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REFERENCE: G/SO 229/31 DNK (26)
CE/AP/ak 602/2014

The Secretary-General of the United Nations (High Commissioner for Human Rights) presents his compliments to the Permanent Representative of Denmark to the United Nations Office at Geneva and has the honour to transmit herewith the decision (Advance unedited version), adopted by the Committee against Torture on 28 April 2017, concerning complaint No. 602/2014, which was presented to the Committee for consideration under article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on behalf of S.B.B.

In accordance with the Committee's established practice, this decision will be made public, without disclosing the complainant's identity.

20 June 2017

HUMAN RIGHTS
UNITED NATIONS

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

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Committee against Torture

Communication No. 602/2014*

Decision Decision adopted by the Committee at its sixtieth session (18 April – 12 May 2017)

Communication submitted by:	S.B.B. (represented by counsel, Niels-Erik Hansen)
Alleged victim:	The complainant
State party:	Denmark
Date of complaint:	9 May 2014 (initial submission)
Date of adoption of decision:	28 April 2017
Subject matter:	Deportation to Sudan; risk of torture
Substantive issues:	Non-refoulement
Procedural issues:	Admissibility - manifestly ill-founded
Articles of the Convention:	3, and 22

* The following members of the Committee participated in the examination of the present communication: Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller-Rouassant, Ana Racu, Sapana Pradhan-Malla, Sébastien Touze and Kening Zhang. Pursuant to rule 109 of the Committee's rules of procedure, Jens Modvig, did not participate in the consideration of the communication.

Background

1.1 The complainant is S.S.B., a Sudanese national born on 24 June 1974. He sought asylum in Denmark, but his request was rejected. Following the Danish Refugee Appeals Board's (hereafter RAB) decision of [redacted] April 2014, the complainant was invited to leave Denmark voluntarily within 15 days. At the time of submission, he had not left Denmark and was subject to deportation. He alleged that his deportation to Sudan by Denmark would violate his rights under article 3 of the Convention against Torture. The complainant is represented by counsel.[1]

1.2 On 16 May 2014, the Committee, acting through its Rapporteur on new complaints and interim measures, asked the State party not to expel the author while the complaint was being considered. On 27 May 2014, the RAB suspended the time limit for the complainant's departure until further notice in accordance with the Committee's request. On 16 February 2016, following a request by the State party dated 17 November 2014, the Committee, acting through the same Rapporteur, denied the request of the State party to lift interim measures.

The facts as submitted by the complainant

2.1 The complainant is originally from Darfur. In 2004 he moved to Khartoum and until 2007 the complainant worked in a store. On an unspecified date in 2007, three men from the National Security Force entered the store and subjected the complainant to physical ill-treatment. The complainant's brother was affiliated to the Justice and Equality Movement (JEM) and the three men wanted to obtain information from him about his brother's whereabouts. They stabbed him with a knife several times and the complainant was taken to a military hospital. He was informed that he was arrested.

2.2 While in the hospital, on [redacted] April 2007, the complainant was interrogated by police officers. Police officers threatened to beat him to death if he refused to tell them where his brother was and provide information about his brother's involvement with JEM. They also accused him of not being a true Muslim since he had a Christian girlfriend. One hour after the interrogation, a cleaner in the hospital, who witnessed the interrogation, advised the complainant to escape as soon as possible, otherwise the police would kill him. Subsequently, the complainant fled the hospital and managed to escape from Sudan with the assistance of an "agent".

2.3 From 2007 until 2013, the complainant lived as an asylum seeker in Greece. On [redacted] April 2012, the complainant's partner, whom he had met in Sudan in 2006 and who is an Eritrean national, and their two children were granted a residence permit in Denmark. The complainant entered Denmark and applied for asylum on [redacted] August 2013.

2.4 On [redacted] January 2014, the Danish Immigration Service dismissed the complainant's request for asylum. On an unspecified date, he appealed the decision to the RAB. On [redacted] April 2014, the RAB upheld the decision of the Danish Immigration Service on grounds of finding the complainant's statements inconsistent. The RAB did not find credible his statements regarding the experienced ill-treatment, subsequent hospitalization and escape from the military hospital. According to the decision, the complainant was supposed to leave Denmark voluntarily within 15 days.

