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**Human Rights Committee**

Views adopted by the Committee under the Optional Protocol, concerning communication No. 2653/2015[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

*Communication submitted by:* Ekens Azubuike(represented by counsel Ms. Barriere)

*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 - non-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

*Article of the Covenant:* 6, 7, 9 (1) and 17

*Articles of the Optional Protocol:* 2, 3, 5(2)(b)

1.1 The author of the communication, dated 6 October 2015, is Mr. 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 International Covenant on Civil and Political Rights (the Covenant) would be violated, if the State party deported 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 (MASSOB). In addition, he claims that he would be persecuted and denied medical treatment because of his health condition (HIV positive). The Optional Protocol to the Covenant entered into force for Canada on 19 August 1976. The author is represented by counsel.

1.2 On 7 October 2015, the Special Rapporteur on New Communications and Interim Measures decided to grant interim measures sought by the author, requesting the State party not to deport him while his communication was examined by the Committee.[[3]](#footnote-3) However, the author was deported on 6 October 2015, before the Committee’s decision granting the interim measures 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 the author’s comments on the State party’s request, the Committee, on 14 November 2016, requested him to provide some clarifications.[[4]](#footnote-4) 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 (PRRA)) 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 PRRA, on 15 November 2021, and had other judicial proceedings pending.[[5]](#footnote-5)

1.5 On 12 July 2022, the State party requested to lift the suspension, as the third PRRA application had been rejected on 7 March 2022. On 25 January 2023, the Special Rapporteur on New Communications and Interim Measures lifted the suspension.

 Factual background

2.1 The author became a member of MASSOB in 1999. He left Nigeria in 2000, following rumors that the police were arresting MASSOB members. He requested asylum in Greece, but it was rejected, so he returned to Nigeria. In December 2003, he became a security agent for MASSOB in his region. He was responsible for organizing demonstrations, mobilizing members, holding the flag and printing t-shirts. In January 2004, he was arrested due to his militancy. He claims that he was detained for one week, during which he was tortured, and that he was freed after he paid a bribe to the chief of the secret services in Imo State, A.A. They agreed that the author would pay A.A. for information on police operations against MASSOB. In 2005, A.A. informed the author that a big operation against MASSOB was going to be carried out. The author decided to go into hiding and leave Nigeria, in contravention of MASSOB’s orders to stay and fight.

2.2 The author and his female partner left Nigeria for Ireland and sought asylum there in October 2005, but their application was rejected. In January 2007, the author left Irelandfor Ghana using a Ghanaian passport. He was detained in Ghana for 15 days because he was not the owner of the passport. 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 MASSOB. He remained hiding in Nigeria until May 2007, when he left, using his brother’s passport and paying a bribe to 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 (RPD) on 26 March 2009, due to his militancy in MASSOB. In February 2009, the Canada Border Services Agency (CBSA), asked the High Commission of Canada in Ghana to request that Interpol verify the authenticity of the judgment that convicted the author and sentenced him to life imprisonment. In December 2010, Interpol Nigeria sent a letter to the Canadian authorities indicating that the judgment in question was 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 was visited by officials who asked for a bribe in order to state that the judgment was authentic. They did not pay the bribe.

2.4 On 3 June 2014, the author’s refugee status was cancelled by the Refugee Protection Division (RPD) of Canada because the judgment convicting him was forged and because the author did not provide other evidence which would justify granting him a 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 may ask foreign authorities to verify documents provided that there is a balance between public interest and the right to privacy, which was respected in the author’s case. The Court indicated that Interpol informed the State party that there was no judge with the name stated in the judgement 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,[[6]](#footnote-6) as there were differences in how the lawyer’s name was written in the headline and in the signature.

2.5 Following a request by the Ministry of Public Safety to investigate whether the author would fall into the category of a person inadmissible to Canada because of his participation in terrorist activities,[[7]](#footnote-7) on 26 June 2014 the Immigration and Refugee Board (IRB) concluded that he did not fall within such category. The IRB indicated that although the author was a member of MASSOB, there was no reasonable ground to believe that MASSOB had engaged in acts of subversion against the Nigerian government.

