

酷刑聲請上訴委員會  
免遣返聲請呈請辦事處  
香港灣仔告士打道7號  
入境事務大樓30樓 3007-10室  
電話: 2594 6612 傳真: 2110 4728

TORTURE CLAIMS APPEAL BOARD  
NON-REFOULEMENT CLAIMS  
PETITION OFFICE  
ROOMS 3007-10, 30/F  
IMMIGRATION TOWER  
7 GLOUCESTER ROAD  
WANCHAI, HONG KONG  
Tel: 2594 6612 Fax: 2110 4728

Our Ref.: (27) in USM 4042/16/7/12/R6  
USM 4043/16/7/13/R7  
USM 4044/16/7/14/R8  
USM 9498/17/12/165/R31

2 November 2018

By Post



DLS CAT Office, Unit 1703B,  
17/F Skyline Tower,  
39 Wang Kwong Road,  
Kowloon Bay, Kowloon

Dear Sir/Madam,

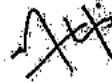
I refer to your appeal/petition against the Immigration Officer's Decision as contained in the Notice of Decision of 20 June 2016 attached to your Notice of Appeal/Petition of 4 July 2016 and Notice of Further Decision dated 27 November 2017.

The Torture Claims Appeal Board ("the Board")/Adjudicator of the Non-refoulement Claims Petition Office has reviewed your case and decided

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that the above mentioned decisions should be confirmed. Please refer to the attached document for the reasons of the Board/the Adjudicator. The Decision of the Board/Adjudicator is final.

Yours faithfully,

A handwritten signature, possibly reading "A. H.", is written over a horizontal line.

( [REDACTED] )

for Torture Claims Appeal Board/  
Non-refoulement Claims Petition Office

c.c. Director of Immigration (Attn.: CIO(RA)LS)

**English:**

The Torture Claims Appeal Board/the Adjudicator ("the Board") has made a decision on your appeal/petition against the decision of the immigration officer. If you have any enquiries regarding the Board's decision, you may contact the case officer during office hours via the telephone number as shown on the covering letter of the decision.

**Chinese (Traditional):**

酷刑聲請上訴委員會／審裁員(委員會)已就你對入境事務主任的決定所提出的上訴／呈請作出決定。如你對委員會的決定有任何查詢，可按有關是項決定的隨文函件上所示電話號碼，於辦公時間內致電與個案負責人員聯絡。

**Chinese (Simplified):**

酷刑声请上诉委员会／审裁员(委员会)已就你对入境事务主任的决定所提出的上诉／呈请作出决定。如你对委员会的决定有任何查询，可按有关是项决定的随文函件上所示电话号码，于办公时间内致电与个案负责人员联络。

**Bengali:**

নীর্যাতনের দাবীর আপীল পরিষদ এর বিচারক একটি রায় প্রদান করেছেন, ইমিগ্রেশন অফিসার এর বিচারের বিরুদ্ধে আপনি যে আপীল করেছিলেন সেটার উপর, যদি আপনার পরিষদ এর এই রায়ের বেপারে কোন জিগগাসা থাকে আপনি চাইলে কেস অফিসারের সাথে অফিস চলাকালীন সময়ে যোগাযোগ করতে পারবেন রায়ের এই চিঠিতে যে টেলিফোন নামবার উললেখ রয়েছে সেটার মাধ্যমে।

**Hindi:**

यातना के दावों की अपील बोर्ड/निर्णायक ("बोर्ड") ने आपके आप्रवास अधिकारी के फैसले के खिलाफ अपील/याचिका पर निर्णय लिया है। बोर्ड के इस फैसले के बारे में अगर आपको कोई पूछताछ करनी है, तो निर्णय के प्रावरण पत्र पर दिखाया गए टेलीफोन नंबर के माध्यम से कार्यालय समय के दौरान आप इस मामले के अधिकारी से संपर्क कर सकते हैं।

**Indian Punjabi:**

ਤਸ਼ਦਦ ਦੇ ਦਾਅਵੇ ਦਾ ਅਪੀਲ ਬੋਰਡ / ਨਿਰਨਾਇਕ ("ਬੋਰਡ") ਨੇ ਤੁਹਾਡੀ ਅਪੀਲ / ਪਟੀਸ਼ਨ, ਜੋ ਤੁਸੀਂ ਇਮੀਗਰੇਸ਼ਨ ਦੇ ਅਫਸਰ ਦੇ ਖਿਲਾਫ ਕੀਤੀ ਸੀ, ਦਾ ਫੈਸਲਾ ਕਰ ਦਿੱਤਾ ਗਿਆ ਹੈ। ਜੇ ਤੁਸੀਂ ਬੋਰਡ ਦੇ ਫੈਸਲੇ ਦੇ ਖਿਲਾਫ ਕੁਝ ਪੁੱਛ-ਗਿੱਛ ਕਰਨੀ ਹੈ ਤੇ ਤੁਸੀਂ ਦਫਤਰ ਦੇ ਸਮੇ ਦੇ ਦੌਰਾਨ, ਕੇਸ ਦੇ ਅਫਸਰ ਦੇ ਨਾਲ ਫੋਨ ਤੇ ਗੱਲ ਕਰ ਸਕਦੇ ਹੋ, ਉਸ ਫੋਨ ਨੰਬਰ ਤੇ ਜੋ ਫੋਨ ਨੰਬਰ ਤੁਹਾਡੇ ਫੈਸਲੇ ਦੇ ਨੋਟਿਸ ਦੀ ਚਿੱਠੀ ਦੇ ਉਪਰ ਦਿੱਤਾ ਗਿਆ ਹੈ।

**Indonesia:**

Dewan Naik Banding Klaim Penyiksaan / Adjudicator ("Dewan") telah membuat satu keputusan tentang naik banding/petisi anda menentang keputusan dari petugas imigrasi. Jika anda ada pertanyaan apapun terhadap keputusan Dewan ini, anda boleh menghubungi petugas kasus selama jam kerja lewat nomor telpon yang tercantum di atas surat pengantar dari keputusan ini.

