



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

Advance unedited version

Distr.: General
26 November 2021

Original: English

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>Substantive issue:</i>	Risk of torture upon return to country of origin (non-refoulement)
<i>Procedural issue:</i>	Level of substantiation of claims
<i>Article of the Convention:</i>	3

* 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, Erdogan Iscan, Liu Huawen, Peter Kessing, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



1.1 The complainant is A.A., an Afghan national, born in 1998. He claims that the State Party would violate his rights under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”) if it were to deport him to Afghanistan. The author is represented by counsels Ruth Nordström and Rebecca Ahlstrand. Sweden accepted the competence of the Committee against Torture to consider communications under article 22 of the Convention on 8 January 1986.

1.2 On 13 March January 2019, under rule 114 (1) of its rules of procedure (CAT/C/3/Rev.6), the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to the Afghanistan while his complaint was being considered by the Committee.

Facts as presented by the complainant

2.1 The complainant is an Afghan national, born in Iran to Afghan parents. He was never eligible for Iranian ID documents and therefore never attended school. He never visited Afghanistan. The complainant’s parents had moved to Iran in the 1990’s 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 Syria or be deported to Afghanistan. The family could not return to Afghanistan because of the feud. The complainant’s family, including his brother, himself and his parents, therefore fled to Sweden in 2015 and applied for asylum there on 24 November 2015.

2.2 The family were initially refused asylum. In the meantime, the complainant and his family came into contact with the Pajala Pentecostal Church and 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 baptised 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 this placed them 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 Board (“the Board”) heard the complainant’s application. In its decision to reject his claim, it held that due to the serious consequences of conversion to Christianity in Afghanistan, the complainant must have carefully weighed the risk of doing so against his beliefs and, yet, had not been able to adequately explain his rationale for leaving Islam and embracing Christianity, that his reasoning didn’t seem to reflect personal experience but rather giving general and vague answers that led migration authorities to the conclusion that his conversion was not based on genuine belief. The decision cited, for example, that the complainant had, when asked how he knew he was ready to be baptized, responded that he had known he was ready because he had attended all the classes and church sessions in preparation. Therefore, it held that he had not made probable that his faith was genuine and therefore concluded that he would not face any individual threat if returned to Afghanistan, as a result of either of 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, reasoning that, on the reasons to convert, the complainant’s responses were too general and vague and that, before both the Board and the Court, he had failed to elaborate on this. The Court held that the complainant appeared to appreciate the Church’s social elements above all and that therefore it found the conversion to reflect his desire for community, rather than any religious conviction. It concluded that, having failed to make probable that his conversion was based on genuine belief, he would not live openly as a Christian in Afghanistan and thus did not risk treatment, which triggered protection obligations.

2.6 The one of the presiding judges, and the 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 also 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 considered that he had provided a relatively detailed narrative before the Board 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 the rejection was upheld. Leave to appeal was refused and therefore the removal decision was final and enforceable.

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

2.8 On 21 September 2018, the complainant made an application to the migration authorities to have these new circumstances examined in the context of his asylum claim as he submitted that these threats threw new light on the danger he faces in Afghanistan and therefore constitute a permanent obstacle to his removal under the Alien-s Act. The removal order was stayed pending the Migration Court's determination of 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. 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 is known to be a Christian in Afghanistan, which had already been finally determined. Therefore, the application was rejected, the stay on removal lifted and permission to appeal denied.

