



**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. 282/2005

<u>Submitted by:</u>	S. P. A. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Canada
<u>Date of the complaint:</u>	26 September 2005 (initial submission)
<u>Date of present decision:</u>	7 November 2006

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

Procedural issue: non substantiation of allegations

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

Articles of the Convention: 3; 16

[ANNEX]

* Made public by decision of the Committee against Torture.

** Re-issued for technical reasons.

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. 282/2005

<i>Submitted by:</i>	S. P. A. (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Canada
<i>Date of the complaint:</i>	26 September 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 7 November 2006,

Having concluded its consideration of complaint No. 282/2005, submitted to the Committee against Torture on behalf of S. P. A. 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, her counsel and the State party,

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

1.1 The complainant is S. P. A., an Iranian national born in 1954 in Tonkabon, Iran, currently residing in Canada, from where she faces deportation. She claims that her return to Iran would constitute a violation by Canada of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. She is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 27 September 2005, and requested it, under rule 108, paragraph 1 of the Committee's rules of procedure, not to expel the complainant to Iran while her complaint is under consideration by the Committee. The State party subsequently informed the Committee that the complainant had not been deported.

The facts as presented by the complainant

2.1 The complainant obtained a nursing degree in 1986 in Iran, and became a supervisory nurse at the Rejai Hospital and a lecturer at the Islamic Azad University of Mahal Salas

Tonkabon. One of her responsibilities was the purchase of nursing supplies, including bones and cadavers for teaching purposes. Sometime in late 1999, she noticed the poor quality of bones delivered: they showed signs of fractures and it was obvious to her that the individuals had suffered trauma before their deaths. The complainant advised M., the supplier, that she could not use the bones, upon which she wrote a report to the Dean of the University. The next set of bones provided were in perfect condition. Upon querying the origin of this later set of bones, the complainant was informed by M. that the first set were taken from “anti revolutionary groups” while the second were obtained by raiding an Armenian cemetery. The complainant was distressed by this information and went to the Magistrate for Islamic law to discuss the matter, which she believed was a religious one. The Magistrate advised that he would look into the matter.

2.2 On subsequent occasions the complainant noted that the cadavers delivered were of light skin, and on enquiry was told they had been taken from a Baha’i cemetery. She complained again to the Magistrate, who told her that he had ordered that bodies be taken from the Baha’i cemetery, as their religion was below Islam. The complainant argued with him and was accused of being an anti-revolutionary. That evening, the complainant was arrested without charge in her home and taken to a basement room belonging to the Ministry of Intelligence and Security, where she was interrogated while blindfolded. Despite her explanations, she was accused of insulting the Islamic religion, was tortured and beaten. She was kept in a cell and interrogated every night, still blindfolded. She was beaten with sticks and wires, kicked, insulted and taunted. She was given electric shocks and forced to stand for hours without sleep. The injuries on her head were particularly severe and kept bleeding, and her toes were bruised and bloody.

2.3 After two months and because of her bleeding, she was put into a car one night after midnight and taken for medical care. On the way, the driver stopped, got out of the car and left it unlocked. The complainant got out of the car and climbed into the back seat of the first car which was parked near by. She managed to tell the driver her name and address and asked him to take her home, before she lost consciousness. The driver of the car recognized her, and took her to Rasht where her wounds were tended to. The complainant fell in and out of consciousness. When she recovered she was told that she was in Kermanshar and in a safe place. Those who took care of her for several months advised her to leave Iran. They assisted her in obtaining her passport from her family and through a smuggler she traveled to Dubai and then to Colombia. She advised the smuggler that she did not wish to stay in Colombia and therefore traveled to Turkey, Greece, Spain, Jamaica, Mexico and then Canada. Upon her arrival in Canada on 10 September 2001 she made a claim for refugee status.

2.4 She was subsequently informed by relatives in Iran that the authorities were looking for her and that they had been to her sister’s house with several summons for her arrest. They had threatened her daughter and asked to speak to her husband. She was also informed that the driver who was taking her from her detention place to obtain medical care had been bribed, and was supposed to take her back to her family. As she had escaped, her family had not known her whereabouts for a month and a half, at which time the people in Kermanshar had contacted them. Finally, the complainant was told that the people in Kermanshar had been paid by her family to care for her and help her to leave Iran.

