



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2804/2016\*, \*\*

<i>Communication submitted by:</i>	J.S. (represented by counsel, John Sweeney)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Australia
<i>Date of communication:</i>	24 August 2016 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 September 2016 (not issued in document form)
<i>Date of adoption of Views:</i>	1 July 2022
<i>Subject matter:</i>	Removal to China; publication of personal data on a government website
<i>Procedural issues:</i>	Exhaustion of domestic remedies; level of substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; non-refoulement; right to privacy
<i>Articles of the Covenant:</i>	6, 7 and 17
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1.1 The author is J.S., a national of China born in 1971. Her application for a protection visa was rejected and, at the time of the submission of the communication, she risked being removed to China. She claims that the State party has violated her rights under articles 6, 7, 12<sup>1</sup> and 17 of the Covenant. The Optional Protocol entered into force for Australia on 25 December 1991. The author is represented by counsel.

\* Adopted by the Committee at its 135th session (27 June–27 July 2022).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gómez Martínez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Soh Chongrok, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

<sup>1</sup> In her comments dated 19 May 2017, the author clarified that she did not invoke article 12 of the Covenant.



1.2 On 9 September 2016, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to issue a request for interim measures.

### **Facts as submitted by the author**

2.1 The author arrived in Australia on 20 April 2013 on a visitor visa. Her stay became unlawful on 21 July 2013. On 11 September 2013, she was apprehended on suspicion of shoplifting and detained at Villawood Immigration Detention Centre. On 11 October 2013, she applied for a protection visa. In the protection visa interview, she claimed that in 2009 she had embarked on a relationship with a married man in China, and in January 2012, she had witnessed this man transferring 1 million Chinese yuan to a high-ranking government official. She further claimed that on 20 April 2012, she received a phone call from the man's wife, who wanted her to repay the money he had spent "on her", around 180,000 yuan. On 18 May 2012, two men attacked the author, forcing her to write a note saying she owed 180,000 yuan to the man's wife. The author reported this to the police, who failed to arrest the man's wife. The latter found out about the police report and told the author to withdraw it. In October 2012, the author went to the Republic of Korea to seek protection but returned to China as she did not speak the language. In December 2012, she went to Malaysia, Singapore and Thailand, but did not seek protection there because of the hot climate. On 29 May 2013, the author was attacked and beaten with sticks, causing a fracture to her left index finger and a foot. Her family was harassed as well. Following these events, the government official who had received a payment from the man she was dating told her to leave China for Australia, as illegal dealings would come to light if she were to report the harassment to a prosecutor. In addition, if she were to be killed, it could lead to an investigation into the circumstances surrounding her death, during which illegal dealings might be uncovered. The author notes that she therefore feared being killed by associates of the official or being prosecuted upon return to China.

2.2 On 14 November 2013, a delegate of the Minister for Immigration and Border Protection refused her application for lack of credibility. On 10 January 2014, the Refugee Review Tribunal confirmed the decision not to grant her a protection visa.

2.3 On 10 February 2014, the Department of Immigration and Border Protection published on its website an issue of its *Immigration Detention and Community Statistics Summary* containing the name and personal details of approximately 9,250 asylum-seekers, including the author. The information comprised their full names, gender, citizenship, date of birth, period of immigration detention, location, boat arrival details and the reasons why the individual was deemed to be unlawful. The information remained on the website until 19 February 2014. On 12 March 2014, the Secretary of the Department sent the author a letter indicating his intention to assess the implications of the publication for her personally. In turn, she applied to the Federal Circuit Court to seek a judicial order for an assessment of the breach of her personal data and filed a complaint to the Office of the Australian Information Commissioner.

2.4 On 27 June 2014, the Department invited her to explain her concern that the publication of her data would affect her if she were to return to China. Her representative responded that the author was not in possession of all the facts concerning the data breach and that she could therefore not speculate further, and noted also that it would be a conflict of interest for the Department to investigate the consequences of its own breach of the law.

2.5 In November 2014, following an investigation, the Office of the Australian Information Commissioner found that the Department had breached the Privacy Act by failing to put in place reasonable security safeguards to protect the personal information it held against loss, unauthorized access, use, modification or disclosure and against other misuse. The Office also found that the Department had unlawfully disclosed personal information.

