



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2366/2014

#### Views adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	X
<i>Alleged victim:</i>	X
<i>State party:</i>	Canada
<i>Date of communication:</i>	19 March 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rules 92 and 97, transmitted to the State party on 24 March 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2015
<i>Subject matter:</i>	Deportation of author to country of origin (Bangladesh)
<i>Procedural issues:</i>	Admissibility – manifestly ill-founded; admissibility – exhaustion of domestic remedies; admissibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Non-refoulement; refugee status; torture; arbitrary detention; freedom of opinion and expression; discrimination
<i>Articles of the Covenant:</i>	6 (1), 7, 9 (1), 19 (1) and (2) and 26
<i>Articles of the Optional Protocol:</i>	2, 3, 5 (2) (b)



## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)**

concerning

#### **Communication No. 2366/2014\***

*Submitted by:* X  
*Alleged victim:* X  
*State party:* Canada  
*Date of communication:* 19 March 2014 (initial submission)

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

*Meeting on 5 November 2015,*

*Having concluded* its consideration of communication No. 2366/2014 submitted to it by X 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 X, a Bangladeshi national born in 1969 and currently residing in Canada. The author is subject to deportation following the rejection of his application for refugee status in Canada. He asserts that by removing him to Bangladesh, the State party would violate his rights under articles 6 (1), 7, 9 (1), 19 (1) and (2), and 26 of the Covenant. The first Optional Protocol to the Covenant entered into force for Canada on 19 May 1976. He is represented by counsel, Joseph W. Allen.

1.2 On 19 March 2014, pursuant to rules 92 and 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to remove the author to Bangladesh while the communication is under consideration by the Committee. On 1 September 2015, the

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

Committee denied the State party's request to lift interim measures. The author remains in Canada.

### **Facts as presented by the author**

2.1 The author began working as a journalist in Bangladesh in 1997. He authored articles exposing extortion and corruption in Bangladesh, which caused him to be targeted by the ruling political party, the Awami League, and associated groups. Following the publication of an article he wrote in July 2011 focusing on the involvement of a local Awami League leader in drug trafficking, the author began receiving threats from J, who is the leader of a group of "thugs" in the Agargaon slum area. These threats were reported in the news. The author filed a complaint with the police concerning the threats, but to no avail.<sup>1</sup>

2.2 In his communication the author incorporates the facts presented in the Personal Information Form that he submitted to the Canadian Immigration and Refugee Board of the Refugee Protection Division (RPD). According to the Form, the author began his career in journalism by working as an assistant coordinator for the Bangladesh Human Rights Journalist Forum until January 1999. He then worked as a staff reporter in the crime department of *The Daily Bhorer Kagoj* newspaper until January 2004. In the same month, he began working as a staff reporter for the crime department of *The Daily Samakal*. From January 2008 to September 2011, he worked in the crime department of *The Daily Kaler Kantho* as a senior reporter. Since January 2007, he has been a member of the Crime Reporters Association of Bangladesh. The author also states in the Form that he is a supporter of the Bangladesh Nationalist Party but never became a member due to professional restrictions.

2.3 The Personal Information Form states that the author wrote investigative reports concerning various crimes, including drug trafficking, and that some of the reports were published in newspapers. Because of his investigative work, he sometimes received "intimidating words" from various individuals and sometimes had to abandon his assignments because of threats. The Form further states that since the Awami League's rise to power in January 2009, the security situation in Bangladesh has deteriorated due to criminal activity by Awami League members, who collude with the police, and to an increase in the number of extrajudicial killings and enforced disappearances. On 27 June 2010, during a general strike called by the Bangladesh National Party to demand an adequate supply of water, gas and power, members of the Awami League attacked Bangladesh National Party activists in the streets, with support from the police. The Awami League members beat a number of Bangladesh National Party leaders, including one who was eventually detained by the police. The police also stormed into the residence of another Bangladesh National Party leader, vandalized his house and beat women and children who were present. The Form further states that the author and one of his colleagues were assigned to investigate the event and report on it, focusing on whether a crime had been committed by the police. Thus, on 29 June 2010, the author and his colleague went to the scene of the events to interview the family members of the Bangladesh National Party leader whose house had been vandalized. However, plainclothes officers on duty prevented them from conducting their investigation and threatened them with detention for obstructing the police from performing their duties if they did not leave immediately. They eventually abandoned the investigation.

