



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

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COMMITTEE AGAINST TORTURE

Thirty-seventh session
(6 – 24 November 2006)

DECISION

Communication No. 277/2005

<u>Submitted by:</u>	N. Z. S. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	23 August 2005 (initial submission)
<u>Date of present decision:</u>	22 November 2006

Subject matter: deportation with alleged risk of torture and cruel, inhuman or degrading treatment or punishment

Procedural issue: lack of substantiation of claim

Substantive issues: risk of torture on deportation; risk of cruel, inhuman or degrading treatment or punishment on deportation

Article of the Convention: 3

[ANNEX]

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-seventh session

Concerning

Communication No. 277/2005

Submitted by: N. Z. S. (represented by counsel)
Alleged victim: The complainant
State party: Sweden
Date of the complaint: 23 August 2005 (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 22 November 2006,

Having concluded its consideration of complaint No. 277/2005, submitted to the Committee against Torture on behalf of N. Z. S. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1.1 The complainant is, N. Z. S., a citizen of the Islamic Republic of Iran born in 1968, currently residing in Sweden and awaiting deportation to Iran. He claims that his deportation to Iran would constitute a violation of article 3 of the Convention against Torture. The Convention entered into force for Sweden on 26 June 1987. The complainant is represented by counsel.

1.2 On 25 August 2005, the Committee transmitted the complaint to the State party in accordance with article 22, paragraph 3, of the Convention. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Iran pending the consideration of his case. On 6 October 2005, the State party informed the Committee that it would stay the enforcement of the decision to expel the complainant to Iran while the case is under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant, a veteran of the Iran-Iraq war, worked as a sheet-metal worker in Yazd, Iran. In the spring of 1997, he had an argument with a Mullah during Friday prayers regarding a sermon condemning homosexuality. Following the argument, he was attacked and beaten by civilian policemen. The following day, he was arrested by three municipality officials who sealed his shop. He was taken to Agahi (the security police station) where he was detained for two months. During that period he was interrogated and tortured to make him confess his opposition to the regime and to extract information about the persons or organizations responsible for the murder of an Imam seven years earlier.

2.2 Two months after his arrest, he was threatened with torture and ordered to sign a written confession, the content of which he was not allowed to see. After he had signed, he was told that he had confessed to having been active against the regime and sentenced to 28 months' imprisonment and hard labour. There were no court proceedings. He was then transferred to a new prison, Khoureh Barin, in Yazd, where throughout his imprisonment he was subjected to acts of torture such as beatings and mock executions and being forced to watch other prisoners being executed. He was freed in August of 2000, after serving his sentence and being forced to sign an undertaking that he would no longer participate in activities against the regime. He was taken home.

2.3 In February 2002, the complainant took part in a demonstration during which many participants expressed dissatisfaction with the government and which was violently dispelled by the authorities. Two or three days later he learned that all persons who had participated in the demonstration were being arrested one by one. One evening, his house was attacked but he managed to escape through the back door. He then fled to Astara, on the border with Azerbaijan, and left the country with the help of a smuggler who arranged travel documents for him via Azerbaijan and Turkey. He arrived in Sweden on 28 April 2002. He met with a contact at Stockholm airport who was to assist him with his asylum application once he had handed him his travel documents. However, the man took the documents and disappeared.

2.4 On 30 April 2002, the complainant applied for asylum to the Migration Board's Regional Office in Stockholm/Solna. A preliminary hearing was held on the same day, but no interview took place then. On 27 February 2003, a full interview was held in the presence of a state-appointed legal counsel during which the complainant presented detailed information regarding the reasons for, and circumstances of, his escape from Iran. This interview lasted two hours and twenty minutes and no other interview has held at any other stage of the asylum procedure. Counsel provided the Migration Board with supplementary information including two medical certificates which confirmed the existence injuries consistent with his claims of torture as well as his medical journal attesting that he suffered from mental illness and sleep disorder.

