



RPD File No. / N° de dossier de la SPR : MB7-19511

MB7-19792

UCI / IUC : XXXX XXXXXXXX

Private Proceeding / Huis clos

## Reasons and decision – Motifs et décision

Claimant(s)	XXXX XXXX XXXXXXXXX XXXX XXXX	Demandeur(e)(s) d'asile
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Date(s) of hearing	September 1, 2021	Date(s) de l'audience
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Place of hearing	Virtual Hearing	Lieu de l'audience
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Date of decision and reasons	September 22, 2021	Date de la décision et des motifs
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Panel	Lise Pénisson	Tribunal
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Counsel for the claimant(s)	Me Abdelkrim Kebache	Conseil(s) du (de la/des) demandeur(e)(s) d'asile
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Designated representative	XXXX XXXX	Représentant(e) désigné(e)
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Counsel for the Minister	Naomi Alfred	Conseil du (de la) ministre
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## REASONS FOR DECISION

### INTRODUCTION

[1] XXXX XXXX (the claimant) is a citizen of Haiti and her daughter, XXXX XXXX XXXX (the minor claimant), is a citizen of Brazil. They are claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

[2] At the hearing, the claimant confirmed that she has agreed to act as the minor claimant's designated representative.

[3] The claimant arrived in Canada alone with the minor claimant. The other parent is not in Canada. The panel therefore asked the claimant to provide a legal document or written consent authorizing her to care for or travel with the child. In response to the panel, the claimant provided a written explanation that she does not have such documents because the child's father is [translation] "not interested in doing so" and "has shown no interest in assuming any fatherly role for years."<sup>1</sup> During the hearing, she added that she has not been in contact with the child's father for three years and had not contacted him to obtain the documents authorizing her to take care of the child, because she did not know where he lived. The panel found the claimant's explanations reasonable and credible considering the status of her current relationship with her former spouse.

[4] During the hearing, as well as in this decision, the panel considered and applied Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*.<sup>2</sup>

### DETERMINATION

[5] After analyzing all of the documentary and testimonial evidence, the panel determines that the claimant is a refugee within the meaning of section 96 of the IRPA, as there is a serious possibility that she will be persecuted in Haiti by reason of her membership in the particular social group of single women in Haiti.

<sup>1</sup> Document 4: Answers to the Board's questions.

<sup>2</sup> Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution*. Immigration and Refugee Board of Canada (IRB), Effective November 13, 1996.

[6] The panel determines that the minor claimant is a refugee within the meaning of section 96 of the IRPA, as there is a serious possibility that she will be persecuted in Brazil by reason of her membership in the particular social group of unaccompanied minors of African descent and with Haitian parents in Brazil.

[7] This is based on the reasons set out below.

## SUMMARY OF ALLEGATIONS

[8] The claimant's allegations are set out in detail in her Basis of Claim Form (BOC Form).<sup>3</sup>

[9] In summary, the claimant alleges that, if she returns to Haiti, she fears being killed by her uncle's henchmen, who murdered her father after a property dispute.

[10] She alleges that, if she returns to Brazil, she fears for her life by reason of the rampant criminality in that country and the racism that targets Haitians, especially in the employment sector.

[11] Last, she alleges that she fears for the minor claimant's life by reason of the rampant insecurity in Brazil.

[12] The claimant left Haiti for the first time in XXXX 2010, after receiving threats from one of her XXXX customers, who refused to pay his debts. She took refuge in the Dominican Republic, where she remained until XXXX 2011, when she left for Brazil.

[13] In Brazil, she worked in the XXXX and XXXX XXXX and obtained permanent residency.

[14] The minor claimant was born in Brazil on XXXX XXXX XXXX XXXX.

[15] Following attempted knife attacks and the loss of her employment, she decided to return to Haiti on XXXX XXXX XXXX 2016.

[16] On XXXX XXXX XXXX 2016, her father was killed by armed men acting on behalf of her influential uncle. The claimant took refuge in the Dominican Republic the same day. The same criminals attempted to attack her mother.