2.4 The Personal Information Form also states that in July 2011, the author was assigned to write an investigative report on drug trafficking in the Agargaon slum. He visited the

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<sup>1</sup> No further details are provided.

area several times and spoke to local inhabitants in order to gather information. He discovered that the local Awami League leader N.J. and his son were controlling the sale of illegal drugs in the area and were connected to a notorious group of thugs led by J. In response to the report he had published on 2 July 2011, the author received a phone call on 26 July 2011 from J, who threatened to kill him. Thereafter, upon consultation with his editor and the leaders of the Crime Reporters Association of Bangladesh, the author filed a statement (a "General Diary") concerning the threats at the Mirpur Model police station on 27 July 2011. The President and the General Secretary of the Association also issued a press statement to condemn the threat and to request legal action by the police.<sup>2</sup> However, the police took no action and the author received another threatening phone call from J, who stated that he would kill the author if there were any further press statements about "their activities". After this threat, the author decided to maintain a low profile and not to write anything about "them" for the time being.

2.5 According to the Personal Information Form, the author wrote a story on widespread acts of extortion committed by police officials. After the story was published on 12 August 2011 in *The Daily Kaler Kantho*, the author received a phone call from the officer in charge of Paltan police station, who apparently threatened to teach the author a lesson for accusing the police of corruption. On 20 September 2011, the author left Bangladesh for the United States to attend a conference. He arrived in Canada on 2 October 2011. Thereafter, his family in Bangladesh contacted him to inform him that Awami League thugs had raided the family home in Shawrapara and had threatened to kill the author if they found him. As a result, the author's wife hired a lawyer in Bangladesh. The lawyer discovered that the police wanted to question, and possibly prosecute, the author because he had written an article on acts of extortion committed by police officials. The author was advised by the President of the Crime Reporters Association of Bangladesh not to return to Bangladesh until it was safe. On 14 October 2011, the police visited the author's home in Shawrapara and searched for him, without a warrant. The lawyer retained by the author's wife then learned from the police that the author was being sought in connection with his reports on extortion committed by police officers. The lawyer could not assure the author that he would receive any legal protection. The Form states that because of this situation, the author filed an application for refugee status in Canada on 19 October 2011.

2.6 Concerning the exhaustion of domestic remedies, the author states that the Immigration and Refugee Board of the Refugee Protection Division denied his application for asylum on 17 September 2013 and that his application for judicial review of this decision was denied on 31 January 2014. The author further asserts that on 12 March 2014, the Canada Border Services Agency denied his application for an administrative stay of removal. The author claims that he is ineligible to file an appeal before the Refugee Appeals Division of the Board. He further claims that although he filed an application for Pre-Removal Risk Assessment (PRRA) on 14 March 2014, he is not eligible for this

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<sup>2</sup> The author provides a letter dated 27 February 2014 from the General Secretary of the Crime Reporters Association of Bangladesh, who states that the author was a former senior crime reporter for *The Daily Kaler Kantho* and was a former member of the Association as well. The letter also states that the author sought asylum in Canada because he was "a very sincere journalist who did not compromise to any situation" and because of the insecure situation of Bangladesh. The letter further states that if the author returns to Bangladesh he might encounter difficulties, including threats to his life or torture by law-enforcement officials, members of political groups or criminals. The General Secretary appeals to the Government of Canada to ensure the author's safety, as he could be either killed or kidnapped if he were to return to Bangladesh.

procedure, or for permanent residence on humanitarian and compassionate grounds (H&C) until 12 months after the decision on his asylum application has been issued.<sup>3</sup>

### The complaint

3.1 The author submits that Canada would violate his rights under articles 6 (1), 7, 9 (1), 19 (1) and (2), and 26 of the Covenant by forcibly removing him to Bangladesh, where he says that he fears that he will be personally targeted and persecuted by the authorities, who view him as a threat on account of his investigative journalism exposing extortion committed by the police.<sup>4</sup> The author maintains that his work as a journalist has already caused “armed thugs” associated with the Awami League to threaten him with death; he further asserts that the police and the thugs are “still after” him. He argues that as clearly shown by past incidents, victims cannot hope for any help in Bangladesh from the government authorities, who are themselves responsible for committing acts of violence.

3.2 The author alleges that conditions in Bangladesh are becoming more dangerous for journalists and Bangladesh National Party supporters such as himself. He cites numerous reports and articles in support of his assertion that since the elections on 5 January 2014, journalists and other members of the media are at a greater risk of persecution and are regularly threatened and jailed.<sup>5</sup> The cited reports and articles refer, inter alia, to the following incidents in the period 2012-2014: a police raid on a printing press; government control over most of the mass media (especially electronic media); physical attacks on journalists who have reported on political violence; detention of the acting editor of the daily newspaper *Amar Desh*; detention and arrest of human rights defenders, journalists and other citizens under the Information and Communication Technology Act 2006, which curtails freedom of speech and expression; criminal charges filed against two senior members of the human rights organization Odhikar in the wake of its report on the killing of 61 people by government forces during a protest; surveillance and harassment of Odhikar staff throughout Bangladesh; the murder of a journalist who had received death threats after reporting on the local criminal drug trade; attacks on five journalists who were covering alleged extortion by university students in the capital; an attack on the offices of an Internet news outlet in Dhaka, in which at least nine journalists were wounded; widespread impunity in Bangladesh for perpetrators of violence against journalists; and an

<sup>3</sup> The author provides a copy of his first Pre-Removal Risk Assessment application, which was rejected on 17 March 2014. It includes an unsigned affidavit dated 5 March 2014 from A, senior reporter for *The Daily Kaler Kantho*, confirming the author’s occupation and position at the newspaper and that the author had received threats to his life because of his reports against the Government’s “powerful terrorist force”. A further states that after the author left the country, A himself and his family received several phone calls from members of the terrorist group of the current ruling party and police force making threats against their lives and other threats. For that reason, A states that he and his family are trying to leave Bangladesh and that the author should not be sent back there.

