



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3189/2018*, **

<i>Communication submitted by:</i>	M.M.M. (represented by counsel, Elena Lesanu and Elin Edin)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Sweden
<i>Date of communication:</i>	29 May 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 29 May 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	17 July 2025
<i>Subject matter:</i>	Deportation to Afghanistan
<i>Procedural issue:</i>	Admissibility – lack of substantiation
<i>Substantive issues:</i>	Right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment
<i>Articles of the Covenant:</i>	6 (1) and 7
<i>Article of the Optional Protocol:</i>	2

1.1 The author of the communication is M.M.M., a national of Afghanistan born on 3 May 1998.¹ He fears persecution, ill-treatment and risks to his life if the State Party were to remove him to Afghanistan,² which, he argues, would result in a violation of his rights under articles 6 and 7 of the Covenant. The Optional Protocol entered into force for the State Party on 23 March 1976. The author is represented by counsel.

1.2 On 29 May 2018, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to grant the author's request for interim measures and requested the State Party to refrain from deporting the author to Afghanistan

* Adopted by the Committee at its 144th session (23 June–17 July 2025).

** The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

¹ The author was a minor during the national asylum proceedings, and the Migration Agency determined, in the context of the initial asylum proceedings in 2014, that he was born in 1997.

² The author's deportation was scheduled for 29 May 2018.



while his communication was being considered. On 30 May 2018, the State Party indicated that it had halted the author's deportation.³

1.3 On 17 July 2020, the State Party submitted a request for discontinuance of consideration of the communication, since the author's expulsion order had become statute-barred on 7 June 2020. On 23 January 2021 and 11 February 2022, the State Party reiterated its request for discontinuance. On 6 April 2022, the author communicated his opposition to the request for discontinuance, as, after the expulsion order had become statute-barred, he had applied for asylum again, and his second application had been rejected, and a new deportation order issued. On 24 October 2024, the Committee, acting through its Special Rapporteurs on new communications and interim measures, decided to reject the State Party's discontinuance request.

Facts as submitted by the author

2.1 The author is of Hazara ethnicity and was born in Ghazni Province. He lived in the Islamic Republic of Iran with his parents from the age of 4 until the age of 15. While in the Islamic Republic of Iran, the author's father died, and the author had to work while still a child. He claims to be Christian and openly gay, and he has no family left in Afghanistan.

2.2 The author arrived in Sweden in early 2014 and applied for asylum on 27 August 2014 as an unaccompanied minor. In his asylum application, the author noted that he would risk being subjected to persecution by the Taliban if removed to Afghanistan, as he belongs to the Hazara ethnic group and is a Shia Muslim. The author also noted having suffered from several psychiatric problems in his first few years in Sweden and requested protection on grounds of exceptionally distressing circumstances. On 29 October 2015, the Migration Agency rejected the author's asylum application, and his appeal against the Agency's decision was rejected by the Migration Court on 22 March 2016. The author indicates that, in his communication to the Committee, he is not invoking the grounds for protection invoked in his original application for asylum in Sweden.

2.3 After the initial expulsion order became enforceable, the only remedy available to the author was an application claiming impediments to the enforcement of the expulsion order, and he first filed such an application on 12 October 2017.⁴ In the context of the procedure relating to his application claiming impediments, the author invoked new circumstances. Indeed, the author indicated that he had converted to Christianity and had become gay after the initial expulsion order against him had entered into force on 7 June 2016.⁵ In the context of the new proceedings, the author argued that he would be at risk of persecution, ill-treatment and threats to his life if deported to Afghanistan, due to his conversion to Christianity⁶ and the fact that he had been westernized. He needed to be granted international protection.⁷

2.4 On the basis of his application claiming impediments and the new circumstances raised, the Migration Agency granted the author a new interview for consideration of his asylum application, during which he claimed that he had planned to be baptized but had been detained by the police at the end of the summer of 2017.⁸ During the interview with the Agency, the author asserted for the first time his homosexuality and that he had had homosexual relations in Sweden. He indicated that he had not admitted his homosexuality during the initial asylum procedure out of shame and fear of stigmatization, adding that he had not known that homosexuality was not a crime in Sweden. The Agency granted the author an additional interview to elaborate on his sexual orientation and private life, during which

³ The Migration Agency decided on 29 May 2018 to suspend the enforcement of the author's expulsion order.

⁴ This is an extraordinary remedy available under chapter 12 of the Aliens Act.

⁵ That is, after the domestic remedies had initially been exhausted.

⁶ A certificate in support of his conversion was submitted to the migration authorities.

⁷ The author refers to the legal position on the security situation in Afghanistan issued by the Migration Agency in August 2017 (SR 31/2017).

⁸ In his initial communication, the author indicates that a priest baptized him at the deportation centre, during the summer of 2017.

he spoke of his homosexual relationships in the Islamic Republic of Iran and in Sweden, while also admitting to a heterosexual relationship in Sweden.

2.5 In the context of the interview, during which he suffered anxiety attacks, he submitted that other Afghans, some of whom had returned to Afghanistan, knew about his homosexuality. At the deportation centre, the author had been bullied for being openly gay and a Christian, since he had preached about Jesus. The author had been threatened, including in writing, by old friends who had returned to Afghanistan and vowed to persecute him upon his own return to Kabul. The Embassy of Afghanistan in Sweden was also aware of the author's conversion to Christianity, which put him at risk, if removed. In addition, he suffered from severe post-traumatic stress disorder symptoms, including suicide attempts, as attested by several doctors, because of the repeated rapes to which he had been subjected by his boss in the Islamic Republic of Iran when he was a child.

