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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3645/2019*, **

Submitted by:	M.M. (represented by counsel, Stewart Istvanffy)
Alleged victim:	The author
State party:	Canada
Date of communication:	12 August 2019 (initial submission)
Document reference:	Decision taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 14 August 2019 (not issued in document form)
Date of adoption of decision:	27 July 2022
Subject matter:	Expulsion from Canada to Angola
Procedural issues:	Non-exhaustion of domestic remedies; insufficient substantiation of claims; incompatibility with the Covenant
Substantive issues:	Right to redress; right to life; risk of torture or cruel, inhuman or degrading treatment
Articles of the Covenant:	2 (3), 6 (1) and 7
Article of the Optional Protocol:	2, 3 and 5 (2) (b)

1.1 The author of the communication is M.M., an Angolan citizen born on 19 June 1975. The author is subject to a removal order from Canada set for 14 August 2019. He claims that the State party would be violating its obligations under articles 2, 6 and 7 of the Covenant if it were to return him to Angola. The Optional Protocol entered into force for the State party on 19 August 1976. The author is represented by counsel.

1.2 On 14 August 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, requested the State party not to deport the author to Angola while his complaint was under consideration and asked the author to submit additional information within 60 days, with a view to determining whether or not the interim measures should be maintained. On 14 October 2019, the author sent the requested information, specifying that he was receiving

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

** The following members of the Committee participated in the consideration of the communication: 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 Changrok, Kobauyah Tchamdja Kpatcha, Imeru Tamerat Yigezu and Gentian Zyberi.

psychological treatment and that a report would be submitted to the Committee. On 29 October 2019, the State party submitted a request to the Committee for the interim measures to be lifted. On 4 February 2020, the Committee decided to deny the State party's request and to maintain the interim measures.

Facts as submitted by the author

2.1 The author left Angola because he feared for his life following two arrests during which he was subjected to torture and ill-treatment. Prior to these arrests, the author was an evangelical pastor in a church in Luanda, where he was responsible for a group of young people. Representatives of the Ministry of the Interior ordered him to convince the young people in his church to join the ruling political party, the Movimento Popular de Libertação de Angola. Following his refusal to cooperate, he was arrested by the police on 1 June 2014 and detained until 30 June 2014. During his detention, he was subjected to torture and ill-treatment.[1] In September 2014, in order not to risk further detention, the author obtained United States visas for himself and his family. Owing to a lack of funds, he went alone, without his family. In late September 2014, his wife was attacked and aggressively questioned by men who were looking for him, and had a miscarriage.[2] The author then returned to Luanda to take care of his wife and three children. While waiting for a visa to leave Angola for the United States of America, he first hid with his family for more than a year in another province before resettling in Luanda in a different neighbourhood, believing that he would no longer be persecuted. On 20 February 2016, he was arrested for a second time by armed police without an arrest warrant or official vehicle. He was interrogated and tortured for several hours before being released thanks to a police officer who knew his family. Following the death of his two sons, his wife fled to France with his daughter.[3] The author fled to Canada.

2.2 On 19 April 2016, the author, who arrived in Canada from the United States, applied for asylum with the Refugee Protection Division. This application was rejected on 13 February 2017 owing to a lack of credibility of the facts as submitted by the author.[4]

2.3 On 18 July 2017, the Federal Court refused to review the Refugee Protection Division's decision of 13 February 2017. On 13 February 2018, the author filed an application for a pre-removal risk assessment and submitted new evidence, including a warrant for his arrest dated 22 May 2017 and letters of testimony attesting to the risks he faced and to his role as a pastor in Angola. On 23 May 2018, he submitted an application for permanent residence on humanitarian and compassionate grounds.

2.4 On 25 July 2019, the author received two new pieces of evidence in the post from a friend, which he submitted to the Canada Border Services Agency: (a) a warrant for the author's arrest issued by the Angolan State Prosecutor accusing him of "participating actively in political affairs and rebellion demonstrations and being the ringleader, purchasing propaganda material and holding clandestine meetings against the ruling party"; and (b) an affidavit from a former Angolan police officer now living in Canada, testifying to the use of

[1] The author claims that he was regularly beaten with a baton, kicked and punched, interrogated in a heavy-handed way, and intimidated and threatened. He was given barely enough food and water to survive.

[2] The author submits a medical certificate stating that his wife went to the hospital on 30 September 2014 and suffered a "miscarriage caused by a climate of threats from a group of people".

