

**International Covenant on  
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**Human Rights Committee****Communication No. 2149/2012****Views adopted by the Committee at its 108th session  
(8–26 July 2013)**

<i>Submitted by:</i>	M. I. (represented by counsel, Eva Rimsten of Swedish Red Cross)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sweden
<i>Date of communication:</i>	7 May 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 10 May 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	25 July 2013
<i>Subject matter:</i>	Deportation of a lesbian to Bangladesh.
<i>Substantive issues:</i>	Risk of torture and other cruel, inhuman or degrading treatment or punishment upon return to country of origin; prohibition of refoulement
<i>Procedural issues:</i>	Insufficient substantiation
<i>Articles of the Covenant:</i>	7
<i>Articles of the Optional Protocol:</i>	2

## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (108th session)**

concerning

#### **Communication No. 2149/2012\***

*Submitted by:* M. I. (represented by counsel, Eva Rimsten of Swedish Red Cross)

*Alleged victim:* The author

*State party:* Sweden

*Date of communication:* 7 May 2012 (initial submission)

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

*Meeting on 25 July 2013,*

*Having concluded* its consideration of communication No. 2149/2012, submitted to the Human Rights Committee by M. I., under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### **Views under article 5, paragraph 4, of the Optional Protocol**

1.1 The author of the communication is M. I., a Bangladesh national, born on 1 January 1985. She claims that her deportation to Bangladesh by the State party would violate article 7 of the Covenant. The author is represented by counsel.

1.2 On 10 May 2012 and 18 January 2013, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure in light of insufficient information as to the facts submitted by the author at the time.

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

**The facts as submitted by the author**

2.1 The author used to live in Dhaka, Bangladesh, where her parents and siblings still live. She alleges that she is lesbian and that her parents learned about this around the end of 2002 or the beginning of 2003. Subsequently, her parents arranged a marriage for her with a Bengali man living in Sweden. The marriage took place on 3 January 2006 in Dhaka against her will. Her husband stayed for a few days in Bangladesh before returning to Sweden.

2.2 In June 2006, the author arrived in Sweden, after receiving a temporary Swedish residence permit. When her husband found out that she was a lesbian, he forced her to return to Bangladesh in July 2006. That same year, she met her partner and they started living together. Due to their low income, they sought aid from a student organization, called Satra Dal (Chhatra Dal). In exchange, the author helped the organization to recruit new members. In April 2008, the police learned that she was lesbian, and arrested and detained her for four to five days. During her detention, she was raped and beaten. During the same period, on 14 April 2008, her partner, Ms. P.A., was kidnapped by the Islamic student organization, called Shator Shibir (Chhatra Shibir), and the author does not know her whereabouts since then. The author alleges that she received threats from this organization and from the police. She was in touch with a sister and, occasionally, with her mother; her father refused to have any contact with her, as he felt that his honour had been harmed because of her behaviour.

2.3 As her Swedish residence permit was valid until May 2008, the author returned to Sweden. On 16 May 2008, she applied for asylum before the Swedish Migration Board. She stated that she had fled Bangladesh to escape abuse by the police and Chhatra Shibir. She claimed that she had been detained by the police for four or five days and raped due to her sexual orientation, and that her partner had been kidnapped by Chhatra Shibir. Moreover, homosexual acts are forbidden under Bangladeshi law<sup>1</sup> and no organization can openly defend the rights of homosexuals. If returned to Bangladesh, she would be at risk of torture and inhuman treatment. She provided a medical report, dated 11 December 2008, which stated that she was depressed and under medication. She felt isolated, helpless and unsafe, and was scared all the time.

