



RPD File No. / N° de dossier de la SPR : TA9-19139TA9-19170

*Private Proceeding / Huis clos*

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX	<b>Demandeur(e)s d'asile</b>
<b>Date(s) of Hearing</b>	June 10, 2011 August 4, 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto, Ontario	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	November 23, 2011	<b>Date de la décision</b>
<b>Panel</b>	R. Markovits	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Douglas Lehrer	<b>Conseil(s) du / de la / des demandeur(e)s d'asile</b>
<b>Tribunal Officer</b>	N/A	<b>Agent(e) de tribunal</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)s désigné(e)s</b>
<b>Counsel for the Minister</b>	N/A	<b>Conseil du ministre</b>

[1] XXXXX XXXXX, the principal claimant, and his wife XXXXX XXXXX, citizens of Bangladesh, claim refugee protection pursuant to sections 96 and 97(1) of the *Immigration and Refugee Protection Act (IRPA)*.<sup>1</sup>

## BACKGROUND

[2] The hearing was held on two sessions, June 10, 2011 and August 4, 2011. At the first hearing, counsel informed me that the principal claimant was hard of hearing and was suffering from a heart condition. I assured counsel and the principal claimant that we would stop whenever the principal claimant felt he needed a recess. It soon became apparent that the principal claimant found it difficult to answer the questions put to him directly and at other times, he became very emotional and could not answer at all. At one point, I called for a recess so the principal claimant could compose himself. When the hearing reconvened, I attempted to continue questioning the principal claimant but he became so agitated that it was impossible to carry on; as a result, the hearing was adjourned.

[3] Having considered the principal claimant's age, medical condition, and emotional frailty, I directed his counsel to begin the questioning at the second session.

## ALLEGATIONS

[4] The detailed allegations are set out in the Personal Information Forms<sup>2</sup> (PIF) of the claimants, and XXXXX XXXXX relies on her husband's narrative. The principal claimant provided most of the testimony at the hearing. The principal claimant alleges that he is Hindu and in 1988, he was a XXXXX XXXXX of the Bangladesh Hindu Buddha Christian Unity Council (Unity Council) in his region of XXXXX. He further alleges that in the early 1990's, his XXXXX was attacked and looted during sectarian riots. Since 2001, he was the victim of extortion from two members of the Jamatt-e-Islami party (JeI), XXXXX and XXXXX. They routinely demanded XXXXX to XXXXX taka. The extortion went on for a number of years.

[5] Due to his problems with XXXXX and XXXXX, the principal claimant, on different occasions, sought advice from the Unity Council, the mayor or his Member of Parliament (MP). The mayor advised him to negotiate with the extortionists and the MP said he could not help

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<sup>1</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

<sup>2</sup> Exhibit C-1, C-2 and C-3.

because his party, the Awami League (AL), was in opposition. The financial strain caused the principal claimant to close his XXXXX in XXXXX 2007.

[6] Besides operating a XXXXX, the principal claimant also managed an XXXXX store for a large company. XXXXX and XXXXX often came to the XXXXX store with their associates and bought XXXXX on credit but refused to pay the amounts owed. The principal claimant alleges that he had to cover the shortfall from his pocket.

[7] Finally, in XXXXX 2009, the principal claimant hosted a religious ceremony at his home, attended by friends, relatives, and neighbours. XXXXX and XXXXX interrupted the celebration and demanded XXXXX taka from the principal claimant. They demanded the money be paid in ninety days. An argument started and a scuffle broke out. In the course of the scuffle, the principal claimant was struck in the mouth by XXXXX. The principal claimant needed medical and dental treatment because of the injury. This precipitating incident caused the claimants to flee Bangladesh. The principal claimant hired an agent in XXXXX 2009 to help obtain Canadian visas to visit the claimants' son and daughter in Canada. The claimants arrived in Canada on XXXXX, 2009 and made their claim for protection on June 24, 2009.

## **DECISION**

[8] I find that the claimants are not Convention refugees, as they do not have a well-founded fear of persecution for a Convention refugee ground in Bangladesh. They are not persons in need of protection as, on a balance of probabilities, they do not face a risk to life, or a risk of cruel and unusual treatment or punishment should they return to Bangladesh. There are no substantial grounds to believe that their removal to Bangladesh would subject them personally to a danger of torture.

