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CE/GT/ak 644/2014

The Secretary-General of the United Nations (High Commissioner for Human Rights) presents his compliments to the Permanent Representative of Sweden to the United Nations Office at Geneva and has the honour to transmit herewith the decision (Advance unedited version), adopted by the Committee against Torture on 18 November 2016, concerning complaint No. 644/2014, which was presented to the Committee for consideration under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of R.O et al.

In accordance with the Committee's established practice, this decision will be made public, without disclosing the complainants' identities.

22 December 2016

United Nations CAT/C/59/D/644/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 644/2014 *

Decision adopted by the Committee at its fifty-ninth session (7 November – 7 December 2016)

Submitted by:	R.O. (represented by counsel Lena Isaksson)
Alleged victim:	The complainant and her three minor daughters
State party:	Sweden
Date of complaint:	8 December 2014 (initial submission)
Date of present decision:	18 November 2016
Subject matter:	Deportation to Nigeria
Procedural issues:	–
Substantive issues:	Non-refoulement; Risk of torture upon return to country of origin
Articles of the Convention:	3

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Jens Modvig, Sapana Pradhan-Malla, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

Background

1.1 The complainant is R.O. born on 21 October 1975. She submits the complaint on her behalf and on that of her three minor daughters: X., Y. and Z, born on 2 November 2005, 29 November 2008, and on 19 October 2012, respectively. All are Nigerian nationals. She claims that by deporting her daughters and herself to Nigeria, the State party would violate their rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "Convention"). The Convention came into force in the State party on 26 June 1987, and it has made the declaration under article 22 of the Convention. The complainant is represented by counsel.

1.2 On 18 December 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to expel the complainant and her daughters to Nigeria while their complaint was being considered by the Committee.

The facts as presented by the complainant

2.1 The complainant is a Catholic Christian who belongs to the Esan (or Ishan) ethnic group. She grew up in Benin City, Edo State, Nigeria. She submits that in 2000 she moved to Italy, where she worked and had a temporary residence permit. She worked firstly as baby-sitter and then as an employee in a porcelain company. She married her now ex-husband in 2004, also a Nigerian national from the Uromi ethnic group. They had three daughters. The first two children were born in Italy and the third in Sweden. In 2008, the complainant lost her job. She claims that since she was unemployed, she became dependant on her husband's residence permit, and she would lose her permit if her husband became unemployed or if she divorced him

2.2 The complainant's mother-in-law, living in Nigeria, insisted on having the daughters undergo female genital mutilation (FGM). Following a family visit to Nigeria in 2010, her husband also started to insist for the daughters to undergo FGM. As the complainant refused, he became aggressive and abused her physically. The complainant submits that on an unspecified date, she informed the Italian welfare services of this situation; that she was told that an agreement had to be personally reached with her husband; and that she did not denounce her ex-husband's abuses for fear of losing her residence permit, and because she did not believe the Italian authorities would provide her with assistance. In 2012, she decided to leave her husband when she was pregnant with her third daughter because she feared that he would use the opportunity to bring the two older daughters to Nigeria when she was hospitalised to give birth.

2.3 On 1 September 2012, while pregnant with her third child, the complainant arrived in Sweden with her other two daughters and applied for asylum on that same day. She claimed that if her daughters were returned to Nigeria or Italy, they would be at risk of FGM by their father and grandmother. Furthermore, her siblings, living in Nigeria, have had their own children mutilated and also support such practice. On 3 April 2013, the Swedish Migration Agencyrejected her application. It stated that her accounts did not fit the requirement to be probable and credible since she had been able to protect her daughters against FGM so far; that she had not turned to the Italian or Nigerian authorities for protection; and that she had not submitted any written documents to support her asylum request. Moreover, the complainant had no problem with the authorities in her country of origin. The Migration Agency also noted that 30% of all women in Nigeria are genitally mutilated; that the practice is most common in the southern parts of Nigeria by Igbo and Yoruba ethnic groups; that 82.4% of victims of FGM were mutilated during the first year of age, 1.6 % between the age of 1-4, and 12.5% after 5 year of age; that according to a

country report about Nigeria the number of FGM practices had decreased; and that the State of Edo has a ban on FGM and the law criminalized this act.[1] Against this background, it found that it was unlikely that the complainant's daughters would face risk of being subject to FGM if returned to Nigeria, and that it is was not against the three children's best interests to return them to Nigeria, alone with their mother. Accordingly, the Migration Agency gave the complainant four weeks to leave the country voluntarily with her children.