2.4 On 14 January 2009, the Migration Board rejected the author's application for asylum and ordered her return to Bangladesh. The Board pointed out that she did not provide any written proof to support her claims, and concluded that her allegations were not credible. The Board did not believe that she would be at risk of persecution due to her sexual orientation. It stated that the threats allegedly made by her parents, her husband's family or persons from Chhatra Shibir were criminal acts by individuals, and should be dealt with by the Bangladeshi authorities. Likewise, the author's detention and rape by the police was an act of misconduct that should have been reported to the authorities. The acts she complains about were never reported to the police or any other relevant authority and she did not show that the authorities were incapable or unwilling to investigate these allegations or to protect her. The Board further noted that although homosexual acts are forbidden by Bangladeshi law, it is not clear whether the law is actually enforced.<sup>2</sup> Finally, the Board pointed out that the author had left Bangladesh without any difficulties using her

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<sup>1</sup> Section 377 of the Criminal Code of Bangladesh states that "any person who voluntarily has sexual intercourse against the order of nature with a man, woman or animal, shall be punished with imprisonment of up to 10 years or for life."

<sup>2</sup> The Committee notes that the Migration Board's decision refers to the Swedish Ministry of Foreign Affairs' report on human rights in Bangladesh, 2007, and to the United Kingdom: Home Office, *Country of Origin Information Report - Bangladesh*, 31 August 2007.

own passport, which showed that she was not wanted by the Bangladeshi authorities. Moreover, it noted that she had arrived in the State party for the first time in 2006, but applied for asylum only in 2008. Therefore, it concluded that she did not feel an urgent need for protection.

2.5 The author appealed this decision before the Swedish Migration Court. She asserted that the Migration Board's decision focused its assessment on information that the Bangladesh law prohibiting homosexual acts was not applied. However, the Board failed to assess all the elements related to her case, in particular her forced marriage and departure to Sweden, as a way of making her change her sexual orientation, and the abuses to which she and her partner were subjected in Bangladesh. As a victim of rape by the police, she could not have gone to the police for help. Moreover, the Migration Board ignored how homosexuals are generally treated in Bangladeshi society. She had provided two medical reports, dated 28 May and 19 October 2009, which stated that she suffered from severe depression due to her fear of returning to Bangladesh and her family's rejection of her sexual orientation. Despite medication, her situation had worsened and there was a high risk of suicide.

2.6 On 22 December 2009, the Migration Court dismissed the author's appeal. It stated that the author did not provide any documentation in support of her claim and that the general situation for homosexuals in Bangladesh was not sufficient grounds for it to grant the author a residence permit in the State party. Furthermore, there were inconsistencies in her allegations and the information she provided was vague and not credible. The inconsistencies relate in particular to the manner in which her husband had learned about her sexual orientation, and when and in what circumstances she was made to leave her parents' house. The information she provided about her allegations regarding persecution by Chhatra Shibir was vague and insufficient. With regard to the alleged disappearance of her partner, the Court upheld that the author's assertion that neighbours had seen her partner being taken away by men with beards was not enough to conclude that she had been kidnapped by Chhatra Shibir. Furthermore, since the author had failed to file a complaint about that event, it could not be concluded that she would be at risk due to her partner's disappearance. Regarding her allegations of arrest, physical abuse and rape by the police, the Court reiterated the Migration Board's position that this aggression was a criminal act committed by individual policemen and there was no reason to believe that they would not have been investigated and sanctioned by the authorities. The Migration Court concluded that the author had failed to show that she would risk persecution if returned to Bangladesh.

2.7 The author submitted an application for leave to appeal before the Migration Court of Appeal. On 5 May 2010, the Court decided not to grant her leave to appeal.

2.8 After the migration authorities' decision to return the author to Bangladesh, her psychological state worsened. She was hospitalized six times due to deep depression and risk of suicide. On 24 February 2011, she submitted an application to the Migration Board under chapter 12, sections 18 and 19, of the Aliens Act, requesting non-execution of the expulsion order for medical reasons. She argued that during the previous interviews with the Board she had felt shame, given in particular the presence of men. There were also misunderstandings during the interviews due to interpretation. On 9 March 2011, the Migration Board dismissed her application. The Board considered that the author's state of health had already been assessed by both the Migration Board and the Migration Court. Moreover, the provision laid down in chapter 12, section 18, of the Aliens Act is applicable to situations in which the person is so severely ill that return is, in principle, impossible.