[3] His two sons died of yellow fever on 23 February and 2 March 2016, having received inadequate care, according to the author. His wife ran away with his daughter, "blaming the author for the loss of their children".

[4] In the Refugee Protection Division's decision, it was found that the author was not credible for the following reasons: he had not indicated on his Canadian immigration form that he had lived in another neighbourhood when he returned to Angola in 2014; he had obtained visas for Brazil on 23 July 2014 but had preferred to wait for United States visas and "therefore did not really fear for his life"; he had not been able to find a way to bring his family to the United States but had returned to Angola; he had returned to Luanda knowing that his wife had previously been assaulted by individuals looking for him; and he did not fit the profile of a person particularly vulnerable to persecution by the Angolan authorities.

torture by the authorities against those suspected of being members of the opposition in Angola.[5]

2.5 On 30 July 2019, the application for a pre-removal risk assessment[6] and the application for permanent residence on humanitarian and compassionate grounds were both rejected. On the same day, the author's deportation was scheduled for 14 August 2019, despite the submission of new evidence during the hearing.

2.6 On 7 August 2019, the Canada Border Services Agency refused to halt the author's deportation following the submission of the new evidence, alleging in particular that the translation of the arrest warrant was not genuine. On the same day, the author filed a motion to stay his deportation before the Federal Court, with the hearing scheduled for 13 August 2019 at 2 p.m.

2.7 For context, the author claims that Angola commits numerous human rights violations and abuses against people suspected of being against the ruling party or members of opposition parties, and that he has been targeted because of his position as a church leader. He refers to the Human Rights Watch report on Angola, in which concerns are expressed about illegal practices, including arbitrary arrests, extrajudicial killings by security forces, the suppression of opposition and a lack of investigations.[7]

Complaint

3.1 The author claims that by returning him to Angola, the State party would be exposing him to a substantial risk of violation of his rights under articles 2, 6 and 7 of the Covenant.

3.2 The author maintains that insufficient weight has been attached to the evidence provided and to the alleged risks of irreparable harm in the event of his deportation by the Canadian authorities. He argues that the rejection during the pre-removal risk assessment of the new evidence that he provided on the grounds that it was based on facts that had already been found not to be credible by the Refugee Protection Division amounts to a clear lack of a remedy to correct any errors and that strong new evidence is thus given no weight. He also contends that the enforcement officer who refused to postpone the deportation despite the new evidence submitted in July 2019 is not impartial or trained to hear such matters.

3.3 The author argues that he must have access to an effective remedy that would allow him to present new evidence of risk until his departure from Canada. A large amount of new evidence was obtained after the asylum application was turned down, the most recent of which was received on 25 July 2019 and was rejected by the Canadian authorities without a valid legal reason and with no regard for the risks alleged by the victim.

3.4 The author adds that he would face a serious risk of abuse and human rights violations and reprisals if he were to be returned to Angola. He maintains that Angola is a country where there are massive and systematic violations of human rights, particularly by the authorities, which make arbitrary arrests and carry out extrajudicial executions. He claims that he faces irreparable harm because he is being targeted by the authorities and because he is suspected of being involved in activities directed against the ruling party. These accusations have far-reaching consequences in Angola, potentially leading to the death penalty or extrajudicial execution.

[5] This former police officer testifies that he has, on numerous occasions, "drafted, handled and executed arrest warrants and notices to appear" issued against suspected members of the opposition and that he was trained to commit acts of torture from 1983 to 1987, before fleeing to Canada. He attests to the authenticity of the author's arrest warrants and is convinced that the authorities' practices of political repression are ongoing.

[6] The officer who conducted the pre-removal risk assessment considered that the author "reiterated the same fears as those alleged before the Refugee Protection Division and that he did not file new evidence to substantiate his story".

[7] See Human Rights Watch, "Angola: Events of 2018", available at: https://www.hrw.org/world-report/2019/country-chapters/angola.

Additional information submitted by the author

4.1 In the context of granting interim measures, the Committee had requested the author to provide: (a) more detailed information on the ill-treatment he suffered during the arrests in June 2014 and February 2016, together with any medical documents he has in his possession in this regard; (b) an explanation as to why he did not travel to Brazil when he obtained a visa and returned to Angola in September 2014 while he was wanted there; and (c) a certified copy of a verified translation of the arrest warrant dated 10 September 2018.

