



## 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. 2240/2013\*, \*\*

<i>Communication submitted by:</i>	M.A. (represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	12 April 2013 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 92 and 97 of the Committee's rules of procedure, transmitted to the State party on 15 April 2013 (not issued in document form)
<i>Date of adoption of Views:</i>	17 March 2017
<i>Subject matter:</i>	Removal to Afghanistan
<i>Procedural issue:</i>	Insufficient substantiation of claims
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6, 7 and 14
<i>Articles of the Optional Protocol:</i>	2, 3 and 5

1.1 The author of the communication is M.A., a national of Afghanistan, born in 1970. His asylum application in Denmark was rejected and he risked deportation to Afghanistan. In his initial submission, he claimed that Denmark had violated his rights under article 14 of the Covenant, and that in case of his forcible return to Afghanistan, his rights under articles 6 and 7 would also be violated. The Optional Protocol entered into force for Denmark on 23 March 1976. The author is represented by counsel, Niels-Erik Hansen.

1.2 When submitting the communication, on 12 April 2013, the author requested that, pursuant to rules 92 and 97 of its rules of procedure, the Committee request that the State party refrain from removing him to Afghanistan pending the consideration of his case. On 15 April 2013, the Committee, acting through its Special Rapporteur on new

\* Adopted by the Committee at its 119th session (6-29 March 2017).

\*\* The following members of the Committee participated in the examination of the communication:  
Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



communications and interim measures, decided not to accede to the request. The author was deported to Afghanistan on the same day.

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

2.1 The author lived in Kabul Province. He is ethnic Tajik and a Sunni Muslim. From 1985 to 1992 he was a member of the Khalq Party, Parcham wing, and was the representative of the youth branch of the party at his school. He had higher education and trained as an engineer. He then attended a military school in Kabul and held the rank of lieutenant colonel. After his studies, he served in the Air Force as an engineer. When the mujahidin came to power,<sup>1</sup> he stopped his political activities and lost his job. Later, he worked in the Ministry of Rural Rehabilitation and Development. Between 2005 and 2009, he worked for the ministry responsible for roadbuilding, reconstructing roads in different provinces.

2.2 On 19 August 2009, he was in Ghazni Province with two colleagues. They took a taxi. At some point, the car suddenly turned off the road and onto a dirt track. The colleague in the front seat tried to stop the car by grabbing the steering wheel, but the driver, who belonged to the Taliban, cut his neck with a knife, resulting in a serious injury. The author and the other colleague who had been in the back seat of the taxi were forced to get out of the car. They tried to defend themselves, but another person with a large knife appeared and the author was seriously injured.<sup>2</sup> He fainted and was brought to a hospital.<sup>3</sup> He stayed for three months in the public hospital and was then transferred to a private hospital where he stayed for almost a year. The author claims that neither he nor his colleagues had realized that the taxi driver was a member of the Taliban, as he was dressed in the habitual manner of that region.

2.3 On 6 March 2011, about four months after he had been discharged from the hospital, members of the Taliban knocked at the front door of the family home. The author had been carrying out maintenance on the roof and saw three persons armed with Kalashnikovs. The police were contacted and arrived in a matter of minutes;<sup>4</sup> one of the three persons was killed, while the others fled. Ten to 15 days later, the author and his family moved to a nearby house. On 21 June 2011, the author left Afghanistan and travelled to Turkey. He claims that he had almost no contact with his relatives in Afghanistan. However, he was informed that his car, in which his wife and another relative were travelling, had been fired at.

2.4 The author arrived in Denmark on 9 September 2011 without valid travel documents and requested asylum, initially appearing at the Copenhagen City police department. He argued that, if returned to Afghanistan, he would again face persecution by the Taliban. He claims that since he had participated in construction financed, sponsored or carried out by foreign entities, the Taliban suspected that he worked for a foreign army. Moreover, he would also be persecuted due to the fact that he can identify the taxi driver who assaulted him and his colleagues. He has had to have surgery on his abdomen several times as a consequence of the 2009 attack. He also claims that he had no affiliation with a militia and that he had never been arrested or subjected to any house search by the authorities. He further claims that his relatives had faced problems caused by the Taliban, without however providing further details.

2.5 On 7 December 2011, the Danish Immigration Service refused to grant asylum to the author, owing to inconsistencies in his statements over time that led to the conclusion that he lacked credibility.

