Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3032/2017*,**,***

Communication submitted by: J.I.
Alleged victim: The author (represented by counsel, Elin Edin)
State party: Sweden
Date of communication: 31 October 2017 (initial submission)
Document references: Decision taken pursuant to rule 92 of the Committee’s rules of procedure, transmitted to the State party on 2 November 2017 (not issued in a document form)
Date of adoption of Views: 13 March 2020
Subject matter: Deportation from Sweden to Afghanistan
Procedural issue: Level of substantiation of claims
Substantive issues: Risk of torture, cruel, inhuman or degrading treatment or punishment; non-refoulement
Articles of the Covenant: 6, 7 and 18
Article of the Optional Protocol: 2

1.1 The author of the communication is J.I., an Afghan national born in 1996. He claims that his deportation to Afghanistan by the State party would violate his rights under articles 6, 7 and 18 of the Covenant. The author is represented by counsel. The State party ratified the Optional Protocol on 8 January 1986.

1.2 On 2 November 2017, pursuant to rule 94 of the Committee’s rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from returning the author to Afghanistan while his case was under consideration by the Committee.

* Adopted by the Committee at its 128th session (2–13 March 2020).
** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamaram Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, José Manuel Santos Pais, Vasilka Sancin, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.
*** An individual opinion (dissenting) by Committee member Gentian Zyberi is annexed to the present Views.
The facts as submitted by the author

2.1 The author lived with his parents and older brother in the Nawur village of the Ghazni province in Afghanistan. His parents were Christians and practised their religion in secrecy at home. His father worked for the Provincial Reconstruction Team (PRT) and made sufficient earnings so that the family had some protection. The family had little contact with neighbours and had no relatives. On Easter, the author’s mother would give bread and fruits to two or three families who lived nearby. Inside the author’s house was a room for prayer, and the author’s father used to read the Bible. The family also had a cross and pictures of Maria and baby Jesus that were kept hidden. They would pray at every meal, thanking the lord for the food. The author’s father would say that Jesus was the saviour. The author and his brother did not go to school because schools were in mosques and local clergy did not allow them to study there because of their religion. The author and his brother spent most of their time at home helping with farming. They both carried small wooden crosses that their father had made for them.

2.2 Two days after his tenth birthday, the author was playing in the field with his brother when they heard screaming and a gunfire. They saw cars and armed people outside their house. The author believes that these people were affiliated with Taliban. After a while, the cars left, and the author and his brother returned to the house to find that their parents had been gone. They called their father’s colleague who used to give their father a ride to work every morning. The colleague took the brothers to Ghazni where a smuggler took them to Pakistan and then to Iran.

2.3 The author and his brother spent five years in Iran. They worked in a plastic factory in Tehran. The author’s brother had a car accident and lost one leg while in Iran. Due to their illegal status, they were afraid of being caught by the police. As they lived at the factory, they did not interact with any Christians. They, however, would pray and wear their crosses underneath their shirts. One day, the author’s supervisor saw his cross and slapped his face so hard that he hurt his ear. He still has a problem with that ear and had a surgery on it after arriving in Sweden. The author’s brother borrowed money from his employer to send the author to Sweden. The brother himself could not go because of his leg. A smuggler took the author to Turkey by car. After staying in Istanbul for six months, the author was put on a boat to Italy and subsequently driven in a car to Sweden.

2.4 On 29 August 2014, the author applied for asylum in Sweden. He was initially assigned a legal guardian and moved to a foster family in 2015. He regularly attended a local church, Bible studies and Christian camps and conferences. In August 2015, he was baptised during a “big camp”, which was attended by more than 200 people.

2.5 On 21 August 2015, the Migration Agency rejected the author’s asylum application, finding his account to be too brief, not detailed and contradictory. The Agency did not question that the author was going to church regularly in Sweden, but questioned whether his faith was genuine. The Agency concluded that the author’s accounts as to his Christian upbringing in Afghanistan and his wish to live a Christian life in Sweden were not credible.

