United Nations CCPR/C/138/D/2653/2015

International Covenant on Civil and Political Rights

Distr.: General
2 February 2024

Original: English

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2653/2015*, **

Communication submitted by:	Ekens Azubuike (represented by counsel, Mylène Barrière)
Alleged victim:	The author
State party:	Canada
Date of communication:	6 October 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 7 October 2015 (not issued in document form)
Date of adoption of Views:	7 July 2023
Subject matter:	Deportation to Nigeria
Procedural issues:	Admissibility – exhaustion of domestic remedies, lack of substantiation
Substantive issues:	Non-refoulement; torture; cruel, inhuman or degrading treatment or punishment; personal liberty; and right to privacy
Articles of the Covenant:	6, 7, 9 (1) and 17
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication is Ekens Azubuike, a national of Nigeria, born in Imo State on 13 February 1972. He claims that his rights under articles 6, 7 and 9 (1) of the Covenant would be violated if the State party were to deport him to Nigeria, where he would face a risk of torture or death due to his militancy in the Movement for the Actualization of the Sovereign State of Biafra. In addition, he claims that he would be persecuted and denied medical treatment because of his health condition (he is HIV-positive). The Optional Protocol to the Covenant entered into force for Canada on 19 August 1976. The author is represented by counsel.

* Adopted by the Committee at its 138th session (26 June–26 July 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.

1.2 On 7 October 2015, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to grant the interim measures sought by the author, and requested the State party not to deport him while his communication was being examined by the Committee.[1] However, the author had been deported on 6 October 2015, before the Committee's decision granting the interim measures had reached the State party's authorities. Following the author's return to Canada and arrest upon arrival in November 2015, the Committee, on 2 December 2015, reminded the State party that the interim measures remained in effect while the communication was being examined.

1.3 On 31 March 2016, the State party requested the Committee to lift the interim measures. Following receipt of comments by the author on the State party's request, the Committee, on 14 November 2016, requested the author to provide some clarification.[2] On 19 May 2017, the State party requested the Committee to suspend the examination of the author's case until a remedy he had requested (a second pre-removal risk assessment) had been decided. The State party also reiterated its request to lift the interim measures. On 1 February 2018, after having reviewed the submissions made by both parties, the Committee decided to suspend the examination of the communication and to maintain the interim measures.

1.4 On 14 September 2020, the author requested the Committee to lift the suspension. On 4 February 2022, the State party requested the Committee to maintain the suspension, as the author had applied for a third pre-removal risk assessment, on 15 November 2021, and had other judicial proceedings pending (see para. 2.17 below).

1.5 On 12 July 2022, the State party requested the Committee to lift the suspension, as the third pre-removal risk assessment application had been rejected on 7 March 2022. On 25 January 2023, through its Special Rapporteurs on new communications and interim measures, the Committee lifted the suspension.

Factual background

2.1 The author became a member of the Movement for the Actualization of the Sovereign State of Biafra in 1999. He left Nigeria in 2000, following rumours that the police were arresting members of the Movement. He requested asylum in Greece, but it was rejected, so he returned to Nigeria. In December 2003, he became a security agent for the Movement in his region. He was responsible for, among other things, organizing demonstrations, mobilizing members and making imprints on T-shirts. In January 2004, he was arrested for his militancy. He claims that he was detained for one week, during which he was tortured, and that he was released after he paid a bribe to A.A., the chief of the secret services in Imo State. They agreed that the author would pay A.A. for information on police operations against the Movement. In 2005, A.A. informed the author that a large operation against the Movement was going to be carried out. The author decided to go into hiding and leave Nigeria, in contravention of the Movement's orders to stay and fight.

2.2 The author and a woman, his partner, left Nigeria for Ireland and sought asylum there in October 2005, but their application was rejected. In January 2007, the author left Ireland for Ghana using a Ghanaian passport. He was detained in Ghana for 15 days because the passport was not his. After being released, he entered Nigeria illegally. Once there, he learned that in December 2005 he had been convicted and sentenced to life imprisonment due to his militancy in the Movement. He remained in hiding in Nigeria until May 2007, when he left, using his brother's passport and having bribed an immigration officer. He arrived in Canada on 3 November 2007, and filed an asylum application.

2.3 The author was granted refugee status by the Refugee Protection Division on 26 March 2009, on the basis of his militancy in the Movement for the Actualization of the Sovereign State of Biafra. In February 2009, the Canada Border Services Agency asked the

[1] The Committee requested the State party to clarify some issues related to the asylum proceedings. The State party replied on 7 December 2015.

[2] Specifically, further information and supporting documentation regarding his allegations that he had been detained and tortured in Nigeria following his deportation and that he had been subjected to abusive treatment by the State party's authorities from September 2015, while in custody.

High Commission of Canada in Ghana to request the International Criminal Police Organization (INTERPOL) to verify the authenticity of the judgment according to which the author had been convicted and sentenced to life imprisonment. In December 2010, the INTERPOL office in Nigeria sent a letter to the Canadian authorities indicating that the judgment in question had been forged, and requested their collaboration to apprehend the author. The author claims that, as a result of the State party's request to verify the authenticity of the judgment, his family in Nigeria had been visited by officials who had asked for a bribe in order to state that the judgment was authentic. The family did not pay the bribe.

2.4 On 3 June 2014, the author's refugee status was cancelled by the Refugee Protection Division of Canada on the basis that the judgment convicting him had been forged and that the author had not provided other evidence that would justify granting him refugee status. The author challenged this decision before the Federal Court, which rejected his appeal on 29 April 2015. The Court considered that the State party's authorities could ask foreign authorities to verify documents, provided that there was a balance between the public interest and the right to privacy, and that the balance had been respected in the author's case. The Court indicated that INTERPOL had informed the State party that there was no judge with the name stated in the judgment working at the high court of the judicial district of Orlu. The Court further dismissed two letters from the police addressed to the author's lawyer submitted as evidence,[3] as there were differences in how the lawyer's name was written in the heading and in the signature.

