



International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under the Optional Protocol, concerning communication No. 3069/2015*, **, ***

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| <i>Communication submitted by:</i> | B.B. (represented by counsel, Elin Edin) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Sweden |
| <i>Date of communication:</i> | 11 December 2017 (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 15 December 2017 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 16 March 2021 |
| <i>Subject matter:</i> | Deportation to Afghanistan |
| <i>Procedural issue:</i> | Level of substantiation of claims |
| <i>Substantive issues:</i> | Right to life; risk of torture and other cruel, inhuman or degrading treatment or punishment upon return to country of origin; prohibition of refoulement |
| <i>Articles of the Covenant:</i> | 6 and 7 |
| <i>Articles of the Optional Protocol:</i> | 2 and 5 (2) (a) |

1.1 The author of the communication is B.B., a national of Afghanistan and an ethnic Hazara, born on 24 September 1999. He claims that his deportation to Afghanistan by the State party would violate his rights under articles 6 and 7 of the Covenant. The Optional Protocol entered into force for Sweden on 23 March 1976. The author is represented by counsel.

1.2 On 11 December 2017, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from deporting the author to Afghanistan while his case was under consideration by the Committee. On 11 December 2017, the State party suspended

* Adopted by the Committee at its 131st session (1–26 March 2021).

** The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Wafaa Ashraf Moharram Bassim, Mahjoub El Haiba, Furuya Shuichi, Marcia Kran, Kobauyah Tchamdja Kpatcha, Duncan Laki Muhumuza, Carlos Gomez Martinez, Photini Pazartzis, Hernán Quezada, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Hélène Tigroudja, Imeru Tamerat Yigezu and Gentian Zyberi.

*** Individual opinions by Committee members Vasilka Sancin and Photini Pazartzis (dissenting) and Furuya Shuichi (dissenting) are annexed to the present Views.



the enforcement of the author's deportation order until further notice, and released the author from detention.¹

Factual background

2.1 The author was born in the Islamic Republic of Iran after his parents moved there from Mazar-e-Sharif in Afghanistan. The author grew up in Mashad, Islamic Republic of Iran, with his family.²

2.2 On 11 September 2015, the author applied for asylum in Sweden as an unaccompanied minor.³ He alleged that he would risk suffering violence by the Taliban and Islamic State in Iraq and the Levant (ISIL) because he is a Shia Muslim, or forcibly being recruited by ISIL if returned to Afghanistan. On 14 September 2015, during an introductory interview, the author stated that, if granted a residence permit, he would like to bring his parents and siblings from the Islamic Republic of Iran to Sweden.

2.3 On 7 November 2015, the author's parents and his younger brother also applied for asylum in Sweden. On 2 June 2016, the author went through another oral interview on the understanding that on that date he could no longer be considered an unaccompanied minor as he had been reunited with his family. On 1 July 2016, before any decision was taken by the Migration Board, the parents withdrew their asylum applications because they wanted to return to Afghanistan to care for the author's grandfather. The Migration Board struck out the parents' asylum application.

2.4 On 15 July 2016, the asylum applications of the author and his brother were rejected by the Migration Board. As they did not have any identity documents, the Migration Board took Mazar-e-Sharif in Afghanistan, where the parents of the author were originally from, as their place of origin. The Migration Board found that it was unlikely that the author and his brother would be recruited by ISIL upon their return, in view of the fact that there was no evidence of the presence of ISIL in that region and that it usually recruited ideologically motivated people. The Migration Board also found that bearing in mind the author's and his brother's health, development and best interests in general, they should not be separated from their parents, who had expressed their wish to return to Afghanistan. The decision was appealed to the Migration Court.

2.5 On 23 September 2016, the parents stated before the Migration Board that they would like to return to Afghanistan without their children, since the children would have a better life in Sweden and they had a friend there who was willing to adopt them. When the author's brother was left alone in the room with the case officer, he stated that he did not want to return to Afghanistan with his parents and then confirmed that his father had beaten both his brother and him. Against this background, the Migration Board filed a report to Social Services expressing concern for the children.

2.6 On 1 February 2017, the Migration Court rejected the appeal of the author. On 9 March 2017, the Migration Court of Appeal refused leave to appeal, and the decision to expel the author became final.

2.7 On an unspecified day, the author's father beat him severely with an electric cable. The author reported the abuse to the police and he and his brother were separated from their parents and brought to a centre for refugee children. After around a week, they were sent back to live with their parents, who blamed them for reporting the assault to the police and abused them both verbally and physically. On 30 March 2017, the district court of Ångermanland sentenced the author's father to four months' imprisonment and to paying compensation to the author and his brother for repeated physical abuse between 1 November 2015 and 18 October 2016.⁴ The author's mother was also convicted for minor assault on the boys but was only given a fine.

¹ The author is still in Sweden according to the information in the file.

² There is no evidence that the author had any residence permits in the Islamic Republic of Iran.

³ When he applied for asylum he was 15 years old.

⁴ He was sentenced for six instances of minor assault against the author's brother and one instance of assault against the author.

2.8 In April 2017, before the prison sentence was enforced, the author's parents disappeared from their home.⁵ When the author came back from school, he found a letter in which his father disowned him and his brother and promised to kill him when he returned to Afghanistan to punish him for reporting his abuse to the police and for the ensuing conviction. The author was considered an unaccompanied minor and placed in a children's home.

