Federal Court  Cour fédérale

Date: 20220802

Docket: IMM-832-21

Citation: 2022 FC 1154

Ottawa, Ontario, August 2, 2022

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

MONDAY IYANGBE ERIATOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND
THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

JUDGMENT AND REASONS

[1] Mr. Monday Iyangbe Eriator (the Applicant) seeks the judicial review of a decision of the Immigration Appeal Division (IAD) which allowed the appeal of the Ministers. The Immigration Division (ID) had found Mr. Eriator not inadmissible. The Ministers appealed and a panel of the IAD allowed the appeal and issued a deportation order.

[2] The judicial review application was authorized pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act or IRPA]. The application must be granted. The impugned decision is not reasonable in that it does not bear "the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). A decision must be based on an internally coherent reasoning. As the Supreme Court noted in *Vavilov*:

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".

The decision under review suffers from a lack of internal rationality.

I. The facts

[3] The relevant facts in this case are not in dispute. The Applicant is a Nigerian national born in 1979. He crossed the border between Canada and the United States between ports of entry (through Roxham Rd) on October 23, 2017. He is neither a Canada citizen nor a permanent resident of this country. He claimed refugee protection but his claim is in abeyance as it was alleged that he is inadmissible to Canada.

[4] Mr. Eriator was made the subject of a report made pursuant to section 44(1) of the Act on July 3, 2018. The report was referred to the ID for an inadmissibility hearing. It is alleged that Mr. Eriator is inadmissible pursuant to paragraph 35(1)(a) of the Act, which reads:

Human or international rights violations	**Atteinte aux droits humains ou internationaux**
35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	**35 (1)** Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :
(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;	a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la Loi sur les crimes contre l'humanité et les crimes de guerre;

[5] The allegation relates to the uncontested fact that the Applicant was a member of the Nigerian Police Force (NPF). He joined the Force voluntarily in June 2009 and left on December 31, 2016. His employment with the NPF is presented as follows:

- Clerical officer at the Force Headquarter Annex in Obalende, Lagos, from February 2010 to April 2015, and from June 2015 to December 2015;
- Security guard for a high-ranking officer in Port Harcourt, from April 2015 to June 2015;
- Assigned election duties for two elections, including the presidential election of 2015; he was manning checkpoints;
- Assigned to the Special Anti-Robbery Squad (SARS) in Ikeja from December 5, 2016 to December 10, 2016.

[6] Very little is known about the circumstances surrounding the Applicant's departure from Nigeria and his arrival in Canada in October 2017. The only thing that is known is that he came from the United States and he crossed the border at a place other than a port of entry.

[7] The allegation that the Applicant is inadmissible by reason of committing outside of Canada offences referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* relates to his service in the NPF. As will become apparent, the allegation is based on complicity in crimes committed during his career by the NPF. Documentary evidence was submitted which reports on offences perpetrated in Nigeria. I list the various documents considered by the ID:

- Human Rights Watch, "Rest in pieces", Police Torture and Deaths in Custody in Nigeria, July 2005;
- Human Rights Watch, "Everyone's in on the Game, Corruption and Human Rights Abuses by the Nigerian Police Force", 2010;
- Open Society Institute New York, Criminal Force, Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force, 2010;
- Amnesty International, "Welcome to Hell Fire", Torture and Other Ill-treatment in Nigeria, 2014;
- Amnesty International, Nigeria: You have signed your death warrant, Torture and other Ill-treatment in the Special Anti-Robbery Squad (SARS), 2016;
- Elkanah Babalunde, Torture by the Nigerian Police Force: International Obligations, National Responses and the Way Forward, Strathmore Law Review, January 2017.

