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Communication No. 2284/2013

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

<i>Submitted by:</i>	F.M. (represented by Stewart Istvanffy)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	16 August 2013 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 23 August 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2015
<i>Subject matter:</i>	Deportation to Chad from Canada
<i>Procedural issues:</i>	Failure to sufficiently substantiate allegations; incompatibility <i>ratione materiae</i> with the Covenant
<i>Substantive issues:</i>	Right to an effective remedy; right to life; prohibition of torture and cruel, inhuman or degrading treatment; rights of aliens (expulsion)
<i>Articles of the Covenant:</i>	2, 6 (para. 1), 7 and 13
<i>Article of the Optional Protocol:</i>	2

[Annex]



Annex

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

concerning

Communication No. 2284/2013*

Submitted by: F.M. (represented by Stewart Istvanffy)

Alleged victim: The author

State party: Canada

Date of communication: 16 August 2013 (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. 2284/2013, submitted to the Human Rights Committee on behalf of F.M. 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, paragraph 4, of the Optional Protocol

1.1 The author of the communication, dated 16 August 2013, is F.M., a Chadian national born on 1 November 1975 in Moundou (Chad), who is under threat of deportation to Chad. He claims that the State party would violate article 2, article 6, paragraph 1, articles 7 and 13 of the Covenant if it were to deport him. The author is represented. The Optional Protocol entered into force for Canada on 19 August 1976.

1.2 On 23 August 2013, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, informed the author that it had denied his request for the provision of interim measures consisting of the issuance of a request to the State party to refrain from deporting the author while the communication was being examined.

1.3 On 9 December 2013, after examining new evidence submitted by the author on 6 December 2013 (see para. 2.12 below), and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from

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

deporting the author to Chad while the communication was being examined. This request to the State party was reiterated on 18 December 2013 and 5 June 2014.

1.4 On 5 February 2014, as part of its observations on the admissibility and the merits of the communication, the State party informed the Committee that it agreed to temporarily refrain from deporting the author.

The facts as presented by the author¹

2.1 Following the events that occurred in N'Djamena on 2 and 3 February 2008, during which rebel groups attacked the capital and temporarily took control, the author and his family left their home to seek refuge in Kousseri. During their absence, and because their home was one of the few that had a well, the rebels entered their home and drew water from the well. After the rebels had been driven out of the city, the author and his family were able to return to their home. At approximately 1 a.m. on the night of 20 March 2008, which was the day after they had returned home, the author was woken by a dozen men wearing turbans who claimed to be members of the National Security Agency. They accused him of having helped the rebels by letting them into his home to get water. Without giving him a chance to explain, some of the men struck him, then blindfolded him and took him away to a secret location.

2.2 The author was held incommunicado and questioned about his movements during the war; about the Association pour la promotion des libertés fondamentales au Tchad (Association for the Promotion of Fundamental Freedoms in Chad), of which he was a member; about their president; and about the rebellion in general. He was beaten, threatened and intimidated and still has a scar on his left leg. The author's detention lasted for four days, until 24 March 2008, when an officer offered to free him in exchange for his car. The officer also told him that, if he refused, he would be put to death like others who had supported the rebels. The author agreed to sign a number of documents for his release. The officer who had helped him escape drove him to the border with Cameroon, where the author, with the help of his employer, was able to obtain a visa for the United States. While in Cameroon, the author learned that his home and several others in the neighbourhood had been destroyed by fire and that he was still being sought by officers of the National Security Agency. The author's three children, born on 16 April 1998, 29 September 2001 and 20 August 2006, remain in Chad to this day.

2.3 The author took advantage of the fact that one of his uncles worked at an airport in Chad to purchase a low-cost ticket to the United States and left Chad by plane on 13 April 2008. From the United States, the author, who does not speak English and has family in Canada, crossed the Canadian border on 29 April 2008 and claimed refugee status there.

