



RPD File No. / N° de dossier de la SPR : VB8-02138

Client ID No. / N° ID client : XXXX

Private Proceeding / Huis clos

Reasons and Decision – Motifs et décision

Claimant(s)

XXXX XXXX

Demandeur(e)(s) d'asile

Date(s) of hearing

August 22, 2019

Date(s) de l'audience

Place of hearing

Held by videoconference in
Saskatoon, SK and in
Vancouver, BC

Lieu de l'audience

Date of decision
and reasons

September 26, 2019

Date de la décision
et des motifs

Panel

Miryam Molgat

Tribunal

Counsel for the claimant(s)

N/A

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

Designated representative

N/A

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] These are the reasons for decision in the refugee protection claim made by XXXX XXXX, who claims to be a citizen of Burundi and is claiming refugee protection pursuant to section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).¹

[2] The claimant stated that she would proceed without legal counsel.

ALLEGATIONS

[3] The claimant made the following allegations. The claimant was born in 1982. She is a Muslim Hutu. The claimant has three children from a common-law relationship. In 2014, the claimant married a man with whom she had no children. He had worked for a long time as a XXXX XXXX XXXX for the XXXX XXXX XXXX XXXX of Burundi. He was kidnapped by the coup forces during the attempted coup of May 13, 2015. He subsequently had to flee the country to a destination unknown to the claimant. Burundi intelligence agents began going to the claimant's home repeatedly in an attempt to obtain information about her husband's whereabouts. The claimant was raped on XXXX XXXX, 2015, by three members of the Imbonerakure militia. She was placed in a cell and was then transferred to the judicial police. The claimant was hospitalized for two weeks and then resumed working at the XXXX XXXX XXXX XXXX. Between five and six months later, the claimant received a WhatsApp message from XXXX XXXX XXXX. Every time the claimant received this kind of message, she went to Uganda or the Democratic Republic of Congo. The Imbonerakure militia tracked her movements. On XXXX XXXX, 2017, the claimant was kidnapped, raped, and beaten by two hooded men. The claimant found herself in hospital without knowing how she got there.

DETERMINATION

[4] The panel concludes that the claimant failed to discharge the burden of proof that there is a serious possibility of persecution on a Convention ground or that, on a balance of probabilities,

the claimant would personally be subjected to a risk to her life or a risk of cruel and unusual treatment or punishment if she were to return to her country. The reasons are as follows.

ANALYSIS

[5] The determinative issues in this case are credibility and subjective fear.

Identity

[6] The claimant's identity as a Burundian national was established by the testimony and supporting documents, including the Burundian passport.²

Credibility

[7] The panel finds that the claimant's testimony with respect to the following elements is not credible: the relationship with her husband, his disappearance, her husband's position at the XXXX XXXX XXXX XXXX XXXX XXXX, and the persecution of the claimant following her husband's disappearance.

Claimant's relationship with her husband

[8] The claimant had some difficulty testifying about her husband. The claimant stated at the hearing that in 2014 she married a man who was born in 1976, was 38 years old, was nine years her senior, and had worked since 2006 as a XXXX XXXX XXXX for the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX (she believed he was a XXXX XXXX). The claimant was unable to explain why she stated that he was born in 1976 when she indicated on the Basis of Claim Form (BOC Form)³ that he was born in 1973. She stated that she made a mistake because she was nervous. The claimant was unable to explain why she stated that she was nine years younger than her husband, when the age difference is 14 years, if he was born in 1976. The claimant was unable to explain why she stated that her husband was 38 years old when they married when her marriage registration extract indicates that he was 41.⁴ The claimant was unable to explain why, if her husband is a XXXX XXXX XXXX and has been a XXXX XXXX since 2006, the two marriage documents on the record indicate that he is a XXXX. The claimant's speculation that this may have been his previous position is given little weight; the

presumption of credibility does not extend to the inferences made by the claimant from facts in her testimony.

[9] The claimant stated that her husband divorced his first wife. She did not provide a very clear and convincing explanation of why the marriage certificate indicates that he was single rather than divorced. Given that this is a civil status document, one would expect the marriage certificate to indicate the marital status of the individuals married. The Burundi national identity card indicates whether the bearer is divorced or single,⁵ and therefore one would expect that this status appear on the marriage certificate given that the civil status in question changes as a result of the marriage.

[10] These contradictions taken together cast doubt on the alleged marriage.

