



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3023/2017*, **

<i>Communication submitted by:</i>	O.H.D., O.A.D. and B.O.M. (represented by counsel, Madeline Bridgett)
<i>Alleged victims:</i>	The authors and N.M.T.
<i>State party:</i>	Australia
<i>Date of communication:</i>	6 September 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 September 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	25 March 2022
<i>Subject matter:</i>	Deportation to Nigeria
<i>Procedural issues:</i>	Incompatibility; lack of authorization; inadmissibility <i>ratione personae</i> ; inadmissibility <i>ratione materiae</i> ; level of substantiation of claims
<i>Substantive issues:</i>	Right to respect for family life; non-refoulement; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	2 (1), 7, 17, 23 (1) and 24 (1)
<i>Articles of the Optional Protocol:</i>	1, 2 and 3

1.1 The authors of the communication are O.H.D., born in 1992, his mother, B.O.M., born in 1963, and his brother, O.A.D., born in 1995, all nationals of Nigeria. They submit the communication on their own behalf and on behalf of N.M.T., the daughter of O.H.D., a national of Australia born in 2016. The authors claim that their deportation to Nigeria by the State party would violate their rights under articles 2 (1), 7, 17, 23 (1) and 24 (1) of the Covenant. The Optional Protocol entered into force for the State party on 25 December 1991. The authors are represented by counsel.

* Adopted by the Committee at its 134th session (28 February–25 March 2022).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.



1.2 On 21 September 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

Facts as submitted by the authors

2.1 O.H.D. and O.A.D. were born to B.O.M., who is Christian, and M., who converted from Islam to Christianity. In 1995, M was fatally poisoned by his family, probably because of his conversion. During the pre-funeral ritual, B.O.M. was beaten by M's family members for refusing to drink the water in which his body had been bathed. She was locked in a room together with his body and was told to eat the body she had killed, but she was freed by her family members. M's family demanded custody of the children. After negotiations, it was decided that B.O.M. could keep the children, on the conditions that she did not marry another Christian, did not take them to church, registered them in Muslim schools and referred to them by their Muslim names. However, in 2002, M's family took the children away from her upon learning that she had been taking them to church. Following the intervention of a religious chief, O.H.D. was ordered to remain with M's family and to be enrolled in a Muslim school, but his brother, O.A.D., was returned to B.O.M. O.A.D.'s forehead was cut to mark him as a Muslim. Thereafter, B.O.M. received threats warning her not to take O.A.D. to church.

2.2 In 2005, M's sister found out where B.O.M. was living and that she had been taking O.A.D. to church. She then started telling the local community that B.O.M. had killed her husband and that she was a witch. B.O.M. relocated to various parts of Nigeria to seek refuge from M's family. In 2006, she took O.H.D., relocated to Kaduna State with him and O.A.D. and married another Christian. In 2009, M's family, which had become involved with Ahli-Sunnah, affiliated to Boko Haram, started to threaten her and her family, stating that they would be killed if she continued to attend church. One day, she was in church with her family when a bomb went off in the church's car park, killing seven people. In 2012, her shop was ransacked and her husband received more threats. In 2013, following a threat from Ahli-Sunnah to her husband, her house was bombed and set on fire. They moved in with her stepdaughter in Abuja, but she too began to receive threats.

2.3 The authors arrived in Australia on 28 February 2013 and applied for a protection visa (class XA) on 12 March 2013. On 11 July 2013, a delegate of the Minister of Immigration and Border Protection refused their application, on the basis of the finding that they did not have a real risk of being persecuted. The Refugee Review Tribunal confirmed that decision on 12 August 2014. The Federal Circuit Court of Australia dismissed their appeal on 23 October 2015. Four applications to the Minister of Immigration and Border Protection pursuant to section 417 of the Migration Act 1958, which allows the Minister to substitute the decision of the Federal Circuit Court of Australia for a more favourable decision, were also unsuccessful. Their visas would expire on 8 September 2017.¹

