



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2204/2012<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	J.D. (represented by counsel, Niels-Erik Hansen)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	18 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 19 November 2012 (not issued in document form)
<i>Date of adoption of Views:</i>	26 October 2016
<i>Subject matter:</i>	Deportation to China
<i>Procedural issues:</i>	Insufficient substantiation; inadmissibility <i>ratione materiae</i>
<i>Substantive issues:</i>	Right to an effective remedy; right to life; torture, cruel, inhuman or degrading treatment or punishment; non-refoulement; right to a fair and public hearing by a competent, independent and impartial tribunal; right to freedom of religion or belief; right to the equal protection of the law; protection of minorities
<i>Articles of the Covenant:</i>	2, 6, 7, 14, 18, 26 and 27
<i>Articles of the Optional Protocol:</i>	2, 3

\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

\*\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.



1.1 The author of the communication is J.D., a Chinese national born in 1971. At the time of submission of the communication, she was awaiting deportation to China, following the rejection of her application for asylum in Denmark. At that time, the author claimed that by forcibly deporting her to China, Denmark would violate her rights under articles 2, 6, 7, 14, 18, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

1.2 On 19 November 2012, pursuant to rule 92 of the Committee's rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from expelling the author to China while her case was under consideration by the Committee.

1.3 On 25 January 2013, the Committee, acting through its Special Rapporteur on new communications and interim measures, acceded to the State party's request to lift interim measures.<sup>1</sup> The author was deported to China on 23 October 2013.

### **The facts as presented by the author**

2.1 The author was arrested and detained several times in China for being a member of the Falun Gong faith. She was detained for the first time in 1999 for two weeks and again from 2000 until 2002 and from 2003 until 2005 in a women's prison. She was then transferred to a psychiatric hospital, where she was put under forced medication until 2007. During her detention periods, she was subjected to "physical outrages". Because of the constant persecution which led to the various episodes of detention, the author decided to stop practising her religion in public as of 2007; since then she continued to practice her religion alone at home. The author left China in August 2010 with the help of a third person, Y.B. She first arrived in the Netherlands and entered Denmark in March or April 2011, where she was apprehended by the Danish police in November 2011. The Copenhagen police filed a report on 17 November 2011, which is when the author officially claimed asylum in Denmark.

2.2 On 30 April 2012, the Danish Immigration Service rejected the author's asylum application under paragraph 7 of the Aliens Act. The Refugee Appeals Board upheld the decision of the Immigration Service on 15 August 2012. The Board ordered the author to leave the country within seven days, in accordance with section 33 (1) and (2), of the Aliens Act. By letter dated 23 October 2012, the author through her counsel, requested a reconsideration of her asylum application on the basis of the Board's recent jurisprudence, in which it had reopened the case of two asylum seekers who feared religious persecution in Afghanistan further to a letter from the Office of the United Nations High Commissioner for Refugees of 1 May 2012, in which it stated, inter alia, that "the right to freedom of religion is a fundamental human right and one's religious belief, identity or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution."

2.3 On 16 November 2012, the Refugee Appeals Board refused to reopen the author's asylum proceedings and confirmed its earlier decision of 15 August 2012. Pursuant to section 56 (8) of the Aliens Act, decisions of the Refugee Appeals Board are final.

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<sup>1</sup> Counsel's request of 27 February 2013 to reinstate interim measures or at least to request the State party not to place the author, who is a victim of torture, into immigration detention was denied by the Special Rapporteur on new communications and interim measures on 12 March 2013; counsel's repeated requests of 13 September 2013 and 30 September 2013 to reinstate interim measures were denied on 30 September 2013; counsel's new request of 21 October 2013 to reinstate interim measures was denied on 22 October 2013.

### The complaint

3.1 The author claims that by deporting her to China, where she is not authorized to practice her religion freely and publicly, and where such practice entails persecution, imprisonment and torture,<sup>2</sup> Denmark would violate her rights under articles 2, 6, 7, 18, 26 and 27 of the Covenant.

