Federal Court Cour fédérale

Date: 20240308

Docket: IMM-7989-22

Citation: 2024 FC 400

Vancouver, British Columbia, March 8, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

WALE FRANCIS AKINPELU

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Wale Francis Akinpelu, seeks judicial review of a decision of the Immigration and Refugee Board of Canada's Immigration Division [ID] dated August 5, 2022 [Decision], deeming him inadmissible to Canada under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The ID found that Mr. Akinpelu is inadmissible on grounds of violating human or international rights for committing an act outside

Canada that constitutes an offence under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24 [CAHWCA].

[2] Mr. Akinpelu is a citizen of Nigeria and former member of the Nigeria Police Force [NPF]. The ID found that during Mr. Akinpelu's tenure, the NPF committed crimes against humanity that were part of a widespread or systemic attack directed against the civilian population, and that Mr. Akinpelu was complicit in those crimes. As it found Mr. Akinpelu inadmissible to Canada, the ID issued a deportation order against him pursuant to paragraph 229(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]

[3] Mr. Akinpelu submits that the ID breached his right to procedural fairness by neglecting to consider his more recent testimony and the documents he submitted regarding his "meritorious" service with the NPF. Mr. Akinpelu also claims that the NPF is not a criminal organization or an organization formed for a criminal purpose, and that the ID therefore could not conclude that he was guilty of crimes against humanity pursuant to paragraph 35(1)(a) of the IRPA.

[4] For the reasons that follow, I will dismiss this application for judicial review. No violation of procedural fairness occurred in the treatment of Mr. Akinpelu's file and Mr. Akinpelu has not raised any reviewable error in the ID's Decision warranting the intervention of this Court.

II. Background

A. *The factual context*

[5] Mr. Akinpelu is a foreign national from Nigeria. He obtained a visa to travel to the United States in 2017. In March 2018, he entered Canada with his wife and daughter and made a refugee claim the following day.

[6] A Canada Border Services Agency [CBSA] Officer interviewed Mr. Akinpelu in May 2018, due to concerns regarding his inadmissibility to Canada. At the time, Mr. Akinpelu was not accompanied by counsel, but he confirmed during the interview that he had consulted with his lawyer prior to attending the interview.

[7] Mr. Akinpelu declared that he voluntarily served in the NPF from 2001 to 2017. He testified that he progressed through the ranks as a constable, corporal, and then sergeant of the NPF. He attested to being responsible for arrests, detentions, interrogations, and monitoring detainees. In his final posting, he served in the Special Anti-Robbery Squads [SARS] at Ajah, Panti, and Itire in Nigeria and he acted as commander of the Itire unit for four years before leaving the NPF in 2017.

[8] The ID found Mr. Akinpelu inadmissible to Canada and he was issued a deportation order. Mr. Akinpelu challenged that decision before this Court in *Akinpelu v Canada (Citizenship and Immigration),* 2021 FC 523, where Justice Heneghan found that the ID had erred by shifting the burden of proof onto Mr. Akinpelu to prove that he was not inadmissible under subsection 45(d) of the IRPA. The Court remitted the matter back to the ID for redetermination.

[9] A *de novo* hearing took place on April 26, 2022 before the ID. The parties agreed to rely on the disclosures made during the first hearing and Mr. Akinpelu's counsel tendered new disclosures. Both parties made new submissions to take into account new testimony from Mr. Akinpelu and new case law.

B. *The ID Decision*

[10] The ID noted, at the outset of its Decision, that inadmissibility determinations under paragraph 35(1)(a) of the IRPA are subject to the standard of proof prescribed by section 33, which requires "reasonable grounds to believe" that an individual committed an act that would render them inadmissible to Canada. The "reasonable grounds to believe" standard of proof is more than a "mere suspicion," but less than the civil standard of "balance of probabilities" (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]).