2.4 In support of his application to the Committee, the author provided an undated statement from Souleymane Guengueng² and a letter from Brian McDonough dated 12 December 2012. Mr. Guengueng states that F.M., whom he met in Montreal in January 2013, had in fact been held prisoner in Chad, that he narrowly escaped death and that if he were to return he would again be in mortal danger. The letter from Mr. McDonough, lawyer and Director of the Social Action Office of the Montreal

¹ The author submitted additional information on 12, 18 and 21 November 2013 and on 6 and 18 December 2013. For the purposes of precision and thoroughness, this section is also based on the judicial and administrative decisions adopted by the Canadian courts and outlines the remedies sought by the author even in those cases where the remedies or their outcomes post-date the author's submission of the communication to the Committee.

² Honorary president of the Association des victimes de crimes et répressions politiques au Tchad (Association of Victims of Political Repression and Crime in Chad), named human rights defender of the year, 2002, by Human Rights Watch.

archdiocese, underlines the risks that the author would run if he returned to Chad. Mr. McDonough says that he personally spoke with Marie Larlem, General Coordinator of the Association pour la promotion des libertés fondamentales au Tchad, in whose name the author had provided assistance to prisoners of conscience and victims of ill-treatment. Ms. Larlem unequivocally confirmed that F.M. would be in danger if he were forced to return to Chad because of the control exercised by members of the military and the attacks committed against human rights defenders, which go unpunished.

2.5 In his letter Mr. McDonough also indicates that he spoke with Father Diondoh, who had taken over the care of F.M.'s children after his departure from Chad. Father Diondoh confirmed that persons working to defend human rights were under threat.

2.6 On 29 November 2010, the Refugee Protection Division of the Immigration and Refugee Board of Canada rejected the author's asylum application. The Board found that the author's application suffered from "serious credibility problems" and considered his account to be implausible and lacking in believability. The Board found it particularly doubtful that the author's home had been destroyed by government authorities because they bore him ill will. It pointed out that government authorities had destroyed nearly 1,000 houses in various parts of the city in an attempt to drive out the rebels and that there was nothing to indicate that the author had been targeted in particular.

2.7 The Board also found the author's claim that he belonged to an association for the promotion of fundamental freedoms in Chad to be implausible after determining that his membership card was fraudulent. The fact that the author had not applied for protection in the United States, his port of arrival, but had preferred to head towards the Canadian border, was deemed incompatible with his claim that he feared for his life. Lastly, the Board found that the author had not proved he was in need of protection and therefore rejected his asylum application.

2.8 An application for judicial review was submitted to the Federal Court of Canada, but, after a hearing, the Court rejected it on 20 December 2011 on the grounds that the Immigration and Refugee Board had made a reasonable decision. Meanwhile, on 22 November 2011, the author submitted an application for permanent residency on humanitarian and compassionate grounds, in which he put forward arguments relating to the general situation in Chad and his integration into Canadian society. The application was rejected on 25 July 2012, the authorities responsible for the residency procedure having found that, although the overall human rights situation in Chad was a matter for concern in many respects, the author had not shown how he would personally be at risk. In addition, it was determined that the author had not become so well-established in Canada that this could be considered sufficient grounds for approving the application. On 26 October 2012, the author applied for judicial review of the rejection of his residency application and for leave to appeal under section 72 (1) of the Immigration and Refugee Protection Act. The Federal Court of Canada rejected this application on 21 March 2013.

2.9 On 23 December 2011, the author submitted a first application for pre-removal risk assessment under section 112 of the Immigration and Refugee Protection Act, in which he cited the same risks as in his asylum application. His application was rejected on 31 May 2012 on the grounds that the evidence that had been submitted merely constituted a repetition of the author's initial arguments or had little probative weight. The officer conducting the assessment had determined that activity on the part of rebel groups in Chad had lessened and that there had been a corresponding reduction in the number of arbitrary arrests. It was accordingly concluded that the author was not at risk of persecution. On 26 October 2012, the author applied for, and was granted, a judicial review of this decision by the Federal Court. On 17 December

