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Human Rights Committee

Communication No. 1898/2009

Views adopted by the Committee at its 109th session (14 October – 1 November 2013)

<i>Submitted by:</i>	Naveed Akram Choudhary (represented by counsel Stewart Istvanffy)
<i>Alleged victims:</i>	The author, his wife, Safia Naveed and three of their children (Asma, Saif and Rayan Naveed)
<i>State party:</i>	Canada
<i>Date of communication:</i>	31 August 2009 (initial submission)
<i>Document reference:</i>	Special Rapporteur's rule 92 and 97 decision, transmitted to the State party on 4 September 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	28 October 2013
<i>Subject matter:</i>	Expulsion to a country where the person fears to be tortured and persecuted.
<i>Procedural issue:</i>	Non-exhaustion of domestic remedies; non-substantiation; and incompatibility with the Covenant.
<i>Substantive issues:</i>	Right to life, right to protection from cruel, inhuman or degrading treatment or punishment; right to be free from arbitrary detention; right to protection from arbitrary and unlawful interference with the family and home; protection of the family; right to child protection.
<i>Article of the Covenant:</i>	Articles 2, 6, 7, 9, 13, 14, 17, 23 and 24
<i>Article of the Optional Protocol:</i>	Articles 2; 3; and 5, paragraph 2 b)
	[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (109th session)

concerning

Communication No. 1898/2009*

Submitted by: Naveed Akram Choudhary (represented by counsel Stewart Istvanffy)

Alleged victims: The author, his wife, Safia Naveed and three of their children (Asma, Saif and Rayan Naveed)

State party: Canada

Date of communication: 31 August 2009 (initial submission)

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

Meeting on 28 October 2013,

Having concluded its consideration of communication No. 1898/2009, submitted to the Human Rights Committee by Mr. Naveed Akram Choudhary 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 30 August 2009, is Naveed Akram Choudhary, a Pakistani national born in Pakistan on 26 February 1968. He claims that the State party would violate his rights under articles 6, 7 and 9 of the Covenant were he to be deported to Pakistan and that the procedural guarantees of articles 2, 13 and 14 of the Covenant have been violated through the domestic proceedings. Finally he claims that his deportation would also entail a violation of his rights as well as the rights of his wife, Safia Naveed Choudhary, of Pakistani citizenship, born on 28 August 1972; and three of his children, Asma Naveed, born on 15 September 2002, Saif Naveed, born on 12 October

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

2003 and Rayan Naveed, born on 23 October 2005, who have Canadian citizenship under articles 17, 23 and 24 of the Covenant. He is represented by counsel Stewart Istvanffy¹.

1.2 On 4 September 2009, pursuant to rule 97 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures requested the State party not to expel the author and his family while the communication was being examined.

Factual Background

2.1 The author is married to Safia Naveed with whom he has four children, three of whom are Canadian citizens. The author was an active Shia member of the Imam Bargah community in Jhelum, Punjab, who has been targeted by the Sunni extremist group Sipah-e-Sahaba (SSP) for speaking out against Islamist fundamentalism and violence. The city of Jhelum is a stronghold of the Sipah-e-Sahaba.

2.2 Problems began in 1999 when the SSP opened an office in the author's neighbourhood. Between 2000 and 2002, the author has been a victim of attacks and threats by SSP members, who also threatened that he and the other Shiites would be killed if they continued organizing meetings of "infidels". He complained to the police and to the Office of the Senior Superintendent of Police in Jhelum², but achieved no results. In particular, he and his wife were attacked in March 2001 during a religious gathering. As a result, the author had to be treated at the hospital for the injuries suffered³. On 13 February 2002, some SSP supporters shot at him and his fellow Shiites. On another occasion he learnt that a complaint had been filed to the police by the SPP accusing him of publicly insulting the Sunni faith⁴. He then decided to leave Pakistan

2.3 The author learnt after he left Pakistan that the complaint issued against him for publicly insulting the Sunni faith had resulted in the criminal charge of blasphemy and that the police came to his house to arrest him. As they did not find him, they issued an arrest warrant against him⁵. The author fled to Canada with his wife via the United States in March 2002, and claimed refugee status in Montreal on 15 April 2002.

2.4 Later, the author claimed that their son left behind in Pakistan had been kidnapped in November 2006 as an act of reprisal against him, and is still missing⁶. A *fatwa* was also issued against the author by radical Sunnis of Jhelum.

2.5 The Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) rejected the author's refugee claim on 14 December 2004, on the basis that his wife and he did not credibly establish their identity. The Board found that the author's identity document seemed to be counterfeit as it did not contain the normal characteristics generally observed in that type of document. As for the identity document presented by his wife, the Board noted that the numbering of the card was part of a list of documents that were

¹ The Optional Protocol entered into force for the State party on 20 August 1976.

² A copy of the letter to the Senior Superintendent of Jhelum district dated 14 February 2002 is appended to the author's original communication.

³ Medical report dated 10 March 2001 submitted by the author.

⁴ A copy of the first Information report filed by an SSP member on 14 February 2002 is appended to the author's original communication.

⁵ A copy of the arrest warrant dated 7 May 2002 is appended to the author's original communication (the arrest warrant was delivered, according to that same document, on 28 June 2002).