[11] The ID found that the NPF committed crimes against humanity that were part of a widespread or systematic attack directed against the civilian population, and that Mr. Akinpelu was complicit in those crimes. The ID found there were reasonable grounds to believe that, particularly as a sergeant, Mr. Akinpelu knowingly and voluntarily made a significant contribution to the crimes committed. To come to this conclusion, the ID canvassed the documentary evidence before it, which documented the NPF's widespread and systematic acts of torture, extrajudicial killings, enforced disappearances, and acts of sexual violence against civilian populations.

[12] The ID noted that in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 [*Ezokola*], the Supreme Court of Canada set out factors to help with assessing an individual's complicity in crimes against humanity. Relying on a combination of the documentary evidence and Mr. Akinpelu's testimony, the ID considered the following factors from *Ezokola*:

- The size and nature of the NPF;
- The part of the NPF in which Mr. Akinpelu was most directly involved;
- Mr. Akinpelu's duties and activities in the NPF;
- Mr. Akinpelu's position and rank;
- The length of time Mr. Akinpelu was in the NPF; and
- The method by which Mr. Akinpelu was recruited to the NPF and any opportunities to leave the NPF.

[13] The ID's finding that Mr. Akinpelu was complicit in the NPF's crimes was predicated on his employment and rank within the NPF. The ID determined that Mr. Akinpelu was in synchronization with the common design of the NPF, and that he was committed to the accomplishment of the organization's purpose, by whatever means necessary. The ID noted that Mr. Akinpelu's own basis of claim detailed his employment and progression through the NPF as follows:

- 2001 to 2007 - Surveillance Department, Badagry Division;
- 2007 to 2009 - Patrol and Guard, Onireke Division;
- 2009 to 2012 - Anti-Robbery Section, Ajah;
- 2012 to 2014 - SARS, State CID, Panti, Yaba; and
- 2014 to 2017 - Officer in Charge, Anti-Robbery Itire, Itire Police Station.

[14] The ID further relied on the evidence regarding the State Criminal Investigation Departments [SCID], which contains a SARS, and of which Mr. Akinpelu was a member. The ID noted that the NPF used "anti-robbery" as a façade or justification for extrajudicial killing and other police abuses, and that there is evidence that the SCID in Panti was responsible for torture and other human rights abuses.

[15] Moreover, the ID noted the discrepancies between, on the one hand, Mr. Akinpelu's testimony in his refugee claim and at the CBSA interview and, on the other hand, his testimony during his admissibility hearings. The ID also found that, at the April 26, 2022 hearing, Mr. Akinpelu attempted to downplay his own level of responsibility within the NPF and his proximity to the investigation of any serious crimes or interrogations. To this effect, Mr. Akinpelu testified to never having heard of or witnessed any wrongdoing by any NPF officer, which the ID found to be implausible. As a result, the ID found that Mr. Akinpelu's testimony was not credible.

[16] In its reasons, the ID observed that its role is to make determinations regarding inadmissibility to Canada, and not to determine Mr. Akinpelu's guilt or innocence on either the civil or criminal standards of proofs (*Kharisa v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 773 at para 29). Instead, in the Decision, the ID emphasized that:

> [90] … Mr. Akinpelu's knowing contribution to the crime and criminal purpose of the NPF can be factually implied from the circumstances, considering the prevalence and scale of violence and the general environment in which the acts occurred, public knowledge about the existence of the organization's criminal acts, his position in the police hierarchy, his roles, and the significant period of time he spent in the NPF.

[17] In its detailed reasons, developed over 119 paragraphs, the ID weighed each of the *Ezokola* factors and the evidence before it. In particular, the ID considered the record of the NPF's crimes "through the sieve of the length of time Mr. Akinpelu remained and progressed in the organization." The ID concluded that Mr. Akinpelu was complicit in the NPF's activities, which was sufficient to establish that there were reasonable grounds to believe that Mr. Akinpelu committed an act outside of Canada referred to in sections 4 to 7 of the CAHWCA.

C. *The relevant provisions*

[18] The relevant statutory provisions read as follows.

