



## 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. 3863/2020\*\*, \*\*\*, \*\*\*\*

<i>Communication submitted by:</i>	A.I. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	13 December 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 18 December 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	26 July 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; right to a fair trial; freedom of opinion and expression
<i>Articles of the Covenant:</i>	7, 14 and 19
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is A.I., a national of Burundi born in 1980. She claims that the State party has violated her rights under articles 7, 14 and 19 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 17 December 2020, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to deport the author to Burundi while the communication was

\* Reissued for technical reasons on 16 August 2023.

\*\* Adopted by the Committee at its 135th session (27 June–27 July 2022).

\*\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, 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, Imeru Tamerat Yigezu and Gentian Zyberi.

\*\*\*\* Individual opinions by Committee members Duncan Laki Muhumuza (partially dissenting) and José Manuel Santos Pais (dissenting) are annexed to the present decision.



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

### **Factual background<sup>1</sup>**

2.1 The author notes that her husband was an accountant with the Mouvement pour la solidarité et la démocratie (Movement for Solidarity and Democracy) party<sup>2</sup> and that, in 2015, he actively participated in the many protest marches against the candidacy of the President of Burundi, Pierre Nkurunziza, for a third presidential term.<sup>3</sup> Ever since, the armed militia of the ruling party (the Imbonerakure), police officers and judges have been tracking down members of the Mouvement pour la solidarité et la démocratie and their families.

2.2 On 17 February 2017, the author travelled to the State party to visit her sister.<sup>4</sup> Her husband stayed in Burundi. A few days later, she was told<sup>5</sup> that police officers had gone to her home in Bujumbura, Burundi, on 20 February 2017 to look for her husband. She provides a notice dated the same day and issued by the local station of the Musaga criminal investigation police in which her husband is listed as wanted for "participation in an insurrectional movement". The author asserts that her husband disappeared on 20 February 2017 and that she has not heard from him since.

2.3 The author notes that the police and the Imbonerakure are also actively looking for her because of her husband's political activities and because the authorities believe that she knows his whereabouts.<sup>6</sup> She provides a notice issued by the local station of the Musaga criminal investigation police, dated 28 February 2017, in which she is listed as wanted.<sup>7</sup>

2.4 The author applied for asylum in the State party on 14 March 2017. On 22 February 2018, the Swedish Migration Agency rejected her asylum application for reasons including the contradictory nature of her statements regarding her husband's political activities and her inability to provide details about the activities of the Mouvement pour la solidarité et la démocratie, her husband's political activities and how those activities had affected their daily lives. The Swedish Migration Agency also considered that the author's limited explanations were unsatisfactory given that her husband had occupied a full-time post within the party for several years and that they had lived together in fear of being killed as a result of those activities.

2.5 The author filed an appeal with the Migration Court, which was rejected on 9 April 2020. On 27 May 2020, the Migration Court of Appeal refused her leave to appeal, and the decision to deport her became final.

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<sup>1</sup> As the author did not provide a full statement of the facts concerning the proceedings, the factual background is based on both the author's initial submission and the State party's observations.

<sup>2</sup> During her interview with the Swedish Migration Agency on 17 January 2018, the author noted that her husband collected neighbourhood dues for the Mouvement pour la solidarité et la démocratie and participated in monthly party meetings. However, she was unable to provide any further details or information on her husband's activities or even information on how her husband's activities had affected her own life at the time, despite the officer's many questions in that regard.

<sup>3</sup> The author notes that Pierre Nkurunziza ran for a third term even though only two consecutive presidential terms were permitted under the Constitution of Burundi. By a contested decision of 5 May 2015, the Constitutional Court of Burundi authorized Pierre Nkurunziza to seek a third term.

<sup>4</sup> This is the date given by the author during her interview with the Swedish Migration Agency on 17 January 2018. During this interview, she also noted that she had applied for a passport from the Burundian authorities. The passport was issued in 2016. The author entered Sweden on a visa.

<sup>5</sup> Her interview with the Swedish Migration Agency on 17 January 2018 revealed that the author was told by her housekeeper over the telephone that the police had arrived.