2.4 On 25 April 2013, the complainant appealed the Migration Agency's decision before the Migration Court. She submitted that despite the banning on FGM in the Edo State, practice of FGM continued as shown by the fact that there was no information that anyone had been prosecuted for these acts; that those responsible had never been prosecuted because of police inaction; and that the Nigerian authorities would therefore not be able to protect the complainant's children from FGM. Since her family in Nigeria all practice FGM, she would not be able to protect her children herself. Finally, the complainant contended that the Migration Agency had failed to adequately take into account her and her children's special vulnerability. The children have never lived in Nigeria and the complainant herself left her country in 2000. If returned, she will have no working network and no means for her and her children's protection.

2.5 On 18 October 2013, the Migration Court rejected the complainant's appeal. The Migration Court pointed out that the State of Edo had banned FGM; that a number of NGOs were working in this field locally; that FGM practice was most frequent in the Yoruba and Igbo ethnic groups; and that the complainant had therefore not made it probable that Nigerian authorities were lacking willingness or authority to protect her and her children. Moreover, the general situation in Nigeria was not so severe that it provided in itself a right to a residence permit in Sweden.[2]

2.6 On 5 November 2013, the complainant appealed this decision to the Migration Court of Appeal. She argued inter alia that women from her and her ex-husband's ethnic groups were usually mutilated in Nigeria, and that FGM was practiced by her own family.

2.7 On 17 December 2013, the Migration Court of Appeal decided not to grant leave to appeal. The decision to expel the complainant and her daughters became final and non-appealable.

2.8 On 8 or 9 July 2014, the complainant requested suspension of the deportation order and a re-examination of her case in light of the changing security situation in Nigeria, and reiterated that her three daughters would be at risk of FGM if deported. She pointed out that she was a divorced single mother with three daughters who had no possibility of internal protection. She further argued that her three daughters had developed strong ties with Sweden.

2.9 On 30 September 2014, the Migration Agency rejected the complainant's request for re-examination of her case. It stated that the general situation in the Edo State had not changed, and that the fact that two of her daughters were in the Swedish education system and that the family attended local Church activities was no proof that they had a special link to Sweden. Finally, it considered that even though the general human rights situation had worsened in northern regions of the country, this was not the case in the south, where the complainant comes from. Accordingly, the Migration Agency stated that the measure to enforce the decision must continue.

[1] The Migration Agency's decision refers inter alia to the UK Home Office's Operational Guidance Note on Nigeria. January 2013.

[2] The Migration Court refers to the Swedish Ministry for Foreign Affairs' General country information report, *Manskliga rattigheter i Nigeria 2010*.

2.10 On 14 October 2014, the complainant appealed once again to the Migration Court on the same grounds. She added as new circumstances that Boko Haram had expanded its control over more territory in Nigeria, and that there was an increased risk of Ebola in the country.

2.11 On 20 October 2014, the Migration Court rejected the appeal on the grounds that there were no new circumstances related a risk of FGM, that Boko Haram was active mainly in northern Nigeria, and that the risk of Ebola did not qualify as a new circumstance under the Swedish Aliens Act.

2.12 On 28 November 2014, the complainant appealed this decision to the Migration Court of Appeal, claiming that the Migration Court had made a wrong assessment of the risk caused by Boko Haram and the Ebola health crisis. Boko Haram attacks had increased in intensity at the time of the appeal, and the security situation for civilians in Nigeria had been worsening for a year.

2.13 On 3 December 2014, the Migration Court of Appeal did not grant a leave to appeal. The Migration Board's order expulsing the complainant and her daughters from the State party gained legal force.

