



RPD File No. / N° de dossier de la SPR : MB6-06798

Client ID No. / N° ID client : XXXX

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

<b>Claimant</b>	<b>XXXX XXXX</b>	<b>Demandeur d'asile</b>
<b>Dates of hearing</b>	June 16, 2017 December 20, 2017 March 15, 2018 March 16, 2018	<b>Dates de l'audience</b>
<b>Place of hearing</b>	Montréal, Quebec	<b>Lieu de l'audience</b>
<b>Date of decision and reasons</b>	May 15, 2019	<b>Date de la décision et des motifs</b>
<b>Panel</b>	Dany Dubé	<b>Tribunal</b>
<b>Counsel for the claimant</b>	Jacques Despatis	<b>Conseil du demandeur d'asile</b>
<b>Designated representative</b>	N/A	<b>Représentant(e) désigné(e)</b>
<b>Counsel for the Minister</b>	Josée Barrette	<b>Conseil du Ministre</b>

## REASONS AND DECISION

### INTRODUCTION

[1] **XXXX XXXX** states that he is a citizen of the Democratic Republic of the Congo (DRC). He alleges that he is a “Convention refugee” and a “person in need of protection,” as set out in section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] Should he return to the DRC, the claimant fears that he will be persecuted, tortured, threatened, mistreated and/or killed by:

- a. **XXXX XXXX XXXX** (a.k.a. **XXXX XXXX**) and his associates, who allegedly hold him liable for the loss of a significant amount of money;  
and/or
- b. The Agence nationale de renseignements (ANR) [national intelligence agency], which is looking for him because he participated in political activities and it fears that he will report the inhumane and illegal methods and techniques used against dissidents.

### DETERMINATION

[3] The panel finds that the claimant is subject to Article 1F(c) of the United Nations *Convention Relating to the Status of Refugees* (the Convention) because there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations. Accordingly, pursuant to section 98 of the IRPA, the claimant is not a “Convention refugee” or a “person in need of protection.”

[4] This is for the following reasons.

### ALLEGATIONS

[5] The claimant’s complete allegations are found in his response to question 2 of the Basis of Claim Form<sup>1</sup> (BOC Form), in the attached schedule and in the statutory declaration<sup>2</sup> that he subsequently submitted. Here is a summary.

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<sup>1</sup> Document 1 – Claimant’s Basis of Claim Form (BOC Form).

<sup>2</sup> Document 4 – Claimant’s statutory declaration and copy of driver’s licence, submitted on December 19, 2016.

[6] In the DRC, the claimant was a diamond and gold broker.

[7] On XXXX XXXX, 2013, the claimant was supposed to carry out a diamond transaction in XXXX involving XXXX XXXX (a.k.a. XXXX XXXX), XXXX XXXX XXXX XXXX XXXX XXXX. However, the transaction did not take place, since the person sent on behalf of the XXXX did not show up and remained unreachable.

[8] When he returned to Kinshasa, the claimant learned that the XXXX's messenger had been arrested and that he himself was wanted, since they were accused of appropriating the significant amount of money intended for the diamond transaction.

[9] On XXXX XXXX, 2013, the claimant went to hide in Makala.

[10] On XXXX XXXX, 2014, military personnel looked for the claimant at his home. He was not there, but his spouse was then beaten, raped and threatened by the military personnel.

[11] A friend of the claimant's then helped keep the claimant's family safe.

[12] On XXXX XXXX, 2014, XXXX XXXX's troops found the claimant. The claimant was mistreated and detained in a house until late XXXX2014. He was interrogated for the purpose of determining the location of the money intended for the diamond transaction.

[13] In late XXXX 2014, the claimant's spouse and children fled the DRC and came to Canada. They claimed refugee protection in Canada. However, their claims were rejected on February 20, 2015.<sup>3</sup>

[14] On XXXX XXXX, 2016, since the claimant believed that his issues were over, he took part in a political demonstration against the regime in power. He and other demonstrators were mistreated at the demonstration. They then hid for fear of reprisals.

[15] On XXXX XXXX, 2016, the claimant was found, arrested and locked up by the ANR. He was interrogated and tortured.

[16] On XXXX XXXX, 2016, the claimant was released right before his execution. He was released by a military leader because his family paid the military leader a fee.

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<sup>3</sup> Document 6 – Copy of the refugee protection claim file of XXXX XXXX et al.