2012, the Federal Court ordered a stay of removal. However, on 15 July 2013, the Federal Court upheld the decision, having concluded that the risk assessment officer did not err in rejecting the evidence that had been available at the time of the initial application for protection. Moreover, the Federal Court also reaffirmed that the fact that the author had produced a fraudulent membership card for the Association pour la promotion des libertés fondamentales au Tchad had contributed to the Board's initial conclusion that the author lacked credibility. The Federal Court also found that the risk assessment officer had reached a reasonable conclusion when that officer had decided that the Refugee Protection Division would have rendered the same decision if it had been presented with the new evidence produced by the author.³

2.10 On 28 October 2013, the author submitted a second application for pre-removal risk assessment.⁴ A stay of removal was granted pending completion of the process. His application was rejected on 20 November 2013. In support of his application, the author had submitted the same evidentiary materials that were attached to his application to the Committee (detailed in paragraphs 2.4 and 2.5 above).⁵ The risk assessment officer did not accord probative value to the new materials, largely because of the chronological inconsistency between Mr. Guengueng's statement and the author's account.

2.11 On 27 November 2013, the author applied for a judicial review of the decision on his second pre-removal risk assessment application and a stay of the order for his removal to Chad. On 4 December 2013, the application for stay of his removal was rejected. The author's date of departure was set for 10 December 2013.

2.12 On 6 December 2013, the author submitted a new application to the Committee for interim measures that would suspend his removal to Chad. In support of his application, he submitted a written statement dated 5 December 2013 from Jacqueline Moudeïna, a lawyer who is president of the Association tchadienne pour la promotion et la défense des droits de l'homme (Chadian Association for the Promotion and Defence of Human Rights) and coordinator of counsel for the victims of Hissène Habré. Ms. Moudeïna noted in her statement that the author's life would be at risk if he were to return to Chad, notably because of his activism in the Catholic Church, his work with a major Chadian human rights organization and unfounded suspicions regarding his alleged support for the rebellion of February and March 2008. Ms. Moudeïna added that she had been able to examine most of the evidence submitted to the Canadian authorities and thought that there was a real and serious danger to the author. The facts had been checked with a number of persons who had attested to the danger faced by F.M. Ms. Moudeïna also confirmed that the member of the military who bears the greatest ill will towards the author is currently chief of security at the N'Djamena airport. Ms. Moudeïna concludes by saying that the author is facing a direct threat to his life and safety, and, in particular, the threat of forced disappearance. If he returned, he would immediately be arrested and tortured.

2.13 On 18 December 2013, the author informed the Committee that he had been detained on 10 December 2013 by the Canada Border Services Agency (CBSA). The author noted that he was accorded two hearings to contest his detention, on 12 and 16 December 2013, respectively, but that he had been informed by CBSA officers that the application to the Committee for interim measures was not binding on the Canadian

³ Including the letter from Father Diondoh stating that the persons who bore ill will towards the author were still searching for him.

⁴ Which may be submitted one year after the first application for pre-removal risk assessment, if accompanied by new evidence.

⁵ The author was able to submit only new evidence that post-dated the rejection of his first application on 31 May 2012.

authorities and was subject to the discretionary decision of the Ministry of Public Safety.

2.14 On 7 March 2014, a new application submitted by the author for a judicial review of the risk assessment decision of 20 November 2013 (para. 2.10) was rejected by the Federal Court.

2.15 On 2 June 2014, the author transmitted to the Committee an order from CBSA in which he was instructed to report to Pierre-Elliott Trudeau International Airport, Montreal, on 10 June 2014, for his departure from Canada.

