



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 918/2019\*, \*\*

<i>Submitted by:</i>	A.A. (represented by counsels, Ruth Nordström and Rebecca Ahlstrand)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of complaint:</i>	15 February 2019 (initial submission)
<i>Date of adoption of decision:</i>	24 November 2021
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Substantive issue:</i>	Risk of torture if deported to country of origin (non-refoulement)
<i>Article of the Convention:</i>	3

1.1 The complainant is A.A., a national of Afghanistan born in 1998. He claims that the State party would violate his rights under article 3 of the Convention if it deported him to Afghanistan. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 8 January 1986. The author is represented by counsels, Ruth Nordström and Rebecca Ahlstrand.

1.2 On 15 February 2019, pursuant to rule 114 (1) of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party not to deport the complainant to Afghanistan while the communication was being considered by the Committee.

#### Facts as presented by the complainant

2.1 The complainant is a national of Afghanistan, born in the Islamic Republic of Iran to Afghan parents. He was never eligible for Iranian identity documents and therefore never attended school. He has never visited Afghanistan. The complainant's parents moved to the Islamic Republic of Iran in the 1990s after their lives were threatened by relatives in a family land dispute. In 2015, the Iranian police arrested the complainant and his brother, who were told they must fight in the Syrian Arab Republic or be deported to Afghanistan. The family could not return to Afghanistan because of the feud. The complainant, his brother and his parents therefore fled to Sweden in 2015 and applied for asylum there on 24 November 2015.

\* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Claude Heller, Erdoğan İşcan, Liu Huawen, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé, Bakhtiyar Tuzmukhamedov and Peter Vedel Kessing.



2.2 The family were initially refused asylum. In the meantime, the complainant and his family came into contact with Pajala Pentecostal Church, became very involved in church life and received significant support from church members. This experience led the complainant and his brother to embrace Christianity and they were baptized as Christians. As well as attending church for worship and Bible study, the brothers joined a band of Christian Dari-speaking musicians and performed in churches throughout northern Sweden.

2.3 The complainant and his brother added their conversion to their asylum claims, asserting that they would consequently be at risk if they were returned to Afghanistan. The claims were heard separately and the complainant's brother was granted asylum. His parents were awarded temporary residence permits on the basis of the father's terminal cancer diagnosis.

2.4 On 15 June 2017, the Swedish Migration Agency heard the complainant's application. In its decision to reject his claim, it held that owing to the serious consequences in Afghanistan of conversion to Christianity, the complainant must have carefully weighed the risk of doing so against his beliefs, and yet he had failed to adequately explain his rationale for leaving Islam and embracing Christianity. The Agency asserted that his reasoning appeared not to reflect personal experience, but rather to involve general and vague answers, leading it to the conclusion that his conversion was not based on genuine belief. The Agency noted, by way of an example, that the complainant's response when asked how he knew that he was ready to be baptized was that he had attended all the classes and church sessions in preparation. The Agency therefore held that he had not demonstrated that his faith was genuine and that he would not face any individual threat if returned to Afghanistan, as a result of either his beliefs or his parents' family history. It also held that the situation in Afghanistan was not such as to trigger the obligation to provide a temporary residence permit on humanitarian grounds.

2.5 The complainant's appeal was heard by the Migration Court on 1 August 2018. The Court denied the appeal, on the grounds that the complainant's responses regarding the reasons for his conversion were too general and vague, and that he had failed to elaborate on this point before either the Swedish Migration Agency or the Court. The Court held that the complainant appeared to appreciate the Church's social elements above all, and that his conversion reflected his desire for community rather than any religious conviction. It concluded that, having failed to demonstrate that his conversion was based on genuine belief, he would not live openly as a Christian in Afghanistan and thus did not risk being subjected to treatment that would trigger protection obligations.

2.6 One of the presiding judges and Chair of the Migration Court, however, issued a dissenting opinion in which she recognized the difficulties inherent in assessing the genuine basis of a person's religious conviction and the many factors which can hamper the attempt to provide a succinct account for one's beliefs, regardless of the genuineness of that belief. Noting the lack of specificity in elements of the complainant's explanation, she nevertheless considered that he had provided a relatively detailed narrative before the Swedish Migration Agency and the Court, regarding his view of Christianity and personal reflections on the differences between Islam and Christianity. She also noted that he had exhibited such a level of knowledge of Christianity as could be expected from a person with his level of education. She made particular reference to his understanding of the contrast between Islam and Christianity in the treatment of women, as well as his motivation to share his faith with others. She found no reason to question the genuineness of the complainant's beliefs and voted to grant him refugee status and temporary residence. The vote did not have sufficient support and the rejection was upheld. Leave to appeal was refused, and the removal decision was therefore final and enforceable.

2.7 The complainant continued his religious activities and posted videos of the band's performances, photographs of him attending church activities and Bible quotes for his 12,000 mainly Dari-speaking followers on Instagram. Thereafter, he began to receive threats from Afghans and Iranians, which he reported to police.