2.9 The author's legal guardian submitted on his behalf an application of impediment to enforcement of his expulsion order.⁶ It requested that the author be granted a resident's permit or a re-examination of his asylum case based on the developments in the author's situation after the expulsion order became final, i.e. that his parents had travelled to Afghanistan, he was now in Sweden alone with his brother and that he had received a threatening letter from his father who wrote that he would kill him if he travelled to Afghanistan.

2.10 On 7 July 2017, the Migration Board rejected the application for a resident's permit or re-examination of the author's case. The Migration Board noted that the disappearance of the author's parents was a new circumstance that had not been previously examined, but there was no evidence in support of the author's claims that his parents had actually left Sweden to go to Afghanistan. The Board held that the threatening letter could not have evidential value as it was a simple handwritten message with no indication of when, how, from whom, or why the author had received it. The translation service used by the Migration Board noted that the letter could not be properly translated, as it was incomprehensible. The information which the author himself has provided about the content of the document is scarce, unclear and vaguely formulated. The Migration Board therefore concluded that there were reasons to believe that the author's parents were deliberately hiding so that the author would be once again considered an unaccompanied minor and treated as such. Furthermore, it held that even though the whereabouts of the author's parents were unknown, it had been established that the author had other relatives in Afghanistan.⁷ Accordingly, the Board concluded that there was no practical impediment to the enforcement of the expulsion order against the author.

2.11 The decision was appealed to the Migration Court. In support of the claimed threat against him from his father, the author submitted the judgment of 30 March 2017 of the district court of Ångermanland, in which his parents were convicted of assault on him and his brother.⁸ On 21 July 2017, the court rejected the author's plea for inhibition of the enforcement of the expulsion order and an oral hearing. On 9 August 2017, the court rejected the appeal.⁹ The author again appealed the decision to the Migration Court of Appeal which rejected the request for leave to appeal on 19 September 2017.

2.12 On 25 September 2017, the Migration Board decided to hand over the enforcement of the expulsion order to the police authority. On the same day, the police authority detained the author, since they assumed that he otherwise might go into hiding or pursue criminal activities in Sweden.¹⁰ On 2 October 2017, the author was indicted for a minor drug offence.¹¹ At the request of the police authority, on 6 October 2017 the Migration Board examined the current security situation in Afghanistan and concluded that it could not be deemed an impediment to the enforcement of the expulsion order against the author.

⁵ The author believes that his parents fled to Afghanistan, as they had been saying they would, to evade the father's prison sentence. The current whereabouts of the parents of the author are not clear according to the information on file.

⁶ See chapter 12, sections 18–19 of the Swedish Aliens Act.

⁷ The Board emphasized that a decision to expel an unaccompanied minor may not be enforced unless the enforcing authority has ensured that the child will be received by a family member, a designated guardian or an organization well-suited to care for children.

⁸ See para. 2.7.

⁹ "The court concurs with the Migration Board regarding the limited evidential value of the letter and notes that nothing appears in the criminal court verdict to lead anyone to suppose that the complainant runs any risks mentioned in chapter 12, section 1 of the Aliens Act, or that such risks exist regarding chapter 12, section 2 and 3 of the Act."

¹⁰ See para. 4.11.

¹¹ The author received a summary imposition of a fine on the charge of this drug offence. He has not been convicted for any other offence in Sweden.

2.13 On 22 October 2017, the author was baptized while he was in detention.¹² On 25 October 2017, the author again claimed before the Migration Board impediments to the enforcement of the expulsion order and requested a re-examination of his case, as he had converted from Islam to Christianity. On 26 October 2017, the Migration Board decided to reject his application owing to the fact that he had not raised issues relating to his alleged Christian faith earlier, even though he had had a chance to do so in the Migration Court before 9 August 2017, and therefore his claims regarding his conversion to Christianity were not deemed credible.¹³ On 17 November 2017, the Migration Court rejected the appeal as it also found the information provided by the author about his conversion not credible.¹⁴ On 4 December 2017, the Migration Court of Appeal denied the request for leave to appeal.

Complaint

3.1 The author submits that his deportation to Afghanistan would constitute a violation of his rights under articles 6 and 7 of the Covenant. He claims he will be persecuted by his father, the Afghan authorities and the general population because of his renegation of Islam and conversion to Christianity, which is punishable by death under Afghan law.¹⁵ The author contends that according to the vengeful Afghan culture, the fact that he reported his father to the police damaged his father's honour, which can only be restored through the author's death. His father must therefore kill him to restore his lost honour.¹⁶

3.2 The author notes that there has been no adequate examination of his conversion by the Migration Board and thus there has been no opportunity for him to demonstrate to the deciding authorities the genuine nature of his change of faith. He claims a failure of the principle of due diligence on the part of the State party and that an oral hearing for asylum claims on the basis of religion must be held to discharge the State party's positive obligations under international law. He also notes that the assessment of the Migration Board about the delay in invoking his conversion to the Christian faith in the asylum process displays a lack of understanding of the psychological and emotional background of the author as a young person with a long history of abuse and fear of his parents.¹⁷

3.3 In that connection, the author puts forward a number of factors of vulnerability: he is a young man who is a victim of domestic violence, with absolutely no social and linguistic ties to Afghanistan since he was born and grew up in the Islamic Republic of Iran, he is of Hazara ethnic origin and he has converted to Christianity. All those elements would make it difficult for him to be integrated into Afghan society and increase the risk of trafficking, forced recruitment by the Taliban, involvement in the drug trade and so on. He claims that

¹² The author alleges that in 2016, he started dating a Christian girl who took him to church many times, where he felt at peace and connected to Jesus. He started to view Islam as a cause of war, while he was touched by evangelical messages of love and forgiveness. The author also alleges that he associates Islam with his abusive father, as he was afraid of Allah as someone cruel, like his father. The author explains that he was initially afraid to get baptized for fear of his parents but when he was informed by the police that his parents had left Sweden, he felt safe enough to get baptized.