[8] The ID panel referred to a number of paragraphs taken from these publications. They are generally of a generic nature and tend to document that corruption on a significant scale is present in Nigeria. Torture is mentioned frequently. In one Amnesty International report, it is reported that visits to "police station throughout Nigeria over many years" have allowed

Amnesty International to "document hundreds of allegations of torture or other ill-treatments in police custody … Amnesty International found that torture is such a routine and systemic part of policy that many police sections in various states, including SARS and CID, use designated 'torture chamber': special interrogation rooms commonly used for torturing suspects" (Welcome to Hell Fire, p 646). The Open Society Institute New York (2010) speaks of SARS and State Criminal Investigation Divisions (SCIDs) as widely believed to be responsible for extrajudicial executions.

[9] It is the Amnesty International report of 2016 which is most specific on the activities of SARS units. I reproduce a number of paragraphs the ID panel had in its reasons:

> page 731
>
> SARS: BACKGROUND AND WORKING METHODS
>
> The Special Anti-Robbery Squad is a branch of the Nigerian police created to fight violent crimes including armed robbery and kidnapping. According to senior police officers, SARS evolved over time from a special outfit created by different state commands to address specific violent crime such as armed robbery, kidnapping, communal violence and religious violence. In each state, SARS is under the criminal investigations department of the police command. The Federal Special Anti-Robbery Squad (FSARS) has a nationwide mandate and is under the Federal Criminal Investigation Department (FCID) Abuja. Both are headed by senior police officers, usually at the rank of Chief Superintendent of Police (CSP) and are commonly called O/C SARS.
>
> … Not every police officer can work in SARS. They need to be tough to deal with the rough demands of their job …
>
> page 740
>
> THE 'ABATTOIR' DETENTION CENTRE IN ABUJA
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> The Special Anti-Robbery Squad (SARS) detention centre in the Federal Capital Territory (FCT) was previously a butcher's yard

> and is commonly known as the “abattoir”. According to the Officer-in-Charge, it is regarded by the authorities as the “pinnacle of police detention in Abuja”. Despite this claim, however, when Amnesty International visited in June 2016, some 130 people were detained in the compound, whom delegates described as looking emaciated and traumatized.
>
> page 744
>
> The apparent lack of accountability breeds and perpetuates impunity by SARS officers, creating an environment in which detainees are at risk of torture and other ill-treatment. Amnesty International believes that this is partly because many officers have bribed their way into SARS units. They may therefore feel unaccountable to the very superiors they have bribed and who, in many cases, are the ones to investigate the alleged wrongdoing.

[10] The ID division notes that there were, in 2009, 377,000 members of the NPF. I have not found in the reasons of the ID or the IAD how many SARS units there are in a country of upwards of 200 millions inhabitants (192 millions in 2017), let alone how many SARS officers there are. There was not either any evidence of the involvement of the Applicant in the police activities other than what he testified to.

II. The ID decision

[11] The Ministers never relied on some evidence that the Applicant participated in any specific crime. Rather they relied exclusively on the contribution that the Applicant made to the crimes and the criminal purpose of the organization, what constitutes alleged complicity. The crimes identified were not genocide nor war crime, but rather crimes against humanity. It is defined as follows in the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24:

crime against humanity	**crime contre l’humanité**
means murder, extermination,	Meurtre, extermination,

enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (crime contre l'humanité)	réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu. (crime against humanity)

[12] In an attempt to establish the level of contribution as required by the Supreme Court of Canada in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678 [*Ezokola*], the Minister referred to the state of policing in Nigeria: corruption, police orders allowing for the use of lethal force to apprehend suspects, the use of torture as an investigation means, SARS being described as the main perpetrator of extrajudicial killings as well as torture. More specifically with respect to Mr. Eriator, the Ministers resorted to the fact that he joined the NPF voluntarily, that he was promoted from constable to corporal in 2014 and that the Applicant knew when he joined that the NPF had committed human rights violations. The Ministers also argued about what was referred to as "several credibility concerns" with regard to the Applicant's career and his knowledge of human rights violation committed by the NPF. The

Applicant was not to be believed when he stated he had not witnessed torture and that he was not aware of human rights violations.