2.9 The complainant claims that his asylum claim suffered procedural flaws, which have been repeatedly raised by civil society in relation to the asylum system generally. In particular, the focus on the ability of the applicant to express his thoughts and beliefs verbally and the lack of understanding, objectivist and subject matter expertise of decision-makers. 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, and as evidenced by the transcripts, applicants are expected to concisely relate their theological rationalisation of choosing one religion or sect over the other, in response to closed questions with only one satisfactory response without any regard to the emotional, cultural, socio-economic and interpersonal reasons for which one comes to a particular belief and the ways that belief manifests and develops over time and how a person can, in such circumstances be expected to explain all of these very personal elements in such a pressurized environment. If preconceived, highly restrictive, criteria are not met, the individual is adjudged to lack credibility and, as a result, any evidence proffered to support the genuineness of his beliefs is not accorded probative weight and is essentially dismissed. In the author's case, he was not formally educated and was illiterate when he arrived in Sweden, and not used to discussing religion in these terms and so was not thought 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 he faces in Afghanistan was not explored any further after the credibility finding was made. Regardless of the State party's opinion on the genuineness of his conversion, it failed to consider the impact of his activities on social media being known to people in Afghanistan, evidenced by the threats he has received. The State party therefore failed to sufficiently assess the risk he faces in Afghanistan, the second most dangerous place on earth to be a Christian where they are known to suffer "extreme persecution". No one knows the true number, but less than 0.3% of the population will confess to any belief other than Islam. Apostasy (renouncing Islam for the benefit of other religion or atheism) is considered a Hudud (most serious) crime in Afghanistan. Accordingly, apostates cannot be pardoned and, if the person refuses to recant or after recanting behaves in any way that indicates apostatic beliefs, he will be punished with death. One does not have

to practice Christianity or even be an atheist to be accused of apostasy. Examples of the many acts considered to fall in this category include denying Islam and its five pillars or declaring that Mohammed is not the last prophet. The complainant states that many sources cite the even greater threat to a perceived apostate is from their own family and community. There are documented cases of extra-judicial or “honour” killings for apostasy. The complainant asserts that the State party failed to investigate any of these elements after making the 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 due to his conversion to Christianity, which was found to be genuine. By contrast, owing to the complainant's failure to meet arbitrarily imposed standards believed by State party authorities to typify faith, he will be denied fellowship and affinity with other Christians, the intimacy of faith that common prayer and devotion provides, as well as the communal support and ability to express his beliefs and instead face a serious personal risk if deported in particular because of his 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, presents a constant danger to his life. The complainant therefore alleges that he faces a real, serious, personal threat to his life upon return to Afghanistan and that therefore to deport him, without carrying out a rigorous assessment in line with international standards, would violate the State Party's obligations under Article 3 of the Convention.

State Party Observations

3.1 By note verbale of 4 September 2019, the State party submitted its observations on admissibility and merits.

3.2 Firstly, it 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. Thus, the decision to expel the complainant will become statute-barred on 12 February 2022.

3.3 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 article 3 of the Convention if he were returned to Afghanistan, fails to rise to the minimum level of substantiation required for the purposes of admissibility. The State party considers the communication as manifestly unfounded and inadmissible pursuant to article 22, paragraph 2 of the Convention and rule 113 (b) of the Committee's rules of procedure.¹

3.4 Should the Committee find the communication admissible, 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 and therefore, the complaint lacks merit and does not evidence any violation under the Convention.

3.5 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 a 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 of a consistent pattern of gross, flagrant or mass violations of human rights in that country.² However, as the Committee has also emphasised, the aim of such a determination is to establish whether the individual concerned would personally be at a real, 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

¹ Inter alia, H.I.A. v. Sweden, Communication No. 216/2002, Views adopted on 2 May 2003, para 6.2.

² Article 3, paragraph 2 of the Convention.

charged, additional grounds must exist, which show that the individual concerned would in fact be at personally at risk of such treatment.³

3.6 Furthermore, the State party recalls the Committee's position that the burden of proof rests with the complainant, who must present an arguable case establishing that he or she runs a foreseeable, present, personal and real risk of being subjected to torture. 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.⁴

3.7 The State party refers to information provided⁵ to the UN Human Rights Council, noting widely acknowledged achievements in the field of human rights in Afghanistan. While it 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' assessment, that the prevailing situation on the ground cannot be 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.

3.8 The State party draws the Committee's attention to provisions in the Swedish Aliens Act, which reflect the principles which form basis of article 3 of the Convention. Thus, it 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 asserted that such a test was applied in the complainant's case, which it states is indicated by reference to Chapter 4, Sections 1 and 2 of the Aliens Act in the determination of the complainant's asylum claim before domestic authorities.⁶

3.9 Moreover, the State party notes that, in determining the risk faced by an individual in 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 Agency and the Court conducted thorough examinations of the complainant's case in accordance with those standards.