2.8 On 21 September 2018, the complainant submitted an application to the migration authorities to have these new circumstances examined in the context of his asylum claim. He submitted that these threats threw new light on the danger that he faced in Afghanistan and

therefore constituted a permanent obstacle to his removal under the Aliens Act. The removal order was stayed pending the Migration Court's determination on the application. The complainant submitted screenshots of his social media accounts and conversations in which a relative threatened him for being a non-believer. He also reported other threats, which he had removed from his social media accounts. In its decision of 2 February 2018, the Court held that the facts presented were not new circumstances, but rather additions or modifications to the pre-existing claim that he was known to be a Christian in Afghanistan, which had already been determined in a final decision. The application was therefore rejected, the stay on removal lifted and permission to appeal denied.

2.9 The complainant submits that his asylum claim suffered procedural flaws, which have been repeatedly raised by civil society in relation to the asylum system generally. In the complainant's case in particular, the decision makers focused almost exclusively on the level of his theoretical knowledge of the religion rather than on his subjective experience of faith in the context of the church that had welcomed him and with which he associated Christianity. *Sur place* conversions are viewed with suspicion and assessed according to an excessively high evidentiary burden, making the chance of success minimal. In cases such as his, as evidenced by the transcripts of the proceedings, applicants are expected to concisely explain their theological rationalization for choosing one religion or sect over another, in response to closed questions with only one satisfactory response, with no regard to the emotional, cultural, socioeconomic and interpersonal reasons for which one comes to a particular belief, the ways in which belief manifests and develops over time, or the difficulty of explaining all of these very personal elements in such a pressurized environment. If preconceived, highly restrictive criteria are not met, the individual is adjudged lacking in credibility and, as a result, any evidence proffered to support the genuineness of the individual's beliefs is not accorded probative weight and is essentially dismissed. In the author's case, he was not formally educated, he was illiterate when he arrived in Sweden and he was not used to discussing religion in such terms, and so he was thought not to be credible. Testimonies by those best placed to judge his genuineness were simply not taken into account.

2.10 The complainant explains that the risk that he faces in Afghanistan was not explored any further after the credibility finding. Regardless of the State party's opinion on the genuineness of his conversion, it failed to consider the impact of his social media activity being known to people in Afghanistan, as evidenced by the threats that he has received. The State party therefore failed to sufficiently assess the risk that he faces in Afghanistan, which is the second most dangerous place in the world to be a Christian and where Christians are known to suffer extreme persecution. No one knows the true number, but less than 0.3 per cent of the population will confess to any belief other than Islam. Apostasy – that is, the renunciation of Islam for another religion or for atheism – is considered a *hudud* offence, the most serious, in Afghanistan. Accordingly, apostates cannot be pardoned, and if they refuse to recant or after recanting behave in any way that indicates apostatic beliefs, they are punished with death. One does not have to practise Christianity or even be an atheist to be accused of apostasy. Examples of the many acts considered to fall into the category of apostasy include denying Islam and its five pillars or declaring that Mohammed is not the last prophet. According to the complainant, many sources state that an even greater threat to perceived apostates comes from their own family and community. There are documented cases of extrajudicial or "honour" killings for apostasy. The complainant asserts that the State party failed to investigate any of these elements after finding that he lacked credibility on the basis of his oral evidence.

2.11 The complainant's brother received a residence permit and refugee status owing to his conversion to Christianity, which was found to be genuine. By contrast, owing to the complainant's failure to meet arbitrarily imposed standards that are believed by the State party authorities to typify faith, he will be denied fellowship and affinity with other Christians, the intimacy of faith provided by common prayer and devotion, and the communal support and ability to express his beliefs. Instead, he will face a serious personal risk if deported, in particular because of *sur place* activities since his conversion, which has become known in Afghanistan. Further, the failure to act in accordance with strict social and religious guidelines on a day-to-day basis will present a constant danger to his life.

## Complaint

3. The complainant claims that he would face a real, serious and personal threat to his life upon return to Afghanistan, and that deporting him without conducting a rigorous assessment in accordance with international standards would therefore amount to a violation by the State party of article 3 of the Convention.

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

4.1 In a note verbale dated 4 September 2019, the State party submitted its observations on admissibility and the merits.

4.2 First, the State party informs the Committee that, under chapter 12, section 22 (1), of the Aliens Act, an expulsion order that has not been issued by a general court expires four years after the order became final and non-appealable. The decision to expel the complainant will therefore become statute-barred on 2 February 2022.

4.3 The State party maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of its obligations to article 3 of the Convention if he were returned to Afghanistan fails to meet the minimum level of substantiation required for the purposes of admissibility. The State party considers the communication manifestly unfounded and inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.<sup>1</sup>

4.4 Should the Committee find the communication admissible, and since the complainant has failed to substantiate his claims that his expulsion to Afghanistan would violate article 3 of the Convention because of the risk that he faces, as a Christian convert or as a person being ascribed Christian beliefs, if he were to be returned there, the complaint lacks merit and does not reveal a violation under the Convention.