[13] Similarly, Mr. Eriator is not truthful when he claims that he was not armed during his posting as a security guard or when he was a member of SARS. Grasping perhaps at straws, the Ministers complained about the way the Applicant testified he was recruited in the NPF and suggest that there exists a contradiction. It is claimed that during an interview by a Canada Border Security agent, the Applicant said that he ran marathons while he testified before the ID that he was a runner, but he did not participate in marathons.

[14] Counsel for Mr. Eriator argued that some discrepancies in the Applicant's testimony are due to interpretation errors. Fundamentally, counsel submitted that the *Ezokola* analysis led to an absence of complicity: there is no significant contribution to the group's crimes. Mere association with an organization does not suffice.

[15] The Applicant's involvement with a SARS unit lasted less than one month. He was in fact sidelined by the group because he was not permanent staff: indeed he did not carry a weapon because of his low rank. He was not unaware of the Force's bad reputation, but being aware of events does not lead to complicity. The ID summarizes the submissions thus: "Counsel submits that the Minister has not presented any credible and trustworthy evidence to establish that there are reasonable grounds to believe that Mr. Eriator made a significant and knowing contribution to crimes or any criminal purpose committed by the NPF in the places where he was posted" (ID decision, para 25). In other words, the Minister failed his burden.

[16] After a careful analysis, the ID agreed with Mr. Eriator that complicity in the commission of crimes against humanity had not been established. As said explicitly, the issue is whether there are grounds to believe, in accordance with section 33 of the Act, that Mr. Eriator has committed an offence found in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*.

[17] Applying the *Ezokola* framework, the ID refers specifically to paragraphs 87, 88, 94 and 95. Thus, six factors that "serve as a guide in assessing whether an individual has voluntarily made a significant and knowing contribution to a crime or criminal purpose" (*Ezokola*, at para 91) are considered. They are:

> (i) the size and nature of the organization;
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> (ii) the part of the organization with which the refugee claimant was most directly concerned;
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> (iii) the refugee claimant's duties and activities within the organization;
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> (iv) the refugee claimant's position or rank in the organization;
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> (v) the length of time the refugee claimant was in the organization, particularly after acquiring knowledge of the group's crime or criminal purpose; and
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> (vi) the method by which the refugee claimant was recruited and the refugee claimant's opportunity to leave the organization.

[18] The ID finds that the burden of establishing that the NPF, and in particular SARS, have committed crimes against humanity during Mr. Eriator's career to which Mr. Eriator did contribute significantly has not been satisfied. It notes that he was a member of one SARS unit for a month, but without making a request for the position. The Applicant held positions at the

lower end of the organization; the ID found a lack of "credible and trustworthy evidence to believe that Mr. Eriator did anything else than clerical work, except from time to time he would investigate complaints brought before him" (ID decision, para 44).

[19] The method of recruitment and the opportunity to leave the organization factors were the subject of comments by the ID. Mr. Eriator's credibility concerning the incident that, he says, prompted him to leave SARS, and the NPF altogether, had a negative effect on his credibility. According to the Applicant, while members of the SARS unit were patrolling on December 23, 2016, they encountered armed robbers who opened fire on the patrol. Fire was returned and one armed robber was killed. Mr. Eriator claimed that he was unarmed and instructed to lie down, or run away, in case of an exchange of gunfire. He was not believed. The ID found "the incident generally implausible" (ID decision, para 50). According to the evidence, the Applicant left the NPF one week later.

[20] In spite of finding the incident implausible, it remained, in the view of the ID panel, that there was an absence of evidence that Mr. Eriator was himself involved in crimes against humanity while with SARS:

> [51] Although the tribunal has many unanswered questions about the December 2016 incident, it nonetheless concludes there is an absence of any clear evidence that Mr. Eriator was an armed SARS officer involved in any human rights violations either individually or in complicity with others during his brief posting with the SARS. The tribunal cannot engage in speculation of what could have occurred while Mr. Eriator was a member of the SARS team.
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> [My emphasis.]