(1) *IRPA*

Rules of interpretation	**Interprétation**
33 The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
…	[…]
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	**a)** commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la Loi sur les crimes contre

Against Humanity and War Crimes Act;	l'humanité et les crimes de guerre;

(2) *CAHWCA*

Genocide, etc., committed outside Canada	**Génocide, crime contre l'humanité, etc., commis à l'étranger**
6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada **(a)** genocide, **(b)** a crime against humanity, or **(c)** a war crime, is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.	**6 (1)** Quiconque commet à l'étranger une des infractions ci-après, avant ou après l'entrée en vigueur du présent article, est coupable d'un acte criminel et peut être poursuivi pour cette infraction aux termes de l'article 8 : **a)** génocide; **b)** crime contre l'humanité; **c)** crime de guerre.
Conspiracy, attempt, etc.	**Punition de la tentative, de la complicité, etc.**
(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.	**(1.1)** Est coupable d'un acte criminel quiconque complote ou tente de commettre une des infractions visées au paragraphe (1), est complice après le fait à son égard ou conseille de la commettre.

D. *The standard of review*

[19] The standard of review applicable on the judicial review of ID's decisions is reasonableness (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 114 [*Mason*]; *Ghirme v Canada (Citizenship and Immigration)*, 2024 FC 104 at para 4 [*Ghirme*];

Canada (Public Safety and Emergency Preparedness) v Verbanov, 2021 FC 507 at para 48 [*Verbanov*]). This is confirmed by the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason* at para 7).

[20] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[21] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention," seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[22] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[23] With respect to issues of procedural fairness, however, the Federal Court of Appeal has repeatedly stated that these do not require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 33–56 [*CPR*]). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct." Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision-makers on matters of procedural fairness.

III. Analysis

[24] Mr. Akinpelu submits that the ID breached his right to a procedurally fair process by ignoring his direct testimony that he was not involved in any crimes against humanity, and was always respectful of civilians' rights. Mr. Akinpelu also claims that the ID ignored his evidence regarding his "meritorious service" as well as the risks and attacks faced by members of the NPF.

[25] Mr. Akinpelu further attacks the ID's reliance on reports from Amnesty International and Human Rights Watch, referring to them as "speculative," and he asserts that he cannot be found inadmissible unless he is proven guilty of specific crimes.

[26] Finally, Mr. Akinpelu maintains that the ID erroneously concluded the NPF was an organization involved in crimes against humanity, because under Article 7 of the *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 90 [*Rome Statute*], the course of conduct needs to be "pursuant to or in furtherance of a State or organizational policy," which was not the case here. He also submits that because the NPF does not have a "state policy to commit war crimes or crimes against humanity," he cannot be found to be complicit in these types of acts absent concrete proof.

[27] With respect, I am not persuaded by any of Mr. Akinpelu's arguments.

[28] As stated by the respondent, the Minister of Public Safety and Emergency Preparedness [Minister], there are important differences between the *Rome Statute* and section 35 of the IRPA. In particular, the IRPA does not presume to prosecute or find an individual guilty of a crime. The burden of proof to support a finding of inadmissibility under section 35 of the IRPA is

"reasonable grounds to believe." Moreover, based on the jurisprudential criteria for the assessment of crimes against humanity, an explicit or written state or organizational policy endorsing human rights abuses or crimes against humanity is not required. It was therefore open to the ID to find that the Nigerian authorities turning a blind eye to such abuses speaks to the widespread and systematic nature of said abuses.

[29] Furthermore, the ID did not find Mr. Akinpelu inadmissible simply for being a member of the NPF. The ID rather based its entire analysis on whether there were reasonable grounds to believe that Mr. Akinpelu made a voluntary, knowing, or significant contribution to the abuses committed by the NPF. To this effect, the inadmissibility process is not reflective of findings of guilt or innocence, but is rather informed by the "contribution" analysis.

A. *Mr. Akinpelu's right to procedural fairness was not violated*

[30] Mr. Akinpelu submits that the ID breached his right to a procedurally fair process by ignoring his direct testimony that he was not involved in any crimes against humanity, and was always respectful of civilians' rights.

