



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
7 February 2013

Original: English

Committee against Torture

Communication No. 464/2011

**Decision adopted by the Committee at its forty-ninth session,
29 October to 23 November 2012**

| | |
|-----------------------------------|--|
| <i>Submitted by:</i> | K.H. (represented by counsel, Niels-Erik Hansen) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Denmark |
| <i>Date of complaint:</i> | 7 February 2011 (initial submission) |
| <i>Date of decision:</i> | 23 November 2012 |
| <i>Subject matter:</i> | Expulsion of the complainant to Afghanistan |
| <i>Procedural issue:</i> | - |
| <i>Substantive issue:</i> | Risk of torture upon return to the country of origin |
| <i>Article of the Convention:</i> | 3 |

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-ninth session)

concerning

Communication No. 464/2011

Submitted by: K.H. (represented by counsel, Niels-Erik Hansen)

Alleged victim: The complainant

State party: Denmark

Date of complaint: 7 February 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 November 2012,

Having concluded its consideration of complaint No. 464/2011, submitted to the Committee against Torture by Niels-Erik Hansen on behalf of K.H. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is K.H, a national of Afghanistan, born on 26 July 1975. He currently resides in Denmark. He claims that his return to Afghanistan by Denmark would violate article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Niels-Erik Hansen.

1.2 On 15 June 2011 and 8 June 2012, the Rapporteur on new complaints and interim measures decided, on behalf of the Committee, not to issue a request for interim measures pursuant to rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev. 5).

The facts as presented by the complainant

2.1 The complainant is an ethnic Pashtun and of the Sunni Muslim faith. He used to live in the village of Kala Sheikh in the Chaparhar district of Nangarhar province, Afghanistan. He has been married twice and has five children with his second wife. He is illiterate and has never been involved in any political or religious party, nor did he take part in demonstrations. However, his father and his brother used to work for the Government, until the mujahideen came to power and fought against the Hezb-e-Islami forces. He alleges that

one of his brothers was detained when the mujahideen were in power, and that he has not been seen again. His village of origin, Chaparhar, is associated with terrorist activities.

2.2 The complainant and his family were threatened by the Taliban. Around 2006 or 2007, his house was hit by missiles, which caused the death of his father and brother. The Taliban accused his family of being spies for the Government. He was forced to flee his hometown for Jalalabad, the capital of the province. In early 2010 he was working on a road construction project when the Taliban came and detained him and other persons who were with him. He was tied up and beaten with sticks and rifle butts. He gave the Taliban a false name, since his family name was known to them due to his father's and brother's previous problems with Hezb-e-Islami. He agreed to collaborate in the future with the Taliban since he had no other choice. He was left tied to a tree and with three ribs broken. He did not return to his work because he feared being sought out again by the Taliban.

2.3 Subsequently, he worked in Jalalabad as bricklayer. One day, while he was finishing his work, there was an explosion. Afterwards, he and four of his colleagues were detained by the police and he was wrongly accused of having participated in a terrorist bombing attack in Jalalabad. He was detained for two days and questioned three times a day. The four colleagues were released after one day. He was kept because he spoke Pashto and came from a village where many Taliban came from. During his detention, he was again ill-treated, kicked and beaten with pieces of wood and rifle butts. His hands and one leg were injured. With the assistance of his wife's uncle, he was able to bribe the police and escaped from the prison during the night. The policemen told him to leave Afghanistan, otherwise he would be murdered. They were afraid that he would tell someone about the bribe. Afterwards, he drove a minibus to Peshawar in Pakistan. He stayed in Pakistan for two weeks before travelling in vans and trucks through the Islamic Republic of Iran, Turkey, Greece and Italy. He was in possession of a Pakistani passport at his departure, but it was seized in the Islamic Republic of Iran.