2.9 In October 2011, the author submitted a second application to the Migration Board, putting forward new circumstances to support her allegations regarding risk of persecution or torture and other cruel, inhuman or degrading treatment or punishment if returned to Bangladesh. She submitted as evidence a copy of an application to the Cerani Gong police

station in Dhaka about the disappearance of her partner, filed by her partner's brother. She also submitted an article published in the newspaper *Dainik Nowroj* on 13 April 2011, which deals with lesbianism in Bangladesh. This article makes reference to a 2008 article which commented on the author's relationship with Ms. P.A. The 2011 article indicated that the previous article had received much attention throughout the country and that, as a result, the author and her partner had gone into hiding and no one knew where they were. The 2011 article also included the opinion of a sociology professor from the University of Dhaka, declaring that relationships like that of the author and her partner were signs of the negative effect that Western culture had on Bangladeshi society. The author also submitted a new medical report which reflects her statements that, due to her sexual orientation, she was mentally and physically abused by her husband, the police had arrested, beaten and raped her, and her family did not want to have contact with her. According to the medical report, she lived in great fear and was in need of medication and counselling as she was severely traumatized and suffered from severe depression without psychotic symptoms.<sup>3</sup> Finally, the author submitted reports about the human rights situation in Bangladesh and the risk of persecution faced by lesbian, gay, bisexual and transgender persons (LGBTs).<sup>4</sup> On 15 February 2012, the Migration Board rejected the application.

2.10 The author appealed the Migration Board's decision to the Migration Court. On 9 March 2012, the Court concluded that there were no new circumstances to render a re-examination of the case necessary. The author then lodged an application for leave to appeal before the Migration Court of Appeal. On 23 March 2012, the Court of Appeal denied the leave.

2.11 On 10 and 15 January 2013, the author informed the Committee that lesbians are stigmatized in Bangladesh and often face extreme family and social pressure to marry a man. Chhatra Shibir is an extremist Islamic organization whose goal is to establish an Islamic system in Bangladesh. The fact that there is little information about persecution of sexual minorities by Chhatra Shibir is an indication of how difficult the situation in Bangladesh is for homosexuals.<sup>5</sup>

<sup>3</sup> A copy of the medical report, dated 14 October 2011, is in the Committee's file.

<sup>4</sup> The author refers to reports by the Office of the United Nations High Commissioner for Refugees (UNHCR) and International Crisis Group, as well as the report, *Fleeing homophobia: Asylum claims related to sexual orientation and gender identity in Europe*, by Sabine Jansen and Thomas Spijkerboer, COC Nederland and University of Amsterdam, September 2011.

<sup>5</sup> The author submitted to the Committee reports from States and NGOs about the situation in Bangladesh, including United States Department of State, *2010 Human Rights Report : Bangladesh* (April 2011); United Kingdom: Home Office, *Bangladesh – Country of Origin Information Report* (23 December 2011); Human Rights Watch, *World Report 2011: Bangladesh, Events of 2010* (January 2011); Immigration and Refugee Board of Canada, *Bangladesh: Treatment of homosexuals, including legislation, availability of state protection and support services* (19 July 2010); and Citizens' Initiatives on CEDAW-Bangladesh, *Combined sixth and seventh UN CEDAW alternative report* (July 2010). According to the report of the U.S. Department of State, in practice the law that criminalizes homosexual acts is rarely enforced. In general, there is no information concerning persecution of homosexuals and homosexual rights organizations remain informal and are unable to set up permanent establishments due to the possibility of police raids. In addition, the author's references to these reports highlight the fact that homosexual acts are criminalized in Bangladesh under section 377 of its Criminal Code. Some reports refer to the situation of lesbians in Bangladesh and note that the fate of virtually all Islamic women is marriage and motherhood. Lesbians are objects of rejection and social derision, and lesbianism is kept secret for fear of loss of marriage prospects. On the other hand, Citizens' Initiatives states that new research shows that sexually marginalized populations, especially those belonging to the *hijra* or transgender/trans-sexual community, are systematically persecuted by State agents through section 54 of the Penal Code, which allows for