⁶ Newspaper article submitted

declared stolen by the Government of Pakistan⁷. The IRB therefore found that these pieces of evidence put into doubt the validity and authenticity of both cards. It concluded that, in line with the jurisprudence of the Federal Court, when documents tendered by the applicant are found to be fraudulent and no satisfactory explanation is offered, the panel can draw a negative conclusion with regard to the applicant's identity and credibility⁸. The IRB concluded that since the author had not established the identity of him and his wife, it considered that they had not established the central element of their claim.

2.6 The Federal Court rejected the author's application for leave for judicial review on 24 March 2005. A request to re-open the case on the basis of additional documentation was rejected on 8 July 2005 by the IRB.

2.7 Both the author's demand on humanitarian and compassionate grounds and pre-removal risk assessment (PRRA) were rejected on 28 and 29 May 2007 respectively. The author filed for judicial review of the PRRA decision, which was denied in April 2008.

2.8 The deportation of the author and his family was scheduled for 8 September 2009. A motion for stay of deportation was filed on 31 August 2009 and was still pending before the Federal Court at the time of submission of the communication to the Committee. However, this remedy has no suspensive effect against the order for removal. The author therefore claims that he exhausted domestic remedies.

The complaint

3.1 The author contends that his deportation would entail a violation of articles 6, 7 and 9 of the Covenant. He claims that, in light of the *fatwa* and arrest warrant issued against him, his life and personal security would be at great risk if returned to Pakistan. The Sipah-e-Sahaba is one of the most dangerous radical Sunni organizations in Pakistan, over which the Pakistani authorities have no control, and who mistreated the author in the past.

3.2 The author was involved in most of the important religious events of his Imam Bargah and he is well-known in the Pakistani Shia community in Montreal. It is therefore impossible for him to hide in his country. The author adds that there is complete impunity in Pakistan for groups acting against him. Despite compelling evidence by human rights organizations and newspaper articles, the Canadian authorities ignored that such danger existed.

3.3 The PRRA decision did not take into consideration pieces of evidence that he submitted regarding the risk to his life and risk of torture, thereby violating the procedural guarantees prescribed in articles 13 and 14 of the Covenant.

3.4 As to the final decision of the Federal Court, it refers only to the legality of the PRRA decision not to the danger to his life. The decision does not even mention the newspaper articles and other evidence about the disappearance of the author's eldest son in Pakistan in November 2006. He submitted an important number of documents, attestations, letters and newspaper articles confirming that the author has been persecuted in Pakistan and his life will be in danger if he returns to his country. However, the case was rejected because of a lack of recognition by the IRB of the extent of sectarian terrorism in Pakistan and the lack of protection provided by the state in this regard. More importantly, the decision was mainly based on the lack of identity documents.

⁷ The report specifies that the serial number of this document is part of a list of blank copies of national identity cards stolen in Peshawar in 1997.

⁸ The IRB cited the Federal Court's jurisprudence in *Yogorajah, Vigneswararajan v. M.C.I* (C.F. 1ère inst., IMM-5722-01), Rouleau, December 20, 2002.

3.5 The author has strong support from the Shia leadership in his city and in Pakistan and submitted several letters to the Canadian authorities confirming the danger he faces. The author alleges that all this evidence has been ignored in the decision refusing his PRRA application. The evidence includes police reports, arrest warrant, medical report, a lawyer's letter and corroborating letters from his temple. The author suffers from depression and the children are scared to be sent back to Pakistan.

3.6 The judicial review by the Federal Court is not an appeal on the merits. Rather, it is a very narrow review for gross errors of law. Leave must be obtained, for which an arguable case must be made, in order for the Federal Court to proceed with this review. In addition, in the context of deportation, it has no suspensive effect. In his case, the Federal Court stated that it could not address irreparable harm that was based on the same allegations brought before the Immigration and Refugee Board or the PRRA officer. The author therefore considers the recourse before the Federal Court to be futile.

3.7 The author further considers that PRRA officers do not fulfil the requirements of impartiality, independence and recognized competence in matters of international human rights and legal matters. Their decisions do not always conform to the jurisprudence of the Federal Court or the IRB and do not take into account in any realistic fashion the situation in the countries of the people asking for relief.

3.8 On 6 September 2009, the author brought additional claims to the Committee. He argues that the rights of his children, who were born in Canada and have Canadian citizenship, have not been considered in the decisions regarding them, despite substantial evidence of danger and terrible living conditions for them in Pakistan. These children have the right to the protection of the State party without discrimination and the decision to deport their parents does not respect this international obligation. If the children return with their parents, they will be victims of a violation of article 24. In its decision dated 7 April 2008, the Federal Court did not take into account the protection of the family and the consideration of children's rights.

3.9 The author notes that the fact that he and his family have lived in Canada since 2002 was not taken into account by the Canadian authorities. The couple's eldest son was left behind in Pakistan and disappeared in the hands of Islamic extremists in late 2006, as corroborated by newspaper articles and letters from family members⁹ submitted to the authorities and now to the Committee. In addition, one of the author's sons needs special education which cannot be afforded in Pakistan. The family's return to Pakistan would be contrary to the best interest of the children and would violate article 17 and 23 of the Covenant.

