



Refugee Protection Division

Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : MB7-17275  
MB7-17399

Client ID No. / N° ID client : XXXX

XXXX

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

Claimant(s)

Demandeur(e)(s) d'asile

XXXX XXXX XXXX XXXX XXXXXXXXXX XXXX

Date(s) of hearing

Date(s) de l'audience

February 4, 2019, and May 9, 2019

Place of hearing

Lieu de l'audience

Montréal, Quebec

Date of decision  
and reasons

Date de la décision  
et des motifs

June 11, 2019

Panel

Tribunal

Trisha Elie

Counsel for the claimant(s)

Conseil(s) du (de la/des)  
demandeur(e)(s) d'asile

Mark J. Gruszczynski

Designated representative

Représentant(e) désigné(e)

N/A

Counsel for the Minister

Conseil du (de la) ministre

Michel-Ange Jakhar

## REASONS FOR DECISION

### INTRODUCTION

[1] XXXX XXXX XXXX XXXX (the male claimant) and his spouse, XXXX XXXX (the female claimant), are citizens of Haiti and have obtained permanent residence in Brazil. They are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] The Minister of Immigration, Refugees and Citizenship (the Minister) is a party in this refugee protection claim. The Minister intervened by making submissions and providing evidence.<sup>1</sup> The Minister's representative was not present in the hearing room.

[3] The Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*<sup>2</sup> was considered and applied during the hearing and in rendering the decision in this refugee protection claim.

### DETERMINATION

[4] Having considered all the evidence, including the claimants' testimony, the panel concludes that XXXX XXXX XXXX XXXX and XXXX XXXX are not excluded under section 98 of the IRPA and Article 1E of the *Convention Relating to the Status of Refugees*<sup>3</sup> (the Convention).

[5] Having considered all the evidence, including the male claimant's testimony, the panel concludes that the male claimant, XXXX XXXX XXXX XXXX, has established that he would face a serious possibility of persecution in Haiti on a Convention ground by reason of his political opinion. The panel therefore determines that he is a refugee under section 96 of the IRPA and allows his refugee protection claim.

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<sup>1</sup> Document 4 – Minister's notice of intervention.

<sup>2</sup> Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*. Effective November 13, 1996.

<sup>3</sup> *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Reissued, Geneva, December 2011.

[6] Having considered all the evidence, including the female claimant's testimony, the panel concludes that the female claimant, **XXXX XXXX**, has established that she would face a serious possibility of persecution in Haiti on a Convention ground by reason of her membership in a particular social group (single woman in Haiti). The panel therefore determines that she is a refugee under section 96 of the IRPA and allows her refugee protection claim.

## **ALLEGATIONS**

### **The male claimant**

[7] The male claimant's allegations are set out in his Basis of Claim Form (BOC Form).

[8] In summary, the male claimant alleges that he fears being killed or mistreated by supporters of the [translation] "Artibonite an-acsyon (AAA) movement"<sup>4</sup> (the agents of persecution).

[9] The male claimant alleges that the agents of persecution targeted him because he refused to be part of the AAA movement after attending one of their meetings; he also refused to take money from them.

### **The female claimant**

[10] The female claimant's allegations are set out in her BOC Form.

[11] In summary, the female claimant alleges that she fears being killed by her ex-husband's new wife, **XXXX XXXX** (the agent of harm), and [translation] "her families and supporters."<sup>5</sup>

[12] The female claimant alleges that the agent of harm targeted her because she is her ex-husband's first wife and has five children with him.

[13] The female claimant further alleges that she fears returning to Haiti because, as a woman, she would not have access to justice against her agent of harm or to a centre for abused women.

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<sup>4</sup> Document 2.1 – Male claimant's Basis of Claim Form (BOC Form), MB7-17275, account.

<sup>5</sup> Document 2.2 – Female claimant's BOC Form, MB7-17399, account.

## ANALYSIS

### Identity

[14] The claimants' personal and national identities as citizens of Haiti were established, on a balance of probabilities, by means of their testimony and certified true copies of their Haitian passports that were entered into evidence on the record.<sup>6</sup>

### Permanent residence in Brazil and exclusion under Article 1E

[15] Section 98 of the IRPA states: "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."

