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Civil and Political Rights**

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Human Rights Committee

Communication No. 2370/2014

**Views adopted by the Committee at its 114th session
(29 June – 24 July 2015)**

<i>Submitted by:</i>	A.H. (Represented by counsel, Mr. Helge Nørrung)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Denmark
<i>Date of communication:</i>	18 March 2014 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 92 and rule 97 decision, transmitted to the State party on 31 March 2014 (not issued in a document form)
<i>Date of adoption of Views:</i>	16 July 2015
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Substantive issues:</i>	Right to life; risk of torture and ill-treatment; right to a fair trial.
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Articles of the Covenant:</i>	6, 7, and 14
<i>Articles of the Optional Protocol:</i>	2, 3 and article 5, paragraph 2 (b)

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (114th session)

concerning

Communication No. 2370/2014*

Submitted by: A.H. (Represented by counsel, Mr. Helge Nørrung)
Alleged victim: The author
State party: Denmark
Date of communication: 18 March 2014 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 16 July 2015,

Having concluded its consideration of communication No. 2370/2014, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is Mr. A.H., an Afghan national born in 1985, who was deported to Afghanistan on 18 March 2014, following the rejection of his asylum claim in Denmark.¹ He claims that by forcibly deporting him to Afghanistan, Denmark has violated his rights under articles 6, 7, and 14 of the International Covenant on Civil and Political Rights (“the Covenant”). The author is represented by counsel, Mr. Helge

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Olivier De Frouville, Ahmed Amin Fathalla, Yuji Iwasawa, Ivana Jelic, Duncan Muhumuza Laki, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

¹ The initial submission was sent after 23:00 on 17 March 2014. The deportation was scheduled for 00:00 (midnight) on 18 March 2014. The complaint was received by the Secretariat later on 18 March 2014. The Secretariat informed the Special Rapporteur on New Communications and Interim Measures and requested that counsel provides an update as to the status of the deportation. Later that morning, counsel informed that the deportation had occurred, and the Special Rapporteur was informed accordingly. Counsel then made a request to have the author returned to Denmark. The full version of the communication (with English translations of the administrative decisions) was only received on 27 March 2014.

Nørrung. The Optional Protocol to the Covenant entered into force for Denmark on 23 March 1976. Initially, the author invited the Committee to issue a request for interim measures of protection and, following his deportation, he requested to be returned to Denmark for his safety.

1.2 On 31 March 2014, when registering the communication, and pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on New Communications and Interim Measures, requested the State party to ensure that the author is protected during the period of consideration of the communication by the Committee and, in particular, instruct its Embassy in Kabul to contact the author and provide information on his situation. The Committee reiterated its request for interim protection on 1 July 2014. On 1 October 2014, the State party informed the Committee that its authorities are unable to provide protection of the author on Afghan territory, where Denmark does not have jurisdiction; however, the State party added that it has complied with the Committee's request to instruct its Embassy in Kabul to contact the author and provide information on his situation, including the interview of the author conducted by the Danish Embassy in Kabul *summer* 2014. On 19 December 2014, the Committee once again reiterated its request for interim protection.

The facts as presented by the author

2.1 The author claims, *inter alia*, that he was highly likely to risk being subjected to abuse contrary to articles 6 and 7 of the Covenant upon return to Afghanistan since the Danish Refugee Appeals Board (the Board) considered as a fact that the author had been employed in Afghanistan as an agent to fight drug crimes, and in that connection, had collaborated with several English-speaking organisations. The fact that he spoke English and returned to his country of origin from a Western country increased the risk to which he would be exposed in Afghanistan. The author considers that he is at risk of abuse or of being killed upon return to his country of origin, and that his return thus represents a breach of articles 6 and 7 of the Covenant.