**Nepali:**

तपाईंले अध्यागमन कर्मचारीले गर्नु भएको निर्णयको विरुद्धमा उठाउनु भएको उजुर/अर्जी लाई लिएर यातना दाबी उजुर परिषद/निर्णायककर्ता ("परिषद") ले निर्णय गरिसकेको छ। सो परिषदको निर्णयको सन्दर्भमा यदि तपाईंलाई जुनै पनि सोध पुछ गर्नु छ भने यो निर्णय पत्रमा देखाईएको टेलिफोन नम्बर मार्फत अफिस समयमा घटना कर्मचारी संग सम्पर्क गर्न सकिने छ।

**Sinhala:**

ආගමන නිලධාරී විසින් දුන් තීන්දුවට එරෙහිව ඔබ විසින් ඉදිරිපත් කළ ඇපල / පෙත්සම් වෙනුවෙන් වධ නිංසා නීතීකම් ඇපල් මංඩලය / විනිශ්චය කරන්නා ("මංඩලය") තීරණය ගෙන ඇත. මංඩලය විසින් ගන්නා ලද මෙම තීරණය සම්බන්ධයෙන් ඔබ හට යම් කිසි කාරණා දැන ගත යුතු වේ නම් මෙම තීරණය දැනුම් දුන් ලිපියේ පිට කවරයේ පෙන්නුම් කර ඇති දුර කතන අංකය මාර්ගයෙන් කාර්යාලය පවත්වන කාලය තුළදී තවු නිලධාරියාගෙන් විමසුම් කළ හැකිය.

**Swahili:**

Tafadhali fahamu ya kwamba Bodi ya Rufaa ya Utesaji / Muamuzi ("Bodi") imefanya uamuzi juu ya rufaa / ombi lako dhidi ya uamuzi wa afisa wa uhamiaji. Ukiwa una maswali yoyote kuhusu uamuzi wa Bodi, unaweza kuwasiliana na afisa wa kesi wakati wa masaa ya kazi kupitia namba ya simu kama inavyoonekana kwenye barua ya uamuzi huo.

**Tagalog:**

Ang Lupon ng Apela ng mga Kahilingan dahil sa Labis na Pahirap/ ang huwes na namagitan ("ang Lupon") ay gumawa ng kapasiyahan sa iyong apela/petisyon laban sa kapasiyahan ng opisyal ng imigrasyon. Kung ikaw ay may kahit anong pag-uusisa hinggil sa kapasiyahan ng Lupon, maari mong kontakin ang opisyal ng kaso habang sa mga oras ng tanggapan sa pamamagitan ng numero ng telepono ayon sa ipinakita sa nagtatakip na liham ng kapasiyahan.

**Tamil:**

இந்த சித்திரவதை கோரிக்கை கள் மேல் முறையீட்டு வாரியம்/இந்த தீர்ப்பாளர் ("இந்த வாரியம்"), இந்த குடிபுகல் அதிகாரி யின் தீர்ப்புக்கு எதிரான உமது மேல் முறையீடு/மனு வின் மீது ஒரு தீர்ப்பு செய்துள்ளது. இந்த வாரியத் தின் தீர்ப்பு பற்றி ஏதாவது விசாரனை உமக்கிருந்தால், அந்த தீர்ப்புக் கடிதத் தின் முகவுரைக் கடிதத் தின் மேல் காணப் படும் தொலைபேசி இலக்கத் தின் ஊடாக அந்த வழக்கு அதிகாரியை வேலை நேரங்களில் நீர் தொடர்பு கொள்ளலாம்.

**Urdu:**

ٹارچر کلیمز ایپل بورڈ / جج ( "بورڈ" ) نے امگریشن افسر کے فیصلہ کے خلاف آپکی ایپل / عرضداشت پر فیصلہ تیار کر لیا ہے۔ اگر آپ کو بورڈ کے فیصلہ کے بارے میں کوئی معلومات لینی ہوں ، آپ کیس افسر کے ساتھ دفتری اوقات کے دوران رابطہ کر سکتے ہیں بذریعہ ٹیلیفون نمبر جو کہ فیصلہ کے تعارفی خط پر دکھایا گیا ہے

**Vietnamese:**

Ban Kháng cáo Khiếu nại Ngược đãi /Thẩm phán ("Ban") đã đưa ra quyết định đối với kháng cáo/kiến nghị chống lại quyết định của nhân viên nhập cảnh. Nếu ông/bà có thắc mắc gì về quyết định của Ban, ông/bà có thể liên hệ nhân viên thụ lý trong giờ hành chính qua số điện thoại ghi trên thư ngỏ của quyết định.



