



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 104/2023*, **

<i>Communication submitted by:</i>	F.I.J. (not represented by counsel)
<i>Alleged victims:</i>	E.O.J., S.J. and E.J.
<i>State party:</i>	Sweden
<i>Date of communication:</i>	17 October 2022 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 64 and 70 of the Committee's rules of procedure, transmitted to the State party on 4 April 2023 (not issued in document form)
<i>Date of adoption of Views:</i>	29 August 2024
<i>Subject matter:</i>	Deportation of children with psychosocial and intellectual disabilities and their family members to Nigeria
<i>Procedural issues:</i>	Admissibility <i>ratione materiae</i> ; admissibility <i>ratione loci</i> ; admissibility <i>ratione personae</i> ; substantiation of claims
<i>Substantive issues:</i>	Children's rights; right to life; situations of risk and humanitarian emergencies; equal recognition before the law; freedom from torture or cruel, inhuman or degrading treatment or punishment; respect for home and the family; education; health; adequate standard of living
<i>Articles of the Convention:</i>	7 (2), 10, 11, 12 (4), 15 (2), 17, 23 (5), 24, 25 (a), 26 (1) (a), and 28 (1) and (2) (a) and (c)
<i>Articles of the Optional Protocol:</i>	1 and 2 (e)

1.1 The author of the communication is F.I.J., a national of Nigeria born in 1982. She submits the communication on behalf of her children, E.O.J, born in 2010, S.J., born in 2012, and E.J., born in 2018, all nationals of Nigeria. The author claims that, by deporting them to Nigeria, the State party would violate their rights under articles 7 (2), 10, 11, 12 (4), 15 (2),

* Adopted by the Committee at its thirty-first session (12 August–5 September 2024).

** The following members of the Committee participated in the consideration of the communication: Muhannad Salah al-Azzeh, Rosa Idalia Aldana Salguero, Rehab Mohammed Boresli, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Amalia Eva Gamio Ríos, Laverne Jacobs, Samuel Njuguna Kabue, Kim Mi Yeon, Alfred Kouadio Kouassi, Abdelmajid Makni, Floyd Morris, Markus Schefer and Saowalak Thongkuay.



17, 23 (5), 24, 25 (a), 26 (1) (a), and 28 (1), (2) (a) and (c) and paragraph (l) of the Preamble to the Convention, as well as article 23 (4) of the Convention on the Rights of the Child. The Optional Protocol entered into force for the State party on 14 January 2009. The author is not represented.

1.2 On 4 April 2023, the Committee, acting through its Special Rapporteur on new communications and interim measures under article 4 of the Optional Protocol, requested the State party to refrain from removing the author, her children and her husband, O.O.J., to Nigeria while their communication was under consideration by the Committee. On 5 April 2023, the Swedish Migration Agency decided to suspend their removal to Nigeria.

1.3 On 7 November 2023, the Committee, acting through its Special Rapporteur on new communications and interim measures under article 4 of the Optional Protocol, decided not to issue a request for interim measures in relation to the alleged eviction of the family from their apartment in Sweden.

A. Summary of the information and arguments submitted by the parties

Facts as submitted by the author

Facts preceding the present communication

2.1 On 18 March 2015, O.O.J. submitted a communication to the Committee on behalf of E.O.J., who had been diagnosed with autism and unspecified psychosocial disabilities in 2013. In it, O.O.J. argued that the Swedish Migration Agency had violated E.O.J.'s rights under the Convention by rejecting several applications for asylum and other residence permits and insufficiently considering the consequences of his and the family's deportation to Nigeria on him in light of his disabilities. On 18 August 2017, at its eighteenth session, the Committee examined the communication.¹ The Committee concluded that the communication was inadmissible under article 2 (d) of the Optional Protocol as O.O.J. had not exhausted all available domestic remedies.