3.2 The author notes that, in the opinion of the Refugee Appeals Board, the fact that she decided not to practise her religion in public after several periods of detention owing to her religious beliefs, is the evidence that she is no longer at risk. The author considers on the contrary that, if she started to manifest her religion again with other members of Falun Gong, she would be persecuted, which is the case with other Falun Gong members in China, if they choose to practise their religion in public. In violation of article 18 of the Covenant, the decision of the Refugee Appeals Board therefore sets a precondition that the author renounces *ad vitam* the practice of her religion upon her return to China.<sup>3</sup>

3.3 The author further argues that the current Danish asylum procedure is contrary to article 14 of the Covenant, as asylum seekers cannot appeal the Refugee Appeal Board's decisions to a higher judicial instance.<sup>4</sup> For her, this also raises the question of discrimination, since under the State party's law, decisions of a great number of administrative boards, which have the same composition as the Refugee Appeals Board, can be invoked in front of the ordinary courts.

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

4.1 On 21 January 2013, the State party recalls the facts on which the present communication is based and the author's claims, and submits that the communication should be declared inadmissible. Should the Committee declare the communication admissible, the State party submits that no violation of the provisions of the Covenant will occur if the author is deported to China.

4.2 The State party submits that the Refugee Appeals Board accepted as facts the author's statements regarding her detention by the Chinese police owing to her practice of Falun Gong, but could not accept her statement of being wanted by the Chinese authorities at the time of her departure. The Board found that the author had made inconsistent and embellished statements about crucial parts of her motives for seeking asylum, including her departure and the reason for it. The Board emphasized that until her interview with the Danish Immigration Service on 29 March 2012, the author had not mentioned that she was allegedly wanted by the Chinese authorities at the time of her departure, whereas she had given no specific reason for her departure in previous interviews with the police on 17 November 2011, with the Danish Centre against Human Trafficking on 18 November 2011, with the police on 28 November 2011 and in her asylum application form of 29 November 2011. During the interview with the Danish Immigration Service, the author had stated that her mother feared for her and that the author subsequently came into contact with Y.B., who helped her with her departure, whereas she had stated to the Refugee Appeals Board

<sup>2</sup> The author refers to the concluding observations of the Committee against Torture (CAT/C/CHN/CO/4), para. 25.

<sup>3</sup> The author refers to UNHCR Guidelines on international protection: religion-based refugee claims under article 1 A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees; a UNHCR statement of 17 June 2011 on religious persecution and the interpretation of article 9 (1) of the European Union qualification directive (directive 2004/83/EC); and the judgment of the European Court of Justice in the joined cases C-71/11 and C-99/11, *Federal Republic of Germany v. Y and Z*, which concerns the interpretation of the European Union qualification directive.

<sup>4</sup> The author refers to the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/DEN/CO/17), para. 13.

that it was Y.B. who told her mother that she was wanted. The author was not able to describe in detail why she, who had not practised Falun Gong in public or carried out activities for the movement since her most recent release from detention, had allegedly again become of interest to the authorities, nor how Y.B. had found out about that. The author's statement to the Board about her departure from China did not seem to reflect a personal experience. The Refugee Appeals Board also emphasized that the author had left China with a genuine passport and visa, and that it was not credible that she would have paid a large sum of money for such help with her departure without at the same time obtaining accurate instructions as to what to do when she reached the Netherlands and without any detailed information on the possibilities of seeking asylum in Europe. The Board therefore attached no importance to the author's statements that it was out of fear of the European authorities that she had applied for asylum only upon her arrest in Denmark, more than one year after her entry into Europe, and found that her statement concerning her motive for seeking asylum was undermined by the length of the period from her entry into the Netherlands until she applied for asylum in a European country.

