



## International Covenant on Civil and Political Rights

Distr.: General  
15 September 2015

Original: English

### Human Rights Committee

#### Communication No. 2288/2013

#### Views adopted by the Committee at its 114th session (29 June-24 July 2015)

<i>Submitted by:</i>	Osayi Omo-Amenaghawon (represented by counsel, Jens Rye-Andersen)
<i>Alleged victim:</i>	The author and her minor child
<i>State party:</i>	Denmark
<i>Date of communication:</i>	25 September 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 2 October 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	23 July 2015
<i>Subject matter:</i>	Deportation to Nigeria of victim of human trafficking
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; competence <i>ratione materiae</i>
<i>Substantive issues:</i>	Expulsion of aliens; risk of irreparable harm in country of origin; right to an effective remedy; right to life; prohibition of torture or cruel, inhuman or degrading treatment; expulsion of non-citizen; fair trial; right to freedom of religion; right to equal protection of the law
<i>Articles of the Covenant:</i>	2, 3, 6, 7, 13, 14, 18, 26 and 27
<i>Articles of the Optional Protocol:</i>	2 and 3



## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (114th session)**

concerning

#### **Communication No. 2288/2013\***

*Submitted by:* Osayi Omo-Amenaghawon (represented by counsel, Jens Rye-Andersen)

*Alleged victim:* The author and her minor child

*State party:* Denmark

*Date of communication:* 25 September 2013 (initial submission)

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

*Meeting* on 23 July 2015,

*Having concluded* its consideration of communication No. 2288/2013, submitted to the Human Rights Committee by Osayi Omo-Amenaghawon, under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

*Adopts* the following:

#### **Views under article 5 (4) of the Optional Protocol**

1.1 The author of the communication is Osayi Omo-Amenaghawon, a Nigerian national born on 30 April 1990. She submits the communication on her behalf and on behalf of her minor child. She claims that the State party would violate her rights under articles 6 and 7 of the International Covenant on Civil and Political Rights were she to be deported to Nigeria. She also claims that her rights under articles 2, 18, 26 and 27, read in conjunction with articles 3, 6, 7, 13 and 14 of the Covenant, would be violated by the State party. She is represented by counsel, Jens Rye-Andersen.

1.2 On 2 October 2013, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author and her child to Nigeria while the communication was being examined. On 9 October 2013, the Refugee

---

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

Appeals Board of Denmark suspended the deadline for the author's removal from the State party, in accordance with the Committee's request.

### **Factual background**

2.1 The author is of Urhobo ethnicity and professes the Christian faith. She claims that she lived in Warri, Nigeria, until 2007, and attended primary and secondary school for 12 years. When she was 17 years old, her mother was killed by militant extremists and the family house, together with other houses in the area, was burnt down. She does not know why her mother was killed; she had no contact with her father and she has no relatives in Nigeria. After her mother's death, she moved to Lagos, where she lived on the street with other homeless people. She used to sell snacks at the airport and got just enough money to survive. One day in September 2009, she met a married couple, Mr. P.B. and Ms. B.O. Since they offered to her help to get a good education and have a better life, she gave them her telephone number.

2.2 The author submits that three months later, Mr. P.B. called her and asked her to pick up some documents and money at his brother's (Mr. I.) house in Benin City, Nigeria, and take them to the Danish Embassy in Nigeria. She alleges that the papers were filled out in English and Danish and that she did not know their content. At the Embassy, the author filled in her name and address and paid a sum of money in the local currency. On 11 March 2010, she received a telephone call informing her that her visa was ready. She alleges that it was only at that moment that she learned that she had obtained a residence permit to work as an au pair in Denmark. She contacted Mr. P.B.'s brother, Mr. I., who gave her an aeroplane ticket, paid for by Mr. P.B., to travel to Denmark.