## **ANALYSIS**

[9] The determinative issues in this claim are nexus, state protection and Internal Flight Alternative (IFA).

### ***Credibility***

[10] When a claimant swears that certain facts are true, this creates a presumption that they are indeed true unless there is valid reason to doubt their veracity.<sup>3</sup> The determination as to whether a claimant's evidence is credible is made on a balance of probabilities.<sup>4</sup>

[11] The principal claimant, as previously mentioned, was at times quite emotional and nervous during his testimony. Although it was difficult at times to get direct answers to questions put to him, I do not find that the principal claimant was deliberately trying to be misleading or evasive. Given his age, his anxiety at the hearing, and the difficulty of testifying through an interpreter, his testimony was relatively spontaneous and sincere. As such, I find his testimony about being extorted to be credible.

[12] The finding of credibility does not extend to the principal claimant's assessment of the reasons for the extortion or to his conclusion that an IFA does not exist in Bangladesh.

### ***Identity***

[13] The claimants' identities as Bangladeshi nationals are established by the testimony of the principal claimant and by the personal identity documents filed, including their Bangladeshi passports.<sup>5</sup>

[14] Their identity as Hindus is established by the testimony of the principal claimant and by documents submitted by counsel.<sup>6</sup>

### ***Nexus***

[15] For the principal claimant to be a Convention refugee as he claims, his fear of persecution must be, "by reason of" one of the five grounds enumerated in the Convention refugee definition. I find that the reason for targeting the principal claimant does not fall within one of the five grounds enumerated. Based on the analysis below, I find that on a balance of probabilities, the claimant was a victim of crime; namely, he was a victim of Muslim hooligans who were trying to extort money from the claimant.

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<sup>3</sup> *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.).

<sup>4</sup> *Orelien v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 592 (C.A.).

<sup>5</sup> Exhibit R/A-2.

<sup>6</sup> Exhibit C-5, items 6 and 7.

[16] A claimant's fear of persecution must fall under the definition of a Convention refugee.

According to the *IRPA*:

A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside each of their countries of nationality and is unable or, by reason of that fear, is unwilling to avail themselves of the protection of each of those countries...<sup>7</sup>

[17] The Federal Court has held that victims of crime, corruption,<sup>8</sup> or vendettas<sup>9</sup> generally fail to establish a link between their fear of persecution and one of the Convention grounds in the definition of a Convention refugee. The Board has been upheld in its finding of lack of nexus, where the claimant was a victim of crime.<sup>10</sup>

### **Are There Mixed Motives for Persecution?**

[18] In his submissions, counsel has argued that although the principal claimant was a victim of extortion, there is reason to believe that the extortion was in part due to the principal claimant's religion and, therefore, there are mixed motives for the persecution. Canadian jurisprudence does not preclude refugee protection because there are mixed motives. On the contrary, the Federal Court in *Shahiraj*<sup>11</sup>, *Flores*<sup>12</sup> and *Gonsalves*<sup>13</sup> has decided that refugee protection is not excluded when there are mixed motives. It is sufficient that one of the motives have nexus to a Convention ground. Counsel suggests that there is a history of animosity directed towards Hindus in Bangladesh, and that the principal claimant was a victim of such animosity; therefore, his claim has a nexus to the Convention refugee definition.

[19] The documents before me mention past instances of sectarian violence in Bangladesh, (especially after the Barbi Mosque incident in India in 1991-1992) and corresponds with what the

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<sup>7</sup> *Immigration and Refugee Protection Act*, section 96.

<sup>8</sup> *Leon, Johnny Edgar Orellana v. M.C.I.* (F.C.T.D., no. IMM-3520-94), Jerome, September 19, 1995;  
*Calero, Fernando Alejandro (Alejandro) v. M.E.I.* (F.C.T.D., no. IMM-3396-93), Wetston, August 8, 1994;  
*Vargas, Maria Cecilia Giraldo v. M.E.I.* (F.C.T.D., no. T-1301-92), Wetston, May 25, 1994.

<sup>9</sup> *Marincas, Dan v. M.E.I.* (F.C.T.D., no. IMM-5737-93), Tremblay-Lamer, August 23, 1994;  
*De Arce v. Canada (Minister of Citizenship and Immigration)* (1995), 32 Imm. L.R. (2d) 74 (F.C.T.D.);  
*Xheko, Aida Siri v. M.C.I.* (F.C.T.D., no. IMM-4281-97), Gibson, August 28, 1998.

