



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 1011/2020\*, \*\*

|                                      |   |
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| <i>Communication submitted by:</i>   | S.B.M. (represented by counsel, Youstbi Djuanvat)   |
| <i>Alleged victim:</i>               | The complainant   |
| <i>State party:</i>                  | Sweden  |
| <i>Date of complaint:</i>            | 28 May 2020 (initial submission)  |
| <i>Document references:</i>          | Decisions taken pursuant to rules 114 and 115 of the Committee's rules of procedure, transmitted to the State party on 23 June 2020 (not issued in document form) |
| <i>Date of adoption of decision:</i> | 10 July 2023  |
| <i>Subject matter:</i>               | Deportation to Afghanistan  |
| <i>Procedural issue:</i>             | Level of substantiation of claims   |
| <i>Substantive issue:</i>            | Risk to life or risk of torture or other cruel, inhuman or degrading treatment or punishment, if deported to country of origin (non-refoulement)                  |
| <i>Article of the Convention:</i>    | 3   |

1.1 The complainant is S.B.M., a national of Afghanistan born in 1988. He claims that the State party would violate his rights under article 3 of the Convention if it removed him to Afghanistan. The State party has made the declaration pursuant to article 22 (1) of the Convention, effective from 8 January 1986. The complainant is represented by counsel.

1.2 On 23 June 2020, pursuant to rule 114 of its rules of procedure, the Committee, acting through its Rapporteur on new complaints and interim measures, decided not to issue a request for interim measures in favour of the complainant, but to register the communication. The complainant was removed to Afghanistan on 31 October 2020.

#### Facts as submitted by the complainant

2.1 The complainant is an atheist and bisexual. While living in Afghanistan, the complainant regularly visited mosques to conceal the fact that he was an atheist. His father was murdered prior to his birth and his mother died during childbirth several years after he

\* Adopted by the Committee at its seventy-seventh session (10–28 July 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, Abderrazak Rouwane, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



was born. The individuals who murdered his father were villagers from the Akhund clan, who later became members of the Taliban. The complainant submits that members of the Akhund clan stole the land that belonged to his parents. At the age of 17, he confronted the individuals who stole his parents' land at a mosque and, as a result, the Afghan authorities came looking for him. He escaped through the back door of the mosque. After the confrontation, the complainant fled to the Islamic Republic of Iran and then to Sweden.<sup>1</sup>

2.2 On 6 November 2015, the complainant applied for asylum in Sweden on the basis that he was wanted by the Afghan authorities following his conflict with the Akhund clan. He also referred to the fact that he was both an atheist and bisexual as grounds for granting him protection.<sup>2</sup>

2.3 After his arrival in Sweden, the complainant became active on social media regarding his non-religious beliefs. He encouraged public debate regarding issues such as equality and secularism in Afghanistan. He criticized the prevalence of child marriage and sexual harassment in Afghanistan. He posted an image of the Prophet Muhammad on social media for the purpose of illustrating that Afghan religious leaders had contributed to the systemic abuse of girls and women. As part of his actions against child marriage and sexual harassment in Afghanistan, the complainant posted images online depicting the Prophet Muhammad dragging his 9-year-old wife, Aisha, yelling "MeToo", which is a modern rallying cry against sexual harassment. The complainant wrote that child marriage was "a grim crime" regardless of who committed the act. It was intended to be a criticism of Afghan religious leaders who may have hidden behind the veil of religion to abuse systematically underage girls and women. As a result of that post, the complainant received several death threats on social media.<sup>3</sup> His scathing criticism and political activism as an atheist have resulted in personal threats against him from various individuals. Some of those threats have also been written on a photograph of the complainant and circulated on social media.

2.4 On 19 July 2018, the Swedish Migration Agency denied the complainant's application for asylum. It found that, although most of the threats raised in the application were genuine, since they originated from unknown individuals, they were unlikely to present a danger to the complainant. He appealed that decision to the Migration Court. On 27 November 2019, the Migration Court upheld the decision of the Swedish Migration Agency. The complainant appealed that decision to the Migration Court of Appeal, which, on 28 January 2020, denied his appeal.

## Complaint

3.1 The complainant submits that, if returned to Afghanistan, he would risk being exposed to treatment contrary to article 3 of the Convention, including imprisonment and torture.

