



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3706/2020\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	Jean-Claude Rudurura (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	29 January 2020 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 6 February 2020 (not issued in document form)
<i>Date of adoption of Views:</i>	1 November 2022
<i>Subject matter:</i>	Deportation to Burundi
<i>Procedural issue:</i>	Admissibility – communication manifestly ill-founded
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication, dated 29 January 2020,<sup>1</sup> is Mr. Jean-Claude Rudurura, a national of Burundi born in 1977. He claims that the State party has violated his rights under articles 6 and 7 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is not represented by counsel.

1.2 On 6 February 2020, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party to refrain from deporting the author to Burundi while his case was

\* Adopted by the Committee at its 136th session (10 October–4 November 2022).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\* A separate opinion by Committee member Carlos Gómez Martínez (dissenting) is annexed to the present Views.

<sup>1</sup> The author provided supplementary information on 31 January 2020.



under consideration by the Committee. On the same day, the State party decided to suspend the author's deportation.

### **Factual background<sup>2</sup>**

2.1 The author reports that he lost his parents and siblings in Burundi during the political events of 1993. He holds a degree in health sciences and has worked as a senior health supervisor in the Province of Muramvya, Burundi. His duties included the planning and oversight of activities at the health centres in Muramvya. He was also responsible for the statistics pertaining to the provincial hospitals and health centres, including reports on births and deaths.

2.2 In April 2015, demonstrations were held across the country to protest against Pierre Nkurunziza's bid for a third presidential term. The author took part in the protests. He was threatened by the authorities because of his political affiliation and his Tutsi ethnicity. Suspected opponents of the regime and protesters were targeted and killed. Several cases of enforced disappearance have been reported, and unidentified bodies have been found in several parts of the country. A large number of corpses passed through the morgue at the hospital in Muramvya. As the regime's crackdown took hold, the author's duties in his role as supervisor of health care facilities were changed. He was forced to sign false death reports exonerating the Imbonerakure, a militia group paid by the Government.

2.3 In 2016, two bodies were found in the Mubarazi River. The discovery of the bodies was linked to the disappearance of the journalist Jean Bigirimana earlier that year. The author and several managers at the hospital in Muramvya were pressured by officers from the National Intelligence Service to falsify reports related to the discovery of the bodies. The officers infiltrated the hospital to prevent the bodies being identified. The author and other hospital managers were threatened by the officers and forced to declare that the two bodies found were those of victims of land disputes. In their threats against the author, the officers identified him as a "Tutsi supervisor", and an "opponent" who was among those who had "attempted to mount a coup" against the ruling regime. They also claimed to have seen the author demonstrating against President Nkurunziza's third term. Following pressure from the National Intelligence Service, the two bodies were buried without the required DNA tests or autopsies having been performed on them. The situation raised the suspicions of the family and friends of Jean Bigirimana, who worked at the *Iwacu* newspaper. A journalist working for *Iwacu*<sup>3</sup> approached the author to gather information about the bodies. The National Intelligence Service and the police summoned the author to dissuade him from giving information to the press. Despite the warning, the author passed information to the journalist about the bodies. The author later learned that one of the doctors from the hospital in Muramvya had fled. He then decided to leave the country. The author states that he was able to obtain a passport and a visa for Sweden<sup>4</sup> and leave the country legally, since he was not a wanted man at the time of his departure. He also reports that the National Intelligence Service and the police were not aware that he had taken part in the demonstrations against Pierre Nkurunziza's third term. It was only after arriving in Sweden that the author learned that the police, officers from the National Intelligence Service and members of the Imbonerakure wearing police uniforms had come to look for him at his place of work and had also searched his house in the Ngagara district of Bujumbura. Officers from the National Intelligence Service and the Imbonerakure then apprehended his wife and daughter. At the time of the submission of the communication, their whereabouts remained unknown. An arrest warrant and a summons from the public prosecutor's office in Muramvya were issued in respect of the author<sup>5</sup> in connection with charges of participation in an insurrectionist movement.