2.6 On 11 November 2015, the Migration Court remitted the case to the Agency, as the Agency’s decision did not specify a country to which the author was to be expelled. On 30 December 2015, the Agency again rejected the author’s application. On 31 March 2016, the Migration Court denied the author’s appeal. On 19 May 2016, the Migration Court of Appeals rejected the author’s appeal. From this moment, the decision of the Migration Court has entered into force and all ordinary domestic remedies have been exhausted. The deadline for the author’s voluntary departure from Sweden was set for 16 September 2016. On 16 September 2016, the author left Sweden for Germany and tried to apply for asylum there. However, under the Dublin Regulation, Germany ordered the author’s return to Sweden on 21 September 2016.

2.7 On 12 December 2016, the author submitted an application to the Migration Agency, claiming impediments to enforcement of his expulsion. In support, the author enclosed his legal guardian’s personal statement, printouts of the author’s Facebook page containing Bible quotes and prayers, his pastor’s certification, and several articles about situations of unaccompanied Afghan minors in Sweden. On 23 December 2016, the Migration Agency
rejected this application. The Migration Court also rejected the author’s appeal on 15 June 2017, as it was submitted late.

2.8 On 10 July 2017, the author submitted a second application claiming impediments to enforcement, indicating that staff members of the Afghan Embassy in Stockholm had learned of his Christian faith. He also claimed that while in immigration detention, he had been hassled by other Afghan detainees and some staffs for his being openly Christian and that some of those detainees had already been deported to Afghanistan. On 12 July 2017, the Migration Agency rejected this application, finding that “his interest in the Christian faith” would not attract the interest of the Afghan authorities or private actors and that his religious affiliation was not genuine. The author’s appeal to the Migration Court was rejected on 20 July 2017. The Migration Court of Appeals also denied a review permit or leave to appeal.

The complaint

3.1 The author claims that his deportation to Afghanistan would amount to a violation by the State party of articles 6, 7 and 18 of the Covenant, because there is a real and substantiated risk of irreparable harm, even death, due to severe persecution of Christians in Afghanistan. He submits that, in Afghanistan, Christians and converts have been sentenced to long imprisonment for blasphemy, and members of the parliament even called for the execution of converts. Furthermore, because the author is Hazara and will thus be presumed to be Shia Muslim, he will be punished with death for apostasy. In this connection, he asserts that the migration authorities have failed to assess the risks associated with apostasy.

3.2 The author further contends that the Migration Agency erred in finding his accounts to be not credible because he could not “give an eloquent theological explanation” as to why he is a Christian. He emphasizes that he has not received any formal education and that certain statements during the asylum proceedings were incorrectly attributed to the author who was then found to be inconsistent. Also, the fact that Christians are persecuted in Afghanistan was used against him, as the Agency concluded that, because of such persecution, the author’s account of his parents having lived as Christians in Afghanistan was non-credible. Moreover, the Agency mistakenly demanded that the author demonstrate the “thought process that one can expect from a convert”, while the author in fact is not a convert, but was born into a Christian family.

State party’s observations on admissibility and the merits

4.1 On 2 March 2018, the State party submitted its observations on admissibility and the merits of the communication.

4.2 The State party submits that according to an official note by the Migration Agency, the author was “encountered” on 28 August 2014 in the city of Malmö, Sweden. He claimed to be an orphan born in 1999 in Afghanistan. He was registered as a minor and placed in special housing for children. On 29 August 2014, the author applied for asylum and was assigned a public counsel on 18 September 2014. During an interview on 28 September 2014, the author stated that he did not know exactly when he was born, but that he knew that he was 10 years old when he left Afghanistan. A medical age assessment conducted by the National Board of Forensic Medicine estimated his age to be 10 years old when he left Afghanistan.

4.3 The State party describes the procedural history concerning the author’s asylum application and subsequent appeals. It further explains that under the Dublin Regulation, the Agency accepted the transfer of the author from Germany on 3 October 2016. On 12 December 2016, the Agency decided to place the author under supervision¹, and he was placed in detention from 10 April 2017 to 14 July 2017.

4.4 With regard to the author’s application of 12 December 2016, the State party notes the claims therein that his Christian faith had been revealed in the media, as a Swedish public television broadcaster (SVT1) had broadcast four church services in which he participated.

