



# 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. 2603/2015\*, \*\*, \*\*\*

<i>Communication submitted by:</i>	A.B.H. (represented by counsel, Dorte Smed, of the Danish Refugee Council)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	28 April 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure (now rule 92), transmitted to the State party on 30 April 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	8 July 2019
<i>Subject matter:</i>	Author's deportation from Denmark to Afghanistan
<i>Procedural issues:</i>	Inadmissibility as manifestly ill-founded; level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture or other cruel, inhuman or degrading treatment or punishment
<i>Article of the Covenant:</i>	7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is A.B.H.,<sup>1</sup> a national of Afghanistan born on 8 March 1977. He claims that he would be a victim of a violation by Denmark of article 7 of the Covenant, if deported to Afghanistan. The author asked the Committee to request

\* Adopted by the Committee at its 126th session (1–26 July 2019).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

\*\*\* An individual opinion by Committee members Marcia V.J. Kran, Vasilka Sancin and Yuval Shany (dissenting) is annexed to the present Views.

<sup>1</sup> The author requests that his identity be kept confidential.



interim measures in order for him not to be removed to Afghanistan pending the examination of his communication. The author is represented by counsel.<sup>2</sup>

1.2 On 30 April 2015, pursuant to rule 92 of its rules of procedure (now rule 94), the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Afghanistan while his case was under consideration by the Committee. On 7 May 2015, the State party suspended execution of the deportation order against the author.

1.3 On 1 December 2015, in light of the information provided by the State party that the Danish Refugee Appeals Board had decided to reopen the case, the Committee suspended its consideration of the communication until further notice and reminded the State party not to deport the author while the case was suspended. On 21 April 2016, the State party advised the Committee that on 18 April 2016 the Refugee Appeals Board had decided to uphold the decision to reject the author's request for asylum, and requested that the suspension of the communication be lifted. On 15 July 2016, the Committee decided to lift its suspension of the case and to grant an extension for the State party to present its observations on the admissibility and the merits of the communication.

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

2.1 The author is of Pashtun ethnicity and comes from Kunar Province in Afghanistan. He asserts that he runs the risk of being persecuted if he were to be deported to Afghanistan because, after having worked five years for the international forces, he has come into conflict with the Taliban. In addition, the Afghan authorities wrongfully suspect him of being affiliated with the Taliban.

2.2 The author states that he was employed as a soldier with Afghanistan's National Directorate of Security from 2007 to 2012, training and working with Afghan forces and forces of the United States of America. The author's tasks included arresting members of the Taliban. Due to his work, the author was threatened by the Taliban on several occasions. The author received two threatening letters from the Taliban at his home,<sup>3</sup> and soon after the first threatening letter, shots were fired at his car in an attempt to kill him. In December 2012, the author was kidnapped and detained by the Taliban for three or four months before he managed to escape. The author was in a taxi together with four other persons, and at a checkpoint they were forced to move towards the mountains. During his detention, the author did not reveal his real identity. He had managed to hide his national identity card in the taxi when they were stopped, and he was not recognized by the Taliban members as they belonged to a Taliban faction from a different district than the author's home district. During an airstrike, the author managed to escape from the Taliban. Subsequently, he stayed with his uncle for three or four days before leaving Afghanistan for Pakistan. After his departure, the author was told that his family had received another threatening letter from the Taliban, addressed to him. The author's father informed the author that his former colleagues in the army had searched his home and that he was suspected of collaboration with the Taliban because of his long absence.

2.3 The author entered Denmark on 8 December 2013 without any valid travel documents and applied for asylum on the same day. His sister, her husband and their children have residency in Denmark. The rest of the author's close family, including his wife and his six children, reside in Afghanistan.

2.4 On 26 March 2014, the Danish Immigration Service refused the author's asylum request. On 10 July 2014, the Refugee Appeals Board remitted the case to the Danish Immigration Service for reconsideration at the request of the Danish Immigration Service. On 27 November 2014, the Danish Immigration Service again refused asylum to the author. On 9 March 2015, the Refugee Appeals Board upheld the refusal of the author's application for asylum, by a majority. Although the Refugee Appeals Board considered it as a fact that

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<sup>2</sup> Troels Peter Koch was replaced by Dorte Smed of the Danish Refugee Council.

