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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. 2373/2014***

Communication submitted by:	I. K. (represented by Helge Nørrung)
Alleged victim:	The author
State party:	Denmark
Date of communication:	26 February 2014 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 3 April 2014 (not issued in document form)
Date of adoption of Views:	18 March 2019
Subject matter:	Author's deportation from Denmark to Afghanistan
Procedural issues:	Inadmissibility as manifestly ill-founded; inadmissibility *ratione loci* and *ratione materiae*; level of substantiation of claims
Substantive issues:	Risk to life; risk of torture or other cruel, inhuman or degrading treatment; freedom of religion
Articles of the Covenant:	6, 7 and 18
Article of the Optional Protocol:	2

* Adopted by the Committee at its 125th session (4 – 29 March 2019).

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

1.1 The author of the communication, dated 26 February 2014, is Mr. I. K.,[1] a national of Afghanistan, born on [redacted] January 1996.[2] The author claims that he would be a victim of violation by Denmark of articles 6, 7 and 18 of the International Covenant on Civil and Political Rights (the Covenant), if deported to Afghanistan. The author's appeal against a negative decision on his application for asylum in Denmark was finally rejected on [redacted] February 2014. His deportation to Afghanistan has been expected within 15 days from the final decision, by [redacted] February 2014.[3] The author requested the Committee to issue interim measures not to remove him to Afghanistan pending the examination of his communication. He is represented by counsel, Helge Norrung.[4] The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976.

1.2 On 3 April 2014, the Committee decided, acting through its Special Rapporteur on new communications and interim measures, not to issue a request for interim measures under rule 92 of the Committee's rules of procedure.

The facts as presented by the author

2.1 The author submits that he is of hazara ethnicity and comes from Gazni[sic][5] province in Afghanistan. He left his home country in October 2011, after having a conflict with a powerful neighbour, an army general.

2.2 The author submits that his father was killed by the Taliban in 2007, and his mother was left with five minor children, including the author. In 2011, the afore-mentioned general attempted to seize the land that belonged to the author's family, and during the ensuing physical altercation, the author hit the neighbour's son on his leg with a spade. The author's mother urged him to escape to avoid further punishment from the powerful neighbour.

2.3 Prior to this incident, the author also experienced attempts to rape him during a short period of employment with his father's former employer, a local commander.

2.4 The author travelled through several countries before reaching Denmark. On the way to Denmark, he visited Christian churches in Greece and Italy, firstly because the churches offered food, and later because he found peace in the church. The author began to be interested in Christianity. He rejected his Muslim faith, and his family in Afghanistan was informed about his "conversion".[6] He submits that he converted to Christianity not to obtain asylum, but because he found the Christian religion to be peaceful.[7] He claims that he rejected Islam wholeheartedly and wishes to practice Christianity. In its final decision, the Board correctly stated that the author is a former shia muslim and now a "seeking Christian". It is further correctly stated that the author's father worked for a commander Bask Habibullah and that he was killed by Taliban in that connection in 2007. Finally, the Board held that it "cannot deny that the applicant and his family has had a land dispute with the neighbour about the boundary between the lots, and that the author has hit the neighbour's son with a spade across the leg." Nevertheless, the Board rejected the asylum claim, finding that "it is not substantiated that he upon return to the homeland will be in risk of persecution which would justify his asylum, according to the Aliens Act (section 7, paragraph 1), or to be in a real risk of abuse covered by the Aliens Act (section 7, paragraph 2)."

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[1] The author requests that his identity be kept confidential.

[2] The author was born in 1994, according to a disputed age test.

[3] The author estimated that the Police would deport him to Afghanistan within one month from the date of the communication.

[4] Power of attorney is annexed to the initial communication. Mr. Helge Norrung was replaced by Mr. Daniel Norrung, following the first counsel's retirement.

[5] The author may be referring to Ghazni province in Afghanistan.

[6] The decision of the Danish Refugee Board of [redacted] February 2014 (annex 1).

[7] The author asserts that, as he was a minor, he was living in asylum centres which did not facilitate contact with alternative religions. It was the author's counsel who contacted Christian associates which led to the author's contact to a local priest near the asylum centre who would assist the author to learn more about Christianity. Before the Board meeting, the counsel submitted on [redacted] February 2014 a brief letter by the priest attesting to the author's Christian beliefs. When transferred to an adult asylum centre, he kept his faith secret due to hostility of other country-men.

2.5 Since the 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.

The complaint

3.1 The author claimed that he would be exposed to persecution, torture and a risk of death in violation of articles 6 and 7 of the Covenant, if removed to Afghanistan. He claims to be in need of protection due to his ethnicity as a Hazara, young age and his interest in Christianity over two years, which he has expressed to other Afghans.[8]

3.2 The author further submitted that the land dispute with a powerful neighbour, an army general, and the fact that the author has no family in Afghanistan put him at further risk of being subjected to torture or being killed.