2.2 The author worked for several organizations including the Pacific Architecture Engineering (PAE), which cooperate with the Narcotics International Unit (NIU), the Drug Enforcement Agency (DEA), and the Counter Narcotics Police Afghanistan (CNPA) investigating drug-related crimes. He claims that due to his work to fight drug crimes, he was sought by the Taliban, who knew him because he had assisted in securing the arrest of two drug lords affiliated with the Taliban. Moreover, due to his work, he was a victim of an abduction attempt and received written threats, and his brother was kidnapped and killed. The author also contends that he fears the Afghan authorities who believe that he is a supporter of Christianity because of the existence of a video recording in which the author talks about Christianity and Islam.

2.3 The author submits that he would be persecuted by the Taliban because of his work, and maintains that he falls within several of the groups at risk mentioned in the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan dated 6 August 2013.

2.4 The author further submits that the Board had breached article 14 of the Covenant by not sending its refusal to reopen the asylum proceedings until 4:33 pm on 17 March 2014, few hours before the planned return of the author around midnight the same day. He thus claims that the late forwarding of the decision in fact prevented the author from effectively submitting a communication to the Committee under the Optional Protocol to the Covenant. He notes that the Board had been advised of the return well in advance by both the case officer of the Danish Refugee Council and by the National Police, and that the Board had been advised that the case would be brought before an international body if the reopening was refused.

2.5 In addition, the author's counsel submits that the author had produced several original documents, certificates and photographs in support of his asylum claim and that the Board had infringed the author's human rights by rejecting his statements about conflicts in his country of origin without seeking detailed information about the validity of the evidence produced.

2.6 On 30 June 2014, the author's counsel indicated that the Board has not complied with the Committee's request that the Danish authorities in Kabul contact the author and inquire about his safety during the three and a half months that have elapsed since the protection measures were requested, informing also that the author is not staying with his family but moving from place to place to avoid persecution. In light of counsel's information of 1 July 2014, the Committee reiterated its request for protection measures in the author's case.

2.7 On 22 July 2014, the author's counsel added that author has indicated in an email that the Ministry of the Interior had inquired with the elders of his village about the work and the family problems of the author. In the same email, the author, in order to demonstrate the prevailing threats to his security, alleged that his son was killed, although initially in his communication to the Committee of 17 March 2014 he claimed that his brother was killed.

2.8 On 29 August 2014, the author reiterates that he is in danger in Afghanistan and that he has not yet been properly protected, submitting that the Danish Embassy in Kabul as well as the International Organisation for Migration (IOM) have repeatedly been seized of the author's needs for protection. He claims that the State party has not provided any information regarding the eventual measures taken to give effect to the Committee's request for measures of protection aimed at ensuring the author's safety. On 2 September 2014, the author submits that he presented his bodily injuries to the staff of the Danish Embassy in Kabul to demonstrate a threat he reportedly faces, indicating the absence of response to the Committee's request for protection. On 10 September 2014, the author further informed that he received no response at all from the State party's authorities after his meeting in the Danish Embassy in Kabul.

2.9 The author considers that, as no judicial review of the Board decision is available, all domestic remedies have been exhausted and explains that the communication is not being examined under another procedure of international investigation or settlement.

The complaint

3.1 The author submits that by forcibly returning him to Afghanistan, the State party violated his rights under articles 6 and 7 of the Covenant.² He also claims a violation of article 14 of the Covenant "or equivalent" in connection with the hearing of the author's asylum case by the migration authorities and his subsequent return to Afghanistan. He maintains that in Afghanistan he is at "great risk of being exposed to serious harm and abuse, even death" and insists that the risk stems from his former work fighting drug crime and his cooperation with several English-speaking agencies in that capacity. The author explains that due to this work, he belongs to several risk groups, including 'individuals associated with, or perceived as supportive of, the government and the international community', and 'individuals perceived as contravening the Taliban's interpretation of Islamic principles, norms and values'.³ He further argues that because he speaks fluent English and 'returns from the West', he faces greater risk.

² At the time the initial communication was submitted, the author had not yet been deported.

³ The author cites UNHCR Eligibility Guidelines for Afghanistan (6 August 2013), p. 31, 47.

3.2 The author also asserts that he fears the Afghan authorities, who believe that he is a supporter of Christianity because of a video recording in which he talks about Christianity and Islam.