3.2 The complainant underlines that he is at risk of being tortured if he returns to Afghanistan. He submits that, pursuant to article 1 of the Penal Code of Afghanistan and article 130 of its Constitution, Afghan courts must apply Hanafi jurisprudence when hearing *hudud* crimes, such as apostasy. Such crimes are punished by harsh sentences, including death, as affirmed by the European Asylum Support Office<sup>4</sup> and the United States Commission on International Religious Freedom.<sup>5</sup>

3.3 The complainant claims that, due to the threats that he has received concerning his atheism, political opinions and publication of the image of the Prophet Muhammad, he fears

<sup>1</sup> There is no information regarding the complainant's journey to Sweden.

<sup>2</sup> There is no information regarding the complainant's bisexuality.

<sup>3</sup> The complainant states that this is due to the fact that depicting the Prophet Muhammad is considered to be blasphemous.

<sup>4</sup> European Asylum Support Office, *EASO Country of Origin Information Report: Afghanistan – Individuals Targeted under Societal and Legal Norms* (2017). See also European Asylum Support Office, *Country Guidance: Afghanistan – Guidance Note and Common Analysis* (2018).

<sup>5</sup> United States Commission on International Religious Freedom, *2017 Annual Report* (Washington, D.C., 2017), pp. 120–123. See also United States of America, Department of State, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report 2012*, "Afghanistan" (Washington, D.C., 2012); and Hanibal Goitom, "Laws criminalizing apostasy in selected jurisdiction" (Washington, D.C., Law Library of Congress, 2014).

that he will be tortured, persecuted or killed wherever he decides to go in Afghanistan. He also claims that he will be unable to seek and obtain protection from the Afghan authorities against eventual attacks or torture by the Taliban or private individuals concerning his atheism and political opinions. The complainant submits that in a similar case, on 22 January 2008, a court sentenced to death Sayed Pervez Kambaksh, an Afghan university student, for blasphemy and distribution of texts defaming Islam, without the necessary judicial guarantees, including legal assistance.

3.4 The complainant submits that, considering his extensive social and political activism in Sweden, several groups in Afghanistan, including religious hardliners, the Taliban, private individuals and Afghan public authorities, would accuse him of blasphemy or apostasy. The complainant also submits that the risk of death and torture against him is aggravated by the fact that he used his real name and photograph for all his posts on social media, including the image of the Prophet Muhammad.

3.5 The complainant claims that the State party failed to carry out an individuated risk assessment as it never considered the fact that the complainant's real name and photograph had been circulated on social media in relation to his blasphemy against the Prophet Muhammad. The complainant concludes that there are substantial grounds for believing that, for the purpose of article 3 of the Convention, he is facing a foreseeable, real and personal risk of being killed or tortured in the receiving country due to his atheism and political activism.

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

4.1 In a note verbale dated 12 March 2021, the State party submitted its observations on admissibility and the merits. It stated that the complainant's assertion that he was 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.

4.2 The State party notes that it does not wish to underestimate the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan;<sup>6</sup> 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 complainant's expulsion to Afghanistan in the light of his personal circumstances, such as the assessments of the Swedish migration authorities in the present case.

4.3 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 grounds that go beyond mere theory or suspicion, although the risk does not need to meet the test of being highly probable.<sup>7</sup>

<sup>6</sup> Reference is made to reports on the human rights situation in Afghanistan, including [A/76/667-S/2022/64](#); Office of the United Nations High Commissioner for Refugees, "Afghanistan: compilation of country of origin information (COI) relevant for assessing the availability of an internal flight, relocation or protection alternative (IFA/IRA/IPA) to Kabul" (December, 2019); Austrian Centre for Country of Origin and Asylum Research and Documentation, "Brief compilation on the security situation in Afghanistan" (2019) and "Security situation and socio-economic situation in Herat-City and Mazar-e Sharif" (2019); Special Inspector General for Afghanistan Reconstruction, *Quarterly Report to the United States Congress* (Arlington, 2019); and United Nations Assistance Mission in Afghanistan, "Quarterly report on the protection of civilians in armed conflict: 1 January to 30 September 2019" (2019).