<sup>6</sup> During her interview with the Swedish Migration Agency on 17 January 2018, the author noted that the police and the Imbonerakure were looking for her; they either wanted information on her husband's whereabouts, if he was on the run, or had killed her husband in 2017 and wanted to go after her because she was his wife.

<sup>7</sup> The interview with the Swedish Migration Agency on 17 January 2018 revealed that the two notices in which she and her husband were listed as wanted were received at her home by her housekeeper. The housekeeper photographed them and used a mobile telephone belonging to neighbours to send them to the author. The author provided copies of the two wanted notices to the Swedish Migration Agency and the Committee.

## Complaint

3.1 The author fears that, if she is returned to Burundi, the police or the Imbonerakure will persecute her to obtain information on her husband's whereabouts.

3.2 The author notes that, since the elections of 2015, the police and the Imbonerakure have been tracking down members of the Mouvement pour la solidarité et la démocratie and their families, who are frequently arrested, imprisoned or killed. She adds that the party has been banned by the Government and that it is in fact the only party that the Government banned from participating in the 2020 elections.

3.3 The author asserts that the State party has rejected all her appeals following her application for political asylum and protection and is forcing her to leave the country despite the physical evidence that she has provided, including a copy of the notice issued by the Burundian police in which she is listed as wanted.

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

4.1 On 17 August 2021, the State party submitted its observations on admissibility and the merits of the communication.

4.2 From the content of the communication, the State party infers that the author is arguing that her deportation to Burundi would violate articles 6 and 7 of the Covenant because of the threat that she faces from the Burundian authorities and the Imbonerakure.

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

4.4 To determine whether the author's forced return to Burundi would violate articles 6 and 7 of the Covenant, the following elements must be taken into account, in accordance with the Committee's jurisprudence: 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 and 7 of the Covenant after returning to her country.

4.5 Concerning the general human rights situation in Burundi, with reference to a series of reports by the United Nations and non-governmental organizations,<sup>8</sup> the State party notes that, while it does not wish to underestimate the concerns that may legitimately be expressed in that regard, the general human rights situation in Burundi is not in itself sufficient to establish that the author's deportation would be contrary to articles 6 and 7 of the Covenant.<sup>9</sup>

4.6 With regard to the author's personal risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant, the State party notes that, according to the migration authorities, the fact that she is a woman and is of Tutsi ethnicity was not in itself sufficient for the author to be considered as having plausibly demonstrated that she was in need of protection.<sup>10</sup> In addition, the written evidence submitted by the author in her file was considered to be simplistic and therefore of little probative value. The State party adds that, in its ruling, the Migration Court also found the author's account of her husband's activities in the Mouvement pour la solidarité et la démocratie to be imprecise and lacking in detail. The Court noted that, according to the author, she had never attracted the attention of the authorities or any other actor, and her account of the threat that she faced was thus found to

<sup>8</sup> See [S/2019/837](#); [A/HRC/42/49](#); International Crisis Group, "Running Out of Options in Burundi", *Africa Report*, No. 278, 20 June 2019; United States Department of State, "Burundi 2020 Human Rights Report", available on the Department of State website ([www.state.gov](http://www.state.gov)); Immigration and Refugee Board of Canada, "Burundi: the authorities' treatment of members of the political party known as Movement for Solidarity and Democracy (Mouvement pour la solidarité et la démocratie, MSD)", 8 March 2017; Freedom House, "Freedom in the World 2021, Burundi"; and Human Rights Watch, "World Report 2021, Burundi".

<sup>9</sup> Human Rights Committee, general comment No. 36 (2018), para. 30.

<sup>10</sup> In her asylum application to the national authorities, the author stated that she was being persecuted because she is of Tutsi ethnicity and is a woman.

be insufficient. The claim that she and her husband are wanted persons is based on second-hand information and was not found to be sufficient to plausibly demonstrate that she was in need of protection.

4.7 The State party further notes that the national migration authorities considered that the security situation in Burundi was one of internal armed conflict. However, it was considered that not all residents were at risk of treatment constituting grounds for protection, and the author did not plausibly demonstrate that she was in need of protection in connection with the situation in her country of origin.

