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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning Communication No. 937/2019*,**

Communication submitted by:	A.A.S. *et al. v*. Sweden (represented by counsels, Ms. Rebecca Ahlstrand and Ms. Ruth Nordström)
Alleged victim:	The complainants
State party:	Sweden
Date of complaint:	24 May 2019 (initial submission)
Document references:	Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on [2 July 2019] (not issued in document form)
Date of adoption of decision:	17 November 2023
Subject matter:	Deportation to Afghanistan
Procedural issue:	Level of substantiation of claims
Substantive issue:	Risk of torture upon return to country of origin (non-refoulement)
Article of the Convention:	3

1.1 The complainants are Mr. A.A.S., born in 1965 and his children Ms. N.S., born in 1997, Mr. S.S 1, born in 2000; Mr. S.S 2., born 1996, and S.S.2's family: S.S.2's wife S.H., born in 1997, and their daughter H.S., born in 2015.[1] They are all Afghan nationals. The complainants applied for asylum in Sweden on the grounds of fear of N.S' former husband following a forced marriage and, subsequently, their conversion to Christianity; however, their applications were rejected. They claim that their forcible removal to Afghanistan would amount to a violation by Sweden of article 3 of the Convention as they fear that they will face ill-treatment or torture if removed. To avoid irreparable harm, the complainants urged the Committee to issue interim measures to halt their deportation to Afghanistan while their communication was being considered by the Committee. The State party has made the

* Adopted by the Committee at its seventy-eighth session (30 October–24 November 2023).

** The following members of the Committee participated in the examination of the communication: Todd Buchwald, Claude Heller, Erdogan Iscan, Liu Huawen, Maeda Naoko, Ilvija Pūce, Ana Racu, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.

[1] The Secretariat received separate submissions depending on their separate examinations in the Migration Agency, but this summary was prepared for all the complainants as the cases were examined jointly in the Swedish Migration Court, and the counsel and the complainants want the case to be examined jointly.

declaration pursuant to article 22 (1) of the Convention, effective from 26 June 1987. The complainants are represented by counsels.

1.2 On 2 July 2019, in application of rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to request the State party to refrain from returning the complainants to Afghanistan while their complaint was under consideration by the Committee.

Facts as submitted by the complainants

2.1 The complainants are Afghan nationals of Tajik ethnicity and Sunni Muslims. They all resided in Herat and claim to have practised Islam but that they did not have a strong connection to the religion.

2.2 In 2015, A.A.S. was forced to marry his 17-year-old daughter N.S. to his uncle's son – W.A., who was 40 years old at the time of the marriage and had another wife.[2] W.A, who is powerful and wealthy, wanted to marry N.S. to have children because his first wife could not. W.A. is a car salesman who the complainants believe also smuggles drugs within Afghanistan. W.A. has a large network of connections throughout Afghanistan, including with the government. W.A.'s associates were also known by the complainants to be armed.

2.3 W.A. was "unkind" from the beginning of his marriage to N.S. He soon began physically and psychologically abusing N.S. His friends used to come over to W.A.'s house where they would use drugs, smoke all night, be loud, and force N.S. to cook and serve them. If the food was not up to W.A.'s standards, he would beat her. N.S. told her family what was happening, and A.A.S. went to speak with W.A. The latter told A.A.S. that N.S. was no longer A.A.S.'s daughter and that she was his property. W.A. threatened A.A.S., telling him not to contact his daughter ever again. A.A.S. asked his son, S.S., to go speak with W.A. S.S. was beaten, and W.A.'s associates threatened him with a weapon. A.A.S. and S.S. reported this attack to the police. No action was taken by the police. N.S. told her family that she was going to commit suicide if she had to continue to live with W.A.

2.4 A.A.S. organized for N.S. to leave Afghanistan with S.S-2., his wife S.H., and their daughter (H.S.).[3] The four left Afghanistan for Iran together. After N.S. fled from W.A.'s house, he visited A.A.S.'s home asking about N.S. and threatened A.A.S. and his family. He told him should A.A.S. not return N.S. to him, he would kill all A.A.S.'s family, stone N.S. to death, and marry N.S.'s younger sister. When A.A.S. heard this threat, he decided that he and the remainder of the family would leave Afghanistan. They joined N.S., S.S., S.H., and H.S. in Iran. The complainants spent between a week and nine days in Iran.[4] A smuggler helped them cross the border into Turkey and from Turkey to Greece. At the Iran-Turkey border, gunfire broke out. The family was separated, and their identification documents were lost.[5] A.A.S., N.S., S.S., S.H., H.S., and B.S continued on from Turkey to Greece where Christians from Word of Life church helped them by giving the family clothes, food, and shelter. Two of the Christians who helped them began teaching them about Christianity.