[21] Finally, the ID examined if, in the end, there was a significant contribution to the crimes of the organization. The panel purported to apply *Ezokola* as articulated by this Court in *Concepcion v Canada (Citizenship and Immigration)*, 2016 FC 544:

> [17] While I agree with the Minister that there are many common elements in *Ramirez* and *Ezokola*, there are also, in my view, some significant differences. Specifically, in *Ezokola*, the Supreme Court explicitly departed from the concept of complicity by association (a notion that derives not from *Ramirez* itself, but from its progeny; See, *eg, Sivakumar v Canada (Minister of Employment & Immigration)*, [1994] 1 FC 433 at para 9). As discussed above, the test now requires proof of a significant contribution to an international crime. The Minister argues that that test was met in this case by evidence showing that Mr Concepcion made a "voluntary, significant and knowing contribution to the Philippines Military for many years when it was committing atrocities". In my view, that is not the proper test. The evidence must show, at least, that the person made a significant contribution to a crime or the organization's criminal purpose, not just a contribution to the organization.
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> [My emphasis.]

[22] The ID concluded that it did not have objective, credible and trustworthy evidence demonstrating reasonable grounds to believe that the Applicant performed duties that could be considered as a significant, voluntary and knowing contribution to the criminal purpose of the NPF, including the SARS.

III. The IAD decision and analysis

[23] The matter being the subject of the judicial review application is of course the decision of the IAD after an appeal launched by the Ministers. The IAD disagreed with the ID. The examination of the reasons for decision of the ID tend to show the significant difference with the reasons given by the IAD.

[24] I note that the appeal was heard on the basis that the contentious issue on appeal was the presence of the kind of contribution required since *Ezokola* in order to reach a conclusion of complicity. Counsel for Mr. Eriator complained bitterly that, in fact, the IAD delved into credibility issues, contrary to the agreement reached between the parties to avoid holding a new hearing before the IAD. In fact, the statement made by the IAD according to which "that is contrary to natural justice to rely solely on written testimony to reassess the respondent's credibility in an unfavourable way" (IAD decision, para 5) would be nothing more than a prophylactic against the use that the IAD made of credibility issues in its ruling. Be that as it may. Counsel for Mr. Eriator was never able to show with any precision how the credibility issues affected the decision rendered. Indeed, considerable time was spent at the hearing of this case to present the argument. Counsel's suspicion may have come from paragraph 7 of the reasons for decision:

> [7] Throughout the decision, the IAD adopted the ID's credibility findings, but sometimes gave a different perspective in the analysis. A re-analysis of these facts, in relation to the law, therefore leads to a different conclusion in the end.
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> [My emphasis.]

Later on, the IAD states that the "IAD therefore repeats the ID's credibility finding but does not attribute the same effects to them" (para 10). As with other passages from the decision under review, these sentences are obscure: it is less than clear what use was actually made of the "credibility findings" made by the ID. These concerns could however go to the quality of the decision made, its justification and its intelligibility. There are, in my estimation, even more serious problems with this decision that make it unreasonable.

[25] As already mentioned, this judicial review application is successful because the Supreme Court, in *Vavilov*, reiterated that not only the outcome of a decision must be reasonable, but also the decision making process must also be reasonable: “It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (at para 83). The starting point is of course the reasons given, which a reviewing court will examine with respectful attention, not seeking perfection but rather whether it “is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (at para 85). That is in my view what is defective in this decision.

[26] The two passages relating to the credibility of the Applicant illustrate the deficiencies in the reasons under review which exist to explain how and why decisions are made; they shield against arbitrariness. The paragraphs are elliptical; they do not explain, are vague and less than transparent. As the Supreme Court said emphatically in *Vavilov*, the reasons “are the primary mechanism by which administrative decision makers show that their decisions are reasonable — both to the affected parties and to the reviewing courts” (at para 81).

[27] Here, the IAD accuses the ID of lacking in its “overall assessment of the analysis factors regarding complicity”. The IAD states that “the panel considers that the totality of the factors demonstrate complicity” (para 10). It was a surprising statement as the analysis conducted by the ID examined clearly the relevant factors and did not appear to suffer from a lack of cogency by reason of lack of overall assessment of the factors.

