

**AT AUCKLAND**

**Appellants:** **AF (South Africa)**

**Before:** A R Mackey (Chair)  
V J Shaw (Member)

**Counsel for the Appellants:** C Curtis  
I Uca

**Counsel for the Respondent:** No Appearance

**Date of Hearing:** 23 May 2011

**Date of Decision:** 29 July 2011

---

**DECISION DELIVERED BY V J SHAW**

---

**INTRODUCTION**

[1] The appellants are a mother, her 15-year-old son and 19-year-old daughter. They are all citizens of South Africa, though the mother also holds British nationality. These appeals were heard contemporaneously with the family's humanitarian appeals [2011] NZIPT 500240, 500238 and 500242.

[2] These appeals are against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant the appellants refugee status or to recognise them as protected persons under the Convention Against Torture or the International Convention for the Protection of Civil and Political Rights (ICCPR). The mother acts as the responsible adult for the purposes of her son's appeal.

[3] The Tribunal finds that the appellants are not refugees or protected persons. The primary issues are whether in South Africa there is a real chance of any of the appellants being seriously harmed by a former husband of the mother (and the father of the daughter) or of their becoming the victims of criminal violence and sexual assault generally.

### **THE APPELLANTS' CASE**

[4] The appellants are white South Africans. As their claims centre on their domestic situation, what follows is a summary of the mother's life, and in particular, her three marriages.

[5] The mother was born in Durban in 1956. Her parents separated when she was only a few months old. Thereafter, she had only limited contact with her father, who died when she was in her teens. She was largely raised by her maternal aunts and from around six years of age was sent away to boarding school. She claims never to have had contact with her older brother and believes that her older sister was adopted out. As a child she felt abandoned by her mother (now deceased), and from the age of 15 years had no further contact with her.

[6] In her teenage years the mother experienced ongoing sexual harassment which she attributed to aggressive male sexual attitudes towards white blond women and the fact that she lived in poor areas where the police were corrupt. She was raped when 14 years old and was too traumatised to tell anyone. She was raped a second time by a teacher when aged 15 or 16 years, as a result of which she became pregnant with her oldest child, a son. The police were involved, but, on discovering the man was married, declined to pursue the matter. Both rapes were committed in the context of the mother accompanying the men on dates.

[7] During her pregnancy the mother travelled with the woman who was looking after her to the United Kingdom where she remained for several months. During this stay she was again raped. She was too ashamed to tell anyone of the incident.

[8] When her son was around nine months old and she was living as a solo mother, she was raped at knifepoint by an intruder who entered her home. A

complaint was made to the police who launched an investigation, but they were not able to locate her assailant.

[9] In 1976 the mother married her first husband with whom she had two more sons and a daughter. Her husband was around 25 years her senior and the marriage ended after some 12 years because of the mother's dissatisfaction with her husband's controlling nature and his unwillingness to work or share domestic responsibilities. During this marriage the mother was raped again, but she did not complain to the police as her assailant was the husband of a family friend.

[10] The mother remarried in August 1990 and a second daughter (the present appellant) was born. At first her second husband was very attentive and loving to her and his four stepchildren, but his demeanour soon changed and he would regularly beat and sexually assault the mother. It was subsequently revealed that he had been sexually abusing the third son. Following the mother's complaint to the police, her second husband was charged and eventually convicted and sentenced in 1994 to seven years' imprisonment. He made threats against the mother and continued to harass her while on bail. He was released on early parole around 2000.

[11] In 1996 the mother married for a third time and her fourth son (the present appellant) was born. Unfortunately this third husband had an addiction problem which adversely affected his mood and his behaviour became unpredictable and aggressive. The mother separated from him in 2001. She remained living in the family home with her two youngest children and her older daughter.

[12] In order to supplement her income as a swimming instructor, the mother took in two male boarders. The younger boarder, aged 18 years, raped the youngest daughter in the family home. She was aged around 12 years at the time. The matter was not reported to the police as the young man's mother begged the mother not to do so. The second boarder, aged around 20 years, alerted the mother to what was happening, and also revealed a romantic interest in the younger daughter.