2.4 O.H.D. claims to maintain strong ties to Australia, including through the presence of an Australian uncle, the fact that he was featured in the news for his contribution to local activities and his receipt of a university scholarship. In October 2016, a petition addressed to the Australian authorities in his favour received over 24,000 signatures. Moreover, he has two jobs and has set up a trust fund for N.M.T., his daughter, who was born in Australia. O.H.D.'s relationship with N.M.T.'s mother broke down. On 14 February 2017, the Family Court of Australia issued an interim parenting order for N.M.T. to spend up to two hours every two weeks with O.H.D. at a contact centre. In an interim parenting order dated 14 July 2017, the parents were ordered to enable N.M.T. to spend time with him if a parentage test confirmed his fatherhood. The DNA test confirmed this but, at the time of the filing of the present communication, he had never met N.M.T., as he has been on a waiting list for the contact centre.

¹ The authors left Australia for Nigeria on 11 October 2017 (see para. 5.1 below). Subsequently, B.O.M. travelled to Canada, O.H.D. to the United States of America and O.A.D. to Benin (see para. 5.5 below).

Complaint

3.1 The authors contend that O.H.D.'s removal from Australia would mean that he would be deprived of any family life with N.M.T., in breach of articles 2 (1), 17, 23 (1) and 24 (1) of the Covenant. The same would apply to B.O.M. and O.A.D., given the extended family culture in Nigeria. His removal would also preclude him from concluding the pending family law proceedings in Australia, in which he seeks to obtain permanent parenting orders. The absence of such orders may result in the authors indefinitely losing contact with N.M.T., as O.H.D. is not in contact with her mother.

3.2 The authors contend that three of the section 417 applications made to the Minister of Immigration and Border Control were made after N.M.T.'s birth. However, the Minister failed to consider her birth as a new circumstance or the compatibility of the refusal to grant a protection visa with her rights.²

3.3 Further, even if O.H.D. were to be permitted to take N.M.T. with him to Nigeria, this would place her at risk of irreparable harm, given the family's history (see paras. 2.1 and 2.2 above) and in the light of the Committee's findings in *Husseini v. Denmark*.³ This would include continued ill-treatment from the family of M., financial hardship in the absence of employment and social isolation and ostracism from their community. Given her young age at the time of the submission of the communication, she cannot yet decide whether to have contact with O.H.D. However, his deportation would traumatize her, and it is his right to have contact with her.

3.4 Referring to the impunity for human rights abuses committed by the Nigerian authorities and Boko Haram and to communal violence, the authors argue that they would be unable to seek protection from the Nigerian authorities, and would thus be exposed to a real and immediate danger of treatment contrary to articles 2 (1) and 7 of the Covenant. Country information confirms that the religious persecution to which they were subjected in Nigeria would again be inflicted on them upon return.⁴

3.5 The authors dispute the findings made by the delegate of the Minister of Immigration and Border Protection, who concluded that they had systematically misrepresented events to provide claims and had lied about events and instances of threats. They contend that those findings demonstrate a lack of understanding of political, cultural and family life in Nigeria and the social structures in the country, in particular how the police and community relate to each other. The Refugee Review Tribunal also found that the authors lacked credibility. The State party's authorities thus failed to give due weight to their detailed account of the existence of a risk of ill-treatment.⁵ Moreover, the basis of the finding of non-credibility in the absence of proof shows a lack of respect for their culture, religion and ethnicity and amounts to discrimination.

3.6 The authors also allege violations of articles 3 (1), 3 (2), 5, 9, 10, 14 (2), 16, 18 and 30 of the Convention on the Rights of the Child and articles 3, 16, 31 and 33 of the Convention relating to the Status of Refugees.

3.7 The authors seek recognition of the violation of their rights under the Covenant, the Convention on the Rights of the Child and the Convention relating to the Status of Refugees, and of the State party's obligations to refrain from deporting them to Nigeria and to grant them protection as refugees (see para. 7.4 below).

² *Husseini v. Denmark* (CCPR/C/112/D/2243/2013), para. 9.6.

³ Para. 9.5.