2.5 Following a request by the ministry responsible for public safety to investigate whether the author would fall under the category of a person inadmissible to Canada owing to participation in terrorist activities,[4] on 26 June 2014 the Immigration and Refugee Board concluded that he did not fall within such category. The Board indicated that although the author was a member of the Movement for the Actualization of the Sovereign State of Biafra, there was no reasonable ground to believe that the Movement had engaged in acts of subversion against the Government of Nigeria.

2.6 On 16 September 2014, the author's first request for permanent residence based on humanitarian and compassionate considerations, which he had submitted in 2009, was rejected by the ministry responsible for immigration, citizenship and refugees.

2.7 On 17 October 2014, the author submitted an application for a pre-removal risk assessment, indicating that he would present evidence in a later communication. By mistake he sent the evidence to the wrong email address.[5] On 25 February 2015, the request was rejected. The pre-removal risk assessment officer analysed three letters provided by the author that supported his allegations that the Nigerian authorities would persecute him if he were returned: the letter dated 16 December 2010 from INTERPOL (Nigeria) that confirmed that the judgment convicting the author was fake; a letter dated 2 December 2010 from the author's lawyer in Nigeria indicating that the Nigerian authorities were aware of the author's asylum request in Canada; and a letter addressed to the author's lawyer in Nigeria requesting him to cooperate with the authorities to apprehend the author for having falsified the judgment. The officer considered that the two letters related to the lawyer had little evidentiary weight, as they had been written with different letterheads and were typed with varying font styles and sizes. In addition, the inconsistencies found in them weakened their reliability as evidence. The officer further indicated that, according to objective sources,[6] despite the crackdown on certain members of the Movement for the Actualization of the Sovereign State of Biafra, only leaders and organizers appeared to attract the attention of

[3] The letters were dated 2 December 2010 and 16 August 2012, and indicated that the author had to report to the police. They also referred to the author's refugee claim in Canada.

[4] Pursuant to article 34 (1) (f) of the Immigration and Refugee Protection Act.

[5] The author indicates that he submitted a medical report showing that he suffered from post-traumatic stress disorder, and that he also submitted evidence demonstrating that the communications between the State party's authorities and INTERPOL had put him at risk; that the Nigerian police had a long-standing practice of inflicting torture and ill-treatment; that members of the Movement for the Actualization of the Sovereign State of Biafra were persecuted; and that HIV-positive persons were discriminated against in Nigeria.

[6] The author makes general reference to a 2005 report by the Danish Immigration Service and a 2014 report by the Department of State of the United States of America.

Nigerian officials. The officer indicated that, as the author's involvement with the Movement dated from before his departure from Nigeria – in 2005 – and considering that he had not demonstrated that he had carried out any activities related to the Movement after that date, he would not be exposed to a risk of persecution if he were returned to Nigeria. On 27 March 2015, the author requested leave for appeal to the Federal Court, which, on 30 June 2015, denied the author's request.

2.8 On 6 October 2015, the author was deported. The author indicates that he was detained upon arrival in Nigeria and subjected to torture and ill-treatment. He claims that he was initially held for about 48 hours at the airport, after which he was transferred to a clandestine detention centre in Lagos for about two weeks, during which he was tortured. He was then transferred to a federal prison where he was detained in very bad conditions. On 18 November 2015, he allegedly escaped from prison with the help of members of the Movement.

2.9 Thereafter, the author returned to Canada on 19 November 2015, using the refugee travel document he had been provided by the Canadian authorities. He was arrested upon arrival and detained until 17 February 2016, when he was released on bail. He indicates that a day after his arrival, he was transferred to a detention facility for persons accused of criminal offences. He made numerous complaints about his detention, including that he should be held in an immigration facility, that he was not allowed to present witnesses at detention hearings and that all his requests for transfers had been denied.[7]

2.10 The author claims that on 29 June 2016, members of the Department of State Services of Nigeria visited his lawyer, in connection with the investigation related to his escape from prison on 18 November 2015. A new warrant of arrest against him was issued on 16 June 2016, charging him with jailbreak and treason. On 7 July 2016, N.O., the author's lawyer in Nigeria, decided to stop representing him, as he feared for his life and the life of his family due to threats received from the Nigerian authorities in connection with his work representing the author.[8] A new lawyer, A.D., started to represent him in June 2017.[9]

2.11 On 24 March 2016, the author submitted a second application for a pre-removal risk assessment. It was rejected at the first stage, on 31 May 2016; however, the ministry responsible for immigration, refugees and citizenship intervened and decided that the application would be reviewed, including evidence regarding the events that had occurred after the rejection of the author's first application for a pre-removal risk assessment. In May 2017, the pre-removal risk assessment agent requested the author to provide the originals of some documents.[10]

[7] The author provides two letters from the Canada Border Services Agency, dated 22 December 2015 and 21 January 2016, stating that the author was not a suitable candidate for transfer. Specifically, the letter from 2016 states that the rejection was based on "numerous behavioural factors", including reports of aggressive behaviour.

[8] The author provides a copy of the lawyer's letter of resignation. The letter also indicates that the Department of State Services of Nigeria had detained R.O., the president of the Orlu district branch of the Movement for the Actualization of the Sovereign State of Biafra, as he was the last person to visit the author before he escaped from prison. In addition, the lawyer affirms that the President of Nigeria, who had fought in the civil war against the separatist movement in Biafra, had ordered a clampdown on all "agitating groups", including the Movement, seeking the independence of Biafra, and that many militants had been extrajudicially executed, imprisoned without charges, disappeared or arrested on charges of treason leading to life imprisonment.

[9] The author provides a letter to that effect dated 12 June 2017.