2.4 The complainant arrived in Denmark on 25 July 2010, without valid travel documents, and applied for asylum the next day. Since he was illiterate he could not complete the asylum application form by himself. He claimed that he was fleeing from the Taliban and the Afghan authorities. He had been detained by the Taliban and then arrested by the authorities and wrongly accused of a terrorist bombing attack; while in detention he had been ill-treated and tortured in such a way that some of his ribs had been broken. He added that torture was widespread in Afghanistan, and that the authorities were unable to protect the population from the Taliban's violence. He feared for his life since he had been arrested by the authorities in connection with an explosion in Jalalabad, he had been forced by the Taliban to cooperate with them, and he had escaped from prison after paying a bribe. If re-arrested, he would be subjected to torture and killed. He feared the same if the Taliban were to find him, since they still believed that he was a spy for the Government. The complainant was not aware of the whereabouts of his family and could not provide a nationality certificate issued by his country of origin.

2.5 On 28 October 2010, the Danish Immigration Service rejected his application for asylum. It stated that it was for the asylum seeker to provide the necessary information to assess and decide his request. However, his narrative was vague and, in several crucial points, characterized by contradictions, such as the circumstances of his detention by the Afghan authorities and subsequent escape from prison. The complainant appealed this decision to the Refugee Appeals Board.

2.6 On 17 January 2011, the Refugee Appeals Board denied the complainant's request for medical examination, rejected his application for asylum, and ordered his deportation pursuant to section 33, paragraphs 1 and 2, of the Aliens Act. The Board accepted the complainant's allegation as to the incidents with the Taliban. However, it pointed out that he was able to live in Afghanistan for at least one year without any problem with the

Taliban, that he gave a false name, and that the blows to which he was subjected that caused a broken rib were not of such nature and scope to be relevant for his request. The Board further held that the complainant had provided contradictory information about his place of origin and that his allegations that he had been detained by the authorities on suspicion of terrorism and severely mistreated were inconsistent with respect to the circumstances of his location, detention and escape. Therefore, his statements were not credible and it was unlikely that the complainant would be at risk of persecution or abuse if returned to Afghanistan. Despite his reiterated requests for a medical examination, the Board denied his asylum request, without ordering any medical examination that might have shed light on possible sequelae of torture.

2.7 The complainant claims that with the decision of the Refugee Appeals Board all domestic remedies have been exhausted.

The complaint

3.1 The complainant claims that the State party did not assess adequately the risk that he would be subjected to torture if returned to Afghanistan. He claims that he would be at personal risk of being persecuted and tortured by the Afghan authorities or the Taliban, in violation of article 3 of the Convention.

3.2 The complainant submits that although the Refugee Appeals Board accepted his allegation that he was detained by the Taliban and treated in such a way that a rib was broken, it did not concede that this was a relevant fact for the asylum determination. The State party did not even consider whether the Afghan authorities would be able to protect him against the Taliban's violence. In its assessment of the complainant's allegation of violence committed by the authorities, the Board focused mainly on certain inconsistencies in his statements that were not relevant enough to reject his application, and that were produced due to problems with interpretation. Furthermore, despite the medical evidence provided¹ and his request for further specialized medical examination, the Board denied his request for asylum without ordering such an examination. Accordingly, the State party's failure to consider the medical information provided by the complainant and its refusal to request further medical examinations constitute a violation of article 3 of the Convention.²

3.3 The complainant alleges that the State party also failed to consider and assess his claims within the framework of the situation of human rights in Afghanistan, in particular to take into account that torture is widespread in the country, that the legal system has collapsed, and that both the Afghan authorities and the Taliban commit acts of violence against the population.

State party's observations on the admissibility and the merits

4.1 On 15 December 2011, the State party submitted its observations on the admissibility and the merits and requested the Committee to declare the complaint inadmissible as manifestly unfounded pursuant to article 22, paragraph 2, of the Convention, or otherwise to declare that the complaint does not disclose a violation of article 3 of the Convention.

¹ The complainant provided two medical reports, or "memoranda" (English translation from the Danish), dated 11 October and 13 December 2010, in which it is noted that he had not been able to sleep for more than a year due to nightmares relating to torture experienced while he was in prison. It is also noted in the reports that the complainant claimed to suffer from pain in the left thorax and requested drugs for it.