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<sup>3</sup> Document 2 – Basis of Claim Form (BOC Form): MB7 19511; MB7 19792.

[17] On XXXX XXXX XXXX 2016, the claimant returned to Haiti for her father's funeral. After the funeral, the criminals attacked and burned down the family home.

[18] Fearing for her safety, the claimant returned to the Dominican Republic, where she stayed for three months before leaving for Brazil with the minor claimant in order to arrange her trip to the United States.

[19] In XXXX 2016, she left Brazil for Mexico, where she stayed for a few months before arriving in the United States in XXXX 2017.

[20] Fearing deportation from the United States, the claimants travelled to Canada on XXXX XXXX XXXX 2017.

[21] On XXXX XXXX XXXX 2017, their refugee protection claims were referred to the Refugee Protection Division (RPD).

#### **SUMMARY OF THE MINISTER'S INTERVENTION**

[22] The Minister intervened in this matter based on exclusion 1E in accordance with paragraph 170(e) of the IRPA and rule 29 of the *Refugee Protection Division Rules*.

[23] The Minister filed submissions.<sup>4</sup>

[24] The Minister submits the following:

- a. The claimant's name is on a list of Haitian citizens who have obtained permanent residence in Brazil.
- b. The documentary evidence shows that the rights and obligations of permanent residents of Brazil are substantially similar to those of Brazilian nationals, including rights in matters of health care, education and employment.
- c. There is no evidence that, once safely in Canada, the claimant took steps to maintain her status by applying for an extension with the Brazilian consular authorities.

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<sup>4</sup> Document 5 – Notice of Intervention by the Minister of Immigration, Refugees and Citizenship: Exclusion 1E; Exhibit M1.

- d. The claimant provided no evidence that her permanent resident status in Brazil was lost, automatically or otherwise, between the time of her arrival in Canada and the date of the hearing.
- e. The claimant's daughter was born in Brazil and is a Brazilian citizen. As the parent of a Brazilian child, the claimant could apply for a permanent visa as long as the child is financially dependent and under her legal guardianship, which remains the case today.

[25] The Minister is asking that the claimant be excluded from the application of the Convention under Article 1E and that her refugee protection claim be rejected.

[26] The Minister was not present at the hearing.

## ANALYSIS

### Identity

[27] The identities of the claimants were established, on a balance of probabilities, by means of a copy of their passports and a copy of the minor claimant's birth certificate submitted in support of their refugee protection claim.<sup>5</sup>

### Exclusion 1E

[28] In light of the Minister's intervention, the panel also examined whether the claimant is a person referred to in Article 1E of the Convention.

[29] In *Zeng*,<sup>6</sup> the Federal Court of Appeal provided the following criteria for establishing whether Article 1E of the Convention should apply to a particular case:

Considering all relevant factors to the date of the hearing, does the claimant have status, substantially similar to that of its nationals, in the third country? If the answer is yes, the claimant is excluded. If the answer is no, the next question is whether the claimant

<sup>5</sup> Document 1 – Information on the case referred by the Canada Border Services Agency (CBSA) and/or Immigration, Refugees and Citizenship Canada (IRCC): Claimants' passports and minor claimant's "certidão de nascimento" [birth certificate].

<sup>6</sup> *M.C.I. v. Zeng, Guanqiu* (FCA, No. A-275-09), Noël, Layden-Stevenson, Stratas, May 10, 2010, 2010 FCA 118, at paragraph 28.

previously had such status and lost it, or had access to such status and failed to acquire it. If the answer is no, the claimant is not excluded under Article 1E. If the answer is yes, the RPD must consider and balance various factors. These include, but are not limited to, the reason for the loss of status (voluntary or involuntary), whether the claimant could return to the third country, the risk the claimant would face in the home country, Canada's international obligations, and any other relevant facts.

[30] The panel analyzed each factor set out in *Zeng*.