¹ Chapter 10, Section 6 of the Aliens Act.
The author further claimed that he had written Christian texts on Facebook and, as a Hazara, he belonged to a particularly vulnerable group in Afghanistan. In this connection, the State party notes that re-examination of an asylum case may only be granted where it can be assumed, on the basis of “new circumstances”, that there are lasting impediments to the enforcement of an expulsion order\(^2\), and that these circumstances could not previously have been cited or the applicant otherwise provides a valid excuse for not having done so. In this regard, the Agency has a limited scope to take into account circumstances such as “frustrated hopes, anxiety about returning to the country of origin, or social or financial issues”.

4.5 On 23 December 2016, the Agency rejected the author’s application, finding that the author’s claims as to his Christian faith had already been examined. However, his statements about his appearance in the media were considered new. The Agency held that “to be attributed Christian religious beliefs in Afghanistan can result in persecution, although mainly from private actors, constituting a need for international protection”. It, however, concluded that the Afghan State has neither the capacity nor the interest to monitor its citizens’ actions abroad. Since no evidence indicated that anyone in Afghanistan had noted the author’s texts on Facebook or the Swedish television broadcasts, the Agency concluded that the author “had not plausibly demonstrated his need for protection due to attributed religious beliefs in Afghanistan”. Also, the mere fact of being a Hazara in Afghanistan does not in itself qualify as a ground for international protection.

4.6 On 3 July 2017, the author reported the Migration Agency and the Agency’s Director-General to the police for “improper exercise of public authority and obstructing the course of justice” for rejecting his asylum application. The prosecutor considered that it could not decide on the matter, which contained an appeal of the Migration Agency’s decision and a request for immediate release from detention, and sent the report to the Agency. The Agency interpreted this report as a notification of impediments to the enforcement of the expulsion order and rejected it on 5 July 2017.

4.7 The author lodged a new application to the Agency on 10 July 2017 and claimed impediments to the enforcement of his expulsion order (para. 2.8). In the application, he claimed that prior to his detention, he had attended a Bible course and actively participated in the congregation’s activities. He also submitted that conversion was punishable by death according to Afghan law and that the Afghan State actively sought and prosecuted people who blaspheme against Islam. The Agency rejected this application on 12 July 2017, finding that the author had not plausibly demonstrated that his conversion was out of genuine personal religious conviction. Also, the Agency found no evidence indicating that his conversion had come to the attention of the Afghan public. Regarding the new claim about the Embassy’s knowledge about the author, the Agency noted that no supporting evidence had been presented. Nor did he substantiate his claim of harassment at the detention centre. Accordingly, the Agency concluded that the cited new circumstances did not provide reasonable grounds for believing that the author had attracted the interest of the Afghan authorities or individuals in such a way that he would risk persecution upon his return.

4.8 As concerns the author’s claim that the Agency held that the author had not proven that individuals are persecuted for blasphemy in Afghanistan, the State party asserts that the Agency has made no such or similar findings in its decision. Also, the State party submits that it was the author who initially raised claims of conversion and that the author’s counsel repeatedly argued in the asylum application that the author’s conversion would put him at risk if returned to Afghanistan. Several of those references to conversion have been omitted from the author’s English translation of the asylum application.

4.9 On 20 July 2017, the Migration Court rejected the author’s appeal, holding that his claims were “supplements” to what he had previously stated about Christianity. Furthermore, even if staff members of the Afghan Embassy had been made aware of the author’s belief, this was not sufficient to constitute a need for international protection as “there was no support in available country of origin reports for the idea that the Afghan authorities would contribute to such active persecution”.

