



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3674/2020*, **

<i>Communication submitted by:</i>	J.-C. S. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	21 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 24 January 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	31 October 2023
<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, 7, 9 and 13
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is J.-C. S.,¹ a national of Burundi born in 1970. His application for asylum was rejected. He claims that the State party will violate his rights under articles 6, 7, 9 and 13 of the Covenant if it deports him to Burundi.² The Optional Protocol entered into force for the State party on 23 March 1976. The author is not represented by counsel.

1.2 On 24 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 under consideration by the Committee. The Committee also requested both parties to supplement their claims. On the same day, the State party decided to suspend the author's

* Adopted by the Committee at its 139th session (9 October–3 November 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

¹ The author requested anonymity.

² In June 2021, the author informed the Committee that he had left Sweden and was in Belgium.



deportation. On 13 April 2021, the Committee, after receiving additional information from both parties, decided to lift the interim measures granted to the author.

Factual background³

2.1 The author is a Burundian of Tutsi ethnicity. He is a member of the Mouvement pour la solidarité et la démocratie, an opposition political party. As an employee of a popular media outlet in Bujumbura, Burundi, since 2005, he was known to the National Intelligence Service. On 23 June 2013, police officers searched the author's home in Bujumbura. During the search, the police discovered a photo that he had taken of himself with the President of the Mouvement pour la solidarité et la démocratie, Alexis Sinduhije. The discovery at the author's home led to his persecution by the National Intelligence Service. In April 2015, demonstrations were held across the country to protest against President Pierre Nkurunziza's bid for a third presidential term. The author took part in the protests.

2.2 Between 2015 and 2017, the author worked for the United Nations system in Burundi as a driver for the International Organization for Migration (IOM). While the author was on duty, his vehicle was stopped at a roadblock on three occasions⁴ by the National Intelligence Service. The third time, the author's vehicle was stopped on the grounds that he was transporting members of the Banyamulenge community⁵ who were refugees and political opponents of the Government of Burundi. The authorities also suspected the author of taking young people to training camps in Muyinga with a view to participating in armed movements against the Government. Although the vehicle was flying the United Nations flag, the National Intelligence Service searched it.

2.3 In 2017, following the killing of a staff member of IOM, the author feared for his safety. As a precautionary measure, he no longer stayed for long in the same place, frequently changing his address. Unable to tolerate the pressure, in March 2017, the author decided to leave Burundi. He travelled through Europe, including France and Norway, and finally settled in Sweden.

2.4 While in Sweden, the author continued his political activities as a member of the Mouvement pour la solidarité et la démocratie. He was active as a party recruiter and, in that capacity, regularly attended the party's meetings and events. In July 2017, the author received an email from his wife informing him that agents of the Imbonerakure and the National Intelligence Service had come to take him from his home in Bujumbura.

2.5 On 12 November 2017, the author applied for asylum in Sweden. The Swedish Migration Agency rejected his application and decided, on 2 July 2019, to expel him to Burundi. The Migration Agency considered that the general situation in Burundi did not justify the granting of a residence permit and that the author's individual circumstances did not warrant a different conclusion. As for his Tutsi ethnicity, the Migration Court acknowledged that the Tutsi could be discriminated against in Burundi, but that such group membership was not sufficient grounds for granting international protection. The Migration Court also considered that the documents submitted to substantiate the author's membership in the Mouvement pour la solidarité et la démocratie were limited, had low probative value and did not support the claim that he ran a personal risk. In addition, no such risk was considered to have emerged from his participation in the demonstration in 2015 against the third term of President Nkurunziza, given that he had been able to remain in Burundi until 2017.

2.6 The author appealed the decision of 2 July 2019 of the Swedish Migration Agency to the Migration Court, which rejected the appeal on 8 November 2019. On 30 December 2019, the Migration Court of Appeal refused leave to appeal.

2.7 On 28 February 2020, following an application submitted by the author, the Swedish Migration Agency decided not to grant him a residence permit or a new examination. The author appealed the decision to the Migration Court, which rejected the appeal on 30 March

³ As the author provided an incomplete account of the facts concerning the proceedings, the account set out below is based on both the author's initial submission and the State party's observations.

