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COMMITTEE AGAINST TORTURE
Thirty-sixth session
1-19 May 2006

DECISION

Communication No. 256/2004

Submitted by:	Mehdi Zare (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	22 September 2004 (initial submission)
Date of present decision:	12 May 2006

Subject matter: Deportation to face torture and/or cruel inhuman or degrading treatment or punishment.

Procedural issues: None

Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment.

Articles of the Convention: 3

[ANNEX]

*Made public by decision of the Committee against Torture

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-sixth session

concerning

Communication No. 256/2004

Submitted by:	Mehdi Zare (represented by counsel)
Alleged victim:	The complainant
State party:	Sweden
Date of complaint:	22 September 2004 (initial submission)

The Committee Against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 12 May 2006

Adopts the following:

Decision of the Committee against Torture under article 22 of the Convention

1.1 The complainant is Mr. Mehdi Zare, an Iranian national, currently awaiting deportation from Sweden. He claims that his removal to Iran would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel..

1.2 On 23 September 2004, the Committee forwarded the complaint to the State party for comments and requested, under Rule 108, paragraph 1 of the Committee's rules of procedure, not to return the complainant to Iran while his complaint was under consideration by the Committee. On 21 January 2005, the State party acceded to the complainant's request.

The facts as submitted by the complainant

2.1 The author was born in Abadan (Southern Iran). He moved to Shiraz because of the Iran-Iraq war. In 1996, he married the daughter of the chairman of the Imamjome executive body i.e. Omana, of the city of Faza. An Imamjome is an Islamic priest with special powers.

2.2 According to the complainant, since 1999, he has been an active member of the Socialist party of Iran (known as the PSI) and was its representative in Faza. He took part in different political actions: distributing leaflets and other political material; gathering information; preparing meetings; and renting appropriate meeting places. His brother-in-law was an active politician with a leading position in the SPI in Mashad city. The complainant

rented an apartment in Shiraz for his sister and brother-in-law, who were in hiding. During their stay, the complainant frequently visited them. He also distributed videotapes and leaflets on student demonstrations for them in Teheran. His brother-in-law and sister were eventually obliged to flee to Switzerland, where they were granted political asylum.

2.3 The complainant argues that his frequent visits and absences raised the suspicion of his wife's family, who thought that he was having an affair. He was unable to reveal the truth and unable to give a plausible explanation. His wife requested a divorce and obtained it on 28 August 2001. The complainant's ex-wife's family reported him to the authorities on the basis that he frequented a suspicious address in Shiraz, had a parabolic antenna, and frequently drank alcohol. On 1 September 2001, a policeman conducted a search of the complainant's home and confiscated the parabolic antenna and some alcohol. The complainant was arrested and brought to the "General court" in Faza, where he was detained. He was interrogated for 24 hours and severely beaten. He experienced a severe pain in his kidneys as a result. In the night of 2 September 2001, a medical doctor ordered him to be sent to a hospital, where he was diagnosed as suffering from "inflammation of the kidneys". He was then transferred to a detention centre adjacent to the General Court.

2.4 On 3 September 2001, he was charged with the crime of possessing a parabolic antenna and possessing and drinking alcohol. He explains that the real reason for his arrest was to keep him detained, pending the investigation of his visits to the apartment in Shiraz. On 12 September 2001, the General Court found him guilty as charged and sentenced him to 140 whiplashes (75 for the antenna, and 65 for the possession of alcohol). On 14 September 2001, he appealed to the court with a request to have his punishment transformed into a fine, but his request was denied on 18 September 2001. The verdict was to be enforced on 21 September 2001. On 18 September 2001, the complainant was released on bail. He learned from a friend that his political activities were discovered by the authorities, in the course of the investigation on him. On 18 September 2001, he left Faza and travelled to Shiraz, after having been informed by his lawyer that the authorities were searching for him for "serious crimes".