2.3 On 6 April 2010, the author arrived in Denmark with a genuine Nigerian passport. The author states that after her arrival, she was raped by Mr. P.B., who also threatened to kill her if she told his wife about the rape. After a month, she was told by Ms. B.O. that she would not be looking after their children, but rather would have to work and make money to repay them, since she owed them €50,000 for bringing her to Denmark. The author further alleges that: she was forced to work as a prostitute in different brothels in Jutland; she surrendered Dkr 118,000 to Ms. B.O.; and Ms. B.O. beat her with a stick several times and threatened to kill her if she told anyone in Nigeria what she, Ms. B.O., made her to do in Denmark.

2.4 On 17 August 2010, the author reported Ms. B.O. and Mr. P.B. to the police in Silkeborg, Denmark. They were prosecuted and detained. During the criminal proceedings, the author appeared as a witness against them. She alleged that she did not contact the police in the beginning because she was afraid that Ms. B.O. would have her arrested and sent back to Nigeria.

2.5 The author claims that around September or October 2010, she received a telephone call from Mr. P.B.'s brother (Mr. I.), who lived in Nigeria. He referred to the imprisonment of Mr. P.B. and told her that she would be killed if she came back to Nigeria. After that, she decided to change her telephone number to avoid receiving further threats.

2.6 On 1 or 12 November 2010, the author applied for asylum to the Danish Immigration Service (at Sandholm Asylum Centre). She explained her experiences since her arrival in Denmark and claimed that she was afraid of being killed by Mr. P.B. and Ms. B.O. or their relatives in Nigeria. During the asylum proceedings, she claimed that, inter alia, she was threatened several times by Mr. P.B. and that Ms. B.O. threatened to kill her and send people after her both in Europe and in Nigeria if she did not pay the €50,000. She also stated that: she still felt persecuted by them because her complaint to the Danish police and her testimony against them had resulted in their imprisonment for seven months; they had all her personal data, including photographs of her; Mr. P.B.'s brother in Nigeria had

threatened her when they were imprisoned; she had not received any other threats from that person because she had changed her telephone number; and Mr. P.B. and Ms. B.O. had relatives in Lagos and Benin City, Nigeria, who the author had met several times prior to her departure from Nigeria. Furthermore, in Nigeria, she could not report threats to the authorities since they were corrupt and could be bribed to look for her. Finally, she argued that she could not live in any other part of Nigeria but Lagos or Benin City because of the ongoing fighting between Christians and Muslims in Nigeria.

2.7 On 4 August 2011, the Danish Immigration Service rejected the author's application for asylum pursuant to section 7 of the Aliens Act. The author appealed the decision before the Danish Refugee Appeals Board.

2.8 On 29 December 2011, the author gave birth to a baby. The baby's father is also a former asylum seeker in Denmark.

2.9 On 15 March 2012, the Appeals Board upheld the Immigration Service decision of 4 August 2011. The Appeals Board reviewed the author's accounts and found that she was not at any real risk of persecution in Nigeria. It pointed out that, although she claimed that she had received a death threat from Mr. P.B.'s brother on one occasion, she had not provided any detailed information and had failed to render probable that he wanted to or was able to carry out his threat. The Appeals Board also pointed out that reports<sup>1</sup> on the human rights situation in Nigeria indicated that the Nigerian authorities were actively fighting against human trafficking and its consequences. It provided the author with a list of organizations in Nigeria that assisted victims of human trafficking and prostitution. The Appeals Board also noted that the author had declared that she had never been in conflict with the authorities in Nigeria, nor detained, arrested, charged or sentenced, nor experienced any house searches, nor been a member of a political or religious party or organization, nor had she participated in any activities or demonstrations organized by them.

2.10 On 13 December 2012, the author requested the Appeals Board to re-open her asylum proceedings. She claimed that she had become highly profiled since a Danish television channel had discussed her asylum proceedings in a televised broadcast on 12 December 2012. She felt that she would be at risk of persecution by the human trafficking network in Nigeria and that the Appeals Board decision of 15 March 2012 had failed to consider the protection she needed as a witness in a case of human trafficking before the judicial authority of Denmark. She further submitted that other victims of human trafficking had been granted international protection in other Nordic countries.