State party's observations on the admissibility and the merits

4.1 On 1 March 2010, the State party provided observations on the admissibility and merits of the communication.

4.2 The State party challenges the admissibility of the author's claims under articles 6 and 7 for failure to exhaust domestic remedies since, at the time of writing the author had an outstanding application for leave to apply for judicial review before the Federal Court¹⁰. In addition, the author's allegations are inadmissible for failing to substantiate that he has established a *prima facie* case. Indeed, the author's allegations before the Committee are based on the same facts and evidence as were presented to the Canadian authorities. It is not

⁹ Those documents were submitted in the latest submission for humanitarian and compassionate grounds (H&C application) in July 2008.

¹⁰ See para. 5.1 below.

the role of the Committee to re-evaluate facts and evidence unless it is manifest that the domestic authorities' evaluation was arbitrary or amounted to a denial of justice. Nothing in the author's communication suggests arbitrariness or denial of justice. Nevertheless, should the Committee decide to re-evaluate the facts and evidence of the case, the State party submits that the author has not established that he would be at personal risk of a treatment contrary to the Covenant.

4.3 The author's claims under articles 2, 9, 13 and 14 are inadmissible as incompatible with the Covenant pursuant to article 3 of the Optional Protocol.

4.4 In his written narrative filed in support of his refugee claim, the author stated that as a Shia involved in religious activities in the city of Jhelum, he arranged a Shia religious gathering in March 2000. Members of the SSP pelted his home with stones and, although the police came, no one was arrested. He began to receive threatening phone calls and other Shia members were harassed and beaten. On 10 March 2001, he and his wife were attacked by the Sunni extremist F.M. and four others and he received a nose injury and bruising. In May 2001, the Imambargah was attacked by about two dozen Sunnis, who pelted stones at the Shias and threatened to set the building on fire. In February 2002, motorcyclists riding past the Imambargah allegedly opened fire on it with guns. The author continued to receive threatening phone calls and therefore went with other Shias to the police to file a complaint. While he, his wife and son were in another village visiting relatives, he was informed that the police had come to his home to arrest him after a Sunni extremist had filed a complaint against him for having publicly insulted the Sunni faith. The family therefore decided to leave the country. An agent could only make travel arrangements for the author and his wife but promised to arrange for their son to join them.

4.5 Before the Immigration and Refugee Board (IRB), the author was represented by counsel and gave oral testimony in addition to the documentary evidence submitted. He had the chance to explain any ambiguities or inconsistencies and respond to any questions. The IRB determined that the author was not a Convention refugee and not a person in need of protection. The IRB found that the documents establishing the author's identity were fraudulent. The author had been provided with the expert's report concluding that the author's ID was a counterfeit more than 3 months before his December 2004 hearing before the IRB, but was unable to provide any other documents establishing his identity. He merely insisted that the documents were real. Because the author had not established his identity, which was a central element of his claim, the IRB determined that the author was not a refugee. On 24 March 2005, the Federal Court denied the author's application for leave to apply for judicial review of the IRB decision.

4.6 During the Pre-Removal Risk Assessment (PRRA), the author made the same claims as before the IRB. He added that his son, Awais, had been kidnapped while visiting his grandparents in Jhelum on 2 November 2006. With respect to the author's identity, the PRRA officer noted that since the 2004 hearing, the author had obtained computerized identity cards, as well as Pakistani passports for himself and his wife. The PRRA officer relied on the fact that Pakistani authorities did in fact issue a passport to the author as conclusive evidence of identity.

4.7 The PRRA officer, considering the various reports on the human rights situation in Pakistan, noted that sectarian violence affects all minority groups in the country, and that the Sunni majority are also victims. In 2005, the Pakistani government cracked down on the SSP militants, with many members, including its leader, arrested. The government has also implemented measures to limit the abuse of blasphemy laws, resulting in a significant reduction of blasphemy cases, the dropping of charges and low conviction rates. With regard to the fatwa issued against the author, the PRRA officer relied upon the documentary evidence which suggested that anyone in Pakistan can purport to issue a fatwa, but only those fatwas issued by a proper body will have any consequence. The PRRA officer did not

consider that the barely legible photocopy of the fatwa issued against him and which was provided by the author was sufficient to give the document any probative weight.

4.8 With respect to the alleged kidnapping of the author's son, the PRRA officer did not consider that the newspaper articles mentioning that the son had been missing for 6 days were sufficient proof. Despite being requested to do so, the author did not inform the officer whether the son was still missing, and as such, the disappearance was given little probative weight in assessing the risk to the author. The Officer concluded that the author had failed to establish the presence of a personalized risk. On 9 August 2007, the author applied for leave to apply to the Federal Court for judicial review of the negative PRRA decision. Leave was granted on 20 December 2007. The application was joined with the author's application for judicial review of his negative Humanitarian and Compassionate Grounds (H&C) decision.

