



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2327/2014*, **

<i>Communication submitted by:</i>	Y (represented by counsel, Joseph W. Allen)
<i>Alleged victim:</i>	Y
<i>State party:</i>	Canada
<i>Date of communication:</i>	31 October 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 7 January 2014 (not issued in document form)
<i>Date of adoption of Views:</i>	10 March 2016
<i>Subject matter:</i>	Deportation of author to Bangladesh
<i>Procedural issues:</i>	Admissibility – exhaustion of domestic remedies; admissibility – manifestly ill-founded; admissibility – <i>ratione materiae</i> ; admissibility – victim status
<i>Substantive issues:</i>	Arbitrary detention; discrimination; non-refoulement; refugee status; right to life; torture
<i>Articles of the Covenant:</i>	6 (1), 7, 9 (1) and 26
<i>Articles of the Optional Protocol:</i>	1, 2, 3 and 5 (2) (b)

* Adopted by the Committee at its 116th session (7-31 March 2016).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

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1.1 The author of the communication is Y, a national of Bangladesh born in 1960 and currently residing in Canada. She is subject to deportation following the rejection of her application for refugee status in Canada. She asserts that by removing her to Bangladesh, the State party would violate her rights under articles 6 (1), 7, 9 (1) and 26 of the Covenant. The Optional Protocol to the Covenant entered into force for the State party on 19 August 1976. The author is represented by counsel, Joseph W. Allen.

1.2 On 7 January 2014, pursuant to rules 92 and 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from removing the author to Bangladesh while the communication is under consideration by the Committee. On 10 September 2015, the Committee denied the State party's request to lift interim measures. The author remains in Canada.

1.3 On 13 August 2014, the Committee denied the State party's request to split the consideration of admissibility and the merits.

The facts as presented by the author

2.1 The author asserts that her sister, L., married a violent man, B., in Bangladesh. Owing to B.'s abusive and violent behaviour, L. filed for divorce and went to the United Kingdom of Great Britain and Northern Ireland with the author's brother, I., in 2005. After the author's father died in 2006, I., who was a British national, returned to Bangladesh. There, he was murdered by three individuals: B., B.'s brother K.S. (a high-ranking army officer) and one of their friends. Following a press conference held by the author's family and intervention from the British High Commissioner to Bangladesh, all three perpetrators were convicted and sentenced to death in 2007. However, they filed an appeal of their criminal convictions and their death sentences were reversed following a change in Government. Reversal of death sentences is not unusual in Bangladesh, where sentences are overturned with the arrival of a new Government.

2.2 Another of B.'s brothers, S. (a high-ranking police inspector), threatened to kill the author and her family unless they withdrew their complaint against the three convicted perpetrators. In October 2010, S. called the author's mother and told her that his brother and friend would soon be released from detention. He further stated: "You will continue to lose your children one after another. Your daughter [the author] is our next target. You will be our last target." The police took no action against S. after the author's mother informed them about the call. Deeply concerned about the author's safety, her daughter in Canada sponsored her application for a Canadian visitor's visa in November 2010. The author obtained the visa in December 2010. A few days before her departure for Canada, she started receiving phone calls from an unidentified individual who threatened to kill her. In response, she filed a complaint at the Hajaribag police station in Dhaka, on 5 January 2011. On the same day, she left for Canada. S. and the individuals who murdered the author's brother have influential contacts in the Government in Bangladesh.

2.3 The author's son and numerous other relatives have applied for refugee protection in the United Kingdom and L. has obtained refugee status there. All of the author's siblings have fled Bangladesh, and her ex-husband and children are in hiding. The author is presently in Canada with her daughter, who is a permanent resident of Canada.

2.4 The author submits that she has exhausted domestic remedies in Canada. Her application for refugee status was denied on 15 April 2013 and her application for leave to commence judicial review of the negative asylum decision was denied on 23 August 2013. When she submitted the communication to the Committee, she claimed that she was

ineligible to file applications for pre-removal risk assessment (PRRA) and for permanent residence on humanitarian and compassionate grounds (H&C).¹

The complaint

3.1 The author submits that the State party would violate her rights under articles 6 (1), 7, 9 (1) and 26 of the Covenant by forcibly removing her to Bangladesh, where S. (her sister L.'s former brother-in-law and a police inspector) has threatened to kill her family unless they withdraw their complaint against his brothers and his friend. She also fears the vengeance of her brother's three killers, whose death sentences were recently reversed. The author maintains that both the police force and the judiciary in Bangladesh are undermined by widespread corruption and impunity,² and that it is therefore impossible to obtain protection from the State authorities there.

3.2 The Immigration and Refugee Board of Canada erred in finding that the author was not credible simply because she was not specifically mentioned in the documentary evidence she presented concerning her brother's murder or in the subsequent threats. She provided a copy of the complaint she made at the police station in Dhaka concerning death threats she had received via telephone.³ The author also presented to the Committee a new statement by her sister L. to support her allegation that she had been subjected to violence and threats. The author also asserts that she has never had a fair opportunity to contest the merits of the Board's decision because leave for judicial review of a decision of the Board is granted only in about 10 per cent of cases.