⁴ United States, Department of State, *Nigeria 2012 Human Rights Report* (2012); Human Rights Watch, "World report 2012: Nigeria – events of 2011"; United States, Department of State, "Nigeria 2012 international religious freedom report" (2012); United States, Department of State, "Country reports on terrorism 2016 – Nigeria" (2017); and Harriett Sherwood, "Christians flee growing persecution in Africa and Middle East", *The Guardian*, 13 January 2016.

⁵ The authors refer to *Byahuranga v. Denmark* (CCPR/C/82/D/1222/2003), para. 11.4.

State party's observations on admissibility and the merits

4.1 By note verbale of 1 June 2018, the State party submitted that the communication is inadmissible with respect to B.O.M., O.A.D. and N.M.T., as the power of attorney submitted concerns O.H.D. only, and there are no indications that B.O.M. or O.A.D. were subject to any restrictions on their ability to provide an express authorization. Domestic privacy legislation and article 17 of the Covenant therefore limit the State party's ability to respond to the allegations concerning B.O.M., O.A.D. and N.M.T. Furthermore, although N.M.T. does not yet have the capacity to authorize a legal representative to represent her, and although O.H.D. is her biological father, their relationship is insufficiently close to establish his authority to bring a communication on her behalf or to authorize the legal representative to act on her behalf. Moreover, there is no evidence that her mother, her primary carer, has consented to O.H.D. bringing the communication on her behalf. The claim of a violation of article 24 (1) of the Covenant is therefore inadmissible *ratione personae*, as the rights in that article can be enjoyed by children only.⁶

4.2 The State party observes that the claims advanced under the Convention on the Rights of the Child and the Convention relating to the Status of Refugees are inadmissible under article 3 of the Optional Protocol. The provisions of the Convention on the Rights of the Child may inform the Committee's consideration of relevant articles of the Covenant in accordance with article 31 of the Vienna Convention on the Law of Treaties; however, the Covenant cannot be interpreted as comprehensively importing provisions of the Convention on the Rights of the Child.

4.3 The State party submits that all claims made under the Covenant are insufficiently substantiated and are of a hypothetical nature, as the authors have meanwhile voluntarily returned to Nigeria. There is therefore no action by the State party that could form the basis of the alleged breaches. In addition, the communication does not set out which conduct by the State party amounted to a violation of article 2 (1) of the Covenant. Furthermore, any claim of a possible future breach of article 23 (1) of the Covenant is inadmissible *ratione materiae*.

4.4 The State party also submits that the claims are without merit. Concerning the claim under article 7 of the Covenant, the State party submits that the authors' voluntary return means that there can be no act by the State party capable of constituting a violation. In addition, the authors have not proved that the non-refoulement obligation is engaged in their respect. All of their allegations under article 7 of the Covenant have been assessed by domestic decision makers, who found that they would not be subject to a real risk of irreparable harm in Nigeria and that their claims lacked credibility and support in country information. Specifically, the departmental decision maker found that B.O.M. had improbably claimed that her first husband had sought to return to the village of his family, which had poisoned him, that she could not explain how her business activities had continued during the years during which she was allegedly targeted, and that she had claimed implausibly that Ahli-Sunnah suspended its unsuccessful attempts to harm her, but recommenced its interest in her for no apparent reason. Furthermore, it was found implausible that she had a genuine fear for her life in Nigeria considering her many returns to the country after overseas holidays. Moreover, she had first claimed that Ahli-Sunnah had connections throughout the country and had tracked her for 10 years, but then claimed that it would not target her family in Nigeria.

4.5 The State party observes that, on review, the Refugee Review Tribunal concluded that the mental health problems of the authors⁷ did not explain their credibility issues, given their explanations of their actions in relation to their claimed fears. Although their home appeared to have been damaged by a fire in 2013, the police report contained no indication that it had been bombed and they could not explain why they had travelled to the place of the attack. Moreover, they had transited through the United Kingdom of Great Britain and Northern

⁶ The State party refers to *Fei v. Colombia* (CCPR/C/53/D/514/1992), para. 5.2.