<sup>4</sup> The author provides a copy of an article he claims to have written for *The Daily Kaler Kontho* dated 2 July 2011 entitled “Drug dealing in broad daylight”. The article reports on open drug dealing in the Agargaon slum and names N.H. [sic] and his son as overseers of the slum.

<sup>5</sup> The author cites the following sources: Committee to Protect Journalists, “Bangladesh arrests three journalists, raids news outlet”, 17 January 2014; New Age Bangladesh, “Inquilab office sealed off”, 17 January 2014; New Age Bangladesh, “BNP march fails to take off as police, AL men rule roads”, 30 December 2013; Human Rights Watch, “Bangladesh: drop charges, stop harassment of Odhikar”, 15 January 2014; Committee to Protect Journalists, “Bangladeshi journalist brutally stabbed, killed”, 18 June 2012; Committee to Protect Journalists, “Bangladeshi journalists attacked while covering extortion”, 25 April 2013; Committee to Protect Journalists, “Journalists wounded in newsroom attack in Bangladesh”, 29 May 2012; Committee to Protect Journalists, “Bangladeshi journalists call for justice in couple’s murder”, 27 February 2012; Human Rights Watch, World Report 2014: Bangladesh.

increased crackdown on journalists and government critics in the lead-up to the January 2014 elections. The author therefore argues that his life would be in danger if he returns to Bangladesh.

3.3 The author further submits that the Immigration and Refugee Board erred in finding that he lacked credibility. The author maintains that he provided to the Board substantial documentation establishing that he had written articles on drug trafficking in Bangladesh and filed a police complaint after receiving threatening telephone calls. The author also asserts that he has never been afforded a fair opportunity to contest the merits of the negative decision by the Board because of the procedural flaws inherent in the judicial review process. Specifically, the author claims that the Federal Court grants only 10 per cent of requests for leave to apply for judicial review of a negative decision. Moreover, the author alleges that the judicial review process does not involve a review on the merits, as questions of credibility and appreciation of evidence are reviewed only on the basis of a standard of “reasonableness” rather than a standard of “correctness”.

#### **State party’s observations on admissibility**

4.1 In its observations dated 27 January 2015, the State party maintains that the communication is inadmissible due to the author’s failure to exhaust domestic remedies because (a) the author filed a new Pre-Removal Risk Assessment application on 22 October 2014, which is still pending; and (b) although he has been eligible to file an application for permanent residence on humanitarian and compassionate grounds since 13 September 2014, he has not done so. The State party submits that either procedure, if successful, would allow the author to remain in Canada. Moreover, the humanitarian and compassionate process would take into consideration any potential hardships the author might face in Bangladesh. The State party notes that in *Dastgir v. Canada* and *Khan v. Canada*, the Committee was of the view that the humanitarian and compassionate application was an effective remedy that must be exhausted for purposes of admissibility.<sup>6</sup> The State party regrets the Committee’s more recent position that humanitarian and compassionate applications are not remedies that must be exhausted for the purposes of admissibility.<sup>7</sup> The State party takes the view that the grounds on which the author of a communication is allowed to remain in Canada should not matter, as long as the author is protected from removal to the country where she or he alleges to be at risk. The humanitarian and compassionate application is a fair administrative procedure, subject to judicial review, that includes an assessment of relevant hardship factors that an individual may face if he or she were required to apply for permanent resident status from outside Canada. In fact, a number of authors have had their international communications before various treaty bodies, including the Committee, rendered moot because their humanitarian and compassionate application was successful. Recently, two communications before the Committee involving Canada were discontinued for this reason: communications Nos. 2138/2012 and 2144/2012.

4.2 The State party further considers that the author’s allegations under articles 9 (1), 19 (1) and (2), and 26 of the Covenant are incompatible with the scope of these provisions and are therefore inadmissible *ratione materiae*. These articles do not impose an obligation on States to refrain from removing individuals who potentially face a real risk of infringement

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<sup>6</sup> The State party cites, inter alia, communication No. 1578/2007, *Dastgir v. Canada*, decision of inadmissibility adopted on 30 October 2008.

