

1213120 [2013] RRTA 676 (24 September 2013)

DECISION RECORD

RRT CASE NUMBER: 1213120
DIAC REFERENCE(S): CLF2011/191634
COUNTRY OF REFERENCE: Bangladesh
TRIBUNAL MEMBER: Jane Marquard
DATE: 24 September 2013
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. The applicant who claims to be a citizen of Bangladesh arrived in Australia in October 2011. He travelled to Australia on a Bangladeshi passport issued in 2008. Departmental records indicate that he came to Australia [in particular circumstances]. He arrived in Australia on a subclass 456 Business (short Stay) Visa.
2. The applicant applied to the Department of Immigration for the protection visa on 11 November 2011 and the delegate refused to grant the visa on 31 July 2012.
3. According to his application to the Department, he was born on [a certain date] in Dhaka. He is currently [a number of] years old. He came from a farming family. He said that his father was one of the wealthiest men in the region and their family was considered to be upper middle class.
4. He has [siblings], all living in Bangladesh as are his parents.
5. He said that his father is a landlord and influential. He was affiliated with the Bangladesh National Party (BNP). He is a patron of BNP. His father was vice president of [District 1] Committee. He claimed that his family was targeted by local Awami cadres.
6. He started school in [year]. He claimed that [in] 2000 he was returning home from [school] and was kidnapped by Awami cadres and mistreated. A week later his father paid a ransom and he was released. He became scared and sick. His parents stopped his schooling for a year. He said that in all he attended school for [a number of] years until [2008].
7. He said that in the 2008 elections his family provided a vast amount of money to [Mr A], the candidate for BNP. His opponent was [Mr B] from the Awami League. The applicant worked for [Mr A], asking for votes door-to-door. [Mr B] won the election with a two thirds majority. His family again became a target of Awami cadres.
8. In 2008 and 2009 he travelled to [Country 2] (on three occasions), [Country 3], [Country 4] and [Country 5] as a tourist. [In] 2009 he worked as “[an occupation]”.
9. He said that in [2009] during the caretaker regime his father and [sibling] took him to [Country 6] where he lived for 20 months with his [relative]. He returned to Bangladesh in [2011] and was welcomed by political friends at [District 1].
10. He claimed that in [2011] he was elected as joint secretary of the [District 1] Committee of BNP, and in [in the same year] he became an Executive Member of the District Committee of BNP at a very early age. This was due to his family’s background and their involvement with BNP. He was targeted by [Mr C] from the Awami League.
11. He claimed that on [a particular day in] 2011 at 8pm he was returning home from Dhaka when he was attacked by a group of Awami cadres led by [Mr C] at [a certain location]. He was nearly beaten to death on the roadside. Passers-by took him to a private clinic where he remained for 7 days.

12. He stated that his parents went to the police station to file a case but failed to do so. On the other hand a false claim was filed against him. His father then became determined to send him overseas.
13. In a submission from his adviser these claims were reiterated and expanded. In relation to his schooling it was stated that he was kidnapped in [a certain year]. In relation to his political involvement the adviser submitted that the applicant was a leading activist of Jatiyatabadi Dal and leader of its district committee. He participated in numerous processions, meetings and led demonstrations. He also campaigned locally. It was submitted he could not safely and reasonably relocate as the opponents and police could find him anywhere. The adviser submitted that human rights violations occur in Bangladesh, including his leader being evicted from her home of 40 years. A number of news reports were provided, relating to violence against BNP and the situation in Bangladesh generally.
14. At the Departmental interview the applicant said that after the kidnapping he took two years off school. He said [Mr C] was involved in his kidnapping. Later he said he left school in [2008]. He said that he travelled to [Country 2] because he was receiving treatment for illness, which he referred to as both respiratory and psychological. He said he went to [Country 6] to save his life. He referred to an incident in [2005] when Awami cadres tried to cut his hands. He claimed he did not mention this in his original statement as he wanted to keep it short. The agent clarified that the applicant in the December 2008 election was [Mr A], and that [name deleted] was a nickname. He said he was an observer while campaigning, but talked about [Mr C] and how he shoots people who talk negatively about him, which he did to an advisor of a BNP leader named [Mr D]. He went on to say that [Mr C] threatened to kill him 3 to 4 days after the election as he was angry a “little boy” and said negative things about him. He claimed that his father’s cousin, [Mr E] was murdered in early 2010. His father had wanted to make him a candidate. The Awami League killed him as they thought he was a threat. He said that he returned from [Country 6] in 2011 because he was homesick although his father said it was not safe. He claimed that after his return he became Joint-President of [District 1] Thana BNP.
15. The delegate of the Department refused the application on 12 July 2012. The delegate was not satisfied that he was an open and honest witness. The delegate did not accept he was a member of or involved with BNP.
16. The applicant appeared before the Tribunal on 22 July 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.
17. The applicant elaborated on his earlier evidence. He said that the Department found that he was not kidnapped. He asked his father why he was kidnapped as he was young. Now he knows more as he has spoken to his father. His father sent him away. He did not come of his own avail. His father sent him for safety.
18. The applicant confirmed that he was born in [District 1] in [a certain year] and is currently [a number of] years old. His father, [and siblings] are still living there. One of his [siblings] is in [Country 6] and [others] are married and living with their own families. [A sibling] lives in Dhaka because of problems due to his father’s involvement in politics. They were farmers, his father owns a lot of land and cultivates a wide range of crops. His father was wealthy. The last two to three years the farm has not done that well.