2.11 On 3 April 2013, the Refugee Appeals Board refused to re-open the author's case and ordered her to leave the country voluntarily within the deadline established by its decision of 15 March 2012. The Appeals Board considered that her request did not provide significant new information for it to re-examine her case. It also pointed out that: her allegation about a human trafficking network in Nigeria lacked details and was vague; she was threatened by telephone on only one occasion by Mr. P.B.'s brother; there was no information about reprisals against her family; and there was no information that she had been threatened again, even after Mr. P.B. and Ms. B.O. had been released from prison in March 2011, nor about how she would be at risk of persecution by human traffickers either in Nigeria or in Denmark. The Appeals Board also noted that, according to different reports, the Nigerian authorities had set up measures to fight against human trafficking and that the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and non-

---

<sup>1</sup> The authorities referred to United States of America, Department of State, *Trafficking in Persons Report*, 10th edition (14 June 2010); and the Danish Immigration Service report on its fact-finding mission to Nigeria (7 April 2009).

governmental organizations had made substantial efforts to provide assistance to female victims of human trafficking who had returned to take up residence in Nigeria.<sup>2</sup> Based on that, the Appeals Board concluded that the fact that the author had been mentioned in two televised broadcasts in Denmark would not change its decision regarding her request for asylum in Denmark.

2.12 On 3 June 2013, the author filed a new application for reconsideration of her asylum request before the Refugee Appeals Board. On 1 July 2013, the Appeals Board decided not to consider the author's application for reconsideration, in accordance to section 33(8) of the Aliens Act, since her place of residence was unknown. It stated that, according to the Danish Immigration Service accommodation database, she had disappeared from the Avnstrup Asylum Centre on 11 June 2013 and was showing as "wanted" in the system of the Immigration Centre of the National Police Force.

### **The complaint**

3.1 The author alleges that the State party would violate her rights under articles 6 and 7 of the International Covenant on Civil and Political Rights if she were to be returned to Nigeria. She also claims that her rights under articles 2, 18, 26 and 27, read in conjunction with articles 3, 6, 7, 13 and 14 of the Covenant has been violated by the State party.

3.2 The author claims that if she returned to Nigeria, she would be at risk of being killed and tortured in violation of articles 6 and 7 of the Covenant. She states that Mr. P.B. and Ms. B.O. were sentenced and imprisoned because she reported them to the Danish police and produced testimony against them before the court and that she had received death threats before and after their trial. Furthermore, she submits that the State party is obliged to provide full protection to her as a witness and a person who reported a case of human trafficking.

3.3 She claims that after the Appeals Board decision was handed down, several news broadcasts from a Danish television station had mentioned her story, showed her face and given her real name. As such, she had become highly profiled and was at a higher risk of being killed by Mr. P.B. or Ms. B.O. or by persons linked to the human trafficking network in Nigeria.

3.4 She contends that shelters for victims of human trafficking in Nigeria are not safe; that persons involved in human trafficking have the means and power to reach her; and that bribery is common practice in Nigeria. Against that background, she argues that she would not receive any protection from the Nigerian authorities if needed.

3.5 The author maintains that her right under article 14 of the Covenant has been violated because the decisions of the Refugee Appeals Board cannot be appealed before the Danish courts.

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

4.1 On 2 April 2014, the State party submitted its observations on the admissibility and merits of the communication. It maintains that the communication should be declared inadmissible for non-substantiation and for lack of competence *ratione materiae*. However, should the Committee declare the communication admissible, the State party maintains that the Covenant has not and would not be violated if the author and her child are returned to Nigeria.

---

<sup>2</sup> The authorities referred to the United Kingdom, Home Office, *Operational Guidance Note: Nigeria* (January 2013); and Freedom House, "Countries at the Crossroads 2012: Nigeria" (20 September 2012).

4.2 The State party informs the Committee that, on 19 December 2013, the author filed a new application for reconsideration of her asylum request to the Danish Refugee Appeals Board. She claimed that several news broadcasts from a Danish television station had mentioned her story, showed her face and given her real name, therefore she had become highly profiled. She also informed the authorities that her new place of residence was the Red Cross Asylum Centre at Avnstrup.