2.6 On 13 January 2015, the author was advised that the Department would undertake an international treaty obligations assessment to assess whether the non-refoulement obligations of Australia had been engaged due to the data breach. Therefore, she discontinued her case before the Federal Circuit Court. On 5 February 2015, in the context of the assessment, she

was invited to provide information about her concerns regarding the data breach. The Department issued its assessment on 23 March 2015, without having interviewed the author, finding that she did not have a profile that would expose her to a real risk of significant harm by the Chinese authorities and/or any other individuals or groups on return to China, and that she was not a refugee. The Federal Circuit Court dismissed the author's application for review on 12 May 2015, principally because the Department was not required to assess the non-refoulement obligations of Australia on the ground of section 197C of the Migration Act.<sup>2</sup> The Federal Court upheld the author's appeal, ruling that procedural fairness was due to the recipients of the letter of March 2014, that section 197C of the Migration Act did not apply to the present case and that the assessment process was not procedurally fair. Following an appeal by the Government, the High Court of Australia decided on 27 July 2016 that the assessment process was a statutory process requiring procedural fairness and that section 197C did not apply, but that the Department had acted in accordance with the law in conducting the assessment.

2.7 The author then appealed to the Minister under section 417 of the Migration Act,<sup>3</sup> requesting that he substitute a more favourable assessment for the negative one. That request was deemed not to fit the guidelines established by the Minister for referral on 17 August 2016.

### Complaint

3.1 The author submits that the State party would violate her rights under articles 6 and 7 if it returned her to China. She argues that she was the mistress of a businessman there who assisted corrupt officials with business dealings. The man's wife paid others to follow, harass and assault her. As she was present at some of these dealings, some of the officials were concerned that her problems with her partner's wife might accidentally alert the police to their business dealings and advised her to leave China. Thus, she borrowed money to travel to Australia. However, she has defaulted on the repayment and the loan shark is harassing her parents to repay the money.

3.2 The author also submits that the State party has breached her right to respect for her privacy under article 17 of the Covenant by publishing her personal data on the website of the Department of Immigration and Border Protection. The author notes that section 336E of the Australian Migration Act outlaws the disclosure of information gathered during visa processing and invokes the position of the United Nations High Commissioner for Refugees (UNHCR) on the confidentiality of asylum-seekers' information.<sup>4</sup> The author claims that the

<sup>2</sup> Section 197C of the Migration Act states as follows:

"Australia's non-refoulement obligations irrelevant to removal of unlawful non-citizens under section 198 [concerning removal from Australia of unlawful non-citizens]

(1) For the purposes of section 198, it is irrelevant whether Australia has non-refoulement obligations in respect of an unlawful non-citizen.

(2) An officer's duty to remove as soon as reasonably practicable an unlawful non-citizen under section 198 arises irrespective of whether there has been an assessment, according to law, of Australia's non-refoulement obligations in respect of the non-citizen."

<sup>3</sup> Section 417 (1) of the Migration Act states as follows:

"If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 415 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision."

<sup>4</sup> UNHCR holds the view that States should, as a general rule, refrain from revealing any information about a person's refugee status to the authorities of another State unless the individual concerned has given express consent to the sharing of such information. This is particularly relevant where the other State is the refugee's country of origin and applies with regard to the refugee's personal data as well as any elements pertaining to his or her asylum claim, including the very fact that an asylum application had been submitted. Disclosure of such information without a legitimate basis for doing so, or of more information than is necessary for the purpose, would constitute a breach of the refugee's right to privacy. It may also endanger the safety of the refugee or persons associated with him or her (UNHCR, "Guidance note on extradition and international refugee protection", April 2008, p. 24).

sequence of weighing the risks involved through the international treaty obligations assessment before concluding that the data breach did not and would not result in human rights breaches contradicts the High Commissioner's interpretation of how the rights to privacy and non-refoulement should interact. She notes that the privacy legislation of Australia allows for compensation, which was to be awarded in due course, but that there was no remedial provision for asylum-seekers specifically. She argues that the publication of her personal data concerns a protection claim involving high-level corrupt officials in China, which has a record of serious human rights abuses. She fears that the Chinese authorities, particularly the officials involved with her former partner who do not want her to return, have accessed these details.