*Permanent residence in Brazil*

[31] First, the panel notes that permanent residence in Brazil provides certain rights, including the right to work, study, access social services and the right to return.<sup>7</sup> Social rights under the Brazilian constitution include education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute. There are, however, some restrictions, such as the prohibition to perform military service, vote or access certain public functions.<sup>8</sup>

[32] The panel concludes that permanent resident status in Brazil provides rights that are substantially similar to those of Brazilian citizens.

*Status of the claimant in Brazil*

[33] The panel notes that in her IMM 0008 form, at question 12 (Previous countries of residence), the claimant writes [translation] "Worker" in Brazil between XXXX XXXX XXXX 2011, and XXXX XXXX XXXX 2016.<sup>9</sup> In an amendment to her BOC Form, the claimant also states that she obtained permanent residence three months after arriving in Brazil.<sup>10</sup>

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<sup>7</sup> Document 5: Notice of Intervention by the Minister Exclusion 1E.  
National Documentation Package (NDP) on Brazil, July 30, 2021, Tab 3.4: Brazil and Haiti: Temporary visas, including for family reunification; whether foreign national parents of a child with Brazilian citizenships can obtain a temporary visa...IRB. July 27, 2021. ZZZ200658.E.

<sup>8</sup> Ibid.

<sup>9</sup> Document 1 – Information the case referred by the CBSA and/or IRCC: IMM 0008 form – Question 12.

<sup>10</sup> Document 4: Amendment to the BOC Form.

[34] The Immigration and Refugee Board of Canada's Research Directorate confirmed that the claimant's name is on the list that was consulted in 2017, although the passport number XXXX is not listed.<sup>11</sup>

[35] At the hearing, the claimant confirmed that she had held permanent resident status in Brazil. She stated that she had lost the card that confirms this status but nevertheless stated that her card had been issued about three months after arriving in Brazil (that is, around XXXX 2011) and that its validity expired in 2020. However, according to the information available in the National Documentation Package (NDP) on Brazil, foreigners with permanent status receive a Cédula de identidade de Estrangeiro (CIE) [foreigner identity card] that is valid for a period of nine years, which they must renew before it expires.<sup>12</sup>

[36] Based on the evidence on the record and the claimant's credible testimony regarding her status in Brazil, there is every reason to believe, on a balance of probabilities, that the claimant held permanent resident status in Brazil while staying there.

Claimant's status on the date of the hearing

[37] The claimant left Brazil in XXXX 2016.

[38] The documentary evidence indicates that foreigners "who are outside the country for more than two years lose their permanent resident status."<sup>13</sup>

[39] Since the claimant has been absent from Brazil for a period of more than two years, there is every reason to believe, on a balance of probabilities, that the claimant no longer held permanent resident status in Brazil on the date of the hearing.

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<sup>11</sup> Document 6: Memorandum, Research Directorate, IRB.

<sup>12</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 3.6: Brazil and Haiti: Foreigner identity cards (Cédula de Identidade de Estrangeiro, CIE) issued to Haitian residents, including the purpose of the information indicated on them (2010-September 2017). IRB. October 17, 2017. ZZZ106003.FE.

Document 3.2: NDP on Brazil, April 23, 2021, Tab 2.9: Summary of other stakeholders' submissions on Brazil. United Nations. Human Rights Council. February 24, 2017. A/HRC/WG.6/27/BRA/3.

Tab 5.6: Even with renewed laws, Brazil struggles to protect women amid rising femicide. Global Voices. March 19, 2020.

Voluntary or involuntary loss of permanent resident status in Brazil

[40] The panel focused on the problems encountered by the claimant in Brazil and the reasons for her departure from that country.

[41] She testified that she had worked sporadically. In 2014, she was the victim of an attempted knife attack and lost her employment. She added that she fears for her safety due to the rampant criminality in Brazil. She also discussed the difficulties she encountered while seeking employment due to racism against Haitian nationals and the lack of employment. Her former spouse left the family home when her child was one year and four months old (that is, around XXXX2016), which left her in a precarious situation. She decided to return to Haiti.

[42] The panel asked why she returned to Brazil in XXXX 2016, given the context she had just described. The claimant stated that she did not intend to stay in Brazil when she returned there: it was a stopover on her way to the United States.