3.3 Concerning the author's interest in Christianity, the author submitted that he had told about it from the beginning of the asylum proceedings in Denmark and that he had not pretended to have great knowledge of his newfound religion, which at first merely gave him peace, but ended up in a serious study of Christianity for the purpose of becoming baptised. The author has further enclosed a copy of a certificate of baptism, according to which the author was baptised on [redacted] February 2014 in the [redacted] Church of [redacted]. The author claimed that it would constitute a breach of article 18 of the Covenant to return him to Afghanistan since he may thereby lose the right to choose his own religion and the right to exercise it.

3.4 In light of the above, the author concluded that his removal to Afghanistan would constitute a violation by Denmark of his rights under articles 6, 7 and 18 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 3 October 2014, the State party submitted its observations on admissibility and the merits of the communication, arguing that it is inadmissible due to non-substantiation of the author's claims, or alternatively without merits.

4.2 The State party recalls that the author is an Afghan national, registered as born on [redacted] January 1994, who entered Denmark on [redacted] February 2013 without valid travel documents and applied for asylum the same day. On [redacted] August 2013, the Danish Immigration Service decided that the author was 19 years old, and his date of birth was registered as [redacted] January 1994. The author stated that he was born on [redacted] January 1996. On [redacted] November 2013, the Immigration Service refused asylum to the author. On [redacted] February 2014, the Danish Refugee Appeals Board upheld the refusal of the author's asylum application by the Immigration Service. On 26 February 2014, the author submitted the communication to the Committee, claiming that it would constitute a violation of articles 6, 7 and 18 of the Covenant to return him to Afghanistan. On 24 March 2014, the Ministry of Justice upheld the decision on the author's age made by the Immigration Service. A forcible return of the author to Afghanistan was scheduled for 25 March 2014, but the return was cancelled. On 30 April 2014, an alert was recorded for the author in the Danish Criminal Register for the purpose of his detention and return to Afghanistan, since the author had failed to appear, although summoned. The author was not to be found at the moment of submission and kept in hiding from the Danish authorities.

4.3 The State party describes relevant domestic law and procedures, including the structure, composition and functioning of the Board, which it considers to be an independent, quasi-judicial body.[9] It also points out to the established procedures for assessing inconsistent statements by the asylum-seeker, which may impact the asylum-seeker's credibility.

[8] The author claims that he falls within the risk groups as elaborated in the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan, published by the UNHCR on 6 August 2013, page 67.

[9] See e.g. *Obah Hussein Ahmed v. Denmark* (CCPR/C/117/D/2379/2014), paras. 4.1.-4.3.

4.4 As regards articles 6 and 7 of the Covenant, the State party submits that the author has failed to establish a prima facie case for the purpose of admissibility of his communication, because it has not been established that there are substantial grounds for believing that the author would be in danger of being deprived of his life or subjected to torture or to cruel, inhuman or degrading treatment or punishment on his return to Afghanistan. This part of the communication should be declared inadmissible as not sufficiently substantiated.

4.5 The State party considers that the author's alleged conversion to Christianity cannot be deemed genuine, while finding that the author has failed to establish that there are substantial grounds for believing that, following a return to Afghanistan, he risks any violation of his rights under article 18 as a consequence of the alleged conversion to Christianity. This part of the communication should therefore be considered inadmissible as manifestly ill-founded. The State party also observes that the author is seeking to apply the obligations under article 18 in an extraterritorial manner, submitting that it cannot be held responsible for violations of article 18 expected to be committed by another State party outside the territory and jurisdiction of Denmark. It argues that the Committee has never considered a complaint on its merits regarding the deportation of a person who feared violation of other provisions than articles 6 and 7 of the Covenant in the receiving State. In the State party's view, extraditing, deporting, expelling or otherwise removing a person to fear of having his rights under e.g. article 18 of the Covenant violated by another State party will not cause such irreparable harm as is contemplated by articles 6 and 7 of the Covenant. Therefore, this part of the communication should also be rejected as inadmissible *ratione loci* and *ratione materiae,* pursuant to Rule 96 (d) of the Committee's Rules of Procedure, read together with Rule 96 (a) of the Committee's Rules of Procedure and article 2 of the Optional Protocol.

4.6 Should the Committee find the communication admissible, the State party submits that it has not been established that there are substantial grounds for believing that it would constitute a violation of articles 6, 7 and 18 of the Covenant to return the author to Afghanistan.

4.7 The Refugee Appeals Board took a decision on [redacted] February 2014 not to grant a residence permit to the author, pursuant to section 7(1) or 7(2) of the Aliens Act, on the basis of a procedure during which the author had the opportunity to present his views to the Board both in writing and orally, with the assistance of legal counsel.