[13] The mother's three older sons, as they matured, left South Africa for the United Kingdom and all three have now acquired the right of permanent residence there. The older daughter married and lives with her husband in Durban.

[14] During 2004 the mother formed an internet relationship with an Australian man. After he visited the family in South Africa, he and the mother became engaged. In 2005 the three appellants joined the fiancé in Australia. The relationship failed within two weeks.

[15] The appellants remained living in Queensland until December 2006 when they came to New Zealand. Soon after their arrival in this country, the daughter disclosed what proved to be an unfounded fear that she was pregnant as a result of being raped by a middle-aged man who had been boarding with the family in Queensland. The mother laid a complaint with the Queensland Police, but was subsequently informed that, after investigation, the matter would not be proceeded with as there was insufficient evidence.

[16] In this country there has also been an incident whereby the daughter was sexually assaulted in the family home. A school friend, who was staying the night, invited several older males with gang associations to enter through the bedroom window and engaged in consensual sex with them. The daughter was forced to have oral sex with one of the men. The mother, on learning of the men's presence, ordered them to leave the house and made a complaint to the police, but the friend did not corroborate the daughter's account and the police did not pursue charges.

[17] The mother had hoped that she would be able to obtain New Zealand citizenship through her late father, an Englishman who had migrated here with his family when a young child, but this proved not to be the case. In March 2006 she lodged a residence application under Family (Sibling and Adult Child) policy sponsored by the older of her two half-brothers (the sons of her father's first marriage) with whom she had maintained contact over the years. Immigration New Zealand (INZ) declined this application in August 2009 and an appeal to the former Residence Review Board was also declined in January 2010. The appellants' refugee claims were lodged in April 2010.

[18] The appellants do not want to return to South Africa. They are afraid that they will be targeted and seriously harmed by the mother's second husband in retaliation for the complaint which led to his conviction and imprisonment. After he was released from prison around 2000 he had come on occasions to the family's home and made threats against the mother. The mother is also afraid that he will rape the son and daughter.

[19] The appellants are also afraid that in South Africa they will be victims of violent criminals and that the mother and daughter will also be raped by black African men.

### **Submissions**

[20] Counsel filed submissions prior to the hearing and also relied on extensive submissions and country material filed with the Refugee Status Branch.

### **CREDIBILITY**

[21] Comprehensive psychological reports on all three appellants were prepared by psychologist Amanda McFadden. The mother's report addresses in detail her relationship history and the multiple traumatic experiences she has had over the course of her life. The mother has also provided a written statement (18 August 2010) and she was interviewed by the RSB. She has given a generally consistent account of her background.

[22] On some matters, such as the contact with and threats made by her second husband following his release from prison, the mother's evidence is vague. But as to the broad outline of her background summarised above, there is no reason to doubt that it is a truthful account.

### **JURISDICTION**

[23] Section 198(1) of the Immigration Act 2009 requires the Tribunal to conduct an inquiry into whether to recognise an appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) a protected person under the Convention Against Torture (section 130); and/or
- (c) a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

## THE REFUGEE CONVENTION – THE ISSUES

[24] Section 129 of the Act provides:

### 129 Recognition as refugee

- (1) A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.
- (2) A person who has been recognised as a refugee under subsection (1) cannot be deported from New Zealand except in the circumstances set out in section 164(3).

[25] 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."

[26] As explained in earlier decisions of this Tribunal, including *AA (Iran)* [2010] NZIPT 800056 (22 December 2010), the Tribunal intends to rely on the jurisprudence developed in the determinations of the RSAA over the period 1991 to 2010, subject only to the rulings of superior New Zealand courts, jurisprudential changes resulting from the 2009 Act, and ongoing developments in international refugee and protection law.