¹³ There was no oral hearing on his conversion to the Christian faith.

¹⁴ The Migration Court concurred with the reasoning of the Board and also noted that the judgment in the conviction of the author's father did not reveal any motive for the assault, thus the document does not support the author's claim that his father threatened him on religious grounds. It also found that the threatening letter of the author's father had been examined in the previous proceedings and was thus not a new circumstance.

¹⁵ The author refers to country reports stating that it is not possible to live openly as a Christian convert in Afghanistan. The author also notes that his conversion is known about in Afghanistan.

¹⁶ The author refers to the report, by the Country of Origin Information Centre (Landinfo), "Afghanistan: blood feuds, traditional law (pashtunwali) and traditional conflict resolution" (2011), which describes the honour and revenge culture of Afghanistan. It also states that 80 per cent of all murders in Afghanistan are connected to revenge, which is strongly linked to honour, and that failure to take revenge is perceived as a sign of moral weakness.

¹⁷ The author submits that his father, a very religious Shia Muslim, had always pressured him to follow Islam since they had lived in the Islamic Republic of Iran. The author was physically abused and beaten by his father whenever he questioned Islamic religious doctrines and practice. The author alleges that he has a panic attack with a strong feeling of fear of his father when he thinks about his return to Afghanistan.

these elements were not adequately examined and assessed during his asylum proceedings. He also adds that since he fears his parents, it is difficult for him to request a *tazkira*, an identity document necessary for life in Afghanistan.

3.4 The author submits that he has exhausted domestic remedies.

State party's observations on admissibility and the merits

4.1 In a note verbale of 11 June 2018, the State party submitted its observations on the admissibility and merits of the communication.

4.2 In regard to the admissibility of the communication under article 5 (2) (a) of the Optional Protocol and rule 99 (e) of the Committee's rules of procedure, the State party submits that it is not aware whether the present communication is being or has been examined under another procedure of international investigation or settlement.

4.3 The State party notes it does not contest the admissibility in regard to article 5 (2) (b) of the Optional Protocol and rule 99 (f) of the Committee's rules of procedure.

4.4 The State party maintains that the author's assertion that he runs the risk of being treated in a manner that would amount to a breach of the Covenant failed to attain the basic level of substantiation required for the purpose of admissibility. The communication is thus inadmissible pursuant to article 3 of the Optional Protocol and rule 99 (b) of the Committee's rules of procedure.

4.5 In regard to the alleged violation of articles 6 and 7 of the Covenant, the State party notes that a forced return to the country of origin may constitute a breach of articles 6 or 7 of the Covenant where there are substantial grounds for believing that there is a real risk of irreparable harm, but that the real risk must be the necessary and foreseeable consequence of forced return and be personal.¹⁸ The State party also notes that considerable weight should be given to the assessment conducted by the domestic authorities, given that it is generally for those 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. The State party emphasizes that that approach is based on the acceptance by the Committee of the comparative advantage that domestic authorities have in making factual findings owing to their direct access to oral testimonies and other materials presented in legal proceedings at the national level. The State party adds that several provisions in the Aliens Act reflect the same principles as those set out in articles 6 (1) and 7 of the Covenant. The Swedish migration authorities therefore apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a complaint under the Covenant.

4.6 As for 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. The State party also notes that, whereas it recognizes that the security situation of Afghanistan in recent years has deteriorated, there is a great variation in the intensity of the conflict in the different regions of the country and the level of indiscriminate violence in the country as a whole is not such that there is a general need to protect all asylum seekers from that country.¹⁹ The State party

¹⁸ See Human Rights Committee, general comment No. 31 (2004), para.12. The State party submits that the Committee's jurisprudence indicates a high threshold for substantial grounds for establishing that a real risk of irreparable harm exists. Therefore, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin: see *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.3. The State party also claims that the burden of proof rests with the author, who is required to establish that a real risk of treatment contrary to articles 6 or 7 would be a foreseeable consequence of his expulsion: see *Hamida v. Canada* (CCPR/C/98/D/1544/2007), para. 8.7; *A.R.J. v. Australia* (CCPR/C/60/D/692/1996), paras. 6.8 and 6.14; *Dauphin v. Canada* (CCPR/C/96/D/1792/2008), para. 7.4; and *A.P.J. v. Denmark* (CCPR/C/119/D/2253/2013), para. 9.6.

¹⁹ The State party also refers to a number of documents of the United Nations, international organizations, Governments and civil society organizations with regard to the human rights situation in Afghanistan, including the United Nations Assistance Mission in Afghanistan, "Midyear update on

also notes that although general discrimination against the Hazara is still prevalent in Afghanistan, the latest documented information does not establish ethnicity or religion as a major ground of discrimination against them.²⁰ The State party indicates that the report of the Swedish Migration Board in December 2017 does not support the conclusion that the mere claim of renunciation of Islam is enough to conclude that there is a real risk of persecution of an individual that would warrant international protection, while it also notes that according to the report, in Afghanistan apostates risk being disowned by their family and killed by others in society without judicial process, that mere accusations of apostasy can provoke violence and that people who lack a social network are particularly vulnerable. The State party also notes that it is possible for apostates to repent and return to the Muslim faith. Thus, a general situation does not in itself suffice to establish that the author's expulsion would contravene articles 6 or 7 of the Covenant. The assessment before the Committee must therefore focus on the foreseeable consequences to the author of his expulsion to Afghanistan in the light of his personal circumstances. In this connection, the State party emphasizes that asylum seekers have the burden of proof to plausibly demonstrate that they belong to a group that is at risk of persecution.