4.8 The State party observes that the Board found that it could not be ruled out that the author and his family had had a land dispute with a neighbour in Afghanistan, and that the author had consequently hit the neighbour's son on the leg using a spade. However, the Board found that the land dispute was not of such nature or intensity as to give reason to assume that the author would be at a real risk of abuse on the part of his neighbour if the author returned to Afghanistan. The Board has assessed whether the author as asylum-seeker has a well-founded fear of being subjected to specific, individual persecution of a certain severity if returned to his country of origin and came to a negative conclusion. The State party agrees with the Board that the land dispute relied upon by the author was not of such nature or intensity that the author would be at a real risk of abuse on the part of his neighbour if the author returned to his country of origin. There were no sufficient grounds established for the author to obtain residence permit. The State party observes that, according to the author's own statement, the neighbour did not demand the land of the author's family until mid-2011, four years after the father's death in 2007, that the author merely hit the neighbour's son on the leg using a spade, that the neighbour has taken all the family's property after the author's departure, that the neighbour's son has died after the author's departure, that the author's family has subsequently left Afghanistan and that the land dispute took place 3 years ago.

4.9 The State party finds that the fact that the author is young, without family and an ethnic Hazara from the Ghazni province cannot in itself justify the author's entitlement to international protection. In reference to the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan* from 6 August 2013, the State party submits that the author does not belong to a minority ethnic group in the area of his residence as Hazaras constitute 25 per cent in Ghazni province. Moreover, the author is a young unmarried male of working age with no health problems. He stated when interviewed by the Immigration Service on [redacted] November 2013 that neither he nor anybody in his family

had been involved in politics. The author has further stated that he has never experienced any problems with the Afghan authorities. Accordingly, the author is inconspicuous.

4.10 As regards author's Christian activities and persuasion, the Board considered the statements made by the author during the Board hearing and in the written material, and took into account the material forwarded by the author's counsel in its decision. However, the Board has considered that there was no basis for granting the author a residence permit under section 7 of the Aliens Act since the author's Christian persuasion could not be deemed genuine. The author had stated to the Board that he had sought out the church in Greece for food and peace, that when he came to Denmark, a year or so had passed during which time the author had not actively sought information about Christianity or tried to get to church, and that the author thus only established contact with a pastor two weeks before the Board hearing. The State party observes that the author's letter of 26 February 2014 to the Committee enclosed a certificate of baptism stating that the author had been baptised on [redacted] February 2014 in the Pentecostal Church of Rudkøbing. The Board considered the author's Christian activities in its decision of [redacted] February 2014; the State party submits that a certificate of baptism dated 12 days after the Board's decision cannot lead to a different assessment. It should be noted on this point that the author was baptised and had a certificate of baptism issued three days before he brought his complaint before the Committee and one month before his scheduled forcible return. The author also stated at the Board hearing on [redacted] February 2014 that, at counsel's meeting with the author prior to the Board hearing, counsel had phoned a Christian acquaintance with contact to refugees and had asked him to contact a third individual and send the author a link, disclosing that the author established contact to the Danish church my means of his counsel. Moreover, the Board could not find as a fact in its decision of [redacted] February 2014 that the author's home town area had become aware that he had gone to church in Greece. The author has also stated that he did not understand what was said in the church in Greece. At the date of the Board hearing, the author furthermore did not understand what pastors in Denmark were saying. Nine or ten days prior to the Board hearing, he had received a Bible in Farsi, which he had studied. He further admitted that he had been able to communicate only with few persons because he knew only a little Farsi, and that he was able to read Farsi, but had problems understanding some expressions and concepts.

4.11 According to the information available, the author was baptised 12 days after the Board hearing at a time when the author had merely been in contact with a Danish pastor for slightly under one month, when he did not understand what was being said in the Danish churches, and when he had attempted to study a Bible not written in his native language. The State party further observes that the author's alleged new faith has not been demonstrated in external activities other than his baptism on [redacted] February 2014, and that he admitted to the Immigration Service and the Board that his relationship with Christianity was very personal and secret. Moreover, the author went missing after the Board hearing; the Danish police therefore recorded an alert for the author in the Criminal register on 30 April 2014. The author was still not to be found and kept in hiding from the Danish authorities at that point. In view of the timing of events and the general circumstances of the case, the State party considers that the author has failed to substantiate that his alleged conversion to Christianity is genuine.[10] The State party finally observes that, in its judgement of 8 July 2014 in *M.E. v. Denmark* (application no. 58363/10), the European Court of Human Rights expressed its opinion on the examination of a similar case by the Danish asylum authorities, which was considered as complying with the due process guarantees as the applicant was represented by a lawyer and he was given the opportunity to submit written observations and documents, and his arguments were duly considered.