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

- (a) Objectively, on the facts as found, is there a real chance of the appellants 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 CLAIMS TO REFUGEE STATUS

### Interpretation of Well-founded Fear

[28] The RSAA, whose jurisprudence is adopted by the Tribunal, for many years, interpreted the term "being persecuted" as the sustained or systemic

violation of basic human rights demonstrative of a failure of state protection. In other words, the core norms of international human rights law are relied upon to define the forms of serious harm which may fall within the scope of “being persecuted”. This is fully explained in *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90].

[29] A well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative chance, of persecution occurring. As noted in the issues set out above, an assessment of the “well-founded fear” element of the refugee definition has, at its core reference point, not the facts subjectively perceived by the claimant, but the objective facts as found by the decision-maker. This explanation of the objective standard required was summarised in *Refugee Appeal No 76044* (11 September 2008) at [57], which states:

**“THE RISK ISSUE**

**“A WELL-FOUNDED FEAR”**

**The legal test**

[57] In the Authority’s jurisprudence the well-founded standard has been understood as mandating the establishment of a real chance of being persecuted. See for example *Refugee Appeal No. 72668/01* [2002] NZAR 649 at paras [111] to [154]. The standard is an entirely objective one. The trepidation of the refugee claimant, no matter how genuine or intense, does not alter or affect the legal standard and is irrelevant to the well-foundedness issue. Any subjective fear of harm, while relevant to the question whether the claimant is unable or unwilling to avail him or herself of the protection of the country of nationality, is of no relevance to whether the anticipation of being persecuted is well-founded. See *Refugee Appeal No. 75692* [2007] NZAR 307 at paras [76] to [90] and the *Michigan Guidelines on Well-Founded Fear* (2005) 26 Mich. J. Int’l L. 491.”

*The mother*

[30] The mother is a citizen of both South Africa and the United Kingdom. It is a fundamental requirement of Article 1A(2) of the Refugee Convention that a claimant with more than one nationality must establish that she is lacking the protection of each of the countries of which she is a national. The mother must therefore demonstrate that she has a well-founded fear of being persecuted for a Convention reason both in South Africa and the United Kingdom.

*South Africa*

[31] The mother’s fears of returning to South Africa are twofold: she fears being seriously harmed by her second husband and that she will also become a victim of criminal violence, including sexual violence.

[32] Dealing first with the risk posed by the second husband, his ongoing animosity towards the mother is said to stem from his having received a seven year sentence of imprisonment following her complaint that he sexually abused her third son. However, these events are now well in the past. The marriage took place in August 1990 and ended within two years following the revelation of the sexual abuse. The second husband was convicted and sentenced around 1994.

[33] The mother has referred to the husband's threatening and abusive behaviour towards her while on bail pending trial, which caused her to move home on several occasions. No doubt this was a difficult and stressful time for the mother and she may well have experienced some harassment from the husband. But the fact remains that she came to no harm, despite an alleged threat to kill her.

[34] The husband was released around 2000. The mother claims that thereafter he frequently appeared at her home where she lived with her third husband and that the visits continued after her separation. This was corroborated by her older daughter in South Africa during a phone interview with the psychologist, although she also stated that when the husband came to the house and shouted for her mother, she would go and tell him she had called the police and he would leave. Noted is the younger daughter's failure to mention during her psychological interview any memory of contact with her father subsequent to his release from imprisonment, despite his alleged frequent appearances at their home. The second husband has re-married and has a son.

[35] The claims about the danger posed by the second husband appear to be exaggerated, a possibility acknowledged by Ms McFadden, who noted the mother's responses to probing questions about her contact with her second husband post-separation and up until the time she left South Africa had at times a vague quality. Ms McFadden also noted that the mother can be prone to negative exaggeration of her situation, especially concerning her second husband, and that because of the history of the marriage and her mental state she is primed to see threat in any material associated with him. As explained above, a subjective fear, however genuine and intense, does not establish that a fear is well-founded.

[36] It is not plausible that if this former husband was intent on harming or killing the mother and/or her children, he would not have made some serious attempt to do so over such a lengthy period. There is no reliable evidence that during the six years prior to her departure from South Africa the second husband assaulted



the mother or harmed her in any direct manner. Were she to now return after a five-year absence, there is no reason why that situation would not continue. Should any contact with the second husband occur, as in the past, it would be unwelcome and distressing for the mother, but would not put her safety at risk.

