



# 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. 2984/2017\*, \*\*

<i>Communication submitted by:</i>	J.B.N.K.
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	22 May 2017 (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 30 May 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	13 March 2020
<i>Subject matter:</i>	Deportation from Sweden to Rwanda
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issues:</i>	Right to life; risk of torture or ill-treatment
<i>Articles of the Covenant:</i>	6 and 7
<i>Article of the Optional Protocol:</i>	3

1.1 The author of the communication is J.B.N.K. He was born on 5 September 1992 and holds Congolese and Rwandan passports. He claims that the State party would violate his rights under articles 6 and 7 of the Covenant if he were deported. The Optional Protocol entered into force for the State party on 23 March 1976. The author is not represented by counsel.

1.2 On 30 May 2017, 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 to refrain from deporting the author to Rwanda while the communication was under consideration by the Committee.

#### Factual background

2.1 The author is of Tutsi ethnicity. He was born in north Kivu in the Democratic Republic of the Congo.<sup>1</sup> His family fled to Rwanda in 1998 owing to the ongoing conflict

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

<sup>1</sup> The author provides a copy of his birth certificate from the Democratic Republic of the Congo.



in Democratic Republic of the Congo. The author grew up in Rwanda and graduated from college there in 2011. However, the author emphasizes that he is not a national of Rwanda and that his family had only been granted residence permits in that country.

2.2 The author submits that since 2011, he and other young Congolese refugees in Rwanda started facing problems. Many of them were forcibly recruited to join the M23 rebel group. In 2012, the author was contacted by a man who knew his father. The man offered him a scholarship to go the United States of America, presenting it as part of a project between Rwanda and the United States for Congolese refugees. The author, who did not have a passport, was requested to give a passport photo and his details to the representatives of Congolese refugees. On 7 September 2012, the author received a Rwandan passport, which contained an error in his date of birth. When he requested the representatives to correct the error, they told him that they could not amend the error as he might lose the scholarship.

2.3 The author was told that before travelling to the United States, there would be a three-month preparation course and that he would be transported by bus to the course location in northern Rwanda. Two days before his trip, his father was contacted by an assistant of one of the representatives. This person was his friend and told him that no such education programme existed in the United States. Instead, the author and others who had been offered the same opportunity were going to be transported to training camps for the M23 militia. As the author refused to join the M23 movement, he travelled to the border between Rwanda and Uganda on the same day on which the departure for the training had been scheduled. He crossed the border and remained in Uganda. The author's family started receiving messages from other Congolese refugee representatives arguing that the author was a Congolese spy. The author also received hate messages from young people who were taking part in the M23 training. At an unspecified date, the author returned home from Uganda. The author's father was called twice by State authorities of Rwanda to answer to allegations of him being in Rwanda as a Congolese spy. For this reason, in November 2012, the author and his family decided to go back to Goma in the Democratic Republic of the Congo.

2.4 Once in Goma, the author worked as an interpreter for a non-governmental organization a few days per week, as his brother did.<sup>2</sup> Government officials of the Democratic Republic of the Congo started to accuse the author and his family of being M23 members, arguing that they were spying on the government and sending the information to M23. In addition, M23 accused him and his family of not supporting them in their fight for the Tutsi and claimed that they, therefore, did not deserve to be called Tutsis.<sup>3</sup> After receiving several letters containing these accusations, the author went on a trip to Kenya. In September 2013, when the author returned to Goma to convince his family to move to Kenya, he found the dead bodies of his parents and his younger brother, and his sisters were crying after having been violated.

2.5 The author decided to flee to Uganda, where he applied for asylum on 3 September 2014. The author was given refugee status on 23 November 2014. The author explains that he had to leave his Congolese passport with the Ugandan police when he applied for asylum and did not get it back, because the national authorities told him that they could only give it back to him if he went back to the Democratic Republic of the Congo.

2.6 In Uganda, the author met with refugees from the Democratic Republic of the Congo who were former M23 militia members. In January 2014, the author was stopped in Kampala by three people who accused him of having been involved in the issuance of reports against M23. The author submits a Ugandan police report, dated 2 May 2014, which states that the author had reported that he had been attacked by some members of the M23 rebels who had fled into Uganda. They accused the author of reporting them to a human

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<sup>2</sup> The author explains that he worked as an interpreter for an association for human rights that reported to Human Rights Watch, and his brother worked for the Red Cross of the Democratic Republic of the Congo. The author also explains that he did not have a regular contract as an interpreter in these organizations. He was paid per working day. His work involved meeting people who were victims of the conflict and assuring the interpretation of their testimonies.