<sup>7</sup> *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; *X. v. Denmark* (CAT/C/53/D/458/2011), para. 9.3; and *T.M. v. Sweden* (CAT/C/68/D/860/2018), para. 12.13.

4.4 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 observes that the 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 that context, the State party notes that, under the Aliens Act, the expulsion of an individual may never be enforced to a country where there is reasonable cause to assume that the individual would risk being subjected to the death penalty or to corporal punishment, torture or other inhuman or degrading treatment or punishment, or to a country where such persons are not protected from being sent on to another country in which they would run such a risk.

4.5 The State party observes that the national authorities are in a very good position to assess the information submitted by asylum-seekers and to appraise the credibility of their statements and claims, and underlines that, in the present case, both the Swedish Migration Agency and the Migration Court conducted thorough examinations of the complainant's case.

4.6 Regarding the asylum procedure, the State party notes that the Swedish Migration Agency conducted an extensive asylum investigation into the complainant's case on 8 November 2017 and a complementary investigation on 12 January 2018. The investigation was conducted by a decision maker who noted that the investigation had been affected by problems with the interpretation. However, the complainant agreed to continue. The State party submits that second and third complementary investigations were conducted on 8 February and 28 March 2018. The Swedish Migration Agency also completed a fourth complementary investigation through videoconferencing on 11 June 2018. The minutes from that investigation were communicated to the complainant's public counsel, who submitted written observations.

4.7 Furthermore, upon appeal, the Migration Court held an oral hearing with the complainant on 12 November 2019. The investigations and the hearing were all conducted in the presence of a public counsel and with the assistance of an interpreter, to whom the complainant confirmed that he understood the proceedings well. The complainant was invited to scrutinize and submit written observations on the minutes of the investigations conducted and to make written submissions and appeals. It follows from the above that the complainant has had ample opportunities to explain the relevant facts and circumstances in support of his claim and to argue his case, both orally and in writing, before the Swedish Migration Agency and the Migration Court.

4.8 The State party recalls the Committee's Views wherein it was confirmed that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight should be given to findings of facts made by organs of the State party concerned.<sup>8</sup> 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. Accordingly, considerable weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainant to Afghanistan, which did not entail a violation of article 3 of the Convention.

4.9 The Government notes that, during the domestic proceedings, the complainant presented claims relating to his sexual orientation and a land dispute. However, the complainant has not emphasized those claims in the complaint to the Committee. The Government wishes, nonetheless, to clarify that it finds no reason to deviate from the findings of the domestic migration authorities regarding those claims.

4.10 Referring to the complainant's claims regarding atheism, the State party notes that most atheists or non-believers in Afghanistan are very careful about expressing their views and that Islam permeates daily life and culture in the country. A local community's expectations of religious behaviour may vary geographically and socially. Persons accused of apostasy or blasphemy may be sentenced by courts to severe punishments, although they

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<sup>8</sup> See, for example, *N.Z.S. v. Sweden* (CAT/C/37/D/277/2005), para. 8.6; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *S.K. et al. v. Sweden* (CAT/C/54/D/550/2013), para. 7.4.

are given the opportunity to repent. However, case law is limited: since 2014, there have been no reports of court cases.<sup>9</sup>

4.11 The State party refers to the thematic report of Lifos on Christians, apostates and atheists in Afghanistan,<sup>10</sup> in which it shows, among other things, that a person is not automatically perceived as an atheist because the person does not practise Islam in public. In general, tolerance for deviations is higher among educated people in cities. As long as an atheist does not publicly disrespect Islam, that person does not risk being sanctioned. The Swedish Migration Agency also argued that, should the Migration Court find that there is a threat to the complainant, this threat would be geographically limited.

4.12 The State party submits that, in its judgment of 27 November 2019, the Migration Court, *inter alia*, noted that the complainant's religious and political convictions were not the reasons for which he had left Afghanistan. During the oral hearing in the Migration Court, the complainant stated that he was of the opinion that all persons were entitled to their own beliefs and that he only criticized some parts of Islam. The Court shared the assessment of the Swedish Migration Agency that the complainant had not established that he faced a probable risk of persecution due to his atheism upon return to Afghanistan. The State party also submits that the complainant comes from a family of atheists. In Afghanistan, he followed religious customs, such as visits to the mosque. The complainant has not shown that he is obliged to return to a family or social group that is religiously conservative. He has the possibility to settle in a larger city and be part of a social context in which his views on religion are accepted.