4.2 On 14 October 2019, the author submitted a certified translation of the arrest warrant and an affidavit stating the following: on 1 June 2014, the author was arrested by police officers while meeting with young people from his church and was identified as the leader of the group in question. At least three police officers beat him on several parts of his body with their fists, boots and batons. He was handcuffed and forcibly dragged across the floor to the outside of the church, "thrown" into a car and stamped on by the police.

4.3 When he arrived at the police station, the author was beaten again by the officers escorting him and by the officers on site until he lost consciousness. He woke up in a cell, where he was beaten by his fellow inmates and "abandoned" for two days with open wounds and no access to medical care, water, food or information on the charges against him.

4.4 The author was then interrogated by the station commander, who asked him what specific steps he had taken to make the young people in the church join the ruling party. The author replied that he did not engage in politics and was returned to his cell. That afternoon, he was transferred to Viana prison, where he remained until 30 June 2014, without trial and without having been informed of the charges against him. He was not given access to medical care and was unable to contact his family or a lawyer. He was eventually released, without explanation.

4.5 On 20 February 2016, armed police officers entered the author's home without a warrant and asked him if he had joined the ruling party. He replied that he had not. The officers beat him, stamped on him, slapped him, dragged him by force and loaded him into a civilian vehicle in front of his wife and children. During the journey, he was also beaten. The officers took him to a house a few kilometres from his home and continued to question him about his membership of the ruling party and that of the young people in the church. He was locked up in the house for several hours without being given any information and thought that he was going to be executed. An officer who knew his family came and opened the window from the outside, allowing him to escape, and warned him not to return home as he was a wanted man.

4.6 Regarding his visa applications, the author explains that, in July 2014, he obtained 30-day visas for Brazil for his entire family. The author was unable to pay for the trip in time, having lost his job upon release from prison. Two months later, a friend living in the United States who was visiting Angola helped him to secure a visa for the United States (which he did in September 2014). His friend paid the airfare. The author eventually had to return to Angola following his wife's miscarriage, after she had been savagely beaten by individuals who were looking for him.

4.7 The author states that, at that time, despite his two arrests, there was no arrest warrant or official summons against him. He adds that he was harassed by police officers over the telephone but that no legal action was taken against him, which explains why he was not subjected to any checks when he passed through the airport. Now that an arrest warrant and a notice to appear have been issued, he will no longer be able to pass through airport controls without being arrested.

State party's observations

5.1 On 29 October 2019, the State party submitted a request to lift the interim measures, arguing that the author had failed to establish a prima facie case of irreparable harm that would justify the Committee's request, as he had not established substantial grounds for believing that his removal to Angola would place him at risk.

5.2 The State party submits that the national authorities concluded that the author was not credible regarding the alleged risks he might face in Angola and failed to establish a serious

possibility that he would face a risk of torture or cruel or inhuman treatment or punishment, or that his life would be threatened or that he would suffer other irreparable harm if returned to Angola.

5.3 The State party summarizes the facts as submitted by the author and reminds the Committee that interim measures should be used with caution and reserved for deserving communications, which the author's is not.

5.4 The State party acknowledges that impartial reports[8] attest to the existence in Angola in recent years of serious human rights violations against activists and groups that oppose the Government. It emphasizes, however, that the author does not belong to any of the categories targeted by this persecution and that the documentary evidence does not mention any arbitrary arrest or extrajudicial execution of ordinary members of his church.

5.5 The State party adds that the author's allegations were thoroughly examined by competent and impartial authorities. The author was represented by legal counsel at all stages and given every opportunity to substantiate his claims. However, the State party concluded that the author's allegations lacked credibility and that the evidence provided was insufficient.

5.6 The State party recalls the procedures that the author went through and underlines that the Refugee Protection Division concluded that the author lacked credibility in view of various contradictions in his testimony. For example, the State party indicates that the author provided only one residential address in Angola between 2005 and 2016, even though he remained in hiding for a year, which he did not indicate on the form. Moreover, the State party points out that the author did not flee to Brazil in July 2014 when he had the opportunity to do so, nor did he subsequently take any steps to obtain protection in the United States while he was there. Instead, he returned to Angola to assist his family. The Federal Court therefore concluded the following: "The applicant's general behaviour is not at all consistent with that of someone who truly fears for his life. This greatly undermines his credibility to the extent that the Court does not believe his allegations of persecution at the hands of members of the Movimento Popular de Libertação de Angola".