3.3 The author further submits that she is suffering from severe depression and anxiety, and that her symptoms are so grave that they interfere with her daily functioning.⁴

State party's observations on admissibility

4.1 In its observations dated 24 June 2014, the State party considers that the communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol because the author has not exhausted domestic remedies. On 15 March 2014, she became eligible to file PRRA and H&C applications, and on 1 April 2014, she filed a PRRA application. This means that her allegation that she would be at risk upon return will be assessed prior to her removal. If her PRRA application is denied, she will be able to seek judicial review of that decision and can also seek a judicial stay of removal while her application for judicial review is pending. As she has filed a PRRA application, her

¹ The author cites Canada Immigration and Refugee Protection Act subsection 25 (1.2) (c) and article 112 (2) (c).

² The author cites, inter alia, United States Department of State, Bangladesh 2012 Human Rights Report, 19 April 2013; U4 Anti-Corruption Resource Center, Transparency International and Chr. Michelsen Institute, Overview of corruption and anti-Corruption in Bangladesh, 7 November 2012; and Freedom House, Freedom in the World 2013: Bangladesh.

³ The author provides a translation of the complaint, which is dated 5 January 2011. In the complaint, the author states, "An unknown caller from his phone number [xxx] has been calling me again and again at my personal mobile phone number [xxx] for the past 4/5 days and intimidating and threatening me in various ways, including death threats. Whenever I asked about his address and identity, the caller cut off the phone."

⁴ The author provides a psychological evaluation report dated 19 November 2012 by psychologist Lise Libarian, who states: "[Y] needs professional care to help her with her depression, anxiety and post-traumatic stress. She needs to be followed by a psychiatrist and be prescribed medication to help alleviate her severe depression, anxiety and post-traumatic stress. Along with medication and psychotherapy, her depression, anxiety and potential risk of suicide will eventually diminish."

communication before the Committee has become moot and is hence inadmissible under article 1 of the Optional Protocol.

4.2 The State party further considers that the author's claims under articles 9 (1) and 26 of the Covenant are inadmissible under article 3 of the Optional Protocol because these provisions have no extraterritorial application. Any alleged risks to the author's security should only be considered as part of the assessment of her complaint in relation to articles 6 and 7.

Author's comments on the State party's observations

5.1 In her comments dated 25 July 2014, the author asserts that the PRRA process is not an effective remedy because only 2-3 per cent of such applications are successful.

5.2 The author also maintains that eligibility for residency on H&C grounds depends not only on the hardship that the applicant would face upon return to the country of origin, but also on the degree to which the applicant is established in Canada. Because she is "presently dealing with psychological issues and had difficulty obtaining employment", which is an important step in proving that she is established in Canada, she has chosen to wait until she is able to present a stronger and more effective H&C application. Furthermore, because removal is not automatically stayed during the processing of an H&C application, it is not an available and effective remedy.

5.3 With regard to the issue of the extraterritorial application of article 9 (1) of the Covenant, the author submits that the Committee should follow the admissibility approach set forth in its Views on communication No. 1898/2009, which involved similar allegations, documents and family circumstances that pointed to a risk of arbitrary detention and persecution upon return to Bangladesh.⁵ The author also argues that the same reasoning should apply to her claim under article 26 of the Covenant.

5.4 On 16 October 2014, the author informed the Committee that her PRRA application had been denied for the same reasons set forth by the Refugee Protection Division of the Immigration and Refugee Board.

State party's additional observations on admissibility and observations on the merits

6.1 In its observations dated 8 January 2015, the State party informed the Committee that the author had filed an application for leave and judicial review of the PRRA decision; the application was still pending. The author was still eligible to file an H&C application but had not done so.

6.2 The State party reiterates that the communication is inadmissible under articles 1, 2, 3 and 5 (2) (b) on the grounds that it is moot, that domestic remedies have not been exhausted and that it is incompatible with the provisions of the Covenant. Concerning the author's criticisms of the PRRA process, the State party observes that the Federal Court of Canada has confirmed the independence of PRRA decision makers in several cases. Moreover, the acceptance rate of such applications in itself does not establish that the process lacks independence or is biased in favour of removal. The relevance of a low acceptance rate should be assessed in the light of the nature of the programme and its clients. The vast majority of PRRA applicants have already been found by the Refugee Protection Division not to be at risk of persecution, not to face a risk to life and not to be at risk of torture or cruel or unusual treatment or punishment. The PRRA programme aims to assess any risk of return at the time of removal that may not have existed at the time of the

⁵ See communication No. 1898/2009, *Choudhary v. Canada*, Views adopted on 28 October 2013.