4.13 The State party observes that, in its decision of 19 July 2018, the Swedish Migration Agency made an assessment of the complainant's activities on social media and found that he had received threatening comments and manipulated photographs that could be perceived as threats. However, the complainant did not know the persons behind the threats and had no contact with them except on social media. The Swedish Migration Agency concluded that the complainant had not established that he faced a probable risk of persecution or any other treatment warranting international protection from the individuals who had threatened him.

4.14 The State party notes that, in his complaint, the complainant refers to an image and comments that seem to have been posted on Facebook in 2018. The complainant's posting of the image on social media appears to have resulted in comments of various kinds, some of which are angry. However, there are no clear and specific threats in relation to what will happen to the complainant after his return to Afghanistan and who would carry out acts contrary to the Convention. Nor has the complainant shown that he has a prominent or distinctive role in the debate on the situation in Afghanistan that would make him particularly vulnerable upon his return.

4.15 The State party notes that the assessments of the Swedish Migration Agency and the Migration Court lead to the conclusion that the complainant has not been able to demonstrate that his attitude towards religion and Islam would put him at risk of treatment in violation of the Convention upon return to his home country. Nor has the complainant manifested any beliefs that would lead to his being perceived as an apostate upon return to his home country. The complainant does not belong to a high-profile risk group or have a status of the kind that would put him at risk of targeted attacks in Afghanistan. Consequently, the State party holds that the complainant has not been able to demonstrate that the domestic migration authorities failed to take into account relevant facts, written evidence or risk factors in their assessments or that the authorities' assessments were arbitrary, manifestly erroneous or amounted to a denial of justice. In that regard, the State party reiterates that the Committee is not a court of fourth instance that should re-evaluate facts and evidence.

4.16 Consequently, the State party holds that the evidence presented in the domestic proceedings and that submitted to the Committee is insufficient to conclude that the

<sup>9</sup> Landinfo (Norwegian country of origin information centre), "Temannotat Afghanistan: forhold for ateister, apostater og personer beskyldt for blasfemiske handlinger" (Oslo, 2021) (in Norwegian).

<sup>10</sup> Lifos (Swedish centre for country information and analysis in the field of migration), "Temarapport: Afghanistan – Kristina, apostater och ateister" (Stockholm, Swedish Migration Agency, 2017) (in Swedish).

complainant's expulsion to Afghanistan constitutes a violation of its obligations under article 3 of the Convention due to risks associated with atheism. Concerning the admissibility of the communication, the State party considers that it should be declared inadmissible under article 22 (2) (and rule 113 (b) of the Committee's rule of procedure) as it is manifestly unfounded. As regards the merits, the State party holds that the communication reveals no violation of the Convention.

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

5.1 On 14 July 2021, the complainant submitted his comments on the State party's observations on admissibility and the merits. He maintains that the communication should be considered admissible. He informs the Committee that he was expelled to Afghanistan, after which he fled to the Islamic Republic of Iran without formal documents. However, subsequently, he had to return to Afghanistan. The complainant also informs the Committee that he has not received any post-removal assistance, despite earlier assurances given by the Swedish Migration Agency in that regard. He holds that he is currently hiding from the Taliban, Afghan authorities and members of the public because of safety concerns.

5.2 The complainant argues that, in its observations, the State party emphasized his atheism. However, he submits that the most serious aspect of his communication relates to the publication, on 30 November 2018, of a cartoon of the Prophet Muhammad and a little girl within the context of the MeToo movement. He notes that its publication caused an intense backlash and death threats from many Afghans online. He requests the Committee to consider that fact in its determination of the merits of the communication. In that regard, the complainant recalls that, when assessing whether there are substantial grounds for believing that the forced return of a person to another State exposed the person to the danger of torture, in violation of article 3 of the Convention, the Committee should consider all relevant factors, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. However, as the Committee has repeatedly emphasized, the aim of such determinations is to establish whether the individuals concerned would personally be at a foreseeable and real risk of being subjected to torture in the country to which they are returned.<sup>11</sup> In that regard, the complainant recalls that, in its general comment No. 1 (1997), the Committee indicated that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable",<sup>12</sup> the Committee recalled that the burden of proof generally fell on the complainants, who must present an arguable case that they faced a foreseeable, real and personal risk.<sup>13</sup>