[28] The IAD proceeds to assess the *Ezokola* factors. It never even alludes to the "raison d'être" of these factors. As noted before, the ID refers directly and specifically to the relevant paragraphs from *Ezokola*, where the Court states that mere association with an organization will not suffice. The individual must make a significant contribution to the crime or criminal purpose of a group. Not any contribution will do. The Court articulates the requirement in paragraphs 88 to 90:

> [88] Given that contributions of almost every nature to a group could be characterized as furthering its criminal purpose, the degree of the contribution must be carefully assessed. The requirement of a significant contribution is critical to prevent an unreasonable extension of the notion of criminal participation in international criminal law.
>
> [89] To be complicit in crimes committed by the government, the official must be aware of the government's crime or criminal purpose and aware that his or her *conduct* will assist in the furtherance of the crime or criminal purpose.
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> [90] In our view, this approach is consistent with the *mens rea* requirement under art. 30 of the *Rome Statute*. Article 30(1) explains that "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge". Article 30(2)(a) explains that a person has intent where he "means to engage in the conduct". With respect to consequences, art. 30(2)(b) requires that the individual "means to cause that consequence or is aware that it will occur in the ordinary course of events". Knowledge is defined in art. 30(3) as "awareness that a circumstance exists or a consequence will occur in the ordinary course of events".

This is the law that constrains the decision maker. The degree of contribution must be carefully assessed and the official must be aware that the "conduct will assist in the furtherance of the crime or criminal purpose". Mere association falls short of complicity.

[29] The Court was rightfully invited by counsel for the Ministers to consider the reasons of the IAD as a whole. Accordingly, we have to consider what evidence was identified by the decision maker that would be significant contribution to the crime or criminal purpose of a group. Awareness of the crimes is one thing; awareness that the conduct "will assist in the furtherance of the crime or criminal purpose" is another. Guilt by association is what is to be prevented by the application of the *Ezokola* framework. As I read the reasons, they do not go beyond the association of Mr. Eriator with the police force.

[30] The size of the organization was duly noted by the IAD, with upwards of 375,000 members strong. While the Supreme Court in *Ezokola* commented extensively on the size of an organization (at para 94), the IAD acknowledged that not every police officer is necessarily a contributor to crimes against humanity, yet the panel found that "the NPF's criminality is so widespread in the country that being a police officer in Nigeria is already an indication of a certain contribution" (para 26). Mere membership or failure to dissociate from a multifaceted organization do not found complicity. Contrary to what is implied by the IAD, guilt by association or passive acquiescence will not do. Indeed, the factor concerning the size of the organization would have required an explanation in view of paragraph 94 of *Ezokola*. None was given:

> [94] *The size and nature of the organization.* The size of an organization could help determine the likelihood that the claimant would have known of and participated in the crime or criminal purpose. A smaller organization could increase that likelihood. That likelihood could also be impacted by the nature of the organization. If the organization is multifaceted or heterogeneous, i.e. one that performs both legitimate and criminal acts, the link between the contribution and the criminal purpose will be more tenuous. In contrast, where the group is identified as one with a limited and brutal purpose, the link between the contribution and

> the criminal purpose will be easier to establish. In such circumstances, a decision maker may more readily infer that the accused had knowledge of the group's criminal purpose and that his conduct contributed to that purpose. That said, even for groups with a limited and brutal purpose, the individual's conduct and role within the organization must still be carefully assessed, on an individualized basis, to determine whether the contribution was voluntarily made and had a significant impact on the crime or criminal purpose of the group.
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> [My emphasis.]