4.3 The Refugee Appeals Board found itself unable to grant asylum based on the author's subjective fear of returning to China because of the outrages to which she had previously been subjected. In its assessment of this, the Board emphasized that the author had not left China until a good three years after her release from detention, that her departure was legal and that her fear was not supported by other objective circumstances. The Board therefore found that the author would not be at any concrete and individual risk of persecution falling within section 7 (1) of the Aliens Act if she returned to her country of origin. Similarly, the Board found that the author would not be at any risk of being subjected to matters falling within section 7 (2) of the Aliens Act.

4.4 The State party further submits that the Refugee Appeals Board observed in its decision of 16 November 2012 on the author's request the asylum proceedings to be reopened, *inter alia*, that the author had been questioned about and had had the opportunity to describe her Falun Gong activities and their significance to her to the Danish Immigration Service and the Board during the asylum proceedings. In that context, the Board noted in its decision of 16 November 2012 that the author had stated during the interview with the Danish Immigration Service on 29 March 2012 that she had broken with the Falun Gong movement in 2003 and that she had not subsequently had any affiliation with or carried out activities for Falun Gong. Additionally, the author had stated both at that interview with the Danish Immigration Service and at the Board hearing that she had only carried out physical Falun Gong exercises in her home and a few times on strolls since 2007 and that she had experienced no problems in that connection. The author had further stated that, to her, Falun Gong did not concern the mind or politics, but was merely a way of improving her health. Accordingly, by her own description, the author's practice of physical exercises known to her from Falun Gong was motivated neither by religion nor politics.

4.5 Against that background, the Refugee Appeals Board found that the author, who appeared not to stand out in any way whatsoever, except for the previous instances of deprivation of liberty, had not proved on a balance of probabilities that she would risk persecution falling within section 7 (1) of the Aliens Act or outrages falling within section 7 (2) of the Act as a consequence of activities for Falun Gong if she returned to China.

4.6 The State party proceeds to provide a detailed description of the tasks and composition of the Refugee Appeals Board, proceedings before it and the legal basis of its decisions.<sup>5</sup>

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<sup>5</sup> For a full description, see communication No. 2379/2014, *Obah Hussein Ahmed v. Denmark*, Views adopted on 7 July 2016, paras. 4.1- 4.3.

4.7 As to the admissibility of the communication, the State party argues that it is the responsibility of the author to establish a prima facie case for the purpose of admissibility of the communication under articles 2, 6, 7, 14, 18, 26 and 27 of the Covenant by satisfying each of the requirements of rule 96 (b) of the Committee's rules of procedure. It submits that the claims brought by the author are not sufficiently substantiated for her to be regarded as a victim, and that the communication should therefore be declared inadmissible.

4.8 On the merits, the State party submits that its obligations under articles 6 and 7 of the Covenant are reflected in section 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or cruel, inhuman or degrading treatment or punishment if he or she returned to his or her country of origin. The State party further notes that the other obligations cited by the author, except for article 14 of the Covenant, all relate to discrimination on the grounds of religion to which the author will allegedly be subjected if she returns to China.

4.9 In that context, the State party recalls that the provisions of article 2 of the Covenant, which lay down general obligations for States parties, cannot by themselves, and without being linked to another provision, give rise to a claim in a communication under the Optional Protocol. It also submits that, as follows from the Committee's previous jurisprudence in individual cases, articles 18, 26 and 27 of the Covenant do not in themselves have extraterritorial effect, but may indirectly gain such effect if discrimination must be expected to reach an intensity and extent which attracts the protection of the principle of non-refoulement in article 7 of the Covenant.

