



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

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Committee Against Torture
Thirty-third session
(8 – 26 November 2004)

DECISION

Communication No. 223/2002

Submitted by: S.U.A. (represented by counsel)
Alleged victims: The complainant
State party: Sweden
Date of the complaint: 12 December 2002
Date of present decision: 22 November 2004

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

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

Thirty-third session

Concerning

Communication No. 223/2002

Submitted by: S.U.A. (represented by counsel)
Alleged victims: The complainant
State party: Sweden
Date of the complaint: 12 December 2002

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 2004,

Having concluded its consideration of complaint No. 223/2002, submitted to the Committee against Torture by S.U.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, his counsel and the State party,

Adopts the following:

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

1.1 The complainant is S.U.A., a Bangladeshi citizen born in 1972 currently awaiting deportation from Sweden. He claims that his expulsion to Bangladesh would constitute a violation by Sweden of article 3 of the Convention. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 13 December 2002. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant to Bangladesh pending the consideration of his case by the Committee. On 6 February 2003 the State party informed the Committee that on 13 December 2002 the Swedish Migration Board decided to stay the enforcement of the decision to expel the complainant to Bangladesh.

The facts as submitted by the complainant

2.1 The complainant belongs to the Ershad faction of the Jatiya Party in Bangladesh, which is not part of the present Government coalition. He claims having participated in activities organized by the Party in Mithapur, including meetings, demonstrations, distribution of pamphlets, construction of roads and schools and charity work. Because of his involvement with the Party he was kidnapped about 20 times by members of the governing Bangladesh Nationalist Party (BNP) who kept him for periods ranging from a few hours to one week and beat him. Those incidents were reported to the Police who took no action.

2.2 The complainant was reportedly arrested by Bangladeshi police on three occasions and taken to the Madariapur police station, where he was tortured. He was exposed, *inter alia*, to beatings, rape attempts, electric shocks, cigarette burns, beatings on the soles of the feet, was hanged from the ceiling and forced to drink dirty water. On one occasion he was accused of unspecified crimes and on the other two he was accused, respectively, of murder and violence in the course of a demonstration. He denies the facts of which he was accused and claims that the purpose of the arrests was to bring his political activities to an end. Counsel states that, because of his mental condition, the complainant cannot recall the exact dates but it seems that such arrests took place in August 1996 and November 1998. The complainant also claims to have been convicted for attempted murder and sentenced to eight years' imprisonment.

2.3 Copies of the medical reports issued by three Swedish doctors in 2001 are attached to the complaint. They indicate that the complainant suffers from post-traumatic stress disorder, that the scars on his body are consistent with the acts of torture that he described and that he requires medical treatment.

2.4 The complainant argues that he has exhausted domestic remedies. His asylum application was rejected by the Swedish Migration Board on 21 February 2001 and his appeal of that decision was rejected by the Aliens Appeals Board on 3 June 2002.

The complaint

3.1 The complainant claims that he will be tortured again if he is returned to Bangladesh. In support of his claim he refers, *inter alia*, to NGO reports indicating that the use of torture by the police in Bangladesh is common.

State party's submissions on the admissibility and merits of the complaint

4.1 On 29 April 2003 the State party submitted its observations on the admissibility and merits of the complaint. It indicates that the complainant entered Sweden on 23 March 1999 using a forged passport which contained a forged certificate of permanent residence in Sweden. On the same day he applied for asylum and presented a genuine passport to the Swedish authorities.

4.2 The Migration Board interviewed the complainant on the same day. He stated, *inter alia*, that he started working for the Jatiya Party upon finishing his education in

1994. He also stated that he had been involved with the Party since 1983, when he was still at school. His activities consisted of organizing and speaking at party meetings and distributing leaflets. Four or five years ago he had been accused of murder by members of the BNP and the Awami League and arrested by the police. He remained in custody for some 15 or 20 days before being released on bail and was acquitted at the trial. Other false allegations had been made against him. He had also been arrested by the police on several occasions, each of them for a short time.

4.3 A second interview was held by the Migration Board on 20 December 2000 in the presence of the complainant's legal counsel. He stated that he was suffering from ill health and had to consult a physician. He was feeling constantly tense and nervous, had sleeping difficulties, poor appetite, loss of memory and nightmares. He also made a number of varying and contradictory statements concerning *inter alia* his alleged experience of different types of mistreatment by the members of the BNP on the one hand and the police on the other hand; the dates and length of the detention periods; the date when he started working for the Jatiya Party and his activities in the Party.