4.9 In the framework of the H&C application, in addition to the claims already made before the IRB and PRRA officer, the author alleged that his three Canadian-born children could be in danger at the hands of religious extremists if the family had to return to Pakistan. The author's H&C application was turned down on 28 May 2007 based on the same reasoning as the PRRA officer. In addition, the officer considered the author's degree of establishment in Canada and the best interest of the author's children. The officer noted that the author had been unemployed for four years in Canada and that his active participation in religious activities in Montreal was not sufficient to establish that he is well integrated into Canadian society. With respect to the children, the officer determined that because of their young ages the fact that they would be going with their parents to Pakistan where they are citizens, and the presence of a large family in Pakistan to provide support, the best interest of the children did not warrant an exemption from the normal requirements of the legislation. The officer concluded that the difficulties the family may face upon return are not unusual, undeserved or disproportionate, and as a result, there were insufficient humanitarian and compassionate grounds to exempt the family from the requirement to obtain an immigration visa from outside of Canada.

4.10 After the author's applications for leave to apply for judicial review of both the PRRA and H&C decisions were granted, the Federal Court rendered its decision on 7 April 2008, denying the judicial review applications. The Court considered that the decision taken by the PRRA officer was reasonable since it was based on a thorough and thoughtful analysis. As for the H&C decision, the Court reiterated that the best interest of the child is one factor among others to be considered by the officer, but this interest does not constitute necessarily the determinative factor acting as an impediment to the removal of the family. The Court found that the officer was "alive, alert and sensitive" to the best interests of the children, as required by the jurisprudence, and that his findings were reasonable and based on evidence.

4.11 On 23 July 2008, the author made a second H&C application based on the same allegations of risk as in previous applications and emphasized the best interest of his Canadian-born children and the unsettled human rights situation in Pakistan. The officer noted that although one of the children required speech therapy, such therapy was available in Pakistan. Moreover, while the education system in Pakistan was not ideal, the children could get a public education until the age of 17, or could attend private schools. In addition, as Canadian citizens, they could choose to return to Canada for their university education. The officer concluded that the children would therefore not suffer hardship if returned with their parents to Pakistan where they also have an extended family. With regard to the risk, the officer considered the new developments in the human rights situation in Pakistan. The officer noted that sectarian violence continued in Pakistan with members of all religions (Ahmadis, Christians, Hindus, Shiites and Sunnis) being at risk. He considered that the author had not demonstrated a personal risk in this regard. He noted that his father, who is

also an active Shiite, had been able to remain at the same address for a number of years, apparently without problems. With respect to the kidnapping of the author's son, the officer considered that the letters from author's friends were from interested parties and had not been submitted to the police or human rights bodies that may have acted thereupon.

4.12 In his communication, the author referred to several human rights organizations, including Amnesty International and Human Rights Watch, which he alleges confirm that there is complete impunity in Pakistan for "religious terrorists and their crimes". The author has not submitted any evidence demonstrating that someone with his profile as a local Shia leader is at particular risk of torture or death in Pakistan. Even if human rights violations continue to be reported, including against Shias, this is not sufficient to be the basis for a violation of the Covenant. In any event, the main reports on the human rights situation in Pakistan do not indicate that Shias are particularly at risk. For instance, the U.S State Department Report notes that most blasphemy allegations are made against Sunni Muslims against other Sunni Muslims. Appellate courts have been dismissing most blasphemy charges and in 2005, a law was passed requiring senior police officers to review blasphemy charges, to eliminate spurious charges. The State party notes that the focus of the author's allegations concern actions by Sunni extremists in Pakistan and not state authorities.

4.13 Even if the author does face a risk of ill-treatment if he returns to Pakistan, he has not shown that he does not have an internal flight alternative. In particular, the author has not proven that the extremists who allegedly want him dead would search for him outside of his hometown of Jhelum. Even though he may face hardship should he not be able to go back to his home town, such hardship would not amount to a violation of article 7 of the Covenant.

4.14 The State party further argues that the author's claims with respect to articles 2, 9, 13 and 14 are incompatible with the Covenant, or in the alternative, insufficiently substantiated. In accordance with the Committee's jurisprudence, the provisions of article 2 lay down general obligations for States parties and cannot, by themselves and standing alone, give rise to a claim in a communication under the Optional Protocol¹¹.

4.15 With respect to article 9, the State party contends that unlike article 7, article 9 does not have any extraterritorial application as indicated in the Committee's General Comment No. 31¹². Even if the author could prove that he would be detained upon return to Pakistan, this would not lead to the State party's responsibility under the Covenant. Only the most serious breaches of fundamental rights can constitute exceptions to the power of the state to decide conditions allowing foreigners to enter and remain in its territory. Limiting the power given to a state to control who immigrates across its borders by giving extraterritorial reach to all articles of the Covenant would deny a state's sovereignty over removal of foreigners from its territory.

4.16 With respect to article 13, the State party considers the author's claims inadmissible for non-substantiation and incompatibility with the Covenant. In the event that the Committee wishes to consider the application of article 13 on the merits, the State party emphasizes that article 13 reflects the well-established principle of international law that states have the right to control the entry, residence and expulsion of aliens. Article 13 does not grant to non-nationals a broad right to asylum or right to remain in the territory of a state party. The author was allowed to stay in Canada for the purpose of having his refugee claim determined and for the purpose of having his PRRA application assessed. Since it has

¹¹ The State party refers inter alia to the Committee's jurisprudence in communication No. 1234/2003, *P.K v. Canada*, Inadmissibility decision of 20 March 2007, para. 7.6.

