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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2685/2015*,**,***

Communication submitted by:	R.M. and F.M. (represented by counsel, Ms. Jytte Lindgård)
Alleged victims:	The authors and their two minor children
State party:	Denmark
Date of communication:	19 November 2015 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 25 November 2015 (not issued in document form)
Date of adoption of Views:	24 July 2019
Subject matter:	Deportation to Afghanistan
Procedural issue:	Level of substantiation of claims
Substantive issues:	Right to life; risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
Articles of the Covenant:	6, 7, 17, 23
Article of the Optional Protocol:	2

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

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

*** Individual opinions by Committee members Shuichi Furuya, Photini Pazartzis, Yuval Shany and Andreas Zimmermann are annexed to the present Views.

1.1 The authors of the communication are R.M., born in 1989, and his wife, F.M., born in 1994. They are Afghan nationals and present the communication on their own behalf and on behalf of their two children born in 2011 and 2014. They claim that by forcibly deporting them to Afghanistan, Denmark would violate their rights under articles 6, 7, 17 and 23 of the Covenant. The authors are represented by counsel.

1.2 On 25 November 2015, pursuant to rule 92 of the Committee's rules of procedure, the Special Rapporteur on new communications and interim measures requested the State party to refrain from deporting the authors and their children to Afghanistan while their case was under consideration by the Committee. On 27 January 2017 and then on 9 April 2018, the Special Rapporteur decided to deny the State party's requests to lift interim measures.

The facts as presented by the authors

2.1 The authors fled Afghanistan after having had sexual relations outside marriage, which resulted in F.M. becoming pregnant. These sexual relations occurred at the F.M.'s residence when her family was absent.[1] When she was 3-month pregnant, F.M. was formally engaged to one of her uncle's friends, who was older and with whom she had had no previous contact. After the authors' departure,[2] F.M.'s family threatened R.M.'s family. F.M.'s cousin killed R.M.'s brother[3] because he had helped the authors to escape. The authors stayed for about 6 months in Turkey, where their first son was born. Then they went to Greece, where they stayed for 14 months.

2.2 F.M. entered Denmark without valid travel documents on 23 April 2012, and R.M. on 11 December 2012.[4] They applied for asylum the day of arrival, respectively. F.M. declared that she feared being killed by her uncle or her fiancé because she had had sexual relations with R.M. and became pregnant. R.M. declared that he feared being subjected to blood revenge from his wife's uncle because he had sexual relations with a young woman without being married to her and then helped her escape from her family. He also feared for his life because his brother was killed by F.M.'s family. However, the Danish Immigration

[1] F.M. declared before the Danish authorities that she grew up with her father's brother, so she was living in her uncle's house. She met R.M. at the home of his aunt, who was living in the neighbouring house.

[2] The authors declared before the Danish authorities that after leaving their homes, they went into hiding in another part of Kabul for 20 days, and they married during that period. They had been married by a mullah, in the presence of R.M.'s parents, at the home of the agent who had organized their departure from Afghanistan. Then they went to Turkey.

[3] The report of the Danish Immigration Service on the asylum interview with R.M. on 18 February 2013 mentions that R.M. produced a document as evidence of his brother's death. According to the interpreter's translation of the copy of that document, on 12 July 2011, the son of M.Q. had been killed and found in the Qasem Kham alley, and three persons had been arrested on that occasion and convicted for the killing. The document was a record of the death of the relevant person. The interpreter stated that the document was dated 23 October 2012, was provided with three signatures as well as the signature of the issuer of the document and was from the first police district. R.M. declared that the document was from the police in Kabul and that it was evidence of the death of his brother. However, the interpreter could not read whether that was the case because the writing was illegible.

[4] The authors declared before the Danish authorities that R.M. stayed in Greece after F.M.'s departure.

Service rejected F.M.'s asylum application on 15 August 2012,[5] and R.M.'s application on 17 May 2013.[6]

2.3 By two decisions of 22 October 2013, the Refugee Appeals Board upheld the previous decisions. It deemed the authors' explanations on certain points to be divergent, and in addition implausible and fabricated for the occasion. In particular, it noted their divergent statements as to the timing of their sexual relations and, taking into account the relevant background information on Afghanistan, it considered to be unlikely that the authors had sexual intercourse at F.M.'s house. In these circumstances, the Board held that the documents produced by R.M. on the circumstances of his brother's death had no evidentiary value.

2.4 On 1 September 2015, the authors sought reopening of their case. They maintained their previous statements and explained that some of the errors regarding the dates were due to the fact that F.M. is illiterate. They also submitted that they had contacted an Afghan attorney, who confirmed the high risk for them if they return to Afghanistan.[7]

2.5 On 3 June 2016, the Refugee Appeals Board refused to reopen the case because the authors had not demonstrated a risk of degrading treatment or punishment if they are sent back to Afghanistan.

The complaint

3.1 Denmark would violate the authors' rights under articles 6, 7, 17 and 23 of the Covenant by deporting them to Afghanistan, where they fear for their lives. F.M. fears being stoned to death for having had an extramarital sexual relationship.[8] The Afghan authorities will most likely not be able or willing to protect her.[9] In 2013, the UN Assistance Mission in Afghanistan (UNAMA) reported that police detained individuals for moral crimes, who were almost exclusively women.[10]

3.2 According to the same report, '[p]olice and legal officials often charged women with intent to commit *zina*[11] to justify their arrest and incarceration for social offenses (...). Article 130 of the constitution provides courts with the discretion to use sharia (Islamic law)

[5] The Immigration Service deemed F.M.'s narrative as not being credible. It took note of her statement that her uncle strictly controlled her whereabouts, and that she was not allowed to leave the house except to go to her neighbour's house to fetch water. Therefore, the Service considered unlikely that she had an affair with R.M. – who was a stranger to her – right after meeting him for the first time; it was also unlikely that she invited him to her home, initiated a sexual relationship with him, and had the opportunity to continue meeting with him after she became engaged to another man. The Service further noted that F.M.'s relationship with R.M., her pregnancy and her escape from Afghanistan occurred during the same period that she was engaged to another man, which was equally unlikely given the restrictions on her movements. It also emphasized that the authors stayed in Kabul for 20 days and were not approached by either F.M.'s uncle or her fiancé during that time.