4.3 On 24 February 2014, the Appeals Board refused to re-open asylum proceedings for the author as there were no substantial grounds for believing that she was in danger of being deprived of her life or being subjected to torture or other cruel, inhuman or degrading treatment if she returned to Nigeria. The State party maintains that the author is trying to use the Committee as an appellate body to have the factual circumstances advocated in favour of having her claim for asylum reassessed. The State party submits that the Committee should give considerable weight to the findings of the Refugee Appeals Board which is better placed to assess the facts in the author's case.

4.4 The State party submits that the decisions of the Appeals Board rejecting the author's asylum request were based on a comprehensive and thorough examination of her case. It found that even though it might be true that the author had received a death threat by telephone, she had failed to render probable that she would be at a real risk of persecution, as required by section 7(1) of the Aliens Act, or of abuse, as required by section 7(2) of the Aliens Act, if returned to Nigeria. She received a telephone threat once only; her allegations about the human trafficking network in Nigeria were vague and lacked details; and the fact that her case was broadcast on Danish television does not enable the Board to conclude that she would be at real risk of persecution in Nigeria. Furthermore, according to reports,<sup>3</sup> the Nigerian authorities are making an effort to combat human trafficking and its consequences, and several organizations in Nigeria provide assistance to victims of human trafficking and prostitution.

4.5 The State party acknowledges that victims of human trafficking who fear persecution in their country of origin may apply for asylum. However, the fact that a person is a victim of human trafficking does not, in itself, justify asylum, nor does the victim's cooperation with the police or other authorities to find and prosecute human traffickers automatically make the victim eligible for asylum. In all asylum cases, the asylum authorities assess whether there is basis for granting asylum under the rules in force in Denmark.

4.6 The State party submits that the author's right to a fair trial has not been infringed because the decision of the Refugee Appeals Board cannot be appealed before the national courts. The State party refers to the Committee's general comment No. 32 (paras. 16 and 17) and maintains that asylum proceedings do not constitute a suit at law to determine civil rights and obligations and therefore they fall outside the scope of article 14. It notes that the European Court of Human Rights has consistently excluded asylum and expulsion proceedings from the scope of application of the similarly-phrased article 6 of the European Convention on Human Rights.

4.7 The State party provides a detailed description of the asylum proceedings under the Aliens Act, in particular of the organization and competence of the Refugee Appeals Board. It points out that the Appeals Board is an independent and quasi-judicial body that is considered a court within the meaning of article 39 of the Council of the European Union Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005/85/EC). Pursuant to section 56(8) of the Aliens Act,

---

<sup>3</sup> See footnotes 1 and 2 above.

decisions of the Appeals Board are final, which means that there is no avenue for appeal against the Board's decisions. Aliens may, however, by virtue of the Danish Constitution, bring an appeal before the ordinary courts, which have the authority to adjudicate any matter concerning the limits to the competence of a public authority. As established by the Supreme Court, review by the ordinary courts of decisions made by the Refugee Appeals Board is limited to the points of law, including any inadequacy in the basis for the relevant decision or the illegal exercise of discretion. The Board's assessment of evidence is not subject to review.

4.8 The Appeals Board may assign a legal counsel to asylum seekers and, in practice, it assigns a counsel in all asylum cases. The counsel can meet with the asylum seeker and study the case file and the existing background material before the individual Board hearing. Asylum proceedings before the Appeals Board are oral. The hearing is attended by the asylum seeker and his or her counsel, as well as an interpreter and a representative of the Danish Immigration Service. During the hearing, the asylum seeker is allowed to give a statement and answer questions. The counsel and the representative of the Danish Immigration Service are allowed to make closing remarks, whereupon the asylum seeker can give a final statement. Against that background, the State party submits that, if the Committee finds that article 14 of the Covenant applies to asylum proceedings, the author has not sufficiently established that this provision has been breached.

