



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2810/2016\*, \*\*

<i>Communication submitted by:</i>	Mozibor Rahaman (represented by counsel, Viken Artinian, of Joseph Allen and Associates)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	13 September 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 16 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	2 July 2021
<i>Subject matter:</i>	Deportation to Bangladesh
<i>Procedural issues:</i>	Incompatibility; exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Non-refoulement; right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person
<i>Articles of the Covenant:</i>	6 (1), 7 and 9 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author of the communication is Mozibor Rahaman, a national of Bangladesh born in 1978. His asylum application in Canada was rejected and he risks deportation to Bangladesh. Mr. Rahaman claims that his deportation would violate his rights under articles 6 (1), 7 and 9 (1) of the Covenant. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by counsel.

1.2 On 16 September 2016, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party not to remove the author while his case is under examination. On 3 July 2018, the Committee decided not to accede to

\* Adopted by the Committee at its 132nd session (28 June–23 July 2021).

\*\* The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Changrok, Kobayuh Tchamdja Kpatcha, Hélène Tigroudja and Gentian Zyberi.



the State party's request to lift interim measures. On 10 November 2020, the Committee decided to lift its request for interim measures.

### **Facts as submitted by the author**

2.1 The author is a member of the opposition Bangladesh National Party, which he joined in January 2009, becoming a regular member of the Pathalia Union branch of the Savar Upazila administrative region in the Dhaka District of the capital. He became a member of the executive committee of the Party in February 2010, the publicity secretary of his branch in April 2011 and the organizing secretary of his branch in April 2013.

2.2 The author was repeatedly attacked, beaten and extorted for money by goons of the Awami League, the party in power. On 23 April 2012, after a demonstration in which the rapid action battalion of the Awami League was blamed for extrajudicial killings, members of the battalion arrested him, beat him up and made him pay 50,000 taka for his release.<sup>1</sup> In April 2013, when he resisted a forcible recruitment into the Awami League, he was beaten up again and a sum of 50,000 taka was extorted from him. His police complaint led to nothing; he was only subjected to more retaliation from the same goons. In April 2013, during a protest rally at which he and the president of the Bangladesh National Party spoke, goons sent by the League attacked and injured them with hockey sticks.<sup>2</sup> In November 2013, during another demonstration, the goons attacked them again. His police complaint proved fruitless. He received phone threats from members of the League. In March 2014, goons from the League attempted to extort 1 million taka from him and the police arrested him on accusations of anti-government activities due to his involvement in the Bangladesh National Party. In May 2014, his house was ransacked, and his brother was attacked twice by the goons of the League owing to his political activities. No action was taken following another complaint to the police.<sup>3</sup> In June 2014, the police and the rapid action battalion started looking for him under the Special Powers Act on the ground that he was instigating people to act against the Government.<sup>4</sup>

2.3 On 6 April 2014, the author entered Canada on a temporary resident visa. On 27 June 2014, he filed an application for asylum. The author notes that, on 27 March 2015, the Refugee Protection Division of the Immigration and Refugee Board of Canada rejected his application for asylum on the ground that his account of his persecution was not credible. He filed his party identity card and a letter from the General Secretary of his branch as proof of his membership in the Bangladesh National Party.<sup>5</sup> He is currently a member of the party's branch in Canada. While the Immigration and Refugee Board accepted his proof of membership in the Party, it did not believe that he was an organizing secretary, finding his testimony of his duties to be vague.

2.4 The author further notes that the Refugee Appeal Division of the Immigration and Refugee Board of Canada affirmed the decision of the Refugee Protection Division, as he had not proven his position in the Bangladesh National Party. The Division made this finding despite new evidence of an attack on his family by the Awami League, involving the rape of his wife in September 2015, including letters from the doctors who had treated her, hospital discharge certificates and affidavits from his parents.<sup>6</sup> On 8 February 2016, the Federal Court denied the author his leave request for judicial review. At the time of the submission of the communication, he was not yet eligible to apply for a pre-removal risk assessment.

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<sup>1</sup> The author submits a medical certificate to confirm his injury due to physical assault.

<sup>2</sup> The author provides a medical certificate of an injury by physical assault.

<sup>3</sup> The author provides a copy of a translation of an application for entry of a general diary by his brother dated 26 May 2014.

<sup>4</sup> The author submits a letter from his lawyer dated 5 August 2014.

<sup>5</sup> The author submits copies of his Bangladesh National Party identity card, a letter from the senior joint secretary-general of the Party and a letter from the Pathalia Union branch of the Party, dated 1 August 2014.

<sup>6</sup> The author submits copies of the letters from the doctors who treated his wife.

## Complaint

3.1 The author contends that the Refugee Protection Division erred in finding that his account was not credible. He notes that he spent 15 minutes explaining that he was in charge of planning and producing events, ensuring that a significant number of members would participate, and recruiting new members through his business relations since he was a well-known and successful businessperson. He also explained that he played an active role in the 2014 election by going door to door in his neighbourhood. The finding of the Refugee Protection Division that an executive member would delegate such tasks is arbitrary, as he explained that he was well known in his area and could therefore obtain more support. Furthermore, in Canada, politicians also go door to door.

3.2 The author submits that in cases of imminent deportation, the Committee can consider all relevant evidence filed before the adoption of its decision.<sup>7</sup> With this in mind, he filed a letter from the main national branch of the Bangladesh National Party, confirming his membership and position in the party, his protests against the Government and the fact that goons of the Awami League youth organization threatened his life, harassed and tortured his family and raped his wife, who has since required mental health treatment. He also filed additional medical documents concerning his wife's rape.