Reference No.: USM 4042/16/7/12/R6  
USM 4043/16/7/13/R7  
USM 4044/16/7/14/R8  
USM 9498/17/12/165/R31

**Torture Claims Appeal Board/  
Non-Refoulement Claims Petition Office**

**Appellant/Petitioner:** [REDACTED] (Wife, A1, aged 35)  
[REDACTED] (Husband, A2, aged 37)  
[REDACTED] (Son, A3, aged 6)  
[REDACTED] (Son, A4, aged 1)

**Representation:** **For the Appellant/Petitioner:**  
[REDACTED] Duty Lawyer

**For the Director of Immigration:**

(i) [REDACTED]  
Government Counsel,  
Department of Justice

(ii) [REDACTED]  
Immigration Officer,  
Immigration Department

**Date of Hearing:** [REDACTED]

**Heard at:** Hearing Room C, Rooms 3007-10, 30/F,  
Immigration Tower, 7 Gloucester Road,  
Wanchi, Hong Kong

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**Decision**

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**Background**

1.1 The Appellants/Petitioners are Rwandan nationals. [REDACTED]  
[REDACTED] ("A1") and [REDACTED] ("A3") departed Rwanda  
via Uganda on 24 March 2015 and landed in Mainland China. On 26 March

2015 they sought entry into Hong Kong but were refused permission to land. 3 weeks later, they were in the transit area of Hong Kong Airport, claiming to be on transit to Addis Ababa, but did not board the flight. They were refused permission to enter Hong Kong. However on 17 April 2015 A1 raised a non-refoulement claim to the Director of Immigration ("the Director") followed on 5 May 2015 by a formal claim for herself and on behalf of A3. On raising their claims they were permitted to enter Hong Kong.

1.2 As to [REDACTED] ("A2"), he came to Hong Kong on 21 August 2015 but was refused permission to enter. However he also raised a claim the following day and was then permitted to enter. [REDACTED] ("A4") was born in Hong Kong on 28 November 2016. A1 then raised a claim on his behalf on 2 May 2017.

1.3 All the Appellants base their claims on the same set of facts, and so the claims were consolidated ("the claim"). The claim is for protection on all available grounds, namely (1) risk of Torture under Articles 1 and 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") ("**Torture Risk**"), (2) risk of harm under Article 3 of Section 8 of the Hong Kong Bill of Rights Ordinance Cap.383 ("**BOR3 Risk**") where the harm is often called Cruel, Inhuman or Degrading Treatment or Punishment ("CIDTP"), (3) risk of loss of life under Article 2 of Section 8 of the Hong Kong Bill of Rights Ordinance Cap.383 ("**BOR2 Risk**"), and (4) risk of Persecution ("**Persecution Risk**") on the principles in Article 33 of the 1951 Convention relating to the Status of Refugees ("the RC").

1.4 The claim was dismissed by the Director on 20 June 2016 and 27 November 2017 (the latter regarding BOR2 Risk) and 28 November 2017 (for A4), hence the Appellants were liable to be repatriated unless they filed appeals/petitions (now consolidated and referred to as "the appeal") to the Torture Claims Appeal Board/Non-refoulement Claims Petition Office ("TCAB"). A1, A2 and A3 filed their appeals on 4 July 2016, while A4's appeal was filed on his behalf on 11 December 2017.

### **Basis of the claim**

2. A1 says she fears being killed by people of the Front Patriotique Rwandais policital party ("FPR") because of her affiliation with the Force Démocratique Unifiées Inkingi Party ("FDUI") which was an opponent to the FPR. A2 says he fears harm from the FPR and/or the Government only because he is married to A1, although he himself, being a motor mechanic and a driver



in Kigali, has had no political affiliation nor participated in any political activity. A3 and A4 base their claims on those of A1 and A2.

3.1 A1 says she was born in Cyangugu in Rusizi but had moved to live in Kigali since about 1997. She had received schooling to secondary level. She has work experience operating her own garments business. She says she had joined the FDUI on 4 October 2010 which was working towards democracy, and she recruited members for the Party. But at the end of 2010 the chairperson of the FDUI, Madam Ingabire, was arrested. She says the FPR was trying to dismantle the FDUI. In "Incident 1" which she says occurred in May 2011 (NB: no precise date stated), after a meeting in Gisenyi, she was abducted together with 3 other members by car to Kami (a street in Kigali) by 4 unidentified people. She says she was detained for 28 days, during which time she was beaten with a stick everyday when forced to provide them with the name of the person in charge of the abovestated meeting, to admit of providing ammunition to people in Congo in order to overthrow the Rwandan government, and to agree to testify in court against Madam Ingabire. She says that she was freed to go home in June 2011 even though, astonishingly, she was never required to go to court as required by the abductors. For the alleged beatings she did not need to see any doctor, but only took painkillers at home and recovered after 2 weeks.