4.9 As to the author's claims under articles 2, 3, 13, 18, 26 and 27 of the Covenant, the State party submits that they are manifestly ill-founded and points out that the author has failed to elaborate in any way on the circumstances on which her allegations are based. Therefore, it considers that there are no substantial grounds for believing that her rights under those provisions would be violated if she returned to Nigeria.

4.10 Furthermore, the State party points out that the Danish Refugee Appeals Board has given particular focus to human trafficking. It has drafted a memorandum, in which it has given an account of its case law relating to human trafficking. All the members of the Board have a copy of the memorandum, and it is referred to in the examination of similar cases. Victims of human trafficking who are not lawfully resident in Denmark are granted a so-called "reflection period", that is, a longer period of time prior to departure from Denmark than that accorded to other aliens. The purpose of the reflection period is to give the individual time to recover and become empowered so as to overcome the victimization of human trafficking. The reflection period may be extended for medical reasons or if the victim is participating in the investigation or trial of human traffickers in Denmark. Preparations for returning a person to his or her country of origin are made on an individual basis, depending on the circumstances and wishes of the individual, and includes psychological assistance and training courses or tuition in Denmark to give the person the possibility of establishing an income base following his or her return, and arrangements in his or her country of origin, such as reception and reintegration assistance.<sup>4</sup>

#### **Author's comments on the State party's observations**

5. On 1 October 2014, the author submitted her comments on the State party's observations on admissibility and merits. The author argues that she had sufficiently substantiated her allegations in her initial communication and highlights that she was a victim of human trafficking and that she received various threats in connection with her trafficking and with the fact that she testified against the perpetrators of her trafficking before the judicial authorities of the State party.

---

<sup>4</sup> The State party does not explain whether this was applied in the author's case.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

6.2 The Committee notes, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 The Committee recalls its jurisprudence, in which it has stated that authors of communications must exhaust all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>5</sup> The Committee notes that the author unsuccessfully appealed the negative asylum decision before the Danish Refugee Appeals Board and that the State party does not challenge the exhaustion of domestic remedies by the author. The Committee, therefore, considers that it is not prevented from considering the present communication under article 5 (2) (b) of the Optional Protocol.

6.4 The Committee notes the author's claim that the decisions of the Refugee Appeals Board are the only decisions that are final without possibility of appeal before the national courts and that the State party has thus violated article 14 of the Covenant. In that regard, the Committee refers to its jurisprudence, in which it has stated that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1), but are governed by article 13 of the Covenant.<sup>6</sup> Article 13 of the Covenant offers some of the protection afforded under article 14 of the Covenant, but not the right of appeal.<sup>7</sup> The Committee therefore considers that the author's claim under article 14 is inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

6.5 The Committee notes the author's claims under articles 6 and 7 of the Covenant that, if returned to Nigeria, she would be at risk of being killed or tortured. The Committee also takes note of the State party's argument that the author's claims under articles 6 and 7 are unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the author has provided sufficient substantiation regarding those claims and therefore considers that part of the communication admissible.

6.6 The Committee notes that the author invokes a violation of her rights under articles 2, 18, 26 and 27, in conjunction with articles 6 and 7 of the Covenant, and under articles 3 and 13, of the Covenant. The Committee observes that the author has not provided any information to substantiate those claims and she has failed to provide sufficient information to enable the Committee to consider that the facts of the communication raise issues under those articles of the Covenant. Therefore, the Committee concludes that the author has failed to sufficiently substantiate her claims that the State party would violated articles 2,

---

<sup>5</sup> See communications No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4; and No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5.

<sup>6</sup> See, communications No. 2186/2012, *X and X v. Denmark*, Views adopted on 22 October 2014, para. 6.3; No. 1494/2006, *A.C. v. The Netherlands*, decision of inadmissibility adopted on 22 July 2008, para. 8.4; and No. 1234/2003, *P.K. v. Canada*, decision of inadmissibility adopted on 20 March 2007, paras. 7.4 and 7.5.

<sup>7</sup> See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.