¹² General Comment No. 31 of 29 March 2004 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 12.

been determined that the author was not at risk in Pakistan, and because he is subject to a lawful order, he is not lawfully in the territory of Canada. Therefore article 13 does not apply to his case. In addition, article 13 regulates only the procedure and not the substantive grounds for expulsion and its purpose is to prevent arbitrary expulsions. The State party considers that the relevant laws and processes which apply the question of removal of the author from Canada are fully consistent with these procedural requirements. The author has not established that the proceedings leading to the removal order against him were not in accordance with lawful procedures or that the domestic authorities acted in bad faith or abused their power. In the alternative, the State party contends that the proceedings challenged satisfy the guarantees contained in article 13. As detailed above, the author had his case heard by an independent tribunal, the IRB; he was represented by counsel; had full opportunities to participate and be heard and had access to judicial review.

4.17 As for article 14, the author's claims are unsubstantiated and incompatible with the Covenant as the author has brought no arguments or evidence in support of his claim. Moreover, in accordance with the Committee's jurisprudence, the immigration proceedings challenged by the author are not "suit at law" and are therefore not encompassed by article 14¹³. General Comment No. 32 on article 14 states that this provision does not apply to extradition, expulsion and deportation procedures¹⁴.

4.18 The State party notes the author's criticism of the Canadian determination and post-determination process in general terms. With respect to the author's allegation that PRRA officers lack independence, the State party refers the Committee to several decisions of the Federal Court, among them *Say v. Canada*¹⁵ where the independence of the PRRA decision-makers was considered in detail on the basis of extensive evidence and argument. In addition, contrary to the author's argument that PPRA decisions are taken on the enforcement side of immigration, the PRRA function has, since 2004, been under the authority of the Minister of Citizenship and Immigration, who is responsible for refugee protection and immigration matters. Another Minister, the Minister of Public Safety, is responsible for deportation.

4.19 For all the reasons stated above, the State party considers that the author's claims are inadmissible. In the alternative, it finds them without merits.

Author's comments on the State party's submission

5.1 On 28 March 2012, the author submitted his comments on the State party's submission where he reiterates his allegations regarding the risk for himself and his family in case of return to Pakistan.

5.2 The IRB decided on 14 December 2004 that the author and his wife were not Convention refugees, which was based on the conclusion that they had not established their identity. It is clear from reading the decision that there has been no evaluation of credibility of the author and his wife. The author requested additional time to submit other documents to establish identity or to show that their national identity cards were valid, but this was refused. This decision follows the adoption of Section 106 of the Immigration and Refugee Protection Act of June 2002 which mandated a closer attention to identity documents.

¹³ The State party refers to the Committee's jurisprudence in communication No. 1341/2005, *Zündel v. Canada*, Inadmissibility decision of 20 March 2007, para. 6.8; and communication No. 1234/2003, *P.K v. Canada*, Inadmissibility decision of 20 March 2007, paras. 7.4 and 7.5.

¹⁴ See General Comment No. 32 on the Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 17.

¹⁵ *Say v. Canada* (Solicitor General), 2005 FC 739.

Following the 2002 legislation, the IRB became stricter on this issue. Many refugee claims are rejected with no hearing to judge their credibility.

5.3 The author and his wife then presented new computerized national identity cards from Pakistan, which were accepted as establishing their identity. These documents contained the same identity numbers and information as in the national identity cards which were earlier judged to be fraudulent by the IRB. After the negative decision of the IRB, leave was denied at the Federal Court.

5.4 The author reiterates that both decisions on the humanitarian application and PRRA request were abusive and arbitrary in that they did not take into account compelling evidence about the risk faced and the importance of protecting family rights. The author believes that these decisions are very good examples of the ineffective nature of the PRRA recourse. The author refers to a Brief presented to the Canadian Standing Committee on Citizenship and Immigration (House of Commons, Ottawa) by some NGOs including Amnesty International¹⁶, which identifies systemic problems with the PRRA process including: 1) dismissing apparently trustworthy evidence without providing the reasoning for doing so; 2) capricious choices among documentary evidence; 3) failure to independently consider credibility once the IRB has made a negative finding; and 4) raising of the evidentiary threshold far beyond that required by the law and jurisprudence. The report concludes to the absence of accountability of PRRA officers, their lack of institutional independence and a lack of transparency as to qualifications and training of PRRA officers.

5.5 With regard to the judicial review, the author considers that there is real reluctance on the part of the Canadian authorities to correct very clear mistakes. There is no mention in the Federal Court's decision of 7 April 2008 of the disappearance of the author's son. In addition, two questions were proposed for certification; one of them addressing the question of protection of family life and the other addressing the proper criteria for risk review. Neither of them was certified and there is no possibility of appeal without certification¹⁷.