2.12 The author stated that she was living illegally in Sweden and that the decision to expel her to Bangladesh could be executed by the police at any time. Moreover, the Migration Board informed her that she had no right to a daily allowance or housing. Without this aid, she had no financial means nor a place to stay in the State party. She also informed the Committee that the Migration Board had refused to re-register her as an allowance beneficiary. She feared being placed in administrative detention while awaiting expulsion.

### **The complaint**

3.1 The author holds that the authorities of the State party did not adequately assess the risk she would be subjected to if returned to Bangladesh, notably persecution or torture and other cruel, inhuman or degrading treatment or punishment, which would violate article 7 of the International Covenant on Civil and Political Rights. The authorities of the State party focused excessively on the fact that the law prohibiting homosexual acts is not applied. However, they failed to assess all the elements related to her case, including her mental health condition.

3.2 Although the law that criminalizes homosexual relationships is not systematically applied it reinforces a general climate of homophobia and impunity for those who persecute LGBT individuals. Moreover, the law is applied in an unofficial manner without recorded prosecutions by State and non-State agents.

3.3 The author claims that the migration authorities did not take into account that during the proceedings she needed language interpretation and that the inconsistencies in her statements regarding important facts were due to misunderstandings or inaccurate interpretation.

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

4.1 On 14 January 2013, the State party provided observations on the admissibility and merits of the communication. It pointed out that the author's case had been assessed by its authorities under the 2005 Aliens Act, which entered into force on 31 March 2006, and that all domestic remedies had been exhausted.

4.2 The decision ordering the expulsion of the author to Bangladesh gained legal force on 2 June 2010, when the Migration Court of Appeal decided not to grant her leave to appeal. Since she refused to leave the State party voluntarily, on 4 November 2010, the Migration Board decided to hand over the enforcement of the expulsion order to the police.

4.3 The communication is manifestly unfounded as the author's assertions that she is at risk of being treated in a manner that would amount to a breach of the Covenant fail to attain the basic level of substantiation required for the purpose of admissibility.

4.4 Should the Committee conclude that the communication is admissible, the issue before the Committee is whether a forced return of the author to Bangladesh violates the obligation of the State party under article 7 of the Covenant.

4.5 Since Bangladesh is a State party to the International Covenant on Civil and Political Rights as well as to the Convention against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment, it is assumed that the Committee is well aware of the

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arrest without warrant in case of "suspicious" behaviour. It further states that the police are notorious for gross infringements of the rights of sexual minorities through invoking section 54, and that harassment, physical and sexual abuse and extortion, as well as arbitrary arrest and detention, are standard forms of violence faced by these groups.

general situation of human rights in the country, including for LGBT individuals. Based on a number of reports<sup>6</sup> on the current situation in Bangladesh, it cannot be concluded that there is a general need to protect asylum seekers from that country. Although there may be concerns with respect to the current human rights situation in Bangladesh as regards LGBT individuals, this does not in itself suffice to establish that the forced return of the author would constitute a breach of the State party's obligation under article 7 of the Covenant.

4.6 The Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a communication under article 7 of the Covenant. The national authority assessing the asylum request is in a very good position to evaluate information submitted by an asylum seeker as well as to evaluate the credibility of his or her claims.

