



**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.
2642/2015*, ****

<i>Submitted by:</i>	S. (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Denmark
<i>Date of communication:</i>	19 June 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 17 August 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	26 March 2018
<i>Subject matter:</i>	Deportation to Bangladesh
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Torture, cruel, inhuman or degrading treatment or punishment; refoulement
<i>Articles of the Covenant:</i>	1, 7 and 9
<i>Articles of the Optional Protocol:</i>	2

* Adopted by the Committee at its 122th session (12 March to 6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Ivana Jelic, Bamariam Koita, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany, Margo Waterval.

1.1 The author of the communication is S., a Bangladeshi national, born on [REDACTED] 1983. He claims that his rights under articles 1, 7 and 9 of the International Covenant on Civil and Political Rights (hereinafter the Covenant) will be violated if he is to be returned to Bangladesh by the State party.

1.2 On 17 August 2015, pursuant to rule 92 of the Committee's rules of procedure, the Committee requested the State party to refrain from deporting the author to Bangladesh, while his case was under consideration by the Committee. On 4 September 2015, following the Committee's request to refrain from deporting the author, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark.

Factual background

2.1 The author is a citizen of Bangladesh of Muslim faith. He indicates that he is a member of the Jamaat-e-Islami, a political party that opposes the government of Bangladesh. Since 2007, he has been regarded as a non-cooperative member of the party who should be punished.¹ The author has been affiliated with the party since 1989, when he was sent to a school run by it [REDACTED] Madrasa-. When his father died in 2000, he remained without financial support. He therefore started to live in the school because it was free and provided food and clothing for free. One condition to live in the school was to join the young people's movement of the Jamaat-e-Islami, called the Islamic Satroshivir. As part of this movement, the author had to participate in activities designed to promote the school and the party, such as recruiting new members, including students from other schools, collecting donations for the school and the party, discussing the Jamaat-e-Islami view of Islam, and learning martial arts.

2.2 Between 2002 and 2004, he went back to living at home but continued to attend the [REDACTED] Madrasa. During this time, he taught other students martial arts so that they could fight if demonstrations became violent. He also attended demonstrations himself and encouraged others to do so. The author states that he had to bring between 5 and 10 people to each demonstration.

2.3 Between 2004 and 2006, the author had become a senior member of the Islamic Satroshivir and stopped attending class. He was responsible for planning, preparing, and leading demonstrations, working to earn money for the party, and collecting donations. As he was a martial arts instructor, the author was also expected to fight in demonstrations in case of tensions.

2.4 In October 2007, the author's family advised him to stop his activities with the movement because it had become dangerous: there were many demonstrations in the capital city and the party was engaging in illegal activities such as setting cars and buses on fire. The author decreased his activities little by little. The last demonstration he was involved in was in October 2007. As he was requested to be in the front to fight in case there were clashes, he refused to do so and went home.

2.5 After the author disobeyed the party and left the demonstration in October 2007, he was summoned twice to a meeting with Jamaat-e-Islami leaders, which he refused to attend. On a third occasion, the author agreed to meet with two leaders outside a Girls High School. The leaders demanded an explanation from the author and reminded him of his pledge to the party. The author indicates that the leaders blamed him for the death of some party members during the last demonstration as a result of violent clashes, and stated that the Bangladesh police would "get him for this". The author explained that he wished to leave the party. In response, the author was attacked by the leaders and beaten with iron knuckles. He also had his stomach cut up with a razor, the scars of which are still visible. The author was

¹ See para. 2.4 and 2.5

admitted to a clinic and then transferred to a private doctor.² Then, the author went to stay with his aunt in [REDACTED] for approximately one month while he recovered from the attack. A few days after the attack by the leaders of the party, the Jamaat-e-Islami was accused of committing a terrorist attack during a demonstration, in which two cars were set on fire and two people suffered burns and died. The author learned that the authorities believed that he was connected with this crime, even though he did not take part in it.³ The author believes that he was denounced by the Jamaat-e-Islami leaders, as a punishment for trying to leave the party.