4.8 In short, the migration authorities considered that the reasons given by the author regarding the risk of treatment constituting grounds for protection in her country of origin were insufficient to plausibly demonstrate that she was in need of protection. Furthermore, the State party believes that the author is trying to use the Committee as a court of appeal.

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 national proceedings was arbitrary or amounted to a denial of justice. It considers that the author's version of events and the facts put forward in her complaint are insufficient to support the conclusion that her alleged risk of ill-treatment in the event of a 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.

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

5.1 On 9 December 2021, the author submitted her comments on the State party's observations.

5.2 In these comments, the author states that she faces a personal, real and considerable risk of being subjected to treatment contrary to article 7 of the Covenant if deported to Burundi. She in no way disputes the content of the various reports on the human rights situation in Burundi to which the State party refers in its observations. In addition, she refers to a report of January 2020 by the Burundi Human Rights Initiative indicating that arrests, ill-treatment, torture and extrajudicial killings by the police and the Imbonerakure were continuing to occur in Burundi and that most of the victims were members of the opposition, including the Congrès national pour la liberté (National Congress for Liberty) and the Mouvement pour la solidarité et la démocratie, and their families.<sup>11</sup>

5.3 The author recalls that the Office of the United Nations High Commissioner for Human Rights in Burundi was closed on 28 February 2019, following a decision by the Government of Burundi, and that the Office of the Special Envoy of the Secretary-General for Burundi was closed on 31 May 2021.

5.4 The author also maintains that, by deporting her to Burundi, the State party would be violating article 14 of the Covenant, as she would be at risk of being arrested and not receiving a fair trial in the country. She recalls that a notice in which she was listed as wanted for "participation in an insurrectional movement" was issued by the local station of the Musaga criminal investigation police, dated 28 February 2017, and that human rights activists convicted of the same offence without having been given a fair trial have received prison sentences exceeding 30 years. It is noted in the report of the Burundi Human Rights Initiative that pressure on the justice system to do the bidding of the ruling party had intensified to such an extent that, by early 2020, what was left of the independence of the justice system had almost completely disappeared for politically sensitive cases. It is emphasized in the same report that this kind of obstruction is particularly pronounced in trials where the defendants are members of opposition parties.<sup>12</sup>

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<sup>11</sup> See the Burundi Human Rights Initiative, "A Façade of Peace in a Land of Fear: Behind Burundi's Human Rights Crisis" (January 2020).

<sup>12</sup> *Ibid.*, pp. 67 and 68.

5.5 Lastly, the author refers to article 19 of the Covenant, which states that everyone has the right to hold opinions without interference.

### **State party's further observations**

6.1 On 16 February 2022, the State party submitted further 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 essentially already been addressed in the State party's initial observations. It wishes to emphasize that it fully maintains its position regarding the facts, admissibility and merits of the present complaint, as set out in its initial observations.

6.3 In addition, the State party notes that, in her comments, the author appears to assert that there has been a violation of articles 14 and 19 of the Covenant. It emphasizes in this regard that this is the first time that the author has invoked these articles and that she has not explained why these provisions are applicable. The State party therefore considers that this part of the complaint should be declared inadmissible.

### **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 to the Covenant.

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 assertion that she has exhausted all effective domestic remedies available to her. In the absence of any objection by the State party in that regard, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee also takes note of the author's assertion that her deportation to Burundi would result in a violation of article 14 of the Covenant, insofar as she would be at risk of being arrested and not receiving a fair trial in the country, as well as a violation of article 19 of the Covenant. The Committee notes, however, that the author has failed to sufficiently substantiate these claims and therefore declares them inadmissible under article 2 of the Optional Protocol.

7.5 As for the author's claims based on a risk of being subjected to treatment contrary to article 7 of the Covenant, the Committee recalls paragraph 12 of its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is 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 personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>13</sup> In assessing the existence of such a risk, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin.<sup>14</sup> The Committee recalls its jurisprudence according to which considerable weight should be given to the assessment conducted by the State party and reiterates that it is generally for organs of States parties to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it can be established that the assessment was

<sup>13</sup> See, for example, *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3; *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.3; *V.R. et al. v. Denmark* (CCPR/C/117/D/2745/2016), para. 4.4; and *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2.