2.5 Since, according to the Danish Aliens Act, the decision of the RAB cannot be appealed before the Danish courts, the complainant submitted that he has exhausted all

[1] Denmark made a declaration under article 22 of the Convention on 27 May 1987.

available and effective domestic remedies. He further submitted that the communication is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The complainant claimed that his deportation to Sudan would violate his rights under article 3 of the Convention against Torture because he would be at personal risk of being persecuted and tortured upon return. He feared that upon return to Sudan, he could be prosecuted and even killed because of his brother's militant activities and because of the fact that he has a Christian girlfriend.

3.2 The complainant further claimed that the decision of the RAB to refuse him asylum lacked proper investigation and reasoning, contrary to article 3(2) of the Convention. Moreover, no medical examination was conducted by the Danish authorities in order to confirm or refute the complainant's claims of physical ill-treatment.

State party's observations on admissibility and the merits

4.1 On 17 November 2014, the State party submitted that the complainant entered Denmark on [redacted] August 2013 without valid travel documents and applied for asylum on [redacted] August 2013. On [redacted] January 2014, the Danish Immigration Service refused asylum to the complainant. On [redacted] April 2014, the RAB upheld the refusal by the Danish Immigration Service of the complainant's asylum application.

4.2 In its decision of [redacted] April 2014, the RAB stated, *inter alia*, that the complainant belonged to the [redacted] Clan, was of the Muslim faith and was born in Mallet, Darfur, Sudan. The complainant had not been a member of any political or religious associations or organisations, but had participated in one single demonstration in Mallet because the government had attacked his region. It also appears from the decision that the complainant had referred to his fear of being arrested and killed by the intelligence service if returned to Sudan because of his brother's attachment to the JEM. The complainant had also referred to his fear of reprisals or of being killed by both individuals and the authorities because he was in a relationship with a Christian woman, whom he had met in 2006. In support of his grounds for seeking asylum, the complainant submitted that he had been detained and tortured on [redacted] April 2007. He was later admitted to a military hospital because he was unconscious. He escaped from there with the assistance of a hospital employee.

4.3 The majority of the RAB could not find as facts the complainant's statement on his detention and subsequent hospitalisation and escape from a military hospital. In its assessment, it emphasised that, on essential points, he had made inconsistent and augmentative statements, and that he and his partner had made inconsistent statements concerning the reason for their departure from Sudan. When interviewed by the Danish Immigration Service, the complainant stated that he had participated in a demonstration in 2003, but that this had not given rise to problems, and that he had moved to Khartoum in 2005 because he had not wanted to live in the same town as his brother. At the hearing before in the RAB, the complainant stated that he had moved to Khartoum in 2003 because the animals he was tending as a shepherd had been killed. Later at the hearing, the complainant changed his statement saying that he had started travelling back and forth to Khartoum in 2003, but that he had not moved until 2005. When interviewed by the Danish Immigration Service on [redacted] November 2013, the applicant stated that he had been approached at his workplace by three men, who had beaten and tortured him, stabbing him with a knife all over his body so that he had fainted, after which they had taken him to a military hospital. When interviewed on [redacted] January 2014, the applicant stated that three or four persons had looked for him and had taken him to the police station, where he had been beaten and whipped across the thighs, and that he lost consciousness the next day and had therefore been taken to a hospital. The complainant's partner stated to the Danish

Immigration Service on [redacted] September 2009, that the complainant had been arrested during a visit to his parents. At the hearing before the RAB, the complainant stated that his body had been cut with pieces of metal.

4.4 The complainant and his partner had also made inconsistent statements on the reason for the complainant's departure from Sudan. During her asylum proceedings, the complainant's partner stated that the complainant had problems with the authorities because he was a conscientious objector, whereas the complainant stated that it was his brother's attachment to the JEM that had given rise to his problems with the authorities. Finally, it appears from the decision of the RAB that the majority of its members emphasised that the applicant's statement on the escape from the military hospital did not seem probable. The RAB also found that the complainant's relationship with a Christian woman could not justify asylum. The RAB emphasised the background information available, from which it appeared that it is permitted for Muslim men and Christian women to marry in Sudan, that there is no reason to believe that the authorities will react against such marriages, and that it is very unlikely that such relationships are reported to the police, since they are not illegal. The majority of the RAB found no basis for adjourning the proceedings pending an examination for signs of torture.