4.4 On 30 January 2001 the complainant's counsel filed written observations with the Migration Board in which he submitted *inter alia* that the complainant had been held at the police station in Madariapur and tortured on three different occasions. Furthermore, on numerous occasions he had been kidnapped and subjected to beatings with sticks and fists by supporters of the BNP which had resulted in serious damage to his elbow. The complainant had further been physically abused also by supporters of the Awami League. Both the complainant and his Party had reported these incidents to the police which had taken no action.

4.5 On 21 February 2001, the Migration Board rejected the application for asylum and ordered the complainant expulsion to Bangladesh. Noting that the information provided by the complainant at the two hearings and the subsequent written observations differed *inter se*, and that he had changed his statements during the second interview, the Board held that the complainant had not been able to provide a credible account of his situation in Bangladesh or his political activity in the Jatiya Party. Referring to a number of inconsistencies and peculiarities in his statements, the Board concluded that the complainant had not made it probable that he was of interest to the BNP, other political parties or the authorities in Bangladesh. The Board further observed that the complainant's alleged political activities, irrespective of his lack of credibility, were legal under Bangladeshi law and that the kidnappings and beatings to which he had been exposed by political opponents was not something which was sanctioned by the Bangladeshi authorities. While noting that persons held in detention in Bangladesh were often subjected to mistreatment by police personnel, the Board expressed its view that this was not an abuse that was sanctioned by the Bangladeshi authorities.

4.6 On 27 February 2001 the complainant lodged an appeal with the Aliens Appeals Board. He stated that a case in which he and three other persons were charged with murder of a BNP supporter was pending before the Faridpur Court and submitted some "court documents" regarding the case, together with a letter from the lawyer who was said to represent him in the case. The complainant subsequently declared having been informed by his lawyer that he had been sentenced to eight years' imprisonment for attempted murder. He also submitted several medical

certificates and records and a copy of what was purported to be a certificate issued by a Mr. Khan, a Member of Parliament in Bangladesh and member of the central committee of the Jatiya Party, indicating that he had been tortured and needed protection.

4.7 On 3 June 2002 the Board rejected the appeal. It held that the material before it did not support that the complainant was to be considered a refugee, nor that there was a risk that he would be exposed to inhuman or degrading treatment in accordance with the Aliens Act. It further concluded that there were no grounds for granting him a residence permit for humanitarian reasons. In September 2002, the complainant filed a new application with the Aliens Appeals Board in which he asserted that an enforcement of the expulsion order would be contrary to the requirements of humanity. This new application was rejected on 15 October 2002.

4.8 The State party indicates that it is not aware of the same matter having been examined under another procedure of international investigation or settlement and that all available domestic remedies have been exhausted. It maintains, however, that the complaint should be considered inadmissible in accordance with article 22, paragraph 2 of the Convention, as it lacks the minimum substantiation that would render it compatible with article 22.

4.9 On the merits, the State party refers to the human rights situation in Bangladesh. It stated that, while remaining problematic, the situation had improved. Following the introduction of democratic changes in the early 1990's, no systematic repression of dissidents has been reported and a wide variety of human rights groups were generally permitted to conduct their activities. However, violence has been a pervasive element in the country's politics and supporters of different parties frequently clash with each other during rallies and demonstrations. The police reportedly use physical and psychological torture during arrest and interrogation and the perpetrators are rarely punished. The police is also said to be reluctant to pursue investigations against people affiliated with the ruling party, and the Government frequently uses the police for political purposes. Arbitrary arrests are common and lower level courts are considered to be susceptible to pressures from the Executive. The higher levels of the Judiciary, however, display a significant degree of independence and often rule against the Government in criminal, civil and even politically controversial cases. While high profile individuals could be arrested and harassed by the police, persecution for political reasons is of rare occurrence at the grass-root level. Court cases based on false accusations are common, but were primarily directed towards senior party officials. Individuals active in politics at the grass-root level can avoid harassment by relocating within the country.

4.10 The State party contends that the Swedish authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee will do when examining a complaint under the Convention. In its decision of 3 June 2002 the Aliens Appeals Board concluded that the evidentiary standard to be applied by it in deciding the complainant's appeal under the Aliens Act corresponded to that established by the Committee under article 3 of the Convention.