2.6 In December 2007, the author's cousin informed him that he had been charged in a case arising from the demonstration in October 2007. The author's cousin stated that it had been reported in two nationwide newspapers, [REDACTED] and [REDACTED]. The author notes that his name was reported incorrectly as S.⁴ Furthermore, the author indicates that he has also learned that his name was on a list of accused persons for the murder of a well-known professor in August 2007, who had written many books on the Jamaat-e-Islami and spoken out against them in university lectures. The author provides the Committee with court documents related to the charges.⁵

2.7 After learning about these accusations, the author fled Bangladesh in December 2007. He arrived in Greece in August 2008, after passing through India, Pakistan, Iran, and "other countries". He lived on the street in Greece for over two years and then tried to go back to Bangladesh. When the author reached the Indian-Bangladesh border, he called his family. His cousin who is a member of the youth branch of the Jamaat-e-Islami, told him that he should not enter the country because he would be killed or put in prison and tortured. According to the cousin, the author's mother had said that the Bangladesh police had come to her house three times to look for the author in connection with the charges against him regarding the professor's killing. His cousin also informed the author that, according to his mother, the police were arresting young members of the Jamaat-e-Islami for the death of the university professor. She alleged that the police were beating and torturing these young members to identify other members of the party and placing them in prison without a trial. Further, the author's mother stated that some low-level members of the Jamaat-e-Islami had told her that the party knew that the author was still alive after the assault perpetrated by the leaders in October 2007.⁶ The author claims that after hearing this news, he decided to travel back towards Europe.

² The author does not provide any medical report. He also states that public doctors are under a duty to inform the police, and affirms that he was scared of the police being notified since the leaders of the party had threatened him.

³ The author does not specify who gave him this information.

⁴ In the interview report dated [REDACTED] June 2012, contained in the RAB decision, it is indicated that the author had stated that he was falsely charged in this case, as there was a confusion with another person's name, who was also a member of the Jamaat-e-Islami.

⁵ The author only provided translations of the documents dated 2012, not the originals. These They were also provided to the State party and include: 1) Document dated [REDACTED] December 2011 related to the investigation of the murder of Professor [REDACTED]. It is not clear if the document has been issued by the Chief Metropolitan Magistrate Court of Dhaka or if it is submitted to it; 2) Document dated [REDACTED] February 2004 related to the investigation of the murder of Professor [REDACTED]. It appears to be a police report on the murder of the professor occurred on the same day; 3) Affidavit by the brother of Professor [REDACTED] dated [REDACTED] February 2004 in relation to the investigation of the murder of his brother; 4) Document dated [REDACTED] December 2011 related to the investigation of the murder of Professor [REDACTED] (police report submitted to the Chief Metropolitan Magistrate Court of Dhaka); 5) "Charge sheet" related to the investigation of the murder of Professor [REDACTED]. Mr. Ss. (name very similar to the name of the author, with a slightly different spelling) is among the accused in the case.

⁶ See para. 2.5

2.8 On [redacted] November 2011, after passing through India, Pakistan, Iran, Turkey, Greece and Italy, the author arrived in Denmark without valid travel documents. On [redacted] November 2011, he applied for asylum. On [redacted] November 2011, [redacted] June 2012 and [redacted] September 2013, the Danish police interviewed the author and he stated his reasons for applying for asylum. On [redacted] October 2013, the Danish Immigration Service (DIS) rejected the author's application for asylum. It noted that the author had provided divergent explanations for key events related to his asylum claims and that he lacked credibility. The Immigration Service was not convinced of the author's recount of his membership with the Jamaat-e-Islami,⁷ the charges against him in Bangladesh,⁸ the threats received by Jamaat-e-Islami members,⁹ and how he translated documents from Bengali into English. Furthermore, it emphasised that on [redacted] August 2013, the Danish Foreign Ministry concluded that the documents provided by the author stating the charges against him in Bangladesh were not genuine. The DIS concluded that the author was not persecuted at the time of departure, and that he did not risk persecution upon his return. It also concluded that the author did not face a risk of being subjected to abuse if returned to his country. As he had an offer of employment that met the minimum requirements, the author was advised by the Immigration Service's decision that he could apply for a residence permit.