- [17] The claimant's family then helped him find a XXXX passport to flee the country.
- [18] The claimant fled the DRC on XXXX XXXX, 2016. He arrived in Canada the next day.
- [19] On November 7, 2016, the claimant filed this refugee protection claim.

## ANALYSIS

### Identity

- [20] Unlike his spouse and children,<sup>4</sup> the claimant was able to provide his Congolese passport.<sup>5</sup> The original passport was seized by the immigration officer who received his refugee protection claim.
- [21] In addition, there were no doubts regarding the authenticity of the claimant's passport.
- [22] The panel is satisfied as to the claimant's identity.

## MINISTER'S INTERVENTION

- [23] At the first hearing, since it noted that Article 1F of the United Nations *Convention Relating to the Status of Refugees* may apply to this claim, the panel decided to adjourn the hearing. It believed that the participation of the Minister of Public Safety and Emergency Preparedness Canada (the Minister) could help ensure a full and proper hearing of the refugee protection claim.
- [24] On June 22, 2017, the panel sent a notice to the Minister<sup>6</sup> to inform him of the following:
- In his account, that claimant states that he worked in the diamond trade and that he was supposed to carry out a diamond transaction involving XXXX XXXX XXXX (a.k.a. XXXX XXXX).
  - The account<sup>7</sup> of the claimant's former spouse, which was shared in this file by means of Refugee Protection Rule 21 (RPD Rule 21), states as follows:

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<sup>4</sup> Document 6 – Copy of the refugee protection claim file of XXXX XXXX et al.

<sup>5</sup> Document 2 – Information package provided by Canada Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC).

<sup>6</sup> Notice to the Minister, dated June 22, 2017.

<sup>7</sup> Document 6 – Copy of the refugee protection claim file of XXXX XXXX et al., (File No. MB4-03690/UCI: 92 216 634).

My husband was also in business. He was a broker. He regularly went to XXXX in the province of XXXX, where he received precious stones (gold and diamond) from a miner. He supplied an individual named XXXX XXXX, who represented XXXX XXXX XXXX XXXX. He received a small commission from the miner and from the XXXX's representative.

- According to the documentary evidence:
  - XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX  
XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX  
XXXX XXXX XXXX XXXX XXXX.<sup>8</sup>
  - The diamond trade in the DRC helps fund illegal armed groups.<sup>9</sup>
  - The deaths and human rights abuses currently taking place in eastern DRC are mainly related to the extraction and trade of minerals such as diamonds.<sup>10</sup>
- The United Nations General Assembly adopted resolutions<sup>11</sup> concerning the link between the illegal diamond trade and armed conflicts. This could show that the trade is an act contrary to the purposes and principles of the United Nations.
- In addition, at the hearing on June 16, 2017, the claimant's testimony suggested that:
  - he had been involved in the diamond trade since XXXX;
  - he left the trade in XXXX;
  - he took part in the trade because it was very profitable;
  - the trade was very risky, since he was dealing with crooks and criminals;
  - he knew that he was dealing with criminals, but he did not want to know what the criminals were doing with the diamonds afterward; and
  - he dealt with a number of Congolese government members and military personnel.
- The panel does not know whether the claimant's trade activities were lawful, but his statements that he was dealing with criminals raise doubts in this area.
- The refugee protection claims of the claimant's children and former spouse were rejected<sup>12</sup> because the RPD was not satisfied as to their identity, in particular since there were doubts

<sup>8</sup> Document 3 – National Documentation Package (NDP), Democratic Republic of the Congo, March 31, 2017: Tab 2.6: *CORI Country Report, Democratic Republic of Congo; Security Issues, April 2013, Country of Origin Research Information, April 2013, page 56;*

Tab 2.12: *Rapport de mission en République démocratique du Congo (RDC)* [report of the mission to the Democratic Republic of the Congo (DRC)], France, Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless persons], April 2014, page 114;

Tab 4.1: *I. Political Transformation. Bertelsmann Stiftung, BTI 2016 - Democratic Republic of the Congo Country Report*, Gütersloh: Bertelsmann Stiftung, 2016, page 11; and

Tab 4.6: *Groupes armés actifs en République démocratique du Congo, Situation dans le « Grand Kivu » au 2ème semestre 2013* [armed groups active in the Democratic Republic of Congo, situation in the “Greater Kivu” region in the second half of 2013], Group for Research and Information on Peace and Security, Georges Berghezan, November 2013, pages 19 and 30;

Document 3 – NDP, DRC, March 31, 2017,

Tab 2.8: *Final report of the Group of Experts on the Democratic Republic of the Congo*, United Nations, Security Council, 23 May 2016, page 40;

Tab 4.1: *Supra*, footnote 8, page 11; and

Tab 4.6: *Supra*, footnote 8, pages 19 and 30.