4.7 The State party contends that due process was upheld in assessing the author's application for asylum. The Migration Board conducted several interviews with the author in the presence of public counsel and interpreters, who the author confirmed understood his language well. The author therefore had several opportunities to explain the relevant facts and circumstances in support of his claims and to argue his case, orally and in writing, before the Migration Board and in writing before the Migration Court. Thus, the Migration Board and the Migration Court have thoroughly examined all the facts of the author's case, considered whether his claims are coherent and detailed and whether they contradict generally known facts or available information on the country of origin.

4.8 Against this backdrop, the State party holds that it must be considered that the Migration Board and the Migration Court had sufficient information, together with the facts and evidence with regard to the present case, to ensure that they had a solid basis to make a well-informed, transparent and reasonable risk assessment concerning the author's need for protection in Sweden. In view of the fact that the Migration Board and the Migration Court are specialized 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 that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, the State party holds that considerable weight must be attached to the conclusions of the Swedish migration authorities.

4.9 Concerning the claims that the author would be at risk of persecution upon his return to Afghanistan, given that he has converted away from Islam, the State party concedes that Christians and Christian converts in Afghanistan run a real risk of being subject to persecution, warranting international protection. However, the question is whether the author's alleged Christian faith is based on genuine personal religious conviction. The State party contests that the author's conversion was based on genuine faith as it was submitted at a very late stage of the asylum proceedings, after the expulsion order had gained legal force and when the author was detained by the enforcing police authority. Furthermore, the author did not provide a reasonable explanation as to why he did not mention that his religious beliefs had changed during the proceedings of his first application for re-examination of his case. The State party also argues that the author's account of his thoughts and reflections about his faith has been deemed by the national instances to be general descriptions and comparisons of Islam and Christianity. The State party therefore considers that the motives behind the conversion raise doubts and are questionable. The State party notes that the judgment of the district court of Ångermanland does not contain any information linked to the author's religious beliefs. The State party is of the view that the author has not plausibly demonstrated that he has converted from Islam to Christianity out of genuine religious conviction; nor can it be assumed that there is a threat against him because of his father's or

the protection of civilians in armed conflict: 1 January to 30 June 2018" (15 July 2018) and A/72/888-S/2018/539.

²⁰ See A/HRC/31/46. See also European Asylum Support Office, *EASO Country of Origin Information Report. Afghanistan Individuals Targeted by Armed Actors in the Conflict* (December 2017).

anyone else's awareness of his baptism in Sweden, or that he in some other way risks being ascribed a religious view.

4.10 The State party also notes that the author never mentioned, either in his initial asylum application in Sweden or later during the domestic re-examination of his case, that he had been subjected to beatings as a punishment for being critical against Islam or that he had had any connections to Christianity while in the Islamic Republic of Iran. These are new claims submitted before the Committee and were not made before the domestic migration authorities. The State party thus strongly questions the veracity of these claims.

4.11 The State party also adds some facts: that on 25 August 2017, the Migration Board was informed by the district court of Ångermanland that the author had been detained, as he was suspected of molestation and attempted manslaughter. On 18 September 2017, the Board was further informed that the author had been released from detention. He had also been suspected of sexual molestation of a female employee at the migration boarding house and of using drugs, which was reported from the migration boarding house to the social welfare committee in several notifications.

4.12 The State party holds that the author's account and the facts he relied on are insufficient to conclude that the alleged risk of ill-treatment on his return to Afghanistan meets the requirements of being a foreseeable, real and personal risk. Consequently, it concludes that enforcement of the expulsion order would not, under the present circumstances, constitute a violation of the obligations of Sweden under articles 6 or 7 of the Covenant.

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

5.1 On 29 October 2018, the author submitted his comments on the State party's observations on admissibility and the merits.

5.2 Regarding the admissibility of the case, the author confirms that the same matter is not being examined nor has been examined under another procedure of international investigation. The author also contends that given what was set out in his initial submission and the present comments, his claims are substantiated enough for the purpose of admissibility.

5.3 As for the merits of the case, the author argues that it is not sufficient that the Aliens Act reflects the same principles as those laid down in article 6 (1) and 7 of the Covenant for these rights to be exercised in practice and not to be just an abstract principle.

5.4 The author contests the State party's allegation that the author's case was "thoroughly" examined by the national migration authorities, given that he was interviewed only once in June 2016. Contrary to the State party's observations, the author's allegations on the conversion and the threats from his father have never been heard in oral interviews or investigated by any authorities, despite the author's request to be heard in an oral procedure. The author states that he has never been given a proper chance to substantiate his claims with a case officer at the Migration Board without his parents being present.²¹

5.5 In that connection, the author contests the State party's allegation that he lacks a valid excuse for having waited several months after his father left before he told the authorities about his conversion. He alleges that the authorities showed a total lack of consideration of the impact of abuse by caregivers and trauma on a young person. The district court of Ångermanland established that his father regularly resorted to severe acts of violence against the children, which indicates his past abuse in the Islamic Republic of Iran. The author has thus lived in constant fear and trauma, which was exacerbated after he came to Sweden. He also emphasizes that he shows the typical attitudes of persons who have suffered from repeated physical violence and abuse. He has tremors and hyperarousal, being constantly

²¹ The author reiterates that all decisions were solely based on his interview in 2016 and interviews with his parents. He states that he has not been heard since the first impediment of enforcement was lodged.

hypervigilant.²² He bursts into tears without reason and has anxiety attacks. Nevertheless, those facts have never been considered by the migration authorities.