4.5 The State party refers to the Committee's jurisprudence that, in determining whether there are substantial grounds for believing that the forced return of a person to another State would expose that person to danger of torture, such as to constitute a violation of article 3 of the Convention, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>2</sup> However, as the Committee has also emphasized, the aim of such determination is to establish whether the individual concerned would be personally at a real and foreseeable risk of torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not, in and of itself, constitute sufficient grounds for determining that a particular person would face such a risk. For a violation of article 3 of the Convention to be charged, additional grounds must exist, which show that the individual concerned would in fact be personally at risk of such treatment.<sup>3</sup>

4.6 Furthermore, the State party recalls the Committee's position that the burden of proof rests on the complainant, who must present an arguable case establishing that the risk of being subjected to torture is foreseeable, present, personal and real. In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.<sup>4</sup>

4.7 The State party refers to information provided to the Human Rights Council, which noted widely acknowledged achievements in the field of human rights in Afghanistan.<sup>5</sup> While State party does not underestimate the legitimate concerns expressed with respect to the current human rights situation in Afghanistan, it finds no reason to deviate from the assessment of its migration authorities that the prevailing situation on the ground cannot be

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<sup>1</sup> For example, *H.I.A. v. Sweden* (CAT/C/30/D/216/2002), para 6.2.

<sup>2</sup> Convention, art. 3 (2).

<sup>3</sup> For example, *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002), para. 8.3; and *A.B. v. Sweden* (CAT/C/54/D/539/2013), para. 7.3.

<sup>4</sup> For example, *H.O. v. Sweden* (CAT/C/27/D/178/2001), para. 13; *A.R v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; and *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3.

<sup>5</sup> See <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/afghanistan/>.

deemed to be of such a nature that there is a general need to protect all asylum seekers from the country. Accordingly, the complainant must show that he would personally face a real risk of being subjected to treatment in violation of article 3 of the Convention upon his return there. The State party notes that the domestic migration authorities and courts have evaluated the prevailing human rights situation in Afghanistan in relation to the complainant's individual circumstances and found that he has not substantiated his claim that he is in need of international protection.

4.8 The State party draws the Committee's attention to provisions in the Aliens Act, which reflect the principles forming the basis of article 3 of the Convention. It thus submits that its migration authorities apply the same kind of test when examining an asylum claim as is used to assess complaints under the Convention. It further asserts that such a test was applied in the complainant's case, as indicated by the reference to chapter 4, sections 1 and 2, of the Aliens Act in the determination of the complainant's asylum claim before the domestic authorities.

4.9 Moreover, the State party notes that, in determining the risk faced by an individual during such proceedings, domestic authorities are in a position to assess the information presented to them and, in particular, have the benefit of being able to appraise the credibility of an applicant's statements and claims. In this regard, both the Swedish Migration Agency and the Migration Court conducted thorough examinations of the complainant's case in accordance with those standards.

4.10 By way of background, the State party confirms that the Swedish Migration Agency held an introductory interview with the complainant in connection with his asylum application on 5 December 2015, and an extensive asylum interview was conducted on 15 June 2017 in the presence of the complainant's publicly funded counsel. The transcript was subsequently shared with his counsel for comment. In an individualized overall assessment, the Agency considered that the complainant had not plausibly demonstrated that he had converted to Christianity out of a genuine and personal religious conviction or that he intended to live as a Christian convert upon his return to Afghanistan. The Agency noted, *inter alia*, that the complainant was unable to explain why he had chosen to leave Islam or what Christianity meant to him personally. Furthermore, he was able to answer only in general terms what the Christian faith entailed and could not link the information that he provided to any events that he had experienced. He also stated that he was unaware of any risks that a conversion might involve and claimed that such risks were in any case not important to him. The Agency further considered the complainant's account regarding the significance of baptism within Christianity, as well as to him personally, to be of a general nature. He was unable to explain why he had been baptized at the chosen time. In reply to questions as to why he had chosen to be a Protestant in particular and the meaning of Protestantism, the complainant only asked why that point mattered, and was unable to explain the meaning of Protestantism. The Agency consequently held that the complainant was unable to explain in any detail why he had chosen Christianity or the Protestant branch of Christianity, and concluded that he had not plausibly demonstrated that there was an individual threat to him in Afghanistan or that the security situation there could be deemed such as to engender a generalized need to protect all asylum seekers from the country. The application was rejected.

4.11 The complainant appealed to the Migration Court, and he was able to appear personally and testify. The hearing was conducted with the assistance of an interpreter. In its individualized overall assessment, the Court upheld the Swedish Migration Agency's finding, as it considered that the complainant had not plausibly demonstrated that he had converted out of genuine personal religious conviction. The Court held, *inter alia*, that even though a decision to convert from Islam to Christianity had serious implications, the complainant was able to provide only vague and general responses as to why he had chosen to convert, without being able to further expand on the reasons for his decision. His knowledge of Christianity was deemed to be of a general nature. The Court, which did not call the complainant's cited church activities into question, found that his account was more an indication that he greatly appreciated the social support that he received from the Church. The Court found that the complainant had failed to plausibly demonstrate that he would be constrained to live as a Christian in Afghanistan or that he had been labelled a Christian by others in Sweden or

Afghanistan. The Court thus found that the complainant had not demonstrated that he faced a risk in Afghanistan that would obligate the State party to provide protection.