<sup>10</sup> Document 3 – NDP, DRC, 31 March 2017, Tab 2.6: *supra*, footnote 8, page 87.

<sup>11</sup> Document 11 – Particularly resolutions A/RES/69/136, A/RES/64/109, A/RES/65/137, A/RES/66/252, A/RES/67/135, A/RES/68/128 and A/RES/69/136.

regarding the authenticity of their identity documents, some of which the claimant allegedly obtained.

[25] On September 13, 2017, the Minister sent a notice of intervention<sup>13</sup> to the panel and to the claimant. In the notice, the Minister informed the panel and the claimant that he wanted to participate in the hearing and that he was intervening as a result of the credibility of the claimant's allegations.

[26] The Minister's representative attended the second hearing, and she had the chance to ask the claimant questions. The hearing was again adjourned to enable the parties to provide documentation on the diamond trade, the claimant's studies and the claimant's employment as a broker.

[27] On January 16, 2018, the Minister sent an amended notice of intervention<sup>14</sup> to the panel and to the claimant. In the amended notice, the Minister informed the panel and the claimant that he was now intervening as a result of the claimant's possible contribution to crimes against humanity and/or his possible acts contrary to the purposes and principles of the United Nations.

[28] On February 20, 2018, the Minister submitted extensive objective evidence<sup>15</sup> regarding the illegal diamond trade and its damaging impact.

[29] A third and final hearing was held. After the hearing, the parties were required to provide written submissions.<sup>16</sup>

[30] In her written submissions,<sup>17</sup> the Minister's representative asked the panel to find that the refugee protection claim is excluded from the application of the Convention, since there are serious reasons for considering that the claimant has been guilty of acts contrary to the purposes and principles of the United Nations.

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<sup>12</sup> Document 6 – Copy of the refugee protection claim file of XXXX XXXX et al., (File No. MB4-03690/UCI: 92 216 634).

<sup>13</sup> Document 10 – Notice of Intervention of the Minister of Public Safety and Emergency Preparedness Canada, submitted on September 13, 2017.

<sup>14</sup> Document 12 – AMENDED Notice of Intervention of the Minister of Public Safety and Emergency Preparedness Canada, submitted on January 16, 2018.

<sup>15</sup> Document 13 – Documents M-1 to M-39, submitted on February 20, 2018.

<sup>16</sup> Written submissions from the Minister's representative, dated April 26, 2018; Written submissions from counsel for the claimant, dated May 22, 2018; and Written response from the Minister's representative, dated May 31, 2018.

<sup>17</sup> Written submissions from the Minister's representative, dated April 26, 2018; and Written response from the Minister's representative, dated May 31, 2018.

[31] In paragraph 48 of her written submissions, the Minister's representative argues that the claimant should be excluded under Article 1F(a) of the Convention. However, the panel notes that this argument does not align with the rest of her submissions and with the finding requested in paragraphs 56 and 57 of her written submissions. The panel notes that the submissions concern Article 1F(c).

## EXCLUSION

[32] In light of the foregoing, the panel analyzed whether the refugee protection claim should be excluded pursuant to Article 1F(c) of the Convention.

[33] To that end, section 98 of the IRPA states as follows:

A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

[34] Article 1F of the Convention is in a schedule to the IRPA. It reads as follows:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: ...

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations. ...

[35] The burden for exclusion is to establish that there are serious reasons for considering that the claimant committed crimes or that he has been guilty of these acts, which requires more than mere suspicion, but less than a balance of probabilities.<sup>18</sup>

[36] For the purposes of its analysis, the panel will focus on the period of reference from 2008 to 2014, namely, the period in which the claimant was involved in the diamond trade, according to his testimony and the responses provided in his immigration form.<sup>19</sup>

## Participation in acts contrary to the purposes and principles of the United Nations

### *Trade in blood diamonds, conflict diamonds or war diamonds*

<sup>18</sup> *Sivakur v. Canada (MEI)*, 1993 CanLII 3012 (FCA), [1994] 1 FC 433.