<sup>3</sup> The author submits that because of the letters, he considered quitting the army. Eventually, he decided that the threats were a part of his job, and chose to ignore them and continue his work with the army. Therefore, he did not save the letters.

the author had been employed as a senior medic with the National Directorate of Security, the majority of the members of the Refugee Appeals Board observed that while the author had been able to provide details on and document his work for the National Directorate of Security extensively, his statement about his detention by the Taliban lacked any details despite the fact that the detention had lasted for about four months.<sup>4</sup> Therefore, the Refugee Appeals Board could not consider much of the author's account of events credible, because his statements about his conflict with the Taliban and the way they had allegedly tried to identify him was vague and unlikely on several points.

2.5 Since final decisions by the Refugee Appeals Board cannot be appealed to the Danish courts, the author submits that he has exhausted all available and effective domestic remedies. The present communication has not been and is not being examined under another procedure of international investigation or settlement.

2.6 On 26 October 2015, the Refugee Appeals Board decided to reopen the case for consideration, at an oral hearing by a new panel. On 18 April 2016, the Refugee Appeals Board, by a unanimous decision, refused the author's asylum request again.

### **The complaint**

3.1 The author claims that there are substantial grounds for believing that he would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment upon his return to Afghanistan as a result of his work for the Afghan intelligence service and United States forces for five years.

3.2 The author also fears the Afghan authorities because he was wrongfully suspected of supporting the Taliban. He submits that this accusation is extremely difficult to exonerate, since there have been several examples of soldiers changing sides, and the author strongly believes the approach of the National Directorate of Security would be to err on the side of caution rather than to risk a Taliban infiltrator. The author submits background information on threats to persons working with foreign soldiers or the Afghan National Security Forces, as well as individuals suspected of supporting "anti-government elements".<sup>5</sup>

3.3 As regards the assessment of his claims in domestic proceedings, he submits that the decision of the Refugee Appeals Board of 9 March 2015 was reached by a majority instead of being a unanimous decision. Although it was accepted by the Board that he had worked for the National Directorate of Security and United States forces for five years, the Board found that his statement on his detention by the Taliban weakened his overall credibility, including his statement about the threatening letters and the shooting incident. In that connection, the Board observed that it seemed peculiar that the author, who had brought extensive documentation on his employment and affiliation with the National Directorate of Security, had not been able to present the threatening letters. Based on an overall assessment, the majority of the members of the Board concluded that the author had failed to render it probable that he had been identified by the Taliban or that he had had a specific conflict with the Taliban. The author submits in this respect that he gave a detailed and adequate account of his detention and that he also answered questions about his detention to the best of his ability. The author also submits that he was able to provide well-documented evidence of his five years of work for the National Directorate of Security because such evidence was available, in contrast to the lack of documentation in connection with his

<sup>4</sup> The author had given inconsistent statements about his detention, as to whether three or four passengers from the taxi had been taken to the mountains by the Taliban and whether he had been tied with a rope or a chain. The Board also found to be unlikely the author's statement that the Taliban had detained him for four months without making any attempts to verify his statement regarding his alleged identity but that instead it had allegedly tried to identify him by sending in a person from the authorities or a previously arrested Taliban member. The Board emphasized that this was even more peculiar in light of the fact that the applicant had not participated in interrogations and that he had been masked in connection with the arrests.

<sup>5</sup> Office of the United Nations High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 6 August 2013 (HCR/EG/AFG/13/01). See also European Asylum Support Office, *Afghanistan: Insurgent Strategies – Intimidation and Targeted Violence against Afghans*, December 2012.

four-month-long detention. According to the author, the argument of the Board fails to take into consideration the very nature of a detention and the author's physical and emotional condition while being detained. With regard to the Board's remark finding it peculiar that he had been unable to produce the two threatening letters that he had received from the Taliban, he submits that he did not keep the letters because he had decided to consider it part of his job to receive such letters, and therefore ignored them and continued his work. The author further submits that the Refugee Appeals Board generally finds documents from Afghanistan inadmissible and attaches no importance to them, as it appears from a memorandum from the Ministry of Foreign Affairs of Denmark that it is extremely difficult to verify the authenticity of such documents and that false documents are widely available in Afghanistan. Moreover, the author submits that the Refugee Appeals Board attached considerable importance to small inconsistencies in his statement on his capture and subsequent detention and that the Board's reasoning was highly speculative and not based on evidence. The author also contends that his statements cannot generally be considered unconvincing and that he should have been given "the benefit of the doubt". Finally, the author submits that, in its consideration of his appeal, the Refugee Appeals Board did not apply the Office of the United Nations High Commissioner for Refugees (UNHCR) guidelines on credibility assessment.<sup>6</sup>

3.4 Finally, the author refers to the general situation of forced returnees in Afghanistan.<sup>7</sup>

3.5 In light of the above, the author claims that his removal to Afghanistan would constitute a violation by Denmark of his rights under article 7 of the Covenant.