3.3 The author claims that he has a fear of persecution by the Awami League, its goons, the police and "all other" Bangladeshi authorities. He cites country information on the deteriorating respect for political rights, widespread violence, arrests and irregularities in the 2014<sup>8</sup> and 2016<sup>9</sup> elections and killings by the rapid action battalion and security forces during raids, arrests and other law enforcement operations.<sup>10</sup> Politically motivated violence remains a serious problem and impunity enables government officials to commit human rights violations.<sup>11</sup> Police remand is "synonymous" to torture, which is inflicted "mainly" on political opponents.<sup>12</sup> Intraparty violence within the rapid action battalion and the Awami League also led to deaths, mostly linked to criminal rather than political activities.<sup>13</sup> Arbitrary arrests, including of opposition leaders and activists, often relate to political demonstrations and people are often detained without specific charges.<sup>14</sup> The authorities interfere with opposition parties, including the Bangladesh National Party, deny them permission to hold meetings and rallies,<sup>15</sup> raid their members' houses and attack them.<sup>16</sup> They pressure the judiciary in cases involving opposition leaders.<sup>17</sup> Claims of extrajudicial killings increased

<sup>7</sup> *Madafferi v. Australia* (CCPR/C/81/D/1011/2001), para. 9.8.

<sup>8</sup> Freedom House, *Freedom in the World 2015: The Annual Survey of Political Rights and Civil Liberties*, available at [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_2015\\_complete\\_book.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2015_complete_book.pdf); Human Rights Watch, *Democracy in the Crossfire: Opposition Violence and Government Abuses in the 2014 Pre- and Post-Election Period in Bangladesh*, 2014, available at <https://www.hrw.org/report/2014/04/29/democracy-crossfire/opposition-violence-and-government-abuses-2014-pre-and-post>; and United Kingdom of Great Britain and Northern Ireland, Foreign and Commonwealth Office, "Case study: Bangladesh – political violence", available at <https://www.gov.uk/government/case-studies/bangladesh-political-violence>.

<sup>9</sup> Odhikar, "Six-month Human Rights Monitoring Report" (1 January–30 June 2016), available at [https://anfrel.org/wp-content/uploads/2016/07/HRR-Six-month\\_2016\\_Eng.pdf](https://anfrel.org/wp-content/uploads/2016/07/HRR-Six-month_2016_Eng.pdf).

<sup>10</sup> United States Department of State, "Country Reports on Human Rights Practices for 2015", available at <https://2009-2017.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dldid=252959#wrapper>; and Asian Human Rights Commission, "The State of Human Rights in Bangladesh, 2013: Lust for Power, Death of Dignity", available at <http://www.humanrights.asia/wp-content/uploads/2013/07/AHRC-SPR-008-2013-HRRpt-Bangladesh.pdf>.

<sup>11</sup> United States Department of State, "Country Reports on Human Rights Practices for 2015"; United Kingdom, Foreign and Commonwealth Office, "Case study: Bangladesh – political violence"; and Odhikar, "Six-month Human Rights Monitoring Report".

<sup>12</sup> Odhikar, "Six-month Human Rights Monitoring Report".

<sup>13</sup> United States Department of State, "Country Reports on Human Rights Practices for 2015".

<sup>14</sup> *Ibid.*; and Asian Human Rights Commission, "The State of Human Rights in Bangladesh, 2013".

<sup>15</sup> United States Department of State, "Country Reports on Human Rights Practices for 2015".

<sup>16</sup> Asian Human Rights Commission, "The State of Human Rights in Bangladesh, 2013"; and Odhikar, *Human Rights Report 2013: Odhikar Report on Bangladesh*.

<sup>17</sup> *Ibid.*

after the Awami League gained power.<sup>18</sup> The author submits that this information establishes that violence is used against political minorities. Thus, as a member of the Bangladesh National Party, and based on his experiences, he runs a personal risk of persecution, including cruel and inhuman treatment.

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

4.1 By a note verbale of 28 March 2018, the State party submitted its observations on admissibility and the merits. It notes that the author had access to multiple domestic remedies, whereby competent and impartial decision-makers thoroughly examined his claims and determined that his allegations were not credible and insufficiently substantiated.

4.2 The State party notes that the Refugee Protection Division denied the author's asylum application on 27 March 2015, as he had not established a reasonable basis for persecution nor, on a balance of probabilities, that he would be personally subjected to torture, a risk to his life or a risk of cruel and inhuman treatment or punishment. The Refugee Protection Division found that his testimony, which included changes and contradictions, was vague and evasive and that his explanations for these problems were unreasonable. First, he claimed to be a member of the executive committee of the local branch of the Jatiyatabadi Jubo Dal but could not differentiate between it and the Bangladesh National Party, stating that the latter is the main party while the Jatiyatabadi Jubo Dal is an affiliated organization. When asked to explain why he had joined the Jatiyatabadi Jubo Dal rather than the main party, he answered vaguely and evasively. Second, he could not adequately explain his role as organizing secretary, answering vaguely and evasively. Third, he claimed that the leader of the Bangladesh National Party, Elias Ali, disappeared on 18 April 2012, whereas objective information reported his disappearance on 17 April 2012. He did not explain this satisfactorily, other than to state that Mr. Ali had disappeared around 11 p.m. on 17 April 2012. He had not stated this initially, despite his alleged important role in a major demonstration against said disappearance. Fourth, on his visa application he stated that he did not belong to any political organization. Initially, he stated that no visa would have been issued to him if he had disclosed his political involvement, but later stated that he had made a mistake. He could not reasonably explain why. Fifth, he initially stated that his wife left the house on 29 May 2014, but later that she had called him on 2 June 2014, stating that the police had come and looked for him. He subsequently claimed that she had left on 3 June 2014. Sixth, his statement about the assault on his brother was vague and evasive. Seventh, he omitted to report his detention on 23 and 24 April 2012 on his refugee protection claim form.