The complaint

3.1 The complainant claims that by deporting her daughters and herself to Nigeria, the State party would violate article 3 of the Convention as the daughters would be at risk of FGM by her ex-husband, her mother-in-law or the local community in general.

3.2 The Edo State, where the complainant comes from, has never persecuted someone for performing FGM. If returned to their country of origin, the Nigerian authorities will not provide the complainant and her daughters with any protection, given that the police system is inefficient in FGM cases. In this connection, she points out that she never contacted the Nigerian authorities before because she never lived in Nigeria with her husband; that she had informed the welfare social services in Italy about the problems with her husband, but they did not help her and only suggested to solve this family problem by reaching an agreement with her husband. She claims that such agreement would mean putting her children at risk of FGM. In addition, due to the activities of armed groups such as Boko Haram violence and human rights violations have increased in Nigeria. Since 2012, Boko Haram has killed more than 5000 people, burned more than 300 schools and deprived more than 10000 children of an education. If the complainant and her daughters escape to another part of Nigeria in order to be away from her ex-husband, mother-in-law and her own family, they would be in danger of being victims of this armed group, in particular due to their Christian faith.[3]

[3] The complainant refers to US Department of State's 2013 Human Rights Report: Nigeria [that states that FGM remained a human rights problem of importance in 2013. The federal government publicly opposed FGM but took no legal action to curb the practice. While 12 states banned FGM, once a state legislature criminalized FGM, NGOs found they had to convince local government authorities that state laws applied in their districts. The Ministry of Health, women's groups, and many NGOs sponsored public awareness projects to educate communities about the health hazards of FGM. Underfunding and logistical obstacles limited their contact with health-care workers. While practiced in all parts of the country, FGM/C remained most prevalent in the southern region among the Yoruba and Igbo. Infibulation, the most severe form of FGM, was common in the South and infrequently occurred in northern states. The age at which women and girls were subjected to the practice varied from the first week of life until after a woman delivered her first child; however, most victims suffered FGM before their first birthday.]; Swedish Ministry of Foreign Affairs 2010 Human Rights

State party's observations on admissibility and the merits

4.1 On 17 June 2015, the State party submitted its observations on admissibility and merits. It maintains that the complaint is inadmissible on grounds of lack of victim status of the complainant and her daughters and manifestly unfounded pursuant to article 22 (1) and (2) of the Convention.

4.2 The State party informs the Committee that during the examination of the complainant's request for asylum the Swedish Migration Agency took contact with the Italian police in order to confirm whether the complainant and her daughters had resided in that country. On 6 December 2012, the Italian authorities informed them that the complainant was unknown in Italy and that no visa had been issued in her name. Since the complainant could not be sent back to Italy under the Dublin Regulation, the Migration Agency proceeded to consider the case. However, on closer inspection of the document by the Swedish Police later on, it was clear that the complainant's date of birth was incorrectly stated in the first request. Considering that this mistake might have been the reason for which the Italian authorities had not found her in their system, another request was sent to them. On 13 June 2014, the Swedish Police received confirmation that the complainant had been in Italy since at least 1998, and that in February 2012 she had been issued a permanent residence permit without any time limit. Furthermore, her first two daughters also held valid residence permits in Italy, and the Italian authorities had registered the information concerning the birth of her youngest daughter. In view of this, by a memorandum of 19 December 2014 the Swedish Police concluded that it was possible to transfer the complainant and her children to Italy, or to enforce the order to return them to Nigeria. According to the memorandum, the complainant expressed unwillingness to return to Italy since she did not know where to live or how she would provide for her family. She further maintained that she no longer had contact with her ex-husband and that she did not know how to get in touch with him. Against this background, it maintains that it is possible to transfer the complainant and her children to Italy, where they will not risk any treatment contrary to the Convention. Thus since they are no longer in immediate danger of removal to Nigeria, they are not victims within the meaning of article 22 of the Convention.[4]

4.3 The State party provides a description of relevant domestic legislation and points out that the complainant's case was considered in accordance with the 2005 Aliens Act. Provisions of the Swedish Aliens Act reflect the same principles as those indicated in