<sup>7</sup> The State party cites communication No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4; and communication No. 1816/2008, *K.A.L. and A.A.M.L. v. Canada*, decision of inadmissibility adopted on 26 March 2012, para. 6.5 (finding that the authors were not required to apply for a judicial review of a second negative decision on an application for residence on humanitarian and compassionate grounds for admissibility purposes.)

of their rights to liberty or security of the person, their freedom of opinion and expression or their right to equality in the receiving State.<sup>8</sup> The State party further considers that any alleged risk to the author's security of the person under article 9 (1) can be considered as part of the assessment of his complaint in relation to article 6 (1). It also considers that the author has not clearly articulated how his removal to Bangladesh would violate the State party's obligations under articles 9 (1), 19 or 26 of the Covenant; he presumably contends, with respect to article 9 (1), that he would face a risk of arbitrary arrest or detention in Bangladesh. The author has not alleged that the State party has subjected him to arbitrary arrest or detention. In fact, the author has never been detained in Canada during the course of his immigration proceedings.

4.3 Moreover, the State party considers that the communication is inadmissible as being manifestly unfounded for three reasons. First, with regard to the negative credibility findings of the State party's authorities, it is not the Committee's role to review credibility assessments made by domestic decision makers. The author's allegations before the Committee are based on the same facts and evidence that were presented to the Refugee Protection Division and the Federal Court and that have been filed before the Pre-Removal Risk Assessment officer. The Division rejected the author's narrative of feared persecution on two grounds: credibility issues and the Division's appreciation of the totality of the evidence submitted in support of the claim for protection. The Division reasoned that although it believed that the author was a journalist in Bangladesh who may have written one article condemning Awami League members and co-written one article condemning police corruption, the salient question was whether he was persecuted or targeted as a result of his work as a journalist in Bangladesh. Despite the Division's determination that the author lacked credibility, it nevertheless fully considered the objective documentary evidence he submitted concerning his alleged situation as a journalist who had published incriminatory articles in Bangladesh.

4.4 Notably, the Refugee Protection Division did not find it credible that the author could be persecuted by the Bangladeshi police because, when prompted at the hearing to identify the incidents related to his fear, he failed to mention the 14 October incident he had referred to in his Personal Information Form, which the Division considered to be the sole incident in support of his claim that he feared the police.<sup>9</sup> The Division determined that it was reasonable to expect that the author should have recalled this single incident related to his fear of the police; his failure to remember it adversely affected the credibility of his allegations. Moreover, when asked by the Division about his colleague A, with whom the author co-wrote an article on police corruption and with whom the author claims he had spoken a few times since being in Canada, including about a month prior to the Division hearing, the author categorically indicated that A was still working for the same newspaper and had not had any incidents with the police. The Division was concerned about this discrepancy, since it was not credible that A, a fellow journalist in essentially the same situation as the author in the context of allegations of justifiable fear of the police, had had no problems with the police. When questioned further about why A would not have been subjected to the same treatment from the police as the author, the latter adjusted his testimony to first say that A was no longer working for the crime department of the newspaper, only to later change his testimony again and say that the police had sought out

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<sup>8</sup> The State party considers, however, that any alleged risk to the author's security of the person under article 9 (1) of the Covenant can be considered as part of the assessment of his complaint in relation to articles 6 (1) and 7.

<sup>9</sup> The State party further notes that on the form for his claim for protection as a refugee, which he signed on 23 November 2011, the author stated that he has been "sought by the police" but that he has never "been arrested" or "been detained by the police".

A and that he must have “managed his situation” with them. Eventually, the author asserted that A may have had problems with the Bangladeshi police but he never thought to ask him about that. In the Division’s view, it was illogical for the author not to inquire whether his colleague still in Bangladesh was being targeted by police. Moreover, the inconsistencies in the author’s testimony and the absence of any trustworthy evidence demonstrating that the police were pursuing either the author or A, who together authored and published an article on police corruption, further supported the finding that the author’s allegations of being targeted by police were simply not credible. The State party considers that A’s letter (dated 5 March 2014 and submitted to the Committee) must be treated with the same level of careful scrutiny. It strains credulity that members of the Bangladeshi police would not have visited A as they had the author, or would have waited for the author to leave Bangladesh before doing so. The State party submits that it is even more difficult to believe that the author is only now being made aware of threats made against his colleague and co-author in relation to the same newspaper article.