[16] Article 1E of the Convention reads as follows:

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

[17] The male claimant alleged that he lived in Brazil for nearly three years and worked there.

[18] The female claimant alleged that she lived in Brazil for three years and worked there.

[19] According to the documentary evidence,<sup>7</sup> a person enjoys several rights as a permanent resident of Brazil. According to the Brazilian constitution, these social rights include education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute.

[20] Moreover, according to the Brazilian constitution, permanent residents have the same rights as Brazilians, with some restrictions, the most important being the prohibition from

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<sup>6</sup> Document 1 – Information package provided by the Canada Border Services Agency / Immigration, Refugees and Citizenship Canada: claimants' passports.

<sup>7</sup> Document 6 – National Documentation Package (NDP) for Brazil, March 29, 2019, Tab 3.4: The rights and duties of permanent residents, including the rights and duties of individuals who have a permanent visa, such as professors, researchers, highly-skilled technicians and foreign scientists; procedure to obtain or renew a residency permit; grounds for losing permanent residence (2014-May 2016). Immigration and Refugee Board of Canada (IRB). May 25, 2016. BRA105515.FE.

carrying out military service, from voting and from serving in certain important public office positions.<sup>8</sup>

[21] The panel therefore considered whether the claimants ought be excluded in accordance with Article 1E of the Convention.

[22] With this in mind, on December 14, 2018, the Refugee Protection Division (RPD) sent a notice to the Minister.

[23] On April 18, 2019, the Minister filed, in writing, a notice of intervention in this case. The Minister filed submissions and provided evidence,<sup>9</sup> arguing that the claimants should be excluded from the application of the Convention under Article 1E.

[24] At the hearing, the panel assessed this possibility of exclusion by asking the following questions:

*Do the claimants have permanent resident status in Brazil as of the day of the hearing?*

[25] No, the claimants both testified that they had previously obtained permanent residence in Brazil but that, as of the day of the hearing, they had lost this status, as they had left Brazil more than two years ago, that is, in XXXX 2016.

[26] According to the documentary evidence, Brazilian law states that permanent residents lose their status following a two-year absence from the country without justification.<sup>10</sup>

[27] The panel notes the sworn testimony of the claimants, who did state that they had obtained permanent resident status in Brazil.

[28] It is true that to avoid losing this status, the holder may submit justifications. However, nothing in the documentary evidence at this time specifies what justifications would be valid from the Brazilian authorities' perspective to avoid losing this status. At this stage of its analysis,

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<sup>8</sup> *Supra*, footnote 7, p. 6.

<sup>9</sup> Document 4 – Minister's notice of intervention.

<sup>10</sup> Document 3 – NDP for Haiti, March 29, 2019, Tab 14.11: Brazil and Haiti: Situation of Haitians in Brazil, including rights and obligations; permanent resident status; documents issued to Haitians, including Foreigner Identity Cards... IRB. June 21, 2018. ZZZ106127.FE.

the panel finds that, based on the evidence, the claimants had this status in the past, but they have lost it because they left Brazil more than two years ago as of the day of the hearing.

[29] In *Zeng*,<sup>11</sup> the Federal Court of Appeal states that a claimant may be excluded from Canada's protection, even if they have lost their status in a third country. The panel must weigh various factors before making a decision on the issue of exclusion.

[30] Essentially, the most determinative factor in the analysis weighing against exclusion is the risk in the country of origin. Both of the claimants have established, on a balance of probabilities, that they would face a serious possibility of persecution if they were to return to Haiti.

[31] In this case, the panel concludes that there is no cause to exclude the claimants under Article 1E of the Convention for the reasons that follow.

*Voluntary or involuntary loss of status for the claimants*

[32] Based on their testimony and on a balance of probabilities, the panel concludes that the claimants left Brazil voluntarily.

[33] The male claimant gave sincere testimony at the hearing. He stated that he had lost several jobs in Brazil because of Brazilian colleagues who were, in his opinion, racist. He was fired after these colleagues made false allegations against him. The male claimant explained that, ultimately, he believes he was fired several times because he is black.