2.4 On 24 July 2017, the author applied for asylum in Sweden. On 16 April 2019, the Swedish Migration Agency rejected his application. In its decision, the Agency did not

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<sup>2</sup> As the author provided an incomplete account of the facts concerning the proceedings, the account set out below is based both on the author's initial submission and on the State party's observations.

<sup>3</sup> The journalist, who is in exile in Canada, confirmed the author's statements in a letter sent to the Swedish migration authorities.

<sup>4</sup> The author did not indicate the date of his arrival in Sweden.

<sup>5</sup> The author attached copies of an arrest warrant and a summons.

dispute that the author had worked at the hospital in Muramvya and that he had been threatened in 2016 and 2017. However, it did not consider it credible that the author had been in the morgue with the doctors when the bodies were identified. While the Agency did not dispute the author's ethnicity, it did not take into account the threats and enforced disappearances targeting, in particular, individuals considered to be enemies of the Government. In its decision rejecting the author's asylum application, the Agency held that the author had failed to name Jean Bigirimana's wife as having been present at the morgue on the day the body was identified. According to the Agency, that omission proves that he was not present. However, the author asserts that he had been unable to make out Jean Bigirimana's wife among the large number of people who were in the morgue at the time the bodies were identified and that only those individuals who were in uniform or wearing badges were easily identifiable.

2.5 The author appealed the Agency's decision of 16 April 2019 before the Migration Court, which rejected the appeal on 21 October 2019. On 16 December 2019, the Migration Appeals Court refused him permission to lodge another appeal, and the decision to deport him became final. The author states that the Swedish authorities ordered him to leave his accommodation and stopped reimbursing his living expenses on 21 January 2020. Since hearing of the disappearance of his family in Burundi after he left for Sweden, the author has suffered from chronic hypertension.<sup>6</sup> He is receiving treatment for his condition.

2.6 The author also submitted to the Swedish Migration Agency an application for a residence permit, which was refused on 25 September 2020. In the same decision, the Agency also denied him a re-examination of his situation. He did not lodge an appeal against that decision. The author claims to have exhausted all domestic remedies. He also states that he has not submitted the same matter for examination by another international body of investigation or settlement.

### **Complaint**

3.1 The author claims that if he returns to Burundi, he risks being killed or subjected to torture, imprisonment or enforced disappearance, given that the authorities in Burundi have accused him of having disclosed information to human rights organizations and journalists about the bodies found in the Mubarazi River. He believes that he is wanted by the police and the National Intelligence Service because he was a supervisor at the hospital in Muramvya at the time of the events, because he is of Tutsi ethnicity and because he participated in the demonstrations against President Nkurunziza's third term in office. The author indicates that, as a Tutsi, he belongs to a minority group that faces threats from the current Government. He also claims that the current situation reminds him of the events of 1993, during which his family was killed. He believes that the situation of the Tutsis in Burundi has deteriorated and that the mere fact of belonging to this ethnic group constitutes grounds for persecution. He recalls that according to several non-governmental organizations, the Tutsis in particular are the target of arbitrary acts committed by the police.

3.2 The author claims that the examination of his asylum application was flawed. The investigators cut his interview short because the interpreter was in a hurry. His lawyer did not have time to ask questions during the interview. The author also argues that the Migration Court requested additional oral information owing to confusion about his grounds for asylum, which the investigators refused to supply. The author states that when it examined his application for refugee status, the Swedish Migration Agency did not take into account the procedural shortcomings in his case. He further asserts that he had prepared a document supporting his claims for submission to the Agency, but that the document was not considered by the Migration Court.

### **State party's observations on admissibility and the merits**

4.1 On 25 November 2020, the State party submitted its observations on the admissibility and the merits of the communication.

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<sup>6</sup> The medical certificate attached to the file does not contain any other details other than information about his hypertension.

4.2 The State party questions the accuracy of the translation of the decisions issued by the domestic migration authorities, as submitted by the author. From the content of the author's communication, it infers that he is arguing that his deportation to Burundi would violate articles 6 and 7 of the Covenant on the basis that he faces a threat from the authorities in Burundi and the Imbonerakure.