Division hearing. Considering that Canada's overall acceptance rate for refugees is about 41.6 per cent, according to recent statistics,⁶ the lower PRRA acceptance rate reflects the fact that most individuals in need of protection receive it from the Immigration and Refugee Board.

6.3 The State party clarifies that under domestic law, the PRRA process is not an appeal of the Refugee Protection Division decision. The applicant may submit for consideration only new risk-related evidence that arose after the adoption of the Division's decision or that was not reasonably available at that time. Moreover, the Pre-Removal Risk Assessment Officer can also consider only evidence that demonstrates that the applicant would be exposed to a new, different or additional risk not contemplated at the time of the Division's decision. In the author's case, the officer diligently executed his duties, researching whether there had been a change in country conditions and considering the evidence that the author claimed to be new. The officer found that the allegedly new evidence was not new because it either predated the Division hearing and thus should have been presented to the Division, or was irrelevant to the PRRA process. In particular, the officer considered the letter written by the author's sister, L., dated 10 December 2013. He noted that although the letter post-dated the Division hearing, it was not new evidence because it could reasonably be expected to have been available to the author to provide to the Division during the hearing. The author could easily have obtained such a letter from L. for presentation at that time. Furthermore, the officer found that the statements made in L.'s letter did not overcome all the issues raised by the Immigration and Refugee Board.

6.4 Regarding the author's argument that the H&C process is not available or effective, the State party considers that this remedy is available to the author because she became eligible to file an H&C application on 15 March 2014. Although the filing of such an application would not lead to an automatic stay of removal pending the outcome of the assessment, the author could apply to the Federal Court for a judicial stay of removal so that she could remain in Canada during the consideration of her application. Ultimately, if the application is successful, she could remain in Canada as a permanent resident. Because successful applicants are allowed to remain in Canada, the H&C application is an effective domestic remedy available to those who have their claim for protection denied.

6.5 The State party notes that in *Dastgir v. Canada* and *Khan v. Canada*, the Committee took the view that the H&C application was an effective remedy that must be exhausted for purposes of admissibility.⁷ The State party regrets the Committee's more recent position that such applications are not remedies that must be exhausted for the purposes of admissibility.⁸ The State party considers that the grounds on which the author of a communication is allowed to remain in Canada should not matter, as long as the author is protected from removal to the country where she or he alleges to be at risk. The H&C application is a fair administrative procedure, subject to judicial review, that includes an assessment of relevant hardship factors that an individual might face if required to apply for permanent resident status from outside Canada. In fact, a number of authors have had their

⁶ The State party cites Office of the United Nations High Commissioner for Refugees, *Statistical Yearbook 2012*, 12th ed., Annex, table 10, "Asylum applications and refugee status determination by country/territory of asylum and level in the procedure", available from www.unhcr.org/52a723f89.html.

⁷ See communication No. 1578/2007, *Dastgir v. Canada*, decision of inadmissibility adopted on 30 October 2008 and No. 1302/2004, *Khan v. Canada*, decision of inadmissibility adopted on 15 July 2006, cited, among other cases, by the State party.

⁸ The State party cites communications No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4; and No. 1816/2008, *K.A.L. and A.A.M.L. v. Canada*, decision of inadmissibility adopted on 26 March 2012, para. 6.5.

international communications before various treaty bodies, including the Committee, rendered moot because their H&C application was successful. Recently, two communications before the Committee involving Canada were discontinued for this reason: communications No. 2138/2012 and No. 2144/2012.

6.6 The State party also responds to the author's argument that she is delaying her H&C application so as to "have the opportunity to present a strong and effective application". The State party considers that the author's explanations for her delay in filing an application confirm that this remedy is both available and effective and must therefore be exhausted for purposes of admissibility. While she claims that she is "presently dealing with psychological issues which made it difficult for her to obtain employment", she states that she has been employed since 2013. It is inappropriate for the author to purposely delay the making of an H&C application when eligible to apply. The process is not intended to be an alternative immigration stream or an appeal mechanism for failed asylum claimants. It is reserved for applicants who will personally suffer unusual and undeserved, or disproportionate, hardship if required to follow the standard procedure of applying to immigrate to Canada through normal channels, i.e., from outside the country. Positive H&C consideration may be warranted when the period of inability to leave Canada owing to circumstances beyond the applicant's control is of considerable duration and when there is evidence of a significant degree of establishment in Canada. The author claims that she is purposely choosing to delay accessing an available and effective remedy; thus, it cannot be said that her current circumstances are beyond her control. Therefore, it is inappropriate for the author initially to allege that the State party violated its obligations under the Covenant by denying her access to a domestic remedy but later to take the position that it is not an effective remedy when access to that remedy became available to her and she purposely failed to avail herself of it.