2.16 On 4 June 2014, the Federal Court rejected the author's motion for a stay of the order for his removal to Chad. In this decision, the Court took note of the Committee's request for interim measures but indicated that "Canada [was] not bound by such a recommendation".⁶ The Court also noted that, in seeking to substantiate the risks that he faced, the applicant had submitted the same arguments which had already been considered in connection with his asylum and pre-removal risk assessment applications and that he had been granted stays of removal and had availed himself of the numerous remedies provided for in the Immigration and Refugee Protection Act. By order dated 28 August 2014, the Federal Court rejected the author's application for leave to appeal and judicial review of its decision of 4 June 2014.

2.17 On 10 June 2014, the author failed to report to the airport as instructed by CBSA. He has since been living in hiding in Canada.

The complaint

3.1 The author claims that he is being persecuted by the Chadian authorities for having provided drinking water to rebel groups but undoubtedly also for being a member of a non-governmental organization working for the defence of human rights. The author has strong reason to believe that he would be arrested at the airport, imprisoned and tortured by the Chadian authorities if he were to return. He recalls that he has already been the victim of torture and adds that if he were returned to Chad he would probably also be subjected, in violation of articles 6 and 7 of the Covenant, to the summary execution from which he narrowly escaped in the past.

3.2 The author's asylum application was rejected by the Refugee Protection Division on the grounds that he was lacking in credibility, even though he had provided a substantial amount of evidence to support his application. The evidence consists of a copy of his membership card for the Association pour la promotion des libertés fondamentales au Tchad, photos taken when his house was being destroyed, photos showing his scars, articles relating to the events of 2 and 3 February 2008 and a letter containing the testimony of a priest in Chad. Additional testimony that had been submitted was rejected on the grounds that the persons who offered it did not have direct knowledge of the facts.

3.3 The author considers that the pre-removal risk assessment process is not in accordance with the Covenant, since, under section 113 (a) of the Immigration and Refugee Protection Act, none of the evidence that was available at the time of the consideration of the case by the Refugee Protection Division could be re-examined by the officer conducting the assessment.⁷ Moreover, the standard applied by a Federal Court judge when reviewing a decision by a risk assessment officer is that of a

⁶ Referring to a ruling by the Ontario Court of Appeal, *Ahani v. Canada* (Attorney General), 2002 CanLII 23589 (ON CA).

⁷ The Act states that "an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection".

“reasonable decision”, meaning that, even if the judge asserts that the officer could have decided otherwise, the decision is maintained if it is accompanied by logical reasoning in fact and in law. The author therefore considers the remedies available in Canada to be ineffective, in violation of article 2 of the Covenant.

3.4 For the same reasons, the author claims that article 13 of the Covenant has been violated, since he has not been allowed to advance the reasons why he should not be deported or have his case reviewed by a competent authority.

State party’s observations on admissibility and merits

4.1 On 5 February 2014, the State party submitted its observations on the admissibility and the merits. The State party notes that the author’s allegations are the same as those presented to the Canadian authorities and recalls that it is not the role of the Committee to evaluate facts and evidence unless the national authorities’ evaluation was manifestly arbitrary or amounted to a denial of justice.⁸ The material submitted by the author does not support a finding that the Canadian authorities’ decisions suffered from any such defects.

4.2 According to the State party, the author’s claim under article 2 of the Covenant should be declared inadmissible, as this provision cannot by and of itself give rise to a claim.⁹ Article 2 of the Covenant does not establish an independent right to reparation but merely defines the scope of States parties’ legal obligations.¹⁰ Given the subsidiary nature of article 2, only a concomitant violation of a recognized right may give rise to the right to a remedy.¹¹ Consequently, the author’s claims in this regard must be rejected in accordance with article 3 of the Optional Protocol or, alternatively, found to be groundless. It is not for the Committee to assess the entire Canadian system. Furthermore, all the Canadian institutions that have dealt with the author’s case have thoroughly examined both the claims and the evidence. The Canadian authorities have not been shown to have acted in an arbitrary fashion or to have committed any error whatsoever in the examination of the case.