4.5 The State party observes that the Refugee Protection Division reached the same conclusion with respect to the author’s allegation of being persecuted by local members of the Awami League Government and associated thugs, again because of important omissions and inconsistencies in his oral testimony or between this testimony and his Personal Information Form. In the Division’s view, three elements were particularly revealing. First, the author testified orally concerning an incident in February 2013 when Awami League members and thugs descended on the home of his relatives, looking for him; however, this incident does not appear in his Personal Information Form, which the author had declared to be complete, true, exact and up-to-date as of the day of the hearing. When asked about this discrepancy during the hearing, the author responded that it was an omission or mistake on his part. However, the Division rejected this explanation, deeming that it could reasonably expect the author to recall the February 2013 incident in documents he filed on 26 June 2013 in support of his application or, at least, to recall the incident before declaring his Personal Information Form complete, true, exact and up-to-date as of the day of the hearing. Moreover, the Division determined that the author’s credibility was further adversely affected when he again adjusted his testimony at the hearing to say that there had been two “home visits” by Awami League members and thugs in February 2013, one at the residence he shared with his wife and children (where they apparently continue to reside) and one at his relatives’ home. Second, the Division identified mistakes in the dates and number of threatening telephone calls the author claims to have received. In the view of the Division, an experienced senior crime reporter such as the author could reasonably be expected to be adept at recalling the dates and chronology of events. Even without focusing on the precise dates of events, the Division questioned the credibility of a journalist of 14 years’ experience who could not recall if the threat from Awami League thugs occurred on the same day as his complaint to the police or the day prior. Moreover, despite the author’s suggestion by way of explanation that there had been “a printing error”, the Division viewed it as highly unlikely that two separate newspapers could print the same error, especially given the level of detail in the reporting articles. Third, in the light of the overall lack of credibility of the author’s allegations, coupled with important inconsistencies between the author’s Personal Information Form, his testimony and the supporting material he submitted, the Division determined that many of these exhibits, including a letter from the Crime Reporters Association of Bangladesh, were self-serving and had no probative value in corroborating the author’s allegations that he was targeted by local Awami League members and thugs. Concerning the author’s application for leave for judicial review, the Federal Court’s stated test for granting leave is that an applicant must show that there is a “fairly arguable case” or “a serious question to be determined”.

4.6 Second, the State party considers that the communication is inadmissible as manifestly ill-founded because the author has not met his evidentiary burden of



substantiating his account of past experience in Bangladesh, nor has he shown that current conditions in the country raise for him personally any risk of irreparable harm. The State party recalls the Committee's jurisprudence stating that "the risk must be *personal* and that there is a *high threshold* for providing substantial grounds to establish that a real risk of irreparable harm exists".<sup>10</sup> A "real risk" means that the risk must be "the necessary and foreseeable consequence of the deportation" and there must be evidence to support this conclusion.<sup>11</sup> The State party considers that the author has not met his burden of establishing that he would personally face a foreseeable risk of irreparable harm if returned to Bangladesh based on his past work as a journalist, whether such an alleged threat emanates, as the author asserts, from thugs associated with the ruling political party or from police in Dhaka. To the extent that he asserts any fears based on his being a Bangladesh National Party supporter, neither his claims before the domestic authorities nor his communication ever focused on his political affiliation or his role as a human rights defender; his claims are based exclusively on assertions that he faces irreparable harm due to his newspaper reporting and work as a journalist. In this regard, although he had worked as a journalist since 1997, he alleges that he received threats only in 2011, in response to a controversial article he co-authored. He does not allege to have been harassed or threatened throughout his career. Nothing in the material he submitted to the Committee tends to suggest that he stands out in any way from other journalists in Bangladesh.

4.7 The State party further submits that several objective elements undermine the credibility of the author's allegation that he received threats in the summer of 2011 because of his work as a journalist. For example, as the State party's immigration authorities noted during the course of the proceedings involving him, the discrepancies in the author's recollection of his experiences are rather unusual for an experienced journalist. As another example, it is suspect that the other journalist who co-authored the newspaper article at the centre of the alleged threats never indicated that he faced similar threats or visits from thugs or police until after the Canadian Refugee Protection Division determined that the author's story was not credible in that regard; only then did the author file A's letter purportedly corroborating his account. The State party considers that this seriously calls into question the probative weight of this evidence and that none of the documents submitted by the author provides reliable substantiation for his allegations. The State party maintains that the letter from the Crime Reporters Association of Bangladesh dated 27 February 2014 lacks specific details concerning any abuse the author may have experienced in the past and is entirely speculative concerning any risks he might face if returned to Bangladesh. There is no explanation as to why the author stands out from among journalists in Bangladesh such that it is credible and reasonable to think that he is personally at risk of the stated dangers more than three years after one locally focused newspaper article.

4.8 The State party considers that an additional factor undermining the credibility of the author's allegations is the absence of any explanation as to why the allegedly offending newspaper article he co-authored, along with the media report of the threats he allegedly received, refer to a journalist with another name. In the absence of any explanation by the author, it is open to question why he would have published in *The Daily Kaler Kantho* under an alias [Y] when the press pass establishing his credentials as senior reporter refer to him as X. It is equally plausible that these newspaper articles refer to another journalist altogether, and not the author. Indeed, while the State party does not dispute that the author

<sup>10</sup> The State party cites communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2 (emphasis added by the State party; internal citations omitted).