² The complainant refers to the Committee's jurisprudence in communication No. 339/2008, *Amini v. Denmark*, decision adopted on 15 November 2010.

4.2 The State party provided information concerning the asylum proceedings carried out by the Danish Immigration Service and the Refugee Appeals Board. On 23 August 2010, the complainant claimed that he was detained twice, once by the Taliban and once by the Afghan authorities. The authorities accused him of having organized an explosion in Jalalabad. His wife's uncle had bribed the authorities to let him escape. The police was looking for him and if he was re-arrested he would probably be killed by the authorities. As to the Taliban, the complainant and his family had been threatened by the Taliban in Chaparhar, which believed that they were spies for the Government. About three or four years ago the complainant's house had been hit by missiles and his father and brother were killed in that connection.

4.3 On 2 September 2010, the Immigration Service conducted an interview with the complainant. He claimed that about six months ago, he was on his way out of the building in which he worked when an explosion occurred near the airport in Jalalabad, so he stayed inside the building for a while before going out. However, the police arrived and detained him and four colleagues. They were all brought to a police district office in Jalalabad and put in the same cell together with other people. He stayed in detention for two days. In this period he was interrogated three times daily and subjected to violence by policemen in the form of blows with rifle butts and kicks. His colleagues were released, but he stayed in detention because he came from Chaparhar, a village from which many terrorists came. He was released after paying a large bribe. However, the authorities told him that he should leave the country. He also told the Immigration Service that previously, while he was helping to build a new road, the Taliban came one night and detained him and seven other people. He was tied to a tree and beaten with pieces of wood and rifle butts. The following morning, when the town's inhabitants arrived at the place he and the others had been left, they were freed. When asked, he stated that he had not been detained at any other time or otherwise had any other problem in Afghanistan. He further pointed out that he participated in demonstrations against the Taliban three or four years ago.

4.4 On 21 October 2010, the complainant was interviewed again by the immigration authorities. He first asserted that he had never been detained or arrested by the authorities in Afghanistan, nor was he wanted by them. Afterwards, he stated that he had been detained by the police in connection with holiday festivities six months before his entry into Denmark. Confronted with his earlier statement, he said that he thought that the question was whether he had had problems while President Najibullah was in power and not while President Karzai was in power. During the interview, he also held that he was working outside a building when the explosion happened in Jalalabad and that he started running in the opposite direction of where policemen were, because they were shooting and he could be hit by gunfire. After the authorities pointed out that this did not coincide with his previous statement, he said that he stayed outside the building. When the authorities asked him why he did not request the police to contact his boss at the building construction site in order to corroborate his statements, he said that he did not have a real boss and that only an engineer occasionally came to supervise the work and paid his wages. When asked whether the police who received the bribe stipulated conditions for his release, he replied in the negative. When confronted with his previous statement, he stated that his wife's uncle was the one who told him to leave, but the police also wanted him to leave Afghanistan. As to his allegations that his family was sought by the Taliban, he noted that given his father's and brother's work positions, the Taliban thought they were Government spies.

4.5 On 17 January 2011, at the Refugee Appeals Board hearing, the complainant claimed that he was on his way home from work and had walked for about 20 minutes, close to the airport, when the explosion occurred. Confronted with his previous statements, he replied that he was on his way out of the building when the explosion occurred, that he ran away from the site, that the police told him to stop, but he ran on because he panicked. He also pointed out that he had been detained because he spoke Pashto and came from Tora

Bora. Confronted with his previous statement, he submitted that Chaparhar and Tora Bora were close to each other. Likewise, he was confronted with his previous inconsistent statements concerning the conditions for his release. He told the authorities that the police was afraid that he would tell someone about the bribe. For this reason the chief of police required him to leave the country.

