



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1881/2009

#### Views adopted by the Committee at its 108th session (8–26 July 2013)

<i>Submitted by:</i>	Masih Shakeel (represented by counsel, Stewart Istvanffy)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Canada
<i>Date of communication:</i>	24 June 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and 97 decision, transmitted to the State party on 25 June 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	24 July 2013
<i>Subject matter:</i>	Deportation to Pakistan
<i>Substantive issues:</i>	Right to liberty and security; torture, cruel and inhuman treatment; right to life; right to an effective remedy
<i>Procedural issues:</i>	Non-substantiation; incompatibility with the Covenant; and non-exhaustion of domestic remedies
<i>Articles of the Covenant:</i>	2; 6, paragraph 1; 7; 9, paragraph 1; and 14
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b)

## 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 (108th session)**

concerning

#### **Communication No. 1881/2009\***

*Submitted by:* Masih Shakeel (represented by counsel, Stewart Istvanffy)

*Alleged victim:* The author

*State party:* Canada

*Date of communication:* 24 June 2009 (initial submission)

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

*Meeting on 24 July 2013,*

*Having concluded* its consideration of communication No. 1881/2009, submitted to the Human Rights Committee by Mr. Masih Shakeel 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 24 June 2009, is Masih Shakeel, a Christian pastor born in 1970 in Karachi, Punjab, Pakistan. His asylum application had been rejected in Canada, and at the time of submission of the communication, he faced imminent deportation to Pakistan.<sup>1</sup> He claims that his deportation to Pakistan would amount to a violation by Canada of articles 6, paragraph 1; 7 and 9, paragraph 1, of the Covenant.<sup>2</sup> He

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

The texts of two individual opinions by Committee members Mr. Yuval Shany, Mr. Cornelis Flinterman, Mr. Walter Kälin, Sir Nigel Rodley, Ms. Anja Seibert-Fohr and Mr. Konstantine Vardzelashvili, and by Mr. Yuji Iwasawa, respectively, are appended to the present Views.

<sup>1</sup> A deportation order against the author was issued, scheduling his deportation for 26 June 2009, i.e. two days after the submission of his communication before the Committee.

<sup>2</sup> The Optional Protocol entered into force for Canada on 20 August 1976.

also raises allegations under article 14 of the Covenant with respect to the consideration of his asylum application. The author is represented by counsel, Stewart Istvanffy.

1.2 On 25 June 2009, 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 not to remove the author to Pakistan while the communication was under consideration by the Committee. The Committee's request was granted.<sup>3</sup>

#### **The facts as presented by the author<sup>4</sup>**

2.1 The author is a Christian pastor from Karachi, Pakistan, who claims that he was constantly discriminated against by Muslim fundamentalists because of his Christian faith. He was forced to quit his job at the Karachi Water Board because of discrimination. Because it was very difficult for him to find a job, he started attending church more regularly, and was assigned the duty of evangelism in 2001. As an evangelist, he was often harassed by Muslim fundamentalists. Hatred against Christians grew even more after the United States-led invasion of Afghanistan in 2001, leading to the arson of several churches, and the assassination of Christian devotees. At the end of 2003, the author met with a well-established businessman, A. M., who wished to convert to Christianity. A.M. became friends with the author, and started visiting him at his home. A.M. became close to the author's wife and the author asked him to stop visiting them, but A.M. continued his visits in the author's absence, and started accusing the author of "working against Muslims", to draw the attention of local Maulvis (Muslim religious scholars). On his way home on 4 February 2004, the author was beaten by unknown assailants, who threatened to burn him alive if he went against A.M. The author sought assistance from the police, to no avail.

2.2 On 15 April 2004, the author's wife and daughter were abducted by unknown men. The author reported the incident to the police, but no written report was made. On 20 April 2004, the author received a message delivered on behalf of A.M, telling him that his wife and daughter were in Kandahar, Afghanistan, and that he would need to travel to Afghanistan to see them again. The author agreed, but on 24 April 2004, he was abducted by three men who drove him to the Afghan border, and ordered him to tell the border guard that he was there to dig trenches. The author was sent to a camp near the border, but thereafter expelled to Pakistan, even though he tried to explain that his wife was probably in Kandahar.

2.3 The author returned to Pakistan,<sup>5</sup> but not to Karachi. Instead, he settled in a Christian colony in Quetta, and thereafter in Hyderabad. He maintained contact with his brother, who advised him not to return to Karachi, as he was being looked for there. The author then moved to Sri Lanka for safety reasons,<sup>6</sup> but subsequently learned from his brother that A.M. had proposed a deal for the return of his wife and daughter, which prompted the author to go back to Karachi, although he did not find his family once back there. The author then went to live in Kashmir Colony<sup>7</sup> with Christian friends.

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<sup>3</sup> The State party informed the Committee, in its submission of 18 April 2013, that despite having no legal right to remain in Canada, the author, at the request of the Committee, had not been deported to Pakistan (see para. 6.1 below).

<sup>4</sup> For the purposes of clarity, this part is based on the author's submission, as well as on his applications before domestic jurisdictions of the State party, and related decisions adopted.

<sup>5</sup> No date provided.

<sup>6</sup> No date provided.

<sup>7</sup> A neighbourhood in Jamshed Town, which lies in the central part of Karachi. The Karachi City-District has 18 autonomous constituent towns, of which Jamshed Town is one.

2.4 On 6 October 2004, fundamentalist Maulvis hung a written note on the door of the author's house in Karachi, accusing him of burning the Koran and instigating the public to kill him.<sup>8</sup> The author's brother brought him the note and also provided a copy to the police. Instead of assisting him, the police advised him to "learn to live with the majority" in Pakistan. The author returned to Sri Lanka, where he applied for asylum with the United Nations High Commissioner for Refugees, which was denied.<sup>9</sup> He continued living in Sri Lanka at an Apostolic Church, which assigned him various duties assisting victims of the tsunami.