2.6 On 29 November 2017, the Migration Agency decided to reject the author's application for asylum, on the basis of the Aliens Act. The Agency found the author not to be trustworthy, as he could not express his feelings in a reliable way. The author's statements in relation to his homosexuality and conversion to Christianity were considered rather general and were found not to be credible.

2.7 The author appealed the negative decision of the Migration Agency to the Migration Court, which granted him an oral hearing. The Court, however, denied the author's appeal on all grounds, upholding the assessments made by the Agency. The author further requested leave to appeal from the Migration Court of Appeal, which denied his request.

2.8 With the entry into force of the decision of the Migration Court of Appeal, all available domestic remedies have been exhausted.⁹ The same matter has not been submitted to another procedure of international investigation or settlement.

Complaint

3.1 The author claims that he will face persecution, ill-treatment and risks to his life, due to his conversion to Christianity and sexual orientation, if the State Party were to remove him to Afghanistan, which would result in a violation of his rights under articles 6 and 7 of the Covenant. He adds that the risks of irreparable harm due to a lack of protection by the authorities are implied by the fact that the laws in Afghanistan proscribe both conversion and homosexuality.¹⁰

3.2 The author also fears the risks of ill-treatment and of limited care and protection, due to his post-traumatic stress disorder caused by the psychological impact of having been a victim of rape and abuse as a child, and the fact that he has no family back in Afghanistan.

State Party's observations on admissibility and the merits

4.1 On 29 November 2018, the State Party submitted its observations on the admissibility and merits of the case. The State Party requests that the communication be declared inadmissible as not sufficiently substantiated. Alternatively, the State Party argues that the communication reveals no violation of the Covenant.

4.2 As to the facts, the State Party notes that the author's applications have been properly assessed by the domestic migration authorities, which found that the author has not shown that he is in need of protection in Sweden and that he therefore can be expelled to Afghanistan.¹¹ The author applied for asylum in Sweden on 27 August 2014, and the Migration Agency rejected his application and decided on 29 October 2015 to expel him to

⁹ The rejection of the author's asylum application by the Migration Agency on 29 October 2015 gained legal force on 7 June 2016 and became enforceable.

¹⁰ See Office of the United Nations High Commissioner for Refugees (UNHCR), "UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan", document HCR/EG/AFG/16/02, April 2016.

¹¹ The State Party submitted copies of the Migration Agency's decisions of 29 October 2015, 29 November 2017 and 10 April 2018, and the Migration Court's judgments of 22 March 2016, 22 January 2018 and 20 April 2018.

Afghanistan. The decision was appealed to the Migration Court, which, on 22 March 2016, rejected the appeal. On 7 June 2016, the Migration Court of Appeal refused leave to appeal, and the decision to expel the author became final and non-appealable.¹² Subsequently, the Migration Agency decided, on 17 October 2017, to grant the author a re-examination of his asylum application. On 29 November 2017, however, the Agency decided to reject the author's application for residence and work permits. The author appealed the Agency's decision to the Migration Court, which rejected the appeal on 22 January 2018. The Migration Court of Appeal refused leave to appeal on 26 February 2018. Subsequently, the author applied again for a residence permit for studies in Sweden and for a re-examination of his application for a residence permit due to impediments to the enforcement of the expulsion order that he claimed existed. On 10 April 2018, the Migration Agency decided to reject the author's second application claiming impediments. The Migration Court rejected the author's appeal against the Agency's decision on 20 April 2018. The Migration Court of Appeal decided on 15 May 2018 to refuse leave to appeal.

4.3 Regarding admissibility, the State Party accepts that all available domestic remedies have been exhausted, arguing that the author's assertions fail to attain a basic level of substantiation and should be declared inadmissible, pursuant to article 3 of the Optional Protocol.

4.4 Recalling paragraph 12 of the Committee's general comment No. 31 (2004), the State Party submits that, when determining whether a person would face a risk of a violation if forcibly returned to another country, the risk of a violation must be a necessary and foreseeable consequence of the forced return,¹³ and such risk must be personal and real.¹⁴ There is a high threshold for establishing substantial grounds that a real risk of irreparable harm exists. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.¹⁵ The burden of proof rests with the author, who is required to establish that there is a real risk of irreparable harm.¹⁶ The Committee has also held that considerable weight should be given to the assessment conducted by the State Party, and that it is generally for the organs of the State Parties to the Covenant to review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.¹⁷ The Committee's approach is also based on the view that it is not a court of fourth instance that should re-evaluate facts and evidence *de novo*.¹⁸ Referring to ongoing concerns regarding the human rights situation in Afghanistan, as reflected in background reports, the State Party holds that the Committee's assessment must be focused on the foreseeable consequences of the author's removal to Afghanistan, that is, whether he would personally face a real risk of being subjected to treatment in violation of articles 6 or 7 of the Covenant.

4.5 As regards the assessment of a personal risk of being subjected to treatment in breach of articles 6 and 7 of the Covenant, both the Migration Agency and the Migration Court conducted thorough examinations of the author's case on the basis of the Aliens Act, including several interviews and an oral hearing. After the initially claimed grounds for asylum had been investigated, and the decision to expel the author had become final and non-appealable, he was granted a re-examination of his application for a residence permit, as he invoked new grounds for asylum, which he maintains before the Committee. The Migration Agency held a new asylum interview with the author on 3 November 2017, focusing primarily on his alleged conversion from Islam to Christianity. On 27 November 2017, the Agency held a supplementary interview with the author, focusing primarily on his alleged need for protection due to his sexual orientation. Upon appeal, the Migration Court

¹² The expulsion order became statute-barred on 7 June 2020.

