



RPD File No. / N° de dossier de la SPR : MA8-04273
MA8-04274

Private Proceeding

Huis clos

Claimant(s)

Demandeur(e)s d'asile

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Date(s) of Hearing

Date(s) de l'audience

March 10, 2011
June 20, 2011

Place of Hearing

Lieu de l'audience

Montréal, Quebec

Date of Decision

Date de la décision

October 14, 2011

Panel

Tribunal

Renée Bourque

Claimant's Counsel

Conseil du demandeur d'asile

M^c Annick Legault

Tribunal Officer

Agent du tribunal

N/A

Designated Representative

Représentant désigné

XXXXXXXXXXXXXXXXXXXXX

Minister's Counsel

Conseil du ministre

N/A

[1] The claimant, XXXXXXXXXXXXXXXXXXXX, is a citizen of Burundi and her son, XXXXXXXXXXXXXXXXXXXX, was born in the United States. She and her son are claiming to be “Convention refugees” and “persons in need of protection” under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).

ALLEGATIONS

[2] The claimant stated that she was born to a Hutu father and a Tutsi mother. She was married traditionally to a Hutu man named XXXXXXXXXXXXXXXXXXXX. They separated in XXXX 2008. Their son, XXX, was born on XXXX, 2007, in Washington; he is an American citizen.

[3] On XXXXXXXX, 1994, she survived the massacre of her family—her mother, her two sisters and her brother XXXXXXXX. She managed to escape, but she was hit by a projectile in the right thigh. The assailants were a group of 10 young Tutsis called the “Sans Échecs” [no failures]. She reported two of the assailants, XXXXXX and XXXX. They were imprisoned but released in 2006.

[4] She went to live with a cousin in XXXXXX. She then went to study in a boarding school in XXXXXX. In 1995, ethnic divisions made her studies difficult. She then went to study in a boarding school in XXXXXX.

[5] In 1999, she moved in with her brother XXXX, the oldest in the family, who was married and had two children.

[6] In XXXXXX 2000, she was raped by two men who came into her home.

[7] She was rescued by neighbours who heard the children crying. She was hospitalized for two weeks.

[8] Afterwards, she went to live in a convent in XXXX, where she received threats.

[9] Then, from 2001 to 2005, she worked as a XXXX. In XXXXXXXX 2004, the families completed the marriage rituals long-distance.

[10] She sent her cousin XXXX to obtain her passport because she was afraid of being recognized. Her husband had no permanent status in the United States at that time.

[11] She left Burundi on XXXXXXXX, 2005, and went to Washington, where her husband was waiting for her. Since she had a student visa, she started taking courses.

[12] In 2007, her husband was granted permanent residence and could sponsor her. However, he found out that the photograph on her passport was false, as it was her cousin's photograph. He was angry and started ignoring her and refused to sponsor her.

[13] She decided to leave the United States and her husband to come to Canada with her son. Her son had a false birth certificate stating that he was Burundian, because she did not want anyone to know that she had stayed so long in the United States.

[14] She arrived in Canada on XXXXX, 2008, with her son, who was then 10 months old. Because she had altered certain dates on her documents, she was detained for identity reasons.

[15] XXXXXXXXXXXXXXXXXXXX is the designated representative of her son, XXXXXXXXXXXXXXXX.

DETERMINATION

[16] Having analyzed the documentary and testimonial evidence, the panel determines that the claimants are not "Convention refugees" or "persons in need of protection."

ANALYSIS

WOMAN IDENTIFIED AS A VULNERABLE PERSON

[17] The claimant was identified as a vulnerable person.¹ The panel therefore rigorously followed the coordinator's recommendations in this file and allowed counsel to question the claimant for nearly all of the first session of the hearing. The panel was careful about the form of the questions that were asked and suggested a break when this was necessary, because she was crying.

[18] The panel was sensitive to the factors that can influence the testimony of women refugee claimants fearing gender-related persecution. In such situations, the panel must show sensitivity and understanding.

[19] With the assistance of counsel for the claimant, the panel made certain that the atmosphere in the hearing room was calm and reassuring, limited interruptions and questions that could be seen as

¹ See decision on file dated March 1, 2011, rendered by Elaine Doyle.

intimidating or aggressive and thereby facilitated the claimant's testimony.² Before making any findings of fact or assessing the credibility of the claimant's allegations, the panel carefully considered the IRB Chairperson's guideline entitled *Women Refugee Claimants Fearing Gender-Related Persecution*.