5.6 Mid-2009, the author and his family were called to prepare for deportation which was set for 8 September 2009. A written request was made to defer the deportation until there was a time to study the second humanitarian application. This was refused at the end of June 2009. An application for judicial review was made and a substantial memorandum was submitted with a motion to stay the deportation. This was heard on 31 August 2009 and it was refused on 5 September 2009 on the basis that there was no serious question in law which the author considers abusive given the serious risk alleged. The author argues that it has become much more difficult to obtain stays of deportation, to the extent that many lawyers no longer wish to pursue this recourse because it has little chance of success. The Federal Court has raised the threshold of what is an arguable case for the issuance of an

¹⁶ The author submits a document entitled: "The Pre-Removal Risk Assessment in Canada, Brief presented to the Standing Committee on Citizenship and Immigration, House of Commons, Ottawa by Amnesty International, Section canadienne francophone, La Table de concertation des organismes au service des personnes réfugiées et immigrantes, Le Centre Justice et Foi, February 13, 2007" (annexed to the author's comments)

¹⁷ According to the information on file, the Federal Court refused to certify question 1 because it was not a new question and had already been determined by the Federal Court of Appeal and the Supreme Court of Canada; the Court refused to certify question No. 2 as the general situation in Pakistan and the presence of personal risk had been considered by the PRRA officer. Furthermore, question 2 raised factual issues that did not transcend the applicants' interest nor constitute an issue of broad significance or general application that should lead to a certification pursuant to the criteria set forth in earlier jurisprudence of the Federal Court.

order to stay deportation to a level that is permitting clear violations of the State party's international obligations.

5.7 The author maintains that at the time of writing all domestic remedies were exhausted, with the second humanitarian application being denied end of September 2009 and the request for judicial review rejected in March 2010.

5.8 The author's family has suffered a number of health problems due to their unstable situation. The author became partially paralyzed at one point in late 2009 and the children have had long-term follow-up from organizations for victims of torture in Montreal and from social services¹⁸.

5.9 With regard to the allegations under articles 6 and 7, the author reiterates that numerous evidence on the risk upon return was brought to the attention of the domestic authorities such as a letter from the President of their Imam Bargah dated 3 July 2002 which tells about the main facts of persecution against the author before he left; a detailed medical report related to the attack against him on 10 March 2001; a copy of the collective application for the Senior Superintendent of Police for protection of 13 February 2002; and a copy of the First Information Report sworn out against him by the radical imam on the following day from their visit to the police. There is no reason to doubt about the veracity of any of those documents. At the time of the PRRA and H&C applications, more evidence of persecution was brought such as information regarding the fatwa brought against the author or the information related to the disappearance of his son.

5.10 The author argues that in March 2009, the family received a call-in notice from the immigration authorities and they presented themselves as required. At that time, a removals officer detained both parents and the three Canadian children, alleging the lack of response to a letter sent by the administration. The author and his wife were then released on bail along with the children. The author considers that this detention at the Laval detention centre north of Montreal (holding centre for migrants), which lasted several days was not justified and profoundly traumatized the children.

Additional observations by the parties

6.1 On 1 March 2013, the State party submitted that the author's counsel makes false and misleading assertions about the Canadian refugee determination process. Based on the evidence before it, the Federal Court found that the author had not raised a serious issue and that he had not established irreparable harm. The Court also found that the best interest of the children had already been considered in the first H&C decision.

6.2 While the State party notes that the author makes general criticisms against the asylum process, which are not justified, it adds that those allegations were never raised before domestic authorities, notably before the Federal Court.

6.3 With regard to the author's detention with his family for a short period of time in March 2009, the State party notes that the author has not taken issue with any aspect of this detention in any domestic proceedings before or after the introduction of his communication to the Committee. This allegation is therefore inadmissible for non-exhaustion of domestic remedies pursuant to article 5, paragraph 2 b) of the Optional Protocol. The State party insists that the children were never detained contrary to the author's assertion. The children were placed in the holding centre with the author at his own request and with a view to avoid the separation of the family.

¹⁸ The author does not provide further details to support his allegation.

6.4 The State party notes that on 19 December 2011, the author made a third application for permanent residence on the basis of humanitarian and compassionate grounds. No decision on that application had been made at the time of the State party's additional observations.

6.5 On 10 May 2013, the State party added that the author's deportation would not interfere with his family life, as Canada has taken no steps to separate the members of the family. The State party is not preventing the children from accompanying their parents to Pakistan where the family can continue to live together. The children, as Canadian citizens, are authorized to remain in Canada; the decision as to whether the children would accompany the parents to Pakistan or remain in Canada is purely the parents' decision, not the result of the State party's decision and therefore does not amount to interference. In addition, the author's removal is justified, lawful and reasonable and proportionate. In its jurisprudence, the Committee has considered that the birth of a child who receives citizenship at birth or at a later time is insufficient by itself to make the proposed deportation of his parents arbitrary.

6.6 In the author's case, humanitarian and compassionate grounds factors which included family considerations both in Canada and Pakistan were carefully considered during the author's two first H&C applications as already described by the State party. The author and his wife came to Canada and had three children there knowing that they might be required to leave if their asylum claim was rejected. The author's ability to stay in Canada was prolonged only by the remedies afforded to him under Canadian law.