⁴ The author did not provide the dates of those events.

⁵ A Tutsi community of South Kivu province in the Democratic Republic of the Congo.

2020. The author appealed the judgment to the Migration Court of Appeal, which, on 29 May 2020, decided not to grant leave to appeal. The decision to deport the author became final.

2.8 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 violations of articles 6, 7, 9 and 13 of the Covenant. He submits that, if he returns to Burundi, he risks being killed or subjected to torture, given his previous engagement against the political regime in place in Burundi and his political affiliation. He submits that he is wanted by the police and the National Intelligence Service because he is of Tutsi ethnicity, a minority group that faces threats from the current Government, and a member of the Mouvement pour la solidarité et la démocratie who took part in protests against President Nkurunziza's bid for a third presidential term.

3.2 The author states that, when the Migration Court examined his application for refugee status, it did not consider his request to submit oral information as part of his application for asylum. The author claims that his request for asylum was, therefore, not adequately assessed.

State party's observations on admissibility and the merits

4.1 On 22 June 2020, the State party submitted its observations on admissibility and the merits of the communication.

4.2 Concerning admissibility, the State party submits that the present communication should be declared inadmissible under article 3 of the Optional Protocol and rule 99 (b) of the Committee's rules of procedure since the communication is not sufficiently substantiated for the purposes of admissibility.

4.3 The State party considers that the author's assertion that he would run the risk of being treated in a manner that would amount to a violation of the Covenant if he were returned to Burundi fails to reach the minimum level of substantiation required for the purposes of admissibility. It therefore submits that the communication is manifestly ill-founded and inadmissible pursuant to article 3 of the Optional Protocol.

4.4 The State party recalls that, to determine whether the author's forced return to Burundi would violate articles 6 and 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's being subjected to treatment contrary to articles 6 and 7 of the Covenant after returning to his country.

4.5 With regard to the general human rights situation in Burundi, the State party notes that, while it does not wish to underestimate the concerns that may legitimately be expressed in that connection, it is not sufficient to cite the general situation in the country to establish that the author's deportation would be contrary to articles 6 and 7 of the Covenant.⁶ The State party also notes that 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.

4.6 As for the author's personal risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant, the State party notes that both the Migration Agency and the Migration Court conducted thorough examinations of the author's case. The State party also submits that the Swedish Migration Agency was able to meet with, hear and question the author in person and that the author had the opportunity to challenge his removal in writing and orally before the Migration Agency and in writing before the Migration Court, with the assistance of public counsel. The State party notes that, according to the migration authorities, the author stayed in Burundi for two years after participating in a demonstration against the President in 2015 and that, when he left Burundi in April 2017, he did so legally, after obtaining a new passport in December 2016 from the national authorities. The State party concludes that the author did not fear any immediate repercussions as a consequence of his involvement in the

⁶ General comment No. 36 (2018), para. 30.

protests, which contradicts his assertion that he was of particular interest to the Government or the Imbonerakure. The State party adds that the author waited seven months after his arrival in Europe to apply for asylum and that, during that time, he visited friends in France and went on vacation in Norway.

4.7 Furthermore, the State party draws the Committee's attention to the fact that the Migration Court found that the author's account concerning the risk of ill-treatment if he were returned to Burundi was speculative in the sense that he had not shown why he would be of any particular interest to the Government or the Imbonerakure. The State party notes the conclusions of the national migration authorities, which found that the author had not made a plausible claim that he required international protection because of the political activities that he had carried out while in Sweden.

4.8 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.⁷ 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 and 7 of the Covenant.

4.9 The State party notes that the author has not presented any reasoning concerning the alleged violation of article 9, which concerns liberty and security of person. The State party also clarifies that the author was not held in detention or in any other way subjected to treatment within the ambit of article 9 during his stay in Sweden. Accordingly, the State party concludes that there has been no violation of article 9.