<sup>10</sup> *Bacchus, Amit v. M.C.I.* (F.C., no. IMM-4679-03), Mosley, June 8, 2004, 2004 F.C. 821.

<sup>11</sup> *Shahiraj, Narender Singh v. M.C.I.* (F.C.T.D., no. IMM-3427-00), McKeown, May 9, 2001.

<sup>12</sup> *Flores, Israel Aguirre v. M.C.I.* (F.C.T.D., no. IMM-455-02), Dawson, August 20, 2002, 2002 FCT 893.

<sup>13</sup> *Gonsalves, Stanley Bernard v. M.C.I.* (F.C., no. IMM-3827-10), Zinn, June 7, 2011, 2011 FC 648.

principal claimant alleges. These documents also speak of the discrimination that Hindus faced as a result of the now repealed *Vested Property Act*:

The Vested Property Act was an East Pakistan-era law that allowed the Government to expropriate ‘enemy’ (in practice Hindu) lands. Under the law, the Government seized approximately 2.6 million acres of land, affecting almost all Hindus in the country.<sup>14</sup>

[20] Based on the evidence before me, I am not convinced that there were mixed motives for his persecution. I find therefore that the principal claimant was targeted by criminal activity for the following reasons.

[21] In 1988, after the principal claimant joined the Unity Council, he maintains that his Muslim neighbours looked upon him differently.<sup>15</sup> This was the only mention of any sort of problem the principal claimant had as a result of his membership in the Unity Council. I note that strange looks do not amount to persecution.

[22] The principal claimant alleges that his **XXXXXX** was ransacked as a result of sectarian violence. The riots were endemic in the region, due to the Babri Mosque arson at the hands of Hindu extremists in India. There was no evidence adduced of religious animosity directed at the principal claimant during the periods of 1988-1991 and 1992-2001.<sup>16</sup>

[23] It was in 2001, almost **ten years later**, when **XXXXXX** and **XXXXXX** first extorted money from the principal claimant. According to the narrative and the principal claimant’s testimony, the principal claimant operated a successful **XXXXXX** and **XXXXXX** store. **XXXXXX** and **XXXXXX** would demand money from him every three months, which he continued to pay for well over six years. The principal claimant alleges that he was persecuted by **XXXXXX** and **XXXXXX** because he was Hindu. In his PIF, the principal claimant stated the reason **XXXXXX** and **XXXXXX** started to visit his **XXXXXX** was “in order to extort”<sup>17</sup> money from him and they used the derogatory epithet *malaun*. The claimant also testified that on these occasions, the extremists would announce that the principal

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<sup>14</sup> Exhibit R/A-1, item 12.8, page 4.

<sup>15</sup> Exhibit C-1, Narrative, lines 5-6.

<sup>16</sup> The principal claimant joined the Unity Council in 1988 and there was no evidence adduced that he experienced any form of discrimination as a result. According to his testimony, the first instance of problems occurred in 1991 during the riots.

<sup>17</sup> Exhibit C-1, Narrative, line 13.

claimant must have money because his children were abroad.<sup>18</sup> That statement implies that either he could afford to send his children abroad or they were sending money back to the principal claimant.

[24] The principal claimant testified that other Muslims feared Muslim extremists and there was no evidence adduced that only Hindus were victims of these extremists.

[25] After the principal claimant closed his **XXXXX**, **XXXXX**, **XXXXX**, and their associates purchased **XXXXX** from the principal claimant's store on credit. They refused to pay for the **XXXXX** they bought. According to the principal claimant, he was responsible to make up the short fall; in essence, the principal claimant was still being extorted by **XXXXX** and **XXXXX**. There was no further persuasive evidence that the reason for the extortion was anything but criminal.

[26] The principal claimant finally refused to allow **XXXXX** and **XXXXX** to purchase any more **XXXXX**. The principal claimant was at home celebrating a religious ceremony that he sponsored. **XXXXX** and **XXXXX** arrived and demanded the principal claimant pay them more extortion money. According to his PIF, **XXXXX** and **XXXXX** stated that the principal claimant was "obviously well off with such a celebration." They also said that they were aware of the principal claimant's travels to other countries, and therefore, the principal claimant was obviously wealthy.