<sup>14</sup> *Idem*.

clearly arbitrary or amounted to a manifest error or denial of justice.<sup>15</sup> The Committee also recalls its jurisprudence to the effect that the burden is on the author to prove that he or she would face a real and personal risk of irreparable harm if deported.<sup>16</sup>

7.6 The Committee notes the author's assertion that the police and the Imbonerakure are actively looking for her because of her husband's activities in the Mouvement pour la solidarité et la démocratie and because they want to obtain information on the whereabouts of her husband, who disappeared in 2017. It also notes that the author fears being arrested, subjected to inhuman or degrading treatment and not receiving a fair trial if returned to Burundi.

7.7 The Committee notes the State party's assertion that the present communication is insufficiently substantiated. It also notes the fact that, in its ruling of 9 April 2020, the Migration Court found the author's account of her husband's activities in the Mouvement pour la solidarité et la démocratie to be contradictory, imprecise and lacking in detail. It further notes the findings of the national migration authorities that the author did not plausibly demonstrate that she was in need of protection and the fact that the written evidence submitted by the author in her application was considered to be simplistic and therefore of little probative value.

7.8 The Committee finds that the author's claim that her husband was active in the Mouvement pour la solidarité et la démocratie is the basis on which her complaint rests and the cause of the risk that she faces of being subjected to treatment contrary to article 7 of the Covenant. In this regard, it notes that the author has not provided any information to substantiate this claim and that the statements that she made on the matter during the national proceedings were considered to be contradictory, imprecise and lacking in detail, despite the many relevant questions that she was asked during her interview with the Swedish Migration Agency, whether on the activities of the party itself, her husband's activities in particular or, should her husband never have told her anything about his activities in the party, how his activities had affected their personal lives. The Committee therefore considers that the author has not convincingly explained the basis for her fears that returning to Burundi would put her at risk of being subjected to treatment contrary to article 7 of the Covenant.

7.9 Moreover, the Committee notes that the national authorities have considered all the author's claims and finds that she has not demonstrated that the assessment by and conclusions of the national authorities were clearly arbitrary or amounted to a manifest error or denial of justice.

7.10 The Committee therefore concludes that the communication is inadmissible under article 2 of the Optional Protocol.

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.

<sup>15</sup> *V.R. et al. v. Denmark*, para. 4.4; *F.B.L. v. Costa Rica* (CCPR/C/109/D/1612/2007), para. 4.2; *Fernández Murcia v. Spain* (CCPR/C/92/D/1528/2006), para. 4.3; and *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3.

<sup>16</sup> See, for example, *A.E. v. Sweden*, para. 9.7; *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 9.7; and *M.P. et al. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7.

[Original: English]

## Annex I

### **Individual opinion of Committee member Duncan Laki Muhumuza (partially dissenting)**

1. The Committee found that there was no violation of articles 7, 14 and 19 of the Covenant based on the information provided by the author.
2. Having examined the assertions by the author, I am convinced that there is a violation of article 7 of the Covenant, which could easily escalate into a violation of article 6 of the Covenant, as a result of the author's deportation to Burundi.
3. With regard to articles 14 and 19 of the Covenant, I agree with my colleagues that the author did not provide information to substantiate her claims of infringement of the said articles. I will therefore address the question of article 7, in respect of which I find that the author's claims were substantial.
4. The author emphasized that after travelling to the State party to visit her sister in 2017, she was told a few days later that on 20 February 2017 police officers had gone to her home in Bujumbura, Burundi, to look for her husband. The author further stated that she herself was actively being sought by the police and the Imbonerakure because of her husband's political activities and because the authorities believed that she knew his whereabouts. She was presented with a "wanted notice" with her name on it issued by the local Musaga criminal investigation police station, dated 28 February 2017.
5. The author's current profile reveals that she is a person of interest to the Imbonerakure and wanted by/in Burundi for the purposes of tracing/locating her husband. The "wanted notice" with her name on it discloses an apparent and imminent threat to her life, which points to the fact that her life would be in danger should she be returned to Burundi.
6. States parties have an obligation not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.<sup>1</sup> The risk posed must be personal, and there should be a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.
7. It is undisputed that the author was presented with a "wanted notice" with her name on it issued by the local Musaga criminal investigation police station. The notice was issued to compel her to disclose the whereabouts of her husband, which she states that she does not know. A "wanted notice" is issued by the police when they want to question someone in connection with a crime that has been committed. In this case, the notice was issued to the author for the purposes of advising the Imbonerakure of her husband's whereabouts. Her husband was involved in the political activities of the Movement for Solidarity and Democracy Party, which does not constitute a crime per se. A "wanted notice" was therefore issued in respect of the author on account of other factors and not in relation to a crime, as none had been committed. In no uncertain terms, the author indicated the apparent risk to her own life which would lead to irreparable harm.
8. It has been reported previously that the Imbonerakure, including through their activities and ties with the authorities, specifically with the Bujumbura police, are able to find a person in all parts of the country and abroad or prevent a person from exiting the country; these activities have been revealed in several reports and by several sources. This has also been stated in reports issued by the United Nations and non-governmental organizations. The State party notes that it does not underestimate the legitimate concerns expressed by the author with respect to the human rights situation in Burundi. In the circumstances, it would

