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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 from the 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 person 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 <i>refoulement</i>
<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, from the 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., 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.

* 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 Kaelin, Ms. Zonke Zanele Majodina, Mr. Kheshoe Parsad Matadeen, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval.

Factual background

2.1 The author used to live in Dhaka, Bangladesh. Her parents and siblings still live there. She alleges that she is lesbian and that her parents learnt about it around end of 2002 or beginning of 2003. Subsequently, her parents arranged a wedding with a Bengali man who lived 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 going back to Sweden.

2.2 In June 2006, the author arrived in Sweden, after receiving a Swedish temporary residence permit. When her husband found out that she was lesbian, he forced her to go back to Bangladesh in July 2006. That same year, she met her partner and started to live together. Due to their low income, they sought aid from a student organization called “Satra Dal”. In exchange the author helped the organization recruit new members. In April 2008, the police learnt that she was lesbian, and arrested her for four to five days. During her detention, she was raped and beaten. On the same period, on 14 April 2008, her partner, Ms P.A., was kidnapped by an Islamic organization called *Shator Shivir* and since then the author does not know her whereabouts. The author alleges that she received threats from this organization and the police. She stayed 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 Migration Board. She pointed out that she fled Bangladesh to escape from abuse by the police and the *Shator Shivir* organization. She claimed that she was detained for four or five days and raped by the police due to her sexual orientation and that her partner was kidnapped by the *Shator Shivir*. Moreover, homosexual acts were forbidden by Bangladeshi law and no organization can openly defend the rights of homosexuals¹. If returned to Bangladesh she would be at risk of torture and inhuman treatment. She provided a medical certificate dated 11 December 2008, according to which she was depressed and under medication. She felt isolated helpless and unsafe. She was scared at all times.

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. The alleged threats made by her parents, her husband’s family or persons from the *Shator Shivir* movement were criminal acts from individuals which should be dealt with by the Bangladesh’s 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 not capable or willing 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 being enforced.² The Board finally pointed out that the author left Bangladesh without difficulties and with her own passport, which showed that she was not wanted by the Bangladeshi authorities. Moreover, as she arrived in the State party for the first time in 2006 but applied for asylum only in 2008, the Board concluded that she did not feel an urgent need for protection.

¹ Bangladeshi Criminal Law 377 states that “the person who has sexual intercourse against the nature with a man, woman or animal will be punished with imprisonment up to 10 years or lifetime.”

² The Committee notes that the Immigration Board’s decision refers to the 2007 Swedish Ministry of Foreign Affairs’ report on Human Rights and to the United Kingdom: Home Office, Country of Origin Information Report – Bangladesh, 31 August 2007.

2.5 The author appealed this decision before the Migration Court. She asserted that the Migration Board's decision focused its assessment on the fact that the 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 to make her change her sexual orientation and the abuses that she and her partner went through. As victim of rape by the police, it could not be expected that she turned to the police for help. Moreover, the Migration Board ignored how homosexuals were in general treated in Bangladesh's society. She also provided two medical reports, dated 28 May and 19 October 2009, which stated that she suffered from severe depression due to her fear to return to Bangladesh and her family 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 could not itself be sufficient to grant the author 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 related, in particular, to the manner in which her husband learnt about her sexual orientation; and when and in which context she was made to leave her parents' house. As to her allegations regarding the persecution by the *Shator Shivir* organization, the information provided 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 was kidnapped by the organization *Shator Shivir*. Furthermore, since the author failed to file any complaint concerning this 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 single 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 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 leave to appeal.

2.8 After the migration authorities' decision to return the author to Bangladesh, her psychological state got worse. She was hospitalized six times due to deep depression and risk of suicide. On 24 February 2011, she made 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 she felt shame, in particular given 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 before by the Board and the Migration Court. Moreover, the provision laid down in chapter 12 section 18 of the Aliens Act was applicable to situations in which the person was so severely ill that the return was, in principle, impossible.

2.9 In October 2011, the author submitted a second application to the Migration Board, claiming 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 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 *Dainik Nowroj* newspaper 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 got much attention in the whole country; that as a result the author and her partner went into hiding; and that no one knew where they were. The 2011 article also included the opinion of a sociology professor from the University of Dhaka who declared that relationships like the author had with her partner were signs of negative effect that western family culture had in the Bengali society. She also submitted a new medical certificate which reflects her account, that due to her sexual orientation, she was mental and physically abused by her husband; that the police arrested, beaten and raped her; and that her family did not want to have contact with her. According to the medical certificate, 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 symptoms³. Finally, she submitted reports about the human rights situation in Bangladesh and the risk of persecution of lesbian women, gay men, bisexuals and transgenders (LGBTs)⁴. 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 re-examine the case. After that, the author 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. *Shator Shivir* is an extremist Islamic organization which goal is to establish an Islamic system. The fact that little information about the *Shator Shivir's* persecution of sexual minorities is an indication of how difficult the situation in Bangladesh is for homosexuals.⁵

2.12 She held that she was living illegally in Sweden and that the decision to expel her to Bangladesh could be executed by the police anytime. 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 or a place to stay in the State party. She also informed the

³ Copy of a medical report, dated 14 October 2011, is on file.