3.10 By way of background, the State party confirms that the Migration Agency held an introductory interview with the complainant in connection with his asylum application on 5 December 2015, and on 15 June 2017, an extensive asylum interview took place in the presence of the complainant's publicly funded counsel. The transcript was subsequently

³ See, inter alia, E.J.V.M. v. Sweden, Communication No. 213/2002, Views adopted on 14 November 2003, para. 8.3, and, for a more recent reference, A.B. v. Sweden, Communication No. 539/2013, Views adopted on 11 May 2015, para. 7.3.

⁴ Inter alia, H.O. v. Sweden, Communication No. 178/2001, Views adopted on 13 November 2001, para. 13, A.R. v. the Netherlands, Communication No. 203/2002, Views adopted on 14 November 2003, Para. 7.3, Arthur Kasombola v. Canada, Communication No. 343/2008, Views adopted on 18 May 2012.

⁵ United States country report to the UN Human Rights Council, 13 March 2019.

⁶ Chapter 4. Refugees and persons otherwise in need of protection:

'refugee' means an alien who - is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and - is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country. This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals. In this Act a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she 1 feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or 3 is unable to return to the country of origin because of an environmental disaster.

shared with counsel for comment. In an overall, individual 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 *inter alia*, noted that the complainant was unable to explain why he had chosen to leave Islam or what Christianity meant to him personally. Furthermore, he was only able to answer in general terms what the Christian faith entails and could not link the information he provided to any events he had experienced. He also stated that he was unaware of any risks a conversion might involve and claimed that such risks were in any case not important to him. The Swedish Migration 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 baptised at the chosen time. In reply to questions regarding why he had chosen to be a Protestant in particular and the meaning of Protestantism, however, the complainant only asked why this mattered and was not able 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.

3.11 The complainant appealed to the Migration Court; he could appear personally and testify. The hearing was also conducted with the assistance of an interpreter. In its individualized, overall assessment, the Migration Court upheld the 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 has serious implications, the complainant was only able to provide 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 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. Thus, the Court found that the complainant had not demonstrated that he faced a risk in Afghanistan which would obligate the State party to provide protection.

3.12 In this regard, the State party submits that, in the case before the Board, with the assistance of an interpreter and public counsel, the complainant was invited to review the interview record 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. Therefore, the complainant had several opportunities to provide all relevant facts and make any necessary corrections. The decision-making authorities in both instances had before them sufficient facts and documentation to ensure they undertook well-informed, transparent and reasonable risk assessments, concerning the complainant's need for protection.

3.13 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.⁷ It further cites the Committee's Views 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.⁸

3.14 In light of the forgoing, and in view of the fact that the Agency and courts are specialised 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, arbitrary or amounted to a

⁷ Z.S. v. Sweden, Communication No. 277/2005, Views adopted on 22 November 2006 para. 8.6, N.S. v. Switzerland, Communication No. 356/2008, Views adopted 6 May 2010, para. 7.3, and S.K et al v. Sweden, Communication No. 550/2013, Views adopted on 8 May 2015, para. 7.4.

⁸ For example, G.K. v. Switzerland, Communication No. 219/2002, Views adopted on 7 May 2003, para. 6.12.

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.

3.15 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 this fact has become known to people in Afghanistan, through social media as evidenced by the threats 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.

3.16 The State party asserts that the complainant in fact wishes to use the Committee as a 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 render the determination arbitrary or otherwise amounting to a denial of justice.

3.17 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 the asylum seeker who has 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.

3.18 The State party avers that domestic authorities assessed the author's case, in accordance with the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, as well as the Migration Court of Appeal's own precedent.⁹ 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. An 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/credibility of the complainant's cited conversion.

3.19 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, domestic authorities took all of the documentation provided into consideration in their assessment. They did not question the fact that the complainant had been baptised or that he had participated in church activities. However, such evidence was not found to be sufficient to substantiate that the complainant had converted out of a genuine and personal Christian conviction, which accords with established domestic precedent.¹⁰

3.20 After the 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 the Aliens Act,¹¹ based on new circumstances, connected to his alleged conversion that had since emerged and also that his family had been granted residence permits in Sweden.