3.3 The author urges the Committee to request the State party to refrain from any conduct amounting to a violation of articles 6 and 7 of the Covenant and to declare her a refugee *sur place* given the failure of its authorities to protect her confidentiality and her credible claim for protection against China.

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

4.1 In its observations of 10 May 2017, the State party notes that the unintentional disclosure of the author's information did not mention any contact information or that she had applied for a protection visa, or the grounds for doing so. From 17 May 2016, she was granted a series of bridging visas to allow her to reside in the community while seeking judicial review of the international treaty obligations assessment. The last of these visas expired on 30 August 2016. At the time of the submission of the State party's observations, she was residing unlawfully in the community.

4.2 The State party submits that the author's claims under articles 6 and 7 are inadmissible as insufficiently substantiated and, if the Committee were to admit them, without merit. These claims do not fully articulate the type of harm feared or the actors responsible. Further, the claims were considered through robust domestic administrative and judicial processes, including under the complementary protection provision in paragraph 36 (2) (aa) of the Migration Act of 1958, by the Department and the Refugee Review Tribunal. Following the data disclosure, the Department conducted an international treaty obligations assessment to reconsider her claims. The author sought judicial review of the assessment by the Federal Circuit Court of Australia, the Federal Court of Australia and the High Court of Australia. The Department also considered her request for ministerial intervention against the relevant ministerial guidelines. The State party notes its obligation to act as a model litigant in all proceedings and the Committee's general practice not to question the assessment and evaluation of evidence made in domestic processes.<sup>5</sup> In the present case, no error of fact or law was identified, and the author has not demonstrated that the factual conclusions reached are manifestly unreasonable.<sup>6</sup> The State party requests that the Committee accept that its authorities have thoroughly assessed the author's claims and found that her case does not engage its protection obligations. Additionally, since the conclusion of these processes, the relevant country information has not changed to her disadvantage.

4.3 The State party observes that the claims contained in the communication, excepting the subsequent disclosure of personal information, are the same as those in the author's protection visa application. The Department's decision maker in that case noted inconsistencies between her claims in the compliance client interview and in the protection visa interview. In the former, the author had stated that she was married and that she had no debts. In the latter, she stated that she was divorced and owed a significant amount of money to a private lender. The decision maker did not find the author's attempts to explain these

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The author also refers to the following: "Likewise, the authorities of the country of asylum may not weigh the risks involved in sharing of confidential information with the country of origin, and conclude that it will not result in human rights violations" (UNHCR, "Advisory opinion on the rules of confidentiality regarding asylum information", March 2005, p. 2).

<sup>5</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd ed. (Kehl am Rhein, Germany, Engel, 2005), pp. 180–181.

<sup>6</sup> *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.4.

discrepancies convincing and found that she did not owe any money. The decision maker also noted that she did not claim any fear of harm from the lender. Moreover, the decision maker considered that if she feared for her life, she would not have returned to China after her travels abroad. The decision maker concluded that the author had not witnessed a corrupt financial transaction and that consequently she did not fear harm. The decision maker, therefore, refused the author's application.

4.4 The State party observes that the author made oral submissions with the assistance of an interpreter before the Refugee Review Tribunal. The Tribunal reviewed country information from various sources. It considered her claims and confirmed the Department's decision, finding that she was not a credible witness, as she had not adequately explained the gap between her claimed witnessing of a bribe in January 2012 and the claimed threat in January 2013.<sup>7</sup> It also found that her two return trips to China and her residence there for more than a year after the second return contradicted her stated fear. It did not accept that she had been threatened by a businessman and a corrupt official; that she had been beaten by agents of her partner's wife and forced to sign a document acknowledging a debt of 180,000 yuan; that she had a second debt of 200,000 yuan; or that she would be unable to repay those debts. It considered that the medical records submitted had little probative value, given that they indicated that she had acquired injuries "by accident" and also given the prevalence of fraudulent documentation in China.