⁴ The author refers to UNHCR's and International Crisis Group's reports. She also refers to a report "Fleeing Homo: Asylum claims related to sexual orientation and gender identity in Europe" (2011), published by the COC-Nederland and the University of Amsterdam.

⁵ The author's submission provides States' and NGOs' reports, such as the 2010 US Department of State Human Rights Report-Bangladesh, the 2011 UK Border Agency-Bangladesh: Country of origin information, the 2011 Human Rights Watch World Report-Bangladesh, an Amnesty International's report "*Bangladesh: Treatment of homosexuals including legislation, availability of state protection and support services*" (2010), and the Combined sixth and seventh alternative report to UN CEDAW Committee, submitted by Citizens' Initiatives (July 2010). According to the US Department of State's report, in practice the law that criminalized homosexuality was rarely enforced. In general, no information is provided concerning persecution of homosexuals and reports mainly point out that homosexual's rights organisations remain informal and are unable to set up permanent establishments. In addition, the quotations of these reports, submitted by the author refer mainly to the fact that homosexual acts are criminalized in Bangladesh by Section 377 of its Criminal Code. Some of them also refer to the situation of lesbians and note that the fate of virtually all Islamic women is marriage and motherhood. Lesbians are object of rejection and social derision. Lesbianism is kept a secret fearing loss of marriage prospects. On the other hand, the Citizens' Initiatives report also points out that "[N]ew research shows that sexually marginalized population, especially those belonging or the *hijra* or transgender/trans-sexual community, are systematically persecuted by state agents through another provision, that of Section 54 [of the Penal Code] which allows for arrest without warrant in case of suspicious behaviour. The police are notorious for gross infringements of the rights of sexual minorities [...] through invoking Section 54. Harassment, physical and sexual abuse and extortion, as well as arbitrary arrest and detention, are standard forms of violence these groups face..."

Committee that the Migration Board had refused to re-register her as allowance's beneficiary. She feared to be placed in administrative detention while waiting for expulsion.

The complaint

3.1 The author holds that the State party's authorities did not assess adequately the risk she would be subject 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 Covenant. The State party's authorities 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 of those that persecute LGBT-individuals. Moreover, the law is applied in an unofficial manner, which does not lead to recorded prosecutions committed by State and non-States agents.

3.3 The State party's migration authorities did not take into account that during the proceedings she needed language interpretation and that the inconsistencies of 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 was assessed by its authorities under the 2005 Aliens Act which entered into force on 31 March 2006 and that all domestic remedies were 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 leave to appeal. Since she refused to leave the State party voluntarily, on 4 November 2010 the Migration Board decided the enforcement of the expulsion order be handed over 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 As Bangladesh is a State party to the Covenant 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 general situation of human rights in the country, including for LGBT-individuals. From a number of reports⁶ on the present 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 removal of the author would constitute a breach of the State party's obligation under article 7 of the Covenant.

⁶ The State party refers to the 2010 Report on Human Rights in Bangladesh, issued by the Swedish Ministry for Foreign Affairs (June 2011); the United Kingdom Home Office's report Bangladesh Country of Origin Information (COI) (30 September 2012); and the United States Department of State Country Reports on Human Rights Practices for 2011, Bangladesh (24 May 2012).

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 conducting the asylum request is in a very good position to assess the information submitted by an asylum-seeker and to evaluate the credibility of his or her claims.