3.21 In this context, the State party notes that its authorities can neither re-examine a decision issued by a higher authority nor can they examine the accuracy of assessments made by a higher authority. The matter of issuing a residence permit may only be examined at the enforcement stage if an alien submits evidence of new circumstances that constitute a lasting impediment to enforcement.¹² The evidence provided by the complainant as new

⁹ MIG 2011:29.

¹⁰ The Court of Appeal held that general statements about someone's beliefs cannot be awarded any decisive probative value. (MIG 2011:29).

¹¹ Chapter 12, (18) (19).

¹² Chapter 12, Section 1, 2 or 3 of the Aliens Act, i.e., that there is a risk of the death penalty, torture or persecution.

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 permanent impediment to enforcement and therefore nothing to warrant a fresh examination of the complainant's case.

3.22 That decision was appealed to the Migration Court, which held that the complainant's alleged conversion had already been the subject of an examination by migration authorities. Therefore, evidence providing only further support for the same contention were 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.

3.23 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 exceptional nature as to warrant a fresh examination of his need to remain in the State party. The Court consequently rejected the appeal.

3.24 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, yet as it has no link to the complainant's individual case, it adds nothing to the matter before the Committee and reiterates that domestic agencies are better placed to assess alleged risks to individuals through various activities including posts on social media, than the authors, who have not met the individuals to whom they refer.

3.25 The State party reiterates that all of the claims made by the complainant have been fully explored yet were not found to substantiate a genuine and personal religious conviction. It therefore asserts there is no reason to conclude that the proceedings before domestic authorities were inadequate, or that the decisions reached were in any way arbitrary or amounted to a denial of justice. It reiterates that, as the Committee is not a court of fourth instance, and not having 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 decision-makers who were able to carry out an in-depth investigation and therefore submits that there is no basis upon which to re-evaluate facts and evidence de novo.

The complainant's comments on the State party's observations

4.1 The complainant submitted comments on 7 January 2020.

4.2 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.

4.3 He further asserts that his claims regarding the danger faced by converts to Christianity in Afghanistan are well documented. He refers to county information which confirms that only 0.3 % of the population confesses to the Christian faith. Furthermore, true numbers are 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, in particular they risk being targeted by the community, according to a 2017 report.¹³ Therefore, he has shown that being a Christian, which he has also supported with his own evidence and witness testimony, exposes him to a serious risk of treatment constituting torture, in which case the State party's has an obligation, under article 3, not to return, refoul or extradite him to a country in which he faces such a risk.

¹³ Migrationsverket, Temarapport: Afghanistan – Kristna, apostater och atister, 2017-12-21, The Swedish Migration Board, <https://lifos.migrationsverket.se/dokument?documentSummaryId=40679>.

4.4 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 it appears is not 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 he faced and therefore whether it had the obligation to provide him with international protection.

4.5 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, which effectively meant 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 UNHCR's interpretive legal guidance on international protection in religion-based claims,¹⁴ in which it clearly states that a claimant's detailed knowledge of his or her religion does not necessarily correlate with their sincerity of belief and that instead, eliciting information on the individual's religious identity or way of life, through open questions allowing a narrative explanation of an individual's personal experience, will often be more appropriate and useful and may even be necessary. This is because, as is evident in the complainant's case, closed questions are useful only to elicit prescriptive answers, which may lead to the interviewer judging only against the expected response, rather than assisting the decision maker in developing an in depth understanding of the many ways in which belief may be manifest in that individual's life.

4.6 According to the complainant, the authorities failed to adequately evaluate the human rights situation in Afghanistan in the context of his personal circumstances. He notes that, in Afghanistan, Shari'a (Islamic) law takes precedent over all other laws. Under Shari'a, Hudud crimes, which are considered to be the most serious, are not commutable. Where, in the case of apostasy, these carry the death penalty, a period of reflection is granted in order to allow the individual to recant. However, if the individual is perceived to persist in the offending behaviour, he will be executed. Apostasy is not limited to changing religion or being a confirmed atheist but includes many others including statements interpreted as denouncing Islam and its 5 pillars or denial of Mohamed as the last prophet. Therefore, the failure to recant a conversion or having recanted, to convince others that the recantation was sincere, would be punishable by death.