[31] With respect, and as I indicated at the hearing before the Court, Mr. Akinpelu does not raise any issues of procedural fairness in his submissions. The duty to act fairly has two components: i) the right to a fair and impartial hearing before an independent panel, and ii) the right to be heard and to know the case one has to meet (*Haba v Canada (Citizenship and Immigration)*, 2017 FC 732 at para 28). The ultimate question "is whether, taking into account the particular context and circumstances at issue, the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard as well as a full and

fair opportunity to know and respond to the case against them" (*Tiben v Canada (Citizenship and Immigration)*, 2020 FC 965 at para 18). None of the arguments made by Mr. Akinpelu raises questions regarding the ID's impartiality or his right to have an opportunity to be heard. Mr. Akinpelu's arguments instead revolve around the ID's assessment of his evidence and the treatment of his testimony, which are issues regarding the reasonableness of the Decision.

[32] This is not a situation where any violation of procedural fairness hampered the decision making process.

[33] In any event, the ID did not ignore Mr. Akinpelu's direct testimony nor did it neglect the "vital" evidence he submitted. In fact, the ID specifically assessed his new testimony in relation to his prior testimony and made numerous adverse credibility findings against him in this respect, which he failed to address in his arguments. Significantly, many of the adverse credibility findings made by the ID are based on Mr. Akinpelu's late disavowal of his involvement in the SARS after he became aware of the evidence pointing to their repeated human rights abuses—to the point where he ultimately claimed that he was only an "errand boy" or was involved in the human rights desk—, contradicting his initial testimony. Mr. Akinpelu has either ignored his earlier statements, not included them in his record, or not disputed them. As the Minister notes, he simply continues to assert his denials.

[34] Moreover, "it is well established that an administrative decision maker is presumed to have weighed and considered all of the evidence presented to it, unless the contrary is established" (*Singh v Canada (Citizenship and Immigration)*, 2020 FC 350 at para 38). It is also trite law that a decision maker's failure to mention a particular piece of evidence does not mean that it was ignored or excluded (*Newfoundland and Labrador Nurses' Union v Newfoundland*

and Labrador (Treasury Board), 2011 SCC 62 at para 16). Here, not only was Mr. Akinpelu's testimony not ignored, but the ID properly assessed it in relation to all of the other evidence before it—conducting a fulsome assessment of Mr. Akinpelu's most recent and previous testimonies. Ultimately, the ID concluded Mr. Akinpelu's most recent testimony was not credible as compared to his prior testimony.

[35] In sum, not only was there no procedural fairness violation in this case, but Mr. Akinpelu has not adequately addressed the ID's adverse credibility findings or the discrepancies in his testimonies. In this case, the ID reasonably relied on Mr. Akinpelu's earlier statements rather than his later testimony. Indeed, the jurisprudence suggests that the first version of a testimony is often more credible (*Nathaniel v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 32 at para 33; *Athie v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 425 at para 49). Moreover, it is well established that the Court must show deference to the ID with respect to credibility assessments, as such assessments are at the very core of the ID's authority and expertise (*Tovar v Canada (Citizenship and Immigration)*, 2016 FC 598 at para 25, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) (FCA) at para 4; *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 22). Here, nothing on the record suggests the ID did not engage with Mr. Akinpelu's testimony or the evidence he submitted.

B. *The Decision is reasonable*

[36] Turning to the substance of the Decision and its reasonableness, Mr. Akinpelu first attacks the ID's reliance on reports from Amnesty International and Human Rights Watch, referring to them as "speculative." He further asserts that he cannot be found inadmissible unless

he is proven guilty of specific crimes. Moreover, Mr. Akinpelu submits that because the NPF does not have a "state policy to commit war crimes or crimes against humanity," he cannot be found complicit in these types of acts absent concrete proof. Finally, Mr. Akinpelu contends that the ID erroneously concluded that the NPF was an organization with a criminal purpose that was involved in crimes against humanity, because under Article 7 of the *Rome Statute*, the course of conduct needs to be "pursuant to or in furtherance of a State or organizational policy."

[37] Mr. Akinpelu's arguments are not convincing and they demonstrate a fundamental misunderstanding of the relevant legal standards, jurisprudence, and statutes.