<sup>19</sup> Document 2 – Information package provided by CBSA and/or IRCC, IMM 5669, Schedule A, question 8.

[37] For several years, a number of serious and sustained violations of fundamental human rights have been attributable to the illegal diamond trade.

[38] More specifically, concerning Angola and the DRC, the documentary evidence shows that both the working conditions in the diamond mines and the use of the diamonds following their extraction are part of the sustained violation of fundamental human rights. This includes the use of forced labour for children in the mines<sup>20</sup> and the use of the profits from the diamond trade to fund and arm rebel groups that wage war on governments.<sup>21</sup>

[39] To curb the scourge, the United Nations General Assembly adopted a series of resolutions.<sup>22</sup> In the year 2000, it adopted a resolution<sup>23</sup> defining these diamonds as “rough diamonds which are used by rebel movements to finance their military activities, including attempts to undermine or overthrow legitimate Governments.” This resolution and the subsequent resolutions refer to these diamonds indiscriminately, during the period of reference, as “blood diamonds,”<sup>24</sup> “conflict diamonds”<sup>25</sup> and/or “war diamonds.”<sup>26</sup> They note that trade in these diamonds “continues to be a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate Governments and the illicit traffic in and proliferation of armaments, especially small arms and light weapons.”<sup>27</sup>

[40] For the purposes of this decision, the panel will refer to the diamonds as “blood diamonds.”

<sup>20</sup> Document 13 – M-10, p. 274; M-15, pages 432–433; M-16, p. 443; and M-21, p. 485.

<sup>21</sup> Document 13 – M-14, p. 380; M-18, p. 468; M-23, p. 596.

<sup>22</sup> Document 11 – List of resolutions in resolution 69/136 of 12 December 2014: Resolutions 55/56 of 1 December 2000, 56/263 of 13 March 2002, 57/302 of 15 April 2003, 58/290 of 14 April 2004, 59/144 of 15 December 2004, 60/182 of 20 December 2005, 61/28 of 4 December 2006, 62/11 of 26 November 2007, 63/134 of 11 December 2008, 64/109 of 11 December 2009, 65/137 of 16 December 2010, 66/252 of 25 January 2012, 67/135 of 18 December 2012 and 68/128 of 18 December 2013.

<sup>23</sup> Document 11 – Resolution A/RES/55/56 of 1 December 2000 of the United Nations General Assembly, cited in all the resolutions submitted.

<sup>24</sup> Document 11 – Resolutions A/RES/55/56 of 1 December 2000, 56/263 of 13 March 2002, 57/302 of 15 April 2003, 58/290 of 14 April 2004, 59/144 of 15 December 2004, 60/182 of 20 December 2005 and 61/28 of 4 December 2006, all cited in the resolutions submitted.

<sup>25</sup> Document 11 – Resolution 62/11 of 26 November 2007, cited in the resolutions submitted; and Resolutions 63/134 of 11 December 2008, 64/109 of 11 December 2009, 65/137 of 16 December 2010, 66/252 of 25 January 2012 and 67/135 of 18 December 2012.

<sup>26</sup> Document 11 – Resolutions 68/128 of 18 December 2013 and 69/136 of 12 December 2014.

<sup>27</sup> Document 11 – Particularly resolutions A/RES/69/136, A/RES/64/109, A/RES/65/137, A/RES/66/252, A/RES/67/135, A/RES/68/128 and A/RES/69/136.



*Acts contrary to the purposes and principles of the United Nations*

[41] Article 1 of the constitutive instruments of the United Nations, the *Charter of the United Nations*,<sup>28</sup> addresses the general purposes of the United Nations. It reads as follows:

*Article 1*

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

[Emphasis added]

[42] To determine what constitutes acts contrary to the purposes and principles of the United Nations, the Supreme Court of Canada stated the following:

... In my view, attempting to enumerate a precise or exhaustive list stands in opposition to the purpose of the section and the intentions of the parties to the Convention. There are, however, several types of acts which clearly fall within the section. The guiding principle is that where there is consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights as to amount to persecution, or are explicitly recognized as contrary to the purposes and principles of the United Nations, then Article 1F(c) will be applicable.<sup>29</sup>

[43] This decision suggests that several categories of acts may be contrary to the purposes and principles of the United Nations. The following example is given:

Several categories of acts fall within this principle. First, where a widely accepted international agreement or United Nations resolution explicitly declares that the commission of certain acts is contrary to the purposes and principles of the United

<sup>28</sup> *Charter of the United Nations*, signed on June 26, 1945, and came into force on October 24, 1945.