[31] The IAD noted that while Mr. Eriator was involved in clerical work for most of his service, he nonetheless participated in investigations which add up to dozens of investigations over a period of many years. Nothing is offered as to the types of "investigation" conducted. That nevertheless leads the IAD to state that "[I]n Nigeria, investigations and torture are associated…" (para 14). That is somewhat of a startling proportion. The panel goes on to suggest that the duration of involvement in the NPF means that Mr. Eriator "was obviously exposed to the acts of other police officers and contributed to the objective of his organization" (para 15). There is no indication, let alone a demonstration of how that could constitute the kind of contribution required, as opposed to mere suspicion. He was aware and turned a blind eye. How does that constitute a contribution? There is no indication as to how the Applicant made a significant contribution to the crime or criminal purpose of a group. Instead, we are dangerously close to guilt by association, for being a member of an organization of 377,000 members. That does not stop the IAD from concluding in that same paragraph that "the panel has reasonable grounds to believe that, given his many years of [translation] 'clerical' work and investigation, the respondent contributed in his own way to the crimes against humanity perpetrated by the organization with which he was affiliated". There is no indication of what is meant by "in his own way". The *Ezokola* Court required that there be a careful assessment of the degree of

contribution. What that specific and significant contribution is, other than being a member of a police force of 377,000 members remains unknown. The contribution appears to be that of being a member of the police force in view of the lack of evidence.

[32] The same can be said about the participation of the Applicant in control checks during two elections. Such checks are used according to the documentary evidence to extort money from people who seek to pass. But there is no evidence that the Applicant took part in extortion when he helped man some checkpoints at election time. There is no evidence either that would suggest that every checkpoint is used for extortion. Furthermore, it is not explained how that kind of local extortion becomes a crime against humanity or contributes significantly to crimes against humanity or the criminal purpose of the organization. The contribution is said to take the following form: “By being present at three instances, he reinforced a system of extortion largely depicted in the documentary evidence. The respondent therefore directly helped his colleagues establish the NPF’s authority during road blocks”. In *Vavilov*, the Court finds that “the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise” (at para 104). In my view such is the case here.

[33] Then, the IAD moves in the area of the Applicant’s participation in a SARS unit for a period of less than one month. There is absolutely no evidence that is offered by the IAD with respect to the particular unit joined by the Applicant in early December 2016.

[34] The incident on December 23, 2016 which involved a gunfight was seen as implausible by the ID. But that does not imply a contribution to crimes or criminal purpose. I have not found in the IAD decision, nor for that matter in the ID decision, any indication of crimes that would have been committed by the SARS unit which the Applicant joined for less than one month. Similarly, we have no evidence about the activities of this particular unit. If there was that incident on December 23, 2016, that would likely be a case of self-defence. Without any evidence in support, the IAD writes at paragraph 20:

> [20] In this case, since the SARS unit is known for its systematic and ongoing abuse of criminals, there are reasonable grounds to believe that the respondent contributed to the crimes committed by this unit during the very busy month that he worked, even if he considered himself separate from the rest of the group. There is no evidence that the practices of the SARS changed during that month and that there were all of a sudden no crimes against humanity. The panel links the legitimacy of this conclusion, based on the documentary evidence, to the fact that it cannot rely on the respondent's statements, found to be not very credible by the ID.
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> [My emphasis.]

This constitutes an unfounded generalization not supported by anything other than suppositions. I repeat, there is nothing that is known about this particular SARS unit in this particular place in Nigeria that is revealed by the IAD to justify such generalization based on nothing other than mere suspicion. The only indication given is that there were ten members in the unit. Moreover, it is rather incoherent that the lack of credibility making an incident implausible is taken as positive evidence of the commission of crimes against humanity. In *Vavilov*, the Court speaks of the reviewing court being "satisfied that the decision maker's reasoning 'adds up'" (at para 104). With all due respect, this is not the case here.