2.9 The author appealed this decision, and on [redacted] January 2014, the Danish Refugee Appeals Board (RAB) upheld the DIS's decision. The Board considered that the author has given vague and inconsistent statements during his asylum proceedings, including: 1) the course of events prior to his departure from Bangladesh, as in one occasion he indicated that he left Bangladesh in July 2008, while in other occasions he stated that he left the country in December 2007 or early 2008; 2) his membership with Jamaat-e-Islami, as he first stated that he became a member in 2002, and then he indicated that he had started sympathising with the party in 2004 and became a member in 2006; 3) his attendance at the Koran school, as he first indicated that he attended it from 1998 to 2000, then he stated that he attended it from 2000 to 2004, and in another occasion, he indicated that he attended the Koran school from 2004 to 2006; 4) his employment in Bangladesh, as while he indicated that he had worked as a hairdresser and at a furniture factory from 2003 to mid-2006 and that he had not worked prior to that, in another occasion he stated that from 2000 to 2006 he had worked both at a furniture shop and as hairdresser; 5) the conflicts with the Jamaat-e-Islami, as while in one occasion he stated that he had been threatened by members of the party in January 2007 because his refusal to participate in some of the party's activities, he later stated that he was only threatened in October 2007 and subsequently assaulted by leaders of the party; 6) the charges against him in Bangladesh, as first the author indicated that he had been charged only in relation to one incident in which two persons had died following a demonstration during which some cars were burned; then he stated that he had been charged in the case in connection with a demonstration in October 2007 during which two members of the Jamaat-e-Islami and two police officers had died as a result of violent clashes; and later he indicated that he had been charged in relation to three different incidents, including the first incident referred to above, plus an incident occurred in 2007 in Dhaka, in which a person had been killed in an explosion, and another one occurred about one year before his departure from Bangladesh, in which a University professor had been killed; 7) the way in which the court documents submitted to the Danish authorities had arrived to his hands, as while he first

⁷ The DIS indicated that while in his interview of [redacted] November 2011, the author stated that he joined the Jamaat-e-Islami in 2002, in the interview of [redacted] June 2012, he said that he joined it in 2006, after being a sympathizer from 2004 to 2006.

⁸ According to the DIS decision, in his asylum application of [redacted] November 2011, the author stated that he was charged for arson and subsequent destruction of two cars which resulted in two people being killed. However, in his interview of [redacted] June 2012, the author indicated that he was not aware of the nature of the charges against him in Bangladesh.

⁹ The DIS indicated that the author's allegations that he had received threats from the leaders between January and October 2007 were not credible.

stated that the court had sent the documents to the police and that the police had subsequently sent them to his cousin's address, in another occasion he indicated that he had received the documents from his attorney, who had procured a copy of the documents from the authorities, after which he had forwarded them to his cousin who had subsequently forwarded them to him; 8) the way in which the newspapers learnt about the charges against him – or the other person called S.s.¹⁰, as when asked how the newspapers learnt about them, the author indicated that the journalists were entitled to receive that kind of information if they requested it to the police, when informed that printing information on an ongoing investigation would obstruct an investigation, the author indicated that the case had been investigated during long time and that everyone knew who the suspects were.

2.10 The RAB's decision also indicates that the Danish Foreign Ministry has requested a verification of the court documents provided by the author and that it had issued a Memorandum on the matter.¹¹ According to the Ministry's Memorandum dated August 2013, those documents were verified and it was concluded that they are non-genuine, and do not prove the charges against the author in Bangladesh. The Ministry's Memorandum indicates that the verification involved a visit to the court in order to compare the documents provided and the originals, and that they referred to two different cases. The author's name did not appear in any of the documents related to these two cases referred to in his asylum application. His name did not appear either in the list of names of the accused persons, or of those who had been arrested without being charged. When asked about these findings, the author replied that he did not know how the Ministry carried out its verification, and insisted that a criminal case against him existed in the court of Dhaka.

2.11 The Board concluded that the author had not been able to substantiate the grounds for asylum. It also stated that the author had presented insufficient evidence to establish that he was more than a sympathiser of the Jamaat-e-Islami, and that, accordingly, he has not made himself a high-profile individual in relation to the authorities or any political parties. Therefore, the alleged isolated assault which took place in October 2007 -attack by the party's leaders-, could not justify the asylum.

2.12 On December 2015, the author submitted to the RAB a certificate from the Bureau of Human Rights Bangladesh indicating that he had been subjected to torture in Bangladesh, that his life was threatened there, and that false accusations had been made against him, involving him in a murder. He also submitted two undated articles in Bengali indicating that the Jamaat-e-Islami will soon be declared illegal in Bangladesh because of the party's criminal offences against the people during the fight of the liberation movement in 1971; and that an individual with the name of the author, had been provisionally charged as a traitor and is on the run. According to this second article, that person is a well-known student leader of the Jamaat-e-Islami students' organisation and has been charged with treachery. The article also states that there are more pending cases against him, and that therefore he is a person of interest for the authorities. The RAB considered the submission of these documents as a request for reopening the asylum proceedings. On February 2016, the RAB refused to reopen asylum proceedings. It noted that, based on their appearance, contents and the late submission, the documents appeared to be fabricated for the occasion. It also stated that the author had failed to explain why these documents were not provided at an earlier stage of the asylum proceedings. The Board refers to a memorandum published by the Norwegian Country of Original Information Centre (Landinfo) that states it is easy to obtain false

¹⁰ Name very similar to the name of the author, but with a slightly different spelling.