<sup>3</sup> The author stated before the authorities in Sweden that he had travelled to Kenya to investigate the possibilities of protection there, and that when he returned to Goma in August 2013, he found that his family was dead and his older brother was missing.

rights organization in the Democratic Republic of the Congo. The report also states that the author had spoken to the police on 20 March and 25 April 2014. As the author did not feel safe in Uganda, he contacted a Kenyan businessman, who was based in Rwanda and who used to work with his father, and requested his help to flee Uganda. The businessman offered the author the opportunity to participate in a training programme in Europe that was arranged for his employees. The author had to go to Rwanda to get a visa, which he did by bus at night. On 26 May 2014, the author travelled to Sweden using the Rwandan passport he had received in 2012.

2.7 On 29 May 2014, the author applied for asylum. On 28 October 2015, the Swedish Immigration Service rejected his asylum request noting that the author had submitted a passport from Rwanda, a voter card from the Democratic Republic of the Congo, police reports from Uganda, and his asylum registration card from Uganda. The Immigration Service noted that its Identity Unit had found that the passport was valid. However, it considered that the registration card and the voter card would be easy to falsify and that they were therefore of low probative value. In addition, it was pointed out that the author did not provide any documents from the Rwandan authorities to support the claim that he had lived as a refugee in Rwanda, and that he also failed to provide a valid justification to indicate how his Rwandan passport had been issued.

2.8 The Immigration Service therefore considered the author to be a Rwandan citizen. It found that the author had not demonstrated that he had returned to the Democratic Republic of the Congo in 2012 because he had no stamps in his passport, and found his explanation that he had entered with his passport to Rwanda and went back to Uganda with his student document not credible as no stamps confirmed this movement. The Service further noted that the author had not submitted any police reports related to the threats he had received in the Democratic Republic of the Congo. He had not supplied a copy of the letters received, any evidence of the accusations that the authorities of Rwanda and Uganda were colluding with M23, or any contract from the non-governmental organization he claimed to have worked for, despite having been requested to do so. The Immigration Service further noted that he fled to Goma owing to the threats he faced after having refused to join M23. It noted that M23 was based in Goma at the time, and that when requested to explain why he had fled to a place from which the militia was operating, the author could not provide an explanation. It also noted that the author had not been able to explain why he would have been threatened by M23 and the authorities of the Democratic Republic of the Congo, apart from having worked as an interpreter. The Immigration Service further noted that the author had, on several occasions, travelled between Rwanda and Uganda without facing any problems with the Rwandan authorities. Finally, the Immigration Service considered that the visa that had made it possible for the author to travel to Sweden was not a means of escaping Rwanda, given that he had chosen to participate in the conference before approaching the Swedish Migration Agency to seek asylum. The Immigration Service considered that the author had not made an honest attempt to substantiate his story.

2.9 On 6 November 2015, the lawyer of the author appealed the decision of the Immigration Service without consulting him. After submitting the appeal, the author and the lawyer met, and his lawyer asked him to request that the Office of the United Nations High Commissioner for Refugees (UNHCR) in Sweden transmit his refugee registration details through their office in Uganda. On 7 March 2016, the lawyer sent the author's refugee profile from UNHCR in Uganda to the immigration authorities.

2.10 In the appeal, the author explained that when he returned to Goma, the city was under the control of the Congolese army. The author therefore considered it to be safer to return to Goma than to stay in Rwanda. He also explained that it was difficult for him to obtain evidence of his claims pertaining to the events in the Democratic Republic of the Congo.

2.11 On 10 March 2016, the Migration Court upheld the decision of the Immigration Service. It considered that the documents concerning refugee status that had been submitted by the author, which had been issued in Uganda, could have been manipulated, and that he had failed to substantiate that he was a resident of the Democratic Republic of the Congo. Instead, the Migration Court believed he was a resident of Rwanda. They considered that the situation in Rwanda was not sufficiently serious to entitle the author to a residence permit in Sweden. The Migration Court affirmed that the author's account was not credible, and considered that there was a lack of written evidence concerning his account. The Court

further argued that the author had not provided evidence that he was a refugee in Rwanda, and that the assertions that M23 and Rwandan authorities were after him were based on second-hand information with low probative value, because the grounds for protection cited by the author were largely based on information recounted to him by his father. The author argues that the decision was already taken before the submission of the UNHCR documents and that they were not taken into account.