[20] The panel is also aware that, in assessing the credibility of a woman who claims to have been a victim of sexual violence, the panel must demonstrate knowledge, understanding and sensitivity to the circumstances of women in this type of situation;³ it must apply a standard of reasonableness that incorporates the experiences of women who are victims of violence;⁴ and it must attempt to understand the evidence as a whole, in context.⁵

PREAMBLE

[21] In this file, the principal claimant and her son, XXXXXXXX, arrived at the border on XXXXX, 2008, from the United States. They stated that they came from Burundi and immediately claimed refugee protection. The principal claimant had in her possession her own national identity card⁶ and a birth certificate for her son.⁷ The claimants were interviewed on April 13, 2008. The female claimant stated at her interview that she had left Burundi on XXXX, 2008, arrived in Washington on XXXXX and then travelled to New York and Plattsburgh, and then to Lacolle. Because of the weak security features on the two documents in her possession,⁸ as well as certain inconsistencies that emerged during her interview with the immigration officer,⁹ the claimants were detained until XXXX, 2008.¹⁰

[22] The panel notes that the claimant produced three versions of her story.

² Applying Guideline 4 entitled *Women Refugee Claimants Fearing Gender-Related Persecution*, issued by the Chairperson of the Immigration and Refugee Board (IRB), and taking into account the Guidelines issued by the Office of the United Nations High Commissioner for Refugees on gender-related persecution HCR/GIP/02/01, May 7, 2002, in particular the procedural measures recommended in paragraph 36.

³ *Griffith*, in paragraph 25; *Chacon Fernandez*, in paragraph 16.

⁴ *Griffith*, in paragraph 28, and *De Araujo Garcia*, in paragraph 27.

⁵ *Myle*, in paragraph 15.

⁶ Exhibits A-3, Immigration documents in a bundle, national identity card dated XXXX, 2006.

⁷ Exhibit M-2, Extract of birth certificate, No. XXXXXX, in the name of XXXXXXXXXXXXXXXXXXXX.

⁸ *Supra*, footnotes 6 and 7.

⁹ Exhibit A-4.

¹⁰ Exhibit M-5, Record of Proceedings, April 23, 2008.

[23] In her first account, given to the immigration officer¹¹ when she arrived on XXXX, 2008, she stated that she had witnessed people killing her mother, three of her sisters, her brother and his wife in XXXXXX 1994; that she had then testified about this on January 20, 2008, and stated that [translation] “intelligence people” had sent her messages telling her to keep quiet; and that on January 23, 2008, she was raped by four people. She added that she feared the intelligence police and had arrived in the United States on April 9, 2008.

[24] In her Personal Information Form,¹² signed on May 27, 2008, she states the following: she saw people kill her mother, her two sisters (XXXX and XXXX) and her brother XXXXXX. She added that two of the four assailants were imprisoned but have since been released. She has always wanted to leave her country but was only able to do so after she married XXXXXXXXXXXXXXXX in 2004. She joined him in the United States in XXXXX 2005. She allegedly used a cousin’s photograph on her passport in order to hide the fact that she was fleeing her country. She stated that she had concealed her stay in the United States out of fear that she would be refused refugee protection, and had destroyed her passport for the same reason.

[25] However, she filed an amended version of this second narrative¹³ a year later, on May 7, 2009. In this new three-page narrative, she states that she witnessed the murders of her mother, two sisters (XXXXX and XXXXX) and her brother XXXXXXXX in XXXXX 1994. She states that she reported two of the assailants, XXXX and XXXXX, but that they were released in 2006. She was allegedly raped in XXXX 2000 by two men who came to her brother’s home, where she was living; she allegedly spent two weeks in the hospital following this rape. She worked as a XXXX from 2001 to 2005 and then left her country on XXXXXXXXX, 2005, with a student visa for the United States because she was afraid for her life. Her husband was granted citizenship in 2007, and when he began the sponsorship process, he discovered that she had used a false passport, became angry at her and refused to sponsor her. Because she had been in the United States for over a year (from 2005 to 2008), she could no longer apply for asylum there. Her husband therefore gave her the money to travel to

¹¹ Exhibit A-3, Immigration document, immigration officer’s interview notes.