2.5 The family entered Sweden, where they applied for asylum on 12 November 2015 on the grounds of their risk of being exposed to torture and inhumane and degrading treatment in Afghanistan. While in Sweden, the complainants began attending the Word of Life church on a regular basis. They began reading from a Persian translation bible and studying Christianity. All of the complainants were baptised on 18 June 2017 by Pastor E.S. of the Word of Life Church. The complainants were active in their church and regularly discussed religion with other Christians to better understand their new faith.

2.6 The asylum request before the Migration Agency was split into multiple cases. A.A.S. and his minor son B.S. were interviewed by the Swedish Migration Board on 2 June 2017.

[2] No exact date of the marriage was provided.

[3] There are discrepancies between the Swedish Migration Board interviews with complainants on what exact day N.S., S.S., S, and H.S. left Afghanistan.

[4] The two groups (N.S., S.S., S.H. and H.S. versus A.A.S., his wife, and their other children) spent different amounts of time in Iran since they left at different dates.

[5] See all of the complainants' Swedish Migration Board interviews noting that they lost their Tazkira (Afghani identification cards) during the chaos at the border.

Their case was decided by the Migration Agency on 26 October 2017. S.S., S.H., and H.S. were interviewed by the Swedish Migration Board on 30 May 2017, and their case was decided on 30 October 2017 by the Migration Agency. N.S. was interviewed on 1 June 2017 by the Swedish Migration Board, and her case was decided on 10 November 2017. The court held that while all complainants supplied enough information to establish their identities in lieu of official identification documents,[6] the story about W.A. threatening their family was not credible. The court held that the stories were too inconsistent and that there was not a real threat of harm from W.A. should the family be deported. Regarding their conversion to Christianity, the Migration Agency held that none of the complainants could adequately discuss the tenets of their new faith for it to have been a genuine conversion. As such, the Migration Agency held that the complainants should be deported.[7]

2.7 The complainants appealed the decision of the Migration Agency to the Malmö Migration Court of Appeals. The complainants argued that the facts presented regarding their conversion to Christianity and the threat posed by W.A. were credible grounds for asylum. For this reason, they asked that the case be referred back to the Migration Board for new processing due to an insufficient investigation of N.S. which thereby affected other complainants' perceived credibility. The Malmö Migration Court of Appeals held an oral hearing on 13 December 2018 and denied referral on 4 January 2019. The court upheld the lower court finding that the facts presented were not reliable regarding W.A. and that the complainants' conversion did not seem genuine.[8]

2.8 The complainants appealed the Malmö Migration Court of Appeals decision to the Supreme Migration Court. On 19 March 2019, the Supreme Migration Court denied the Applicant's leave to appeal.[9] In April 2019, the complainants received serious threats from W.A. by phone, both in relation to N.S.'s marriage and due to the conversion. The call was recorded and this new circumstance was not examined by the migration authorities.

2.9 The complainants claim that they have exhausted all available domestic remedies and that the same matter has not been or is not pending before any other mechanism of international investigation or settlement.

Complaint

3.1 The complainants claim that their forcible removal to Afghanistan would amount to a violation by Sweden of article 3 of the Convention. Relying upon Article 3 of the Convention, the complainants contend that there are substantial grounds to believe they would be in danger of being tortured if returned to Afghanistan. The complainants assert that, if returned, they will be killed by W.A. and his associates. N.S. will be stoned to death for leaving her husband, and W.A. will kill the remaining family members for helping her escape and for their conversion to Christianity.

3.2 The complainants submit that the Migration authorities did not sufficiently consider their social background, education, gender etc. in the assessment of their asylum application. They also submit that the Migration agency has not sufficiently considered the best interest of the child in the asylum process. The complainants further contend that their conversion to Christianity constitutes a *sur place* reason to grant asylum. They have been practising Christianity for several years now. They have provided evidence in the complaint about the conditions for Christians and converts in Afghanistan. Based on family members' reactions in Afghanistan, the complainants assert that they will be killed for their perceived apostasy.

3.3 The complainants conclude that, in the light of their personal situation, as active Christians, and the threats against them, there are substantial grounds for believing that they would risk being subjected to torture if they were returned to their country of origin.

[6] See provided court document. Their Tazkira were all lost in the firefight at the Iran-Turkey border. Note that the Swedish Migration Board reversed this opinion when it went before the Malmö Migration Court of Appeals. Malmö Migration Court of Appeals held that their identity was well enough substantiated to hear the case.

[7] Document provided.

[8] Document provided.

[9] The ccomplainants provided the document but did not translate it.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 19 December 2019, the State party submitted its observations on admissibility and the merits.