6.7 The State party also considers that the communication is inadmissible as manifestly ill-founded because the author has not substantiated on even a prima facie basis her allegations with respect to articles 6 and 7. The Refugee Protection Division found that the author was not credible. The documentary evidence she provided made "no mention of the [author] in a situation where if [her] allegations were true the panel would expect her to be mentioned". The Division explained that it expected that the author would be mentioned in the documentation she provided for the following reasons: extensive documentation concerning this murder case was available owing to the high level of publicity surrounding the murder of the author's brother I., a British citizen; there were numerous individuals and legal teams involved in the murder case, such that the facts surrounding the case were well documented; the author comes from a large family, many of whose members continue to reside in Bangladesh and provide her with information; and the panel has experience with claims from Bangladesh and is aware that the press in Bangladesh is very active. The Division commented on the significant amount of documentary material on the murder and intimidation allegations, noting that that was due partly to the author's family's efforts to ensure that the Government of the United Kingdom was aware that it would be a miscarriage of justice if the murderers of a British citizen were not prosecuted. Additionally, the Division noted that there had been in-depth analyses of the risks faced by the author's family in Bangladesh as a result of hearings on the United Kingdom asylum applications of the author's sister, L., and the author's nephew. The Division attached very little probative value to the police complaint filed by the author since it had been created by the author herself on the day she left Bangladesh, when she knew that she would be seeking refugee protection in Canada. In addition, the complaint did not specifically identify anyone, and the author's immediate departure from Bangladesh ensured that it could not be investigated further.

6.8 The Refugee Protection Division noted that neither the author nor her mother was mentioned in documents relating to the period before and during the murder trial (including

a letter written by her brother J. in 2006, in which he listed family members who were being threatened). The Division also noted that the alleged threats and efforts to intimidate the author's family members, including her brother J. and her sister L., were poorly documented. The Division further found that there was no mention of the author, her mother or the threats that the author alleged had been made against them in a letter written by the author's sister-in-law (M., I.'s widow) and dated more than a year after the author arrived in Canada, in which M. alleged that threats had been made against her, her children, her sister-in-law, L., and L.'s children. Specifically commenting on M.'s letter, the Division considered it a "credibility issue" that there was no mention of the author's own allegations in the letter. At her protection hearing, the Division specifically questioned the author about this discrepancy. The author testified that M. had not mentioned either the author or her mother because she was only referring to her family in the United Kingdom. However, the Division rejected that explanation because the letter mentioned L. and her family (who initially remained in Bangladesh after the trial.)

6.9 The State party also observes that the Refugee Protection Division questioned the author as to why she could not provide more definitive evidence to clarify her allegations relating to either the Awami League's efforts to secure the release of B. and K.S., or their actual release. The author informed the Division that she was unable to do so because there was "no one left [in Bangladesh]". The Division did not accept that answer as being true because it was inconsistent with other evidence establishing that the author had extensive family connections in Bangladesh, including her husband, three daughters and numerous aunts, uncles and cousins. Since the murder and the murder trial had been so widely publicized, and because of the active and partisan nature of the press in Bangladesh, the Division expected that any significant developments in the murder case would likely have been reported by the press (in particular in the Bangladesh Nationalist Party papers in relation to efforts by the competing Awami League) or recorded in legal documents. However, no such reports or documents were provided to the Division. The Division reviewed the 2008 decision of the United Kingdom Asylum and Immigration Tribunal concerning L.'s asylum application, as well as the 2012 appeal decision on the application for asylum in the United Kingdom of the author's nephew, H. The Division observed that those decisions had provided a "developed analysis of the risk faced by the [author's] family in Bangladesh". The Division noted that in the decision on L.'s claim, it was set out quite explicitly that the author did not receive threats, nor did her mother.

6.10 In the 2012 decision on H.'s asylum appeal, there was no mention of any threats made to the author or her mother, even though H.'s hearing took place after the author had left Bangladesh and after her mother had allegedly died from anxiety brought on by the death threats. The Refugee Protection Division also noted that the testimony of the author's sister L. at H.'s appeal hearing specifically contradicted the author's claims that S. had specifically targeted L. (H.'s mother), since L., in answer to a question by the United Kingdom adjudicator as to why S. had not directly targeted her, testified that S. had engaged in "clandestine harassment" by filing fake legal cases. In addition to contradicting the author's allegation that she was at risk, the Division found that L.'s testimony also weakened the author's claim of a lack of State protection, since "the implication of S. keeping a low profile is that there exists State protection". The Division found that the decision on H.'s asylum appeal demonstrates that H. and his family were at risk for a specific reason: their involvement in the murder case. The Division further found that, on the basis of the evidence before it, the author was not involved in that case. Thus, on the basis of the evidence provided to it by the author, the Division found that overall, it could not see why the author would be a target of S. and did not find it reasonable that the author would be at risk. The Division, on its own initiative, sought out evidence to corroborate the author's claims. However, it found that the "only corroborative evidence" which implied a "specific risk" to the author was the complaint the author had filed with the police on the

day she left Bangladesh for Canada. The Division attached very little probative value to that document for the reasons stated above.⁹ In reaching its conclusion that the author's claim was untrue and amounted to an effort to be allowed to live in Canada with her daughter, the Division had had the benefit of observing the author first-hand, hearing her oral testimony and questioning her.