4.5 The State party notes that the Department found in its international treaty obligations assessment of 23 March 2015 that the non-refoulement obligations of Australia were not engaged in the author's case. Absent changes in her circumstances other than the data breach, the Department accepted the findings of the Refugee Review Tribunal. No details of her protection claims were disclosed. Further, country information indicated no risk of a real chance of serious harm in China on the ground of overstaying her visa. Country information suggested that she could be detained briefly and questioned. However, given her lawful departure, there would be no real chance of serious harm, even if the Chinese authorities suspected that she had applied for a protection visa. On 12 May 2015, the Federal Circuit Court dismissed the author's application for judicial review of the assessment for a lack of jurisdiction. Her appeal to the Federal Court of Australia was granted on 2 September 2015. The High Court of Australia granted the Government's application for special leave to appeal and the appeal itself, finding that the assessment process was procedurally fair.

4.6 The author reiterated her claims in a request for ministerial intervention under section 417 of the Migration Act, which permits the Minister to substitute a decision of the Refugee Review Tribunal with a more favourable decision if the Minister thinks it is in the public interest to do so. On 17 August 2016, the author was notified that it had been determined that her claims did not meet the guidelines for referral to the Minister. On 30 August 2016, the author made a request for ministerial intervention under section 48 (b) of the Migration Act, which permits the Minister to allow people to lodge a subsequent protection visa application where new issues require an assessment or to improve a protection claim. The request noted that other individuals affected had been informed that the Department would no longer rely on the outcome of international treaty obligations assessments and that they would now be able to lodge another protection visa application. The State party notes that the ministerial intervention power is non-compellable. The author was notified on 31 August 2016 that her request did not meet the guidelines, as she had not raised any new protection claims or shown a need for a further assessment. In contrast to those who were informed that they could lodge another protection visa application, the author's assessment was upheld by the High Court of Australia. Thus, her case did not require a further assessment.

4.7 The State party submits that the author's claim under article 17 of the Covenant is inadmissible as she has not exhausted domestic remedies. The State party notes that she has lodged a privacy complaint with the Office of the Australian Information Commissioner. Under the Privacy Act of 1988, the Office can investigate privacy complaints from individuals about the Department of Immigration and Border Protection. It resolves most

<sup>7</sup> The Refugee Review Tribunal interpreted the author's statements at the hearing before it as meaning that she had witnessed the payment of the bribe in January 2012, but had been threatened because of it in January 2013.

complaints through conciliation, which may include remedial action taken by the government agency, including changes to its practices or procedures, staff training, an apology and/or compensation. The Office can also seek undertakings from relevant government agencies or make a determination imposing the aforementioned remedies, both of which are enforceable by a court. The State party submits that this procedure constitutes an effective remedy. Moreover, the Office has already completed its own investigation into the disclosure, and the breaches of the Privacy Act will be considered when investigating individual complaints. The Office is currently examining a representative (class) complaint, in which the author is represented. Pending this, individual complaints, including the author's, are not being progressed. The State party notes the author's acknowledgment that the process might lead to the award of compensation. It disputes that legislation does not provide for a remedy for asylum-seekers, as nothing in the legislation prevents an asylum-seeker from fully participating in the complaints process.

4.8 The State party submits that it is complying with its obligations under article 2 (3) of the Covenant to provide the author an effective remedy for any breach through the review of any risk arising from the disclosure and through the complaint process before the Office of the Australian Information Commissioner. Following the Commissioner's conclusion (see para. 2.5), the Department took steps to remedy any impact by writing to each affected individual, including the author, advising them of the opportunity to raise concerns and that such concerns would be assessed. For the author's assessment, the Department assumed that the Chinese authorities might have accessed her personal information, but determined that the disclosure did not engage the non-refoulement obligations of Australia. The High Court of Australia found the decision not to be affected by legal error. Accordingly, any prejudice to the author's protection claims was appropriately remedied. As preventative, structural measures, the Department has enhanced its information and communications technology and privacy training regimes; formed a high-level working group on online publishing; updated its online publishing material, with an emphasis on embedded or hidden data; and arranged an external review. The Department is strengthening its policies, and the understanding of staff, on physical, information technology and communications security and the appropriate handling of personal information. It is also reviewing its privacy breach notification policy and will emphasize to staff the need for proactive notification of all breaches. Further, the author is being represented in a representative (class) complaint and has lodged an individual complaint before the Office of the Australian Information Commissioner. Possible outcomes may include apology or compensation. Thus, the appropriateness of any further remedy is being considered.