2.5 On 15 February 2005, a fatwa was issued against the author, accusing him of blasphemy against Islam, and stating that "Pastor Shakeel and his whole family are at fault", and that "all of them have to be killed".<sup>10</sup> On 4 June 2005, a First Information Report was filed against him, in his absence, by the same complainant who signed the fatwa of 15 February 2005. The report states that, on 4 June 2005 (the same day the report was filed), the author was among a group of Christians bearing large pieces of wood, steel rods and stones, and speaking against Islam as they passed in front of a mosque (Jam'a Masjid Hanfiya Trust, Manzoor Colony), which they attacked with stones. The report names the author, among other suspects, portrays him as the leader of the group and accuses him of preaching about the Christian faith. At the end of the report, the Karachi police expressly indicate that the facts reported constitute offences under the Pakistani Criminal Code, including section 295 (blasphemy law).

2.6 The author decided to go to Canada. He was able to obtain a visa through the Church, and arrived in Montreal on 6 September 2006 on a visitor's visa. From Canada, the author maintained contact with his brother, who continued to advise him never to return to Pakistan, and to give up the idea of finding his wife and daughter, as it would be too dangerous for him to return.

2.7 The author applied for refugee protection in Montreal in February 2007.<sup>11</sup> On 16 May 2008, the Refugee Protection Division of the Canadian Immigration and Refugee Board (IRB) heard the author's claims. On 8 July 2008, the IRB rendered its decision, finding that the author was not a "Convention Refugee", and not a person in need of protection. The Board noted several contradictions in the author's allegations, and rejected his allegation that his wife and daughter had been kidnapped and that he had fled to Sri Lanka to avoid persecution. It thus gave no probative value to the documentary evidence he had submitted in support of his allegation that false charges and a fatwa had been issued against him. The Board further considered the human rights situation in Pakistan, and determined that incidents of violence against Christians are isolated, concluding that there was no more than a mere possibility that the author would face persecution due to his religion upon deportation. On 26 November 2008, the Federal Court denied the author's application for leave to apply for judicial review of the IRB decision.

2.8 On 6 February 2009, the author applied for a pre-removal risk assessment (PRRA) on the same grounds as his initial asylum application, submitting new documentary evidence, including a letter and complaint to the police from his brother, who asserted that

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<sup>8</sup> Note (undated) (original and translation from Urdu to English) is available on file. It reads: "Pastor Shakeel Masih ... is an enemy of Islam. He took the Koran from the Madrasa. I saw Pastor Shakeel with my own eyes. He burned the Koran ... If you find him anywhere, shoot him. Never forgive this kind of people. Anyone who sees him can shoot him on the spot".

<sup>9</sup> No reasons or decision provided.

<sup>10</sup> Annexed to the file (original and translation from Urdu to English).

<sup>11</sup> The author does not provide a date for his asylum application. It appears from the State party's submission that the author's Personal Information Form is stamped 12 March 2007.

he had been beaten by unknown individuals who were looking for the author.<sup>12</sup> Subsequently, on 3 April 2009, the author submitted a photo of his dead brother, who had died as a result of internal bleeding following the attack on him. On 16 March 2009, the author's PRRA application was rejected, as a result of which the removal order against the author became enforceable.<sup>13</sup> The PRRA Officer rejected most of the evidence submitted, as it was not clear whether such evidence had been available before the IRB decision. With respect to the police report filed by the author's brother, subsequent to his assault by unknown individuals, the PRRA Officer established that the police "were not a witness to the alleged events", and thus gave it no probative value as evidence of a threat against the author or even his brother, which it considered to be of a "self-serving" nature.

2.9 On 4 June 2009, the author applied to the Federal Court for leave to apply for judicial review of his PRRA decision. On 17 June 2009, pending the result of his leave application with respect to the negative PRRA decision, the author brought a motion before the Federal Court asking for a stay of execution of the removal order against him. The Court denied his application on 22 June 2009. While it accepted that the author's brother had been beaten to death by unknown individuals, and that the author had been suicidal and was desperately afraid to return to Pakistan, the Court found it insufficient to establish a serious issue, as the author had the burden to satisfy the Court that he had serious grounds to question the legality of the PRRA decision, which he had failed to do. On 22 September 2009, the Federal Court denied leave to appeal against the negative PRRA decision of 16 March 2009.

2.10 On 18 March 2009, the author applied for permanent residence in Canada on humanitarian and compassionate grounds ("H&C"), which remains pending.<sup>14</sup> The author claims that he has exhausted all remedies available to him, which would have the effect of preventing his deportation to Pakistan.

### **The complaint**

3.1 The author submits that his deportation from Canada to Pakistan would expose him to the risk of almost certain death and a real risk of arbitrary detention, torture, and extrajudicial execution. In the past, the author had been threatened by radical Muslims with connections to Sunni extremists linked to the Sipah-E-Sahaba, one of the most dangerous organizations in Pakistan, whose determination to kill Christians is notorious. According to the author, the Pakistani authorities have no control over this movement. He also refers to the extent of sectarian terrorism in Pakistan, in general, and the lack of State protection available.

3.2 Regarding the country situation, the author refers to several international non-governmental reports which had commented upon the blasphemy law, including a report by

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<sup>12</sup> The author annexes to the file a police report (translation from Urdu to English) filed by his brother on 10 January 2009, in which he claimed to have been beaten by two unknown individuals, who were looking for the author. His brother reported that, after telling them that the author was not in Karachi, he was threatened, insulted, punched and kicked, resulting in extreme pain in his abdomen and back. (It is reported that the author's brother subsequently died of internal bleeding as a result of this attack).

<sup>13</sup> The deportation was scheduled for 26 June 2009.

<sup>14</sup> At the time of the author's submission to the Committee, submission of the State party's observations on admissibility and merits, and the latest submission from the State party on 18 April 2013 (see para. 6.1 below) this procedure was still pending in the author's case. Under this procedure, the test is whether an applicant would suffer unusual, undeserved or disproportionate hardship if he or she had to apply for a permanent residency visa from outside of Canada. There is no limit to the number of H&C applications which may be filed, although an application fee is required.

the International Crisis Group, which stressed that, since 1991, blasphemy cases have carried a mandatory death penalty, although it has never been carried out. The report also stressed that the blasphemy law remains a “lethal weapon in the hands of religious extremists and the handiest instrument for mullahs” to persecute rivals, particularly members of the Christian community, as well as liberals. The author further cites the Human Rights Commission of Pakistan, which reported that in blasphemy cases involving minorities, lower courts invariably convict the accused; that religious groups pressure the police into lodging charges under the blasphemy law; and that in October 1997, a Lahore High Court judge who had acquitted a teenage boy of blasphemy was shot dead in his chambers.