4.12 Based on the above, the State party submits that it will not constitute a violation of article 6 or 7 of the Covenant to return the author to Afghanistan, and that he will not risk any violation of his rights under article 18 of the Covenant as a consequence of his alleged

[10] The State party refers to Afghanistan: Situasjonen for kristne og konvertitter, a report published by Landinfo on 4 September 2013 on "converts of convenience" pages 19 and 22 indicating that several sources have stated that, even if it becomes known in the country of origin that the relevant person has indicated conversion as an asylum ground in another country, this does not mean that the relevant person will become vulnerable upon his return since Afghans have great understanding for compatriots who try everything to obtain a residence permit in Europe.

conversion to Christianity. In any circumstances, the State party cannot be held responsible for violations of the author's rights under article 18 eventually to be committed by another State party outside the territory and jurisdiction of Denmark.

Author's additional information and comments on the State party's observations

5.1 On 30 July 2015, the author informed the Committee that his deportation is scheduled for 2 August 2015. On 3 August 2015, the author's counsel submitted that the author was deported to Kabul on 2 August 2015. The counsel reiterated the request for interim measures, as there might be ways to bring him back through private channels.

5.2 On 2 October 2015, the author submitted comments on the State party's observations, claiming that the communication should be declared admissible, that articles 6, 7 and 18 of the Covenant were violated by the State party's decision to return the author to Afghanistan, and that the Committee's decision pursuant to Rule 92 on interim measures should be reconsidered because the author is now in imminent danger in Afghanistan.

5.3 Although the author finds the accounts by the Immigration Service to be generally correct, the "age decision" by the Immigration Service has been disputed by the author who maintains that he was born on [redacted] January 1996.

5.4 Since the submission of the initial communication, the following facts have occurred: On 9 July 2015, the author was arrested on his way to a Church summer camp and was detained for deportation. His counsel was advised, that the author's deportation was planned for 10 August 2015. On 30 July 2015, the author's counsel wrote an e-mail to the Committee asking for urgent reconsideration of interim measures, attaching a deportation order by the police who apparently had hastened the deportation to take place on Sunday, 2 August 2015. On 2 August 2015, one of the author's Christian friends and Red Cross volunteer, together with the counsel, visited the author for the last time in the Ellebaek deportation centre; he was given consolation and the Christian sacrament. On 12 August 2015, Red Cross volunteer J[redacted] K[redacted] and priest S[redacted] K[redacted] wrote an admonition on the matter to the Danish asylum authorities, attached to the comments (annex 5). On 1 October 2015, the author's main priest S[redacted] K[redacted] wrote an update to her own letter of attestation of 25 July 2015 (annex 6). Those descriptions, together with the description from the priest H[redacted] F[redacted] H[redacted] (annex 3) give clear evidence of the author's conversion to Christianity. The priests J[redacted] K[redacted] and S[redacted] K[redacted] have had sparse contact with the author since his removal to Kabul.

5.5 Concerning statements made by the author during the asylum proceedings, the counsel refers to the parts of the Board's decision, which deal with author's interest in Christianity during and since his stay in Greece.[11] While the author's statements to the asylum authorities have been duly recorded, the Board has not reflected on the statements as recorded in the counsel's brief to the Board of [redacted] February 2014 (annex 2). The Board decision (page 13) only mentions that such briefs were submitted. The author confirmed that his church activities in Greece were not motivated by a desire to obtain asylum. Since the Church was the only place that helped with shelter and food, it gave him a favourable impression of Christianity. As he did not speak the language, he could not develop his interest, which continued in Denmark. The author wished to learn more about Christianity while staying at various asylum centres. After the interview with the Immigration Service, the author succeeded in making contact with the guardian of one his friends named A[redacted] J[redacted], who referred him to some Christian websites.

5.6 Requested to clarify what he means by his rejection of Islam, the author stated that he abhorred the kind of Islam he had experienced in Afghanistan, which is an expression of coercion, and which do not spare children like the author. Asked whether he would pray in the mosque by his return, the author responded that he would not, regardless whether he is granted asylum or not. The author continued: "They say that they are Muslims, but I detest their actions; they killed my father and they raped me." He added that his family received information on the author's interest in Christianity after the family had fled to Pakistan. There is now very little contact between the author and his family, since neither of them want to talk to each other. This is due both to the author's interest in Christianity, and because they

[11] Board's decision of [redacted] February 2014, pages 5 – 9.

believe that the author's aggression towards the neighbour's son is the reason for the family's misfortune (annex 2). The author's counsel also objects to the Immigration Service's conclusion that the author's land dispute was not current and relevant as the author reportedly stated that his neighbour had had taken the earth in his/her possession and now cultivates it, which he perceives as devoid of any empathy for the applicant who at the age of 14 – 15 years old, and being the oldest son of a widow, was stripped of his and his family's livelihood by a powerful and ruthless neighbour.

5.7 Referring to the UNHCR's background materials, the counsel argues that the author will be at risk of persecution, torture or risk to life, if removed, due to his young age and ethnicity. He should therefore be entitled to asylum under the Aliens Act, article 7,paragraphs 1 or 2. As concerns the Board's decision, none of the author's statements made during the Board's hearing can be taken as lacking honesty; the author admitted from the outset that his knowledge of Christianity is limited, but that his wish to learn more about it is great, in spite of language barriers. It is likewise evident that the author denounces the kind of Islam he had experienced in Afghanistan.