6.7 The State party submits that the author's allegation under article 24 is in fact related to the alleged risk of violence faced by the children in Pakistan by fundamentalist militants, which is an issue more appropriately dealt with under articles 6 and 7 of the Covenant and for which the State party refers to its observations of 1 March 2013. With respect to the specific allegation that the best interest of the author's children was not taken into sufficient consideration, the State party notes that the Immigration and Refugee Protection Act (IRPA) expressly requires that decisions be made taking into account the best interests of a child directly affected, which has been the case in the present communication.

7.1 On 21 July 2013, the author added that the last two years in Pakistan have been the most serious years of violence against Shias during the past twenty years and there are systematic, massive and flagrant human rights abuses with impunity against religious minorities. The author considers that the evidence provided to the Canadian authorities point to the serious risk faced by the author and his family in case of return to Pakistan.

7.2 The author stresses that currently there is no effective remedy in Canada since the PRRA procedure is an administrative recourse and the judicial review is weak since it only controls the legality of decisions. The treatment of his case shows the unwillingness of the authorities to provide for a way to correct mistakes, even in life and death questions such as faced by the author who is a victim of what he considers one of the worst terrorist groups in the world. The author does not understand why this crucial point has been given no importance at all. Therefore, contrary to the State party's assertion, the author's claims are sufficiently substantiated.

7.3 The author refutes the State party's contention according to which he has tried to mislead the Committee on the Canadian Refugee determination process. The author maintains his opinion about the strict legal analysis performed for stays of deportations. He also maintains that PPRA officers are not applying the correct legal standard in law.

7.4 As to the detention of the author and his family, the author reiterates that there was no justification for his children to be detained, which involved trauma for them.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

8.3 The Committee notes the numerous applications of different nature made by the author to prevent his deportation to Pakistan and particularly a third Humanitarian and Compassionate Grounds application (H&C). 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 them¹⁹. The Committee 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. Therefore, the Committee considers that it is not precluded by the requirements of article 5, paragraph 2 b), of the Optional Protocol from examining the main claims of the present communication. With regard to the author's subsequent allegations related to his detention and the alleged detention of his children for several days in March 2009, the Committee notes that the author has not challenged such detention and the treatment allegedly suffered before domestic courts. The Committee therefore considers this part of the communication to be inadmissible pursuant to article 5, paragraph 2 b) of the Optional Protocol.

8.4 With respect to the author's claim that the State party has breached its obligation, pursuant to articles 2, 13 and 14 of the Covenant, to provide for an effective remedy to contest the author's expulsion, the Committee considers that these issues are intimately linked to the merits of the case. The Committee therefore finds that the claims have been sufficiently substantiated for purposes of admissibility.

8.5 With regard to the author's allegations of a violation of his family's rights under articles 17 and 23, the Committee notes that those allegations remain general and that, given the age of the children (8, 10 and 11 years old), it is not envisaged that the family will be separated. Accordingly, the Committee considers that the author has not substantiated his claims under these provisions and concludes that this part of the communication is inadmissible pursuant to article 2 of the Optional Protocol.

8.6 With regard to author's claims under article 24 related to the fate of his children upon return to Pakistan, the Committee considers that the author has not sufficiently substantiated, for the purpose of admissibility, that the education of his children would be disrupted in Pakistan and that the special needs of one of the children cannot be met in this country. Accordingly, the Committee considers this claim to be inadmissible under article 2 of the Optional Protocol.

8.7 With regard to the author's claims under articles 6, paragraph 1; and 7 of the Covenant, the Committee notes that the author has explained the reasons why he feared to

¹⁹ See communication No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4; communication No. 1003/2001, *P.L. v. Germany*, Inadmissibility decision of 22 October 2003, para. 6.5; and communication No. 433/1990, *A.P.A. v. Spain*, Inadmissibility decision of 25 March 1994, para. 6.2

be returned to Pakistan, based mainly on the alleged fatwa and arrest warrant issued against him and the past harassment and attacks by the Sipah-e-Sahaba (SSP). The Committee also notes that the author has provided documentary evidence in support of such claims which should be considered on the merits. The Committee accordingly finds the author's claims under articles 6, paragraph 1; and 7 admissible pursuant to article 2 of the Optional Protocol.

8.8 With regard to the author's claims under article 9, paragraph 1, the Committee notes the State party's argument that its non-refoulement obligations do not extend to a potential breach of this provision. The Committee takes note of the author's allegations that because of the fatwa issued against him, the First Information Report filed with the police and the subsequent arrest warrant issued in 2002, he would be at risk of arbitrary detention upon return. The Committee considers that, in the context of the present communication, these claims cannot be dissociated from those under articles 6 and 7 of the Covenant and, therefore, the Committee will not examine them separately from the latter.

8.9 The Committee therefore declares the communication admissible in so far as it appears to raise issues under articles 2, 6, paragraph 1, 7, 9, paragraph 1, 13 and 14 of the Covenant, and proceeds to their consideration on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered this communication in light of all the information received, in accordance with article 5, paragraph 1, of the Optional Protocol.

9.2 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 harm²⁰. The Committee also recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists²¹.