[6] The Service cited many of the same reasons it gave for its decision on F.M.'s application. It found unlikely that the authors could have met at F.M.'s home four times within a period of about three weeks without being noticed.

[7] The authors produced two documents in the original language, together with Danish and English translations, which they claim that they represent statements from an Afghan attorney and persons from the local Council of Elders. The imam from the mosque in the authors' village has allegedly also signed. In addition, a "representative for the area" has also allegedly confirmed that the authors face a high risk of being subjected to the Afghan Penal Code for adultery.

[8] Honour killings are very regular in Afghanistan, see Country of Origin Research and Information (CORI), *Thematic Report Afghanistan: Blood Feuds*, February 2014. There were 406 reported cases of honour killings and sexual assaults between 21 March 2011 and 21 April 2013, although the unreported number of cases was believed to be much higher (U.S. Department of State, *2013 Country Reports on Human Rights Practices – Afghanistan*, 27 February 2014, p. 39).

[9] Without further details, the authors submit that in two decisions which are available in the Danish Board's 23rd annual report for 2014, the Board emphasized that the applicants for asylum concerned – allegedly in the same situation as the authors – could not receive any protection from the Afghan authorities. The authors found it odd that in their case, the Board considered that F.M. will receive protection from the Afghan authorities.

[10] U.S. Department of State, *2013 Country Report*, p. 10.

[11] "Zina" is the term in Afghan law for extramarital sexual relations.

(…). Observers reported that legal officials used this article to charge women and men with "immorality" or "running away from home." Police often detained women for *zina* at the request of family members.'[12]

3.3 Another UNAMA report mentions that even though the Attorney General Office (AGO) instructed the Afghan prosecutors not to press charges against women for "running away" or "attempted *zina*" – as these are not an actual codified crime under Afghan law, as also confirmed by the Supreme Court – information provided to UNAMA by the Supreme Court for three provinces, including Kabul, showed that authorities continued to imprison women and girls for "running away/attempted *zina*" in violation of the AGO Directive and Supreme Court instructions.[13] It is therefore likely that F.M. risks a criminal prosecution if returned to Afghanistan, as she is guilty of both *zina* and "running away."

3.4 Article 427 of the Afghan Penal Code provides that a person who commits adultery shall be sentenced to long imprisonment which, according to article 100, cannot be less than 5 years and more than 15 years. It is an aggravating circumstance if the victim is under 18 years old, is a married woman or a maiden. Therefore, R.M. risks being imprisoned for up to 15 years. He also fears being subjected to blood revenge because he had sexual intercourse with F.M. without being married to her and because he helped her escape from her family. F.M.'s cousin already killed his brother and R.M.'s family has fled to Pakistan after refusing the payment of blood money and receiving threats from F.M.'s family.[14]

3.5 The Refugee Appeals Board erred by finding that the authors' narrative was not credible. Particular weight should be given to the fact that F.M. gave birth to a child in February 2011, which means that the baby would have had to be conceived around May 2010, when the authors were still in Afghanistan. The authors admit differences in their explanations as to the timing of their sexual relations, but there are no differences in the core content. Sexual intercourse outside marriage is a criminal offense in Afghanistan and can result in long imprisonment for the woman. It is therefore of minor importance what number of days had elapsed between when the authors first met and when they had sexual intercourse, as well as the number of days that had elapsed between intercourses.

3.6 The Board failed to give credence to the documents produced by the authors and translated into Danish, which show that R.M.'s brother was killed on account of the authors' relationship. In *A.H. v. Denmark*, the Committee took note of A.H.'s allegations that neither the Immigration Service nor the Board initiated any investigation as to the veracity and validity of the evidence produced in support of his detailed allegations.[15] The same applies to the authors' case.

3.7 The authors' case has been published in the Danish media, and both of them appeared on television telling their story.[16] This additional profiling, which is probably known in the Afghan media, will make it difficult for them to return unnoticed.

3.8 F.M.'s mental health is very bad and she has attempted suicide several times. Her mental state will only worsen if she returns to Afghanistan, and the family can thus be considered as particularly vulnerable. The authors will not be able to get any help from Afghan authorities because of the extramarital relationship.

3.9 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* mention that UNHCR considers that women falling under the following categories are likely to be in need of international refugee protection: a) victims and those at risk of sexual and gender-based violence; b) victims and those at risk

[12] Pp. 11-12.

[13] UN Assistance Mission in Afghanistan (UNAMA), A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, December 2013, p. 24.

[14] Blood money is to be paid after an honour killing, so that one can get forgiveness if payment has been effected.

[15] *A.H. v. Denmark* (CCPR/C/114/D/2370/2014), para. 8.7.

[16] No further information.

of harmful traditional practices; and c) women perceived as contravening social mores.[17] F.M. belongs to two of those groups.

3.10 The authors finally admit small divergences in R.M.'s accounts before the Danish authorities, but this was because he "lacks a mathematical understanding of time" and when speaking of calendar months, he does not use the same calendar system as used in the West. R.M. admits his duty to substantiate the grounds for seeking asylum, but any reasonable doubt must benefit an applicant for asylum. Explanations should be completely non-credible in order to refuse asylum and the Immigration Service should not use the standard of "not being convinced."

State party's observations on admissibility and merits

4.1 On 15 July 2016, the State party submitted that the communication should be declared inadmissible. Should the Committee declare it admissible, articles 6, 7, 17 and 23 of the Covenant will not be violated if the authors and their two children are returned to Afghanistan.

4.2 On 10 December 2014, the Refugee Appeals Board refused to reopen proceedings because the authors had not provided any new information and because on 22 October 2013, the Board already made an overall assessment of the information provided, in conjunction with background information on Afghanistan. In its 2013 decision, the Board did not rule out that extramarital affairs occur in Afghanistan, but found unlikely that the authors had sexual intercourse at F.M.'s house several times and thus exposed themselves to an obvious risk of being subjected to serious sanctions from both their families and the authorities.