¹³ *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), paras. 6.8 and 6.14.

¹⁴ *Dauphin v. Canada* (CCPR/C/96/D/1792/2008), para. 7.4; *A.P.J. v. Denmark* (CCPR/C/119/D/2253/2013), para. 9.6; and general comment No. 36 (2018), para. 30.

¹⁵ *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.3.

¹⁶ *Hamida v. Canada* (CCPR/C/98/D/1544/2007), para. 8.7.

¹⁷ *A.H.S. v. Denmark* (CCPR/C/119/D/2473/2014), para. 7.5; and *Tarlue v. Canada* (CCPR/C/95/D/1551/2007), para. 7.4.

¹⁸ *Shakeel v. Canada* (CCPR/C/108/D/1881/2009), appendix I, para. 2.

held an oral hearing with the author *in camera* on 16 January 2018, as part of which a witness who attested to his conversion was heard. The interviews, the investigations and the hearing were conducted in the presence of public counsel and interpreters. The State Party contends 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 national migration authorities, as expressed in their rulings ordering the expulsion of the author to Afghanistan. The State Party holds that a return of the author to Afghanistan would not entail a violation of articles 6 or 7 of the Covenant.

4.6 During the national asylum proceedings, the author was not able to plausibly demonstrate his identity, and his fingerprints in the Eurodac database showed that he had stated different information about his identity to the authorities in Bulgaria and, then, Austria. Furthermore, the national migration authorities considered that the author had not plausibly demonstrated that he was a minor. However, the fact that Afghanistan was the author's country of origin was not questioned. Given that the author, according to his own account, was only about 4 years old when he left Afghanistan and that he had not returned there since, he was considered to lack any connection to his stated home province of Ghazni, as well as to any other province or specific area in the country. Therefore, his case was examined in relation to the prevailing conditions in the country as a whole. After the decision to expel the author had become final and non-appealable, the author did not return to his home country, although he was required to do so. When stopped by the police as part of identity checks of persons present in the territory, on 3 September 2017, the author provided three different identities to the police. Since the author had used different identities on several occasions, before the Bulgarian, Austrian and Swedish authorities, the Migration Agency and the Migration Court found that this had a negative effect on the author's general credibility when considering his claim for protection.

4.7 In his first asylum application, the author cited the risk of persecution that he would face as a member of the Hazara ethnic group and of the Shia population, which are groups particularly vulnerable to the Taliban's persecution. Considering the country information, the national authorities concluded that simply belonging to either of these groups could not in itself be deemed sufficient to conclude that there existed a need for international protection. Furthermore, the author did not present any other circumstances that would indicate a personal risk. Regarding the claims of mental ill-health, although the national authorities did not question them, they considered that, on the basis of the medical assessment, his condition was not of such severity as to be life-threatening and that nothing supported the claim that his suicidal thoughts were the result of severe mental ill-health.

4.8 On 17 October 2017, the author applied for and was granted a re-examination of his application for a residence permit, as he had invoked new circumstances relating to his claim to be in need of protection in Sweden. He alleged that, upon return to Afghanistan, he risked being subjected to persecution or other ill-treatment, since he had converted from Islam to Christianity while in Sweden, and because of his sexual orientation.

4.9 As regards the need for protection because of conversion, the State Party accepts, on the basis of the background reports, that there exists in Afghanistan of a real risk of persecution for those who renounced their Muslim faith or converted during an asylum procedure. However, the mere claim of such a conversion does not suffice to conclude that there is a real risk of persecution for an individual. In the present case, the authorities found that the author's account of his conversion lacked credibility and that he failed to plausibly demonstrate that his stated conversion was based on a genuine and personal religious conviction.¹⁹ The State Party argues that the author submitted the communication to the Committee to have his credibility reassessed. An overall assessment was made of the circumstances in which the conversion had taken place and of whether it could be expected

¹⁹ See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, 2011); and "Guidelines on international protection: religion-based refugee claims under article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", document HCR/GIP/04/06, 28 April 2004.

that the author would live as a convert upon his return to Afghanistan. The authorities considered that the alleged conversion had taken place in Sweden after his expulsion order had become final and non-appealable, and during the time in which he was held in detention awaiting the enforcement of the expulsion order. The conversion was not a continuation of religious views that he had held before his arrival in Sweden. During the investigation, the Migration Agency found that the author had not been able to provide more in-depth reasoning about his alleged decision to convert to Christianity. His description of what Christianity meant to him personally and of his motives was of a general nature, and the Agency found that there existed credibility gaps in the author's account of his conversion. The Migration Court, furthermore, found that the author, during the oral hearing, had had considerable difficulties in recounting in any depth the internal thought process that must have preceded the conversion, his choice to convert to Christianity and how Christianity had affected his life. In conclusion, the Migration Agency and the Migration Court found that the author had not plausibly demonstrated that his conversion to Christianity was based on a genuine and personal religious conviction or that he would live as a Christian convert upon return to Afghanistan and would face a concrete risk.