4.10 As regards the assessment of whether there is a risk that the author would endanger her life or be exposed to the risk of torture or cruel, inhuman or degrading treatment or punishment upon her return to China, the State party refers to the decisions of the Refugee Appeals Board of 15 August 2012 and 16 November 2012. The State party also observes that, according to the author's submissions, it is presupposed in the Board's decision of 15 August 2012 that she must conceal her religious identity in order to avoid further persecution if she returns to China. However, that is not the case. As appears from its decision of 16 November 2012, the Board emphasized the author's own statements about her affiliation with Falun Gong, including particularly her statements to the Danish Immigration Service on 29 March 2012 and at the Board hearing on 15 August 2012 (see, para. 4.4 above). At no time during the examination of her application for asylum did the author state that she had had to conceal or suppress her religious persuasion since 2007 out of fear of further persecution or outrages, or that she adhered to Falun Gong as a religion at the present time. The State party also observes that the author stated during the asylum proceedings that she had become interested in Christianity during her stay in Denmark and was considering being baptized. Accordingly, there are no specific grounds for assuming that, in view of her personal situation, the author can reasonably be expected to perform religious acts that will place her at risk of becoming subjected to persecution or outrages justifying asylum upon her return to her country of origin.

4.11 The State party further notes that, in its decision of 15 August 2012, the Refugee Appeals Board considered whether the outrages to which the author had been subjected from 1999 to 2007 would afford grounds for asylum under section 7 of the Aliens Act at the present time. The Board found no basis for such a conclusion. Similarly, it found no other facts that might give rise to persecution or outrages upon her return to China, as it was unable to accept the author's description of the sequence of events leading up to her departure in 2010 (see, para. 4.2 above).

4.12 Concerning the reference made by the author's counsel to the preliminary ruling of the European Court of Justice in the joined cases C-71/11 and C-99/11, *Federal Republic of Germany v. Y and Z*, the State party notes that the European Court of Justice established

that the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising his or her right to freedom of religion in the country of origin, runs a genuine risk of persecution or outrages justifying asylum. The person concerned would thus have a well-founded fear of persecution or outrages justifying asylum if it might reasonably be expected that, upon his or her return to the country of origin, he or she would engage in religious practices which would expose him or her to a real risk of persecution or outrages justifying asylum. The competent authorities cannot reasonably expect the person concerned to abstain from those religious practices. In that context, the State party refers to the fact that the author of the present communication has not presented any information on her situation which would affect the assessment of her case in light of this ruling.

4.13 As to the author's claim under article 14 of the Covenant, the State party submits, with reference to the European Court of Human Rights, which has consistently excluded asylum and expulsion proceedings from the scope of application of the similarly-phrased article 6 of the European Convention on Human Rights in its jurisprudence, that asylum proceedings do not constitute civil rights and obligations and therefore fall outside the scope of article 14 of the Covenant.

4.14 Should the Committee find that asylum proceedings do fall within the scope of article 14 of the Covenant, the State party submits that the author has failed to establish that she has been deprived of her right to access to the courts. In that respect, the State party points out that the Refugee Appeals Board is a quasi-judicial body which qualifies as a competent, independent and impartial tribunal established by law. The Board's decision was further based on a procedure, during which the author had the opportunity to present her views, both in writing and orally, to the Board with the assistance of legal counsel. The Board conducted a comprehensive and thorough examination of the evidence in the case. The author has thus been granted access to a hearing as described in article 14 of the Covenant.

4.15 Furthermore, article 14 (5) of the Covenant only applies to criminal cases. The author's remarks on whether the Refugee Appeals Board handles appeals or not and whether its decisions can be brought before the regular courts are thus, regardless of whether or not asylum proceedings fall within the scope of article 14, immaterial to the case at hand.

4.16 In conclusion, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of her communication under articles 2, 6, 7, 14, 18, 26 and 27 of the Covenant and that the communication is therefore manifestly ill-founded and should be declared inadmissible. Should the Committee find the communication admissible, the State party further submits that it has not been established that there are substantial grounds for believing that the author will be in danger of being subjected to torture, or cruel, inhuman or degrading treatment or punishment if returned to China and that the return of the author to China therefore does not constitute a violation of articles 6 or 7 of the Covenant. Nor will the author's rights under articles 2, 14, 18, 26 or 27 be violated, as they are articles which do not in themselves have extraterritorial effect.