2.5 On 19 September 2001, the complainant called his neighbours in Faza and learned that the authorities had searched his home and closed his repair shop. He realized that his life was in danger and decided to flee from Iran. He went to Bandar Abbas and stayed there for 25 days, before leaving to Tabriz. A smuggler brought him to the border, and from there he went to Sweden by train and car. On 22 January 2002, he arrived in Sweden. On the same day, he requested political asylum and had a preliminary interview. On 18 December 2002, a complete interview took place. The complainant was represented by a lawyer. On 23 May 2003, he had a complementary interview, and his lawyer represented him by phone. During this third interview, upon being asked questions that he had already answered, the complainant had the impression that the translation during the earlier interviews was inadequate and complained to the authorities. On 4 June 2003, the authorities proceeded to the audition of the tape recordings and concluded that the interview was defective, as the interpreter had left out and added information.

2.6 On 17 June 2004, the Migration Board rejected the complainant's asylum request, on the grounds that his statements were not credible. It considered that he had altered his statements, from a fear of punishment for possessing a parabolic antenna and drinking and possessing alcohol, to a fear of punishment for aiding a person with an illicit political view. The Board

considered that the complainant hadn't made out that the Iranian authorities were aware that he was helping his sister and brother-in-law; it found it unlikely that the complainant had been sentenced to 140 whiplashes, as the penalty in Iran for the charges against him was a monetary fine. As to the effectiveness of translation, the Board pointed out that the complainant had had the possibility of making corrections through counsel. The Board concluded that the complainant had failed to prove that he risked persecution if returned in Iran.

2.7 The complainant appealed to the Aliens Appeal Board with a request to have his counsel replaced and to have an oral hearing. On 6 October 2003, the Board denied both of his requests. He then hired a private lawyer, who submitted supplementary information on the complainant's political activities in Iran. The complainant himself also submitted supplementary documents, including a letter from SPI, in which it was stated that he had been a political activist, as well as a medical certificate that he had suffered from a heart attack, which could have emanated from the stress to which he was exposed. On 8 June 2004, the Board rejected the appeal on the ground that the complainant was not credible. The Board stated, *inter alia*, that he had had the opportunity to correct the translations from the second interview, that he couldn't prove that he had been sentenced to 140 whiplashes and his claim that he was politically active had not been mentioned earlier in the proceedings.

2.8 On 21 June 2004, the complainant lodged a new application with the Aliens Appeal Board. He presented what he purported to be original documents, allegedly proving that his request to change the verdict to a monetary fine was denied by the Iranian authorities. These consisted of a decision, of 18 September 2001, rejecting his application for conversion and a note of criminal record about him. The Board did not consider the documents trustworthy and rejected the application on 15 July 2004.

2.9 On 19 July 2004, the complainant lodged a second new application with the Board, with a clarification on his political activities for the previous five years. The Board found that there was no proof that he had been involved politically in Iran and rejected his application on 1 September 2004. On 9 September 2004, in his final application, the complainant presented what he purported to be original summonses from the Iranian authorities inviting him to attend the general court in Shiraz. He requested the Board to postpone its decision pending the issuing of a medical certificate. On 13 September 2004, the Board denied the complainant's request and, on 17 September 2004, rejected his application.

The complaint

3.1 The complainant claims that the State party would violate article 3 of the Convention if he is returned to Iran, as he has a real and personal fear of being tortured and ill-treated upon return, on account of his previous political activities. The sentence of 140 whiplashes will be imposed upon him. He submits that the real reason behind this verdict was the authorities' desire to persecute him for his political activities.

3.2 In the complainant's view, the domestic authorities failed to examine his case and his statements objectively and impartially. He claims that the documents provided by him to prove his sentence were authentic and that those demonstrating his involvement in the SPI were not accepted. As to the judgement of his sentence to 140 whiplashes, he claims that during the interviews he stated that he had never received a written verdict and that the

verdict was only orally communicated to him after the court proceedings in Faza. He claims that the State party failed in its obligation, under domestic law, to ensure that the interviews were conducted properly. He could not correct his statements properly, because the information he received from the interviews was incomplete. The Board refused to allow him an oral hearing, thus preventing him from correcting the information provided during interviews.

State party's submission on admissibility and the merits

4.1 By submission of 21 January 2005, the State party submits that the complaint is inadmissible as manifestly ill-founded. On the facts, the State party confirms that the interpretation during the second interview was defective and for this reason the complainant was allowed to make a number of corrections to the information he had presented during the second interview. In made such amendments in submissions on 3 February and 19 June 2003 and these corrections and clarifications were taken into account by the Migration Board.