\(^2\) Chapter 12, Sections 1-3 of the Aliens Act.
4.10 As to the admissibility, the State party submits that the communication is not sufficiently substantiated, manifestly unfounded and thus inadmissible pursuant to article 3 of the Optional Protocol and rule 96(b) of the Committee’s rules of procedure. As regards the author’s claim under article 18, the State party contends that, unlike articles 6 and 7, article 18 does not have extraterritorial application. It submits that this part of the communication should therefore be declared inadmissible 

4.11 With regard to the alleged violation of article 6 and 7 of the Covenant, the State party notes that when determining whether the expulsion of the author to Afghanistan constitutes a breach of articles 6 or 7 of the Covenant, the following considerations are relevant: the general human rights situation in Afghanistan and, in particular, and the personal, foreseeable and real risk of breach of article 6 or 7 of the Covenant that the author would be subjected to following his return to Afghanistan. The State party also notes that considerable weight should be given to the assessment conducted by the State party, as it is generally for the domestic authorities to directly 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.

4.12 As to the general human rights situation in Afghanistan, the State party notes that Afghanistan is a party to the Covenant, as well as to the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment. It also refers to the Migration Agency’s new legal position paper on Afghanistan indicating that even though the security situation in the country has deteriorated, there is still great variation in the intensity of the conflict in different locations. The State party submits that while it does not wish to underestimate the concerns with respect to the current situation in Afghanistan, a general situation does not in itself suffice to establish that the author’s expulsion would contravene articles 6 and 7 of the Covenant. The assessment before the Committee must thus focus on the foreseeable consequences of the author’s expulsion to Afghanistan in the light of his personal circumstances.

4.13 The State party submits that the author has failed to substantiate his claim that he would run a personal and real risk of being subjected to treatment in violation of articles 6 and 7 of the Covenant in Afghanistan. The State party points out that several provisions in the Swedish Aliens Act reflect the same principles as those laid down in articles 6(1) and 7 of the Covenant. Thus, the Swedish migration authorities apply similar test when considering an application for asylum under the Aliens Act as the Committee when examining a complaint under the Covenant.

4.14 The Migration Agency conducted several interviews with the author in presence of a public counsel and interpreters. Therefore, the author had several 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 Migration Agency, and in writing before the Migration Court.

4.15 Against this backdrop, the State party holds that it must be considered that the Migration Agency and the Migration Court had sufficient information, together with the facts and evidence in regard to the present case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk-assessment concerning the author’s case. Also in view of the fact that the Migration Agency and the migration courts are specialised bodies with particular expertise in the field of asylum law and practice, the State party contends that there is no reason to conclude that the national rulings were inadequate or were in any way arbitrary or amounted to a denial of justice. Accordingly, the State party holds that considerable weight must be attached to the opinions of the Swedish migration authorities.

4.16 As regards the author’s claims that he risks persecution as he is a Hazara, the State party refers to country information indicating that the Shia and Hazara ethnic minorities are essentially one and the same group in Afghanistan and that the Taliban has referred to them as “brothers”. The State party further notes that “discriminatory intent based upon ethnicity or religion was not documented among the motives for the many instances of targeting the

3 J.D. v. Denmark (CCPR/C/118/D/2204/2012), para. 10.7.
Hazara”. While discrimination against Hazaras persists, “Sunni versus Shia discrimination is on the decline and confined to ‘some localities’”. In light of the foregoing, the State party’s authorities found that the general situation for Hazaras did not in itself suffice to establish a need for international protection.

4.17 The State party accepts that Christians in Afghanistan and those returning there are generally at risk of facing persecution because of their beliefs. It, however, notes that the asylum seeker must substantiate that “he or she belongs to a group that is at risk of persecution because of religious beliefs”. The State party also submits that the author’s Christian faith must be based on genuine conviction. Having conducted extensive interviews with the author, the State party’s authorities found his accounts to be non-credible or unreliable. In particular, the Migration Agency noted the author’s statement that his Christian parents had “not really taught their children about Christianity or what it meant to be a Christian”. In light of “how unusual Christianity is in Afghanistan and the considerable pressure on Christians”, the Agency considered that the author’s family must have lived under unusual and difficult circumstances and that only the most devout and genuine believers would take such risks of living as Christians in Afghanistan. It thus found it “strange” that the author’s parents had not told him more about Christianity. Furthermore, his responses to the questions about his Christian life in Afghanistan were found to be very brief and lacking in detail. While noting his young age at that time, the Agency considered that he, as a young adult, should be able to explain more about this upbringing “based on his own perspective today”. The Agency further observed that the author failed to explain anything about his thoughts or feelings regarding “how it was to be different from other children in the area”.