2.6 On 16 September 2014, the Ministry of Immigration, Citizenship and Refugees rejected the author’s first request of permanent residence based on Humanitarian and Compassionate considerations (H&C), which he had submitted in 2009.

2.7 On 17 October 2014, the author submitted a PRRA, indicating that he would present evidence in a later communication. By mistake he sent the evidence to the wrong email address.[[8]](#footnote-8) On 25 February 2015, the PRRA was rejected. The PRRA officer analysed three letters provided by the author which supported his allegations that the Nigerian authorities would persecute him if he were returned: a) a letter dated 16 December 2010 from the Interpol (Nigeria) that confirms that the judgement convicting the author was fake; b) 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 c) 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 judgement. The PRRA officer considered that the two letters related to the lawyer had little evidentiary weight, as they were 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 PRRA officer further indicated that according to objective sources,[[9]](#footnote-9) despite the crackdown on certain MASSOB members, only leaders and organizers appeared to attract the attention of Nigerian officials. The PRRA officer indicated that, as the author’s involvement with MASSOB 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 MASSOB 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 was 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 some MASSOB members.

2.9 Thereafter, the author returned to Canada on 19 November 2015, using his refugee travel document provided by the Canadian authorities. He was arrested upon arrival 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 rather be held in an immigration facility, that he was not allowed to present witnesses at detention hearings, and that all his requests for transfer were denied.[[10]](#footnote-10)

2.10 The author claims that on 29 June 2016, members of the Nigerian Department of State Security (DSS) visited his lawyer, in relation to 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.[[11]](#footnote-11) A new lawyer, A.D., started to represent him in June 2017.[[12]](#footnote-12)

2.11 On 24 March 2016, the author submitted a second PRRA application. It was rejected at a first stage (on 31 May 2016); however, the Ministry of Immigration, Refugees and Citizenship intervened and decided that the application would be reviewed, including evidence regarding the events occurred after the rejection of the author’s first PRRA. In May 2017, the PRRA agent requested the author to provide the originals of some documents.[[13]](#footnote-13)

2.12 On 1 May 2018, the author’s second PRRA was rejected because the author lacked credibility. The PRRA agent analysed the evidence submitted by the author in relation to his detention in Nigeria following the deportation, and the risk faced by MASSOB members, including the author’s allegation that he had been confirmed as chief security officer of MASSOB in November 2015, while in detention in Nigeria. The PRRA agent took note of several public reports and press articles on the situation of MASSOB members.[[14]](#footnote-14) Further, he examined the evidence submitted by the author in relation to his membership of MASSOB[[15]](#footnote-15) and indicated that if the documents provided by the author were genuine, they would support his allegations. However, he 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 MASSOB membership were copies or scans, with signatures which looked identical; and that some of the documents were submitted through the author’s lawyer in Nigeria, who was the same lawyer who submitted and verified the court judgement which had been found to be a forgery. In addition, the PRRA agent referred to an IRB report according to which fraudulent documents are easily available in Nigeria.[[16]](#footnote-16) 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 copy in colour and its stamps were from the notary and not from the warrant itself. Moreover, the notary attesting the authenticity of the documents was the same notary which attested the authenticity of the forged judgement. The PRRA agent also referred to the author’s history of submitting false documents, i.e., the false judgement and the use of the travel document which he said he had lost. Therefore, he concluded that the documents could not be considered as authentic. The PRRA agent also considered that the author’s statements were full of inconsistencies; for instance, he 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 PRRA agent indicated that the author 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 changed this statement, saying that it was not really a scar. Moreover, the documents supporting the author’s allegations that he denounced the torture to Canadian authorities,[[17]](#footnote-17) had not much evidentiary weight, as the alleged injuries were self-reported and were not confirmed by medical professionals; further the author did not seek medical treatment after being released. The PRRA agent concluded that the author lacked credibility overall and was not able to demonstrate his membership of MASSOB since his departure from Nigeria in 2005. Therefore, there was no evidence that the author was wanted in Nigeria, that he was seen as a threat by Nigerian authorities or that he would face a risk if returned there. On 28 May 2018, the author requested from the Federal Court leave 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 H&C. He alleged that he would face a very difficult situation in Nigeria due to his condition of being HIV positive. In particular, he alleged that medical treatment for the disease was inadequate there, medicines, when available, were very expensive, and the government would refuse to provide him with such medicines, given his history as a MASSOB member. 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 in custody in Nigeria. On 20 July 2020, the author’s H&C applicationt was rejected. The agent considered that the author did not demonstrate that, if returned to Nigeria, he would face a situation which 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 impacted personally by such factors. Concerning the author’s allegations related to his HIV status, the agent indicated that the author failed to prove that he would face personal difficulties that are not experienced by the general population or by someone in a situation similar to his, in particular taking into account that the Nigerian government has taken measures to address discrimination of persons living with HIV/AIDS, such as the Anti-Discrimination Act of 2014. Moreover, the agent noted that there are agencies in Nigeria that provide support and anti-retroviral therapy at no cost. Regarding the author’s allegations regarding his mental health, the agent noted that the author had provided a medical certificate of 2008 which 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, this allegation would not be taken into account. The author’s allegations related to his son were found vague. On 3 August 2020, the author requested the Federal Court leave for appeal for judicial review of the decision on the H&C application. His request was rejected on 22 January 2021.