4.3 Further, the Refugee Protection Division did not attach probative value to several documents, which undermined the credibility of his political profile, and determined that he had given evidence on the basis of fraudulent papers, including: a letter from the author's lawyer, which lacked a case number, contrary to applicable guidelines; medical certificates without an indication of the assailants' identities or the circumstances of the alleged assault; his father's affidavit, which only restated the author's allegations; a letter misspelling the Pathalia Union "branch" as "brunch"; and his Bangladesh National Party membership card. The Refugee Protection Division was prepared to accept that he may have participated in activities supporting the Bangladesh National Party in Bangladesh and Canada, but not that he had been targeted or that he has a significant profile. It considered documentary evidence on the treatment of political activists in Bangladesh, including incidents of violence and arbitrary arrests, and found that participation in rallies or membership in an opposition party did not itself suffice to establish a risk of persecution.

4.4 The Refugee Appeal Division dismissed the author's appeal on 14 December 2015 on the following grounds. First, he had identified his involvement in only one demonstration, in November 2013, showing, given country information, insufficient detail about the confrontational climate in 2013 before the 2014 election, when the Bangladesh National

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<sup>18</sup> *The New Humanitarian*, "Inquiry urged into Bangladesh's 'extrajudicial' killings", available at <https://www.thenewhumanitarian.org/news/2014/02/04/inquiry-urged-bangladesh-s-extrajudicial-killings>; and United Kingdom, Foreign and Commonwealth Office, "Case study: Bangladesh – political violence".

Party would have been most involved in disruptions. Second, he had not explained why, as a partisan activist, he was outside Bangladesh on a business trip during the election. Third, his explanation of his role in the Jatiyatabadi Jubo Dal was vague, as his response, that he had gone door to door, was inconsistent with the responsibilities of an organizing secretary who would be charged with organizing activities. It was also a credibility issue when he answered a question by stating what he did he did only in his capacity as an individual. Fourth, despite his claim that the Jatiyatabadi Jubo Dal was a victim of attacks from the Awami League, country information showed that during 2013 the Bangladesh National Party confronted the Government by means of conflict, attacks and attempts to spread violence and disorder. Fifth, during 2013, the Party “would prefer” to have someone in charge of sending Jatiyatabadi Jubo Dal protesters out to barricade streets and fight, as it was pursuing anarchy. Sixth, the evidence he provided indicated the complicity of the Jatiyatabadi Jubo Dal in violence in his area. Seventh, he had not mentioned his membership in the Bangladesh National Party in his visa application. Furthermore, the Special Powers Act is so broad that it can be used against anyone at any time, and there was a willingness to issue letters citing it to facilitate entry to Canada. The Refugee Appeal Division considered a newspaper article, including pictures showing him at rallies, based on its tenor and content, to be fraudulent. Moreover, the evidence submitted did not resolve the credibility issues identified. On 12 April 2016, the Federal Court decided not to grant leave for review of the decision of the Refugee Appeal Division.

4.5 The State party notes that the author’s claim of ineligibility for a pre-removal risk assessment is moot as his application was rejected on 10 May 2017. The pre-removal risk assessment officer considered that the new evidence submitted did not resolve the credibility issues previously identified and that the translations were not certified. Some letters, including from his mother’s lawyer and the senior joint secretary-general of the Bangladesh National Party, were based on hearsay, whereas a letter from the Bangladesh National Party dated 10 March 2017 on the killing of opposition members by the Awami League government is unsupported by evidence. The affidavits and hospital records established that the author’s mother and spouse had been attacked in September 2015 and that the latter may have been raped, although there was no evidence identifying the aggressors as Awami League goons. Further, there was little evidence for his mother’s allegation that one of the League’s goons had filed an extortion case against him, and country information states that people complain to the police to manipulate the system. His mother’s assertion that her son would be killed in police “crossfire” or executed was speculative. Court documents, including an arrest warrant and an internal police note, were of questionable reliability, given the omission of the widely publicized death of one of the co-accused. Country information on at-risk persons with high-ranking political profiles did not change the lack of evidence for the author’s assertion that he has such a profile. On 20 February 2018, the Federal Court dismissed his application for leave and judicial review. At the time of the submission of the State party’s observations, his application for residence on humanitarian and compassionate grounds was pending.

4.6 The State party submits that the communication is inadmissible as the author has not exhausted all domestic remedies, and in the absence of a request for an administrative deferral of his removal, which he could have filed, given the alleged new evidence. If the enforcement office considers that there is new risk-related evidence, removal is deferred to allow time for a full pre-removal risk assessment. According to the Federal Court of Appeal, the rights accorded by this procedure are not illusory. In case of denial, he could have applied to the Federal Court for leave to seek review and for a judicial stay of removal.