2.5 The complainant’s application for refugee status on the basis of her political opinion was rejected on 2 May 2003. On 23 May 2003, she filed an application for leave and judicial

review of this decision, which was denied on 16 September 2003. On 25 March 2004 she filed an application for consideration under section 25(1) of the Immigration and Refugee Protection Act (humanitarian and compassionate grounds application, 'H&C'), providing new evidence that she had been employed as the Supervisor of Nursing and an Instructor at the University of Mahal Salas Tonekabon. She also submitted a pre-removal risk assessment ('PRRA') application on 13 August 2004, and subsequently submitted new evidence in the form of letters from her daughter and sister, and a court summons dated 22 December 2003 from the Tehran Islamic Revolutionary Court, requiring her to attend court on 6 January 2004. The H&C and PRRA applications were denied by the same officer and notified to the complainant on 16 August 2005. An application for leave and judicial review of the PRRA and H&C decisions was filed in the Federal Court on 25 August 2004. Her application for stay of removal was denied on 26 September 2005.

2.6 The complainant was scheduled to be deported to Iran on 27 September 2005. The application for leave to apply for judicial review of both the PRRA and H&C decisions was subsequently dismissed on 1 December 2005.

The complaint

3.1 The complainant argues that she would be imprisoned, tortured or even killed if returned to Iran, in violation of articles 3 and 16 of the Convention. This is based on the fact she is a known perceived opponent of the Iranian regime and the fact a passport was applied for on her behalf, thereby alerting the Iranian authorities of her imminent return. There is a court summons in her name, and as she missed the court date, based on objective country information there will most likely be a warrant for her arrest. Counsel refers to the United Kingdom Country Report from the Immigration and Nationality Directorate Home Office from October 2003, which states that the traditional court system in Iran is not independent and is subject to government and religious interference. The report states that trials in the Revolutionary Courts, where crimes against national security and other principal offences are heard, are notorious for their disregard of international standards of fairness. Revolutionary Court judges act as prosecutor and judge in the same case, and judges are chosen for their ideological commitment to the system. Indictments lack clarity and refer to undefined offences such as 'anti-revolutionary behaviour'. Counsel claims that those accused of 'anti-revolutionary behaviour' are dealt with unfairly once detained: although the Constitution prohibits arbitrary arrest and detention, there is reportedly no legal time limit on *incommunicado* detention, nor any judicial means to determine the legality of the detention. Further, female prisoners are repeatedly raped or otherwise tortured while in detention, and there are widespread reports of extra judicial killings, torture, harsh prison conditions, and disappearances.

3.2 Counsel submits a medical certificate dated 22 June 2005 based on the complainant's Personal Information Form and a clinical interview and exam performed on 17 June 2005, which concludes that there is evidence of multiple scars on her body. Significant wounds are on her face and scalp, and are consistent with a mechanism of blunt trauma as described by her. The irregular depressed scar on the top of her head is said to be consistent with her description of a lesion that was left open and sutured at a later date. The scars on her arms and legs are more non-specific but are consistent with blunt trauma. The bilateral toenail onycholysis is typical for post traumatic nail injury and could certainly have resulted from

being stepped on repeatedly as she has described. The medical report concludes that her psychological history is consistent with Post Traumatic Stress Disorder-Chronic.

3.3 Counsel argues that the PRRA officer did not assess the risk as the officer seemed to determine that the complainant was not credible, despite this independent physician's report that her injuries were consistent with the information provided in her Personal Information Form. Further, counsel highlights that the PRRA officer did not determine that the warrant for the complainant's arrest was not genuine.

State party's observations on the admissibility and the merits

4.1 On 27 June 2006, the State party argues, on article 3, that the communication is inadmissible as manifestly unfounded as the complainant has not substantiated her allegations even on a *prima facie* basis. Her communication is based on the same story that competent domestic tribunals have determined to lack credibility and plausibility. On article 16, the complainant has made no attempt to substantiate her claim and it is therefore also inadmissible as manifestly unfounded. Apart from the complete absence of evidence on this point, according to the Committee's jurisprudence, the potential aggravation of a complainant's state of health possibly caused by deportation does not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16¹.