<sup>29</sup> *Pushpanathan v. Canada* (Minister of Citizenship and Immigration), [1998] 1 SCR 982, paragraph 65.

Nations, then there is a strong indication that those acts will fall within Article 1F(c). The *Declaration on the Protection of All Persons from Enforced Disappearance* (GA Res. 47/133, 18 December 1992, Article 1(1)), the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (GA Res. 3452 (XXX), 9 December 1975, Article 2), and the *Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism* (GA Res. 51/210, 16 January 1997, Annex, Article 2), all designate acts which are contrary to the purposes and principles of the United Nations. Where such declarations or resolutions represent a reasonable consensus of the international community, then that designation should be considered determinative.<sup>30</sup>

[44] The resolutions<sup>31</sup> adopted by the United Nations General Assembly to end the trade in these diamonds specifically note the devastating impact of conflicts fuelled by the trade on the peace, safety and security of people in affected countries, and refer to the obligations placed upon States by the Charter of the United Nations regarding the maintenance of international peace and security.

[45] The panel considers that, while the resolutions do not state word for word that the trade in these diamonds is an act contrary to the purposes and principles of the United Nations, they specifically note the devastating impact of the act, and refer directly to Article 1 of the *Charter of the United Nations*, which establishes the maintenance of international peace and security as the main purpose of the United Nations. In addition, these resolutions support the *Kimberley Process* by recalling that “the elimination of illicit diamonds from legitimate trade is the primary objective.”<sup>32</sup>

[46] The panel finds that the resolutions are clear enough to conclude that the blood diamond trade is contrary to the purposes and principles of the United Nations.

[47] Moreover, in the panel’s mind, the evidence clearly establishes the existence of a consensus in international law that the trade in blood diamonds constitutes and fuels a sufficiently serious and

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<sup>30</sup> *Pushpanathan v. Canada* (Minister of Citizenship and Immigration), [1998] 1 SCR 982, paragraph 66.

<sup>31</sup> Document 11 – Particularly resolutions A/RES/69/136, A/RES/64/109, A/RES/65/137, A/RES/66/252, A/RES/67/135, A/RES/68/128 and A/RES/69/136.

<sup>32</sup> Document 11 – Particularly resolutions A/RES/69/136, A/RES/64/109, A/RES/65/137, A/RES/66/252, A/RES/67/135, A/RES/68/128 and A/RES/69/136.

sustained violation of fundamental human rights as to amount to persecution and constitutes an act contrary to the purposes and principles of the United Nations.<sup>33</sup>

***Claimant's participation in the blood diamond trade***

[48] Regarding whether the claimant participated in the blood diamond trade, the panel believes that it is more likely than not that the claimant was involved in the transactions of these diamonds. No direct evidence shows that the diamonds in the transactions involving the claimant were blood diamonds. However, the context of these transactions and the facts set out in the evidence on the record lead the panel to determine that he participated in the transaction of these diamonds.

[49] The claimant was involved in the diamond trade for a long period of about XXXXyears.<sup>34</sup> He stated that he XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.<sup>35</sup> He gave vague testimony on the legality of the diamond transactions and the origin of the diamonds. He could not clearly explain who needed a permit or a licence, and he stated that he did not know whether it was legal to sell diamonds to military personnel. Sometimes, he stated that he did not know the origin of the diamonds for which he facilitated the transaction and that he did not want to know. Other times, he stated that the diamonds came from the XXXX region without being able to provide further details. The panel believes that, even though the diamond market may be difficult to understand in the DRC, it was reasonable to expect the claimant to be more specific, since he stated that XXXX XXXX XXXX at university<sup>36</sup> and worked exclusively in the field for a number of years.

[50] In addition, at the hearing, the claimant stated that he traded with a number of criminals. He testified that his profession was dangerous because he dealt with [translation] “crooks” and “criminals” and that there was “racketeering.” He sometimes referred to the people whom he traded with as [translation] “traffickers.” He even testified that XXXX XXXX XXXX was already a notorious criminal during the period of reference. Nevertheless, he stated that he did not want to

<sup>33</sup> *Pushpanathan v. Canada* (Minister of Citizenship and Immigration), [1998] 1 SCR 982, paragraph 65.