¹¹ The State party has not provided a copy of the Memorandum.

documents in Bangladesh.¹² Therefore, the RAB relied on the reasoning of its decision on 7 January 2014 and rejected the author's reopening request.

The complaint

3.1 The author claims that in case he is deported to Bangladesh, he would be at risk of being imprisoned and tortured because of the false charges against him for crimes committed by the Jamaat-e-Islami, and because he would be considered as a member of that organisation, and that the authorities are very harsh with its members.¹³ He submits that he would be arrested and tortured, and could even be sentenced to death, in violation of his rights under article 9.1 of the Covenant.

3.2 The author also claims that he is considered to be a traitor by the Jamaat-e-Islami, and could be killed for refusing to cooperate with them, because members are supposed to cooperate for life. He indicates that he has learnt from low-level members of the Jamaat-e-Islami that the party is aware that he did not die from the attack by the party's leaders of October 2007, and that they would try to kill him again. He further alleges that the Bangladeshi authorities will not protect him because the Jamaat-e-Islami is an anti-government group. He therefore considers that deporting him to Bangladesh would amount to a violation of article 1 of the Covenant.

State party's observations

4.1 On 17 February 2016, the State party submitted its observations on the admissibility and the merits of the communication. It provides a description of relevant domestic legislation and submits that the complainant's asylum request was considered in accordance with it, in particular the Aliens Act, which reflects the same principles as those established in article 3 of the European Convention on Human Rights, in compliance with its international obligations regarding asylum applications. The State party also describes the structure, composition and functioning of the RAB.¹⁴

Admissibility

4.2 The State party argues that the author's claim under article 1 of the Covenant is inadmissible under article 1 of the Optional Protocol. It submits that the right of all peoples to self-determination and the right to freely determine their political status, pursue their economic, social and cultural development and dispose of their natural wealth and resources, involves a collective right. In this connection, it refers to the Committee's jurisprudence, according to which an individual cannot claim to be the victim of a violation of the right to self-determination enshrined in article 1 of the Covenant, as such article deals with rights conferred to peoples.¹⁵

¹² Thematic memorandum, Bangladesh: Police and legal system (Temanotat, Bangladesh: Politi og rettsvesen), published by the Norwegian Country of Origin Information Centre (Landinfo) on 4 July 2013.

¹³ The author refers to a press release by Amnesty International, Bangladesh: Disturbing increase in disappearances, clampdown on press freedom, issued on 2 September 2014, available at <https://www.amnesty.org/en/latest/news/2014/09/bangladesh-disturbing-increase-disappearances-clampdown-press-freedom/>. He also refers to Human Rights Watch World Report 2014, available at <https://www.hrw.org/world-report/2014/country-chapters/bangladesh>.

¹⁴ See *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1-4.3.

¹⁵ *Ivan Kitok v. Sweden* (CCPR/C/33/D/197/1985), para. 6.3. The State party also refers to Human Rights Committee, *Lubicon Lake Band v. Canada*, communication 167/1984 and *H.E.A.K v. Denmark* (CCPR/C/114/D/2343/2).

4.3 Regarding the author's claim under article 9 of the Covenant, the State party states that it is not aware of any case in which the Committee has applied article 9 extraterritorially. It refers to a decision by the European Court of Human Rights, *Othman v. the United Kingdom*, in which the Court decided to apply extraterritorially article 5 of the European Convention of Human Rights which is similar to article 9 of the Covenant. In this decision the Court stated that "(...) a Contracting State would be in violation of Article 5 if it removed an applicant to a State where he or she was at real risk of a flagrant breach of that Article. However, as with Article 6, a high threshold must apply. A flagrant breach of Article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. A flagrant breach of Article 5 might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a flagrantly unfair trial".¹⁶

4.4 The State party further considers that the author has failed to demonstrate that a flagrant violation of article 9 of the Covenant would occur in case he would be deported to Bangladesh. It therefore considers that this claim is manifestly unfounded and should be held inadmissible under Rule 96 of the Committee's Rules of Procedure.

Merits

4.5 The State party indicates that it does not consider it relevant to comment any further on the author's claims regarding article 1 of the Covenant.

4.6 Regarding the claims under article 9, the State party submits that the author has not sufficiently established that his return to Bangladesh would constitute a violation of this provision. The State party also notes that the author has not provided any new information compared to the information made available to the domestic authorities during the asylum proceedings.