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

5.1 In her comments of 27 February 2013 on the State party's observations on admissibility and the merits, the author submits that she was held in immigration detention in Denmark from 24 October 2012 until late November 2012 with a view to her being deported to China. The legality of her detention was challenged by the author's counsel up to the Board of Appeal of the Danish Supreme Court, which, on 6 December 2012, rejected the application for permission to appeal against the administrative detention order upheld by the High Court on 12 November 2012. Since all domestic remedies with regard to her

immigration detention have now been exhausted, the author wishes to add a new claim of an additional violation by the State party of her rights under article 7 of the Covenant, on the grounds that such detention constitutes inhuman treatment owing to her previous detention and torture in China, the trauma of which has been revived by her detention in Denmark.

5.2 The author further submits that the Danish authorities have never doubted that she belonged to Falun Gong and accepted as facts her statements as regards her detention by the Chinese police because of her practice of Falun Gong. Despite the fact that she consented to an examination for signs of torture, such an examination was never carried out.<sup>6</sup>

5.3 As to the State party's argument that it was only on 29 March 2012 that the author told the Danish Immigration Service for the first time that she was allegedly wanted by the Chinese authorities at the time of her departure, the author submits that she did not mention this information to the police who apprehended her in November 2011, because she was not asked the question by the police. Since the police are not in charge of asylum applications, it was not the role of the police to seek such information. The author adds that since the Danish Centre against Human Trafficking does not deal with asylum applications either, she was under no obligation to mention at the interview with them on 18 November 2011 that she was wanted by the Chinese authorities at the time of her departure.

5.4 In response to the State party's argument that the present communication is manifestly ill-founded and should therefore be declared inadmissible (see paras. 4.7 and 4.16 above), the author reiterates that it is admissible for the reasons explained in her initial submission and that the State party has failed to substantiate its claim as to why it should be considered manifestly ill-founded.

5.5 As to the facts on which the present communication is based, the author submits, with reference to her statements during the asylum proceedings, that during her first detention period in China she was asked to sign a statement declaring that Falun Gong was a "harmful movement". She was asked to do the same during her second detention. Having been subjected to torture in the course of her third detention, the author eventually signed a statement, declaring that Falun Gong was a subversive movement and committing not to carry out any activities for it at any time in the future. For that reason, she was no longer able to openly perform her Falun Gong activities. She therefore did not practise Falun Gong in public from 2007 until her departure from China in 2010, because she was afraid to do so and not because she no longer believed in Falun Gong. The author submits that, contrary to what is claimed by the State party (see paras. 4.4 and 4.10 above), she has "broken with Falun Gong" not of her free will but owing to the violence and inhuman treatment to which she was subjected by the Chinese authorities. Although she was afraid to practise Falun Gong activities after having been detained, she believed that she had to fight for her convictions. The author adds that, whereas for her Falun Gong is a religious conviction, the Chinese authorities also take it as a political conviction, which is in opposition to the Communist Party.

5.6 The author further submits that the decision of the Refugee Appeals Board not to reopen her asylum proceedings was signed by a staff member of the Board's secretariat, rather than by a member of the Board itself, and that it simply reproduced the errors and misinterpretations from the impugned decision of the Board of 15 August 2012. The author also points to a number of inaccuracies in how that decision of the Board was misrepresented by a staff member of the Board's secretariat who examined her request to reopen asylum proceedings. For instance, whereas the Board accepted that Falun Gong was the author's faith and only questioned why she should be subjected to persecution by the

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<sup>6</sup> The author refers to Committee against Torture communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012, paras. 5.10, 5.11 and 8.8.