4.2 The State party submits that the Aliens Appeal Board found no reason to refer the case back to the Migration Board or to conduct an oral hearing. The complainant had participated in three interviews. After it was discovered that there were deficiencies in the second interview, a third interview was held which involved detailed questions. In addition to the records from the three interviews, the material before the Migration Board included submissions from the complainant. Moreover, the complainant had submitted extensive written material to the Aliens Appeal Board.

4.3 On the merits, the State party notes that, the government of the Islamic Republic of Iran is reported to violate human rights. However, this does not suffice to establish that the complainant's forced return would violate article 3. For such a violation, he must demonstrate that he faces a foreseeable, real and personal risk of being tortured, present an arguable case that goes beyond mere theory and suspicion, and that it rests primarily with the complainant to collect and present evidence in support of his/her account. The State party sets out the relevant provisions of the Aliens Act and points out that several provisions reflect the same principle as that laid down in article 3, paragraph 1 of the Convention. It also submits that the national authority conducting the asylum interview is naturally in a very good position to assess the credibility of the asylum seeker's claims. Thus, great weight must be attached to the opinions of the Swedish immigration authorities which considered this case.

4.4 According to the State party, there is no reliable evidence that the complainant was detained, charged or convicted for the possession of a parabolic antenna and alcohol consumption. He failed to demonstrate that there is a risk of being subjected to corporal punishment if expelled to Iran. With the new application submitted to the Aliens Appeals Board on 21 June 2004, he submitted two documents, which were purported to be originals of the decision to reject his application for conversion of the flogging sentence to a fine, and of the note of criminal record. It was submitted that the complainant had authorised his brother to obtain these documents for him. The Aliens Appeal Board considered that the documents were not originals and there were a large number of fabricated documents in circulation. In the Board's view, they lacked probative value.

4.5 On 1 September 2004, the Aliens Appeal Board rejected the complainant's second new application, in which he submitted a certificate, dated 30 June 2004, and purportedly issued by the Secretary General of the SPI. The Board stated that a similar certificate had been

submitted and that the new certificate did not contain information that gave the Board reason to depart from its previous assessment. On 17 September 2004, the Board also rejected the complainant's third application. He had appended two summonses to his application, which purported to summon him before an Iranian court, as two named persons had reported to the authorities that he had worked actively against the regime. The Board found that crimes of a political nature are generally dealt with by the Revolutionary Court and, according to information available to the Board, this court does not issue summonses. In addition, the documents at issue carried the emblem of the ordinary courts and not of the Revolutionary Court.

4.6 In November 2004, the Government requested the Swedish Embassy in Tehran to provide certain information regarding, *inter alia*, the documents submitted by the complainant. The Embassy consulted an Iranian legal expert to obtain an opinion on the authenticity of the alleged application to an Iranian court for a conversion of the flogging sentence to a fine, the alleged decision of 18 September 2001 of the Court, rejecting the application, and the alleged note of the criminal record, concerning the alleged flogging sentence. The Embassy found that a criminal record does not normally contain the kind of information represented therein. It observed that the note had been issued only thirteen days after the alleged judgement was delivered, at a point in time in which the time-limit for filing an appeal against the alleged judgement had not yet expired. It is unlikely that it would have been issued so quickly and it generally takes longer than thirteen days before a judgement is registered in the criminal record.

4.7 As to the alleged application for a conversion of the flogging sentence, the Embassy noted that the form used for the application is intended for use in civil proceedings. This is not the correct form for the present case. In addition, the Embassy noted that such an application should be directed to the authority responsible for the enforcement of the sentence and not, as in this case, to the court/administration against "social decay". In addition, the text of the alleged application states that the complainant "according to the assessment of the then judge and prison physician, he has problems with his kidneys and is not fit to take corporal punishment". The State party questions why the first instance judge would issue a sentence of corporal punishment if he held this view. Concerning the alleged decision of the Court to reject the application, the Embassy stated that the decision only deals with issues of guilt and not with that of conversion of the sentence. Furthermore, all three documents appear to have been sent by fax, one after another, on 27 February 1999 , prior to the alleged events described by the complainant.[1]

4.8 The State party highlights the complainant's failure to furnish the alleged judgement, sentencing him to corporal punishment and submits that, in the course of the proceedings, he provided different reasons why he could not do so. In the current complaint, the complainant states that the judgement was only given orally by the Iranian court and thus he had never received a written version of it at all. According to the Iranian expert, a person who had been sentenced by a public court in Iran, as in this case, would be able to procure the judgement. This would not be the case if it had been the Revolutionary Court that had tried him. The

[1] For instance, he stated that the judgement on which the note of criminal record was based and that his above-mentioned application concerned, was delivered by the court on 12 September 2001.

complainant did not mention during the domestic proceedings the misunderstanding that he now invokes, and there is no indication that the interpretation during the third interview was flawed.