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<sup>1</sup> See the Committee's general comment No. 31 (2004), para. 12.

be a travesty to allow the State party to proceed in this manner, and would render it an accomplice if the author's rights were to be violated.

9. Regarding article 7, it is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.<sup>2</sup> Furthermore, the prohibition in the Covenant on torture and other forms of ill-treatment applies whether the acts were conducted by public officials or private persons. This means that the State has a positive duty, including one of due diligence, to adequately protect individuals within its jurisdiction from acts by, inter alia, private terrorist actors.<sup>3</sup>

10. The State party has a duty to protect the author from acts of torture or cruel, inhuman or degrading treatment, as provided in article 7. The State party should have taken measures to conduct its own due diligence and ascertain the imminent threats and risks facing the author, instead of dismissing her claims and deciding to deport her back to Burundi, where her life would be in danger. Deporting the author to Burundi is a punishment in itself, and the State party would be sending her to a "den of lions" knowing that her life in Burundi was in danger and she would be at risk of suffering irreparable harm. This would amount to a violation of the author's rights under article 7 of the Covenant.

11. I find a violation of article 7 which is likely to result in a violation of article 6. The Committee should therefore implore the State party to take immediate measures to protect and preserve the author's life. The State party should be implored to take immediate measures to protect and preserve the life of the author. Moreover, the Committee should take judicial notice that in circumstances such as the author's, the issuance of a "wanted notice" can lead to the risk to her life.

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<sup>2</sup> See the Committee's general comment No. 20 (1992), para. 2.

<sup>3</sup> See the Committee's general comment No. 31 (2004), para. 8.



[Original: English]

## Annex II

### Individual opinion of Committee member José Manuel Santos Pais (dissenting)

1. I regret not being able to concur with the Committee's decision in the present communication. In my view, the author's complaint should have been declared admissible and a violation found of the author's rights, at least under article 7 of the Covenant.
2. The Committee concluded that the Swedish authorities had addressed the author's claims, and that the author had not demonstrated that the assessment by and conclusions of the domestic authorities were clearly arbitrary or amounted to a manifest error or denial of justice.<sup>1</sup> I hesitate to reach such a straightforward conclusion.
3. The author was not represented by counsel,<sup>2</sup> and this may have been detrimental to her claim. Notwithstanding, she clearly referred to several reasons which, taken together, seem to confirm the high personal risk she may face if returned to her country of origin.
4. The State party acknowledges, following reports by the United Nations and non-governmental organizations, that one should not "underestimate the concerns that may legitimately be expressed with respect to the human rights situation in Burundi", however it asserts that "the general situation in the country does not, in itself, suffice to establish that the author's deportation would be contrary to articles 6 or 7 of the Covenant".<sup>3</sup>
5. Right after this conclusion, the State party notes that the author is a woman and of Tutsi ethnicity, and is therefore particularly vulnerable. And yet, it considers that these elements are not, in themselves, "sufficient for the author to be considered as having plausibly demonstrated that she is in need of protection".<sup>4</sup>
6. Furthermore, according to the State party, "national migration authorities considered that the security situation in Burundi was one of internal armed conflict".<sup>5</sup>
7. The author claims that her husband worked for the Movement for Solidarity and Democracy Party and, in 2015, had actively participated in protest marches following the announcement that the President of Burundi, Pierre Nkurunziza, would run for a third presidential term,<sup>6</sup> even though only two consecutive presidential terms were allowed under the Constitution. It was a contested decision of 5 May 2015 by the Constitutional Court which allowed the President to seek a third term.<sup>7</sup>
8. Ever since, according to the author, the armed militia of the ruling party (the Imbonerakure), police officers and judges have been tracking down members of the Movement for Solidarity and Democracy and their families, including naturally the author, frequently arresting, imprisoning or killing them. This was the only party that the Government banned from participating in the 2020 elections.<sup>8</sup>
9. Having left Burundi on 17 February 2017, the author was informed that on 20 February 2017, police officers had gone to her home in Bujumbura to look for her husband. She presented the Swedish authorities with a "wanted notice" dated the same day, with her husband's name on it, issued by the local Musaga criminal investigation police station, for