3.2 In "Incident 2" which she says occurred 2 days after she had returned home (NB: As the date of "Incident 1" is imprecise, the date of "Incident 2" is also imprecise), 2 men had intruded into her home and taken away all important documents including her passport and those relating to the FDUI and her clothing business. She argued with them and they pushed her against the window causing her to fall one storey below causing pain to her shoulder. She did not need to see a doctor, but applied "medicine" to the shoulder which recovered after 2 days. She says she complained to the Street Chief but obtained no help from him. On 28 September 2011 she married A2, and they lived in peace for over 4 months until early February 2012 when she moved back to Village Cyangugu to give birth to son A3 on 11 March 2012. She heard that the police were looking for members of the FDUI, and so at the end of that month she moved to Village Bukavu in Congo (at the border with Rwanda) where she and A3 lived in peace for 2 years until she moved back to Kigali in Rwanda at the request of husband A2. She says that in June 2014 she was given, via the Street Chief, a warrant for her arrest and a court summons. She was therefore a wanted person, but she ignored the warrant and the summons, and applied, successfully despite being a wanted person, a (new) passport. In October 2014 she and A3 moved to stay with a friend in Gitarama as she was avoiding arrest.

3.3 In “**Incident 3**” which she says occurred 2 days after arriving in Gitarama, she and A3 were abducted by people from the CID and driven to Kami. She says that in the journey she was beaten up and something was used to try to insert into her vagina but she kept her thighs closed and so only her thighs were hurt. She says she lost consciousness and found herself (with A3) in Kigali Main Hospital (NB: This event is astonishing because the abductors had obviously not intended to kill her because she was taken to hospital, and furthermore she was not under guard when in hospital, but was free to be discharged after 2 months). She produced a hospital certificate with a diagnosis of “high vaginal bleeding” which has nothing to do with the thighs, but is consistent with her statement of not having been assaulted vaginally, as on her own account the abductors had only “tried” to assault her vagina but failed. Furthermore she herself said she was “still recovering from maternity” (see Non-Refoulement Claim Form at Answer 35 §21), hence the “high vaginal bleeding” may well have been residual post-partum bleeding which had nothing to do with assault. She received physiotherapy and “medication” while in hospital. After release from hospital she moved to stay with a friend Ornella in Byumba (at the Rwandan border with Uganda). She and A3 encountered nothing hostile for 2.5 months while living in Byumba, but nevertheless flew out of Uganda on 24 March 2015.

3.4 As to A2, he says he had received 3 telephone threats after “Incident 3” above. The unidentified callers questioned why he married A1 who had political views. He says that when crossing the Rwandan-Ugandan border on 24 March 2015 he was taken away by 3 persons and detained in a room for 2 days (see his 2nd Record of Interview). He says they interrogated him for the whereabouts of A1 and A3, and had beaten his legs and soles causing swelling, then submerging them in freezing water. He was then taken to “a prison” where he was also beaten and given something salty and oily for lunch. After another fortnight he was sent to the Kigali Main Prison Hospital for treatment, then transferred to the University of Kigali Hospital because the former did not have facilities to treat his liver condition. He produced a hospital certificate with a diagnosis of “hepatitis” which is an infectious disease, not a traumatic condition, hence does not support his allegation of trauma while being detained, especially when the alleged trauma was to the soles of the feet. The certificate under “Treatment on discharge” says “Amoxycillin 500mg/3/day” (an antibiotic for the treatment or prevention of infection). In addition to the gross anatomical difference between the liver and the soles of his feet, his account of detention and brutality is vague for time, duration and other details other than a general statement of beating. He says that after the beatings he had spent 15 days in hospital, and while there he contacted a high-ranking soldier friend Jomba who helped him cross into Tanzania. Jomba obtained A2’s passport for him and A2 went into Tanzania without any problem on 26 April 2015. He stayed with a friend for 4 months

until late August 2015, encountering nothing hostile. But he says he had *heard* from his father that “people like police officers” were looking for him, and so on 20 August 2015 he flew to Hong Kong to join A1 and A3.

### **The Hearing, and consideration of the alleged facts**

4. A hearing was held where Duty Lawyer informed me that none of the Appellants would testify. In order to be fair I gave all my queries about the case for Duty Lawyer to take instructions over the ensuing few weeks before she would be sending in her final submissions, so that if the Appellants would change their minds they can give answers to their lawyer who would then inform the TCAB of same. The Director had no questions to ask.

### **Unreliability**

5.1 An analysis of the alleged facts will appear later. But from the outset it is important to view the alleged case in perspective, which shows the claim to be woefully lacking, i.e. the features in the story make it unreliable to be accorded with evidential weight. A further feature common to all 4 Appellants is the lack of *serious* ill-treatment and/or *serious* harm which are required elements in non-refoulement law whether under Torture or BOR3 or BOR2 or Persecution. I realise that A1 disputed the Director’s finding in this regard, but a contused shoulder which recovered by itself after 2 days without medical treatment from a doctor (“Incident 2”), and mere physiotherapy and medication (“Incident 3”) do not indicate severe injury and serious harm. As to A2, he only needed an antibiotic as medical treatment, which again did not indicate major medical treatment or severe injury or serious harm (in fact hepatitis was an infectious disease, not traumatic, i.e. it was not an injury) for the purpose of non-refoulement law. **On the requirement of future risk of “serious ill-treatment or severe injury or serious harm” none of the Appellants has established any substantial risk or basis of fear of same, and so the appeal must be dismissed.** But even if I am wrong there is more below.

5.2 A1 alleges brutality (“Incident 3”) but she was taken to Kigali Main Hospital, which is inconsistent with the intention to kill on the part of her alleged abductors. To say that they would want to inflict serious harm, yet take her to hospital for treatment (NB: She was suffering from high vaginal bleeding, as discussed above), defies common sense. I find the thesis that she had gone to hospital because of assault in “Incident 3” totally unreliable.

