

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73894

REFUGEE APPEAL NO 73895

REFUGEE APPEAL NO 73896

REFUGEE APPEAL NO 73897

AT AUCKLAND

<u>Before:</u>	L Tremewan (Chairperson) G Pearson (Member)
<u>Counsel for APPELLANT:</u>	H Hylan
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	27 and 28 May 2004
<u>Date of Decision:</u>	24 January 2005

DECISION DELIVERED BY G PEARSON

[1] These are appeals brought against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellants, who are nationals of the Democratic Republic of Congo (DRC).

[2] The hearing was conducted in the Lingala language (with the assistance of a translator), which is a major language of the DRC. The two adult appellants were both clearly fluent in that language. They also demonstrated knowledge of

the DRC, which was consistent with persons who had lived there for a long period of time.

[3] The claim concerns a family who assert they are at risk in the DRC due to having assisted Rwandan persons of Tutsi ethnicity escape the DRC. This occurred in 1999, at a time when the DRC had been invaded by Rwandan troops, and Tutsi people, whether troops or not, were being killed in reprisal.

[4] The claim is determined on the basis of assessing the credibility of the account given, and an assessment of the risk faced by the appellants in the DRC at the present time.

INTRODUCTION

[5] The first appellant is a married man. His wife is the second appellant. Her claim is, to an extent, derivative from the first appellant's claim. Accordingly, they will be referred to as the appellant and the appellant's wife. The third and fourth appellants are the children of the appellant and his wife; they are girls, and are respectively nine and five years of age.

[6] The children were represented by their parents pursuant to section 141B of the Immigration Act 1987.

[7] The appellants also have a child who was born in New Zealand since their arrival here.

[8] The appellant came to New Zealand from South Africa in February 2000; he applied for refugee status in March 2000. The appellant's wife and the children came to New Zealand in August 2001, and they applied for refugee status in September 2001. The RSB interviewed the appellant and his wife separately in December 2001; and completed the appellant's wife's interview in January 2002. The children were not interviewed due to their age. The RSB in decisions of 30 May 2002 declined each appellant's claim for refugee status.

[9] As noted, the appellants claim they are at risk of persecution in the DRC, because the appellant and his family assisted Rwandan people to flee the DRC in

1999. It is necessary to assess the credibility of that claim.

[10] The second issue arises from the passports the appellants used to travel from South Africa to New Zealand. There is evidence suggesting that the holders of those travel documents are citizens of South Africa, having been born in that country. Accordingly, regardless of the credibility of the claim that the appellants are at risk in the DRC, it is necessary to determine whether they are citizens of South Africa and so able to live there.

[11] The account that follows is a summary of the evidence given at the appeal hearing by the appellant and his wife. The children did not give evidence due to their age. The evidence is assessed later.

THE APPELLANTS' CASE

Early years

[12] The appellant and his wife were both born in the DRC, in Kinshasa. They describe themselves as being of Luba (Muluba) ethnicity. The appellant's have Christian beliefs. They have not experienced difficulties due to their ethnicity or religion.

[13] The appellant's father was an influential man. He held a position in a Government ministry, and from 1980 to 1985 he was a Member of Parliament in the Mobutu Government (a single party government – the MPR Party).

[14] The appellant had political opinions, but they were not expressed in a way that led to any difficulty for him. The appellant did not support President Mobutu's regime (which from 1965 to 1997 controlled Zaire, now known as the DRC), as he viewed it as a dictatorship, which abused human rights.

[15] The appellant's wife has not been interested in politics.

[16] The appellant remained at secondary school until his early 20s, at his father's insistence. The appellant's progress through secondary school had been slow as he devoted more time to soccer than his studies.

[17] After completing secondary school the appellant was unemployed, and supported by his father. In the late 1980s the appellant attended a University in the DRC, where he studied law. He made good progress with his studies, but part way through his third year of study he had to stop due to the cost.

[18] The appellant then undertook a computing course. However, he did not find relevant employment. He later found work as a teacher at a primary school.

[19] The appellant's wife had attended school without any significant difficulties, and after that trained as a hairdresser.

[20] The appellant and his wife married in 1994.

[21] Prior to the hearing, counsel produced documents relating to the appellant's background. The documents were attached to his submissions. They included the appellant's DRC driving licence, a school certificate, a certificate relating to a Spanish language course, and the appellant and his wife's marriage certificate.