4.12 In this regard, the State party submits that, in the case before the Swedish Migration Agency, with the assistance of an interpreter and public counsel, the complainant was invited to review the interview transcript prior to the hearing and submit written observations to correct any misleading information. He was also invited to provide written submissions in support of his appeal after the hearing. The complainant therefore had several opportunities to provide all the relevant facts and make any necessary corrections. The decision-making authorities in both instances had before them sufficient facts and documentation to ensure that they undertook well-informed, transparent and reasonable risk assessments concerning the complainant's need for protection.

4.13 In this connection, the State party recalls the Committee's jurisprudence to the effect that considerable weight must be given to findings of fact by relevant State party organs.<sup>6</sup> It further cites the Committee's decisions in which it has clearly stated that it is for domestic courts to evaluate the facts and evidence in any particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.<sup>7</sup>

4.14 In the light of the foregoing, and in view of the fact that the Swedish Migration Agency and courts are specialized in the field of asylum law and practice, the State party submits that there is no reason to conclude that the domestic decisions were inadequate or arbitrary or amounted to a denial of justice. Accordingly, considerable weight must be attached to those decisions, which concluded that the complainant's removal to Afghanistan did not place him at personal risk such as that envisaged under the Convention.

4.15 With reference to the complainant's claim that he risks treatment contrary to article 3 of the Convention in Afghanistan as a Christian convert, and that his conversion has become known to people in Afghanistan through social media, as evidenced by the threats that he received, which he claims places him at risk of treatment contrary to article 3, the State party notes that he was not able to plausibly demonstrate that his conversion was based on genuine belief and was therefore not found to be credible.

4.16 The State party asserts that the complainant in fact wishes to use the Committee as a court of fourth instance in order to change the credibility finding. It recalls that this is not the role of the Committee where, as in this case, there is no basis on which to conclude that the domestic decisions suffered such procedural flaws as to render the determination arbitrary or otherwise amounting to a denial of justice.

4.17 The State party concedes that there is country information to suggest that individuals who return to Afghanistan after having renounced their Muslim beliefs or having converted to another religion during an asylum process run a real risk of persecution, thereby warranting international protection. It is those asylum seekers who bear the burden of proving that their conversion was the result of a genuine religious conviction. However, a mere claim of conversion does not suffice to conclude that there exists a real risk of persecution.

4.18 The State party avers that domestic authorities assessed the author's case, in accordance with the Office of the United Nations High Commissioner for Refugees (UNHCR) Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, as well as with the precedent of the Migration Court of Appeal.<sup>8</sup> An overall assessment was made of the circumstances surrounding the conversion with a view to establishing whether the complainant would in fact live as a Christian in Afghanistan. Account was taken of the fact that the alleged conversion took place in Sweden and therefore was not a continuation of religious views held prior to arrival in the State party. Consequently, particular attention was paid to the reliability and credibility of the complainant's cited conversion.

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<sup>6</sup> *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *S.K. et al v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

<sup>7</sup> For example, *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.12.

<sup>8</sup> See Migration Court of Appeal, case No. MIG 2011:29, Judgment.

4.19 In accordance with UNHCR guidelines, the Migration Court held an oral hearing to examine the nature of the complainant's faith, his introduction to Christianity, any religious convictions held before or since the conversion, any possible disaffection with his former religion and beliefs, and the manifestation of his faith in his personal experience and his involvement in activities connected with the church, including a baptism certificate and witness testimonies in support of his claims. Contrary to the complainant's claims before the Committee, the domestic authorities took all of the documentation provided into consideration in their assessment. They did not question the fact that the complainant had been baptized or that he had participated in church activities. However, such evidence was not found to be sufficient to substantiate the claim that the complainant had converted out of a genuine and personal Christian conviction, in accordance with established domestic precedent.<sup>9</sup>

4.20 After the Migration Court rejected his appeal, the decision to expel the complainant became final and enforceable. At that time, the complainant submitted a request for the re-examination of his eligibility for refugee status, pursuant to chapter 12, sections 18 and 19, of the Aliens Act, based on new circumstances connected to his alleged conversion that had since emerged and the fact that his family had been granted residence permits in Sweden.