[37] The mother also fears that in South Africa she will be a victim of criminal violence, including being a victim of further sexual assaults, especially by black African men.

[38] The mother has been a victim of sexual assault in the past. She has described three instances of rape while a teenager in South Africa and one in the United Kingdom and a further rape by a family friend during her first marriage. None of her assailants were black Africans. The mother also has a history of unhappy and abusive relationships.

[39] The mother's history suggests that she was most at risk of rape when a young woman. She is now in her mid fifties. Nonetheless she fears being raped and being a victim of murder, home invasion, burglary and the like. She has described odd incidents that have occurred in more recent times to her or her family members such as a black man putting his hand through her car window and ripping her chain from her neck and a black man shooting a pellet gun at her youngest son while he was walking home from school which caused his leg to bleed. One of her sons living in the United Kingdom was stabbed and robbed outside the family home during a visit home in 2003. The family also experienced some thefts from their home.

[40] South Africa's high level of violent crime, including sexual assaults, is well known and crime permeates the entire country irrespective of the socio-economic status of neighbourhoods.: United States Department of State *Country Reports on Human Rights Practices for 2011: South Africa* (8 April 2011) and *Overseas Security Advisory Council South Africa 2011 Crime and Safety Report* (30 April 2011), Centre for the Study of Violence and Reconciliation *A State of Sexual Tyranny: The Prevalence, Nature and Causes of Sexual Violence in South Africa* (November 2008).

[41] The latter report at pages 26–28 discusses the difficulties in quantifying the prevalence of rape over and above reported police statistics of around 50,000 rapes annually. Projections from limited studies suggest that only one in four rapes amongst the 17–48 age group was reflected in police statistics. That

equates with a figure of 2, 070 rapes or attempted rapes per 100, 000 women in that age group. While it is thought women over 48 years probably constitute a relatively small portion of the overall total, other studies suggest girls under 17 years have high rates of victimisation.

[42] There is no evidence that white women are more at risk of being sexually assaulted. On the contrary, the same report at page 51 refers to *Tracking Justice*, a study of female adult victims of rape in Gauteng which found that black African women were at greater risk of being raped than white women. White women made up only 5 per cent of adult rape victims in Gauteng, whereas they were 21 per cent of the population. Rape in the home by an unknown intruder also formed only a small minority of rapes. Only 12 per cent of adult women who were raped, were raped by an unknown perpetrator during a house break-in (see pages 42–43).

[43] The mother was once raped at knife-point in her home by an intruder, but that incident happened some forty years ago. The chance of her again becoming the victim of a violent intruder or other assailant who rapes, murders or seriously injures her is a random or remote chance, not a real chance as required for a well-founded fear:

[44] It is also submitted that the mother's particular personal characteristics and fragilities make her vulnerable to entering abusive relationships with men and limits her capacity to seek appropriate help thereby elevating her risk of domestic violence and abuse.

[45] Her history of unhappy or abusive relationships is acknowledged. It may be that she remains psychologically vulnerable and prone to impulsive decisions with respect to potential partnerships, as identified by Ms McFadden. It is not clear though, from the description of the marriages recorded by Ms Mc Fadden, that the first and second marriages were particularly violent. It also noticeable, that as she has matured, the mother's willingness to tolerate abusive relationships has decreased and her ability to recognise abusive traits in men and take steps to protect herself has increased. She separated from her second husband relatively quickly and in 2006 it took her no more than two weeks of living with the Australian man she met through the internet for her to recognise his controlling abusive temperament and end the relationship. There is no evidence of her entering or staying in an abusive relationship over the last five years. Nor does her more

recent history reveal an unwillingness or inability to approach social agencies, including the police. In this country she has been adept at accessing help for herself and her children, including from mental health, educational and other social services, the police and her Member of Parliament.