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

4.1 In its submission of 19 July 2016, the State party challenges the admissibility and the merits of the communication. The State party notes that it is for the author to establish a prima facie case for the purposes of admissibility. The State party argues that the author's claim under article 7 is manifestly ill-founded and should therefore be declared inadmissible for lack of sufficient substantiation.

4.2 The State party describes relevant domestic law and procedures, including the structure, composition and functioning of the Refugee Appeals Board, which it considers to be an independent, quasi-judicial body.<sup>8</sup> It also points out to the established procedures for assessing inconsistent statements by the asylum seeker, which may affect the asylum seeker's credibility.

4.3 The State party notes that, when assessing whether the conditions for granting a residence permit have been met under the Aliens Act,<sup>9</sup> the Refugee Appeals Board takes into account the existence of a well-founded fear of being subjected to specific, individual persecution of a certain severity if returned to the country of origin. In determining whether the fear is well founded, the Board takes into account the information on persecution prior to the asylum seeker's departure from his or her country of origin and, most importantly, what the asylum seeker's personal situation will be if returned to his or her country of origin.

4.4 Furthermore, the State party cites the judgment by the European Court of Human Rights in *H. and B. v. United Kingdom* concerning an Afghan national who had been employed as an interpreter for United States forces in Afghanistan, in which the Court rejected the claim that the author would not be safe in Kabul because of his profile and the security situation there. The Court found that it could not consider that the author would be at risk in Kabul solely because of his previous work as an interpreter for United States

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<sup>6</sup> Ibid.

<sup>7</sup> The author refers to the notes verbales of the Embassy of Afghanistan in Norway dated 26 February 2015 and 2 March 2015 calling for a halt to all forcible deportations to Afghanistan.

<sup>8</sup> See, for example, *Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1.–4.3.

<sup>9</sup> The State party informs the Committee that, pursuant to section 7 (1) of the Aliens Act, a residence permit will be issued to an alien upon application if he or she falls within the Convention relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will also be issued to an alien if he or she risks being subjected to the death penalty or to torture or ill-treatment.

forces, but that it should instead examine the individual circumstances of his case, the nature of his connections and his profile. The Court concluded that the author had failed to demonstrate that his return to Afghanistan would violate article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).<sup>10</sup>

4.5 In the present case, the State party notes that the Refugee Appeals Board decided to reopen the author's asylum case at an oral hearing to be reconsidered by a new panel. In its new, unanimous decision of 18 April 2016, the Refugee Appeals Board made a thorough assessment of the author's specific circumstances, including his credibility, and the background information available in respect of Afghanistan. While the Board accepted substantial elements of the author's statement as facts as compared to in the Board's judgment of 9 March 2015, it found that the author had failed to render it probable that he would be in danger of being killed or being subjected to torture or to inhuman or degrading treatment or punishment if he were returned to Afghanistan. In particular, the Board considered it a fact that the author had worked as a soldier and performed first aid at a United States base in Kunar Province and that the Taliban had made written threats against him twice in that connection. However, the Board found that the threats, which were delivered to his family's home in late 2011 and early 2012, had not been of such a nature and intensity as to render it probable that the Taliban would continue to contact him.<sup>11</sup> The Board also considered it a fact that the author had been kidnapped by the Taliban in 2013, but considered that the kidnapping had not been connected to the author's work for United States forces. The Board also considered it a fact that he had not been identified during his capture. The Board found that the applicant had failed to render it probable that the shooting incident to which he was subjected in 2011 was connected to his work for United States forces, as the existence of such a connection was based solely on his own assumption. The Board therefore found that the author had not become a high-profile individual as a result of that kidnapping and that the applicant did not risk continued persecution due to the kidnapping or due to his former work at the United States base.<sup>12</sup> Finally, the Board found that the applicant's statement that he feared the Afghan authorities because they suspected him of having joined the Taliban was based solely on the author's own assumption. In that respect, the Board noted that the author had told the United States forces about the two threatening letters from the Taliban and about his fear of the Taliban.