4.7 The State party further reiterates that the author lacked credibility during the asylum proceedings. It also states that the RAB evaluates the asylum seeker's credibility on the basis of an overall assessment, and that if his or her statements appear coherent and consistent, they are normally considered as facts. However, when the asylum seeker's statements are characterised by inconsistencies, like in the author's case, the RAB attempts to clarify the reasons of such inconsistencies. The State party further recalls that on 17 January 2014, the RAB found that the author had not been able to substantiate his grounds of asylum, as in several points he gave evasive answers, as well as inconsistent statements in relation to the course of events prior to his departure, including the time of his membership of the Jamaat-e-Islami, his activities for the party, the times of his attendance to the Koran school, the time when he had had jobs, the time and motives of his conflicts with the Jamaat-e-Islami, the way the court documents were surrendered to his cousin, the name of his attorney, the newspaper articles on the charges against him and the time of his departure.

4.8 The State party refers to each of the inconsistencies described above, reiterating the RAB's findings.¹⁷ It emphasizes that in respect with the alleged charges against the author regarding the killing of a professor, the author first mentioned that the killing occurred on 17 August about one year before he left Bangladesh, which in the State party's view corresponds to the period between December 2006 and July 2007. After being informed that the court documents submitted by him indicated that the killing of the professor took place in 2004, he changed his version of the facts, affirming that he had been charged with a killing of a professor occurred in 2004. The State party also highlights that according to the Ministry of Foreign Affairs' verification of the court documents produced by the author during his asylum process, he was not a party in the criminal cases in which he alleged to be accused.¹⁸

¹⁶ European Court of Human Rights, Application no. 8139/09, *Othman v. the United Kingdom*, Ruling of 17 January 2012, para. 233.

¹⁷ See para. 2.9.

¹⁸ See para. 2.10.

The State party concludes that, as decided by the RAB, it is not possible to attach any evidential weight to such documents.

4.9 The State party further states that the author had not rendered probable that he would be considered as a suspect of the crimes based on the false charges against him or that he would be considered as a person of interest by the authorities of Bangladesh, taking into account that he is not a high profile member of the Jamaat-e-Islami, but only a sympathizer. The RAB did not find any specific reasons to assume that the author would risk abuse by the Jamaat-e-Islami upon return. Moreover, the activities performed by the author for the Jamaat-e-Islami date far back in time. This is confirmed by background information, including a 2015 report from the British Home Office, according to which "Membership or support of groups opposed to the current government does not of itself give rise to a well-founded fear of persecution in Bangladesh. Decision makers must assess claims made on the basis of the person's actual or perceived involvement in political opposition to the current government on the facts of the case, taking account of the nature of the applicant's claimed political activity or profile; and the extent to which they may have come to the adverse attention of the authorities and the reasons for that; the level and nature of actual or perceived political involvement, as well as their previous experiences in Bangladesh".¹⁹

4.10 The State party reiterates that the author failed to demonstrate that he would face a real risk of a breach of article 9 of the Covenant in case of deportation to Bangladesh.

4.11 Finally, the State party recalls that important weight should be given to findings of domestic authorities, and that it is generally for State organs to assess the facts and evidence of each case, unless it can be established that such assessment was arbitrary or amounted to a denial of justice.²⁰ The author has failed to explain whether there were any irregularities in the decision-making process.²¹ The State party also notes that, in his communication to the Committee, the author has failed to provide new, specific details about his situation. This reflects that he merely disagrees with domestic decisions, and that he is trying to use the Committee as an appellate body.

Author's comments on the State party's observations

5.1 On 11 April 2016, the author submitted his comments on the State party's observations. Regarding the State party's argument that he failed to substantiate his allegations, the author states that he is "heavily traumatized" as a result of the attack he suffered in Bangladesh –by the Jamaat-e-Islami members- and by being on the run, living on the streets and in refugee camps for about 4 years. The author states that the trauma affects his memory. In this regard, he indicates that he has difficulties in putting events in a chronological order and that it is difficult to give precise dates to events which happened so many years ago, including when he was a child or a teenager. Moreover, his ability to concentrate has decreased due to the traumas he has suffered. He states that the interviews during his asylum proceedings were very long and that the same questions were asked several

¹⁹ British Home Office, Country and Information Guidance – Bangladesh; Opposition to the Government, February 2015. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565489/CIG-BGD-Political-opponents-v1-February-2015.pdf. The State party also refers to the Country Report on Human Rights Practices 2013 – Bangladesh by the US Department of State which stated that "while political affiliation was sometimes a factor in the arrest and prosecution of members of the opposition parties, the government did not prosecute individuals solely for political reasons". Available at <https://www.state.gov/documents/organization/220600.pdf>.