4.7 With regard to the author's claim that she faces a real personal risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment in Bangladesh by Bangladeshi authorities as well as by the Islamic student organization, Chhatra Shibir (Islami Chhatra Shibir), due to her sexual orientation, the State party recalls that the Migration Board and migration courts made a thorough examination of the author's claim. Before deciding the case, the Migration Board conducted a short introductory interview in connection with the asylum application as well as a longer interview with the author which lasted approximately one hour and forty minutes and was conducted in the presence of her appointed counsel and an interpreter, whom the author confirmed that she understood well. Furthermore, the author had the opportunity to submit observations on the minutes of the interview and has also argued her case in writing before the Migration Board and migration courts. The Migration Court also held a hearing in which the author was heard. Moreover, even after the decision ordering her expulsion had gained legal force, the Migration Board had, on two occasions, reviewed new circumstances invoked by her under chapter 12 of the Aliens Act. The expulsion decision was appealed, but was not overturned by the migration courts. Against this background, it must be considered that the Migration Board and migration courts had a solid basis for assessing the author's need for protection in the State party. There is no reason to conclude that the decisions of the migration authorities were inadequate or that the outcome of the domestic proceedings was clearly arbitrary or amounted to a denial of justice. In fact, great weight should be attached to the assessment made by the State party's migration authorities.

4.8 As concerns the author's allegations of persecution, the State party contends that her account contains a number of discrepancies and ambiguities with regard to the events following her return to Bangladesh in July 2006, many of which had already been pointed out in the Migration Court's decision of 22 December 2009. At the first interview with the Migration Board on 19 May 2008, the author submitted that her family in Bangladesh had put her out from their home in 2002-2003, when they learned that she was homosexual. At the interview with the Migration Board on 8 December 2008, however, she stated on several occasions, that her family put her out of the home in 2006, assumedly not long after her return to Bangladesh from the State party. Moreover, she stated that she had met her partner at the university in 2006 and that they considered themselves a couple when she was thrown out of her family home in 2006. Furthermore, her counsel submitted a written statement to the Migration Court, dated 1 April 2009, in which the author claims that she was forced to move out of her parents' home upon her return to Bangladesh, because her father allegedly became furious, and threatened and beat her. At the Migration Court's oral

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<sup>6</sup> The State party refers to Swedish Ministry for Foreign Affairs, *2010 Report on Human Rights in Bangladesh* (June 2011); United Kingdom: Home Office, *Bangladesh – Country of Origin Information Report* (30 September 2012); and United States Department of State, *2011 Country Reports on Human Rights Practices – Bangladesh* (24 May 2012).

hearing on 9 December 2009, the author stated that she had been locked up in her parents' home for seven to eight months after her return to Bangladesh in 2006 and beaten several times, until she finally managed to escape to her partner's home, in February or March 2007. The State party highlights that the author was assisted by a legal counsel as well as an interpreter throughout the major part of the asylum proceedings, and that prior to the hearings, she had the opportunity to argue her case in writing before both the Migration Board and the Migration Court.

4.9 Throughout the proceedings, the author provided vague and sketchy information regarding the alleged threats from the Islamic student organization, Chhatra Shibir, as well as the circumstances surrounding the kidnapping of her partner. The author submitted that she was threatened orally by Chhatra Shibir on four occasions, and that she believed that members of the organization had kidnapped her partner while the author herself was in police custody. However, she did not provide any details as to when she had received the threats, how they were expressed nor their specific content. Furthermore, her allegations regarding the circumstances surrounding the kidnapping of her partner were likewise vague, relying only on second-hand information from fellow students who allegedly had seen her partner being removed by "men wearing beards". The State party further notes that the author's alleged escape from Bangladesh corresponds in time with the date on which her temporary residence permit in the State party expired. Consequently, in light of the discrepancies and ambiguities regarding the essential aspects of the author's account, there are strong reasons to question the author's credibility regarding the events that allegedly occurred after she returned to Bangladesh in July 2006 and up to May 2008.

4.10 The State party considers that the author does not run a real risk of being subjected to treatment in violation of article 7 of the Covenant if returned to Bangladesh. She has not submitted any written documentation to support her claim that she was or still is being sought or accused of any crime by the Bangladeshi authorities. Moreover, she was able to leave Bangladesh in May 2008 from the international airport, using her own passport, without any problems. Furthermore, according to her own account, she was released from the alleged arrest by the Bangladeshi police after only a couple of days, despite the fact that homosexuality is criminalized in Bangladesh. In view thereof, there is nothing to suggest that the arrest and treatment of the author was officially sanctioned by the Bangladeshi authorities; rather, they must be seen as criminal acts performed by individual police officers. In this regard, the State party points out that there is no information in human rights reports concerning the author's country of origin indicating that Bangladeshi authorities systematically or actively seek out or persecute lesbians.