19. His father held a position of the president of [District 1] BNP in [year]. He said he is involved with BNP but left his position in [year]. He had responsibilities for selecting candidates and campaigned. I asked what it meant for his father to be a patron (in his statement) He said that this meant that he donated money to BNP. I asked why in his statement he said his father was vice president of [District 1] Committee. He said that his father was the BNP Committee President. I asked if he was referring to one committee. He said he was and his father was president. He said that when he appeared before the Department, he did not know everything but he has checked now and his father was president. I asked if his father suffered any problems from Awami. He answered that his father was threatened that he would be killed in [year]. This is why he left BNP. He said that his [siblings] in Bangladesh were not involved but the [sibling] currently in [Country 6] used to accompany him in campaigning for BNP. [That sibling] did not face any problems from Awami but their father sent them abroad to prevent any problems occurring.
20. He said that in 2000 he was coming home from school and there was a shop. A person offered him food and someone took him from behind. He was tortured. He still cannot forget the torture. He was very young. He said that his father has told him that he was kidnapped because his father was involved in BNP in 1989, and helped an MP with money and votes, and as there was no [amenity] in the locality, his father obtained one and recruited 20 people worked seven days to instal it. His father was threatened by [Mr C]. In 1996 his father helped [Mr D] as chairman and was elected. [Mr C] had been a candidate. His father was not that involved. [Mr C] then kidnapped the applicant. His father told him he was asked for a huge amount of money. Previously [Mr C] had said he would cause harm to his father. I asked him why [Mr C] would want to take revenge against his father four years after the election. He said that at the time he was aged [number] so does not know. It was because of his father that [Mr C] failed only marginally. I asked why in the statement accompanying his application he did not refer to [Mr C] as instigating the kidnapping. He said that he did not have any special reasons, he said before recently he did not know the details well. When he called his father he found out more. I asked if the kidnapping was in the newspapers. He said that people were not very concerned. He lived in a simple village without electricity and the communication system was not good.
21. He said his father paid a lot of money for his ransom, and when the applicant was released he was very sick. He could not sleep. He dreamt about people coming to kill him. His father was worried. Then they stopped his schooling. I asked how long this was for and he said he took off 2 years. I asked why in his application he said he attended for 8 years from [year] to [year]. He said that he went to school but not regularly, once or twice a week. Then he stopped because some of the boys whose fathers were involved in politics threatened to cut his hand or leg. He said that he went to see doctors. He was in hospital for a week.
22. He claimed that he used to get sick ten to fifteen days a month and was on medication. He was having psychological problems because he became forgetful and could not sleep. He said that he went back to school after the two years but he cannot remember exactly. Once a week he went to school. After about two years he went back to school but when the boys threatened him he left altogether. He said he remembers exactly when it was. It was Thursday, he was late to get out off the class, and he was pushed down, and someone else said "let's cut him" They did cut his fingers and people stopped them. I asked what year this was. He said it was 2006 and then after that he left school. I asked why he said that he left school in [2008]. He said that his name was in the school register and the teachers came to his house and told him to appear at the examinations. He did this until he was [a certain age] in

[2008] His education was not going well. He had problems socialising. I said at the interview he thought it may have been [another month in] 2008 when he finished school. He said it was [2007] and he received his result in 2008.

23. I asked why he travelled to [Country 2] (3 times), [Country 4], [Country 3] and [Country 5] between 2008 and 2009. He answered that he went to these places because three times he went to the doctor in [Country 2]. His father took him to a doctor in [Country 3] and [Country 4] and for sightseeing. He went to a doctor there because he was sick for ten to fifteen days a month, having mental issues and physical issues (such as crying at night). They went to a famous doctor in [Country 2].
24. He claimed that his passport did not state his actual address. This was because [Mr C] was chairman of the Union and would not give him a passport so with the help of a friend of his father he got a passport. I said to him that his passport was issued in [2008]. He said [Mr C] was chairman from 2001 to 2011. I said that Awami only came into power in 2009 so how could he impact on the issue of passports in 2008. He said that he was in power in the village.
25. He said that he still has sicknesses now. It is a little bit better than before. I asked him if he sees a doctor, and he said he does not because he cannot afford it.
26. I asked him why he got involved in campaigning for [Mr A] in the election in December 2008 and spoke out against the person who had been responsible for kidnapping him. He said with hindsight he would not have got involved. He said that he was young. I asked how his father, when the applicant was only [a number of] years old, would allow him to go out and speak out against [Mr C] if he had kidnapped the applicant. He said he is the eldest and the beloved son. He said his father could not stand him being sick. He wanted to see if something would work out. I asked him why he would get involved in this. He said that he got involved for one reason. His father said he would take him overseas. He was angry that [Mr C] would not grant him a certificate (the union chairman has to certify that he lived in the region, and [Mr C] would not do this).
27. Asked about what he did in the campaign, he said that he went with his senior political colleagues to ask for votes. He said he campaigned for at least for one week directly before the election. He went to his own locality and far away. He said he told voters that [Mr C] killed two people and would not give him his passport. He did not tell people about the kidnapping as he felt pain about that. He said that they should not vote for Jatiya Samajtautik Dal (JSD), [Mr C]'s party as [Mr C] shoots people who say negative things. In 2004 he killed a friend of his called [Mr E]. I asked why he said at the interview he had campaigned for three days but today he said that it was a week. He said it was three days to a week. I said surely he could not have had a large role at the age of [age deleted]. He agreed and said that he was not given responsibility, he only told people what to expect of [Mr C] if elected.
28. He said that his father did not want him to get involved because he was young and sick and it did not matter about the passport. He said that his father did not involve him- the senior brothers came to his house and took him. His father asked him why he would go as he was sick and too young.
29. I asked him why he said this about his father not wanting him to get involved when he said in his Departmental interview that his father told him he should get involved to get braver and have practice at speaking publicly. The applicant answered that in his interview he was

referring to his involvement in 2011. I said the delegate was referring to his involvement at the age of [age deleted]. He responded that he told his father he wanted to campaign, and his father then said go with confidence. First his father said he did not want him to go and then said he could go. He said his father supported him. His father also wanted him to go overseas to the doctor. I asked why the applicant would want to get involved if he was sick and anxious as claimed. He said that he saw many doctors and he wanted to go to the doctor in [Country 2].

30. The applicant said he was targeted after the election by [Mr C]. The government was formed in 2008. Then Awami became powerful and they said they would kill him. He heard from other people that they would kill him. He said he could not stay with his parents after this. I asked why. He said if he mixed with people he would be killed. I asked why [Mr C] would be interested in the applicant as a minor with very little participation in politics. He said that [Mr C] came to know that his father donated money to the candidate who opposed him, and the applicant accompanied his father. [Mr C] thought that if he killed him his father would not be involved. I asked how long after the election he was threatened. He said it was 15 days to a month. After three months after the election the government was formed, then he heard. I asked him why he said at the interview it was 3 to 4 days after the election. He said he heard from other people that this threat had been made.
31. He said that after this he did not go outside alone. He said it is a big compound and he only went outside with a friend or senior brothers. This happened until he went to [Country 6]. He did not work. He said many people worked for his father and he supervised. Then his father organised his passport and he went to [Country 2] for treatment. I asked why he said he worked [in a certain occupation in] 2009. He said that it was mistake, he worked in [Country 6 in that occupation]. He said that after the election he lived in his [relative]'s house in Dhaka for a few days. I asked if it was incorrect that he lived there for 5 to 6 months as claimed in the Department interview. He said that was when he returned from [Country 6], he lived for five of the six months in Dhaka.
32. I asked him if he feared for his life why he did not ask for protection in one of the countries to which he travelled. He said that he was dropped at his [relative]'s house and did not think about it. He was very young. I asked him why they waited seven months for him to go to [Country 6] in July 2009. He said that it was because the first time his visa was refused and the second time his father made the preparations.
33. I asked why he returned in [2011] if he genuinely feared for his life. He said that he returned at the age of [age deleted]. He did not like staying with his [relative] as he was not allowed to go out at night. He felt like he was in a prison. His father said he should not return to Bangladesh but he did so without telling anyone. I put to him that if he genuinely feared for his life he would not have returned. He said that he was afraid but felt he was in gaol and had no friends in [Country 6]. He said that his father was not happy he returned so took him to Dhaka.
34. I asked how soon after his return he got involved in politics. He claimed that he started politics [three months later]. He went to [District 1] with his senior brother. Then he was given the position of joint secretary of [District 1] thana. He also became executive member of the district committee. This was possible because he had connections with a political leader. He was a recognised student leader working with other student leaders. I asked why he would get involved. He said that his senior brother took him to [District 1], introduced him and they requested he work for them. He said that this is how they involved