3.3 In light of the circumstances described, the author contends that the fatwas and First Information Report filed against him under the blasphemy law constitute irrefutable evidence that his life will be in danger should he be returned to Pakistan. If he is arrested on account of the false accusations brought against him, he will face a substantial risk of torture at the hands of the Pakistani police, and his right to life will be in danger. He has tried on several occasions to seek help from the police, including after he was beaten, after his wife and daughter were abducted, and after his life was threatened, always to no avail.<sup>15</sup> He was involved in most of the religious events in his church, and is also well known to the Pakistani Christian community in Montreal.<sup>16</sup> Consequently, there is no viable possibility for him to hide in Pakistan. He reiterates that, as a member of the Christian minority community, the danger he faces in the event of his return is real, and that the deportation order against him is tantamount to a death sentence.

3.4 The author further submits that, were he returned to Pakistan, his mental health would be at risk. He submits several medical reports, which establish that he suffers from depression, mental fatigue and anxiety as a result of multiple causes, including the disappearance of his wife and daughter, fear for his life in the event of return, and deep grief and a sense of guilt surrounding his brother’s death. The reports also describe his suicidal ideation following his brother’s death and in connection with his fear of being forcibly returned to Pakistan. Since a date for his forced removal to Pakistan was scheduled, the author’s suicidal symptoms have been exacerbated, which, according to medical reports, indicates deep suffering, and suggest that the author is in a situation of danger, needing intensive psychological care, and in need, foremost, of protection by the Canadian Government to be allowed to live in a country in which he feels safe. In conclusion, the author submits that his deportation by the State party to Pakistan would constitute a violation of his rights under articles 6, paragraph 1; 7, and 9, paragraph 1, of the Covenant.

3.5 The author also challenges the refugee determination and asylum procedures under articles 2 and 14 of the Covenant, noting that his case illustrates the absence of any valid domestic remedy in the State party. While the Federal Court has recognized that the author’s brother was the victim of a violent death, and that the author is suicidal, it nonetheless rejected the latter’s application for a stay of deportation. According to the author, the current PRRA procedure and H&C review are not in line with the State party’s obligation to provide individuals with an effective remedy. The risk assessment is carried out by immigration agents who lack competence in human rights or legal matters in general, and who lack impartiality. Such decisions are adopted in pursuance of the “enforcement side” of immigration, with considerable pressure to increase deportation numbers. He further notes that the stay of deportation filed on his behalf was pleaded on 22

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<sup>15</sup> No further details are provided as to the specific action taken.

<sup>16</sup> The author annexes several letters from members of the Christian community in Montreal, which describe him as an active and committed member of the local Pakistani Christian community.

June 2009, and rejected on the same day, on the ground that the Court could not take into account the risk of irreparable harm, based on the same allegations which had previously been presented before the Immigration and Refugee Board or the PRRA Officer. According to the author, this shows the futility of the procedure for a motion before the Federal Court to stay a deportation. He adds that when there is substantial, uncontradicted evidence of a risk to life and torture, access to effective legal recourse should be guaranteed. The author contends that by failing to secure him such effective remedy, the State party breached articles 2 and 14 of the Covenant.

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

4.1 In its submission on the admissibility and merits of the communication transmitted on 21 December 2009, the State party notes that the author has based his communication on precisely the same story, evidence and facts that a competent domestic tribunal and expert risk assessment officer have determined not to be credible, and as not supporting a finding of substantial personal risk of torture or cruel or inhuman treatment in the future.

4.2 The State party contends that the author's allegations with respect to articles 6, paragraph 1, and 7 are inadmissible on the ground of non-exhaustion of domestic remedies and non-substantiation. In particular, the author has submitted an application for consideration of permanent residence on humanitarian and compassionate grounds (H&C), which is an available and effective remedy,<sup>17</sup> and has yet to be decided. In the event that his H&C application is granted, the author will receive permanent resident status. In the event that his application is denied, he will receive reasons for such refusal, and can submit an application for leave to apply for judicial review to the Federal Court. Consequently, the State party requests the Committee to declare the communication inadmissible with respect to allegations presented under articles 6 and 7, for failure to exhaust domestic remedies.

4.3 The State party further submits that the author has not substantiated, on even a *prima facie* basis, his claims with respect to articles 6 and 7 of the Covenant. His assertions are neither credible, nor are they supported by available objective evidence. The State party submits that several pieces of evidence and declarations from the author are so inconsistent as to shed doubts on his credibility. It notes that the fatwa is in Urdu, yet has an English-language signature stamp, and typed English-language footer, with the word "Colony" misspelled as "Calony". According to the State party, it is questionable that the official letterhead of a fundamentalist Muslim group in Pakistan would use an English-language signature, misspelled at that. It further questions a number of allegations made by the author, including his brother's alleged beating and subsequent death, his divorce, the purpose of his travel to Sri Lanka, and the identity of the alleged perpetrators of his brother's beatings, which were on one occasion described by the author in a covering letter (accompanying a picture of his dead brother in a coffin) as "police officers", and on other occasions as "unknown individuals" (in the police report filed by his brother), or as "hooligans" (in a letter from his brother, addressed to the author).

4.4 The State party also noted a contradiction concerning the author's divorce deed, dated 26 October 2007, which provides the author's reasons for seeking divorce as that he found he could no longer maintain a normal matrimonial relationship with his wife. According to the State party, this explanation for the divorce is inconsistent with the author's allegation that his wife was "kidnapped". In addition, the divorce deed submitted by the author was signed by him in Karachi in October 2007, that is, several months after his asylum application was filed in Canada (in February 2007). The author's voluntary

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<sup>17</sup> The State party refers to the Committee's decision in communication No. 1302/2004, *Khan v. Canada*, decision of inadmissibility adopted on 25 July 2006, para. 5.5.

return to Pakistan to obtain a divorce indicates that he does not fear persecution, torture, or death there, as he claims. Furthermore, the author has not explained the contradiction between his assertion that his wife and daughter were “kidnapped” in April 2004, and his admission, during his asylum proceedings, that he had attended his daughter’s dedication to the church in June 2004.