4.3 With regard to the claims made under article 6, paragraph 1, and article 7, the State party submits that the author has not sufficiently substantiated his claims for the purposes of admissibility. In particular, he has been unable to substantiate his claims that his life is in danger and that he risks being tortured or subjected to ill-treatment if he is returned to Chad. The Canadian courts have found that his story is not entirely credible, since it was not supported by objective proof and was incoherent and contradictory. Furthermore, the author presented a false document to the Refugee Protection Division as proof that he is a member of an association that promotes fundamental freedoms in Chad, which greatly damaged his credibility. According to the decision of the Refugee Protection Division, the author has stated that he has never been arrested, charged or detained, but this contradicts his allegations that he was detained and held for four days in March 2008. The author has been unable to explain why he neglected to mention this. Furthermore, his claim that he is being sought to this day by the officer who freed him in 2008 in exchange for his car is implausible; he has been unable to explain why the officer who supposedly saved his life in 2008 should now be searching for him. Nor has he explained why, when applying to the Refugee Protection Division, he did not submit the written statement by Ms. Larlem in

⁸ See communication No. 1551/2007, *Tarlue v. Canada*, decision on inadmissibility adopted on 27 March 2009, para. 7.4.

⁹ The State party refers, inter alia, to communication No. 1551/2007, *Tarlue v. Canada*, para. 7.3.

¹⁰ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 3.

¹¹ See communications Nos. 343, 344 and 345/1988, *R.A.V.N. et al v. Argentina*, decision on inadmissibility adopted on 26 March 1990, para. 5.3.

order to corroborate his status as a member of the Association pour la promotion des libertés fondamentales au Tchad but instead presented this document for the first time during his first pre-removal risk assessment. In his communication to the Committee, he has provided no new facts or new evidence to show that he would be at risk of persecution if sent back to Chad.

4.4 The State party adds that the author's claims are objectively groundless, since the evidence he has presented is confined to the statements of third parties or to information that is much too vague to point to a personal and real threat. The author has furnished no evidence, nor has he claimed, that his family or former colleagues or employers have been threatened or targeted since he left Chad. If he were being actively sought by agents at the highest levels of the Chadian Government, as he contends, then the family members whom he left behind in Chad, or his former colleagues or employers, would have been contacted by government agents trying to find him or would themselves have been threatened.

4.5 Furthermore, the information in the documents provided as evidence by the author is much too vague and general to point to a real and personal danger. For example, Father Diondoh merely states in his letter that the people who bore the author ill will are still asking for information about him, but he offers no further explanations or details. Moreover, his letter contains no indication that the author's children, for whom Father Diondoh has been caring since the author's departure, have been threatened in any way. As for the letter from Mr. McDonough, it does not contain sufficiently precise information to show that the author is being sought by State agents. The sole new evidence submitted to the Committee, namely the written statement by Ms. Moudeïna dated 5 December 2013, in no way proves that the author might be at risk of being tortured or killed if he were to be returned. She gives no details about her sources and does not explain why the chief of airport security in the capital might have a personal quarrel with F.M.

4.6 The State party recalls that the evidence provided by the author to the Immigration and Refugee Board contradicts his claims that his house was destroyed because he was personally targeted by the regime. The evidence shows, instead, that the author's house suffered the same fate as nearly 1,000 other homes in N'Djamena which were destroyed during the same period by the Chadian regime in order to drive the rebels out of the capital. The information furnished by Mr. Guengueng likewise contradicts the author's claims.

4.7 The State party concludes by asserting that, even if F.M. was detained for four days more than five years ago, that does not lead to the conclusion that there is a real danger that he will be subjected to unlawful treatment today. The author's fears are founded on nothing more than speculation that he is still being sought by the authorities. The State party acknowledges that, based on the documentary sources recently examined by the Canadian authorities, the general human rights situation in Chad remains a cause for concern. However, the author has not succeeded in proving that he is personally at risk of being targeted by the authorities. Accordingly, the communication should be declared inadmissible with respect to articles 6 and 7 of the Covenant.