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

5.1 In her comments dated 19 May 2017, the author contends that she has exhausted domestic remedies. The process before the Office of the Australian Information Commissioner is delayed and has been pending for more than three years, even though it only needs to award a monetary value as compensation, and the Office cannot remedy the risk of refoulement. If the author were to wait for the outcome, she would therefore have to do so in China. The preventative measures are irrelevant for her as they do not include an assessment of her risk of refoulement in the light of the breach.

5.2 The author disputes that the communication is insufficiently substantiated and that her account lacked credibility. She argues that the purpose of the compliance client interview is to assess whether she is an unlawful non-citizen; it is therefore irrelevant to her protection claims. She argues that mutual distrust would have been the order of the day at the compliance client interview.<sup>8</sup> Moreover, the Refugee Review Tribunal and the State party failed to acknowledge that her claims remained "remarkably consistent". She argues that the dismissal of her medical documents because of the prevalence of documentation fraud in China is a racist premise. Likewise, the dismissal of the loan documents because of concerns about her credibility constitutes apprehended bias. As for her travels, the author notes that Malaysia,

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<sup>8</sup> The author refers to *MZZJO v. Minister for Immigration and Border Protection* (2014), Federal Court of Australia Full Court, 80, para. 56, where it is stated that decision makers should exercise some caution in relation to omissions by applications of matters at the entry interview.

Singapore and Thailand are not parties to the 1951 Convention relating to the Status of Refugees; that Malaysia and Singapore have poor reputations in terms of the treatment of illegal immigrants; that the likelihood of protection in Thailand was low as it was not a wealthy country and has problems with people from South-East Asian conflicts; that she had language difficulties in the Republic of Korea; and that her reception in the Republic of Korea would have been “less than cool” as China was an ally of the Democratic People’s Republic of Korea. As for the judicial review in her case, the judiciary can only review decisions made in domestic processes on the law, not on the facts. Further, the response to her request for ministerial intervention offered no reasons for not forwarding it to the Minister and was completely formulaic.

5.3 The author submits that the breach of her data shows that the State party’s authorities did not afford sufficient care. Many applicants have long requested to be provided with all the information regarding the data breach in various courts, but the Department has refused. Further, it was revealed to her only during the proceedings before the High Court of Australia, and was omitted from the State party’s observations, that the disclosure mentioned that the police had detained her. She argues that this is relevant as the Department of Immigration and Border Control executes its own detention. Detention by the police may therefore suggest to anyone interested in her that there is a criminal accusation against her in Australia. This may trigger an investigation into her activities in China, which could be used to accuse or threaten her with charges of criminal activity there. She reiterates her fear of being killed, threatened or mistreated by the officials engaged in criminal activities with her former partner or the loan shark, who may want to ensure that she keeps quiet.<sup>9</sup>

5.4 The author objects to the publication of the Tribunal’s decision in her case, given that it usually publishes a selection of its jurisprudence. However, no assurance was provided to her that the decision had never been published. She argues that the Department should have informed her about the Tribunal’s practice of publishing decisions.

5.5 The author notes that following the data breach, the State party introduced section 197C into the Migration Act to make it illegal for officers to assess whether the authorities had non-refoulement obligations towards people in the author’s situation. The Department then argued in court that the international treaty obligations assessment was not subject to the requirements of procedural fairness. Indeed, no interview was conducted with her and communications with her were in English, which she could not understand without translation. Further, despite the High Court’s subsequent finding that all entities who may have an adverse interest in those affected should be assumed to have accessed the data, the assessment presumed access by the Chinese authorities but not by organized criminals in China. The assessment assumed that the credibility findings by the Refugee Review Tribunal were correct. She was unable to answer any queries about those findings due to her detention.