4.6 The State party recalls that it is generally for the authorities of States parties to examine the facts and evidence of the case in order to determine whether there is a risk of irreparable harm, unless it can be established that the assessment was arbitrary or amounted to a denial of justice. In the present case, however, the Refugee Appeals Board found that the author would not be at a specific and individual risk of persecution in case of his return to Afghanistan. The State party adds that no new information has been brought to the Committee over and above that already assessed by the Board. Thus, in the State party's opinion, there is no basis for doubting, let alone setting aside, the assessment made by the Board, according to which the author has failed to establish that there are substantial grounds for believing that he would be at risk of being killed or subjected to cruel, inhuman or degrading treatment or punishment if he were returned to Afghanistan.

4.7 The State party submits that the reports relied upon by the author form part of the Refugee Appeals Board's background material on Afghanistan, which were taken into account in the Board's assessment of his case. Nevertheless, the State party submits that the

<sup>10</sup> Judgment of 9 April 2013 (applications Nos. 70073/10 and 44539/11).

<sup>11</sup> It has been emphasized that at the Board hearing, the applicant stated that it had been part of his job to receive similar letters and that this was a risk that he had accepted. This statement is supported by the circumstance that the applicant's family has not been contacted or threatened by the Taliban at any time and that, when kidnapped, the applicant appeared to be a low-profile individual in the eyes of the Taliban, who did not find out about his real identity despite his work at the United States base.

<sup>12</sup> The Refugee Appeals Board could not consider it as a fact that the author's father, after the author's entry into Denmark in 2014, had received yet another threatening letter telling the applicant to cease working for the United States forces. The Board emphasized in that respect that it seemed unlikely that the Taliban would not know that the applicant had ceased working for the United States forces two years earlier.

author's reference to the general situation of forced returnees in Afghanistan could not lead to a different assessment of his case.

4.8 The State party informs the Committee that, following the Committee's request for interim measures, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark until further notice. Based on all the above, the State party requests that the Committee review its request for interim measures.

#### **Author's comments on the State party's observations**

5.1 On 10 March 2017 the author submitted comments on the State party's observations, claiming that there were substantial grounds for believing that he risked being subjected to ill-treatment in violation of his rights under article 7 of the Covenant if he were deported to Afghanistan.

5.2 In response to the State party's statement that it has not been accepted as a fact that the author's father received yet another threatening letter after his departure, the author submits that even if this claim remains disputed by the State party, this has no bearing on the established facts that he received threatening letters from the Taliban and that he was detained by the Taliban. He also disputes the State party's assertion that he was not identified by the Taliban since the two letters he received prior to his departure were addressed to him personally. He also submits that even if his kidnapping was not considered to be linked to the two threatening letters, the letters alone would prove that he has been targeted by the Taliban due to his cooperation with the United States forces.

5.3 The author refers to the judgment of the European Court of Human Rights in *J.K. and others v. Sweden*, and applying the findings of the Court<sup>13</sup> to his specific case he submits that the fact that he was abducted by the Taliban provides a strong indication of a future and real risk of ill-treatment. The burden of proof thus rests with the State party to dispel any doubts about that risk. In addition, the account of events by the author is consistent with information from reliable and objective sources about the general situation in the country. As regards the judgment of the European Court of Human Rights in *H. and B. v. United Kingdom*, cited by the State party, the author notes that the Court endorsed the lack of credibility of the applicant, as had been established by the Government, and this was a key factor in no violation being found in the particular case. In the present case, however, most of the author's statements have been accepted as facts and thus the cases are not comparable.

5.4 The author also submits that he would not be able to relocate to any part of Afghanistan due to risk of ill-treatment. Relying on the general country information, he argues that the Taliban undertake targeted kidnappings of specific individuals and persons suspected of working for the international forces.<sup>14</sup> Therefore, suspicion that a person works for the international forces is sufficient, even if Taliban intelligence has no certainty of the identity or the employment of the person kidnapped.

5.5 In addition, the author recalls the various reports referred to in his initial submission to substantiate his claim that working for the international military forces entails a high risk of ill-treatment by the Taliban.

5.6 Lastly, the author requests the Committee to uphold its request for interim measures.

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<sup>13</sup> Judgment of 23 August 2016 (application No. 59166/12), para. 102: "The Court considers that the fact of past ill-treatment provides a strong indication of a future, real risk of treatment contrary to article 3, in cases in which an applicant has made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, it will be for the Government to dispel any doubts about that risk."