4.18 Furthermore, the State party notes the author’s statement that he had no knowledge of Christianity during his time in Afghanistan or when he and his brother went to Iran. The author also stated that he had obtained knowledge about Christianity by watching a film about Jesus at his workplace in Iran. The Agency found this account implausible, given the “status of Islam in Iran”. It also considered that the author failed to “describe in a detailed and authentic way” what drew him to Christianity and why he decided to explore the religion in Sweden. In this connection, the Agency took note of the author’s statement that he had left Iran to “obtain a future and education”. Furthermore, the author’s claim that his parents died because of their religion was deemed speculative, as he was not able to explain how he had obtained this information and he had never received any confirmation of their deaths.

4.19 In addition, the State party notes that the author’s claim that the Migration Court’s decision had been erroneous were not raised in his appeal to the Migration Court of Appeals. In his appeal, he only argued that the Migration Court’s decision contained misunderstandings and errors without specifying what they were.

4.20 In conclusion, the State party notes that during the domestic asylum proceedings, the author’s accounts were considered to be far too brief, lacking in detail and contradictory to be deemed a personal experience. Neither his account of upbringing as a Christian in Afghanistan nor of wanting to live as a Christian in Sweden was considered reliable. The State party concludes that the author has failed to substantiate that his faith is based on genuine personal religious conviction or that, upon return to Afghanistan, he intends to practice Christianity. The State party therefore considers that the author’s deportation would not constitute a violation of its obligations under articles 6 and 7 of the Covenant.

Author’s comments on the State party’s observations

5.1 On 15 October 2018, the author submitted his comments on the State party’s observations.

5.2 With regard to his claim under article 18, he concedes that “article 18 does not have extraterritorial application”, but he maintains his claims under articles 6 and 7.

5.3 The author reiterates that no new hearing was granted after the exhaustion of ordinary remedies and that thus he never had a chance to “orally substantiate all the written evidence about his active Christian life in Sweden”. While he was born into a Christian family, he did not at first have in-depth knowledge and his faith was that of a child. However, the fact that his faith has evolved in Sweden and that his active Christian life exposes him to a risk of being perceived as an apostate have never been assessed by the migration authorities.
Moreover, while his religious congregation was willing to testify for him, the migration authorities have not granted such opportunity.

5.4 The author argues that the requirement to invoke new circumstances under chapter 12 of the Aliens Act is problematic, as it is often interpreted in a way that the circumstances cannot be related to the original asylum grounds. The migration authorities seem to interpret “new circumstances” as “new grounds”, thereby preventing asylum applicants from having their new claims assessed. The State party has been criticized for this practice, to no avail. In this regard, the author claims that his three years of active participation in church activities and religious practice were considered as a mere modification of his original asylum ground and thus disregarded.

5.5 As concerns his assertion in his asylum application that he was a convert, the author contends that his then-counsel submitted such a claim without his knowledge. He further claims that regardless of being a convert or a “born-Christian”, he would face a risk of persecution if returned to Afghanistan. In addition, he points out that the interpreters have noticed that his and his brother’s names were Christian names. He also asserts that the migration authorities acted arbitrarily when finding that no one could have lived as a Christian in Ghazni, although the Migration Agency has previously granted refugee status to other Afghans from this district based on their Christian faith. Regarding the State party’s statement that his conversion is unknown to the Afghan authorities, the author claims that the Swedish authorities should not request evidence as to whether the Afghan authorities are aware of his conversion or demand that he hide his religion in Afghanistan.