5.7 With regard to the application for permanent residence on humanitarian and compassionate grounds, the State party submits that it was rejected because the author failed to demonstrate the difficulties he would face if returned to Angola.

5.8 Concerning the two applications for a pre-removal risk assessment, the officer concluded that "the applicant has not demonstrated that, on the balance of probabilities, he personally would be exposed to a risk to his life or to a risk of cruel or inhuman treatment or punishment (...) or that there are substantial grounds for believing that he would be subjected to torture in Angola". The officer also concluded that the evidence presented by the author was weak. In particular, he found that the second arrest warrant submitted by the author was inconsistent: it did not indicate that there had been a previous warrant for the author's arrest, the author was described as single, and the paper was "remarkably white" for paper that had been "stuck under the author's door" for nine months.

5.9 Regarding the request for an administrative deferral of the execution of the removal order, the Federal Court of Appeal ruled that the circumstances did not justify a deferral of removal and that the new evidence (the second arrest warrant) was not authentic and that the affidavit from the former Angolan police officer could not be taken into account, as it could not be considered as expert evidence.

5.10 In closing, the State party recalls that it is not for the Committee to reassess the facts unless the evaluation of the facts and the evidence made by the domestic courts was clearly arbitrary or constituted a denial of justice. The State party adds that it has fulfilled all its obligations in relation to the author's case and that the procedures afforded to the author were conducted in accordance with Canadian law and the country's international obligations under the Covenant.

[8] Amnesty International, *Report 2017/18: The state of the world's human rights*, 2018, pp. 90–92; Human Rights Watch, *World Report 2019: Events of 2018*, 2019, pp. 29–33; and United States Department of State, "2021 country reports on human rights practices: Angola".

Author's comments on the State party's observations

6.1 On 4 December 2019, the author submitted comments in response to the State party's request to lift the interim measures. The author contends that only one body, the Refugee Protection Division, made a decision on his credibility and that subsequent bodies followed its lead, rejecting the additional evidence. He claims that this evidence was deemed insufficient owing to the initial finding of non-credibility.

6.2 Furthermore, the author explains that his credibility was assessed only once by the Refugee Protection Division. It was not assessed by the Refugee Appeal Division or the Federal Court. Similarly, before the administrative authorities, while the evidence was found to be admissible, it was given little weight because of the lack of credibility claimed by the Refugee Protection Division. The author states that, having changed lawyers, he had not submitted all the evidence to the Refugee Protection Division,[9] which could have influenced the assessment of his credibility.

6.3 The author reiterates that fundamental rights, particularly the right to freedom of expression and association, are continuously violated by the authorities in Angola, which employ a variety of strategies to discourage opponents of the ruling party. The author, a leader and pastor of his church, having refused to submit to the demands of the ruling party, is considered a political opponent. He recalls that he never presented himself as an "ordinary member of a church", as claimed by the State party. He also argues that the two arrest warrants should be considered genuine for lack of an apparent defect.

6.4 The author also refers to the reports mentioned by the State party on the human rights situation in Angola and stresses that they show that political repression is still very much a reality. He also emphasizes that Angola is one of the least democratic countries in Africa and that political repression and arbitrary detention are widespread.

6.5 Lastly, the author refers to the psychological treatment that he received in Canada.[10] The evaluation consisted of qualitative interviews that included psychological tests. The psychologist notes, among other things, that the author's attitude does not suggest "any pretence or attempt at avoidance and/or concealment"; that "the memories of the traumatic sequences and events were reported without any particular effort, with precision and logical sequencing" and that the author "is clearly aware of the contradictions that some of his behaviours may have given rise to but was able to provide an acceptable and meaningful explanation/justification". The psychologist concluded that the author was suffering from chronic post-traumatic stress disorder, "as evidenced by the unexpected and increasingly disturbing build-up of traumatic sequences experienced in Angola from 2014 onwards: police arrest, brutality and imprisonment, cruel, inhuman and degrading treatment and torture, telephone harassment, endemic poverty …". The psychologist also refers to the physical, sexual and mental abuse suffered by the victim during his arrests and imprisonment. She reports deep shame as a common reaction among victims of sexual abuse. She describes the author's distress as palpable and clinically significant.

State party's observations on the admissibility and the merits

7.1 On 17 February 2020, the State party submitted its observations on the admissibility and the merits of the communication.

7.2 According to the State party, the author's claims that he would face a risk of torture or death at the hands of the authorities in Angola should be declared inadmissible under articles 2 and 5 of the Optional Protocol.