4.5 There is nothing new to suggest that the author is at personal risk of torture or any ill-treatment in Pakistan. The State party recalls that it is not the role of the Committee to re-evaluate facts and evidence, unless it is manifest that the domestic tribunal’s evaluation was arbitrary or amounted to a denial of justice.<sup>18</sup> Regarding the situation in Pakistan, the State party is of the view that the author is not at personal risk,<sup>19</sup> in that he has not submitted any evidence demonstrating that Christians or Christian pastors are at particular risk of torture or death in Pakistan. Incidents of violence against Christians are isolated, not systematic nor systemic. The U.S. Department of State report<sup>20</sup> indicates that most blasphemy allegations are made by Sunni Muslims against other Sunni Muslims. While there have been several cases of blasphemy allegations against Christians, the same source indicates that bail has been granted, and at least one of the accused has been acquitted, indicating that judicial protection is available to Christians accused. In 2005, a law was passed requiring senior police officers to review blasphemy charges and eliminate spurious charges. The report confirms that all religious minorities in Pakistan – Ahmadis, Shias and Hindus, as well as Christians – are targets of discrimination and sporadic violence. Even if human rights abuses against some persons – including Christians – continue to be reported in Pakistan, this is not sufficient by itself to constitute a violation of the Covenant if the author is returned there.

4.6 The State party further submits that the author’s allegations concern actions by private actors in Pakistan, as opposed to State authorities, and that the author has failed to establish that Pakistan is unable, or unwilling, to protect him.<sup>21</sup> In conclusion, the State party reiterates that the author has not substantiated that he is at personal risk if returned, and an internal flight alternative is available to him, even if it were to be accepted that he would be in danger in Karachi.

4.7 Regarding the author’s allegations under article 2 that he was denied access to an effective remedy, the State party submits that these allegations are incompatible with the provisions of the Covenant, within the meaning of article 3 of the Optional Protocol. The author has criticized the PRRA and H&C procedures, as well as the review process by the Federal Court under article 2 of the Covenant, which cannot be invoked standing alone.<sup>22</sup>

4.8 With respect to the author’s allegations under article 9 of the Covenant, the State party submits that they are incompatible with the provisions of the Covenant, pursuant to

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<sup>18</sup> The State party refers to, inter alia, communication No. 1551/2007, *Tarlue v. Canada*, decision of inadmissibility adopted on 27 March 2009, para. 7.4.

<sup>19</sup> The State party refers to the Committee against Torture’s communication No. 119/1998, *V.N.I.M. v. Canada*, decision adopted on 12 November 2002, para. 8.5, in which it determined that, due to the fact that the complainant had not established that he would run a personal risk of being exposed to torture upon return, the Committee had determined that it need not examine the general human rights situation of the country of return.

<sup>20</sup> U.S. Department of State, Country Reports on Human Rights practices – Pakistan – 2008. According to the report, “most complaints were filed against the majority Sunni Muslim community. Many blasphemy complaints were lodged by Sunnis against fellow Sunnis”.

<sup>21</sup> The State party refers to communication No. 1302/2004, *Khan v. Canada* (see note 17 above), para. 5.6, in which the Committee found the communication inadmissible, partly on these grounds.

<sup>22</sup> The State party refers, inter alia, to communication No. 1234/2003, *P.K. v. Canada*, decision of inadmissibility adopted on 20 March 2007, para. 7.6.



article 3 of the Optional Protocol. The State party is of the view that article 9 of the Covenant has no extraterritorial application and does not prohibit a State from deporting a foreign national to a country where he alleges he faces a risk of arbitrary arrest or detention.<sup>23</sup>

4.9 As for the author's allegations brought under article 14 of the Covenant, challenging the refugee determination and post-determination process, the State party is of the view that this issue is beyond the scope of the Committee's review, and should be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol, as immigration proceedings are not a "suit at law", within the meaning of article 14, as interpreted by the Committee.<sup>24</sup> The State party nonetheless refutes the author's contentions, which it views as devoid of any basis in fact or law. Regarding the PRRA determination, the State party refers to several decisions of the Federal Court, among them *Say v. Canada (Solicitor General)*,<sup>25</sup> where the independence of the PRRA decision-makers was considered in detail, and confirmed, on the basis of extensive evidence and argument. Since 2004, and thus at the time of the author's own PRRA application in 2009, the PRRA function has been under the authority of the Minister of Citizenship and Immigration, thereby further reinforcing the Officer's independence.<sup>26</sup>

4.10 In the event that the Committee were to declare part or all of the allegations admissible, the State party requests that the Committee find them without merit.

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

5.1 On 10 April 2012, the author rejected the State party's observations. He submits that the State party merely reiterates the conclusions of the Refugee Board and the PRRA determination, which rejected the author's claims solely based on alleged inconsistencies. The author reiterates that he has been denied access to effective recourse, stressing that existing procedures in the State party are not designed to correct errors, and that there is an extreme unwillingness to acknowledge any mistakes made in the asylum process. PRRA Officers are low-level immigration officers working in such a climate of scepticism that they will find that there is no danger for any refused refugee claimant, no matter what new evidence is produced, or the country situation. The author adds that this case highlights the fact that there is no real access to an effective remedy within the State party's appellate system in asylum procedures, with a very narrow judicial review in the process. The Federal Court has raised the threshold for what is an arguable case for the issuance of an order to stay deportation to a level which is permitting flagrant violations of the State party's obligations. The Federal Court will not accept new evidence on judicial review, even if such evidence is of a compelling nature. The PRRA procedure takes an extremely restrictive approach to new evidence, as can be seen from the wording of section 113 of the Immigration and Refugee Protection Act.<sup>27</sup>

<sup>23</sup> The State party refers to paragraph 3 of the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

<sup>24</sup> The State party refers to communications No. 1341/2005, *Zundel v. Canada*, decision of inadmissibility adopted on 20 March 2007, para. 6.8, and No. 1234/2003, *P.K. v. Canada* (see note 22 above), paras. 7.4-7.5.