²⁰ The State party refers *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3; *K v. Denmark* (CCPR/C/114/D/2393/2014) paras. 7.4 and 7.5; *N. v Denmark* (CCPR/C/114/D/2426/2014), para. 6.6.

²¹ The State party refers to *Mr. X and Ms. X v Denmark* (CCPR/C/112/D/2186/2012), para. 7.5 and *Z v. Denmark* (CCPR/C/114/D/2329/2014), para. 7.4.

times in different ways. There was a point when he was not able to concentrate anymore and just responded to the questions "in a haze".

5.2 The author further states that the method used by the Danish authorities during the interviews made it difficult to answer in a precise way. Once the questions were translated by the interpreter, he started to reply, but the interviewer cut him asking to shorten the answers. Therefore, every time he provided some details, the interpreter's translations were cut by the interviewer, and could therefore not be taken into account.

5.3 These difficulties are enhanced by the differences between the Islamic and the European calendars. The author indicates that when he was a child or a teenager, he was used to the Islamic calendar, and that when he was questioned about events that happened then, it was difficult for him to give precise dates according to the European calendar, as for instance, one month in the Islamic calendar can fall between two months in the European calendar. In addition, the interpreter would not be able himself to precisely translate certain dates according to the European calendar.

5.4 Regarding the inconsistencies highlighted by the State party concerning his attendance to school, work and his membership to the Jamaat-e-Islami, the author indicates that he cannot be sure on which precise date he started to go to the Koran school. He indicates that he went to the school while living there, but that he went on attending the school after having returned to live home. At another period in time, he was not a student at the school, but remained linked to it because he was a supporter of the Jamaat-e-Islami. Regarding his work, he indicates that he worked when he could in order to provide his family with money. As he did not have a fix employment, and taking into account that these activities overlapped –school, work and Jamaat-e-Islami membership-, the author submits that it is very difficult to provide precise dates to the Danish authorities.

5.5 Furthermore, the author refers to a 2014 report by the US Department of State, according to which in Bangladesh there are extrajudicial killings, enforced disappearances, torture and ill treatment by the security forces, as well as arbitrary arrests and lengthy pre-trial detentions.²² He also refers to Amnesty International's annual report 2014-2015 which states that the police routinely torture detainees in custody. The author highlights that the report indicates that torture and other ill-treatment are widespread and committed with impunity.²³ The author further refers to a 2015 report by Human Rights Watch according to which "thousands of opposition members and protesters were arrested, and unknown numbers remain in custody."²⁴ The report states that abuses by security forces in Bangladesh continue to enjoy near total impunity, despite being documented by independent actors. The author concludes that taking into account the above background information, the risk of being subjected to torture or ill treatment if returned to Bangladesh is demonstrated.

5.6 Regarding the State party's argument that the court documents submitted by the author during the asylum proceedings do not have any evidentiary weight, the author indicates that he cannot pronounce himself about the Ministry of Foreign Affairs' Memorandum dated August 2013 as he has never had access to it.

5.7 He adds that the RAB's decision of February 2016, which dismissed the documents submitted by him on December 2015²⁵ is wrong because it is not possible to reject such documents as false on the basis of arguments such as "their appearance". Moreover, the fact that the RAB rejected those documents because the author had previously submitted

²² US State Department, Country reports on Human Rights practices for 2014 available at <https://www.state.gov/j/drl/rls/irrp/2014/scr/236634.htm>.

²³ Amnesty International's annual report 2014-2015.

²⁴ Human Rights Watch, UN Human Rights Council: Item 4 General Debate, 11 September 2015.

Available at <https://www.hrw.org/news/2015/09/21/un-human-rights-council-item-4-general-debate>.

²⁵ See para. 2.12.

documents not deemed genuine is unacceptable as it seems to conclude that a person who once submitted some documents deemed not genuine cannot ever produce any authentic document. As per the State party's reference to the report by Landinfo, according to which it is easy to obtain false documents in Bangladesh, the author states that such affirmation is not sufficient to conclude that his documents are false. In the author's view, the RAB has based its decision on the appearance of the documents, rather than on any evidence or well-documented facts.