4.10 Neither was the author found to have plausibly demonstrated that he would face risks due to an ascribed religious belief. The threatening messages that he had reportedly received after posting a video clip of his baptism could not be considered to plausibly demonstrate that information about his conversion had been disseminated so widely that he would be at specific risk upon return to Afghanistan. Moreover, as the author had failed to plausibly demonstrate his identity, the Migration Court found that he had not substantiated that the video clips could be linked to him personally. In addition, the author was not able to reasonably explain why he had spread information about his conversion to other Afghans on the Internet and why, during a discussion at the Embassy of Afghanistan, he had told an official that he was Christian. The State Party hence concludes that the Migration Agency and the Migration Court conducted satisfactory and detailed investigations of this matter. On 9 April 2018, the author applied for another re-examination of his request for a residence permit. He stated that there were lasting impediments to his expulsion, as he risked being subjected to ill-treatment upon return, since he had, about a week previously, had a cross tattooed on his left forearm, which would be considered morally unacceptable. The Migration Agency did not consider this assertion to constitute a new circumstance and rejected the author's application on 10 April 2018. The Migration Court subsequently rejected the author's appeal on 20 April 2018. On 15 May 2018, the Migration Court of Appeal decided not to grant leave to appeal. The author, in parallel, received a rejection of his application for a residence permit for upper secondary school studies, as he had not demonstrated that he was a minor. Referring to information on tattoos in Afghanistan, as included in background reports, the Migration Court concluded that the author, upon return, could settle in a more urban environment in Afghanistan, where tattoos generally were more accepted. Since the author had not been able to plausibly demonstrate that his conversion to Christianity was based on a genuine and personal religious conviction, the Court found that he could either hide the tattoo or change its motif, to avoid problems upon return. The Court found that the tattoo could not be regarded as a new circumstance that would constitute a lasting impediment to the enforcement of the expulsion order. The author had not plausibly demonstrated that he would be perceived as a Christian in Afghanistan.

4.11 Furthermore, the State Party argues that a risk of persecution due to sexual orientation can constitute a ground for protection, on the basis of the Aliens Act. The Migration Agency has to assess whether an asylum-seeker has plausibly demonstrated that he or she belongs to or is perceived in the country of origin as belonging to a group that risks persecution on this ground.²⁰ Ascertaining an author's lesbian, gay, bisexual, transgender or intersex (LGBTI) background is essentially an issue of credibility, which needs to be assessed in an

²⁰ See UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*; and "Guidelines on international protection No. 9: claims to refugee status based on sexual orientation and/or gender identity within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", document HCR/GIP/12/09, 23 October 2012, in which sexual orientation is considered to be a fundamental aspect of human identity.

individualized and sensitive way.²¹ The Migration Agency held a longer and separate investigation, as well as an oral hearing with the author, regarding the need for protection based on his stated sexual orientation, including in the presence of an LGBTI specialist. The migration authorities found that the author's account of his two homosexual relationships was very vague and lacking in detail, since it was based on general assertions, and there existed credibility gaps and deficiencies in the information submitted regarding his internal motivations. The author was found not to be able to recount the process by which he had come to realize his sexual orientation. Overall, the migration authorities found that the author had failed to plausibly demonstrate, due to credibility gaps in his accounts, that, upon return to Afghanistan, he would face a foreseeable, personal and real risk of persecution or ill-treatment in violation of the Covenant, based on his alleged sexual orientation.

4.12 The State Party further submits that, if a claim for asylum based on sexual orientation is made late in the asylum process, this alone cannot lead to the conclusion that the claim is not credible.²² The decisions of the migration authorities demonstrated that their assessments of the author's credibility were not based solely on the circumstance that the claim was presented at a late stage in the asylum process. In the present case, unlike in *X. v. Sweden*,²³ the migration authorities granted the author a re-examination of his application, as part of which his claims of risks due to his alleged sexual orientation were carefully assessed and the decisions duly reasoned.

4.13 As regards the alleged risk of ill-treatment upon return, since the author suffers from mental ill-health due to post-traumatic stress disorder, the State Party submits that both the Migration Agency, in its decision of 29 October 2015, and the Migration Court, in its judgment of 22 March 2016, found that the evidence invoked in support of this claim did not substantiate that the author's state of mental ill-health was such that it could be regarded as equivalent to a life-threatening mental illness. Moreover, on the basis of the medical certificates presented, the migration authorities noted that the risk of suicide was deemed to be low, and that the cuts inflicted by the author during the suicide attempt that he recounted were superficial, although the author was observed by a psychologist to be suffering from anxiety and nervousness and in need of counselling. In view of the above, the State Party holds that the author's claim that he would be subjected to ill-treatment upon return due to his mental ill-health is unsubstantiated for the purposes of admissibility and, in any event, reveals no violation of articles 6 and 7 of the Covenant.

Author's comments on the State Party's observations on admissibility and the merits

5.1 On 29 March 2019, the author submitted comments on the State Party's observations on admissibility and the merits. He argues that the Committee should consider his communication admissible and find a violation of articles 6 and 7 of the Covenant. The author requests that the State Party issue him a residence permit.