young people and destroyed their lives. I asked why he would get involved if he had been threatened by [Mr C] and feared him. He said that he went to [District 1] without wanting a position, but they asked him. He said there was no election held for his position. They all said they were glad to get him back.

35. I put to the applicant that I found it difficult to understand how he would be given a position in [District 1] if he had not been involved in politics, had been out of the country for twenty months and returned to live in Dhaka not [District 1]. He said that this is how the political parties get students involved. I asked if his father did not try and stop him from being involved given that he had been kidnapped and also that he had been threatened with death. He said his father did not know. I said that he had stated that his father was well connected so how could he not know if his son took on a position. He said his father had stopped being involved in politics.
36. I asked what his responsibilities were as secretary of [District 1] thana. He said that he was called on the telephone. I asked for more specifics about what actions he was involved in. He said “suppose party representatives came, they would say something in favour of the party”. He said that he was inexperienced. He just came from Dhaka and was given responsibility. He could not mix with them well.
37. I asked if there was any reason he did not get involved in Jubo Dal instead. He said that he was not interested in any party. I asked him why he agreed, he said they convinced him. I asked why they would allow him to be involved in the actual BNP at the age of [age deleted] when he only had a few days experience, and as he had been out of the country and completely absent from political participation for at least 20 months, but longer if one included the time was in hiding. I put to him that he had only been in the country for 2 months when elected. He said that young people are told they are the future of the country
38. I asked him to describe the attack on [that particular day in] 2011. He asked what attack I was referring to. Then he said he remembered. Sometimes he went to [District 1], and Awami supporters came to know he was there. They wanted to know why he was mixing with the senior leaders of BNP, and they came to know he was involved in politics. On [that particular day] on the way from Dhaka to [District 1] he was attacked at 8pm by Awami terrorists and was left for dead. They were [Mr C]’s people. He said that he was unconscious and villagers took him to a private hospital. He said that he had a head injury.
39. He provided a copy of a medical certificate, which he said was obtained by his father in 2012. I explained to the applicant that country sources indicated that there was a high level of document fraud in Bangladesh so I would consider all documents carefully in light of his evidence to see what weight to accord it. I also commented that it was unusual that no injuries were recorded on the certificate. He responded that the hospitals are very busy and have no time for entries.
40. He said that his parents filed a case against [Mr C] but the police did not accept the case. Instead he said that [Mr C] filed a case against him stating that he carried a bomb. Then his parents were concerned so they decided to send him overseas. His travel was arranged through a broker. It was very expensive.
41. I asked why he said today that his father did not know he was involved in BNP when he returned to Bangladesh, but on page 12 of the decision record it is stated that he told the delegate that his father supported him in his return to politics. He said initially his father did

not know and was trying to send him overseas. Then he was beaten and so many things had happened. His father found out then and was determined to send him away.

42. I asked how his father could live there safely if he was so involved with BNP. He said that he left politics in 1996. He does not canvas for anybody. If he had continued his involvement in politics he could have been killed. I said that he had told me his father was involved in the 2008 elections. He said that on that occasion, his father was inspired by the fact that the applicant had not been issued a passport, and he could not tolerate this.
43. The Tribunal invited the applicant to comment/respond in writing to adverse information that would form the reason, or part of the reason for affirming the delegate's decision in accordance with s.424AA of the Act. The Tribunal explained the consequences of this, in particular that it might find him to be a witness of low credibility and disbelieve his protection claims and that it could proceed to affirm the delegate's decision. The Tribunal explained his options for comments/response including that he may request more time by way of an adjournment or time for a written reply. In relation to his political involvement, the applicant said that he had only found out some of the details about his case, when speaking to his father after the Departmental interview. Also he did not know he had to provide all information. He said that he had no education, and does not have the love or care of his parents, and feels pain.
44. The applicant submitted that he could not relocate, there is no security anywhere, for example in July 2013 a number of people were killed in Dhaka.
45. I asked him if he still followed BNP politics. He said that if he goes back he will have no interest. He was not interested in the past. If he goes anywhere in Bangladesh he will be killed.
46. The representative said that this applicant has memory problems. The representative also submitted that in Bangladesh children start politics at a very young age. It is lawless there. Political enmity has made the country hell, and his father was a mentor and donor for BNP for a long time. The parliamentary seats in his area remain with Awami. It was also submitted that in BNP, people are often given top jobs without experience. The BNP was repaying his father who had helped the party in its initial stages. In his region BNP was not strong, they have never had a victory there. The applicant was kidnapped by [Mr C], and his mental fabric is unstable. The applicant would face persecution due to his own and his family's history. The family paid \$ 17 000 to a broker to help save his life because of his real fear of chance of persecution.
47. The adviser requested a period of one month to provide a psychological report, given the applicant's background and medical problems. The Tribunal granted the request. On 9 September 2013 the Tribunal received a report dated 15 August 2013 from [a consultant psychiatrist]. The psychiatrist stated that the purpose of the report was to assess the impact of the childhood kidnapping. He said that the applicant's father was engaged in politics with the "left leaning Awami League" He said that during his childhood the applicant remembers having disturbed sleep, crying out at night and seeing a range of doctors through his teenage years. He said that his presence at school was intermittent due to the ongoing threat of danger. There was a period where his father sent him to [Country 6] to prevent any further harm. He said although there was some improvement in the last twelve months, he often had restless sleep and his neighbours said he cried out in his sleep. He said that he saw beggars

and ghosts in his sleep. The doctor said that this was consistent with a disrupted childhood and someone with a perpetual state of fear. This would re-emerge if he went to Bangladesh.

CONSIDERATION OF CLAIMS AND EVIDENCE

48. The key issues in this case are firstly, whether the applicant is a credible witness, and secondly whether there is a real chance of persecution if he returns to Bangladesh in the reasonably foreseeable future. The third key issue is whether he meets the complementary protection criteria.

49. In coming to a decision I have taken into account the relevant law set out in Attachment A and the country sources set out in Attachment B.