18, 26 and 27, in conjunction with articles 6 and 7, as well as articles 3 and 13 of the Covenant, for purposes of admissibility. It concludes that that part of the communication is inadmissible pursuant to article 2 of the Optional Protocol.

6.7 The Committee declares the communication admissible in so far as it appears to raise issues under articles 6 (1) and 7 of the Covenant, and proceeds to its consideration of the merits.

*Consideration of the merits*

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 The Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm to the person, such as that contemplated in articles 6 and 7 of the Covenant.<sup>8</sup> The Committee has also established that the risk must be personal<sup>9</sup> and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>10</sup>

7.3 The Committee notes the author's claims under article 6 and 7 of the Covenant that, if returned to Nigeria she would be at risk of being killed or tortured by Mr. P.B. or Ms. B.O. or their relatives or persons linked to the human trafficking network in Nigeria. To substantiate her allegations, the author refers to the fact that: she was a victim of human trafficking and was forced to work as a prostitute in Denmark; she testified against her traffickers in criminal proceedings in a Danish court; and she was allegedly threatened by her traffickers and a close relative of one of them, who lives in Nigeria. The Committee also notes the State party's arguments that, based on the author's allegations, she was threatened by Mr. P.B.'s brother only once; there does not seem to be evidence of any other threat, even after the release of Mr. P.B. and Ms. B.O. from prison in March 2011; the author's allegations about an alleged risk of harm by persons linked to the human trafficking network is vague and lacks details; and reports from States and NGOs indicate that the Nigerian authorities are actively fighting against human trafficking and its consequences, including for female victims of human trafficking who have returned and taken up residence in Nigeria.

7.4 The Committee recalls its jurisprudence, in which it states that significant weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether the risk of harm on return to one's country of origin exists,

<sup>8</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

<sup>9</sup> Communications No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, paras. 7.1 and 7.2; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

<sup>10</sup> Communications No. 2007/2010, *X v. Denmark*, para. 9.2; and No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18

unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.<sup>11</sup>

7.5 In the present case, the Committee observes that the State party has not challenged the fact that the author was a victim of human trafficking by Mr. P.B. and Ms. B.O., and that they were tried and imprisoned after the author had reported them to the police and testified against them before the court. It also observes that the denials of her asylum requests by the Refugee Appeals Board focused mainly on the lack of concrete details of the author's allegations about the risk to her safety that her aggressors' relatives and persons related to human trafficking in Nigeria represented. In making that assessment, the Board referred in a general fashion to measures taken by the Nigerian authorities to fight against human trafficking and to provide assistance to victims. However, the Committee is of the view that, in the particular circumstances of the author's case, the State party has failed to take into due consideration the special vulnerability of persons (in this case, the author) who have been subjected to human trafficking, which often lasts for several years even after they have been rescued or are able to free themselves from their aggressors, and the author's particular status as witness in the criminal proceedings against her aggressors. The State party has also not taken into due consideration the specific capacity of the Nigerian authorities to provide the author, in her particular circumstances, with protection to guarantee that her life and physical and mental integrity would not be at serious risk.<sup>12</sup> Therefore, in the circumstances, the Committee considers that the author's deportation to Nigeria would constitute a violation of her rights under articles 6 and 7 of the Covenant.

8. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the deportation of the author to Nigeria would, if implemented, violate her rights under articles 6 and 7 of the International Covenant on Civil and Political Rights.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide Osayi Omo-Amenaghawon, the author of the present communication, with an effective remedy, including full reconsideration of her claim regarding the risk of treatment contrary to articles 6 and 7 of the International Covenant on Civil and Political Rights should she be returned to Nigeria, taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author and her minor child to Nigeria while her request for asylum is being reconsidered. The State party should also review its policy of not granting special consideration to requests for asylum from victims of human trafficking who cooperate with its law enforcement authorities (see para. 4.5 above).

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely distributed.

---

<sup>11</sup> See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4; and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3.

<sup>12</sup> See United States of America, Department of State, *Trafficking in Persons Report 2012*, p. 270; and *Trafficking in Persons Report 2014*, p. 297.