5.2 The author argues that he has substantiated his claims that he faces a real and personal risk of being subjected to irreparable harm, which would be a necessary and foreseeable consequence of his removal to Afghanistan. The State Party has failed to present substantive arguments as to why the communication is ill-founded. The author is of the view that the conclusions of the migration authorities and of the State Party in its observations are at variance with the minutes of the proceedings and the final report submitted by his counsel to the Migration Agency. The author claims that he has plausibly demonstrated his need for protection against persecution and ill-treatment due to his conversion to Christianity, sexual orientation and mental ill-health. In addition, tattoos are considered haram, that is, unlawful, within Sunni Islam, the dominant form of Islam in Afghanistan. As the author has not been in Afghanistan since he was a small child, he completely lacks a protective social network there. Moreover, the country information shows that mental healthcare is barely existent in

²¹ See European Court of Human Rights, *M.K.N. v. Sweden*, Application No. 72413/10, Judgment, 27 June 2013, in which the applicant invoked his sexual orientation only upon appeal against the Migration Agency's decision. See also *X and X v. Denmark* (CCPR/C/112/D/2186/2012), para. 7.5.

²² See Migration Agency, legal position SR 38/2015.

²³ CCPR/C/103/D/1833/2008, para. 9.3.

Afghanistan, but the economic and social rights perspective on this issue is missing from the State Party's observations.

5.3 The author attached to his comments a medical certificate, dated 25 March 2019, attesting to his severe psychiatric problems, including anxiety attacks and lack of concentration, due to the post-traumatic stress disorder. The certificate also confirms his need for antidepressants and treatment in a stable environment. Affidavits by a psychologist and a priest were also attached. Lastly, the author alleges that he was exposed to ill-treatment when moved between the detention centres.

State Party's additional observations

6.1 On 25 October 2019, the State Party submitted a rejoinder, maintaining its initial observations.

6.2 The State Party reiterates that the author has not plausibly demonstrated that he would personally face a foreseeable, present and real risk of being subjected to treatment in violation of articles 6 and 7 of the Covenant upon return to Afghanistan, due to his conversion to Christianity, sexual orientation and mental health status. The State Party also recalls that the author has not shown that his medical condition is of such an exceptional nature and of such severity as to reach the threshold for constituting substantial grounds to establish that a real risk of irreparable harm would exist if he is removed.

6.3 The State Party adds that the communication should be declared inadmissible as insufficiently substantiated or, alternatively, found to be without merit.

6.4 On 17 July 2020, the State Party submitted further observations. The State Party requests that consideration of the case be discontinued, as the author's expulsion order became statute-barred on 7 June 2020. It further requests the Committee to declare the communication inadmissible due to non-exhaustion of domestic remedies, since the author applied for asylum again on 23 June 2020, or due to lack of sufficient substantiation. Alternatively, the Committee is requested to dismiss the communication, due to the author's loss of victim status, or to find no violation of the Covenant.

Additional comments from the author

7.1 On 6 April 2022, the author submitted objections to the request for discontinuance. He adds that he was beaten on two occasions by Afghan nationals near the detention centre, due to his Christianity and sexual orientation. The author complains of negligent processing of his second asylum application by the Migration Court, which he considers to amount to a denial of justice, due to a failure to assess the new situation that has arisen in Afghanistan after the Taliban took power. He reiterates that his sexual orientation is genuine, and that, together with the tattoo of a cross on his forearm, it compounds the risks of irreparable harm in the event of his removal to Afghanistan.

7.2 In a submission of 7 April 2023, the author claims that he has exhausted domestic remedies in the context of his second asylum application, that the expulsion order has become enforceable and that he is raising the same claims before the Committee as in his initial communication. However, the author also draws attention to elements that would aggravate the risk of irreparable harm: (a) the fact that the Taliban has taken power in Afghanistan, considering that the author's father and uncles worked as members of the military under the former Government and were killed by the Taliban; (b) the fact that the author's younger brother was killed in a land dispute; (c) the fact that information on the author's conversion has been further spread in Afghanistan, which has led to threats related to honour from his family and extended family; and (d) the fact that the author has become more open about his sexual orientation and has been subjected to hate crimes in Sweden, as his orientation is known among many Afghans.

7.3 The author's second asylum application was rejected by the Migration Agency on 14 April 2021, and the appeal against the decision was rejected by the Migration Court on 13 January 2022. The Court did not find the author's claims regarding his religion, sexual

orientation and family members' land conflicts to be credible.²⁴ On 8 March 2022, the Migration Court of Appeal denied the author leave to appeal. The author adds that the Migration Agency started to act as if no interim measures by the Committee were in place. For example, it summoned the author for an interview about his return to Afghanistan. As the expulsion order against the author has become enforceable, he objects to the State Party's request that his case be discontinued.

State Party's further observations

8.1 On 31 July 2024, the State Party submitted that the new expulsion order against the author would become statute-barred on 8 March 2026.

8.2 On 9 October 2024 and 3 January 2025, the State Party submitted that the communication should be declared inadmissible under article 3 of the Optional Protocol. As to the merits, according to the State Party, there is no reason to conclude that the outcome of the proceedings was in any way inadequate or arbitrary or amounted to a denial of justice. The assertions presented are insufficient to conclude that the author's removal to Afghanistan would constitute a violation of the obligations of Sweden under articles 6 and 7 of the Covenant.

8.3 After the first decision to expel the author became statute-barred, the author applied for asylum again, on 23 June 2020. On 14 April 2021, the Migration Agency rejected his asylum application and decided to expel him to Afghanistan. On 13 January 2022, the Migration Court rejected the author's appeal. On 8 March 2022, the Migration Court of Appeal decided to refuse him leave to appeal, and the decision to expel the author became final and non-appealable. Subsequently, the author claimed that there were impediments to the enforcement of his expulsion order. On 4 August 2022, the Migration Agency decided that there were no such impediments under the Aliens Act. On 8 September 2022, the Migration Court rejected the appeal by the author and, on 4 October 2022, the Migration Court of Appeal decided not to grant him leave to appeal.²⁵ The authorities found that the author had not established substantial grounds for a conclusion that, if removed to Afghanistan, he would face a real risk to his life, torture, ill-treatment or persecution, which would require his protection by Sweden.