5.8 As regards the national asylum proceedings, the counsel objects that the decisions of the Refugee Appeals Board cannot be appealed to the ordinary Danish courts, as stipulated in the Aliens Act (article 56, section 8), which can be seen as a breach of a prescription of the right to appeal in the Danish Constitution (article 63). Moreover, the proceedings before the Board, as a quasi-judicial body, do lack many attributes of a judicial proceedings: the meetings are not open to public, witnesses are not allowed, except in exceptional circumstances, and one member of the five member Board is appointed by the ministry which is the superior authority to the Immigration Service, resulting in the lack of neutrality. Another issue is the lack of specific translation or language education requirement for the interpreters used by the Immigration Service and the Board, and the absence of audio-recording of asylum interviews. There is no requirement to use highly educated interpreters, such as from Afghan, which are not regularly used, neither in the present case nor in other asylum cases for Dari and Pasthu speaking applicants. Those weaknesses in the Danish asylum system make it important that the principle of the benefit of the doubt be invoked in favour of the asylum seeker's credibility.

5.9 Maintaining his previous submissions, the counsel reiterates the request for interim measures so that the State party ensure protection of the author, by returning him to Denmark while the consideration of the communication remains pending.

5.10 Furthermore, the counsel claims that, following his removal to Afghanistan the author lives in great fear of being killed. In reference to the above stated decision of the European Court No. 27034/05, in which the Court stated that "the contracting parties cannot serve as indirect guarantors of freedom of worship for the rest of the world", the counsel reiterates that the author will not be able to practice his religion in Afghanistan in the same manner he did in Europe, without risking his life if his conversion becomes known. Thus, he is deprived of any form of worship except by way of private prayers. The counsel adds that an out-dated method has been used to assess the author's age. In light of the above, the communication should be declared admissible.

5.11 Finally, the counsel reiterates that, given the fact that the author and his family had a land dispute with their powerful neighbour; the author had consequently hit the neighbour's son, and had experienced hostility and rape which made him reject Islam; and that he became a genuine Christian, the Board should have considered the extreme dangers of returning a Christian convert to Afghanistan, even though he was not yet baptized at the time. In conclusion, he maintains that articles 6 and 7 of the Covenant have been violated by Denmark, due to the author's removal to Afghanistan.

State party's additional observations

6.1 On 26 February 2016, the State party submitted its additional observations on admissibility and the merits, reiterating that the author's claims have not been substantiated.

6.2 On 10 July 2015, the author was arrested and detained for the purpose of his forced return from Denmark. On 2 August 2015, the author was forcibly returned to Afghanistan.

6.3 On 3 August 2015, the author requested the Refugee Appeals Board to reopen his asylum case. On 17 December 2015, the Board refused to reopen the author's asylum case.[12] The Board emphasized that the request for reopening and the appended statements[13] were not forwarded to it until 3 August 2015, after the applicant had been returned to Afghanistan on 2 August 2015. Since the author no longer stays in Denmark, and his asylum case is considered to be closed, the author's current situation in Afghanistan cannot be examined.

6.4 In the period from 3 April 2014, when the Committee transmitted the applicant's communication of 26 February 2014 to Denmark, until receipt of the request for reopening of 3 August 2015, when the applicant had already been removed from Denmark, the Board received no information on the applicant's religious persuasion or activities from neither the counsel nor the author or anyone else. However, several of the statements appended to the request for reopening of 3 August 2015 relate to circumstances and events, which according to the information available, took place during the said period. This information could have been forwarded to the Board in due time before the return of the author, but it was not forwarded until after his removal.

6.5 The State party observes that, for the entire period from the hearing of the case by the Board in February 2014 until his actual deportation on 2 August 2015, the author was represented by an attorney who has very extensive experience in the hearing of asylum cases before the Board and who is aware of the importance of presenting to the Board any new information in the case as soon as possible. The counsel did not forward the said information to the Board immediately after the author was arrested on 10 July 2015 and detained for the purpose of his return, but only after his actual deportation on 3 August 2015. The Board was not familiar with the information on the author's religious persuasion and activities in the meantime. The State party also observes that the counsel, in his letter of 30 July 2015 to the Committee, emphasized that the applicant would be forcibly returned on 2 August 2015. It is therefore incomprehensible that the information was not forwarded to the Board until after the author's return. The counsel and the author have not given the Board the opportunity to consider this information, and hear the applicant's detailed statements. Neither the information on the author's circumstances preceding the submission of his communication to the Committee were submitted until after his return on 3 August 2015. The Board also observed inconsistencies in the new information submitted in support of the request for reopening. It appears from the certificate of baptism produced that the author was baptised on [redacted] February 2014, 12 days after the Board hearing. Consequently, maximum number of days from the applicant's initial contact with a pastor in Denmark until the completion of his baptism was 23 days, which does not accord with the author's own statements during the proceedings, nor with the statement from pastor H[redacted] F[redacted] H[redacted] (annex 3) produced previously.