⁷ B.O.M. had been found to have memory loss, insomnia, anxiety and depression. O.H.D. had underlying depression. He had been treated for major depression and had stabilized through the use of medication.

Ireland but had not sought protection there. The Federal Circuit Court dismissed the appeal as the Tribunal's decision had not contained any jurisdictional errors.

4.6 The State party further observes that, on 9 December 2014, O.H.D. and O.A.D. lodged separate protection visa applications, which were declared invalid in the light of section 48A of the Migration Act. They were therefore considered as requests for ministerial intervention. However, the requests were determined not to meet the guidelines for ministerial referral. Their four subsequent requests for ministerial intervention were also unsuccessful.

4.7 The State party argues that the available country information does not remedy the credibility findings made and shows no evidence of Muslim extremists pursuing individuals in the south of Nigeria. Moreover, B.O.M. has not presented any police reports concerning the death of her first husband.

4.8 Concerning the authors' claims under articles 17 and 23 (1) of the Covenant, the State party submits, first, that it did not interfere with the authors' family life. N.M.T. was born after the conclusion of the protection visa proceedings, but the effect on her of not granting a protection visa to the adult authors was considered in the handling of the requests for ministerial intervention. Their voluntary return to Nigeria means that there is no action by the State party that can amount to arbitrary interference. The Committee's decision cited by the authors concerns a permanent re-entry ban precluding the continuation of a close relationship exercised through regular visits.⁸ However, O.H.D. does not have a sufficiently close connection with N.M.T. that is to be protected under these articles,⁹ and he may be able to return to Australia, subject to the satisfaction of visa criteria. Second, not every interference is arbitrary or unlawful. The interference is lawful under the Migration Act, and it was reasonable and predictable that O.H.D. would be subject to removal following the denial of his protection visa application.¹⁰ The State party submits that the situation whereby he could be with N.M.T. only in Australia has been brought about by his own conduct. Third, the State party has enacted laws and policies to protect and support families, and O.H.D. still has options to pursue access to N.M.T. The pending court proceedings on the parenting order can likely be continued. The family law courts of Australia have broad powers to make parenting orders that can be tailored to the circumstances of the parents, including where one parent is living overseas.

4.9 The State party argues that the authors' claim under article 24 (1) of the Covenant is without merit, as O.H.D.'s return to Nigeria has not resulted in a lack of protection for N.M.T., whose mother is her primary carer.¹¹

4.10 The State party observes that the remedies requested by the authors are largely moot in the light of their voluntary return to Nigeria.

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

5.1 In their comments of 10 September 2018, the authors dispute that their return to Nigeria on 11 October 2017 was voluntary, as they left Australia pursuant to their visa obligation to leave the country by 15 December 2017. They would have been detained if they had remained in Australia. Further, B.O.M. provided the Department of Immigration and Border Protection with a letter indicating her unfitness to travel, as well as a psychiatric report, but the Department did not consider her medical and psychiatric conditions when it issued her a Bridging visa E on 9 October 2017.¹² Moreover, the State party's authorities directed them to the International Organization for Migration for the issuance of an aeroplane ticket.

⁸ *Husseini v. Denmark*.

⁹ Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd ed. (Kehl am Rhein, Germany, Engel, 2005), p. 394; and *Balaguer Santacana v. Spain* (CCPR/C/51/D/417/1990), para. 10.2.

¹⁰ *Madafferi v. Australia* (CCPR/C/81/D/1011/2001), para. 9.8.

¹¹ *Balaguer Santacana v. Spain*.

¹² A copy of a letter dated 26 July 2017 from B.O.M.'s general practitioner, indicating that she was unfit to travel due to an upcoming gastroscopy for recurrent abdominal pains and anxiety attacks, is available on file.

5.2 The authors state that, after the submission of the present communication, an officer of the Department of Immigration and Border Protection questioned them about the submission and asked them who had filed it. When one of them responded that they had made the complaint, the officer stated, “Now you are going”. The authors affirm their right to submit a communication to the Committee and that they should not be questioned about the submission or subjected to any reprisals for doing so.