8.4 As to the merits, the State Party notes the author's claims of additional risk factors for irreparable harm in the event of a return to Afghanistan, mainly due to the Taliban takeover in Afghanistan and an ongoing land dispute there. In his second asylum application, the author maintained his previous claims regarding the risks resulting from his conversion to Christianity and sexual orientation. The State Party argues that the author has not shown that the assessments of the facts and evidence by the Migration Agency and the Migration Court were in any way inadequate or arbitrary or amounted to a manifest error or a denial of justice.²⁶

8.5 As in the previous asylum proceedings, the author did not plausibly demonstrate his stated identity or that he had any connection to his alleged home province of Ghazni. His protection claims were assessed in the light of the general situation in his country of origin. Following the Taliban takeover in Afghanistan, the author's appeal against the Migration Agency's decision on expulsion was assessed by the Migration Court, which considered the prevailing situation in the country under Taliban rule.

8.6 Despite the author's objection, the mere fact that Taliban rule was not mentioned in the judgment of the Migration Court did not constitute a judicial error. The fact that no serious judicial error had occurred was later confirmed by the Migration Court of Appeal in its decision not to grant leave to appeal. The State Party argues that the Taliban's takeover of power was taken into account in the second domestic asylum proceedings. The State Party also notes that Afghanistan is a party to the Covenant and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and refers to the

²⁴ The Court did not mention the post-traumatic stress disorder of the author as one of the grounds for protection invoked in his asylum application.

²⁵ The enforceable decision to expel the author will become statute-barred on 8 March 2026.

²⁶ *X v. Norway*, para. 7.5.

background reports on the general human rights situation in the country. As indicated by the migration authorities in the author's asylum case, the general situation in the country does not in itself suffice to establish that his expulsion would be contrary to articles 6 or 7 of the Covenant.²⁷ Having referred to the applicable domestic legislation, the State Party submits that the author has not substantiated that he would personally face a real risk of being subjected to treatment in violation of articles 6 or 7 of the Covenant if removed to Afghanistan.

8.7 In the second asylum proceedings, the Migration Agency conducted three asylum investigations with the author, each lasting over two hours, on 13 August 2020, 12 October 2020 and 15 January 2021. The investigations were conducted in the presence of the author's appointed public counsel and interpreters, whom, as he confirmed, he understood. The minutes of the investigations were communicated to the author's public counsel. As part of the proceedings relating to the appeal against the Migration Agency's decision, the Migration Court held an oral hearing with the author on 16 December 2021.

8.8 As regards his religious belief, the author's account remained vague, and he was not able to present any deeper reasoning concerning his stated conversion or why his faith had deepened. The migration authorities found that the author could not be considered to have plausibly demonstrated that he had converted to Christianity on the basis of a genuine conviction or that he intended to live as a Christian upon his return to Afghanistan. The author's assertion that his conversion had become known to his relatives in Afghanistan was speculative and based on second-hand sources; it could not be considered reliable. The cross tattooed on his forearm was not considered to suffice to conclude that there existed a plausible need for protection upon return. As concerns the grounds for asylum invoked by the author on the basis of his sexual orientation, the State Party notes that they were previously considered by the migration authorities and that credibility deficiencies in his account were identified even though he was given the opportunity to provide clarifications. The author was hence not considered to have plausibly demonstrated that he belonged to the LGBTI group or risked being perceived as belonging to it.²⁸

8.9 During the second asylum proceedings, the author also claimed that a conflict over land had arisen in Afghanistan when his brother had travelled there to take care of their father's estate after his death. This conflict allegedly resulted in his brother's death. The Migration Agency, however, noted that this claim was based on second-hand sources and that there were grounds to question the reliability of the author's account concerning the circumstances surrounding his brother's death. In addition, the assertion that the author would risk being brought before a court and questioned about his late father's activities upon return was not considered to suffice to conclude that he would need international protection. Although the author was not considered to have plausibly demonstrated that he would be identified as belonging to any of specific risk group upon return, on the basis of his religious belief or sexual orientation, the national asylum authorities also assessed whether the behaviour and activities of the author could have serious adverse consequences such as would put him at risk of irreparable harm in the event of a return to Afghanistan.²⁹ The author's health and adaptation to life in Sweden, the prevailing situation in Afghanistan and his ability to adjust to Afghan society upon return were then considered. However, the migration authorities did not establish the existence of any risks in that regard.

8.10 After the expulsion order had become final, the author raised a claim of new impediments to the enforcement of his removal. The author submitted to the Migration Agency that he had adopted a Western way of life during his stay in Sweden and that he would not be accepted upon return to Afghanistan. The Migration Agency noted that this circumstance had not previously been invoked during the asylum proceedings. However, it was not considered likely that the author had undergone such a comprehensive transformation, as so-called westernisation entails, after the expulsion order had become final. It was noted that the information that the author had provided contained little detail regarding the characteristics and values that he had adopted or how he intended to express them upon his

²⁷ General comment No. 36 (2018), para. 30.

²⁸ See UNHCR, "Guidelines on international protection No. 9".