Facts presented in the present communication

2.2 The author notes that, on 23 October 2017, she applied for asylum anew, including on behalf of E.O.J. and S.J. She submitted a statement from a specialist paediatrician in Nigeria according to which there is no care for children with autism in Nigeria. She also submitted reports from psychologists and doctors stating that E.O.J. had an intellectual disability and attention deficit hyperactivity disorder (ADHD), that he requires stability and care and reacts adversely to change, and that his deportation to Nigeria would adversely affect his development. On 8 July 2019, the Migration Agency rejected the author's application. According to the author, the Migration Agency did not obtain new medical country of origin information (MedCOI), but instead relied on MedCOI obtained in immigration procedures in 2013, and disregarded information on its website concerning the lack of care for children with autism in Nigeria. On 14 May 2020, the Migration Court rejected the author's appeal against the decision of the Migration Agency. According to the author, the Migration Agency "held back" the documents that the family submitted with the appeal. The Migration Court found that the documents were missing and the author was made to resend them. However, the Migration Court refused the family's request to return their cases to the Migration Agency despite the "mistrial".

2.3 Before the Migration Court of Appeal, the author argued that E.O.J.'s rights to education and health would be violated upon deportation to Nigeria due to the lack of care required for children with autism, ADHD and intellectual disabilities in that country. She claimed that he would not have access to education in Nigeria, as fees for private schools for children with disabilities in Nigeria were unaffordable. Moreover, E.O.J.'s academic progress would be disrupted upon deportation to Nigeria, as he has lived in Sweden his entire life, where he attended a "special" school that met his requirements. The author also argued that he would experience discrimination, degrading treatment and possibly torture because

¹ *O.O.J. v. Sweden* (CRPD/C/18/D/28/2015).

of his disabilities. On 21 November 2020, the Migration Court of Appeal decided not to grant leave to appeal.

2.4 The author notes that, in 2017, O.O.J. obtained a work permit, but in 2019 a renewal of the permit was denied. In 2018, the author gave birth to E.J. He was diagnosed with autism in March 2020. On 19 March 2019, the Migration Agency rejected a residence application submitted on behalf of O.O.J. and E.J. On 20 April 2020, the Migration Court rejected their appeal. On 21 September 2020, the Migration Court of Appeal denied leave to appeal. Shortly thereafter, the family received an entry ban, which it appealed without success.

2.5 On 27 November 2020, the author applied for a stay of the deportation order, referring to the diagnoses of E.O.J. and E.J. She submitted a certificate stating that E.J. required extensive support, training, stimulation and activation, as well as structure in his daily life and support with communicating and interacting with other children, on account of his socio-communicative difficulties, including in terms of reciprocation, non-verbal communication and social relationships. At the time of filing the present communication, he also had no expressive speech and showed no understanding of speech. Upon receipt of that information, the State party's authorities postponed the family's deportation to examine E.J.'s health situation. At a hearing with the Migration Agency, the author explained how children with E.J.'s disability are treated in Nigeria, where children without verbal expression can be subjected to "spiritual attacks" and exorcism. The author argued that E.J. would experience discrimination and abuse at school and in the neighbourhood. The only way to keep him safe would be to keep him indoors continuously. The author filed a certificate stating that E.J.'s eating habits were those of a six-month-old baby; he is bottle-fed as he has not learned how to chew; and refuses all food except that of one specific brand. The latter is unavailable in Nigeria, where he would consequently risk starvation. She explained that he tends to smear himself and his surroundings with excrement when he is alone and has not been potty-trained as he does not understand when his parents talk to him. She submitted a certificate according to which children from the author's part of Nigeria incur burn marks because of how their disabilities are perceived. It was stressed in the certificate how important it was for E.J.'s well-being and development that he remained in a stable environment.

2.6 On 8 February 2022, the Migration Agency rejected the author's application. According to the author, the Migration Agency did not address her claims that E.J.'s deportation would be "disastrous" for him as a child with disabilities; that he has specific feeding requirements; that the Migration Agency needed to balance the consequences of granting him a permit against those of not granting him a permit; and that he would experience discrimination and be unsafe in Nigeria. According to the author, the Migration Agency did not consider her documentation that disproved its assertions regarding education and free healthcare in Nigeria. The author argues that the Migration Agency claimed that she and O.O.J. could not take care of E.J. as they had been relying on the child and youth rehabilitation centre in Malmö, but that they ignored her own diagnoses with depression and anxiety. On 23 June 2022, the Migration Court rejected the author's appeal against the decision. The author claims that the Migration Court acknowledged but did not address E.J.'s feeding requirements. On appeal before the Migration Court of Appeal, the author submitted a certificate stating that it was not safe for E.J. to eat solid food and that he only drank a product from one specific brand. On 26 August 2022, the Migration Court of Appeal denied leave to appeal.