¹² Exhibit P-1, Personal Information Form, question 31.

¹³ Exhibit P-1 A), Amendments to the PIF dated May 7, 2009.

Canada with their son, who was then 10 months old. She acknowledged during her detention that he had been born in the United States, not in Burundi, and filed a new birth certificate to that effect.¹⁴

[26] The panel raised two issues: the claimants' identities and the identities of the agents of persecution. As the panel did not have all the identity documents in its possession, in particular the most recent reports from her detention, it heard the claimants and then adjourned the hearing in order to obtain these other documents and complete the hearing.

SON'S IDENTITY

[27] When the hearing resumed, the panel accepted the document filed in respect of the son's identity. In light of this document filed in evidence (the photocopy of his birth certificate indicating that he was born in the United States),¹⁵ the panel is satisfied as to the minor claimant's identity.

[28] The panel therefore asked the female claimant whether she was claiming refugee protection against the United States, since her son, XXXXXXXXXXXXXXXX, was born in the United States and has US nationality.

[29] The female claimant, who is the designated representative of her son, stated at the start of the hearing that she would not be submitting evidence against the United States.

[30] Under the IRPA, to be considered a Convention refugee or a person in need of protection on the basis of a risk to life, a danger of torture, or a risk of cruel and unusual treatment, claimants must establish that there is a serious possibility that they would be persecuted or face a risk to their lives, a danger of torture, or a risk of cruel and unusual treatment or punishment, should they return to their country—in this case, the United States.

[31] However, the panel has no evidence to suggest that the male claimant would be in danger if he should return to the United States. On the contrary, his mother stated that she would submit no evidence to that effect against the United States.

¹⁴ Exhibit M-3, Extract of birth certificate, issued in the District of Columbia, in the name of XXXXXXXXXXXXXXXX.

¹⁵ *Idem.*

[32] Consequently, the panel determines that the minor claimant is not a “Convention refugee” or a “person in need of protection.”

[33] Accordingly, the refugee protection claim filed by XXXXXXXXXXXXXXXX is rejected.

MOTHER’S IDENTITY

[34] With respect to the identity of the mother, the principal claimant, the panel confirms the conclusions of the Border Services Agency and those of the Minister’s representative¹⁶ that the claimant’s identity is XXXXXXXXXXXXXXXX, not XXXXXXXXXXXXXXXX.

[35] In light of the document filed in evidence, that is, the photocopy of her national identity card,¹⁷ as well as the photocopies of the documents filed by the Minister,¹⁸ the panel is satisfied as to the female claimant’s identity and believes that her true identity is, in fact, XXXXXXXXXXXXXXXX, not XXXXXXXXXXXXXXXX, as indicated in her Burundian birth certificate.¹⁹ The panel is relying on the totality of the documents filed by the Minister²⁰ and on the female claimant’s statement in her amended form.²¹

CREDIBILITY

[36] Even though the panel was conscious of the Chairperson’s guidelines on women who are victims of gender-based violence and of the fact that the claimant was identified as a vulnerable person, this does not mean that all inconsistencies, contradictions and forgetfulness must be excused. The claimant’s testimony was not credible with respect to major elements of her refugee protection claim.

[37] Because the claimant was identified as a vulnerable person, the panel focused primarily on the final version of her narrative,²² which was filed on May 7, 2009, a year after she arrived in Canada (XXXXXX, 2008); in the circumstances, the panel felt that it was preferable to give more weight to the

¹⁶ Exhibit M-6, Copies of notes for the recommendation for 30-day detention review, May 20, 2008.

¹⁷ Exhibits A-3, Immigration documents in a bundle, national identity card dated May 15, 2006.

¹⁸ Exhibit M-5, Record of Proceedings, April 23, 2008; and Exhibit M-6, Copies of notes for the recommendation for 30-day detention review, May 20, 2008.

¹⁹ Exhibit M-1, Birth certificate from Burundi, No. XXXXXXXX, issued XXXXXXXX, 2002.

²⁰ See list of exhibits M-1 to M-6.

²¹ Exhibit P-1 A), Amendments to the PIF dated May 7, 2009.

²² Exhibit P-1 A), Amendments to the PIF dated May 7, 2009.

most recent version of her story. Despite this, and even though her hearing was held on March 10, 2011, three years after she arrived in Canada, the claimant's testimony at the hearing contained major contradictions with respect to her most recent narrative. As a result, she was not credible.