Nationality

50. I have viewed the applicant's passport and am satisfied that as claimed he has the nationality of Bangladesh.

Credibility

51. I have had regard to all of the applicant's written claims, oral evidence, supporting documentation and relevant country information (including information provided by the applicant) in making findings of fact and assessing whether Australia has protection obligations in respect of him.

52. I found the applicant to be a witness of low credibility.

53. I accept that the applicant came from [District 1]. I am prepared to accept that his father donated money to, was an office bearer and had political connections in BNP. The applicant has said that his father was wealthy and it is plausible that he, like many businessmen there, donated and maintained good relations with local politicians. I accept that his father ceased being involved in BNP from 1998 although in the 2008 elections he actively supported the BNP candidate. I accept that the applicant was kidnapped while he was a young child, and that his father paid a ransom for him. I accept that they suspected a particular individual called [Mr C] to have been involved in this kidnapping. This kidnapping was plausible given that the applicant has said that his father was one of the wealthiest men in the region. I accept that the applicant had a number of mental health issues following this kidnapping, and that as suggested by a recent psychiatric report, these symptoms continue to the present time. I accept that during the course of his political involvement his father may have had death threats, but note that besides the kidnapping of his son in 2000 he has suffered no other harm at the hands of Awami supporters or the government.

54. I accept that the applicant was bullied by Awami students at school in 2005 and that these students threatened to cut his hands or legs, but were stopped by other students. Given the animosity between the political parties, this type of hostility in a school environment is plausible.

55. I do not accept that the applicant campaigned in the 2008 elections, for the following reasons. The applicant's evidence has been that his father was concerned for him because of the mental health effects of the kidnapping and arranged for him to see numerous doctors and to travel overseas to visit doctors. The applicant has said that around that time he was sick for ten to fifteen days a month, and was crying at night. It does not seem feasible in this context

that his father would allow him, as [age]year old with medical issues, to campaign and speak against the very person who had allegedly kidnapped him, and who supposedly was involved in a number of deaths. I also do not accept that his father was threatened with death in 2007 as he has stated that his father was involved with the 2008 election without incident.

56. My concern about this evidence was exacerbated by the contradictory and somewhat confusing testimony given by the applicant at the Department and Tribunal hearings. At the Tribunal hearing he said that his father did not want him to be involved as he was young and sick. However in his Departmental interview, he had said that his father thought he should get involved to become braver and have practice in public speaking. When asked about this contradiction at the Tribunal hearing, he said that in the Departmental interview he was referring to later involvement in 2011. When I put to him that his evidence referred to 2008, he then said that first his father did not want him to go and then said he should be involved with confidence. I do not accept his explanation as his father's attitude to his campaigning is not something which would be forgotten. Other aspects of his evidence about this campaign were also somewhat contradictory. For example at the Departmental interview, he said he campaigned for 3 days and at the Tribunal hearing he said it was a week, which he later said, when asked about the contradiction, was 3 days to a week. At the Departmental interview he said that he talked about [Mr C] threatening to kill him, but at the Tribunal hearing he emphasised that he was angry because [Mr C], as president of the union, had not signed a residency certificate, and he told voters about this. Also, he said at the Department hearing that he was threatened by [Mr C] 3 to 4 days after the election, but when asked about this at the Tribunal, he said it was 15 days to a month. Later he said it was three months after the election. In light of all these inconsistencies and the implausibility of his account, I do not accept that he was involved in the election or that he was threatened after it. I also do not accept that he went into hiding after this. I do not accept that he was sent to [Country 6] because he feared for his life. While the general security situation in Bangladesh may have been a factor, the applicant has referred to his medical problems during this time and it may well be the case that he was sent to [Country 6] for this reason. He has indicated that he returned freely to Bangladesh in 2011 indicating that he did not have a genuine fear. Although he says he was afraid and returned because he was homesick and did not like living with his [relative] who was strict, I do not accept that for these reasons he would return if he was genuinely afraid for his life.

57. I do not accept that the applicant became involved in politics on his return from a 20 month trip to [Country 6] in [2011]. I also do not accept that he was made president of the [District 1] Committee in [2011]. I do not accept these facts because the applicant has indicated he was not really interested in politics and that he was targeted to join by the senior brothers. However I do not accept that he would be asked to be president when he was so young, had been out of the country for twenty months, had anxiety issues, had little political interest, and when his only experience was a few days campaigning in an election (when he has said he was really only an observer). Furthermore, he said in his application he was secretary, later changing this to president, a fact which I do not believe he would be confused about. Furthermore he indicated that he was not living in [District 1] but instead in Dhaka which also calls into question why he would be appointed to the [District 1] committee. He has explained his appointment at such a young age, without an election, as due to his family connections. Even taking this into account I do not accept, given the totality of the evidence, that he would be appointed to the main BNP rather than a youth wing at such a young age with such minimal experience and interest. I also asked the applicant why his father would let him become involved, given the kidnapping, his mental health and the previous threats

against him. He stated that his father did not know, although earlier he had told the Department that his father supported him. When this was put to him, he said that initially his father did not know, but later he found out. These inconsistencies lead to a conclusion that this evidence has been fabricated as I do not accept that an applicant would be confused about his father's reaction to his participation. I do not accept that he was a leading activist, or was joint secretary or executive member of any committee of BNP.

58. As I do not accept that he had been politically active I also do not accept that he was attacked by Awami cadres led by [Mr C] at [a certain location in] 2011. Further I do not accept a false case was filed against him. The applicant provided a medical certificate in relation to this incident. I place little weight on this document given the prevalence of document fraud in Bangladesh. Furthermore I had a number of concerns with the document itself, for example, it did not contain reference to the injuries suffered. The applicant said that doctors are busy there, however even if this is the case, it is unusual for a medical certificate not to state what the injuries were.

59. As I do not accept that his father's political involvement has been extensive or that it has created any problems for the applicant after the kidnapping, I also do not accept that his [sibling] is living overseas because of problems due to his father's involvement. In this regard I note that the father has been able to live in Bangladesh safely.

60. Other aspects of his evidence were also confused and incoherent. For example, when asked about the attack [in] 2011 he asked "what attack?" This attack was allegedly an instigator for him leaving the country. Later he "remembered", but nonetheless I do not accept that once I provided the date for him, that his memory would not have immediately been alerted to the claimed traumatic incident which took place. The advisor has stated that he has memory problems. A report from his psychiatrist states that "his affect was in the anxious range but was largely euthymic. There was no clear evidence of an underlying cognitive deficit" The report does not mention memory problems although it does state that he satisfied the criteria for anxiety disorder which was in partial remission. I accept that someone who has been kidnapped as a child, or who has anxiety disorder, or who is away from family and familiar surroundings, may suffer some memory loss. Some aspects of his evidence may be explainable by these factors. However when considering the totality of his evidence, and lack of coherence on key elements, I cannot be satisfied that he is a credible witness.