[34] In addition, the male claimant wrote and testified that he had left Brazil because he had heard that Haitians were mistreated by Brazilians. He then decided to leave the country. However, the male claimant did not file any specific evidence in that regard.

[35] The female claimant also gave sincere testimony. She lost her job because of a colleague who, according to her, was racist in the remarks she made to her. She allegedly made false allegations against her to their boss, which led to the female claimant being fired. The female

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<sup>11</sup> *M.C.I. v. Zeng, Guanqiu* (F.C.A., No. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010, 2010 FCA 118.

claimant testified that she no longer felt safe in Brazil because two people of Haitian origin had been violently killed in her neighborhood.

[36] However, the claimants failed to establish how the incidents of racism and discrimination in Brazil rise to the level of persecution within the meaning of the Convention for which they could not obtain state protection. Based on their testimony, the claimants did not try to settle in other cities in Brazil or ask the authorities for help regarding the incidents they experienced before they decided to leave Brazil.

[37] Although it is a voluntary loss of status for the claimants, the panel gives neutral weight to this factor in its analysis of the issue of exclusion in this case, in light of the difficult circumstances facing Haitians in Brazil, as described by the claimants in their testimony and corroborated by the objective documentary evidence.<sup>12</sup>

[38] The panel considered the Minister's submissions in this regard; however, in its analysis, the panel also considered other "relevant facts," as set out in *Zeng*. On its own, the factor of the claimants' voluntary or involuntary loss of permanent resident status does not weigh in favour of an exclusion under Article 1E. The [translation] "voluntary" aspect of the loss of status is not straightforward, and the claimants' testimony helps to contextualize the claimants' decision to leave Brazil and give up their status.

*Possibility of returning to the third country (Brazil)*

[39] At the hearing, the claimants testified that, in their opinion, they could not return to Brazil. The claimants stated that they do not believe they will be able to return to that country because they have been outside Brazil for more than two years.

[40] The claimants did not file any specific evidence explaining whether they could avail themselves of an administrative or judicial procedure to recover their status in Brazil and return there.

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<sup>12</sup> Document 5 – NDP for Brazil, March 29, 2019, Tab 13.2: *Report of the Special Rapporteur on minority issues on her mission to Brazil*, United Nations. Human Rights Council. February 9, 2016. A/HRC/31/56/Add.1.

[41] The panel is of the opinion that the objective documentary evidence on this subject is not conclusive either. It states that recourse is available through Brazilian immigration services,<sup>13</sup> but the evidence is insufficient to lead the panel to believe that the return of a permanent resident after being outside the country for two years is more likely than not. Therefore, in this exclusion analysis, the panel gives little weight to this factor.

### **The risk in the country of origin for the male claimant**

[42] As previously mentioned, the panel gives more weight to this factor. The panel concludes that the claimants have established that they face a serious possibility of persecution in Haiti, and as a result, there is no cause to exclude them under section 98 of the IRPA.

[43] The male claimant's allegations establish a nexus to a Convention ground, namely, his political opinion. The panel therefore analyzed this refugee protection claim under section 96 of the IRPA.

### **Credibility**

[44] The panel finds that the male claimant was credible for the following reasons.

[45] There is a presumption of truth in sworn evidence, unless there is reason to doubt that truthfulness. In this claim, there is not sufficient reason to rebut this presumption of truthfulness.

[46] The male claimant testified in detail about the central incident that led him to flee Haiti.

[47] For example, during his testimony at the hearing, the male claimant clarified a detail that gave the panel a better understanding of the circumstances surrounding the events in his claim for refugee protection. The male claimant testified that he did not take the money he was offered by XXXX XXXX XXXX XXXX of the AAA movement's supporters, but the agents of persecution mistakenly believed that he had taken it; as a result, they physically attacked him on XXXX XXXX, 2013, when he did not show up at another meeting of the AAA movement. The male claimant testified that, since then, the agents of persecution have perceived him not only as a political opponent, but also as someone who stole their money.