4.3 The State party considers that the author's assertion that, if returned to Burundi, he runs the risk of being treated in a manner that would amount to a violation of the Covenant fails to reach the minimum level of substantiation required for purposes of admissibility. It therefore submits that the communication is manifestly ill-founded and therefore inadmissible.

4.4 The State party recalls that, to determine whether the author's forced return to Burundi would violate articles 6 or 7 of the Covenant, the Committee must take into account the following elements: the general human rights situation in Burundi, and the personal, foreseeable and real risk of the author being subjected to treatment contrary to articles 6 or 7 of the Covenant after returning to his country.

4.5 With regard to the general human rights situation in Burundi, the State party refers to a number of reports by the United Nations and non-governmental organizations<sup>7</sup> and notes that while it does not wish to underestimate the concerns that may legitimately be expressed in that connection, the general situation in the country is not, in itself, sufficient to establish that the author's deportation would be contrary to articles 6 or 7 of the Covenant.<sup>8</sup>

4.6 As for the author's personal risk of being subjected to treatment contrary to articles 6 or 7 of the Covenant, the State party notes that, according to the migration authorities, the fact that the author is of Tutsi ethnicity is not, in itself, sufficient for him to be considered as having plausibly demonstrated that he is in need of protection. The State party draws the Committee's attention to the fact that there are no medical grounds that would prevent the author's deportation. In addition, the written evidence submitted by the author in his file was considered to be simplistic and therefore of little probative value. The State party adds that the national migration authorities made a comprehensive assessment when considering whether the author had plausibly demonstrated that he faced a personal threat due to his participation in the identification of a body and his political activities and opinions. In their assessment, and on the basis of the author's oral account and the written evidence he cited, they found that the author had not plausibly demonstrated the existence of a personal threat to him. The Swedish migration authorities therefore concluded that the circumstances described by the author were not sufficient to plausibly demonstrate that he was in need of protection.

4.7 With regard to the author's allegation that there were errors in the domestic procedure, the State party emphasizes that both the Swedish Migration Agency and the Migration Court conducted a thorough review of the author's case. In addition, the author was given the opportunity to explain the relevant facts and circumstances in support of his application and to argue his case, orally and in writing, at all stages of the proceedings before the Agency and the Court.

4.8 In short, the migration authorities considered that the reasons the author gave for his assertion that, in his country of origin, he is at risk of treatment that would constitute grounds for protection were insufficient to plausibly demonstrate that he is in need of protection. Furthermore, the State party submits that the author is trying to use the Committee as a court of appeal.

<sup>7</sup> See S/2019/837; A/HRC/42/49; A/HRC/45/32; International Crisis Group, *Running out of options in Burundi*, Africa Report, No. 278, 20 June 2019; United States Department of State, *Burundi 2019 human rights report*, available on the Department of State website ([www.state.gov](http://www.state.gov)); Immigration and Refugee Board of Canada, *Burundi: information on the treatment of members of the political party Mouvement pour la solidarité et la démocratie (MSD) by the authorities*, 8 March 2017; Freedom House, *Freedom in the World 2019: Burundi*; and Human Rights Watch, *World Report 2019 – Burundi (events of 2018)*.

<sup>8</sup> Human Rights Committee, general comment No. 36 (2018), para. 30.

4.9 In conclusion, the State party asserts that there is no reason to conclude that the decisions of the national authorities were inadequate or that the outcome of the domestic proceedings was arbitrary or amounted to a denial of justice. It considers that the author's version of events and the facts set forth in his complaint are insufficient to support a conclusion that the alleged risk of ill-treatment upon his return to Burundi meets the requirements of being foreseeable, real and personal. The State party therefore concludes that the enforcement of the deportation order would not, under the present circumstances, constitute a violation of its obligations under articles 6 or 7 of the Covenant.

#### **Author's comments on the State party's observations**

5.1 On 28 February 2021, the author submitted his comments on the State party's observations.

5.2 In these comments, the author notes that he faces a personal, real and considerable risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant if deported to Burundi.