4.3 The Board considered that no evidential value could be accorded to the documents produced by the authors because they appeared fabricated for the occasion. The Board thus analysed the nature and the contents of those documents. It first observed that according to the *Country of Origin Information for Use in the Asylum Determination Process* published by the Danish Immigration Service in May 2012, false documents are widely available in Afghanistan and there is a black market for buying and selling such documents. The date of 23 July 2010 mentioned by the document for the authors' flee from home did not correspond to R.M.'s declaration that they left Afghanistan on 13 September 2010. Nor did it fully accord with R.M.'s statement that his brother was killed on 12 July 2011, that is, more than one year later. Moreover, the authors' statements on the sequence of events do not accord with the age of their first child. The child was born on 23 February 2011, and thus must have been conceived on or around 23 May 2010. The sequence of events with respect to the moment when F.M. realized that she was pregnant, her forced engagement, her announcement of pregnancy to R.M., their journey from home and their departure, that is, all the grounds for asylum relied upon, do not accord with the statements made.

4.4 The Board further found it peculiar that the authors did not find any reason to verify their statements until almost two years after their applications for asylum had been refused by the Board. The Danish authorities have continually invited them to produce documentation. According to their own statements, the authors stayed in Greece for more than one year, during which they continued to have contact with R.M.'s family, and they allegedly had asked R.M.'s father to obtain a document confirming that his brother had been killed. The Board therefore found no reason to request a verification of the relevant documents. Finally, the circumstance that the authors appeared on Danish TV could not lead to a different assessment. The Board has dismissed the authors' statements on their grounds for asylum and therefore there was no reason to assume that they risk persecution as the information provided in the TV programme cannot be deemed to be correct.

4.5 The authors have failed to establish a *prima facie* case for the purpose of admissibility, in the absence of substantial grounds for believing that they and their children

[17] *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* (HCR/EG/AFG/13/01), 6 August 2013, p. 57. The number of girls and women detained for "moral crimes" was reported to have risen by 50 per cent between October 2011 and May 2013 (p. 56).

are in danger of being deprived of their life or subjected to inhuman or degrading treatment if returned to Afghanistan. The communication is therefore manifestly unfounded.

4.6 Moreover, the authors are seeking to apply the obligations under articles 17 and 23 of the Covenant in an extraterritorial manner. This part is also incompatible *ratione loci* and *ratione materiae* with the Covenant. Denmark cannot be held responsible for violations of articles 17 and 23 expected to be committed by another State party.

4.7 On the merits, the authors have not provided any new information that has not already been reviewed by the Refugee Appeals Board. The State party points to discrepancies in the authors' declarations before the Danish authorities as to the timing of their sexual intercourse,[18] as to the manner in which F.M. announced her pregnancy to R.M.,[19] as to their contact after they had had sexual intercourse for the second time,[20] as to the time elapsed since F.M.'s forced engagement until their escape,[21] as to the killing of R.M.'s brother,[22] and as to F.M.'s cousin.[23] As pointed out by the Refugee Appeals Board when refusing to reopen their case on 10 December 2014, when assessing the inconsistencies in the authors' statements, the Board took into account, on the one hand, the time elapsed since their departure from Afghanistan and the fact that they are illiterates and, on the other hand, the circumstance that the inconsistencies are substantial and concern otherwise very simple grounds for asylum and a very short period of time, with a sequence of events that seems less probable.

[18] When interviewed by the Danish Immigration Service on 7 June 2012, F.M. stated that they had had sexual intercourse for the first time at their fourth rendezvous. However, before the Refugee Appeals Board, on 22 October 2013, she stated that they had had sexual intercourse for the first time at their third rendezvous. Before the Immigration Service on 15 May 2012, F.M. declared that the two instances of sexual intercourse had been one month apart, whereas she stated on 7 June 2012 and on 22 October 2013 that they had been only one week apart. When interviewed by the Immigration Service on 4 February 2013, R.M. declared that they had had sexual intercourse for the first time at their second rendezvous. However, on 18 February 2013, he stated that they had had their first sexual intercourse at their fourth rendezvous, which statement he changed during the interview saying that they had had it at their third rendezvous.

[19] Before the Refugee Appeals Board on 22 October 2013, R.M. declared that F.M. had called on the phone to tell him about her pregnancy, whereas he stated on 18 February 2013 that she had told him on the street in front of her home.

[20] On 4 February 2013, R.M. declared that, after the first sexual intercourse, the authors had met another two or three times at F.M.'s home. On 18 February 2013, he first stated that they had remained in close contact after their first sexual intercourse and that they had seen each other when they had the time. R.M. changed that statement later at the same interview saying that, after the second sexual intercourse, they had only spoken on the phone as they had both been very scared. He maintained that statement at the hearing before the Refugee Appeals Board. By contrast, F.M. stated on 7 June 2012 that they had seen each other three or four times at the home of her paternal aunt (father's sister) after having had sexual intercourse for the second time. However, she changed that statement at the hearing before the Refugee Appeals Board saying that they had kept a low profile and had only had phone contact after having had sexual intercourse for the second time.

[21] On 18 February 2013, R.M. declared that they had escaped four months after their first rendezvous, whereas F.M. declared on 15 May 2012 that she had been told that she had been promised away to another man one month before their escape and that the authors had had a relationship for four months by then. On 4 February 2013, R.M. declared that two weeks had elapsed from F.M.'s engagement until their escape.

[22] R.M. explained on 4 February 2013 that F.M.'s cousin and two or three other persons had assaulted his brother, who had been stabbed with a knife by either F.M.'s cousin or one of the cousin's friends. However, on 18 February 2013, R.M. declared that his family had been contacted by four or five persons altogether, including F.M.'s uncle and cousin. Before the Refugee Appeals Board, on 22 October 2013, R.M. stated that his brother had been stabbed with a knife by F.M.'s cousin and two of his friends. It further appears from the document produced by R.M. that his brother was allegedly killed on 12 July 2011. R.M. declared that the authors left Afghanistan in the spring of 2010. If the killing of R.M.'s brother was related to the authors' premarital relationship and their escape, it seems peculiar that it took more than one year after their escape before his brother was killed.