4.2 With regard to the scope of article 3, the State party recalls that it refers to "substantial grounds" for believing that a person would be in danger of being subjected to torture, and that the Committee's General Comment on article 3 places the burden on the complainant to establish that she would be in danger of being tortured. The grounds on which a claim is established must be substantial and must "go beyond mere theory or suspicion", as confirmed by the Committee in numerous decisions. Consideration of the relevant factors leads to the conclusion that there are no substantial grounds for believing that the complainant would be in danger of being subject to torture. In particular, her credibility is highly suspect and her claim inconsistent and implausible. There are no credible reasons to consider that she fits the personal profile of someone who would be of interest to the Iranian authorities or particularly vulnerable if returned to Iran.

4.3 With regard to the credibility and plausibility of the allegations and the Committee's scope of review, the State party concedes that the Committee does not expect complete accuracy from the complainant. What is required is that the evidence may be considered "sufficiently substantiated and reliable"². Nevertheless, important inconsistencies in the present case are "pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return"³. It is not the role of the Committee to

¹ The State party refers to Communication No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, paragraph 10.2.

² The State party refers to Communication No. 34/1995, *Aemei v. Switzerland*, Views adopted on 9 May 1997, paragraph 9.6.

³ Communication No. 148/1999, *A.K. v. Australia*, Views adopted on 5 May 2004, paragraph 6.2; and Communication No. 106/1998, *N.P. v. Australia*, Views adopted on 6 May 1999, paragraph 6.6.

weigh evidence or re-assess findings of fact by domestic courts, tribunals or decision-makers⁴. The complainant's allegations and supporting evidence are identical to that submitted to competent, impartial domestic tribunals and decision-makers and that were found not to support a finding of risk in Iran. The analysis of the evidence and the conclusions drawn by the Immigration Refugee Board as well as by the PRRA officer who assessed the risk to which she may be exposed if returned to Iran were appropriate and well-founded.

4.4 The State party recalls that the Committee cannot review credibility findings "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice". The complainant made no such allegations and the material submitted does not support a finding that the Board's decision suffered from such defects⁵. Nothing suggests that domestic authorities had any doubts concerning their assessment, nor is there any evidence that the domestic authorities' review was anything other than fully satisfactory: the complainant is simply dissatisfied with the results of the domestic proceedings and the prospects of deportation, but made no allegations or produced any evidence that the proceedings were in any way deficient. Accordingly there are no grounds on which the Committee could consider that it is necessary for it to re-evaluate the findings of fact and credibility made by the domestic tribunals. Nevertheless, should the Committee be inclined to assess the credibility of the complainant, a focus on some of the more important issues clearly supports a finding that the complainant's story simply cannot be believed.

4.5 With regard to her role at the University, the complainant asserted in her Personal Information Form that she was in charge of purchasing all supplies necessary for the nursing faculty and that the University had an arrangement for six years with the supplier of bones. However, in the oral testimony, she stated that she was in charge of ordering bones and that these began to be ordered in 1998, only one year before her problems began. With regard to her arrest and torture, she stated in her Personal Information Form that she recognised the voice of her first cousin, a member of the Ministry, as one of her interrogators. However, in the oral testimony, she stated that her first cousin was among those who arrested her.

4.6 With regard to the complainant's account of her escape, the State party shares the IRB's assessment that it was "unbelievable" and "exaggerated and implausible". In any case, even if it were accepted that the man who was driving her to the medical centre had been bribed by her family, it is implausible that he would leave to allow her to get into another car which coincidentally belonged to someone who recognised her, and that this stranger would not take her to a hospital if she was bleeding and had fainted. It is also not plausible that she would live in a house full of strangers yet not know even after four months of living with them who they were or what their names were, and would not ask to contact her family during all that time.

4.7 With regard to her exit from Iran, the complainant's Personal Information Form indicated that strangers helped her obtain her passport from her family. However, in her oral testimony, she claimed that she left Iran with a false passport. She claims that she needed an exit visa; it was implausible that she would have received such a visa if she was escaping the

⁴ The State party refers, *inter alia*, to Communication No. 148/1999, *A.K. v. Australia*, Views adopted on 5 May 2004, paragraph 6.4.

⁵ The State party refers, *inter alia*, to Communication No. 223/2002, *S.U.A. v. Sweden*, Views adopted on 22 November 2004, paragraph 6.5.

authorities. The State party shares the finding of the IRB that it is “practically impossible to leave Iran through the Tehran airport if a person is sought by the Iranian authorities. It is also almost impossible to obtain false passports because of the many check-ups conducted before getting on the plane”. The complainant has not submitted any evidence that would be capable of casting doubt on this finding.