4.6 In the asylum registration report, the complainant stated that his lowest ribs had been bruised two years before and that he was waiting for a medical examination. Otherwise, his health was good. At the interview with the Immigration Service on 21 October 2010, he asserted that in Denmark he was being treated for stomach complaints. In the pleading of 10 January 2011 submitted before the Refugee Appeals Board hearing, his counsel requested a stay of proceedings to allow the complainant to be examined for signs of torture and appended two memoranda dated 11 October and 13 December 2010, prepared by a medical consultant. At the Board hearing in 17 January 2011, the complainant repeated his statements and informed the Board that doctors in Denmark could not perform surgery on his ribs and he therefore took painkillers. He also took medication because he had nightmares.

4.7 Concerning its national legislation, the State party notes that pursuant to section 7, paragraph 1, of the Aliens Act, a residence permit can be granted to an alien if the person falls within the provisions of the Convention relating to the Status of Refugees. For this purpose, article 1.A of that Convention has been incorporated into Danish law. Although this article does not mention torture as one of the grounds justifying asylum, it may be an element of persecution. Accordingly, a residence permit can be granted in cases where it is found that the asylum seeker has been subjected to torture before coming to the State party, and where his substantial fear resulting from the outrages is considered well-founded. This permit is granted even if a possible return is not considered to entail any risk of further persecution. Likewise, pursuant to section 7, paragraph 2, of the Aliens Act, a residence permit can be issued to an alien upon application if the alien risks the death penalty or being subjected to torture, inhuman or degrading treatment or punishment in case of return to his country of origin. In practice, the Refugee Appeals Board considers that these conditions are met if there are specific and individual factors rendering it probable that the person will be exposed to a real risk.

4.8 Decisions of the Refugee Appeals Board are based on an individual and specific assessment of the case. The asylum seeker's statements regarding asylum motive are assessed in the light of all relevant evidence, including general background material on the situation and conditions in the country of origin, in particular, whether systematic gross, flagrant or mass violations of human rights occur. Background material is obtained from various sources, including country reports prepared by other Governments as well as information available from the United Nations High Commissioner for Refugees and prominent non-governmental organizations (NGOs).

4.9 In cases where torture is invoked as part of the basis for asylum, the Refugee Appeals Board may request the asylum seeker to be examined for signs of torture. The decision as to whether it is necessary to undertake a medical examination is made at a Board hearing and depends on the circumstances of the specific case, such as the credibility of the asylum seeker's statement about torture.

4.10 The State party submits that it is the responsibility of the complainant to establish a *prima facie* case for the purpose of admissibility of the complaint under article 22 of the Convention. In the present complaint, it has not been established that there is substantial ground for believing that the complainant would be in danger of being subjected to torture if returned to Afghanistan. The complaint is manifestly unfounded and, therefore, it should be declared inadmissible.

4.11 The purpose of the complaint is to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim of asylum reassessed by the Committee. The State party recalls the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention,³ and points out that the Committee should give considerable weight to findings of fact made by the State party concerned. In the present case, the complainant had the opportunity to present his views, both in writing and orally, with the assistance of legal counsel. Subsequently, the Refugee Appeals Board conducted a comprehensive and thorough examination of the evidence in the case. Therefore, it submits that the Committee must give considerable weight to the findings of the Board.

4.12 The Refugee Appeals Board rejected the complainant's claim on the grounds that he had not rendered it probable that he would risk new outrages on the part of the Taliban if returned to Afghanistan. He stated during the proceedings that all workers were questioned and searched by the Taliban. Hence, he was not being persecuted personally. In addition, he gave a false name and he lived in Afghanistan without any further problems for at least one year after the incident.

4.13 As to the complainant's claim of being tortured by the Afghan authorities, the State party argues that his statement about being wanted by the Afghan authorities was not credible since he had given such fundamentally diverging statements as to his place of origin, his whereabouts when the explosion occurred in Jalalabad, the circumstances in which he was detained, and the conditions for his release.⁴

4.14 As to the complainant's claim that the inconsistencies in his statements were due to the interpretation service, the State party notes that through the interviews with the police and the immigration authorities, the complainant was provided with language interpretation to and from Pashto, as it is his mother tongue. It further submits that after having had the asylum registration of 23 August 2010 read out to him, the complainant confirmed his statement and signed the report without mentioning any language problem in connection with the interview conducted by the police. After the interviews conducted by the Immigration Service, the reports were translated by the interpreter and reviewed with the complainant, who had the opportunity at that stage to make comments, if any. However, he made no comment about language problems. Likewise, during the Refugee Appeals Board hearing, in which the complainant was represented by his counsel, no objections were made to the interpretation of his statements.