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<sup>13</sup> *Supra*, footnote 10, p. 33.  
*Supra*, footnote 10, p. 21.



[48] At the hearing, the male claimant also testified in detail about the places where he hid after he was physically attacked in Haiti. The male claimant wrote in his BOC Form that he was in hiding before he left Haiti, but did not specify where or how, which he did at the hearing. For example, he mentioned that he hid at his mother's home in XXXX XXXX XXXX XXXX. His mother did the shopping so that he could eat, but he did not go out often. The male claimant testified that he then went to the home of a woman, XXXX XXXX, in XXXX XXXX.

[49] The panel did not note any major contradictions, inconsistencies or omissions between the written account, the oral testimony and the documentary evidence that would have undermined the male claimant's overall credibility.

[50] However, the panel noted a point in the male claimant's oral testimony that he omitted in his BOC Form. This omission concerns the incidents that have occurred since he left Haiti. The male claimant testified that the agents of persecution continue to look for him in Haiti to this day. They go to his mother's home in XXXX looking for him. They also call his mother's home to threaten her. The male claimant testified that the agents of persecution continue to ask questions in the neighbourhood, including to a neighbour named XXXX XXXX. The panel noted that the male claimant did not provide this information in his written account. The male claimant explained that when he completed his BOC Form, his spouse, the female claimant, XXXX XXXX XXXX XXXX XXXX XXXX and required medical care. The male claimant explained that they had had to rush to file their refugee protection claim in order to quickly access medical care here in Canada. That is why he did not take the time to write that the agents of persecution are still looking for him in Haiti. The panel does not believe that the male claimant's explanation reasonably accounts for the omission, because the male claimant's BOC Form was completed in 2017, a year and a half before the date of the hearing. The female claimant testified that XXXX XXXX XXXX XXXX XXXX XXXX; therefore, it is reasonable to believe that the male claimant would have had time since then to amend his BOC Form.

[51] However, the male claimant established, despite this omission and on a balance of probabilities, that the agents of persecution are still looking for him in Haiti. The male claimant was credible concerning the principal incident in his refugee protection claim, namely, that he was attacked for opposing a political movement; in addition, the agents of persecution believe that the male claimant stole money from them. In drawing this conclusion, the panel considered

the male claimant's overall credibility regarding this allegation, the specific evidence filed by the male claimant and the objective evidence on the subject.

[52] To that end, the male claimant entered into evidence a complaint document dated XXXX XXXX, 2019, from the Haitian National Police<sup>14</sup> to support his allegations. In the document, his mother reports death threats by telephone, during which the agents of persecution ask about her son's whereabouts. This document does not contain any irregularities that would lead the panel to doubt its authenticity. The panel gives it probative value.

[53] The panel has also considered the objective documentary evidence on Haiti, which corroborates that conflicts related to political rivalries can intensify quickly:

[translation]

Given the situation of general impunity and the context of prevailing violence in the country, conflicts between individuals, particularly when a political figure is involved, can become very serious, very quickly. **While these conflicts are set in a political context, they most often arise out of personal rivalries.** Violence often comes from a person in power, who directs it against individuals who do not have sufficient protection. It is difficult to characterize them and assess their scope, first because on the one hand, they are not necessarily the acts of state authorities, and second because politically motivated killings are often covered up and presented as homicide cases under ordinary law.<sup>15</sup>

[emphasis in the original]

[54] Moreover, the objective documentary evidence corroborates the male claimant's allegations concerning the will and determination of people who are motivated by revenge in Haiti after a political conflict. It indicates the following:

...the Project Leader reported that, in cases of political revenge, if those seeking it are serious, if they lose track of someone, they attack the family (Project Leader 29 May 2018)....

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<sup>14</sup> Document 5 – Exhibit A-2, [translation] “Haitian National Police, Directorate for the Artibonite department, XXXX Police Station.”

<sup>15</sup> Document 3 – NDP for Haiti, March 29, 2019, Tab 2.5: *Rapport de mission en République d’Haïti du 26 mars au 7 avril 2017* [Republic of Haiti mission report from March 26 to April 7, 2017]. France. Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless persons]. September 15, 2017, pp. 16-17.

