



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 53/2018*, **

<i>Communication submitted by:</i>	J.M. (represented by counsels, Anna-Lena Norberg and Anna-Pia Beier, of the Swedish Refugee Law Centre)
<i>Alleged victim:</i>	J.M.
<i>State party:</i>	Sweden
<i>Date of communication:</i>	25 April 2018 (initial submission)
<i>Date of adoption of decision:</i>	24 March 2022
<i>Substantive issue:</i>	Removal to Afghanistan

1. The author of the communication is J.M., a national of Afghanistan who claims to have been born in 1999. He claims to be the victim of violations by the State party of articles 10, 15, 16, 25, 26 and 27 of the Convention. The Optional Protocol entered into force for the State party on 14 January 2009. The author is represented by counsels.

2. The author is from a Hazara family. He submits that, from the age of 11 until he was 15 years old, as the eldest child in the family, he was beaten almost daily and was repeatedly subjected to gang rape in his village by an influential family that wanted to take his family's land. He arrived in Sweden and applied for asylum on 3 September 2015. On 25 November 2016, the Swedish Migration Agency rejected his asylum application, finding that his account was not credible and that he had an internal flight alternative. It considered him to have been born in 1998. The Agency's decision was confirmed by the Migration Court on 19 May 2017. On 7 July 2017, the Migration Court of Appeal decided not to grant leave to appeal.

3. Once the author became able, for the first time, to articulate his history of sexual abuse, and following hospitalization for a blood transfusion and anal prolapse, he requested a residence permit based on impediments to the enforcement of his expulsion. On 10 August 2017, the Swedish Migration Agency rejected his application, finding that it was not impossible in practical terms to expel him. On 2 November 2017, the Migration Court rejected his appeal. On 7 December 2017, the Migration Court of Appeal refused leave to appeal. On 18 January 2018, the Migration Agency rejected his second request for a residence permit based on impediments to the enforcement of his expulsion. On 15 February 2018, the Migration Court rejected his appeal. On 16 March 2018, the Migration Court of Appeal refused leave to appeal. On 30 January 2018 and 17 April 2018, the Migration Agency

* Adopted by the Committee at its twenty-sixth session (7–25 March 2022).

** The following members of the Committee participated in the consideration of the communication: Rosa Idalia Aldana Salguero, Danlami Umaru Basharu, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Abdelmajid Makni, Sir Robert Martin, Floyd Morris, Jonas Ruskus, Markus Schefer and Saowalak Thongkuay.



rejected his third and fourth applications for a residence permit, respectively, in non-appealable decisions.

4. The author claims that his removal would breach his rights under articles 10, 15, 16, 25, 26 and 27 of the Convention, given that he is highly suicidal; that his colitis is life-threatening without treatment; that he would have to return to his village and meet his perpetrators to obtain an identity card (*Tazkira*); that his mental instability has made him question his religion, which would expose him to a risk of violence; that the lifelong medical treatment that he requires is unavailable; and that his medical conditions affect his ability to work.

5. On 5 June 2018, the Committee, acting through its Special Rapporteur on Communications under the Optional Protocol, decided to register the communication and to grant interim measures by requesting the State party not to remove the author to Afghanistan while his case was under consideration.

6. In its observations dated 3 April 2019, the State party submitted that parts of the communication were inadmissible *ratione materiae* and *ratione loci* and owing to non-exhaustion of domestic remedies. The State party further submitted that the communication had been insufficiently substantiated and that it was without merit. The State party observed, *inter alia*, that the decision to expel the author was due to become statute-barred on 7 July 2021.

7. In his comments dated 5 September 2021, the author informed the Committee that he had filed a new asylum application and that no expulsion decision concerning him was in force. Nevertheless, he requested that the Committee only suspend its consideration of his case for the time being, arguing that he would be unlikely to receive a full re-examination taking into account all relevant facts in the new application process.

8. In its additional observations dated 14 February 2022, the State party requested that the Committee discontinue its consideration of the communication, as the expulsion decision had become statute-barred and the author's asylum application remained pending. The State party noted that a new application entailed a full examination of all asylum grounds. The State party referred to the Swedish Migration Agency's legal position paper on Afghanistan, dated 30 November 2021, according to which the situation in Afghanistan had changed such that no effective protection could be obtained from the Afghan authorities and an internal protection alternative was available only in exceptional cases, thus justifying the granting of a new examination. In his comments dated 25 February 2022, the author voiced his agreement with the State party's request.

9. At a meeting on 24 March 2022, the Committee, having been informed that the author no longer risked being expelled to Afghanistan, concluded that the subject matter of the communication had become moot and decided to discontinue the consideration of communication No. 53/2018.