2.6 The author appealed this decision to the Refugee Appeals Board. He claimed that there was no contradiction in his statements and reiterated his assertion that he would be subjected to persecution by the Taliban if returned to Afghanistan. On 21 November 2012,

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<sup>1</sup> Around 1995.

<sup>2</sup> The author provided a medical certificate from the Danish Red Cross regarding scars on his torso consistent with gunshot and knife wounds. The report is not translated.

<sup>3</sup> The author thinks this must have been by the colleague who escaped, who went for help.

<sup>4</sup> They were able to arrive quickly owing to the proximity of a checkpoint.

the Board dismissed the author's appeal. The Board stated that his statements did not appear credible and that there were inconsistencies regarding important facts related to the alleged events, such as the manner in which the driver assaulted his colleague, who was seated in the front of the taxi; the fact that it took a year and seven months for the Taliban to find him at his house; the fact that the Taliban members stayed in front of his house for several minutes, allowing the police sufficient time to respond to his call; and his claim that he and his family were safe by moving to another house only one mile away, and that they only moved 10 to 15 days after the Taliban visited his house. It was also noted that his health condition could not justify his residence in the State party's territory under section 7 of the Aliens Act and that the Board had no competence to grant a residence permit under provisions that were not in that section. Requests for residence under other grounds had to be filed before the Danish Immigration Service and the Ministry of Justice.

2.7 On 4 December 2012, the author requested the Board to reopen his asylum case. He claimed that the Board's decision of 21 November 2012 was based on a linguistic misunderstanding that led to differences in the description of the manner in which the taxi driver attacked the author's colleague. He stated that the term "halal" could be used to describe a range of situations, from the throat being cut to the head being cut off. On 8 April 2013, the author's counsel asked the Board for an early decision in the matter.<sup>5</sup>

2.8 On 12 April 2013, the Board held that there was no significant new information in the author's request. The Board therefore reiterated its previous reasoning, further asserting that the author had been advised during the proceedings that his statements were inconsistent but did not provide sufficient clarity to reverse the finding.

### **The complaint**

3.1 The author claims that the State party's denial of refugee status and his deportation, having regard to the circumstances surrounding his situation in Afghanistan prior to his departure, in particular the fact that he was stabbed by members of the Taliban and was sought out by them at his home after he was stabbed, constitutes a violation of articles 6 and 7 of the Covenant.

3.2 The author asserts that the Danish authorities did not adequately assess the risk he would be subjected to if he were to be returned to Afghanistan. The Taliban operates in the whole country and he claims that he may be subjected to persecution due to his previous job with the road construction department of the Ministry of Rural Rehabilitation and Development and the fact that he can identify the taxi driver who assaulted him and his colleagues on 19 August 2009.

3.3 The author also argues that his rights under article 14 have been violated, as he was not afforded the opportunity to appeal the Refugee Appeals Board's decision before a court of law.

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

4.1 On 15 October 2013, the State party submitted its observations on the admissibility and merits of the author's communication.

4.2 The State party submits that the author's communication should be declared inadmissible on the grounds that the provisions of the Covenant were not breached when the author was returned to Afghanistan.

4.3 The State party refers to statements made by the author at different stages of the asylum proceedings: in his asylum application form, in his interview with the Danish Immigration Service on 21 November 2011, in a brief from the author's counsel, of 7 November 2012, and at a hearing before the Refugee Appeals Board, on 21 November 2012.

<sup>5</sup> In order to be able to submit a petition to the Committee before his deportation, which had already been scheduled for 15 April 2013.

4.4 The State party notes that, in its opinion, the Refugee Appeals Board stated that the author, as his grounds for asylum, referred to the fact that on 19 August 2009 he, as a manager in a ministry that was associated with the United Nations Development Programme, was to attend a meeting in Ghazni and had taken a taxi together with two colleagues. The driver, who turned out to be a member of the Taliban, had suddenly turned off the road and had cut the throat of the passenger in the front, and the author had been attacked by the driver and another person with knives. He had had his stomach cut open, had been hit in the head and had fallen unconscious. The other passenger had escaped. He had seen the face of the Taliban member who had attacked him. He had been hospitalized for over a year after the incident and had suffered severe and permanent injuries. Furthermore, he stated that on 6 March 2011, three Taliban men had come to his house with weapons while he hid on the roof. After the author's departure from Afghanistan, shots had been fired at the author's car when his brother-in-law was driving in it with the author's wife and children. The author feared that he would be killed by the Taliban if he were returned to his country of origin.