Complaint

3.1 The author claims that the State party has violated articles 7 (2) and 23 of the Convention by deciding to deport E.O.J. and E.J., together with their family, to Nigeria with disregard for the consequences on their health, well-being, psychological development and life. The author asserts that the domestic authorities did not assess the proportionality of the removal despite the need to consider the children's best interests and the strength of their social, cultural and family ties to Sweden compared with their ties to Nigeria.² According to the author, country information shows that the removal of E.O.J. and E.J. to Nigeria would

² The author refers to European Court of Human Rights, *Üner v. the Netherlands*, Application No. 46410/99, Judgment, 18 October 2006.

adversely affect their psychological and mental well-being due to the lack of availability of and access to the required healthcare and support. Under article 15 (2) of the Convention, the author argues that the medical certificates that she submitted show that the deportation would amount to inhuman treatment of E.O.J. and E.J., considering their respective disabilities and health statuses, and would result in lives of uncertainty, instability and denial of access to the required treatment and education. The author claims that E.O.J. and E.J. would not be able to access therapy or rehabilitation upon deportation to Nigeria, in violation of article 26 (1) (a) of the Convention. The author also claims violations of articles 24, 25 (a), 28 (2) (a) and paragraph (1) of the preamble to the Convention, as the State party would knowingly violate the rights of E.O.J. and E.J. upon removing them to Nigeria. Moreover, the author claims a violation of article 23 (4) of the Convention on the Rights of the Child.

3.2 The author argues that the deportation decision violated E.O.J.'s rights under article 12 (4) of the Convention, as all measures relating to the exercise of legal capacity taken by the Migration Agency did not respect his rights, will and preferences. The measures were not free from conflict of interest or undue influence, as the Migration Court upheld the decision of the Migration Agency "without any concrete reason". The decision was also not proportional or tailored to E.O.J.'s circumstances, as the Migration Agency did not contact any hospitals in Nigeria to ascertain the validity of the author's claims that the MedCOI previously obtained was "unrealistic" in E.O.J.'s case. In addition, the Migration Court did not hear E.O.J. and thus failed to adequately protect his rights and interests.

3.3 Lastly, the author argues that E.J.'s deportation to Nigeria would violate his rights under article 10 of the Convention as he would not survive in Nigeria without the only food that he accepts. The author also claims a violation of article 11 of the Convention, as in its decision of 8 February 2022, the Migration Agency stated that it would not consider humanitarian grounds, despite the obstacles to fulfilling E.J.'s feeding requirements in Nigeria.

State party's observations on admissibility and the merits

4.1 In its observations of 1 November 2023, the State party recalls that, on 17 July 2008, the author was granted a temporary residence permit for studies in Sweden. On 21 January 2010, O.O.J. was granted a residence permit based on family ties to the author. On 25 January 2012, the Migration Agency rejected the applications of the author, O.O.J. and E.O.J. for residence permits and decided to expel them to Nigeria. Following S.J.'s birth in 2012, the family applied for asylum. On 30 April 2014, the Migration Agency rejected all the applications filed by the family. Thereafter, the family submitted several applications for residence, mostly based on E.O.J.'s disability. Meanwhile, O.O.J. was granted a residence permit based on his employment and he applied for a prolonged residence permit for himself and E.J. On 19 March 2019, the Migration Agency rejected the family's residence applications and decided to expel them to Nigeria. The decision was upheld by the Migration Court on 20 April 2020 and by the Migration Court of Appeal on 21 September 2020.

4.2 The State party notes that, after their expulsions had become statute-barred, the author, E.O.J. and S.J. applied anew for asylum. On 8 July 2019, the Migration Agency rejected their applications and decided to expel them to Nigeria. The decision was upheld by the Migration Court on 14 May 2020 and by the Migration Court of Appeal on 21 November 2020. On 1 December 2020, the Migration Agency rejected an application for residence filed by all family members except E.J. On 23 December 2020, the Migration Court confirmed the decision of the Migration Agency. On 8 February 2022, the Migration Agency rejected an asylum application filed on behalf of E.J. The Migration Court and the Migration Court of Appeal upheld that decision on 23 June 2022 and 26 August 2022, respectively. On 13 December 2022, the Migration Agency rejected an application for a residence permit filed on behalf of E.J. On 4 January 2023, the Migration Agency rejected an application for residence permits for all family members.