<sup>14</sup> Immigration and Refugee Board of Canada, "Afghanistan: Whether the Taliban has the capacity to pursue individuals after they relocate to another region; their capacity to track individuals over the long term; Taliban capacity to carry out targeted killings (2012–January 2016), 15 February 2016; and European Asylum Support Office, *Country of Origin Information Report – Afghanistan: Security Situation*, November 2016.

### **State party's additional observations**

6.1 On 28 July 2017 the State party submitted its additional observations on admissibility and the merits, reiterating that the author's claims had not been substantiated.

6.2 The State party upholds its observations of July 2016 and furthermore recalls the Committee's jurisprudence that important weight should be given to the assessments conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice, and that it is generally for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.<sup>15</sup> The State party adds that the author has not explained why the decision by the Refugee Appeals Board would be contrary to this standard.

6.3 Referring to the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, the State party recalls that neither the author's detention by the Taliban nor the two threatening letters from the Taliban can independently lead to a finding that the author can be deemed to fall within the scope of section 7 of the Aliens Act. The State party observes that the period of the author's work for the Afghan security forces and the United States forces ended more than four years ago, and that the author cannot be deemed to be a high-profile individual in the eyes of either the Taliban or the Afghan authorities.

6.4 As regards the judgment of the European Court of Human Rights in *J.K. and others v. Sweden*, cited by the author, the State party submits that it differs considerably from the case at hand, in which the author's detention was not deemed to be connected to the threats that he had received from the Taliban on account of his collaboration with United States forces. The State party recalls the case at the European Court of Human Rights of *H. and B. v. United Kingdom*, which, it submits, is more relevant to the case at hand, since, even if certain parts of the application were declared inadmissible, the Court specifically considered the general risk of persons who had previously collaborated with United States forces.

6.5 The State party further notes that although the UNHCR background materials cited by the author indeed refer to persons who have collaborated with international forces as individuals belonging to a potential risk group, this reference cannot independently justify the granting of residence to the author under section 7 of the Aliens Act. The State party continues to argue that the decisive factor is whether, upon an assessment of the information in the case at hand in conjunction with the current background information on Afghanistan, the author would be at a specific and individual risk of persecution if returned to Afghanistan.

6.6 Lastly, as the author failed to render it probable that he would risk specific and individual persecution or abuse in case of his return to Afghanistan, the State party submits that he will not be compelled to find an internal flight alternative, so the author's arguments in this regard are to be considered irrelevant.

6.7 The State party reiterates that the author's claims are manifestly ill-founded and hence inadmissible. Should the Committee find the communication admissible, the State party maintains that it has not been established that there are substantial grounds for believing that it would constitute a violation of article 7 of the Covenant to return the author to Afghanistan.

### **Additional submissions by the parties**

#### *From the author*

7.1 On 8 September 2017, the author reiterated that it had been established by the State party that he had worked for several years for the Afghan security forces and the United States forces. It had also been established and accepted as fact that the author had received two letters from the Taliban because of his work. Therefore, the author contends that these

<sup>15</sup> *A.S.M. and R.A.H. v. Denmark* (CCPR/C/117/D/2378/2014), paras. 8.3 and 8.6.

facts, together with the available country information,<sup>16</sup> are sufficient to establish that he risks persecution upon his return and thus the assessment of the domestic courts amounts to a denial of justice.

*From the State party*

7.2 On 3 October 2017, the State party added that the Refugee Appeals Board was familiar with the documents invoked by the author and they had formed part of the general background information on Afghanistan. The documents invoked by the author did not constitute additional information that would require reassessment of the case. Therefore, the State party maintains its position that the communication should be declared inadmissible, or that it has not been established that there are substantial grounds for believing that it would constitute a violation of article 7 of the Covenant to return the author to Afghanistan.

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

*Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 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.

8.3 The Committee notes that on 1 December 2015 the Refugee Appeals Board decided to reopen the author's case, however on 18 April 2016 the same Board upheld the decision to reject the author's request for asylum. Since the decisions of the Board cannot be appealed, no further remedies are available to the author. The Committee observes that the State party has not objected to the admissibility of the communication under article 5 (2) (b) of the Optional Protocol. Accordingly, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

8.4 Finally, the Committee notes the State party's challenge to admissibility on the grounds that the author's claim under article 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why he fears that his forcible return to Afghanistan would result in a risk of treatment contrary to article 7 of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under article 7, and proceeds to its consideration of the merits.