4.5 The Refugee Appeals Board held that it could not accept the author's statements, as he had given inconsistent statements during the asylum proceedings, and furthermore, his statements did not appear credible. Specifically, prior to the hearing before the Board, the author had stated that the front-seat passenger had had his throat cut by the driver, whereas before the Board the author had stated that the driver had stuck his knife through the passenger's neck so that the blade came out the other side. Furthermore, the Board found it lacking in credibility that on 19 August 2009 the taxi had stopped at the very place where a person with a knife could come to the aid of the driver, particularly having regard to the author's statement that the taxi had stopped suddenly owing to a hole in the road, after a scuffle during which the front-seat passenger had tried to grab the steering wheel. The Board found that it lacked credibility for one year and seven months to have passed between the knife attack and the Taliban seeking out the author at his home. Moreover, the fact that the Taliban had waited at the door for several minutes on 6 March 2011, which according to the author was ample time to call for help, was not credible. The Board also found lacking in credibility the claim that the author and his family had not moved house until 10 to 15 days after members of the Taliban had come to the family home.

4.6 The State party points out that upon overall assessment, the Board found that the author had not rendered it probable that he would be at risk of concrete and individual persecution in case of his return to his country of origin.

4.7 In relation to the Board's refusal of 12 April 2013 to reopen asylum proceedings in the author's case, the Board had held that the author's application was grounded on his contention that its decision of 21 November 2012 was based on a linguistic misunderstanding concerning the word "halal" and that in an Afghan context the word meant slaughter, whether or not only the throat was cut, or the head was cut off altogether.<sup>6</sup> The author also stated that he was in pain every day as a consequence of the attack on him by the Taliban during which he had been stabbed with a knife in the region of the stomach. The application was rejected on the grounds that no new substantial information had been presented and therefore the Board was able to rely on its decision of 21 November 2012 in which it had decided that its findings could not be based upon reliance on the statements of the author, owing to inconsistencies which led to a finding that he lacked credibility. The Board also observed that the author's statement concerning the use of the word "halal" could not lead to a different outcome, as it did not resolve the inconsistency as to the method of injuring the neck of the author's colleague. Moreover, the Board found that his statements lacked consistency on several other points.

4.8 Finally, the Board finally observed that, although it had been aware of the scars and wounds on the author's body at the original hearing of the case, his state of health was not in itself relevant to asylum proceedings. Against that background, the Board had found that the author had not rendered it probable that he would face a risk of persecution that would justify asylum.

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<sup>6</sup> Referring to perceived inconsistencies in his explanation of what happened to his colleague who was travelling in the front seat of the taxi on 19 August 2009.

4.9 The State party explained the activities, organization and jurisdiction of the Refugee Appeals Board, and explained that decisions of the Board were final, which meant that there was no avenue for appeal against the Board's decisions. However, under the Constitution, aliens may bring an appeal before the ordinary courts, which have jurisdiction to adjudicate any matter concerning the limits to the competence of a public authority. This is limited to a review of points of law, including shortcomings in the basis of the decision and the illegal exercise of discretion. The Board's assessment of the evidence before it is not subject to review.<sup>7</sup>

4.10 In reference to the author's submissions, the State party refers to his communication to the Committee stating that returning him to Afghanistan would constitute a breach of article 6 or 7 of the Covenant as he would risk persecution by the Taliban.

4.11 The State party reiterates that the author's counsel observed in his communication to the Committee that the Refugee Appeals Board found the author's asylum grounds, concerning the attack and injury, to be lacking in probability and credibility. In that connection, the counsel for the author stated that the fact of the injuries suffered by the author was proof that he had been persecuted prior to his departure from Afghanistan. His counsel therefore asserted that upon return to Afghanistan the author risked being subjected to further persecution, contrary to article 6 or 7 of the Covenant.

4.12 The State party refers to the fact that the author's counsel had submitted that the Refugee Appeals Board had called into question the author's credibility, despite the fact that it appeared from the Danish Red Cross certificate that the author had scars from being shot and stabbed. He stated that those objective facts had to be seen together with the general situation in Afghanistan for persons attacked by the Taliban.