[43] In its analysis of the voluntary or involuntary loss of permanent resident status, the panel considered the claimant's profile as a migrant of African descent, a single woman and mother of a young child with no family support in her Brazilian neighbourhood. According to the information available in the NDP on Brazil, Afro-Brazilian women face cross-discrimination based on both gender and ethnicity. For example, women of African descent are more likely to be victims of violence and are overrepresented in low-skilled jobs.<sup>14</sup> Furthermore, the documentary evidence reports that domestic and sexual violence, as well as femicide, are widespread in Brazil, particularly among women of African descent.<sup>15</sup> The information contained in tabs 3.2 and 5.6 of the NDP on Brazil highlights the lack of policies to address gender inequality, the lack of specialized tribunals that take charge of women who are victimized by violence, and a lack of resources allocated to fight violence against women.<sup>16</sup> Last, the panel considered the information

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<sup>14</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 2.8: *Compilation on Brazil*. United Nations. Human Rights Council. February 24, 2017. A/HRC/WG.6/27/BRA/2

<sup>15</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 5.6: *Even with renewed laws, Brazil struggles to protect women amid rising femicide*. Global Voices, March 19, 2020.  
Tab 5.1: Domestic violence, including legislation; recourse and support services available to victims (2014-January 2017). IRB. January 20, 2017. BRA105714.E.

<sup>16</sup> Document 3.2: NDP on Brazil, April 23, 2021, Tab 2.9: *Summary of other stakeholders' submissions on Brazil*. United Nations. Human Rights Council. February 24, 2017. A/HRC/WG.6/27/BRA/3.  
Tab 5.6: *Even with renewed laws, Brazil struggles to protect women amid rising femicide*. Global Voices. March 19, 2020.



that migrant women are vulnerable to human trafficking for sexual exploitation by gangs and organized crime.<sup>17</sup>

[44] The panel also concluded that the claimant's explanations were reasonable regarding why she returned to Brazil for approximately three months (XXXXto XXXX 2016) following a stay in Haiti, as the claimant clearly indicated that this was merely a stopover on her journey to the United States.

[45] In view of the objective evidence regarding the situation of women of African descent in Brazil, including migrant women, and considering the claimant's personal circumstances as a single woman and mother of a young child with no support in Brazil, the panel therefore concluded that the situation encountered by the claimant in Brazil constitutes an involuntary loss of status.

[46] This factor weighs against the claimant's exclusion.

Possibility of returning to Brazil

[47] The claimant left Brazil in XXXX 2016, and her residency card expired in 2020.

[48] When asked if she had inquired about returning to Brazil, she stated that she had not done so, as she did not want to return to a country where she did not feel safe.

[49] The panel notes that the minor claimant was born in Brazil and holds Brazilian nationality, as confirmed by the claimant at the hearing.

[50] According to the information contained in Tab 3.4 of the NDP on Brazil, the foreign parents of a Brazilian child can obtain a temporary family reunification visa.<sup>18</sup> According to one of the sources that was contacted for the Response to Information Request contained in Tab 3.3, "the visa in itself is temporary, even though its holder might live indefinitely in Brazil as long as they follow some procedures when they arrive in Brazil in order to [be] granted permanent resident status."<sup>19</sup> The objective evidence describes the steps required to obtain a temporary family

<sup>17</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 7.3: *Brazil: Tier 2. Trafficking in Persons Report 2021*. United States. Department of State. July 1, 2021.

<sup>18</sup> Document 3.2 – NDP on Brazil, July 30, 2021, Tab 3.4: Brazil and Haiti: Temporary visas, including for family reunification; whether foreign national parents of a child with Brazilian citizenships can obtain a temporary visa...IRB. July 27, 2021. ZZZ200658.E.

<sup>19</sup> Ibid.

reunification visa for the parents of a Brazilian child, which involve filling out forms and providing various documents.<sup>20</sup> According to the available information, the process that allows claimants to return to Brazil is not discretionary, complex or burdensome.<sup>21</sup>

[51] The objective evidence therefore shows that, due to her relationship with a Brazilian citizen, the claimant could apply for a temporary family reunification visa to return to Brazil before applying for permanent residency, once again based on relationship.