3.3 The author further argues that the State party obstructed the possibility of invoking the Covenant because it planned to deport him on the very same day when the final domestic negative decision was issued. The author maintains that this amounts to a violation of article 14 of the Covenant. He also states that his request for reopening of the asylum proceedings did not halt his deportation.

3.4 The author asserts that the negative decisions of the Danish authorities “infringe” on his human rights. Neither the Immigration Service nor the Board initiated any investigation as to his claims. He argues that the Board’s decision was flawed because it did not provide a reason for rejecting the information that Taliban affiliates were involved in drug crimes.⁴ He maintains that the Board did not reconsider the issue of credibility in its decision.

3.5 The author claims he has exhausted available domestic remedies in Denmark by obtaining a negative decision, dated 21 May 2013, from the Board, and by receiving a rejection of his request to reopen his asylum case (the rejection was issued on 17 March 2014);⁵ the decision is final and cannot be appealed in court. The author also states that he has not submitted a complaint before any other international instance.

⁴ The unofficial translation of the Refugee Appeals Board’s decision provided by the counsel states that the Board accepted that the author worked for PAE from 2007-2009 and was responsible for investigating drug-related crimes there, and that the Taliban were involved in drug-related crimes. The Board, however, rejected the author’s claim that he had problems with the Taliban two and a half years after he had contributed to the unravelling of drug-related crimes. In this regard, the Board emphasized that the author had been able to stay in Kabul without problems and visit his wife and children weekly at his former residence in Jalalabad, without being approached by the Taliban. The Board also rejected the author’s claim that he had had difficulties at a meeting where Christianity was discussed. In this regard, the Board noted that the author was unable to explain in detail either how the video of him was recorded or to provide details on the contents of the video. The Board noted that the author alleged to have received a threatening letter from the Taliban prior to the relevant events. The Board did not find it probable that the author was pursued by the Taliban at the time of his departure from the country, or that he would face a concrete and individual risk of persecution upon return.

⁵ It appears from the unofficial translation of the Board’s decision denying the request to reopen the asylum case that the author provided new information, claiming that he was abducted on *fall* 2007 from his home in Jalalabad. The abduction allegedly occurred after his work that led to the unravelling of a major drug operation culminating in the arrest of two drug kingpins. The abduction was arranged by a third kingpin, who had avoided arrest. The author believes that his former colleague had denounced him as being an agent responsible for collecting information on the Taliban and on the mafia. The author presented a police report dated *fall* 2009 which describes the abduction events. The Board’s decision also states that the author presented new information on the Taliban’s search for him namely, that his brother told him during a telephone conversation on *summer* 2013 that the Taliban commander [...] had sought out the village leader and inquired about the author’s whereabouts. The author also added that he was able to live in Kabul between 2009 and 2012 because he was incredibly careful in his movements. He lived in hiding and mostly stayed in his office or his apartment, and only visited his family every three months. He also explained that he was unaware of the video recording in which he was discussing Christianity until a warrant was issued for his arrest. A copy of the warrant has not been made part of the file. He further stated that he received the threatening letter dated *fall* 2012 after the meeting about Christianity and before the arrival of the police at the family residence. The author also presented new information that he has acted as an interpreter for 28 countries, including Denmark, Germany, and the USA, and in this capacity he has taken part in a series of meetings with village leaders, Taliban members, etc. The Board found that the author had considerably expanded upon his motive for seeking asylum and had not provided a

State party's observations on admissibility and merits

4.1 On 1 October 2014, the State party submitted its observations on admissibility and merits of the communication. The State party considers that the author has failed to substantiate the risk of irreparable harm as a consequence of his forced return to Afghanistan, and for the same reasons considers the communication inadmissible as manifestly ill-founded due to a lack of substantiation.

4.2 The State party recalls that the author entered Denmark *summer* 2012 without valid travel documents, and applied for asylum. On 14 December 2012, the Danish Immigration Service refused asylum to the author. On 21 May 2013, the Board upheld the refusal by the Danish Immigration Service of the author's asylum application of 14 December 2012. The Board found that the applicant had failed to substantiate that he was persecuted by the Taliban at his departure and that he will be at a specific and individual risk of persecution justifying asylum and falling within section 7, paragraph 1, of the Aliens Act, or at a real risk of inhuman treatment or punishment falling within section 7, paragraph 2, of the Aliens Act, in case of his return to Afghanistan.