4.2 Although it does not contest the fact that all available domestic remedies have been exhausted in the present case, the State party notes, however, that the complainants have cited entirely new circumstances before the Committee that have not been examined by the Swedish migration authorities. The State party notes also that the complainants themselves point out that they have not previously cited an alleged phone call containing threats from N.S.'s former husband or submitted a transcript of this phone call. Therefore, the State party holds that the communication relating to the new circumstances cited before the Committee should be declared inadmissible.

4.3 Furthermore, the State party states that the complainants' assertion that they were at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to Afghanistan failed to rise to the minimum level of substantiation required for the purposes of admissibility. It, therefore, submits that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.

4.4 The State party notes, although the complainants have not expressly claimed in the present communications that they are at risk of treatment contrary to article 3 of the Convention due to the general security situation in Afghanistan, it does not wish to underestimate the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan; however, the situation there has not been deemed such that there is a general need to protect all asylum-seekers from the country. The State party submits that the Committee must focus on the foreseeable consequences of the complainants' expulsion to Afghanistan in the light of their personal circumstances, such as the Swedish migration authorities' assessments in the present matter.

4.5 The State party recalls the Committee's views and observes that the burden of proof in cases such as the present one rests with the complainants, who must present an arguable case establishing that they run a foreseeable, present, personal and real risk of being subjected to torture. In addition, the risk of torture must be assessed on the grounds that go beyond mere theory or suspicion, although the risk does not have to meet the test of being highly probable.[10]

4.6 Regarding the general legal framework of the asylum procedure, the State party informs the Committee that several provisions in its Aliens Act reflect the same principles as those laid down in article 3 of the Convention, and it observes that national migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a subsequent complaint under the Convention. In this context, the State party notes that under the Aliens Act, the expulsion of an alien may never be enforced to a country where there is reasonable cause to assume that the alien would risk being subjected to the death penalty or corporal punishment, torture or other inhuman or degrading treatment or punishment, or to a country where the alien is not protected from being sent on to another country in which the alien would run such a risk.

4.7 The State party observes that the national authorities are in a very good position to assess the information submitted by an asylum-seeker and to appraise the credibility of his or her statements and claims, and subsequently underlines that in the present case, both the Swedish Migration Agency and the Migration Court have conducted thorough examinations of the complainants' case.

4.8 Regarding the asylum procedure, the State party notes that the Swedish Migration Agency held extensive individual asylum investigations with each of the complainants. The minutes from the investigations were subsequently communicated to their public counsel. Upon appeal, the Migration Court held an oral hearing on 13 December 2018, during which

[10] The State party refers to Committee against Torture, *H.O. v. Sweden*, communication No. 178/2001, para. 13; *A.R. v. Netherlands* (CAT/C/31/D/203/2002), para. 7.3; *Kalonzo v. Canada* (CAT/C/48/D/343/2008), para. 9.3; and *X v. Denmark* (CAT/C/53/D/458/2011), para. 9.3.

the complainants were all heard individually. The Agency's investigations and the Court's oral hearing were conducted in the presence of the complainants' public counsel and with the assistance of interpreters, whom the complainants confirmed that they understood well.

4.9 The State party further contends that through their public counsel, the complainants were invited to scrutinise and submit written observations on the minutes from the conducted interviews, and to make written submissions and appeals. they have had several opportunities to explain the relevant facts and circumstances in support of their claims and to argue their case, orally as well as in writing, before the Swedish Migration Agency and the Migration Court. Therefore, the State party holds that the Swedish Migration Agency and the Migration Court have had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment concerning the complainants' need for protection in Sweden.

4.10 The State party recalls the Committee's views whereby it was confirmed that the Committee is not an appellate, *quasi-judicial* or administrative body and that considerable weight will be given to findings of facts made by organs of the State party concerned[11]. The State party holds that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice.[12] Accordingly, considerable weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainants to Afghanistan.

4.11 The State party argues that the domestic authorities have, in accordance with domestic law, paid due regard to the principle of the best interests of the child.[13] They have thus systematically gathered and described relevant facts and analysed the consequences of a potential expulsion for the children, in particular, on their health and development. The State party further notes that H.S., who was only a couple of years old during the domestic proceedings, never cited individual grounds for protection. Instead, she referred to her parents' cited need for protection. Furthermore, nothing emerged during the domestic proceedings to suggest that she, or S.S, the other minor, suffered from health issues.

4.12 The State party draws the Committee's attention to the fact that, during the domestic asylum proceedings, the complainants did not submit any identity documents or other written evidence in support of their cited identities. Their oral submissions in this regard were considered vague and lacking in detail. The domestic authorities therefore found that they had not plausibly demonstrated their cited identities. However, the domestic authorities found no reason to question that the complainants were Afghan citizens from the province of Herat. Their cited need for international protection was therefore examined in relation to the prevailing conditions there.