Well founded fear of persecution

61. As I do not accept the applicant's claims of holding positions in BNP, or working for them, I also do not accept that there is a real chance that the applicant will suffer serious harm for reasons of his political opinion in the reasonably foreseeable future were he to return to Bangladesh. I note that the applicant has indicated that he was not interested in BNP in the past and would not get involved with BNP politics in the future. I do not accept based on anything that has happened in the past, or will happen in the reasonably foreseeable future that there is a real chance of serious harm from [Mr C], Awami League members, the government, police or RAB for reasons of political opinion or any other Convention reason. I do not accept that he will be killed, assaulted, have to face false charges, be arrested or otherwise seriously harmed.

62. I have accepted that his father was a wealthy businessman, donated money, was an office bearer and had political connections within BNP. I do not accept that because of the

father's wealth or connections in the past, the applicant will suffer serious harm. His father and other family members have been able to live in Bangladesh safely. While I accept that the applicant was kidnapped as a very young child because of his father's connections, I have also found that besides an incident at school in 2005, the applicant has not suffered any other serious harm since then because of his father's connection. As I have found that the applicant has no political profile, and is not interested in participating in politics if he returns, it follows that there is no real chance of serious harm for reasons of actual or imputed political opinion because of his father's connections.

63. I accept that the independent country information before the Tribunal indicates that political violence on activists remains a serious problem in Bangladesh, particularly around the time of elections. Recent violent clashes between the authorities and Islamists, following sentencing of a group of Jamaat-i-Islami leaders by a special tribunal dealing with war crimes from the 1971 war of liberation, serve to underline the tensions which exist between the leading political parties. ('*At Least 19 Killed as Unrest Persists in Bangladesh*,' New York Times/International Herald Tribune, 3 March 2013; 'Troops deployed in Bangladesh as riot death toll climbs,' The Guardian, 3 March 2013; 'Toll rises as Bangladesh brought to a halt,' The Australian, 5 March 2013). Even against this background of violence, however, I am not satisfied the information demonstrates that there is a real chance of serious harm in Bangladesh simply because a person's family happens to support one or the other party. BNP is one of the biggest parties in Bangladesh and not all members or supporters suffer violence by virtue of being a member. Under the Act, persecution must involve systematic and discriminatory conduct. I am not satisfied that the applicant would be subject to such non-random conduct motivated against him. Nor am I satisfied in this particular case that the applicant ever had, or now has, a profile as a political activist which would expose him to a real chance of serious harm. I do not accept, based on the country information (which reveals that there may be a real chance of serious harm for political activists in some situations) that supporters of BNP such as the applicant face a real chance of serious harm based on imputed political opinion. The reports of violence set out in Attachment B in general refer to violence primarily on BNP activists or cadres or during election time. On the basis of the country sources I do not accept that there is a real chance of serious harm were the applicant to return in the reasonably foreseeable future on the basis of actual or imputed political opinion, as he has stated that he will not become involved and has no interest in politics.

64. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention and does not satisfy the criterion set out in s.36(2)(a).

Complementary protection

Receiving country

65. I am satisfied that the receiving country is Bangladesh.

Significant harm

66. Having regard to the findings of fact set out above, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Bangladesh, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined.

67. As stated above I accept that his family had connections to BNP. However on the basis of country sources set out in Attachment B, I do not accept that there are substantial grounds for believing that as a necessary and foreseeable consequence of being returned to Bangladesh, there is a real risk that the applicant will suffer significant harm as defined from [Mr C] or Awami supporters or any government authority because his family has connections to BNP. The sources indicate that not all family members of BNP supporters are at risk, and it is notable that the applicant's father has been able to live there safely.
68. I have also accepted that the applicant was kidnapped as a child and bullied at school in 2005 by Awami supporters. I have also accepted that [Mr C] did not give the applicant a residence certificate required. I do not accept, based on country sources that there are substantial grounds for believing that as a necessary and foreseeable consequence of being returned to Bangladesh, that the applicant will suffer significant harm as defined from [Mr C] or Awami supporters or any government authority because of these incidents in the past. The sources indicate that many BNP supporters live there without suffering harm, and these incidents occurred a very long time ago.
69. Accordingly, I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Bangladesh, there is a real risk that he will suffer significant harm as defined in Subsection 36(2A) of the Act.

Conclusions

70. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
71. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
72. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

73. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Jane Marquard
Member

Attachment A

RELEVANT LAW

74. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

75. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
76. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
77. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
78. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
79. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
80. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.

81. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
82. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
83. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
84. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

85. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
86. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
87. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer

significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Section 499 Ministerial Direction

88. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

Attachment B

Country information

Political violence in Bangladesh

89. Political violence is a frequent occurrence in Bangladesh, due to the intense rivalries between, and within, political parties. Odhikar's¹ *Human Rights Report 2009*, published in January 2010, states that "in Bangladesh, political violence between rival groups is a common phenomenon" driven by a desire to establish supremacy and gain power.² Odhikar's *Human Rights Report 2010*, published in January 2011, states that political parties in Bangladesh "play paramount roles in shaping the governance, and often, instead of acting as forces for good, intense rivalry both between the parties, and internal conflicts vitiate all aspects of governance".³ Freedom House, in its 2011 *Freedom in the World – Bangladesh* report, states that "political polarization" is one of the factors that have "long undermined government accountability" in Bangladesh.⁴
90. The *Human Rights Report 2010* from Odhikar states that there were "576 incidents of intra party clashes in the Awami League and 92 within the BNP" during 2010, with seven people killed and 1146 injured in the BNP's internal clashes.⁵ A number of reports published during the last six months have been located which make reference to internal clashes between BNP groups.⁶
91. There are also reports available which refer to incidences of BNP activists mistreating supporters of other political parties. For example, a report from *UNBconnect*, published on 10 August 2011, makes reference to a clash between Awami League and BNP activists at Adhara village in Sadar upazila that resulted in "about 10 people wounded" It was reported that this clash had started after an Awami League worker had been beaten by BNP activists.⁷ A report from *UNBconnect*, published on 2 July 2011, makes reference to the arrest of eight BNP activists in Gobindaganj upazila for attacking a police vehicle and a local Awami

¹ Odhikar is a non-government organisation (NGO), which describes its principal objectives as being "to raise the awareness of human rights and its various abuses, on the one hand and to create a vibrant democratic system through election monitoring on the other. The organisation also performs policy advocacy to address the current human rights situation": Odhikar (undated), 'About Odhikar' <http://www.odhikar.org/about.html> – Accessed 15 September 2011.