4.11 As regards the alleged threats from Chhatra Shibir, the author has not submitted any concrete information indicating that members of the organization would search for her at the present time. Besides, more than four years have passed since the author allegedly received threats from this organization. In view of this, any personal threat that the author anticipates from the organization cannot be considered to be based on grounds that go beyond theory or suspicion. Likewise, there is no concrete information suggesting that the family of her former husband would subject her to treatment in breach of article 7 of the Covenant. Between July 2006 and May 2008, the author lived in Dhaka and no action was taken against her by her former husband's family.

4.12 With regard to the written evidence submitted by the author to the Migration Board with her second request for re-examination of her application for a residence permit on 20 October 2011, the so-called enquiry application submitted to the Bangladeshi police by the brother of the author's partner was a faxed copy of a handwritten document, and therefore it is considered as having low value as evidence. Furthermore, the State party informs the Committee that it requested assistance from its embassy in Dhaka regarding the article submitted by the author that allegedly appeared in the newspaper *Dainik Nowroj* in order to



verify the existence of the newspaper and for information about, inter alia, its distribution and readership. The Swedish Embassy in Dhaka said that it had no knowledge of the newspaper and that, in any event, it was not one of the major newspapers in the country. Furthermore, the embassy failed to find any further information about the newspaper in question. The State party contends that, regardless of the foregoing, it is peculiar that an article would be published by the newspaper in April 2011, describing how the author's relationship caught media attention three years earlier, in January 2008. Even if that was the case, it is even more peculiar that the author was not aware of the allegedly countrywide attention created by the first article in 2008. Therefore, the State party considers that the submitted news article has very low value as evidence.

4.13 In conclusion, the State party submits that the author's account lacks credibility and contains a number of discrepancies and grey areas regarding essential parts. Hence, the communication should be declared inadmissible under article 3 of the Optional Protocol for lack of substantiation. Accordingly, enforcement of the expulsion order against the author would not constitute a violation of article 7 of the Covenant. Concerning the merits, the State party contends that the communication reveals no violation of the Covenant.

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

5.1 On 4 March 2013, the author provided her comments on the State party's observations on admissibility and merits. The author reiterates that several sources of information have described how difficult and grave the situation is for LGBT individuals in Bangladesh. Furthermore, the Bangladeshi authorities are neither willing nor able to protect LGBT individuals because homosexual acts are illegal under domestic law (section 377 of the Criminal Code).

5.2 She claims that the examination of her case by the Swedish migration authorities, under the 2005 Aliens Act, is not comparable to an examination in respect of article 7 of the Covenant. Although she submitted new evidence, her case was never re-examined by the State party's authorities under the criteria set up by chapter 12, section 19, of the Aliens Act. In practice, the Aliens Act makes it almost impossible for an asylum seeker to have his or her request re-examined. In her case, the Migration Board considered in its decision of 15 February 2012 that the new evidence presented was of low value. This means that not all the evidence presented was thoroughly examined in a manner that can be compared to an examination under article 7 of the International Covenant on Civil and Political Rights.

5.3 According to the UNHCR Handbook on procedures and criteria for determining refugee status (HCR/IP/4/Eng/REV.1), the interviewer needs to take into consideration that a vague or general description can be due to "fear" on the part of the applicant. Moreover, the interviewer should also consider that the applicant may be suffering from trauma and cannot remember all the details and circumstances of the case. As regards her account of events to the migration authorities, it is clear from the record of her first interview with the migration authorities on 19 May 2008 that there was a misunderstanding between her and the interviewer. When she referred to events with her family in 2002 or 2003, she meant that that was when her family learned that she was lesbian and they thought that it would be difficult to find a husband for her in Bangladesh, so they arranged a marriage with a man who was living abroad. However, the interviewer understood that that was when she was put out of her parents' house. Furthermore, her legal counsel was not present at the first interview, which was very short, and the interviewer only posed a few follow-up questions; the record of the interview was not read out to her after the interview.