5.6 The author argues that as the State party itself stresses, considerable weight must be given to the competence of the Swedish authorities and that weight should be given to the conviction against the author's father and the victimization of the author, which was disregarded in the asylum proceedings. The author contests the decision of the Migration Court which refused to consider the judgment by the district court of Ångermanland as a new circumstance in the second application for re-examination of his case.²³ In that regard, the author submits that it is not unusual for a prison sentence for a parent who has assaulted his son not to contain information about the motive for the assault, and that this information should have been examined as a new circumstance in the author's oral investigation, in order to assess if there was a connection between the author's conversion and his father's abuse.

5.7 The author emphasizes that although he lived in constant fear of his father, he still craved his father's love as children do. Thus, the fact that he said in the introductory interview that he wanted to bring his parents to Sweden if he were given a residence permit cannot be seen as evidence that his father was not violent and cannot be given a higher value than his father's prison sentence of four months in prison for having subjected the author to physical violence. The author reiterates that it would not be possible to assess the credibility or the sincerity of the belief without having interviewed the person, in particular to examine the psychological aspects of the conversion. He further notes that he should have at least been given the opportunity to answer to alleged deficiencies in credibility.

5.8 The author also adds that the State party failed to take protective measures towards him and his brother as victims of abuse, even though the case officer was informed that the father was physically abusing the author and his brother on 23 September 2016. This element was not considered a reason for protection and the author was forced to stay with his parents even after he reported their abuse to the police.

5.9 The author reiterates that in Afghanistan, the tradition is strictly patriarchal and revenge is seen as a virtue and an absolute duty. The fact that a father who has been sentenced to prison for assault on his own children absconds before the prison sentence is enforced must be seen as a warning signal. The author argues that considering all of those background elements, the State party has been particularly negligent in its obligation to protect human rights without discrimination, since it did not give the author the chance of an oral hearing to substantiate his allegations, nor weighed up the conviction of his father on a charge of child abuse and the threatening letter he left.²⁴

5.10 The author also adds that he has no social network in Afghanistan other than his abusive parents, which makes him in need of protection. In particular as there is a concrete threat against him from his father.²⁵ The author also reiterates the severe human rights situation regarding the persecution and execution of Christian converts. The author adds that although the State party focuses on the security situation in the country, the risk he would face as an apostate is concrete and personal.

5.11 The author also confirms that he has not been sentenced to any crime, except for having smoked a hash cigarette, for which he paid a fine. The author notes that the fact that he was indicted for a minor drugs offence and that he was suspected of sexual molestation of a female employee at the migration boarding house are not relevant to his non-refoulement case.

5.12 In conclusion, the author contends that the State party continues to make general comments in relation to the provisions in the law without having assessed the actual circumstances of his case. The author emphasizes that although he is aware that the Committee is not a fourth instance that should examine the facts de novo, it is important to stress that the Swedish migration authorities have not acted in accordance with domestic law, nor with the country's international human rights obligations. The burden of proof is a shared

²² It is a primary symptom of post-traumatic stress disorder.

²³ See para. 2.11.

²⁴ See article 13 and 24 (1) of the Convention read in conjunction with article 2 (1) of the Convention.

²⁵ From the information on file, it appears that the author has a grandfather in Afghanistan.

responsibility and while the onus is on the applicant to substantiate his claims, the authorities must provide him with the opportunity to do so orally.

State party's additional observations

6.1 On 22 January 2020, the State party submitted its additional observations, stating that the author's comments did not include any new elements in substance. The State party emphasizes that it fully maintains its position regarding the admissibility and merits of the present complaint as expressed in its previous observations of 11 June 2018.

6.2 Regarding the author's claim that the domestic migration authorities were unwilling to provide the author with the opportunity to substantiate his claims of abuse by his parents, the State party reiterates that the author had several opportunities during the ordinary asylum proceedings to explain the relevant facts and circumstances in support of his claims and to argue his case, both orally and in writing, before the Swedish Migration Board and in writing before the Migration Court. However, the scope of assessment of the domestic migration authorities following an application for a new examination at the enforcement stage differs from the scope during the ordinary asylum proceedings. As the author's newly cited circumstances were not deemed to meet the threshold to constitute a lasting impediment to enforcement, no further interview or hearing was held with the author by the domestic migration authorities.

6.3 The State party also contests the author's claims that the migration authorities carelessly disregarded the new circumstances the author submitted. Regarding the letter from his father, the State party reiterates the assessment of the Migration Board that the information he provided in this regard was very brief, indistinct and vague for the purposes of a new examination under the relevant laws. Regarding the author's allegation that the judgment of the district court of Ångermanland was not considered as a new circumstance by the Migration Court, the State party emphasizes that the Migration Court considered, as did the Board, that the alleged threat from the author's father constituted a new circumstance within the meaning of the Aliens Act. However, the Court found that neither the letter nor the judgment was sufficient evidence for the cited circumstances to be assumed to constitute a lasting impediment to enforcement. The State party also emphasizes that on 7 July 2017, the Migration Board concluded that, given the intention of the author's parents to leave the author with friends of theirs in Sweden, there were reasons to believe that the parents were deliberately hiding so that the author would once again be considered an unaccompanied minor.²⁶

6.4 In regard to the author's alleged conversion, the State party reiterates that the domestic authorities found that the author's conversion was a new circumstance and the claim was duly examined. The State party holds that the author's explanation for not raising his interest in Christianity at an earlier stage of the proceedings impacts his credibility negatively. Furthermore, the domestic authorities stress that there were no indications in the written evidence or otherwise to suggest that his father had abused him because he was interested in Christianity. The State party concludes that due to the lack of credibility, the author did not show that he had converted to Christianity out of a genuine and personal religious conviction and that he intended to live as a convert, risking attracting the interest of the Afghan authorities or individuals upon a forced return to Afghanistan, or that he had been ascribed any Christian beliefs.