[38] The panel questioned the claimant about the people she fears, and she stated that they are the people who murdered her family and against whom she testified, as well as the people who raped her. The panel was astonished that the claimant did not mention the intelligence agents, since, as she mentioned in her testimony and in her narrative,²³ it was in particular to avoid being recognized that she had asked to use her cousin's photograph on her passport. She further states in the narrative that the panel retained²⁴ that she was living in hiding at that time. The panel asked her whether she fears the intelligence people, since she did not mention them in her testimony that day, and she stated that she does not fear them.

[39] This admission during her testimony contradicts the most recent version of her narrative²⁵ and undermines her credibility concerning why she used a different photograph (her cousin's) on her passport, a document she states that she destroyed. The panel notes that the claimant, who stated that she had destroyed her passport because it was false²⁶ and that she had obtained the false one in order to avoid being recognized,²⁷ is thus corroborating the Immigration Division's hypothesis that she must have entered the United States using her real passport and that this is why he refused to hand it over;²⁸ indeed, the same exhibit filed by the Minister indicates that, given that she obtained an initial US student visa and that she provided her student card, she would have obtained her passport and her visa through the normal channels. Following the panel's questions on this subject, her counsel stated that this was merely speculation on the immigration officer's part, but the panel is of the opinion that this hypothesis is correct, as she stated today that she does not fear the intelligence police and she therefore had no reason to try to alter her passport. Moreover, the Immigration Division's questions to her husband and his refusals imply that this passport was never destroyed.

²³ *Idem*, lines 66–67.

²⁴ *Idem*, line 67.

²⁵ *Supra*, footnote 22.

²⁶ *Idem*, line 81.

²⁷ *Idem*, line 68.

²⁸ Exhibits M-6, Recommendation for 30-day detention review.

[40] This contradiction also undermines her credibility with respect to her alleged fear, that is, the fear of the intelligence agents in Burundi.

[41] Consequently, the panel does not believe that the claimant fled her country because she feared the intelligence people, as she stated in a questionnaire,²⁹ upon her arrival and as she implied in her amended narrative.

[42] Next, the panel questioned the claimant about the reports she allegedly made regarding the murders of her family members, which she allegedly witnessed in 1994. To begin, she was asked to describe the event. The claimant stated that on that day, she and her cousin were alone in the kitchen. The kitchen window looked into the living room, and through this window, she saw one of the murderers kill her sister. The panel asked her whether her cousin witnessed this as well, and she answered no, that he heard it but did not see it. At almost the same moment, she apparently screamed and the killer saw her through the window between the kitchen and the living room. He allegedly came after her; he came into the kitchen, and her cousin grabbed her by the hand and they fled. The panel asked her whether her cousin saw this man, and this time she answered yes.

[43] The panel notes that she contradicted herself regarding the fact that she was the only witness to this murder; since her cousin was in the kitchen and saw one of the killers, he knew about the event, which astonishes the panel and undermines the claimant's credibility regarding how many people witnessed these murders.

[44] When she was asked whether this cousin had been threatened, she answered that yes, he had received telephone calls asking him where she was living. The panel notes that this cousin was a vehicle for the threats made against the claimant, but was not threatened himself. Later, the panel asked why her cousin, who was also there when the event happened, was not threatened himself. The claimant explained that it was because these criminals were only looking for the members of her family, and also that they only wanted to kill people of mixed background (Tutsi and Hutu) and, since her cousin was only Tutsi, he was not threatened.

²⁹ Exhibit A-2, Immigration documents in a bundle, IMM 5474, question 3 d).

[45] The panel does not accept these explanations; even if the claimant had learned that it was her own family members who were being sought, it is reasonable to believe that these criminals, who went through the claimant's cousin in order to threaten her, would also want to get rid of the cousin, who also witnessed the event. However, this does not seem to be the case, since the killers allegedly called the cousin, but each time threatened only the claimant. Moreover, it is not plausible that the killers would know her cousin's specific background.

[46] This implausibility undermines the claimant's credibility regarding the threats made against her.