[27] The claim before me can be distinguished from *Shahiraj, Flores, and Gonsalves*. The claimant in *Shahiraj* was accused by the police of being associated with Sikh militants as well as being extorted for money. There was a possibility the claimant was being persecuted due to his imputed political opinion. In *Flores*, the documentary evidence indicated that the police in Mexico file false charges against suspected Zapatista members. In both of these cases, the authorities use criminal pretext to target suspected militants. In *Gonsalves*, Justice Zinn found that the Board erred in failing to consider whether there were mixed motives when the agents of persecution uttered racial slurs at the claimant.<sup>19</sup>

[28] In this case, the principal claimant was not persecuted by the authorities due to his imputed political opinion or for his religious beliefs. This case also differs from *Gonsalves* for the following reasons.

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<sup>18</sup> Exhibit C-1, Narrative, line 23.

<sup>19</sup> *Gonsalves, Stanley Bernard v. M.C.I.* (F.C., no. IMM-3827-10), Zinn, June 7, 2011, 2011 FC 648.

[29] The principal claimant's testimony and PIF mention a ten-year gap before **XXXXXX** and **XXXXXX** extorted money from the principal claimant. The principal claimant testified that he paid the extortion money every three months. This went on until 2007. The testimony indicated all the threats the principal claimant received were in the nature of either the principal claimant paying extortion money or he would suffer physical harm. The threats, according to the principal claimant's testimony, were veiled and implied physical harm if the extortion money was not paid. For example, **XXXXXX** and **XXXXXX** never seemed to have threatened the principal claimant in order to coerce him to abandon his religion, Hinduism, and there was no evidence adduced that **XXXXXX** and **XXXXXX** ever demanded that he renounce his Hindu faith.

[30] In his amended PIF, the principal claimant states that **XXXXXX** and **XXXXXX** have approached the principal claimant's brother looking for him. The principal claimant's son, **XXXXXX**, returned to Bangladesh in **XXXXXX** 2011. **XXXXXX** was confronted by **XXXXXX** and **XXXXXX** who demanded to know where the principal claimant was and extorted money from **XXXXXX**. When **XXXXXX** was accosted by **XXXXXX** and **XXXXXX**, they again used derogatory terms.<sup>20</sup> All the testimony adduced did indicate that money was always the motivator for the encounters between **XXXXXX** and **XXXXXX** and the principal claimant, and later, **XXXXXX**.

[31] The only evidence that the attacks were motivated by religious animosity is that the assailants were Muslim and they used disparaging and insulting remarks. The fact that **XXXXXX** and **XXXXXX** used the term *malaun* and demanded a "Hindu tax" does not mean that the principal claimant was targeted **because** he was Hindu. The population of Bangladesh is 90% Muslim and 9% Hindu.<sup>21</sup> In a country where the vast majority of the population is Muslim and the Hindu population amounts to less than ten percent of the population, then most crime perpetrated against the Hindus will more likely than not be committed by Muslims, just as most crimes perpetrated against Muslims will also be done by Muslims. It is almost inevitable that the assailants would be Muslim. This certainly must be true when the victim is perceived to be wealthy.

[32] As Justice Russell in *Huntley* writes,

Verbal and racial abuse is a form of aggression and a means of denigrating or frightening the victim. Such terms are not, in themselves, an objective

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<sup>20</sup> Exhibit C-3.

<sup>21</sup> Exhibit R/A-1, item 12.1.



indicator that the Respondent was attacked because he was white... The use of racial slurs is not, in my view in itself supportive of systematic racially motivated attacks against the Respondent.<sup>22</sup>

[33] In this case, substitute Hindu for white and religious for racial. The principal claimant's testimony does not suggest anything overtly religious apart from religious insults during the extortion. The evidence adduced indicated the purpose of the attacks was not to punish the principal claimant because he was a Hindu, but rather to take his money.