[23] On 18 February 2013, R.M. declared that F.M.'s cousin had told F.M.'s uncle when he saw the authors together. However, R.M. changed that statement saying that F.M.'s cousin had told her uncle only after the authors had escaped. By contrast, F.M. has stated that her cousin saw them talk to each other twice.

4.8 In its assessment of the authors' secret relationship, the Refugee Appeals Board also took into account relevant background information. According to a report on the fact-finding mission of the Danish Immigration Service to Kabul from 25 February 2012 to 4 March 2012, published in May 2012, an independent research institute in Kabul emphasized that "almost all marriages in Afghanistan are arranged marriages (...), and that the culture in Afghanistan is such that it is almost impossible to have relations outside or before marriage. The family of a young girl will mobilize a network around her to protect her and to ensure that she will not be able to enter any relationship." While not ruling out that affairs outside marriage – albeit very rarely – do occur in Afghanistan, the Board found it unlikely that the authors would have been able to have sexual intercourse at the F.M.'s home several times and thus exposed themselves to an obvious risk of being caught and subjected to serious sanctions from both their families and the authorities. When interviewed on 18 February 2013, R.M. declared that they would both have been killed if they had been caught when he visited F.M. It seems unlikely that the authors would run that risk, considering in particular that none of them knew when F.M.'s family would return home. Neighbors could have discovered that R.M. was visiting F.M. at her home while the rest of her family were away. R.M. further stated that they had both regretted their first sexual intercourse, for which reason it seems unlikely that they would have had sexual intercourse again. Both authors declared that they kept a low profile after the second sexual intercourse because they were very scared and worried.

4.9 According to the *Country Marriage Pack – Afghanistan*, published by the Refugee Documentation Centre (Ireland) in April 2015, even though, in principle, there is freedom to choose one's own spouse, marriages in Afghanistan are typically entered into following an agreement between two families. The parties have typically never met before the wedding, and would never refuse an arranged marriage as they would not oppose the wishes of their families. For that reason also, it seems unlikely that the authors had even initiated a relationship, much less initiated a sexual relationship, considering the general Afghan perception of marriage as an agreement between two families or groups that has nothing to do with the parties' own desire.

4.10 The State party further points to inconsistencies in the authors' statements as to their departure from Afghanistan and the birth of their son. According to the authors, they lived in Istanbul for about six months and then in a room in a house in Athens for about one year, and their agent paid the rent all this time. It lacks credibility that one or more human traffickers paid the authors' rent – and probably also food – for one and a half years altogether. Moreover, it seems peculiar that neither author has been able to provide any details of the areas in which they lived in Istanbul and Athens, respectively. R.M. declared to the Danish police on 18 December 2012 and to the Immigration Service on 18 February 2013 that the Greek police had taken the authors to a refugee camp where they had been registered, fingerprinted and photographed. However, there are no Eurodac hits for the authors in Greece. It also seems peculiar that, when interviewed by the Immigration Service on 23 April 2013, R.M. was unable to state the time of birth of his son. He was even unable to state the time of year, nor whether it had been hot or cold. However, he was able to state with certainty that the family had first attempted to leave Turkey for Greece when their son was 20 days old.

4.11 The Refugee Appeals Board could not consider F.M.'s statement on the risk of prosecution a fact, nor could it consider her statement on her relationship with the male author a fact. According to the *Afghanistan 2015 Human Rights Report*, published by the U.S. Department of State on 13 April 2016, which was available when the Board refused to reopen the authors' asylum on 3 June 2016, '[i]n 2012 the Attorney General's Office ordered a halt to the prosecution of women for "running away," which is not a crime under the law.' However, as the Board could not consider to be facts the authors' statements on their situation, including the statement on F.M.'s escape from her family, the State party finds it irrelevant to comment any further on this matter.

4.12 The documents produced by the authors were translated at the request of the Refugee Appeals Board, for which reason the Board was familiar with their contents. The Board found that no particular importance could be attached to the document produced by R.M. on the circumstances of his brother's death. The document appears to confirm that

R.M.'s brother was wounded on 12 July 2011 and subsequently died. It further appears that three persons were arrested in connection with the incident. The document appears to have been issued on 24 October 2012. It seems odd that R.M.'s brother was killed more than one year after the authors' departure from Afghanistan, if his killing was related to the authors' circumstances. Moreover, it seems odd that the document was only issued more than one year after R.M.'s brother was killed. According to R.M., his family was in Pakistan at that time.

4.13 The other document, which appears to be a statement from the council of elders in the authors' village and which was produced only in connection with the communication to the Committee, cannot not be accorded any evidential value either. The Board emphasised the timing of the production of the document and its contents. Thus, the time of the authors' escape from home fixed in the document at 23 July 2010 does not accord with the information provided by R.M. that they escaped from Afghanistan on 13 September 2010.

4.14 When determining whether to request a verification of the authenticity of documents produced by an asylum seeker, the Refugee Appeals Board makes an overall assessment of, *inter alia*, the nature and contents of the documents in conjunction with the prospect of whether such verification could lead to a different assessment of the evidence, the timing and circumstances of the production of the documents, and of the credibility of the asylum seeker's statement in light of the general background information available on conditions in the country. The Board is under no obligation to request a verification of authenticity in all cases in which an asylum seeker presents documents strengthening the grounds for asylum. In *J.K. and Others v. Sweden*, the European Court of Human Rights has not questioned that the Swedish authorities had not requested a verification of the authenticity of the documents produced.[24] False documents are widely available in Afghanistan, and there is a black market for buying and selling such documents.[25] Based on the information available in the case and the nature and contents of the documents produced, the Refugee Appeals Board found no reason to request a verification.

4.15 Allegations on F.M.'s mental health has not been substantiated. It is also of no relevance to the assessment of whether the authors risk persecution falling within section 7 of the Aliens Act in case of their return to Afghanistan. The authors' case is also not comparable to *A.H. v. Denmark* as the circumstances are considerably different.