²⁹ *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.5.

return to Afghanistan. He was thus not considered to have plausibly demonstrated that he would need international protection upon return to Afghanistan on account of having adopted a Western way of life. As to the author's additional assertion that his sexual orientation was not properly assessed, the State Party notes that both the Migration Agency and the Migration Court found that the author's claim about his sexual orientation had been assessed as unreliable in the asylum proceedings and, as such, this did not constitute a new circumstance that could be assumed to constitute a lasting impediment to enforcement of the expulsion order.

8.11 The Migration Agency did not carry out an assessment of internal relocation alternatives, considering that they were not relevant in the author's case, given that the claimed need for protection had been assessed in the light of the general situation in Afghanistan. Lastly, the author has claimed that he is at risk of being subjected to treatment in violation of articles 6 and 7 of the Covenant upon return to Afghanistan, since he also suffers from post-traumatic stress disorder. The national migration authorities did not question the author's ill-health in the domestic proceedings. However, in the most recent asylum proceedings, the state of the author's health was not deemed sufficient, alone or as part of an overall assessment, to consider that there were exceptionally distressing circumstances. As to the author's medical report, the migration authorities noted that the author had had contact with psychiatric services and had received medication and counselling and that he could seek treatment in his country of origin. The State Party notes that the medical report was issued on 5 February 2021, making it several years old, and indicates diagnoses that can be treated to recovery. It is thus of limited probative value as regards the author's current state of health. The author has not plausibly demonstrated that the necessary care is not available to him in Afghanistan. The author, furthermore, has claimed that the migration authorities have not considered how his mental health issues affect his ability to give a clear oral account. However, neither the medical report nor the asylum investigations undertaken revealed any tangible limitations faced by the author in his ability to express himself orally due to his mental ill-health. Moreover, he was represented by legal counsel and had ample opportunities to express himself during two lengthy sets of asylum proceedings.

8.12 During the most recent asylum proceedings, the author did not plausibly demonstrate that he would face a real and personal risk of irreparable harm if returned to Afghanistan, such as would entail a violation of articles 6 and/or 7 of the Covenant.

Further comments from the author

9. On 7 January 2025, the author informed the Committee that the State Party intended to change the domestic law in 2025 such that an expulsion order would no longer become statute-barred after four years. Instead, an expulsion order would become statute-barred five years from the date on which the asylum-seeker departed from Swedish territory. It was hence unlikely that his expulsion order would become statute-barred in 2026.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

10.3 The Committee notes that the author submitted two applications for asylum, in 2014 and 2020, which were both rejected; that his appeals against the decisions of the Migration Agency to expel him to Afghanistan were dismissed by the Migration Court; and that his requests for leave to appeal were denied on several occasions by the Migration Court of Appeal. The expulsion orders became enforceable on 7 June 2016 and 8 March 2022. Thereafter, the author submitted applications claiming impediments to the enforcement of

the expulsion orders and, on 17 October 2017, was granted a re-examination of his asylum application (see para. 4.2 above). The Committee also notes that the State Party does not dispute that all available domestic remedies have been exhausted by the author. Therefore, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

10.4 The Committee notes that the author has not presented to the Committee the protection claims as raised in his first application for asylum (namely, the risks posed by the Taliban). Instead, he has invoked the protection claims that he raised in October 2017, as the basis for his applications claiming impediments to the enforcement of his expulsion order. The Committee notes the author's claims that his removal to Afghanistan would amount to a violation of his rights under articles 6 and 7 of the Covenant, in particular due to his conversion to Christianity, homosexuality, mental ill-health and lack of protection and support network (see paras. 3.1, 3.2 and 5.2 above). It also notes his claim, raised during the proceedings relating to his second asylum application, that the risks that he would face if removed to Afghanistan increased in 2021 with the Taliban's seizure of power, and with the ongoing land dispute concerning his family (see para. 7.2 above). Furthermore, the Committee notes the author's claims that the migration authorities (namely, the Migration Court, during the appeal proceedings in January 2022) did not properly assess his claims in relation to the current context in Afghanistan and that the rejection of his second asylum application after the Taliban's seizure of power was a clear deficiency, amounting to a denial of justice, given that one element of the risks alleged during the most recent asylum proceedings related to the risks of persecution by the Taliban.

10.5 The Committee further notes the State Party's arguments that, in its assessments of the author's applications for asylum and claiming impediments to enforcement and the subsequent re-examination of his application for a residence permit, the migration authorities found that the author had used different identities before the authorities in Bulgaria, Austria and Sweden, that his real age had been questioned and re-assessed, that he had not left Sweden in line with the expulsion order, and that the grounds for protection as invoked before the Committee were invoked once the expulsion order against him had become final and enforceable (see para. 4.6 above). The migration authorities considered that the use of different identities had a negative effect on the author's general credibility, that the grounds cited by the author in his claims for protection had gradually evolved and that the author's statements, such as on his conversion to Christianity, homosexual relationships, the gravity of his mental ill-health and the tattoo of a cross on his forearm, had been found to be lacking in detail and partly based on general information, not supported by evidence, or lacking in credibility, as his motives had not been plausibly established. The Committee also notes the State Party's argument that the migration authorities concluded that the author's dissemination of information about his conversion in a video post or through outreach to the Embassy of Afghanistan and Afghan friends was not sufficient to have given rise to concrete threats against him, that he had not substantiated that any such threats had been made or that he had been identified as a Christian in Afghanistan, and that his stated homosexual relations had not been plausibly established, and the authorities of the country of origin were not aware of them (see paras. 4.9–4.11 above). Furthermore, the Committee notes that the migration authorities did not consider the author's alleged mental ill-health to be life-threatening and that the necessary treatment was still available in Afghanistan (see para. 4.13 above). The Committee also notes the State Party's argument that, as regards the author's stated need for protection due to the Taliban's seizure of power in 2021, the migration authorities considered the author's claims in the light of the prevailing situation in the country under Taliban rule and found that he had not plausibly demonstrated that information about his alleged profile as a convert and homosexual had been disseminated so widely after the Taliban's takeover that it would have reached the authorities in Afghanistan (see paras. 7.1 and 8.6 above).