5.3 The authors provide copies of authorizations of their legal representative signed by O.A.D. and B.O.M., as well as by O.H.D. on behalf of N.M.T. O.H.D. had one contact visit with her before leaving Australia, which was delayed as her mother had cancelled previous visits.¹³ O.H.D. was unable to continue the visits due to his forced departure. N.M.T. is thus being denied the development of a meaningful relationship with the authors. Nevertheless, as her father, O.H.D. has the authority to bring the communication on her behalf.

5.4 In support of their claim under article 7 of the Covenant, the authors invoke the position of the United Nations High Commissioner for Refugees (UNHCR) on the burden of proof and the benefit of the doubt in asylum procedures and asylum-seekers’ possible apprehension by any authority.¹⁴ They argue that, following the exhaustion of domestic remedies, they are not required to raise new substantive claims before the Committee, and that the State party has not incorporated the Convention relating to the Status of Refugees into domestic law.

5.5 The authors claim that, since their return to Nigeria, they have faced persecution by the Fulani tribe and were forced into hiding. B.O.M. had hot water poured over her breasts after the tribe found her. She escaped to a village in Umanger, Benue State, where she stayed with a friend. However, the Fulani attacked the village. She and her friend escaped to a village in Ekiti State, but the Fulani continued to pursue them. B.O.M. escaped and incurred wounds for which she was hospitalized, but her friend was killed.¹⁵ Subsequently, she escaped to Canada. Meanwhile, O.H.D. fled to the United States of America and O.A.D. to Benin, where he has moved between churches searching for safety. None of the authors have a residence permit in their respective countries of residence.

5.6 Under article 17 of the Covenant, the authors affirm that the State party’s interference with their family life was arbitrary and not reasonable, necessary or proportionate, including in the light of their forced departure. They argue that the State party has violated article 24 (1) of the Covenant, as N.M.T. is being denied a relationship with them. The authors refer to final parenting orders made by consent by the Federal Circuit Court of Australia on 3 November 2017, allocating sole parental responsibility to N.M.T.’s mother and ordering, inter alia, that upon her turning 3, O.H.D. is to have online contact with her once a week and that he is to spend time with her when he is in Australia.

5.7 In the light of their departure from Australia, the authors seek recognition of the violation of their rights under the Covenant, the Convention on the Rights of the Child and the Convention relating to the Status of Refugees, and issuance by the State party of a visa permitting them to live in Australia with refugee protection.

State party’s additional observations

6.1 In its additional observations of 30 September 2019, the State party reiterates that the authors’ return to Nigeria was voluntary, and that its authorities use the term “voluntary return” to describe those who leave Australia of their own volition, on either a valid or an expired visa or having requested departure with government assistance. The authors agreed to leave Australia without force and O.H.D. and B.O.M. did so on valid visas. The

¹³ The authors enclose pictures of the visit. The latest court order assigns N.M.T.’s mother sole parental responsibility and orders that O.H.D. spend time with N.M.T. when he is in Australia as agreed by the parties.

¹⁴ UNHCR, “Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees” (HCR/IP/4/Eng/REV.1), paras. 196 and 198–199.

¹⁵ The authors attach a copy of a newspaper article dated 27 January 2018 on the killing of a woman by Fulani herdsmen in Ekiti State.

prescription of departure as a visa obligation is consistent with domestic legislation on the management of finally determined protection claims.

6.2 The State party observes that it has no records, and that the authors have provided no evidence, of the comments allegedly made by the officer from the Department of Immigration and Border Protection concerning the submission of the present communication.

6.3 The State party observes that it fully implements its obligations under the treaties invoked by the authors but that there is no requirement for a single national law, which would be inappropriate for its federal system of government.

6.4 According to the State party, the authors have not provided any evidence to substantiate that any interference with family life was arbitrary or unlawful. The contact between O.H.D. and N.M.T. appears to have been limited, and the authors' voluntary return means that no action by the State party can form the basis of a claim under article 17 of the Covenant. The State party reiterates that the claim under article 24 of the Covenant is insufficiently substantiated given the authors' return and in the absence of substantiation that N.M.T. lacks the protection required under this article.