² Odhikar 2010, *Human Rights Report 2009*, 1 January, p. 9.

³ Odhikar 2011, *Human Rights Report 2010*, 1 January, p. 12.

⁴ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May.

⁵ Odhikar 2011, *Human Rights Report 2010*, 1 January, p. 13.

⁶ 'Pro-BNP lawyers infighting during human chain' 2011, *The Daily Star*, 11 September http://www.thedailystar.net/newDesign/latest_news.php?nid=32193 – Accessed 12 September 2011; '10 hurt as BNP rivals clash' 2011, *The Daily Star*, 9 September <http://www.thedailystar.net/newDesign/news-details.php?nid=201732> – Accessed 12 September 2011; 'Kishoreganj BNP factional fight leaves 50 wounded' 2011, *UNBconnect*, 5 September <http://www.unbconnect.com/component/news/task-show/id-57651> – Accessed 12 September 2011; 'JCD boys vandalise BNP central office' 2011, *The Daily Star*, 22 July <http://www.thedailystar.net/newDesign/news-details.php?nid=195204> – Accessed 12 September 2011; 'BNP leader hurt by party rivals' 2011, *The Daily Star*, 8 July <http://www.thedailystar.net/newDesign/news-details.php?nid=193320> – Accessed 12 September 2011; 'Rival BNP factions lock in fierce clash in Nilphamari' 2011, *The Daily Star*, 27 May <http://www.thedailystar.net/newDesign/news-details.php?nid=187449> – Accessed 12 September 2011; 'BNP announces fresh anti-govt agitation' 2011, *The Daily Star*, 10 May; '10 injured in AL factional clash in Ashulia' 2011, *UNBconnect*, 23 April <http://www.unbconnect.com/component/news/task-show/id-46384> – Accessed 12 September 2011.

⁷ '10 injured in AL-BNP clash in Munshiganj' 2011, *UNBconnect*, 10 August <http://www.unbconnect.com/component/news/task-show/id-55500> – Accessed 12 September 2011.

League leader.⁸ A report from *The Daily Star*, published on 28 March 2011, makes reference to claims by the *Jatiya Samajtantrik Dal* (JSD), or National Socialist Party,⁹ of threats and abuse directed towards JSD leaders by BNP leaders and workers.¹⁰

Treatment of BNP supporters by Awami League supporters

92. The current Prime Minister of Bangladesh is Sheikh Hasina Wazed who “leads the Awami League (AL) alliance, a 14-party coalition with a large majority of parliamentary seats”.¹¹ The Awami League and its allies have been in power since 6 January 2009, following their parliamentary election victory in December 2008. The Awami League alliance won 263 seats at this election. According to Freedom House’s 2011 *Freedom in the World - Bangladesh*, published on 26 May 2011, the BNP in 2010 “remained weak and suffered from serious internal divisions, particularly over succession issues”.¹² Freedom House also states that the BNP-led four party alliance won 32 seats at this election,¹³ while the 2010 *Political Handbook of the World* states that the alliance won 33 seats.¹⁴
93. According to Odhikar’s *Human Rights Report 2010*, political violence “rose immediately” after the Awami League came to power in 2009.¹⁵ This report states that “a total of 220 persons were killed and 13,999 injured in political violence from January to December 2010”.¹⁶ Odhikar also states that the majority of violent acts “were committed by the members or supporters of the ruling political party, the Awami League”.¹⁷
94. A report from *UNBconnect*, published on 26 August 2011, states that a group of BNP activists at Taltala in Sakhipur upazila, who had formed a human chain at a local bus stand to demand “the repair of dilapidated Sakhipur-Takter Chala road”, were attacked by “activists of Awami League, Jubo League and Bangladesh Chhatra League”. One BNP leader was reported to have said that “over 100 of their activists were injured in the attack”.¹⁸
95. A report from *The Daily Star*, published on 22 March 2011, makes reference to a clash between Awami League and BNP activists that occurred at Shibpur in Puthia upazila, which resulted in “at least 20 people, including four policemen” being injured. This occurred after both the Awami League and BNP called meetings at the same field in Shibpur, to take place at the same time. The report makes reference to Awami League activists attacking a

⁸ ‘8 BNP activists held for attack on police vehicle, AL leader in Gaibandha’ 2011, *UNBconnect*, 2 July <http://www.unbconnect.com/component/news/task-show/id-51910> – Accessed 12 September 2011.

⁹ For information on the JSD, see Banks, A.S. et al. (eds) 2010, *Political Handbook of the World Online Edition: Bangladesh*, CQ Press, Washington, p. 115

¹⁰ ‘JSD threatens to retaliate BNP attack’ 2011, *The Daily Star*, 28 March

<http://www.thedailystar.net/newDesign/news-details.php?nid=179485> – Accessed 12 September 2011.

¹¹ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April.

¹² Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May.

¹³ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May.

¹⁴ Banks, A.S. et al. (eds) 2010, *Political Handbook of the World Online Edition: Bangladesh*, CQ Press, Washington, p. 111.

¹⁵ Odhikar 2011, *Human Rights Report 2010*, 1 January, p. 12.

¹⁶ Odhikar 2011, *Human Rights Report 2010*, 1 January, p. 13.

¹⁷ Odhikar 2011, *Human Rights Report 2010*, 1 January, pp. 12-13.

¹⁸ ‘BNP’s programme comes under attack, 100 injured’ 2011, *UNBconnect*, 26 August

<http://www.unbconnect.com/component/news/task-show/id-57070> – Accessed 12 September 2011.

BNP meeting being held near Shibpur mosque, although it also refers to Awami League allegations that “two of their workers were injured as BNP attacked their meeting”.¹⁹

96. A report from *UNBconnect*, published on 22 February 2011, refers to a group of Awami League cadres attacking and looting a shop belonging to a local BNP leader at Gerakul village in Gournadi upazila. It was reported that this incident had occurred “following previous enmity”.²⁰
97. A report from the news website *bdnews24.com*, published on 7 February 2011, reports that the residence of “Dhaka district BNP president and former minister Abdul Mannan” had allegedly been attacked by members of the Awami League’s student wing during a hartal (strike) called by the BNP.²¹
98. A report from *UNBconnect*, published on 4 February 2011, states that “about 20 activists” of the BNP were injured in two separate attacks, “allegedly by ruling party cadres”, in Lalmohon upazila.²²
99. An article from *The Daily Star*, published on 17 January 2011, refers to the second phase of municipal elections being held in Bangladesh at that time. The article makes reference to allegations from “BNP standing committee member Nazrul Islam Khan” that Awami League supporters were “threatening voters and workers of BNP-backed candidates”.²³