4.15 The State party submits that it was unnecessary to initiate an examination of the complainant for signs of torture, as requested by the complainant, since his statements were not credible. The immigration authorities accepted the complainant's allegation about having been subjected to violence resulting in a broken rib in connection with the conflict with the Taliban, but concluded that he was not under the threat of Taliban persecution and therefore he would not risk new outrages by them. In contrast, the Refugee Appeals Board was unable to accept as fact the complainant's allegation of having been detained and subjected to acts of violence by the Afghan authorities.

4.16 The complainant produced various new details before the Committee, including a photocopy allegedly reproducing a newspaper article from an Afghan local newspaper containing a notice declaring that the applicant was wanted for terrorism. The State party notes that this document was not submitted during the asylum proceedings. It further claims that it does not provide significance evidence in the case and that there is no credible

³ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44 and Corr.1), annex IX.*

⁴ See paragraphs 4.3-4.5 above.

explanation as to why this article is only produced at this late stage. According to the translation requested by the Board, the article was published in *The Nangarhar Daily* newspaper on 15 July 2010. It appears from the article that the security police of the Nangarhar province informed the public that K.H.,⁵ son of K.R., residing in the Nangarhar province, Chaparhar district, had been arrested with two friends by the security forces on suspicion of having placed roadside bombs. However, the persons succeeded in escaping after one day. The two friends were arrested again. The State party further points out that it is not possible to establish the authenticity of this document or to verify its information. Nevertheless, even if the article is accepted as true, it does not seem to substantiate the credibility of the complainant's statements during the asylum proceedings, due to several discrepancies between the information provided in it and his statements, such as the name of the person, his place of residence, circumstances of the arrest and release of the other arrested persons, and the dates of the alleged detention and the article's publication.

4.17 Should the Committee find the complaint admissible, the State party argues that the complainant has not established that his return to Afghanistan would constitute a violation of article 3 of the Convention. It further states that article 3, paragraph 1, of the Convention requires that the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is to be returned and that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although it does not have to meet the test of being highly probable.⁶ The existence of a consistent pattern of gross, flagrant or mass violation of human rights in a country does not, as such, constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country.⁷

The complainant's comments on the State party's observations

5.1 On 3 February 2012, the complainant submitted his comments on the State party's observations. He asserts that in addition to a violation of article 3, paragraph 1, the State party has also violated article 3, paragraph 2, of the Convention, since by denying the complainant's request for medical examination, it has failed to gather the necessary information in order to assess his claims of torture before making a final decision.

5.2 The complainant agrees with the description of the fact of the case provided by the State party.

5.3 He highlights that he fears that he is at risk of persecution by the Taliban and the Afghan authorities, in particular by the latter due to the fact that he was forced to agree to cooperate with the Taliban when he was detained by them, and this could be known by the Afghan police. If returned to Afghanistan, he would be tortured by the authorities in order to force him to confess his cooperation with the Taliban.

5.4 The Danish authorities based their assessment about the credibility of his claim on the divergent statements he gave at the beginning of the asylum proceedings. However, this problem often occurs in the first interview of asylum seekers, since they fear to tell the truth

⁵ The name provided does not correspond with the complainant's name.

⁶ The State party refers to communications Nos. 270/2005 and 271/2005, *E.R.K. and Y.K. v. Sweden*, decision adopted on 30 April 2007, paras. 7.2-7.3; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006, paras. 7.1-7.2; No. 180/2001, *F.F.Z. v. Denmark*, Views adopted on 30 April 2002, paras. 9-10; and No. 143/1999, *S.C. v. Denmark*, Views adopted on 10 May 2000, paras. 6.4 and 6.6. It also refers to the Committee's general comment No. 1.