7.3 First, the author has not exhausted all available domestic remedies. He has applied to the Federal Court for leave to seek judicial review of the decision on the reopening of the pre-removal risk assessment. This application is still pending before the Court. Given that no decision has yet been rendered on his application, the State party submits that the author's

[9] The arrest warrants, the witness letters and the police officer's affidavit had not been presented.

[10] The author provides a copy of a psychological report produced by a private doctor.

communication is inadmissible because of non-exhaustion of domestic remedies, pursuant to article 5 (2) (b) of the Optional Protocol.

7.4 Second, the author has not sufficiently substantiated his allegations of violations of the Covenant. In particular, he has not established a prima facie violation of articles 6 and 7 of the Covenant. He has failed to substantiate his allegations of a threat to his life and a risk of torture or ill-treatment if he were to be returned to Angola. With the exception of the new psychological report, the allegations and evidence submitted by the author and on which his communication is based were examined and rejected by the Canadian authorities, which concluded that they were not credible. In particular, the tribunal, which had the opportunity to hear and question the author directly, rejected his entire testimony on the grounds that it suffered from serious credibility problems. Both the application for a pre-removal risk assessment and the application for permanent residence on humanitarian and compassionate grounds were rejected for reasons of lack of credibility and insufficient evidence. Lastly, the Federal Court, which was called upon to examine the author's various allegations, concluded that they were not credible and that the evidence provided was insufficient to substantiate his allegations of a risk of torture and ill-treatment and a threat to his life. Furthermore, the independent documentary sources do not establish a foreseeable, real and personal risk to the author. He does not fall into the category of persons targeted for persecution, unlawful arrest or extrajudicial execution in Angola.

7.5 The State party also recalls that the author's allegations under article 2 of the Covenant are incompatible *ratione materiae* with the provisions of the Covenant. Article 2 does not establish an independent right to reparation; therefore, allegations relating to this article cannot, in themselves, serve as the basis for a claim in a communication submitted under the Optional Protocol.

7.6 In general, the author's allegations were thoroughly examined and were rejected by the Canadian authorities for lack of credibility. The authorities also found that there was no objective evidence to corroborate his allegations that he would be at risk of death, torture or cruel or inhuman treatment if returned to Angola. The communication contains no new arguments or evidence that would alter the conclusions reached by the Canadian authorities.

7.7 The State party maintains that it has met all its obligations in assessing the author's case. The procedures afforded to him were conducted in accordance with Canadian law and the country's international obligations under the Covenant.

7.8 Each of the above grounds is sufficient in itself to establish the inadmissibility of the communication. If, however, the Committee were to conclude that the communication is admissible, the State party would like to assert, in the alternative, that it ought to be rejected on the merits, since it is unfounded.

Author's comments on the State party's observations on the admissibility and the merits

8.1 On 21 July 2021, the author responded to the State party's observations, reiterating that he would face a substantial risk of torture and even enforced disappearance or extrajudicial execution if returned to Angola.

8.2 The author feels deeply traumatized by what happened to him and did not have access to appropriate psychiatric or medical care in Canada until 2019. He states that there is a major problem in Canada owing to the lack of an effective remedy at the end of the process of applying for asylum or the protection of fundamental rights. The author is a victim of a Canadian system that does not accept the possibility of correcting manifest errors, as in the author's case, and does not take into account the situation of non-respect for human rights in Angola.

8.3 The author recalls the facts stated before the national courts, including the Federal Court. Before that court, the author referred to the most recent decision of the pre-removal risk assessment officer of August 2019 rejecting all the new evidence he submitted. The application for judicial review of the case was denied on 27 February 2020. The author argues that the decision that there is no danger to him in Angola is arbitrary and patently unreasonable given the amount of evidence in support of his case.

8.4 The author recalls that there are two police summonses and a great deal of evidence corroborating his testimony that have not been examined and given due weight, amounting to a denial of justice. In the author's opinion, there is ample evidence to show that he was a victim of repression. Unfortunately, all the administrative decisions were based on the initial decision of the administrative tribunal questioning his credibility and the plausibility of his story, without taking into consideration the evidence presented during the proceedings. It is also clear from human rights reports on Angola that the author is a person at great risk since dissidents, including evangelical church leaders, are still in danger today.