4.5 The majority therefore found that the complainant was not persecuted at his departure and would not, if returned, be at such risk of persecution as to justify residence under section 7 of the Aliens Act.

4.6 The State party further provides a detailed description of the legal basis for the work of the RAB and their methods of work.[2]

4.7 Concerning the significance of the asylum seeker's credibility relative to the significance of medical information, the State party referred to the Committee's decision in communication No.209/2002, *Otman v. Denmark*,[3] in which the complainant's statements on torture and the medical information provided on this were set aside due to the complainant's general lack of credibility. In this decision, the Committee referred to para. 8 of its general comment No.1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return. The State party also referred to the Committee's decision in communication No. 466/2011, *Nicmeddin Alp v. Denmark*,[4] in which it found that the State party's authorities thoroughly evaluated all the evidence presented by the complainant, found the complainant to lack credibility, and did not consider it necessary to order a medical examination.

4.8 The State party referred to the views of the Committee in communication No.61/1996, *X, Y and Z v. Sweden*,[5] to the Committee's decision in communication No. 237/2003, *M.C.M.V.F. v. Sweden*,[6] and maintained that the crucial point is the situation in the country of origin at the time of the potential return of the alien to that country.

4.9 The State party submitted that the complainant has failed to establish a *prima facie* case for the purpose of admissibility of his complaint under article 3 of CAT, and referred to Rule 113 of the Committee's Rules of Procedure. It has not been established that there

[2] For detailed description see for example communication No.580/2012, *F.K. v. Denmark*, decision adopted on 23 November 2015, paras 4.9-4.11.

[3] Decision adopted on 12 November 2003, paras 6.4 to 6.6.

[4] Decision adopted on 14 May 2014.

[5] Adopted on 6 May 1998, para. 11.2.

[6] Adopted on 12 December 2005, para. 6.4.

are substantial grounds for believing that the complainant is in danger of being subjected to torture if returned to Sudan. The complaint is therefore manifestly ill-founded and should be declared inadmissible. Should the Committee find the complainant's complaint admissible, the State party submitted that the complainant has not sufficiently established that it would constitute a violation of article 3 to return him to Sudan.

4.10 As can be seen from the decision made by the RAB, it did not consider as a fact the complainant's statement concerning his grounds for seeking asylum, in that the majority of the Refugee Appeals Board emphasised that, on essential points, the applicant had made inconsistent and augmentative statements, and that he and his partner had made inconsistent statements concerning the reason for their departure from Sudan (see para 4.3-4, 4 above). The RAB thus found that the complainant had failed to substantiate that he had been subjected to torture.

4.11 As regards the complainant's observations that the Danish immigration authorities decided the complainant's application for asylum without initiating an examination for signs of torture even though the complainant had consented to undergoing such examination, the State party observes that the RAB normally does not order an examination for signs of torture where the asylum-seeker has appeared non-credible throughout the proceedings, and the RAB therefore has to reject the asylum-seeker's statement about torture in its entirety. The State party submitted that *K.H. v. Denmark*,[7] differs considerably from the complainant's case in that it concerned an Afghan national whose grounds for seeking asylum were related to the Taliban, and that the RAB "could find the complainant's statement regarding his conflicts with the Taliban as a fact".

4.12 The RAB also found that the complainant's relationship with a Christian woman did not justify asylum (see para 4.4 above). In this respect, the State party referred to the *Report on International Religious Freedom – Sudan* [8] published by the US Department of State on 30 July 2012, which was also included in the background material of the RAB at the assessment of the complainant's case. Upon an overall assessment of the information provided by the complainant for the case in conjunction with the other particulars provided in the case, including the information provided by the complainant's partner and the background information available on the situation in the complainant's home region, the majority of the RAB could not accept the complainant's statements on conflicts with authorities or others in Sudan prior to his departure as facts. The State party moreover maintained that neither the fact that the decision made by the RAB was a majority decision, nor the fact that the complainant comes from a country where gross violations of human rights occur can lead to a different assessment of the case.