⁷ The State party refers to communications No. 220/2002, *R.D. v. Sweden*, decision adopted on 2 May 2005, para. 8.2; No. 245/2004, *S.S.S. v. Canada*, decision adopted on 16 November 2005, para. 8.3; *E.R.K. and Y.K. v. Sweden*, para. 7.2; and No. 286/2006, *M.R.A. v. Sweden*, decision adopted on 17 November 2006, para. 7.3.

and feel insecure. Nevertheless, the complainant informed the immigration authorities about the circumstances in which he was tortured and even submitted medical evidence in support of his claim. He reiterates that his statements' inconsistencies were caused by inadequate interpretation, which in his case was particularly important since he is illiterate and could not read and confirm whether translations reflected in an accurate manner what he wished to communicate to the authorities. His counsel could not check the accuracy of the translation since he is not a Pashto speaker. Therefore, there was no way to verify whether these translations, noted in the decisions of the Immigration Service and the Refugee Appeals Board, were correct and accurate.

5.5 He could not submit a proper medical report on any physical evidence of torture, because he could not afford it. However, he provided the authorities with the two medical "memoranda" prepared by a physician. Although they did not relate to signs of torture, these documents provided enough information to justify his request for further medical examination. Moreover, at the Refugee Appeals Board hearing he explained that he had three broken ribs and also showed other sequelae of the violence inflicted by the authorities on his hands and one leg. The complainant further argues that in the light of the clear evidence showing a consistent pattern of gross, flagrant and mass violation of human rights in Afghanistan, if the Danish authorities doubted the credibility of his statements, they should have ordered a specialized medical examination, as he requested. He further argues that he met his counsel on 10 January 2011 and that the same day the counsel submitted a request for a stay of proceedings and for a medical examination. On 17 January 2011, at the beginning of the Board hearing, this request was reiterated orally. Nevertheless, no decision was taken during the hearing, and afterwards the Board decided to reject the complainant's request for asylum, without ordering a medical examination.

5.6 Notwithstanding the State party's acceptance of the complainant's claim concerning the acts of violence inflicted by the Taliban, it has not explained why this was not relevant under asylum law in order to determine the real personal risk that he would face if returned to Afghanistan, and limited itself to denying such a possibility. Moreover, as the authorities accepted that the complainant suffered some form of violence inflicted by the Taliban, they failed to assess whether the Government would be able to protect the complainant against possible reprisals from the Taliban. The complainant recalls that the risk does not have to meet the test of being highly probable.⁸ Likewise, the complainant argues that the State party does not provide enough details about the contradictory statements that would render his claim of torture by the Afghan authorities not credible.⁹

5.7 As to the asylum proceedings, the complainant notes that the Refugee Appeals Board decision cannot be appealed to a higher court and that one of the three members of the Board is an employee of the Danish Ministry of Justice, which puts in question the impartiality and independence of the Board. The complainant further claims that with respect to considering asylum requests, the immigration authorities' assessment does not necessarily comply with the standards enshrined in article 3 of the Convention.

5.8 At the Refugee Appeals Board hearing, many of the questions posed by the immigration service officers and the members of the Board attempted to show the inconsistencies of the complainant's statements and his lack of credibility. The manner in which the questions were posed by the Board members gave the complainant the feeling of being challenged by the same persons who had to decide on his request by the end of the hearing.

⁸ The complainant refers to the Committee's general comment No. 1, para. 6.

⁹ The complainant refers to communication No. 120/1998, *Elmi v. Australia*, decision adopted on 14 May 2009.

5.9 Although the Committee is not an appellate body, as stated in its general comment No. 1, it is not bound by the findings of State party's agencies and has the power of free assessment of the facts based upon the full set of circumstances in every case, as provided by article 22, paragraph 4, of the Convention.