4.21 In this context, the State party notes that its authorities may neither re-examine a decision issued by a higher authority nor examine the accuracy of assessments undertaken by a higher authority. The matter of issuing a residence permit may be examined at the enforcement stage only if an alien submits evidence of new circumstances that constitute a lasting impediment to enforcement.<sup>10</sup> The evidence provided by the complainant as new circumstances was not deemed to fall within the meaning of new circumstances as defined in the Aliens Act. Furthermore, since the complainant was an adult and had had his application for asylum examined separately from those of his family members, it did not appear unreasonable to expel him to Afghanistan even though his family members, for different reasons, had been granted temporary residence permits in Sweden. Accordingly, there were no new circumstances revealing a lasting impediment to enforcement and therefore nothing to warrant a fresh examination of the complainant's case.

4.22 The complainant appealed against that decision to the Migration Court, which held that the complainant's alleged conversion had already been the subject of an examination by the migration authorities. Evidence providing only further support for the same contention was not new within the meaning of chapter 12, section 19, of the Aliens Act, which has been established to exclude modifications or additions to the circumstances originally cited.

4.23 The circumstances cited regarding the complainant's health and his family members were unrelated to his cited need for international protection. In any event, the complainant's humanitarian situation was not deemed to be of such an exceptional nature as to warrant a fresh examination of his need to remain in the State party. The Migration Court consequently rejected the appeal.

4.24 The State party further notes the complainant's allegations of systemic deficiencies within the State party's asylum process and refers to an article submitted in support of this claim by various church members. The State party states that this article contains general information, which, being in the public domain, has in any case been examined by the authorities. As the article has no link to the complainant's individual case, it adds nothing to the matter before the Committee. The State party reiterates that the domestic agencies are better placed to assess alleged risks to individuals through various activities, including posts on social media, than the authors of the article, who have not met the individuals to whom they referred.

4.25 The State party reiterates that all of the claims made by the complainant have been fully explored, yet were found not to substantiate a genuine and personal religious conviction. It therefore asserts that there is no reason to conclude that the proceedings before the domestic

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<sup>9</sup> Ibid. The Migration Court of Appeal held that general statements about someone's beliefs could not be awarded any decisive probative value.

<sup>10</sup> That is, a risk of the alien being subjected to the death penalty, torture or persecution (Aliens Act, chap. 12, sects. 1–3).

authorities were inadequate, or that the decisions reached were in any way arbitrary or amounted to a denial of justice. As the Committee is not a court of fourth instance, and has not had the opportunity to hear the complainant give evidence and establish the veracity of his testimony to enable a fully informed assessment of his credibility, it should attribute substantial weight to the findings of the decision makers who were able to carry out an in-depth investigation. The State party therefore submits that there is no basis upon which to re-evaluate facts and evidence de novo.

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

5.1 On 7 January 2020, the complainant submitted comments.

5.2 In response to the claim that the complaint is inadmissible for being manifestly ill-founded, the complainant argues that he has fully substantiated his claims and therefore the communication is admissible.

5.3 He reiterates his assertion that his claims regarding the danger faced by converts to Christianity in Afghanistan are well documented. He refers to country information confirming that only 0.3 per cent of the population confesses to follow the Christian faith. Furthermore, the true number is unknown as Christians are forced to remain hidden for fear of life-threatening reprisals. Afghanistan is ranked the second most dangerous country in the world for Christians, who face extreme persecution and, in particular, risk being targeted by the community, according to a 2017 report.<sup>11</sup> He has therefore shown that being a Christian – which he has also supported with his own evidence and with witness testimony – exposes him to a serious risk of treatment constituting torture in Afghanistan, meaning that the State party has an obligation, under article 3 of the Convention, not to expel, return or extradite him to that country.

5.4 The complainant agrees with the State party that the merits of his claims turn on whether or not there are substantial grounds for believing that he runs a foreseeable, present, personal and real risk of being subjected to treatment contrary to the Convention in Afghanistan. Having established that the treatment suffered by Christians in Afghanistan meets the necessary standard, which appears not to have been contested, the issue at stake is whether the assessment carried out by the State party, in his particular case, was sufficiently reliable in determining the level of risk that he faced and therefore whether it had the obligation to provide him with international protection.

5.5 The complainant argues that the State party's migration authorities failed to adequately assess this risk, as it set unnecessarily onerous standards against which the genuineness of his conversion was tested, effectively meaning that domestic decisions were based almost solely on his ability to provide persuasive verbal and written arguments to describe his personal motivations and religious conviction. It was concluded that the complainant's claims lacked credibility, leading to the witness testimony provided in support of his claim being deemed to be of little or no probative value. He further states that the overriding importance placed by the authorities on his theological knowledge, or lack thereof, is in direct conflict with the interpretive legal guidance on religion-based refugee claims issued by UNHCR.<sup>12</sup> In that guidance, it is clearly stated that claimants' detailed knowledge of their religion does not necessarily correlate with sincerity of belief, and that instead, eliciting information on the individual's religious identity or way of life, using a narrative form of questioning, including through open-ended questions allowing the claimant to explain personal experiences, will often be more appropriate and useful and may even be necessary. As is evident in the complainant's case, closed questions are useful only to elicit prescriptive answers, which may lead to the interviewer judging against the expected response only, rather than assisting the decision maker to develop an in-depth understanding of the many ways in which belief may be manifest in that individual's life.