6.5 The State party further submits that contrary to the author's claim, it took several protection measures for the author.²⁷ The State party also reiterates that as soon as the author's brother reported their father's abusive behaviour, the matter was reported to social services for their safety.

²⁶ In this connection, the State party states that just before the family was about to go back to Afghanistan, the author's public counsel, instructed by his parents, appealed against the decision of the Swedish Migration Board to expel the author and his brother. It follows from the appeal that the family was devastated when they were told that the Board would not allow the parents to travel to Afghanistan without the children.

²⁷ The State party provides some detailed facts in this regard.

Author's additional comments

7.1 On 25 May 2020, the author submitted additional comments, reiterating his previous claims.

7.2 The author submits that at the time of the ordinary asylum proceedings, when he was given a chance for an interview, he was still a minor and he was never given the opportunity to be heard at the enforcement stage, after the application of impediments to enforcement. The migration authorities are obliged to make an up-to-date risk assessment before expelling an asylum seeker.

7.3 The author also emphasizes that it is pure speculation that his parents were deliberately hiding so that he would be considered an unaccompanied minor.

Issues and proceedings before the Committee*Consideration of admissibility*

8.1 Before considering any claims contained in a communication, the Committee must, in accordance with rule 97 of its rules of procedure, decide whether it is admissible under the Optional Protocol to the Covenant.

8.2 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.

8.3 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.

8.4 The Committee notes that the State party challenges the admissibility of the communication for manifest lack of substantiation of the author's claim under articles 6 and 7. However, the Committee considers that, for the purposes of admissibility, the author has adequately explained the reasons why he fears that his forcible return to Afghanistan would result in a risk of treatment contrary to articles 6 and 7 of the Covenant. The Committee therefore declares the communication admissible, insofar as it raises issues under articles 6 and 7, and proceeds to its consideration on the merits.

Consideration of the merits

9.1 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.

9.2 The Committee notes the author's claim that if he were returned to Afghanistan, he would be exposed to a real risk of irreparable harm, in violation of articles 6 and 7 of the Covenant. He contends that in Afghanistan he would face potentially life-threatening persecution because of his apostasy, which is allegedly known and has been publicized through some returnees apprised of his conversion from Islam to Christianity, as well as persecution from his father who vowed to avenge his tainted honour after the author reported him to the Swedish authorities for abuse, as documented in the threatening letter his father left him before leaving Sweden. The Committee also notes his allegation that the risk of persecution would be aggravated by factors of vulnerability such as the fact that he belongs to the Hazara ethnic minority group and that he has never lived in Afghanistan and thus has no knowledge of the country or the language and no social network beyond his abusive parents.

9.3 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 (para. 12).

The Committee has also indicated that the risk must be personal²⁸ and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.²⁹ All relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.³⁰ 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,³¹ unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.³²

9.4 In regard to the author's claims about his faith and conversion, regardless of the sincerity of the conversion, the test remains whether there are substantial grounds for believing that such a conversion may have sufficiently serious adverse consequences in the country of origin as to create a real risk of irreparable harm, as contemplated by articles 6 and 7 of the Covenant. Therefore, even if it is found that the reported conversion is not sincere, the authorities should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum seeker in connection with his or her conversion or convictions could have sufficiently serious adverse consequences in the country of origin as to put him or her at risk of irreparable harm.³³ In that connection, the Committee recalls that States parties should give sufficient weight to the real and personal risk that a person might face if deported and considers that it was incumbent upon the State party to undertake an individualized assessment of the risk that the author would face in Afghanistan.³⁴

9.5 In the present case, the Committee notes that the author claims that his allegation regarding his conversion was not adequately examined by the migration authorities. However, the Committee also notes that the State party argues that the author's claim regarding the alleged conversion was not deemed to be credible, as the information about the conversion was raised at a very late stage of the asylum process and his explanation for the late submission was not convincing. The Committee also notes the decision of the Migration Board of 26 October 2017, in which it examined the author's allegation concerning his conversion but considered there was a good reason to question the motives behind the author's baptism, which took place on 22 October 2017 when he was taken into detention by the enforcing police authority. The Migration Board also took into account that the author had never mentioned his conversion before, even though he had had an opportunity to do so at the time of his first application for a re-examination. The fact that he claimed his conversion at a very late state of the asylum proceedings has affected the credibility of his information negatively, especially since at that time he had been in Sweden for more than two years and had had several chances to inform the migration authorities about his conversion earlier, in particular after April 2017 when his parents allegedly left Sweden.

9.6 In that regard, the Committee 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 authorities, unless the information could not have been presented before.³⁵ In the circumstances of the present case, the Committee considers the author's claims about the risk to which he would be exposed in Afghanistan as a recent convert to be of a general and vague

²⁸ *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; and *X v. Denmark* (CCPR/C/110/D/2007/2010), para. 9.2; *Q.A. v. Sweden* (CCPR/C/127/D/3070/2017), para. 9.3; *A.E. v. Sweden* (CCPR/C/128/D/3300/2019), para. 9.3.