6.6 In response to the author's additional comments of 2 October 2015, the State party refers to its observations of 3 October 2014, adding that the Board was familiar with the counsel's brief of [redacted] February 2014, when it took its decision on [redacted] February 2014, and pointing out to a report *Afghanistan: Post-Taliban Governance, Security and U.S. Policy*,[14] which confirms the State party's submission concerning the author's age and ethnicity.

6.7 As stated above, an asylum case is deemed to be closed when the asylum-seeker leaves Denmark. If the relevant asylum-seeker re-enters Denmark and applies for asylum, the Board will consider the application to be a new application for asylum, provided that the asylum-seeker has stayed in his country of origin. Since the author no longer stays in Denmark, the Board cannot consider the author's situation after his return on 2 August 2015, as attested in the statements of 12 August 2015 from minister Krog of the Pentecostal Church and Red Cross volunteer Jens Kennet and a statement of 1 October 2015 from minister Krog[15], appended to the counsel's additional comments of 2 October 2015.

6.8 In regard to the author's submission concerning the absence of appeals against the decisions of the Board to the Danish courts and the circumstance that the Board is not a court

[12] The Board's decision is appended as annex 2.

[13] 25 July 2015 statement of minister S[redacted] K[redacted] of the [redacted].

[14] Published by the Congressional Research Service on 15 October 2015, page 75, figure 2.

[15] Both statements are enclosed as annexes 5 and 6.

of law, reference is made to part 5 of the State party's observations of 3 October 2014. As the calling of witnesses is concerned, the State party observes that, during the proceedings before the Board, neither the author nor his counsel requested that witnesses be called. Accordingly, the author's reservation does not seem to be relevant. Concerning the educational requirements of the interpreters, the State party observes that the author does not appear to have pointed out any errors or omissions in translations in connection with the proceedings before the Immigration Service and the Board, nor does he appear to have objected to the interpreters used. Moreover, the author confirmed that he had understood everything said by the relevant interpreter during the interview with the Immigration Service on [redacted] November 2013, and that he had had the opportunity to make comments on and corrections to the report. The author only made a comment as to the meaning of Jirga, otherwise has accepted the report as read out to him by the interpreter. The State party further observes that the Board's members are very attentive to the adequacy of the interpreting provided at Board hearings and will suspend the hearing in case of interpreting problems, and the proceedings will be adjourned if the Board finds it unjustifiable to continue the hearing using the interpreter summoned. The State party adds that the author was represented by counsel at the hearing before the Board and that neither the author nor his assigned counsel made any such objections at its hearing on [redacted] February 2014. It submits that since the author had access to counsel and participated in the oral hearing with the assistance of an interpreter provided by the Board, he has not justified how these proceedings would have amounted to a denial of justice in his case.[16]

6.9 The State party 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.[17] The State party adds that the author has not explained why the decision by the Board would be contrary to this standard, nor has he provided substantial grounds to support his claim that his removal to Afghanistan would expose him to a real risk of irreparable harm in violation of articles 6 and 7 of the Covenant.[18]

6.10 The State party reiterates that the author's claims as manifestly ill-founded and hence inadmissible and that the claims under article 18 are inadmissible *ratione loci* and *ratione materiae* pursuant to article 2 of the Optional Protocol. 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 constituted a violation of articles 6, 7 or 18 of the Covenant to return the author to Afghanistan.

Author's additional comments on the State party's further observations

7.1 On 14 March 2016, the initial counsel submitted additional comments, informing that Daniel Nørrung could not obtain a power of attorney as a succeeding counsel, since the author was removed to Afghanistan on 2 August 2015. The counsel informs that the priests and other Christian friends of the author have continued to worry for his well-being and safety.

7.2 The counsel submits that the author was "available" since 10 July 2015 when he was detained, following which he sent an application to the Immigration Service on 28 July 2015 regarding the author's residence for other reasons (Aliens Act, article 9c(1)), as he hoped for postponement of his expulsion. On 31 July 2015, the National Police informed the counsel that the Immigration Service did not have any objections to the author's deportation. The counsel requested the concerned police officer to contact the Immigration Service once again, but there was no response. On 2 August 2015, the counsel visited the author in the Ellebaek prison together with his priest. On 3 August 2015, not knowing whether the deportation had actually taken place, the counsel forwarded the application for author's residence for other reasons to the Board, together with a request for reopening the asylum proceedings. It was

[16] *K. v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.6.
[17] *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.3 and *K. v. Denmark*, paras. 7.4 and 7.5.
[18] *N. v. Denmark* (CCPR/C/114/D/2426/2014), para. 6.6.

only later that day that the author learned that the author had been deported and arrived in Kabul.[19]

7.3 In reference to a thorough decision by the Board of 17 December 2015, the counsel submits that the sincere Christian activities of the author have been described in six different letters, dated from 10 March 2015 to 26 July 2015. He points out to the perceived inconsistency in the Board's decision wherein it considered that the counsel should have submitted important new information before the author's deportation was effectuated, while the Board refused to assess new information because the author is not in Denmark.