4.7 Furthermore, people not adhering to strictly enforced social, cultural and religious mores immediately raise suspicion from others, which presents in itself the serious risk, of persecution via public denigration, physical attacks and reporting to authorities. The complainant reiterates that the State party failed to investigate the implications of his daily religious practices, focussing only on the consequences of being suspected of conversion to Christianity in Afghanistan. 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 and persecution in addition to torture and inhuman or degrading treatment or punishment.

4.8 The complainant further asserts that despite submitting new evidence in the form of screen shots of his online posts and connected death threats he received after the asylum proceedings had been concluded, which he argues is clear evidence of a new circumstance constituting a permanent obstacle to removal, as the threats could not have been presented earlier, judicial authorities refused to consider such evidence as it was related to the earlier claim and therefore deemed to be supplementary to the earlier claim.

¹⁴ HCR/GIP/04/06, 26 April 2004, section 29.

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

State party's additional observations

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

5.2 It challenges the introduction 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, which it does not identify specifically, but asserts that since these have not been submitted before domestic authorities as part of the domestic proceedings in the complainant's particular case, any claims in this regard are inadmissible on grounds of failure to exhaust domestic remedies.

5.3 The State party maintains that the communication is inadmissible, and the complainant has failed to demonstrate on the merits that domestic proceedings were characterised by arbitrariness or that authorities failed to appreciate or consider any element and therefore 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 and that in deporting him the State party would be in breach of its obligations under the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any complaint, the Committee must decide whether the communication 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.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any complaint from an individual unless it has ascertained that the individual has exhausted all available domestic remedies in relation to the claims submitted therein. It 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 it does not identify the specific information to which it refers, the State party's 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 nor that he has failed to exhaust 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 complainant's communication under article 22 (5) (b) of the Convention.

6.3 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 finds the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

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

7.2 In the present case, the issue before the Committee is whether the return of the complainant to the 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.

7.3 The Committee must therefore evaluate whether there are substantial grounds for believing that the complainant would be personally at risk of being subjected to torture upon return to Afghanistan. In assessing this 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 a 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 a 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.¹⁵

7.4 The Committee recalls its general comment No. 4 (2018) on the implementation of article 3 in the context of article 22, 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 (para. 11).

7.5 The Committee recalls that the burden of proof is on the complainant, 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.¹⁶ The Committee 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. The Committee will 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.¹⁷

7.6 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 disseminated via social media platforms viewed by his 12,000, mainly Dari speaking, Instagram followers in connection to his conversion to Christianity and other Christian content. This risk is magnified by likely further dissemination of that information, as facilitated by such platforms and evidenced by threats 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, which is 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 led to 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. Therefore, his removal to Afghanistan would violate the State party's obligations under article 3 of the Convention.

7.7 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 specialised migration agencies, benefiting from experience and expertise in matters of asylum and, having the benefit

¹⁵ *L.A. v. Sweden* (CAT/C/66/D/729/2016), para. 9.3, and *M.S. v. Denmark* (CAT/C/55/D/571/2013), para. 7.3.

¹⁶ General comment No. 4, para. 38.

¹⁷ *Ibid.*, para. 50.

of considering 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 generalised in terms of the reasons he converted and did not reflect the serious consideration such a decision must have necessitated, if the complainant has truly been motivated by a change in his belief system. The complainant was unable to develop his ideas, identify important elements of Christian symbolism, or explain why he had been drawn in particular to Protestantism, or why he had come to reject Islam. The agencies therefore found the complainant's version of events to lack credibility and concluded therefore 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 did not feel that the testimony of other witness could address the weakness in the complainant's own testimony as to the genuineness of the conversion itself. Against this background, they 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, all procedural guarantees were observed and that nothing in the current complaint leads to the conclusion that the complainant is at a serious personal risk if returned to Afghanistan, and thus, there is no evidence of any violation by the State party of its international obligations.

7.8 The Committee notes that in keeping with the UNHCR non-return advisory,¹⁸ 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.¹⁹ Therefore, the Committee rests in the assurance that once the removal ban is lifted, previously refused Afghan asylum cases will be subjected to fresh review in the context of the human rights situation in Afghanistan as it stands at that time.