4.13 The State party submits that the author had in fact failed to show a prima facie case for the purpose of admissibility of his communication under articles 6 and 7 of the Covenant, under rule 96 (b) of the rules of procedure of the Committee, as it had not been established that sufficient grounds existed on which to believe that the author was in danger of being subjected to torture when he was returned to Afghanistan. The State party therefore claims that the author's communication is manifestly unfounded and should be declared inadmissible. The State party also asserted that it was the responsibility of the author to establish a prima facie case for the purpose of admissibility under rule 96 of the Committee's rules of procedure. Should the Committee find the author's communication admissible, the State party submits that the author has not sufficiently established that the return of the author to Afghanistan constitutes a violation of articles 6 and 7 of the Covenant.

4.14 The State party reiterates that article 6 protects the right to life, which has both a negative component, of not depriving someone of their life, and a positive component, in that the State party should adopt measures to protect the right to life.<sup>8</sup> It follows that article 7, which states that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment,<sup>9</sup> has as its aim the protection of both the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through such legislative and other measures as may be necessary against acts prohibited by article 7.

4.15 The State party also reiterates the jurisprudence contained in the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, according to which States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by non-refoulement. Furthermore, it explained how the obligations under articles 6 and 7 were reflected in domestic provisions, under section 7 (2) of the Aliens Act.

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<sup>7</sup> For a full explanation of proceedings before the Refugee Appeals Board, please refer to the Views of the Committee in communication No. 2422/2014, *Z v. Denmark*, Views adopted on 11 March 2016.

<sup>8</sup> The State party refers to the Committee's general comment No. 6 (1982) on the right to life, para. 1.

<sup>9</sup> The State party cites general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment.

4.16 Coming to the examination of the author's case by the Refugee Appeals Board, the State party asserts that the decision to uphold the refusal by the Danish Immigration Service to grant asylum was made by the Board on the basis of a comprehensive and thorough examination of the evidence in the case, comprising a specific and individualized assessment of the author's asylum grounds combined with its background knowledge of the general situation in Afghanistan and the specific details of the case. The State party therefore asserts that the author is attempting to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim for asylum reassessed by the Committee. The State party submits that the Committee must give considerable weight to findings of the Board, which is better placed to assess findings of fact in the author's case. The State party also avers that all information, including the author's medical record from the Danish Red Cross, was taken into consideration in forming its decision. The State party provided an official translation of the Board's decision.

4.17 Regarding the assessment made by the Board as to the credibility of the author's statements, the State party reiterated the decision of the Board of 21 November 2012 in which it was found that the author had not rendered it probable that he would be persecuted upon his return to Afghanistan. The conclusion was reached on the basis of the author having made inconsistent statements during the proceedings and the fact that his statements were not credible. The State party therefore submitted that there was no reason to question the assessment made by the Board.

4.18 The State party also observes on this point that the author's statement on the attack in August 2009 and the subsequent events appear improbable, in view of the background information available on Afghanistan concerning the activities and mode of operation of the Taliban relative to persons suspected by the Taliban of supporting the Government and/or cooperating with foreign organizations.

4.19 The State party argues additionally that the author had also changed and expanded his statement on other points in connection with proceedings before Danish authorities. For example, the author only told his then-assigned counsel immediately before the Board hearings that he had recognized one of the original attackers from the taxi incident as being someone he had previously seen in the compound of the ministry in Kabul and that he had again recognized that person as one of the three who had come to his home in March 2011. Moreover, the author had only for the first time said to his then-assigned counsel that two persons had tried to get hold of him about two months after his discharge, and also did not say until the Board hearing that he had requested the ministry's office in Paktika Province to find a taxi driver they trusted.

4.20 The State party also observed that the author had made inconsistent statements about the move after the Taliban had visited his home in March 2011. At the interview with the Danish Immigration Service, the author stated that he had lived in the new house, which was situated about one and a half kilometres away from his family's former home, for a few days until his departure on 21 June 2011. However, the author stated to his then-appointed counsel and at the Board hearing that he had lived in the new house for two or three months until his departure from Afghanistan. The author was consequently, according to his own statement, able to take up residence for three months about one and a half or two kilometres away from the home at which the Taliban had sought him out, without being sought out or otherwise harassed by the Taliban.

4.21 The State party observes that the author has had the assistance of an interpreter for his mother tongue, Dari, at all interviews and hearings, and that he also subsequently had an opportunity to read his statements together with an interpreter before he chose to sign them.

4.22 The State party therefore asserts that no evidence has come to light through the proceedings before the Committee which has given the State party reason to change its assessment of the author's credibility.