<sup>11</sup> The State party cites, inter alia, communication No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, paras. 6.11-6.13; communication No. 706/1996, *G.T. v. Australia*, Views adopted on 4 November 1997, paras. 8.1-8.2.

worked as a journalist in Bangladesh, it considers that he has not provided any probative evidence, such as articles that could be unequivocally attributed to him, to support his allegation that his work attracted the attention of police and thugs.

4.9 Similarly, the State party considers that apart from one alleged visit from the police in 2011 after the author had left Bangladesh—for which there is no objectively corroborating evidence, nor any real evidence that police were then, in fact, looking for the author for the alleged nefarious purposes he asserted—there is no indication that his family was the object of continued harassment or intimidation of any kind, even on an irregular basis. The State party submits that this further undermines the credibility of the author’s account. Moreover, it creates serious doubt that anyone is waiting for the author’s return, taking into account that almost four years have passed since the alleged threats in relation to the locally focused newspaper article in question and there have been no apparent further incidents involving his family or fellow journalist and co-author.

4.10 Third, the State party considers that the communication is inadmissible as manifestly ill-founded because even if reports tend to show that the situation of journalists in Bangladesh is generally less than ideal, the author has not substantiated the allegation that he would be personally at risk upon return. Indeed, the State party considers that the author’s allegations are all related to the general “risk to life” that he alleges he will face upon return to his country of origin and the communication is devoid of any explicit explanation relating to purported risks to his personal security or liberty (apart from a brief mention of the risk of arbitrary detention in some of the letters he offers in support), anticipated infringements of his freedom of expression or fears that he will suffer discrimination. The State party recalls that according to the Committee’s jurisprudence, “the existence of a pattern of gross, flagrant or mass violations of human rights in a country is not enough; a complainant must show that he or she faces a foreseeable, real and personal risk”.<sup>12</sup>

4.11 The State party further contests the author’s assertion that the situation he would face in Bangladesh has become much more dangerous since January 2014. The State party considers that on the basis of much of the material submitted by the author himself, the more repressive climate for journalists in Bangladesh following the January 2014 elections may relate more narrowly to the intimidation faced by journalists covering the post-election protests. This is not relevant to the author, who was not in Bangladesh for the elections and never reported on those matters. In any case, the author has in no way established that he has a particularly prominent profile as a journalist or otherwise established any personalized risk, on even a prima facie basis. Finally, for the reasons described above, the State party also considers that the communication is wholly without merit.

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

5. In his comments dated 31 March 2015, the author asserts that the situation of journalists in Bangladesh is extremely dangerous, especially for individuals like the author who have openly criticized the actions of the Awami League. To support this assertion, the author cites recent reports by Reporters Without Borders, the Committee to Protect Journalists and Odhikar, indicating that journalists and bloggers in Bangladesh have been arrested and attacked in 2014 and 2015.<sup>13</sup> On 11 June 2015, the author reported that his new Pre-Removal Risk Assessment application had been denied on 13 May 2015.

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<sup>12</sup> The State party cites Committee against Torture communication No. 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, paras. 8.3, 8.4 and 8.7.

<sup>13</sup> The author cites Reporters Without Borders, 2015 World Press Freedom Index; Committee to Protect Journalists, “Mission Journal: Bangladeshi press reined in as Hasina exerts authority”, 26 March 2015

### State party's further observations

6.1 On 12 August 2015, the State party requested the lifting of interim measures. The State party further considers that the author does not face irreparable harm if returned to Bangladesh, a condition required for the maintenance of interim measures under rule 92 of the Committee's rules of procedure. The State party reiterates its observations referred to in paragraph 4.11 concerning conditions in Bangladesh since January 2014. The State party also reiterates the observations referred to in paragraph 4.10 concerning the claim that the general human rights situation in Bangladesh regarding journalists is insufficient to establish that the author faces a real and personal risk of irreparable harm. On this issue, the State party considers that there is reason to believe that Bangladesh, which constitutionally guarantees freedom of expression and of the press, would be adequately equipped to protect the author. The State party cites the report of the Working Group on the Universal Periodic Review of the Human Rights Council on Bangladesh, in which the Foreign Minister of Bangladesh demonstrated awareness of the situation and claimed that "all reported cases of violence against journalists were followed through with investigation and prosecution, and some had been brought to closure".<sup>14</sup> The State party further notes that the report indicates that Bangladesh supported several recommendations relating to the safety of journalists and the promotion and protection of freedom of expression and freedom of the press. The State party reiterates its observation, referred to in paragraphs 4.6 and 4.7, that the author has not shown that he had a particularly prominent profile as a journalist such that he would stand out from many other journalists in Bangladesh.