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<sup>11</sup> See <https://lifos.migrationsverket.se/dokument?documentSummaryId=40679>.

<sup>12</sup> UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", document HCR/GIP/04/06, 28 April 2004, section 29.



5.6 The complainant reaffirms his contention that the authorities failed to adequately evaluate the human rights situation in Afghanistan in the context of his personal circumstances. He notes that, in Afghanistan, sharia takes precedence over all other law. Under sharia, *hudud* offences, which are considered to be the most serious, are not commutable. In the case of apostasy, which carries the death penalty, a period of reflection is granted in order to allow the individual to recant. However, individuals perceived to persist in the offending behaviour are executed. Apostasy is not limited to changing religion or being a confirmed atheist, but includes many other acts, such as making statements that are interpreted as denouncing Islam and its five pillars or denying that Mohammed is the last prophet. Failure to recant or, having recanted, failure to convince others that the recantation was sincere is punishable by death.

5.7 Furthermore, people not adhering to strictly enforced social, cultural and religious mores immediately raise suspicion in others, which presents in itself the serious risk of persecution by public denigration, physical attacks and reporting to the authorities. The complainant reiterates that the State party failed to investigate the implications of his daily religious practices, focusing only on the consequences in Afghanistan of being suspected of conversion to Christianity. This is not reflective of the State party's obligations under the Convention, nor does it meet the standards set out in domestic legislation, which prohibits deportation to a country where the individual would face corporal punishment, the death penalty or persecution, in addition to the risk of being subjected to torture or inhuman or degrading treatment or punishment.

5.8 The complainant further asserts that despite the fact that he submitted new evidence, in the form of screenshots of his online posts and the connected death threats that he received after the conclusion of the asylum proceedings – which he argues is clear evidence of new circumstances constituting a permanent obstacle to removal, as evidence of the threats could not have been presented earlier – the judicial authorities refused to consider that evidence as it was related to the earlier claim and therefore deemed to be supplementary to it.

5.9 The complainant therefore maintains that at all times he presented clearly substantiated claims, which were dismissed on the basis of his oral evidence. The State party therefore failed in its obligation to rigorously assess the threat that he faced as a Christian convert who had publicly disseminated information in connection with his religious beliefs and had consequently received threats even before his deportation.

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

6.1 On 7 April 2020, the State party noted that the complainant's comments added nothing by way of substance to the complaint.

6.2 The State party challenges the introduction by the complainant of a report, produced by religious organizations, on systematic procedural deficiencies inherent in the asylum process in the State party, on the basis that this information is of a general nature and does not relate to the complainant's case. It submits that this report should therefore be disregarded. It also challenges the inclusion by the complainant of articles (the State party does not specify to which articles it is referring) that have not been submitted before domestic authorities as part of the domestic proceedings in the complainant's particular case, since any claims in this regard are inadmissible on grounds of failure to exhaust domestic remedies.

6.3 The State party maintains that the communication is inadmissible, and that the complainant has failed to demonstrate on the merits that the domestic proceedings were characterized by arbitrariness or that there were elements that the authorities failed to appreciate or consider. Consequently, nothing in the complaint leads to the conclusion that the complainant faces a real, personal and foreseeable risk of being subjected to treatment contrary to the Convention, or that, by deporting him, the State party would be in breach of its obligations under the Convention.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's claim that "articles" submitted to the Committee by the complainant, containing general information not pertaining to his individual case, have not been previously submitted to authorities for domestic review. The Committee further notes that, while the State party does not identify the specific information to which it refers, its concerns seem confined to information of a general nature, and it has not contested the fact that all of the complainant's assertions in relation to his individual asylum claim have been subjected to domestic review or the fact that he has exhausted all available domestic remedies in connection with these individual claims. The Committee therefore finds that, omitting from its consideration claims of a general nature in the public domain, it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

7.3 The State party submits that the communication is inadmissible as manifestly unfounded. The Committee considers, however, that the arguments put forward by the complainant raise substantive issues, which should be dealt with on the merits. Accordingly, the Committee declares the communication admissible and proceeds with its consideration of the merits.

### *Consideration of the merits*

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

8.2 In the present case, the issue before the Committee is whether the return of the complainant to Afghanistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return ("*refouler*") a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Afghanistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.4 The Committee recalls its general comment No. 4 (2017), according to which the Committee will assess "substantial grounds" and consider the risk of torture as foreseeable, personal, present and real when the existence of credible facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention in the case of his or her deportation. Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background; (b) political affiliation or political activities of the complainant or his or her family members; (c) arrest or detention without guarantee of

fair treatment and trial; (d) sentence in absentia; and (e) previous torture (para. 45). With respect to the merits of a communication submitted under article 22 of the Convention, the burden of proof is upon the author of the communication, who must present an arguable case, that is, submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real (para. 38). The Committee also recalls that it gives considerable weight to findings of fact made by organs of the State party concerned, however it is not bound by such findings, as it can make a free assessment of the information available to it in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case (para. 50).