In correspondence sent to the Research Directorate, an official from the National Human Rights Defense Network (Reseau national de defense des droits humains, RNDDH) stated that acts of revenge are generally motivated by political rivalries, the settling of scores, or romantic relationships (RNDDH 8 June 2018). ...

Sources stated that threats may precede acts of revenge (Défenseurs Plus 7 June 2018; Project Leader 29 May 2018) or may constitute [translation] “verbal assault” (Défenseurs Plus 7 June 2018).<sup>16</sup>

[55] For all these reasons, the panel finds that the male claimant’s allegations are credible.

[56] Accordingly, the panel concludes that the male claimant has established, on a balance of probabilities, that these individuals are still looking for him, that they want to hurt him to this day and that they show up in different places in Haiti. As the male claimant alleged, the agents of persecution are political supporters of the AAA movement, who have continued to contact his mother with death threats until recently. The male claimant was attacked in XXXX XXXX XXXX, a commune in the Artibonite department, but his mother lives in XXXX, which is another commune in Artibonite. Despite this, the agents of persecution were able to discover where she lives. They also continue to make inquiries in the male claimant’s neighbourhood to try to learn his whereabouts.

[57] In light of the foregoing, the panel concludes that the male claimant has established, on a balance of probabilities, that he would face a serious possibility of persecution, on a forward-looking basis, if he were to return to Haiti.

#### *State protection*

[58] The panel concludes that the male claimant rebutted the presumption of state protection through clear and convincing evidence, which establishes that the authorities in Haiti would be unwilling or unable to ensure that he receives adequate protection.

[59] The male claimant did not file a complaint with the police because he was afraid that they are associated with the AAA movement, which has a strong presence in the Artibonite department where the incidents took place. The panel does not draw a negative inference from

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<sup>16</sup> Document 3 – Archive – NDP for Haiti, July 20, 2018, Tab 7.6: Response to Information Request (RIR) HTI106117.FE, IRB, July 3, 2018.

the fact that the male claimant failed to call on the police authorities in the past. The panel cannot expect a claimant to put his life in danger to try to obtain state protection that would not be effective. The panel takes into account this principle and the context of inadequate state protection in Haiti.

[60] On this subject, the objective documentary evidence attests to the ineffectiveness of the police authorities and the judicial system in Haiti. In addition, the legal process is inadequate in terms of charges being laid and prison sentences being imposed on the accused:

Some sources state that, in Haiti, no state protection exists for targets of acts of revenge (RNDDH 8 June 2018; Assistant Professor 1 June 2018). Other sources have stated that there is some protection, but that it is inadequate (Défenseurs Plus 7 June 2018; Executive Director 5 June 2018). The Executive Director stated that it is possible for victims to file a complaint with the police and that “in some cases” the police will investigate or at least go to the victim’s house (Executive Director 5 June 2018). ...

According to some sources, the Haitian Police lack the resources to provide protection for those targeted by revenge (RNDDH 8 June 2018; Défenseurs Plus 7 June 2018; Assistant Professor 1 June 2018). ...

Sources also reported that the ineffective and corrupt nature of the legal system encourages acts of revenge (Executive Director 5 June 2018; Project Leader 29 May 2018), because the “probability of prosecution is not high enough to provide a substantial deterrent to organized crime revenge” (Executive Director 5 June 2018). ...<sup>17</sup>

[61] For these reasons, the panel concludes that the male claimant has rebutted the presumption of state protection.

#### *Internal flight alternative*

[62] The panel then reviewed whether a viable internal flight alternative (IFA) exists for the male claimant in Haiti. The panel proposed that the male claimant settle in Cap-Haïtien.

[63] The panel concludes that the male claimant has established, on a balance of probabilities, that he would face a serious possibility of being persecuted throughout Haiti, including in Cap-Haïtien.

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<sup>17</sup> Ibid.

[64] The male claimant established, on a balance of probabilities, that his agents of persecution have the means and the motivation to find him in Cap-Haïtien and anywhere else in Haiti.