5.4 As to the State party's observation that she altered her accounts at the Migration Court hearing, the author argues that her telling the Migration Court that she was held captive in her parent's home has no substantial ground since she also mentioned to the Migration Board that she was held captive by her family. However, due to a

misunderstanding by the interpreter at the interview, this statement was not put in the same way as at the hearing in the Migration Court. In her first interview with the Migration Board, she mentioned that she was not in good health and, during the second interview, she stated that she suffered from psychological problems and that she had seen a doctor. She also told the interviewer that she had been raped by the Bangladeshi police while in custody. Medical reports dated 11 December 2008, which she had presented to the Migration Board before it took its first decision, established that she was getting more depressed in spite of medical treatment. Subsequently, a psychiatrist's report dated 10 October 2009 stated that she suffered from adaptation disorder and deep depression, without psychotic symptoms. The author recalls that victims of torture often suffer from flashbacks and unreliable memory which, as explained in the medical reports she submitted, is the reason for the discrepancies and gaps in the information that she provided. Notwithstanding this, the essential part of her account has been the same all along; therefore there is no reason to question her credibility.

5.5 The organization, Chhatra Shibir was founded in 1977 and has become one of three major student organizations in Bangladesh. She was first contacted by the organization by phone when she was still at her family's home. When she refused to answer his questions, the caller threatened her and told her that if she did not follow the religion, he would take action. Later, when she moved in with her partner, they were both followed by member of Chhatra Shibir, and its leader, Mr. J, threatened to throw acid in their faces, tell everybody in the neighbourhood about their sexual orientation and stone them to death. They did not report this to the police for fear of being arrested for being lesbians. On another occasion she told Chhatra Shibir that she would go to the police. However, shortly after this she was arrested by the police and sexually abused while in custody. The police told her that she was arrested because she was a lesbian. As regards her partner's disappearance, she submits that she was not present when her partner was taken away and that is why she could only rely on second-hand information. Nonetheless, a neighbour told her that her partner was taken away by bearded men carrying swords.

5.6 The State party's inquiry about the newspaper *Dainik Nowroj* and its request for assistance to its embassy in Dhaka was not communicated to the author; therefore, it is difficult for her to respond to the embassy's reply that no such newspaper exists. However, a simple Internet search confirms that the newspaper exists and is on the list of media in Bangladesh.<sup>7</sup> On the other hand, she states that it is not peculiar that she did not know about the publication of an article about her and her partner in this newspaper in 2008 because she did not read the newspapers in those days. That was the year in which she left Bangladesh to return to Sweden and, prior to her departure, her partner had disappeared and she had been arrested by the police so she was not living a normal life because she was under much pressure, traumatized and very afraid. It was her mother who informed her about the article and accused her of putting even more shame on her family by being featured in the publication. Subsequently, one of her friends dared to send a copy of the article to her.

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<sup>7</sup> The Committee notes that the website address referred by the author (<http://media-bangladesh.com/media-details.php?mid=63>) lists the names of people related to some media in Bangladesh; it shows the address, phone and fax numbers for the newspaper *Dainik Nowroj*, as well as the names of staff members.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

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

6.3 With regard to the requirement laid down in article 5, paragraph 2 (b), of the Optional Protocol, the Committee takes note of the State party's acknowledgement that all available domestic remedies have been exhausted. The Committee also takes note of the State party's argument that the author's claim under article 7 is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the author has provided sufficient details and documentary evidence regarding her claims under article 7 of the Covenant. Therefore, as no other obstacles to admissibility exist, the Committee declares the communication admissible and proceeds to its examination on the merits.