[10] Namely: (a) the arrest warrant against the author for escaping jail, dated 17 June 2016; (b) a letter, dated 29 January 2016, signed by the president of the Orlu district chapter of the Movement for the Actualization of the Sovereign State of Biafra confirming the author's membership and that he had been confirmed as the Orlu district chief of security in November 2015, while in detention; (c) a letter, dated 29 March 2016, signed by the Chief of the Umuna Orlu chapter of the Movement with the same content; (d) a letter from the Organization of Emerging African States, dated 17 August 2016, confirming the same facts; and (e) six letters, issued in 2016, signed by the author's former lawyer in Nigeria, N.O., indicating that the cooperation between the Canadian authorities and INTERPOL in Nigeria had put the author at risk and that the Government of Nigeria had increased operations against all members of the Movement. In addition, the author provided the following documents to the State party's authorities: (a) a letter, dated 20 February 2017, signed by the Chief of

2.12 On 1 May 2018, the author's second application for a pre-removal risk assessment was rejected on the grounds that the author lacked credibility. The agent analysed the evidence submitted by the author in relation to his detention in Nigeria following the deportation, and the risk faced by members of the Movement for the Actualization of the Sovereign State of Biafra, including the author's allegation that he had been confirmed as chief security officer for the Movement in November 2015, while in detention in Nigeria. The agent took note of several public reports and press articles on the situation of members of the Movement.[11] Further, he examined the evidence submitted by the author in relation to his membership in the Movement and indicated that if the documents provided by the author were genuine, they would support his allegations. However, the agent considered that the documents could not be considered as authentic. For example, he noted that the warrant of arrest of 17 June 2016 was a black-and-white photocopy with no seals or other security features; that the letters from the individuals and organizations confirming the author's membership in the movement were copies or scans, with signatures that looked identical; and that some of the documents had been submitted through the author's lawyer in Nigeria, who was the same lawyer who had submitted and verified the court judgment that had been found to be a forgery. In addition, the agent referred to a report according to which fraudulent documents are easily available in Nigeria.[12] The agent further noted that even after he received the originals, he continued to have concerns about their authenticity. For instance, the arrest warrant seemed to be a colour copy and its stamps were from the notary and not original to the warrant itself. Moreover, the notary attesting to the authenticity of the documents was the same notary who had attested to the authenticity of the forged judgement. The agent also referred to the author's history of submitting false documents, that is, the false judgment, and to the use of the travel document that he said he had lost. Therefore, the agent concluded that the documents could not be considered as authentic. He also considered that the author's statements were full of inconsistencies. For example, the author did not provide information regarding the origin of the documents, and when questioned about the concerns regarding the authenticity of the documents provided by his former lawyer in Nigeria, he merely indicated that he trusted his lawyer, who had no interest in forging documents.

2.13 Regarding the author's allegations of having been subjected to torture in Nigeria, the pre-removal risk assessment agent indicated that the author had failed to provide details in his application or submissions prior to the oral hearing. In addition, his statements were inconsistent. For example, he initially said that he had a scar on his head resulting from the torture, but when asked to show it, he said it was not really a scar. Moreover, the documents provided in support of the author's allegations that he had reported the torture to Canadian authorities[13] did not have much evidentiary weight, as the alleged injuries were self-reported and were not confirmed by medical professionals. Furthermore, the author had not sought medical treatment after being released. The agent concluded that the author lacked credibility overall and was not able to demonstrate his membership in the Movement for the Actualization of the Sovereign State of Biafra since his departure from Nigeria in 2005. Therefore, there was no evidence that the author was wanted in Nigeria, that he was viewed as a threat by Nigerian authorities or that he would face a risk if returned there. On

the Umuna Orlu chapter of the Movement, indicating that the author's brother had been killed while in custody in November 2016, and confirming that the President of the Orlu district chapter of the Movement, R.O., was in prison because he had visited the author before he had escaped; (b) a letter from the author's former lawyer in Nigeria, N.O., referring to the killing of 11 members of the Movement during a demonstration held on 20 January 2017 (including pictures).

[11] Among others, Amnesty International, *Nigeria: "Bullets Were Raining Everywhere" – Deadly Repression of Pro-Biafra Activists* (2016); Freedom House, "Freedom in the world report 2017"; European Asylum Support Office, *EASO Country of Origin Information Report: Nigeria* (June 2017); and United States Department of State, "Country report on human rights practices: Nigeria" (2016).

[12] See United Kingdom of Great Britain and Northern Ireland, Home Office, "Country information and guidance: Nigeria – background information, including actors of protection and internal relocation" (August 2016), in which the authors cite the Immigration and Refugee Board of Canada and confirm the use of forged documents in immigration proceedings.

[13] The author had provided a letter addressed to prison authorities, dated 15 December 2015, in which he complained of pain resulting from the torture; documented complaints indicating that he had been denied treatment; and a document describing pain in his knee resulting from the "torture suffered in October 2015".

28 May 2018, the author requested leave from the Federal Court to appeal the agent's decision. His request was rejected on 30 August 2018.

2.14 On 27 December 2018, the author submitted a second application for permanent residence based on humanitarian and compassionate considerations. He alleged that he would face a very difficult situation in Nigeria owing to his HIV-positive status. In particular, he alleged that medical treatment for the disease was inadequate there. Medicines, when available, were expensive, and the Government would refuse to provide him with such medicine, given his history as a member of the Movement for the Actualization of the Sovereign State of Biafra. Furthermore, HIV-positive persons were discriminated against in Nigeria. The author also referred to his difficult personal situation, as he was not allowed to see his son, who lived in Ireland with his ex-partner. He also referred to the killing of his brother while the latter had been in custody in Nigeria. On 20 July 2020, the author's application was rejected. The agent considered that the author had not demonstrated that, if returned to Nigeria, he would face a situation that would justify granting him permanent residence on humanitarian and compassionate grounds. The agent acknowledged that there was corruption, poverty and crime in Nigeria, but indicated that the author had not demonstrated how he could be affected personally by such factors. Concerning the author's allegations related to his HIV status, the agent indicated that the author had failed to prove that he would face personal difficulties that were not experienced by the general population or by someone in a situation similar to his, in particular taking into account that the Government of Nigeria had taken measures to address discrimination against persons living with HIV/AIDS, such as the adoption of the HIV and AIDS (Anti-Discrimination) Act of 2014. Moreover, the agent noted that there were agencies in Nigeria that provided support and antiretroviral therapy at no cost. Regarding the author's allegations regarding his mental health, the agent noted that the author had provided a medical certificate from 2008 that had not been updated, according to which he would need medication and psychotherapy. The agent considered that, as mental health treatment was available in Nigeria, that allegation would not be taken into account. The author's allegations related to his son were found to be vague. On 3 August 2020, the author requested leave from the Federal Court to appeal for judicial review of the decision on the application. His request was rejected on 22 January 2021.