*Consideration of the merits*

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

9.2 The Committee notes the author's claim that, if returned to Afghanistan, he would risk being subjected to ill-treatment by the Taliban on the one hand for having worked for five years as a soldier for the Afghan and United States forces and on the other hand for his presumed affiliation with the Taliban by the Afghan authorities. He claims that prior to his departure he received two threatening letters from the Taliban because of his work, and after having received the first letter his car was shot at in an attempt to kill him. He claims that he was abducted by the Taliban and was detained for four months during which he was

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<sup>16</sup> In addition to the reports cited in his previous submissions, the author also relies on the following reports: "Afghanistan: Taliban's intelligence and the intimidation campaign" by the Norwegian Country of Origin Information Centre, dated 23 August 2017, available at [www.landinfo.no/asset/3590/1/3590\\_1.pdf](http://www.landinfo.no/asset/3590/1/3590_1.pdf); "Afghanistan: Taliban's organization and structure" by the Norwegian Country of Origin Information Centre, dated 23 August 2017, available at [www.landinfo.no/asset/3589/1/3589\\_1.pdf](http://www.landinfo.no/asset/3589/1/3589_1.pdf); and "Rättsligt ställningstagande angående säkerhetsläget i Afghanistan", Migrationsverket, dated 29 August 2017, available at [www.ecoi.net/en/file/local/1408296/1226\\_1505138361\\_170829550.pdf](http://www.ecoi.net/en/file/local/1408296/1226_1505138361_170829550.pdf).



subjected to torture on suspicion of working for the Afghan intelligence service and the United States forces, even if the Taliban could not identify the author with certainty. He also alleges that after his departure, his family received another threatening letter from the Taliban, addressed to him. The author submits background information on threats to persons working with foreign soldiers or the Afghan National Security Forces, as well as to individuals suspected of supporting “anti-government elements”.

9.3 On the other hand, the Committee notes that the State party challenged the admissibility and substance of these claims, and that the State party agreed with the Refugee Appeals Board’s assessment, which, while accepting substantial elements of the author’s statements as facts, found that the author had failed to establish that there were substantial grounds for believing that he would be at risk of being killed or subjected to cruel, inhuman or degrading treatment or punishment if he were returned to Afghanistan. In particular, the Committee is mindful that the Refugee Appeals Board, in its findings of 18 April 2016, reassessed the author’s statements and found the following to be facts: (a) the author worked as a soldier and performed first aid at a United States base in Kunar Province; (b) the Taliban made written threats against the author twice in that connection; and (c) the author was kidnapped by the Taliban in 2013. However, the Board found that the threatening letters were not of such a nature and intensity as to render it probable that the Taliban would continue to contact the author. The Board also considered that the author had failed to clearly substantiate that his kidnapping was connected to his work for the United States forces, and noted that he was not identified during his capture. The Board therefore concluded that the author had not become a high-profile individual as a result of that kidnapping and that he did not risk continued persecution due to the kidnapping or due to his former work at the United States base.

9.4 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>17</sup> The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>18</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author’s country of origin.<sup>19</sup>

9.5 The Committee also recalls its jurisprudence that considerable weight should be given to the assessment conducted by the State party, and that it is generally for the organs of States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>20</sup>

9.6 The Committee further recalls its jurisprudence whereby, similarly to the present case, the issue before the Committee was to consider whether past affiliation with the international forces in certain countries could indicate a future risk of persecution contrary to article 7 of the Covenant.<sup>21</sup>

<sup>17</sup> Para. 12 of the general comment.

<sup>18</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), para. 6.6; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>19</sup> *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; and *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

<sup>20</sup> *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>21</sup> In *K. v. Denmark* (CCPR/C/114/D/2393/2014), the Committee concluded that there was no violation of the Covenant, considering that the author had failed to provide substantial grounds to support the claim that he would be exposed to a personal risk if returned to Afghanistan solely on the basis of his past experience as an interpreter for the United States forces. In coming to that conclusion, the Committee found it decisive that the domestic courts thoroughly examined the author’s claims, including the alleged threats he had received, but found them to be inconsistent. In *A.H. v. Denmark* (CCPR/C/114/D/2370/2014) however, the Committee found a violation of article 7 by Denmark establishing that the facts of the case, read in their totality, including the information on the author’s

