



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

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COMMITTEE AGAINST TORTURE
Thirty-second session
3 - 21 May 2004

DECISION

Communication No. 196/2002

Submitted by: Mr. M.A.M. (represented by counsel,
Mr. Ingemar Sahlström)

Alleged victim: Mr. M.A.M.

State party: Sweden

Date of complaint: 3 January 2002

Date of the decision: 14 May 2004

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

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

Thirty-second session

Concerning

Communication No. 196/2002

Submitted by: Mr. M.A.M. (represented by counsel,
Mr. Ingemar Sahlström)

Alleged victim: Mr. M.A.M.

State party: Sweden

Date of complaint: 3 January 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 14 May 2004,

Having concluded its consideration of complaint No. 196/2002, submitted to the Committee against Torture by Mr. M.A.M. 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:

- 1.1 The complainant is Mr. M.A.M., a Bangladeshi citizen, born on 1 January 1968, currently residing in Sweden, where he has sought asylum. He claims that his removal to Bangladesh¹ if his refugee claim is rejected would constitute a violation of article 3 of the Convention by Sweden². He is represented by counsel.

¹ The Convention entered into force for Bangladesh on 4 November 1998, but the State party has not ratified article 22 of the Convention.

² The Convention entered into force for Sweden on 26 June 1987, and the State party has ratified the Committee's competence under article 22 of the Convention.

- 1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 7 January 2002. Pursuant to rule 108, paragraph 9 of the Committee's rules of procedure rev. 3, the State party was requested not to expel the complainant to Bangladesh pending the consideration of his case by the Committee. On 12 February 2002, the State party informed the Committee that it had decided to stay the enforcement of the decision to expel the petitioner to Bangladesh.

The facts as submitted by the complainant:

- 2.1 The complainant belongs to a minority in Bangladesh and lobbied for their rights through a political organization, the Shanti Bahini. During a meeting of the Shanti Bahini in November 1989, in which the claimant participated, the army attacked, and several of the participants were injured or killed. On 7 May 1990, the police arrested the claimant and detained him for six days. During police interrogations, he was allegedly tortured by use of electricity, burned with cigarettes, stuck with needles and kicked and beaten unconscious. On 19 November 1990 he fled the country for Sweden where he applied for asylum. On 4 October 1991, the Migration Board rejected the complainant's application. He appealed the decision to the Aliens Appeals Board, which, on 8 April 1993, rejected his application and ordered him deported to Bangladesh. After that, the complainant went into hiding, and it was not until 5 August 1995 that the decision to expel him could be enforced.
- 2.2 Upon his return to Bangladesh, the complainant was arrested and accused of political activity in Sweden. During four days of detention, he was allegedly beaten unconscious and a policeman poured warm water through his nose. The complainant also alleges having been subjected to ill treatment of his genitals, being forced to drink urine, and that police threatened to kill him with a knife.
- 2.3 The complainant became a member of the Bangladesh National Party's (hereinafter referred to as the BNP) Youth Wing in 1996. He distributed pamphlets, organised demonstrations and in other ways protested against the politics of the Awami League government. He was also a board member in the BNP Mirpur department.
- 2.4 The complainant submits that because of his political activities for the BNP, he was falsely accused of different crimes, and that this is common treatment of political opponents to the government. On 10 November 1998, there was a clash between the Awami League supporters and the police against the BNP supporters. The complainant was arrested and detained for five days for using violence against the police and for preventing policemen from carrying out their duties. During the interrogations, the police allegedly tied the complainant to a chair, kicked and beat him with rifles and sticks. He claims to have lost consciousness several times during these interrogations. He was released against bail after a hearing by a local court. On 18 August 1999, the complainant was convicted and sentenced to 20 months imprisonment and a fine of 50.000 Thaka. The complainant subsequently escaped to Sweden,

where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such) on 4 November 1999³.