Disappearance of the claimant's husband

[11] These doubts about the marriage are reinforced by the evidence concerning the husband's disappearance. In her BOC Form, the claimant indicated that her husband fled Burundi to seek refuge elsewhere. When asked at the hearing to relate what she knew of her husband's fate, she did not mention this fact. One would expect her to mention this in her testimony when asked about it. The panel draws a negative inference from this and considers the two versions of the disappearance to be different. This is important because it is not credible to not mention his leaving the country, which is a central element of the claimant's allegations.

[12] Furthermore, the claimant had difficulty explaining why she believed that her husband fled the country. Her explanations were inadequate, and she was unable to testify directly about this. In her BOC Form, she clearly states that she believed her husband had left the country because he stated several times that he did not want his children to see him die. The panel is of the opinion that the explanation is inadequate. One need not leave the country to avoid being killed in front of one's children. People usually look for answers to make sense of tragic disappearances. It is not credible that the claimant could not expand on her own sworn statement about her husband leaving the country. It is not credible that she was unable to testify in a spontaneous and direct manner about this aspect of her husband's disappearance. This casts doubt on the fact that he has indeed disappeared.

[13] The claimant alleges that she only called her husband's cell phone once since he disappeared in 2015. She explained that she did not persevere because the last time she saw her husband, on the night of XXXX XXXX, he did not have his cell phone. The panel finds that this is not very persuasive. One would expect her to try to contact him on his cell phone since she did not know what happened to him and she states she cares about him.

Employment of the claimant's husband

[14] The claimant stated that she was the only one to wash her husband's work clothes. She did so for the four months of marriage before her husband disappeared. She stated that he returned home from work in his uniform and that they sometimes went home together after work. Therefore, she had many opportunities to see that uniform. The claimant gave a detailed description of the XXXX XXXX XXXX XXXX XXXX XXXX that her husband wore every Friday as his work uniform. However, the XXXX XXXX XXXX that her husband is wearing in the photographs⁶ does not match her description. The XXXX XXXX in the photographs, which she confirmed were photographs of her husband wearing his Friday uniform, does not have any of the XXXX XXXX XXXX XXXX XXXX XXXX that she described in detail. The XXXX XXXX has XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, which she did not mention. She only mentioned the XXXX XXXX XXXX XXXX XXXX. This is surprising given the size of the XXXX XXXX XXXX XXXX XXXX XXXX XXXX seen in the photographs of her husband in his Friday uniform.⁷ She explained that this contradiction resulted from her nervousness and that she did not remember. The panel does not accept this explanation and believes that if she did not remember what the upper part of the shirt looked like, she would not have described the many details. What is more, the photos submitted would have reminded her of what the shirt looked like. The panel notes that the XXXX XXXX, as shown in the photographs of her husband, catches the eye because of the lack of XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. This contradictory evidence matters given the number of credibility issues related to the evidence about the husband and the significance of the husband's employment in this refugee protection claim.

Rapes

[15] The claimant stated that the two rapes, which occurred on XXXX 2015 and XXXX 2017, were personalized persecution that she was subjected to in Burundi. The first rape is problematic in that the underlying allegations, namely her marriage to a man involved against his will in the May 2015 coup attempt, are not credible. The only evidence on the record attesting to these rapes is a report by XXXX hospital.⁸ When asked why she obtained this report, she explained that she did so in the hope of having her case dealt with one day, if her country ever becomes stable, and so forth. This report is not, strictly speaking, a purely medical report. The medical information is minimal, and there is less of it than there is of other, non-medical information. The medical report includes a great deal of information, which was provided by the claimant's sister, the Good Samaritan who brought the claimant to the hospital, and the claimant herself. There is no indication that the people providing the information were asked about the merits of their statements, which gives less weight to their statements and the report.

[16] The rape as described in this hospital report contradicts the rest of the evidence. The claimant states in her BOC Form that she was forced into a vehicle, tied up and choked, and that she regained consciousness at the hospital without knowing what happened to her after she lost consciousness as a result of the choking. She testified that it was the doctor at the hospital who told her after she awoke that she had been raped. The medical report states that the claimant stated that she suffered a lot up until she was raped. At the hearing, the claimant was unable to explain how she knew upon waking that she had been raped if she only learned about it when the doctor told her. The BOC Form also states that the doctor told her she was kidnapped. According to the allegations, he would not have known this given that the claimant was unconscious and only woke up at the hospital. There is nothing in the Good Samaritan's version in the report to indicate that he could have learned that the claimant had been kidnapped upon arriving at the scene where the claimant was found. The versions of the facts in this report are contradictory and also contradict the BOC Form. The panel assigns little weight to the medical report.