4.3 The State party submits that the author's claims under articles 24, 25, 26 and 28 of the Convention are inadmissible *ratione materiae* and *ratione loci*. According to the State party, the principle of non-refoulement does not oblige it to refrain from expelling the family to Nigeria as the claimed violations would not amount to a real risk of irreparable harm. The State party argues that only treatment contrary to articles 10 and 15 is serious enough to

trigger its responsibility for a removal from Sweden. In contrast, acts or omissions contrary to articles 24, 25, 26 and 28 are not equally serious, unless they are also in violation of article 15 of the Convention.

4.4 The State party also submits that the communication is inadmissible under article 2 (e) of the Optional Protocol as it is insufficiently substantiated or, alternatively, that it is without merit. The State party notes that pursuant to the jurisprudence of the Human Rights Committee, the obligation under the International Covenant on Civil and Political Rights not to extradite, deport, expel or otherwise remove a person from a State party's territory when there are substantial grounds for believing that there is a real risk of irreparable harm entails that the risk must be the necessary, foreseeable and personal consequence of the forced return. The State party also notes that, according to the Human Rights Committee, there is a high threshold for establishing such a risk, and considerable weight should be given to the assessment conducted by the State party. Moreover, it is generally for the organs of the States parties to the Covenant to review or evaluate the facts and evidence in order to determine whether a real risk of irreparable harm exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest denial of justice.

4.5 The State party notes that, in the present case, its authorities evaluated the human rights situation in Nigeria and found that the general situation for persons with disabilities there did not justify granting international protection. In its decision of 8 July 2019, the Migration Agency noted that, according to country information, most federal medical centres and university hospitals in Nigeria, as well as the National Hospital in Abuja, offer psychiatry services, including for children, although some only offer this privately. The State party also refers to the availability of paediatric specialists across Nigeria, of child psychiatry and child psychology in Lagos and preschool for children with autism in Lagos and Abuja. The Migration Agency acknowledged the family's documents submitted to refute the MedCOI but found that these were not so objective as to establish the availability or otherwise of care in the country. Moreover, the Migration Agency assessed that E.O.J.'s state of health did not require it to obtain new information concerning the situation of children with autism in Nigeria. Concerning E.J., the Migration Agency noted, in its decision of 8 February 2022, that country information showed the existence of a relatively well-developed healthcare system in the urban areas of Nigeria. Moreover, children with physical and psychosocial disabilities have access to schooling in some states, as well as free healthcare, school transport, recreational facilities and book subsidies. There are schools, albeit few, that provide adapted education for persons with "minor mental disabilities". The Migration Agency noted that country information did not suggest that criminals would be interested in harming E.J. on account of his disability. Thus, although the situation for children with psychosocial disabilities in Nigeria is difficult, E.O.J. and E.J. would not be at risk of inhuman or degrading treatment or punishment upon expulsion there on that count alone. In that regard, the Migration Agency took into account that the children would be with their parents, who understand their disabilities and requirements.

4.6 The State party argues that the domestic decisions were not inadequate or arbitrary and did not amount to a denial of justice. Its authorities examined the family's claimed need for international protection, as well as the existence of any circumstances that would render their expulsion contrary to the State party's treaty obligations. Concerning the absence of an oral hearing of E.O.J., the State party notes that the procedure before the migration courts is generally written, although oral hearings may be organized if beneficial to the investigation or to promote a faster resolution. In addition, an oral hearing will be held if requested by the asylum-seeker and the court does not deem it unnecessary, or there are special reasons against it. Pursuant to domestic practice, the scope for not holding an oral hearing, if requested, is very limited where the outcome of a case depends on the reliability of the information provided by the asylum-seeker. In the present case, the country information that the family submitted was not deemed to be objective, and E.J.'s disability and state of health had been documented in writing. Regarding the author's claim that the Migration Agency should have contacted hospitals in Nigeria, the State party notes that the Migration Agency assessed that E.O.J.'s state of health did not require it to obtain new country information. Concerning the refusal of the Migration Agency to assess humanitarian circumstances in its decision of 8 February 2022, the State party notes that, at the time, E.J. was subject to a final removal decision. In the framework of E.J.'s subsequent asylum application, the Migration Agency

considered his best interests. Moreover, it took into account humanitarian considerations in its decision of 13 December 2022. The family was represented and had several opportunities to explain the facts and submit evidence. The domestic authorities therefore had sufficient information to make an informed, transparent and reasonable risk assessment.