4.8 As regards article 13, the State party recalls that, on numerous occasions, the author could have apprised the Canadian authorities of the reasons why his asylum application should be approved and why he should not be deported. He was granted an oral interview with the Refugee Protection Division, followed by a decision by the same body. That decision was subsequently examined on the merits by the Federal Court, which rejected the application for judicial review on the grounds that the Immigration and Refugee Board had taken account of the evidence presented and that the conclusions were reasonable. The author also submitted an application for

residency on humanitarian and compassionate grounds, which was rejected, as was the application for leave to appeal and judicial review of the decision by the Federal Court. Lastly, the author also had recourse to the pre-removal risk assessment process on two occasions. The two risk assessment applications, handled by two different administrative officers, were both rejected. Moreover, the first application was examined on the merits by the Federal Court, which rejected it on the grounds that the officer conducting the assessment had properly analysed the evidence and reached conclusions that were reasonable. As for the application for leave to appeal and judicial review of the second risk assessment decision, it remains pending.¹² However, the Federal Court refused to grant a stay of execution of the author's removal order. Referring to the Committee's general comment No. 15 (1986) on the position of aliens under the Covenant, the State party notes that article 13 directly regulates only the procedure and not the substantive grounds for expulsion and concludes that the author has not sufficiently substantiated his claim that this provision has been violated; the claim should consequently be declared inadmissible.

4.9 In conclusion, the State party reiterates that the author has not substantiated his claims that he would suffer irreparable harm if he were deported to Chad. His claims were given thorough consideration and were rejected by all the Canadian authorities concerned. His claims should therefore be declared inadmissible under articles 2, 6, 7 and 13 of the Covenant. Alternatively, if the Committee were to find the communication admissible, then Canada would argue that it is unfounded for the very same reasons as previously adduced.

4.10 As regards the author's current situation, the State party further notes that, following the Federal Court's rejection of his application for a stay of execution of the removal order, such an order was issued by CBSA in which the date of departure was set as 10 December 2013. In response to the Committee's request for interim measures on 9 December 2013, the State party agreed to a stay of removal. The author is still in Canada. Despite the stay of his removal, however, the author should have reported to the airport as instructed on 10 December 2013 to meet with a CBSA agent, since he had not been informed of the issuance of a stay of the removal order by CBSA. Since he failed to do so, CBSA officers made certain inquiries in an attempt to locate him. When it was found that he did not reside at the address provided to the authorities and that he had no fixed address, the author was placed in detention pursuant to section 55 of the Immigration and Refugee Protection Act, since he was deemed to be at risk of failing to appear in the event of a removal order.

4.11 The reasons for the author's detention were regularly reviewed by the Immigration Division, in conformity with the Immigration and Refugee Protection Act (sections 57 (1) and (2)). On 16 December 2013, an offer of release on bond of 2,500 Canadian dollars was made, on the condition that he remain at the address provided by the Canadian authorities at all times and that he report to a CBSA office within 48 hours of his release and every week thereafter. On 19 December 2013, the author was released on these conditions.

Author's comments on admissibility and merits

5.1 On 31 October 2014, the author submitted comments on the State party's observations in which he reiterates his initial arguments. He points out that, despite the Committee's intervention, he was ordered to report for a pre-removal interview on 23 May 2014 under the terms of a removal order which set his date of departure from Canada as 10 June 2014. Since he did not report on that date, he is now being sought and is living in hiding. Since he is in hiding and alone, he has no access to the

¹² This was true at the time of the State party's submission of its observations. The application was rejected on 7 March 2014 (see para. 5.1 below).

psychological support or medical care which he nevertheless needs to help him deal with the anxiety attacks and depression from which he suffers.

5.2 He reaffirms that he has not benefited from effective remedies during the consideration of his pre-removal risk assessment applications and applications for judicial review in the Federal Court; that materials submitted in his pre-removal risk assessment applications as new evidence with strong probative value were indiscriminately rejected; that too many negative conclusions were drawn from contradictions in his testimony that should be attributed to the state of shock and fatigue he was in upon his arrival in Canada; and that he currently suffers from stress, anxiety and profound depression. He reaffirms that, in the event of his forcible return to Chad, he would be at risk of arrest, detention, torture and summary execution by the Chadian authorities.