4.16 The fact that the authors had appeared on Danish TV and had repeated the stories that the Board had not considered to be facts, could not lead to a different assessment of the matter, considering that the Board had dismissed the authors' statements on their grounds for asylum. There is no reason to assume that the authors risk persecution as the information provided in the TV programme cannot be deemed to be correct. Moreover, according to their own statements, the authors have experienced no problems with the Afghan authorities and therefore appear to be low-profile individuals in all respects relative to the Afghan authorities.

4.17 In conclusion, the Refugee Appeals Board took into account all relevant information and the general background information on conditions in Afghanistan. The Committee's established jurisprudence is that important weight should be given to the assessment conducted by the State party, and it is generally for the States parties to review and evaluate facts and evidence, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. The present communication has not brought to light any new specific details as to the authors' situation. They have failed to identify any irregularity in the decision-making process or any risk factors that the Board failed to take properly into account. They are trying to use the Committee as an appellate body to have the factual circumstances advocated in support of their claim for asylum reassessed by the Committee. However, the Committee must give considerable weight to the findings of facts made by the Refugee Appeals Board, which is better placed to assess the factual circumstances in the authors' case. There is no basis for doubting, let alone setting aside, the assessments made

[24] *J.K. and Others v. Sweden* [GC], no. 59166/12, 23 August 2016, para. 58.

[25] Danish Immigration Service, *Country of Origin Information for Use in the Asylum Determination Process*, May 2012, p. 50 et seq.

by the Board, according to which the authors have failed to establish that there are substantial grounds for believing that they would risk the death penalty or be in danger of being subjected to inhuman or degrading treatment or punishment if returned to Afghanistan.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 17 November 2016, the authors maintain that their return to Afghanistan would breach articles 6 and 7 of the Covenant, and that they "have no further comments on possible violations under articles 17 and 23 of the Covenant."

5.2 The State party appears to base its credibility assessment on an inappropriately high standard of proof in asylum proceedings. The Refugee Appeals Board used the "probable" standard, whereas the correct standard is the one of "reasonably possible," as used in the relevant international guidance from the UN High Commissioner for Refugees.[26]

5.3 As to admissibility, there is a personal and real risk of harm, which arises from both an individualised assessment of the authors' situation and relevant background information. The authors have consistently expressed their fear of extremely grave harm at the hands of F.M.'s family or the Afghan authorities, and background information supports the very serious consequences of the authors' sexual relationship and flight. Thus, irreparable harm to the authors is a necessary and foreseeable consequence of their deportation to Afghanistan.

5.4 On the merits, the State party points to a number of minor inconsistencies that do not depart from the core of the authors' asylum claim. Relevant international jurisprudence supports a finding of credibility notwithstanding minor inconsistencies in the asylum seeker's account. In *E.U.R. v. Denmark*, the Committee found a violation of article 7, considering, *inter alia*, that the inconsistencies in the dates themselves were insufficient to vitiate the whole credibility of the claim, and that the inconsistencies were not central to the general claim made by the author.[27] In that case, similar to R.M., the author was also not familiar with the Gregorian calendar. F.M. is illiterate and has never received any schooling.

5.5 The European Court of Human Rights also highlighted in *A.A. v. France* that slight chronological differences did not amount to a significant discrepancy affecting general credibility.[28] The present communication is analogous to that case, in relation to slight chronological differences between the authors' accounts. Also in *R.C. v. Sweden*, the Court held that, contrary to the opinion of the Swedish authorities, the basic story of the applicant was consistent and credible, although there were some uncertainties about the credibility of his escape.[29] All this jurisprudence supports the finding that the authors' central asylum claim is, in fact, credible.

5.6 Any inconsistencies in the authors' accounts should be understood in the context of the entire claim and with regard to their individual circumstances. According to the UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, "the applicant's statements cannot be considered in the abstract, and must be viewed in the context of the relevant background situation."[30] The background situation includes a broad range of subjects, including "(...) the personal background of the applicant, his or her age, nationality, ethnic origin, gender, sexual orientation and/or gender identity, education, social status, religion, and cultural background."[31] At the material time, F.M. was an illiterate 16 year-old orphan raised by her uncle. She never attended school in any form and rarely left the house. R.M. attended school for eight years, but lacks a mathematical

[26] UN High Commissioner for Refugees (UNHCR), *Note on Burden and Standard of Proof in Refugee Claims*, 16 December 1998, paras. 11 and 17; and UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3.

[27] *E.U.R. v. Denmark* (CCPR/C/117/D/2469/2014), paras. 9.7-9.9.

[28] *A.A. v. France*, no. 18039/11, 15 January 2015.

[29] *R.C. v. Sweden*, no. 41827/07, 9 March 2010.

[30] UNHCR Handbook and Guidelines, para. 42.

[31] UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report*, May 2013, p. 36.

understanding of time and was not familiar with the Gregorian calendar at the time of his asylum application. Their inconsistencies are quite natural for an asylum seeker in their situation.

5.7 The inconsistencies in the authors' statements should also be considered in light of the three-year time lapse between the events and the decision of the Refugee Appeals Board. According to UNHCR, "due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them (...). Inability to remember or provide all dates or minor details, as well as minor inconsistencies, insubstantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors."[32] The authors' inconsistencies are not central to the core of their asylum claim and are reasonable given their individual backgrounds and the time lapse between the events in question and the asylum procedure in Denmark.

5.8 The State party notes that a number of elements of the authors' account are "unlikely." In *J.K. and Others v. Sweden*, the European Court upheld the principle of benefit of the doubt in the context of credibility assessments.[33] The State party incorrectly asserts that the authors had sex "several times" at F.M.'s home because the authors only claimed to have had sex twice during the relevant period. Background information suggests that extramarital relationships do occur in Afghanistan. The fact that many women and girls are accused of engaging in sexual activities indicates that it actually does occur, at least to some extent.[34]

5.9 The State party notes that the authors were unable to provide "any details" of where they lived in Istanbul and Athens. This is incorrect. R.M. declared before the Refugee Appeals Board on 22 October 2013 that they stayed in the Aksara area of Istanbul and Akharnoon Street in Athens, close to Victoria Park. F.M.'s lack of specificity about their situation in Turkey and in Greece is consistent with her profile as an illiterate young woman in flight from Afghanistan. The State party further notes that it seems "peculiar" that R.M. could not state the time of his son's birth. R.M. declared in his final interview with the Danish authorities that he could not remember the date of birth because it was a particularly stressful time. This is consistent with R.M.'s identity as a poorly educated person unfamiliar with the Gregorian calendar in flight from Afghanistan.