²⁹ *X v. Denmark*, para. 9.2; *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18; *Q.A. v. Sweden*, para. 9.3; *A.E. v. Sweden*, para. 9.3.

³⁰ *Ibid.*

³¹ *Pillai et al. v. Canada* (CCPR/C/101/D/1763/2008), para. 11.4; and *Z.H. v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

³² 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; and *Rezaifar v. Denmark* (CCPR/C/119/D/2512/2014), para. 9.3; *Q.A. v. Sweden*, para. 9.3 *A.E. v. Sweden*, para. 9.3.

³³ *S.A.H. v. Denmark* (CCPR/C/121/D/2419/2014), para. 11.8. *Q.A. v. Sweden*, para. 9.5, *J.I. v. Sweden* (CCPR/C/128/D/3032/2017), para. 7.5. See also European Court of Human Rights, *F.G. v. Sweden* (judgment, 23 March 2016), para. 156.

³⁴ See *A.B.H. v. Denmark* (CCPR/C/126/D/2603/2015), para.9.10, *Q.A. v. Sweden*, para. 9.6.

³⁵ See, 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, and *A.E. v. Sweden*, para.9.7.

nature, and that his claim regarding the examination of his conversion mainly reflects his disagreement with the factual conclusions drawn by the State party's authorities about the credibility of those claims and do not demonstrate that their conclusions are arbitrary or manifestly unreasonable, or that the proceedings in question amounted to a procedural error or denial of justice.

9.7 In regard to the examination of the alleged abuse of and threat against the author, the Committee observes that the State party claims that the author was given the opportunity to substantiate his claims, both orally and in writing, before the Migration Board and in writing before the Migration Court during the ordinary asylum proceedings, while the author alleges that he was not given a chance to orally substantiate his allegations.

9.8 The Committee notes that in the asylum interview on 2 June 2016, the author did not inform the case officer that he had been abused by his father. However, the Committee also notes that even after the author's brother informed the case officer on 23 September 2016 that his father had beaten him and his brother, on 1 February 2017 the Migration Court rejected the appeal of the author and his brother without examining in depth the risks associated with the threat related to the alleged abuse. The Migration Court in its decision of 9 August 2017 did not find that the criminal verdict against the author's parents provided a reason to suppose that the author ran a serious risk (para. 2.11). The Committee also notes that there was no adequate examination of the alleged threats in the subsequent examination of his asylum claim, as the threatening letter he submitted was not considered by the Migration Board to have evidential value.

9.9 The Committee considers that regardless of the motive of abuse, the alleged abuse and its trauma, in combination with the vulnerability of the author stemming from both his youth and his migration history, could represent a serious risk to the author's health and psychological and physical development. It was therefore incumbent upon the State party's asylum authorities to conduct an in-depth examination of the abusive attitude of the parents, in particular since the allegations of abuse in Sweden had been reported to the relevant institutions in September 2016 and the author's parents were convicted of assault on their children by the district court of Ångermanland in its judgment of 30 March 2017.

9.10 Furthermore, the author may face a real risk of irreparable harm if deported to Afghanistan, since his father, who may have returned there, has allegedly vowed to kill him to restore his lost honour, particularly in the context of Afghan society where it is reported that the restoration of honour often leads to revenge and blood feuds.³⁶ In this connection, the Committee also notes that the author grew up in the Islamic Republic of Iran and does not have a social network or connections in Afghanistan, except for his grandfather.

9.11 The Committee considers that the risk that the author could face in Afghanistan is real and personal, as it emanates from his own family, rather than a general risk. The Committee concludes that the author could face serious adverse consequences in the country of origin that could put him at risk of irreparable harm.

9.12 In view of the above, the Committee considers that the State party failed to adequately assess the author's real, personal and foreseeable risk of returning to Afghanistan, in particular taking into account his father's alleged threats of revenge and his trauma as a result of parental abuse. Accordingly, the Committee considers that the State party failed to give due consideration to the consequences of the author's personal situation in Afghanistan and concludes that his removal to Afghanistan by the State party would constitute a violation of articles 6 and 7 of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the author's removal to Afghanistan would be a violation by the State party of his rights under articles 6 and 7 of the Covenant.

11. In accordance with article 2 (1) of the Covenant, in which it is established that States parties undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant, the State party is under an

³⁶ See Country of Origin Information Centre (Landinfo), "Afghanistan: blood feuds, traditional law (pashtunwali) and traditional conflict resolution".

obligation to proceed to a review of the author's case taking into account the State party's obligations under the Covenant and the present Views of the Committee. The State party is also requested to refrain from expelling the author while his request for asylum is being reconsidered.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the present Views.

Annex I

Joint opinion of Committee members Vasilka Sancin and Photini Pazartzis (dissenting)

1. We respectfully disagree with the majority of the Committee in finding that the author's removal to Afghanistan would, if implemented, be a violation by the State party of his rights under articles 6 and 7 of the Covenant.

2. In paragraph 9.3, the Committee recalls that "it is generally for the organs of the States parties to the Covenant to review and evaluate facts and evidence in order to determine whether such a risk exists, unless it can be established that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice". This legal standard is consistently reflected throughout the Committee's jurisprudence¹ and denotes a threshold that should not be displaced in the absence of compelling facts that clearly demonstrate arbitrariness or a manifest error or a denial of justice.