2.12 The decision was appealed before the Migration Court of Appeal by his lawyer, who requested that the Court consider the documents provided by the UNHCR office in Sweden. On 15 April 2016, the High Court rejected the appeal.

2.13 In his complaint before the Committee, the author submits a copy of his passport, issued on 20 February 2017, from the Democratic Republic of the Congo.<sup>4</sup> He explains that he obtained the passport from the Congolese Embassy after the asylum proceedings had been finalized in the State party.

2.14 On 7 July 2015, the author got a permanent contract of employment in Sweden. He explains that under Swedish law, if an asylum seeker gets a job before getting a rejection of his or her application, the person can apply for a work permit without leaving Sweden. The author therefore applied for such a permit. He argues that even though he complied with all the requirements, his request was rejected on 6 April 2017 because he had not provided the requested additional information. The author explains that he had never received any request for additional information. For this reason, the author appealed that decision.

2.15 On 3 May 2017, the Swedish immigration authorities informed the author that he was going to be deported to Rwanda, while the appeal of the decision of 6 April 2017 was still pending.

### **The complaint**

3.1 The author claims that his deportation to Rwanda would put him at risk of death and torture or other cruel, inhuman or degrading treatment or punishment in violation of articles 6 and 7 of the Covenant. He explains that the Swedish authorities intend to send him back to Rwanda, despite the fact that he is a national of the Democratic Republic of the Congo, which does not recognize dual nationality. The author claims that, if he is returned to Rwanda, he might be arrested by the authorities for having refused to join the M23 movement, as he could be perceived as a spy of the Democratic Republic of the Congo.

3.2 The author further claims that, if he is returned to Rwanda, he would face a risk of persecution by M23 for not supporting them in their fight for the Tutsis. The author indicates that after the intervention of Malawi, South Africa and the United Republic of Tanzania, in partnership with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, M23 was defeated and that its members escaped to Rwanda and Uganda.

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

4.1 On 29 November 2014, the State party submitted its observations on the admissibility and the merits of the communication. It considers that the communication should be held inadmissible for failure to provide the basic level of substantiation required for purposes of admissibility.

4.2 Regarding the merits of the communication, the State party submits that while it does not wish to underestimate the concerns that may legitimately be expressed with respect to the current human rights situation in Rwanda,<sup>5</sup> this situation does not require a

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<sup>4</sup> The copy of the passport provided by the author has as a date of issuance of 20 February 2017.

<sup>5</sup> The State party refers to: Human Rights Watch, "Rwanda: politically closed elections – a chronology of violations", 18 August 2017; Amnesty International, "Setting the scene for elections: two decades of silencing dissent in Rwanda" (2017); Arch Puddington and Tyler Roylance, "Populists and autocrats: the dual threat to global democracy" (Washington, D.C., Freedom House, 2017); United States Department of State, "2016 country reports on human rights practices: Rwanda", 2017; Report of the Secretary-General on the implementation of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the region (S/2017/208); and Regieringskansliet, "Mänskliga rättigheter, demokrati och rättsstatens: Principer i Rwanda 2015–2016" (in Swedish).

general need to protect all asylum seekers from that country. The State party submits that the author is the one who has to show that he personally faces a real risk of being subjected to treatment in violation of article 7 of the Covenant upon return to Rwanda.

4.3 The State party explains that several provisions of the Swedish Aliens Act reflect the same principles as those laid down in article 3 of the Covenant. National authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her statements and claims. In that connection, the Migration Agency and the Migration Court have conducted thorough examinations of the complainant's case. The State party submits that, on 2 June 2014, the Migration Agency held an introductory interview with the author and shared the minutes with the author's counsel on 16 June 2014. On 11 August 2014, an extensive asylum investigation that lasted for more than three hours took place in the presence of the public counsel, and the minutes were also communicated to the public counsel on 13 August 2014. Both the interview and the investigation were conducted in the presence of interpreters, and the author confirmed that he understood them well. The author was also able to submit written observations on the minutes, and therefore had several opportunities to explain the relevant facts and circumstances to support his claims. For this reason, the State party submits that the migration authorities have had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainant's need for protection in Sweden. The State party contends that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice, and that considerable weight must be attached to the opinions of the Swedish migration authorities that returning the author to Rwanda would not entail a violation of article 7 of the Covenant.