4.7 The State party contends that the author has not shown substantial grounds for believing that E.O.J. and E.J. would be subjected to a real risk of irreparable harm contrary to articles 10 or 15 of the Convention because of their disabilities upon removal to Nigeria. The State party observes that, pursuant to treaty body jurisprudence, a medical condition must be of an exceptional nature for it to trigger the obligation of non-refoulement,³ and the aggravation of a person's health by virtue of a deportation is generally insufficient to amount to degrading treatment.⁴ The State party invites the Committee to follow the approach of the European Court of Human Rights, which, in *Paposhvili v. Belgium*, held that only very exceptional circumstances may raise issues under article 3 of the European Convention on Human Rights, including situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that the person, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in the person's state of health resulting in intense suffering or to a significant reduction in life expectancy.⁵ According to the State party, article 15 of the Convention cannot oblige States parties to alleviate disparities in the level of treatment available in the sending State compared with that of the receiving State.

4.8 The State party notes that, in the present case, the migration authorities found that the family had not plausibly demonstrated that anyone in Nigeria would intend to harm E.O.J. or E.J. because of their disabilities. They also concluded that country information showed that the required care and child psychiatry are available in Nigeria, even though not of the quality and cost found in Sweden. In that regard, the authorities considered that E.O.J. and E.J. would be accompanied by their parents, who understand their disabilities and requirements. They also assessed that E.O.J. would have the opportunity to attend schooling that would meet his requirements. The State party notes that, in its decision of 23 December 2020, the Migration Court found that it had not emerged that E.O.J.'s state of health was so serious that his expulsion would breach article 3 of the European Convention on Human Rights.

4.9 Regarding the author's claim under article 7 (2) of the Convention, the State party notes that its authorities considered the best interests of E.O.J. and E.J., including their respective states of health and development. However, the best interests of the child must be weighed against other societal interests, including regulating migration. Moreover, according to the State party, the fact that a child must return with its parents to their country of origin is not necessarily negative and does not generally seriously damage its psychosocial development. The State party notes that, according to the preparatory works of the Aliens Act, what is best for a child is often not clear-cut. Moreover, the Convention on the Rights of the Child does not provide for the right to reside in the country of immigration. In the present case, the domestic authorities considered that the children's healthcare and schooling needs would be met in Nigeria, and that a difference in quality between care and rehabilitation in Sweden and Nigeria was not decisive. The authorities considered that it would not harm the children's health if they accompanied their parents, with whom they are growing up. Nor does the general situation in Nigeria amount to especially distressing circumstances under the Aliens Act. The authorities therefore concluded that it was in the children's best interest to continue to live with their immediate family, even if this required accompanying them to Nigeria. A further proportionality assessment was therefore not needed.

4.10 The State party notes that its authorities considered the family's adaptation to Sweden and the duration of their stay, including their right to respect for their privacy under article 8 of the European Convention on Human Rights. However, only time legally spent in the

³ *Z. v. Australia* (CCPR/C/111/D/2049/2011), para. 9.5.

⁴ *G.R.B. v. Sweden* (CAT/C/20/D/83/1997), para. 6.7; *T.M. v. Sweden* (CAT/C/31/D/228/2003), para. 6.2; and *Y.G.H. et al. v. Australia* (CAT/C/51/D/434/2010), para. 7.4.

⁵ European Court of Human Rights, *Paposhvili v. Belgium*, Application No. 41738/10, Judgment, 13 December 2016.

country could be considered. The authorities acknowledged that E.O.J. and E.J. had adapted well to Swedish society but found that they were still dependent on their parents and they would have family members in Nigeria who could help with their integration. E.J. was not considered to have reached his formative years yet.