5.3 Furthermore, if the FPR people or the authorities had wanted to inflict serious harm for the purposes she alleges (*viz* to name the person in charge of the meeting in May 2011 and to testify against Ingabire of the FDUI), to say that they would send her to the Kigali Hospital without putting her under guard but had allowed her to be discharged free, defies common sense. This was asked of A1 via her Duty Lawyer who responded after taking instructions, and her response was "not in a position to comment", i.e. the query is not explained.

5.4 The Court of Appeal has said that a claimant who does not raise a claim as soon as he arrives in Hong Kong, but does so only *after* he is arrested, casts doubt on the veracity of the claim: *Usman Butt, Sunil Koirala, Wasim Ashraf & others*: HCMA 70, 114, 244, 379, 402 / 2010, judgment at §41. Certain aspects against credibility are enacted in Section 37ZD of the Immigration Ordinance Cap.115 ("the Ordinance"), and one should pay attention to same. Although the dictum does not precisely apply to today's facts, the reasoning does apply.

5.5 A1 says she was harbouring grave fears for her life when she left Rwanda (and Uganda), but for a long 2 years from March 2012 to April 2014 she did not do anything to seek help from anyone when in Congo (in Bukavu).

5.6 When in the Hong Kong Airport on 14 April 2015, A1 claimed to be on transit to Addis Ababa, yet neither she nor A3 ever boarded the stated flight, showing dishonesty: Section 37ZD(3) of the Ordinance.

5.7 A2 says he was detained and beaten when attempting to cross the Rwandan border into Uganda, and was given lunch albeit salty and oily, but *somehow* he was sent to hospital for treatment which, if the incident had truly occurred, meant that the men had not wanted to kill him as he now claims.

5.8 Furthermore, A2 says that while he was (as he says now still is) wanted by the Rwandan authorities, *somehow* he was able to use the telephone in hospital and he secured this *mysterious* "high ranking soldier friend" who could obtain his passport and arrange smooth passage for him to go into Tanzania, at a time when he says he was a "wanted person", which defies common sense.

5.9 Given A2 says he was harbouring grave fears for his life when he left Rwanda, he nevertheless did not seek any help from anybody when in Tanzania despite a lengthy 4 months.

5.10 A2 says he was wanted by the Rwandan government because he was married to A1. But he has never participated in any political activity. He was only working as a motor mechanic and as a driver. Even on his own version he

had never been interested in politics. There is simply no logical basis for the Rwandan Government to arrest him as a wanted person, let alone for Torture or CIDTP or Persecution. The story is illogical and defies common sense.

5.11 The warrant for A1's arrest has long expired pursuant to Rwandan statutory law – it was issued in June 2014 and has now in fact expired for 4 years, hence has no basis to generate fear: see **Refworld: Law No.13 of 2004 relating to the Code of Criminal Procedure: Article 48** Organic Law no.20/2006 of 22/04/2006 (Ministry of Justice, published 17 May 2004: accessed 08 January 2018) <http://www.refworld.org/docid/46c306492.html> Duty Lawyer did not dispute the citation above, but submits that on A1's instructions the warrant would not expire until it is executed: but she has cited no authority to counter the cited Code of Criminal Procedure above. The submission is a bare assertion not supported by any evidence.

#### *Country of Origin Information ("COI")*

5.12 The following COI was given to Duty Lawyer and to Government Counsel for their comments to be incorporated in their final submissions long after the oral hearing had concluded. A summary of the COI is as follows:

**Rwanda: Information on the FDU Inkingi Party** (Refworld, Freedom House: 21 December 2011, accessed 3 July 2018)  
<http://www.refworld.org/docid/4f10265b2.html>

The article speaks of the murder of Charles Ingabire and several other attacks including shootings, and a call by FDUI upon the governments of African countries such as Uganda, Tanzania and South Africa to investigate the violence and bring the perpetrators to justice. Amnesty International notes: "Past elections have been marred by intimidation, however this year's vote gives Rwanda the chance to promote rights not repression" said Amnesty International's Africa Programme Deputy Director Tawanda Hondora.

**Rwanda: Post-Election Political Crackdown** (Human Rights Watch: September 28, 2017: accessed 3 July 2018)  
<https://www.hrw.org/news/2017/09/28/rwanda-post-election-political-crackdown>

The article says that on August 29 (2017), police showed up at Rwigara's office in Kigali, the capital, and took her (Diane Rwigara) to her home, where they interrogated Rwigara and her family members and barred them from leaving their house. On August 30, following rumors that Rwigara may have been arrested or forcibly disappeared, the police announced that she was not in detention but that she was under investigation. After several weeks of