(1) *The documentary evidence*

[38] First, Mr. Akinpelu asserts that the ID erred in relying on "speculative" documents from human rights organizations and the United Nations [UN]. I do not agree. The ID was entirely within its right to rely on documents from Amnesty International, human rights organizations, and the UN. The reliance on such documents follows the normal course of proceedings before the ID, and this Court has previously held that a tribunal can rely on such documents (*Wijenayake v Canada (Citizenship and Immigration)*, 2022 FC 1224 at para 16; *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at para 32). Mr. Akinpelu's submissions on this point are entirely without merit.

(2) *The assessment of the NPF's activities*

[39] There are two main parts to the assessment conducted by the ID in the Decision. First, the ID determined that the NPF had a criminal purpose and committed crimes against humanity

during Mr. Akinpelu's tenure. Second, it found that Mr. Akinpelu was complicit in the NPF's crimes against humanity and in its criminal purpose.

[40] Mr. Akinpelu submits that the ID erroneously concluded the NPF was an organization involved in crimes against humanity since, under Article 7 of the *Rome Statute*, the course of conduct needs to be "pursuant to or in furtherance of a State or organizational policy." I disagree.

[41] With respect to the requirement that in order to make a finding of widespread or systematic human right abuses under international criminal law, there must be the existence of "a state or organizational policy" that endorses such behaviour, the ID provided a detailed analysis to distinguish the present matter from this Court's decision in *Verbanov*. In *Verbanov*, the Court determined that the fact that individual Moldovan police officers continued to use torture for various singular reasons did not mean that crimes against humanity were carried out by the Moldovan police force as a whole, in a widespread and systematic way (*Verbanov* at para 66). In that case, the Court specifically emphasized that Moldova was a country struggling to eradicate the remnants of the former USSR and that it had committed to combat torture through initiatives and policies (*Verbanov* at para 43).

[42] However, the present situation is different from that in *Verbanov.* As the ID noted in its Decision, no such policies or initiatives appear to have been implemented in Nigeria by the NPF or government officials to any meaningful degree. Although there is no clear written policy articulated by the Nigerian government or the NPF that directs the police to commit acts of abuse and aggression against its citizens, the lack of concrete action, real reforms, and factual results by the government can lead to a conclusion of implicit consent to such acts. As noted by the ID, the NPF indicates in multiple circumstances that "NPF personnel enjoy a stunning degree of

impunity," and "the absence of acknowledgement and public condemnation of such violations by senior government officials further assists in creating a climate for impunity and raises serious concern about the political will to end such human rights violations." In sum, the ID found that the lack of action and the omissions of the Nigerian authorities amounted to a State policy. Here, the State policy was to do nothing and to close its eyes to the atrocities being committed by the NPF.

[43] I underline that the *Verbanov* decision does not stand for the proposition that the government's constitution or a formal written policy specifically endorsing human rights abuses must exist before a finding of crimes against humanity can be made. In fact, Justice Grammond said quite the opposite, concluding that "this judgment should not be understood as shielding police officers from the accountability warranted by the commission of heinous crimes. Whether the torture of detainees is conducted pursuant to a State or organizational policy is an issue that must be decided on a case-by-case basis, according to the evidence" (*Verbanov* at para 76).

[44] Here, the ID found, based on numerous reliable and independent country documents, that the Nigerian authorities turned a blind eye to such abuses which were widespread, sustained, and concerted, involving decisions made at the highest ranks of the NPF. Indeed, the ID specifically concluded that the widespread and systematic nature of the human rights abuses were well known to state authorities who promised various reforms which were not carried out. This led the ID to its conclusion that the widespread and systematic attack on the civilian population was tacitly endorsed by the police force and by the state more generally.

[45] In my view, such a conclusion was reasonably based on the evidence before the ID, and reconcilable with the requirements of the *Rome Statute* and the jurisprudence of this Court.

(3) *The assessment of Mr. Akinpelu's complicity*

[46] Turning to the ID's finding that he was "complicit" in the NPF's crimes against humanity and in its criminal purpose, Mr. Akinpelu asserts, relying on paragraph 29 of *Ezokola*, that he cannot be found inadmissible unless he is proven guilty of specific crimes. With respect, this is a categorically flawed interpretation of the *Ezokola* judgment.