4.13 The State party submitted that no new information has been provided in the complainant's complaint to the Committee on his conflicts in his country of origin as compared with the information available when the RAB decided the appeal and which was therefore included in the basis of the RAB's decision. Nor has any other information been provided that may result in a different assessment of the credibility of the complainant's information on his grounds for seeking asylum. The State party also referred to the findings made by the European Court of Human Rights in several cases concerning the assessment of credibility in asylum cases, including in its judgment of 9 March 2010 in *R.C. v. Sweden* (application No 41827/07, para. 52): "The Court observes, from the outset, that there is a dispute between the parties as to the facts of this case and that the Government have questioned the applicant's credibility and pointed to certain inconsistencies in his story. The Court acknowledges that it is often difficult to establish, precisely, the pertinent facts in

[7] Communication No. 464/2011, decision adopted on 23 November 2012.

[8] See https://www.state.gov/j/drl/rls/irf/2012religiousfreedom/index.htm#wrapper.

cases such as the present one. It accepts that, as a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned."[9]

4.14 The State party further submitted that it also follows from the case-law of the Committee that due weight must be accorded to findings of fact made by Government authorities.[10] The RAB made its decision on the basis of a procedure during which the complainant had the opportunity to present his views both in writing and orally with the assistance of legal counsel. The decision made by the RAB was thus based on a comprehensive and thorough examination of all the evidence in the case. When assessing the complainant's credibility, the RAB made an overall assessment, which included the complainant's statements and demeanour at the RAB hearing in conjunction with the other information available in the case. In accordance with the case-law of the Committee, the RAB emphasised in that connection whether the statements were coherent, likely and consistent. In his complaint to the Committee, the complainant failed to provide any new, specific details about his situation and he is thus in fact trying to use the Committee as an appellate body to have the factual circumstances relied upon in support of his claim for asylum reassessed by the Committee. The State party maintained that the Committee must give considerable weight to the findings of fact of the RAB, which is better placed to assess the factual circumstances in the complainant's case.

Complainant's comments on the State party's observations

5.1 On 21 January 2016 and 2 February 2016, the complainant submitted that the Danish Immigration Service and the RAB did not appear to understand the need to carry out medical examinations in torture cases. When he arrived in Denmark he and his spouse were not able to get family reunification under the existing rules. As a victim of torture in his country of origin, he consequently filed an application for protection in Denmark against deportation to Sudan.

5.2 The complainant submitted that in all communications concerning deportations, it is argued by the State party that the complainants had failed to establish a *prima facie* case, as a reason to declare their communications ill-founded, but very little reasoning is provided as of why these are ill-founded. He further noted that he agrees with the State party, that he is trying to use the Committee as an appellate body, since he is "desperately in need of the assistance" of the Committee. The domestic law does not allow an appeal against the decisions of the RAB even in cases such as his, where the RAB was split when deciding the case. A minority of the RAB members wanted the complainant to be granted asylum or to allow for a medical examination before making the final decision. This was, however, overruled by the majority of the RAB members, which issued a negative decision. The complainant maintained that as a matter of fair trial, such a decision should be allowed to be examined at a higher level but this is not allowed in the State party. Consequently, he agreed with the State party that the Committee is in fact used as an appellate body, but he contested that the Committee should give any weight to the findings made by majority of members of the RAB, since these were made without "proper basis" –in his case a medical torture examination.

5.3 The complainant maintained that the Committee should consider his communication admissible, and reject the argument, that he failed to establish a *prima facie* case.

[9] Reference is also made to the judgment delivered by the European Court of Human Rights on 26 June 2014 in *M.E. v. Sweden* (application No 71398/12, para 78).

[10] See, *inter alia*, communication No.209/2002, *Otman v. Denmark*, decision adopted on 12 November 2003, para. 6.5.

5.4 The complainant referred to the Committee's decision on communication No.339/2008, *Amini v. Denmark*, paras 9.8 and 9.9[11] and to communication No.464/2011, *K.H. v. Denmark*, para. 4.5[12] and noted that in both cases the RAB had considered that the complainants had lied about the torture they had suffered, no medical examination was allowed, but both complainants were able to get a free of charge torture examination by the doctors at the Danish Amnesty International medical group. Since asylum seekers in Denmark are not allowed to work, they have no income that would allow them to pay for such a medical examination from their own means. Consequently, many asylum-seekers who were not allowed a medical torture examination by the Danish authorities, apply for the free examination by Amnesty International. The organisation can only process a limited number of cases and so far the complainant's case was not amongst them, even though he had applied. He maintains that it is the State party to the Convention who should be responsible for allowing such medical torture examinations, and not the complainant who has no financial means or NGO's with limited resources based on volunteer work.