2.15 On 15 November 2021, the author applied for a third pre-removal risk assessment, claiming that, as a member of the Movement for the Actualization of the Sovereign State of Biafra, he would face a risk if deported to Nigeria. It was rejected on 7 March 2022. The pre-removal risk assessment agent analysed several pieces of evidence submitted by the author, including a letter dated 21 June 2018, signed by the Movement of Biafrans in Nigeria, which indicated that the author was a known Biafran activist and had been a member of the Movement for the Actualization of the Sovereign State of Biafra since 1999. The agent gave little weight to the letter, as the two movements are separate organizations and he found it to be not credible that the Movement of Biafrans in Nigeria would provide a letter to a member from another organization. The agent also analysed a warrant, dated 26 July 2019, that had been submitted, in which it was stated that the author had been charged with "jailbreak and treason felony". The agent gave little evidentiary weight to the warrant, as the author had not provided any evidence or explanation regarding how he had obtained it, other than stating that his lawyer in Nigeria had sent it to him. Moreover, the warrant seemed to be a photocopy signed and stamped by the same judge who had signed the arrest warrant dated 17 June 2016 that had been found to be forged in the proceedings of the second pre-removal risk assessment. The agent also examined a letter addressed to the author, dated 21 October 2021, in which the author had been invited to present himself to the police in Orlu on 17 January 2022; and an affidavit by H.U., a government official appointed by the government of Imo State to find prisoners who had escaped from Owerri prison. The affidavit indicated that the author's name had appeared in the record of prisoners who had escaped, and that if he did not surrender, H.U. had the authority to apprehend him. The agent indicated that the signature in the document was illegible and that the address under it was in Lagos. Moreover, the affidavit was not accompanied by the government official's credentials. After analysing other

documents submitted by the author,[14] the agent concluded that he had not presented new evidence that would refute the previous findings in relation to his credibility as established in the decision of the second pre-removal risk assessment. In addition, the agent took into account the author's history of submitting fake documents and lying, and the fact that he had appeared as not credible during his oral hearing. The agent further considered that the difficult conditions in Nigeria were experienced by the general population and did not affect the author personally.

2.16 On 27 April 2021, the author applied to the Federal Court of Appeal for leave to appeal the negative decision of 22 January 2021 (see para. 2.14 above). The Court rejected the author's request. On 24 September 2021, the author sought leave to appeal the decision of the Federal Court of Appeal before the Supreme Court. On 24 December 2021, the Supreme Court accepted his application on the condition that he submit additional materials. However, on 21 April 2022, the Supreme Court rejected the author's application.

2.17 Separately, in January 2020, criminal charges were brought against the author for the use of a counterfeit bill (CAN$ 50). The criminal proceedings against him had the effect of staying his removal until they were concluded.[15] In addition, on 24 June 2020, the author was arrested, accused of having stolen over 50 vehicles in 2019 using fake bank drafts. The parties have not provided any information in relation to the outcome of these criminal proceedings.

Complaint

3.1 The author alleges that if he were returned to Nigeria his rights under articles 6, 7 and 9 (1) of the Covenant would be violated. He submits that if he were deported, he would face a real risk of torture or death from the authorities based on his militancy in the Movement for the Actualization of the Sovereign State of Biafra. He would be identified upon arrival because the State party had made the Nigerian authorities aware, in the context of the expulsion order, of the judgment by the Nigerian court sentencing him to life imprisonment. This ruling contained information about the author and his functions as a member of the Movement. By contacting the Nigerian authorities, directly, the State party's authorities had failed to take into account the *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, in which the Office of the United Nations High Commissioner for Refugees indicates that independent sources (such as an embassy fact-finding mission or non-governmental organizations) should be used instead of local authorities. The author also indicates that even if it were true that the judgment was fake, his rights would still be violated, as the objective conditions to grant him the refugee status were fulfilled and there is no "good faith" requirement in the Convention relating to the Status of Refugees.

3.2 The author adds that the State party's authorities had recognized the risk he would be subjected to if deported to Nigeria, as established in the decision granting him refugee status in 2009, which stated that he was a high-ranking member of the Movement for the Actualization of the Sovereign State of Biafra.[16] The author also quotes several reports stating that members of the Movement are targeted by the Nigerian authorities, which arrest and torture them and subject them to extrajudicial execution or enforced disappearance.[17]

3.3 The author also claims that being HIV-positive would put him at risk if returned to Nigeria, as it is known that persons with HIV are heavily discriminated against in Nigeria, and they do not have access to adequate medical services. The author claims that persons

[14] Among others: news articles related to the crackdown on members of the Indigenous People of Biafra group and members of the Movement for the Actualization of the Sovereign State of Biafra; and alleged threats suffered by the author because he had established Ekens Foundation International, a think tank helping political prisoners and refugees. The threats were related to political statements the author had posted on the Foundation's Facebook page.

[15] Immigration and Refugee Protection Act, art. 50 (a).

[16] According to the author, such membership was recognized in the decision of the Immigration and Refugee Board dated 26 June 2014 and in the first pre-removal risk assessment decision.