[17] In formulating its reasons, the panel considered and applied the guideline entitled *Women Refugee Claimants Fearing Gender-Related Persecution*.⁹ These guidelines do not correct the credibility issues of the claimant's allegations.

Membership in XXXX

[18] The claimant stated that she was targeted also because she belongs to the organization XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. She testified that she was a low-level XXXX specializing in XXXX XXXX. She stated that she XXXX XXXX in the country's provinces, showing XXXX how to XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. She stated that she joined the organization in 2005 and was a member until 2015, when the association XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. In question 7 of Schedule A,¹⁰ the claimant stated that she had never belonged to any association. Her explanation was that it was a mistake because she was certain that she had answered yes to the question. The panel is of the opinion that this is not a satisfactory explanation. Had she answered yes, she likely would have stated on the form the name of the association, the dates she was associated with the organization, and her position, which is the information requested. None of this appears on the form. The panel draws a negative inference with respect to credibility, especially since the claimant's membership in XXXX is cited as a ground of persecution experienced.

[19] Even if the claimant worked for XXXX at some point, she did not establish that, in her case, this would result in a serious possibility of future persecution. The issues of credibility and/or subjective fear of returning to the country and the failure to apply for asylum elsewhere undermine this aspect of the claim. The allegation that she was targeted because of her activism is not credible.

Summonses

[20] The claimant stated at the hearing that she received three summonses: she allegedly complied with the first two, as requested. The third was received after she left Burundi for North America. Her testimony concerning the timing of the summonses is at odds with her BOC Form in that the latter only mentions two and not three summonses. The BOC Form does not indicate

that she presented herself at all. This casts doubt on the allegation that she received two summonses while still in Burundi. The claimant had no explanation for the blatant spelling mistakes in the stamp of the XXXX XXXX, 2018, summons, which is the only copy she submitted.¹¹ The panel assigns little weight to the summons on the record, as it is of the opinion that the circumstances under which it was issued and its contents have not been established on a balance of probabilities.

[21] After a summons was issued in her name in XXXX 2018, she left and returned to Burundi no less than three times before leaving the country for the last time. This is documented by the exit stamps in her passport bearing the dates XXXX XXXX and XXXX, 2018, and XXXX XXXX, 2018. This pattern of returning to the country contradicts the statements made regarding persecution. It also undermines the allegations in this case. Her explanation was that she returned to visit her children, that as a woman she was struggling, and that she was ashamed. However, the claimant did not provide a satisfactory explanation for returning to Burundi, and the panel draws a negative inference from this.

[22] In weighing the claimant's explanation for returning multiple times to the country, the panel takes into account that sexual violence has been on the rise since the beginning of the 2015 crisis in Burundi, according to women's rights organizations. Several sources report that women are often victims of such violence in searches carried out by law enforcement. The targeting of women fleeing the country has been documented. The particular vulnerability of women after the disappearance of their spouse has also been noted.¹² In circumstances where there are credibility issues with events prior to instances of leaving the country, the panel draws a negative inference from this conduct, which undermines the credibility of the claimant and her allegations.

[23] The standard of proof for assessing evidence is the balance of probabilities, that is, "one cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so."¹³

Subjective fear

[24] The panel is of the opinion that the claimant would not have returned to Burundi if she truly feared persecution in that country. The panel believes that her actions show a lack of subjective fear and undermine her general credibility.

[25] The claimant's risk of persecution in Burundi supposedly existed on the various occasions that she lived in other countries, particularly in Uganda, which is described by Burundian refugees as being preferable to other countries.¹⁴ The claimant stayed in Uganda for several days on a number of occasions. She explained that she did not claim asylum in that country because of family obligations. This is not satisfactory in the circumstances. The reasons for finally deciding to leave her children in Burundi and to come to North America are not credible.