5.3 In that connection, the complainant submits that individuals who have mocked, displayed or published cartoons of the Prophet Muhammad in Afghanistan have either been murdered or gone into hiding.<sup>14</sup> In that regard, the complainant argues that it is highly probable that a person who has criticized and published an image of the Prophet Muhammad and accused him of being a sexual offender within the context of the MeToo movement will be tortured or killed in Afghanistan. Therefore, the complainant requests that the Committee consider the actions of the State party in removing him to Afghanistan, which punishes blasphemy with the death penalty, as a violation of article 3 of the Convention.

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

6.1 On 20 September 2021, the State party submitted its additional observations. It argues that, even if there might be aspects of the complainant's submissions that the Government has not addressed, this should not be interpreted as an acceptance of those assertions. The State party underlines that the issue of re-establishment support lacks any relevance to the

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<sup>11</sup> *E.J.V.M. v. Sweden* (CAT/C/31/D/213/2002); and *A.B. v. Sweden* (CAT/C/54/D/539/2013).

<sup>12</sup> General comment No. 1 (1997), para. 6.

<sup>13</sup> *A.R. v. Netherlands*, para. 7.3.

<sup>14</sup> See, among others, the Batley Grammar School row of March 2021, the decapitation of schoolteacher Samuel Paty in the outskirts of Paris in October 2020 and the *Charlie Hebdo* shooting in January 2015.

assessment of whether there has been a violation of the Convention in the present case and, accordingly, holds that the complainant's assertions in this regard should be disregarded by the Committee.

6.2 The State party informed the Committee that, due to the prevailing security situation in Afghanistan, the Swedish Migration Agency had decided, on 16 July 2021, to suspend enforcement of all deportation orders to the country. However, as the Committee is aware, in accordance with his expulsion order, the complainant left Sweden and returned to Afghanistan on 31 October 2020. In that regard, the State party holds that the current developments in Afghanistan were not foreseeable when the decision on the expulsion of the complainant became final or when he subsequently left Sweden. The State party maintains that the domestic migration authorities conducted thorough examinations of the complainant's claims and that there is no support for the assertion that the rulings were arbitrary or amounted to a denial of justice.

### **Complainant's additional comments**

7.1 On 30 December 2022, the complainant submitted additional comments and indicated that he wishes to pursue his communication, which should not be discontinued or declared inadmissible. The complainant informed the Committee that he was currently in hiding, moving undocumented from village to village, as he was being targeted by religious militants in Afghanistan. He also added that his previous activism, including the publication of the prophet's image, was relatively well known among locals due to the circulation of his photograph on social media and that the militants in the region intended to inform locals about his social media activism in relation to his atheist views. He added that details of his true identity emerged regularly as militants had drawn a connection to his home village and thus found out about his activism.

7.2 The complainant informed the Committee that he had been detained by militants in one of the villages in which he was hiding and interrogated about the "blasphemous" cartoon that he had published while he was in Sweden. He emphasized that he had been identified by his real name in connection with his social media activity. Fortunately, he was able to convince his interrogators that his Facebook account had been hacked. The complainant reiterates that his life is extremely difficult as he lives with the constant fear of being found out, tortured and killed. Moreover, he is unable to live a normal life due to the difficulties involved in acquiring identity documents and following daily religious activities in order to get a regular job.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

8.1 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.

8.2 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 has contested the admissibility of the communication, stating that it 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.

8.3 The Committee notes the complainant's allegation that, due to his atheism, there is a risk of his being tortured or killed in Afghanistan. The Committee also notes that the State party acknowledges that most atheists in Afghanistan are very careful about expressing their views and that, however, individuals are not automatically perceived as such because they do not practise Islam in public. The State party also argues that the complainant had not made it probable before the Swedish Migration Agency and the Migration Court that his atheism was genuine.