5.5 The complainant referred to a case of a Turkish national of Kurdish origin who was claiming asylum due to the torture he suffered before fleeing and where the RAB ordered a medical torture examination and subsequently granted him asylum based on the results. The decision of the Board was thus postponed until the Board had the results of this medical examination.[13] He maintained that this was the "correct procedure" that should also have been followed in his case, because it is of paramount importance to establish whether or not the complainant had been tortured before fleeing, in order to allow for the assessment of whether or not he will be subjected to torture (again) on return. In support he referred to the Committee's jurisprudence in communications No.63/1997, *Arana v. France,*[14] No.233/2003, *Agiza v Sweden,* para. 13.7,[15] and No.416/2010, *Chun Rong v. Australia.*[16] He also referred to the Committee's decision in *K.H. v. Denmark,*[17] where the Committee explicitly held 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" and found a violation of article 3.

5.6 The complainant further referred to two decisions by the European Court: A.A. vs. France, Application No18039/11 and A.F. vs. France, Application No. 80086/13, in which the applicants were asylum seekers from Sudan. In both cases the Court found France in violation of article 3 of the European Convention for Human Rights and Fundamental Freedoms, *inter alia* based on a very precise examination of background information about the human rights situation in Sudan. In the second decision the Court stated that: "[…] *it is likely that A.F. on his arrival at Karthoum Airport, would attract the unfavourable attention of the authorities on account of the few years he spent abroad.*"[18] The complainant maintained that he also spent long time abroad and he would attract attention on return, which would immediately reveal his scars resulting from the torture he suffered. The above would allow the Sudanese police and security service to understand, that he is one of their former "clients". The complainant submitted a photo of his scars in support. Consequently, he will be subjected to interrogation and most likely tortured.

[11] Adopted on 15 November 2010.
[12] Adopted on 23 November 2012.
[13] Case file No. 1-30-449.774, no copy provided by the complainant.
[14] Decision adopted on 9 November 1999.
[15] Decision adopted on 20 May 2005.
[16] Decision adopted on 7 February 2013.
[17] Supra note 9, para 8.8.
[18] See press release issued by the Registrar of the Court, Deportation of two Sudanese nationals living in France to their country of origin would entail a violation of the Convention15 January 2015.

5.7 The complainant maintained that the Committee's general comment No.1, clearly indicates that the State party, aware of gross human rights violations in the country of origin, must establish whether or not the asylum seeker suffered torture before fleeing. This is a crucial element in the assessment of whether or not the complainant would also face torture on return. The State party seems to have taken the (wrong) position that it is not obliged to establish whether or not the complainant was in fact tortured before fleeing, in order to be able to make the assessment of a future risk of torture upon return. Consequently, the complainant argued that with regard to the merits of the case, the majority of RAB members that rejected a medical examination before rejecting the complainant's claim for asylum had violated the "procedural aspects" of article 3.

State party's further observations

6.1 On 10 June 2016, the State party submitted in response to the complainant's comments of 21 January 2016 that it maintains its observations of 17 November 2014. It further submitted that as appears from the decision made by the RAB, the majority of its members "could not find as facts the complainant's statement" that he was detained in April 2007 and tortured by persons having ties with the Sudanese authorities due to his brother's attachment to the JEM. In this respect, the majority of the RAB members emphasised that the complainant had made augmentative and inconsistent statements on essential elements of his grounds for asylum, and that he and his partner had made inconsistent statements on the reason for their departure from Sudan (see paras 4.3-4.4).