4.7 The State party observes that the author’s claim under article 9 (1) of the Covenant is incompatible with the Covenant. Said article imposes obligations based on territory and jurisdiction and does not preclude removing someone based on a risk of arbitrary detention in the receiving State.<sup>19</sup> Only the most serious breaches of fundamental rights can form exceptions to the power of States to decide conditions on the entry and stay of foreigners.<sup>20</sup> Thus, the Committee should not take the approach in *Choudhary v. Canada*.<sup>21</sup> An alleged

<sup>19</sup> General comment No. 35 (2018), para. 57; and general comment No. 31 (2004).

<sup>20</sup> See European Court of Human Rights, *Soering v. United Kingdom* (application No. 14038/88), judgment of 7 July 1989, para. 86.

<sup>21</sup> *Choudhary v. Canada* (CCPR/C/109/D/1898/2009).

risk of arbitrary detention would be more appropriately considered under articles 6 (1) and 7 of the Covenant.

4.8 The State party submits that the author's claims of a risk upon removal to Bangladesh are inadmissible as they are manifestly unfounded. First, it is generally for domestic decision-makers to evaluate the facts and evidence of a particular case and important weight should be given to their assessments unless these were clearly arbitrary or amounted to a denial of justice. However, the author has identified no such defects. Moreover, his allegations are not credible. He made similar claims about the decision of the Refugee Protection Division to the Refugee Appeal Division and to the Federal Court, which disagreed with him. After a thorough review, the Refugee Protection Division found that his credibility was undermined generally, as well as specifically concerning his political profile, arrest and detention in April 2012, his allegation of a visit by the police on 2 June 2014 and his brother's assault on 26 May 2014. The Refugee Appeal Division also came to a negative conclusion as to his credibility. Moreover, in the present communication, the author claims membership in the Bangladesh National Party, whereas in his basis of claim form, and before the Federal Court, he claimed membership in the Jatiyatabadi Jubo Dal, the youth wing of the Bangladesh National Party, which are completely separate and have no overlap.<sup>22</sup> Violence committed by political youth wings remains a problem in Bangladesh. The author appears to have attempted to distance himself from the attacks and violence committed by the youth wing by omitting to mention his membership in it. Additionally, before the domestic authorities, he claimed that they attempted to extort 100,000 taka from him, rather than 1 million.

4.9 Second, the author has not substantiated his account of persecutory experiences. He has provided no evidence of his arrests and ill-treatment, the payment of a bribe, the attacks carried out by the Awami League or the ransacking of his house. He changed the account of his arrest following accusations of anti-government activities. The evidence for his medical treatment,<sup>23</sup> the attacks of the Awami League on his brother,<sup>24</sup> wife and mother<sup>25</sup> and the claim that the police and the rapid action battalion are looking for him<sup>26</sup> are unreliable. Additionally, he has not explained why his claimed persecutors allegedly continued to look for him following his departure from Bangladesh, using a passport and visa in his own name, as he was well known. Moreover, any persecution fell outside of articles 6 (1) and 7 of the Covenant, as on 1 January 2014, he came to Canada for business, did not seek protection and returned to Bangladesh. He returned to Canada on 6 April 2014 for business and without intending to seek protection, which he did only on 27 June 2014.

4.10 Third, the author has not substantiated a personal risk upon return to Bangladesh and the new evidence submitted to the Committee is not sufficiently reliable or objective. The letter dated 2 September 2016 purportedly from the main branch of the Bangladesh National

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<sup>22</sup> Research Directorate, Immigration and Refugee Board of Canada, *Bangladesh: Roles and responsibilities of the executive members of the local branches of the Bangladesh Nationalist Party and the Jatiyatabadi Jubo Dal (Bangladesh Nationalist Youth Party) (2010–August 2014)* (15 August 2014), sect. 2.3.

<sup>23</sup> The State party mentions that the letters postdate the alleged incident by two years. They provide different dates about the incidents than those given in the communication, their writers do not identify themselves as doctors and they lack details such as the date of the treatment, the nature of the injuries and the identities of the assailants.

<sup>24</sup> According to the State party, the original version of what seems to be a police complaint does not appear to be an official first information report. It mentions only one incident concerning unknown assailants. The document does not identify a motive for the assault nor why the assailants would pose a threat to the author. The dates mentioned in the original and translated versions are inconsistent. A medical report submitted as evidence of the attack is dated three months after the alleged incident, is partially untranslated, refers to a different date on which the incident allegedly occurred, contains no information about the assailants' identities and details about the injuries and treatment are illegible.

<sup>25</sup> See para. 4.6. The State party argues that the author's parents are not impartial witnesses. There is also no evidence that the attack related to his involvement with the Bangladesh National Party or that it was reported to the police.

<sup>26</sup> The State party notes that the lawyer's letter is dated two months after he allegedly contacted a police station. The letter is not addressed to anyone specific. Important details are missing, including the names of the police station, the police officer and the complainant and the nature of the complaint. It states mistakenly that the author "is" involved in politics in Bangladesh.

Party is not new evidence as it is very similar to a letter previously submitted. Moreover, the writer of the letter indicates having no personal knowledge of the author's activities. The letter appears inaccurate, as it asserts that the Bangladesh National Party is unable to carry out "any" political activities. The additional documents on the rape of the author's wife contain no new details, including on the alleged assailants. The letter allegedly from the Bangladesh National Party in Canada contains an address at which it is not registered, uses an unusual abbreviation for the Party and is not objective as it advocates on his behalf.