5.6 Regarding the “Christianity tests” conducted by the Swedish authorities, the author cites criticisms expressed by some Swedish lawyers and churches finding the tests “irrelevant” and “far too complicated” and considering the migration authorities to be “religious illiterate”. Furthermore, he claims that the authorities ignored that he had created, as a self-defence mechanism, a certain emotional distance to his accounts about his parents, which bring him a traumatic memory. He submits that “his religion is deeply connected to his love and longing for his parents and he feels that he lost them because of them being Christian and that his religion is all that he has left from his parents”. He contends that the authorities failed to take into account this emotional and psychological aspect when assessing his asylum claim. Regarding the negative credibility finding based on his claim to have gained Christian knowledge from watching a film in Iran, the author contends that there are many ethnic and religious minorities in Iran and that the Iranian regime does not have any issue with Christianity. Lastly, the author states that during one of his asylum interviews, he hardly understood the interpreter who spoke a different dialect from his own.

5.7 The author submits that having a strong social network, support system and “cultural competence” is crucial in Afghanistan, but he does not have any family or relative. He has an accent from which Afghans can tell that he has lived abroad, and his non-participation in Muslim traditions will eventually reveal his Christianity. Also, the human rights situation in his hometown, Ghazni, has deteriorated, as the Taliban control many parts of the city. The author considers that the State party is “naïve” to believe the Taliban’s statement that hazaras are their brothers. In view of the foregoing, the author claims that he would face a serious risk of persecution upon return.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 97 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

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

6.3 The Committee notes the author’s claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that
connection, the Committee considers that it is not precluded from examining the communication under article 5 (2)(b) of the Optional Protocol.

6.4 Notwithstanding the State party’s contention that article 18 does not have extraterritorial application, the Committee notes that the author merely invokes article 18 of the Covenant without advancing any arguments to support this claim. Therefore, the Committee considers that this claim is insufficiently substantiated for the purposes of admissibility. Accordingly, it declares this part of the communication inadmissible under article 2 of the Optional Protocol.4

6.5 The Committee notes the State party’s challenge to admissibility on the grounds that the author’s claim under articles 6 and 7 of the Covenant is unsubstantiated. However, the Committee considers that, for the purposes of admissibility, the author has provided sufficient information in support of this claim that his deportation to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. Therefore, the Committee declares the communication admissible insofar as it raises issues under articles 6 and 7 and proceeds to its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information submitted by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author’s claim that returning him to Afghanistan would expose him to a real risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. He claims that in Afghanistan, he would face persecution potentially life threatening due to his particular vulnerability related to his Christian faith, which is publicized through social media, and his Hazara ethnicity, aggravated by the fact that he left Afghanistan at the age of ten and does not have any family or network in the country while the security situation is seriously worsening.

7.3 The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant.5 The Committee has also indicated that the risk must be personal6 and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.7 Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author’s country of origin.8 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,9 unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.10

7.4 In the present case, the Committee notes that the State party’s authorities considered that the author’s accounts regarding his Christian parents, upbring and faith were non-credible and that he thus failed to substantiate that his conviction was genuine, despite the certificate of baptism and the letters of support from a Christian pastor. The Committee also notes the authorities’ conclusion that he thus failed to substantiate that, in Afghanistan, he would face persecution by the Afghan authorities because of his Christianity. In this connection, the Committee notes the author’s view that the assessment of his claim regarding

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4 The Committee also notes that the author did not maintain his claim in regard to article 18 as it concedes the State party’s claim ratione materiae.
5 Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.
7 X v. Sweden (CCPR/C/103/D/1833/2008), para. 5.18.
8 Ibid. See also X v. Denmark, para. 9.2.
10 See, for example, K v. Denmark, para. 7.4.
his Christianity was arbitrary, as the authorities disregarded the facts that, although he was born into a Christian family, he was a child when he lost his parents and that his faith was therefore that of a child, which has further evolved after his arrival in Sweden. In this regard, the Committee notes that the State party’s authorities found that the author had failed to describe in a detailed and convincing manner how he had learned about Christianity in Iran, and why he had decided to further explore Christianity upon his arrival in Sweden. The Committee also observes that the State party’s authorities noted the author’s statement that he had left Iran to “obtain a future and education”.