7.4 The counsel claims that the facts as presented in the initial communication, including the author's interest in Christianity, began already during his transit in Greece where he prayed in Churches, continued with attendance of religious services on Sundays and church instruction on Thursdays in Denmark, and culminated with his baptism. Those information were substantial enough to reopen the author's asylum case when he was still in Denmark so that an additional hearing could take place. When reopening was not initiated and the State party's observations were not favourable, the counsel applied for author's residence for other reasons. In the meantime, the counsel intended to submit all the additional documents from priests to the Committee. However, since the deportation date was announced very late, the counsel only managed to send the five single documents to the Committee on 30 July 2015, a few days before the deportation, whereas the full views appeared in the counsel's comments of 2 October 2015.

7.5 Finally, the counsel emphasizes that the rejection of the author's asylum by the Board on [redacted] February 2014 was based on only one-and-half hour long hearing of the author, that his baptism and active Christian life were documented already in the initial communication and that the above referred priests have known the author for more than 18 months.

7.6 The counsel concludes that the author is at imminent risk of being exposed to serious harm and even threat to life, and that he is not able to practice his religion, wherefore he recommends reconsidering the request for interim measures to demand the State party to invite the author back to Denmark. This would enable the Board to perform the additional hearing based on the importance of supplementary information submitted to it by the counsel. The counsel claims that the alleged violations of articles 6, 7 and 18 of the Covenant by Denmark would remain a reality if the deportation is not revoked.

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 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

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 the author appealed against the negative decision of the Danish Immigration Service on his asylum application to the Refugee Appeals Board, which dismissed the appeal on [redacted] February 2014, and that the Board also rejected the author's request for reopening his asylum case on 17 December 2015. 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 The Committee notes the author's claims that by removing him to Afghanistan, he would be exposed to persecution, torture and a risk of death in violation of articles 6 and 7 of the Covenant, due to his ethnicity, young age, land dispute with a neighbour and interest in Christianity; and that he would be deprived of the right to exercise his religion in public,

[19] The counsel attached a copy of the e-mail correspondence with the concerned police officer.

in violation of article 18. The Committee notes, however, the State party's argument that the author's claims with respect to articles 6, 7 and 18 of the Covenant should be declared inadmissible because he "has failed to establish a prima facie case for the purpose of admissibility of his communication."

8.5 With regard to the author's claim under article 18, the Committee further notes the State party's argument that the author's conversion to Christianity has not been genuine, and that this part of his claim is inadmissible *ratione loci* and *ratione materiae*, as incompatible with the provisions of the Covenant, because article 18 does not have extraterritorial application and the State party therefore cannot be held responsible for violations of article 18 expected to be committed by another State party outside the territory and jurisdiction of Denmark. The Committee recalls that article 2 of the Covenant entails an obligation for States parties not to deport a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant, in the country to which removal is to be effected.[20] The Committee notes in this regard that the author has not provided further information to substantiate his claim that by removing him to Afghanistan, the State party has violated the author's rights under article 18 that would amount to irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant.[21] The Committee therefore considers that the author has failed to sufficiently substantiate his claim for purposes of admissibility, and that, this part of the communication is inadmissible under article 2 of the Optional Protocol.

8.6 While noting the State party's arguments that the author's claim under articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation, the Committee considers that the author has adequately explained numerous risk factors, including his ethnicity, age and a conflict with a powerful neighbour, for which he fears that his forcible removal to Afghanistan would result in a risk of treatment incompatible with the concerned provisions of the Covenant. The Committee is therefore of the opinion that this part of the communication, raising issues under articles 6 and 7 of the Covenant, has been sufficiently substantiated for purposes of admissibility. The Committee considers that the inadmissibility argument adduced by the State party is intimately linked to the merits and should thus be considered at that stage.

8.7 The Committee declares the communication admissible insofar as it appears to raise issues under articles 6 and 7 of the Covenant, and proceeds to its consideration on the merits.

Consideration of the merits

9.1 The Committee has considered the present 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 issue before the Committee is whether the removal of the author to Afghanistan (on 2 August 2015) has amounted to a violation, by the State party, of its obligations under articles 6 and 7 of the Covenant.

9.3 The Committee recalls its general comment No. 31,[22] 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. The Committee has also indicated that the risk must be personal and that the threshold for providing substantial grounds to establish that a real risk of irreparable harm exists is high.[23] Thus, all relevant facts and circumstances must be considered, including the general human

[20] See the Committee's General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[21] See e.g. *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.5.