2.15 On 15 November 2021, the author applied for a third PRRA, claiming that as MASSOB member, he would face a risk if deported to Nigeria. It was rejected on 7 March 2022. The PRRA officer analysed several pieces of evidence submitted by the author, including a letter dated 21 June 2018, signed by the Movement of Biafrans in Nigeria (MOBIN) which indicated that the author was a known Biafran activist and MASSOB member since 1999. The PRRA agent gave little weigh to the letter, as MASSOB and MOBIN are separate organizations and he found not credible that MOBIN would provide a letter to a member from another organization. The agent also analysed a warrant dated 26 July 2019, 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 did not provide any evidence or explanations regarding how it came to his possession, only indicating 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 which was found false during the second PRRA proceeding. The PRRA agent also examined a letter addressed to the author, dated 21 October 2021, in which he was invited to present himself to the police in Orlu on 17 January 2022; and an affidavit by a government official, H.U., appointed by the Imo State government to find prisoners who had escaped from the Owerri prison. The affidavit indicated that the author’s name 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 PRRA agent indicated that the signature in this 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,[[18]](#footnote-18) the PRRA officer concluded that he did not present new evidence that would refute the previous findings in relation to his credibility, as established in the second PRRA’s decision. In addition, the PRRA officer 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 PRRA 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 (FCA) for leave to appeal the negative decision of 22 January 2021 (see para. 2.14). The FCA rejected the author’s request. On 24 September 2021, the author sought leave to appeal the FCA’s decision 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 falsified 50-dollar bill. The criminal proceedings against him had the effect of staying his removal until they were concluded.[[19]](#footnote-19) In addition, on 24 June 2020, the author was arrested, accused of having stolen 55 vehicles in 2019, using fake bank drafts. The parties have not provided any information in relation to the outcome of these criminal proceedings.

 The complaint

3.1 The author alleges that if returned to Nigeria his rights under articles 6, 7 and 9(1) 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 MASSOB. The author claims that he would be identified upon arrival because the State party 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 MASSOB. By contacting the Nigerian authorities directly, the State party’s authorities failed to take into account UNHCR’s Handbook on procedures on the determination of refugee status, which indicates that independent sources (such as an embassy fact-finding mission or NGOs) should be used instead of local authorities. The author also indicates that even if it were true that the judgement 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 1951 Refugee Convention.

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 MASSOB.[[20]](#footnote-20) The author also quotes several reports stating that MASSOB members are targeted by the Nigerian authorities which arrest and torture them and subject them to extrajudicial executions or enforced disappearances.[[21]](#footnote-21)

3.3 The author also claims that being HIV positive would put him at risk if returned to Nigeria, as it is known that people with HIV are heavily discriminated against in Nigeria, without access to adequate medical services. The author claims that people with HIV can be denied medical care and can lose their job.[[22]](#footnote-22) In addition, there is a perception that people 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 MASSOB member 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 PRRA proceedings and that those proceedings were not effective. For instance, in relation to the first PRRA request, 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) 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 second and third PRRA proceedings, 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 very secondary point in the decision granting asylum, as it was hardly mentioned in it. 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 or psychological follow-up.