Supplementary submissions by the author¹³

6.1 On 19 March 2015, the author stated that he was in psychological distress, was having dark thoughts and was living in total isolation, in hiding and in fear of being arrested and deported to Chad. He requested that the Committee expedite its consideration of his communication.

6.2 On 8 April 2015, the author again drew the Committee's attention to his declining mental health and transmitted several letters in support of his cause.¹⁴

Issues and proceedings before the Committee

Interim measures

7. The Committee takes note of the State party's assertion that it agreed to stay the execution of the order for the author's removal and its statement that the author should have reported to the airport as instructed by CBSA despite the issuance of a stay of the removal order. The Committee nonetheless remains concerned by the decision of the Federal Court of Canada of 4 June 2014 in which the Court found that Canada was not bound by the interim measures adopted by the Committee on behalf of the author. The Committee recalls its consistent position that a failure to implement interim measures is incompatible with the obligation to respect in good faith the procedure for the consideration of individual communications established under the Optional Protocol.¹⁵ In addition, the Committee reminds the State party that its obligations under the Covenant and the Optional Protocol are binding on the State party as a whole, including all branches of its Government.¹⁶

Consideration of admissibility

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

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

¹³ Through counsel.

¹⁴ These included a letter from the Bishop Emeritus of Moundou (Friars Minor Capuchin), a letter from "Centre Afrika" of Montreal and a new letter (undated) from Mr. Guengueng recalling the risk faced by the author and emphasizing that the latter has been in hiding "in a Montreal church for nearly eight months".

¹⁵ See general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, para. 19.

¹⁶ See general comment No. 31, para. 4.

8.3 The Committee notes that the author has availed himself of numerous administrative and judicial remedies and that nothing now stands in the way of his deportation to Chad. Moreover, the State party has not contested the fact that domestic remedies have been exhausted. Consequently, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

8.4 With regard to the author's claim under article 2 of the Covenant regarding the decision to deport him, the Committee recalls that this provision cannot be invoked independently¹⁷ and therefore considers this part of the communication to be inadmissible under article 2 of the Optional Protocol.

8.5 The Committee also notes the author's claims regarding a violation of article 6, but considers that they have been insufficiently substantiated for purposes of admissibility. The Committee accordingly declares this part of the communication also to be inadmissible under article 2 of the Optional Protocol.

8.6 The Committee is of the view that, for purposes of admissibility, the author has also failed to sufficiently substantiate his argument under article 13 of the Covenant relative to his claim that he was unable to advance the reasons why he should not be deported or to have his case reviewed by a competent authority. The Committee takes note of the State party's argument that the author's asylum proceedings were conducted in conformity with the law and that he was able to avail himself of all the remedies provided for in the Immigration and Refugee Protection Act. The Committee points out that the author was afforded an opportunity to submit and challenge evidence concerning his removal and that the author took the opportunity, under domestic law, to have his asylum application reviewed on several occasions by the competent authorities, such as the Refugee Protection Division and the Federal Court, and to use the relevant administrative procedures: the pre-removal risk assessment and the application for residency on humanitarian and compassionate grounds. Consequently, the Committee considers that the author has not sufficiently substantiated his claim for purposes of admissibility and that this part of the communication must therefore be declared inadmissible in accordance with article 2 of the Optional Protocol.

8.7 The Committee notes the State party's challenge to the admissibility of the communication on grounds of the author's failure to substantiate his claims under article 7 of the Covenant. The Committee considers, however, that the arguments advanced by the State party to support its position in this respect are intimately linked to the merits and must therefore be examined at that stage.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee takes note of the author's claim that his deportation to Chad from Canada would expose him to a risk of irreparable harm, in violation of article 7 of the Covenant. It takes note of the State party's argument that the author's claims are largely speculative and that those claims were rejected by the various Canadian institutions that reviewed his case by reason of their inconsistency and lack of credibility and the lack of objective proof that he would run such a risk.