[26] The claimant also stated at the hearing that she did not claim asylum in Rwanda or Uganda because opponents of the Burundian government were prosecuted there. Yet, in October 2016, there were approximately 30,000 Burundian refugees in Uganda and more than 80,000 in Rwanda.¹⁵

[27] According to the United Nations High Commissioner for Refugees, both countries have continued to accept new arrivals,¹⁶ and Rwanda accepts them automatically.¹⁷ The claimant's reasons for failing to claim asylum in these two countries are dubious in light of the allegations in this case of relentless, personalized persecution for almost three years. Had the claimant been subjected to this persecution, one would have expected her to remain in Uganda or Rwanda.

[28] The claimant did not state that she took any particular precautions when repeatedly crossing the border with Rwanda or the Democratic Republic of Congo. The land border crossings were controlled by the Imbonerakure and the Burundian police.¹⁸ Given the allegation that the claimant was of particular interest to two known members of the Burundian army, XXXX XXXX XXXX and XXXX XXXX XXXX a.k.a. XXXX, as well as her allegation that the Imbonerakure were keeping track of her movements, it is not credible that the claimant was able to cross the border repeatedly without difficulty and, above all, that she did not do anything to protect herself when crossing the border. The many travel stamps in the claimant's passport

demonstrate that she repeatedly crossed these borders and exposed herself to serious risks and dangers and even persecution. This behaviour is inconsistent with the alleged persecution.

[29] When the panel considers all of the evidence, it finds that the adverse findings of credibility taken together undermine the claimant's credibility and her allegations.

DOCUMENTS ON THE RECORD

[30] The panel grants little weight to the claimant's documents on the record. She was unable to establish the merits of the allegations that these documents attempt to corroborate.

CONCLUSION

[31] For the foregoing reasons, the panel determines that the claimant is neither a Convention refugee under section 96 of the IRPA nor a person in need of protection under paragraph 97(1)(a) or 97(1)(b) of the IRPA. The claimant is not credible. The panel therefore rejects her claim for refugee protection.

(signed) Miryam Molgat
Miryam Molgat
September 26, 2019
Date

IRB translation

Original language: French

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 1.

⁵ Exhibit 3 – National Documentation Package (NDP) on Burundi, March 29, 2019, Tab 3.11: *The requirements and procedures to obtain a national identity card; description of the national identity card*. Immigration and Refugee Board of Canada (IRB). March 11, 2014. BDI104778.FE

⁶ Exhibit 4.

⁷ Exhibit 4.

⁸ Exhibit 1.

⁹ IRB, Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*, Ottawa, Canada, March 1993, amended in November 1996.

¹⁰ Exhibit 1.

¹¹ Exhibit 1.

¹² Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 1.5: Burundi. *Situation sécuritaire* [security situation]. Belgium. Office of the Commissioner General for Refugees and Stateless Persons. July 3, 2018.

¹³ *Orelie v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.), at 605, per Mahoney J.A.

¹⁴ Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 2.9: "*I Fled Because I was Afraid to Die*": *Causes of Exile of Burundian Asylum Seekers*. International Refugee Rights Initiative. August 2017; National Documentation Package on Burundi, March 29, 2019, Tab 2.12: *Conform or Flee: Repression and Insecurity Pushing Burundians into Exile*. Amnesty International. September 29, 2017. AFR 16/7139/2017.

¹⁵ Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 10.2: Burundi, Democratic Republic of Congo, Rwanda, Tanzania and Uganda: *Activities of Burundian Militias in Rwanda, the Democratic Republic of Congo, Tanzania and Uganda, including relationship with Burundian refugees* (2015-February 2017). IRB, March 14, 2017. ZZZ105754.E.

¹⁶ Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 14.2: Burundi, Democratic Republic of Congo, Rwanda, Tanzania, and Uganda: *Ability to travel from Burundi to bordering countries, including the documents required for travel and obstacles encountered at the border* (2015-February 2017). IRB, March 20, 2017. ZZZ105753.E.

¹⁷ Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 14.2: Burundi, Democratic Republic of Congo, Rwanda, Tanzania, and Uganda: *Ability to travel from Burundi to bordering countries, including the documents required for travel and obstacles encountered at the border* (2015-February 2017). IRB, March 20, 2017. ZZZ105753.E.

¹⁸ Exhibit 3 – NDP on Burundi, March 29, 2019, Tab 14.2: Burundi, Democratic Republic of Congo, Rwanda, Tanzania, and Uganda: *Ability to travel from Burundi to bordering countries, including the documents required for travel and obstacles encountered at the border* (2015-February 2017). IRB, March 20, 2017. ZZZ105753.E.