[17] The author refers to an Amnesty International report quoted in a press article dated September 2015, available at http://www.ibtimes.co.uk/nigeria-credible-evidence-that-pro-biafrans-are-targeted-by-police-says-amnesty-international-1519127.

with HIV can be denied medical care and can lose their job.[18] In addition, there is a perception that persons with HIV are homosexuals, which also puts them at risk of persecution.

3.4 Moreover, the author considers that there is a cumulative effect in his situation, as he is a member of the Movement for the Actualization of the Sovereign State of Biafra and HIV-positive. He could be targeted by the authorities and also be subjected to persecution by anti-gay groups.

3.5 The author further considers that his rights were not respected during the pre-removal risk assessment proceedings and that those proceedings were not effective. For instance, in relation to the first pre-removal risk assessment, he indicates that the agent failed to take into account evidence that he had submitted (the information he sent to the wrong email address, see para. 2.7 above) which referred to the impossibility of being adequately treated for HIV in Nigeria and the fact that having HIV would put him in a dangerous situation. He states that this decision, as well as those taken in the proceedings for the second and third pre-removal risk assessments, contradicted what had previously been established by the State party's authorities when he was granted refugee status, in particular taking into account that the allegedly falsified judgment was a secondary point in the decision granting asylum, as it was hardly mentioned in the decision. In addition, the author claims that the appeals to the Federal Court were not an effective remedy, as it was not possible to present new evidence.

3.6 Finally, the author denies the State party's allegation that he never claimed abuse by Nigerian authorities following his deportation on 6 October 2015. He states that he informed the Canadian authorities about his detention and torture in Nigeria, and that during his detention he was examined by a doctor who confirmed symptoms of previous torture. However, the State party's authorities denied him access to proper medical care and psychological follow-up.

Additional information from the author

4.1 On 26 August and 12 and 14 September 2020, the author provided additional information. He claims that the Canada Border Services Agency is conspiring against him as a reprisal for having submitted the communication to the Committee. He indicates that in July 2018, he submitted a complaint in this regard to the Agency, indicating that two Agency officers wanted to "frame him" and to "see him dead", and that one of them was responsible for the ill-treatment he had suffered while in detention after he had returned to Canada in November 2015. The author provides a reply from the Agency dated 24 August 2018, in which the Director of the Enforcement and Intelligence Operations Division indicated that the author had not provided any details regarding the alleged ill-treatment; that the author's allegations against the officers were ill-founded, as no evidence had been provided to substantiate them; and that when the author was received in the Agency's office to hear his complaint, he had constantly interrupted the interviewer, so it had been suggested that he submitted another complaint in writing.

4.2 The author also submits that he contracted tuberculosis and HIV while in the custody of the State party's authorities in 2007.[19] The author claims that since that moment, he has been receiving medical treatment, costing US$ 1300 per month, which is not available in Nigeria. He also submits that even if the treatment were available there, it would not be accessible, as the minimum wage in Nigeria is US$ 35 per month. He adds that his residence was raided on 24 June 2020, following a criminal investigation of his suspected theft of over 50 vehicles. The author claims that the investigation is part of the State party's authorities'

[18] Immigration and Refugee Board, response to information request regarding treatment of persons with HIV/AIDS by society in Nigeria (2007). Available at https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/18/NGA102418.E.pdf.

[19] He provides, among other documents, a letter from the Ministry of Public Safety, dated 27 October 2008, stating that there was no evidence that he had contracted HIV or hepatitis B while detained. Regarding the tuberculosis, it states that the author was offered a test, as one person detained in the facility he was in had tested positive, but that the results of a test conducted on 13 November 2007 were negative.

efforts to tarnish his reputation, as a reprisal for having submitted the communication to the Committee.

State party's observations on admissibility and the merits

5.1 On 11 January 2021, the State party submitted its observations on the admissibility and the merits of the communication.

5.2 The State party submits that the communication is inadmissible because the author did not exhaust the available domestic remedies, since his request to the Federal Court for leave to appeal the rejection of his second application for permanent residence based on humanitarian and compassionate considerations was pending when the State party submitted its observations (see para. 2.14 above). The State party indicates that an appeal to the Federal Court regarding the rejection of an application for permanent residence based on humanitarian and compassionate considerations constitutes an effective remedy to avoid any irreparable harm caused by a subsequent deportation.[20]

5.3 The State party further submits that the author's allegations under article 9 (1) are incompatible *ratione materiae*, since that provision does not impose a non-refoulement obligation on the State parties. In particular, States parties that deport a person, following a decision by their domestic authorities, are not obliged to ensure that the person's rights under article 9 (1) are respected in the country to which the person is deported. The State party refers to paragraph 57 of the Committee's general comment No. 35 (2014), according to which only prolonged arbitrary detention may amount to inhuman treatment prohibited by article 7 of the Covenant, which, in the view of the State party, confirms that the Covenant does not impose an obligation to ensure the enjoyment of all of the rights it contains outside the respective territory.[21] Moreover, the State party indicates that according to the Committee's jurisprudence, a person's rights under the Covenant could be violated by a deportation only if the country to which the person is deported would violate the person's rights under articles 6 and 7 of the Covenant. It adds that States have the sovereign power to regulate immigration matters and that if the Covenant allowed for its extraterritorial application, it would be usurping the States' powers in this respect.[22]

5.4 The State party also submits that the author did not substantiate his claims regarding articles 6 and 7 of the Covenant. The State party indicates that the author failed to establish for admissibility purposes that he would face a real, personal and continuous risk if deported to Nigeria. The author failed to demonstrate that the Nigerian authorities were looking for him or that he would be killed or subjected to torture or ill-treatment, given that he had left the country more than 13 years ago. The State party considers that the author has not demonstrated, even prima facie, that if deported, he would face a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.[23] The State party indicates that several domestic authorities had analysed the author's claims and all concluded that he had not demonstrated that he would face any risk if deported to Nigeria. In particular, the author made several incoherent and contradictory allegations, submitted fake documents and made false statements, including regarding the loss of his refugee travel document (which he used afterwards). These assessments were confirmed by the Federal Court, which reviewed the evidence submitted by the author. The State party considers that the Committee is not in a position to examine the credibility of the author, as it has not had the possibility to hear him directly.