5.10 The complainant points out that the State party accepted that he was subjected to serious violence by the Taliban. Nevertheless, the State party's authorities did not assess the gravity of the violence inflicted in order to see whether this amounted to torture. Moreover, a medical examination would have also given more details about his allegation of torture by the Afghan authorities, but he was prevented from producing this evidence. He further asserts that the human rights situation in Afghanistan with regard to the violations committed by the Taliban currently persists and that the governmental authorities are unable to provide protection against the Taliban's violence.

5.11 As to the authorities' assessment of his claim regarding the detention and torture inflicted by the Afghan authorities, the complainant argues that the reasons why the authorities concluded that his statements were contradictory are not relevant, since they focused mainly on the fact that he contradicted himself regarding the circumstances in which he was detained after the explosion in Jalalabad. Furthermore, the State party failed to include in its assessment the fact that prominent NGOs had reported the practice of torture by the Afghan police.

5.12 The complainant states that he is from Tora Bora, a region from which many Taliban come, and he speaks Pashto. If returned, these two facts will be enough for the authorities to interrogate him. This, together with the fact that he was forced to promise the Taliban that he would assist them and that the police in Kabul may be aware about his escape from prison, will put him at risk of torture.

5.13 As to the copy of the newspaper article provided along with his complaint, the complainant notes that the Committee is free to assess all facts based upon the full set of circumstances in the case and that it is not prevented from considering evidence that was not produced within the State party's proceedings. He further explained that he could not provide this document to the authorities because he did not receive it before May 2011. He also emphasizes that the article proves the Afghan authorities' knowledge about his previous detention and escape from prison, which indicates that he will be at real and personal risk if returned to Afghanistan.

State party's further submission

6.1 On 11 April 2012, the State party submitted further information concerning the complainant's comments on its observations on the admissibility and the merits.

6.2 The State party points out that the Refugee Appeals Board fully considered the complainant's claim about conflict with the Taliban and that, as stated in its decision, the complainant himself asserted that he had given a false name, that all workers had been questioned and searched in general, and that he had been able to live in Afghanistan for a year without further problems.

6.3 The Refugee Appeals Board is under an obligation to bring out the facts and make objectively correct decisions. Depending on the circumstances, the Board is supposed to ask the asylum seeker questions at the oral hearing to bring out the facts adequately. This however does not compromise its impartiality and professionalism. The State party further notes that neither the complainant nor his counsel had claimed that a member of the Board had questioned the complainant in an unpleasant manner. After the close of the hearing the complainant was asked whether he had any further comments to make, but he had none.

6.4 The fact that the Refugee Appeals Board did not expressly refer to the Convention cannot be considered to reflect a failure to include its obligations in its decisions.

6.5 In reviewing an asylum application, the Refugee Appeals Board takes into account all factual and background information available at the time of its decision.

6.6 The State party argues that the number of broken ribs caused by the Taliban's violence would not affect the specific assessment of the assault allegedly suffered by the applicant in terms of asylum law.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the instant case, the State party has recognized that the complainant has exhausted all available domestic remedies.

7.3 The State party submits that the complaint is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible. Since both the State party and the complainant have provided observations on the merits of the communication, the Committee proceeds immediately with the consideration of the merits.

Consideration of the merits

8.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present complaint in the light of all information made available to it by the parties concerned.

8.2 The issue before the Committee is whether the expulsion of the complainant to Afghanistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 With regard to the complainant's claims that most likely he would be imprisoned upon return and subjected to torture, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture upon return to his country of origin. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for

determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 1 on the implementation of article 3 of the Convention, in which it states that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, the Committee recalls that the burden of proof normally falls upon the complainant, who must present an arguable case establishing that he runs a “foreseeable, real and personal” risk. The Committee also recalls that, as set forth in its general comment No. 1, while it gives considerable weight to the findings of fact of the State party’s bodies, it is entitled freely to assess the facts of each case, taking into account the specific circumstances.