4.11 Between 1990 and 2000, 1427 requests for asylum were filed by Bangladesh citizens in Sweden. Residence permits were granted in 629 cases, *inter alia* on the

ground that the applicant was in need of protection having regard to the risk of torture and other ill-treatment in the event of expulsion. The Swedish authorities have therefore significant experience in assessing claims from asylum seekers from Bangladesh, and considerable weight must be attached to their opinions.

4.12 The State party draws the Committee's attention to the contradictory nature of the statements made by the complainant during the interview and those subsequently made by counsel on his behalf. It questions whether the latter may be considered to represent an accurate description of the account provided by the complainant during the interview. In any event, there can be no doubt that it is the statements made directly by the complainant to the officers of the Migration Board during the two interviews that offer the best material by which to determine the veracity of his claims.

4.13 The State party observes that in the two interviews, the complainant provided contradictory information about two central elements of his account: (i) the identity of the political group(s) responsible for the alleged false murder allegation made against him,¹ and (ii) whether the allegation made against him and resulting in his arrest and torture occurred quite shortly before his departure or, alternatively, four to five years earlier. Moreover, statements made by the complainant on these matters in the course of the second interview, as well as his different statements during this interview on the number of arrests and detentions to which he claimed to have been subjected, were difficult to reconcile with the information contained in the supplementary written observations submitted later by counsel on his behalf. While the Committee in its case law has emphasized that complete accuracy cannot be expected from victims of torture, the contradictions contained in the complainant's statements to the Swedish authorities are of a nature to raise serious doubts as to the general credibility of his claims.

4.14 It should also be observed that, during the first interview, the complainant made no mention of ever having been subjected to deprivations of liberty by supporters of the BNP, nor of having been subjected to torture by the police or the BNP. Furthermore, whereas he stated, during the second interview, that he never reported the harassment to the police as he knew that he would receive no assistance from them, counsel's subsequent submissions indicate that both the complainant and the Jatiya party reported the incidents to the police but that no action was taken against those involved. Repeatedly asked about his activities in support of the party, the complainant only at the very end of the first interview stated that the reason why he was a subject of interest to the supporters of the BNP was that he had been in charge of activities such as building roads in his community, a role very different from his other alleged tasks (preparing party meetings, handing out leaflets etc.). However, when asked, he was unable to recall the date when he first undertook this task. Furthermore, the complainant's marital status remains uncertain, as the information he provided contains clear discrepancies.

¹ During the first interview the complainant stated that he had been arrested by the police after being falsely accused of murder by « two or three opposition parties », specifically the BNP and the Awami League. In the second interview he stated that he had never had any difficulty with the Awami League and that supporters of the BNP had made a false charge against him.

4.15 The State party acknowledges that the complainant has been diagnosed as suffering from post traumatic stress disorder. However, the medical evidence he provided does not demonstrate that his mental condition at the time of the second interview was such that it may explain the unclear and contradictory nature of his statements in respect of central aspects of his detention and torture. A distinction must be made between the complainant's medical condition at the time of the second interview and his physical and mental condition as reported in the subsequent medical certificates provided to the national authorities and the Committee. While at the time of the second interview he complained that he was feeling unwell, the above-mentioned certificates indicate that his medical condition during 2001 deteriorated progressively. Such certificates, dated August, September and October 2001 and August 2002, cannot be regarded as indicative of his medical condition at the time of the second interview. Furthermore, it does not appear from the certificates that the complainant, during his examination, made any reference to physical abuse at the hands of BNP supporters, but mentioned simply having been tortured twice by the police.

4.16 Regarding the complainant's allegations that there was an ongoing case against him for murder, the Swedish Embassy in Dhaka engaged a reliable lawyer to look into the matter. This lawyer examined the documents in Bengali submitted by the complainant and made inquiries with the Madaripur Magistrate Court. On verifying the Court's records, it was found that the case numbers indicated in the above documents referred to three different sets of proceedings concerning different accused individuals and different sections of the Penal Code. In none of the cases there was any accused with the complainant's name.

4.17 On two occasions the complainant submitted what purported to be copies of certificates issued by a Mr. Sahajahan Khan, Member of Parliament in Bangladesh and member of the central committee of the Jatiya Party. Following inquiries by the Swedish Embassy in Dhaka it was found that there is no Member of Parliament for the Jatiya Party by that name. There is a Member of Parliament for the Awami League named Shajahan Khan who is active in the Madaripur District.