6.11 Further evidence suggests that the author lacks credibility. For example, at the Refugee Protection Division hearing and in her communication, the author claimed that her mother had died in May 2011 "from anxieties brought on by the death threats". However, in her PRRA application, completed on 31 March 2014, the author listed her mother as alive and residing in Bangladesh. In addition, and also on the basis of the author's PRRA application, it appears that the author's son, who had previously resided in London and who, according to the author's communication, had applied for refugee status in the United Kingdom, had returned to Bangladesh. The author had relied on her son's asylum claim as evidence that her family was fleeing Bangladesh. Her failure to bring this change in circumstances to the Committee's attention is therefore of concern. Moreover, the hearing and decision on the United Kingdom asylum appeal of the author's nephew H. took place on 23 November 2012, just under three months before the author's own protection hearing, which took place on 14 February 2013. However, there is no mention in the United Kingdom decision of the author's claims that S. had tried to have the Government of Bangladesh interfere in the convictions and sentences of B., K.S. and P., or that the three individuals had been released from prison. It is difficult to accept that H., whose initial asylum claim was rejected, would not have referred to these facts, given that, if true, they would have strengthened his case on appeal.

6.12 Concerning the author's allegations that the human rights situation in Bangladesh is worsening, the State party submits that the material the author presents is similar (and in some cases, identical) to that which was presented to and considered by the Refugee Protection Division and the Pre-Removal Risk Assessment Officer. Both the Division and the officer specifically acknowledged the material and the Division, in particular, found that corruption was rampant in Bangladesh. Thus, the human rights situation in Bangladesh, as perceived by the author, has been thoroughly assessed by domestic decision makers.

6.13 A review of previous as well as more recent reports from the same agencies relied on by the author (as well as country reports by the Government of the United Kingdom, Human Rights Watch and Amnesty International) would suggest that the human rights situation in Bangladesh has not worsened; it has either stayed the same or improved slightly in some areas. Moreover, the author has not provided any evidence to demonstrate how any general level of risk relates to her personal circumstances. She has not substantiated her allegation that the current Awami League Government has interfered or will interfere with the outcome of the murder trial or has released or will release the murderers.

6.14 The author does not provide any evidence to support her claims that the "agents of persecution" who murdered her brother have significant judicial and political contacts, nor has she provided evidence demonstrating that any individuals have used their alleged contacts to influence the outcome of the murder trial. Indeed, the evidence presented by the author at her protection hearing suggests the opposite: as noted by the Refugee Protection Division, her evidence established that the police in Bangladesh are clearly willing to arrest and charge a captain in the army (K.S.). In addition, it is also clear from the author's communication that the police are willing to arrest and charge a police inspector (P.) as well as a person who has one brother who is a police inspector and another brother who is an army captain (B.) It is also clear from the author's communication that the judiciary of

⁹ See para. 6.7.

Bangladesh is willing and able to convict members of the police and the military. Thus, the author's claim that "the authorities are an important part of the [corruption] problem, making it impossible to go to them for help" would appear to be untrue as it relates to her specific circumstances.

6.15 The author has not provided any evidence to support her allegations concerning the reason the death sentences were reversed and the criminal convictions were appealed. The author claims that these actions are due to the fact that the Government changed in 2008 (from the Bangladesh National Party to the Awami League). The author notes that it is not unusual in Bangladesh for sentences to be overturned with the arrival of a new Government. However, it can no longer be said that the Awami League is a "new Government", since it has been in power for six years and had been in power for five years at the time that the author submitted her complaint to the Committee. Furthermore, according to the author's communication, her brother's murderers are B., K. S. and P. The only information provided by the author that is purportedly about the murder case is the photocopy of a screen shot, apparently of the Supreme Court of Bangladesh website, referring to a number of cases involving three individuals (B., A. and P.). However, there is no evidence to confirm that these are the same individuals identified by the author as her brother's murderers. Moreover, there is no evidence that the Awami League Government has interfered or is interfering in the murder case.

6.16 The State party also considers that the author has not shown that she would not have an internal flight alternative in Bangladesh. The Refugee Protection Division considered this issue when it noted that the author's alleged persecutor, S., was a police inspector in Rajshahi, a city 250 kilometres from Dhaka. The Division found that there was no evidence of any specific political connections on S.'s part, thereby implying that S. had no influence beyond Rajshahi. The author's evidence confirms that S. has no influence. The author's husband, four of their five children and her mother have remained in Bangladesh. In addition, the author's extended family, particularly her father's side of the family, is large and many members continue to reside in Bangladesh, including numerous aunts, uncles and cousins. Thus, it appears that there are many places in Bangladesh where the author could safely reside.