4.8 With regard to the delay in seeking refugee protection, the complainant traveled for two months through Colombia, Turkey, Greece, Spain, Jamaica and Mexico, before coming to Canada and filing a refugee claim. The delay in making a refugee claim detracts from her credibility. Under domestic and international refugee law jurisprudence, a delay in filing a refugee claim is a relevant factor to be taken into account in assessing whether the complainant has a subjective and objective fear of persecution.

4.9 With regard to the existence of a summons, although the refugee claim was made in September 2001, the complainant failed to present documentary evidence to corroborate her claim before it was heard in November 2002. Although she was in telephone contact with her family, she did not tell the IRB if there was an arrest warrant out in her name, and it was not until her claim was rejected that she submitted, as part of her PRRA application, a “summons” dated 22 December 2003. It is implausible that a summons would be issued more than two years after the complainant’s alleged escape from detention. If the authorities had been looking for her since her escape, it is implausible that her family would have simply destroyed the other notices of summons as their letters claim, nor even mentioned the existence of the notices during their phone conversations with her. The State party thus shares the PRRA officer’s findings about the minimal probative weight of the purported summons. In addition, there is no evidence or allegation that any member of her family was detained or mistreated. With regard to the existence of an arrest warrant, the State party emphasizes that there is no such warrant despite the complainant’s claims.

4.10 As far as the medical evidence is concerned, the complainant produced a medical report dated 22 June 2005 in support of her PRRA application. The PRRA Officer did not consider the report to be probative of future risk, because the physician’s opinion was based on his/her consideration of the complainant’s Personal Information Form and a clinical interview. The existence of scars does not, by itself, establish that the complainant had been a victim of torture in the past or would face a substantial risk of torture in the future. In the light of the complainant’s overall lack of credibility and the implausibility of central aspects of her claim, particularly since it is unsupported by other independent and reliable evidence, the alleged cause of the scarring is implausible. Most significantly, the scarring, while perhaps evidence of past torture is insufficient to substantiate that the complainant would be at risk of torture in the future.

4.11 Finally, although the State party concedes that the general human rights situation in Iran is poor and deteriorating, it notes that because the country to which the complainant would be returned is Iran does not by itself constitute sufficient grounds for determining that she would be in danger of being subjected to torture upon her return⁶.

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

⁶ The State party refers, *inter alia*, to Communication No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, paragraph 9.6.

5.1 On 6 September 2006, the complainant argues that the jurisdiction of the Committee does include an independent review of the facts.⁷ Its role would be redundant if it were merely to follow the decisions of domestic tribunals without any independent assessment of the case⁸. Further, the IRB, the only comprehensive evaluation of her case, failed to recognize the effects of torture or trauma on a person's ability to recount her story. With regard to her credibility, the complainant argues that the evidence of four independent medical and psychological experts as well as letters from the Vancouver Association for Survivors of Torture about her psychological state and the scars on her body corroborate her account of being tortured. She recalls that torture affects one's ability to recount traumatic experiences in a coherent and consistent manner, and that complete accuracy is seldom to be expected from victims of torture, especially those suffering Post Traumatic Stress Disorder.

5.2 With regard to the State party's argument that the complainant's case has been reviewed by "competent, domestic tribunals", and firstly as to the Immigration and Refugee Board ('IRB'), the complainant notes that there is no reference whatsoever to training of IRB members on the effects of trauma or torture. There is also no reference to training on how IRB members understand or use medical and psychological reports as a tool in the assessment of credibility. The complainant recalls that at no time during the hearing did the IRB member appear to recognize that she displayed classic symptoms of trauma. The IRB member who heard her refugee application on 28 November 2002 had limited, if any, expertise in the effects of trauma or torture. Consequently, the member was distracted by minor inconsistencies in the testimony and failed to give due weight to the expert report of a psychologist, which was filed with the IRB on 10 September 2003. Since the IRB member found the complainant not credible, the psychological assessment was ignored. In other words, the Member assessed the complainant's credibility without considering the effects of depression and PTSD, then dismissed the psychological report as irrelevant.

5.3 While the State party argues that the complainant benefited from several reviews by independent, competent tribunals after the refugee hearing, she submits that this is a misleading description of the process for failed refugee claimants. Indeed, judicial review is an extremely narrow remedy, available only on technical legal grounds, and applicants must obtain leave from the Court before they can proceed to judicial review. From 1998 to 2004, the Federal Court denied leave in 89% of cases. Of the 11% who were granted leave, only 1.6% of negative decisions by the IRB were overturned by the Federal Court.