5.3 The author argues that the risk he faces is related to his political affiliation and ethnic background. He points out that Tutsis are still persecuted, imprisoned and killed in Burundi. He recalls that his family was exterminated in 1993 in Rutegama, in the Province of Muramvya. As a survivor of those events, he has information on the identity of the killers, who are currently in power. In this respect, he is a potential target of the current authorities. He recalls that his escape from Burundi is linked to the disappearance of the journalist Jean Bigirimana. He believes that until Mr. Bigirimana's body is found and the case is reported in the press, he will not be able to travel to Burundi without officers from the National Intelligence Service pursuing him. The author reiterates that threats were made against him at his workplace and that his family was also persecuted. The author fears that because of the warrant issued for his arrest, he will be seized and taken into custody if he returns to Burundi.

5.4 The author submits that the State party noted that he was threatened by the National Intelligence Service, the police and the Imbonerakure only during the period between the summer of 2016 and May 2017. However, the author believes that the State party should have given much more weight to this information in its examination of his asylum application.

5.5 As for the general human rights situation in Burundi, the author argues that human rights violations and abuses continue in the country, particularly against opponents and Tutsis. The alleged perpetrators of these violations and abuses are the Imbonerakure and members of the National Intelligence Service and the police. The author recalls that the Imbonerakure are a militia group belonging to the ruling National Council for the Defence of Democracy-Forces for the Defence of Democracy. He adds that freedom of expression and association is severely restricted. Media professionals, opposition politicians and human rights defenders are particularly targeted. He cites the recent cases of several nationals of Burundi who returned from exile in the United Republic of Tanzania and the Democratic Republic of the Congo and who were killed by the Imbonerakure after their arrival. The author adds that the Office of the United Nations High Commissioner for Human Rights in Burundi was closed in 2019, allowing the police, the National Intelligence Service and the Imbonerakure to continue to commit atrocities.

5.6 The author refutes the State party's argument that the translations of the decisions rendered by the authorities submitted by him to the Committee were inaccurate. He maintains that the French translations of the documents submitted are accurate. He believes that, to varying degrees, the State party's authorities have ignored the arguments raised in his application for protection, despite the written evidence on file in support of his asylum claim, including a medical certificate, a summons from the public prosecutor's office, an arrest warrant, a letter from an *Iwacu* journalist, a letter from a human rights defender and his membership card for the Movement for Solidarity and Democracy.

5.7 The author states that on 14 January 2020, the migration authorities evicted him from his accommodation in the middle of winter. They also confiscated his bank card and identity card. As a result, the author considers that the State party has also violated his rights to housing and food. He adds that his health was put at risk by the fact that the State party's authorities cancelled his medical appointments while he was suffering from chronic

hypertension and undergoing treatment in Sweden. The author submits that the decision of 25 September 2020 of the Swedish Migration Agency, in which he was refused a residence permit and a re-examination of his situation, was not appealed and that he has therefore exhausted all domestic remedies. He recalls that the State party's migration authorities urgently summoned him on 29 September 2020 and asked him to sign a document acknowledging receipt of the decision. The author believes that the decision of 25 September 2020 was reached on an unsound basis.

5.8 The author considers that the State party has failed to comply with article 4 (2) of the Optional Protocol. He argues that the decision of 25 September 2020 did not comply with the interim measures requested for him by the Committee.<sup>9</sup> The author states that following the Committee's request, his "basic needs",<sup>10</sup> including his identity card, were taken away from him. He believes that the State party has not informed the Committee of the reasons for rejecting his request for protection. For all these reasons, the author considers that his deportation by the State party to Burundi would constitute a violation of articles 2 (1), 6 and 7 of the Covenant.

### **State party's additional observations**

6.1 On 24 June 2021, the State party submitted additional observations on the author's comments.

6.2 The State party notes that the author's comments do not contain any new relevant arguments on the merits that have not already been largely addressed in the State party's initial observations. It wishes to emphasize that it fully maintains its position on the facts, admissibility and merits of the present complaint, as set out in its initial observations.

6.3 The State party further reiterates that the migration authorities have undertaken a rigorous examination of the author's asylum application. With regard to possible errors in the author's asylum application, the State party reiterates that the author had ample opportunity to defend his claims before the migration authorities and adds that he was assisted by a public defender.