6.2 The State party further considers that, according to the author's own evidence, the threats against him were limited to three specific incidents in 2011. He does not explain why he would be at risk as a result of those threats if returned to Bangladesh in 2015. Moreover, the risk faced by the author has already thoroughly been assessed by several domestic authorities: the Refugee Protection Division; a Canadian Border Services Agency enforcement officer, who considered the author's application for an administrative deferral of removal; and a Senior Immigration Officer (Pre-Removal Risk Assessment Officer). The author did not apply for judicial review of the Pre-Removal Risk Assessment decision.

6.3 On a general level, the State party also considers that requests for interim measures should be used with caution and reserved for *prima facie* meritorious cases. The State party emphasizes that it has a right to control the entry, residence and expulsion of aliens and, in particular, has the right to maintain the integrity of its immigration and protection determination system by removing claimants who have been determined not to be in need of protection. The State party states that it "has the utmost respect for the work of the Committee. However, it submits that the Committee should be reluctant to interfere with the removal of individuals found not to be at risk by domestic decision makers, especially in cases where their allegations and personal narratives are not consistent with a future risk of irreparable harm when current country conditions are taken into account. Individuals such as the author, whose allegations of risk have been thoroughly assessed and who have been found not to be at a real and personal risk should not be the subject of [interim measures.]" The fact that the author faces removal to a country with a problematic human rights record is not by itself adequate for the maintenance of interim measures, given the evidence that he does not face a real and personal risk of irreparable harm upon return.

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(stating in part: "Those not supporting the Awami League are in the line of fire."); Committee to Protect Journalists, "Bangladesh: attacks on the press in 2013", 22 September 2014; and Odhikar, "Human Rights Monitoring Report (February 1-28, 2015)", 1 March 2015.

<sup>14</sup> The State party cites A/HRC/24/12 (8 July 2013), paras. 67, 129.72, 129.77 and 129.101-129.104.

**Author's further comments**

7. In a communication dated 31 August 2015, the author reports that he filed a humanitarian and compassion application on 29 July 2015. He also submits that such an application “does not stop removal until acceptance of the application at the first level” and argues that the State party’s submissions indicate that it intends to remove the author from Canada before his application or communication can be examined. The author further reiterates his contention that he would face a personal risk if returned to Bangladesh and cites several recent news articles indicating that journalists in Bangladesh are currently at risk of ill-treatment by the authorities.<sup>15</sup> He therefore argues that interim measures remain necessary.

**Issues and proceedings before the Committee***Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the claim is admissible under the Optional Protocol to the Covenant.

8.2 The Committee notes, as required by 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.

8.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of 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>16</sup> The Committee notes that the author has a pending humanitarian and compassion application and that the State party considers this to be an effective remedy. While noting the State party’s observations that the humanitarian and compassion application could allow the author to reside permanently in Canada and that two recent communications before the Committee were discontinued because their humanitarian and compassion applications were granted, the Committee nevertheless notes that the author’s removal to Bangladesh has not been stayed during the consideration of his humanitarian and compassion application and therefore considers that this application

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<sup>15</sup> The author cites *The Northeast Today* (India), “Journalism at risk in Bangladesh”, 4 May 2015 (“Journalism in Bangladesh is at risk, as stated in a report by an international organisation, Article 19 yesterday. There has been an upsurge in atrocities on journalists in Bangladesh which arouses grave concern.”); International Federation for Human Rights, “Bangladesh: Two more journalists arrested; government trying to silence free speech”, 20 August 2015 (“Journalist Probir Sikdar, owner of the online newspaper *Uttaradhikar Ekattor News*, was arrested on the evening of 16 August 2015 from his Dhaka office for allegedly defaming a government minister on Facebook.... Similarly, on 18 August 2015 Shaukat Mahmud, President of the Bangladesh Federal Union of Journalists, was arrested by plain clothed policemen for allegedly committing an arson attack on a bus on 23 January 2015.”); and Committee to Protect Journalists, “Journalist arrested in Bangladesh under country’s ICT Act,” 17 August 2015 (relating to the arrest of Probir Sikar and stating: “Sikdar was arrested following a complaint that alleged he had ‘tarnished the image’ of a cabinet member belonging to the ruling Awami League party, according to news reports. In a Facebook post earlier this month, Sikdar said he had been threatened and that three individuals, including Khandaker Mosharraf Hossain, Minister of Local Government, Rural Development and Co-operatives, as well as a convicted war criminal and a businessman, should be held responsible if something happened to him, according to police cited in the independent newspaper *The Daily Star*.”)