<sup>25</sup> 2005 FC 739.

<sup>26</sup> Prior to 2004, the PRRA function was situated within the Canadian Border Services Agency.

<sup>27</sup> Section 113 reads:

"Consideration of an application for protection shall be as follows:

5.2 The author refers to a report of the Committee to Aid Refugees, Amnesty International and Centre justice et foi, submitted to the Immigration Committee of the Canadian Parliament. This report, and the oral submissions presented to Parliament, show strong evidence that instead of the international law test of “substantial risk”, the State party’s courts impose a standard of “beyond a reasonable doubt” for applicants to meet, when assessing the risk faced. The threshold for review by the Federal Court of PRRA decisions is very high: The Court will only intervene if it finds that the decision was “manifestly unreasonable”, which is the highest threshold for review of decisions in administrative law. Thus, there are many situations in which a judge may not have arrived at the same conclusion as the PRRA officer based on the evidence on file, but will still not intervene, because the PRRA decision was not “manifestly unreasonable”. According to the above-mentioned report referred to by the author, PRRA agents thus do not have to make the “right” decision; they just have to avoid making “manifestly wrong” ones. The author submits that this is not in conformity with the State party’s obligations under article 2 of the Covenant, particularly in cases involving the right to life, or the right to be free from torture. In the present case, the risk faced by the author was not given proper consideration by the State party’s authorities.

5.3 While acknowledging the fact that he filed an H&C application in mid-March 2009 which is still pending, the author rejects the State party’s contention that domestic remedies were not exhausted, as the renewed H&C application does not protect him from deportation to Pakistan. Also, extensive medical evidence which was submitted as part of the H&C application had already been submitted with his PRRA application, but was not taken into consideration. There is therefore very little prospect of success for this H&C.

5.4 The author rejects the inconsistencies and doubts raised by the State party with regard to a number of pieces of evidence and allegations. There is no reason to question the strong evidence submitted. Referring to the fatwa, whose authenticity was questioned by the State party, the author notes that minor mistakes in English are common in Pakistan, even in official documents. The author acknowledges a mistake in one of the covering letters accompanying his PRRA submission submitted by his counsel, which stated that his brother had been attacked by “police officers”,<sup>28</sup> but notes that this does not contradict or diminish the probative value of such evidence, as his brother claimed the police failed to record the names of his aggressors. The author adds that whether his wife left him, or was kidnapped, does not seem entirely material to the case. Regarding the divorce deed, which is specifically addressed by the State party in light of conflicting dates, the author responds that the divorce procedure was organized by his brother when the author was already in Canada. The author merely had to sign all the documents and send them to his brother, who carried out the procedure in Pakistan on his behalf. Everything he has reported regarding the loss of his wife and daughter is very painful to him, and difficult to talk about.

5.5 Regarding the question of an internal flight alternative, the author submits that Islamist fundamentalists are “all across Pakistan”, and that there is nowhere in the country where the life of a Christian pastor would be truly safe. There is a legal presumption that if the persecution comes from the State, or from State agents, an internal flight alternative should be deemed to be absent. The author recalls that a police report under the blasphemy law was filed against him. The complainant in the case is the same Mullah who issued the

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(a) 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;  
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required”

<sup>28</sup> See para 4.3 above.

fatwa against the author, who is a well-known radical fundamentalist. Consequently, the author would be subjected to arrest and probable torture anywhere in Pakistan. To claim, as the State party does, that he would have an internal flight alternative cannot be considered a serious and reasonable argument in the circumstances.

5.6 The author adds that the objective evidence of danger for Christian leaders is extremely strong and well documented. If anything, the danger has worsened since the author left Pakistan. The author annexes a large number of documents, including press clippings reporting, inter alia, on: the assassination, in Faisalabad, of two Christian brothers, including a pastor, who had been arrested and charged with blasphemy, and were subsequently shot down outside of court; a death sentence and price on the head of a Christian mother of five for “blaspheming against Islam”; the assassination of Punjab Governor Salman Taseer in Islamabad, who was shot by one of his bodyguards because of his opposition to the blasphemy law in Pakistan; and armed attacks against Christians in Karachi by Taliban. On the basis of the evidence presented, the author submits that, clearly, the Pakistani authorities are not offering protection to individuals persecuted on account of their faith, including those facing charges of blasphemy.

5.7 The author reiterates that there is overwhelming evidence as to the personal subjective risk faced, on the basis of his profile and his past, which leads him to maintain that articles 6, 7 and 9 would be violated should he be returned to Pakistan. Pakistan is, clearly, either unwilling or unable to protect Christians. The danger is even greater for a pastor and an evangelist. It is uncontested that the author is a Christian pastor. This was confirmed by several letters from different sources in Sri Lanka, Canada and Pakistan. People accused of blasphemy are often lynched in prison, and not only do the police offer no protection in such cases, but actually assist complainants in bringing this type of blasphemy complaint.

5.8 The author further refers to the independent medical and psychological evidence submitted, recalling that he has been receiving long-term follow-up by a social worker and a doctor, as well as one of the main organizations treating patients suffering from post-traumatic stress disorder.<sup>29</sup> He also testified about his despair and suicidal state after his brother’s death, and submitted pictures of his dead brother as part of his application for a stay of his deportation.

#### **Further submission from the State party**

6.1 On 18 April 2013, the State party responded to the author’s comments. First, it informs the Committee that the author remains in Canada, solely on the basis of the Committee’s request for interim measures, with which the State party has complied. The State party reiterates that the complaint is both inadmissible and without merit in its substance, and that a number of inconsistencies were identified as having undermined the author’s credibility. In this regard, the State party notes that, contrary to his assertions, the fact of whether his wife left him or was kidnapped is material to the case, since kidnapping is consistent with his allegations of persecution and risk, whereas a marriage breakdown would simply suggest a personal motive for leaving Pakistan, which is unrelated to risk of harm. The State party reiterates the fact that a number of inconsistencies and contradictions were identified in his story concerning the alleged kidnapping, which is of substantial importance in the assessment of his allegations. Furthermore, since the author is alleging that the fatwas purportedly issued against him were at the instigation of “his wife’s abductor”, whether in fact there was a kidnapping is very relevant to the issue of the existence of the fatwas.