4.3 The State party adds that on 29 July 2013 the Danish Refugee Council, acting on behalf of the author, requested the Board to reopen the asylum proceedings. In its decision of 17 March 2014, the Board refused to reopen the asylum proceedings, and stated, *inter alia*, that it had found no grounds for reopening the case, nor had it found any grounds for extending the time limit for the applicant's departure. The Board emphasized that no substantial new information or views had been added to the case beyond the information available at the original hearing by the Board. The Board stated the following: 'the Board finds that the applicant has substantially enlarged on his statement about his grounds for asylum in connection with the request for reopening since he had told neither the Danish Immigration Service nor the Board that he had moved house in Kabul about every two months and had three times stayed in a hotel and sometimes spent the night at his workplace, and since he had also failed to mention anything about the safety precautions taken by him when visiting his family every second month. He had stated to the Danish Immigration Service that he had regularly visited his family, while he had stated at the Board hearing that he had lived peacefully in Kabul. Even when taking into account that the applicant appears to be of unstable mental health, the Board finds that he has failed to provide a reasonable explanation for these substantial enlargements, which concern a crucial part of the asylum grounds relied upon. Consequently, the applicant must still leave Denmark in accordance with the time limit stated in the decision of 21 May 2013. As appears from the Board's decision, the applicant may forcibly be returned to Afghanistan pursuant to section 32a of the Aliens Act if he does not leave voluntarily.' On 18 March 2014, the author was returned to Afghanistan.

4.4 The State party further informs that, in accordance with the Committee's request of 1 July 2014, it instructed on 16 July 2014 the Danish Embassy in Kabul to establish contact with the author on the telephone number provided by the author's counsel on 30 June 2014.

reasonable explanation for adding significant details he had not mentioned earlier in proceedings. The Board found the documents presented by the author to be apparently constructed for purposes of the occasion, and that the author had not adequately explained how the police report was procured or why it was not presented earlier. The Board found it unlikely that the Taliban would seek out the leader of the author's village more than a year after the author's departure from Afghanistan, and more than three and a half years after the author left the village after the attempted kidnapping. The Board noted that it is easy to obtain all kinds of forged documents in Afghanistan, including threatening letters from the Taliban. The Board found no basis for finding that the author had had conflicts in Afghanistan due to his employment in ISAF from 2003 to 2007, or that he had the profile of someone subject to a specific and individual risk of persecution.

The Danish Embassy made several attempts to contact the author on the provided telephone number, but in vain. Contrary to the author's information that he appeared in person at the Danish Embassy in Kabul in *summer* 2014, the State party informs that its Embassy in Kabul could not provide a positive confirmation that the author contacted one of its outer security checkpoints; however, conceding that the author could be dismissed by a guard if he had not submitted a prior request for appointment by e-mail.

4.5 The State party also indicates that the author contacted the Danish Embassy in Kabul by e-mail and forwarded some correspondence between him, his counsel and the Committee concerning the case. By letter of the Committee of 8 August 2014, the State party received counsel's further information of 22 July 2014, including five documents in attachment provided by the author. Those documents included a confirmation of the author's identity by the Ministry of the Interior and a village elder *M*, a confirmation of the author's residence in *S* village in the Lematak district, and of possible threats to the author, a document referring to an (unnamed) Afghan asylum-seeker from Denmark, and a request to the Ministry of the Interior to receive a copy of the confirmation of author's identity by village elder which was handed over. By e-mail of 11 August 2014, the author provided to the Embassy further correspondence in his case.