5.5 The State party also indicates that the author has not provided sufficient evidence to substantiate his claims before either the domestic authorities or the Committee. Moreover, the significant number of incoherencies and contradictions in his account has weakened the credibility of the evidence he submitted. For example, the State party indicates that the author has not provided any evidence regarding his allegations of having been subjected to torture by the Nigerian authorities in 2004 and in 2015. The medical certificate concerning the first

[20] *Dastgir v. Canada* (CCPR/C/94/D/1578/2007), para. 6.2.

[21] The State party also refers to the Committee's general comment No. 31 (2004), para. 12.

[22] The State party refers to the judgment of the European Court of Human Rights in *Soering v. The United Kingdom*, Application No. 14038/88, Judgment, 7 July 1989, para. 86.

[23] The State party refers to the Committee's general comment No. 31 (2004), para. 12.

date referred to the author's version of the facts. As to the second allegation, the author changed his story during the interview with the pre-removal risk assessment agent and did not allow the agent to examine his skull for signs of torture. The State party further indicates that the author has not provided sufficient proof that the Nigerian authorities are searching for him. For instance, he has not demonstrated that he is an active member of the Movement for the Actualization of the Sovereign State of Biafra – the domestic authorities concluded that the documents he provided to demonstrate such membership did not have any evidentiary weight.[24] In addition, the State party refers to a report by the Home Office of the United Kingdom of Great Britain and Northern Ireland, according to which the Movement had split into several small groups, which had made it lose importance.[25] Therefore, the State party maintains that it is unlikely that the Nigerian authorities are interested in persecuting members of the Movement for the Actualization of the Sovereign State of Biafra, and if they are, they would focus on individuals who, unlike the author, engaged in separatist activities.

5.6 Regarding the author's allegations that he had contracted tuberculosis while in detention in Canada, the State party asserts that the medical certificate submitted by him, besides being undated, indicates that he has non-active tuberculosis, which means that he does not need medical treatment. Furthermore, the State party indicates that none of the documents provided by the author demonstrate that he would not be able to find treatment for his medical conditions in Nigeria.

5.7 The State party refers to the Committee's jurisprudence according to which it is for the domestic authorities to assess the facts and evidence, and that significant weight should be given to their decisions unless the author demonstrates that such decisions are manifestly arbitrary or constitute a denial of justice, which the author has not done in the present case.

5.8 Lastly, the State party submits that, should the Committee consider the communication to be admissible, the author's claims are manifestly unfounded for several reasons: there is no credible proof that the author had been subjected to torture in Nigeria; the author lacks credibility; the author's evidence lacks evidentiary value, as it contain fake documents, including the judgment stating that he was sentenced to life imprisonment, which has been confirmed as non-authentic; and the author has not demonstrated his participation in any political activity linked to the Movement for the Actualization of the Sovereign State of Biafra, at least since 2007.

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

6.1 On 24 January 2022, the author submitted his comments on the State party's observations. The author considers that he has exhausted the domestic remedies, as his appeal to the Federal Court in relation to the second application for permanent residence based on humanitarian and compassionate considerations was rejected on 22 January 2021, and the appeal against this decision was rejected on 3 May 2021.

6.2 Regarding the State's party's argument that his allegations under article 9 (1) of the Covenant are incompatible *ratione materiae*, the author indicates that the non-refoulement principle is a rule of international customary law, and that it applies to all kinds of removals, including deportations, regarding persons who fear threats to their lives or their freedoms under the Convention relating to the Status of Refugees.

6.3 Concerning the argument that the author has not demonstrated that he would face a foreseeable risk of being tortured or killed if deported, the author states that he has been consistently active with the Movement for the Actualization of the Sovereign State of Biafra since 1999 and that he has demonstrated this in the asylum proceedings. The author further claims that he has seen members of the Movement being killed and abducted by the Nigerian police.

[24] For instance, in relation to the arrest warrant of 2019, the State party indicates that the date (17 August 2016) does not coincide with the date provided to the Committee (17 June 2016) and contains legal mistakes that a Court would not make.

[25] United Kingdom, Home Office, "Country policy and information note Nigeria: Biafran separatists" (April 2020).

6.4 He asserts that the State party has violated several provisions of international[26] and domestic law[27] by withdrawing his refugee status after violating the confidentially principle that governs asylum proceedings, namely by contacting the authorities in Nigeria, who are his persecutors. The author adds that the verification of the judgment made by the State party's authorities violated his rights under article 17 of the Covenant.

6.5 The author also submits that the State party's authorities made legal and factual errors in assessing several points of his claims, including the unavailability of medical treatment required by HIV-positive persons in Nigeria, in particular due to its high cost and the discrimination he would face there. The author claims that these allegations were duly supported by evidence provided during the asylum proceedings. In addition, the State party's authorities did not properly assess his claim that the Nigerian authorities would not be in a position to protect him against discrimination or provide him with the necessary HIV medication.

6.6 The author also refers to violations of his rights during the asylum proceedings, among others: mistreatment suffered before his deportation in October 2015;[28] seizure of his card confirming his reinstatement as chief security officer of the Movement for the Actualization of the Sovereign State of Biafra upon his return to Canada in November 2015;[29] misconduct of a Canada Border Services Agency officer who disliked him because of his political views; dismissal of his complaints against that officer; mistreatment at the detention centre where he was held after his return; denial of medical follow-up for persons who have been subjected to torture; his detention in a maximum security detention facility instead of in an immigration facility; his contraction of HIV and tuberculosis while detained; and the failure to give adequate weight to the medical report indicating he suffers from post-traumatic stress disorder and to acknowledge the impact that a removal would have on his mental health. The author affirms that he never lied, misrepresented facts or used fake documents during the asylum proceedings. Moreover, the author reiterates that the Canada Border Services Agency has a plan to kill or frame him as a reprisal for his communication to the Committee.

