



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 2341/2014

#### Decision adopted by the Committee at its 112<sup>th</sup> session (7-31 October 2014)

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| <i>Submitted by:</i>                     | N.U. (not represented by counsel)  |
| <i>Alleged victim:</i>                   | The author   |
| <i>State party:</i>                      | Norway   |
| <i>Date of communication:</i>            | 15 May 2013 (initial submission)   |
| <i>Document references:</i>              | Special Rapporteur's rule 97 decision,<br>transmitted to the State party on 5 February 2014<br>(not issued in document form) |
| <i>Date of adoption of decision:</i>     | 28 October 2014  |
| <i>Subject matter:</i>                   | Non-refoulement  |
| <i>Substantive issues:</i>               | Inhuman, degrading treatment or punishment.  |
| <i>Procedural issue:</i>                 | Exhaustion of domestic remedies  |
| <i>Article of the Covenant:</i>          | 7  |
| <i>Article of the Optional Protocol:</i> | 5, para. 2 (b)   |



## Annex

### **Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (112th session)**

concerning

#### **Communication No. 2341/2014\***

*Submitted by:* N.U. (not represented by counsel)  
*Alleged victim:* The author  
*State party:* Norway  
*Date of communication:* 15 May 2013 (initial submission)

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

*Meeting on 28 October 2014,*

*Adopts the following:*

#### **Decision on admissibility**

1.1 The author of the communication is Mr. N.U., a stateless person,<sup>1</sup> born in Myanmar in 1976. His request for asylum in Norway was rejected and he faces deportation to Myanmar. He claims that, if Norway proceeds with his deportation, it will violate his rights under article 7 of the International Covenant on Civil and Political Rights. The Optional Protocol entered into force for the State party on 23 March 1976. The author is unrepresented.

1.2 On 5 February 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Myanmar while his case was under consideration by the Committee.

1.3 On 19 May 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided that the admissibility of the communication should be examined separately from its merits.

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Walter Kälin, Yuji Iwasawa, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Varzelashvili, Margo Waterval and Andrei Paul Zlătescu.

<sup>1</sup> According to a copy of the author's refugee card, he is a national of Myanmar. However, the authenticity of that document was challenged by the Norwegian authorities.

### **Factual background**

2.1 The author was born in Myanmar in 1976. In 1982, his parents were shot dead by the army of Myanmar. At that time, given his young age, he did not know his parents' origins and religion, nor why they were killed. In 1983, he was taken to Bangladesh and placed in the care of a family of Bengali farmers. In 1994, his application for a national identification card and a passport was rejected on the grounds that he was not born in Bangladesh. The author appealed the refusal to the court. The court decided to issue him with a refugee card.<sup>2</sup> In 2007, the author's foster parents lost his identity documents and the court decisions during cyclone Sidr in Bangladesh.

2.2 On an unspecified date, the author left Bangladesh because he could not work there as a refugee, and travelled to India, Pakistan, the Islamic Republic of Iran and Turkey.<sup>3</sup> He lived in Turkey for five years, where he applied unsuccessfully for citizenship. He moved to Greece for one year, where he applied unsuccessfully for asylum. In 2012, he arrived in Norway, where he applied for asylum on 23 April 2012.

2.3 On 7 June 2012, the author was interviewed by the Norwegian asylum authorities. He submitted that he had left Bangladesh because his application for citizenship had been rejected and he could not find a job there. He feared deportation to Myanmar because he did not have any knowledge of the country or his relatives' whereabouts. He also feared that the Burmese authorities would abuse him as they would assume that he was connected to Al-Qaida.<sup>4</sup>

2.4 On 15 June 2012, the Directorate of Immigration rejected the author's asylum application on the grounds that he had not substantiated a well-founded fear of persecution to a sufficient degree. The Directorate has not been able to reach a conclusion concerning the applicant's identity, including his nationality, and could therefore not assess his need for protection. On 14 October 2013, the Immigration Appeals Board confirmed the decision of the Directorate. The Board did not find the author's submissions that he was a Rohingya from Myanmar adequately substantiated. The Board concluded that the conditions of recognizing the author as a refugee had not been met and that he had not substantiated that he came from a country or an area where he would risk abuse on an individual or a general basis.

### **The complaint**

3. The author claims that his forcible removal from Norway to Myanmar would put his life at risk and expose him to torture, in violation of his rights under article 7 of the Covenant.

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

4.1 On 19 March 2014, the State party submitted its observations on admissibility. It maintains that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, for a failure to satisfy the requirement of exhaustion of domestic remedies, and requests that the Committee lift its request that the State party refrain from deporting the author from Norway.

4.2 The State party submits that the author has not instituted legal proceedings in court to challenge the lawfulness of the decision taken by the Immigration Appeal Board. Pursuant to the Code of Civil Procedure of 17 June 2005 No. 90, a decision by the Board

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<sup>2</sup> No copy of the court decision was provided.

<sup>3</sup> The author does not specify the duration of his stay in these countries.

<sup>4</sup> No further information is provided in this connection.

could be the subject of an appeal to the competent city or district court, whose judgement could be appealed at the High Court and, ultimately, at the Supreme Court. The domestic courts have full jurisdiction to review the lawfulness of the Board's decision and are empowered to quash the decision should they find that it was unlawful.

4.3 The State party further submits that the author has not asked a court to rule a temporary injunction against his removal from Norway. According to chapters 32 and 34 of the Code of Civil Procedure, a person whose expulsion had been ordered by the immigration authorities can apply to a court for an interlocutory injunction to stay the implementation of the expulsion order.

4.4 The State party further submits that the author has not applied for free legal aid, under the provisions of the Legal Aid Act of 13 June 1980 No. 35 as amended, in order to pursue legal action before domestic courts. He was entitled to do so both with regard to the institution of a temporary injunction and with regard to the institutions of proceedings seeking to invalidate the decision made by the Immigration Appeals Board.

4.5 The State Party points out that the author has not offered any prima facie evidence that the above domestic legal remedies would be either unavailable or ineffective in his case.

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

5. On 30 April 2014, the author reiterated the comments he had provided to the Immigration Appeals Board in a letter dated 15 October 2012,<sup>5</sup> whereby he contested the decision of the Directorate of Immigration and claimed that the Hindi interpreter before the Directorate had not understood him correctly; that he had been unable to obtain any information about his family; and that it was impossible for him to return to Myanmar.

#### **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 it is admissible under the Optional Protocol to the Covenant.

6.2 The State party has submitted that the Committee should not consider the present communication, since the author has not instituted proceedings before a court to challenge the lawfulness of the decision taken by the Immigration Appeal Board and/or to seek a temporary injunction against his forcible removal from Norway. The author did not avail himself of an opportunity to request free legal aid, despite being entitled to do so. The author also did not offer any prima facie evidence that domestic legal remedies would be not available or ineffective in his case.

6.3 In the absence of any pertinent information from the author, the Committee observes that he has not pursued the domestic remedies available to him, as pointed out by the State party. In the absence of any other information on file in this connection, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met in the present case. Accordingly, it concludes that it is precluded by article 5, paragraph 2 (b), of the Optional Protocol to examine the present communication.

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<sup>5</sup> A copy of the letter is included on file.

7. The Human Rights Committee therefore decides:
    - (a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;
    - (b) That this decision shall be communicated to the State party and to the author.
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