[46] Whether, on return to South Africa, the mother chooses to enter an abusive relationship (and she appears far better equipped to protect herself from such relationships than in the past) and, if so, whether the degree of harm she experiences is sufficiently serious and sustained to amount to persecution, is speculative, that is, below a real chance.

#### *United Kingdom*

[47] The mother says she was raped when visiting the United Kingdom as a teenager and she fears being raped again. However, that incident too occurred some 40 years ago when she was young. Should she live in the United Kingdom, the chance of her again being raped or suffering serious domestic violence from an abusive partner, is remote or speculative, that is, below the real chance required for a well-founded fear.

[48] Further, the United Kingdom is a developed democratic country with a sophisticated well-resourced police force and judicial system and well-functioning social agencies. There is therefore a presumption that state protection is available to victims of domestic and other criminal violence: *Refugee Appeal No 523/92* (17 March 1995).

#### *The son*

[49] The son is a South African citizen. He is not a citizen of the United Kingdom. It is probable that as a dependent child of his mother he could acquire the right of residence in the United Kingdom. There are though, various conditions that would have to be met beyond mere formalities, so that at this time the only country to which he can be returned is South Africa.

[50] The son fears that if returned to South Africa he would be at risk of serious harm from his mother's second husband and that he will become a victim of violent crime.

[51] There is no evidence of the son having had any direct contact with the second husband when he was living in South Africa and no evidence of any attempt on the part of the second husband to harm the son. For the reasons discussed above, the Tribunal does not accept that the second husband represents a real risk to the mother or either of her children.

[52] It has also been submitted that the son has personal characteristics, in particular, psychological fragilities that place him at a real risk of coming to serious harm from criminal violence in South Africa.

[53] The son is a 15-year-old white South African. His parents separated when he was aged around 5-6 years and his father has played no role in his life since. In her report, completed in July 2010, Ms McFadden described the son as bright and articulate and having excellent comprehension and insight. He has a history from a young age of severe separation anxiety, becoming anxious at minor separations from his mother and refusing to attend school. This condition persisted after the family came to New Zealand and when he has attended school he has experienced bullying. His mother has regularly home-schooled him, though at the time of Ms McFadden's interview he had recently enrolled at a college following the family's move to another city. Prior to the move he had been involved in petty crime. When interviewed by the Tribunal, he confirmed that he had ceased attending the college after several months and was again being home-schooled. His goal is to pass his exams and undertake tertiary studies.

[54] The family reported to Ms McFadden that the son's anxiety was decreasing, but he still experienced residual anxiety. Ms McFadden considers that his fear of living in South Africa largely reflects his having internalised his mother's fears for her and her children's safety, and his general knowledge of high levels of violent crime in South Africa.

[55] When living in South Africa the son experienced instances when he or his family members were the target of criminality, such as when nine years old he was shot at with a pellet gun in the street and his leg was grazed, the snatching of his mother's chain, the robbery of his brother and thefts from their home. Such incidents would have been distressing, but, even cumulatively, do not amount to persecution.

[56] The son's primary vulnerability identified by Ms McFadden is his reliance on his mother for support. He needs a stable supportive environment and a return to

South Africa will likely trigger an increase in his levels of fear and anxiety so he may become more socially withdrawn and suffer from depression.

[57] As explained above, the son's subjective fears are not relevant to an assessment of a well-founded fear in terms of Article 1A of the Refugee Convention. It is possible that in South Africa the son could be seriously harmed through a random violent criminal act, but it has not been demonstrated that his sensitivity and caution about social interactions outside the home elevates his risk to that of a real chance.

#### *The daughter*

[58] The daughter's claim to fear her father (her mother's second husband) because he "will take me away and rape me" is rejected. She is now aged 19 years and she has had no contact with her father since a small child. Ms McFadden noted that much of her evidence about her mother's relation with her father had a "magical quality" and she considers that the daughter has internalised her mother's fears in respect of her father. There is no reliable evidence that the father has demonstrated any genuine intention to harm his daughter, let alone ever attempted to do so. There is no reason to consider that the situation will change in the future. Should the daughter return to South Africa, there is no real chance that her father will rape or seriously harm her.