8.5 The author argues that there was no effective remedy to correct the errors in the assessment of the evidence after the initial negative decision of the Refugee Protection Division. There was only one hearing on credibility, at the beginning of the procedure. The right to a genuine hearing after an initial rejection is not truly accepted; the various entities use the initial rejection as the basis for denying credibility or not giving any weight to the evidence that follows. The author adds that there were no significant contradictions in his accounts, that he explained why he had not left Angola earlier and that he pointed out several elements that show that he was subjected to torture in his country with impunity. He emphasizes that he applied to reopen the decision taken following the pre-removal risk assessment in July 2019 after receiving an original arrest warrant dated 10 September 2018 and a letter from his former landlord explaining how he had found the warrant, with no doubts as to its origin. The affidavit of a former Angolan police officer also confirmed the authenticity of the warrant. In addition, the author raises the lack of independence of the authorities in the process, alleging that his deportation would endanger his life and physical integrity. The author also attached the psychological evaluation report confirming the severe psychotraumatic sequelae, which might have influenced the authorities' perception of his credibility. The doctor concluded that the author had managed to give a credible account of what happened in his life and the serious physical and psychotraumatic injuries he suffered in his home country; that he should be able to reunite with his wife and daughter, who are currently asylum-seekers in France; and that he should be able to receive psychotherapeutic support to alleviate the depressive after-effects associated with the feelings of vulnerability and incomprehension/injustice that he has experienced.

8.6 The author requests the Committee to remind the State party of the international prohibition on any State that is a party to the Covenant to return any person to a place where that person would face a substantial risk of torture.

State party's additional observations

9.1 On 24 November 2021, the State party submitted additional observations contesting the author's criticism of its immigration and justice systems.

9.2 The State party reiterates that the evidence was thoroughly examined by the various Canadian authorities and that the author has not exhausted domestic remedies. It acknowledges that, on 27 February 2020, the Federal Court dismissed the application for leave to seek judicial review of the decision on the reopening of the pre-removal risk assessment. Despite this decision, the State party reiterates that the author has not exhausted domestic remedies. As of 27 February 2021, the author is entitled to submit another application for a pre-removal risk assessment, as 12 months have passed since the Federal Court denied the application for leave to seek judicial review of the decision on the reopening of the pre-removal risk assessment. The State party maintains that the author's new evidence, namely the psychological report, could be submitted as part of a second application for a pre-removal risk assessment, which is an effective and useful remedy that the author should have exhausted before submitting this new evidence to the Committee. The Immigration and Refugee Protection Act permits additional applications for a pre-removal risk assessment from persons whose refugee claim has been rejected but who have remained in Canada following the issuance of the notice informing them of the rejection.

9.3 The State party contends that the author's comments shed no new light on how Canada would violate articles 2, 6 and 7 of the Covenant by returning the author to his country of origin. Indeed, they are essentially the same arguments presented in his communication and to which the State party has already responded in its observations on the admissibility and

the merits. The author's additional comments do not demonstrate that he personally would be at risk of harm from inhuman or degrading treatment if returned to Angola.

9.4 The State party therefore reiterates its request that the author's communication be declared inadmissible under articles 2, 3 and 5 of the Optional Protocol and rule 99 of the Committee's rules of procedure, for the reasons already set out in its observations on the admissibility and the merits: the author has failed to exhaust domestic remedies and has not sufficiently substantiated his allegations of violations of articles 6 and 7 of the Covenant; and his allegations under article 2 of the Covenant are incompatible *ratione materiae* with the provisions of the Covenant.

9.5 Furthermore, the State party reiterates that the Committee has repeatedly held that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether a risk of torture or cruel, inhuman or degrading treatment exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.[11] In the present case, the author has not established that the decisions adopted by the Canadian authorities were manifestly unreasonable, arbitrary or flawed in any way that would provide grounds for the Committee to intervene. In such circumstances, the Committee should rely on the decisions of the national authorities with regard to the evidence.

9.6 The fact that the author's counsel allegedly misrepresented him before the Refugee Protection Division, as argued by the author in his comments, does not amount to a denial of justice or to an unreasonable and arbitrary decision by the Division. Indeed, the Committee has consistently held that a State party cannot be deemed responsible for alleged errors committed by a privately retained lawyer, unless the domestic decision-maker has found that the lawyer's behaviour was manifestly incompatible with the interests of justice.[12] The author has produced no evidence to support such an allegation.