4.11 The country information submitted shows only a general level of risk. Despite the author's qualification of the Bangladesh National Party as a "minority" party, it is one of the two principal parties in Bangladesh. Much of the information submitted is similar to that already considered by the domestic authorities. While the human rights situation in Bangladesh remains concerning, some improvements have been made, including efforts to improve police performance,<sup>27</sup> a reduced use of the Special Powers Act against opponents<sup>28</sup> and a reduction in interparty clashes.<sup>29</sup> Politically motivated killings are apparently less numerous.<sup>30</sup> Such violence should be understood in the larger context of the rivalry between the Awami League and the Bangladesh National Party. Opposition members can risk harassment and in certain cases injury or death, particularly when they criticize the Government or engage in clashes between political youth organizations.<sup>31</sup> Opposition leaders and activists may face arbitrary arrest and detention.<sup>32</sup> Ordinary party members are generally not at a real risk of persecution and the proportion of people affected by political violence is low compared to the size of the parties in question.<sup>33</sup>

4.12 Fourth, the author has an internal flight alternative, as his parents and brothers have remained at the same place despite alleged threats. His wife and son allegedly relocated to a place where, apparently, they have lived without further incident. Internal relocation is not unreasonable legally, economically, culturally or linguistically.

4.13 The State party submits that the communication is meritless for the same reasons.

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

5.1 On 5 June 2018, the author provided his comments. He contests that a request for a deferral of his removal would have been effective, as his application for a pre-removal risk assessment has been refused. Moreover, there is limited authority to defer removal, and only for challenges related to arranging international travel.<sup>34</sup> An application for residence on humanitarian and compassionate grounds does not stop removal.

5.2 The author notes that the State party appears to argue that he was never involved in politics, but also that he was simply a supporter, not a high-ranking member. The State party has found that his membership in the Bangladesh National Party is not credible but has also requested additional information on his membership for his application for residence on

<sup>27</sup> United States Department of State, "2016 Country Reports on Human Rights Practices: Bangladesh", available at <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/bangladesh/>.

<sup>28</sup> United Kingdom, Home Office, *Report of a Home Office Fact-Finding Mission: Bangladesh*, (conducted 14–26 May 2017) (September 2017), para. 2.4.1, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655451/Bangladesh\\_FFM\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655451/Bangladesh_FFM_report.pdf).

<sup>29</sup> *Ibid.* p. 16.

<sup>30</sup> United States Department of State, "2016 Country Reports on Human Rights Practices: Bangladesh".

<sup>31</sup> *Ibid.*; European Asylum Support Office, *Country of Origin Information Report: Bangladesh: Country Overview*, available at [https://coi.easo.europa.eu/administration/easo/PLib/Bangladesh\\_Country\\_Overview\\_December\\_2017.pdf](https://coi.easo.europa.eu/administration/easo/PLib/Bangladesh_Country_Overview_December_2017.pdf), para. 3.3.2.

<sup>32</sup> United Kingdom, Home Office, *Report of a Home Office Fact-Finding Mission: Bangladesh*, (conducted 14–26 May 2017) (September 2017), para. 2.2.10.

<sup>33</sup> *Ibid.*

<sup>34</sup> Canada, Ministry of Citizenship and Immigration, *Perez v. Canada* (Public Safety and Emergency Preparedness) 2007 FC 627.

humanitarian and compassionate grounds in order to analyse if it renders him inadmissible. The State party cannot change its argument depending on the procedure.

5.3 The author argues that the evidence filed after the decision of the Refugee Appeal Division is important and that the State party discredits it based on microscopic and overzealous arguments. First, the State party disregards the provenance of the evidence from a third world country, even though the Federal Court has cautioned against evidentiary interpretation through “North American logic and experience”.<sup>35</sup> He does not have an internal flight alternative, as Awami League goons continue to visit his family, which lacks financial means to move, and his wife was raped during one of these visits.<sup>36</sup> The State party refutes the new medical evidence based on what it does not state, and medical documentation never states the names of the attackers. He takes offence to the State party’s questioning of his wife’s rape and claims, additionally, to have filed a psychiatric evaluation of her condition. As the ruling party and the police work together, the latter will not provide copies of complaints to opponents or mention the name of the ruling party.

5.4 Second, country information cited by the State party to argue that the first information report was not drafted on an official form does not state that a specific form exists. The required information was included in the document of reference. The author argues that the State party does not appear to know that Bengali numbers differ from western numbers.

5.5 Third, the author argues that it is irrelevant that his Bangladeshi lawyer’s letter was written two months after the inquiry at the police station, as lawyers may confirm oral correspondence in writing later. The State party does not focus on what the letter states.

5.6 Moreover, the police do not assist the administration of justice and remain reluctant to investigate against the ruling party.<sup>37</sup> The authorities do not protect individuals from persecution by the State.<sup>38</sup> Abuses, including killings, by security forces continue with impunity.<sup>39</sup> Sometimes, political affiliation is a motive for arrest and prosecution.<sup>40</sup> Thousands of opposition activists and members have been arrested and held secretly without trial since 2013.<sup>41</sup> Over 320 enforced disappearances, including 50 subsequent killings, were recorded since the Awami League took office in 2009.<sup>42</sup> Targets for disappearance included people affiliated with opposition parties.<sup>43</sup> Security forces allegedly tortured political opponents and critics.<sup>44</sup> The Government appears to be worse than its predecessors concerning arbitrary deprivations of the right to life.<sup>45</sup> The Special Powers Act permits arrest and detention without a warrant.<sup>46</sup>

<sup>35</sup> See decisions of the Federal Court, para. [15], available at <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/49849/index.do?r=AAAAAQAWjm5vcnRoIGFIZXJpY2FulGxvZ2jljgE>.