4.9 As to the sentence itself, the State party refers to the findings of the Migration Board that the possession of a parabolic antenna does not render punishment as harsh as flogging in Iran and that consumption of alcohol was primarily punished under the set of rules in Iranian Penal Law called *houdud*. The relevant punishment was 80 whiplashes, but such a sentence required that the accused had confessed on two occasions that he had consumed alcohol, and two men should have witnessed this act. The sentence would only be enforced in cases where the accused could not rationally explain his alcohol consumption. There is also the possibility for the accused to be pardoned, or under certain circumstances, to have the sentence set aside, providing that he regretted his actions. The consumption of alcohol could also be punished under the *tazirat* rules of the Iranian Penal Code, under which he may be sentenced to three to six months' imprisonment and/or 74 whiplashes. In view of the high standard of proof required under the *Houdud* rules, and the fact that under *Tazirat* rules alcohol consumption was primarily punished by imprisonment, together with the lack of credible documentation on this point, the Board found unlikely that the complainant had been sentenced to, or was at risk of being subjected to, flogging for alcohol consumption or possession of a parabolic aerial.

4.10 As to the claim that he is at risk of being tortured on account of his political activities with the SPI, the State party submits that, the complainant elaborated on this claim in successive stages, which gives reason to serious questions about its reliability. At the first interview by the Migration Board, he stated that he had not been politically active in Iran. Later he submitted that he had assisted his politically active brother-in-law, and in a submission to the Migration Board, in February 2003, he claimed that he should be granted political asylum on these grounds. It was not until his appeal to the Aliens Appeal Board in August 2003, that he invoked his own political involvement as the reason for asylum.

4.11 In support of his claim, the complainant submits two summonses inviting him to attend the public Court of Shiraz, on 31 July 2004 and 25 August 2004, which he claims were handed to his mother. The same Iranian legal expert was consulted on the authenticity of these documents: He concluded that, although the summonses themselves indicate that they were issued by the Public Court in Shiraz, the stamps on the documents originate from the division of the Public Prosecutor's Office, and prosecutors in Iran do not issue summonses. In addition, the purpose of the hearing normally included on summons is to explain certain circumstances rather than to explain "statements made against you by two named persons", as in this case. In addition, it is noted that these two summonses were invoked in support of his claim that the two named persons had reported to the Iranian authorities that he had worked actively against the regime. As this would appear to suggest that he was wanted by the authorities for some kind of political crime, which are dealt with by the Revolutionary Court and which does not issue summonses, the authenticity of these documents was doubtful.

4.12 In addition, despite efforts made to find information on the SPI, the State party claims that is has found nothing, either in human rights reports, on the internet, or through the Iranian legal expert in Teheran. Thus, even if it is accepted that this party exists, it has not attracted any attention among those likely to have heard about it if its members had been subjected to persecution by the Iranian authorities, as claimed. As to the claim that he is

wanted by the Iranian authorities, the State party points out that this claim, like the claim on his political activities, was not brought up at the beginning of the asylum proceedings. At the beginning of the proceedings, he pointed to the risk of ill-treatment allegedly emanating from his former father-in-law and the private individuals taking orders from him. For the State party, it is not clear whether the complainant continues to invoke this ground as a basis for this communication. If so, the State party submits that this claim falls outside the scope of article 3, as it relates to fear of torture or ill-treatment by a non-governmental entity without the acquiescence of the Government.

4.13 To explain the inconsistencies in his story, the complainant appears to submit that the whole of the national asylum proceedings has been defective. The State party recalls that only the interpretation during the Migration Board's second interview with the complainant has been established as flawed, and the complainant has had an opportunity to rectify any faults that could be found in this recording. The claims that there have been further deficiencies in the handling of the case have not been substantiated.