4.23 The State party also asserts that the fact that the author has scars on his body cannot be found to render it probable that the author was persecuted by the Taliban prior to his departure from Afghanistan. In that connection, the State party observed that in view of the general security situation in Afghanistan and information on the many violent incidents in the country, the relevant injuries to the author must be considered, in the State party's

opinion, to have been inflicted in incidents not justifying asylum. Moreover, according to the author's own statements, the State party notes that the author performed compulsory military service, including carrying arms, at a time when the general security situation in Afghanistan was uncertain.

4.24 Additionally, the State party posits that the general situation in Afghanistan is not in itself of such a nature as to entitle the author to asylum.

4.25 Overall, the State party observes that the author, who, according to his own statement, has had 12 years of schooling, has not been able to give a reasonable explanation as to the contradictions and improbabilities that characterize his statements. Against this background, the State party finds no basis for doubting, let alone setting aside, the assessment made by the Refugee Appeals Board, according to which the author has not established that there are substantial grounds for believing that he was in danger of being deprived of his life or subjected to torture when he was returned to Afghanistan. For the same reason, the State party asserts that it has not been substantiated that the return of the author to Afghanistan implied a breach of articles 6 or 7 of the Covenant.

4.26 The State party therefore reiterates its submission that the author has failed to establish a prima facie case for the purpose of admissibility of his communication under articles 6 and 7 of the Covenant, under rule 96 of the Committee's rules of procedure, and that the communication is therefore manifestly unfounded and should be declared inadmissible. Should the Committee find the communication admissible, the State party concludes that it has not been established that there are substantial grounds for believing that the author was in danger of being deprived of his life or subjected to torture on return to Afghanistan and therefore his return to Afghanistan did not constitute a violation of article 6 or 7 of the Covenant.

#### **Comments of the author's counsel on the State party's submission**

5.1 On 30 December 2013, the author's counsel provided his comments. The counsel referred to two other cases which were ongoing at the same time and in relation to which the State party had refused to allow ample time between the decision to reopen and the deportation, which the counsel avers is a pattern of behaviour with the intention of frustrating the work of the Committee. In the other cases, interim measures were granted and the deportations were stopped — in one case on the same day as the deportation was to be carried out, and in the other case the Refugee Appeals Board decided to reopen the case.

5.2 The counsel submits that the failure of the State party to complete its consideration of the author's case in time enough to act in case of a negative outcome meant that there was not sufficient time for the Committee to consider the case and as a result the author was deported. He also submits that he has lost contact with the author since his deportation on 15 April 2013 and that he is feared to have been killed or kidnapped, since he had been told to contact his counsel immediately upon his arrival in Afghanistan, which he did not do and he has not been heard from since.

5.3 The counsel makes reference to a case before the Committee against Torture in which interim measures had not been granted and the complainant had been deported, but a violation was found by the Committee against Torture regarding his refoulement to Afghanistan and the State party welcomed the author in that case to come back to Denmark, where he now lives.<sup>10</sup> Luckily, he was traced to Pakistan, where he had gone into hiding. The counsel therefore requests the Human Rights Committee to consider this matter and also requests that the State party provide an official translation of the Refugee Appeals Board decision not to reopen the case of 12 April 2013 and the Danish Immigration Service decision of 7 December 2011, since again, the unofficial translations were made in such a hurry, owing to the State party's delay, that they are not sufficiently accurate to be used as a basis on which to make a decision in the present case.

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<sup>10</sup> See Committee against Torture communication No. 464/2011, *K.H. v. Denmark*, decision adopted on 23 November 2012.

5.4 Finally, the counsel states that he hardly had time between receiving the decision of the Refugee Appeals Board and filing with the Committee, in order to attempt to stop the imminent deportation, or to translate the medical file of the author which shows that he was stabbed and shot and that he has many scars on his body. The counsel also requested that this be translated by the State party.

5.5 As to the State party's submission, the counsel refers to the statement that the author has not shown a prima facie case of violations of articles 6 and 7 of the Covenant, since the communication is not sufficiently substantiated in the view of the Government of Denmark. With regard to the criteria for admissibility, the counsel submits that the author must be able to demonstrate a basis for his fear of persecution in his country of origin. The counsel refers to the general situation in Afghanistan as being one of the worst in the world for human rights and security concerns. Furthermore, he asserts that the author was able to easily establish a prima facie case in light of the injuries that he is proven to have suffered, such as gunshot and stab wounds. The counsel states that these are clear indications of persecution he suffered in the past and that this forms the basis of his fear that such treatment would be repeated upon his return to his country of origin. On this basis, the author has clearly shown a prima facie case and therefore there should be no issue as to admissibility in this case.