3. In para. 9.9, the Committee considers that "regardless of the motive of abuse, the alleged abuse and its trauma in combination with the vulnerability of the author stemming both from his youth and his migration history could represent a serious risk to the author's health and psychological and physical development" which would require an "in-depth examination of the abusive attitude of the parents".

4. In our view the author, no longer a minor, provided no convincing evidence that the State party had failed to properly assess whether he would be facing a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant, if returned to Afghanistan. The Swedish authorities did assess the threatening letter allegedly written by the author's father, but the Migration Board found "it could not have evidential value as it was a simple handwritten message with no indication of when, how, from whom, or why the author had received it. The translation service used by the Migration Board noted that the letter could not be properly translated, as it was incomprehensible. The information which the author himself has provided about the content of the document is scarce, unclear and vaguely formulated. The Migration Board, therefore, concluded that there were reasons to believe that the author's parents were deliberately hiding so that the author would be once again considered and treated as an unaccompanied minor." (para. 2.10).

5. In the absence of any other substantiated evidence of a serious and personal risk the author would be exposed to if returned to Afghanistan, and given that there exists ambiguity as to the whereabouts of the author's parents (in para. 9.10 that is recognized that by the indication that the parents may have returned to Afghanistan), we cannot conclude that the decision of the Swedish authorities to refuse the author's asylum request was clearly arbitrary or amounted to a manifest error or denial of justice that would entail a violation of articles 6 and 7 of the Covenant.

¹ *A.S.M. and R.A.H. v. Denmark* (CCPR/C/113/D/2378/2014), paras. 8.3 and 8.6; *E.U.R. v. Denmark* (CCPR/C/117/D/2469/2014), para. 9.7, citing numerous earlier communications. See also *Ashby v. Trinidad and Tobago* (CCPR/C/74/D/580/1994), para. 10.3.

Annex II

Individual opinion by Committee member Furuya Shuichi (partially dissenting)

1. I am in agreement with the conclusion in the Views that as the State party failed to adequately assess the author's risk of returning to Afghanistan because of his father's alleged threats of revenge and his trauma due to parental abuse, his removal to Afghanistan by the State party would constitute a violation of articles 6 and 7 of the Covenant. However, I am unable to concur with its conclusion that the author has failed to demonstrate that the State party's examination of the author's conversion to Christianity was arbitrary or manifestly unreasonable, or that the proceedings in question amounted to a procedural error or denial of justice (para. 9.6).

2. According to the jurisprudence of the Committee, it is generally for the organs of a State party to examine the facts and evidence of the case in question in order to determine whether a real risk of irreparable harm exists when a person leaves for the country of his or her origin, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.¹ This means that, in deportation cases, the Committee generally respects the assessment by the State party of the substantive aspects of risks, while it may deal with apparent procedural defects or errors in that assessment as the basis for finding violations of the Covenant. In addition, the Committee has taken the position in assessing the risk of conversion that the test is whether there are substantial grounds for believing that the conversion of a person may have serious adverse consequences in the country to which he or she is deported such as to create a real risk of irreparable harm, irrespective of the sincerity of the conversion. Accordingly, as is pointed out in paragraph 9.5, even when the reported conversion is found not to be sincere, the authorities of the State party should proceed to assess whether, in the circumstances of the case, the behaviour and activities of the asylum seeker in connection with his or her conversion could have sufficiently serious adverse consequences in the country of origin as to put him or her at risk of irreparable harm.²

3. In the present case, the State party concedes in general that, according to the Swedish Migration Board's report in December 2017, in Afghanistan an apostate risks being disowned by his or her family and killed by others in society without judicial process; that mere accusations of apostasy can provoke violence; and that people who lack a social network are particularly vulnerable without support. Further, it notes that the assessment must focus on the foreseeable consequences to the author of his expulsion to Afghanistan in the light of his personal circumstances and emphasizes that the author has the burden of proof to plausibly demonstrate that he is at risk of persecution (para. 4.6). Nevertheless, the State party contests the claim that the author's conversion was based on genuine faith, as it was submitted at a very late stage of the asylum proceedings and, on the ground of the insincerity of his conversion, it denies the risk that he will be persecuted upon his return to Afghanistan.

4. However, the State party has not made any individualized assessment of the risk that the author would be subject to persecution or other ill-treatments in Afghanistan if he is regarded as an apostate (even if he has not genuinely converted to Christianity). It has also denied him an oral interview, despite the author's request to be heard in an oral procedure. In my view, this denial substantially deprived the author of the opportunity to demonstrate that he would be subject to the risk of persecution because of his conversion. In that regard, the author has repeatedly and sufficiently alleged this procedural defect (paras. 3.2, 5.4 and 5.9).

¹ *K v. Denmark*, para. 7.4; *Q.A. v. Sweden*, para. 9.5; *A.E. v. Sweden*, para. 9.3.

² *S.A.H. v. Denmark*, para. 11.8; *J.I. v. Sweden*, para. 7.5; *Q.A. v. Sweden*, para. 9.5.

5. Under such circumstances, I cannot agree with the conclusion the State party came to, having sufficiently examined and assessed the relevant facts through adequate proceedings, that no real risk of irreparable harm would exist also on the basis of the author's conversion. Accordingly, I have to conclude that the assessment by the State party was clearly arbitrary or amounted to a manifest error or denial of justice and therefore the deportation of the author to Afghanistan would constitute a violation of articles 6 and 7 of the Covenant in the light of his conversion.