Treatment of BNP supporters by security forces

100. In its *Human Rights Report 2010*, published on 1 January 2011, Odhikar provides the following comment regarding impunity in Bangladesh, which indicate that the police have a tendency not to take action on crimes committed by members of the ruling party:

...if crimes are committed by the members of the party in power, the police tend to look the other way, and the message given to the government officials, to tolerate misdeeds of the supporters of the present regime’s political party, or else the government’s wrath will befall on them.²⁴
101. In this context it is worth noting information provided by the International Crisis Group (ICG) in a report published on 11 December 2009, which outlines the politicised nature of the Bangladeshi Police. This report indicates that “all governments”, including the current Awami League government, “have used the police to crush political enemies while many politicians have used them to advance their personal interests”.²⁵ The report also indicates that “low police salaries and government control of promotions and transfers all but ensure that the police are dependent on the political leadership”, which has implications for

¹⁹ ‘20 injured as AL, BNP clash’ 2011, *The Daily Star*, 22 March <http://www.thedailystar.net/newDesign/news-details.php?nid=178665> – Accessed 12 September 2011.

²⁰ ‘AL cadres loot shop chopping BNP leader and family members in Barisal’ 2011, *UNBconnect*, 22 February <http://www.unbconnect.com/component/news/task-show/id-42064> – Accessed 12 September 2011.

²¹ ‘BNP leader’s residence vandalised’ 2011, *bdnews24.com*, 7 February <http://www.bdnews24.com/details.php?id=186655&cid=3> – Accessed 12 September 2011.

²² ‘At least 20 BNP activists injured in attacks allegedly by ruling party cadres in Lalmohon’ 2011, *UNBconnect*, 4 February <http://www.unbconnect.com/component/news/task-show/id-40871> – Accessed 12 September 2011.

²³ ‘Govt trying to fix polls’ 2011, *The Daily Star*, 17 January.

²⁴ Odhikar 2011, *Human Rights Report 2010*, 1 January, p. 17.

²⁵ International Crisis Group 2009, *Bangladesh: Getting Police Reform on Track*, 11 December, p. 14.

the proper investigation of crimes.²⁶ It is also stated that “police are often complicit in the crimes of government officials”.²⁷ The ICG report also states that, under the current government, “Awami League parliamentarians and leaders of the party’s student wings...are forcing personnel changes at all ranks of the police force” It was reported that the government had been removing a number of BNP-appointed police officials and replacing them with persons loyal to the Awami League, and that threats had been made against another policeman to force him to hire constables loyal to the same party.²⁸ In light of this information, it is relevant to note that there are reports available which refer to police breaking up BNP meetings and demonstrations with the assistance of supporters of the Awami League.²⁹

Treatment of BNP supporters by the present government

102. Reports have been located which make reference to adverse treatment which has been directed towards BNP politicians by the present Awami League government. This treatment includes the withdrawal of “politically motivated” cases against Awami League politicians while leaving those against BNP politicians open, and placing travel restrictions on BNP politicians.³⁰ The government has also reportedly shut down pro-BNP media, in particular the daily newspaper *Amar Desh* and the private television station, Channel One.³¹
103. According to Freedom House’s 2011 *Freedom in the World – Bangladesh* report, published on 26 May 2011, “dozens of cases, most against leading AL politicians” have been withdrawn since 2009, with the last of 15 cases against Prime Minister Sheikh Hasina Wajed being dropped in May 2010. However, “many cases against BNP politicians, including party leader Khaleda Zia and her family, have remained open”.³² Human Rights Watch’s 2011 *World Report* for Bangladesh, published on 24 January 2011, also makes reference to the government in 2010 recommending the withdrawal of “hundreds of corruption cases initiated against Awami League supporters on the grounds that they were “politically motivated” cases filed under previous governments”. However, this report also noted that the government had not recommended the withdrawal of “similar cases” against members of the political opposition, “raising significant concerns about discriminatory treatment and politically motivated prosecutions”.³³
104. According to the US Department of State’s 2010 *Country Report on Human Rights Practices* for Bangladesh, published on 8 April 2011, the government placed restrictions which prevented “some opposition political figures” from departing Bangladesh during 2010. The government reportedly created a list of persons suspected of war crimes during the 1972 War of Independence “who it considered ineligible to travel outside the country”. However,

²⁶ International Crisis Group 2009, *Bangladesh: Getting Police Reform on Track*, 11 December, p. 14.

²⁷ International Crisis Group 2009, *Bangladesh: Getting Police Reform on Track*, 11 December, p. 14.

²⁸ International Crisis Group 2009, *Bangladesh: Getting Police Reform on Track*, 11 December, p. 15.

²⁹ ‘BNP protests attack on picketers of Islamic parties during hartal’ 2011, *UNBconnect*, 11 July <http://www.unbconnect.com/component/news/task-show/id-52684> – Accessed 13 September 2011; ‘Police and BCL cadres foil BNP meeting in Barisal; 11 injured’ 2010, *UNBconnect*, 5 December <http://www.unbconnect.com/component/news/task-show/id-36266> – Accessed 13 September 2011.

³⁰ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May; Human Rights Watch 2011, *World Report 2011 – Bangladesh*, 24 January.

³¹ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May; ‘Bangladesh shuts down pro-opposition newspaper’ 2010, *Agence France-Presse (AFP)*, 2 June; US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April, Section 2.a.

³² Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May.

³³ Human Rights Watch 2011, *World Report 2011 – Bangladesh*, 24 January.

this list was made up entirely of opposition party leaders. While the government did not revoke the passports of these listed persons, immigration officials at Hajrat Shah Jalal International Airport in Dhaka reportedly prevented “numerous politicians belonging to the opposition BNP and Jamaat-e-Islami” from departing Bangladesh, “citing the no-fly list and instructions from undisclosed higher authorities” Some politicians were able to depart and return to Bangladesh after successfully challenging these “unannounced restrictions”. The report goes on to refer to three occasions where “immigration officers barred senior BNP leaders from travelling abroad in violation of high court orders”.³⁴

105. Information has also been located which refers to the adverse treatment of pro-BNP media by the current Awami League government. For example, Freedom House’s 2011 *Freedom in the World* report for Bangladesh provides the following information regarding the shutting down of the opposition daily newspaper *Amar Desh* in June 2010, and the treatment of persons associated with the newspaper:

In June, authorities in Dhaka forcibly closed the oppositionist daily *Amar Desh* and arrested its acting editor, Mahmudur Rahman, who is a close adviser to Zia. Rahman was initially charged with fraud and publishing without a valid license, but then was also charged with sedition. The sedition charge allowed authorities to hold him indefinitely, and he was reportedly tortured in custody. In August, Rahman and several colleagues were sentenced for contempt of court in a separate case initiated in May, and Rahman received the maximum six-month jail sentence. Over the past two years, various employees at the paper have been charged with defamation for articles written about the ruling party. However, after a Supreme Court order expired, the paper resumed publication in July pending a resolution of its licensing application, which remained ongoing at year’s end.³⁵