5.6 The author argues that the preventative measures taken by the Department do not constitute a remedy. The removal of the information after 10 days did not prevent worldwide access, as shown by an external report, and many of those who accessed the data could not be identified. The Department failed to specify to those affected the exact nature of the data released and did not offer any more information despite repeated requests for it to do so. Thus, those affected were asked to speculate about something they had never contemplated, including who may have accessed their data.

5.7 On 13 January 2021, the author referred to a letter from the Australian Information Commissioner and Privacy Commissioner of 24 September 2019, concerning the Commissioner’s intention to make a determination “in coming weeks”. However, the procedure remained pending.<sup>10</sup>

<sup>9</sup> The author adds that “her reputation has been harmed by the data breach in this way and, in her situation, that harm is dangerous, to the point, says the complainant, of the involvement of Chinese Government officials corruptly in torturing her” [sic].

<sup>10</sup> The author refers to public information about the procedure:  
<https://assets.slatergordon.com.au/downloads/English-Guide-for-people-who-made-a-submission.pdf?mtime=20210127124539&focal=none>.

**State party's additional observations**

6. In its additional observations dated 28 April 2022, the State party reported that in January 2021, the Australian Information Commissioner and Privacy Commissioner found that the Department had interfered with the privacy of the class members. As a result, the Commissioner determined that the 1,297 class members who had made submissions and/or provided evidence of their losses or damages were to be paid compensation. On 21 June 2021, following an application for review of the Commissioner's determination, the Administrative Appeals Tribunal put on hold the implementation of the determination pending its decision on the application. Thus, no assessment or payment of compensation had yet taken place.

**Issues and proceedings before the Committee***Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

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

7.3 The Committee notes the State party's observation that the claim under article 17 of the Covenant is inadmissible for a lack of exhaustion of domestic remedies, as the author has a complaint pending before the Office of the Australian Information Commissioner, which can make determinations that can be judicially enforced. The Committee also notes that the author informed it on 21 January 2021 that the procedure before this Office was still pending, even though it had found a breach of the Privacy Act more than six years prior, in November 2014. The Committee further notes the State party's observation that the Commissioner identified those eligible for compensation in January 2021, almost seven years after the breach. The Committee has no information before it justifying the delay. In the circumstances, the Committee considers that this procedure is unreasonably prolonged and therefore ineffective. Consequently, article 5 (2) (b) of the Optional Protocol does not preclude the Committee from considering the claim under article 17 of the Covenant.

7.4 The Committee notes that the parties disagree about the level of substantiation of the claims under articles 6 and 7 of the Covenant. The Committee notes the author's arguments regarding the assessment of her application for a protection visa, including that her statements at the compliance client interview are irrelevant; that the consistency of her claims was not acknowledged; that the dismissal of her medical and loan documents is based on a racist premise and apprehended bias; and that the authorities accorded undue weight to her travels abroad. The Committee also notes the protection claims concerning the publication of her personal data, i.e. that the Chinese officials involved with her former partner may have accessed these details, particularly her detention by the police in Australia; that this could lead to an investigation or threats of charges of criminal activity; that she could be killed, threatened or mistreated by the officials or the loan shark; that the international treaty obligations assessment disregarded the fact that organized criminals in China could have had access to her data; and that she was procedurally disadvantaged.

7.5 The Committee recalls paragraph 12 of its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. In making such assessment, all relevant facts and circumstances must be taken into consideration, including the general human rights situation in the author's country of origin.<sup>11</sup>

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<sup>11</sup> See, for example, *O.H.D., O.A.D. and B.O.M. v. Australia* (CCPR/C/134/D/3023/2017), para. 7.7; *V.R. and N.R. v. Denmark* (CCPR/C/117/D/2745/2016), para. 4.4; *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.