<sup>34</sup> Document 2 – Information package provided by CBSA and/or IRCC, IMM 5669, Schedule A, question 8.

<sup>35</sup> Document 9 – Claimant’s responses to CBSA’s questions, submitted on September 13, 2017, response to question 3.

<sup>36</sup> Document 2 – Information package provided by CBSA and/or IRCC, IMM 5669, Schedule A, question 7; Document 14 – Diploma and two transcripts, in a bundle (C-15).

know where the diamonds came from and how the criminals used them and that it was none of his business.

[51] All this suggests that the claimant's diamond trading was illegal. However, there is more.

[52] According to the BOC Form of his former spouse,<sup>37</sup> the claimant regularly supplied the same representative of XXXX XXXX XXXX (a.k.a. XXXX XXXX) with diamonds. At the hearing, the claimant tried to contradict his former spouse's BOC Form. He argued that the only time that he was meant to be involved a diamond transaction for XXXX XXXX XXXX, in XXXX 2013, the transaction was aborted. Later at the hearing, he tried to explain that his former spouse did not fully understand him when he told her what happened because of the intonation that he used when he spoke Lingala. The panel is not satisfied with these explanations. The claimant was allegedly in a common-law relationship with his former spouse for about nine years.<sup>38</sup> It is therefore reasonable to expect that the former spouse would know the claimant's accent and that the claimant would make sure that she fully understood his story, if only to ensure that she could seek the protection of her own children by claiming refugee protection in Canada. In addition, at the start of the hearing, the claimant confirmed the information in his former spouse's BOC Form.

[53] In addition, the claimant testified that XXXX XXXX XXXX allegedly personally called to ask him to facilitate a diamond transaction totalling \$XXXX XXXX XXXX.<sup>39</sup> Therefore, this transaction was supposedly the largest transaction in which the claimant allegedly took part. According to his testimony at the hearing, the largest transaction in which he took part totalled \$XXXX XXXX XXXX. It is difficult to believe that the XXXX trusted him with such a large transaction while supposedly doing business with him for the first time. The claimant explained that the transaction was significant to him, but not to XXXX XXXX XXXX. This shows that the claimant was informed of other transactions conducted by XXXX XXXX XXXX.

[54] Considering all these facts, the panel believes that the claimant was regularly involved in XXXX XXXX XXXX's diamond transactions.

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<sup>37</sup> Document 6 – Copy of the refugee protection claim file of XXXX XXXX et al.

<sup>38</sup> Document 2 – Information package provided by CBSA and/or IRCC, IMM 0008, page 2 of 5, question 14.

<sup>39</sup> Document 9 – Claimant's responses to CBSA's questions, submitted on September 13, 2017, response to sub-question 4 of question 3.

[55] According to the evidence,<sup>40</sup> XXXX XXXX XXXX XXXX worked with smugglers and rebel groups, in particular by supplying them with weapons. He also conducted illegal mining activities. His activities clearly fuelled conflicts in which these rebels participated.

[56] The panel knows that the rebels were particularly active in the eastern zones of the DRC, and that the transactions involving the claimant allegedly took place in another region. Nevertheless, the panel believes that the claimant's ongoing association with XXXX XXXX XXXX, who was clearly immersed in the blood diamond trade, and the lack of detailed testimony or clear evidence regarding the origin of the traded diamonds show that the claimant participated in transactions involving blood diamonds. Why were these diamonds reportedly traded so far from the zone of rebel activity? Was it to avoid suspicion, to launder money or for other reasons? The answer is not relevant.

[57] The panel considers that all the above facts show that the diamonds traded by the claimant were specifically blood diamonds. It draws an inference from the many indications to find that the claimant must have traded diamonds from illegal mines or conflict zones, and that the trade in these diamonds fuelled conflicts.

Therefore, the panel finds that the claimant participated in the blood diamond trade and that he must have known about it. This act is contrary to the purposes and principles of the United Nations, under Article 1F(c) of the Convention.

### **Applicability of exclusion 1F(c) to the claimant**

[illegible]

[58] In written submissions, counsel for the claimant denied that the claimant was responsible for the devastating impact of the blood diamond trade and minimized his role in the trade and its impact.