8.5 The Committee notes the complainant's submission that there are substantial grounds for believing that, upon removal to Afghanistan, he would be subjected to torture and cruel, inhuman or degrading treatment or punishment. He claims that this risk emanates from the information that he disseminated on social media platforms, viewed by his 12,000 mainly Dari-speaking followers on Instagram, in connection with his conversion to Christianity and other Christian content. This risk is likely to be magnified by further dissemination of that information, as facilitated by such platforms and evidenced by the threats that he has already received as a direct result of his online activity. He states that in the context of available country information regarding the treatment of Christian converts in Afghanistan, he has clearly shown that his conversion, based on genuine belief, creates a serious risk of treatment contrary to the Convention, which the State party authorities failed to appreciate owing to an overly prescriptive and limited understanding of the evolution and manifestation of personal belief. He states that this restrictive interpretation resulted in a negative credibility finding based solely on oral evidence, which led to a further failure to consider all the supporting evidence in the case as a whole, in the context of his educational and cultural background. His removal to Afghanistan would therefore violate the State party's obligations under article 3 of the Convention.

8.6 The Committee also notes the State party's assertions that all of the complainant's claims were dealt with objectively and were duly examined by its specialized migration agencies, which had the benefit of experience and expertise in matters of asylum and were able to consider all the information before them, including the complainant's oral evidence in both instances. The agencies, nonetheless, reached the conclusion that the complainant's testimony was too vague and generalized in terms of the reasons for his conversion and did not reflect the serious consideration that such a decision must have necessitated if the complainant had truly been motivated by a change in his belief system. The complainant was unable to develop his ideas, identify important elements of Christian symbolism, explain why he had been drawn to Protestantism in particular or why he had come to reject Islam. The agencies therefore found the complainant's version of events to lack credibility and concluded that the conversion was not based on a genuinely held religious conviction. They did not challenge the fact of the baptism itself or that the complainant attended church and other events, but they did not feel that the testimony of other witnesses could address the weakness in the complainant's own testimony as to the genuineness of the conversion itself. Against this background, the authorities concluded that the complainant would have no motivation to continue practising as a Christian in Afghanistan and therefore did not risk raising suspicions and facing persecution as a result. The Committee notes that the State party contends that the complainant's case was robustly reviewed and that all procedural guarantees were observed. The Committee further notes the State party's assertions that nothing in the current complaint leads to the conclusion that the complainant would face a serious personal risk if returned to Afghanistan, and thus that there is no evidence of a violation by the State party of its international obligations.

8.7 The Committee notes that, in keeping with the UNHCR non-return advisory,<sup>13</sup> the Swedish Migration Agency has, since 16 July 2021, halted all deportations to Afghanistan, and is no longer issuing rejection decisions in Afghan asylum cases.<sup>14</sup> The Committee therefore rests assured that once the removal ban is lifted, previously refused Afghan asylum

<sup>13</sup> UNHCR, "Position on returns to Afghanistan", August 2021.

<sup>14</sup> Swedish Migration Agency, "Information regarding the situation in Afghanistan" (last updated 7 December 2021).

cases will be subjected to fresh review in the context of the human rights situation in Afghanistan as it stands at that time.

8.8 With that in mind, the Committee will confine itself to the consideration of the procedural handling of the complainant's claims. First, the Committee notes that the State party recalls that the burden of proof rests on the complainant to substantiate his claim, in accordance with the UNHCR handbook. The Committee further notes that the handbook goes on to expand on this basic legal principle, stating that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner and, in some cases, it may be for the examiner to use all the means at his or her disposal to produce the necessary evidence in support of the application.

8.9 The complainant provided oral evidence to the Swedish Migration Agency in his substantive interview, on 15 June 2017, at which point he was 19 years old. During the interview, the complainant stated that, although a national of Afghanistan, he had never set foot in that country; that he suffered from depression and anxiety; that he had "a lot of problems so therefore I can't think clearly"; that he was illiterate when he had arrived in Sweden; that his father had cancer, and he had been responsible for taking care of his parents and found it overwhelming; that he had never been allowed to attend school in the Islamic Republic of Iran; that his father's uncle had been killed because of the feud about family land; that his mother's family had warned her not to come back because her life was in danger in Afghanistan; and that his mother's uncle was still a member of Hizb-i Islami, showing a photo of him with the leader; and that his brother had attempted suicide.