**Author’s further information**

4.1 On 26 August, 12 and 14 September 2020, the author provided additional information. He claims that the CBSA 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 CBSA indicating that two CBSA officers wanted to “frame him” and to “see him dead”, and that one of them was responsible for the ill treatment he suffered while in detention after he returned to Canada in November 2015. The author provides a reply from the CBSA dated 24 August 2018, in which the Director of the Enforcement and Intelligence Operations Division indicated that the author did not provide any details regarding the alleged ill treatment; that the author’s allegations against the CBSA officers were ill-founded, as no evidence was provided to substantiate them; and that when the author was received in the CBSA’s office to hear his complaint, he constantly interrupted the interviewer, so it was 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.[[23]](#footnote-23) The author claims that since that moment, he has been receiving medical treatment that costs 1300 USD per month which is not available in Nigeria, and even if available, it would not be accessible, as the minimum wage in Nigeria is 35 USD per month.

He adds that his residence was raided on 24 June 2020, following a criminal investigation of his suspected theft of 55 vehicles. The author claims that the investigation is part of the State party’s authorities’ effort to tarnish his reputation, as a reprisal for having submitted the communication to the Committee.

 State party’s observations on the 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 the author’s request to the Federal Court for leave to appeal the rejection of his second H&C application was pending when the State party submitted its observations (see para. 2.14). The State party indicates that an appeal to the Federal Court regarding a rejection of a H&C application constitutes an effective remedy to avoid any irreparable harm caused by a subsequent deportation.[[24]](#footnote-24)

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, State parties that deport a person, following a decision by its 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 the General Comment No. 35, according to which only prolonged arbitrary detention may amount to inhuman treatment prohibited by article 7 of the Covenant,[[25]](#footnote-25) 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.[[26]](#footnote-26) 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.[[27]](#footnote-27)

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, personalized and continuous risk if deported to Nigeria. The author failed to demonstrate that the Nigerian authorities are looking for him or that he would be killed or subjected to torture or ill treatment, in particular taking into account that he 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.[[28]](#footnote-28) The State party indicates that several domestic authorities had analysed the author’s claims and all concluded that he did not demonstrate that he would face any risk if deported to Nigeria. In particular, the author made several incoherent and contradictory allegations, he 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 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 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 PRRA 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 MASSOB member, taking into account that the domestic authorities concluded that the documents he provided to demonstrate such membership do not have any evidentiary weight.[[29]](#footnote-29) In addition, the State party refers to a 2020 report by the UK Home Office, according to which, by that year, MASSOB had split in several small groups which had made it lose importance.[[30]](#footnote-30) Therefore, the State party maintains that it is unlikely that the Nigerian authorities are interested in persecuting MASSOB members, 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 a 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, in case the Committee considers the communication to be admissible, the author’s claims are manifestly unfounded because of several reasons: there is no credible proof that the author had been subjected to torture in Nigeria; the author’s lacks credibility; the author’s evidence lacks evidentiary value, as it contain fake documents, including the judgement convicting him to life imprisonment which has been confirmed as non-authentic; and the author has not demonstrated his participation in any political activity linked to MASSOB at least since 2007.

 Author’s comments on the State party’s observations on the admissibility and 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 H&C application 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) 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 1951 Convention on 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 being active with MASSOB since 1999 and that he has demonstrated this in the asylum proceedings. The author further claims having seen MASSOB members being killed and abducted by the Nigerian Police.

6.4 He asserts that the State party has violated several provisions of international[[31]](#footnote-31) and domestic law[[32]](#footnote-32) by withdrawing his refugee status after violating the confidentially principle that governs asylum proceedings by contacting the authorities in Nigeria, who are his persecutors. The author adds that the verification of the judgement made by the State party’s authorities has violated his rights under article 17 of the Covenant.