5.4 With regard to the PRRA, the complainant recalls that its scope is limited to "new evidence", not arguments that the initial decision by the IRB was wrong, and that in 2003 only 2.6% of PRRA applications were approved. She also recalls that she submitted new evidence which her family had sent her and that had not been available at the time of the IRB hearing. She filed a medical report confirming the scars on her body, evidence that she worked at Azad University, and a writ of summons issued by the Tehran Islamic Revolutionary Court. The PRRA officer rejected her application in July 2005 on the basis of lack of corroborating evidence. She emphasized that her jurisdiction was limited to review of "new evidence" and refused to consider the newly available documents relating to the complainant's employment at the University because, in her opinion, the documents should

⁷ Counsel refers to Communication No. 258/2004, *Dadar v. Canada*, Views adopted on 23 November 2005, paragraph 8.8.

⁸ *Ibid.*

have been obtained *before* the refugee hearing and therefore could not be considered as new evidence. In fact, the documents were found in storage at the complainant's mother's home.

5.5 While the PRRA officer did not contest that there was significant, unusual scarring on the complainant's head, scalp and body, she dismissed the medical report because the doctor's opinion was based on a "clinical interview" with the complainant and a review of her Personal Information Form. These comments reflect a complete lack of training or understanding about the nature of medical evidence. Thus, the complainant argues that crucial medical and psychological evidence have never been properly considered at any stage of the refugee process. The dismissal by the PRRA officer of the medical evidence was arbitrary, unreasonable and completely incorrect. As to the writ of summons, the PRRA officer accorded it "minimal weight", drawing on research concerning criminal proceedings in Iran. This is an inappropriate comparison as the writ indicates that it was issued by the Islamic Revolutionary Court, which presides over religious matters.

5.6 With regard to the H&C decision, the complainant recalls that the Committee has noted its limitations⁹ and that in the present case the H&C review and the PRRA were performed by the same officer. In her decision on the H&C, the officer referred to her findings in the PRRA and many of the paragraphs in the PRRA are copied verbatim in the H&C. It is submitted that the H&C was not an independent review and suffered from the same flaws as the PRRA.

5.7 With regard to inconsistencies in her testimony, the complainant submits that none of them go to the heart of her account and that her overall account has always been consistent. She recalls that the Committee has frequently acknowledged that complete accuracy is seldom to be expected by victims of torture.¹⁰ It has also held that a medical diagnosis of Post Traumatic Stress Disorder is a relevant factor in considering whether inconsistencies detract from a claimant's credibility.¹¹ Finally, as to the delay in seeking protection, the Convention for the protection of refugees does not require that a refugee seek protection in the first state to which he flees.

5.8 With regard to the human rights situation in Iran, the complainant recalls that the Committee has previously taken note of the serious human rights situation in Iran in finding that an applicant should not be *refouled* to that country.¹² She submits that the situation in Iran has not improved, and recalls that the General Assembly has recently expressed serious concern at the continuing human rights violations taking place there¹³. The Committee has persuasive evidence corroborating that the complainant was tortured by the Iranian

⁹ Counsel refers to Communication No. 133/1999, *Enrique Falcon Ríos v. Canada*, Views adopted on 23 November 2004.

¹⁰ Counsel refers to Communications No. 21/1995, *Ismail Alan v. Switzerland*, Views adopted on 8 May 1996; and No. 41/1996, *Pauline Muzonzo Paku Kisoki v. Sweden*, Views adopted on 8 May 1996.

¹¹ Counsel refers to Communication No. 43/1996, *Kaveh Yaragh Tala v. Sweden*, Views adopted on 15 November 1996.

¹² *Ibid*, para.10.4.

¹³ Counsel refers to Resolution 60/171, adopted in March 2006.

authorities, and in Iran a history of detention and torture is a significant indicator of future risk¹⁴.

Issues and proceedings before the Committee

Examination of admissibility

6.1 Before considering any claims contained in a communication, the Committee must decide whether or not the communication is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do so 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.

