



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1895/2009

Decision adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	S.R. (not represented by counsel)
<i>Alleged victims:</i>	A.B.K. (his wife), N.U.R. (his daughter), S.B.R. (his daughter) and the author
<i>State party:</i>	Belgium
<i>Date of communication:</i>	9 July 2009 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 August 2009 (not issued in document form)
<i>Date of decision:</i>	2 November 2015
<i>Subject matter:</i>	Deportation to Rwanda
<i>Procedural issues:</i>	Lack of cooperation from the State party
<i>Substantive issues:</i>	Prohibition of torture and cruel or inhuman treatment; prohibition of discrimination; equality of men and women before the law; right to recognition as a person before the law; right to protection of the family; right to protection of the child
<i>Articles of the Covenant:</i>	2 (para. 1), 3, 7, 16, 23 (para. 1), 24 and 26
<i>Article of the Optional Protocol:</i>	None



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 1895/2009*

<i>Submitted by:</i>	S.R. (not represented by counsel)
<i>Alleged victims:</i>	A.B.K. (his wife), N.U.R. (his daughter), S.B.R. (his daughter) and the author
<i>State party:</i>	Belgium
<i>Date of communication:</i>	9 July 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 2 November 2015,

Having concluded its consideration of communication No. 1895/2009, submitted to the Human Rights Committee on behalf of S.R. et al. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Decision on admissibility

1. The author of the communication, which is dated 9 July 2009 (as supplemented by a submission of 10 August 2009), is S.R. (principal author), a Rwandan national of Hutu ethnicity, who was born in 1978 in Bukavu (Democratic Republic of the Congo). He also submits the communication on behalf of his wife, A.B.K. (second author), and their two children, N.U.R. and S.B.R., who were born on 28 February 2007 and 8 April 2008 respectively. He claims to be a victim of violations by the State party of articles 2 (1), 3, 7, 16, 23 (1), 24 and 26 of the Covenant. The Covenant entered into force for Belgium on 21 July 1983 and the Optional Protocol thereto on 17 August 1994.

* The following members of the Committee participated in the consideration of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Yuji Iwasawa, Ms. Ivana Jelić, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Factual background¹

2.1 In September 2006, the author, a member of the Kigali Bar, was asked to defend two individuals of Hutu ethnicity who were accused of genocide. He took over the case from the original defence counsel, Mr. Banda, who had been killed by unidentified persons. He represented the accused at three hearings before the court, on 6, 8 and 10 November 2006. In the course of those hearings he received threats, including death threats, from the victims' families, accusing him of defending and seeking the release of perpetrators of genocide and vowing to kill him. At the time of the hearing of 8 November 2006, the author received death threats via a note left at his home which read: "If you don't drop the two defendants' case, you risk losing your life — like your colleague Banda". The author's wife, A.B.K., received the same note. That same day, the author received an anonymous call on his mobile telephone from someone claiming to be a security officer and advising him "to drop the case or risk dying and having his family die".

2.2 The day after this incident, on 9 November 2006, the author went to the Nyamirambo police station to report the threats. The officer present reassured the author, saying that the threats were merely intimidation. He then asked the author why he was defending "criminals" and thereby risking his life.

2.3 On 10 November 2006, the author took part in a further hearing. On returning home, he found a second note and received another telephone call. On 11 November 2006, he again went to the police station, but the officers asked him to drop the cases he was defending. He knew then that he could not expect any help from the authorities.

2.4 On 18 November 2006, the author received a call informing him that his father had been killed by armed men. Two hooded men had reportedly gone to the author's home looking for him and, not finding him there, killed his father. His pregnant wife was allegedly kicked during the attack and heard the armed men say that they would be back later. Following this attack and still being sought by relatives of the victims — senior military officers — the author and his wife took refuge with the author's uncle in Butamwa, where they remained in hiding for a week. His uncle helped them leave Rwanda for Belgium.

2.5 On 25 November 2006, the author and his wife left Rwanda. With the help of a smuggler, they arrived in Brussels the next day and filed a first asylum application there on 27 November 2006. On 20 August 2007, the application was rejected by the Office of the Commissioner General for Refugees and Stateless Persons, which noted major inconsistencies in the author's account. The Office pointed to inconsistencies regarding significant family dates and events, details of his clients' trial² and the circumstances of his journey to Belgium.³ The Office also noted discrepancies with his wife's account, including regarding the threats made against him. The Office identified other implausibilities concerning, in particular, the number and date of the hearings in which the author had participated as counsel; the number of anonymous telephone calls threatening him with death; and information about the murder of the lawyer whom he had subsequently replaced in the case. The author had told the Immigration Office that the lawyer had been killed by his wife, but then later told the

¹ In order to provide a comprehensive and coherent account, this section also takes account of the claims brought by the author before the domestic authorities and the decisions reached.

² The Office noted in particular that the author did not know the defendants' professions or the name of the judge hearing the case, even though he had taken part in three hearings.