6.17 The author's allegations of persecution concern the actions of a private individual, S., and not State authorities. The Refugee Protection Division noted that State protection was available to the author, given that the police in Bangladesh had arrested and charged the three individuals responsible for I.'s murder. These actions were taken despite the fact that at the time of their arrests, K.S. was an army captain, P. was a police inspector and B. had one brother who was a police inspector (i.e., S.) and another brother who was an army captain (i.e., K.S.). As per the author's communication, all three individuals were subsequently tried and convicted by a court in Bangladesh. The Division further noted the availability of State protection after considering L.'s testimony during H.'s asylum appeal proceedings (to the effect that S. had engaged in clandestine harassment of L. in order to avoid detection). The Division considered that this testimony weakened the author's claims of a lack of State protection "because the implication of S. keeping a low profile is that there exists State protection". The author has not presented evidence demonstrating that any of S.'s threats were in any way sanctioned by the State. Indeed, given L.'s testimony at H.'s appeal hearing, the logical inference is that the State did not sanction S.'s alleged behaviour. In the light of the foregoing, the State party concludes that the author has not established that her rights under articles 6 or 7 would be violated should she be returned to Bangladesh.

6.18 The State party further submits that the author's claims under articles 9 (1) and 26 are inadmissible *ratione materiae*, because these articles do not have extraterritorial application, and are without merit in the light of the foregoing.

6.19 The State party also notes the author's claim that she "has never been afforded a fair opportunity to contest the merits of her negative [Refugee Protection Division] decision" and her criticism of the Canadian immigration and protection system. The State party considers that it is not within the scope of review of the Committee to consider the Canadian refugee protection system in general, but only to examine whether, in the present case, the State party complied with its obligations under the Covenant. Moreover, her criticisms are not valid, for several reasons. First, the leave requirement has been deemed constitutional by the Federal Court of Appeal of Canada. An applicant must show that there is a "fairly arguable case" or a "serious question to be determined" by way of judicial review. Leave applications are thoroughly reviewed by a judge of the Federal Court on the basis of written submissions from both the author and the Government.

6.20 Second, the author's complaint that leave applications are only granted in 10 per cent of cases is based on statistics from 2006 compiled by the Canadian Council for Refugees. The statistics compiled by the Federal Court itself, using data for the 2013 calendar year, indicate that out of 5,496 applications for leave for judicial review in the refugee context that were decided in that period, 685 applications were granted. In other words, the grant rate was 12.5 per cent. These statistics are not indicative of a lack of vigilance by the Federal Court but rather of a focus of its resources, which are not unlimited, on the decisions that satisfy the established test for leave. This triage of cases is made necessary by the high volume of leave applications filed each year.

6.21 Third, the current system of judicial review by the Federal Court does provide for "judicial review of the merits" of a Refugee Protection Division decision, as it allows for review of both the law and the facts. As in many legal systems around the world, judicial review in Canada is best characterized as judicial supervision of administrative decision-making. For reasons of expertise, accessibility and efficiency, a specialized administrative tribunal is often the best primary decision maker for a particular matter. The Refugee Protection Division is a division of the Immigration and Refugee Board, an independent and quasi-judicial tribunal. Board members hear immigration and refugee matters exclusively, receive specialized training in this area of the law, and stay informed and develop expertise in country conditions and events of alleged persecution or other human rights violations. They have access to the Board's internationally recognized research programme which produces, among other research, a National Documentation Package for every country for which there is a claim for refugee protection. While Board members are best situated to be the primary decision makers, the function of judicial review is to ensure the legality, the reasonableness and the fairness of the administrative decision-making process and its outcomes. The Federal Court reviews the Board's decisions for factual errors or errors involving both facts and law, generally on a standard of reasonableness in deference to the tribunal's expertise. However, the Court may also review the correctness of any aspect of the tribunal's decision that involves questions of law of central importance to the legal system as a whole and outside the tribunal's expertise. Judicial review could not effectively function if each review were a *de novo* hearing, with the reviewing court acting as a second trier of fact that shows no deference to the administrative decision maker, given that a properly functioning judicial system conducting judicial and appellate reviews cannot retry the same case at multiple levels of court. This approach would simply not be feasible in any administrative system.

6.22 Fourth, the author's complaints about the judicial review process are unsubstantiated. The Refugee Protection Division provided careful reasoning for its determination that the author's allegations of persecution are untrue. Finally, concerning the author's criticisms of recent changes to the PRRA and H&C processes, the State party considers that these allegations are moot because the author has been eligible to use these processes since 15 March 2014. In addition, the legislative changes of which the author complains were made in 2010 for the purposes of streamlining Canada's immigration and

refugee protection system by removing duplicate proceedings. Several decision makers assess the allegations of personal risk presented by individuals seeking the State party's protection: the Refugee Protection Division, the Federal Court and a Canada Border Services Agency Removals Officer (if the person were to request an administrative deferral of removal). Such risk assessments usually occur within a 12- to 18-month time frame, which obviates the need for an additional assessment of the same risk factors by either a Pre-Removal Risk Assessment Officer or a Humanitarian and Compassionate Officer. Furthermore, the H&C process is intended to provide claimants with an alternate avenue by which to seek the State party's protection, one that is not based on personal risk of irreparable harm but is more broadly based and allows for consideration of a number of other factors. The author has not provided any evidence to support her criticisms of the refugee protection system in Canada.