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

5.1 In her comments of 23 July 2023 and 29 March 2024, the author noted that, following O.O.J.'s loss of work, the family applied to social services for financial assistance to retain their rented apartment. On an unspecified date, social services rejected their application on the ground that their income was too high. The author disputes this finding as social services disregarded that they had paid for her father's medical treatment and funeral in Nigeria and had managed the funds of their local church. The author did not appeal the decision as their contact person at social services told her that the courts would reject any appeal. The author claims that she and the children are eligible for social housing but that O.O.J. is not. She argues that the family is left without means to pay for their rent and therefore at risk of eviction, in violation of articles 10, 17, 23 (5) and 28 (1) and 2 (c).⁶

5.2 The author stresses the importance of respecting the rights of children with disabilities in all decision-making processes. She disputes that the respective states of health of E.O.J. and E.J. did not require further investigation, as autism requires ongoing and specialized support. The author reiterates that the Migration Agency did not assess the proportionality of removing E.O.J. to Nigeria despite their counsel's request in this regard. According to the author, the State party's observation regarding the high threshold for triggering the non-refoulement obligation overlooks the nuanced and complex nature of psychosocial disabilities. It is crucial to consider the long-term impact of irreparable harm on a child's well-being and development. The author notes that chapter 5, section 6, of the Aliens Act stipulates that children may be granted residence under exceptionally distressing circumstances. In that regard, the author argues that E.O.J. and E.J. have multiple disabilities, E.J. having been diagnosed with autism, intellectual disability "at the highest level" and with hearing impairments in both ears. At the age of six years, he does not talk and still uses diapers. The author argues that E.J. would experience discrimination if he smears himself with excrement as he has done in Sweden. She reiterates that she submitted a certificate to the domestic authorities to prove that E.J. was bottle-fed with one specific brand, which is not available in Nigeria. However, the courts did not pronounce themselves on the consequences of depriving E.J. of the only product he consumes. According to the author, the State party does not understand that E.J.'s acceptance of only one product is a by-product of his psychology. E.J. ended up in emergency care twice in 2023 because of dehydration and extreme hunger. According to the author, such care is non-existent in Nigeria, which would be fatal to him. Currently, E.J. only eats sausages and sparingly so. Sometimes he eats nothing. Dietary supplements have been approved for him.

5.3 The author refers to a report according to which persons with disabilities in Nigeria face significant challenges in accessing healthcare and support services.⁷ Although some services exist, they often lack adequate resources, infrastructure and trained personnel, which can undermine the access of children with disabilities to specialized care and support. The report described how stigma and discrimination of persons with disabilities could result in social isolation, limited opportunities, bodily harm, verbal or physical abuse or, sometimes, lynching. The author notes that the report stated that many children with disabilities in Nigeria were excluded from the education system and were at increased risk of abuse, neglect, poverty and marginalization, and lack of legal protection. The author argues that persons with disabilities in Nigeria are more likely to experience extreme poverty, may experience negative attitudes, face difficulties accessing health services due to the non-availability of accessible hospitals and specialized personnel, and experience poor educational outcomes.⁸ According to the author, doctors in Nigeria have confirmed that the information cited by the

⁶ The author did not provide any additional information in this regard.

⁷ Asyls and Asylum Research Centre foundation, *Nigeria: Children and Young People with Disabilities* (2021), available at <https://www.asylos.eu/nigeria-report>.

⁸ Rosa Maria Martinez and Varalakshmi Vemuru, "Social inclusion of persons with disabilities in Nigeria: challenges and opportunities", World Bank Blogs, 29 September 2020.

Migration Agency is inaccurate and the reports she has submitted from doctors, psychologists, welfare officers and teachers demonstrate that the removal of E.O.J. and E.J. to Nigeria, where they have never been, would be fatal to them. The author informed the Migration Agency that, in the event of bodily harm, there is little that the Nigerian police can or will do.

5.4 The author refers to the right to liberty and security of persons with disabilities, as well as the right to live independently and to be included in the community, but without providing a justification.

B. Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee notes the State party's argument that the author's claims under articles 24, 25, 26 and 28 of the Convention are inadmissible *ratione materiae* and *ratione loci*, as only treatment contrary to articles 10 and 15 of the Convention can trigger its responsibility for a removal from Sweden. In that regard, the Committee recalls that the removal by a State party of individuals to a jurisdiction where they would risk facing violations of the Convention may, under certain circumstances, engage the responsibility of the removing State under the Convention.⁹ The Committee considers that the principle of non-refoulement imposes a duty on a State party to refrain from removing a person from its territory when there is a real risk that the person would be subjected to serious violations of Convention rights amounting to a risk of irreparable harm, including but not limited to those enshrined in articles 10 and 15 of the Convention.¹⁰ The Committee therefore considers that article 2 (b) of the Optional Protocol does not preclude it from examining the present communication.