Chinese authorities since she had not practised Falun Gong in public after she had signed the declaration that Falun Gong was a harmful movement (see para. 5.5 above), the staff member of the secretariat asserted that Falun Gong was not the author's religion but only a way of improving her health. In that context, she reiterates her initial claim that asylum seekers should be granted the right to appeal against the decisions of the Board to a higher judicial instance, as is already the case, for example, in England, Germany and Norway. She also argues in great detail that the legal system for asylum determination in Denmark is contrary to the Covenant and that there are significant shortcomings in the composition and functioning of the Board.

5.7 The author argues that the State party is discriminating against her on the ground of her national origin as far as the right to due process under article 14 of the Covenant and the right to the equal protection of the law under article 26 of the Covenant are concerned. According to section 63 of the Danish Constitution, any decision of a public body can be invoked by the citizens before a court. The only exemption from this rule is the group of asylum seekers, who are, as is the author, discriminated against in this regard. By way of example, the author refers to a hypothetical negative decision of the Danish Immigration Service on an application for family reunification submitted by a Danish national and a foreign spouse that can be appealed first to the Immigration Appeals Board and then to the ordinary Danish courts.

5.8 The author further argues that her deportation to China would result in a violation by the State party of articles 6 and 7 of the Covenant, as she fears that she will be tortured again and possibly killed on her return because of her affiliation with Falun Gong. In that context, she states that a large number of female members of Falun Gong have been killed by the Chinese authorities.<sup>7</sup> The author argues that she will only be able to live in China if she continues to hide her religious beliefs and not practise her religion in public. She submits therefore that the test should be what would happen to her if she returned to China and openly practised Falun Gong. If such open practice leads to persecution in the country of origin, then the deportation should not take place. Furthermore, as the author is already known to the Chinese authorities from the time of her imprisonment and since the Danish authorities were in contact with the Chinese authorities in November 2012 with a view to deporting her, she fears that she will be detained on arrival in Beijing by the airport police and subjected to interrogation and torture.

5.9 As to the State party's arguments in relation to the author's claims under article 14 of the Covenant (see paras. 4.13-4.15), the author submits that the Committee should use the opportunity presented by the present communication to conclude that asylum is a civil right covered by article 14 of the Covenant and to establish a violation thereof, since the author is not allowed to appeal the decisions of the Refugee Appeals Board of 15 August 2012 and 16 November 2012 to the ordinary Danish courts.

5.10 The author submits that, although articles 18 and 27 of the Covenant may not have extraterritorial effect on their own, seen together with the principle of non-refoulement in article 7 of the Covenant they provide the standard for the kind of religious activities protected under the Covenant. In other words, the right to freedom of religion, together with the right not to be subjected to torture or inhuman treatment, are among the rights covered by the Covenant. The author, who had performed religious activities covered by articles 18 and 27 of the Covenant, was detained and tortured by the Chinese authorities on a number of occasions because of her affiliation with Falun Gong and eventually prevented from exercising her religious freedom when she was forced to sign the declaration that Falun Gong was a harmful movement (see para. 5.5 above). She argues, therefore, that her right to

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<sup>7</sup> The author refers to the report compiled by the Falun Gong Human Rights Working Group "The Falun Gong report 2003. The Chinese Government's State terrorism against woman and children".



freedom of religion was violated in China and that the State party should respect her right to freedom of religion by providing her with protection in Denmark.

#### **Further submissions from the author and the State party**

6. On 21 October 2013, the author submits that the Refugee Appeals Board recently granted asylum to another asylum seeker from China. That person's first asylum request in Denmark owing to his persecution in China on the grounds of affiliation with Falun Gong was rejected by the Danish authorities. He was deported to his country of origin in 2007, where he was again detained and tortured. Consequently, he returned to Denmark and again applied for asylum, which was granted to him on 10 June 2013.