4.13 The State party argues that according to the Migration Agency, the complainants' accounts regarding the alleged threat from N.S.'s former husband were vague and inconsistent. Consequently, there were reasons to question the complainants' reliability. The Migration Agency further found that the information provided by the complainants regarding their particular situation contradicted available country of origin information about forced marriages. In his connection, the Migration Agency noted that the complainants had been unable to explain how an influential uncle was able to force A.A.S. into marrying off his daughter to the uncle's son even though the uncle was supposedly dead.

4.14 Further, the State party holds that, upon appeal, the Migration Court noted that the complainants had escalated their accounts related to the alleged threat against them in Afghanistan. The Court also noted that the complainants, during the oral hearing, altered their accounts in some regards concerning why they had left their country of origin. The

[11] See, for example, N.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 on 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)

[12] CE v. Sweden, Communication No. 677 Views adopted on 5 May 2017

[13] As per the provision on the best interests of the child, contained in Chapter 1, Section 10 of the Aliens Act and derived from article 3 of the United Nations Convention on the Rights of the Child.

information provided by the complainants during the oral hearing was further considered inconsistent in relation to what they had stated during the asylum investigations at the Swedish Migration Agency. Moreover, the Court found that A.A.S provided entirely new information that had not been previously cited. In an overall assessment, the Court held that the complainants' accounts were neither reliable nor credible. In agreement with the Agency, the Court also noted that the complainants' assertions contradicted available country of origin information about forced marriages. Consequently, the Court held that the complainants had not plausibly demonstrated that there was a personal threat against them in Afghanistan from N.S.'s former husband.

4.15 The State party also notes that N.S. claimed that during the domestic asylum proceedings she, as a woman, was at risk of treatment constituting grounds for international protection, partly by her former husband and partly because she did not have a male network in Afghanistan. The State party adds that since the domestic authorities further found that the complainants could return to Afghanistan together, the N.S. would return with her father and brother, which meant that she would have a male network. Accordingly, N.S. was not able to plausibly demonstrate that there was a threat against her in Afghanistan because she is a woman.

4.16 Concerning the complainants' claim of conversion to Christianity, the State party acknowledges that according to the relevant country of origin information, there is support for the assessment that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process run a real risk of persecution warranting international protection. However, in the present case, the State party holds that the migration authorities concluded that the complainants had not plausibly demonstrated that they had converted to Christianity based on a genuine and personal religious conviction. Nor had they plausibly demonstrated that they intended to live as converts, which would place them at risk of attracting the interest of the Afghan authorities or individuals upon a forced return to Afghanistan. The domestic authorities further considered that the complainants had not plausibly demonstrated, based on what had emerged in the case, that they were at risk of being ascribed any Christian beliefs. Furthermore, the State party notes that the complainants' cited conversion took place in Sweden only weeks after their asylum investigations were held, during which they claimed to be beginners with limited knowledge of Christianity.

4.17 The State party further adds that during the domestic asylum proceedings, the migration authorities gave the complainants the opportunity to individually explain how their interest in Christianity had come about and to describe their reasoning before deciding that they wanted to convert. Both the Swedish Migration Agency and the Migration Court found that the complainants' accounts were vague and lacking in detail; they were deemed unable to explain, in a genuine way, what Christianity meant for them personally in their everyday life.

4.18 Consequently, the State party holds that what was presented in the domestic proceedings and what has been submitted to the Committee is insufficient to conclude that the complainant's expulsion to Afghanistan constitutes a violation of its obligations under article 3 of the Convention due to risks associated with the invoked conversion. Concerning the admissibility, the State party considers that the complaint should be declared inadmissible under article 22, paragraph 2 (and rule 113 (b) of the Committee's rule of procedure) as being manifestly unfounded. Concerning the merits, the State party holds that the communication reveals no violation of the Convention.

Complainants' comments on the State party's observations

5.1 On 14 July 2021, the complainants submitted their comments.

[On the admissibility]

5.2 In response to the claim that the complaint is inadmissible for being manifestly ill-founded, the complainants argue that they have fully substantiated their claims and therefore the communication is admissible.