6.7 The author also comments on the State party's violations of its obligations under international law, [30] in particular regarding the principle of non-refoulement, as the immigration authorities did not consider the risk he would be exposed to as an HIV-positive person in Nigeria. In addition, the immigration officers were selective and inconsistent in reviewing the evidence he submitted and they misinterpreted the law. The author further questions the reasoning of the State party authorities in their decisions, in particular those regarding his applications for permanent residence based on humanitarian and compassionate considerations.

State party's additional observations

7.1 On 4 February and 11 July 2022, the State party submitted an update on the author's situation and referred to his comments on admissibility and the merits. The author had access to all legal and administrative guarantees provided by law and his allegations that the State party's authorities were selective, incurred inconsistencies and misinterpreted the law are ill-founded. The State party also submits that the author lacks credibility, as he lied during the immigration proceedings, used falsified documents and provided statements that contained many factual inconsistencies. The State party also reiterated that it is not within the Committee's scope of review to re-evaluate findings of credibility made by the domestic authorities, who have had the benefit of observing/hearing the author.[31] The State party adds that the author's allegations reflect his dissatisfaction with the outcome of the asylum proceedings, and it refers to the Committee's jurisprudence according to which it is generally

[26] The author refers to several provisions of the Convention relating to the Status of Refugees.

[27] The Canadian Charter of Rights and Freedoms, among others.

[28] The author claims that he was threatened, intimidated, harassed and handcuffed.

[29] The author provides a copy of the card.

[30] The author refers to the Convention relating to the Status of Refugees and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, among other instruments.

[31] The State party refers to, for example, *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.3; and *Kaur v. Canada* (CCPR/C/94/D/1455/2006), para. 7.3.

for the organs of States parties to examine the facts and evidence of the case in order to determine whether a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[32]

7.2 Regarding the author's allegation in relation to article 17, the State party indicates that its authorities took into account the author's privacy rights. It refers to the domestic decision on the matter, according to which the verification of the false judgment had been conducted in a manner that had respected the author's privacy rights.[33] The author did not provide evidence that his rights under article 17 had been violated.

Author's further comments

8. On 4 and 10 February, 16 March and 29 April 2022, and 23 and 27 January 2023, the author submitted several updates on his situation. He reiterated his previous allegations and provided further documentation.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 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.

9.3 The Committee notes the State party's argument that the author has not exhausted the domestic remedies, given that when the State party submitted its observations, the author's leave to appeal the rejection of his second application for permanent residence based on humanitarian and compassionate considerations was pending before the Federal Court. The Committee observes, however, that on 22 January 2021, the Court rejected the author's request. Therefore, the Committee considers that that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

9.4 The Committee notes the author's allegations that, by contacting the Nigerian authorities in order to verify the judgment by which he was convicted and sentenced to life imprisonment, the State party violated his rights under article 17 of the Covenant, as the author's family in Nigeria was exposed. The Committee also notes the State party's argument that the author's privacy rights were respected and that the author did not substantiate his allegations. The Committee notes that the author's claim in relation to article 17 was raised after the submission of the communication in response to the State party's observations. The Committee also notes that the author has not developed this claim, nor has he provided any evidence to support it. Therefore, the Committee considers that the author has failed to sufficiently substantiate the alleged violation of article 17 for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.5 The Committee notes the author's claim that his rights under article 9 (1) of the Covenant would be violated were he to be deported to Nigeria. The Committee also notes the State party's argument that these allegations are incompatible *ratione materiae* with the Covenant, as article 9 (1) does not impose a non-refoulement obligation on State parties. The Committee observes that the author has made a general assertion without providing any information or evidence as to why deportation to Nigeria would violate his rights under this provision. In particular, he has not established substantial grounds for believing that he would face a real risk of a severe violation of his liberty or security[34] that might result in an irreparable harm commensurate to the irreparable harm contemplated by articles 6 and 7 of

[32] See, for example, *W.K v. Canada* (CCPR/C/122/D/2292/2013), para. 10.3; and *Monge Contreras v. Canada* (CCPR/C/119/D/2613/2015), para. 8.7.

[33] The State party refers to general comment No. 16 (1988).

[34] General comment No. 35 (2014), para. 57.

the Covenant.[35] Therefore, the Committee considers that the author has not substantiated these allegations and it declares this part of the communication inadmissible under article 2 of the Optional Protocol.

9.6 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his claims under articles 6 and 7 of the Covenant. Accordingly, it declares that part of the communication admissible and proceeds with its consideration on the merits.

Consideration of the merits

10.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

10.2 The Committee notes the author's claim that his removal to Nigeria would expose him to treatment contrary to articles 6 and 7 of the Covenant, as he fears being subjected to torture or ill-treatment or being killed by the Nigerian authorities because of his membership in the Movement for the Actualization of the Sovereign State of Biafra. The Committee further notes the author's allegations that being HIV-positive would put him at a further risk because persons with HIV in Nigeria are heavily discriminated against and can be denied medical care, and that treatment for his inactive tuberculosis would not be available. The Committee also notes the author's allegations that he would be easily identified upon arrival in the country due to the exchanges between the State party and the Nigerian authorities in relation to verifying the judgment by which he was convicted and sentenced to life imprisonment.

10.3 The Committee also notes the State party's argument that the author did not substantiate his claims. In particular, the State party argued that the author had failed to demonstrate that he would face a real, personal and continuous risk of irreparable harm if deported to Nigeria, as he had not proven that the Nigerian authorities were still looking for him or that he would be killed or subjected to torture or ill-treatment, given that he had left the country more than 13 years ago.