6.5 In response to the authors' claims of persecution since their departure from Australia, the State party reiterates that it did not remove them and that their claims were comprehensively considered by domestic processes. According to the State party, there is no continuing obligation to assess their risk of harm after their return.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

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

7.3 The Committee notes the State party's argument that the communication is inadmissible because it was not validly brought on behalf of O.A.D., B.O.M. and N.M.T. However, the Committee also notes that the authors provided copies of authorizations signed by O.A.D. and B.O.M., as well as one signed by O.H.D. on behalf of N.M.T. Recalling its constant practice to consider that a parent has standing to act on behalf of his or her children without explicit authorization from them, the Committee is satisfied that O.H.D. has a sufficiently close relationship with N.M.T. to lodge the communication on her behalf¹⁶ and that the communication does not appear to be against the latter's best interests.¹⁷ Thus, while noting that authorizations should, in principle, be provided with the initial submission of the communication, the Committee considers that the communication was validly brought by the authors on their own behalf and on behalf of N.M.T. under rule 99 (b) of the Committee's rules of procedure. Thus, the Committee considers that the requirements of article 2 of the Optional Protocol are not an obstacle to the admissibility of the present communication.

7.4 As to the authors' claims of violations of the Convention on the Rights of the Child and the Convention relating to the Status of Refugees, the Committee notes that article 1 of the Optional Protocol limits the material scope of its competence to receiving and examining communications claiming a violation of any of the rights set forth in the Covenant. The allegations of violations of other treaties fall outside of this scope. The Committee therefore declares these claims inadmissible under article 3 of the Optional Protocol as incompatible with the provisions of the Covenant.

¹⁶ *X v. Serbia* (CCPR/C/89/D/1355/2005), para. 6.4.

¹⁷ See, in this regard, Committee on the Rights of the Child, *Huertas v. Spain* (CRC/C/81/D/13/2017), para. 9.2.

7.5 Further, inasmuch as the authors claim a violation of their rights under article 2 (1) of the Covenant, the Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down general obligations for States parties and they cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.¹⁸ The Committee thus considers that the authors' claims under article 2 of the Covenant are inadmissible under article 3 of the Optional Protocol.

7.6 The Committee notes that the State party submits that the communication is insufficiently substantiated, the authors' voluntary return to Nigeria means that there is no action by the State party that can form the basis of their claims (see para. 4.3 above) and the remedies requested by the authors are largely moot (see para. 4.10 above). The Committee notes, however, that the authors have disputed that their return was voluntary, arguing that a legal obligation to leave Australia had been imposed on them and that a continued stay would have resulted in a risk of them being detained (see para. 5.1 above). The Committee notes, in this light, that the State party has not effectively contested this argument and proved that their return was voluntary, besides arguing that the authors agreed to leave Australia without force, O.H.D. and B.O.M. did so on valid visas and its authorities use the term "voluntary return" to describe those who leave Australia of their own volition, on either a valid or an expired visa or having requested departure with government assistance (see para. 6.1 above). Against this background, the Committee considers that the authors' return does not in itself have the effect of rendering the present communication moot. Therefore, the Committee will consider whether the claim that the decision to remove the authors to Nigeria violated their rights under the Covenant is sufficiently substantiated for the purpose of admissibility.

7.7 The Committee recalls paragraph 12 of its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. In making such an assessment, all relevant facts and circumstances must be taken into consideration, including the general human rights situation in the author's country of origin.¹⁹ The Committee recalls its jurisprudence according to which considerable weight should be given to the assessment conducted by the State party and reiterates that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in a particular case in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary, manifestly erroneous or amounted to a denial of justice.²⁰

7.8 In the present case, the Committee notes that the authors' protection claims were assessed by several domestic administrative and judicial authorities, at various levels, and that they did not accept the credibility of their account or of their protection needs. In particular, those authorities found that B.O.M. had made improbable and inconsistent statements concerning material elements of her account, including the poisoning of her first husband, the concurrence of her displacements within Nigeria with the continuation of her business, Ahli-Sunnah's intermittent interest in her and the fact that she had taken many overseas holidays while she was living in Nigeria and had ultimately opted to return to that country (para. 4.4 above). The Committee considers that, while the authors disagree with the findings of national authorities, they have failed to substantiate the existence of any specific errors or manifest arbitrariness in these decisions. The Committee therefore declares the

¹⁸ *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; and *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4.