intimidation, questioning, and restrictions on their movements, Rwigara and her sister, Anne, a dual Rwandan and American citizen, and her mother, Adeline, a dual Rwandan and Belgian citizen, were arrested on September 23. They are being held in police custody in the capital, Kigali. The police say that they arrested the three, in part, for "publicly revealing information that is, by law, supposed to be confidential." During the interrogations in the weeks before her arrest, Rwigara told Human Rights Watch that she was being accused of forgery linked to alleged invalid signatures to establish her candidacy, of illegally forming and leading a political organization, and of inciting insurrection or trouble among the population. The family was also accused of non-payment of taxes. In the days leading up to her arrest, Rwigara spoke with international media outlets and criticized the police actions and the accusations against her. Hours before her arrest, Rwigara told one outlet that her family was being "persecuted for criticizing the government". Since Rwigara has come under police investigation, some of her supporters have been arrested or harassed. On September 12, police arrested a supporter at his home, where they found t-shirts supporting Rwigara. He was held in an unknown location and questioned about Rwigara, then released five days later. Two of his family members were also arrested and one was released after being held in an unknown location for a week. The other remains in police custody.... The FDU-Inkingi has faced serious challenges since 2010. The party has not been allowed to register or take part in elections, and its members have been arrested and harassed repeatedly. The party's president, Victoire Ingabire, has been in prison since 2010 and is serving a 15-year sentence following a flawed trial.... On September 26, charges were confirmed against eight FDU-Inkingi members, including the four leaders, and they are being held in preventative detention in Remera, a suburb of Kigali. They are charged with forming an irregular armed group and offenses against the president. One party member was released. Ntirutwa, the FDU-Inkingi member who went missing on September 6, was forcibly disappeared and held incommunicado for 17 days, before a family member could visit him at the Remera police station on September 23. During this period, the police would not confirm to Human Rights Watch or his family whether he was in custody. Ntirutwa has not been charged. A person taken with Ntirutwa later told Human Rights Watch that he and Ntirutwa were crossing the street in Kicukiro, a Kigali suburb, "when a private car pulled up and we were forced in by men with guns. One said, 'You are being taken because you want to cause insecurity in Rwanda.' Our heads were covered so we could not see where we were going." He was later interrogated about the party. "When I asked for a lawyer, I was told, 'We will kill you.' They pushed me to the ground and kicked me and said I was an idiot." Later, a man in civilian clothes pulled the mask off, put a gun to his face and said, "If you continue to refuse answers to our questions, you will see." After about 20 hours, he was released from the Remera police station. Ntirutwa

had previously been detained on September 18, 2016, allegedly by the military, in Nyarutarama, a Kigali suburb. He was detained, beaten, and questioned about his membership in the FDU-Inkingi, then released two days later. Gasengayire, another of those arrested, was previously arrested after visiting Ingabire in prison in March 2016. The police detained her for three days, beat her, questioned her, and denied her access to a lawyer. The police released her without charge, but re-arrested her in August 2016, and charged her with inciting insurrection and disorder among the population. They also accused her of stirring up local opposition to the expropriation of land belonging to residents in her home district and of promoting the FDU-Inkingi. Residents who tried to testify on her behalf at her trial were intimidated. A court acquitted and released her on March 23, 2017.

**Safer to Stay Silent** (Amnesty International 2010: accessed 3 July 2018)

<https://www.amnestyusa.org/files/afr470052010en.pdf>

Following six years of extensive reforms to the conventional justice system, the Rwandan government announced a review of the “genocide ideology” law in April 2010. Amnesty International welcomes this government initiative. This report identifies Amnesty International’s concerns about the current legislation and its application in light of the Rwandan government’s review process. Prohibiting hate speech is a legitimate aim, but the Rwandan government’s approach violates international human rights law. Rwanda’s vague and sweeping laws against “genocide ideology” and “divisionism” under “sectarianism” laws criminalize speech protected by international conventions and contravene Rwanda’s regional and international human rights obligations and commitments to freedom of expression. The vague wording of the laws is deliberately exploited to violate human rights. Prosecutions for “genocide ideology” and so-called “genocide ideology-related” offences were brought even before the law defining this offence was promulgated. People continue to be prosecuted for “divisionism”, under “sectarianism” laws, even though “divisionism” is not defined in law. Rwandans, including judges, lawyers and human rights defenders, expressed confusion about what behaviour these laws criminalise.

**Rwanda 2015 Country Report on Human Rights Practices** (US Department of State: accessed 3 July 2018)

<http://www.state.gov/documents/organization/252929.pdf>

The publication under the section **Trial Procedures** says that the law provides for a presumption of innocence. The law requires that defendants be informed promptly and in detail of the charges in a language they comprehend, and judges at times postponed numerous hearings because this requirement was not observed. Defendants have the right to a fair trial without undue delay, and the

Rwanda Governance Board reported in its 2014 Governance Scorecard that "in 2013 there were no reported backlogs, with all 11,575 cases carried forward from 2011-12 processed as reported by the National Public Prosecution Authority." Despite improvements, lawyers reported there were an insufficient number of prosecutors, judges, and courtrooms to hold trials within a reasonable time. In the ordinary court system, the law provides for public trials, although courts closed proceedings in cases involving minors to protect witnesses or at the request of defendants. Judges, rather than juries, try all cases. Defendants have the right to communicate with an attorney of their choice, although many defendants could not afford private counsel. The law provides for legal representation of minors. The law does not provide for an attorney at state expense for indigent defendants. The Rwandan Bar Association and 36 other member organizations of the Legal Aid Forum provided legal assistance to some indigent defendants but lacked the resources to provide defense counsel to all in need. Legal aid organizations noted the requirement that defendants present a certificate of indigence signed by their village chief made it difficult to qualify for pro bono representation. The law requires that defendants have adequate time and facilities to prepare their defense, and judges routinely granted requests to extend preparation time. Defendants and their attorneys have the right to access government-held evidence relevant to their cases, but courts and prosecutors did not always respect this right. Defendants have the right to be present at trial, confront witnesses against them, and present witnesses and evidence on their own behalf. By law defendants may RWANDA 12 Country Reports on Human Rights Practices for 2015 United States Department of State Bureau of Democracy, Human Rights and Labor not be compelled to testify or confess guilt, and judges generally respected the law during trial. There were numerous reports that the SSF coerced suspects into confessing guilt. There were also reports that judges accepted confessions obtained through torture despite defendants' protests and failed to order investigations when defendants alleged torture during their trial. The law provides for the right to appeal, and this provision was respected.