5.3 Regarding their conversion to Christianity, the complainants note that in Afghanistan, they will have to hide their Christian beliefs because of fear of reprisals and persecution, and they will not be able to freely manifest their religious faith. Moreover, there are no official Christian churches in Afghanistan open to Afghan citizens.[14]

5.4 The complainants admit the State party's argument that they did not cite in the domestic proceedings the argument based on the alleged threats from the former husband of N.S. However, they contest that the threats and transcripts of threats should be declared inadmissible. They hold that any application based on the transcripts or audio files of threats would neither lead to a residence permit under Chapter 12 Section 18 nor a new examination of the issue of residence permits under chapter 12 section 19 of the Swedish Aliens Act. Such circumstances would clearly only be considered additions or modifications of previously stated grounds for asylum, which is the regular response to such applications. The complainants indicate that all the domestic remedies concerning the threat from the latest phone call, which has been provided as a transcript, have been exhausted, as there is no realistic possibility of this evidence leading to any examination on the merits.

5.5 Concerning the merits, the complainants submit that, in the present case, the general security situation in Afghanistan should be considered a cumulative factor in the assessment of the risk of treatment contrary to the Convention**.**

5.6 The complainants argue that they provided to the migration authorities several testimonies of their faith from pastors, church leaders, and Christian friends; as well as baptism certificates, which have not been questioned by the State party. The complainants also indicate that the basis for not believing them is, however, constituted by evaluations and assessments made in a clearly arbitrary manner. They contend that there is a real and personal risk of them being subjected to torture in Afghanistan.

5.7 The complainants neither dispute that the Migration authorities have, in most respects, formally fulfilled the requirements of the judicial proceedings, nor do they contest that the Migration Authorities are special bodies with particular expertise in the field of asylum law. However, the complainants assert that formal procedures are not enough when the assessments and decisions are arbitrary and, while putting considerable weight on the assessments made by the authorities, the Committee is not bound by such findings.[15] The complainants contest the fact that the family members are considered not reliable and credible based on alleged smaller inconsistencies in their stories. The overall story is however consistent. The complainants further add that according to case law of the European Court of Human Rights, minor inconsistencies should not undermine the overall reliability of the story.[16]

5.8 Regarding the domestic proceedings on their religion-based claim, the complainants refer to the UNHCR Guidelines on International Protection[17], which stipulates, inter alia that, in the assessment of religious beliefs, "Refugee status determinations based on religion could also benefit from the assistance of independent experts with particularised knowledge of the country, region and context of the particular claim and/or the use of corroborating testimony from other adherents of the same faith". The complainants also point out the fact that Sweden is commonly considered as one of the world's most secular States with limited capacity in assessing religious beliefs. In this regard, the complainants submit that there is a lack of expertise of the migration authorities in assessing religion-based claims. [18] They also

[14] Migrationsverket, Temarapport: Afghanistan — Kristna, apostate och ateister, 2017-12-21, p. 6, The Swedish Migrations Board, https://lifos.migrationsverket.se dokument?documentSummaryId=40679 4 World Watch List Reasearch, Open Doors 2019, Afghanistan: Country Dossier 2019, p 1.

[15] General Comment 1 (CAT), 9 (a) and 9 (b), and see e.g. G.K. v Switzerland, communication no 2019/2002, 7 May 2003, para 6.12.

[16] See European Court, R.C. v Sweden, Case no. 41827/07.

[17] Guidelines on International Protection: Religion-Based Refugee Claims under Article IA(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees.

[18] Swedish Department of Justice, Letter of regulation for the financial year 2019 regarding the Swedish Migration Board, Internet: https:/!www.esv.se/statsliggaren!regleringsbrev/?RBID=20040.

assert that the depth of convictions is also difficult to assess within a 2–3-hour interview at the Migration Agency and could naturally grow over time.

5.9 The complainants further hold that similar criticism of arbitrary assessments in religion-based claims of an atheist were made by the Human Rights Committee in case Q.A. v. Sweden[19], where a violation of the ICCPR was found. The Human Rights Committee noted that " the migration authorities nonetheless assessed each ground for protection the author alleged separately and did not assess the facts that the combined grounds aggravates the risk of the author even though he has multiple vulnerability profiles, which led them to conclude that the author had failed to establish sufficient grounds to believe he would face irreparable harm if returned to Afghanistan" (para 9.6). Similarly, the different risks and threats cited in the Applicants' cases have not been examined jointly in the complainants' case.

5.10 The complainants submit that they genuinely told their story in a clear personal and credible manner. They contend that the assessment of the Migration Court is arbitrary and based on subjective views on religious experiences. The complainants submit that in the case of S.H., the Migration Court has not mentioned that the Applicant is illiterate, which is a highly relevant factor, which always should be considered. According to the Migration Agency's own guidelines/regulations and the UNHCR guidelines on religion-based claim that authorities should appreciate the frequent interplay between religion and gender, race, ethnicity, cultural norms, identity, way of life and other factors. In this regard, each case should be individualized, and special consideration should be taken to age, gender, cultural, social and educational aspects before an oral hearing is held. [17] This is clearly lacking in the Swedish assessments.