[65] The male claimant's credible allegations are as follows: the individuals who targeted him have ties to the AAA movement, which is associated with Youri Latortue, a politician in Haiti. He was a senator and is still active in politics; the AAA supporters may therefore have access to firmly rooted political power in Haiti. As a result, they have the means to find him throughout Haiti. In addition, the recent actions of the agents of persecution (threats against his mother) are an indicator of their motivation to find the male claimant.

[66] On this topic, the objective documentary evidence corroborates the male claimant's allegations. It states that assailants can easily locate their victims and that they have the means to do so. This evidence states the following:

According to the sources, the principal means assailants use to find their victims is by word of mouth (Défenseurs Plus 7 June 2018; Assistant Professor 1 June 2018). The Project Leader mentioned that assailants generally know their victims, who are members of their entourage, their [translation] "sphere of influence" at work or school, or who are known publicly (Project Leader 29 May 2018). The Executive Director stated that assailants can look to the victim's social networks as a way to find them, including informal networks in their neighbourhood (Executive Director 5 June 2018). The Chancellor stated that the main way of tracking victims down was "individual networks" (Chancellor 18 June 2018).

According to The Assistant Professor, rumours are rife in Haiti and are an effective way of locating people because "Haitians tend to be geographically tied to a small area and so anyone outside of their [usual] circle will be quickly recognized" (Assistant Professor 1 June 2018). She added that Haitians are generally well aware of their neighbours' business (assistant professor, 1 June 2018).<sup>18</sup>

[67] For all these reasons, the panel concludes that no viable IFA exists for the male claimant anywhere in Haiti, including in Cap-Haïtien.

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<sup>18</sup> Ibid.

## The risk for the female claimant in the country of origin

### *Profile as a single woman in Haiti*

[68] In light of the panel's positive determination in the refugee protection claim made by the male claimant (the female claimant's spouse), the female claimant's membership in a particular social group as a single woman in Haiti (without male protection) is now the ground of persecution to be analyzed for the female claimant.

### *Credibility*

[69] In *Duversin*,<sup>19</sup> the Federal Court concluded that the panel must analyze the situation of Haitian women claiming refugee protection as members of the particular social group of women who may be victims of gender-based persecution.

[70] At paragraph 29 of the Federal Court's decision in *Dezameau*, Justice Pinard states the following:

This is not to say that membership in a particular social group is sufficient to result in a finding of persecution. The evidence provided by the applicant must still satisfy the Board that there is a risk of harm that is sufficiently serious and whose occurrence is "more than a mere possibility".<sup>20</sup>

[71] In this case, the panel concludes that the female claimant's particular circumstances are such that she would be in a highly vulnerable position if she had to return to Haiti as a single woman.

[72] The panel finds that the female claimant was credible for the following reasons.

[73] The female claimant testified in a spontaneous and detailed manner about her particular circumstances in Haiti. In terms of family, she testified that she started a family with her ex-husband when she was very young and that they had five children together. He is now in a relationship with another woman. The female claimant left the family home in 2013, and her

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<sup>19</sup> *Duversin v. Canada (Citizenship and Immigration)*, (F.C., No. IMM-3714-17), Gagné, May 1, 2018, 2018 FC 466.

<sup>20</sup> *Dezameau, Elmancia v. M.C.I.* (F.C., No. IMM-4396-09), Pinard, May 27, 2010, 2010 FC 559.

ex-husband has not been in contact with their five children since then; as a result, the female claimant was alone with them in Haiti. The female claimant's children still live in Haiti in the care of the female claimant's friend. If she were to return to Haiti today, the female claimant would have no choice but to live alone with her five children.

[74] In terms of employability, the female claimant testified that she has always worked as a merchant selling XXXX XXXX XXXX. Financially, the female claimant lived modestly.

[75] In light of the foregoing, the panel took into account the following factors that would put the female claimant at greater risk of being subjected to sexual violence because of her status as a single woman in Haiti: her low socio-economic status and the lack of male protection at home.