4.7 With regard to the author's claim that she faces a personal real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment in Bangladesh by the Bangladeshi authorities, as well as from the Islamic student organization called *Shator Shivar (Islami Chhatra Shibir)*, due to her sexual orientation, the State party recalls that the Migration Board and migration courts made a thorough examination of this claim. Before deciding the case, the Migration Board, apart from a short introductory interview in connection with the asylum application, conducted a longer interview with the author. It 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. Further, she had the opportunity to submit observations on the minutes from 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, after the decision ordering her expulsion gained legal force, the Migration Board on two occasions reviewed new circumstances invoked by her under Chapter 12 of the Aliens Act. The latter decision was appealed against, 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 the assessment of the author's need for protection in the State party. There is no reason to conclude that migration authorities' decisions were inadequate or that the outcome of the domestic proceedings was clearly arbitrary or amounted to a denial of justice. Great weight must therefore 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 states that her account contains a number of discrepancies and ambiguities relating to the events after her return from the State party to Bangladesh in July 2006, many of which were already pointed out by 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 threw her out from her home in 2002-2003, after it had come to their knowledge that she was homosexual. At the interview with the Migration Board on 8 December 2008, however, she submitted on several occasions, that it was in 2006 that her family threw her out, assumedly rather immediately after her return from the State party. Moreover, she specified that she met her partner at the university that year and that they considered themselves to be a couple when she was thrown out from her family home *in 2006*. Furthermore, in a written submission by her counsel to the Migration Court, dated 1 April 2009, she claimed that she was forced to move out from her home upon her return, since her father allegedly became furious, threatened and beat her. Later, at the Migration Court's oral hearing on 9 December 2009, she instead said that she was locked up in her home by her family for 7-8 months after her return, that she was beaten several times and that she finally managed to escape to her partner's place, in February or March 2007. The State party highlights that she was assisted by a legal counsel, as well as by an interpreter throughout the major part of the asylum proceedings; and that, prior to the hearings, she had opportunity to argue her case in writing both before the Migration Board and the Migration Court.

4.9 Throughout the proceedings, the author provided vague and scanty information regarding the alleged threats from the Islamic student organisation *Shator Shivar*, as well as the circumstances surrounding the kidnapping of her partner. The author submitted that she was threatened orally by *Shator Shivar* on four occasions, and that she believed that members of the organisation kidnapped her partner while the author was, herself, in police

custody. However, the author has not provided any details as to when she received the threats, how they were expressed or their specific content. Further, her allegations regarding the circumstances surrounding the kidnapping of her partner are likewise vague and rely 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 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 referred to upon essential aspects of the author’s account, there are strong reasons to question the author’s credibility as regards the events that allegedly occurred after her return from the State party to Bangladesh in July 2006 and up to May 2008.

4.10 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 in support of her claim that she was or still is sought after or accused of any crime by the Bangladeshi authorities. Moreover, she was able to leave Bangladesh 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 authorities only after a couple of days, despite the fact that homosexuality is criminalised in Bangladesh. In view hereof, there is nothing to suggest that the arrest and treatment of the author was officially sanctioned by the Bangladeshi authorities. Rather, it must be seen as criminal actions performed by individual police officers. In this regard, the State party points out that there is no information in the human rights reports concerning the country of origin indicating that Bangladeshi authorities systematically or actively seek up or persecute lesbians.

4.11 As regards the alleged threats from the *Shator Shivir* organization, the author has not submitted any concrete information indicating that members of the organisation would search for her at present. Besides, more than four years have passed since the author received the alleged threats from this organisation. In view of this, any personal threat that may remain from the organisation 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 against her was taken by her former husband’s family.

4.12 With regard to the written evidence submitted by the author to the Migration Board within her second request for a re-examination of her application for residence permit on 20 October 2011, the supposed police report by the brother of the author’s partner was a fax-copy written by hand, and, thus, it must be considered having a low value as evidence. Further, the State party informs the Committee that it requested assistance from its Embassy in Dhaka regarding the submitted article in the newspaper *Dainik Nowroj*, in order to verify the existence of the newspaper, and to provide information regarding its distribution, circle of readers, among other details. The Embassy replied 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 in its attempts to find any further information about the newspaper in question. The State party contends that, regardless of the above, 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 would be the case, it is even more peculiar that the author had not been aware of the allegedly countrywide attention of the first article in 2008. Therefore, the submitted news article has a 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 in essential parts. Hence, the communication should be declared inadmissible under article 3 of the Optional Protocol for

lack of substantiation. Accordingly, the 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. Further, the Bangladesh's authorities are neither willing nor able to protect LGBT-individuals because homosexual acts are illegal under domestic law.

5.2 The examination of her case by the migration authorities under the 2005 Aliens Act is not comparable to an examination according to 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 get a re-examination of his or her request. 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 evidence has gone through a thorough examination which can be compared to an examination under article 7 of the Covenant.