6.2 The State party submitted that the case file concerning the complainant's partner,whom the complainant met in 2006 in Sudan and had cohabited with at the time of their departure from Sudan in 2007, was taken into account in the examination of the complainant's application for asylum and was accordingly included in the basis of the decisions made in the case by the Danish Immigration Service and the RAB. The State party confirmed the complainant's submission with regard to his partner's asylum proceedings and that on [redacted] April 2012, the RAB granted residence to her under section 7(2) of the Aliens Act taking into account her illegal departure from Eritrea, her long-term stay abroad and her evasion of military service. It further appeared from the case file relating to the application for asylum lodged by the complainant's partner that she stated, when interviewed by the Danish Immigration Service on [redacted] December 2009, that the complainant had not completed his compulsory military service and had therefore been arrested at his parent's place, that he had escaped after 14 days in prison and that the couple had then left Sudan. However, from the case file relating to the complainant's application for asylum, it appeared that he stated at the asylum interview on [redacted] January 2014 that he had told his partner that he had been arrested because of his brother's attachment to the JEM and that he believed that his partner had not told that to the Danish Immigration Service because it was not her problem. The complainant also stated that his partner might need a psychologist and did not speak very clearly. At the hearing before the RAB on [redacted] April 2014, the complainant was asked to explain the fact that his partner had said during her asylum proceedings that the complainant had had to leave his country of origin because of his military service. The complainant responded that his partner was not proficient in Arabic and that he had not wanted her to know the full truth. The State party has considered whether the above discrepancies between the complainant's and his partner's accounts of the incident that made them leave Sudan in 2007 and the augmentative and inconsistent statements in the complainant's account may be attributable to torture, as claimed by the complainant himself, but has found that this is not the case.

6.3 As regards the photo of scars on the complainant's body, the State party observed that the fact that the complainant has scars on his body cannot be taken to mean that the complainant has been subjected to the physical abuse claimed by him. In cases in which the

asylum-seeker has claimed to have been subjected to torture as a result of circumstances that still apply and in which there is therefore a risk that the asylum-seeker will be subjected to torture again in case of return to his country of origin, the RAB will normally not make arrangements for an examination for signs of torture if the relevant asylum-seeker has appeared non-credible throughout the proceedings as in the case at hand. The RAB therefore fully rejects the relevant asylum-seeker's statement on the alleged torture or the circumstances that gave rise to the torture. If the statement on why the asylum-seeker was subjected to torture is rejected as being non-credible and the circumstances giving rise to the risk of torture in case of his return continue to prevail according to the asylum-seeker, it naturally cannot be considered a fact either that, on that basis, the asylum-seeker risks being subjected to torture in case of return to his country of origin. The State party referred to communication No.565/2013, *S.A.P. v. Switzerland,*[19] in which the complainant had produced medical certificates in support of his application for asylum and the Committee had stated: "[...] S.A.P. claims that, as a result, she sustained extremely serious injuries and suffered from post-traumatic stress disorder. However, the Committee considers that the complainants have not provided sufficient evidence to allow it to conclude that the attested injuries were caused by the alleged acts of persecution and ill-treatment by those authorities. [...]".

6.4 The State party submitted that it is aware of the recent decision in communication No.580/2014, *F.K. v. Denmark* (CAT),[20] which reads: "[…] the Committee considers that, while the State party has raised serious credibility concerns, it drew an adverse credibility conclusion without adequately exploring a fundamental aspect of the complainant's claim. The Committee therefore considers that, by rejecting the complainant's asylum application without ordering a medical examination, the State party failed to sufficiently investigate whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Turkey". In the opinion of the State party, it cannot be inferred from *F.K. v. Denmark* that there is a general obligation to perform an examination for signs of torture in cases where an asylum-seeker's statement on his grounds for asylum cannot be considered a fact because the statement is deemed to lack credibility. Accordingly, the reasoning given in *F.K. v. Denmark* is very specific.

6.5 The State party submitted that, no matter whether it may be considered a fact that a consistent pattern of gross, flagrant or mass violations of human rights exists in Sudan, it finds that the complainant would not be at a specific and individual risk of abuse falling within article 3 on his return. It referred to the Committee's decisions in communications No 555/2013, *Z. v. Denmark*[21] and No 571/2013, *M.S. v. Denmark,*[22] stating 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. The State party further maintained that the complainant's reference to the judgments by the European Court of Human Rights in *A.A. v. France* (application No 18039/11) and *A.F. v. France* (application No 80086/13) cannot lead to a different assessment of his case.