7.9 With that in mind, the Committee will confine itself to the consideration of the procedural handling of the complainant's claims. Firstly, the Committee notes that the State party raises the complainant's burden of proof in substantiating his claim in accordance with the UNHCR handbook.²⁰ 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 disposal to produce the necessary evidence in support of the application."

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

7.11 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 went to a nearby church, to pray, the people at the church listened to his life story and prayed for him. It made him feel calmer. His feelings of hopelessness and anxiety went away. From the day he became a Christian he felt better mentally, he didn't go to the Mosque because he associated it with grief, if Islam was peaceful there wouldn't be so much fighting and the Taliban would not kill people. He didn't like their treatment of women, having explained that his mother's family had threatened to kill her because of her work in the police force in

¹⁸ UNHCR, "Position on Returns to Afghanistan", August 2021.

¹⁹ Information regarding the situation in Afghanistan - Swedish Migration Agency, (migrationsverket.se).

²⁰ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

Afghanistan and that Christianity by contrast represented to him joy, everyone was happy at church, he enjoyed singing and praying, the bible was full of good advice and teaches you to help people, he quoted his favourite excerpts, and explained that for him being baptized meant being reborn, that he would die for Christianity as Jesus had died for his followers, that he would love to visit Bethlehem. He therefore appears to have presented a picture of his personal reasons, beliefs and his personal perception of the differences between Christianity and Islam.

7.12 The complainant's statements should have triggered an individual psychiatric assessment to ascertain whether he had suffered trauma or had any mental health challenge which 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 objectively to be expected having regard to the seriousness with which "apostasy", which was not explained to the complainant, is viewed in Afghanistan, a country he has never been to.

7.13 The decision also states that when asked which symbols were central to Christianity, the complainant responded "the red cross". Whereas, the interview transcript shows that the question asked was "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 red cross, with its tangentially Christian roots or that, where the complainant grew up, the Iranian Red Crescent Society is exactly equivalent to the Red Cross.²¹ It also fails to recognize that Islam rejects symbolism and has no equivalent to the cross.

7.14 The decision also quotes the complainant as saying that he knew he was ready to be baptized because he had attended all the prerequisite classes, when he was actually asked how the people that baptized him knew he was ready and he responded that his fulfilling the prerequisites was how they knew he was ready. 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

7.15 The Committee notes that the authorities have focused in particular on the reasons for the complainant to convert to Christianity. It also notes that in its decision, the Board found that the complainant had not been able to develop his reasoning thereon and 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, stating clearly that misgivings seem to be about gaps in bible knowledge only and that these can be understood having regard to the complainant's educational and cultural background. There is no indication that all of the evidence was assessed in combination at either instance. The Migration 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 constituting 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 was finally determined. To dismiss them 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 they were posted in bad faith to support his asylum claim, which there is no indication of, fell to the state party to determine.

7.16 In this regard, the Committee notes that at no point did the State party enquire into the actual or likely impact of the complainant's prolific social media activity, posting clearly Christian content on social media on the risk he faced in Afghanistan. Nor did it find the medical diagnosis provided after his substantive interview, confirming a very traumatic event during his childhood and the serious mental health challenges he continues to face, as a reason to adjust its objective expectations regarding the ability to give evidence, despite clear

²¹ History | Iranian red crescent (rcs.ir).

guidance in this regard, or to undertake any assessment of the availability of medical care in Afghanistan, as categorised as essential by the doctor.

8. In 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. The failure to place his evidence in the context of his cultural and educational background, failure to obtain and include in its assessment independent medical evidence, failure to consider evidence as a whole and the failure to accurately represent responses by the applicant, especially as these were used to form the basis of the credibility assessment and consequent rejection of his claim, leads the Committee to conclude that the State party did not undertake a sufficient, individualised assessment of the risk of a foreseeable, present, personal and real risk that the complainant would be subjected to torture if deported to Afghanistan.

9. The Committee, acting under article 22 (7) of the Convention, therefore 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.

10. The Committee considers that the State party is required by article 3 of the Convention to reconsider the complainant's asylum application in the light of its obligations under the Convention and the present Views. The State party is also requested to refrain from deporting the complainant while his application for asylum is being considered.

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