6.4 The State party considers that the elements identified by the author as procedural errors are not of such a nature as to give rise to the need for a re-examination by the migration authorities. It also considers that the information on the author's health, on his fears surrounding his Tutsi ethnicity and on the general human rights situation in Burundi do not give rise to any new grounds for reconsidering his situation. Accordingly, the State party argues that the facts as submitted by the author do not disclose any violation of articles 6 and 7 of the Covenant.

6.5 Lastly, the State party points out that the author referred in his comments to two decisions of the Swedish Migration Agency, dated 7 and 14 January 2020. It notes that these decisions were made prior to the Committee's request for interim measures. Consequently, the decisions are not relevant to the assessment of the personal, foreseeable and real risk that the author would be subjected to treatment contrary to article 6 or 7 of the Covenant if returned to Burundi. The State party further recalls that the decision to deport the author to Burundi will become final on 16 December 2023.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

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<sup>9</sup> In its request for interim measures in respect of the author, the Committee requested the State party not to deport the author to Burundi pending the Committee's decision on the communication.

<sup>10</sup> The term "basic needs" is reproduced as submitted by the author, who did not provide any further explanation.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that regard, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee notes the State party's challenge to the admissibility of the communication on the ground that the author's claims under articles 6 and 7 of the Covenant are not sufficiently substantiated. It considers, however, that for purposes of admissibility, the author has provided sufficient information to support his claim that he fears that he would be subjected to treatment contrary to articles 6 and 7 of the Covenant if forcibly returned to Burundi. The Committee therefore declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to the consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

8.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it referred to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there were substantial grounds for believing that there was a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.<sup>11</sup> The Committee has also indicated that the risk must be personal<sup>12</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>13</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>14</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,<sup>15</sup> unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>16</sup>

8.3 The Committee notes the author's claim that, if returned to Burundi, he would be at risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. The author alleges that he is at risk of life-threatening persecution because he is particularly vulnerable owing to his ethnic and political affiliation and to his role as a health supervisor at the time that bodies were identified in the Province of Muramvya in the context of the disappearance of the journalist Jean Bigirimana. The Committee also notes the author's allegation that, as a survivor of the 1993 political crisis in which his parents died, he fears that, upon his return to Burundi, he will be targeted by those in power, some of whom may have links to the persons responsible for the death of his parents.

8.4 The Committee takes note of the author's claim that, if returned to Burundi, he would be exposed to a risk of persecution because of his Tutsi ethnicity and because he participated in the demonstrations against President Nkurunziza's third term in office, was present during the examination of the bodies found in the Mubarazi River in 2016 and gave information to the press about the falsification of reports relating to the identification of the bodies. The Committee further notes the author's claim that after leaving Burundi, he was told that State agents and members of the Imbonerakure had visited his workplace to look for him and had also searched his house. According to the author, his wife and daughter had been arrested,

<sup>11</sup> Human Rights Committee, general comment No. 31 (2004), para. 12.

<sup>12</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; and *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3.

<sup>13</sup> *X v. Sweden*, (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>14</sup> *Ibid.* See also *X v. Denmark*, para. 9.2.

<sup>15</sup> *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>16</sup> See, for example, *K. v. Denmark*, para. 7.4.

and, at the time of submission of the communication, no information was available on the location in which they were being detained. The Committee also takes note of the State party's allegation that Tutsi ethnicity is not sufficient to justify a request for protection and that there are no medical reasons that would prevent the author's deportation. The Committee notes that in its observations, the State party emphasizes that the author has not plausibly demonstrated that he was personally threatened because of his participation in the identification of the bodies or because of his political activities or opinions, or that he was in need of protection.