Report on Nigeria; Human Rights Watch World Report 2014 on Nigeria [states that horrific abuses in the north by the militant Islamist group Boko Haram and the Nigerian security forces' heavy-handed response to this violence dominated Nigeria's human rights landscape in 2013. Security forces throughout the country engaged in human rights abuses. There were few investigations or prosecutions of these crimes. Corruption in the police force remained a serious problem. The prosecutor of the International Criminal Court said at the time that there was reason to believe Boko Haram had committed crimes against humanity. According to available information this is still the ICC's position at the end of 2015];; and Amnesty International Annual Report 2012; [which notes that Nigeria's human rights situation in 2012 had deteriorated compared to previous years. Hundreds of people were killed in politically motivated, communal and sectarian violence across the country. Violent attacks attributed to Boko Haram increased, killing more than 500 people. The police were responsible for hundreds of unlawful killings, most of which remained non-investigated. The justice system remained ineffective, and violence against women remained rife].

[4] The State party refers to Communication n° 264/2005, *A.B.A.O. v France*, views adopted on 8 November 2007, paras. 8.3-8.4; and to the Human Rights Committee's jurisprudence concerning Communication n° 1291/2004, *Dranichnikov v. Australia*, Views adopted on 20 October 2006, para. 6.3.

article 3 of the Convention and, therefore, the State party's authorities apply the same kind of test when considering asylum applications.

4.4 Should the Committee find the complaint admissible, the State party contends that the complainant has failed to demonstrate that she and her daughters would face a foreseeable, real and personal risk of harm if returned to Nigeria.[5] It recalls that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, and must be personal and present even if it does not need to meet the test of being highly probable.[6] In this regard, the State party asserts that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country.

4.5 Reports about the human rights situation in Nigeria [7] indicate that FGM is common in many parts of the country. Approximately 30% of Nigerian women have been genitally mutilated. The number varies greatly from region to region and the greatest problem is in the south. It pointed out that a national law forbidding FGM has been enacted by the government in 2015. Moreover, on a state level, the Edo state has also enacted laws against genital mutilation. These measures, along with the work of local and international NGOs, have reduced the number of FGMs practiced in Nigeria. The State party also maintains that it does not underestimate the concerns regarding the general human rights situation in Nigeria. This situation, however, does not in itself establish that the complainant and her family would be personally at risk if is expelled to their home country.

4.6 The State party maintains that its authorities are in a very good position to assess the information submitted by an asylum-seeker and to assess the credibility of his/her claims. In the complainant's case, both the Swedish Migration Agency and the Migration Court conducted thorough examinations. The Migration Agency had an extensive interview with the complainant, which was conducted in the presence of a legal counsel and an interpreter, whom the complainant confirmed she understood well. The complainant was also given the opportunity to argue her case in writing both before the Migration Agency and the Migration Court. Throughout the asylum procedure, the complainant was represented by legal counsel. The Migration Agency and Migration Court had sufficient information to

[5] The State party refers to the Committee's jurisprudence, communications n° 178/2001, *H.O v Sweden*, Views adopted on 13 November 2001, para.13; and n° 203/2002, *A.R v The Netherlands*, Views adopted on 14 November 2003, para. 7.3.

[6] The State party refers to the Committee's jurisprudence, communications n° 150/1999, *S.L v Sweden*, Views adopted on 11 May 2001, para. 6.3; and n° 213/2002, *E.J.V.M v Sweden*, Views adopted on 14 November 2003, para. 8.3.