6.6 The State party submitted that, according to the information provided by the complainant, the complainant has not been a member of any political associations or

[19] Adopted on 25 November 2015, para. 7.4.
[20] Adopted on 23 November 2015, para. 7.6.
[21] Adopted on 10 August 2015.
[22] Adopted on 23 November 2015.

organisations, nor was he contacted by the authorities prior to the incident claimed by the complainant to have occurred in 2007, which incident the majority of the members of the RAB could not accept as a fact. Residence under section 7 of the Aliens Act cannot be justified by the circumstances that the complainant is an ethnic African and initially originated from Darfur. It has not been rendered probable that the complainant would attract the attention of the Sudanese authorities merely as a consequence of his long-term stay abroad. Accordingly, the State party finds that the complainant appears as a very low-profile individual for the Sudanese authorities and that he would not risk abuse on his entry into Sudan. As regards the complainant's references to a number of other communications, the State party submitted that those concerned asylum-seekers from other countries and that no equalities between the circumstances of the complainant's case and the circumstances of those cases have been identified. It therefore finds that those references cannot lead to a different assessment of the complainant's case.

6.7 The State party referred to the views adopted by the Human Rights Committee in communications No.2272/2013, *P.T. v. Denmark*, para. 7.3,[23] No.2393/2014, *K v. Denmark*, paras 7.4 and 7.5,[24] and No.2426/2014, *N v. Denmark*, para. 6.6.[25] It maintained that the complainant's communication merely reflects that he disagrees with the assessment of his specific circumstances and the background information made by the RAB in his case. The complainant also failed to identify any irregularity in the decision-making process or any risk factors that the RAB had failed to take properly into account. Therefore, the State party reiterated that the complainant is in fact trying to use the Committee as an appellate body to have the factual circumstances advocated in support of his claim for asylum reassessed by the Committee. Furthermore, it reiterated that the Committee must give considerable weight to the findings of fact made by the RAB, which is better placed to assess the factual circumstances of the complainant's case.[26]

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, 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 (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 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the present case the State party does not contest that the complainant has exhausted all available domestic remedies.

7.3 The Committee recalls that for a claim to be admissible under article 22 of the Convention and rule 113 (b) of its rules of procedure, it must rise to the basic level of substantiation required for purposes of admissibility.[27] The Committee notes the State

[23] Adopted on 1 April 2015.
[24] Adopted on 16 July 2015.
[25] Adopted on 23 July 2015.
[26] The State party provides statistics on the case law of the Danish immigration authorities, which, show, *inter alia*, the recognition rates for asylum claims from the ten largest national groups of asylum-seekers decided by the RAB between 2013 and 2015.
[27] See, *inter alia*, communication No.308/2006, *K.A. v. Sweden*, decision adopted on 16 November

party's argument that the communication is manifestly ill-founded owing to a lack of substantiation. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues under article 3 of the Convention, and that those arguments should be dealt with on the merits. Accordingly, the Committee finds no obstacles to the admissibility and declares the communication admissible.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

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

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Sudan. 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. The Committee remains seriously concerned about the continued and consistent allegations of widespread use of torture and other cruel, inhuman or degrading treatment perpetrated by State actors, both the military and the police, which have continued in many parts of the country.[28] 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 return; additional grounds must be adduced to show that the individual concerned would be personally at risk.[29]

8.4 The Committee recalls its general comment No 1 (1997) on the implementation of article 3 of the Convention, that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable", but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal. The Committee recalls that under the terms of general comment No. 1, it gives considerable weight to findings of fact that are made by authorities of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.5 The Committee notes the complainant's claims that he would be at a real personal risk of torture if returned to Sudan because: he was interrogated regarding his brother's involvement with JEM and his whereabouts by national security officers and police officers, he was stabbed with a knife several times by security officers; he was threatened with death by police officers; and he fled a military hospital where he was detained and subsequently the country. He also feared returning to Sudan because of his relationship with a Christian woman, since police officers had accused him of not being a true Muslim

2007, para. 7.2.

[28] See *Concluding observations on the fourth periodic report of the Sudan*, Human Rights Committee, CCPR/C/SDN/CO/4, adopted on 22 July 2014, paras 15-17.