6.5 The author also states 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 that the Nigerian authorities will not be in position to protect him against discrimination or provide him with 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;[[33]](#footnote-33) seizure of his MASSOB card confirming his reinstatement as chief security officer upon his return to Canada in November 2015;[[34]](#footnote-34) misconduct of a CBSA officer who disliked him because of his political views; dismissal of his complaints against this CBSA 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; being kept in a maximum security detention facility instead of in an immigration facility; having contracted HIV and tuberculosis while detained; not having given adequate weight to the medical report indicating he suffers from PTSD and ignoring 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 CBSA has a plan to kill him or frame him as a reprisal of his communication to the Committee.

6.7 The author also comments on the State party’s violations of its obligations under international law,[[35]](#footnote-35) 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’ decisions, in particular those regarding his H&C applications.

 State party’s further 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 the 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 in 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.[[36]](#footnote-36) 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 for the organs of State 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.[[37]](#footnote-37)

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 judgement was conducted in a manner that respected the author’s privacy rights.[[38]](#footnote-38) The author did not provide evidence that his rights under article 17 were violated.

 Additional comments by the author

8. On 4 and 10 February, 16 March and 29 April 2022 and on 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 because when the State party submitted its observations, the author’s leave to appeal the rejection of his second H&C application was pending before the Federal Court. The Committee however observes 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 judgement that allegedly convicted him and sentenced him 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 if he were 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, which might result in an irreparable harm[[39]](#footnote-39) that would be commensurate to the irreparable harm contemplated by articles 6 and 7 of the Covenant.[[40]](#footnote-40) 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 this part of the communication admissible and proceeds with its consideration on the merits.

 Consideration of the merits

10.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided for under 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 of MASSOB. The Committee further notes the author’s allegations that being HIV positive would put him at a further risk because people with HIV in Nigeria are heavily discriminated and can be denied medical care, and that the treatment of 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 judgement convicting him and sentencing him 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 failed to demonstrate that he would face a real, personalized and continuous risk of irreparable harm if deported to Nigeria, as he did not prove that the Nigerian authorities are looking for him or that he would be killed or subjected to torture or ill treatment, given that he left the country more than 13 years ago.

10.4 The Committee recalls its general comment No. 31, which refers to the obligation of State 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.[[41]](#footnote-41) 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.[[42]](#footnote-42) In making this assessment, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin.[[43]](#footnote-43) 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 State parties to examine the facts and evidence of the casein 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[[44]](#footnote-44).

10.5 The Committee notes that the author was able to submit three PRRAs, two H&C applications, as well as 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 observers that although, in principle, the PRRA does not review new evidence, the decision-makers of the second and third PRRAs reviewed evidence related to events that occurred after the rejection of the author’s first and second PRRAs.

10.6 The Committee also notes that the author was represented by counsel at least until the second PRRA. 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 MASSOB membership, the Committee notes, firstly, that when requested to verify the authenticity of the ruling which convicted the author and sentenced him to life imprisonment, Interpol confirmed that it was fake, as the judge signing it had never been part of the tribunal which had supposedly issued the ruling. In this regard, the Committee notes the State party’s argument that the verification of the judgement was conducted according to domestic legislation. The Committee takes note of the Federal Court’s decision of 29 April 2015, which considered that authorities are allowed to verify documents provided that they strike a balance between public interest and the right to privacy. The Committee acknowledges that State parties have the power to determine who can stay in their territory and may carry out 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 this was not done with respect to 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 decided the first PRRA examined two letters according to which 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 decided the second PRRA analysed a warrant of arrest dated 17 June 2016, several letters confirming the author’s membership of MASSOB, and other documents submitted through his lawyer in Nigeria. The Committee notes that the PRRA 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 same lawyer who had provided the judgement which was determined to be a fake. The author did not provide information as to how he obtained these documents, nor did he provide any evidence rebutting the PRRA agent’s assessment.