<sup>16</sup> See *Warsame v. Canada*, para. 7.4; communication No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5.

cannot be considered as offering him an effective remedy under the circumstances.<sup>17</sup> Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

8.4 The Committee notes the State party's argument that the author's claims are inadmissible under article 2 of the Optional Protocol due to insufficient substantiation. Concerning the author's claims under articles 6 (1) and 7 of the Covenant, the Committee notes that the author has explained that the reasons he fears being returned to Bangladesh are based on his status as a supporter of the Bangladesh National Party and his investigative journalism uncovering alleged illicit government activity and corruption. The Committee notes that the author has not provided any information or documentation indicating that he was targeted due to his support for the Bangladesh National Party. The Committee therefore finds this aspect of the author's claim inadmissible under article 2 of the Optional Protocol. However, the Committee finds that, for the purposes of admissibility, the author has provided sufficient details and documentary evidence regarding his personal risk of facing death or cruel, inhuman or degrading treatment or punishment due to his work as an investigative journalist in Bangladesh and therefore finds this part of the communication admissible.<sup>18</sup>

8.5 With regard to the author's claims under articles 9 (1), 19 (1) and (2), and 26 of the Covenant, the Committee notes the State party's argument that its non-refoulement obligations do not extend to potential breaches of these provisions and that these claims are therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol. The Committee further notes the State party's observation that the author has not clearly articulated how his removal to Bangladesh would violate the State party's obligations under these articles. The Committee finds that the author failed to substantiate, for purposes of admissibility, his allegations under articles 9 (1), 19 (1) and (2), and 26. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

8.6 The Committee declares the communication admissible insofar as it raises issues under articles 6 (1) and 7 and proceeds to consideration of the merits.

#### *Consideration of the merits*

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

9.2 The Committee notes the author's claim that he would face ill-treatment if he were removed to Bangladesh due to his work as an investigative journalist who authored articles exposing criminal activity by the ruling party and the police force. It also notes the State party's observations that the domestic decision makers were not satisfied that the author had been personally targeted as a journalist, or would be targeted if he returned to the country. The Committee further takes note of the State party's observation that it is not the Committee's role to review credibility assessments made by domestic decision makers.

9.3 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

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<sup>17</sup> See communication 1898/2008, *Naveed Akram Choudhary v. Canada*, Views adopted on 28 October 2013, para. 8.3; *Warsame v. Canada*, para. 7.4.

<sup>18</sup> See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 8.6.

of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.<sup>19</sup> The Committee has also indicated that the risk must be personal<sup>20</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>21</sup> The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>22</sup>

9.4 While noting the reports cited by the author concerning serious human rights violations against journalists in Bangladesh, especially those who report on corruption and other politically sensitive matters, the Committee observes that the author's claims were thoroughly examined by the State party's authorities in the context of his refugee claim and Pre-Removal Risk Assessment application. The Refugee Protection Division found that while the author may have worked as an investigative journalist in Bangladesh, he had not substantiated his claims concerning alleged attacks and threats directed towards him personally; that he had not shown he would be of interest today to the Bangladeshi police or to individuals working for the Awami League; that the evidence he tendered to substantiate his claims did not have sufficient probative value;<sup>23</sup> and that while he submitted material referring in general terms to human rights violations encountered by journalists in Bangladesh, he did not provide any material indicating that he would be personally targeted.

9.5 The Committee further notes that although the author contests the Refugee Protection Division's finding as to the risk of harm he faces in Bangladesh, he has not attempted to refute any of the specific credibility concerns raised by the Division or the Pre-Removal Risk Assessment Office concerning the documentation he provided or his testimony before the domestic authorities.<sup>24</sup> In this regard, the Committee observes that the author has not explained why the name of the author of the article published in *The Daily Kaler Kontho* that he provides to show that he is at risk is different from his own name, or how he would be identified as the author of such articles if he were returned to Bangladesh. The Committee also takes note that the author has not commented on the observations of the Refugee Protection Division and the Pre-Removal Risk Assessment Office that he had stated that the co-author of the *Daily Kaler Kontho* article, who is still in Bangladesh, has not experienced any problems with the police there. While the author asserts that he did not have a fair opportunity to contest the merits of the Division's decision before the Federal Court, he does not specify the basis of his application for leave for judicial review and does not comment on the State party's observation that such applications are granted where there is a "fairly arguable case" or "a serious question to be determined". Accordingly, the Committee considers that the author has not identified any irregularity in the decision-making process or any risk factor that the State party's authorities failed to take properly into account. The Committee considers that while the author disagrees with the factual conclusions of the State party's authorities, he has not shown that they were arbitrary or manifestly erroneous, or amounted to a denial of justice. In the light of the above, the

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<sup>19</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>20</sup> See, inter alia, *K v. Denmark*, para. 7.3; communication No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2; *X v. Denmark*, para. 9.2.

<sup>21</sup> See *X v. Denmark*, para. 9.2; communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>22</sup> See, inter alia, *K v. Denmark*, para. 7.4.

<sup>23</sup> See paras. 4.4-4.9 above.

<sup>24</sup> See paras. 4.4, 4.5, 4.7 and 4.8 above.

Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to article 6 (1) or 7 of the Covenant if he were removed to Bangladesh.

10. 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 author's removal to Bangladesh would not violate his rights under article 6 (1) or 7 of the Covenant.

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