6.23 For the foregoing reasons, the State party also considers that the communication is wholly without merit. It further considers that the author is attempting to use the Committee as a tribunal of "fourth instance" and that the material submitted by the author cannot support a finding that the domestic decisions were manifestly arbitrary, erroneous or equivalent to a denial of justice.

Author's additional comments

7.1 On 1 May 2015, the author informed the Committee that she had filed an H&C application in January 2015. The three men who allegedly murdered her brother were freed after their appeal before the Criminal Appellate Jurisdiction was granted on 13 November 2014.¹⁰ Their release from detention presented additional danger for her should she return to Bangladesh.

7.2 On 4 September 2015, the author informed the Committee that one of her nephews, H., had been granted asylum in the United Kingdom. She claims that an H&C application does not stay removal until acceptance of the application at the "first level" and that the acquittal and release of B. and his associates would further endanger her. The convictions of the three individuals were overturned "as soon as pressure from the [United Kingdom] stopped", which demonstrates the clear lack of State protection in Bangladesh. Finally, current documentary evidence demonstrates that nothing has changed in Bangladesh since the communication was submitted in 2013. Impunity and corruption still undermine judicial processes and prevent individuals from obtaining State protection there.¹¹

State party's further observations

8. In a further submission dated 6 July 2015, the State party reiterates its prior arguments and observes that according to the court document provided by the author, the High Court Division set aside the convictions of her brother's alleged killers on 23 January 2013, not on 13 November 2014, as the author asserts. Accordingly, the court's decision was available to the author for use at her hearing before the Refugee Protection Division on 14 February 2013 as well as for her PRRA application filed on 22 October 2014. Moreover,

¹⁰ The author provides a decision of the Supreme Court of Bangladesh, High Court Division, Dhaka (Criminal Appellate Jurisdiction) dated 20-23 January 2013. The Court set aside the convictions and death sentences of B., K.S. and P. for the murder of I., owing to the prosecution's failure to prove its case beyond a reasonable doubt. The author also provides a copy of a judgment issued by the Supreme Court of Bangladesh, Appellate Division, dated 19 January 2015. The judgment upheld the decision of the High Court Division to set aside the convictions of B., K.S. and P., in the absence of any cogent evidence proving the charges against them.

¹¹ The author cites Freedom House, 2015 Freedom in the World Report: Bangladesh.

there is nothing in the court's decisions or the author's submissions that provides proof that she is at risk, or that the authorities of Bangladesh are unable to protect her. The determinations of the Canadian decision makers were not based on whether the accused individuals were (or would remain) in prison; in fact, S. was not in prison. Rather, the assessment of risk was based on the considerations mentioned in the State party's prior submissions. The author was not identified in any of the letters sent by the author's family to the United Kingdom authorities complaining about death threats and identifying the family members who had been threatened, nor was she mentioned in any of the United Kingdom asylum proceedings as having been threatened or at risk in Bangladesh. In fact, in L.'s asylum proceedings, it was explicitly stated that the author had not been threatened.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

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

9.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.¹² The Committee notes that the author has filed a pending H&C application, which the State party considers to be an effective remedy. The Committee also notes the State party's observations that a successful H&C application would allow the author to reside permanently in Canada and that two recent communications before the Committee were discontinued because their H&C applications had been granted. However, it is uncontested that removal is not automatically stayed by the filing of an H&C application. Because the author alleges a need for protection from such removal, the Committee considers that the H&C application cannot be considered as offering her an effective remedy under the circumstances.¹³ Accordingly, the Committee considers that it is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol from examining the present communication.

9.4 The Committee notes the State party's argument that the communication is moot and is therefore inadmissible under article 1 of the Optional Protocol because, while the author claims that she became eligible for removal without having had access to the PRRA or H&C procedures, she does in fact have access to them. The Committee observes that the author has since exhausted the PRRA remedy without success and recalls that her H&C application does not constitute an effective remedy. The Committee therefore considers that it is not barred by article 1 of the Optional Protocol from examining the communication.

9.5 The Committee further notes the State party's argument that the author's claims are inadmissible under article 2 of the Optional Protocol owing to insufficient substantiation. However, concerning the author's claims under articles 6 (1) and 7 of the Covenant, the Committee finds that, for the purposes of admissibility, the author has provided sufficient

¹² See *Warsame v. Canada*, para. 7.4; and communication No. 1003/2001, *P.L. v. Germany*, decision of inadmissibility adopted on 22 October 2003, para. 6.5.