8.5 In the present case, the Committee notes that the State party has accepted that the complainant was detained by the Taliban while he was working on a road construction project, and that the Taliban subjected him to serious violence, causing him at least one broken rib. The Committee also notes that the State party considered that the complainant would not risk outrages by the Taliban upon his return since he was not individually persecuted, he had given them a false identity, and he was able to live in Afghanistan without further problems. The Committee notes that the State party argues that the complainant’s claim as to the alleged torture inflicted by the Afghan authorities was not credible due to diverging statements about his place of origin, and the circumstances of his detention and escape from prison. The Committee also notes the State party’s argument that the Immigration Service interviews and the Danish Refugee Appeals Board hearing were held with the assistance of an interpreter working to and from Pashto and that the complainant made no comments about language problems. The Committee further notes that despite the complainant’s request, the Board considered that a specialized medical examination was unnecessary since his statements were contradictory.

8.6 The Committee notes that the complainant contests the State party’s assessment as to the risk he would face if returned to Afghanistan. He claims that he would be at risk of persecution by the Taliban and the Afghan authorities. The Committee notes that the complainant claims that the State party has not explained why the uncontested claim concerning the violence he was subjected to by the Taliban is not relevant under asylum law, and that the authorities failed to assess whether the Afghan authorities would be able to protect him against possible reprisals from the Taliban. As to his claim about the violence inflicted by the Afghan authorities, the Committee also notes that the complainant claims that the State party based its assessment about the credibility of his claim on the divergent statements he gave within the asylum proceedings, that his statement’s inconsistency stemmed from inadequate language interpretation, and that he was unable to check it since he is illiterate. He further argues that although he requested the Refugee Appeals Board for a specialized medical examination in order to verify whether he has signs of torture, and showed the Board alleged signs of torture on his hands and one leg or foot, the Board rejected his request for asylum without ordering this examination.

8.7 The Committee observes that it is not disputed that the complainant was detained by the Taliban and subjected to violence, causing him at least one broken rib. The Committee also observes however that the complainant’s allegation of persecution by Taliban is mainly related to his father’s and brother’s activities, that they were killed around 2006 or 2007, that there is no claim that this persecution continues against any other member of the family, including the complainant, and that his detention and ill-treatment was not related to a personal persecution. The Committee further observes that after this incident the

complainant was able to live in Afghanistan for at least one year without any further problem or need of special protection. Accordingly, the Committee considers that the complainant has failed to provide sufficient evidence in support of his claims to the effect that he would be exposed to a real and personal risk of torture by the Taliban if returned to Afghanistan.

8.8 The Committee observes that in the interviews before the Danish Immigration Service and the Refugee Appeals Board, the complainant, who is illiterate, provided inconsistent statements as to his place of origin, the circumstances in which he was detained by the Afghan police, and his escape from prison; that the interviews were held with the assistance of an interpreter to and from Pashto; and that the complainant tried to clarify his statements following questions during the Board hearing. The Committee also notes that on 10 January 2011 and during the Board hearing of 17 January 2011, the complainant requested a specialized medical examination and argued that he lacked financial means to pay for an examination himself. The Committee further observes that the complainant's allegation that he showed to the Board sequelae of the violence inflicted by the Afghan authorities on his hands and one leg or foot was not contested by the State party. The Committee considers that although it is for the complainant to establish a *prima facie* case to request for asylum, it does not exempt the State party from making substantial efforts to determine whether there are grounds for believing that the complainant would be in danger of being subjected to torture if returned. In the circumstances, the Committee considers that the complainant provided the State party's authorities with sufficient material supporting his claims of having been subjected to torture, including two medical memoranda, to seek further investigation on the claims through, *inter alia*, a specialized medical examination. Therefore, the Committee concludes that by rejecting the complainant's asylum request without seeking further investigation on his claims or ordering a medical examination, the State party has failed to determine whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned. Accordingly, the Committee concludes that, in the circumstances, the deportation of the complainant to his country of origin would constitute a violation of article 3 of the Convention.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the complainant's removal to Afghanistan by the State party would constitute a breach of article 3 of the Convention.

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in accordance with the above observations.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]