10.9 Thirdly, the Committee notes that the agent who decided the third PRRA 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 non-authentic. The Committee also notes that the author only indicated that he received the documents through his new lawyer in Nigeria and did not provide any additional evidence to support the documents’ authenticity. 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 the video submitted by the author, the Committee notes the State party’s argument 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 an HIV positive person, 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 second H&C decision of 20 July 2020, which indicated that anti-retroviral treatment is provided at no cost in Nigeria and that the authorities there have taken measures to combat the discrimination against people with HIV, including the Anti-discrimination Act. The Committee further observes that the author did not respond to the State party’s statement that medical treatment is 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 as well as 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 submitted several incoherent and contradictory allegations, that he used fake documents, and made false statements – all of which 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.[[45]](#footnote-45)

11. In 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.

1. \* Adopted by the Committee at its 138th session (26 June – 26 July 2023) [↑](#footnote-ref-1)
2. \*\* 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. [↑](#footnote-ref-2)
3. The Committee requested the State party to clarify some issues related to the asylum proceedings. The State party replied on 7 December 2015. [↑](#footnote-ref-3)
4. The Committee requested to provide further information and supporting documentation regarding his allegations that he was detained and tortured in Nigeria after his deportation, and that he was subject to abusive treatment by the State party’s authorities from September 2015, while in custody. [↑](#footnote-ref-4)
5. See para 2.17. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. Pursuant to article 34(1) (f) of the Immigration and Refugee Protection Act. [↑](#footnote-ref-7)
8. He indicates that he submitted a medical report indicating that he suffers from PTSD; evidence demonstrating that the communications between the State party’s authorities and the Interpol had put him at risk; that the Nigerian police had an extended practice of inflicting torture and ill treatment; that MASSOB members are persecuted; and that HIV positive persons are discriminated in Nigeria. [↑](#footnote-ref-8)
9. Reports by the Danish Immigration Service (2005); US Department of State (2014). [↑](#footnote-ref-9)
10. He provides two letters from the CBSA dated 22 December 2015 and 21 January 2016, stating that the author was not a suitable candidate for transfer, i.e, the letter from 2016 states that the rejection was based on “numerous behavioural factors,” including reports of aggressive behaviour. [↑](#footnote-ref-10)
11. The author provides a copy of the lawyer’s letter of resignation. The letter also indicates that that the DSS had detained Orlu District’s MASSOB President, R. O., as he was the last person to visit the author before he escaped from prison. In addition, the lawyer affirms that Nigeria’s President -who fought in the civil war against the separatist movement in Biafra - had ordered to clap down all “agitating groups” seeking Biafra’s independence, including MASSOB, and that many militants had been extra-judicially executed, imprisoned without charges, disappeared, or charged with treason leading to life imprisonment. [↑](#footnote-ref-11)
12. The author provides a letter dated 12 June 2017, indicating so. [↑](#footnote-ref-12)
13. i) arrest warrant against the author for escaping jail dated 17 June 2016; ii) letter dated 29 January 2016, signed by Orlu District MASSOB’s President confirming the author’s membership and that he was confirmed as Orlu District’s Chief Security in November 2015, while in detention; iii) letter dated 29 March 2016, signed by MASSOB’s Chief of Umuna Orlu Chapter with the same content; letter from the Organization of African Emergent States dated 17 August 2016 confirming the same facts; iv) 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 Nigeria had put the author at risk and that the Nigerian Government had increased the operations against all MASSOB members. In addition, the author provided the following documents to the State party’s authorities: i) letter dated 20 February 2017, signed by the MASSOB’s Chief of Umuna Orlu Chapter indicating that the author’s brother was killed while in custody in November 2016, and confirming that Orlu District’s MASSOB President, Mr. R. O. was in prison because he visited the author before he escaped; ii) letter from the author’s former lawyer in Nigeria, Mr. N.O referring to the killing of 11 MASSOB members during a demonstration on 20 January 2017 (including pictures). [↑](#footnote-ref-13)