4.6 The State party furthermore informs that *summer* 2014, the Danish Embassy in Kabul interviewed the author in a secure meeting room close to the Embassy premises during which the author explained, *inter alia*, that *within 13 days in summer* 2014 he had received two threatening phone calls from anonymous numbers during which the caller of unknown identity reportedly stated 'that they knew A.H. had returned to Afghanistan' and inquired about his exact location. After the second phone call, A.H. stated to have changed his phone number. During the interview, the author described his visit to the UNHCR office in order to find out about the conditions for seeking refugee status once he would leave Afghanistan. The author also described a physical attack and beating he reportedly sustained *in summer* 2014 by unknown assailant/s as a result of which he apparently had a scar on his lower right arm, a bruised lip, both eyes slightly swollen and bruised and bruises on his thigh, ankle and the lower leg.⁶ He also referred to his moves between three different places, a couple of weeks a time at each place, since he returned to Afghanistan. During those moves, the author stayed with his brother in Kabul, his father-in-law in Takhar province, where his wife and children are also staying, and with his sister in Jalalabad. During the interview, the author claimed to have suffered from emotional distress caused by being away from his family and not staying in a fixed location, as well as from the insecurity he feels from the attack.

4.7 During August and September 2014, according to the State party, the author and his counsel sent a number of emails about the case to the Danish Embassy in Kabul, in the most recent of which, dated 9 September 2014, the author indicated, *inter alia*, that he had received several threatening phone calls the preceding Sunday from persons saying that they knew his address. The author had then donned women's clothes and had left his place of residence to stay the night in a mosque. The State party also indicates that the author alleged he had been unable to work since his return to Afghanistan in March 2014 because he was afraid and that it was hard living without money. The author also reportedly gave his new telephone number, which he had changed to prevent 'them' from finding him. According to the State party, the author finally stated that, if he did not hear from the Danish authorities, the author would leave Afghanistan and go somewhere else.

4.8 Between 20 and 22 September 2014, the author exchanged several text messages with the diplomatic staff of the Danish Embassy in Kabul, in which the author asked, *inter*

⁶ The author mentioned that he had not informed his lawyer of the attack but intended to do so.

alia, if there was any news in the case in response to which he learned that the relevant authorities had received all information in the case, and requested the author generally to keep in contact with his counsel for news in the case.

4.9 As regards the Committee's request for protection of the author and information on his situation, the State party admits that the Danish authorities are unable to provide protection of the author on Afghan territory where Denmark does not have jurisdiction. The State party however maintains that it complies with the Committee's request to instruct the Danish Embassy in Kabul to contact the author and provide information on his situation, as described above.

4.10 Regarding the claims under 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,' as required under Rule 96 of the Committee's Rules of Procedure. Thus, it has not been established that there are substantial grounds for believing that the author is in danger of being arbitrarily deprived of his life or subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party considers this part of the communication manifestly ill-founded and requests that it be declared inadmissible.

4.11 As regards his claims under article 14 of the Covenant 'or equivalent', and in particular the author's objections to the short period of time between the refusal of the Board to reopen the author's asylum proceedings and the return of the author to Afghanistan, the State party is of the view that article 14 of the Covenant lays down the principle of due process of law, including the right of access to the courts in the determination of a person's rights and obligations in a suit of law. The State party makes a reference to the case law of the Committee that proceedings relating to the expulsion of an alien do not fall within the ambit of a determination of 'rights and obligations in a suit of law' within the meaning of article 14, paragraph 1, but are governed by article 13 of the Covenant.⁷ Accordingly, the State party submits that asylum proceedings fall outside the scope of article 14 of the Covenant, and that this part of the communication should therefore be declared inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol to the Covenant.

4.12 The State party further objects to the author's allegations concerning article 14 of the Covenant 'or equivalent' that the Danish authorities are supposed to have made the author's possibility of exercising his right to complain to the Committee illusory because of the short period of time between the refusal of reopening and the return. The State party observes in that connection that the Board made its decision in the author's case on 21 May 2013, whereby domestic remedies were, in principle, exhausted, and the author could then have submitted a complaint to the Committee. However, the author's counsel did not submit his complaint to the Committee until 17 March 2014, immediately before the author's scheduled forced return to his country of origin. In reality, he thus had nearly ten months to prepare his complaint. Against this background, the State party submits that the author has failed to establish a *prima facie* case for the purpose of admissibility of this part of the communication, which it considers manifestly ill-founded and should therefore be declared inadmissible.