6.3 The Committee notes that the author has submitted the communication on behalf of her children, E.O.J., S.J. and E.J., but that she has not argued that S.J. is a person with disabilities and has not provided any relevant information concerning S.J. The Committee therefore finds that the communication is inadmissible *ratione personae* under article 1 of the Optional Protocol insofar as it was presented on behalf of S.J.

6.4 Regarding the author's claim of a violation of paragraph (1) of the preamble to the Convention, the Committee notes that the latter does not give rise to rights that can be invoked independently from the provisions laid down in the articles of the Convention. Moreover, the Optional Protocol to the Convention does not mandate the Committee to consider alleged violations of treaties other than the Convention. The author's claims under paragraph (1) of the preamble of the Convention and article 23 (3) of the Convention on the Rights of the Child are therefore incompatible *ratione materiae* and inadmissible under article 2 (b) of the Optional Protocol.

6.5 In relation to the author's argument concerning the family's alleged risk of being evicted from their apartment, the Committee notes that she did not resort to any domestic remedies. The Committee notes the author's arguments that she did not receive any eviction notice and that she was told by a social services officer that the courts would reject any appeal against the rejection of her application for financial assistance. However, the Committee recalls its jurisprudence that, although there is no obligation to exhaust domestic remedies if they have no reasonable prospect of success, authors of communications must exercise due diligence in the pursuit of available remedies, and it notes that mere doubts or assumptions about the effectiveness of domestic remedies do not absolve the authors from the obligation to exhaust them.¹¹ The Committee considers that the author's explanations in this regard do

⁹ *O.O.J. v. Sweden*, para. 10.3; and *N.L. v. Sweden* (CRPD/C/23/D/60/2019), para. 6.4.

¹⁰ See also Human Rights Committee, general comment No. 31 (2004), para. 12.

¹¹ *G.J.D. v. Australia* (CRPD/C/24/D/36/2016), para. 7.5; *F.O.F. v. Brazil* (CRPD/C/23/D/40/2017), para. 8.4; *T.M. v. Greece* (CRPD/C/21/D/42/2017), para. 6.4; *N.B. and M.W.J. v. United Kingdom of Great Britain and Northern Ireland* (CRPD/C/22/D/43/2017), para. 6.4; *Bellini et al. v. Italy* (CRPD/C/27/D/51/2018), para. 6.4.

not demonstrate that domestic remedies would have no reasonable prospect of success. The Committee therefore considers that this claim is inadmissible under article 2 (d) of the Optional Protocol.

6.6 The Committee notes the State party's submission that the communication is inadmissible under article 2 (e) of the Optional Protocol as insufficiently substantiated. In that regard, the Committee notes that the author primarily argues that the State party's migration authorities violated the rights of E.O.J. and E.J. under articles 7 (2), 10, 11, 12 (4), 15 (2), 23, 24, 25 (a), 26 (1) (a) and 28 (2) (a) under the Convention by deciding to deport them to Nigeria without sufficiently considering the consequences of the deportation on the survival, health, access to education and development of E.O.J. and E.J., in view of their respective disabilities and their best interests as children. In particular, the Committee notes the author's claim that the migration authorities insufficiently considered her arguments regarding the unavailability of services adapted to children with autism in Nigeria, as well as of the only food product that E.J. accepts.

6.7 The Committee also notes that the State party's authorities considered the respective situations of E.O.J. and E.J. in several procedures. In particular, the Committee notes that, in its decision of 8 July 2019, the Migration Agency relied on MedCOI stating that most federal medical centres and university hospitals in Nigeria, as well as the National Hospital in Abuja, offered child psychiatry services, albeit some only privately; the Federal Neuropsychiatrist Hospital Yaba in Lagos offered child psychiatry and psychology services; there were paediatric specialists in all hospitals in Nigeria; and there was access to preschool education for children with autism, at least in Lagos and Abuja. The Committee also notes that the Migration Agency considered that the documents submitted by the author did not show that the situation of children with autism in Nigeria had changed since the MedCOI had been obtained. The Migration Agency thus concluded that the required care and treatment for children with autism were available in Nigeria and that E.O.J.'s family would be able to support him. Likewise, the Committee notes that, in its decision of 13 December 2022, the Migration Agency noted that the urban parts of Nigeria have a relatively well-developed healthcare system and that there were no indications that E.J.'s healthcare requirements could not be met there. In relation to E.J.'s limited acceptance of food, the Committee considers that the author has not substantiated that it was contrary to his rights under the Convention for the State party's authorities not to accord decisive weight to this factor, in the absence of indications that E.J. could not come to accept another diet with the help of his parents and, as necessary, healthcare services in Nigeria. The Committee further considers that the author has insufficiently substantiated her claim of procedural shortcomings concerning the consideration of documents by the Migration Court, in the absence of any indications that the rights of E.O.J. and E.J. were violated in this context. Overall, the Committee considers that, while the author disputes the aforementioned assessments, she does not demonstrate that they suffered from any defect that rendered them clearly arbitrary or contrary to justice. The Committee therefore considers that the author's claims under articles 7 (2), 10, 15 (2), 23, 24, 25 (a), 26 (1) (a) and 28 (2) (a) of the Convention are inadmissible under article 2 (e) of the Optional Protocol as insufficiently substantiated.

