and YZ both assert that the appellant would be at risk anywhere in the DRC. They claim that the Congolese population generally “hate people from the east”, because they are perceived to be Rwandans who have come to the DRC to seize land and are blamed for the civil war in the DRC.

[52] Country information submitted by counsel provides some evidence that such attitudes have held sway in Kinshasa in the past. However, it is also apparent that such sentiments were directed towards Tutsi, not Hutu, and that they have dissipated.

[53] The UKHO Report refers to the Fact Finding Mission Report on the DRC (October 2002) by the Documentation and Research Service, Refugee and Nationality Commission of Belgium (CEDOCA). CEDOCA refers to human rights abuses against a number of people in Kinshasa in August and September 1998 who were, or were perceived to be, Tutsi. These were in reaction to the conflict between the DRC and Rwanda. This appears to have been the high point for such sentiment.

[54] The DOS report for 2002 (cited in the UKHO Report, para 22.29), also indicated that ethnic Tutsi were subjected to abuse in the capital and elsewhere in the DRC for perceived or potential disloyalty to the regime after the start of the war in 1998. No mention was made of any abuse suffered in Kinshasa by Hutus, whether from the east or from elsewhere.

[55] Even the abuse of Tutsis “decreased significantly during 2001” according to the DOS report for 2002. The improvement continued to the point where a camp which had housed several hundred Tutsis in Kinshasa since 1998 had closed by 2003, because the local population had become more tolerant towards the Tutsi; Ministry of Foreign Affairs of the Netherlands as cited in UKHO Report para 22.30.

[56] The view that it is Tutsis who have been at risk, not Hutu, is reinforced by the practices of other refugee-receiving jurisdictions. For example, the UKHO Report canvassed various EU states about the basis upon which asylum claims from the DRC were considered. While those states referred to all asserted that claims are dealt with on an individual basis, UK policy was said to be to grant asylum “generally” to Tutsis, but not to persons of mixed origin, and the Swiss stated that asylum is granted to “Tutsis in some cases”. None of the countries referred to in the UKHO report state that asylum was granted to Hutu on the basis of ethnicity alone.

[57] It has been accepted that the appellant and his family members fell victim to two random attacks during the height of the civil war during the late 1990s. However the Authority’s task is to assess whether the appellant faces a real chance of being persecuted in the DRC in the future.

[58] In the somewhat dysfunctional environment which exists in the DRC it is possible that any civilian could find themselves in the wrong place at the wrong time and become a victim of the fighting which has resulted in the death and displacement of civilians, predominantly in the east. However, the risk of serious harm faced by the appellant is, at its highest, a random risk which falls below the standard of a real chance.

[59] By way of illustration it is helpful to refer to the 2006 DOS report, in which MONUC is cited as attributing to FARDC (government troops) and the national police (PNC) responsibility for two-thirds of all unlawful killings in the country during 2006. Numerically, this amounted to something around 50 civilians allegedly killed by FARDC during the first six months of 2006, and “at least 10” allegedly killed by PNC officers (section 1a). In the context of a population estimated in the 2005 and 2006 DOS reports to be approximately 60 million, the number of “unlawful killings” was apparently relatively low.

[60] This is not to trivialise those incidents which have occurred. Nor does the Authority overlook the fact that it is assessing the risk of serious harm in all its guises, not only that resulting in death. However, while the assessment of a real chance is not to be reduced to a merely mathematical equation, the Authority finds that the chance of the appellant falling victim to serious harm in the DRC in the future does not rise to the level of a real chance such that the appellant has an objectively well-founded fear of being persecuted for a Convention reason by the DRC government, the Banyamulenge, or any other non-state agent.

[61] Nor does the Authority find that the appellant would be at risk of serious harm as a 'returned asylum seeker', as counsel submitted in his further submissions dated 17 November 2006. Mr Mansouri-Rad referred to an extract in the 2005 DOS Report in which mistreatment of returned asylum seekers had been reported in the DRC. This relied upon an article published by the BBC in December 2005 (the BBC article) which suggested that the DRC authorities interrogate all failed asylum seekers returned to the DRC from Europe and, if necessary, detains them at Kinshasa airport (section 2.d). (The BBC article was not identified in the 2005 DOS Report, but was identified in the UKHO Report as *Asylum questions for DR Congo* <http://news.bbc.co.uk/1/hi/world/africa/4483364>).

[62] However, this assertion has subsequently been fundamentally discredited. The UKHO Report refers to the contrary views reached by the UK Foreign and Commonwealth Office (FCO) and the United Nations High Commissioner for Refugees (UNHCR), in response to the BBC article.

[63] The FCO sought input from sources including local non-governmental organisations, press and lawyers, ministers from all parties forming the transitional government and other embassies in Kinshasa.