³ The author told the Office that he was unaware of the content of his travel documents and that he did not know the name or nationality under which he had travelled or the cost of the journey.

Office of the Commissioner General for Refugees and Stateless Persons that he had been killed by persons unknown.

2.6 On 28 April 2008, the Aliens Litigation Council rejected the author's appeal and refused to grant him subsidiary protection status. The Council also noted the contradictions and inconsistencies in his account that had been raised previously by the Office of the Commissioner General for Refugees and Stateless Persons and concluded that "the number and nature of the inconsistencies noted in the author's successive accounts prevented a finding that the facts upon which he relied corresponded to events actually experienced by him".

2.7 On 19 June 2008, the author submitted a new asylum application, which was swiftly denied by the Immigration Office. A third asylum application, submitted on the basis of a new element — a summons from a *gacaca* court — was also rejected pursuant to a decision dated 29 September 2008, which was accompanied by an order to leave Belgian territory with his family by 16 July 2009. On 13 January 2009, the Aliens Litigation Council rejected the author's application for a cassation motion and a suspension of the order on the grounds that he had not attended a hearing on 23 December 2008. On 24 February 2009, the Council of State rejected the author's appeal against the latter decision on the grounds that the application was manifestly inadmissible, since the Council of State was not empowered to order the suspension or enforcement of a decision of a dispute tribunal such as the Aliens Litigation Council.

2.8 On 5 May 2008 and 28 January 2009, the author submitted two applications for the regularization of his status to the Immigration Office (Federal Public Service for Home Affairs). They were declared inadmissible on 6 June 2008 and 9 June 2009 respectively.

2.9 In its decision of 6 June 2008, the Immigration Office denied the author's application for a residence permit because of major and glaring inconsistencies that undermined the credibility of the author's and his wife's account in relation to basic information, such as their place of joint residence in Rwanda, the date of their first meeting and the composition of the author's family, and also significant events, such as the date of death of the author's mother. The Immigration Office also noted in its decision that the author had been unable to give the name of the judge hearing the case that he was defending, even though he had participated in three hearings before the court in Cyangugu.

2.10 In its decision of 9 June 2009, the Immigration Office treated the summons from the *gacaca* court as a new element, but considered that it could only have probative value in supporting a credible and coherent account, which was not the case in the present instance given the contradictions and inconsistencies noted in the previous proceedings. Consequently, the Immigration Office dismissed the author's application.

The complaint

3.1 The author claims that his and his family's deportation to Rwanda would constitute a violation by the State party of articles 2 (1), 3, 7, 16, 23 (1), 24 and 26 of the Covenant. He maintains that the fact that he received death threats before leaving his country of origin would expose him and his family to a real and imminent risk of torture or death if he returned to Rwanda.

3.2 With regard to article 16, the author maintains that the State party has denied him and his family the right to recognition as persons before the law by refusing them the status of refugees and a residence permit. He further claims that he, his wife and his two minor children constitute a family and that the State party has failed to provide them with protection, in violation of article 23. As to articles 24 and 26, the author

contends that he and his family were discriminated against by the State party during the asylum and regularization application process.

Additional comments by the author

4.1 On 3 September 2014, the author informed the Committee that on 1 September 2014, on the basis of his adoption by a Belgian national, he had filed with the Immigration Office an application for a residence card for family members of European Union citizens pursuant to the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens. The application remains pending.

4.2 He also points out that on 28 April 2014 a similar application was rejected by the Immigration Office on the ground that he had failed to show that his material circumstances were such as to confer a right of residence. Accordingly, he was issued with an order to leave the country within 30 days after the decision.

4.3 On 5 December 2014, the author informed the Committee that he had left Belgium on 11 October 2014 for Switzerland, where he lodged an asylum application on 13 October 2014. On 18 November 2014, the Swiss Federal Office for Migration rejected his application and ordered his removal to Belgium, as the “responsible Dublin State”, by the canton of Lucerne. On 4 December, the author was placed in detention with a view to his deportation to Belgium.

4.4 The author reiterates that he would face a real and imminent risk of death if he were returned to Belgium because the Belgian authorities, acting in “collusion” with the Rwandan authorities, intend at all costs to deport him to Rwanda, where he would be at risk of torture or death.

4.5 On 22 July 2015, the author informed the Committee that he had resided in Switzerland for three months, including two months in detention following his asylum application and the Federal Office for Migration’s decision of 18 November 2014 to dismiss that application. The author points out that in the asylum proceedings in Switzerland he emphasized the reasons for his persecution by Belgium, not Rwanda.⁴ On 15 December 2014, the Federal Administrative Court rejected his application on the ground that the author had failed to establish that the Belgian authorities were incapable of assessing his application for protection. The Court therefore concluded that Belgium remained the country responsible for assessing his asylum application under the Dublin Regulation.