5.10 The State party also seems to suggest that F.M.'s fear of persecution for running away from home is not well-founded. Several sources clearly demonstrate that prosecution continues.[35] There also exists a real risk of an "honour killing" being carried out against F.M. by her family.[36] Therefore, there is a range of relevant background information that demonstrate extremely grave consequences for women, like F.M., fleeing arranged marriages and suspicion of moral crimes (such as extramarital affairs). Background

[32] UNHCR, *Note on Burden and Standard of Proof in Refugee Claims*, para. 9.

[33] *J.K. and Others v. Sweden*, para. 93.

[34] The authors refer to the 2013 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, as well to U.S. Department of State, *2015 Country Reports on Human Rights Practices – Afghanistan*, 13 April 2016, which mentions that out of 92 honour killings in a three-month period in 2015, half was triggered by sex outside marriage (p. 35).

[35] UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined initial and second periodic reports of Afghanistan* (CEDAW/C/AFG/CO/1-2), 23 July 2013, para. 24; U.S. Congressional Research Service, *Afghanistan: Post-Taliban Governance, Security, and U.S. Policy*, 22 December 2015, RL30588, p. 15; U.K. Home Office, *Country Information and Guidance – Afghanistan: Women fearing gender-based harm/violence*, February 2016, Version 1.0, para. 8.5.2; UN Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to Afghanistan* (A/HRC/29/27/Add.3), 12 May 2015, para. 23; UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013* (A/HRC/25/41), 10 January 2014, para. 45; and UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan* (HCR/EG/AFG/16/02), 19 April 2016, p. 59.

[36] The authors invoke the 2015 U.S. Department of State report.

information also supports a real risk for R.M.: the UNHCR *2016 Eligibility Guidelines on Afghanistan* provide that "[m]en who are perceived to be acting contrary to prevailing customs may also be at risk of ill-treatment, particularly in situations of accusations of adultery and sexual relations outside of marriage." [37] To conclude, this background information supports the authors' claims of a well-founded fear of persecution arising from their extramarital affair and flight from Afghanistan.

State party's additional observations

6.1 On 17 May 2017, the State party submitted that the authors' observations did not provide any new information on their situation. It also informs the Committee that the authors had a third child on 14 July 2016.

6.2 As to the authors' allegation that the Refugee Appeals Board "appears to base its credibility assessment on an inappropriately high standard of proof," it follows from section 40 of the Danish Aliens Act that an alien must provide such information as is required for deciding whether he or she falls within section 7 of the Act. It is thus incumbent upon an asylum seeker to render it probable that the conditions for the grant of asylum are satisfied. At the examination of an application for asylum, the asylum seeker is informed of his or her duty to provide information and of the importance of providing all relevant information. The Refugee Appeals Board is free to assess evidence, and thus such an assessment is not governed by special rules of evidence.

6.3 The Board seeks to determine what submissions can be considered facts. If they appear coherent and consistent, the Board will normally consider the statements as facts. When the asylum seeker's statements throughout the proceedings are characterised by inconsistencies, changing statements, expansions or omissions, the Board will attempt to clarify the reasons. In many cases, the asylum seeker's statements will become more detailed and accurate in the course of the proceedings. There may be various reasons for this, such as developments in the proceedings and the asylum seeker's particular situation, which the Board will include in its assessment of the asylum seeker's credibility.

6.4 However, inconsistent statements made by the asylum seeker about crucial parts of his or her grounds for seeking asylum may weaken the asylum seeker's credibility. One of the circumstances that the Board will take into account is the asylum seeker's explanation for the inconsistencies. It will take into account the asylum seeker's particular situation, such as cultural differences, age and health. Particular consideration is shown to asylum seekers who are illiterates.

6.5 It follows from paragraphs 206 to 219 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* that, in certain situations, it may be necessary due to the asylum seeker's age or mental state to lay greater emphasis on objective circumstances than on the statements made by the asylum seeker during the proceedings. The Refugee Appeals Board will assess the asylum seeker's procedural capacity and generally be less demanding when it comes to the burden of proof in cases of child asylum seekers or asylum seekers with a mental disorder or impairment. Finally, the Board will always assess to what extent the principle of the benefit of the doubt should be applied if it is in doubt about the asylum seeker's credibility.

6.6 The Refugee Appeals Board took into account the particular situation of the authors, including the circumstance that F.M. is illiterate. R.M. has, however, attended school for eight years and private English lessons for eight months. The information given in the authors' observations of 17 November 2016 that R.M. is "poorly educated" is therefore incorrect. Also the cases cited by the authors are not comparable with the authors' case.

Authors' additional observations

7.1 On 11 August 2017, the authors contested the State party's assessment that they are trying to use the Committee as an appellate body. In several cases, the State party has not respected the Committee's recommendations.

[37] 2016 *UNHCR Eligibility Guidelines*, p. 64.

7.2 R.M. had a very good job in Afghanistan – together with his father, they had their own company with several employees. He had a good standard of living, so he had no reason to leave Afghanistan if it was not for the conflict he invokes. The authors could have had "a significantly better life" in Afghanistan than they have in Denmark, where they are asylum seekers. This circumstance should be included in the assessment of their credibility by the Committee. It is also the Committee which can assess the factual circumstances of this case, not only the Refugee Appeals Board, as declared by the State party.

7.3 Even if R.M. went to school for eight years, there were several periods of time when he did not attend because of the war. As to the eight-month English course, it was one and a half hour twice a week.

7.4 It is impossible for the authors to return to Afghanistan. R.M.'s aunt lives next to F.M.'s uncle, so the families will be alerted if they return. The authors have now three children, so it would be difficult for them to settle elsewhere in Afghanistan where they do not have family. Their story has also been exposed through press coverage and television broadcast, which means that it is publicly known that they have applied for asylum in Denmark and also makes it difficult to return to Afghanistan.