[22] During the course of the hearing, it became evident that the appellant and his wife had more documentation relating to their background in the DRC. They had brought some documents to New Zealand, and would be able to produce them. The Authority pointed out to the appellant, and his counsel, that documentation supporting the evidence given regarding the family's background would be material, and likely important.

[23] The following morning the appellant produced photographs of himself. They had obviously been taken some years before, and he explained they were taken in the DRC. He also produced a university record sheet, and a copy of an email from his sister. Subsequently, the appellants also produced birth certificates relating to each of them.

[24] The documents produced all gave confirmation of the appellants having a background in the DRC.

[25] The appellant also produced a letter from a leader of the Congolese community in New Zealand. The letter explained that the appellant, his wife, and their children were all actively involved in Congolese community activities in New

Zealand. The identity of the appellants were known in the community, and the family was fluent in the Congolese languages, namely French, Lingala, Swahili and Tshiluba. The letter also confirmed that the appellant's father was a well known political figure in the DRC, and a former Member of Parliament.

Assisting Rwandan People

[26] In 1997 Laurent Kabila, with the assistance of Rwandan, and Ugandan troops captured Kinshasa, and Laurent Kabila was installed as president, displacing President Mobutu.

[27] However, after being installed as president, Laurent Kabila was then under pressure from the Rwandan and Ugandan forces that had supported him. They sought to take control of the DRC themselves; both by abusing their authority in the community, and attempting to destabilise President Kabila. That rebellion commenced in August 1998, and there was a ceasefire in July 1999.

[28] The Rwandan and Ugandan people are similar in appearance (of Tutsi ethnicity), and significant numbers already lived in the DRC as a longstanding part of the community. The appellant's brother was married to a Rwandan woman.

[29] After the Rwandan and Ugandan troops attempted to take control of the DRC they sought to be inconspicuous by wearing civilian clothes. This led to widespread persecution, and killing of Rwandan people in the DRC, whether they were troops or not.

[30] This directly affected the appellant's family. As noted, the appellant's brother was married to a Rwandan woman; the appellant and other members of the family had contact with Rwandan people.

[31] The Congo River marks the border between the DRC, and the Republic of Congo. Kinshasa is in the DRC, and Brazzaville is the city on the opposite side of the river located in the Republic of Congo. It is possible to cross the river in the area by canoe, and it takes approximately two hours.

[32] The appellant, his brother, and the appellant's wife's brother (a soldier) were all involved in assisting Rwandan people to flee the DRC. They assisted

them to travel to a place on the Congo river, from where transport across to the Brazzaville area would be arranged. The transport was by canoes paddled by boys who lived in the area. The appellant and the other family members would take Rwandan people there by car, and assist with negotiating a fee for passage to Brazzaville. The car trips would carry one or two Rwandans at a time. When they arrived at the site, all but the driver would get out. The car would later return for the person who had stayed to assist the Rwandans in securing their passage across the river.

[33] The appellant believes that approximately 8 Rwandan people were helped to escape in this way, over a period of about a month. The appellant and his family were not paid for helping these people. They were people introduced through the appellant's sister, although in some cases he knew them from when he had been at school and university. The appellant understood they were all members of the longstanding Rwandan community in the DRC.

[34] On the last occasion the appellant did this, he and the Rwandan people had been "dropped off", and were negotiating passage with the boys. At that point DRC troops in vehicles arrived. The boys who were going to paddle the canoes swam away in the river. The appellant and the Rwandan people were arrested. The appellant was put into one vehicle, and the Rwandan people into another.

[35] The appellant was taken to a military camp. He was beaten, verbally abused, and put into prison. The following morning, the appellant was told he was a traitor as he had helped Rwandan people, and then beaten. The appellant remained in detention at the camp for some 3 weeks, and was beaten regularly. The beating included being hit with a stick on his back. On one of the occasions the appellant was subjected to an incident of serious sexual abuse.

[36] After the appellant had been at the first military camp for approximately three weeks he was transferred to another military camp. The appellant was also regularly beaten at that camp. He remained there for some weeks.

[37] When the appellant did not return, his family asked his brother-in-law, who was a soldier, to make inquiries. He had also been involved in assisting Rwandan people to escape. He discovered the appellant was being detained. The appellant

eventually escaped from the second military camp with the assistance of his brother-in-law.