<sup>36</sup> As proof, the author submits hospital discharge certificates, medical attestations and statements from his mother and a friend of his wife.

<sup>37</sup> Asian Human Rights Commission, “Asia Report 2016: Bangladesh”.

<sup>38</sup> United Kingdom, Home Office, “Country Policy and Information Note: Bangladesh: Opposition to the government”, January 2018.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Human Rights Watch, “‘We don’t have him’: Secret Detentions and Enforced Disappearances in Bangladesh”, 6 July 2017, available at <https://www.hrw.org/report/2017/07/06/we-dont-have-him/secret-detentions-and-enforced-disappearances-bangladesh>; Amnesty International, “Caught between fear and repression: Attacks on freedom of expression in Bangladesh”, available at <https://www.amnesty.org/en/documents/asa13/6114/2017/en/>; and United States Department of State, “2017 Country Reports on Human Rights Practices: Bangladesh”, available at <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/bangladesh/>.

<sup>42</sup> Ibid.

<sup>43</sup> United States Department of State, “2016 Country Reports on Human Rights Practices: Bangladesh”.

<sup>44</sup> United Kingdom, Home Office, “Country Policy and Information Note Bangladesh: Opposition to the government”, January 2018.

<sup>45</sup> Asian Human Rights Commission, *Asia Report 2016: Bangladesh – Policing System Stands Against the Purpose of Administering Justice*, available at <http://www.humanrights.asia/wp-content/uploads/2021/03/ASIA-REPORT-2016.pdf>.

<sup>46</sup> United States Department of State, “2017 Country Reports on Human Rights Practices: Bangladesh”.



5.7 The author notes that he was recently charged for extortion, despite being in Canada. He submits copies of court documents, a first information report and an arrest warrant. He argues that he has provided abundant evidence to support his case.

### State party's additional observations

6.1 By a note verbale of 11 June 2020, the State party provided additional observations. It notes that on 21 June 2018, a senior immigration official refused the author's application for residence on humanitarian and compassionate grounds because he was likely inadmissible under article 34 (1) (f) of the Immigration and Refugee Protection Act as the Federal Court has determined that it is reasonable to conclude that the Bangladesh National Party engages in acts of subversion by force and/or terrorism. An applicant's self-admitted claims of membership in an organization that allegedly engages in such acts is generally accepted in the security assessment. The standard is one of "reasonable grounds to believe", i.e., a "bona fide belief in a serious possibility based on credible evidence". The author's non-involvement in violence was accepted, but for the security assessment, this was immaterial to the fact of his membership in the Bangladesh National Party. The Federal Court granted leave concerning the decision on his application for residence on humanitarian and compassionate grounds, but on 17 July 2019 the Court dismissed his application for judicial review.

6.2 The State party notes that the author applied for a pre-removal risk assessment after his initial submission to the Committee. He should have submitted the new evidence to the domestic authorities first and could have done so in a request for a removal deferral, which could have stopped his immediate removal. Deferrals are reserved for cases where the failure to defer will expose the applicant to a risk of death, extreme sanction or inhumane treatment and where deferral might result in the removal order becoming inoperative.<sup>47</sup> Deferrals and pre-removal risk assessments have different purposes, standards and consequences.

6.3 The State party reiterates that those more likely to be at risk in Bangladesh are those with high-ranking political profiles. Under the current Government, senior opposition members, particularly members of the Bangladesh National Party, face a high risk of being arrested and charged.<sup>48</sup> Members of such parties participating in demonstrations face a high risk of arrest and violence.<sup>49</sup>

6.4 The State party notes that the purpose of the security assessment was not to determine his protection needs. Its authorities consistently found that he was not credible and had insufficiently substantiated his membership in the Bangladesh National Party and his claims of persecution. Reiterating its arguments (paras. 4.2–4.12), the State party adds that the author mentioned his involvement in rally protests in his initial submission before the Committee, but in his application for residence on humanitarian and compassionate grounds he repeatedly denied such involvement. Before the Committee, he has indicated his involvement in rally protests and demonstrations, but in his humanitarian and compassionate application, denied participation in "*hartals*". Contrarily to his submission before the Committee, he also claimed, in his humanitarian and compassionate application, that he had never been charged with a crime. He claimed before the Committee that his family lacks the means to leave Bangladesh but stated to the authorities of the State party that he continuously increased his income and sent money to his family. The State party argues that the foregoing demonstrates his dishonesty.

6.5 The State party refutes the claim that the domestic findings were arbitrary or amounted to a denial of justice. The author's reference to "North American logic and experience" does not come from the Federal Court's analysis and decision in the case cited. Two of the allegedly new medical documents were considered and rejected by both the Refugee Protection Division and Refugee Appeal Division. Further, his claim that the police provide no copies of complaints to political opponents is undermined by his purported provision of a

<sup>47</sup> *Perez v. Canada* (Public Safety and Emergency Preparedness).

<sup>48</sup> Australia, Department of Foreign Affairs and Trade, "DFAT [Department of Foreign Affairs and Trade] Country Information Report: Bangladesh" (2 February 2018), available at [https://www.ecoi.net/en/file/local/1424361/4792\\_1518593933\\_country-information-report-bangladesh.pdf](https://www.ecoi.net/en/file/local/1424361/4792_1518593933_country-information-report-bangladesh.pdf).