4.13 For the foregoing reasons, the State party considers that the communication is also without merit as the author has not sufficiently established that there are substantial grounds for believing that the return of the author to Afghanistan constituted a violation of article 6

⁷ See, inter alia, communication No. 2007/2010, *J.J.M. v Denmark*, Views adopted by the Committee on 26 March 2014, para. 8.5 (CCPR/C/110/D/2007/2010).

or 7 of the Covenant, or that the State party has failed to comply with article 1 of the Optional Protocol to the Covenant.

Author's further information

5.1 On 17 December 2014, the author's counsel shared a copy of that day's letter addressed to the Ministry of Foreign Affairs of Denmark in which he informs that, based on sporadic e-mails and telephone calls from the author to the counsel and the Danish Refugee Council, it is evident that the author and perhaps also his family have escaped to Pakistan due to telephone threats against his wife and son. The author's counsel concludes that the State party has not yet succeeded in providing protection to the author, and requests the Danish Ministry of Foreign Affairs to indicate if the State party's authorities are able to provide shelter for the author and his family in Pakistan. Further to that correspondence, the Committee reminded the State party on 19 December 2014 that its request for interim measures of protection of the author of 31 March 2014 remains in effect.

5.2 On 12 January 2015, the author's counsel submits that based on the information from the author, he hides himself in the mountain area at the border between Afghanistan and Pakistan. He adds that the author has to walk two hours to a place with internet connection and that he can be reached at the internet address copied on the e-mail. The author's counsel sent a copy of the information to the State party to enable it to find a safe way to communicate with him in order to arrange for a place to meet for a rescue operation. The counsel adds that it is his conviction that the author and his family are in a very dangerous situation, and that his life is in danger. In the message of 23 December 2014, which formed part of the e-mail of 12 January 2015, the author's counsel complains of the absence of information by the State party whether it could or would provide the author with any kind of protection, as requested through the counsel's e-mail of 17 December 2014 to the Danish Ministry of Foreign Affairs.

5.3 On 3 February 2015, the author indicates that on 18 March 2014, when the Danish authorities deported him back to Afghanistan, he was left at the Kabul airport without any kind of support or even the address of a guest house for him to stay. He moved to his brother's house, following which the author received phone calls from unknown callers who had stated that they had known about the author's return to Afghanistan and threatening him that 'they' would find his exact location. The author also refers to his interview with the Danish Embassy *summer* 2014 during which he reported the incident of a physical assault against him *summer* 2014; however, without description of any new circumstances. The author submits that further to the interview he did not receive any protection from the Embassy. He also indicates that for a long time, he has lived far away from his children at the border between Pakistan and Afghanistan whereas the author's children live at distance at the house of the author's father-in-law. The author expresses regrets that his children grow up without him, while they as well as his wife reportedly remain in risk. He concludes that despite his work for the US Army for 12 years, he now feels stranded as left without any protection, living in the mountains without electricity and in winter. The author in fact calls for help to save his life and the family.

5.4 On 12 February 2015, the author in his e-mail correspondence yet again submits that he finds himself in a bad situation, urging his protection and that of his family.⁸

⁸ The author adds that if no help is forthcoming, he threatens to burn his children and himself in front of the Danish Embassy.

State party's further submission

6.1 On 28 January 2015, the State party submits, with reference to its observations of 1 October 2014, that the submissions by the author's counsel of 12 January 2015 do not give rise to any further comments by the State party. The State party maintains, as stated in its observations of 1 October 2014 that the communication is manifestly ill-founded and should be declared inadmissible. Should the Committee find the communication admissible, the State party further maintains that the return of the author to Afghanistan did not constitute a violation of the provisions of the Covenant.

6.2 On 10 February 2015, the State party in its submission informs that, in reference to the State party's observations of 1 October 2014, the submissions by the author's counsel of 3 February 2015 do not give rise to any further comments by the State party.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee has ascertained, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that it is undisputed that the author has exhausted all available domestic remedies, as required by article 5, paragraph 2 (b), of the Optional Protocol.