[47] When she was asked whether she herself was threatened, she answered yes, by members of one of the killers' families. She allegedly recognized the man's voice—XXXX's voice; he threatened her on her home telephone and sometimes on her cellphone, because he had heard that she had reported them. He made these threats against her before he was put in prison, that is, between XXXXXXXX 1994 and XXXXXXXX 1995.

[48] The panel also notes that she stated earlier in the hearing that she had been threatened by the killers' family members and later during the hearing that it was XXXX himself, one of the two killers, who had threatened her; the panel asked her the reason for this change. She replied that, in fact, she had always stated that it was the family who had threatened her, but in referring to XXXX, she was thinking about the call from him in 2008.

[49] The panel does not accept this explanation regarding the identities of the people who made these threats; the panel asked her clearly whether she had received any direct threats, and she clearly answered yes, from his family members, which excludes the killer.

[50] The panel does not believe that the claimant received these threats, as she contradicted herself on a number of points in relation to this event—the number of people who witnessed the murders (she and her cousin), where she later received the threats (her house or her cousin's house), and who made the threats (the family of one of the killers, or one of the killers as well). Moreover, at least two people were apparently there at the time of the event—the claimant and her cousin; however, her cousin, who lives in Burundi and allegedly received numerous telephone calls threatening the claimant (approximately eight calls, according to the claimant), experienced no problems with the killers.

[51] These contradictions and this implausibility undermine the claimant's credibility with respect to the threats received, and the panel does not believe that this can be attributed to the medication she is taking, as she appeared alert during the hearing and answered the questions spontaneously. Given that she was identified as a vulnerable person, the panel did not attempt to confront her with the other versions of her story, in order to avoid upsetting her.

[52] The panel asked her why two of the documents submitted³⁰ make no mention of her mother's murder. The first is a letter from a female friend, which refers to the murders of her family members as [translation] "the massacre of her brothers and sisters" but does not mention their mother; in the second, a man named XXXXX explains that he cannot obtain the death certificates [translation] "for her brothers and sisters." In both cases, the claimant was confronted with the omission of her mother's murder, which is not mentioned in either document, and she explained that in her culture, the name of a person who has died cannot be written down.

[53] The panel does not accept this cultural explanation. Even if this cultural characteristic turned out to be valid, it would have been easy to write [translation] "mother" without writing her name.

[54] The panel does not believe that the claimant's mother was killed in these murders, as her narrative states,³¹ because, on two occasions, people other than the claimant failed to mention it; in addition, because these documents come from people other than the claimant, these omissions cannot be attributed to the claimant's psychological state.

[55] The panel reviewed the letter from XXXXXXXXXXXX³² and asked the claimant why it had to be an immediate family member who requested the death certificates for her brothers and sisters, as was explained at the hearing. She replied that she did not know. When she was asked why she had not asked her aunts or uncles in the country to obtain them, she stated that it was because her uncle lives in the inner part of the country. The panel asked whether she could have made the request to the Burundian embassy employees³³ who met her when she arrived in Washington, in the United States,

³⁰ Exhibits P-6, Letter from XXXXXXXXXXXX dated August 3, 2010, and Exhibit P-7, Letter from XXXXXXXXXXXX dated October 4, 2010.

³¹ Exhibit P-1 A), Amendments to the PIF dated May 7, 2009, line 10.

³² Exhibit P-7, Letter from XXXXXXXXXXXX dated October 4, 2010.

³³ Exhibit M-6, Recommendation for 30-day detention review.

and she stated that this was not the case. The panel asked her what she meant, because that is what it says in the Minister's notes.³⁴ She replied that she had given whatever answers had come to mind. The panel is astonished by this explanation, as she is the one who made this declaration when she arrived in Canada; the panel understands that she would have been stressed at that time, but does not understand why she would have made such a statement—that Burundian embassy employees had come to meet her—if it were not true, as she had nothing to gain in this respect.

[56] The panel notes that the claimant did not make any other attempts to obtain these death certificates for her brothers and sisters; yet, these death certificates are crucial evidence in her claim for refugee protection, and the claimant has been in Canada for three years, since XXXX 2008. The panel is of the opinion that the claimant would have had enough time and been able to make this request; indeed, if she could not do so through family members or through the employees at the Burundian embassy, she could have done so through the intelligence employees, since she stated that she has no fear of them. For this reason, the panel does not believe that these murders (of her mother, her sisters and her brother) occurred, which undermines the claimant's credibility regarding the very foundation of her narrative in her claim for refugee protection: that she reported one of the people responsible for the murders of her family members in XXXXXX 1994.