7.5 The Committee considers that, in any event, as concerns an asylum seeker’s claim of conversion or religious conviction, the test is whether, regardless of the sincerity of the conversion or conviction, there are substantial grounds for believing that such conversion, or conviction, may have serious adverse consequences in the country of origin such as to create a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant. Therefore, even when it is found that the reported conversion or conviction is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the asylum seeker’s behaviour and activities in connection with his or her conversion or conviction, could have serious adverse consequences in the country of origin so as to put him or her at risk of irreparable harm.11

7.6 In the present case, the Committee notes the finding of the Migration Agency that, while claiming a risk of harm in Afghanistan because of his Christian faith, the author failed to present sufficient evidence to substantiate his claim that his faith had drawn the attention of the Afghan authorities through his texts on social networks, appearance in the Swedish media, the staffs of the Afghan embassy in Stockholm and other Afghan detainees in the migration detention centre. The Committee also finds that although the author contests the assessment and findings of the Swedish authorities, he has not presented any evidence to the Committee to substantiate his claim that he has ever been targeted by the Afghan authorities on the basis of his Christianity, or that his alleged Christianity is indeed known to the Afghan authorities.

7.7 The Committee considers that the information at its disposal demonstrates that the State party took into account all the elements available when evaluating the risk of irreparable harm faced by the author upon his return to Afghanistan. The Committee also considers that, while the author disagrees with the factual conclusions of the State party’s authorities, he has not shown that the Migration Agency’s decision of 30 December 2015 was arbitrary or manifestly erroneous, or amounted to a denial of justice.

7.8 The Committee recalls that the obligation not to remove an individual contrary to a State party’s obligations under the Covenant applies at the time of removal and that, in cases of imminent deportation, the material point in time for assessing this issue must be that of its own consideration of the case.12 Accordingly, in the context of the communications procedure under the Optional Protocol, in assessing the facts submitted by the parties for consideration, the Committee must also take into account new developments that may have an impact on the risks that an author subject to removal may face. In the present case, the information in the public domain has signalled a significant deterioration of the situation in Afghanistan in recent times.13 However, on the basis of the information in the case file, the Committee is not in a position to assess the extent to which the current situation in his country of origin may impact the author’s personal risk. In this context, the Committee recalls that it remains the responsibility of the State party to continuously assess the risk that any individual would face in case of return to another country before the State takes any final action regarding his or her deportation or removal.

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12 See, for example, S.Z. v. Denmark, para. 7.9.
7.9 While not underestimating the concerns that may legitimately be expressed with respect to the general human rights situation in Afghanistan, and without prejudice to the continuing responsibility of the State party to take into account the present situation of the country to which the author would be deported, the Committee considers that the evidence and circumstances invoked by the author have not adduced sufficient grounds for demonstrating that he would face a real and personal risk of treatment contrary to articles 6 and 7 of the Covenant if returned to Afghanistan.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author’s forcible return to Afghanistan would not violate his rights under articles 6 and 7 of the Covenant.
Annex I

Individual opinion of Gentian Zyberi (dissenting)

1. I regret I cannot join the Committee in its assessment for the following reasons. First, although most cases brought before the Committee by Afghan nationals involve their conversion to Christianity after their departure, as a reason for their potential persecution and risk upon return, in this case the author claims he was raised as Christian since childhood in Afghanistan. Second, the application of the “genuine conversion” test presents significant challenges, as it is generally very difficult to assess whether a person is genuinely interested in the activity in question, be it a political cause or a religion, or whether the person has only become involved in it in order to create post-flight grounds.\(^\text{14}\) This is even more so in this case. Third, the Hazaras have been persecuted by the Taliban in 1996-2001,\(^\text{15}\) and the Taliban are likely to return to power in Afghanistan.\(^\text{16}\) These above are aggravating factors to the possibility of real and foreseeable risk of irreparable harm to the author being inflicted by a prominent non-State actor and soon to-be State authority. As a real or perceived Christian Hazara, the author cannot count on protection either from the State authorities, or from his own Hazara community. Fourth, the case involves a young adult, with little if any formal education, with no family or network in Afghanistan, since he lived most of his life outside Afghanistan, as a Christian, and from the Ghazni province where the security situation is rather precarious.\(^\text{17}\) The combination of these personal circumstances increases the likelihood of violation of Articles 6 and 7 of the Covenant with respect to the author, if he were returned.