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

#### *Consideration of admissibility*

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

6.2 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.

6.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 As to the author's claim under article 14 of the Covenant that he was unable to appeal the negative decision of the Refugee Appeals Board to a judicial body, the Committee refers to its jurisprudence that proceedings relating to aliens' expulsion 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>11</sup> Furthermore, the latter provision offers asylum seekers some of the protection afforded under article 14 of the Covenant, but not the right of appeal to judicial courts. The Committee therefore concludes that this claim is inadmissible *ratione materiae*, under article 3 of the Optional Protocol. The Committee also considers that even if the author had invoked article 13 of the Covenant, his claims on this issue remain insufficiently substantiated.

6.5 The Committee notes the State party's argument that the author's claim with respect to articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation. The Committee considers, however, that the author has adequately explained why he feared that forcible return to Afghanistan would result in a risk of treatment incompatible with articles 6 and 7 of the Covenant for the purposes of admissibility. The Committee is therefore of the opinion that the author has sufficiently substantiated his allegations under articles 6 and 7 with plausible arguments in support thereof. Accordingly, the Committee declares the claim admissible and proceeds to its consideration of the merits.

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<sup>11</sup> See Human Rights Committee communication No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 8.5. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 17 and 62.



*Consideration of the merits*

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

7.2 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.<sup>12</sup> The Committee has also indicated that the risk must be personal<sup>13</sup> and that there is a high threshold for providing substantial grounds to establish 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>14</sup>

7.3 The Committee recalls that it is generally for the organs of State parties 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 clearly arbitrary or amounted to a manifest error or denial of justice.

7.4 The Committee notes the author's claim that he would face ill-treatment or death if removed to Afghanistan owing to previous persecution suffered at the hands of the Taliban. The Committee also notes the State party's submission that, inter alia, there is no evidence indicating that the author would be at an individualized and substantial risk of torture, having regard to the lack of credibility ascribed to the author's account and the fact that his scars were likely received during his years of active military service during a period of particular instability in Afghanistan, and further notes the State party's submission that the decision of the Refugee Appeals Board was well founded and based on a comprehensive and thorough examination of the evidence in the case and on current background material on the situation in Afghanistan.

7.5 The Committee takes note that the State party's authorities, having examined the evidence provided by the author in his asylum application, including interviews and oral hearings, found that the author had not shown that he would be at a personal risk of harm upon return to Afghanistan. The Committee notes, in particular, that the Refugee Appeals Board did not find the author's account of events prior to his departure from Afghanistan credible, owing to inconsistencies in information given at different stages of the asylum process. The Board did accept that the author had scarring on his body but did not accept his explanation of how it had happened. Consequently, the Board found that the author did not have a well-founded fear of persecution by the Taliban. It observed that the author had had the opportunity to review evidence given at each stage of the asylum process with an interpreter and to correct any inconsistencies that he found, but that he had not done so.

7.6 The Committee notes the author's statement in his application to reopen the case before the Refugee Appeals Board that the State party's determination in his case was largely based on an erroneous interpretation of his description of the method by which his colleague was stabbed in the neck. The Committee also notes the State party's submission that the author's explanation of this misunderstanding did not explain the inconsistencies in his comparative accounts on that issue and neither did he sufficiently explain the other inconsistencies inherent in his testimonies.

7.7 In the light of the foregoing, the Committee considers that the author has not identified any irregularity in the decision-making process or any risk factor that the State party's authorities failed to take properly into account. While the author disagrees with the factual conclusions of the State party's authorities, he has not shown that those conclusions were arbitrary or manifestly erroneous or that they amounted to a denial of justice. In these

<sup>12</sup> See para. 12.

<sup>13</sup> See, among others, communications No. 2280/2013, *Y v. Canada*, Views adopted on 22 July 2015, para. 7.2; and No. 2272/2013, *P.T. v. Denmark*, Views adopted on 1 April 2015, para. 7.2.

<sup>14</sup> See communications No. 2280/2013, *Y v. Canada*, para. 7.2; No. 2007/2010, *X v. Denmark*, Views adopted on 26 March 2014, para. 9.2; and No. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

circumstances, and in the absence of any other pertinent information on file, while not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, the Committee cannot conclude that the information before it shows that the author faced a personal and real risk of treatment contrary to articles 6 (1) or 7 of the Covenant when he was removed to Afghanistan.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Afghanistan did not violate his rights under article 6 or 7 of the Covenant.

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