14. Amnesty International, Nigeria: Bullets Were Raining Everywhere – Deadly Repression of Pro-Biafra Activists”; Freedom House, Freedom World Report, 2017; European Asylum Support Office, report on Nigeria, June 2017; US Department of State Country Report Nigeria, 2016, among others. [↑](#footnote-ref-14)
15. See footnote 11. [↑](#footnote-ref-15)
16. He referred to UK Country of origin Information and Guidance: Nigeria, August 2016 which confirms the use of forged documents in immigration proceedings. [↑](#footnote-ref-16)
17. The author provided a letter addressed to the prison authorities dated 15 December 2015, in which he complains of pain resulting from the torture; complaints indicating that he has been denied treatment; and a document describing the pain in his knee resulting from the “torture suffered in October 2015”. [↑](#footnote-ref-17)
18. Among others: news articles related to the crackdown on IPOB and MASSOB members; alleged threats suffered by the author because he established the “Ekens Foundation International” a think tank helping political prisoners and refugees. The threats were related to political statements the author posted on the Foundation’s Facebook page. [↑](#footnote-ref-18)
19. Immigration and Refugee Protection Act, art. 50(a). [↑](#footnote-ref-19)
20. According to the author’ such membership was recognized in the IRB’s decision of 26 June 2014 and in the first PRRA decision. [↑](#footnote-ref-20)
21. He refers to an Amnesty International report quoted in a press article of September 2015 available at <http://www.ibtimes.co.uk/nigeria-credible-evidence-that-pro-biafrans-are-targeted-by-police-says-amnesty-international-1519127>. [↑](#footnote-ref-21)
22. Commission de l’immigration et du statut du refugié du Canada, Nigeria Treatement of persons with HIV/AIDS by society (2005-2007). [↑](#footnote-ref-22)
23. He provides among others, a letter from the Ministry of Public Safety, dated 27 October 2008, stating that there was no evidence that he 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 same facility as him resulted positive, but that following a test conducted on 13 November 2007, the result was negative. [↑](#footnote-ref-23)
24. Refers to *Dastgir v. Canada* (CCPR/C/94/D/1578/2007), para. 6.2. [↑](#footnote-ref-24)
25. (CCPR/C/GC/35), para. 57. [↑](#footnote-ref-25)
26. The State party also refers to the General Comment 31 (CCPR/C/21/Rev.1/Add. 13), para. 12. [↑](#footnote-ref-26)
27. The State party refers to the judgment of the European Court of Human Rights in *Soering v. United Kingdom*, 1989, para. 86. [↑](#footnote-ref-27)
28. It refers to the General Comment No. 31, para. 12. [↑](#footnote-ref-28)
29. 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. [↑](#footnote-ref-29)
30. UK Home Office, Country Policy and Information Note Nigeria: Biafran separatists, April 2020. [↑](#footnote-ref-30)
31. He refers to several provisions of the 1951 Refugee Convention. [↑](#footnote-ref-31)
32. Canadian Charter of Human Rights, among others. [↑](#footnote-ref-32)
33. He claims having been threatened, intimidated, harassed and handcuffed. [↑](#footnote-ref-33)
34. He provides a copy. [↑](#footnote-ref-34)
35. He refers the 1951 Refugee Convention and the Convention against Torture, among others. [↑](#footnote-ref-35)
36. It 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 [↑](#footnote-ref-36)
37. Among others, *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 [↑](#footnote-ref-37)
38. It refers to General Comment N. 16. [↑](#footnote-ref-38)
39. General Comment No. 35 (CCPR/C/GC/35), para. 57. [↑](#footnote-ref-39)
40. General Comment No. 31 (CCPR/C/21/Rev.1/Add. 13), para. 12. See also *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5. [↑](#footnote-ref-40)
41. See general comment No. 31 (CCPR/C/21/Rev.1/Add. 13), para. 12. [↑](#footnote-ref-41)
42. *Y. v. Canada* (CCPR/C/114/D/2280/2013), para. 7.2; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2 [↑](#footnote-ref-42)
43. *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18. [↑](#footnote-ref-43)
44. *Rasappu v. Canada* (CCPR/C/115/D/2258/2013), para. 7.3. [↑](#footnote-ref-44)
45. See, inter alia,  *J.R.R. et al. v. Denmark* (CCPR/C/132/DR/2787/2016), para. 10.7. [↑](#footnote-ref-45)