[64] According to the FCO, the reported harassment of some returnees is part of a trend of opportunistic crime against random civilians by unpaid or underpaid officials. It is not evidence that failed asylum seekers are specifically targeted for harassment by the security services. The FCO states that harassment is experienced by the majority of travellers, both Congolese and foreign, and continues:

"All passengers arriving at N'djili airport are liable to be questioned by DRC immigration officials. We have no evidence that returned failed asylum seekers are specifically targeted for adverse treatment." (UKHO Report para 36.03).

[65] According to the FCO, there is no evidence that DRC nationals are at risk of being persecuted from DRC authorities on being returned to Kinshasa after a failed claim for political asylum in a third country. The FCO stated:

"... other EU governments continue to make regular supervised returns of failed asylum seekers to Kinshasa, for which DRC Immigration requires a suitable identification document." (UKHO Report para 36.03).

[66] The Belgian and Dutch governments also stated that they have not seen any evidence to indicate that returned failed asylum seekers are persecuted (UKHO Report para 36.09).

[67] The UNHCR position is similar. After canvassing several organisations and institutions (including the Congolese Immigration Authorities (DGM), the National Committee for Refugees (CNR), IOM, MONUC and national human rights NGOs) UNHCR considers that, while it is usual procedure to interrogate individuals who return without current DRC passports, there was no evidence of systematic mistreatment or abuse of returnees, including failed asylum seekers, returning through Kinshasa Airport (UKHO Report para 36.05).

[68] Counsel submits that there are no reports of asylum seekers returning to the eastern provinces of the DRC. While that is true, it is relevant to note that by September 2006, more than 20,000 people had been repatriated to South Kivu and thousands of others had been returned elsewhere in the east (UKHO Report, paras 8.89-8.90).

[69] It is also highly relevant that the extract in the UKHO Report relating to the treatment of returned asylum seekers, the UNHCR *Response to Information Request Subject: DRC – Treatment of rejected asylum seekers* (letter dated 19 April 2006), emphasises that, if there is any risk, it is to Tutsi/Banyamulenge, rather than Hutu. It states:

“With the limited information available to UNHCR, it does not have evidence that there is systematic abuse, including detention and mistreatment, of failed asylum-seekers returned to the DRC through Kinshasa airport. It wishes to highlight, however, that it advises against the forced return to Kinshasa of persons of Banyamulenge ethnic origin.” [as cited in UKHO Report, para 36.06, emphasis added].

[70] That assertion is mirrored to some extent by the 2006 DOS report, which states that

“The FARDC and other security forces sometimes harassed, arbitrarily arrested, and threatened Tutsis--including the Banyamulenge ... in North and South Kivu provinces” (section 5).

[71] In short, there is no reason why the DRC authorities would regard the appellant as a failed asylum seeker unless he volunteered that information. Even if he did so, there is no evidence that he would be at risk of being persecuted for a Convention reason if returned to the DRC by way of air to Kinshasa, even in combination with his Hutu ethnicity.

Summary

[72] In conclusion, it is not difficult to understand why the general insecurity in

the DRC might legitimately give rise to anxiety about returning. Country information establishes that life undoubtedly remains difficult for many of its citizens. Humanitarian problems are undoubtedly exacerbated by the large numbers of displaced Congolese returning to their homes.

[73] Even if it is accepted that the appellant may find himself having to deal with many of the problems facing his country at present, the focus of the Refugee Convention is narrowly defined. Matters of general insecurity alone do not bring him within the ambit of protection offered by the Convention. The appellant has not demonstrated that he has a well-founded fear of being persecuted in the DRC for a Convention reason.

[74] In making that finding, the Authority has borne in mind the recent decision of Winkelmann J in the High Court of New Zealand, *A v Chief Executive of Department of Labour* (CIV 2004-404-6314, Auckland High Court, 19 October 2005). Her Honour found that when conducting its forward-looking assessment of whether an appellant faces a real chance of being persecuted, the Authority must consider “whether an individual having all of [the appellant's] characteristics” would face a real chance of serious harm for a Convention reason if returned to the country of origin; para 38.

[75] The Authority has carefully and collectively considered the appellant's claims to be at risk from the Banyamulenge; from the government of the DRC; because of the attitudes of the DRC populace as a whole towards people from the east, and as a failed asylum seeker. In considering those claims the Authority has taken into account all of his characteristics as a DRC national from a village in the east of the DRC, of Hutu ethnicity and with no political background, who was twice the victim of random assaults by Tutsi militia during the late 1990s, and who is a resourceful individual who has adapted to life in several different countries since leaving the DRC in 1999.

CONCLUSION

[76] Turning to the first principal issue, for all of the reasons set out above, the Authority finds that objectively, on the facts as found, there is no real chance of the appellant being persecuted if returned to the DRC. That being the case, the second principal issue does not fall for consideration.

[77] The Authority therefore finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A N Molloy"

A N Molloy
Member