4.4 The State party further argues that the author has not plausibly demonstrated that he is a national of any country other than Rwanda. The State party explains that the author presented two documents with different information: a voting card as an identification document for the Democratic Republic of the Congo and a passport from Rwanda. It submits that a Congolese passport was never presented to the authorities of Sweden. The voting card could have been manipulated, which gives it a low probative value. However, the Rwandan passport is genuine and establishes that the author was born in Kinazi Ruhango, Rwanda, on 5 September 1989. The State party also notes that during the Migration Agency's assessment, the author stated that his date of birth had been changed in his Rwandan passport because no one under 21 would be allowed to apply for a scholarship in the United States. When the author was later asked to explain why someone needed to change his date of birth, he answered that M23 had been severely criticized for recruiting young people. The Migration Agency questioned whether a rebel group such as M23 would be concerned with the age of their recruits or with receiving international criticism on such an issue. The State party therefore concludes that, according to the information and documentation available, the author is from Rwanda.

4.5 Finally, the State party considers that the present communication reveals no violation of the Covenant. The Swedish migration authorities have emphasized that the standard of proof cannot be set too high for claims concerning risk of persecution, as it is rarely possible to present solid evidence in this regard. However, an asylum seeker's account needs to be deemed plausible and credible, and he or she has to make an honest attempt to substantiate his or her account.

4.6 In this regard, the State party recalls the arguments of the Swedish migration authorities for denying the author's request for asylum:

- (a) The documents submitted by the author have low probative value;
- (b) Some of the submitted documents contain contradictory information;
- (c) The author submitted articles showing that the M23 rebel group, which was previously considered to have been quashed, was recruiting soldiers in Rwanda and Uganda in early 2014. These articles cannot, however, be considered to substantiate per se that the complainant would face an individual and real threat upon return to Rwanda;

(d) The author does not have stamps in his Rwandan passport to support his argument that he returned from Rwanda to the Democratic Republic of the Congo in November 2012;

(e) The author failed to submit written documentation in support of his claim that he worked as an interpreter for a non-governmental organization. He also failed to provide a copy of the threatening letters he received or the police reports from the Democratic Republic of the Congo, and he has not been able to provide a reasonable explanation as to why he could not submit such documentation;

(f) The author travelled between Rwanda and Uganda on several occasions, and he returned to the Democratic Republic of the Congo, despite the alleged personal risk of persecution by the authorities in these countries. Therefore it can be presumed that none of the authorities of these countries tried to stop him as he has crossed the borders;

(g) The author travelled to Sweden with a valid visa granted in his Rwandan passport; hence, it is possible to conclude that the Rwandan authorities must have allowed him to cross the borders without stopping him or arresting him;

(h) The author argues that he was an interpreter dealing with information about abuses committed by both sides of the conflict; however, he has not proclaimed to be, or to have been, in possession of any further sensitive information that might be of the interest to the M23 rebel group;

(i) The author's claims of need of protection in Rwanda are largely based on information that he received from his father, and therefore have low probative value.

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

5.1 The author reiterates that his counsel, appointed by the Swedish migration authorities, appealed the authorities' decisions without consulting him. He explains that on 11 August 2014, he went to the asylum investigation meeting without having had a chance to exchange information with his counsel beforehand. Consequently, his counsel was not aware of his situation and was unable to understand his story.

5.2 The author further argues that by returning him to Rwanda, the State party would not only violate the Covenant, but also articles 33 to 35 of the Convention relating to the Status of Refugees. His return to Rwanda, which is not his country of origin, will expose him to a threat of death or life imprisonment. The author reiterates that the State party did not consider the documents provided by the UNHCR office in Sweden, which contacted the Ugandan office to inquire about his situation, because his lawyer sent them to the migration authorities after submitting the appeal.

5.3 The author notes that the State party described in its submission the current human rights situation in Rwanda. However, he considers that the Swedish authorities are not aware of the real situation in the country. Many Rwandan refugees have been detained and deported from Uganda to Rwanda by government secret agents in Rwanda. They have been tortured, and some of them have been forcibly disappeared.<sup>6</sup>

5.4 The author submits that, contrary to the State party's assertion and as explained to the authorities of the State party, his Congolese voting card is a valid document. He also provided a document from the Government of Canada confirming that voting cards are used as an identity document by people in the Democratic Republic of the Congo. He also submits that he contacted the UNHCR office in Sweden to confirm that he is a national of the Democratic Republic of the Congo. He further submits that it is not true that he had not provided an explanation as to why he did not have the passport when he applied for asylum in Sweden. He explained to the migration authorities that the Ugandan police had told his family that they could only give him the passport in person and only if he agreed to sign documents to confirm that he would return to the Democratic Republic of the Congo.