5.11 The complainants submit that the fact that the family is yet active in the Christian church, three years after their first investigation shows that they are still growing in knowledge. Regarding the State party's remarks on the timing of their baptism, the complainants state that they were baptized after the interview at the Migration Agency, and before they even received a first decision from the Agency, which must be considered being at the beginning of their asylum proceeding.

5.12 Concerning the forced marriage, the complainants submits that the assessment of the Migration authorities is contrary to country information and there is nothing to support that the forced marriage described by the complainants is not credible. The complainants also submit that the country information alleged to support this[20] leads to information concerning different examples of cultural marriage traditions and that large local variations may occur. The complainants, therefore, concluded that the assessment of the Migration authorities is contrary to country information and there is nothing to support that the forced marriage described by the Applicants is not credible.[21]

5.13 The complainants maintain that there are serious threats from NS's former husband. The complainants argue that the same country of origin information that is referred to by the authorities states that women can be punished for moral crimes, such as leaving their husbands, which N.S. has been guilty of.[21] The fact that N.S. left her husband, is a fact which in itself can be considered a threat to her, and the entire family. The Swedish migration authorities have however not put enough weight and consideration to the gender issues, stigma, honour crimes and violence that N.S., as an adult, single and divorced woman who left her husband, could be subjected to. The fact that the Applicant also has converted to Christianity or could be ascribed such a conversion should also be considered jointly with risks associated with gender and other issues. However, the migration authorities tend to view each protection ground separately, not considering the full weight of all protection grounds viewed together.[22]

5.14 The complainants submit that the State party's failed to properly assess the child's interest concerning the case of S.H., who was a minor at the time of the asylum application.

[19] Human Rights Committee, *Q.A. v. Sweden* (3070/2017, January 16, 2020).

[20] Lifos 38713, Country policy and information note Afghanistan: Women fearing gender-based violence (version 2.0), p. 20 and 29 f.

[21] See e.g., HRC, Q.A. v Sweden 3070/2017, 16 January 2020.

[22] *Ibid.*.

The complainants submit that the authorities should, on their own, make an individual assessment of plausible protection grounds concerning the child[23] as the child can have protection grounds separate from the parents.[24] In the case of H.S., there is an obvious risk of forced marriage in Afghanistan, as a majority of marriages are arranged, which was never mentioned in the decisions. The authorities cannot renounce their responsibility of investigation, relying completely upon the applicant's stated protection grounds.[25] As the Migration authorities' own reports conclude, women and children belong to the vulnerable groups in Afghanistan, and this should lead to the conclusion that these circumstances needed to be specifically examined in the complainants' case.[26]

State party's additional observations

6.1 On 1 July 2020, the State party submitted its additional observations. The State party reiterates that the domestic instances have paid due regard to the principle of the best interests of the child during the asylum process. While noting the migration authorities' assessment that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process run a real risk of persecution warranting international protection, the State party argues that the complainants have the burden of proof to plausibly demonstrate that a claimed conversion from Islam to Christianity is based on a genuine and personal religious conviction. In this regard, the State party that there is no support for the conclusion that a mere claim of such a conversion is sufficient to conclude that there is a real risk of persecution of an individual which would warrant international protection.

6.2 The State party reiterates that the domestic migration authorities found that the complainants' accounts regarding the former husband of N.S. could not be credible. The State party maintains its position that there is no reason to conclude that the domestic rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. The State party also maintains that the complainants' account and the facts relied on by them in the complaint are insufficient to conclude that the alleged risk of ill-treatment upon their return to Afghanistan meets the requirements of being foreseeable, real and personal. Consequently, an enforcement of the expulsion orders would not, under the present circumstances, constitute a violation of Sweden's obligation under article 3 of the Convention. Accordingly, the State party fully maintains its position regarding the admissibility and merits of the present complaint as expressed in its initial observations.

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 communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party does not contest the fact that all available domestic remedies have been exhausted[27], and that, however, new circumstances, including phone calls from N.S.'s former husband threatening the complainants, should be declared inadmissible by the Committee. The Committee also notes the complainants' argument that such new circumstances would

[23] The State party has noted that the child (Applicant HS) never cited individual grounds.

[24] See Migration Agency information site: https://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-iSverige/Att-ansoka-om-asyl/Barn-i-asylprocessen.html

[25] (see European Court, [G.C.], F. G. against Sweden (43611/11]

[26] Lifos 38241, Afghanistan - Security situation, potentially vulnerable categories of persons, the situation of women, children, hazards and internal flight. 20160929.

[27] *E.M.M.A. v. Sweden* (CAT/C/74/D/960/2019), paras. 9.2, 9.4 and 10.

neither lead to a residence permit[28] nor a new examination of the issue of residence permits[29]; but only be considered additions or modifications of previously stated grounds for asylum. Therefore, the Committee observes that all the available domestic remedies have been exhausted.