[7] The State party refers to the Swedish Ministry for Foreign Affairs' General country information report, *Manskliga rattigheter i Nigeria 2010*, 2010. Available in Swedish at: http://www.manskligarattigheter.se/sv/manskliga-rattigheter-i-varlden/ud-s-rapporter-om-manskliga-rattigheter/afrika-och-soder-om-sahara?c=Nigeria; and to a report by the Immigration and Refugee Board of Canada, *Prevalence of female genital mutilation (FGM), including ethnic groups in which FGM is prevalent; available State protection,* 27 July 2010, available at http://www.ecoi.net/local_link/144821/259833_de.html. [The report by the Immigration and Refugee Board of Canada, *Prevalence of female genital mutilation (FGM), including ethnic groups in which FGM is prevalent; available State protection*, sustains that FGM is most common in the South East and South West zones, among the Yoruba and Igbo tribes. With respect to geographic zone, the percentage of women who reported undergoing FGM varies as follows: North Central: 11.4 %; North East: 2.7 %; North West: 19.6 %; South East: 52.8 %; South Central: 34.2 %; South West: 53.4 %. In addition, FGM is common among the Edo, who is the main ethnic group in Edo State. The report recognizes that a number of Nigerian states have banned FGM, and that NGOs have been operating in this field locally].

ensure that they had a solid basis for making a well-informed, transparent and reasonable risk-assessment. In light of the material before them, they found that the complainant's and her daughters' return to Nigeria would not entail a violation of article 3 of the Convention. There is no reason to conclude that its authorities' decisions were inadequate or arbitrary. In this connection, the State party points out that the Committee is not an appellate body, and that considerable weight should be given to findings of facts that are made by organs of the State party concerned.

4.7 The State notes that the complainant has not contacted the police authorities in Nigeria to report her ex-husband's and her mother-in-law's threats regarding FGM of the daughters, and that the country information does not support her view that a person seeking protection from the police for threats regarding FGM does not receive any help. This, combined with the fact that the complainant has not previously had any problems with the Nigerian authorities, shows that the complainant has not plausibly demonstrated that the law enforcement authorities in Nigeria lack the willingness or ability to provide protection to the complainant and her daughters.

4.8 The State party also points out that the Migration Agency's decision stated that the *"expulsion shall be executed by the complainants travelling to Nigeria, if they could not show that any other country would accept them*". In this connection, it maintains that if it is possible for an individual to abide by the authorities' decision on expulsion by travelling to another country where he or she will be admitted, the individual has an obligation to do so. Since according to the Swedish police's memorandum of 19 December 2014, the complainant and her first two daughters have permanent residence permits in Italy, and they may therefore return to this country. It further submits that the complainant has not indicated to have contacted the Italian authorities for protection. According to available information, Italy has specific criminal law provisions to address FGM,[8] and an important number of remedies exist under Italian law when there is a risk of such practices.

4.9 In conclusion, the State party reiterates that the complainant has failed to demonstrate that there are substantial grounds for believing that her daughters and she would personally be at risk of torture if returned to Nigeria or Italy. Consequently, their expulsion to Nigeria would not constitute a violation of article 3 of the Convention.

Complainant's comments on the State party's observations on the admissibility

5.1 On 5 January 2016, the complainant provided her comments on the State party's observations and reiterated her previous allegations.

5.2 She submits that her permanent residence permit in Italy is dependent upon her ex-husband's permit and that as the State party has not requested Italy to accept her transfer and that of her daughters, it is unknown whether Italy will accept that she and her daughters stay in Italy.

5.3 Even if the complainant's permanent residence permit in Italy were independent of that of her ex-husband's, it is still doubtful whether Italy would accept responsibility for her and her daughters, since the holder of a residence permit CE (*permesso di soggiorno CE*)

[8] The State party refers to a report by the EIGE, *Female genital mutilation in the European Union and Croatia*, 2013 [according to which Italy has specific criminal law provisions to address FGM, which means that courts can adjudicate on cases outside the territory of their country. In addition, in situations in which a girl is at risk of FGM, child protection law can be leveraged to safeguard the child. A range of measures may be applied, from removing the girl from her family and suspending parental authority to to withholding passports or travel documents and issuing a non-authorisation to leave the country.].

needs to show that he or she has sufficient income to maintain himself/herself and the members of his/her family. According to Italian law, the residence permit can be revoked if the holder no longer fulfils the requirements set for its issue. Since the complainant has no longer an income in Italy, she would risk her permit being revoked and being sent back to Nigeria with her daughters.