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<sup>29</sup> Réseau d’intervention auprès des personnes ayant subi la violence organisée (RIVO).

6.2 The State party recalls that, in his latest observations, the author has claimed that the divorce was organized by his brother, and that he had signed the documents in Canada and sent them to Pakistan. However, according to the State party, the author's signature on the document was purportedly witnessed by two individuals, he (the author) was purportedly identified by a lawyer based on his (the author's) identity card, and the document is "attested" by a Justice of the Peace. If the author's latest version of events is true, then it indicates that the author falsified a legal document by purporting to sign it in Karachi when in fact he signed it in Canada, and that he had witnesses who participated in this fraud. Either the author was in Karachi at the time, or the divorce deed is evidence of his lack of credibility. The State party concludes that such inconsistencies concerning the central aspect of his story seriously undermine the overall strength of his case.

6.3 The State party rejects the author's statements, under articles 2 and 14 of the Covenant, about aspects of the Canadian refugee determination system. It clarifies that, contrary to the author's assertions, the test for a stay of deportation sought before the Federal Court has been applied since the Court's decision of 1988, *Toth v. Canada (Minister of Employment and Immigration)*,<sup>30</sup> in which the Court established the following test: whether there is a serious issue to be tried; whether there is a risk of irreparable harm if the applicant is deported; and whether the balance of convenience favours the applicant. This same test was applied in the author's application for a stay of removal in June 2009,<sup>31</sup> in which the court determined that the author had not raised a serious issue as to the legality of the PRRA decision, and considered the new evidence in its assessment of whether there was a risk of irreparable harm, and whether the balance of convenience favoured the applicant. The State party further rejects the author's assertion that the burden of proof required to be offered protection in the PRRA process is "beyond a reasonable doubt". It clarifies that, whether the risk is assessed by the Immigration and Refugee Board or by a PRRA Officer, the standard of proof for protection on Refugee Convention grounds is "reasonable chance", and the standard of proof for protection on the grounds of risk of torture or risk to life or of cruel and unusual treatment or punishment is on a "balance of probabilities". The State party further reiterates that it is not the role of the Committee to consider the Canadian immigration and refugee protection system in the abstract. It submits that, to the extent that any of the author's allegations about the deficiencies in the system had a direct bearing on the assessment of his claim for protection, which is denied, they should have been raised before the Federal Court. In the same vein, the State party recalls that the author applied for permanent residence on humanitarian and compassionate grounds ("H&C") in March 2009. To date, no decision on this application has been made.

6.4 Regarding the human rights situation in Pakistan, the State party submits that the U.S. Department of State *International Religious Freedom Report for 2011* indicates that while religiously motivated violence and human rights abuses remain serious problems in Pakistan, there are signs of improvement with respect to the blasphemy laws and religious tolerance. In recent months, it has been reported that senior members of the Pakistan Government, including the interior minister, have spoken out in defence of a young Christian girl facing blasphemy charges. The Pakistani police and Government provided protection for the girl and her family in the months following the accusations. In November 2012, the Islamabad High Court threw out the charges against the girl for lack of evidence, and subsequently filed charges against her accuser for fabricating evidence. According to the State party, these developments suggest that the highest levels of the Pakistani government, as well as the police and the courts, are becoming increasingly sensitive to the misuse of blasphemy allegations. It also reiterates that the blasphemy laws are applied to all

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<sup>30</sup> (1988), 86 NR 302 (FCA).

<sup>31</sup> *Masih v. Canada (Minister of Citizenship and Immigration)*, IMM-2867-09 (22 June 2009).

other religious minorities in Pakistan, as well as the majority Muslims, and therefore cannot be considered to constitute discrimination against Christians in particular.

6.5 The State party reiterates that the communication should be deemed inadmissible on the grounds that the author's allegations under articles 6 and 7 of the Covenant are manifestly unfounded; that his allegations of violations of articles 2, 9 and 14 are incompatible with the provisions of the Covenant; and that he has failed to exhaust domestic remedies in respect of the new allegations raised in his reply submission. In the alternative, the State party asks the Committee to find the communication to be wholly without merit.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

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

7.2 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.

7.3 With respect to the author's allegation that the refugee determination and asylum procedures breached article 14 of the Covenant, as immigration agents lack competence and impartiality, the Committee observes that the author has failed to sufficiently substantiate, for admissibility purposes, that, in his case, the decisions adopted in the framework of his asylum application and related review proceedings did not emanate from competent, independent and impartial tribunals. In these circumstances, the Committee need not determine whether the proceedings relating to the author's deportation fell within the scope of application of article 14 (determination of rights and duties in a suit at law).<sup>32</sup> This part of the communication, accordingly, is inadmissible under article 2 of the Optional Protocol.

7.4 The Committee notes the State party's argument that the author has not exhausted domestic remedies because he filed an H&C application on 18 March 2009, which remains pending. The Committee recalls its jurisprudence to the effect that authors must avail themselves of all judicial remedies in order to fulfil the requirement of article 5, paragraph 2 (b), of the Optional Protocol, insofar as such remedies appear to be effective in the given case, and are de facto available to them.<sup>33</sup> In the present case, the Committee observes that four years after the author's H&C application was filed, it remains unanswered and considers that the delay in responding to the author's application is unreasonable. The Committee further observes that the pending H&C application does not shield the author from deportation to Pakistan, and therefore cannot be described as offering him an effective remedy. Accordingly, the Committee concludes that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from examining the author's communication.