7. On 17 December 2013, the State party submits that the decision of the Refugee Appeals Board of 10 June 2013, referred to by the author, substantially differs from the present case. In that decision, the Board accepted as a fact that the applicant had taken part in demonstrations in China and that in connection with those demonstrations he had been imprisoned and exposed to outrages by the Chinese authorities. Against that background, the Board found that the applicant would be at risk of persecution, as "a suspect of active, oppositional activities against the Chinese Government" if returned to China. Thus, the State party maintains, as stated in its observations of 21 January 2013, that the present communication is manifestly ill-founded and should be declared inadmissible. Should the Committee find the communication admissible, the State party further maintains that no violations of the Covenant have occurred.

8. On 11 March 2016, the author's counsel submitted that his client "managed to enter China" after having been deported from Denmark and now lives in hiding in Beijing with "some Christians who provide shelter". She does not dare to go back to her home and describes her situation as very bad, since she cannot work officially or be part of normal public life. The author is still interested in the consideration of her communication by the Committee, since she is aware that the Danish authorities twice had to take back to Denmark the authors of other communications to the United Nations after they had been deported to Afghanistan.

9. On 12 April 2016, the State party referred to its observations of 21 January 2013 and stated that counsel's further submission of 11 March 2016 did not give rise to any further comments from the State party.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

10.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.

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

10.3 The Committee takes note of the author's claim that domestic remedies have been exhausted. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

10.4 As to the State party's argument that the author's claim under article 6 of the Covenant should be declared inadmissible owing to insufficient substantiation, the Committee notes that the information submitted to it does not provide sufficient grounds to

believe that the author's removal to China would expose her to a real risk of a violation of her right to life. The author's contentions in this respect are general allegations mentioning the risk of persecution and imprisonment, which could ultimately lead to her death due to torture, without indicating however that she has experienced any direct threat to her life. In these circumstances, the Committee considers that the author has not sufficiently substantiated her claims under article 6 of the Covenant and therefore declares this part of the communication inadmissible pursuant to article 2 of the Optional Protocol.

10.5 Concerning the author's claims under article 14 of the Covenant that she was unable to appeal the negative decisions of the Refugee Appeals Board to a judicial body, the Committee refers to its jurisprudence that proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14 (1) but are governed by article 13 of the Covenant.<sup>8</sup> Furthermore, the latter provision offers to asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial courts.<sup>9</sup> On that basis the Committee concludes that the author's claims under article 14 are inadmissible *ratione materiae* under article 3 of the Optional Protocol.

10.6 With regard to the author's claims under articles 2 and 26 of the Covenant that the State party is discriminating against her on the grounds of her national origin and her status as an asylum seeker, the Committee notes that she has failed to provide sufficient substantiation in support of her claims and, consequently, considers this part of the communication inadmissible under article 2 of the Optional Protocol.

10.7 The Committee notes the State party's argument that the author's claims with respect to articles 7 and 18 of the Covenant should be declared inadmissible, owing to insufficient substantiation, and its objections with regard to the extraterritorial application of article 18 of the Covenant. The Committee notes that the author has explained that the reasons she feared being returned to China were based on the detention and treatment that she had allegedly suffered as a result of her religious beliefs, and on country information concerning the ill-treatment of Falun Gong practitioners. The Committee finds that for the purposes of admissibility, the author has provided sufficient details regarding her personal risk of cruel, inhuman or degrading treatment or punishment as an alleged Falun Gong practitioner if she were returned to China and therefore finds the author's claims under article 7 admissible.<sup>10</sup> As for the allegations concerning a violation of article 18, the Committee considers that they cannot be dissociated from the author's allegations under article 7, which must be determined on the merits.<sup>11</sup>

10.8 As to the author's separate claim that her detention from 24 October 2012 until late November 2012 with a view to her being deported to China constituted inhuman treatment due to her previous detention and torture in China and thus violated her rights under article 7 of the Covenant, the Committee considers that the author has failed to provide any information to substantiate this allegation. Accordingly, the Committee concludes that this part of the communications is insufficiently substantiated, for purposes of admissibility and is therefore inadmissible under article 2 of the Optional Protocol.