[57] Consequently, the panel is of the opinion that if these murders did not occur, she also did not file a report and cannot have received threats from killers who were in prison until 2006, one of whom (XXXX) allegedly tried to find her in 2008, two years after he was released.

[58] Given that the claimant is not credible with respect to her fear of the intelligence agents, or the threats from people she allegedly reported, or the murders of her family members, since these murders did not take place, the panel asked her about her fear of the people who allegedly raped her in 2000.

[59] She was asked to describe the circumstances of this rape. She stated that in 2000, she had moved in with her brother to take care of his children, since his wife (her sister-in-law) was in the hospital. Two people came asking for her brother, then for his wife; they did not ask for them by name or say why they wanted to see them, and then they raped her.

³⁴ *Idem.*

[60] She was asked whether there was any connection between her alleged report against the two killers in 1994 (which the panel does not believe) and the alleged rape in 2000. She answered yes, because even though she did not know them, they were armed and came toward her. She stated that they did not say her brother's names or her sister-in-law's names; they asked the whereabouts of the father of the child she was holding, then of the child's mother. They also did not say the claimant's name, but apparently said, [translation] "Oh, it's you."

[61] The panel is astonished that these people who came to see her brother would attack her and decide to rape her, since it appears that they were not looking for her, but for her brother. However, having noted no major contradictions in this testimony, the panel gives her the benefit of the doubt regarding this rape.

[62] Consequently, the panel does not believe that the claimant fled her country because she feared the intelligence people and that she therefore used a false passport; it does not believe that members of her family were murdered and that she reported some of the people responsible; it does not believe that she received threats; and, finally, it does not believe that, if she was raped in 2000, the rape occurred in the circumstances alleged, i.e. that there was a connection to the killers she allegedly reported.

PERSECUTION

[63] It is unfortunate that the claimant was subjected to harassment as a person of mixed origin (Hutu and Tutsi) while at boarding school, at the lycée or during her activities with the church.

[64] However, the treatment the claimant fears, in the context described above, is not sufficiently serious to conclude that she has a reasonable fear of persecution; moreover, the documentary evidence states that people of mixed origin are generally associated with their father's ethnic group,³⁵ in the claimant's case, Hutu.

According to the Professor of criminal law at the University of Burundi, a person born of a mixed couple is generally treated as a member of his or her father's ethnic group (ibid.).

³⁵ Exhibit A-1, National Documentation Package on Burundi, April 13, 2011, Tab 13.3, February 26, 2008. The ethnicity of a person born of a Tutsi mother and a Hutu father or vice versa; the treatment of people born of mixed couples by members of these two ethnic groups; state protection available.

[65] Further, regardless of a person's actual ethnic origin, physical appearance is often the criterion that is used to determine ethnic background.³⁶

A researcher, who is also executive director of a non-governmental organization (NGO), pointed out that people of mixed ethnic origin can, nevertheless, be associated with either of the ethnic groups based on arbitrary criteria such as physical appearance (Researcher 10 Feb. 2008). The same Researcher stated that “[p]eople of mixed origin may be at particular risk of persecution if they do not align themselves (or are not considered by perpetrators to be aligned ... to the correct group” (ibid.).

[66] The panel notes that, regardless of the ethnic origins of the claimant's parents, she may have been mistreated in the past and not accepted by either group.³⁷

[67] However, the panel notes that, although the claimant may have been harassed and discriminated against in the past because of her background, and may have suffered humiliating treatment and fear the same should she return to Burundi, the panel does not believe that she would be subjected to the same treatment today.

FEAR UNDER SECTION 96, PARTICULAR SOCIAL GROUP OF WOMEN

[68] The panel sought to determine whether the claimant would be at risk, should she return to Burundi, as a member of the particular social group of women since, in her form, she wrote that she fears gender-based persecution.³⁸

[69] The case law states that, for female claimants, it is important to analyze in detail whether certain women, because of a variety of specific characteristics, may constitute a particular social group.³⁹

³⁶ *Idem.*

³⁷ Exhibit P-1 a), Amendments to the PIF, lines 27–28.

³⁸ Exhibit P-1, Personal Information Form, question 28.