[52] This factor weighs in favour of the claimant's exclusion.

*Risk/fear in Brazil (country of residence)*

[53] The claimant made no allegations on this topic other than those set out in paragraphs 41 to 46, namely, her fear of being a victim of crime and her difficulties in accessing employment by reason of the racism against Haitians.

[54] In its analysis of the claimant's risks and fears in Brazil, the panel also considered her profile as a migrant of African descent, along with her personal circumstances as a single woman with a young child and no support network in Brazil. The panel notes that the claimant stated that she has a brother who resides in Brazil. However, she also stated that she did not know where he resided or the nature of his work. In the panel's view, it therefore has no information leading to the conclusion that the claimant's brother could provide her with support in Brazil if she returned to that country.

[55] In view of the objective evidence regarding the situation of women of African descent in Brazil, including migrant women, as set out in paragraphs 41 to 46, and given the claimant's personal circumstances as a single woman and mother of a young child with no support network in Brazil, the panel is of the opinion that there is a serious possibility of persecution should she return to Brazil by reason of her membership in the particular social group of migrant women of African descent who live alone and are mothers.

[56] This factor weighs against the claimant's exclusion.

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<sup>20</sup> Document 3.2 – NDP on Brazil, July 30, 2021, Tab 3.4: Brazil and Haiti: Temporary visas, including for family reunification; whether foreign national parents of a child with Brazilian citizenships can obtain a temporary visa... IRB. July 27, 2021. ZZZ200658.E.

<sup>21</sup> *Ahmad*, 2021, FC 2014.

Risk in Haiti (country of origin)

[57] In its analysis of the risks the claimant would face in her country of origin, the panel focused on analyzing the risk of violence related to the claimant's gender, considering the situation of women in Haiti and considering the claimant's personal circumstances.

[58] According to the objective evidence, violence against women and girls, including sexual violence, is widespread in Haiti and continues to increase. Sources report that sexual violence is used as a weapon of war by armed gangs in the slums of Port-au-Prince and in poor metropolitan areas.<sup>22</sup> Various sources report a significant and growing crime problem in Haiti due to the activities of criminal groups that control several regions of the country.<sup>23</sup>

[59] The panel also considered the claimant's family situation and marital status. The claimant's mother and sister, along with one other child, reside in the Dominican Republic and do not work. The claimant is currently supporting them. Her brother lives in Brazil. The claimant has no contact with any of her other family members in Haiti. Therefore, if she returned to Haiti, the claimant would be alone because she has no spouse and no family support network there. In the panel's view, this would place her in a situation of increased vulnerability to the problems of violence against women mentioned above.

[60] When asked about the possibility of accessing housing, she stated that she would not be able to rely on more distant family members because she left the country in 2010 and has not kept in touch with these people. According to the documentary evidence, women in Haiti face greater barriers in housing access due to "systemic gender discrimination against their owning property."<sup>24</sup>

<sup>22</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 5.3: Violence, including sexual violence, against women; state protection and support services (2017-June 2019). IRB. June 14, 2019. HTI106291.FE.

Tab 5.12: *Haïti : Les violences faites aux femmes*. [Haiti: violence against women.] France. Office français de protection des réfugiés et apatrides [French office for refugees and stateless persons]. January 9, 2017.

<sup>23</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 7.1: The security situation, including crime and kidnappings; measures taken by the government and other stakeholders to fight crime (2014-June 2018). IRB. June 19, 2018. HTI106116.FE.

Tab 5.3: Violence, including sexual violence, against women; state protection and support services (2017-June 2019). IRB. June 14, 2019. HTI106291.FE.

<sup>24</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 5.4: The situation of women who live alone, including those who are not in precarious situations; whether they can access employment and housing; support services available to them (2017-June 2020). IRB. August 17, 2020. HTI200278.E.

In light of the foregoing, the panel is of the opinion that the claimant would face significant difficulties in accessing housing if she returned to Haiti.