5.3 According to the UNHCR Handbook on procedures and criteria for determining refugee status, the interviewer needs to take into consideration that a vague or general description can be due to the person's fear. Moreover, it should be considered that the person may suffer from a trauma and therefore does not remember all the details and circumstances in the case. As regards her account given to the authorities, it is clear from the protocol 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 the events with her family in 2002 or 2003, she meant that at that time her family learnt that she was lesbian, that they thought it would be difficult to find a husband for her in Bangladesh, and therefore arrange a marriage with a man living abroad. However, the interviewer understood that on that period she was thrown out of her parents' house. Further, the interview was held without the presence of her legal representative, was very short, the interviewer only posed few follow up questions, and the protocol 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 hearing of the Migration Court when she told the Migration Court that she was held captive in her family's home, the author argues that it has no substantial ground since she also mentioned that she was held captive by her family during the proceedings before the Migration Board. However, due to misunderstandings between her and the interpreter this statement did not come out in the way as it did at the hearing at the Migration Court. In her first interview, she also 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 while in custody by the Bangladeshi police. Medical reports, dated 11 December 2008, presented by her before the Migration Board took its first decision, established that she was getting more depressed in spite of medical treatment. Later, a psychiatrist's report, issued on 10 October 2009, also stated that she suffered from adaptation disorder and deep depression, without psychotic symptoms. The author recalls that victims of torture often suffer from backlashes and a bad memory. In this connection, these medical certificates explained the discrepancies and gaps in the information that she provided. Notwithstanding this, the essential part of her account had all along been the same, therefore there is no reason to question her credibility.

5.5 With regard to the organization *Shator Shivir*, this organization was founded in 1977; and became one of the three major students' organizations. The first time she was contacted by them was on the phone, when she was still in her family's house. When the author 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 both were followed by member of *Shivir* and its leader, Mr. J, threatened them with throwing acid in their faces; telling everybody in the neighbourhood about their sexual orientation; and stoning them to death. She did not report this to the police for fear of being arrested as lesbians. On another occasion she told *Shivir* that she would go to the police. However, 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 lesbian. As regards her partner's disappearance, she submits that she was not present when her partner was kidnapped and that is why she had to 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 search in internet confirms that this newspaper exists as part of the media in Bangladesh⁷. On the other hand, it is not peculiar that she did not know about the publication of an article about the author and her partner in this newspaper in 2008. It is precisely the year when she left Bangladesh. Prior to her departure, her partner had disappeared and she had been arrested by the police. She did not live a normal life since she was under much pressure, traumatised and very afraid so she did not read newspapers on those days. It was her mother who informed her about this article and accused her of putting even more shame over her family by being in this publication. It was one of her friends who, later on, dared sending a copy of the article to her.

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

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 were 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.

⁷ The Committee notes that the website address referred by the author (<http://media-bangladesh.com/media-details.php?mid=63>) only lists names of persons or institutions that appear to be related to the media in Bangladesh. As to the *Dainik Nowroj* newspaper only provides an address in Dhaka, a phone number and an email address.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided 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 forced her to marry a Bangladeshi man; she was harassed by the organization *Shator Shivir* and the Bangladeshi police; while in police custody she was raped by policemen; her partner was kidnapped by *Shator Shivir*'s members and her whereabouts are still unknown. The 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 of State and non-State agents that persecute LGBT-individuals. Further, homosexuality is harshly stigmatized in the Bangladeshi society and, lesbians are often subjected to intimidation and ill-treatment and forced by their families to marry men. As result of all the events she went through, the author's mental health has been severely affected. The author also claimed 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 *Dainik Nowroj* newspaper on 13 April 2011 that made reference to her sexual relationship with her partner, Ms P.A., described in the newspaper in 2008, that had gotten much attention in the whole 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 the organization *Shator Shivir*, were vague and that she did not provide any written documentation in support of her claims within the asylum proceedings. Further, the alleged arrest and rape of the author seemed to be the result of misconduct performed by policemen, and her claim that she was threatened and that the organization *Shator Shivir* is responsible for her partner's kidnapping lacked concrete evidence. The State party also argues that, notwithstanding Bangladesh law criminalizes homosexual acts and there may be some concerns about the human rights situation as regards LGBT-individuals, the law is not applied in practice. In addition, the documentation submitted by the author, together with her second application to the Migration Board is of low value, as it is not possible to verify its authenticity.

7.4 The Committee recalls its General Comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a risk of irreparable harm⁸, 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, from the material before it, the Committee observes that the author's sexual orientation and her allegations of rape by Bangladeshi policemen while in detention has not been challenged by the State party; 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 the medical treatment

⁸ 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.

received in the State party; that Section 377 of the Bangladesh Criminal Code forbids homosexual acts; and that homosexuals are stigmatised in the Bangladesh society. The Committee considers that the existence of such law by 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 indicated inconsistencies and ambiguities are not of such nature so 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 went through in Bangladesh because of her sexual orientation, in particular her mistreatment by the police, in order to assess the alleged risk she would face if returned. 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 the deportation to Bangladesh would, if implemented, violate her 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 a full reconsideration of the author's claim regarding the risk of treatment contrary to article 7, should she be returned to Bangladesh, taking into account the State party's obligations under the Covenant and the present Committee's 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 an 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 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 Committee's 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.]