6.2 The Committee notes that the State party has raised an objection to admissibility based on the fact that the complainant, in its view, has not substantiated her allegations even on a *prima facie* basis and that therefore the communication is manifestly unfounded. As to the complainant's claims under article 16 of the Convention, the Committee notes that no arguments or evidence have been submitted in substantiation of this claim, and therefore the Committee concludes that this claim has not been substantiated for the purposes of admissibility. This part of the communication is thus inadmissible.

6.3 As to the allegations made pursuant to article 3 of the Convention, the Committee is of the opinion that the arguments before it raise substantive issues which should be dealt with on the merits and not on admissibility alone. The Committee therefore declares the communication admissible as to the allegations made under article 3 of the Convention.

Merits of the communication

7.1 The issue before the Committee is whether the forced return of the complainant to Iran would violate the State party's obligation pursuant to article 3, paragraph 1, of the Convention not to expel or return ('refouler') an individual to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture upon return to Iran. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she 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 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.

¹⁴ Referring to *Tala* where the Committee held that "his history of detention and torture should be taken into account when determining whether he would be in danger of being subjected to torture upon his return".

7.2 The Committee recalls its General Comment No. 1 on article 3¹⁵, which states that it is to assess whether there are “substantial grounds for believing that the author would be in danger of torture” if returned, and that the risk of torture “must be assessed on grounds that go beyond mere theory or suspicion”. 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”¹⁶.

7.3 In assessing the risk of torture in the present case, the Committee notes that the complainant has claimed that she was arrested and detained for around two months in early 2001 by Iranian authorities, and that during this period she was tortured. It also notes the complainant’s contention that there is a foreseeable risk that she would be tortured if returned to Iran, on the basis of her previous detention and torture, the fact the State party applied for a passport for her, and the court summons which, according to the complainant, will result in an arrest warrant as she did not appear before the court as required.

7.4 The Committee also notes the complainant’s argument that the PRRA, H&C and subsequent judicial review procedures are flawed, as the officer who concluded both procedures deemed that the court summons and proof of the complainant’s employment as a nurse were not “new evidence” which she had to take into account during the PRRA. On this point the Committee considers that the judicial review procedure, while limited to appeal on points of law, did examine whether there were any irregularities in the PRRA and/or H&C determinations.

7.5 The State party has pointed to inconsistencies and contradictions in the complainant’s testimonies which, in its opinion, cast doubt on the veracity of her allegations. The State party has specifically highlighted inconsistencies relating to the complainant’s story on her role at the University, her arrest, torture, and escape from detention, her exit from Iran and delay in seeking refugee protection, and finally the summons for court and the lack of evidence of an arrest warrant. The Committee draws the attention of the parties to its General Comment No. 1 according to which the burden to present an arguable case is on the author of a complaint. Here, the Committee notes that the complainant has provided a court summons and documents purporting to refer to her employment at the University. However the Committee deems that the complainant has not submitted sufficient details or corroborating evidence to shift the burden of proof. In particular, she has not adduced satisfactory evidence or details relating to her detention or escape from detention. Further, she has failed to provide plausible explanations for her failure or inability to provide certain details which would have been of relevance to buttress her case, such as her stay for over three months in Kermanshah and the names of those who helped her to escape. Finally, the Committee deems that she has failed to provide plausible explanations for her subsequent journey through seven countries, including some asylum countries, prior to finally claiming refugee status in Canada.

7.6 The Committee notes that the complainant’s arguments, and the evidence to support them, have been presented to the State party’s courts. The Committee reiterates in this regard that it is for the courts of the State parties to the Convention, and not the Committee, to evaluate facts and evidence in a particular case. It is for the appellate courts of States parties

¹⁵ A/53/44, Annex XI, adopted on 21 November 1997.

¹⁶ Communication No. 203/2002, *A.R. v. The Netherlands*, Views adopted on 21 November 2003, paragraph 7.3.

to the Convention to examine the conduct of a case, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the officers had clearly violated their obligations of impartiality. In this case, the material before the Committee does not show that the State party's review of the complainant's case suffered from such defects.

7.7 Finally, the Committee, whilst noting with concern the numerous reports of human rights violations, including the use of torture, in Iran, must reiterate that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured. On the basis of the above, the Committee considers that the complainant has not substantiated that she would personally face such a real and imminent risk of being subjected to torture upon her return to Iran.

7.8 The Committee Against Torture, acting under article 22, paragraph 7, of the Convention, considers that the complainant has not substantiated her claim that she would be subjected to torture upon return to Iran and therefore concludes that the complainant's removal to that country 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.]