2.5 On 5 September 2003, the Migration Board rejected the complainant's application. The Board stated, *inter alia*, that it did not find his story credible because the complainant had not submitted his asylum claim immediately upon his arrival in Sweden. Furthermore, though acknowledging that certain interpretations of the Shari'a and Fatwas from religious leaders have been known to result in capital punishment, the Migration Board, referring to provisions of the Iranian constitution governing religious practices, argued that converts from Islam were tolerated as long as they observed religion in private. The Board also considered that the

complainant was no longer of any interest to the Iranian authorities as he had been released from prison and did not belong to any of the categories of participants in the 2002 demonstrations in Yazd considered to be of interest by the authorities. The Migration Board concluded he had substantially exaggerated the risk of torture and inhuman treatment if deported to Iran and that as a result, he could not be considered a refugee, while his physical condition did not warrant a residence permit on humanitarian grounds.

2.6 The complainant appealed to the Aliens Appeals Board. In his appeal, he provided an additional document, a transcript of his criminal record which stated: that he had been imprisoned for 28 months; that he had been released after he had signed an undertaking not to oppose the regime; that he had participated in new actions against the government; that he is wanted by the police and will be subjected to legal proceedings and punishment when he is found. On 17 December 2004, he requested that the Aliens Appeals Board conduct a complete torture investigation and an oral hearing; the request was denied on 23 December 2004. On 31 March 2005, he was requested to make a statement regarding the translation of his criminal record. As he considered that the document had been translated correctly he did not make supplementary observations. On 15 April 2005, the complainant once again requested a complete torture investigation and that the Aliens Board conduct and oral hearing; this request was denied on 26 April 2005. On 20 May 2005, the Aliens Appeals Board rejected the complainant's application. The Board concluded that the complainant was not credible. According to the Board's translation of his criminal record, he had been imprisoned from 9 April 1988 to 11 August 1990. There was therefore an unexplained 10 years difference between the dates recorded in the document and the dates of his detention according to his statements. The Appeals Board upheld the Migration Board's findings and concluded that he had not proved that it was probable that he was either a refugee or in need of protection under the Aliens Act. With the application rejected, his expulsion order became effective and was returned to the Migration Board for enforcement.

2.7 On 31 May 2005, the complainant lodged a new application for a residence permit with the Aliens Appeals Board, arguing that all his statements had been correct and that he had had no knowledge of the inaccuracy of the criminal record before the decision of the Aliens Appeals Board. After the Aliens Appeals Board decision of 20 May 2004, the complainant's brother had contacted the Iranian authorities, who confirmed the inaccuracy and corrected the data. According to the authorities there had been a mix up of two figures in the criminal record and the imprisonment had begun on 1376 and not on 1367. The corrected version was sent to the complainant by his brother. Counsel expressed regret at the oversight and criticized the Appeals Board for its failure to investigate the matter in a satisfactory manner, pointing out that the complainant had not been notified that it questioned the transcript. The Appeals Board rejected the application on 7 June 2005, considering there were no new facts that made it necessary to reconsider its earlier decision.

2.8 On 20 June 2005, the complainant lodged another application for a residence permit, in which he appended the original corrected document from the Iranian authorities proving that the first transcript of his criminal record had been incorrect. The Aliens Appeals Board rejected his application on 30 June 2005. The Board observed that many fake documents were in circulation and that it could attach no evidentiary value to the ones presented for the complainant. As a result, it held that there were no grounds for a reappraisal of the complainant's case.

The complaint

3.1 The complainant argues that the Swedish authorities reached their decision to reject his asylum claim based on general information without taking into account his arguments and explanations. Instead, they based their rulings concluding that he was not credible on two facts: his release from prison and a typing error in his criminal record. According to the complainant, by concluding that his release meant that he was of no interest to the Iranian authorities, the Migration Board did not take into account all the relevant information he had provided. Neither the Migration Board nor the Aliens Appeals Board ever refuted his explanation that his failure to apply for asylum immediately upon arrival was owing to his poor mental and physical condition and that he applied as soon as he was able to, i.e. two days later.

3.2 The complainant submits that the Aliens Appeals Board not only failed to notify him that it challenged his translated criminal record, but it also later refused to consider the corrected version, alleging that other fake documents were in circulation. The complainant points to the double standards employed by the Board: on one hand, the incorrectly translated version was used as the basis of its judgment; on the other, the copy corrected by the Iranian authorities was dismissed as having no evidentiary value. The complainant notes that the Board never contacted the Swedish Embassy in Teheran to verify the document's authenticity. Finally, the complainant submits that his repeated requests for an oral proceeding before the Aliens Appeals Board were rejected even though they were mandated by law (save in cases where it was clear that such a hearing was unnecessary). The complainant maintains that if they doubted his credibility, the Swedish authorities should have used the oral hearing to challenge the complainant's claims.