### *Consideration of the merits*

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

7.2 The Committee notes the author's claim that her return to Bangladesh would expose her to a risk of torture and other cruel, inhuman or degrading treatment or punishment, due to her sexual orientation. Prior to her last arrival in the State party, her family had forced her to marry a Bangladeshi man; she had been harassed by the organization, Chhatra Shibir, and the Bangladeshi police; while in police custody she was raped by policemen; her partner was kidnapped by members of Chhatra Shibir and her whereabouts are still unknown. Bangladeshi law forbids homosexual acts and LGBT individuals lack protection from the authorities, who are neither willing nor able to protect them. Although this law is not systematically applied, its existence reinforces a general climate of homophobia and impunity for State and non-State agents who persecute LGBT individuals. Furthermore, homosexuality is harshly stigmatized in Bangladeshi society and lesbians are often subjected to intimidation and ill-treatment and forced by their families to marry men. As a result of all the events she experienced, the author's mental health has been severely affected. The author also claims that she provided relevant evidence that was not given due weight by the State party's authorities, in particular a copy of an article published in the newspaper *Dainik Nowroj* on 13 April 2011 that made reference to her sexual relationship with her partner, Ms P.A., which had previously been described in a newspaper article in 2008 that had received much attention throughout the country.

7.3 The Committee takes note of the State party's arguments that the author lacks credibility, as her statements regarding persecution by the police and Chhatra Shibir were vague and she had not provided any written documentation to support her claims in the asylum proceedings. Furthermore, the State party considers the alleged arrest and rape of the author to be the result of misconduct on the part of policemen, and that her claim that she had been threatened by Chhatra Shibir, which is responsible for her partner's kidnapping, lacked concrete evidence. The State party also argues that, notwithstanding the Bangladesh law criminalizing homosexual acts and concerns about the human rights situation regarding LGBT individuals, the law is not applied in practice. In addition, the

documentation submitted by the author with her second application to the Migration Board is considered of low value as the authorities cannot verify its authenticity.

7.4 The Committee recalls its general comment No. 31<sup>8</sup> in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee also recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine the existence of such risk.

7.5 In the present communication, the Committee observes, based on the material before it, that the author's sexual orientation and her allegations of rape by Bangladeshi policemen while in detention was not challenged by the State party. It also observes that her sexual orientation was in the public domain and was well known to the authorities; that she suffers from severe depression with high risk of committing suicide despite medical treatment received in the State party; that section 377 of the Criminal Code of Bangladesh forbids homosexual acts; and that homosexuals are stigmatized in Bangladesh society. The Committee considers that the existence of such a law in itself fosters the stigmatization of LGTB individuals and constitutes an obstacle to the investigation and sanction of acts of persecution against these persons. The Committee considers that in deciding her asylum request the State party's authorities focused mainly on inconsistencies and ambiguities in the author's account of specific supporting facts. However, the inconsistencies and ambiguities mentioned are not of a nature as to undermine the reality of the feared risks. Against the background of the situation faced by persons belonging to sexual minorities, as reflected in reports provided by the parties, the Committee is of the view that, in the particular case of the author, the State party failed to take into due consideration the author's allegations regarding the events she experienced in Bangladesh because of her sexual orientation — in particular her mistreatment by the police — in assessing the alleged risk she would face if returned to her country of origin. Accordingly, in such circumstances, the Committee considers that the author's deportation to Bangladesh would constitute a violation of article 7 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is therefore of the view that deportation to Bangladesh would, if implemented, violate the author's rights under article 7 of the Covenant.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including full reconsideration of her claim regarding the risk of treatment contrary to article 7 if she is returned to Bangladesh, taking into account the State party's obligations under the Covenant and the Committee's present Views. In the meantime, the State party is requested to refrain from expelling the author to Bangladesh while her request for asylum is under reconsideration. The State party is also under the obligation to take steps to prevent similar violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its

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<sup>8</sup> 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, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III.

jurisdiction the rights recognized in the Covenant, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views, and to have them translated in the official language of the State party and widely distributed.

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

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