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<sup>6</sup> The author makes reference to the following documents: Human Rights Watch, "We will force you to confess": torture and unlawful military detention in Rwanda", 10 October 2017; Human Rights Watch, "Why not call this place a prison?": unlawful detention and ill treatment in Rwanda's Gikondo Transit Center", 24 September 2015; and OHCHR, "Prevention of torture: UN human rights body suspends Rwanda visit citing obstructions", news release, 20 October 2017.

5.5 The author notes that the State party concluded that he was a national of Rwanda, because it considered the passport to be the only credible document that he submitted. However, he reiterates that his voting card, his refugee documents and the copy of the new Congolese passport have the same date of birth and country of origin, and constitute evidence of his Congolese nationality. As he already explained several times to the State party's migration authorities, he only got the Rwandan passport for "illegal purposes".

5.6 The author further notes that the State party did not deny the credibility of the reports he had provided concerning the recruitment of soldiers by the M23 rebels in Rwanda and Uganda. He further submits that he did not get a stamp on his passport when he left Rwanda in November 2012 because he used his voting card, and he cannot use his Rwandan passport to go back to the Democratic Republic of the Congo. At that time, he did not have a Congolese passport, which was only issued in 2017. In order to travel between Rwanda and Uganda, he used his student card and his Rwandan passport, as Rwandan nationals do not need a visa to enter Uganda, whereas Congolese nationals have to pay 100 United States dollars to get one. The author confirms that his Rwandan passport contains few stamps compared with the number of times he travelled to Rwanda because he was using his student card to enter the country.

5.7 Concerning the written evidence of his work experience with the non-governmental organization, the author reiterates that he did not have a permanent contract and that he was paid on a daily basis. Consequently, he did not have evidence of that work experience. He explains that all the threatening letters he and his family received were given to the police for investigation. He also questions if the authorities would believe him even with the letters, considering that they continue arguing that even his identity documents could have been manipulated. In addition, the author argues that he already submitted the Ugandan police report, demonstrating his insecurity in Uganda, to the authorities of Sweden.

5.8 Finally, the author explains that the decision to return to Goma, after his family started receiving threats from the M23 rebels in Rwanda, was not his decision. It was a decision made by his family, because they did not have anywhere else to go, other than back home. The author states that at that time, Goma was controlled by government forces in the Democratic Republic of the Congo, not by M23 rebels as the State party affirms.

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

6.1 On 9 October 2019, the State party reported that the decision to expel the complainant would become statute-barred on 15 April 2020. It submits that on 5 June 2018, the author submitted an application to the Swedish Migration Agency for a residence permit or a new examination of the issue of a residence permit pursuant to the Aliens Act, citing impediments to enforcement. The author presented his Congolese passport in original in order to prove his identity and nationality and claimed that there were strong grounds for granting him international protection against his country of origin, the Democratic Republic of the Congo, and that those grounds had not been previously assessed.

6.2 On 20 September 2019, the Swedish Migration Agency decided not to grant the complainant a residence permit or a new examination of the issue of the residence permit. The decision explains that the order to expel the author is final. For this reason, new assertions can only be examined pursuant to the provisions of the Aliens Act regarding impediments to the enforcement of the refusal-of-entry and expulsion orders. In making such an assessment, the Agency takes into consideration only new exceptional circumstances that have arisen in the case. In this regard, the Swedish Migration Agency considered that the claim that the author is a citizen of the Democratic Republic of the Congo has been previously assessed by the Agency and cannot be considered to constitute a new circumstance under the Swedish Aliens Act.

6.3 The fact that the author had submitted a Congolese passport to the Agency was, however, considered to constitute a new circumstance. The Agency furthermore noted that both the Agency and the Migration Court had previously found that the author was a citizen of Rwanda. It considered that, according to available country of origin information, Rwanda recognizes dual citizenship. In view thereof, the author was still considered a citizen of Rwanda and therefore the Agency found no reason to assume that Rwanda would not be willing to accept the author upon his return there. An assessment of the complainant's grounds for asylum concerning the Democratic Republic of the Congo was

subsequently not made. The Agency found that the author had not plausibly demonstrated that there were lasting impediments to the enforcement of the author's expulsion to Rwanda in compliance with the Aliens Act.