7.4 The Committee notes first, regarding the author's claim under article 14 of the Covenant 'or equivalent', and in particular the author's objections to the short period of time between the refusal of the Board to reopen the author's asylum proceedings and the return of the author to Afghanistan, the State party's arguments that article 14 of the Covenant lays down the principle of due process of law, including the right of access to the courts in the determination of a person's rights and obligations in a suit of law. The Committee refers to its jurisprudence that proceedings relating to the expulsion of an alien do not fall within the ambit of a determination of 'rights and obligations in a suit at law' within the meaning of article 14, paragraph 1, but are governed by article 13 of the Covenant.⁹ Accordingly, the Committee considers that the author's claim under article 14 is inadmissible *ratione materiae* pursuant to article 3 of the Optional Protocol.

7.5 The Committee notes the State party's argument that the author's claims with respect to articles 6 and 7 of the Covenant should be held inadmissible owing to insufficient substantiation as the author 'has failed to establish a prima facie case for the purpose of admissibility of his communication'. At the same time, however, the Committee notes the author's detailed claims regarding the existing risks, for him, and the information that due to his past work in fighting drug crimes, he has been sought by the Taliban, as they were aware that he had assisted in securing the arrest of two Taliban-affiliated drug lords. The

⁹ See, *inter alia*, communication No. 1494/2006, *A.C. and her children, S.M. and E.B. v. The Netherlands*, inadmissibility decision adopted on 22 July 2008, para. 8.4: "The Committee refers to its jurisprudence that deportation proceedings did not involve either 'the determination of any criminal charge' or 'rights and obligations in a suit at law' within the meaning of article 14" (citing communication No. 1234/2003, *P.K. v. Canada*, inadmissibility decision of 20 March 2007, paras. 7.4 and 7.5). See also communication No. 2007/2010, *J.J.M. v. Denmark*, Views adopted by the Committee on 26 March 2014, para. 8.5 (CCPR/C/110/D/2007/2010).

Committee further notes the allegations by the author that he was a victim of an abduction attempt and received repeated written and telephone threats, and that his brother was kidnapped and killed which provide substantial grounds for believing that the author may be in danger of being arbitrarily deprived of his life or subjected to torture or cruel, inhuman or degrading treatment or punishment. The Committee is, therefore, of the opinion that, for the purposes of admissibility, the author has sufficiently substantiated his allegations under articles 6 and 7 of the Covenant.

7.6 In the light of the above, the Committee considers that the communication is admissible, insofar as it raises issues under articles 6 and 7 of the Covenant and proceeds with its examination on the merits.

Consideration of the merits

8.1 The Human Rights 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, paragraph 1, of the Optional Protocol.

8.2 The issue before the Committee is whether the removal of the author to Afghanistan has amounted to a violation, by the State party, of its obligations under articles 6 and 7 of the Covenant.

8.3 The Committee recalls, first, that in its general comment No. 31, 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.¹⁰ The Committee has also indicated that the risk must be personal¹¹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.¹² Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹³

8.4 The Committee further recalls its jurisprudence that important weight should be given to the assessment conducted by the States parties' authorities, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice,¹⁴ 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.¹⁵

8.5 The Committee notes the State party's observation that its obligations under articles 6 and 7 of the Covenant are reflected in section 7(2) of the Aliens Act, under which a

¹⁰ See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

¹¹ See, for example, communications no. 2007/2010, *J.J.M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; No. 333/2007, *T.I. v. Canada*, decision adopted on 15 November 2010; and No. 344/2008, *A.M.A. v. Switzerland*, decision adopted on 12 November 2010. No. 692/1996, *A.R.J. v. Australia*, Views adopted on 28 July 1997, para. 6.6.

¹² See, for example, communications no. 2007/2010, *J.J. M. v. Denmark*, Views adopted on 26 March 2014, para. 9.2; no. 1833/2008, *X. v. Sweden*, Views adopted on 1 November 2011, para. 5.18.