106. A report from *Agence France-Presse (AFP)*, published in June 2010, which also refers to the shutdown of *Amar Desh* and the arrest of Mahmudur Rahman, states that Rahman was “a stalwart of the main opposition Bangladesh Nationalist Party (BNP)” who had been “a vocal critic of the current Awami League government since it swept to power in December 2008 elections”.³⁶

107. Government authorities were also responsible for the shutdown of a pro-BNP private television station in May 2010. According to the US Department of State’s 2010 *Country Report on Human Rights Practices* for Bangladesh, in May 2010 “the information minister met with the owners of private television channels and suggested that they refrain from broadcasting content critical of the government”. Shortly after this meeting, the Bangladesh Telecommunications Regulatory Commission (BTRC) “used a technicality in the communications law” to force the closure of one private television station, Channel One, which had “close ties to the BNP”. The channel was still closed at the end of 2010.³⁷ A report from *New Age* news website, published on 1 June 2011, refers to a BNP official criticising the government “for stopping the printing of *Amar Desh* for some time and for shutting down

³⁴ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April, Section 2.d.

³⁵ Freedom House 2011, *Freedom in the World – Bangladesh*, 26 May.

³⁶ ‘Bangladesh shuts down pro-opposition newspaper’ 2010, *Agence France-Presse (AFP)*, 2 June.

³⁷ US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Bangladesh*, 8 April, Section 2.a.

Channel One”,³⁸ which suggests that the channel remained closed at that time. No information was located indicating that the government had allowed Channel One to reopen.

108. According to the UK Home Office Operational Guidance Note 2012:

The AL-led Government, with the passage of the 15th Constitutional Amendment Bill on 30 June 2012, overturned the 16-year-old requirement that general elections should be overseen by a non-partisan Caretaker Government..The BNP-led opposition alliance announced on 28 November 2012, that they would blockade roads countrywide on 9 December 2012, to press for a return of the Caretaker Government to oversee the next parliamentary polls. Indeed, on 9 December 2012, violent clashes, among BNP-backed blockaders, police and AL workers, were reported from across the country, including Sirajganj, Dhaka, Narayanganj, Chittagong, Rajshahi, Khulna, Lalmonirhat and Laxmipur Districts. At least two persons were killed (one each in Sirajganj and Dhaka towns) and more than 290 people, including 40 policemen, were injured during the clashes. Over 70 bombs went off, around 50 vehicles, including five police vehicles, were set ablaze and 150 others were vandalised.

Under the 15th Amendment, the 2013 parliamentary general elections and all subsequent elections are to be supervised by an independent electoral commission operating under the political Government in power, which in 2013 would still be the current AL-led government. Many independent observers criticized the change because they believed that the electoral system"s vulnerabilities to political manipulation..

(<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/bangladesh.pdf?view=Binary> . accessed 8 July 2013).

Jatiyatabadi (Jatiyotabadi) Jubo Dal

109. The *Encyclopaedia of Bangladesh* the following brief overview of the creation of Jatiyatabadi Jubo Dal (JJD) as the youth wing of the BNP:

The Bangladesh Jatiyatabadi Jubo Dal, the youth wing of the BNP, was started by Zia [General Ziaur Rahman] shortly after the formation of the BNP. Since coming to power, he had always laid emphasis on the necessity for a strong youth organisation to direct activities of the youth towards nation building tasks. The Jatiyatabadi Jubo Dal consisted of the Jatiyatabadi Ganotantrik Jubo Dal, the youth wing of JAGODAL, which was heavily patronized by Zia, a faction of Jatiya Jubo Dal affiliated to NAP-B, a small pro-Chinese youth group known as Jubo Okkya Kendra, a few young BAKSAL members and a large number of former student workers of JSD. The Jubo Dal had organized its branches at the district, thana and union level. Very soon it became the largest youth organisation having its close association with the official Youth Cooperative Complex and Village Defense Party (Singh, N. K.(ed) 2003, ‘Bangladesh Nationalist Parties (BNP): Origin and Development’ in *Encyclopaedia of Bangladesh*, Anmol Publications, New Delhi, pp.269–270).

110. The official website of the BNP lists the Jubo Dal as one of the BNP’s sub organisations. The website provides details of the President and General Secretary of the Jubo Dal. According to the BNP website the Jubo Dal President is Barkatullah Bulu and the General Secretary is Moazzem Hossain Alal. The website does not contain any further detailed information on the Jubo Dal (‘Various committees formed in Bangladesh Nationalist Party’ Bangladesh Nationalist Party (BNP) website

³⁸ ‘Former chief justice will be tried in people’s court: Moudud’ 2011, *New Age*, 1 June <http://newagebd.com/newspaper1/national/20905.html> – Accessed 15 September 2011.

<http://www.bnepbd.com/committee.php?page=5> – Accessed 14 January 2009; ‘Jubo Dal’ (undated), Bangladesh Nationalist Party (BNP) website http://www.bnepbd.com/jubo_dal.php – Accessed 14 January 2009).

Document fraud

111. The Tribunal drew on country information referred to by the delegate in the decision, as well as the most recent UK Home Office report on Bangladesh³⁹ concerning the prevalence of document fraud in Bangladesh. The latter cites part of a Canadian report from 2005 which, although now a few years old, gives a still-current picture of the nature and extent of fraudulent practices:

‘Many false documents exist; it is relatively easy to verify these documents, but verification takes a long time when it is done outside the capital ... The content of genuine documents is often questionable. The rampant corruption in various levels of the government weakens the integrity and the credibility of officially issued documents ... It is common for [political party] membership confirmation letters to be issued to facilitation verification procedures, even if the information is incorrect ... We often hear people saying that it is normal to provide incorrect information for a third party, because it is considered a duty to help “co-nationals/brothers” to immigration to a so-called “rich” country ... Genuine medical certificates containing incorrect information can also be issued ... Birth certificates are issued [often years after the person’s birth] upon verbal or written request, and no proof of the person’s date of birth, identity or age is required; these certificates have the same value as the information provided by the applicant ... Similarly, it is relatively easy to obtain a passport under a false identity’.⁴⁰

³⁹ UK Home Office Country of Origin Report, Bangladesh, 30 September 2012 at paragraph 32

⁴⁰ <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=country&skip=0&coi=BGD&x=9&y=16> BGD100338.E, 8 August 2005. *Bangladesh: Prevalence of fraudulent, forged or fake documents...*