[38] The appellant's brother-in-law obtained access to the prison at the second camp. There was a regular practice of taking some prisoners from the cell, after which they would not return. He was part of a group of soldiers taking prisoners from cells. He indicated to the appellant that he should not show recognition, but he would be back to assist him.

[39] Some two or three weeks later the appellant's brother-in-law returned (with other soldiers), and called out the appellant's name along with others to leave the cell. After they left, the appellant was separated from the other prisoners, one of the soldiers took him to the Congo River, where he was transported by canoe across to the Republic of Congo, in the same way as Rwandan escapees he had helped.

[40] In her evidence the appellant's wife related what happened to her and the appellant's family after the appellant was arrested. Security forces came to their home, where she lived with the appellant's family. On the first visit, the security force personnel looked for Rwandan people hidden in the house. There were no Rwandan people there at the time, though, the family had allowed Rwandan people to hide there from time to time.

[41] On the first visit the security force personnel beat family members, and damaged property. Family members were beaten with batons made of plastic and wood. At the same time they were questioned about Rwandan people. There were several visits, and the family was treated in a similar way on each occasion.

[42] On one of these visits however, the soldiers did discover two Rwandan people in the house. At the time Rwandan people were at risk of being killed by the community, as resentment and retribution had been fostered. When the soldiers located the Rwandan people, they "turned over" one to the crowd which had gathered outside, with the intention that the person would be killed. They arrested the other Rwandan person, and took him away. The appellant's wife is not certain of what happened to the person turned over to the crowd, but assumes he was killed.

[43] There was one visit, after the Rwandan people had been discovered in the house, which involved more serious abuse than the others. On that visit soldiers, in addition to beating members of the family, raped the appellant's mother and sister, and sexually abused other women in the house. One of the men in the house suffered a broken arm.

[44] The appellant's mother was badly injured; she had also been struck on the head and lost consciousness. Family members took her to the hospital. Some two weeks later she died, without regaining consciousness.

[45] After that, the family moved to another region in the DRC.

[46] After arriving in the Brazzaville area, the appellant was arrested because he could not produce identity papers. The appellant was detained for some three or four months. He protested that he would be killed if sent back to the DRC.

[47] A family member back in the DRC had passed word through Rwandan contacts, to Rwandan people in Brazzaville. They were asked to look out for, and assist, the appellant. Rwandan people in Brazzaville located the appellant and had him released from prison by paying a bribe. The appellant was then protected in the home of Rwandan people he had helped to flee the DRC. The appellant stayed with them for some three or four months. The Rwandan people had fled with cash, so they were able to assist the appellant. They were willing to help because he had placed his own life at risk to aid their escape.

[48] In or about March 1999 the appellant flew from Brazzaville to Johannesburg. He entered South Africa using a false DRC passport arranged by the Rwandan people who had assisted him in Brazzaville. The appellant then destroyed the passport.

[49] The appellant's family received news that the appellant had arrived in South Africa. The appellant's wife and daughter then travelled to South Africa. They travelled overland with a merchant, and at the borders used an exit pass and a permit pass. They arrived in South Africa in or about August 1999. The appellant's wife was about to give birth to her second child at that time. She did not know where in South Africa the appellant was. The appellant's wife located the appellant through the Church community, about a week after she arrived in

South Africa. Shortly after that their second child was born, in a South African hospital.

[50] The appellant travelled to New Zealand in February 2000, using his South African passport. The details concerning this passport will be related subsequently. He slept at the New Zealand airport the first night. The following morning he met a man at the airport who it emerged had formerly lived in the DRC. Through that man the appellant met other members of the Congolese community in New Zealand, and has been active within that community since then.

[51] The appellant's wife came to New Zealand in August 2001. She too has been active in the Congolese community in New Zealand.

[52] The appellant has maintained limited contact with his family due to communication difficulties, arising from ongoing serious problems in the DRC. He has had some email correspondence with his sister who lives in the DRC, and a cousin living in France.

DRC and South African Travel Documentation

[53] The appellant is in possession of a DRC passport, issued in 1993. The passport was not used for travel. It records the appellant was born in the DRC.

[54] When the appellant arrived in New Zealand he presented a passport issued by the Republic of South Africa. The passport on its face was issued in September 1998. At this time, on the appellant's account, he was in the DRC. The name in the passport was different from the appellant's name but only slightly. The passport indicated the appellant was born in South Africa.

[55] The appellant explained the circumstances in which he obtained the passport in this way.