Further submissions by the State party

6.1 On 2 December 2016, the State party provided further observations. It reiterates that the author has not provided any new information on his initial grounds for asylum. Regarding the author's claim that he has difficulty in concentrating and in putting events in a chronological manner due to trauma, the State party submits that the RAB is aware that persons who have been subjected to torture or abuse cannot be expected to give a precise and coherent account of all details of an asylum case. However, in the present case, the author gave inaccurate and inconsistent statements, as well as evasive answers to specific questions. Additionally, the author provides statements to the Committee that are inconsistent with those he made during his asylum proceedings. The State party therefore reiterates that it endorses the findings made by the RAB in its decision of 11 January 2014.

6.2 The State party further notes that during the asylum proceedings, the author was given the opportunity to explain the inconsistencies in his accounts. In addition, during his hearing before the RAB, the author was asked elaborative questions on the inconsistencies of his statements. The State party concludes that the author's allegation that he could not give precise statements due to the trauma he has suffered cannot lead to a different evaluation of his credibility.

6.3 Regarding the author's allegations in relation with the method of interviews and the interpretation services during the asylum proceedings, the State party indicates that he never mentioned any problems in that regard before the domestic authorities or in his initial complaint to the Committee. The State party notes that the author signed the reports dated 11 November 2011 and 11 June 2012 after they were read out to him. The second of this reports expressly indicates that the author did not have any problems in understanding the interpreter. Throughout the asylum proceedings, the author was guided about the importance of giving as detailed and correct information as possible, and about the importance that he would point out any problems he would face to understand the interpreter. Therefore, the State party considers that the author has not rendered it probable that any significant misunderstandings occurred during his asylum proceedings due to the provided interpretation or similar reasons.

6.4 The State party reiterates that according to background information on the human rights situation in Bangladesh, including the reports quoted by the author, the author has failed to render it probable that he would risk any abuse by the Bangladeshi authorities or by the Jamaat-e-Islami upon return, as he had a low profile in the organization and only demonstrated that he was a sympathizer of the Jamaat-e-Islami.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 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.

7.2 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 international procedure of investigation or settlement.

7.3 The Committee observes that the author filed an application for asylum in Denmark, which was ultimately rejected by the Refugee Appeals Board on 1 January 2014 and it notes that the State party does not challenge the exhaustion of domestic remedies by the author. Therefore, the Committee considers that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 The Committee takes note of the State party's argument that the author's claim under article 1 of the Covenant should be declared inadmissible, as an individual cannot claim to be victim of a violation of the right to self-determination, because such provision deals with rights conferred to peoples. The Committee further recalls its jurisprudence that it does not have competence under the Optional Protocol to consider claims alleging a violation of the right to self-determination protected in article 1 of the Covenant.²⁶ It reiterates that the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated and recalls that these rights are set out in part III (arts. 6-27) of the Covenant.²⁷ It follows that this part of the communication is inadmissible under article 1 of the Optional Protocol.

7.5 The Committee notes the author's claim that if he is returned to his country, his rights under article 9 of the Covenant would be violated, as he would be arbitrarily arrested and could even be sentenced to death, taking into account that he has been charged with several crimes committed by the Jamaat-e-Islami and that he is a member of such organisation. The Committee also notes the State party's challenge to the admissibility of the communication on the grounds that the author failed to demonstrate that a flagrant breach to article 9 could occur in the receiving State, and that this disposition can therefore not be applied extraterritorially. The Committee recalls that article 2 of the Covenant requires that States parties respect and ensure the Covenant rights for all persons in their territory and all persons under their jurisdiction: This entails, *inter alia*, an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.²⁸ In that connection, the Committee notes that the author did not provide sufficient information regarding his claim under article 9 of the Covenant that would enable the Committee to conclude that his allegations regarding deprivation of liberty would amount to irreparable harm such as that contemplated in articles 6 and 7. Accordingly, the Committee considers that the author has failed to substantiate, for the purposes of admissibility, his allegations that the State party would violate article 9, and it declares that part of the communication inadmissible under article 2 of the Optional Protocol.²⁹

7.6 The Committee further notes the author's allegation that he would be subjected to torture or ill-treatment if returned to Bangladesh, as he would be persecuted for being a member of the Jamaat-e-Islam, and that the authorities are very harsh with the members of that organisation. The Committee considers that the facts as presented by the author raise issues in relation of article 7 of the Covenant, and therefore concludes that, for the purpose of admissibility, he has adequately explained the reasons for which he fears that his forcible removal to Bangladesh would result in a risk of treatment in violation of article 7 of the

²⁶ See, for example *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.3 and *Gillot v. France* (CCPR/C/75/D/932/2000), para. 13.4.