3.3 The failure of the Swedish authorities to appraise objectively, impartially, and systematically his asylum application and to review the relevant supplemental information to conclude that he was not credible lead them to gravely underestimate the risks associated with his return to Iran. Given Iran's treatment of political dissidents, deteriorating human rights situation and his own experience of imprisonment and torture at the hands of the Iranian authorities, as well as evidence that he is still wanted by the Security Police, the complainant claims that he might be declared an enemy of the state because of his activities since 1996. His forced removal to Iran would expose him anew to torture and other cruel, inhuman, and degrading treatment or punishment.

State party's observations on admissibility and merits

4.1 By submission of 9 February 2006, the State party argues that the complaint fails to rise to a basic level of substantiation and should be considered inadmissible pursuant to article 22, paragraph 2, of the Convention. The State party also initially challenged the admissibility of the complaint for non exhaustion of domestic remedies as it argued that under a new provision of Swedish law the Migration Board could review the complainant's case once more. However, on 29 March 2006, the State party withdrew this part of its submission after the Migration Board decided, on 3 March 2006, that the author should not be granted a residence permit.

4.2 On the merits, the State party notes the existence of numerous reports that gross violations of human rights are committed in the Islamic Republic of Iran. However, this does not suffice to establish that the complainant's forced return would violate article 3. For such a

violation to occur, 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 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 of its provisions reflect the same principle as that laid down in article 3, paragraph 1 of the Convention. The State party notes that according to the Government's Bill 1996/97, an applicant's story must be accepted if it appears to be credible, since it is seldom possible for the applicant to provide evidence clearly showing that he risks persecution. Both the Migration Board and the Aliens Appeals Board concluded that the complainant was not credible. It also submits that the national authority conducting the asylum interview is naturally in a good position to assess the credibility of any asylum seeker's claims. The State party refers to the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status and submits that it is for the complainant to support his statements by any available evidence and give a satisfactory explanation for any lack of evidence.

4.3 The State party observes that throughout the procedure, the complainant made a number of inconsistent statements regarding matters of vital importance to the assessment of his claim. The following inconsistencies were highlighted: firstly, the reasons the complainant gave for his arrest and the moment of his detention varied considerably in the statements made to the Migration Board, the Aliens Appeals Board, and the complaint submitted to the Committee. To the Migration Board he stated that he had argued with an Imam because his sermon only dealt with historical issues and that a week later he was arrested; to the Aliens Appeals Board he asserted that he had declared to the imam that he thought it would be better to convert to another religion and that he was arrested on the following day; to the Committee, he claimed that he had shouted at the Mullah during a sermon on homosexuality. There are also a number of inconsistencies in the complainant's account of when and for how long he was imprisoned and whether he had been sentenced or not. The State party notes that during his interview with domestic authorities, the complainant stated that he had never been sentenced and that he had been imprisoned for 28 months. It also notes that in his appeal to the Aliens Appeal Board he claimed that he had been sentenced to 26 months imprisonment after 2 months in detention and finally to the Committee that he had been forced to sign a confession and convicted to 28 months imprisonment after being detained for 2 months. According to the State party, the complainant elaborated on his claim in successive stages, which gives reason to seriously question its reliability. Additionally, it is noted that there are contradictions in the complainant's statements regarding the date of his arrival in Sweden. In his asylum application he stated that he arrived on 23 April 2002 whereas in his appeal to the Aliens Appeals Board he claimed to have arrived on 28 April.

4.4 The State party submits further that the Swedish Embassy in Teheran was requested to provide information regarding the Iranian certificates submitted by the complainant regarding his detention. The Embassy consulted a legal expert who concluded that the certificates are almost certainly false. The first certificate, an abstract from a criminal record, contains information that could not appear in a criminal record, such as the fact that the complainant was released on bail, and had resumed political activities and was wanted by the police. The criminal record only contains information about crimes and convictions. Moreover, a person serving a prison sentence cannot be released on bail. The second certificate which purports to be a correction of the first one contains information that the person in question was called up for military service during the alleged term of imprisonment. The Embassy notes that none of

the certificates specified for which crimes he was convicted. The State party highlights that though the first certificate was dated July 2002 it was not submitted until September 2004 and that its existence was not even mentioned by the complainant during his interview with the Migration Board in 2003. Finally, the State party notes that neither the complainant nor his counsel noticed the misdating in the first certificate, concluding that the complainant has provided false information and documentation.