8.5 The Committee notes the author's argument that the State party's migration authorities should have given much greater weight to the fact that he was a senior health supervisor in the Province of Muramvya, that he worked at the hospital in Muramvya and that reporting on births and deaths formed part of his duties. In that capacity, he had been forced to sign inaccurate death reports that exonerated the Imbonerakure, including in respect of the bodies found in the context of the disappearance of the journalist Jean Bigirimana in 2016. The author states that, as a result, he was threatened by the police, the National Intelligence Service and the Imbonerakure in 2016 and 2017 and also received threats because he had taken part in protests against Pierre Nkurunziza's bid for a third presidential term. The Committee observes that the author has submitted written evidence to accompany his communication, including a medical certificate, a summons from the public prosecutor's office and an arrest warrant.

8.6 The Committee notes that, according to the author, the human rights situation in Burundi has not improved, the protection of civil liberties is not guaranteed and the Imbonerakure have killed several Tutsi refugees on their return from exile. The Committee also notes the State party's argument that the general situation in Burundi is not sufficient, in itself, to establish that the author's deportation would be contrary to articles 6 and 7 of the Covenant.<sup>17</sup> The Committee considers, however, that the State party, in its observations, has not challenged the author's argument that the political and security environment in Burundi remains precarious for opponents of the current regime and for persons who are wanted by the police, the National Intelligence Service or the Imbonerakure.<sup>18</sup> The Committee notes that the latest available reports on Burundi give no indication that the general situation in the country guarantees the safe return of an exile such as the author, who is exposed to a risk of persecution owing to a combination of factors, including in relation to the summons from the public prosecutor's office and the arrest warrant issued against him.

8.7 The Committee takes note of the author's allegation that procedural errors were made in the course of the examination of his asylum application. It also notes the State party's argument that the author had the opportunity to elucidate the circumstances supporting his claim at all stages of the proceedings, that he was assisted by a public defender and that he was free to explain the relevant facts and circumstances supporting his claim. The Committee notes that in its decision, the Swedish Migration Agency took into account all the material submitted by the author, including the medical certificate, and considered that his condition was not life-threatening. The Committee recalls that it is not its role to evaluate the facts and evidence in a given case unless it can be established that the examination was clearly arbitrary or manifestly erroneous, or that it amounted to a denial of justice.<sup>19</sup>

8.8 The Committee notes that, in the present case, the State party does not contest that, if they return to Burundi, persons who participated in the movement against President Nkurunziza's third term of office and in respect of whom an arrest warrant has been issued relating to charges of participation in an insurrectionist movement face a risk of unlawful arrest and detention, murder or enforced disappearance. The Committee notes that the author states that he lost his parents in the events of 1993 and that the perpetrators of those offences may still be in power in Burundi. It also notes the author's allegation that the Swedish Migration Agency did not deny the fact that he is of Tutsi ethnicity, but failed to take into account the threats directed at and enforced disappearances perpetrated against members of

<sup>17</sup> Human Rights Committee, general comment No. 36 (2018), para. 30.

<sup>18</sup> With regard to the general situation in the country, the State party itself has listed a number of reports that attest to the prevalence of human rights violations in Burundi (see footnote 7 above).

<sup>19</sup> See, for example, *K. v. Denmark*, para. 7.4.



that ethnic group and persons considered to be enemies of the Government. The Committee considers that the State party's examination failed to take into account that, given that the author is vulnerable for several reasons and the existence of multiple factors exacerbating the risks facing him, he would experience serious repercussions that would expose him to a risk of irreparable harm in his country of origin. The Committee further notes that the immigration authorities, in their examination, evaluated separately the various arguments put forward to support the author's application for protection and did not take into account the fact that, taken together, these arguments showed that he would be in particular danger in Burundi, and therefore concluded that he had not demonstrated sufficient grounds for believing that he would be exposed to a risk of irreparable harm if returned to his country. The Committee further notes that, although the State party did not dispute that the author was persecuted in 2016 and 2017, it did not give sufficient weight to this point. The Committee notes that, conversely, the State party has given disproportionate weight to the fact that the author did not recognize the wife of the missing journalist at the time that the bodies found in the Mubarazi River were identified.