10.6 The Committee recalls its general comment No. 31 (2004), in which it referred to the obligation of States Parties not to extradite, deport, expel or otherwise remove a person from their territory when there were substantial grounds for believing that there was a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.³⁰ The

³⁰ General comment No. 31 (2004), para. 12.

Committee has also indicated that the risk must be personal³¹ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists. All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.³² The Committee recalls that it is generally for the organs of States Parties to examine the facts and evidence of the case in question in order to determine whether such a risk exists,³³ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.³⁴ The Committee further recalls its jurisprudence that an author carries the burden of proof to support the allegations of a personal and real risk of irreparable harm if deported, including the obligation to submit evidence sufficiently in advance of the decisions of the national domestic authorities, unless the information could not have been presented before.³⁵

10.7 The Committee notes the author's main claims that he converted to Christianity after the expulsion order following the first application for asylum had become enforceable in 2016, and that he was baptized in 2017. He also claims to be openly gay. He did not refer to his conversion and homosexual relationships until three years after the initial asylum proceedings. The Committee, however, notes that the migration authorities found such claims to lack credibility, as the author had not substantiated the motivation for and process of his conversion, the reasons for spreading the news thereof and his claim that he had had genuine homosexual relationships of which the authorities were aware. Considering that the author's identity had not reliably been established during the proceedings, the migration authorities found that the author had not plausibly demonstrated that his conversion to Christianity was based on a genuine and personal religious conviction or that he would live as a Christian convert upon return to Afghanistan. The authorities also found that the author had failed to plausibly demonstrate, due to credibility gaps in his accounts, that he would face a foreseeable, personal and real risk of persecution or ill-treatment based on his stated sexual orientation. In the view of the migration authorities, the author had not plausibly demonstrated the existence of a real, personal and foreseeable risk of treatment contrary to articles 6 or 7 of the Covenant in the event of removal to Afghanistan.

10.8 The Committee further notes the author's claim that the persecution and killing of his father, uncles and brother by the Taliban, and the ongoing land dispute, would put him at risk if he was returned to Afghanistan, especially considering the Taliban's seizure of power in the country in the summer of 2021. It notes his claim that the migration authorities failed to examine these claims in relation to the current context in Afghanistan during the proceedings relating to his second asylum application. The Committee, however, notes that the author has not provided any specific information or evidence in this regard. It also notes the State Party's submission that the Migration Court, on 13 January 2022, and the Migration Court of Appeal, on 8 March 2022, found the facts and evidence produced by the author not to be sufficient to have given rise to concrete threats against him for reasons related to honour or from the Taliban and that he had not substantiated that any such threats had been made. It further notes the State Party's information that the Migration Court and the Migration Court of Appeal considered the author's claims in the context of the current situation in Afghanistan, but found that he had not plausibly demonstrated that the alleged persecution of the author's family had become public knowledge, that information about his profile would have reached the authorities in Afghanistan, or that he would be threatened for his assumed Western opinions in such a way that impediments to enforcement of the expulsion order issued following his second asylum application could be assumed to exist. The Committee notes

³¹ For example, *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3; *P.T. v. Denmark* (CCPR/C/113/D/2272/2013), para. 7.2; *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

³² For example, *X v. Denmark*, para. 9.2; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

³³ For example, *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), paras. 11.2 and 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

³⁴ For example, *K v. Denmark*, para. 7.4; *Y.A.A. and F.H.M. v. Denmark* (CCPR/C/119/D/2681/2015) para. 7.3; *Rezaifar et al. v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; *Q.A. v. Sweden*, para. 9.3; and *A.E. v. Sweden*, para. 9.3.

³⁵ For example, *I.K. v. Denmark* (CCPR/C/125/D/2373/2014), para. 9.7; *M.P. et al. v. Denmark* (CCPR/C/121/D/2643/2015), para. 8.7; *A.E. v. Sweden*, para. 9.7; *H.G. v. Sweden* (CCPR/C/132/D/3266/2018), para. 6.7; and *W.K.D. v. Sweden* (CCPR/C/143/D/2971/2017), para. 8.6.

that, while the author disagrees with the conclusion reached by the migration authorities, he has not provided any additional information on the impediment to enforcement applications made by him in this connection or the claims raised therein. The Committee thus considers, on the basis of the information on file, that the author has not substantiated that the conclusions of the domestic authorities were clearly arbitrary or amounted to a manifest error or denial of justice.

10.9 The Committee therefore concludes that the author has failed to substantiate, for purposes of admissibility, his claims under articles 6 and 7 of the Covenant and declares the communication inadmissible under article 2 of the Optional Protocol.

11. The Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
 - (b) That the present decision shall be transmitted to the State Party and to the author.
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