The Committee recalls its jurisprudence according to which considerable weight should be given to the assessment conducted by the State party and reiterates that it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in a particular case in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary, manifestly erroneous or amounted to a denial of justice.<sup>12</sup>

7.6 In the present case, the Committee notes that the claims articulated by the author in the communication, excepting those concerning the publication of her personal data, were the same as those made in her application for a protection visa. The Committee notes that the State party authorities in this context questioned her credibility and did not accept that she had been harmed or threatened; that she had witnessed the bribery of a corrupt official; that she had been forced to sign a document acknowledging a debt; or that she had been told to leave China to avoid being harmed. They also did not accept that she had a 200,000 yuan debt as claimed, and even if she did, she had not shown a real risk of serious harm for reasons of a debt owed to a creditor. The Committee notes that these authorities found inconsistencies regarding material elements in the author's account, including her family status and the existence of a debt. In this regard, the Committee notes that the author has not shown that it was clearly arbitrary or manifestly erroneous for the authorities to consider her statements in the compliance client interview. In terms of the medical documentation, the Committee notes that the authorities considered not only the prevalence of document fraud in China, but also that the documents indicated that she had acquired injuries "by accident". Similarly, a review of the documentation on file shows that in attributing limited weight to a document concerning her 200,000 yuan debt incurred to fund her travel to Australia, the Refugee Review Tribunal considered that her evidence about how she obtained the document was vague, and that it contradicted her earlier statement that she had no debts. The Committee considers that, while the author disagrees with the outcome of national decisions, she has not substantiated that the authorities' appreciation of these documents or their consideration of her return to China following her travels abroad was clearly arbitrary or manifestly erroneous or that it amounted to a denial of justice. As regards the publication of the author's personal details on the website of the Department of Immigration and Border Protection, the Committee notes that the author was invited by the Department to explain how she considered that the publication of her data would affect her if she were to return to China, but that she declined to do so. Therefore, the Committee sees no ground not to accord considerable weight to the assessment conducted by the State party. In this light, the Committee finds that the author has failed to sufficiently substantiate her claims under articles 6 and 7 of the Covenant relating to the publication of her personal data, these allegations being based on the same account that the State party's authorities deemed to be lacking in credibility. The Committee therefore declares the author's claims under these articles inadmissible pursuant to article 2 of the Optional Protocol.

7.7 The Committee considers that the author's allegations related to the interference in her right to privacy by the publication of her personal data on the website of the Department of Immigration and Border Protection are sufficiently substantiated as raising issues under article 17 of the Covenant. The Committee further notes that, although the author has not expressly invoked a violation of article 2 (3), in conjunction with article 17, of the Covenant, she claims a lack of compensation.

7.8 The Committee considers that the author has sufficiently substantiated her claims for the purposes of admissibility, and proceeds to consider the merits of the claim under article 17, read alone and in conjunction with article 2 (3).

#### *Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

<sup>12</sup> *V.R. and N.R. v. Denmark* (CCPR/C/117/D/2745/2016), para. 4.4; *F.B.L. v. Costa Rica* (CCPR/C/109/D/1612/2007), para. 4.2; *Fernández Murcia v. Spain* (CCPR/C/92/D/1528/2006), para. 4.3; and *Schedko v. Belarus* (CCPR/C/77/D/886/1999), para. 9.3.

8.2 The Committee notes the author's claim under article 17 of the Covenant, according to which the State party breached her right to privacy by inadvertently publishing her full name, gender, citizenship, date of birth, period of immigration detention, location, the reasons why she was deemed to be unlawful and a specification of the detaining entity, on the website of the Department of Immigration and Border Protection. The Committee recalls that States have to take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.<sup>13</sup> The Committee considers that the implementation of such safeguards is particularly important for the protection of the personal data of persons in vulnerable situations, including asylum-seekers and refugees.<sup>14</sup> The Committee notes that, in the present case, the Office of the Australian Information Commissioner found that the Department had breached the Privacy Act, and that the State party does not appear to contest that the author's privacy was breached. The Committee further notes that the recognition of the breach has resulted in the removal of the data and various structural, preventative measures. However, after more than eight years since the breach, the author has not been awarded any compensation. In view hereof, the Committee considers that the author's rights under article 17, read alone and in conjunction with article 2 (3), of the Covenant have been violated.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of article 17, read alone and in conjunction with article 2 (3), of the Covenant.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to provide adequate compensation to the author for the violation suffered. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a 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 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 and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State party.

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<sup>13</sup> Human Rights Committee, general comment No. 16 (1988), para. 10.

<sup>14</sup> UNHCR, "Advisory opinion on the rules of confidentiality regarding asylum information", 31 March 2005.