7.3 Furthermore, the Committee notes that, in the present case, the State party has contested admissibility, stating that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure. The Committee considers, however, that the arguments put forward by the complainants have been sufficiently substantiated; in particular the allegations that they are at risk of being treated in a manner that would amount to a breach of article 3 of the Convention, if returned to Afghanistan, considering both the possible threats against them by N.S.'s husband and the individual situation of the complainants. Accordingly, the Committee declares the complainant's claims under article 3 of the Convention admissible and proceeds with its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication 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 forcible removal of the complainants to Afghanistan following the rejection of their asylum application by the State party would constitute a violation of the State party's obligations under article 3 of the Convention.

8.3 The Committee must evaluate whether there are substantial grounds for believing that the complainants would be personally at risk 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 the 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 non-refoulement obligation exists whenever there are "substantial grounds" for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or a member of a group that may be at risk of being tortured in the State of destination. The Committee recalls that "substantial grounds" exist whenever the risk of torture is "foreseeable, personal, present and real".[30] Indications of personal risk may include, but are not limited to: (a) the complainant's ethnic background and religious affiliation; (b) previous torture; (c) incommunicado detention or other form of arbitrary and illegal detention in the country of origin; (d) political affiliation or political activities of the complainant; (e) arrest and/or detention without guarantee of a fair trial and treatment; (f) violations of the right to freedom of thought, conscience and religion; and (g) clandestine escape from the country of origin owing to threats of torture.[31]

8.5 The Committee also recalls that the burden of proof is upon 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, unless the

[28] Under Chapter 12 Section 18 of the Swedish Aliens Act.
[29] Under chapter 12 section 19 of the Swedish Aliens Act.
[30] General comment No. 4 (2017), para. 11.
[31] Ibid., para. 45.

complainant is in a situation where he or she cannot elaborate on his or her case.[32] The Committee further 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 and will freely assess the information available to it, in accordance with article 22 (4) of the Convention, taking into account all the circumstances relevant to each case.[33]

8.6 The Committee notes the State party's contention that the complainants have not expressly claimed in the present communications that they are at risk of treatment contrary to article 3 of the Convention due to the general security situation in Afghanistan and that, however, the situation there has not been deemed such that there is a general need to protect all asylum-seekers from the country. The Committee also notes the complainants' argument that, in the present case, the general security situation in Afghanistan should be considered a cumulative factor in the assessment of the risk of treatment contrary to the Convention. The Committee recalls that the occurrence of human rights violations in the complainant's country of origin is not, in itself, sufficient for it to conclude that a complainant would face a personal risk of being tortured.[34] In the present case, the Committee considers that there is a need to consider the general human rights situation in Afghanistan in the current context, which has significantly changed since the takeover of the country by the Taliban. The Committee observes that the Swedish Migration Agency, considering the new developments in Afghanistan following the Taliban take-over, decided on 16 July 2021 to halt all deportations to Afghanistan.[35]

8.7 The Committee notes the complainants' contention that the migration authorities did not properly assess the child's interest concerning the case of H.S., who was minor at the time of the asylum application. The Committee also notes that, according to the complainants, the authorities should make an individual assessment of plausible protection grounds concerning the child[36] *proprio moto*, separate from the parents, since in the case of H.S., there is an obvious risk of forced marriage in Afghanistan, as a majority of marriages are arranged, which was never mentioned in the decisions. The Committee also notes the State party's argument that, in accordance with domestic law, the migration authorities paid due regard to the principle of the best interest of the child and systematically gathered and described relevant facts and analysed the consequences of a potential expulsion for the children on their health and development. The Committee considers that in the present case, the fact that the complainants include very young female children is also a factor that should be considered by the migration authorities in their assessment.

8.8 In assessing the risk of torture, the Committee notes the complainants' claims that they were previously threatened by N.S.'s former husband following a forced marriage in Afghanistan. The Committee further notes that the State party's migration authorities assessed that N.S. was not able to plausibly demonstrate that her forced marriage was genuine or there was a threat against her in Afghanistan because she is a woman. The Committee notes the complainants' contention that the migration authorities, when examining the asylum claim, have not put enough weight and consideration in the consideration of N.S.'s case. The Committee also notes the complainants' argument that a particular risk factor for N.S. is gender issues, including stigma, honour crimes and violence, as an adult, single and divorced woman who left her husband could be subjected to. The Committee considers that in the current situation in Afghanistan, removing an entire family, which includes a seven-year-old girl and a divorced woman alleging the risk of persecution over forced marriage without further assessment, would be contrary to the provision of article 3 of the Convention.