[35] In my view, the decision is also guilty of circular reasoning as it suffers from incoherence. I reproduce in its entirety paragraph 22; it exemplifies both:

> [22] Not just anyone is assigned to this special SARS unit. The documentation specifies that it is necessary to be strong at managing demanding work requests. Some police officers must even pay to obtain such a job. Being assigned to the SARS unit, considered to be abusive in the documentation relating to crimes against humanity, is indicative of the respondent's responsibility in the NPF, even if the involvement was short term. In this case, the duration is of little importance, as the respondent did work to achieve the criminal intent of the organization. In fact, the longer the period of involvement in an organization known to commit crimes against humanity, the more reasonable it becomes to believe that the respondent played his role in the organization to ensure that the criminal intent was achieved. During this month when he was with the SARS, the respondent testified that he saw one inmate, but did not have direct contact with him at the police station. Through his presence at the police station, he helped to ensure the safety of the detention facility.
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> [My emphasis.]

While the duration is a factor in ascertaining complicity, which in the case at hand would militate in favor of finding that the Applicant's contribution has not been established, the IAD finds that the factor is irrelevant because it has already concluded about the significant contribution. Of course, the short duration could be discounted if there was strong and possibly indisputable evidence of significant contribution to crime or the criminal purpose of the organization. Such was not the case. The end of the paragraph is also incoherent in that the panel finds that Mr. Eriator saw one inmate in the month he was a member of the small unit, but the panel nevertheless concludes that the mere presence at the police station helped ensure the safety of the detention facility. There is no indication how that contributes.

[36] The last factor examined by the IAD is the position held by the Applicant in the NPF. The *Ezokola* Court found that the duties and activities within the organization are likely to be significant because they speak of the day-to-day participation in the activities of the organization. Similarly, the higher the rank the more likely the person knows of the organization's crime or criminal purpose. The rank may allow for control over those directly responsible for criminal acts.

[37] Surprisingly in my estimation, the panel tried to make hay out of the fact that Mr. Eriator made it to corporal in 2014. But the rank of corporal is the second lowest in the chain of command. In 2008, there were 42,000 corporals in the NPF for 178,000 constables. The IAD commented that being a corporal showed that the Applicant "knew how to meet the needs of the organization". There is nothing to support such gratuitous observation. The same can be said about the comment that the Applicant "had some control over his work" (para 23). Clearly in my view this is done to present a picture of someone autonomous and in control. It is difficult to see how, without any evidence, there could be in the army or a para-military outfit at least 42,000 corporals who are in control of their work or can be said to know about meeting the needs of the organization as they have attained the rank of corporal.

IV. Conclusion

[38] Having reviewed with great care the reasons offered by the IAD to allow the Ministers' appeal, the Court can only conclude that the decision is not reasonable. In order to be reasonable, a decision needs to follow an appropriate decision-making process. *Vavilov* calls for a culture of justification. The decision-making process will help demonstrate that the hallmarks of

reasonableness, i.e. justification, transparency and intelligibility, and whether the decision is justified in relation to the factual and legal constraints, are met.

[39] In my view, the decision under review lacks intelligibility. The very reason for the *Ezokola* framework is to prevent against resorting to guilt by association. The reader does not know after reading the decision how the *Ezokola* framework was applied, how the decision maker went from mere association with the NPF to being complicit in the commission of crimes against humanity. Ultimately, the decision maker must be able to show what the significant contribution is, as opposed to relying on the mere presence in the organization. Suspicions are not enough.

[40] It has not been demonstrated on this record and in this decision that there are reasonable grounds to believe that Mr. Eriator has been complicit in the commission of an offence of crime against humanity in application of the *Ezokola* framework, that is that he made a significant contribution to the crime or the criminal purpose of the NPF. *Ezokola*'s purpose is to avoid guilt by association (*Ezokola,* at para 3). It has not been shown that the evidence took the matter beyond mere association. The decision is unreasonable within the meaning of *Vavilov*.

[41] As a result, the judicial review application is granted. The parties did not suggest any question for certification pursuant to section 74 of the Act.

JUDGMENT in IMM-832-21

THIS COURT'S JUDGMENT is:

1. The judicial review application is granted. The matter of the appeal of the decision of the Immigration Division is returned to a differently constituted panel of the Immigration Appeal Division for a new determination.
2. There is no question for certification.

"Yvan Roy"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
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