[59] Counsel for the claimant argues that Article 1F(c) of the Convention would apply only to people in positions of power or influence within the state.<sup>41</sup> This article of the Convention would not apply to the claimant since he is only an ordinary citizen. The panel notes that the Supreme Court of Canada already addressed this issue and made it possible for individuals who are not state actors to be excluded under this provision. Paragraph 68 of the *Pushpanathan*<sup>42</sup> decision states as follows:

Another important aspect of the exclusion under Article 1F(c) is the inference that violators of the principles and purposes of the UN must be persons in positions of power. This inference is drawn by the UNHCR Handbook at paras. 162-63 and in particular by the Canadian delegate to the Social Committee meetings of 1950 and 1951. While many commentators share this view (Hathaway, *supra*, at p. 229; A. Grahl-Madsen, *The Status of Refugees in International Law* (1966), vol. 1, at p. 286; and Kälin, Köfner and Nicolaus, in Goodwin-Gill, *supra*, at p. 110, note 162), the jurisprudence of signatory states is evolving along a different stream. Goodwin-Gill reports in his treatise, at p. 113, that the *Tehran* decision was the basis of the exclusion of a refugee under Article 1F(c) by Australian immigration authorities, indicating that it may be possible for non-state actors to be excluded by the provision. He contrasts this approach with that in France and Germany which appear to require that the acts be clothed in the authority of the state. Although it may be more difficult for a non-state actor to perpetrate human rights violations on a scale amounting to persecution without the state thereby implicitly adopting those acts, the possibility should not be excluded *a priori*. As mentioned earlier, the Court must also take into consideration that some crimes that have specifically been declared to contravene the purposes and principles of the United Nations are not restricted to state actors.

[60] In addition, counsel for the claimant argues that blame for the responsibility or horror associated with blood diamonds activities should not be attributed without proper consideration.<sup>43</sup> The panel does not believe that the claimant directly participated in committing abuses before or after the blood diamond transactions in which he was involved. Rather, the panel believes that the claimant participated in the blood diamond trade and that this is enough to determine that he has been guilty of acts contrary to the purposes and principles of the United Nations.

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<sup>41</sup> Written submissions from counsel for the claimant, dated May 22, 2018, paragraphs 5 and seq.  
<sup>42</sup> *Pushpanathan v. Canada* (Minister of Citizenship and Immigration), [1998] 1 SCR 982, paragraph 68.  
<sup>43</sup> Written submissions from counsel for the claimant, dated May 22, 2018, paragraphs 27 and seq.

[61] Nevertheless, as a complementary measure, it may be relevant to assess the claimant's contribution to the “devastating impact of the trade on the peace, safety and security of people in affected countries,”<sup>44</sup> a reason for which the blood diamond trade constitutes an “act contrary to the purposes and principles of the United Nations.”

[62] The Supreme Court of Canada, in the *Ezokola*<sup>45</sup> decision, provides tools to assess a person's contribution to similar abuses. It states as follows:

While individuals may be complicit in international crimes without a link to a particular crime, there must be a link between the individuals and the criminal purpose of the group — a matter to which we will later return. In the application of art. 1F(a), this link is established where there are serious reasons for considering that an individual has voluntarily made a significant and knowing contribution to a group's crime or criminal purpose.

[63] While this decision concerns an exclusion under Article 1F(a) of the Convention, the panel believes that the same reasoning applies, *mutatis mutandis*, to the analysis of the claimant's contribution to the impact of the blood diamond trade. It must be determined whether the claimant voluntarily made a significant and knowing contribution to the impact of the trade.

[64] This decision<sup>46</sup> also developed a number of factors that can serve as a guide in assessing whether the contribution is knowing, voluntary and significant. Here is a non-exhaustive list:

- the size and nature of the organization;
- the part of the organization with which the refugee protection claimant was most directly concerned;
- the refugee protection claimant's duties and activities within the organization;
- the refugee protection claimant's position or rank in the organization;
- the length of time the refugee protection claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
- the method by which the refugee protection claimant was recruited and the refugee protection claimant's opportunity to leave the organization.

[65] The panel therefore considered these factors in its analysis of the claimant's contribution to the impact of the blood diamond trade in which he participated, with any necessary modifications.

### ***Claimant's membership in an organization or a group***

<sup>44</sup> Document 11 – Paper copies of the seven United Nations resolutions referred to in the notice sent to the Minister on June 21, 2017, in a bundle.

<sup>45</sup> *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, paragraph 8.

<sup>46</sup> *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, paragraphs 91 and seq.

[66] In this case, it was not established that the claimant was part of an organization or group. Instead, he was the link in a marketing system, the blood diamond trade.