[59] As for her fear of crime and sexual violence in South Africa, the daughter has already experienced being raped in South Africa when aged 12 years. She also claims that she was sexually assaulted when living in Australia and again in this country. Complaints were made to the police in respect of these latter two incidents but, after investigation, both the Australian and New Zealand police declined to lay charges. Some caution therefore is called for as to the daughter's account of events. If the sexual contact was non-consensual, as she claims, on two occasions the men responsible were boarders in the home and on the third occasion men had been invited into the home when her mother was present. In consequence, Ms McFadden considered that the daughter's exposure to sexual harm has occurred because of her mother's failure to protect her.

[60] Besides her home environment and history, a key characteristic of the daughter identified by Ms McFadden as making her vulnerable to again being sexually victimised, is her mild intellectual disability. She is socially and

emotionally immature and said by her mother to be suggestible and easily led. She has limited adaptive functioning skills and needs adult support and oversight.

[61] Since being interviewed by Ms McFadden in June 2010, the daughter has found part-time work in a take-away restaurant. She drives herself to work in her own car and expressed to the Tribunal her hopes of training to be a hairdresser. She was able to identify the importance of making the right friends so as to avoid getting into situations similar to what happened when her school friend invited older gang members into her home. She expressed a desire to live independently of her mother, but acknowledged that her mother would not allow her to do so.

[62] Despite Ms McFadden's concerns about the mother's parenting, before the Tribunal the mother demonstrated insight about her daughter's social vulnerabilities. The mother has been receiving counselling through a community health programme that has been working with the family and she appeared more settled within herself. Her life has not been easy. She impressed as a warm and loving mother, not unintelligent and having a degree of resilience.

[63] When the daughter was asked about her fears of returning to South Africa she was very clear that these centred on being raped by black African men. The risk though, of her being a victim of general sexual or violent crime, such as from an unknown intruder or other stranger, remains at the level of a random or speculative risk. Her mild intellectual disability does not appreciably elevate her risk.

[64] Her vulnerability lies in her naivety. Her mother reported that she was prone to becoming infatuated with prospective boyfriends, idealising the relationship and that she had a poor sense of boundaries, readily engaging in physical contact. The daughter has been sexually active and had several boyfriends since living in this country. There has been no claim that within these relationships she has been raped. She stated to Ms McFadden that her second boyfriend "wasn't good for me at all. He used me for sex", a judgment made with hindsight and not indicative of non-consensual sex. The daughter's immaturity and lack of sophistication may affect her assessment of the suitability of potential boyfriends, but it is not sufficient to elevate the risk of her being raped or physically abused in South Africa to a real, as opposed to a speculative or random, chance.

[65] In any event, the daughter's vulnerabilities in her relations with men are not capable of resolution through the Refugee Convention. The potential for harm remains in which ever country she resides, including New Zealand.

## **CONCLUSION ON THE CLAIMS TO REFUGEE STATUS**

[66] The Tribunal finds that, if returned to South Africa, there is no real chance that any of the appellants will be seriously harmed. Their fears of being persecuted are not well-founded.

## **THE CONVENTION AGAINST TORTURE**

[67] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[68] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[69] The Tribunal has already found that there is no real chance of the appellants being seriously harmed in South Africa. Therefore, they are not protected persons under the Convention Against Torture.

## **THE ICCPR – THE ISSUES**

[70] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for

believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

[71] Similarly, as there is no real chance that any of the appellants will be seriously harmed in South Africa, they are not protected persons under the Covenant on Civil and Political Rights.

## CONCLUSION

[72] For the foregoing reasons, the Tribunal finds that the appellants:

- (a) are not refugees within the meaning of the Refugee Convention;
- (b) are not protected persons within the meaning of the Convention Against Torture; and
- (c) are not protected persons within the meaning of the Covenant on Civil and Political Rights.

[73] The appeals are dismissed.

"V J Shaw"  
V J Shaw  
Member

Certified to be the Research  
Copy released for publication.

V J Shaw  
Member