[47] As was established by the Supreme Court in *Ezokola*, the "commission" of an act that constitutes an offence under sections 4 to 7 of the CAHWCA incorporates various modes of commission of a crime. A relevant mode of commission is complicity (*Ezokola* at para 31). Accordingly, and as clearly set out by the Supreme Court, there is no legal requirement that the Minister prove that an applicant personally or actually committed any particular crime, nor that criminal charges are needed. Indeed, to use the words of the Supreme Court, complicity "require[s] a nexus between the individual and the group's crime or criminal purpose. An individual can be complicit without being present at the crime and without physically contributing to the crime. However, the UNHCR has explained, and other state parties have recognized, that to be excluded from the definition of refugee protection, there must be evidence that the individual knowingly made at least a significant contribution to the group's crime or criminal purpose" (*Ezokola* at para 77).

[48] Thus, contrary to Mr. Akinpelu's assertion, the Minister does not have to demonstrate that Mr. Akinpelu has been found guilty or charged of any crime. Rather, the Minister must prove that there was a sufficient nexus between Mr. Akinpelu's activities within the NPF to the extent that he made at least a "significant contribution" to the group's crime. Indeed, the

inadmissibility process is not reflective of findings of guilt or innocence, but is rather informed by the "contribution" analysis (*Mugesera* at paras 8, 38–41, 53, 68).

[49] In the Decision, the ID undertook an incredibly thorough review of each of the relevant factors enunciated by the Supreme Court in *Ezokola* to assess complicity, such as the size of the NPF, the activities of Mr. Akinpelu within the NPF, and Mr. Akinpelu's position within the NPF (*Ezokola* at para 91). In a detailed and rigorous analysis, the ID reviewed all the evidence regarding Mr. Akinpelu's involvement in the NPF. The ID's finding that Mr. Akinpelu was complicit in the NPF's crimes was predicated on his employment and rank within NPF, and related to him being in synchronization with the common design of the NPF, along with his commitment to the accomplishment of the organization's purpose, by whatever means necessary. The ID further found that the NPF committed crimes against humanity that were part of a widespread or systematic attack directed against the civilian population, and that Mr. Akinpelu was complicit in those crimes.

[50] The ID found reasonable grounds to believe that, particularly as a sergeant, Mr. Akinpelu knowingly and voluntarily made a significant contribution to the crimes committed. To come to this conclusion, the ID canvassed documentary evidence before it, which documented the NPF's widespread and systematic acts of torture, extrajudicial killings, enforced disappearances, and acts of sexual violence against civilian populations. The ID went so far as to specifically note that, according to the evidence before it, the SCID in Panti—of which Mr. Akinpelu was a member—was particularly notorious. The ID noted that the NPF used "anti-robbery" as a façade or justification for extrajudicial killing and other police abuses, and that there was evidence showing that the SCID in Panti was responsible for torture and other human rights abuses.

[51] In light of the evidence on the record, I am satisfied that it was reasonable for the ID to conclude that there was a sufficient nexus between Mr. Akinpelu's activities within the NPF to the extent that he made at least a significant contribution to the group's crime. Such a conclusion is in line with the Supreme Court's teachings in *Ezokola* and the jurisprudence of this Court.

[52] Indeed, in circumstances closely similar to those of Mr. Akinpelu, this Court noted that:

> The ID considered each of the factors set out in *Ezokola* in detail, acknowledged [the applicant's] testimony and examined the discrepancies in the evidence. In conducting this analysis, the ID determined that the documentary evidence of widespread human rights abuses within the NPF was overwhelming. That finding was not unreasonable, nor was it disputed by [the applicant]. In the face of this evidence and in light of [the applicant's] undisputed record of service in the NPF […], it was reasonably possible for the ID to find, as it did, that it was "highly likely that [the applicant] had more extensive knowledge of the NPF's regular and generalized human rights abuses, mistreatment of suspects in detention, summary executions of suspects and torture during investigations and interrogations".
>
> (*Ukoniwe v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 753 at para 15 [*Ukoniwe*]).