4.10 The State party holds that there is no support for the assertion that article 13 gives rise to a right to an oral hearing before a court. In the present case, the State party contends that the decision of the Migration Court not to grant the author an oral hearing was taken in accordance with chapter 16, section 5, of the Aliens Act. The State party also argues that, since the author was able to submit his arguments against expulsion in writing and orally, with the assistance of counsel, during the asylum procedure, it must be considered that the migration authorities had sufficient information, together with the facts and documentation relating to the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's need for protection in Sweden. Accordingly, the State party holds that the author has not shown that there is any reason to conclude that the rulings by the domestic authorities were arbitrary or in any other way incompatible with the provisions of article 13.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 11 June 2021, the author submitted his comments on the State party's observations.

5.2 In his comments concerning the risk to his life if he were to be returned to Burundi, the author points out that, in addition to being targeted for having taken part in the protests against President Nkurunziza's third term in office, he also fears for his life because of his involvement in the investigation with Alexis Sinduhije into the massacre of around 200 people in Buhoro.⁸ The author points out that, although the death penalty has been abolished in Burundi, the police can decide to kill anyone. In that connection, he points out that several opponents of the Government arrested by the police in Burundi have disappeared.

5.3 The author submits that, in order to determine whether he is entitled to protection, the Swedish migration authorities should rely on his statements and other evidence submitted. He also considers that the State party should determine whether his story is reliable and consistent or whether it contradicts generally known facts or available information about Burundi. The author holds that the migration authorities did not sufficiently investigate the

⁷ See *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.5; *X v. Denmark* (CCPR/C/113/D/2515/2014), para. 4.3; and *Z v. Australia* (CCPR/C/111/D/2049/2011), para. 9.4.

⁸ The author does not give the date of that massacre nor of those investigations.

grounds and evidence relating to his asylum request. In that regard, he maintains that he provided information that the migration authorities did not use in analysing the credibility of his account. He cites, as examples, the information about his relationship with Alexis Sinduhije, an article published by *IWACU* and a letter from the editor of that news outlet about his search. The author adds that the migration authorities did adequately examine his exchange of emails with his wife, the documents that he had written in Kirundi⁹ and the letter from the Forum pour le Renforcement de la Société Civile about his arrest¹⁰ when he was on the mission to Muyinga.

5.4 With regard to the alleged violation of article 9 of the Convention, the author clarifies that it would be a violation of that article if the State party expelled him from its territory despite being aware of his risk of imprisonment in Burundi.

State party's additional observations

6. On 24 June 2021, the State party submitted additional observations on the author's comments. The State party reiterates its position regarding admissibility and the merits of the communication. Concerning the claimed procedural deficiencies in the domestic proceedings, the State party maintains that the Migration Agency and the Migration Court had sufficient information to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the author's need for protection in Sweden. The State party adds that the domestic migration authorities conducted thorough examinations and that, in their assessments, took into account the author's claimed political activities. In relation to the author's allegation that the claimed risk of imprisonment in Burundi falls within the scope of the obligations of Sweden, the State party refutes that the enforcement of an expulsion order entails responsibility under article 9 of the Covenant.

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.

7.2 The Committee has ascertained, in accordance with 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 grounds that the author's claims under articles 6, 7, 9 and 13 of the Covenant are not sufficiently substantiated.

7.5 The Committee recalls paragraph 12 of 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. The Committee has also indicated that the risk must be personal¹¹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹² Thus, all relevant facts and circumstances must be considered, including the general

⁹ The author does not specify which documents are involved.

¹⁰ In his previous submission, the author mentioned search, not arrest.

¹¹ *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.