[34] There is objective evidence before me that states that attacks against Hindus were not solely motivated by religious hatred:

Attacks against members of the Hindu community by the wider society were reported in 2007 and 2008, though there is **no evidence confirming that such attacks were religiously motivated.**<sup>23</sup> (emphasis added)

Violence against religious and ethnic minorities still occurred, although many government and civil society leaders stated that **these acts often had political or economic motivations and could not be attributed only to religious belief or affiliation.**<sup>24</sup> (emphasis added)

[35] The principal claimant submitted three letters from a neighbour and two acquaintances in an attempt to corroborate his allegations of persecution at the hands of **XXXXX** and **XXXXX**.<sup>25</sup> I find these letters have little probative value for the following reasons. All these letters were requested by the principal claimant for his hearing; all mention the extortion. From the letters, it is obvious that two of the authors had not witnessed the attacks at the principal claimant's home or his encounters with **XXXXX** and **XXXXX** in the market as they were living in Canada at the time. The letter from the Bangladeshi resident makes no mention of any religious motivation for the attacks. The letters are also vague about specific incidents. It would be reasonable to expect that letters requested by the claimant by supposed witnesses to the persecution would describe the persecutory events in detail. I therefore find these letters have little probative value and assign them little weight.

[36] I am not convinced that the principal claimant was targeted because of religion even in part. According to his testimony, there was a history of payments that went on for many years. When the

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<sup>22</sup> *M.C.I. v. Huntley, Brandon Carl* (F.C., no. IMM-4423-09), Russell, November 24, 2010, 2010 FC 1175.

<sup>23</sup> Exhibit R/A-1, item 2.4, paragraph 3.10.4.

<sup>24</sup> Ibid., item 2.1.

<sup>25</sup> Exhibit C-5, pages 4 and 6; Exhibit C-10, page 3.

principal claimant finally refused to acquiesce to the extortion demands, he was beaten and even more money was demanded. There was no compelling evidence that those who attacked the principal claimant targeted Hindus only. There is not enough evidence to establish religion as a motive for persecution and, therefore, I find there was no mixed motive for persecution. I find that there was insufficient evidence adduced to establish a nexus to the Convention refugee definition.

### ***State Protection and Change in Circumstances***

[37] A state, unless in complete breakdown, is presumed to be capable of protecting its citizens; international protection comes into play only when a refugee claimant cannot obtain protection domestically. A claimant is required to approach the state for protection if protection might reasonably be forthcoming or, alternatively, if it is objectively reasonable for the claimant to have sought protection.<sup>26</sup>

[38] A claimant who alleges that state protection is inadequate must persuade the Board, on a balance of probabilities, that the evidence establishes this inadequacy,<sup>27</sup> and such evidence must be clear and convincing.<sup>28</sup> The claimant's burden of proof is directly proportional to the level of democracy in the state in question: the more democratic the state's institutions, the more the claimant must have done to exhaust all available courses of action.<sup>29</sup> A claimant from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all the recourses available domestically before claiming refugee status.<sup>30</sup>

[39] The adequacy of state protection cannot rest on the subjective fear of the claimant<sup>31</sup>; a claimant cannot rebut the presumption of state protection in a functioning democracy by asserting only a subjective reluctance to engage the state.<sup>32</sup>

[40] Local failures to provide effective policing do not amount to a lack of state protection unless they are part of a broader pattern of state inability or refusal to provide protection.<sup>33</sup>

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<sup>26</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

<sup>27</sup> *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, [2008] 4 F.C.R. 636 (F.C.A.).

<sup>28</sup> *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

<sup>29</sup> *Canada (Minister of Citizenship and Immigration) v. Kadenko* (1996), 143 D.L.R. (4<sup>th</sup>) 532 (F.C.A.).

<sup>30</sup> *Hinzman v. Canada (Minister of Citizenship and Immigration)* [2007], 1 F.C.R. 561 (F.C.); *Hinzman, Jeremy v. M.C.I. and Hughey, Brandon David v. M.C.I.* (F.C.A., nos. A-182-06; A-185-06), Décary, Sexton, Evans, April 30, 2007, 2007 FCA 171.

<sup>31</sup> *Martinez, Dunnia Patricia Suarez v. M.C.I.* (F.C., no. IMM-7329-04), Phelan, July 29, 2005, 2005 FC 1050.

<sup>32</sup> *Judge, Gurwinder Kaur v. M.C.I.* (F.C., no. IMM-5897-03), Snider, August 9, 2004, 2004 FC 1089.

[41] Before me are documents that indicate that historically, Hindus have faced difficulties in Bangladesh. Hindus have been victimized by the *Vested Property Act*; the *Act* is a remnant of the pre-1971 Civil War era and allowed expropriation of Hindu land.<sup>34</sup> The same document also indicates that the law has been repealed. There is also evidence of sectarian violence in the past.