2. In asylum procedures, the burden of proof lies on the person submitting a claim.\(^\text{18}\) However, after the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements.\(^\text{19}\) Since it is hardly possible for a refugee to “prove” every part of his case, it is therefore frequently necessary to give the applicant the benefit of the doubt.\(^\text{20}\) It is an understatement to say that the accounts of the author and the relevant Swedish authorities differ widely (see para. 7.4). How an Afghan national that had fled the country as a minor could prove his age and identity and what happened to his parents? And should the Swedish authorities, better placed and resourced with access to Afghan authorities, have tried to establish these basic facts? The author’s father worked for the Provincial Reconstruction Team (PRT). These were civil-military units introduced by the US government to support reconstruction efforts in unstable states, which were established in Afghanistan in early 2002. Could other reasonable inferences have been drawn from these facts regarding the family’s religious conviction, as well as the reasons for the targeting of the author’s family by the Taliban? The practice of medical establishment of the age carried out by the National Board of Forensic Medicine has been later discontinued. Moreover, its report on the author also notes that there was a 16 percent chance he was 16 years old.

3. It is not contested that Christians or converts who return to Afghanistan run a real risk of persecution and punishment including death penalty under the Afghan legal system, and that the security situation in Afghanistan has seriously deteriorated.\(^\text{21}\) Also, it is not contested

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\(^{14}\) European Court of Human Rights, \textit{F.G v. Sweden} (application no. 43611/11), Judgment of 23 March 2016 (Grand Chamber), para. 123.

\(^{15}\) For the persecution of the Hazaras see the Landinfo report, Hazaras and Afghan insurgent groups (3 October 2016), p.11, stating that “Hazaras and other ethnic groups suffered serious abuse under the reign of the Taliban from 1996 to 2001.”

\(^{16}\) For the potential foreseeable return of the Taliban to power in Afghanistan reference is made to the agreement between the US government and the Taliban, signed in Doha, Qatar, on 29 February 2020.


\(^{19}\) Ibid., para. 203.

\(^{20}\) Ibid.

that the Hazaras in Afghanistan are subjected to discrimination and occasionally subjected to targeted attacks and that persons who have no network in or knowledge of the country would be in a vulnerable position. The author falls in all of these vulnerable categories. Considering the aforementioned facts with the circumstances in which the author has openly expressed his Christian faith on social networks and was exposed to national Swedish media while participating in church services, and the staff of the Afghan Embassy in Stockholm are aware of his Christian faith, it is highly possible his identity and Christianity would come to the attention of Afghan authorities and individuals. In my view, the author’s vulnerability profiles combined with other multiple risk-enhancing circumstances would have serious adverse consequences in the country of origin so as to put him at risk of irreparable harm. In this case the migration authorities seem to have assessed each ground for protection the author alleged separately, but did not consider that the combined grounds aggravate the risk of the author even though he has multiple vulnerability profiles.

4. States parties should give sufficient weight to the real and personal risk that a person might face if deported, and it is incumbent upon the concerned State party to undertake an individualised assessment of the risk that the author with multi-faceted vulnerability would face in Afghanistan. The risk the author would face if returned to Afghanistan is exacerbated by the fact that he has no family or relatives in that country which he has not visited since he left there at the age of ten.

5. In view of the above, the Swedish authorities have failed to adequately assess the author’s real, personal and foreseeable risk of returning to Afghanistan as a perceived Christian with additional risk-enhancing factors and to take into due consideration the consequences of the author’s personal situation in his country of origin. Hence, the author’s removal to Afghanistan would, if implemented, violate his rights under articles 6 and 7 of the Covenant.

“Conversion from Islam to another religion is considered apostasy, which is punishable by death, imprisonment, or confiscation of property according to the Sunni Islam’s Hanafi school of jurisprudence. There were no reports of government prosecutions for blasphemy or apostasy during the year, but converts from Islam to other religions reported they continued to fear punishment from the government as well as reprisals from family and society”.

23 Ibid, para. 9.7.