Complainant's comments

5.1 On 15 May 2005, the complainant commented on the State party's submission. He states that throughout asylum process, he described his personal background, his previous political activities, and how he helped his sister and brother-in-law to escape from Iran. He submitted that the real reason the authorities detained him was to keep him imprisoned pending the results of the investigation into why he had visited the apartment in Shiraz. Further on in his submission, he states that the reasons he did not mention his political involvement, was due to several factors: he had just escaped from Iran; he was in a foreign country, the interpreter was Persian and he didn't know whether he could be trusted; the interpreter took several telephone calls during the interview and was uninterested in what the complainant had to say; and he was told by the SPI that he should not comment on his political involvement without permission.

5.2 As to the State party's point that the interpretation during the first interview was adequate, the complainant submits that the interpretation during this interview was not reviewed, so it is not clear whether it was in fact adequate. As to the flaws in the interpretation during the second interview, the complainant argues that the fact that the authorities did not receive a correct understanding of the reason for his asylum request and other circumstances of the case, referred to in his asylum application, affected the final outcome of the asylum process. Once it became obvious that the interpretation was inadequate, his request that the case be returned to the Migration Board should have been accepted. The argument that the complainant had the opportunity to correct errors from the second interview during the third interview is incorrect, as the faults only became obvious after the third interview itself. The questions posed during the third interview were apparently based on the incorrect opinion that the Migration Board had received during the second interview.

5.3 The complainant admits that he was given an opportunity to comment on the minutes of the second and third interview, but that upon pointing out his objections to his lawyer he was told that such corrections were not necessary, as he would be granted asylum regardless of what was noted in the minutes. In addition, he was told during the final interview that she had

understood everything that he had stated. In any event, all his efforts to correct the errors and misunderstandings would have been pointless.

5.4 The complainant submits that use of Embassy reports precludes any asylum applicant from opposing the information upon which an asylum application may be rejected. The practice could jeopardize the security of the asylum seeker if he/she is returned to his country of origin, or his/her relatives that remain in the country of origin. As the information is often supplied by a person living in the country of origin, an informant could feel compelled to give false information to avoid reprisals from the authorities. The complainant submits that it is difficult for him, as he is not a legal expert, either to comment on the arguments made relating to the application for conversion of the flogging sentence or to make any comments on the advice received by the State party from the alleged legal expert. It is also difficult to comment on their qualifications as they remain anonymous. He submits that what is likely to happen as expressed by the legal expert and what actually happened in this case should not be confused. The complainant confirms that the documents submitted were copies of the originals, but continues to claim that they are authentic.

5.5 The author confirms that the judge that returned the verdict of guilty knew of his kidney problem, but would also have known that the sentence would not have been carried out until several days later, when presumably, his state of health would have improved. It is clear from the decision that the reason the court did not approve the complainant's application was due to the fact that no evidence was presented that could strengthen his request for a conversion. The Court denied his application, in accordance with the religious and legal grounds state in the decision.

5.6 As to the fax marks on the documents, the complainant states that they were faxed from Iran to the Migration Boards' Office fax machine in Kiruna. The incorrect date stamp is a result of the Migration Board's failure to update the time function on the fax machine. As to the State party's remark that it could find no information on the SPI, the complainant submits that the address of its official website (www.jonbesh-iran.com) is written on all the official party papers provided to the State party, and a simple internet search, produces 365 results. [2]

Supplementary submissions from the State party and the complainant's comments

6.1 On 16 November 2005, the State party submitted that since a new remedy to obtain a residence permit had come into force under temporary legislation, the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or at least be adjourned awaiting the outcome of the application of this new procedure. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until a new Aliens Act entered into force on 31 March 2006. These temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new Chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, *inter alia*, if

[2] The complainant provides some of this information.

there is reason to assume that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order.

6.2 Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a long time and if, on account of the situation in the receiving country, the use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. Further special considerations shall be given to a child's social situation, his or her period of residence in and ties to the State party, and the risk of causing harm to the child's health and development. It shall further be taken into account whether the alien has committed crimes and a residence permit may be refused for security reasons.