²⁷ See, for example *Bernard Ominayak et al. v. Canada* (CCPR/C/38/D/167/1984), para. 32.1.

²⁸ See the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12; See also *Ch.H.o.v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5; *Contreras v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5;

²⁹ See *S.Z. v. Denmark* (CCPR/C/117/D/2443/2014), para. 8.4.

Covenant. The Committee therefore declares admissible this part of the communication, and proceeds to its consideration on the merits.

Consideration of the merits

8.1 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.

8.2 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 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.³⁰ The Committee has also indicated that the risk must be personal³¹ 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.³²

8.3 The Committee recalls its jurisprudence that significant weight should be given to the assessment conducted by the State party, and 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.³³

8.4 The Committee notes the author's claim that the State party failed to take into account that in case of deportation, he would face a risk of being subjected to torture or ill treatment for being a member of the Jamat-e-Islami who has conducted several tasks for the party, including planning, preparing, and leading demonstrations, working to earn money for it, collecting donations, and fight in demonstrations in case of tensions. The Committee also notes the author's claim that he has been falsely charged of crimes committed by the Jamaat-e-Islami and that if returned to his country, he would be arrested and tortured, taking into account that domestic authorities are very harsh with members of the Jamaat-e-Islami and that torture of detainees is widespread in Bangladesh. The Committee also notes the State party's argument that the RAB has made a comprehensive and thorough examination of the evidence submitted by the author and considered that he was not credible, as he gave inconsistent statements in relation to the time of his membership of the Jamaat-e-Islami, his activities for the party, the times of his attendance to the Koran school, the time when he was employed, his conflicts with the Jamaat-e-Islami and the time of those conflicts, the charges against him, the surrender to his cousin of the court documents relating to such charges, the name of his attorney, the newspaper articles on the charges against him, and the time of his departure from his country.

8.5 The Committee further takes note of the State party's argument that the author has failed to establish that he is more than a sympathiser of the Jamaat-e-Islami, and that, accordingly, he has not made himself a high-profile individual in relation to the authorities or any political parties. The Committee also notes the State party's statement that the court documents submitted by the author during the asylum proceedings, which indicated that he was accused of committing two crimes, including the killing of a professor, could not be considered as genuine, according to a Memorandum of the Danish Ministry of Foreign Affairs dated 2 August 2013. The Committee also notes the author's allegation that he has never seen such document and that he is not aware of the way in which the Ministry has

³⁰ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

³¹ See, inter alia, *Y v. Canada* (CCPR/C/114/D/2280/2013), para. 7.2; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2.

³² See *Y v. Canada*, para. 7.2, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

³³ See, inter alia, *Y v. Canada*, 2280/2013, para. 7.5; *Rasappu v. Canada* (2258/2013, CCPR/C/115/D/2258/2013), para. 7.3.

conducted the verification of the documents. The Committee however notes that the information available in the file does not enable it to conclude that the author requested at any point to have access to the Memorandum, or would have asked for any clarifications as to the way it was produced.

8.6 The Committee also notes the author's allegation that during the asylum proceedings, he had difficulty in concentrating and in putting facts in a chronological order due to trauma; and notes his objections to the way in which the interviews were conducted and the problems he faced with interpretation services. The Committee also notes the State party's argument that the author agreed with and signed the reports of the interviews conducted during the asylum proceedings after they were read out to him, and that even one of those reports signed by the author expressly indicated that he had not had any problems with interpretation services. The Committee further observes that the author has not provided any evidence to support his allegation that the inconsistencies reflected during the asylum proceedings were due to trauma. It also observes that he has not provided any replies to State party's argument that he had never mentioned any problems with interviewing method or the interpretation services during the asylum proceedings, and that he had signed the reports of the interviews. The Committee further observes that the author has not pointed to any procedural irregularities in the decision-making procedure by the Danish Immigration Service or the RAB, and therefore considers that while the author disagrees with the factual conclusions of the RAB, he has failed to show that they were arbitrary or manifestly erroneous, or amounted to a denial of justice.³⁴

9. In light of the above, the Committee cannot conclude that the information before it shows that the author would face a personal and real risk of treatment contrary to article 7 of the Covenant in case of his return to Bangladesh.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, in these circumstances, is of the view that the author's deportation to Bangladesh, if implemented, would not violate his rights under article 7 of the International Covenant on Civil and Political Rights.

³⁴ See, inter alia, *Y v. Denmark*, Views adopted on 22 March 2016, para. 7.6.