[61] The panel also considered the claimant's level of education and work experience. Her high school education is incomplete and she holds work experience in the field of commerce and catering. The documentary evidence reveals that, in the Haitian employment sector, single women and heads of households are particularly affected by gender inequalities and discrimination against women, along with a "feminization of poverty."<sup>25</sup> In addition to this, the objective evidence states that, in Haiti, women are disadvantaged in the labour market and have "unequal access to resources, including financing and skills development, which makes it "[translation] 'difficult for women to take entrepreneurial initiatives'."<sup>26</sup> Last, the panel notes that the claimant no longer has a family support network in Haiti that could facilitate her search for employment.

[62] For all the reasons mentioned above, the panel concludes that, should she return to Haiti, the claimant would face a serious possibility of persecution by reason of her membership in the particular social group of single women in Haiti.

#### *State protection*

[63] On the topic of state protection, it should be assumed that the state is capable of protecting its citizens.<sup>27</sup>

[64] In this case, the panel concludes that the claimant has rebutted the presumption of state protection with clear and convincing evidence that the Haitian authorities would not be able to provide her with adequate protection.

[65] Haiti does not have a law that addresses violence against women.<sup>28</sup> Although the information contained in the NDP on Haiti reports that women can file a complaint with the police, they face a number of obstacles, including a lack of resources and training to make themselves

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<sup>25</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 5.16: Situation and treatment of survivors of sexual violence and domestic violence, including stigmatization and revictimization (2018-August 2020). IRB. August 18, 2020. HTI200228.E.

<sup>26</sup> Document 3.1: NDP, Haiti, July 30, 2021, Tab 5.4: The situation of women who live alone, including those who are not in precarious situations; whether they can access employment and housing; support services available to them (2017-June 2020). IRB. August 17, 2020. HTI200278.E.

<sup>27</sup> *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, 20 Imm LR (2d) 85; reversing [1990], 2 FC 667, 67 DLR (4th) 1, 10 Imm LR (2d) 189 (CA).

understood by the police; a lack of police sensitivity regarding the victim's situation; procedural complexity when referring cases to the police or the justice system; the absence of legal aid for poor women; and the stigmatization of rape victims within society and the victims' loss of confidence in this system.<sup>29</sup>

[66] The documentary evidence notes that the psychological, legal or medical support services available to the public "are inadequate" and that private organizations, while better, lack the funds to offer "quality service."<sup>30</sup>

[67] Haitian police protection is also inadequate due to a lack of resources within the police force, low salaries for police officers, corruption within the police force and links to criminal groups.<sup>31</sup> Last, according to the information contained in the NDP on Haiti, the judicial system's inefficiency and corruption encourages acts of revenge because "the probability of prosecution is not high enough to provide a substantial deterrent to organized crime revenge."<sup>32</sup>

[68] Based on the objective evidence, the panel therefore concludes that the claimant has rebutted the presumption of state protection with clear and convincing evidence.

### *Internal flight alternative*

[69] While analyzing the claimant's internal flight alternative (IFA) in Haiti, the panel considered the context of women and girls in Haiti, the crime that currently prevails in that country,

<sup>29</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 5.16: Situation and treatment of survivors of sexual violence and domestic violence, including stigmatization and revictimization (2018-August 2020). IRB. August 18, 2020. HTI200228.E.

Tab 5.12: Haïti : *Les violences faites aux femmes*. France. Office français de protection des réfugiés et apatrides. January 9, 2017.

<sup>30</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 5.3: Violence, including sexual violence, against women; state protection and support services (2017-June 2019). IRB. June 14, 2019. HTI106291.FE.

<sup>31</sup> Document 3.1: NDP on Haiti, July 30, 2021, Tab 2.5: *Haïti : Rapport de mission en République d'Haïti du 26 mars au 7 avril 2017* [Haiti: Republic of Haiti mission report from March 26 to April 7, 2017]. France. Office français de protection des réfugiés et apatrides. September 15, 2017.