Further submissions by the State party

6. On 26 April 2016, the State party provided a further submission and reiterated its previous observations. It noted that there is nothing in the complainant's comments to suggest that her first two daughters and she no longer hold valid residence permits in Italy. The complainant's assertion that these permits may be revoked under some circumstances cannot lead to the conclusion that they are unable to return to Italy.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. It notes that in the present case, the State party has recognized that the complainant has exhausted all available domestic remedies. Accordingly, the complaint meets the admissibility requirement set forth in article 22(5)(b) of the Convention.

7.3 The Committee takes note of the State party's argument that the complainant and her minor daughters are not to be considered victims within the meaning of article 22 of the Convention since she and two of her daughters hold valid residence permits in Italy. They can therefore be transferred to the said country, and, thus, they are no presumably longer in immediate danger of removal to Nigeria. The Committee observes that, in the present complaint, it is asked to determine whether the complainant's and her minor daughters' removal to Nigeria would constitute a violation of the Convention; that the decision of the Migration Agency of 3 April 2013 which ordered their expulsion to Nigeria has been subsequently confirmed by the Migration Court and the Migration Court of Appeal; and that such order is valid and executable if the complainant and her daughters do not leave the State party voluntarily. Against this background, the Committee considers that, in the circumstances of the present case, the State party's observations about the complainant's possibility to return to Italy cannot be diassociated from the other complainant's claims under article 3 of the Convention. Accordingly, the Committee considers that the complaint meets the admissibility requirement established in article 22(1) of the Convention.

7.4 The Committee notes the State party's challenge to the admissibility of the complaint on the ground that the complainant's claims under article 3 of the Convention are manifestly ill-founded. The Committee however considers that the inadmissibility argument adduced by the State party i linked to the merits and should thus be considered at that stage. As the Committee finds no further obstacles to admissibility, it declares the present complaint admissible.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the complaint in the light of all the information made available to it by the parties.

8.2 In the present case, the issue before the Committee is whether the return of the complainant and her three minor daughters to Nigeria would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("refouler") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant and her daughters would be personally in danger of being subjected to torture upon return to Nigeria. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[9] Although, under the terms of its general comment No. 1, the Committee is free to assess the facts on the basis of the full set of circumstances in every case, considerable weight is given to the findings of fact that are made by organs of the State party concerned (para. 9).[10]

8.5 The Committee takes note of the complainant's allegations that if deported to Nigeria, her minor daughters would be subjected to FGM by her ex-husband, her mother-in-law or her own relatives. She claims that following a family visit to Nigeria in 2010, her then mother-in-law and husband insisted on having the daughters undergo FGM; that to protect her daughters in 2012 she moved from Italy, where she used to live with her husband, to Sweden; that despite the banning on FGM in the Edo State, this practice continues; and that women from her and her ex-husband's ethnic groups are allegedly mutilated in Nigeria. She also claims that they would not be able to escape to other parts of the country and establish their residence there due to the human rights situation in Nigeria and, in particular, the violence caused by Boko Haram. The complainant further claims that returning to Italy is not an option for her (see. 5.2-5.3 above) and that as the State party has not requested Italy to accept her transfer and that of her daughters, it is unknown whether Italy will accept that she and her daughters stay in Italy.

[9] See also complaint No. 203/2002, *A.R. v. the Netherlands*, decision adopted on 14 November 2003, para. 7.3.

[10] See, inter alia, complaint No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

8.6 The Committee also takes note of the State party's arguments that its authorities, including the Migration Court and the Migration Appeals Court, have thoroughly examined the complainant's allegations when considering her asylum requests, finding that her accounts were not plausible since she has failed to provide any evidence in support of her allegations. Moreover, she was able to protect their daughters from FGM so far and has not had any personal incident in her country of origin. Nor has she reported the alleged threats of FGM to the Nigerian police or requested its protection. Likewise, the State party also maintains that it does not underestimate the concerns regarding the general human rights situation in Nigeria. However, this situation does not in itself establish that the complainant and her daughters would be personally at risk if is expelled to their home country. The Committee also takes note of the State party's argument that the complainant and two of her daughters hold valid residence permits in Italy; that they can move to the said country; and that they would not be at risk of FGM in Italy and will be able to request protection to the Italian authorities, in case of need.