8.10 In explaining his beliefs, the complainant stated that because of all the problems with his brother and father and feelings of hopelessness, disappointment and depression, he had gone to a nearby church to pray, and the people at the church listened to his life story and prayed for him. That experience had made him feel calmer, and his feelings of hopelessness and anxiety had gone away. From the day that he had become a Christian, he had felt better mentally. He did not go to the Mosque because he associated it with grief: he considered that, if Islam was peaceful, there would not be so much fighting and the Taliban would not kill people. He did not like the Taliban's treatment of women, and explained that his mother's family had threatened to kill her because of her work in the police force in Afghanistan. By contrast, Christianity represented joy to him: everyone was happy at church, he enjoyed singing and praying, the Bible was full of good advice and taught the importance of helping people. He quoted his favourite excerpts of the Bible, and explained that for him being baptized had meant being reborn, that he would die for Christianity as Jesus had died for his followers, and that he would love to visit Bethlehem. He therefore appears to have presented a picture of his personal beliefs and reasons for them, and his personal perception of the differences between Christianity and Islam.

8.11 The complainant's statements should have triggered an individual psychiatric assessment to ascertain whether he had suffered trauma or had any mental health conditions that would affect his ability to give clear evidence. It also should have set the asylum claim in an educational and cultural context against which expectations of the complainant's ability to articulate and understand complex theological concepts should have been framed. Instead, the standard applied was the level of rational consideration to be objectively expected having regard to the seriousness with which "apostasy", which was not explained to the complainant, is viewed in Afghanistan, a country to which he has never been.

8.12 According to the decision, when asked which symbols were central to Christianity, the complainant responded "the red cross". However, the interview transcript shows that the question asked was in fact the following: "Is there something in Christianity, equivalent to the crescent in Islam, that feels important to you?" The complainant answered "the red cross, helping people". The question was extremely misleading and took no account of the cultural context regarding the perception of the red cross, with its tangentially Christian roots, or of the fact that, where the complainant had grown up, the Iranian Red Crescent Society was exactly equivalent to the Red Cross.<sup>15</sup> It also failed to recognize that Islam rejects symbolism and has no equivalent to the Christian cross.

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<sup>15</sup> See <http://en.rcs.ir/history-of-iranin-red-crescent>.

8.13 Also in the decision, the complainant is quoted as stating that he knew that he was ready to be baptized because he had attended all the prerequisite classes. In fact, he was actually asked how the people that had baptized him had known that he was ready, and he responded that they had known because he had fulfilled the prerequisites. This completely changes the meaning with regard to his personal commitment to his baptism, and formed the basis of a negative inference against the complainant.

8.14 The Committee notes that the authorities focused in particular on the reasons for the complainant's conversion to Christianity. It also notes that the Swedish Migration Agency, in its decision, found that the complainant had been unable to develop his reasoning regarding his conversion and that his answers remained vague, general and lacking in self-perceived experiences. Despite this finding, however, the complainant's request to provide an oral supplement was simply denied. The Committee notes that this reasoning was largely followed by the Migration Court, despite the dissenting opinion of one of the judges, in which she stated clearly that the misgivings appeared to relate only to gaps in Bible knowledge, which could be understood given the complainant's educational and cultural background. There is no indication that all of the evidence was assessed in combination at either instance. The Court also refused to consider death threats, received as a result of the complainant's social media posts about his religious beliefs and related activities, as new circumstances that would constitute a barrier to removal. Even accepting the narrow definition of new circumstances under domestic legislation, these threats were received after the complainant's asylum claim had been finally determined. The death threats were dismissed as supplements to matters already determined, without a good-faith assessment at any stage of the likelihood that his social media presence could cause him to be subjected torture. Even if it were to be assumed that the death threats had been posted in bad faith to support his asylum claim, of which there is no indication, it was the State party's duty to make such an assessment.

8.15 In this regard, the Committee notes that at no point did the State party enquire as to the actual or likely impact of the complainant's prolific social media activity, in which he posted clearly Christian content, on the risk that he faced in Afghanistan. Nor did it find the medical diagnosis provided after his substantive interview, which confirmed that he had experienced a very traumatic event during his childhood and continued to face serious mental health challenges, to be a reason to adjust its objective expectations regarding the ability to give evidence, despite clear guidance in this regard, or to undertake an assessment of the availability of medical care in Afghanistan, as deemed essential by the doctor.

9. In the light of the foregoing, the Committee considers that the State party has failed in its duty to undertake an individualized assessment of the personal and real risk that the complainant would face in Afghanistan. Given the failure to place his evidence in the context of his cultural and educational background, to obtain independent medical evidence for inclusion in its assessment, to consider evidence as a whole and to accurately represent the applicant's responses, especially as these responses were used to form the basis of the credibility assessment and consequent rejection of his claim, the Committee concludes that the State party did not undertake a sufficient, individualized assessment of the risk of a foreseeable, present, personal and real risk that the complainant would be subjected to torture if deported to Afghanistan.

10. The Committee, acting under article 22 (7) of the Convention, concludes that, without such an assessment, the deportation of the complainant to Afghanistan would constitute a breach of article 3 of the Convention by the State party.

11. The Committee is of the view that, pursuant to article 3 of the Convention, the State party has an obligation to reconsider the complainant's asylum application in the light of its obligations under the Convention and the present decision, and to refrain from deporting the complainant while his application for asylum is being considered.

12. Pursuant to rule 118 (5) of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.