5.13 The above COI shows that, although the Rwandan Government is intolerant over the opposition, one must take notice that (1) in non-refoulement law, general country situations do not advance a claim unless there is personal encounter: *RS CACV 206/2012, Gallolu Kankanamalage Nimal Perera v Director of Immigration Petition Team CACV 215/2012*, (2) even if A1 (or A2) should be arrested and put to trial, there is a system of fair trials in Rwanda, (3) at the very most A1 was a mere supporter of the FDUI who had never been a forefront runner for a political position against the FPR, less still is A2 involved in any politics, and (4) as can be seen from the COI, even forerunners for political positions against the FPR have not been tortured or killed by the



Rwandan Government, therefore the risk of serious harm to A1 or A2 (or A3 or A4) is remote and far from being *substantial* as required by law.

5.14 The COI of Rwanda does not support the thesis of Torture or CIDTP or Persecution because A1 is a mere supporter (affiliator) of the FDUI and a mere businesswoman selling children's clothes from her own shop.

5.15 Of significance against the Appellants' story is the fact that A1 produces a letter headed "To Whom It May Concern" written by Sylvain Sibomana who is **General Secretary of FDU-Inkingi** (dated 17 February 2012) from address "**Kigali, Rwanda**", printed with telephone number 250 72863600. The writer certifies that A1 was a Member of the FDU-Inkingi. The letter has obviously been produced for the purpose of strengthening A1's story, but in generating the letter A1 has overlooked the fact that even the General Secretary of the FDUI living in Rwanda has not been killed, while A1 would like us to believe that a mere member will be killed (if she was really a member). The letter heavily erodes into A1's (hence also A2's) reliability.

*The Appellants' response to the above concerns*

5.16 The above concerns are significant regarding credibility and reliability, and their responses were stated in Duty Lawyer's final submissions as stated in the above paragraphs.

**Conclusion**

6.1 Having studied the whole case and the Appellants' responses in the Duty Lawyer's submissions, I find their story unreliable.

6.2 A1 is dishonest and unreliable: (1) she fabricated a story of assault and used a hospital certificate after going to hospital for a reason unrelated to her story of assault, using same to boost her story, (2) caused a letter to be written and produced by the General Secretary of the FDUI in order to say that she was a Member under threat of being killed when even the General Secretary, openly accessible, has not been killed, (3) dishonestly represented to the Hong Kong Immigration official as being "in transit to Addis Ababa" but did not board such a flight, (4) says her trip to Addis Ababa (capital of Ethiopia) was for her safety but she did not go, (5) says Addis Ababa was safe but decided to enter Hong Kong instead, and (6) when she knew she was refused permission to enter Hong Kong she used a non-refoulement claim in order to enter. The COI cited above, together with the letter from the General Secretary of the FDUI, taken in combination, make her asserted story woefully unreliable.

6.3 As to A2, he is dishonest and unreliable: (1) he says he is at risk despite the fact that he has had no interest in politics and has never participated in any political activity, but fabricated a story that he was disliked by the government only because he was A1's husband, which is illogical and defies common sense, (2) he went to hospital because of hepatitis (infectious disease of the liver) when he says the beatings were to the soles of his feet, and (3) dishonestly used the hospital certificate showing "hepatitis" to "prove" his story of brutality, obviously not expecting that the content of the hospital certificate would be examined regarding medical content.

6.4 The Appellants' asserted story is destroyed by unreliability. **The appeal is dismissed, and the decisions of the Director, dated 20 June 2016 and 27 November 2017, are hereby confirmed.**

#### *Non-refoulement Law*

7. For the sake of completeness, however, I will turn to the areas of the law as applied to *the Appellant's alleged set of facts*.

#### **Torture Risk**

##### *The law*

8. A claimant must establish that repatriation would breach Article 3 of CAT in that there are substantial grounds showing danger of being tortured back home. "Torture" is defined Article 1 of CAT comprising what I call "the 4 legal Elements" which must all be established, viz any act by which (1) severe pain or suffering whether physical or mental, (2) is intentionally inflicted on a person, (3) for such purposes as obtaining from him or a third person information or 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, and (4) 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 but it does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

9. A claimant has the burden of proof to establish all the above legal elements. It is not sufficient if the "evidence" consists of bare assertions, as he has a duty to gather information regarding the claim as much as the host country, and not "to simply sit back and require the Director to disprove it": *TK v*

*Michael C Jenkins Esq and Director of Immigration* CACV 286/2011, judgment at paragraph 25. He must establish *substantial* grounds showing a foreseeable, real, and personal risk. General statements about a country without personal encounter do not advance a claim: *Gallolu Kankanamalage Nimal Perera v Director of Immigration* Petition Team CACV 215/2012.

#### *Fugitives in refugee law*

10. On the Appellants' alleged facts both A1 and A2 had fled Rwanda in order to avoid arrest and the due process of the law. Whether they are innocent or guilty is not for the TCAB to say, but legal sanction is not "Torture" per exclusion within "Element 4". Furthermore, a fugitive is not a "refugee" under refugee law: see UNHCR Handbook (1979) Chapter II at §56. The Appellants are not entitled to be classified as refugees.