8.7 The Committee recalls that FGM causes permanent physical harm and severe psychological pain to the victims, which may last for the rest of their lives, and considers that the practice of subjecting a woman to female genital mutilation is contrary to the obligations enshrined in the Convention.[11]

8.8 In the present case, the Committee observes that it is not disputed that the complainant belongs to Esan ethnic group; that she lived in the Edo State, in southern Nigeria, for more than two decades; that her ex-husband is from Uromi; that despite legislation punishing FGM, it is practiced across Nigeria by various ethnic groups; and that approximately 30% of women have been subjected to FGM. The complainant submits that the State party's authorities have failed to duly take into account the risk she and her daughters would face if removed to Nigeria, since the authorities in their country of origin will not be able to provide them with protection. Her claims mainly rely on the fact that there is no information concerning persons that have been prosecuted in the Edo State for FGM practice. However, according to reports cited by the parties as well as information in the public domain,[12] in Nigeria most victims are subjected to FGM before their first birthday, FGM practice varies significantly among ethnic groups, and it remains most prevalent in southern regions among the Yoruba and Igbo ethnic groups. Against this background, the Committee observes that the complainant has not shown that FGM is practiced by members of her ex-husband's or her own ethnic groups so as to put her minor daughters at real and personal risk of a violation contrary to article 1 of the Convention. Moreover, although she lived for more than two decades in Nigeria, she has not adduced any allegations of being personally subjected to or at risk of FGM in her country of origin.

8.9 The Committee further observes that although the State party's authorities concluded that the complainant and her daughters were not entitled to refugee status or subsidiary protection, the decision of the Migration Agency of 3 April 2013, confirmed by the Migration Court and the Migration Court of Appeal, ordered their expulsion to Nigeria if "they cannot show that any other country would accept them". According to the Swedish Police memorandum of 19 December 2014, contained in the case-file, after the complainant's asylum request was finally dismissed, on 13 June 2014, the Italian

[11] See complaint no. 613/2014, *F.B. v. The Netherlands*, decision adopted on 20 November 2015, para. 8.7

[12] See United Nations Children's Fund (UNICEF), *Female Genital Mutilation/Cutting: a statistical overview and exploration of the dynamics of change* (2013), pp. 27, 28, 34 and 50; US Department of State, Country Reports on Human Rights Practices for 2014-2015: Nigeria; United Kingdom: Home Office, *Operational Guidance Note: Nigeria*, December 2013; and United Kingdom: Home Office, *Operational Guidance Note: Nigeria*, January 2013.

authorities, via Interpol, informed the Swedish police that the complainant and two of her daughters held valid permanent residence permits in Italy, without any time limit. The complainant has not refuted this information and has not convincingly explained why they cannot return and reside in Italy. Rather, she has contended in general fashion that her residence permit in Italy is dependent upon her ex-husband's permit and that even if her residence permit were independent of her husband's, she would risk her permit being revoked since she will not able to show that she has sufficient income to provide for herself and her daughters. Furthermore, no information provided by the parties indicates that upon return to Italy, the complainant and her minor daughters may be at real and personal risk of FGM there or that Italian authorities will be unable or unwilling to protect them. The Committee also notes that Italy is party to the Convention; that it has made a declaration under article 22; and that the current findings do not preclude the author from submitting a complaint against Italy in the future, should she consider that her rights are violated by that State party.

8.10 Accordingly, in the light of the considerations above, and on the basis of all the information submitted to the Committee by the parties, the Committee considers that the complainant has not provided sufficient evidence to enable it to conclude that her and her daughters' removal to Italy or their country of origin would expose her to a foreseeable, real and personal risk of treatment contrary to article 1 of the Convention. The Committee, however, is confident that the State party will give the complainant a reasonable time for her to leave the State party voluntarily, together with her minor children.

9. Accordingly, the Committee, acting under article 22 (7) of the Convention, concludes that the return of the complainant and her three minor daughters to Italy or Nigeria would not constitute a breach of article 3 of the Convention by the State party.