4.5 The State party concludes that even if it is considered established that the complainant was subjected to torture in the past this does not substantiate his claim that in the present he risks torture if returned to Iran.

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

5.1 By submission of 20 June 2006, the complainant reaffirms that all domestic remedies have been exhausted and submits that though a new Aliens Act had come into force, in the circumstances of his case, he could not appeal under the new provisions. The complainant notes that the Migration Board only held one interview with him lasting two hours and twenty minutes which took place almost a year after he arrived in Sweden. The minutes of the interview do not constitute an exact description of what was said. The complainant notes that the decisions of both the Migration Board and the Aliens Appeals Board rely on information obtained during the above-mentioned interview. He notes that he had requested new oral proceedings at the Aliens Board on two separate occasions as the Migration Board had misjudged his credibility and his statements regarding the torture he had been subjected to. He adds that none of the so-called inconsistencies were dealt with by the Migration Board or the Aliens Appeals Board. Regarding the alleged inconsistencies on the reasons for his arrest, he notes first that, in his disagreement with the imam, he had addressed a number of different issues. He submits that it is normal that at each stage of the procedure he provided additional and more detailed information, sometimes in response to new questions that were put to him. As for the timing of his arrest, he submits that consideration must be taken of the fact that persons having experienced different kinds of traumas may have memory loss regarding their trauma. He notes moreover, that the interview took place more than five years after the event. As for the supposed inconsistencies in the complainant's account of when and for how long he was imprisoned and whether he had been sentenced or not, it is submitted that he had actually stated that he had never been convicted by a **court** and that the difference in the number of months spent in detention (26 or 28) were a matter of whether the two months in detention prior to his signing the confession are included in the calculation.

5.2 The complainant notes that during the procedure before the Committee he had requested several extensions of the delays to present information. This was because he intended to procure evidence of his imprisonment and the fact that he was still wanted by the authorities. Unfortunately, he was unable to do so without taking action that he believed would put his relatives at risk. Nevertheless, he submits that he has fulfilled his obligation to collect and present evidence in support of his claims.

5.3 Regarding the information on his arrival in Sweden, the complainant submits that he had had to flee Iran with the assistance of a smuggler, who provided him with false documentation because it was not possible for him to obtain a passport in Iran. The complainant notes that the interest in verifying his itinerary emanates from a need to establish

which country should be responsible for his application of asylum. He argues that an asylum seeker's need of protection cannot be dependent on whether he or she has given a correct statement regarding his/her itinerary. Once the complainant realized that the Swedish authorities attached great importance to his itinerary he submitted his luggage claim to support his statement. He notes that the Aliens Appeals Board did not attach any importance to this inconsistency.

5.4 The complainant submits that although the State party's account of the Migration Board's decision is essentially correct, that one of the main reasons given for the rejection of his application was that he had been released, thereby showing that the authorities had no further interest in him. The complainant submits that the State party's assertion that during his interview he had been arrested "one week" after the Friday sermon is not in the minutes of the interview. What he did assert in his interview was that his store was closed down a week after he argued with the imam/mullah.

5.5 The complainant confirms the description of the appeal to the Aliens Appeals Board as essentially correct. Nevertheless, the translation made of the criminal record submitted by the complainant regarding his detention, states that he was released on bail, which is incorrect. Throughout the asylum process the complainant stated that he had been released after being obliged to sign a document in which he undertook, *inter alia*, not to participate in any activity against the Iranian regime.

5.6 The complainant submits that it is impossible for him to comment on whether the person or persons consulted by the Embassy in Teheran were qualified experts. The conclusion that the document is false is based on information given by anonymous expert/s in a questionable Embassy report. As for the certificates themselves, the complainant highlights that the Aliens Appeals Board, which has extensive experience in reviewing such documents, never raised the objections now advanced by the State party. Though the Board found inconsistencies between some of the facts submitted in the certificate and the statements made, it at no time questioned whether a criminal record can or not contain certain types of information. As for the second certificate, the Embassy doesn't even claim that this document is false, only concluding that as the first one is false the second one must be too. The complainant concludes that the State party has failed to substantiate its allegations that the documents were false.