³⁹ *Josile v. Minister of Citizenship and Immigration*, (F.C.T.D., No. IMM-3623-10), Martineau, January 17, 2011; 2011 FC 39.

[70] The documentary evidence indicates that women are often victims of rape in Burundi.⁴⁰

[Translation]

The impunity of the government forces and the armed groups responsible for the rapes and sexual violence committed during the conflict contributed to creating a climate in which these crimes continue to go unpunished. ...

From 2004 to November 2007, the Seruka centre of Médecins sans frontière (MSF) [Doctors Without Borders] Belgium recorded 5,466 cases of sexual violence, an average of 1,366 victims per year, or 27 victims per week.

These statistics are only the tip of the iceberg. Many victims never come forward, because of various constraints and, in particular, out of fear of reprisals.

[71] Thus, the situation appears to indicate a serious danger for women and young girls in Burundi.

[72] The panel therefore decided to carefully consider the circumstances in which this woman could be living if she were to return to Burundi.

[73] The claimant will soon turn 36 (XXXXXX, 1975) and has 17 years of education. She is married, although perhaps divorced. However, her husband is living in the United States, and she therefore cannot rely on his presence in Burundi.

[74] The claimant also stated that she lost all the members of her family in Burundi, as a number of them were murdered; however, the panel does not believe that these murders took place. Although it is not clear how many members of her family are currently living in Burundi, the claimant still has an uncle in her country, as she stated at the hearing. Finally, she stated in her narrative that she XXX for four years before leaving Burundi.⁴¹ She added that she was living in fear, but the panel does not believe in the alleged threats.

[75] Furthermore, the documentary evidence⁴² states that it is young girls, minors, who are particularly targeted; in December 2006, 60 percent of reported rapes were committed against minors.

⁴⁰ Exhibit A-1, National Documentation Package on Burundi, March 31, 2010, Tab 5.1, Action des chrétiens pour l'abolition de la torture (ACAT Burundi) [Christians for the abolition of torture] / World Organization Against Torture (WOAT). January 31, 2008. [Les violences contre les femmes au Burundi. Rapport alternatif soumis par l'ACAT Burundi et l'OMCT. Comité pour l'élimination de la discrimination à l'égard des femmes \(40^e session\)](#) [violence against women in Burundi: alternate report presented by ACAT Burundi and the WOAT. Committee on the Elimination of Discrimination Against Women (40th session)].

⁴¹ Exhibit P-1 A), Amendments to the PIF dated May 7, 2009, line 58.

⁴² *Supra*, footnote 40, Tab 5.2, October 2007.

[76] According to the claimant's allegations, and as mentioned above, the two men who came to her home did not say her name or the names of her brother or her sister-in-law, as though they came upon her by chance ([translation] "Oh, it's you!"). The panel therefore does not believe that she was specifically targeted.

[77] However, even if she was raped, the panel has already ruled on the murders of her family: the panel does not believe that these events occurred and does not believe that the claimant reported those responsible, since the murders did not take place. There can therefore be no connection between these murders and the rape, if this rape took place.

[78] For these reasons, the panel concludes, on a balance of probabilities, that these people did not come specifically to rape her, and that there is not a serious possibility that the claimant will be threatened or persecuted by these people in the future, should she return to Burundi.

[79] The panel recognizes that conditions in Burundi are not perfect, but the claimant was independent and worked as a XXXX in Burundi for four years before she left the country. Nothing happened to her, and those who are primarily targeted for rape are minor girls.

[80] Consequently, the panel concludes that the claimant, as a woman, would not face a serious possibility of being raped again by other people in Burundi.

CONCLUSION

[81] Having analyzed all the evidence, the panel concludes that the claimant has not established that she would face a "serious possibility" of persecution on a Convention ground, that is, as a member of the particular social group of women or by reason of her alleged political opinion, should she return to Burundi. She also failed to establish, on a balance of probabilities, that she would be personally subjected to a danger of torture, to a risk to her life, or to a risk of cruel and unusual treatment or punishment, should she return to Burundi.

[82] Further, since her son, XXXXXXXXXXXXXXXXXXXX, is a US citizen, he is not a "Convention refugee" or a "person in need of protection."

[83] Consequently, their claims for refugee protection are rejected.

Renée Bourque

Renée Bourque

October 14, 2011

Date

IRB translation

Original language: French