<sup>49</sup> *Ibid.*

police complaint of the attack on his brother. Moreover, country information does indicate that a first information report requires a specific form, which he appears to have provided concerning the alleged false extortion case. Country information does not definitely state that the Awami League is never identified in criminal complaints but in any case there is no indication that his brother knew and reported the assailants' affiliation with the Awami League to the police. The State party refutes the author's reference to Bengali numbers, as the dates in the documents are in western numbers.

6.6 If the Committee accepts the author's political involvement, then his profile was not as significant as he argues. It is difficult to accept that an organizing secretary would have been absent during the very important 2014 election, and he inadequately explained his responsibilities. Moreover, he opted to return to Bangladesh, and came to Canada without intending to seek asylum.

6.7 The State party reiterates its position with respect to availability of an internal flight alternative to the author. It further stresses that the alleged arrest warrant is immaterial to the internal flight alternative, as there is no national police computer system and crimes can be reported only in the jurisdiction of their occurrence.<sup>50</sup> The State party also reiterates its challenge to veracity and probative value of the letter from the author's lawyer in Bangladesh and the documents related to the alleged extortion case (see paras. 4.5 and 4.8). It further notes discrepancies in the author's submissions and maintains that very little evidence exists to prove that an extortion case has been filed against him.

6.8 The State party notes that the author has provided no evidence that his wife complained to the police about her rape. He cannot rely on medical evidence to attribute the rape to the Awami League and the rape is not evidence of a risk to him personally. The allegedly new documents contain no psychiatric evaluation, as claimed, and add no new information in this regard. The unsworn statement from his wife's friend is based on hearsay and does not constitute objective evidence. Likewise, there is no indication that the Refugee Protection Division's evaluation of the letters from the Bangladesh National Party, most of which provide very little detail and were drafted without personal knowledge of the author, was arbitrary. The State party reiterates that fraudulent documents and fraudulent translation are easily obtainable in Bangladesh and that the author has not met his burden of proof. Additionally, the genuineness of certified copies of police/court documents can only be checked by comparing them with the original documents, which third parties cannot request.<sup>51</sup> It also reiterates that general country conditions cannot bolster his allegations.

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

7. In his additional comments dated 26 July 2020, the author reiterates that the State party did not find his membership in the Bangladesh National Party to be credible in the framework of his asylum procedure but rendered him inadmissible in his application for residence on humanitarian and compassionate grounds based on this same membership and his position and involvement in the Bangladesh National Party. He notes that the State party agrees that ordinary members of the opposition involved in political activities and demonstrations face persecution. The country information stating that fraudulent letters can be easily obtained is 14 years old and originates from an unidentified lawyer responding to a query, which cannot be considered reliable evidence.<sup>52</sup> Further, evidence of widespread forgery in a country is insufficient to reject foreign documents. The author notes that the charge sheet in the extortion case mentioned that the accused "are active activists of an identified political group" and that country information confirms that false charges and the rape of his wife are used as tactics against opponents.

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<sup>50</sup> United Kingdom, Home Office, *Report of a Home Office Fact-Finding Mission: Bangladesh*, p. 72.

<sup>51</sup> Immigration and Refugee Board of Canada, Chief Metropolitan Magistrate, Responses to Information Requests, para. 4.2.

<sup>52</sup> Canada, Minister of Citizenship and Immigration, *Veres v. Canada* [2001] 2 FC 124 (TD), para. 19.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

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

8.3 The Committee notes the State party's claim that the author has not exhausted all effective domestic remedies as he failed to apply for an administrative deferral of removal and that, in case of denial, he could have applied to the Federal Court for leave to seek review and for a judicial stay of removal. The Committee notes, however, that such judicial review is based mainly on procedural issues and does not involve a review of the merits of the case.<sup>53</sup> Moreover, where a removal is deferred, it is done to allow for a pre-removal risk assessment, whereas the author has seen his application for such an assessment rejected. Given that the State party did not consider that a number of elements which have not been examined by the domestic authorities to be of relevance, the Committee fails to see sufficient concrete reasons to assume that a subsequent pre-removal risk assessment would have constituted an effective remedy for the author. Thus, the Committee considers that the author has exhausted all available domestic remedies in compliance with the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 The Committee notes the State party's argument that the author's allegations under article 9 (1) are incompatible *ratione materiae* with the Covenant. It considers that the author has not provided sufficient explanation as to how his rights would be violated by the State party through his removal to Bangladesh in a manner that would pose a risk of irreparable harm such as that contemplated under articles 6 and 7 of the Covenant.<sup>54</sup> The Committee concludes that this part of the communication is inadmissible pursuant to article 3 of the Optional Protocol.

8.5 The Committee notes the State party's argument that the author's claims of a risk upon removal to Bangladesh are inadmissible as manifestly unfounded. The Committee notes, however, that the author has explained why he fears a risk of persecution upon return to Bangladesh, and why he believes that the assessment of his case by the State party's authorities was erroneous. The Committee considers that he has sufficiently substantiated his claims under articles 6 (1) and 7 of the Covenant for the purpose of admissibility. Therefore, the Committee declares the communication admissible as raising issues under these articles, and proceeds with its consideration on the merits.