4.6 The author states that on 18 December 2014 he was deported by Switzerland to Belgium, where he was placed in detention for a short period, and then placed under electronic surveillance for three months.

4.7 The author adds that since his return he has had no valid residence permit in Belgium. He recalls that an application for a residence permit on the basis of his filiation (by adoption) with a Belgian national is still pending (see paragraph 4.1 above). In addition, he points out that he has been unjustly struck off the roll of the French Section of the Brussels Bar. On 19 November 2012, he was sentenced in his absence by the Nivelles Criminal Court to 8 months’ imprisonment and a fine of 550 euros for publicly and fraudulently using the title of lawyer without being registered at the Brussels Bar. The Brussels Court of Appeal and the Court of Cassation of Belgium dismissed his appeals against the decision of the Nivelles Criminal Court on 22 May 2013 and 4 June 2014 respectively.

⁴ The author claimed, in particular — as he had before the Committee — that the Belgian authorities, acting in collusion with the Rwandan authorities, intended to deport him to Rwanda and were therefore unable to ensure his protection from persecution in Rwanda.

4.8 On 12 August 2015 the author submitted further information to the Committee, to the effect that he had received a residence permit for Belgium, valid from 28 July 2015 to 28 July 2020, on the basis of his adoption by a Belgian national.⁵

4.9 The author nevertheless wishes to have his communication considered by the Committee on the ground that his former wife, A.B.K. (second author) — from whom he has been divorced since 3 May 2012⁶ — and his two minor daughters, N.U.R. and S.B.R., do not have a residence permit, even though both children were born in Belgium.

Lack of cooperation from the State party

5. On 18 August 2009, 6 May 2010, 9 August 2010, 12 November 2010 and 24 October 2014, the State party was asked to submit its observations on the admissibility and merits of the communication. The Committee notes that this information has not been received. It finds it regrettable that the State party has failed to provide any information with regard to the admissibility or substance of the author's claims. It recalls that, under article 4, paragraph 2, of the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and describing any measures it may have taken to remedy the situation. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that these have been properly substantiated.⁷

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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

6.3 With regard to the exhaustion of domestic remedies, the Committee reiterates its concern that, despite four reminders addressed to the State party, no observations on the admissibility or merits of the communication have been received. The Committee therefore finds that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee notes that the author has provided no information in support of his claim of a violation of article 2, paragraph 1. Furthermore, the Committee considers, in general, that the author's claim concerning the discriminatory intent that allegedly underlies the denial of his asylum applications has not been sufficiently substantiated for purposes of admissibility under article 26. In relation to the claim under article 3, the Committee also considers that the author has put forward no argument in support of this allegation. Lastly, the author has similarly failed to

⁵ Pursuant to article 40 bis and ter of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens, and article 52, read in conjunction with article 69 ter, of the Royal Decree of 8 October 1981 on the entry, temporary and permanent residence and removal of aliens.

⁶ The author was married to A.B.K. at the time of submission of his communication to the Committee in July 2009.

⁷ See, for example, communications No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4; No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006, para. 4; and No. 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000, para. 10.2.

sufficiently substantiate his claim under article 16 of the Covenant, in the light of the facts as submitted. The Committee therefore considers that the author's claims under articles 2, 3, 16 and 26 have not been sufficiently substantiated and that, consequently, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 The Committee has taken note of the author's complaint under articles 23 and 24 of the Covenant, but considers that, here again, he has failed to show in what way the State party has subjected his family to arbitrary or unlawful interference or would be responsible for such interference if the author and his family were returned to Rwanda. With respect to article 24, the author has provided no evidence in support of his allegation to show that the State party has breached or would breach its obligation to protect his two minor children. Accordingly, this part of the communication is also inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the author's fear of being subjected to treatment contrary to article 7 of the Covenant if he were to be returned to Rwanda, the Committee notes that he has obtained a residence permit for Belgium, valid from 28 July 2015 to 28 July 2020, and that he is therefore no longer liable to be deported from Belgium to Rwanda.

6.7 The Committee notes that the author's marriage to A.B.K. — who was named as a co-author of the initial communication — was dissolved following their divorce, which was granted on 3 May 2012. With regard to the author's two minor daughters, N.U.R. and S.B.R., aged 7 and 8, the Committee notes that the author has provided no evidence that they are at any risk of deportation, so that such a risk does not go beyond the bounds of eventuality and theoretical possibility,⁸ and must be considered hypothetical. Consequently, neither the principal author, nor A.B.K., nor their two minor children can, at the present time, claim the status of victim within the meaning of article 1 of the Optional Protocol.

7. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;
- (b) That this decision shall be transmitted to the State party and to the author of the communication.

⁸ See, inter alia, communications No. 2197/2012, *X.Q.H. v. New Zealand*, inadmissibility decision of 25 March 2014, para. 6.3; and No. 932/2000, *Gillot et al. v. France*, Views adopted on 15 July 2002, para. 10.5.