9.7 Moreover, the new evidence presented by the author in the subsequent proceedings before the various Canadian authorities, and his representation by different lawyers, did not enable him to restore his credibility or demonstrate the probative value of the new information collected with regard to the risk of irreparable harm in the event of his removal to Angola. On the contrary, the Canadian authorities found that the new evidence confirmed the contradictions and implausible elements of his story and allegations. In this regard, the implausible elements relate to the important information missing from the first arrest warrant but corrected in the second, the implausible circumstances in which the second warrant was found, the senior pastor's failure to recognize the author's leadership role in his church,[13] and the former police officer's implausible ability to confirm the authenticity of Angolan arrest warrants more than 30 years after leaving the country.

9.8 If the Committee concludes that the author's communication is admissible, the State party requests the Committee to reject it on the merits pursuant to rule 102 of its rules of procedure for the reasons already set out in its observations on the admissibility and the merits and in these additional observations.

Issues and proceedings before the Committee

Consideration of admissibility

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

[11] *Tarlue v. Canada* (CCPR/C/95/D/1551/2007), para. 7.4; *Cridge v. Canada* (CCPR/C/95/D/1529/2006), para. 6.5; *Kaur v. Canada* (CCPR/C/94/D/1455/2006), para. 7.3; *Tadman and Prentice v. Canada* (CCPR/C/93/D/1481/2006), para. 7.3; *Pham v. Canada* (CCPR/C/93/D/1534/2006), para. 7.4; *Kibale v. Canada* (CCPR/C/93/D/1562/2007), para. 6.4; and *P.K. v. Canada* (CCPR/C/89/D/1234/2003), para. 7.3.

[12] *Henry v. Jamaica*, (CCPR/C/64/D/610/1995), para. 7.4; and *Edwards v. Jamaica* (CCPR/C/60/D/529/1993), para. 5.2.

[13] See above, paragraphs 2.7 and 6.3.

10.2 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.

10.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the authors.[14]

10.4 The Committee notes the State party's claims that the author has not exhausted available domestic remedies. It notes that the asylum application that the author filed with the Refugee Protection Division on 19 April 2016, upon his arrival in Canada from the United States, was rejected on 13 February 2017 on the grounds of lack of credibility of the facts. On 18 July 2017, the Federal Court refused to review the Division's decision. On 13 February 2018, the author filed an application for a pre-removal risk assessment and submitted new evidence. On 23 May 2018, he submitted an application for permanent residence on humanitarian and compassionate grounds. On 25 July 2019, the author received two new pieces of evidence in the post from a friend, which he submitted to the Canada Border Services Agency. On 30 July 2019, the application for a pre-removal risk assessment and the application for permanent residence on humanitarian and compassionate grounds were both rejected. The author's deportation was scheduled for 14 August 2019 despite the submission of the new evidence. On 7 August 2019, the Canada Border Services Agency refused to halt his deportation following the submission of the new evidence, alleging in particular that the translation of the arrest warrant was not genuine. On the same day, the author filed a motion to stay his deportation before the Federal Court, which rejected it on 13 August 2019. On 27 February 2020, the Federal Court dismissed the application for leave to seek judicial review of the decision on the reopening of the pre-removal risk assessment. In this context, the Committee notes that the State party considers that the author has not exhausted all available domestic remedies because, as of 27 February 2021, the author could have submitted a new application for a pre-removal risk assessment, as 12 months had passed since the Federal Court denied the application for leave to seek judicial review. The State party indicates that the author's new evidence, namely the psychological report, could have been submitted as part of a second application for a pre-removal risk assessment (para. 9.2). In the State party's view, even if this new formality relates to a repeat application, it is an effective remedy that should be considered as such in the circumstances of the case.[15] The Committee notes that the author has not submitted any comments on this point raised by the State party. Accordingly, the Committee considers that it is precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

10.5 In the light of the foregoing, the Committee will not examine separately the State party's arguments that the author's allegations are also inadmissible *ratione materiae* or for lack of sufficient justification.

11. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (b) of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and the author.

[14] *H.S. et al v. Canada* (CCPR/C/125/D/2948/2017), para. 6.3; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5.

[15] *Choudhary et al. v. Canada* (CCPR/C/109/D/1898/2009), para. 8.3; and *Warsame v. Canada*, para. 7.6. See also *Shodeinde v. Canada* (CAT/C/63/D/621/2014), paras. 6.5 to 7; and *Nakawunde v. Canada* (CAT/C/64/D/615/2014), paras. 6.6 to 6.9.