[56] Some three or four months after entering South Africa the appellant had established himself in the community of a Christian church. He met a South African woman who worked in the South African Department of Home Affairs, which was responsible for the issue of passports. He met her through the church he attended. The appellant told her what had happened to him, she sympathised

with his plight. This woman indicated that officials in the Department of Home Affairs could be bribed to issue false passports. The passports would be genuine in the sense that they were authentically issued in the official process; but issued without the requirements of establishing true identity and entitlement to a passport.

[57] The appellant, with the assistance of the Church community, arranged for the money to be available. The woman took the appellant's fingerprints, took the money to bribe an official, and received passport photographs which had been brought from the DRC by the appellant's wife. The photographs had been taken in 1993 for the appellant's genuine DRC passport.

[58] The appellant duly received a passport. On the face of the document the date of issue was in late 1998. The appellant discussed this point with the woman who had arranged it, and she said anything could be done in the computer system.

[59] The appellant decided to check that the passport "worked" and obtain immigration "stamps", to add to the apparent authenticity of the passport. He travelled to Mozambique, where he stayed for about a month, at the end of 1999.

[60] The appellant's wife and the children also arrived in New Zealand and presented what appeared to be passports issued by South Africa. The names in those passports are markedly different from their names. The passport indicated each of them was born in the DRC.

[61] The appellant's wife explained that the church gave financial assistance to purchase false passports for her and the children.

[62] The NZIS made inquiries regarding the passports, and received a response from the South African Department of Home Affairs, which suggested:

- (a) The respective passports presented by the appellant and one child (the younger child) were genuine passports, and the holders of the passports have identity numbers. Accordingly, they are South African citizens. In the case of the holder of the appellant's passport, he was born in South Africa. No information regarding place of birth was given for the holder of the child's passport;

- (b) The respective passports presented by the appellant's wife, and one child are not genuine passports, but the persons identified in the false passports have identity numbers, and are South African citizens by birth.

Further Inquiries regarding South African Documentation

[63] The Authority made its own inquiries regarding the passports. The information obtained by the NZIS to that point provided some information regarding the status of the relevant passports, but did not assist in identifying the persons who presented them. The Authority sought to obtain further information by informing the South African Department of Home Affairs of the information now available to the Authority, in particular, the circumstances in which the appellants claimed to have obtained the documents.

[64] Inquiries were directed to the South African Department of Home Affairs. The request, in accordance with the relevant protocol, was transmitted through NZIS's London Office, and from there to the New Zealand High Commission in Pretoria to be relayed to the Department of Home Affairs.

[65] A senior NZIS officer in London, on 20 October 2004, informed the Authority that the *Special Assignment* television documentary programme had recently screened a documentary in the United Kingdom concerning the subject of false South African official documents. The officer reported, that the programme claimed that in South Africa "valid and genuine" official documents (including passports, birth certificates and marriage certificates) could easily be obtained by fraudulent means.

[66] Despite numerous "follow up" inquiries, the South African Department of Home Affairs did not supply any information which assisted in determining whether, or not, the appellants are South African Citizens.

Additional information

[67] Counsel for the appellant, prior to the hearing, supplied written submissions, and documentation. The documentation included a DRC drivers licence, marriage certificate, certificates of educational attainments, and country information.

[68] As noted, during the course of the hearing, a letter from the Congolese Union of New Zealand dated 20 October 2004 was supplied, and in addition birth certificates for each of the appellants, and an email letter concerning the birth certificate for the younger child.

[69] Counsel also presented oral submissions.

[70] All of this material has been considered.

THE ISSUES

[71] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"...owing to a 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[73] The appellant and his wife gave an account of persecution in the DRC, which was consistent with the account they gave to the RSB, and with country information.

[74] However, the appellant's account is not consistent with the information originally received from the South African Department of Home Affairs, or the date of issue recorded on the passport presented by the appellant. The passport was,

on its face, issued in South Africa in late 1998, at the time he claimed he was being persecuted in the DRC.

[75] The Department of Home Affairs in South Africa has not been able to provide any meaningful information regarding the claim that the appellant's passport was issued unlawfully by a dishonest employee of the Department. There has also been no useful information regarding whether the appellant's youngest child is the person who was issued with her passport.

[76] It is clear from the information originally provided by the Department of Home Affairs, that the appellant's wife and the older child presented false passports. That is consistent with the evidence of the appellant and his wife.