6.4 In the light of this information, the State party maintains its position that the author's account and the facts relied on by him in the complaint are insufficient to conclude that the alleged risk of ill-treatment upon his return to the country of origin meets the requirements of being foreseeable, real and personal. Consequently, the State party affirms that an enforcement of the expulsion order would not constitute a violation of its obligation under article 7 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, 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 has ascertained, as required under article 5 (2) (b) of the Optional Protocol, that the author exhausted all the domestic remedies available to him. In absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes that, according to the State party, the communication should be declared inadmissible pursuant to article 3 of the Optional Protocol and rule 96 (b) of the Committee's rules of procedure, for failure to attain the basic level of substantiation. In that regard, the Committee notes the author's claims that his forcible return to Rwanda would result in a risk of treatment contrary to articles 6 and 7 of the Covenant, as he may be arrested by the Rwandan government authorities because he had refused to join the M23 movement in 2012 and could be perceived to be a Congolese spy. It also notes the author's claims that, if he were returned to Rwanda, he would face a risk of persecution by members of the M23 movement for not supporting them in their fight for the Tutsis. It further notes the author's allegations that, while living in Rwanda, he and his family were subjected to threats by some of the members of M23, who accused them of not supporting the movement; that his parents and younger brother were killed and his sisters violated in Goma, where he worked as an interpreter for a human rights organization; and that, while living in Uganda, where he was granted asylum, he was assaulted and threatened by former M23 militia members. It further notes the author's claims that the State party intends to expel him to Rwanda, which is not his country of origin, and that it initially dismissed the identity documents he submitted as evidence of his Congolese nationality.

7.5 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 refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when 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 recalls its jurisprudence 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. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.

7.6 The Committee further recalls its jurisprudence in which it has stated that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review or evaluate the facts and evidence of the case in order to determine whether a real risk of irreparable harm



exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>7</sup>

7.7 The Committee notes the State party's arguments that its domestic authorities have carried out a thorough review of the author's claims; that the documents submitted by the author had been deemed to be of a simple nature and thus afforded low probative value; that the author had not provided written documentation in support of his claim that he had worked as an interpreter for a non-governmental organization or that he had received threatening letters. The Committee further notes that the author was not able to provide a reasonable explanation as to why he could not submit such documentation; that the author travelled between Rwanda and Uganda on several occasions and returned to the Democratic Republic of the Congo, despite the alleged personal risk of persecution by the Rwandan and Congolese authorities; that the Identity Unit of the Swedish Immigration Service found that the author's Rwandan passport was valid; that the author travelled to Sweden with a valid visa granted in his Rwandan passport; and that the author argues that he was an interpreter dealing with information about abuses committed by both sides of the conflict, but that he did not indicate that he had been in possession of any further sensitive information that might be of interest to the M23 rebel group.

7.8 The Committee further notes the author's assertion that the State party authorities, when assessing the human rights situation in Rwanda, have failed to consider the information available in a Human Rights Watch report, according to which many Rwandan refugees have been captured and deported to Rwanda from Uganda by government secret agents and have been subjected to torture or disappearance (see para. 5.3). However, the Committee observes that the M23 movement is not mentioned in that report. It also observes that, according to the information that is publicly available, the M23 movement was defeated by the Government of the Democratic Republic of the Congo in November 2013.<sup>8</sup>

7.9 The Committee observes that, while the author disagrees with the conclusions reached by the State party authorities, he has not shown that their assessment of the facts and evidence that he presented was clearly arbitrary or amounted to a manifest error or denial of justice. The Committee considers that the author has failed to provide evidence to attain the basic level of substantiation of his claim of personal risk of irreparable harm that he would allegedly be facing upon deportation to Rwanda, as he did not submit any proof regarding the alleged threats received in Rwanda. Therefore, without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported and not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Rwanda, the Committee considers that the author's claims under articles 6 and 7 of the Covenant are insufficiently substantiated and are therefore 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 transmitted to the State party and to the author.

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<sup>7</sup> See, e.g., *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>8</sup> See, e.g., Human Rights Watch, "'Special mission': recruitment of M23 rebels to suppress protests in the Democratic Republic of Congo", 4 December 2017.