9.3 The Committee notes the author's claims that between 2000 and 2002 he was a victim of violent attacks by members of the Sipah-e-Sahaba (SSP); that a medical report attests of the injuries he suffered following an attack in March 2001; that a fatwa was issued against him by the SSP and that following a First Information Report filed by one of their members to the police, the latter issued an arrest warrant for blasphemy in May 2002. The Committee also notes the author's claim that in 2006, the author's son who remained in Pakistan disappeared.

9.4 The Committee also notes the author's claim that the Immigration and Refugee Board (IRB) rejected his refugee claim on 14 December 2004 based on his failure to establish his identity; that the Federal Court in turn rejected the author's application for leave for judicial review on 24 March 2005; and that a request to re-open the case on the basis of additional documentation was rejected by the IRB on 8 July 2005. The Committee also notes the author's argument that the IRB has not assessed the substantive credibility of his refugee claim.

9.5 The Committee takes note of the State party's contention that the author's claims have been thoroughly assessed by the Canadian authorities including through the IRB,

²⁰ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

²¹ Communication No. 1819/2008, *A.A. v. Canada*, decision of inadmissibility adopted on 31 October 2011, para. 7.8.

PRRA assessment and the H&C procedure and that no arbitrariness or denial of justice stems out from the asylum process. The Committee takes note of the State party's contention that the author was represented by counsel during the procedure before the IRB and gave oral testimony in addition to the documentary evidence submitted; that he was given three months to prepare for the IRB hearing and did not use such time to provide other evidence establishing his identity. With regard to the personal risk, the Committee notes the State party's contention that sectarian violence in Pakistan affects all minority groups in the country; that measures taken with regard to the implementation of blasphemy laws had an impact on dropping charges on that basis; that the documents submitted during the asylum procedure were not of sufficient probatory nature; that the author did not update the Canadian authorities on the alleged kidnapping of his son which affected the credibility of his claim; and that the author had not provided documentary evidence that someone with his profile, as a local Shia leader would be at particular risk of torture or death in Pakistan.

9.6 The Committee observes that, because of his apparent failure to establish his identity at the initial stage of the procedure, the author was not given any further opportunity, in the framework of the Immigration and Refugee Board (IRB), to have his refugee claim assessed although his identity was later confirmed. While the author's claim of a risk to be tortured and suffer threats to his life was assessed during the PRRA procedure, such limited assessment cannot replace the thorough assessment which should have been performed by the IRB. Notwithstanding the deference given to the immigration authorities to appreciate the evidence before them, the Committee considers that further analysis should have been carried out in this case²².

9.7 In this regard, the Committee notes that recent reports point to the fact that religious minorities, including Shias, continue to face fierce persecution and insecurity; that the Pakistani authorities are unable, or unwilling to protect them; that the Government of Pakistan has dropped a proposed amendment to section 295(C) of the Criminal Code (i.e. the blasphemy law);²³ and that there has been an upsurge of blasphemy cases in 2012.

9.8 In light of the situation prevailing in Pakistan, due weight must be given to the author's allegations. In this context, the Committee has taken note of the allegations that a fatwa was issued against the author and a first information report was filed against him under the blasphemy law, and that blasphemy charges incur the death penalty under Pakistan's criminal law. While death sentences have reportedly not been carried out, several instances of extra-judicial assassination, by private actors, of members of religious minorities accused under the blasphemy law have been reported, without the Pakistani authorities being willing, or able, to protect them. The Committee therefore considers, in the circumstances, that the expulsion of the author and his family would constitute a

²² Communication No. 1763/2008, *Pillai v. Canada*, Views adopted on 25 March 2011, para. 11.4.

²³ Upon the consideration of the examination of Pakistan before the Universal Periodic Review (UPR) on 30 October 2012, information provided by non-governmental stakeholders also unanimously pointed to the fact that "religious discrimination, harassment and attacks on minorities continue[d] unabated, and with impunity." It was also reported that since the last consideration of Pakistan under the UPR, "blasphemy laws [had] increasingly been used to persecute religious minorities and have been a pretext for growing religious extremism and vigilantism." Several nongovernmental organizations expressed concern over the number of reported cases and deaths following blasphemy accusations, and instances of individuals being accused of blasphemy—even if found innocent—murdered by vigilantes. Others similarly reported an increase in violent attacks on minorities and religious groups such as Christians, Ahmadis and Shia Muslims, as well as an increase of hate speech propagated by extremists and militant religious groups. Most recommendations formulated by States concerned the urgent need to repeal the blasphemy laws (*see* outcome document A/HRC/22/12).

violation of articles 6, paragraph 1 and 7 of the Covenant, read in conjunction with article 2, paragraph 3 of the Covenant.

9.9 Having reached the above conclusion, the Committee decides not to separately examine the author's claims under article 9, paragraph 1; 13; and 14 of the Covenant.

10. In light of the above, 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 removal of the author and his family to Pakistan would, if implemented, violate their rights under article 6, paragraph 1, and 7, read in conjunction with article 2, paragraph 3 of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a full reconsideration of the author's claim regarding the risk he would face should he be returned to Pakistan, taking into account the State party's obligations under the Covenant.

12. 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 Committee's Views 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.]