[22] *Ibid.*

[23] See communications *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.

rights situation in the author's country of origin.[24] The Committee further 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 the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such risk exists,[25] unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.[26]

9.4 The Committee notes the State party's observation that its obligations under articles 6 and 7 of the Covenant are reflected in sections 7 (1) and 7 (2) of the Aliens Act, under which a residence permit will be issued to an alien upon application if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of his return to his country of origin. The Committee further notes the State party's observation that the assessment of whether an alien risks persecution or abuse justifying asylum in case of his return to his country of origin must normally be made in the light of the information available at the time of the decision, i.e. that the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the State party at the time of the expulsion. According to the State party, the decisive factor must be whether, at the time of the Board's decision of [redacted] February 2014, information was available that supported the author's allegation that he would be at risk of being subjected to persecution or abuse justifying asylum in case of his return to Afghanistan.[27] The State party submitted that the certificate of author's baptism of [redacted] February 2014 was submitted after the Board's final decision of [redacted] February 2014, and that the new information on his conversion to Christianity was submitted only on 3 August 2015, following the author's removal to Afghanistan the day before.

9.5 The Committee notes in particular the Board's findings of [redacted] February 2014 that many of the author's allegations can be considered as facts; however, the Board found that the land dispute was not of such nature or intensity as to give reason to assume that the author would be at a real risk of abuse on the part of his neighbour if the author returned to Afghanistan. The Committee observes that, according to the author's own statements, the neighbour did not demand the land of the author's family until mid-2011, four years after the father's death in 2007, and that the land dispute took place 3 years before the Board's decision. The Board has also, for example, noted that the author does not belong to a minority ethnic group in the area of his residence (para. 4.9), and that the author stated that he has never experienced any problems with the Afghan authorities. The Committee further notes that the Board considered all the author's statements in regard to his Christian activities and persuasion, made during the Board hearing and in the written material, including those by his counsel; nonetheless, the Board could not consider the author's Christian persuasion as genuine, since the author established contact with a pastor in Denmark only two weeks before the Board's hearing and he was baptised on [redacted] February 2014, 12 days after the Board's final decision.

9.6 The Committee also notes that the Board observed, in its decision of [redacted] December 2015, that it received no information on the applicant's religious persuasion or activities from neither the counsel nor the author during the period from 3 April 2014 until receipt of the request for reopening of the author's asylum case on 3 August 2015, when the author had already been removed from Denmark. Since the author no longer stays in Denmark, his asylum case was considered as closed by the State party's asylum authorities. The Committee notes that the Board further observed a lack of explanation why the new information could not be forwarded before the author's forcible removal on 2 August 2015, as well as inconsistencies of such information.

[24] *Ibid.*

[25] See communication *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[26] See communications *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 8.3.

[27] The Board considered, inter alia, the author's allegations that he used to work for the army, but that he was subjected to an attempted rape and therefore quit his job (para. 2.3). However, as his grounds for asylum, the author has referred to his fear that, in case of his return to Afghanistan, he will be killed by his neighbor because of a land dispute or executed by the Afghan authorities because of his interest in Christianity.

9.7 The Committee further notes the author's submission that his claims and risk factors have not been properly assessed by the State party's authorities and that the Board's decisions were manifestly erroneous as they cannot be appealed to a court, emphasizing that the Board's proceedings lack attributes of a judicial process, and that the interpreters used are not properly qualified. In this connection, the Committee notes the State party's claim that the author has not explained why the decisions of the Board in his case would be contrary to the due process standards, nor has he provided substantial grounds to support his claim that his removal to Afghanistan would expose him to a real risk of irreparable harm in violation of articles 6 and 7 of the Covenant. The Committee recalls its jurisprudence that certain kinds of abuse by private individuals may be of such scope and intensity as to amount to persecution if the authorities are not able or willing to offer protection.[28] However, the Committee considers that, in the present case, the author's claims mainly reflect his disagreement with the factual conclusions drawn by the State party, including the alleged risk of being harmed by his former neighbour due to a land dispute, or being persecuted, tortured or executed by the Afghan authorities on account of his religious beliefs, and do not demonstrate that these conclusions are arbitrary or manifestly unreasonable or that the asylum proceedings in question amounted to a denial of justice.[29]

9.8 In the light of the above, the Committee concludes that the information before it does not demonstrate that by removing the author to Afghanistan, the State party has violated his rights under articles 6 and 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that by removing the author to Afghanistan, the State party has not violated its obligations under articles 6 and 7 of the Covenant.

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[28] See *Omo-Amenaghawon v. Denmark* (CCPR/C/114/D/2288/2013), para. 7.5.

[29] See e.g. *P.T. v. Denmark*, para. 7.4, and *M.P. et al. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7.