[53] Moreover, in *Ukoniwe*, Justice Gleeson reified the principle that "[c]omplicity requires neither physical presence during, nor active participation in, the actual crimes" (*Ukoniwe* at para 16, citing *Ezokola* at para 77). Justice Gleeson finally noted that in that case, Mr. Ukoniwe was asking the Court to give greater weight to factors that are favourable to him and to prefer his testimony over the documentary evidence. Justice Gleeson noted that such a task was not the role of this Court (*Ukoniwe* at para 17).

[54] In the case at bar, Mr. Akinpelu is similarly asking the Court to conduct such an exercise by favouring his testimony over the fulsome analysis conducted by the ID, which relied on both his prior and most recent testimony and submissions, as well as the objective documentary evidence. Here too, it is not the role of the Court to reassess such factors.

[55] I further underline that a hearing before the ID is not a criminal trial before an international tribunal (*Ezokola* at para 38). To this effect, "it is unnecessary to craft a multitude of tests for each mode of commission through which a government official may be held complicit in the crimes committed by his or her government. Unique considerations may arise in cases where the individual is said to have control or responsibility over the alleged perpetrators, or where the individual allegedly made specific contributions to a specific crime" (*Ezokola* at para 41).

[56] In this way, the *Rome Statute* is materially different from section 35 of the IRPA. The IRPA does not presume to prosecute or find an individual guilty of a crime. Conversely, Article 10 of the *Rome Statute* states that "[n]othing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute." Under Canadian law, the burden of proof to support a finding of inadmissibility under section 35 of the IRPA is "reasonable grounds to believe," as per section 33 of the IRPA. This standard of proof requires something more than mere suspicion, but less than proof on a balance of probabilities—there must be an objective basis for the belief, based on compelling and credible information (*Mugesera* at para 114; *Ghirme* at paras 9–10, citing *Ezokola* at paras 8, 68, 77, 101–102). Consequently, the ID correctly identified the burden of proof as "reasonable grounds to believe," as per the IRPA framework. And, through thorough reasons, the ID

concluded that, in this instance, there were reasonable grounds to believe Mr. Akinpelu was complicit in the NPF's human rights abuses.

[57] I do not find any reviewable error in the analysis conducted by the ID, whether on the NPF's activities or on Mr. Akinpelu's complicity.

C. *The proposed certified question*

[58] In a letter sent to the Court prior to the hearing, the Minister proposed the following certified question of general importance:

> Does a widespread or systematic attack directed against any civilian population or any identifiable group need to be committed pursuant to or in furtherance of a State or organizational policy to satisfy the elements of the offence of crimes against humanity such that it would render a person inadmissible on grounds of violating human or international rights pursuant to paragraph 35(1)(a) of the Immigration and Refugee Protection Act?

[59] Mr. Akinpelu did not provide any input on this proposed certified question.

[60] For the reasons that follow, I decline to certify the proposed question as I find that it does not meet the requirements for certification developed by the Federal Court of Appeal.

[61] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplates issues of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36;

Mudrak v Canada (Citizenship and Immigration), 2016 FCA 178 at paras 15–16 [*Mudrak*]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]. Furthermore, the question must not have already been determined and settled in another appeal (*Rrotaj v Canada (Citizenship and Immigration)*, 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)*, 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37). As a corollary, the question must have been dealt with by the Court and it must arise from the case (*Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29).

[62] I do not dispute that the question formulated by the Minister appears to raise an issue of broad significance or general application, as it transcends the interests of the immediate parties of this case. However, in the case of Mr. Akinpelu, the proposed question would not be determinative of the issues in this case and dispositive of the appeal.

IV. Conclusion

[63] For the above reasons, this application for judicial review is dismissed. Mr. Akinpelu has not raised any reviewable errors warranting the intervention of this Court.

[64] There are no questions of general importance to be certified.

JUDGMENT in IMM-7989-22

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed, without costs.

2. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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