¹⁹ See, for example, *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *V.R. and N.R. v. Denmark* (CCPR/C/117/D/2745/2016), para. 4.4; *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

²⁰ *V.R. and N.R. v. Denmark*, para. 4.4; *F.B.L. v. Costa Rica* (CCPR/C/109/D/1612/2007), para. 4.2; *Fernández Murcia v. Spain* (CCPR/C/92/D/1528/2006), para. 4.3; and *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3.

authors' non-refoulement claims under article 7 of the Covenant inadmissible pursuant to article 2 of the Optional Protocol.

7.9 The Committee notes the authors' claims under articles 17 and 23 (1) of the Covenant that the decision to remove them from Australia deprived them of any family life with N.M.T. (see para. 5.6 above). The Committee also notes the State party's argument that it did not interfere with any family life of the authors and N.M.T., that any such interference was not arbitrary or unlawful and that the effect on N.M.T. of not granting a protection visa to the adult authors was considered in the handling of the requests for ministerial intervention (see para. 4.8 above). According to the State party, O.H.D. still has options to pursue access to N.M.T., including by continuing the parenting order proceedings and by applying to return to Australia, subject to the satisfaction of visa criteria. The Committee recalls its jurisprudence according to which there may be cases in which a State party's refusal to allow one member of a family to remain in its territory would involve interference in that person's family life. However, the mere fact that certain members of the family are entitled to remain in the territory of a State party does not necessarily mean that requiring other members of the family to leave involves such interference.²¹ In the present case, the Committee considers that the authors have not effectively refuted the State party's argument that the interference with their private life was not arbitrary or unlawful. In this regard, the Committee notes that the final parenting orders dated 3 November 2017, made by consent, provide that O.H.D. is to have online contact once a week with N.M.T. when she turns 3 and that he is to spend time with her when he is in Australia (see para. 5.6 above). The Committee finds that the authors have not sufficiently substantiated how the decision to deny O.H.D. residence in Australia would hinder him in adhering to those orders. As to O.A.D. and B.O.M., the Committee notes that the authors have provided no information to the effect that they have ever comprised a family together with N.M.T.²² Moreover, it results from the information on file that O.H.D. was barred by the Federal Circuit Court from allowing O.A.D. and B.O.M. to attend his visit with N.M.T. The Committee concludes that the authors have failed to sufficiently substantiate why the imposition of the obligation to leave Australia amounted to a disproportionate measure resulting in arbitrary interference with their rights under articles 17 and 23 (1) of the Covenant. These claims are therefore inadmissible under article 2 of the Optional Protocol.

7.10 As for the authors' claims following their return to Nigeria, the Committee recalls that it will in principle not consider events following a return where it is alleged that the removal decision constituted a violation of the Covenant at that point in time, unless those events shed light on the situation prevailing at the relevant time. In the light of the foregoing, the Committee concludes that the claims under articles 7 and 2 (1) are inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

7.11 Regarding the authors' claim under article 24 of the Covenant, the Committee considers that the authors have not provided any specific information to substantiate that N.M.T. lacks protection. In this regard, the Committee takes into account that she continues to be cared for by her primary caregiver, her mother, and that no information has emerged to suggest that O.H.D.'s departure from Australia precludes him from respecting the parenting orders. The Committee therefore considers this claim to be inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

8. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the authors.

²¹ *Dauphin v. Canada* (CCPR/C/96/D/1792/2008), para. 8.1; *Winata v. Canada* (CCPR/C/72/D/930/2000), para. 7.1; *Madafferi v. Australia*, para. 9.7; *Byahuranga v. Denmark*, para. 11.5; and *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.6.

²² Human Rights Committee, general comment No. 16 (1988), para. 5.