Issues and proceedings before the Committee

Consideration of admissibility

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

8.2 The Committee has ascertained, as required by 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 the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that it is not precluded from examining the communication under article 5(2)(b) of the Optional Protocol.

8.4 The Committee takes note of the authors' claim that by forcibly returning them and their children to Afghanistan, the State party would violate their rights under articles 6, 7, 17 and 23 of the Covenant.

8.5 The Committee first notes that the authors have alleged a violation of articles 17 and 23 of the Covenant but without providing any information, evidence or explanation of how their rights under these articles would be violated by the State party through their removal to Afghanistan. The Committee therefore concludes that this part of the communication is insufficiently substantiated and declares it inadmissible pursuant to article 2 of the Optional Protocol.

8.6 The Committee notes the State party's challenge to the admissibility of the communication on the grounds that the authors' claim under articles 6 and 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purpose of admissibility, the authors have adequately explained the reasons for which they fear that their forcible return to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to consideration of the merits.

Consideration of the merits

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

9.2 The Committee notes the authors' claim that deporting them and their children to Afghanistan would expose them to a risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. The Committee notes the authors' argument that F.M. would face criminal

prosecution for extramarital sexual relations and running away from home, and that R.M. would face criminal prosecution for adultery and would be subject to blood revenge from his wife's family. It also notes the authors' submission that their case has been exposed by the Danish media and is also probably known to the Afghan media. The Committee further notes the State party's admission based on different reports that affairs outside marriage do occur in Afghanistan, albeit very rarely, and that marriages in Afghanistan are typically arranged following an agreement between two families.

9.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant (para. 12). The risk must be personal[38] and there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[39] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[40]

9.4 The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,[41] unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.[42]

9.5 The Committee notes the finding of the Refugee Appeals Board that the authors failed to establish that there are substantial grounds for believing that, as a result of their extra-marital relation, they would risk the death penalty or be in danger of being subjected to inhuman or degrading treatment or punishment if returned to Afghanistan, and that they lacked credibility. In that respect, the Committee notes that the Board found inconsistencies in the authors' statements as to the timing of their sexual intercourse, their regular contact, F.M.'s escape and the killing of R.M.'s brother by F.M.'s family.

9.6 However, the test for the Committee remains whether, regardless of the veracity of an asylum seeker's statements, there are substantial grounds for believing that the circumstances invoked may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that an asylum seeker's story is inconsistent on some points, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker's behaviour and activities in connection with, or to justify, his or her declarations could have serious adverse consequences in the country of origin such as to put him or her at risk of irreparable harm.[43]

9.7 In the present case, the Committee observes that it is uncontested that the authors had an extra-marital sexual relationship, and that what is contested is mainly the circumstances in which such relationship evolved. The Danish authorities have also not contested that the authors' first child was conceived in Afghanistan or that the authors were not married at that time. Also, Danish authorities rejected the authors' evidence in respect of the killing of R.M.'s brother as being fabricated for the occasion, however without verifying facts, but solely relying on the general information that false documents are widely available in Afghanistan and that there is a black market for buying and selling such documents. The Committee notes that the Board based its reasoning on the inconsistencies in the authors' statements, concluding that they had failed to render probable a risk of persecution or abuse from family members or third persons.

[38] *K. v. Denmark*, para. 7.3; *P.T. v. Denmark*, para. 7.2; and *X v. Denmark*, para. 9.2.

[39] *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

[40] Ibid. Also *X v. Denmark*, para. 9.2.

[41] *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4, and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

[42] For example, *K. v. Denmark*, para. 7.4.

[43] Mutatis mutandis, *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8, and *F.G. v. Sweden*, para. 156.

9.8 The Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their children would face in Afghanistan, rather than relying on certain inconsistencies in their statements. The Committee notes, in particular, that the Board did not assess whether the authors' extramarital relationship could have serious adverse consequences in the country of origin so as to put them at risk of irreparable harm. In view of the above, the Committee considers that the State party failed to adequately assess the authors' real, personal and foreseeable risk of returning to Afghanistan. Accordingly, the Committee considers that the State party failed to take into due consideration the consequences of the authors' personal situation in their country of origin.

10. The Committee, acting under article 5(4) of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the authors' removal to Afghanistan, if implemented, would violate their rights under articles 6 and 7 of the Covenant.

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

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

Annex I

Individual opinion of Shuichi Furuya (dissenting)

1. I am unable to concur with the Committee's conclusion that the authors' removal to Afghanistan, if implemented, would violate their rights under articles 6 and 7 of the Covenant.

2. The main ground of the conclusion is that the State party, only relying on certain inconsistencies in authors' statements, failed to evaluate the real risk of irreparable harm that they may be exposed (para. 9.8). In my view, however, this conclusion overlooks the essential structure of the procedure for verifying refugee status. Risk evaluation on the likelihood that an asylum-seeker may face persecution in the country of origin has two stages. The first stage is to confirm the factual circumstances of the asylum-seeker and specify potential grounds for persecution, and then, in the second stage, to evaluate whether and to what extent those facts would create a real risk of persecution in light of the situations of the country in question. In this respect, examining the veracity of the statements and documents that an asylum-seeker has provided for explaining his/her circumstances is an indispensable prerequisite for proceeding to the risk evaluation.

3. In the present case, accordingly, it is not correct to state that the Danish authorities failed to undertake an individualized assessment of the risk that the authors would face in Afghanistan. Rather, from the observations by the State party, it is clear that the authorities examined the factual circumstances of the authors through sincerely hearing the statements they made and verifying the documents they submitted in order to undertake a risk assessment. Nevertheless, the examination led the authorities to the finding that the authors' statements and documents were doubtful in a lot of crucial points. In case that the credibility of factual circumstance is not sufficiently assured, it is reasonable that the authorities do not, or cannot, proceed to the second stage: the assessment of a possible risk of irreparable harm that the authors may face.

4. As the Committee's conclusion admits in paragraph 9.4, it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial justice. Therefore, what the Committee should do is to verify whether the evaluation by the Danish authorities on the credibility of the authors' statements and documents was adequately made so that it was not deemed as clearly arbitrary or amounted to manifest error.