8.9 In this regard, the Committee recalls that States parties must give sufficient weight to the real and personal risk to which an individual would be exposed in the event of expulsion.<sup>20</sup> The Committee notes that, according to the documents before it and the general information on the human rights situation in Burundi, there is no guarantee that, in view of the information he provided to the migration authorities about his vulnerability, the author would not be at risk if returned. The Committee notes in particular that the latest report of the Commission of Inquiry on Burundi indicates that, despite certain indications of openness on the part of the Government of Burundi, human rights violations continue, particularly against members of opposition parties, persons suspected of being involved in armed attacks or of collaborating with armed groups, and returnees.<sup>21</sup> The Committee considers that the State party should have carried out an assessment of the personal risk the author would face if he were returned to Burundi, taking into account the fact that he would be vulnerable for several reasons. In the light of the foregoing, the Committee is of the view that the State party has failed to properly assess the real, personal and foreseeable risk that the author would face if returned to Burundi, given that he has already faced intimidation following the discovery of bodies in the Province of Muramvya in 2016 and is currently wanted by the authorities for participation in an insurrectionist movement. Accordingly, it considers that the State party failed to give due consideration to the consequences that the author's personal situation would have for him in his country of origin, and concludes that the State party's assessment was arbitrary. For these reasons, the Committee considers that the author's expulsion to Burundi would constitute a violation of articles 6 and 7 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 6 and 7 of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is required, *inter alia*, to re-examine the author's case, taking into account its obligations under the Covenant and the Committee's present Views. The State party is requested to refrain from deporting the author while his application for asylum is being reviewed.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and comprehensive remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the State party.

<sup>20</sup> *Q.A. v Sweden* (CCPR/C/127/D/3070/2017), para. 9.7.

<sup>21</sup> *A/HRC/48/68*, para. 18.

## Annex

[Original: Spanish]

### **Separate opinion of Committee member Mr. Carlos Gómez Martínez (dissenting)**

1. I disagree with the Committee's finding of a violation of articles 6 and 7 of the International Covenant on Civil and Political Rights.
2. According to its own jurisprudence, the Committee may consider overturning a decision taken by a domestic court only in cases involving arbitrariness, manifest error or denial of justice.
3. In its Views, the Committee recalls this jurisprudence (see para. 8.2) and refers repeatedly to arbitrariness but does not explain why it considers that the decisions of the State party's Migration Court and Migration Appeals Court were arbitrary.
4. The concepts of "arbitrariness", "manifest error" and "denial of justice" are not identical; if they were, the repeated use of all three terms in the Committee's Views would be redundant.
5. In my opinion, the concept of arbitrariness refers to a breakdown in the application of the law. A judicial decision is arbitrary when it is based merely on the subjective will of the judge and not on the law. According to the Committee's jurisprudence, arbitrariness can also occur when the decision is based on a law that is contrary to human rights.
6. However, this is not the aspect of the Committee's Views with which I disagree. The issue is that the claimant does not agree with the assessment of the evidence conducted by the domestic judicial authority, and the Committee ultimately adopts the same position. I believe that the central concept on which the Views should have been based is manifest error, which assumes that an error was made in the assessment of the evidence and that this error was manifest, allowing the Committee to re-evaluate the evidence put before the domestic judicial organs.
7. The manifest error cannot consist merely of the Committee's disagreement with the assessment of the evidence conducted by the domestic courts. However, paragraphs 8.8 and 8.9 of the Views reveal that what the Committee is doing is conducting an evaluation of the evidence that is different from the one conducted by the domestic courts. This is particularly evident in the final sentences of paragraph 8.8, which assert that the State party "did not give sufficient weight" to one element and gave "disproportionate weight" to another element.
8. Furthermore, the Committee conducts this new examination of the evidence without respecting the principle of immediacy: the personal and documentary evidence was put before the domestic courts rather than before the Committee, whose procedure does not include an evidentiary stage.
9. In short, the manifest error or arbitrariness that allows the Committee to re-evaluate the evidence cannot consist merely of a disagreement with the domestic court's assessment of the evidence. This circular reasoning constitutes a fallacy known as *petitio principii*, which occurs when a conclusion is taken for granted.
10. Accordingly, the Committee should not have found a violation of articles 6 and 7 of the Covenant.