[42] The assessment of the claimants' situation must be done in the present and not in the past and the determination is forward-looking. There is objective evidence that indicates significant progress has been made with respect to minorities.

[43] The *Annual Report of the United States Commission on International Religious Freedom, May 2010*<sup>35</sup> describes the situation in Bangladesh. According to the report, a democratic government was elected in December 2008 that replaced a military backed caretaker government. The governing party is the AL and is considered the most secular and is favourably disposed towards minority rights among Bangladesh's major political parties. These elections were free of anti minority violence elections that occurred after the last election in 2001. The previous ruling party, the Bangladesh National Party, formed a coalition with Islamist parties and it failed to investigate or prosecute acts of violence perpetrated against religious minorities who were perceived to be allied with the AL. The new government has appointed three non-Muslims as Ministers and to other senior government positions.<sup>36</sup> The Prime Minister has publically announced that the government would repeal all discriminatory laws that target minorities, ensure that all religious minorities enjoy freedom of expression, and that the government undertakes to uphold equal rights for all citizens.

[44] There are recent court rulings that restored pro-secular provisions in the constitution. The Hindu Welfare Trust received 60 million taka from the Ministry of Religious Affairs.<sup>37</sup> The government has also promoted peaceful celebrations of Christian and Hindu festivals. The mandate of the Council of Interfaith Harmony-Bangladesh is to promote peaceful coexistence between different communities. The Council has also received support from the government.<sup>38</sup> In light of the

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<sup>33</sup> *Zhuravlyev v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 3 (T.D.).

<sup>34</sup> Exhibit R/A-1, item 12.1, page 4.

<sup>35</sup> *Ibid.*, item 12.2.

<sup>36</sup> *Ibid.*, item 12.1 and 12.2.

<sup>37</sup> *Ibid.*, item 12.1.

<sup>38</sup> Exhibit R/A-1, item 12.1.

positive developments, the United States Commission on International Religious Freedom removed Bangladesh from its Watch List in 2009.<sup>39</sup>

[45] The principal claimant testified that during the years of extortion, he approached his MP, but he could not help him because the AL was in opposition. That is not the case now. The government is battling Islamic militants and extremists and, in 2009, the Supreme Court upheld the conviction of leaders of extremists groups.<sup>40</sup>

[46] The change in government does not seem to be temporary, impermanent, or fleeting. The elections took place almost three years ago and there is no evidence before me to suggest that it is in impending danger of being toppled. There is no requirement that a change in circumstance be permanent or without possibility of reversal.<sup>41</sup>

[47] The documents do refer to problems religious minorities have faced in the recent past and the difficulty the victims may have had with the police. Although there were attacks perpetrated against Hindus, the documents also indicate that the number of attacks against Hindus has dropped significantly from 2007.<sup>42</sup>

[48] The claimant testified that he did not believe the police would be willing or able to protect him. Although he himself never had any dealings with the police, he had only advised another member of his community that had problems because he was Hindu. He stated he knew this from his experience as a **XXXXXX** of the Unity Council. The principal claimant never sought protection from the police. As mentioned above, when he approached his MP in 2005 and 2006, the MP stated he could not help the principal claimant because the AL was not in power. Bangladesh is a fledgling, functioning parliamentary democracy even though it has problems.

[49] According to the principal claimant, his MP could not help him because the governing party was not the AL. **XXXXXX** and **XXXXXX** were affiliated with the Jel, a collation partner with the ruling Bangladesh Nationalist Party. Also, according to the principal claimant, the police would not intervene in matters that might raise the ire of the ruling party. This is not the case now. The AL is the governing party and, therefore, the principal claimant's MP could help him if needed as well as

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid., item 2.3, paragraph 4.08.

<sup>41</sup> *Castellanos v. Canada (Minister of Citizenship and Immigration)* (1994), 30 Imm. L.R. (2d) 77 (F.C.T.D.).

<sup>42</sup> Exhibit R/A-1, item 12.1.

the police. Based on the documents before me, Bangladesh is a putative democracy with a functioning independent judiciary. The government is attempting to charge and convict extremists.