[77] We give weight to the information supplied by a senior official of the NZIS when processing the request for information from South Africa. The fact that the news media are reporting a significant problem with persons fraudulently obtaining "valid and genuine" South African documentation gives some confirmation that the appellant's evidence is plausible. It is also of some significance that the media reports are not from a source of which the appellant was likely to be aware, and have had the opportunity to tailor his account to fit.

[78] In the absence of evidence from South Africa, we must determine the case on the evidence before us. We accordingly conclude it is not implausible for the appellant and the youngest child to be in possession of "genuine" South African passports, obtained by fraudulent means. Such passports may accordingly be recognised as "genuine" in the South African system, and also contain false information.

[79] The key issue then is whether on the evidence before us the appellant and his wife were born in the DRC and lived most of their lives there, or whether at least the appellant was born in South Africa.

[80] The most significant evidence before us is the fact that the appellant, his wife and their children speak the languages of the DRC; and that they are known in the Congolese community in New Zealand. It is noted the appellant's father is known in that community as a former politician.

[81] In addition to those elements, the appellant and his wife exhibited a knowledge of the DRC that was consistent with having lived there for a long period of time. Their knowledge of the geography, and history (particularly political), of the DRC would be surprising if they had not lived there for a significant period of time. The information they supplied matched country information.

[82] We considered the possibility the appellant and his wife had been part of a Congolese community living in South Africa. However, the information supplied by the Congolese community in New Zealand concerning the appellant's father being a well known politician is not readily reconciled with the possibility. In addition, the documentation provided by the appellant is not consistent with that possibility either. The relevant documentation included a passport, driver's licence, birth certificates, and certificates relating to the appellant's education. Some of the documentation was material the appellant had not thought to provide. The appellant was able to bring it from his home the day after he was asked for it by the Authority, during the hearing. Receiving the information in those circumstances gives some confirmation the material was not false documentation produced to support a manufactured account.

[83] We did not detect anything in the demeanour of the appellant or his wife which was not consistent with their accounts being truthful. Both of them readily, and quickly, responded to detailed questions regarding the account they gave, and circumstances in the DRC.

[84] Accordingly, we accept that the appellant and his wife are not South African citizens, and that both of them and their older child were born in the DRC.

[85] Accordingly, we accept the account given by the appellant and his wife.

[86] In respect of the younger child, she was born in South Africa. South Africa confers citizenship by birth, but only where the child is of South African descent, or the child would otherwise be stateless (<http://home-affairs.pwv.gov.za>). Citizenship of the DRC is available by descent, regardless of the place of birth (www.dss.mil). Accordingly, the younger child is a citizen of the DRC (or may at least claim it), and is not a citizen of South Africa.

Country information

[87] Counsel for the appellant supplied background material relating to the circumstances in the DRC since 1999 down to the present time. The material included *Coltan, Kabila, and the Congo* Emmanuel Goujon (www.worldconfrontationnow.com), *UDPS Presentation to Catholic University of Louvain* Francois Tshipamba Mpuila (www.udps.org), and *Congo at War: A Briefing on the Internal and External Players in the Central African Conflict* (www.icg.org). This material, and other sources such as BBC News profiles (www.bbc.co.uk), and Department of State Country Reports on Human Rights Practices (www.state.gov) present a clear picture of the DRC's recent history.

[88] The account given by the appellant and his wife is consistent with this information. The country was under the control of Joseph Mobutu from 1965. From 1989 the country was characterised by instability, and deteriorating economic conditions. In 1996 to 1997 Tutsi rebels captured much of the eastern parts of the DRC. In 1997 Tutsi groups and anti-Mobutu rebels, with the assistance of Rwanda, captured Kinshasa. This outcome was initiated and planned outside of the DRC. Laurent-Desire Kabila was installed as president, to mask what was in fact an external invasion.

[89] The Kabila regime was marked by corruption and violence. During the fifteen month period from 17 May 1997 to 2 August 1998 the Kabila regime wielded absolute power. On 2 August 1998 the situation degenerated into open warfare. There were six African countries involved in the war, and a peace accord was signed in 1999. In 2000 the United Nations Security Council authorised a 5,500 strong force to monitor the ceasefire, but fighting has continued between Government forces, rebels, Rwandan, and Ugandan forces.

[90] In 2001 Laurent-Desire Kabila was assassinated, and his son Joseph Kabila succeeded him as president.