7.5 The Committee notes the State party's challenge to the admissibility of the communication on the ground of failure on the part of the author to substantiate his claims under articles 6, paragraph 1, and 7 of the Covenant. In light of the extensive evidence

<sup>32</sup> See, inter alia, communication No.1315/2004, *Singh v. Canada*, decision of inadmissibility of 30 March 2006, para. 6.2.

<sup>33</sup> See communications No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4; No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility of 22 October 2003, para. 6.5; and No. 433/1990, *A.P.A. v. Spain*, decision of inadmissibility of 25 March 1994, para. 6.2.

submitted, both on the general country situation, and on the author's personal circumstances, the Committee considers that the author has sufficiently substantiated, for purposes of admissibility, that his forcible return to Pakistan would expose him to a risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant. The Committee therefore declares this part of the communication admissible, insofar as it appears to raise issues under these provisions which need to be examined on the merits.

7.6. With regard to the author's claims under article 9, paragraph 1, the Committee notes the State party's argument that this provision has no extraterritorial application and does not prohibit a State from deporting a foreign national to a country where he or she allegedly faces a risk of arbitrary arrest or detention. The Committee takes note of the author's claim that because of the fatwa issued against him, and the First Information Report filed with the police, he would be at risk of arbitrary detention upon return. The Committee considers that, in the context of the present communication, this claim cannot be dissociated from those under articles 6 and 7 of the Covenant.

7.7 The Committee therefore declares the communication admissible, insofar as it appears to raise issues under articles 6, paragraph 1, 7 and 9 of the Covenant, and proceeds to their consideration on the merits.

#### *Consideration of the merits*

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it, as provided for under article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee recalls the State party's obligation under article 2 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 processes for expulsion of non-citizens.

8.3 The Committee notes the author's claim that he faces a real risk of being subjected to treatment contrary to articles 6 and 7 of the Covenant if he were to be forcibly returned to Pakistan, where no State protection would be offered to him. The Committee also takes note of the State party's contention that the author's applications before domestic authorities were rejected on the ground that the author lacked credibility, a conclusion reached further to inconsistencies in his statements and lack of credible evidence in support of his allegations. The Committee also takes note of the State party's argument that the blasphemy laws apply to all religious minorities in Pakistan, as well as to the Muslim majority in the country, and that the author failed to convincingly show that he was unable to obtain protection from the Pakistani authorities.

8.4 Notwithstanding the deference to be given to the immigration authorities in assessing the evidence before them, the Committee must determine whether the author's removal to Pakistan would expose him to a real risk of irreparable harm. In this context, the Committee recalls its general comment No. 31, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a risk of irreparable harm, such as that contemplated by articles 6 and 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.<sup>34</sup>

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<sup>34</sup> General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (see note 23 above), para. 12.

8.5 The Committee finds that, in the circumstances, and notwithstanding the inconsistencies highlighted by the State party, insufficient attention was given to the author's allegations about the real risk he might face if deported to his country of origin. The Committee notes that the State party claims that the author's declarations are not credible and merely expresses doubts about their veracity, without substantiating these allegations. With respect to the fatwa, the State party has failed to undertake any serious examination of its authenticity; the fatwa was not given any weight, solely because it included a signature and footer in English, which also contained an English spelling mistake. No official expert analysis was conducted, nor was any thorough investigation undertaken with regard to the author of the fatwa, his profile, or his authority to issue fatwas. Investigation would have been all the more critical given that it was the author of the fatwa who had filed the First Information Report against the author, registered before the Karachi police on 4 June 2005, with respect to acts regarded by the police as constituting an offence under Pakistani criminal law (blasphemy law), which incurs the death penalty. The Committee also notes that the State party has refrained from providing any comment on the Federal Court's statement, in its decision of 22 June 2009, that it was prepared to accept that the author's brother was beaten to death by unknown individuals. Furthermore, the State party failed to take into account the uncontested medical reports submitted by the author, which point to risks for his mental health in the event of a forcible return to Pakistan.

8.6 The Committee accordingly considers, in the circumstances of the present case, that the expulsion of the author would constitute a violation of article 6, paragraph 1, and article 7 of the Covenant.

8.7 In light of its findings on articles 6, paragraph 1, and 7 of the Covenant, the Committee does not deem it necessary to further examine the author's claims under article 9 of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Pakistan would violate his rights under articles 6, paragraph 1, and 7 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including a full reconsideration of his claim regarding the risk of treatment contrary to articles 6, paragraph 1, and 7 of the Covenant should he be returned to Pakistan, taking into account the State party's obligations under the Covenant. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them broadly in the official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendices

### **Individual opinion of Committee member Mr. Yuval Shany, joined by Committee members Mr. Cornelis Flinterman, Mr. Walter Kälin, Sir Nigel Rodley, Ms. Anja Seibert-Fohr and Mr. Konstantine Vardzelashvili (dissenting)**

1. We are unable to agree with the decision rendered by the Committee to find that the State party's decision to deport the author back to Pakistan amounts to a violation of articles 6, paragraph 1, and 7 of the Covenant for the following reasons.

2. According to the Committee's established jurisprudence, it should accord deference to fact-based assessments by national immigration authorities as to whether removed individuals would face a real risk of a serious human rights violation upon removal, since "it is generally for the instances of the States parties to the Covenant to evaluate facts in such cases".<sup>1</sup> Such an approach is based on acceptance by the Committee of the comparative advantage that domestic authorities have in making factual findings due to their direct access to oral testimonies and other materials presented in legal proceedings at the national level. It is also based on the view that the Committee is not a court of fourth instance that should re-evaluate facts and evidence *de novo*.

3. Consequently, the Committee held in the past that it would regard decisions of local immigration authorities as violating the Covenant where the author was able to point to serious irregularities in the decision-making procedures, or where the final decision was manifestly unreasonable or arbitrary in nature because inadequate consideration was given in domestic proceedings to the specific rights of the author under the Covenant or available evidence not taken properly into account.<sup>2</sup> For example, the Committee found violations of the Covenant where the local authorities failed to consider an important risk factor.<sup>3</sup> It also found violations where the author was able to show on the basis of uncontested evidence that upon removal he would be exposed to a real personal risk of irreparable harm.<sup>4</sup>

4. All the risk factors relied upon by the majority view in the present case — the fatwa issued against the author, the violent death of his brother, and the complaint against him to the local police for violating Pakistani blasphemy laws — were duly considered by the Canadian Immigration Refugee Board and the Pre-Removal Risk Assessment officer, as well as by the Canadian Federal Courts that reviewed their decisions. On the basis of all the information before them, the Canadian authorities came to the conclusion that the author's version of the events that he claimed happened to him in Pakistan before leaving that country lacks credibility and that, in general, Christian pastors in Pakistan are not subject today to a real risk of physical harm.