### *Consideration of the merits*

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

9.2 The Committee takes note of the author's allegation that the State party would breach its obligations under articles 6 (1) and 7 of the Covenant by removing him to Bangladesh because of his membership of, positions in and activities for the Bangladesh National Party. He claims that he was repeatedly attacked, extorted and beaten by goons of the ruling Awami League, that he is wanted under the Special Powers Act and for a false claim of extortion, and that said goons have harassed and attacked his family and raped his wife for the same reason.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation

<sup>53</sup> *Monge Contreras v. Canada* (CCPR/C/119/D/2613/2015), para. 7.3.

<sup>54</sup> *N.D.J.M.D. v. Canada* (CCPR/C/121/D/2487), para. 10.3; and *S.K. v. Canada* (CCPR/C/127/D/2484/2014), para. 8.4.

of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal<sup>55</sup> and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.<sup>56</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin. The Committee further recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party and that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists,<sup>57</sup> unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>58</sup>

9.4 The Committee notes the State party's submission that significant weight should be given to the findings of the domestic authorities, as the author had the benefit of multiple fair and independent assessments of his claims. The Refugee Protection Division, the Refugee Appeal Division and the pre-removal risk assessment officer found that he lacked credibility, as his statements were evasive and contradictory, and that the documents and country information submitted insufficiently supported his case. The Committee notes the author's argument that the State party's authorities cannot reject his account of his involvement in the Bangladesh National Party as not credible in his asylum procedure but accept that same account to reject his application for residence on humanitarian and compassionate grounds. The Committee notes, however, that the State party's asylum procedure and security assessments conducted for applications on such grounds have different purposes and different evidentiary standards, the former involving a test of "balance of probabilities" and the latter one of "reasonable grounds to believe".

9.5 The question before the Committee, however, is whether the domestic authorities have properly assessed whether the author would face a real risk of irreparable harm if returned to Bangladesh. To substantiate the existence of such a risk, the author has referred to a number of alleged incidents and circumstances, including arrests, attacks and extortions, particularly from 2012 until 2015. The Committee notes that on 1 January 2014, following several of these alleged incidents, the author came to Canada for business, did not apply for protection and returned to Bangladesh. His return to Canada on 6 April 2014 was also for business purposes, and he applied for asylum only on 27 June 2014. The Committee considers that the author's travels, particularly his voluntary return to Bangladesh, as well as the absence of his comments on said matter, undermine his claim of a risk. Moreover, insofar as he claims that such a risk is established by his lawyer's letter on the search warrant against him under the Special Powers Act, the Committee notes the State party's position, according to which letters signed by lawyers stating that a person is wanted under the Special Powers Act without court/police case number and warrant number lack credibility as they can be easily obtained, and signatories admit to issuing them to facilitate entry into Canada. Likewise, on the alleged extortion case, the Committee notes that, in his application for residence on humanitarian and compassionate grounds, i.e., following his lawyer's letter of 15 March 2017 informing him of the charge, the author denied that he had ever been charged with a crime in Bangladesh. Moreover, he had not explained how he had obtained documents of which, according to country information, copies would not have been provided to him as a fugitive or to his representative.

9.6 The Committee notes, furthermore, that the author has not effectively refuted the reasons for which the State party decided not to accept, as evidence of a risk of irreparable harm, his claims and documents concerning the alleged ransacking of his house (para. 4.9), the alleged attack on his brother (paras. 4.2, 4.9 and 6.5) and the attack on his family,

<sup>55</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6; *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

<sup>56</sup> *X v. Denmark*, para. 9.2; *X v. Sweden*, para. 5.18; and *A.E. v. Sweden*, para. 9.3.

<sup>57</sup> *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *A.E. v. Sweden*, para. 9.3.

<sup>58</sup> *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; and *A.E. v. Sweden*, para. 9.3.

including the alleged rape of his wife (paras. 4.5 and 4.10). In particular, the Committee notes that the author has not substantiated that the alleged rape of his wife was carried out by the Awami League goons as a reprisal against him. The Committee considers that the author's arguments on the scrutiny of his case by the State party's authorities, who identified a considerable number of inconsistencies in his account and the documentation submitted, and their alleged disregard of the provenance of the evidence are not such as to allow for the conclusion that their assessment of the alleged interest of the authorities of Bangladesh in him was arbitrary or amounted to a denial of justice.

9.7 Additionally, the Committee notes the argument of the State party that there is an internal flight alternative for the author in Bangladesh. The State party has argued that, following her alleged rape, his wife and their son relocated to a place where, apparently, they have lived without further incident, and where the alleged arrest warrant against the author would not affect him. The State party has further argued that internal relocation is not unreasonable legally, economically, culturally or linguistically. The Committee also notes that the author has contested the existence of an internal flight alternative, referring to statements from his mother and his wife's friend, which the State party noted did not constitute objective evidence. Thus, the Committee cannot conclude that the State party's assessment of the existence of an internal flight alternative for the author was arbitrary or that it amounted to a denial of justice. The Committee notes the human rights situation in Bangladesh, but considers, in an overall appreciation of the various elements brought before it, that the author has not shown the existence of a personal risk of irreparable harm to him upon removal to Bangladesh. Therefore, without prejudice to the continuing responsibility of the State party to take into account the situation in the country to which the author would be deported and not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Bangladesh, the Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to articles 6 (1) and 7 of the Covenant if he were to be removed to Bangladesh.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's forcible return to Bangladesh would not violate his rights under articles 6 (1) and 7 of the Covenant.

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