[50] This is not to say that state protection is perfect. The principal claimant stated that he had no faith in the police being able to protect him. He testified that the police would only help those that had the support of the current ruling party. State protection may have been inadequate in 1992, in 2005 and in 2006; however, given the change in circumstances, the principal claimant cannot depend on those incidents to rebut state protection. There still may be problems, but the state is endeavouring to provide protection for its citizens. The objective evidence before me indicates that Bangladesh is willing to protect its citizens. The factual situation in Bangladesh has changed significantly since the elections in December 2008 and this change, in circumstance, is most relevant to the matter of state protection.

### *Internal Flight Alternative*

[51] Could the claimant have fled to safety within his/her own country instead of fleeing to Canada? The question of whether an IFA exists is an integral part of the Convention refugee definition.<sup>43</sup> The test to be applied in determining whether there is an IFA is two-pronged, and both prongs must be satisfied for a finding that a claimant has an IFA:

1. The Board must be satisfied, on a balance of probabilities, that there is no serious possibility of the claimant being persecuted in the part of the country to which it finds an IFA exists.<sup>44</sup>
2. Conditions in the part of the country considered to be an IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, for him to seek refuge there.<sup>45</sup>

[52] Dhaka was suggested as a possible IFA at the hearing. The principal claimant alleges that no matter where he goes in Bangladesh, he would be targeted by similar extremists. I find that allegation not credible. The principal claimant may have been a victim of extortion and beaten on one occasion by **XXXXX** and **XXXXX**, however, I am not convinced that he could not safely go and live in Dhaka for the following reasons. Dhaka has a population of over nine million people

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<sup>43</sup> *Rasaratnam v. Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

according to the 2001 census.<sup>46</sup> There was no persuasive evidence adduced that the claimant has a profile that would entice **XXXXXX** and **XXXXXX** to follow him to Dhaka. On a balance of probabilities, I find that **XXXXXX** and **XXXXXX** targeted the principal claimant because they were all in the same neighbourhood. It was an easy opportunity for them to extort money from the principal claimant.

[53] The principal claimant provided a letter from the president of the Unity Council indicating that the principal claimant was a **XXXXXX** but did not specify that he held a particularly prominent position. It does not mention that he was targeted by **XXXXXX** and **XXXXXX** because of his activities, but only that they extorted money from him. There is no evidence before me that indicated that the principal claimant would be targeted by similar criminals in Dhaka, and I find on a balance of probabilities that the principal claimant would not face a risk to his life or a risk of cruel and unusual treatment or punishment, or face a danger of torture. The principal claimant testified that he could survive in an IFA by working. Considering the principal claimant's success at starting two previous businesses and his experience gained from being a business owner, I find it would not be unreasonable for the principal claimant to re-establish himself in Dhaka.

## CONCLUSION

[54] I find that the claimants were targeted by **XXXXXX** and **XXXXXX** for extortion, not because they were Hindu. Even if the claimants were abused by the **XXXXXX** and **XXXXXX** to extort money, as abhorrent as that may be, that does not create a nexus to social group or religion. It was clear from the principal claimant's evidence that **XXXXXX** and **XXXXXX** were interested in money. There was no objective elements adduced to their well-founded fear of persecution because of their religion. They failed to show why they could not live in the IFA identified.

[55] There is no serious possibility that the claimants would be persecuted or that they would be subjected, on a balance of probabilities, to a risk to their lives, or a risk to cruel or unusual treatment or punishment, or a danger of torture in Dhaka. I find that because of a change in circumstance in Bangladesh, the claimants have not rebutted the notion of state protection.

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<sup>46</sup> Exhibit R/A-1, item 1.2.

[56] The female claimant was asked a few questions by counsel about her fears. She reiterated her fear of the extremists. Since the claim of **XXXXXX XXXXXX** is joined to the claim of **XXXXXX XXXXXX**, and was totally reliant on that of her husband's, her claim too must fail.

[57] For the above-mentioned reasons, I conclude that the claimants, **XXXXXX XXXXXX** and **XXXXXX XXXXXX**, are not Convention refugees under section 96 of the *IRPA*, or persons in need of protection within the meaning of section 97(1)(a) or (b) of the *IRPA*.

[58] Their claims are rejected.

*(signed)*

**“R. Markovits”**

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**R. Markovits**

**November 23, 2011**

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**Date**

**KEYWORDS – REFUGEE PROTECTION DIVISION – VICTIM OF CRIME – RELIGIOUS – NEXUS – STATE PROTECTION – IFA – JAMATT-E-ISLAMI PARTY – NEGATIVE – BANGLADESH**