5. According to the Committee's jurisprudence, it is incumbent on the authors to establish that there was such arbitrariness or manifest error in the assessment by the Danish authorities. In the present case, the authorities heard the authors' statements several times and examined the relevant documents, and then cast doubt on the crucial facts relevant to possible risk of persecution, such as the timing of the authors' sexual intercourse (para. 2.2, footnote 5, and para. 4.8), their departure from Afghanistan and stay in Turkey and Greece and the birth of their son (para. 4.10) and the killing of R.M.'s brother (para. 2.1, footnote 3, and para. 4.12). Accordingly, the authors must have demonstrated to the Committee that the authorities' finding casting doubt on the credibility of their statements and documents had been erroneous. In my view, however, the authors did not respond to the uncertainties above with persuasive evidence, and therefore failed to convince the Committee that their statements and documents were sufficiently credible so that the assessment by the authorities had been so erroneous as to be deemed as clearly arbitrary.

6. For the reason above, I have to conclude that the authors' allegation concerning the violation of articles 6 and 7 is insufficiently substantiated for the purpose of admissibility, and thus this part of the communication is also inadmissible under article 2 of the Optional Protocol.

Annex II

Joint opinion of Photini Pazartzis, Yuval Shany and Andreas Zimmermann (dissenting)

1. We regret that we are unable to join the majority on the Committee in finding that in deciding to deport the authors to Afghanistan, Denmark would, if it implemented the decision, violate its obligations under articles 6 and 7 of the Covenant.

2. In paragraph 9.4, the Committee recalls that: "it is generally for the organs of States parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice." Despite this, the majority of the Committee rejected the factual conclusion of the Danish Immigration Service and Refugee Appeals Board that the authors failed to establish grounds for asylum because their allegations about the risk of severe sanction from both their families and the authorities lacked credibility due to significant and numerous inconsistencies in their statements (para. 4.3).

3. The majority's position is based on the failure of the State party to explore "whether the authors' extramarital relationship could have serious adverse consequences in the country of origin so as to put them at risk of irreparable harm" (para. 9.8). According to the majority, "it was incumbent upon the State party to undertake an individualized assessment of the risk that the authors and their children would face in Afghanistan, rather than relying on certain inconsistencies in their statements" (para. 9.8).

4. We disagree with the analysis offered by the majority. All of the allegations raised by the authors were thoroughly considered by the Danish Immigration Service and Refugee Appeals Board and rejected as lacking in credibility because of serious inconsistencies in the authors' statements which rendered their version of events less probable (para. 4.7). Moreover, the documents produced appeared fabricated and did not accord with the authors' statements (para. 4.3). For example, the authors provided a number of inconsistent versions as to when their extra-marital affair began (footnote 20), the circumstances in which F.M. told R.M. about her pregnancy (footnote 21), the frequency of their meetings during the affair (footnote 22) and the time of their escape from home (footnote 23). The Danish authorities also expressed doubts as to whether the version of events provided by the authors relating to an extramarital affair taking place at F.M.'s home and her aunt's home is plausible given the prevailing social customs in Afghanistan and whether the killing of R.M.'s brother, even if occurred, was related to the extramarital affairs given the time gap between the couple's elopement and the murder.

5. Such inconsistencies and improbabilities were deemed by the Danish authorities, who – unlike the Committee – gained a first-hand impression of the authors, as substantial in nature, the result of it being rejection of their grounds of asylum. We do not find in the record before us any reason to regard the conclusions of the Danish Immigration Service and Refugee Appeals Board on the credibility of the authors and their implications for the risk assessment they undertaken to be clearly arbitrary, manifestly erroneous or a denial of justice. As a result, we are of the view that the majority on the Committee failed to properly apply the standard of review it set out to apply, and did not follow the long-held position, according to which the Committee does not serve as "a fourth instance competent to re-evaluate findings of fact [1]

6. In past cases in which the decision of state organs to deport an individual was found by the Committee to run contrary to the Covenant, the Committee attempted to base its position on inadequacies in the domestic decision-making process, such as failure to properly take into account available evidence or the specific rights of the author under the

[1] E.g., *Arenz et al. v. Germany* (CCPR/C/80/D/1138/2002), para. 8.6.

Covenant,[2] serious procedural flaws in the conduct of the domestic review proceedings,[3] or the inability of the State party to provide a reasonable justification for its decision.[4]

7. In the present case, the majority on the Committee points to two possible procedural flaws in the asylum proceedings in Denmark – the failure to consider the risk implications of the extramarital affair and the dismissal by the State party of the document alleging the killing of the author's brother due to the prevalence in Afghanistan of forged official documents (para. 9.7). We disagree with this aspect of the majority's analysis as well.

8. The multiple inconsistencies in the authors' version of events have led the State party to find as factually unsubstantiated the allegation that the authors escaped from their families (para. 4.11). It also noted that "running away" is no longer a prosecutable crime under Afghanistan law (para. 4.11). In these circumstances, it befalls on the authors to demonstrate – which they have not – that married couples like them actually face in Afghanistan a real risk of persecution for pre-marriage sexual relations, and to establish that the specific details of their personal history would be well known in Afghanistan and likely to attract the attention of the authorities or society at large.

9. In the same vein, we cannot conclude that the position of the State party, according to which – in the particular circumstances of the case – independent verification of the document attesting to the brother's death was not warranted, is unreasonable. We note in this regard that the authors did not explain how such a verification could have cured the very serious credibility problems attaching to their claims relating to the circumstances under which they left Afghanistan and the circumstances surrounding the murder.

10. In light of these factors, we do not consider it well-established that the proceedings suffered from a procedural defect that should lead us to doubt the outcome of the asylum process, or its fairness.

[2] E.g., *Hamida v. Canada* (CCPR/C/98/D/1544/2007), paras. 8.4-8.6.
[3] E.g., *X. v. Republic of Korea* (CCPR/C/110/D/1908/2009), para. 11.5.
[4] E.g., *Byahuranga v. Denmark* (CCPR/C/82/D/1222/2003), paras. 11.3-11.4.