8.4 The Committee notes the complainant's allegations that, during his social and political activism in Sweden, he posted on the Internet an image of the Prophet Muhammad dragging his 9-year-old wife, Aisha, yelling "MeToo", to show how Afghan religious leaders have contributed to the systemic abuse of girls and women, and widespread child marriage and sexual harassment in Afghanistan. The Committee also notes the complainant's argument that, following publication of that image, he received several death threats on social media, including those containing a photograph of himself and his real name. The Committee further notes the State party's arguments that the Swedish Migration Agency had assessed that the complainant did not know those behind the alleged threats and had no contact with them except on social media and, therefore, he had not established that he faced a probable risk of persecution or any other treatment warranting international protection. The Committee notes the State party's argument that there were no clear and specific threats in relation to what would happen to the complainant upon return to Afghanistan and who would carry out acts contrary to the Convention.

8.5 The Committee observes that the complainant does not contest the State party's arguments, according to which the Swedish Migration Agency conducted an extensive asylum investigation and several complementary investigations, on 8 November 2017 and 12 January, 8 February, 28 March and 11 June 2018. An oral hearing was held on 12 November 2019. The Committee observes that, during all those investigations, the complainant was assisted by a public counsel and an interpreter to whom the complainant confirmed that he understood the proceedings well; and that the complainant was invited to scrutinize and submit written observations on the minutes of the investigations and to make written submissions and appeal. The complainant did not contest that he had had the opportunity to explain the relevant facts and circumstances in support of his claim and to argue his case, both orally and in writing, before the Swedish Migration Agency and the Migration Court. The Committee notes the State party's arguments 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.

8.6 The Committee observes that, due to the prevailing security situation in Afghanistan, the Swedish Migration Agency decided, on 16 July 2021, to suspend enforcement of all deportation orders to the country. The Committee notes, however, that, in accordance with his expulsion order, the complainant left Sweden and returned to Afghanistan on 31 October 2020. The Committee highlights that, according to the State party, the current developments in Afghanistan were not foreseeable when the decision on the expulsion of the complainant became final or when he subsequently left Sweden. The State party maintains that the domestic migration authorities conducted thorough examinations of the complainant's claims and that there is no support for the assertion that the rulings were arbitrary or amounted to a denial of justice. The Committee notes the complainant's further comments that, since his return to Afghanistan, he is being targeted by religious militants and is hiding, moving undocumented from village to village, and that he is at risk due to his past activism on social media, the dissemination of his atheist views and the publication of the Prophet Muhammad's image. The Committee acknowledges the prevalent human rights situation in Afghanistan and considers, however, that such a situation cannot lead to a post facto assessment of the complainant's communication given that he was removed to Afghanistan more than seven months before the decision of the Swedish Migration Agency to suspend enforcement of all deportation orders to the country. The Committee observes that there is no information in the complainant's additional comments that demonstrates that the decisions of the State party's migration authorities were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice.

8.7 The Committee notes that the Swedish Migration Agency provided the complainant with ample opportunity to substantiate his claims by interviewing him several times and examining the alleged impediments to enforcement of the expulsion order. The Committee observes that the complainant has not provided additional evidence that would cast doubt on the findings of, or the factual evaluation made by, the Swedish Migration Agency, the Migration Court or the Migration Court of Appeal.

8.8 The Committee recalls its jurisprudence in which it has found claims to be manifestly unfounded where the author of the communication has failed to present an arguable case, that



is, to submit substantiated arguments showing that the danger of being subjected to torture is foreseeable, present, personal and real.<sup>15</sup> It notes that it is the responsibility of the complainant to provide arguments supporting the alleged violation of article 3 in such a way that they establish a *prima facie* case for the purpose of admissibility of the complaint.

9. The Committee therefore considers that the complainant's claims fail to rise to the basic level of substantiation required for purposes of admissibility and concludes, in accordance with article 22 (2) of the Convention and rule 113 (b) of its rules of procedure, that the communication is manifestly unfounded and is therefore inadmissible.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under article 22 (2) of the Convention;
  - (b) That the present decision shall be communicated to the complainant and to the State party.
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<sup>15</sup> *S.S. v. Australia* (CAT/C/74/D/935/2019), para. 7.6. See also general comment No. 4 (2017), para. 38.