4.18 The State party also states that the information provided by the complainant about his marital status is unclear. During the first interview with the Swedish Immigration Board he asserted that he was not married. However, a separate case was pending before the Aliens Appeals Board concerning a Bangladeshi woman who had arrived in Sweden in September 2002 and applied for asylum. Before the Migration Board, she claimed that her husband had disappeared three and a half years earlier and that she did not know where he was. She later stated, before the Aliens Appeal Board, having learned that her husband was residing in Sweden. In subsequent submissions to the Board her counsel stated that she was married to the complainant and offered to submit documentary evidence. To the State party's knowledge, no such evidence has yet been provided.

4.19 In view of the conclusions that may be drawn about the complainant's general credibility, the State party contends that while the medical evidence adduced may indicate that he at some point in time was subjected to severe physical abuse, great caution must be exercised in affording it probative value regarding the identity of the perpetrators. A possible risk of being subjected to ill-treatment by a non-governmental

entity or by private individuals, without the consent or acquiescence of the Government of the receiving country, falls outside the scope of article 3 of the Convention.

4.20 Given the limited nature of the complainant's alleged political activities and the length of time that passed from the alleged instances of torture and from his departure from the country, the State party questions whether the complainant today would be a political figure of such importance to his former political opponents that there can be substantial grounds for believing that he would be in danger of being subjected to persecution, either directly by supporters of the BNP or any other party or indirectly by the exercise of influence upon the police. Should such risk exist it would, in view of the complainant's purely local political role, be of a local character and he could therefore secure his safety by moving within the country.

4.21 In view of the complainant's submissions, the State party contends that he has not substantiated his claim and that there are no substantial grounds for holding that his expulsion would constitute a violation of article 3 of the Convention. Furthermore, the claim lacks the substantiation that is necessary in order to render the complaint compatible with article 22, and should therefore be declared inadmissible.

Comments by counsel

5.1 By submissions of 3 July 2003, 9 October 2003 and 23 April 2004, counsel contends that because of his psychiatric problems, the complainant sometimes gave different answers to the same questions and that such problems are the result of the torture to which he was subjected. He also argues that the complaint meets the admissibility requirements and recalls that torture is routinely practiced in Bangladesh, as documented in well known NGO reports. He provides copy of a medical certificate issued on 8 May 2003 indicating that the complainant suffers from post-traumatic stress disorder, depression and has suicidal tendencies. Counsel further alleges that the complainant's wife also suffers from the same disorder and that she was subjected to torture in Bangladesh because of the complainant's political activities.

5.2 Regarding the documents provided by the complainant in support of his claim that there was an ongoing case against him before the Madaripur Magistrate Court, the complainant still believes they are authentic. If they are not, he himself was a victim of fraud.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not the complaint is admissible under article 22 of the Convention. In the present case 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, and that domestic remedies have been exhausted, as acknowledged by the State Party. Furthermore, it notes the State Party's statement that the complaint should be declared inadmissible for lack of substantiation. The Committee considers, however, that the State Party's arguments

raise only substantive issues which should be dealt with at the merits and not the admissibility stage. Since the Committee sees no further obstacles to admissibility, it declares the communication admissible and proceeds with the consideration of the merits.

6.2 The issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State Party's obligation under article 3 of the Convention not to expel or 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.

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk 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 in the return country. However, the Committee recalls its constant jurisprudence that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture 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 on 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. Furthermore, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion but it does not have to meet the test of being highly probable.

6.4 The Committee has noted the medical reports certifying that the complainant suffers from post-traumatic stress disorder, as well as the doctors' assessment that the scars in his body are consistent with the acts of torture described by the complainant. It also notes the State party's doubts as to the identity of the perpetrators of such acts as well as the reports about the use of torture in Bangladesh and the frequent incidents of violence between supporters of different political parties.

6.5 Nevertheless, the complainant's account of his experiences to the Swedish authorities contained contradictions and lacked clarity on issues that are relevant to assess his claim. The Swedish authorities made conclusions about the complainant's credibility which, in the Committee's view, were reasonable and by no reckoning arbitrary.

6.6 The Committee finds that the information submitted by the complainant, including the local and low level nature of his political activities in Bangladesh, does not contain evidence to support the claim that he will run a substantial risk of being subjected to torture if he returns to Bangladesh.

7. In the light of the above, 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 decision of the State Party to

return the complainant to Bangladesh 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.]