[76] The objective documentary evidence on this subject indicates that some women are more vulnerable to crime than others, namely, poor or single women or those living in slums or camps for displaced persons. Moreover, it states that sexual violence against women is a common occurrence in Haiti, that the problem is widespread and serious, and that victims have difficulty accessing justice:

In its August 2016 report, OFPRA states that violence in Haiti is [translation] “indiscriminate,” specifying that “every level of society is vulnerable to being affected by crime,” and that, in Port-au-Prince in particular, the primary victims are “displaced persons living in camps, those living in the poorest parts of the capital, women and children” (France 29 Aug. 2016, 9).<sup>21</sup>

[77] For all these reasons, the panel concludes that the female claimant has established that she would face a serious possibility of persecution by reason of her membership in a particular social group as a single woman in Haiti.

#### *State protection*

[78] The panel concludes that the female claimant has rebutted the presumption of state protection by means of clear and convincing evidence establishing that the Haitian authorities would be unwilling or unable to ensure that she receives adequate protection.

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<sup>21</sup> Document 3 – NDP for Haiti, July 20, 2018, Tab 7.1: RIR HTI106116.FE, IRB, June 19, 2018.

[79] In general, the objective documentary evidence indicates that the Haitian authorities do not have the capacity or the resources to protect citizens who face a serious possibility of persecution.<sup>22</sup>

[80] Moreover, the objective documentary evidence also mentions that the police and judicial system are ineffective in protecting victims of sexual violence:

According to the report of violence against women and sexual minorities in Haiti, in the vast majority of the rape cases documented by KOFAVIV, the police conducted little to no investigation to find and arrest the perpetrators (ANAPFEH *et al.*[2014], 12-13). According to that source, the victims report being verbally harassed by police when they report the crimes (ibid., 13). The report also states that, according to KOFAVIV, rapists identified by their victims and arrested by the police had been released in exchange for a bribe (ibid.).<sup>23</sup>

[81] Based on this objective evidence, the panel concludes, on a balance of probabilities, that state protection is not effective with regard to sexual violence against women in Haiti.

[82] For these reasons, the female claimant has rebutted the presumption of state protection.

#### *Internal flight alternative*

[83] The panel concludes that the female claimant has established, on a balance of probabilities, that she would face a serious possibility of persecution throughout Haiti by reason of her membership in the particular social group of single women in Haiti.

[84] Insecurity, particularly for women without male protection, the female claimant's low socio-economic status and the lack of state protection are factors that exist throughout the country.

[85] The panel concludes that no viable IFA exists for the female claimant anywhere in Haiti.

#### **Canada's international obligations**

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<sup>22</sup> Document 3 – NDP for Haiti, March 29, 2019, Tab 7.2: *Haiti: La situation sécuritaire* [Haiti: the security situation]. France. Office français de protection des réfugiés et apatrides [French office for the protection of refugees and stateless persons]. August 29, 2016.

<sup>23</sup> Document 3 – Archive – NDP for Haiti, July 20, 2018, Tab 5.3: RIR HTI105161.FE, IRB, December 15, 2016.



[86] The panel weighed this factor and believes that by not excluding the claimants under Article 1E of the Convention, Canada's international obligations would be upheld, including the obligation to protect individuals who have a well-founded fear of persecution and individuals who would be subjected to a risk within the meaning of subsection 97(1) if they were to return to their country of origin.

## CONCLUSION

[87] Considering the factors analyzed above that weigh against exclusion under Article 1E, namely the neutral weight given to the voluntary loss of permanent resident status, the little weight given to the possibility of returning to Brazil, and the more significant weight given to the risk in the country of origin and to upholding Canada's international obligations, the panel concludes that the claimants are not excluded under section 98 of the IRPA.

[88] The panel concludes that the claimants have established that they have a subjective fear of persecution in Haiti that is objectively well founded.

[89] Having considered all the evidence, including the claimants' respective testimonies, the panel concludes that they would face a serious possibility of persecution in Haiti.

[90] The panel therefore determines that the claimants are "Convention refugees" under section 96 of the IRPA.

[91] Accordingly, the panel allows the refugee protection claims made by **XXXX XXXX XXXX XXXX** and **XXXX XXXX**.

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**Trisha Elie**

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**Date**

IRB translation  
Original language: French