- 2.5 On 18 October 2000, the Migration Board rejected the complainant's application for asylum. The complainant appealed to the Aliens Appeals Board, which, on 18 May 2001, rejected his refugee claim, and decided to deport him to Bangladesh. The Aliens Appeal Board based its decision on the finding that the complainant's political participation and alleged political persecution did not provide sufficient grounds for asylum since there is freedom of political expression in Bangladesh and the BNP is a legal political party. Although the Board did not question that the complainant was subjected to torture in 1990, 1995 and 1998, he resided in Sweden at the time of the alleged torture in 1992 and could therefore not have been subjected to torture at that time. This made the Board doubt the complainant's credibility. Moreover, although the Board members were aware of the incidents of police violence against persons in detention in Bangladesh, it did not consider that the complainant in particular risks being subjected to violence as part of a political persecution, and that the general treatment of prisoners as such did not justify asylum.
- 2.6 Counsel submitted new information with two new applications to the Board, which were rejected on 20 September and 29 October 2001, respectively. He submitted that the complainant would be arrested immediately upon return to Bangladesh, since he, according to a fax from his Bangladeshi lawyer, is under investigation for murder, and has been convicted and sentenced to life imprisonment for treason and anti-state activities on 3 September 2001.
- 2.7 According to the Swedish local psychiatric service, the complainant displays suicidal tendencies. The medical certificate from the Centrum for Victims of Torture (hereinafter referred to as CTD) states that he suffers from Post Traumatic Stress Syndrome, and that they found several scars which support the complainant's account of the torture he claims to have been subjected to.

The complaint:

3. The complainant claims that if returned to Bangladesh, there are substantial grounds to believe that he would be subjected to torture. He contends that his deportation to Bangladesh would be in violation of article 3 of the Convention. In substantiation of this fear, he invokes the instances of previous detention and torture on account of his political activity in Bangladesh. He further indicates that there exists a consistent pattern of human rights violations by Bangladeshi authorities, in particular against political opponents and persons in detention.

The State party's submission:

³ Counsel states on page 2, paragraph 2 of the initial submission that the complainant applied for asylum on 4 November 1999, but then in paragraph 4 that he applied for asylum on 20 November 1990.

- 4.1 On 13 May 2002, the State party submitted its observations on the admissibility and merits of the case.
- 4.2 On the issue of admissibility, the State party notes that all domestic remedies appear to have been exhausted, but that the complainant may lodge a new request for a residence permit with the Aliens Appeals Board at any time. Such a request must be considered by the Board, provided that new circumstances are adduced that would warrant a different decision.
- 4.3 The State party denies that the complainant's return to Bangladesh would entail a violation of article 3 of the Convention. While the general human rights situation in Bangladesh is not ideal and there are repeated reports of police torture, the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading treatment, and the judiciary displays a significant degree of independence, having for example criticised the police for abuse of detention laws and powers.
- 4.4 Concerning the complainant's personal risk of being subjected to torture in Bangladesh, the State party draws attention to the fact that several provisions in the Alien's Act reflect the principle laid down in article 3, paragraph 1, of the Convention, and that the Swedish Immigration authorities apply the same kind of test when considering an application for asylum as the Committee does under the Convention. That such a test was applied in the present case is illustrated by the fact that the domestic authorities refer to Chapter 3, Section 3 of the Aliens Act and to article 3 of the Convention.
- 4.5 The State party notes that it is primarily for the complainant to collect and present evidence in support of his or her account.⁴ His credibility is of vital importance to the assessment of an asylum application. The Swedish Immigration authorities held a two hours interview before they made a decision in the present case. Thus the Board had ample time to make important additional observations, which, taken together with the facts and the documentation in the case, ensured that it had a solid basis for making its assessment of the complainant's need for protection in Sweden.
- 4.6 The State party recalls that although medical certificates establish that the complainant was subjected to torture, the aim of the Committee's examination of the complaint is to ascertain whether the complainant is at risk of torture upon his return.⁵
- 4.7 The State party understands the complaint to be founded in particular on the allegation that he risks being tortured upon return as a consequence of the alleged murder charge and the alleged judgment of 3 September 2001. It notes that the only piece of evidence submitted in this regard is a fax allegedly received from his lawyer in Bangladesh. Following a request from the State

⁴ The State party refers to the cases of S.L. v. Sweden, case No. 150/1999, Views adopted on 11 May 2001, para.6.4, and M.R.P v. Switzerland case No. 122/1998, Views adopted on 24 November 2000, para.6.5.

⁵ The State party refers to the cases of X., Y. and Z. v. Sweden, case No. 61/1996, Views adopted on 6 May 1998, para.11.2.

party, its Embassy in Dhaka commissioned a lawyer to investigate the matter. The lawyer, who examined the registers of all the five Metropolitan and District Sessions Courts of Dhaka, could not find any judgment passed against the complainant during the year 2001 in relation to murder, treason or anti-state activities charges. This was also confirmed by the Embassy of the United States in Bangladesh.