5.7 Regarding the fact that the certificate was only presented in 2004 to the Appeals Board though it is dated 2002, the complainant explains that after the Migration Board rejected his application he was instructed by legal counsel to try to obtain additional documentation. He then contacted his family in Iran and was informed by his brother that he was in possession of an extract of his criminal record. The complainant was unaware of the existence of this document before then and does not know why his brother had requested the document from the authorities.

5.8 The complainant notes that the State party at no point contested that he was detained and tortured. He maintains that the information provided by him regarding the measures adopted against him by the authorities clearly demonstrate that they are still looking for him.

Additional comments by the State party

6.1 On 5 September 2006, the State party submitted the following complementary comments. It replies to the complainant's assertion that the minutes of the interview contain no reference as to whether he was arrested one week after his discussion with the imam and refers to the minutes where it is in effect stated that he was arrested following the closure of his shop which took place one week after the Friday sermon.

6.2 Regarding the translation of the word "tahood" as bail, the legal expert consulted the original documents and had no idea of how the terms had been translated. According to the expert, a criminal record contains only information about crimes and convictions and it was because the document contained additional information that it was considered questionable.

6.3 Finally, in response to the complainant's assertion that it had not been contested that he had been detained, physically abused and tortured; was not in a position to either confirm or contest this point. It highlights, however, that the medical certificates provided by the complainant supports the existence of old scars but do not *per se* prove when or how these scars were caused. Moreover, the certificate confirms that the injuries correspond with his description of their origin was not issued by an expert on torture.

Issues and proceedings before the Committee

Consideration of admissibility

7. 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 State party on 29 March 2006 that the Migration Board had decided, on 3 March 2006, not to grant a residence permit to the complainant, the Committee considers that 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 its consideration of the merits.

Consideration of the merits

8.1 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.

8.2 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.

8.3 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. The risk does not have to meet the test of being highly probable, but it must be personal and present.

8.4 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 incarceration and torture and the fact that by participating in a demonstration against the government he did not comply with the condition for his release. The Committee notes the complainant's allegation that the asylum procedure in Sweden was defective, among others things, as his requests for oral proceedings before the Aliens Appeals Board were rejected even though the law specifies that the Appeals Board should grant such proceedings if this can be presumed to benefit the investigation. The Committee also notes that the complainant has provided medical certificates that support his contention that he was tortured and that the domestic instances did not question that the complainant had been detained, physically abused and tortured, though the State party notes that it is not in a position to either confirm or deny this allegation.

8.5 However, the Committee also notes that while it is probable that the author was subjected to torture, the question is whether he currently runs a risk of torture if returned to Iran. It considers that, even if it were assumed that the complainant was detained and tortured in Iran in the past, it does not automatically follow that, six years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Iran in the near future¹.

8.6 The Committee notes that the State party has provided extensive reasons, based on expert evidence obtained by its Embassy in Tehran, why it questions the authenticity of the documents presented by the complainant to attest his detention in Iran. It also notes that the complainant's arguments, and the evidence to support them, have been presented to the State party's asylum determination bodies. It recalls its jurisprudence to the effect that it is for the complainant to collect and present evidence in support of his or her account of events², and reiterates that it is not an appellate, quasi-judicial or administrative body. In the present case, the Committee concludes that the State party's review of the complainant's case was not deficient in this respect.

¹ See *S.S.S. v Canada*, Communication N° 245/2004, Views of 16 November 2005, 8.4; *Haad v Sitzerland*, Communication N° 126/1999, Views of 10 May 2000, para. 8.6.

² See *Mehdi Zare v Sweden*, Communication N°256/2004, Views of 17 May 2006, para. 9.5; *M.A.K.v Germany*, Communication N° 214/2002, Views of 14 May 2004, para. 13.5; *S.L. v. Sweden*, Communication No. 150/1999, Views of 11 May 2001, para.6.4.

8.7 In the Committee's view, the complainant has failed to adduce evidence about the conduct of any political activity of such significance as would still attract the interest of the Iranian authorities. Nor has he submitted other tangible evidence to demonstrate that he continues to be at a personal risk of torture if returned to Iran. For these 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.

9. 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.]