Tab 7.6: Acts of revenge committed by gangs or by other organized crime entities; ability of gangs or other organized crime entities to track down their targets, including those who return to Haiti after a long absence (2015-June 2018). IRB. July 3, 2018. HTI106117.FE.

<sup>32</sup> Document 3.2: NDP on Haiti, July 30, 2021, Tab 7.6: Acts of revenge committed by gangs or by other organized crime entities; ability of gangs or other organized crime entities to track down their targets, including those who return to Haiti after a long absence (2015-June 2018). IRB. July 3, 2018. HTI106117.FE.

and the claimant's personal circumstances as a single woman with no family support network. Last, the panel considered the country's situation since the assassination of President Jovenel Moïse and the difficulty in circulating that resulted from the state of emergency that was then declared.

[70] The panel is of the opinion that the violence affecting women and girls in Haiti is the same throughout the territory. As previously stated, the objective evidence points to an increase in crime due to the activities of armed gangs, some of which control several regions of the country and use sexual violence as a weapon of war.<sup>33</sup>

[71] If the claimant were to relocate to another region in Haiti and if she were able to travel, she would receive no family support. As mentioned above, women in Haiti face many difficulties in accessing employment and entrepreneurship, but also in accessing housing and property.

[72] For all of these reasons, the panel concludes that the claimant faces a serious possibility of persecution throughout the country and that it is not objectively reasonable, considering her personal circumstances, to expect her to move to another location in Haiti.

[73] The panel therefore concludes that the claimant has no viable IFA in Haiti.

#### *Conclusion regarding the risk in Haiti*

[74] For all of the reasons stated above, the panel concludes that the claimant has discharged her burden of establishing a serious possibility of persecution if she returned to Haiti.

[75] This factor weighs against the claimant's exclusion.

#### *Canada's international obligations*

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<sup>33</sup> Document 3.2: NDP on Haiti, 30 July 2021, Tab 7.17: Security situation and criminal groups, including the Group of 9 and kidnappings; state protection (2019–July 2021). IRB. July 20, 2021. HTI200655.FE.

[76] Having concluded that the claimant would be at risk if she returned to Brazil and Haiti, the panel is of the opinion that the application of the exclusion under Article 1E of the Convention would violate Canada's international obligations in terms of refugee protection.

[77] This factor also weighs against the claimant's exclusion.

Other relevant facts

[78] The panel analyzed all other relevant facts contained in *Zeng* and found nothing that would interfere with this decision.

**Conclusion regarding exclusion 1E for the claimant**

[79] The following is a summary:

- a. The panel concludes that the claimant had lost her permanent resident status in Brazil on the date of the hearing, a factor that weighs against the claimant's exclusion.
- b. The panel concludes that this loss of status was involuntary by reason of the claimant's profile and personal circumstances in Brazil (a single migrant woman of African descent and mother of a young child), which were analyzed in light of the objective evidence regarding the situation of women of African descent and migrants in Brazil. This factor also weighs against the claimant's exclusion.
- c. The panel also concludes that she faces risks if she returns to Haiti by reason of her membership in the particular social group of single women in Haiti. This criterion touches upon a fundamental aspect of the refugee protection claim, that is, her fear of returning to Haiti. The panel grants this significant weight since she cannot return to her country of origin.
- d. Last, the panel concludes that, considering the claimant's profile and personal circumstances in Brazil as a single migrant woman of African descent with a young child and no support network, and considering the objective evidence regarding migrant women of African descent in Brazil, the loss of her permanent resident status was involuntary, which is a factor that weighs against her exclusion.

- e. For the same reasons relating to her profile and personal circumstances, the panel considers that the claimant would be at risk if she returned to Brazil, a factor that also weighs against her exclusion.
- f. While the claimant could return to Brazil using her relationship to a Brazilian citizen (the minor claimant), the panel is of the opinion that the application of exclusion 1E would violate Canada's international obligations due to the risks she faces in Haiti and Brazil.

[80] For all the reasons stated above, the panel concludes that the claimant is not a person referred to in Article 1E of the Convention.