[91] The United Nations Agency (MONUC) charged with peace keeping estimated that the war, which commenced in 1998, resulted in the death of some two and a half million people by 2001. That illustrates the gravity of conditions in the DRC in recent years.

[92] Since 2002 there have been various peace initiatives, and in 2003 a new constitution was adopted. Instability has been ongoing. At the present time there have been numerous reports of increasing instability with the incursion of Rwandan troops into the eastern part of the country. As recently as 3 December 2004, the United States Department of State issued a press release stating:

“The United States is profoundly concerned about the situation in eastern Congo”
(www.state.gov)

[93] The most recent Department of State Country Report is dated 25 February 2004. It was prior to the recent deterioration. It noted:

“Security forces committed unlawful killings, torture, beatings, acts of rape, extortion, and other abuses, largely with impunity. Prison conditions in hundreds of local detention facilities, both legal and illegal, remained harsh and life threatening; however, conditions in some of the larger, centralized prisons improved.”

[94] The information establishes Government security forces are committing grave unlawful acts against citizens who are perceived as a threat. Furthermore, terror has been used as a means of control. It is also clear Tutsi people are perceived as the cause of much of the tragedy that has afflicted the DRC in recent years. It follows, that persons who are known have actively assisted Tutsi people, are at risk of being regarded as collaborators, deserving of punishment.

Convention ground

[95] The appellant's, his wife's, and his family's motives in assisting Rwandan people were humanitarian. The Rwandan people they assisted were being persecuted for political reasons. The Government was seeking to create a climate of hatred against Tutsi people. This was directed not only against Tutsi people involved in the war, but also those who had lived in the DRC for a long time. The Government incited the civilian population in that way, to better secure its own hold on power. The appellant and his wife were both opposed to that and actively assisted Tutsi people to escape the violence directed against them.

[96] Accordingly, while the actions of the appellant in actively assisting Rwandan people to escape, and his wife in being a party to sheltering Rwandan people, were motivated by humanitarian concerns; it was in each case, an overt political act opposing the policies of the Kabila regime.

Conclusion regarding well founded fear of persecution for a convention reason

[97] We are satisfied the appellant and his wife have a well founded fear of persecution in the DRC. We note that the appellant's father was a well-known politician. It follows that it is not likely the appellant would be able to live inconspicuously in the DRC. It is illustrative that the relatively small Congolese community in New Zealand was aware of the family.

[98] The appellant escaped from prison. He assisted Rwandan people, and at the present time the DRC is suffering from a further incursion of Rwandan invaders. It is improbable that he would not suffer, at the least, harsh treatment were he to return to the DRC and come to the attention of security forces.

[99] It is necessary to consider the circumstances of the appellant's wife, and the children separately. The appellant is the person most clearly at risk, given that he escaped from custody. Some members of the appellant's family still live in the DRC, and have not been persecuted, since leaving Kinshasa.

[100] The issue to be determined is whether the appellant's wife and children have a well founded fear of being persecuted, by reason of their association with the appellant; or whether they would be treated like other more remote members of the family who were also in the family home where Rwandan people were sheltered.

[101] Should they return to the DRC, for the same reasons as the appellant, they are likely to be noticed. In particular, because the family has a profile from the appellant's father's political background; and that the appellant escaped from custody.

[102] If the appellant and the children returned to the DRC with the appellant the risk of them being persecuted due to their association with him would be relatively high. The context in which the risk must be evaluated is that that the DRC has experienced a very large loss of life in recent years. Much of it is attributed to Tutsi insurgents. The risk of an extremely violent reaction to persons perceived as sympathisers is substantial. Killing and violence by security forces is endemic.

[103] The risk is likely to be less if the appellant's wife and the children returned on their own. However, in the climate discussed, frustration at not being able to exact vengeance on the appellant could well result in persecution of his family.

[104] In the present context, particularly given the recent invasion, we are satisfied that each of the appellants has a well founded fear of returning to the DRC.

No Internal Protection Alternative

[105] For completeness, we note there is no internal protection alternative for the appellants. The appellants' fears relate to the security forces in the DRC, which are under the control of the Government. The security forces are active in the areas under Government control, other areas (in the east of the DRC) are an active war zone and it would not be practicable to enter that area.

CONCLUSION

[106] For the above reasons, the Authority finds the appellants are not refugees within the meaning of the Refugee Convention. Refugee status is granted. The appeals are allowed.

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G Pearson
Member