9.7 The Committee recalls the jurisprudence of the European Court of Human Rights which held in *H. and B. v. United Kingdom* that the applicant's former employment as an interpreter for the United States could not solely demonstrate that the applicant would be at risk in his country of origin, but rather the individual circumstances of his case, the nature of his connections and his profile should also be examined. On the other hand, the Committee also refers to *J.K. and others v. Sweden*, which established that past ill-treatment provided a strong indication of a future, real risk of ill-treatment in cases in which a generally coherent and credible account of events had been presented by the asylum seeker that was consistent with the available country information. In such circumstances, the Court held that it was for the Government to dispel any doubts about that risk. The Committee recalls that the Court held that the requirement that an asylum seeker be able to show the existence of individual risk apart from the general perils in the country of destination is, however, less strict, for example, where he or she is a member of a vulnerable group exposed to systematic ill-treatment.<sup>22</sup>

9.8 The Committee also recalls the latest *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, which establish that civilians associated with or perceived as supportive of the international military forces fall into a risk profile and may therefore be in need of international refugee protection.<sup>23</sup>

9.9 In the present case, the Committee notes that even though in its decision of 9 March 2015 the Board found most of the author's allegations to be not credible except for his assertion that he had worked for the international forces for five years, in its decision of 18 April 2016 the Board reassessed the author's statements and accepted substantial elements of them as being facts. It follows that it is not the non-credibility of the author, but rather the issue of to what extent the incidents that have been accepted as facts – particularly in light of the author's failure to establish the link between his activity in the international forces and his kidnapping – are capable of showing that the author would face a real and personal risk of irreparable harm upon his forcible return.

9.10 The Committee recalls that States parties should give sufficient weight to the real and personal risk that a person faces if deported, and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face as someone who had previously collaborated with the international forces. The Committee considers that against the background of the Board accepting that the author had provided a generally coherent and credible account of events, including the reference to the threatening letters from the Taliban as well as to his abduction and detention by the Taliban for four months, these incidents of past ill-treatment provide a strong indication of a future, real and personal risk of persecution contrary to article 7 of the Covenant. The fact that the author's account of events is consistent with information from reliable and objective sources about the general situation in Afghanistan, especially those concerning individuals belonging to a targeted group, render such indication even stronger.

9.11 The Committee is mindful of the State party's main argument that the Board found that the author's detention was not connected to his work for the United States forces and that he had not been identified during his capture. In this context, the Committee notes, however, that the fact that the author was not identified by the Taliban during his detention does not rule out that his abduction was linked to his work for the international forces or that he would be captured again by the Taliban upon his return, which assumption reasonably follows from the previous threats he had received and which were accepted as facts by the Board. Hence, the Committee is of the view that considering the overall

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personal circumstances, such as his former position fighting drug-related crimes and his cooperation with several foreign agencies in that capacity, together with the threats he had received, even though these had not been found credible by the domestic courts, disclosed a real risk of ill-treatment contrary to article 7 of the Covenant.

<sup>22</sup> European Court of Human Rights, *H. and B. v. United Kingdom* (applications Nos. 70073/10 and 44539/11), decision of 9 April 2013, para. 100, and *J.K. and others v. Sweden* (application No. 59166/12), decision of 23 August 2016, paras. 102–103.

<sup>23</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan*, 30 August 2018 (HCR/EG/AFG/18/02), available at [www.refworld.org/docid/5b8900109.html](http://www.refworld.org/docid/5b8900109.html).

personal circumstances of the author, and the incidents that were found credible at the domestic level, the Board failed to adequately assess the real, personal and foreseeable risk of ill-treatment for the author in his country of origin.

9.12 In addition, it has not been shown by the State party that the Afghan authorities would be able to provide protection for the author, considering especially the relevant reports on attacks against Afghan civilians who work or have worked for the international military.

9.13 In such circumstances, the Committee considers that the Refugee Appeals Board failed to adequately assess the author's real, personal and foreseeable risk if he were returned to Afghanistan, which is based not solely on his profile as a former employee of the international forces but also on the risk of future ill-treatment by the Taliban which reasonably follows from his individual circumstances including his past ill-treatment in his country of origin.

9.14 As to the author's assertion that he fears the Afghan authorities and the United States forces because they suspect him of having joined the Taliban, the Committee does not consider it necessary to question the Board's finding that this is based on the author's own assumption and therefore was not accepted as factual at the national level.

10. In the light of the above considerations, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Afghanistan would, if implemented, violate his rights under article 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, which establishes that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an obligation to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the Committee's present Views. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official language of the State party.