***Knowing contribution***

[67] Considering that the claimant studied XXXX at university for XXXX XXXX XXXX years, and that he worked as a broker by facilitating blood diamond transactions for a long period of approximately XXXX years;

[68] Considering that the claimant knowingly facilitated transactions with a number of criminals, including XXXX XXXX XXXX, who was clearly immersed in the blood diamond trade;

[69] Considering the illegality of the claimant's trade, the criminal profile of his clients and the consistency with which he facilitated transactions for them;

[70] The panel finds that the claimant must have known that his transactions involved blood diamonds and that the trade in these diamonds had a devastating impact.

[71] In addition, although the panel believes that the claimant did not know where the diamonds came from or how they would be used, this blindness or recklessness was wilful. The claimant states that he did not want this information since it was none of his business. However, he had all the necessary resources to determine that blood diamonds were involved and to know the impact of the trade.

[72] The panel considers that this constitutes a knowing contribution.

***Voluntary contribution***

[73] The claimant stated that he was not required or forced to trade in diamonds. Instead, his testimony shows that he was interested in the profit aspect, which ensured that he continued in the trade for as long as he did, even though he knowingly and regularly dealt with criminals, knew the dangers of the trade and knew that blood diamonds were involved.

[74] Therefore, the claimant continued to trade in blood diamonds without being forced to do so, for approximately XXXX years, while knowing the devastating impact of the trade.



[75] The panel considers that this constitutes a voluntary contribution.

***Significant contribution***

[76] The panel notes that the claimant participated in the blood diamond trade for approximately XXXX years.

[77] The claimant also stated that his activities were very profitable. For example, he stated that he could earn over \$XXXX XXXX XXXX in commissions in one year. This income is huge for a country in which the per capita income fluctuated between \$220/year and \$319/year<sup>47</sup> during the period of reference.

[78] The panel considers that the length of the claimant's participation in the blood diamond trade and the huge profits that he made from the trade are enough to show the number and worth of the blood diamond transactions in which he participated.

[79] According to the claimant, his broker role involved facilitating transactions between sellers and buyers. He stabilized the price to help close a deal. That is how the blood diamond trade is organized: different stakeholders are involved at each stage, from extraction to exportation.<sup>48</sup> Brokers or negotiators are a significant link in the structure.

[80] The claimant's contribution could be nothing but significant. He ensured that transactions could take place by putting sellers and buyers in contact and by facilitating their transactions, which ultimately supported the market.

[81] Therefore, the claimant's contribution was significant.

[82] The panel finds that the claimant's contribution to the devastating impact of the blood diamond trade was knowing, voluntary and significant, which makes him complicit in the impact.

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<sup>47</sup> Document 3 – NDP, DRC, 31 March 2017, Tab 1.13: *République Démocratique du Congo Aperçu des besoins humanitaires 2016* [Democratic Republic of Congo overview of humanitarian needs 2016], United Nations, Office for the Coordination of Humanitarian Affairs, November 2015, page 05 (6/27); Tab 4.20: *Processus électoral 2013-2016 Surveillance citoyenne, Rapport pré-observation électorale, La liberté d'expression et le processus électoral menacés par l'intolérance politique*, [electoral process 2013–2016 citizen surveillance, pre-election observation report, freedom of expression and the electoral process threatened by political intolerance], Nouvelle Société Civile Congolaise [new Congolese civil society], February 12, 2015, page 34.

<sup>48</sup> Document 13 – M-31, pages 746 to 747.

[83] In conclusion, in light of the foregoing, the panel finds that there are serious reasons for considering that the claimant has been guilty of acts contrary to the purposes and principles of the United Nations and that, therefore, the exclusion under Article 1F(c) of the Convention applies in this decision.

[84] Considering that this finding excludes the principal claimant, the panel is of the opinion that it is not necessary to analyze other exclusions under Article 1F of the Convention or to analyze the history of persecution, threats and risks faced by the claimant in the DRC.

## CONCLUSION

[85] After analyzing all the evidence and considering the parties' submissions, the panel determines that, under section 98 of the IRPA and as a person subject to Article 1F of the Convention, the claimant is not a "Convention refugee" or a "person in need of protection."

[86] Accordingly, the refugee protection claim is rejected.

*Dany Dubé*

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**Dany Dubé**

**May 15, 2019**

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**date**

IRB translation

Original language: French