6.3 No refusal-of-entry or expulsion order will be enforced while the case is under consideration of the Migration Board. Decisions made by the Migration Board under Chapter 2, Section 5 b, as amended, are not subject to appeal. Applications lodged with the Migration Board under the new legislation, which are still pending by 30 March 2006, will continue to be handled according to the temporary amendments of the 1989 Aliens Act. The same applies to cases that the Board has decided to review on its own initiative.

7.1 On 19 April 2006, the complainant responded that on 15 November 2005 the Swedish Migration Board, ex officio, registered the complainant's case for examination under the temporary legislation. The complainant has not been provided with a date for consideration of this matter. In any event, he argues that as his case was registered with the Committee prior to the enactment of the new temporary legislation, the Committee need not wait for the Board's decision before considering the merits of this case.

7.2 The complainant applies the new legal grounds to his case, and argues that: there is no reason to believe that Iran will not accept him, (both the Migration Board and Aliens Appeal Board had previously taken this into account and no new circumstances have arisen since); there are no relevant medical obstacles to enforcing the order; the complainant does not have any children residing in Sweden (of crucial importance when considering humanitarian grounds for a permit); and there is no reason to believe that it would not be possible to enforce the expulsion order by coercive means, because of conditions in the country of return. The complainant submits that, considering the current amendment does not aim to encompass people in a similar situation to him, there is no reason to assume that he will be granted a residence permit under this procedure. Thus, according to the complainant, there is no reason to adjourn the case awaiting the outcome of its examination under the temporary legislation.

7.3 On 28 April 2006, the complainant informed the Committee that by decision of the same day the Migration Board had refused to grant him a residence permit under the temporary legislation. Thus, in his view domestic remedies had been exhausted.

Issues and proceedings before the Committee:

Consideration of admissibility

8. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the

Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. Following information received from the complainant on 28 April 2006, in which he informed the Committee that he had been refused a residence permit under temporary legislation, the Committee is of the opinion that all available domestic remedies have been exhausted. The Committee finds that no further obstacles to the admissibility of the communication exist. It considers the complaint admissible and thus proceeds immediately to the consideration of the merits.

Consideration of the merits

9.1 The issue before the Committee is whether the removal of the complainant to Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 In assessing the risk of torture, the Committee takes into account all relevant considerations, including the existence in the relevant State of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at risk in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

9.3 The Committee recalls its General Comment No.1 on article 3, which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The risk need not be highly probable, but it must be personal and present. In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal.

9.4 In assessing the risk of torture in the present case, the Committee has noted the complainant's contention that there is a foreseeable risk that he would be tortured if returned to Iran, on the basis of his alleged previous political involvement, and that the alleged sentence against him of 140 whiplashes would be carried out. The Committee noted his claim that the asylum procedure in Sweden was flawed, in particular, due to inadequate interpretation during the second interview. The Committee considers that the State party took appropriate remedial action by allowing him the opportunity to correct errors in the minutes of the interview. The complainant does not deny that he had such an opportunity.

9.5 The Committee notes that the complainant has adduced three documents, which he purports to validate the existence of the sentence against him. He has adduced what he alleges are two summonses to attend the Public Court of Shiraz, on 31 July 2004 and 25 August 2004. He had originally alleged that these documents were originals but, in his comments on the State party's submission, confirmed that they were copies. The Committee notes that the

State party has provided extensive reasons, based on expert evidence obtained by its consular services in Tehran, why it questioned the authenticity of each of the documents. In reply the complainant argues that, apparently, the criminal procedure was not applied in this case. The Committee considers that the complainant has failed to disprove the State party's findings in this regard, and to validate the authenticity of any of the documents in question. It recalls its jurisprudence that it is for the complainant to collect and present evidence in support of his or her account of events.[3]

9.6 As to his alleged previous political involvement, the Committee notes the complainant's affirmation that he did not base his initial asylum request on such involvement. It concludes that he has failed to adduce evidence about the conduct of any political activity of such significance that, would attract the interest of the authorities, and, in the language of the Committee's General Comment No. 1 on article 3, would make him "particularly vulnerable" to the risk of being placed in danger of torture.

10. For the abovementioned reasons, the Committee concludes that the complainant has failed to substantiate his claim that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the removal of the complainant to Iran would not constitute a breach of article 3 of the Convention.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

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[3] S.L. v. Sweden, No. 150/1999, Decision adopted on 11 May 2001.