## Annex

### **Individual opinion of Committee members Marcia V.J. Kran, Vasilka Sancin and Yuval Shany (dissenting)**

1. We regret that we cannot join the majority of the Committee in finding that if the author were to be deported to Afghanistan by Denmark it would constitute a violation of the Covenant.
2. In paragraph 9.5 above, the Committee recalls that “it is generally for the organs of States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice”. This rule is consistently reflected throughout the Committee’s jurisprudence,<sup>1</sup> and requires a high threshold, which should not be displaced in the absence of compelling facts clearly demonstrating arbitrariness or a manifest error or a denial of justice.
3. As relates specifically to whether an individual’s past affiliation with international forces could indicate a future risk of persecution contrary to article 7 of the Covenant, the Committee cites, in the footnote to paragraph 9.6 above, *A.H. v. Denmark*.<sup>2</sup> The facts of that case were, however, significantly different from those of the present case, and do not warrant the same legal conclusion. In *A.H. v. Denmark*, the author suffered from unstable mental health, and, prior to his arrival in Denmark, had worked with multiple organizations associated with both the Government of the United States of America and the Government of Afghanistan to investigate drug-related crimes. In particular, he assisted in the arrest of two Taliban-affiliated drug lords, which demonstrated a specific conflict with the Taliban, and, in the context of his past work, he had been the victim of an abduction attempt, he had received written threats, and his brother had been killed, none of which was refuted by the State party. Further, at the time that the communication was considered, new information was available to the Committee, as the author had already been deported to Afghanistan, where he had suffered a physical assault and had faced continued threats made over the phone against him and his family.
4. In the present case, the author was employed as a senior medic with Afghanistan’s National Directorate of Security from 2007 to 2012 and performed first aid at a United States base in Kunar Province. He received threats in late 2011 and early 2012, which the Danish authorities found were related to his position at the United States base, but at a low level of intensity which renders it unlikely that the Taliban would continue to contact him after his active service, and the author himself stated that it had been part of his job to receive similar letters and that this was a risk that he had accepted (para. 4.5). According to the assessment undertaken by the State party, however, the author did not demonstrate that either the 2011 shooting incident he was involved in or his 2013 abduction at the hands of the Taliban were connected to his position – in other words, these events did not arise in the context of the author’s work. The author, except for his claim, did not submit any evidence that would demonstrate such a connection.
5. On review of the submissions, it is clear that the State party considered the particular facts of this case. It allowed the author to appeal the findings of the Danish Immigration Service, and reopened the case for consideration before a new panel. The State party also

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<sup>1</sup> *A.S.M. and R.A.H. v. Denmark* (CCPR/C/113/D/2378/2014), paras. 8.3 and 8.6, and *E.U.R. v. Denmark* (CCPR/C/117/D/2469/2014), para. 9.7, citing *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.3, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18, *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), paras. 11.2 and 11.4, *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3, *A.A. v. Canada* (CCPR/C/103/D/1819/2008), para. 7.8, and *Z. v. Australia* (CCPR/C/111/D/2049/2011), para. 9.3. See also *Ashby v. Trinidad and Tobago* (CCPR/C/74/D/580/1994), para. 10.3.

<sup>2</sup> *A.H. v. Denmark* (CCPR/C/114/D/2370/2014).

considered the general human rights situation in Afghanistan based on reports submitted by the author, within the context of the author's personal circumstances.<sup>3</sup>

6. Although we consider that deportation to Afghanistan may put the author in a more difficult situation than that which he is currently facing in Denmark, this Committee is not in receipt of information that would allow us to challenge the risk assessment undertaken by the Danish authorities. In particular, there is insufficient information before us to hold that the difficulties the author will face upon his return to Afghanistan are likely to reach the level of risk of irreparable serious harm that would result in a violation of article 7 of the Covenant.

7. Under these circumstances, we cannot conclude that the decision of the Danish authorities to refuse the author's asylum request was arbitrary or amounted to a manifest error or denial of justice that would entail a violation of article 7 of the Covenant by Denmark.

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<sup>3</sup> Such an analysis is in line with the Committee's jurisprudence, which states that general reports of non-governmental organizations alone are insufficient to establish ill-treatment, and as such, care must be taken in evaluating an author's submission that is not supported by additional verifiable evidence. See *Kouidis v. Greece* (CCPR/C/86/D/1070/2002), paras. 7.3–7.4.