10.4 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 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 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.[36] In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin.[37] The Committee also recalls its jurisprudence that significant weight should be given to the State party's assessment, and that it is generally for the authorities of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[38]

10.5 The Committee notes that the author was able to submit three requests for pre-removal risk assessment, two applications for permanent residence based on humanitarian and compassionate considerations, and leaves for appeal regarding each of these decisions to various tribunals, including the Federal Court, the Federal Court of Appeal and the Supreme Court. The Committee observes that although, in principle, the pre-removal risk assessment does not include the review of new evidence, the decision makers involved in the second and third pre-removal risk assessments reviewed evidence related to events that occurred after the rejection of the author's first and second assessments.

[35] General comment No. 31 (2004), para. 12. See also *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5.

[36] *Y v. Canada* (CCPR/C/114/D/2280/2013), para. 7.2; and *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2

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

[38] *Rasappu v. Canada* (CCPR/C/115/D/2258/2013), para. 7.3.

10.6 The Committee also notes that the author was represented by counsel at least until the second pre-removal risk assessments. He also had the possibility to submit written evidence and delivered oral statements during the proceedings.

10.7 In relation to the author's claims that he would be subjected to violations of his rights under articles 6 and 7 of the Covenant because of his membership in the Movement for the Actualization of the Sovereign State of Biafra, the Committee notes, firstly, that when requested to verify the authenticity of the ruling by which the author was convicted and sentenced to life imprisonment, INTERPOL confirmed that the ruling was fake, as the judge signing it had never been part of the tribunal that had supposedly issued the ruling. In this regard, the Committee notes the State party's argument that the verification of the judgment was conducted in accordance with domestic legislation. The Committee takes note of the decision of the Federal Court of 29 April 2015, in which the Court had considered that authorities were allowed to verify documents provided that they struck a balance between the public interest and the right to privacy. The Committee acknowledges that States parties have the power to determine who can stay in their territory and may carry out the verifications necessary to make such a determination, provided that the rights of the persons involved are respected. The Committee observes that the author failed to demonstrate that those safeguards were not upheld in connection with the review of his case.

10.8 Secondly, the Committee notes that the State party's authorities analysed the evidence provided by the author at all stages of the proceedings. The Committee notes that the agent who made the decision in the first pre-removal risk assessment examined two letters that indicated that the Nigerian authorities were searching for the author. The agent determined that the letters were not credible because they contained inconsistencies and mistakes. The agent who made the decision in the second assessment analysed a warrant of arrest dated 17 June 2016, several letters confirming the author's membership in the Movement for the Actualization of the Sovereign State of Biafra and other documents submitted by the author through his lawyer in Nigeria. The Committee notes that the agent considered that such evidence had low credibility, as some of the documents, in particular the warrant of arrest, were photocopies without seals or other security features; the signatures on the letters appeared to be identical; and the other documents were provided by the lawyer who had provided the judgment that had been determined to be fake. The author did not provide information as to how he obtained these documents, nor did he provide any evidence rebutting the agent's assessment.

10.9 Thirdly, the Committee notes that the agent who made the decision in the third pre-removal risk assessment examined another arrest warrant dated 26 July 2019 and concluded that it was not credible, as it appeared to be a photocopy signed by the same judge who had signed the other warrant, which had been found to be inauthentic. The Committee also notes that the author indicated only that he had received the documents through his new lawyer in Nigeria and had not provided any additional evidence to support the authenticity of the documents. Lastly, the Committee notes the State party's assertion that, according to publicly available information, forged documents are easily obtained in Nigeria.

10.10 Furthermore, the Committee notes that the State party's authorities analysed the author's allegations of having been subjected to torture after his deportation in October 2015 and considered that they were not credible because they contained contradictions and inconsistencies. Moreover, when the author was asked to show his scars, he changed his version of the facts. The Committee further notes that the only evidence that the author provided to contest the State party's assessment was a report containing his own statements in relation to his injuries, which had not been verified by medical professionals. Regarding a video submitted by the author, the Committee notes the State party's argument (not included in the above summaries of the State party's observations) that it is impossible to know the identity of the individuals it depicts or their relationship to the author; therefore, it is not possible to assess the video's relevance to the communication.

10.11 Concerning the risk that the author would face in Nigeria as a person who is HIV-positive, and due to his latent tuberculosis, the Committee notes his allegations related to the high cost of medical treatment there and to the discrimination and persecution he would face because of his condition. The Committee, however, takes note of the decision, dated 20 July 2020, on the second request for permanent residence based on humanitarian and

compassionate considerations, which indicated that antiretroviral treatment is provided at no cost in Nigeria and that the authorities there have taken measures to combat discrimination against persons with HIV, including the adoption of the HIV and AIDS (Anti-Discrimination) Act. The Committee further observes that the author did not respond to the State party's statement that medical treatment was available at no cost in Nigeria, nor did he provide substantiating information or evidence regarding the discrimination or persecution he would be subjected to in that country.

10.12 The Committee also notes the author's statements concerning the asylum proceedings, in particular the alleged reprisals by the authorities for having submitted a communication to the Committee. The State party's authorities assessed several complaints by the author in relation to the alleged misconduct of the immigration officers and the alleged mistreatment he received while detained. The Committee observes that the State party's authorities took the author's allegations seriously but concluded that he had failed to prove them. In addition, the author has asserted that the State party is "framing him" as a reprisal without, however, providing any evidence to support this assertion.

10.13 Lastly, the Committee notes the State party's statement that the author's claims were thoroughly reviewed by its immigration authorities, which found that he had submitted several incoherent and contradictory allegations, had used fake documents and had made false statements – all of which had weakened the credibility of the evidence he submitted. The Committee further observes that the author has not identified any procedural irregularities in the asylum proceedings. It therefore considers that while the author disagrees with the conclusions of the State party's authorities, he has failed to demonstrate that they were arbitrary or manifestly erroneous or amounted to a denial of justice.[39]

11. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, concludes that the removal of the author to Nigeria would not violate his rights under articles 6 and 7 of the Covenant.

[39] See, among others, *J.R.R. et al. v. Denmark* (CCPR/C/132/D/2787/2016), para. 10.7.