[29] See communications No.282/2005, *S.P.A.* v. *Canada*, decision adopted on 7 November 2006; No 333/2007, *T.I.* v. *Canada*, decision adopted on 15 November 2010; and No 344/2008, *A.M.A.* v. *Switzerland*, decision adopted on 12 November 2010.

on account of that relationship. The Committee also notes the State party's observations that its domestic authorities found that the complainant lacked credibility because, inter alia, he made conflicting and augmentative statements during interviews, and that he and his partner had made inconsistent statements concerning the reason for their departure from Sudan (see paras 4.3 and 4.4).

8.6 In the present case, the Committee observes that the complainant's allegations that he would risk being tortured if returned to Sudan rely on the general human rights records of Sudan, and on the claim that in 2007 he had been stabbed with a knife, threatened and arrested in order to reveal the whereabouts of his brother (a JEM supporter) by security and police officers. The Committee also notes the State party's submissions that the complainant has never been involved with JEM himself and that his political activity was limited to participating in one demonstration and that he provided contradictory statements regarding the events surrounding his ill-treatment and arrest. The Committee notes that, even if it were to discount the abovementioned inconsistencies and accept these claims as true, the complainant has not provided any evidence that the authorities in Sudan had been looking for him in the recent past or were otherwise interested in him. The Committee further takes note of the complainant's position that the authorities should have ordered a medical examination, to prove or disprove whether he had been subjected to torture in the past.

8.7 The Committee observes that a medical examination requested by a complainant to prove the acts of torture that he/she has allegedly suffered should, in principle, be ensured, regardless of the authorities' assessment on the credibility of the allegation, so that the authorities deciding on a given case of forcible return are able to objectively complete the assessment of the risk of torture on the basis of the result of that medical examination, without any reasonable doubt. In the particular circumstances of the present case, however, the Committee takes note of the period of time elapsed since the events in 2007, and recalls that although past events may be of relevance, the principle aim of its assessment is to determine whether the complainant currently runs a risk of being subjected to torture upon his arrival in Sudan.[30] The Committee recalls that ill-treatment suffered in the past is only one element to be taken into account, the relevant question before the Committee being whether the complainant currently runs a risk of torture if returned to Sudan.[31] The Committee considers that, even if it were assumed that the complainant was tortured by the Sudanese authorities in the past, it does not automatically follow that, at least ten years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Sudan.[32]

8.8 The Committee recalls its jurisprudence whereby the risk of torture must be assessed on grounds that go beyond mere theory, and indicates that it is generally for the complainant to present an arguable case.[33] In the light of the considerations above, and on

[30] See communications No. 61/1996, *X, Y and Z* v. *Sweden*, Views adopted 6 May 1998, para 11.2 or No. 435/2010, *G.B.M. v. Sweden*, decision adopted on 14 November 2012, para. 7.7.

[31] See, for example, communications No. 61/1996, *X.Y. and Z. v. Sweden*, decision adopted on 6 May 1998, para. 11.2; No. 435/2010, *G.B.M.* v. *Sweden*, decision of 14 November 2012, para. 7.7; or No.458/2011, *X. v. Denmark*, decision adopted on 28 November 2014, para. 9.5.

[32] See, for example, communication No. 431/2010, *Y.* v. *Switzerland*, decision adopted on 21 May 2013, para. 7.7 or No.458/2011, *X. v. Denmark*, decision adopted on 28 November 2014, para. 9.5.

[33] See communications No. 298/2006, *C.A.R.M. et al. v. Canada*, decision adopted on 18 May 2007, para. 8.10; No. 256/2004, *M.Z. v. Sweden*, decision adopted on 12 May 2006, para. 9.3; No. 214/2002, *M.A.K. v. Germany*, decision adopted on 12 May 2004, para. 13.5; *S.L. v. Sweden*, para. 6.3; and No. 347/2008, *N.B.-M. v. Switzerland*, decision adopted on 14 November 2011, para. 9.9.

the basis of all the information submitted by the complainant and the State party, including on the general situation of human rights in Sudan, the Committee considers that the complainant has not adequately demonstrated the existence of substantial grounds for believing that his return to Sudan would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

9. Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the return of the complainant to Sudan would not reveal a breach of article 3 of the Convention.