¹² *X v. Sweden*, (CCPR/C/103/D/1833/2008), para. 5.18.

human rights situation in the author's country of origin.¹³ 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 exists¹⁴ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁵

7.6 The Committee notes the author's claim that he would be exposed to a risk of persecution if returned to Burundi because he is of Tutsi ethnicity, he participated in the demonstrations against President Nkurunziza's third term in office and he was a member of the Mouvement pour la solidarité et la démocratie, an opposition party. The Committee also notes the author's contention that his home was searched in 2013 by the police, which discovered a photo that he had taken of himself with the president of the Mouvement pour la solidarité et la démocratie, and that, later, during his assignment as a driver for IOM, he was stopped by the police at a roadblock and accused by the National Intelligence Service of transporting rebels to training camps in Muyinga. The Committee further notes that, according to the author, while he was in Sweden, agents of the Imbonerakure and the National Intelligence Service came to his home in Bujumbura and inquired about his whereabouts. The Committee notes that, for all of those reasons, the author claims that he is at risk of being exposed to torture and arbitrary killing if he returns to Burundi.

7.7 Furthermore, the Committee notes the State party's argument that Tutsi ethnicity is not sufficient to justify a request for protection. The Committee also notes that the State party emphasizes that the author has not plausibly demonstrated that he was personally threatened because he did not substantiate that he was of any particular interest to the Government or the Imbonerakure and that his fear of being persecuted if returned to Burundi is only speculative. The Committee further notes the State party's argument that, after the author's participation in the protests against President Nkurunziza's third term in 2015, the author stayed in Burundi for two more years and that, when he left Burundi in April 2017, he did so legally, after obtaining, in December 2016, a new passport from the national authorities. The Committee notes the State party's contention that, after the author arrived in Europe, he visited France and Norway and only applied for asylum in Sweden seven months after his arrival.

7.8 In the present case, the committee considers that the fact that the author stayed in Burundi for two years without any kind of persecution from the Imbonerakure or the National Intelligence Service and legally left the country contradicts his account that he would be at risk upon his return to Burundi. Moreover, the Committee observes that, in his additional comments,¹⁶ the author states that he is currently in Belgium.

7.9 Concerning the question of real and personal risk that the author may face if he returns to Burundi, the Committee notes the State party's contention that it is not sufficient to cite the general situation in Burundi to establish that the author's deportation would be contrary to articles 6 and 7 of the Covenant. The Committee considers that the author has not convincingly explained the basis for his fears that returning to Burundi would put him at risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant.

7.10 The Committee notes the author's claim that the State party's decision to remove him from its territory despite its awareness of the risk of his imprisonment in Burundi entails a violation of article 9 of the Covenant. The Committee considers that the mere risk of imprisonment cannot be invoked as constituting a violation of article 9. The Committee concludes that the author has failed to substantiate his claim for the purposes of admissibility with regard to a violation of article 9 of the Covenant.

7.11 The Committee takes note of the author's allegation that procedural errors were made in the course of the examination of his asylum application because the migration authorities did not adequately assess the new elements that he had provided in support of his asylum request, including his exchange of emails with his wife on the visit by agents of the

¹³ Ibid. See also *X v. Denmark*, para. 9.2.

¹⁴ *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

¹⁵ See, for example, *K v. Denmark*, para. 7.4.

¹⁶ Comments submitted on 11 June 2021.

Imbonerakure and the National Intelligence Service at his home and information about his arrest when he was on the mission to Muyinga. The Committee notes that, according to the author, those elements constitute new circumstances in the case, which the migration authorities should consider.¹⁷ The Committee observes that the State party argues that the author submitted his arguments against his expulsion in writing and orally, with the assistance of counsel, during the asylum procedure and that the migration authorities had sufficient information to carry out a reasonable risk assessment concerning the author's need for protection. The Committee considers that the author's claim under article 13 of the Convention is not sufficiently substantiated.

7.12 Moreover, the Committee notes that the national authorities have considered all the author's claims and finds that he has not demonstrated that the assessment made by the national authorities was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁸

8. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
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¹⁷ In its decision dated 24 April 2020, the Migration Court, while rejecting, in accordance with chapter 16, section 5, of the Alien's Act, the author's request for an oral hearing, provided him with a new deadline of 7 May 2020 to submit the new circumstances before its final decision.

¹⁸ *K v. Denmark*, para. 7.4.; and *P.T. v. Denmark*, para. 7.3.