6.8 The Committee considers that the author has not substantiated that the Migration Agency's refusal to consider humanitarian grounds in its decision of 8 February 2022 relates to situations of risk and humanitarian emergencies covered by article 11 of the Convention. The Committee also considers that the author's claim concerning E.O.J. under article 12 (4) of the Convention, which outlines the safeguards that must be present in a system of support in the exercise of legal capacity,¹² is insufficiently substantiated, in the absence of indications that E.O.J. is subject to such a support system. Furthermore, the Committee notes the author's reference to the right to liberty and security of persons with disabilities and the right to live independently and to be included in the community. However, in the absence of any further explanation, the Committee considers that the author has insufficiently substantiated that part of the communication. Therefore, the Committee declares those parts of the communication inadmissible under article 2 (e) of the Optional Protocol as insufficiently substantiated.

¹² General comment No. 1 (2014), para. 20.

6.9 The Committee notes the author's claim that the Migration Court did not hear E.O.J. The Committee also notes that, according to the case file, the author requested the Migration Court to hear E.O.J. in January 2020. The Committee considers that that claim raises issues of substance under article 7 (3) of the Convention and that the author has sufficiently substantiated it for the purpose of admissibility.

6.10 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns an alleged violation of article 7 (3) of the Convention and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

7.2 The Committee notes the author's claim that the Migration Court failed to hear E.O.J. The Committee notes the State party's argument that the procedure before the migration courts is generally written. The Committee recalls, however, that article 7 (3) of the Convention obliges States parties to ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability- and age-appropriate assistance to realize that right. The Committee considers that, in order to give effect to that provision, States parties should grant children with disabilities the right to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative.¹³ In the present case, the Committee notes that it is undisputed that E.O.J. was not heard by the migration courts despite the author's request and the fact that he was 7 years old at the start of the domestic proceedings and 12 years old when the present communication was submitted and should have therefore been perfectly capable of forming an opinion about his return to Nigeria. While taking note of the State party's argument that the family had several opportunities to explain the facts and submit evidence, the Committee notes, nevertheless, that the State party has not provided any specific information on measures taken to fulfil E.O.J.'s right to express his views. In view of the foregoing, the Committee considers that the State party has breached E.O.J.'s rights under article 7 (3) of the Convention.

C. Conclusion and recommendations

8. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 7 (3) of the Convention. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning E.O.J., the State party is under an obligation:
 - (i) To provide him with an effective remedy, including quashing the present removal order against him and his family;
 - (ii) To reassess his asylum request after hearing him;
 - (iii) To provide him with adequate compensation;
 - (iv) To publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee refers to the recommendations contained in its concluding observations on the combined second and third periodic reports of Sweden.¹⁴ In particular, the Committee recommends that the State party guarantee respect

¹³ See also Convention on the Rights of the Child, art. 12; Committee on the Rights of the Child, general comment No. 12 (2009), paras. 32–34; and *E.A. and U.A. v. Switzerland* (CRC/C/85/D/56/2018), para. 7.3.

¹⁴ CRPD/C/SWE/CO/2-3, paras. 17 and 18.

for the evolving capacities of children with disabilities to ensure that they can form their own views and express them freely in all matters affecting them, including in asylum proceedings, and ensure that their views are given due weight in accordance with their age and maturity; and ensure that they receive disability- and age-appropriate support to realize their right to be heard.

9. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including any information on action taken in the light of the present Views and recommendations of the Committee.