¹⁷ See for example communications Nos. 2176/2012, *M. v. Belgium*, decision on inadmissibility adopted on 30 March 2015, para. 6.5; and 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, para. 7.3.

9.3 The Committee considers it necessary to bear in mind the State party's obligation under article 2, paragraph 1, of the Covenant to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, including in the application of its procedures for the deportation of foreign nationals.¹⁸ The Committee further recalls that States parties are under an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where the necessary and foreseeable consequence of such a measure would be a real risk of irreparable harm, such as that contemplated in article 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.¹⁹ The Committee has also indicated that the risk must be personal²⁰ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.²¹ Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.²²

9.4 The Committee recalls its jurisprudence that it is generally for the appellate courts of the States parties to the Covenant to evaluate facts and evidence in a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.²³

9.5 The Committee observes that the author's application for refugee status was thoroughly assessed by the State party's authorities, which found that the author's statements about his reasons for seeking asylum and his account of the events that caused him to flee Chad were not credible. The Refugee Protection Division found the author's accounts to be lacking in credibility, particularly as regards his presentation of a membership card for the Association pour la promotion des libertés fondamentales au Tchad which was found to be fraudulent. The author has not provided any explanation for this, other than mentioning "contradictions" in the testimony he gave when he arrived in Canada (para. 5.2). Furthermore, the Refugee Protection Division identified a major contradiction in the author's account, since he initially stated that he had never been arrested, charged or detained but then reversed that account when he stated, as in his submission to the Committee, that he had been arrested and then held for four full days in March 2008 by officers of the National Security Agency. In addition, his claims that he is still being sought by the same officers who had freed him in 2008 have been deemed to be implausible.

9.6 The Committee sees no reason to dispute the State party's conclusions, since the author has not identified any irregularity in the decision-making process or any evidence of risk factors that the State party's authorities may have failed to properly take into account. The author has failed to demonstrate that the decisions adopted in respect of his case were manifestly unreasonable, flawed or arbitrary. Furthermore, the Committee is of the view that, while the numerous documentary materials and statements that the author has submitted, both to national bodies and to the Committee, do undoubtedly point to the gravity of the situation in Chad,²⁴ they do not

¹⁸ See general comment No. 6 (1982) on the right to life (article 6 of the Covenant) and general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment (article 7 of the Covenant); see also *Hamida v. Canada*, para. 8.2.

¹⁹ See general comment No. 31, para. 12; see, inter alia, *Hamida v. Canada*, para. 8.7, and communication No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.14.

²⁰ See *A.R.J. v. Australia*, para. 6.6.

²¹ See communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

²² *Ibid.*

²³ See, inter alia, communication No. 541/1993, *Simms v. Jamaica*, decision on inadmissibility adopted on 3 April 1995, para. 6.2.

²⁴ Including the topics of concern identified by the Committee in the concluding observations (CCPR/C/TCD/CO/2) issued following its consideration of the second periodic report of Chad in 2014, such as the common practice of torture and restrictions on freedom of expression.

demonstrate the existence of a personal risk to the author²⁵ or provide substantive grounds for concluding that the author would face a real risk of irreparable harm if he were to be forcibly returned to Chad.²⁶

9.7 The Committee therefore concludes that the author's deportation to Chad would not constitute a violation of article 7 of the Covenant.

10. The Committee, acting under article 5, paragraph 4, of the Optional Protocol to the Covenant, finds that the author's removal to Chad would not violate his rights under article 7 of the Covenant.

²⁵ See communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; Committee against Torture communications Nos. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010; and Human Rights Committee, *A.R.J. v. Australia*, para. 6.6.

²⁶ See *X. v. Denmark*, para. 9.2; and *X. v. Sweden*, para. 5.18.