¹³ See communication No. 2366/2014, *X. v. Canada*, Views adopted on 5 November 2015, para. 8.3; *Choudhary v. Canada*, para. 8.3; and *Warsame v. Canada*, para. 7.4.

details and documentary evidence regarding her personal risk of facing death or cruel, inhuman or degrading treatment or punishment and therefore finds this part of the communication admissible.¹⁴

9.6 With regard to the author's claims under articles 9 (1) and 26 of the Covenant, the Committee notes the State party's argument that its non-refoulement obligations do not extend to potential breaches of these provisions, and that these claims are therefore inadmissible *ratione materiae* under article 3 of the Optional Protocol. The Committee considers that the author has not clearly articulated how her removal to Bangladesh would violate the State party's obligations under these articles. In particular, she has not alleged facts that indicate that she would be arbitrarily detained or subjected to discrimination if returned to Bangladesh. The Committee finds that the author has failed to substantiate, for purposes of admissibility, her allegations under articles 9 (1) and 26. Accordingly, the Committee declares this part of the communication inadmissible under article 2 of the Optional Protocol.

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

Consideration of the merits

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

10.2 The Committee notes the author's claim that she would face ill-treatment or death if she were removed to Bangladesh owing to threats from S., whose friend and two brothers murdered her own brother. The Committee also notes the State party's observations that the domestic decision makers were not persuaded that the author had been personally targeted, or would be targeted if she returned to Bangladesh. The Committee further takes note of the State party's observation that it is not the Committee's role to review credibility assessments made by domestic decision makers.

10.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal¹⁵ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁶ The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.¹⁷

¹⁴ See communication No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 8.6.

¹⁵ See, inter alia, communication No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 7.3; and communication No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2.

¹⁶ See *X. v. Denmark*, para. 9.2; and communication No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹⁷ See, inter alia, *K. v. Denmark*, para. 7.4.

10.4 The Committee takes note that the State party's authorities, after examining the evidence and oral testimony provided by the author in her refugee claim and PRRA application as well as evidence concerning the human rights situation in Bangladesh, found that the author had not shown that she would be at risk if she were returned to Bangladesh. The Refugee Protection Division found that she was not credible concerning the threats she and her mother allegedly received after her brother's murder; that the statements she provided from other individuals to establish that she had been threatened did not mention her; that she did not provide any evidence to support her claims that the agents of persecution who allegedly murdered her brother had important judicial and political contacts; that there was no evidence that any individuals used their contacts to influence the outcome of the murder trial or the subsequent appeal; and that her assertion that the authorities of Bangladesh were unable or unwilling to protect her from the alleged threats was not substantiated. The Committee further notes, *inter alia*, that although the author asserts that her husband and children are in hiding, she has not responded to the State party's observation that several members of her family, including her husband, four of their five children and numerous aunts, uncles and cousins reside in Bangladesh, and that there is no information that any of them is at risk of harm from the alleged killers of the author's brother. While taking note of the reports cited by the author concerning corruption in Bangladesh, the Committee notes the State party's observation that its decision makers found that corruption is "rampant" in Bangladesh but nevertheless considered that there was no credible evidence of a personal risk of harm to the author. The Committee considers that the author's claims before the State party's authorities were thoroughly examined by the Refugee Protection Division and the Pre-Removal Risk Assessment Officer.

10.5 While noting the serious diagnosis of post-traumatic stress disorder, depression and anxiety, the Committee considers that the author's medical condition in itself, in the circumstances of this case, is not sufficient to substantiate the risk alleged by the author concerning her removal to Bangladesh.¹⁸ Although the author asserts that she did not have a fair opportunity to contest the merits of the decision of the Refugee Protection Division before the Federal Court, she does not specify the basis of her application for leave and judicial review and does not comment on the State party's observation that such applications are granted where there is a "fairly arguable case" or "a serious question to be determined".¹⁹

10.6 Accordingly, the Committee considers that the author has not identified any irregularity in the decision-making process, or any risk factor that the State party's authorities failed to take properly into account. The Committee considers that while the author disagrees with the factual conclusions of the State party's authorities, she has not shown that they were arbitrary or manifestly erroneous, or amounted to a denial of justice. In the light of the foregoing, the Committee cannot conclude that the information before it shows that there are substantial grounds for believing that there is a real risk of irreparable harm to the author, as contemplated by articles 6 (1) and 7 of the Covenant.²⁰ This decision is without prejudice to the outcome of the author's pending application for permanent residence on humanitarian and compassionate grounds.

¹⁸ See communication No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, paras. 9.4 and 9.5; *Lin v. Australia*, paras. 2.3 and 9.4; and communications No. 1315/2004, *Singh v. Canada*, decision of inadmissibility adopted on 30 March 2006, note 1 and para. 6.3; and communication No. 1897/2009, *S. Y. L. v. Australia*, decision of inadmissibility adopted on 24 July 2013, para. 8.4.

¹⁹ See *X. v. Canada*, para. 9.5.

²⁰ See general comment No. 31, para. 12.

11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Bangladesh would not violate her rights under articles 6 (1) or 7 of the Covenant.