8.9 The Committee notes the complainants' allegation that due to their conversion from Islam to Christianity when in Sweden, they fear that they will face additional risks of being

[32] Ibid., para. 38.

[33] Ibid., para. 50.

[34] *K.S. v. Australia*, CAT/C/77/D/982/2020), para. 7.5.

[35] AIDA 2021 Update: Sweden (https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-SE_2021update.pdf)

[36] See Migration Agency information site: https://www.migrationsverket.se/Privatpersoner/Skydd-och-asyl-i-Sverige/Att-ansoka-om-asyl/Barn-i-asylprocessen.html

subjected to the death penalty, torture or ill-treatment or persecution if deported. The country information clearly supports his allegation that individuals who have converted to Christianity face risks of torture and other forms of inhuman and degrading treatment in Afghanistan. The Committee also notes that the State party does not contest that individuals who return to Afghanistan after having renounced their Muslim beliefs or converted during an asylum process run a real risk of persecution, warranting international protection. However, the Committee notes the State party's argument that, in the present case, the migration authorities concluded that the complainants had not plausibly demonstrated that their conversion was genuine and that they were at risk of being ascribed any Christian beliefs, which put them at risk upon return to Afghanistan. The State party also argues that the complainants had failed to substantiate their claim that they would be at risk of persecution by the Afghan authorities. The State party further contends that the complainants had not made it probable before the Migration Court[37] and the Migration Service[38] that their conversion was genuine, and they would be ascribed a Christian religious affiliation if returned to Afghanistan.

8.10 The Committee notes the State party's objections that the complainants have not convincingly explained why they presented the fact of their conversion to Christianity in Sweden only weeks after their asylum investigations were held, during which they claimed to be beginners with limited knowledge of Christianity. The Committee observes that from the date when the complainants' claim regarding their conversion was assessed[39] to the date of the consideration of the current complaint under new circumstances in Afghanistan, their practice of Christianity may have grown, and the risk for Christian converts may have become more serious. In that regard, a new examination of the complainants' claims may circumvent any risk of torture and inhuman treatment upon return to Afghanistan.

8.11 The Committee considers that when an asylum-seeker submits that he or she has converted after his or her initial asylum request has been dismissed, it may be reasonable for an in-depth examination of the circumstances of the conversion to be carried out by the authorities.[40] In addition, regardless of the sincerity of the conversion, the test remains whether there are substantial grounds for believing that such a conversion may have serious adverse consequences in the country of origin so as to create a real risk of irreparable harm, such as that contemplated by article 3 of the Convention. Therefore, even when it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum-seeker in connection with his or her conversion or convictions could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.[41]

8.12 In the present case, the Committee observes that the State party does not contest that individuals who return to Afghanistan after having renounced, or after having been perceived to renounce, their Muslim beliefs or converted during an asylum process face a real risk of persecution and punishment, warranting international protection. The Committee notes that the complainants fall within the risk categories. The Committee considers that owing to the complainants' exposure to multiple risk factors, they would face serious adverse consequences in the country of origin that would put them at risk of irreparable harm.

8.13 In that connection, the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the complainant, with multiple risk factors, would face in Afghanistan. The Committee considers that the risk that the complainants would face if returned to Afghanistan is exacerbated by the fact that they are particularly at risk of being targeted by N.S.'s former husband, who had threatened the entire family.

[37] Decision of the Migration Court of Appeal dated 4 January 2019.

[38] Decisions of the Migration Agency dated 26 October 2017, 30 October 2017 and 10 November 2017.

[39] In 2017.

[40] UNHCR, "Guidelines on international protection: religion-based refugee claims under article 1 (a) (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees" (document HCR/GIP/04/06), para. 35.

[41] *Q.A. v. Sweden*, para. 9.5; and European Court of Human Rights, *F.G. v. Sweden*, para. 156.

9 In view of the above, and recognizing that it is not clear whether there is a present risk of expulsion of the complainants by the State party, the Committee, acting under article 22 (7) of the Convention, concludes that it would be inconsistent with the obligations of the State party under article 3 of the Convention[42] if it proceeded to expel the complainants on the basis of the decisions by the asylum authorities of the State party with regard to the risk factors in Afghanistan, as those risk factors existed at the time those decisions were taken.

10. The Committee, reminding the State party of its obligations under article 3 of the Convention, invites the State party to review the complainants' asylum application, taking into account the new circumstances that followed the takeover of Afghanistan by the Taliban in 2021 and in the light of the State party's obligations under the Convention and the present decision.[43]

11. 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.

[42] *A.A. v. Sweden* (CAT/C/72/D/918/2019), para. 10.
[43] Ibid. para. 11.