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<sup>1</sup> Communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, para. 11.2.

<sup>2</sup> See e.g., communication No. 1544/2007, *Hamida v. Canada*, Views adopted on 18 March 2010, paras. 8.4-8.6

<sup>3</sup> Communication No. 1763/2008, *Pillai v. Canada* (see note 1 above), paras. 11.2 and 11.4 ("The Committee further notes that the diagnosis of Mr. Pillai's post-traumatic stress disorder led the IRB to refrain from questioning him about his earlier alleged torture in detention. The Committee is accordingly of the view that the material before it suggests that insufficient weight was given to the authors' allegations of torture and the real risk they might face if deported to their country of origin, in the light of the documented prevalence of torture in Sri Lanka").

<sup>4</sup> Communication No. 1544/2007, *Hamida v. Canada* (see note 2 above), para. 8.7.



5. We are not persuaded by the majority view that the decision of the Canadian authorities demonstrated a serious procedural defect, such as omitting to consider an important risk factor, or was manifestly unreasonable or arbitrary in nature.

6. The author had access to various judicial and administrative instances in Canada, which fully heard and considered his claim of a real risk of irreparable harm upon removal to Pakistan, and he failed to establish that there were any defects in the procedure which should lead us to reject its outcome. Moreover, the version of events provided by the author to the Canadian authorities contained a number of serious contradictions – in particular relating to the kidnapping of his wife and daughter. Therefore, we cannot hold that the sceptical approach taken by the Canadian authorities towards key factual aspects of the author's claim that his personal circumstances are such that he will be at real risk of irreparable harm upon his return to Pakistan was manifestly unreasonable or arbitrary.

7. We also find no grounds in the evidence before us to reject the factual risk assessment made by the Canadian authorities, according to which, in general, Christian pastors in Pakistan are not subject today to a real risk of physical harm. Under these circumstances, in which both the specific and general factual risk factors invoked by the author were thoroughly examined and rejected by legal authorities in the State party, we cannot hold on the basis of the evidence before us that the author proved that upon removal he would be exposed to a real personal risk of irreparable harm.

8. As a result of these considerations, we are of the view that the author has failed to substantiate his claim that the decision of the State party to deport him to Pakistan would violate article 6, paragraph 1, and article 7 of the Covenant and accordingly find no violation of the Covenant by Canada.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee's annual report to the General Assembly.]

### **Individual opinion of Committee member Mr. Yuji Iwasawa (dissenting)**

1. It has long been the constant practice of the Committee in removal proceedings to recall its jurisprudence that “it is generally for the courts of the States parties to the Covenant to evaluate facts and evidence of a particular case, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice.”<sup>1</sup> Since 2011, the Committee has used the following formula: the States parties have the obligation 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; “generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine the existence of such risk”.<sup>2</sup> This latter formula, even though somewhat different from the former, originates from the same underlying idea. As explained also in the individual opinions of Mr Yuval Shany et al., such a deferential standard of review is predicated upon the Committee’s recognition that domestic authorities have comparative advantage in evaluating facts and evidence and that the Committee is not a fourth instance that should re-evaluate facts and evidence *de novo*. The Committee considers decisions of domestic authorities as violating the Covenant where the evaluation was manifestly unreasonable or where there were serious irregularities in the procedures.

2. In the present communication, I am unable to conclude that the material before the Committee demonstrates that the evaluation of facts and evidence carried out by the authorities of the State party was manifestly unreasonable. The domestic authorities identified a number of inconsistencies in the author’s claims as having undermined his credibility, including his claim that his wife and daughter had been kidnapped. The majority of the Committee attaches much importance to the fact that the author of the fatwa was the same person who had filed the First Information Report against the author. However, the author alleged that the fatwa had been issued at the instigation of “his wife’s abductor”, and it was not unreasonable that the domestic authorities considered whether there was in fact a kidnapping as relevant to the existence of the fatwa.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee’s annual report to the General Assembly.]

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<sup>1</sup> Communication No. 1544/2007, *Hamida v. Canada* (see note 2 above), para. 8.4. See also No. 1551/2007, *Tarlue v. Canada* (see note 18 above), para. 7.4; No. 1455/2006, *Kaur v. Canada*, decision of inadmissibility adopted on 30 Oct. 2008, para. 7.3; No. 1540/2007, *Nakrash v. Sweden*, decision of inadmissibility adopted on 30 Oct. 2008, para. 7.3; No. 1494/2006, *A.C. v. The Netherlands*, decision of inadmissibility adopted on 22 July 2008, para. 8.2; No. 1234/2003, *P.K. v. Canada*, decision of inadmissibility adopted on 20 March 2007, para. 7.3. For an overview of the standard of review used by the Committee in removal proceedings up to March 2011, see communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, Individual opinion of Yuji Iwasawa.

<sup>2</sup> Communications No. 2149/2012, *Islam v. Sweden*, Views adopted on 25 July 2013 (posterior to the adoption of the present Views), para. 7.4; No. 1912/2009, *Thuraisamy v. Canada*, Views adopted on 31 Oct. 2012, para. 7.4; No. 1801/2008, *G.K. v. The Netherlands*, Views adopted on 22 March 2012, para. 11.2; No. 1833/2008, *X v. Sweden*, Views adopted on 1 Nov. 2011, para. 9.2; No. 1819/2008, *A.A. v. Canada*, decision of inadmissibility adopted on 31 Oct. 2011, para. 7.8; No. 1763/2008, *Pillai v. Canada*, (see note 1 above), paras. 11.2 and 11.4.