### **Claimant's fears in relation to her country of nationality, Haiti**

[81] The panel considered the claimant's fears in relation to her country of nationality in its analysis of the *Zeng* factors in paragraphs 58 to 76.

[82] The panel concluded that, should the claimant return to Haiti, she would face a serious possibility of persecution by reason of her membership in the particular social group of single women in Haiti.

### **The minor claimant with Brazilian nationality**

[83] The claimant stated that she fears for her daughter's life by reason of the rampant insecurity in Brazil. She added that her young age (XXXX and a half years old) makes her all the more vulnerable to the crime that prevails in that country.

[84] When analyzing the minor claimant's risk, the panel considered the minor claimant's personal circumstances, which are similar to those of her mother (single girl, African descent, Haitian parents), as well as the objective evidence. This evidence shows that both women and girls are victims of intersectional discrimination based on both gender and ethnicity, as well as domestic and sexual violence.<sup>34</sup> While the panel is aware that the claimant is of Brazilian nationality, it

<sup>34</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 2.8: *Compilation on Brazil*. United Nations. Human Rights Council. February 24, 2017. A/HRC/WG.6/27/BRA/2.  
Tab 2.2: Brazil. Amnesty International Report 2020/21: *The State of the World's Human Rights*. Amnesty International. April 7, 2021. POL 10/3202/2021.



nonetheless considers that she has Haitian parents and is therefore likely to be considered a Haitian migrant.

[85] The panel also examined the objective evidence regarding unaccompanied minors of Brazilian nationality and with Haitian parents in Brazil. The information contained in Tab 3.4 states that unaccompanied minors are subject “to abuse and exploitation from all sorts of agents along their [migratory] journey.” It also states that young children or adolescents of African descent disproportionately face violence involving drug traffickers.<sup>35</sup>

[86] The panel is also of the opinion that the minor claimant would not have access to adequate state protection if she had to seek such protection in her country. Indeed, while there are state protection systems and services for unaccompanied children in Brazil, the documentary evidence notes that “the ineffective functioning of the service network [for child protection] often hinders the protection of rights, since many services are not made available by the municipality or [are] made available in an inadequate or insufficient manner.”<sup>36</sup> For example, according to one of the sources consulted, some unaccompanied children live on the street where they are vulnerable to abuse or recruitment by criminal gangs.<sup>37</sup>

[87] In addition, the panel is of the opinion that the minor claimant does not have a viable IFA, as the objective evidence regarding the situation of unaccompanied minors in Brazil applies to all of Brazil.

[88] Therefore, in light of the documentary evidence on the situation of women and girls of African descent in Brazil; in light of the documentary evidence on the risks faced by unaccompanied minors during their migratory journey in Brazil, as well as the violence that children and adolescents of African descent disproportionately face throughout the country; and in light of the inadequacy of protection systems and services for unaccompanied children, the panel

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<sup>35</sup> Document 3.2: NDP on Brazil. July 30, 2021, Tab 3.4: Brazil and Haiti: Temporary visas, including for family reunification; whether foreign national parents of a child with Brazilian citizenships can obtain a temporary visa... IRB. July 27, 2021. ZZZ200658.E.

<sup>36</sup> Document 3.3: NDP on Brazil. July 30, 2021, Tab 3.4: Brazil and Haiti: Temporary visas, including for family reunification; whether foreign national parents of a child with Brazilian citizenships can obtain a temporary visa... IRB. July 27, 2021. ZZZ200658.E.

<sup>37</sup> Document 3.2: NDP on Brazil, July 30, 2021, Tab 2.1: *Brazil. Country Reports on Human Rights Practices for 2020*. United States. Department of State. March 30, 2021.

concludes that there is a reasonable possibility of persecution should the minor claimant return to Brazil.

## CONCLUSION

[89] Based on the above analysis, the panel determines that the claimants, **XXXX XXXX XXXX XXXX XXXX**, are refugees within the meaning of section 96 of the IRPA.

[90] The panel therefore allows their refugee protection claims.

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**Lise Pénisson**

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**22 September 2021**

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