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<sup>1</sup> See para. 7.9 of the Committee's Views above.

<sup>2</sup> See para. 1.1 of the Committee's Views above.

<sup>3</sup> See para. 4.5 of the Committee's Views above.

<sup>4</sup> See para. 4.6 of the Committee's Views above.

<sup>5</sup> See para. 4.7 of the Committee's Views above.

<sup>6</sup> See para. 2.1 of the Committee's Views above.

<sup>7</sup> See footnote 4 of the Committee's Views above.

<sup>8</sup> See para. 3.2 of the Committee's Views above.

“participation in an insurrectional movement” – a major criminal charge. She has not heard from her husband ever since.<sup>9</sup>

10. The author refers to the fact that she herself is actively being sought by the police and the Imbonerakure because of her husband’s political activities, the authorities believing she knows his whereabouts. In this regard, she produced a “wanted notice” with her own name on it, issued by the local Musaga criminal investigation police station and dated 28 February 2017.<sup>10</sup>

11. Despite this, “the written evidence submitted by the author in her file was considered to be simplistic and therefore of little probative value” by Swedish authorities,<sup>11</sup> and her reasons were considered to be “insufficient to plausibly demonstrate that she is in need of protection”.<sup>12</sup> What should the author have produced, then? A copy of the “wanted notice” certified by a Burundian public official (a notary, perhaps), although she was already in Sweden at the time?

12. The Swedish Migration Agency even considered that the author’s limited explanations were unsatisfactory since her husband had occupied a full-time post in the party for several years and they had lived together in fear of being killed as a result of those activities.<sup>13</sup> Does this rule out the fact, however, that both the author and her husband may presently, at least since 2015 (see para. 5 above), be at risk of being killed or seriously harmed once returned to Burundi?

13. In the light of all these factors – namely the political situation in Burundi, with a president perpetuating himself in office against the Constitution, with serious persecution of political opponents and their families, the acknowledged situation of internal armed conflict, and the fact that the author is a woman and of Tutsi ethnicity, that she is the object of a “wanted notice” issued by the criminal investigation police and that her husband is actively being pursued for participation in an insurrectional movement, which may entail for both the risk of imprisonment and even death – could the Swedish authorities still conclude there were no personal risks for the author if returned to her country of origin? I am honestly unable to reach such a straightforward conclusion.

14. Even if it may be debated whether the assessment by and conclusions of the domestic authorities were clearly arbitrary or amounted to a manifest error or denial of justice, there remains a high personal and real risk of irreparable harm for the author if returned in the present circumstances to Burundi. I would therefore have concluded at least a violation of her rights under article 7 of the Covenant.

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<sup>9</sup> See para. 2.2 of the Committee’s Views above.

<sup>10</sup> See para. 2.3 of the Committee’s Views above.

<sup>11</sup> See para. 4.6 of the Committee’s Views above.

<sup>12</sup> See para. 4.8 of the Committee’s Views above.

<sup>13</sup> See para. 2.4 of the Committee’s Views above.