11. Hence the appeal under "Torture Risk" must be dismissed *even on the Appellants' alleged facts*.

#### *Legal "Element 1": "Severe pain and suffering"*

12. Both A1 and A2 speak of injuries but they had not required any *major* medical treatment. This aspect has already been discussed earlier in this Decision. They have not suffered "severe pain and physical or mental suffering reaching the minimum level of severity on the duration of the treatment, its physical or mental effects" under non-refoulement law: *Huri-Laws v Nigeria* African Commission of Human and Peoples' Rights, CAT 225/1998 at §41.

13. The stated facts do not show physical or mental pain or suffering which satisfies "Element 1". I realise that the lack of "Element 1" in the past does not mean no torture in future, but the alleged facts do not establish *substantial grounds* showing a foreseeable and real risk. Accordingly, the appeal also fails under "Torture Risk" due to a reason in addition to and independent of those stated earlier *even on the Appellants' alleged facts*.

#### **BOR3 Risk**

##### *The law*

14. BOR3 is the equivalent of Article 7 of the International Covenant on Civil and Political Rights, viz "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment": *Soering v UK* (1989) EHRR

439 at §91, *Ireland v UK* 5310/71 ECHR (Series A) 25, 5310/71 [1978] ECHR 1, and *Kalashnikov v Russia* (2003) 36 EHRR 34.

15. The requirements for non-refoulement under BOR3 are: (1) *severe* ill-treatment if refouled, viz “serious harm”, (2) *substantial grounds* for believing that the claimant will suffer from such harm, and (3) absence of State protection. The threshold for “serious harm” is very high, involving actual bodily injury or intense physical or mental suffering: *Ubamaka Edward Wilson v Secretary for Security* [2011] 1 HKLRD 359, *Ireland v United Kingdom* (supra).

16. *C & Ors v the Director of Immigration and Another* (2013) 16 HKCFAR 280, FACV 18, 19 and 20 / 2011 speaks of “a well-founded claim” (judgment at §56), which is similar to the terminology used in the cases on the RC which speak about “a well-founded fear”, and this takes the criteria for CIDTP to be virtually the same as for the RC, except that for the RC the harm must also be under one or more of the “Convention Categories” (see below).

#### *Facts of today's case assessed under BOR3*

17. The Appellants have not suffered *serious* ill-treatment or *severe* injury or *serious* harm which would place them within the criteria of CIDTP. Furthermore the COI does not support the risk of such harm to them. The situation falls far short of establishing CIDTP, hence the appeal fails under “BOR3 Risk” *even on the Appellants' alleged facts*.

#### **BOR2 Risk**

18. The issues in “BOR2 Risk” are spelt out in the statute. For the reasons stated above, I find no substantial risk to the Appellants' lives, and the claim under “BOR2 Risk” fails *even on the Appellants' alleged facts*.

#### **Persecution Risk**

##### *The law*

19. Article 33 of the RC says there would be a persecution risk to a person if: (a) owing to well-founded fear of being persecuted on account of one or more of race, religion, nationality, membership of a particular social group or political opinion, the claimant 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: Article 1A(2) of the RC, and (b) his life or freedom would be threatened on account of one or more of the “Convention Categories” i.e. his race, religion,

nationality, membership of a particular social group or political opinion, should he be expelled or returned to the frontiers of a Risk State.

20. There is no statutory definition of "persecution", but there must be "a minimum level of severity", *serious violation* of human rights, or *serious* or intolerable harm. As to perpetrators, the RC uses the term "agents of persecution" which are normally State authorities. The United Nations uses the term "populace" which means a sizeable portion of the population: UNHCR Handbook (1979) Chapter II at §65, *HLR v France* [1998] 26 EHRR 29, *R v SSHD ex parte Bagdanavicius* [2005] UKHL 38.

21. Put another way, the requirements for non-refoulement under Persecution are virtually the same as under BOR3, namely there must be: (1) *severe* ill-treatment if refouled, viz "serious harm", (2) a "well-founded fear" of such harm, namely there must be a *real* chance of such harm occurring and not merely remote or speculative: *CHAN v MIEA* 169 CLR 379 at 430, *MIEA v Wu Shan Liang* 185 CLR 259, and (3) the absence of State protection, but (4) the harm must also be under one or more of the "Convention Categories".

*Facts of today's case assessed under Persecution*

22. The Appellants have not suffered *serious* ill-treatment or *serious* harm which would place them within the criteria of Persecution. Furthermore the COI does not support the risk of such harm. The situation falls far short of establishing CIDTP, hence the appeal fails under "Persecution Risk" *even on the Appellants' alleged facts*.

**Conclusion** (on the Appellants' alleged facts)

23. For numerous and independent reasons the Appellants fail to establish a case of non-refoulement whether under the principles of Torture or BOR3 or BOR2 or Persecution *even on their alleged version of facts*. The consolidated appeal is dismissed, and the decisions of the Immigration Officer, dated 20 June 2016, 27 November 2017 and 28 November 2017, are hereby confirmed.



( William Lam )

Deputy Chairperson of the Torture Claims Appeal Board/  
Adjudicator of the Non-Refoulement Claims Petition Office  
2 November 2018