10.9 With regard to the author's claim under article 27 of the Covenant, the Committee notes that the author has failed to provide sufficient information to enable the Committee to

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<sup>8</sup> See, inter alia, communication No. 2291/2013, *A and B v. Denmark*, Views adopted on 13 July 2016, para. 7.3.

<sup>9</sup> See, inter alia, communication No. 2288/2013, *Omo-Amenaghawon v. Denmark*, Views adopted on 23 July 2015, para. 6.4, and general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.

<sup>10</sup> See communication No. 1957/2010, *Z.H. v. Australia*, Views adopted on 21 March 2013, para. 8.6.

<sup>11</sup> See communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 8.4.

consider that the facts of the communication raise issues under this article of the Covenant. The Committee is therefore of the opinion that this part of the communication is not substantiated and is inadmissible under article 2 of the Optional Protocol.

10.10 The Committee therefore declares the communication admissible, insofar as it appears to raise issues under articles 7 and 18 of the Covenant and proceeds with its consideration of the merits.

*Consideration of the merits*

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

11.2 The Committee notes the author's claim that as a person affiliated with Falun Gong, she would face persecution, imprisonment and torture if she were forcibly returned to China and that she would only be able to live in China if she continued not to practise her religion in public. It also notes the State party's observations that the Refugee Appeals Board accepted as facts the author's statements as regards her detention by the Chinese police owing to her practice of Falun Gong, but could not accept her statement of being wanted by the Chinese authorities at the time of her departure from China.

11.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (para. 12), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal<sup>12</sup> and that there is a high threshold for providing substantial grounds for establishing that a real risk of irreparable harm exists. Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>13</sup>

11.4 The Committee also recalls its jurisprudence that important weight should be given to the assessment conducted by the State party's authorities and that it is generally for the organs of States parties to the Covenant to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>14</sup>

11.5 In that context, the Committee notes the author's assertion that the State party's authorities have failed to assess as a risk factor what would happen to her if she returned to China and openly practised Falun Gong. While noting that there are reports of serious human rights violations in China against Falun Gong practitioners, especially those who hold a prominent position in the movement, the Committee observes, however, that the author's asylum application was thoroughly examined by the State party's authorities, which found that she did not demonstrate an actual commitment to the practice of Falun Gong as a matter of religious or political conviction. In addition, it appeared that the author had become interested in Christianity during her stay in Denmark and was considering being baptized. The Refugee Appeals Board also found that the author had made inconsistent and embellished statements about crucial parts of her motives for seeking asylum, including her departure and the reason for it. In particular, the author was not able to describe in detail why she, who had not practised Falun Gong in public or carried out

<sup>12</sup> See, inter alia, communication No. 2393/2014, *K. v. Denmark*, Views adopted on 16 July 2015, para. 7.3, and communication No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2.

<sup>13</sup> See, inter alia, *X v. Denmark*, para. 9.2, and communication No. 1833/2008, *X v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

<sup>14</sup> See, inter alia, *X v. Denmark*, para. 9.2, *P.T. v. Denmark*, para. 7.3, and *X v. Sweden*, para. 5.18.

activities for the movement since her most recent release from detention, had allegedly again become of interest to the authorities. Furthermore, the Board emphasized that the author did not leave China until a good three years after her most recent release, that her departure was legal and that her fear was not supported by other objective circumstances and evidence. Although the author disagrees with the factual conclusions of the State party's authorities on her asylum application, she has failed to demonstrate that the decision to refuse her protection under sections 7 (1) and (2) of the Aliens Act was clearly arbitrary or amounted to a denial of justice. In the light of the above, the Committee cannot conclude that the information before it shows that the author's removal to China was contrary to articles 7 and 18 of the Covenant.

12. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to China did not violate her rights under articles 7 and 18 of the Covenant.

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