¹³ *Ibid.*

¹⁴ See, inter alia, *ibid.* and communication No. 541/1993, *Errol Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

¹⁵ See communications No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4 and No. 1957/2010, *Lin v. Australia*, Views adopted on 21 March 2013, para. 9.3. See also communications No. 1819/2008, *A.A. v. Canada*, inadmissibility decision adopted on 31 October 2010, para. 7.8, and No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, para. 9.3.

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 normally be whether, at the time of the decisions of 21 May 2013 and 17 March 2014 made by the Board, 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.

8.6 In the context of the refusal of 17 March 2014 by the Board, the Committee notes the State party's argument that the author has substantially enlarged on his statements to the Board and the Danish Refugee Council about the difficulties that he had experienced during his stay in Kabul compared with the statements made by the author during the initial asylum proceedings. The Committee also notes the State party's arguments that the author was able to stay in Kabul from *fall* 2009 to *spring* 2012 without being located or contacted by the Taliban and that he was able to visit his family in Jalalabad, that the author does not seem to have given any information at the meeting at which Christianity had been discussed that could give the Afghan authorities a reason to believe that he had converted to Christianity, and that the Board saw no reason to adjourn the case pending the verification of the authenticity of the documents produced by the author as it believed that it was possible to obtain all kinds of forged documents in Afghanistan.¹⁶

8.7 At the same time, the Committee takes note of the author's assertions that due to his former work in fighting drug related crimes in close cooperation with several English-speaking agencies he is at 'great risk of being exposed to serious harm and abuse, even death' by the Taliban in Afghanistan, in particular due to his assistance in securing of the arrest of two Taliban-affiliated drug lords. The Committee also notes the author's claim that due to his past work, the author belongs to several risk groups under the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan dated 6 August 2013, and that this was conceded by the State party. The Committee further notes the author's assertions that in the context of his past work, he was a victim of an abduction attempt and received written threats; his brother was kidnapped and killed. It notes that those serious allegations were not specifically refuted by the State party. The Committee also notes the author's assertions about his fears from the Afghan authorities, who reportedly believe that he is a supporter of Christianity because of a video recording in which he compares Christianity with Islam, although the State party pointed out to the lack of evidence about the exact circumstances and time of production of the video in question. The Committee further notes the author's allegations that neither the Danish Immigration Service nor the Board initiated any investigation as to the veracity and validity of the evidence produced in support of his detailed allegations.

8.8 The Committee is of the view that the facts as presented, read in their totality, including the information on the author's personal circumstances such as his past experience in combatting drug-related crimes which implicated Taliban-affiliated drug lords, the threats to the author and his family prior to his deportation to Afghanistan, the absence of comprehensive and objective verification by the State party's authorities of the

¹⁶ See e.g. the report of 29 May 2012 of the Danish Immigration Service, Afghanistan – Country of Origin Information for Use in the Asylum Determination Process.

evidence submitted by the author in support of his claims and the unstable state of his mental health, which the Board identified in its decision of 17 March 2014 and which has likely rendered him particularly vulnerable, disclose a real risk for the author of treatment contrary to the requirements of article 7, of the Covenant, due to his removal to Afghanistan, which was not given sufficient weight by the State party's authorities. Accordingly, the Committee is of the view that by removing the author to Afghanistan, the State party has violated its obligations under article 7 of the Covenant.

8.9 In the light of its findings on article 7, the Committee will not further examine the author's claims under article 6 of the Covenant.

9. The Committee acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that by removing the author to Afghanistan the State party has violated his rights under article 7 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy by proceeding to a review of the decision to forcibly remove him to Afghanistan; an arrangement for the quick return of the author to Denmark, taking into account the State party's obligations under the Covenant; and a payment of compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

11. By becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant. In addition, pursuant to article 2 of the Covenant, the State party has undertaken to guarantee 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 where it has been determined that a violation has occurred. The Committee therefore requests the State party to provide, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views, to have them translated into the official language of the State party, and to ensure that they are widely disseminated.