- 4.8 The Embassy also tried to contact the complainant's lawyer, but was told by an individual claiming to be his brother that he was temporarily out of town. Finally, the Embassy was informed by the house owner that no one with the complainant's name had lived at the address referred to in the telefax from the complainant's lawyer. The State party therefore questions the complainant's account about the murder charge and the judgment on treason and anti-state activities. It adds that should such judgment exist, the complainant could appeal against it in a whatsoever higher court. Moreover, the complainant has not submitted any documentation regarding the judgment or the arrest warrant, or the appeal against the judgment, which he claims was filed by his lawyer.
- 4.9 The State party points out that the events that allegedly prompted the complainant's departure from Bangladesh appear to have been directly linked to his active support of the BNP. It is therefore of vital importance to the assessment of the present case to acknowledge that the BNP has been the ruling party in Bangladesh since 1 October 2001. The State party considers that the shift in political authority implies that there no longer exists a basis for the complainant's claim that he would risk torture upon his return to Bangladesh and the burden to substantiate his claims now is all the heavier on the complainant.⁶
- 4.10 The State party adds that the grounds for which the complainant previously was tortured no longer exist, since he first was tortured in 1990 for belonging to an organization to which he does not seem to belong to anymore, and for the other instances for participating in the work of the BNP, which is now the ruling party in Bangladesh.
- 4.11 The State party points to several inconsistencies and shortcomings in the complainant's account that it considers to be of relevance to the assessment of his credibility. Firstly, during the asylum interview and despite the fact that the complainant was asked to state the reasons for his application, he did not mention that he had been abused by the Bangladesh police until the interviewer brought up the subject of torture and then only on vague and general terms. In particular, although asked by the interviewer whether he had been arrested on other occasions than on 10 November 1998, he did not mention that he had been arrested and tortured in connection with the expulsion from Sweden to Bangladesh in 1995.
- 4.12 Secondly, while the complainant initially mentioned three instances on which he had been subjected to torture, he mentioned a fourth occasion which should

⁶ The State party refers to the case of A.D. v. the Netherlands, case No. 96/1997, Decision adopted on 12 November 1999, para.7.4.

have occurred in 1992, in connection with a medical examination. On this fourth occasion, however, the complainant actually was residing in Sweden.

- 4.13 Thirdly, the complainant provided diverging information about his life in Bangladesh after his return from Sweden in 1995. While according to the record from the medical centre in Rågsved of 11 January 2000, the complainant states that he was imprisoned for six months upon return to Bangladesh in 1995 and otherwise living on the run, the record from the psychiatric clinic shows that he had been working as an assistant in a shop for four years, between 1995 and 1999. The allegation of a six months imprisonment otherwise does not appear anywhere else in the information submitted by the complainant to the Swedish authorities.
- 4.14 The State party concludes that the complainant has not substantiated his claim that there are substantial grounds for believing that he would be in danger of being tortured if returned to Bangladesh, and that an enforcement of the expulsion order would therefore not constitute a violation of article 3 of the Convention.

The complainant and the State party's further comments:

- 5.1 On 23 April 2004, counsel submitted comments to the State party's submission. He reiterates the complainant's previous arguments, and adds that the complainant claims that he is still active in the Shanti Bahini, and that he is therefore wanted by the Bangladeshi police and authorities.
- 5.2 By note verbal of 29 April 2004, the State party disputes that the complainant can invoke his membership with the Shanti Bahini organization as a new circumstance. First, this new circumstance should be disregarded because the complainant has not referred to it previously in his complaint to the Committee, although he must have had the possibility to do so. Second, the late submission of the new circumstance gives reason to question the veracity of the complainant's statement in this regard. Third, the complainant has submitted no evidence to support his claim, and fourth, the State party has information about a peace accord between the Shanti Bahini and the Bangladeshi government signed on 2 December 1997, and that the Shanti Bahini was formally abolished in 1999. Thus, the complainant has not substantiated his claim that the alleged membership in Shanti Bahini would imply that he would be exposed to a risk of torture if expelled to Bangladesh.

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. In this respect 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. The Committee also notes that the State party does not contest the exhaustion of domestic remedies, although it

submits that, in the circumstances, a complainant may lodge a new request for a residence permit with the Aliens Appeals Board at any time and that such a request must be considered by the Board provided that new circumstances are adduced that could call for a different decision. The Committee considers that the complainant, by bringing his claim before the highest appellate body in Sweden under domestic legislation, has exhausted available and effective domestic remedies. As the Committee sees no further obstacles to admissibility, it declares the complaint admissible and proceeds to a consideration of the merits.

Consideration of the merits

- 6.2 The Committee must decide whether the forced return of the complainant to Bangladesh would violate the State party's obligation, under 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 would be in danger of being subjected to torture. It follows that, in conformity with the Committee's jurisprudence and despite the allegations of the complainant in regard to the situation in Bangladesh as per paragraph 3, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, 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.
- 6.3 The Committee takes note of the information received from the complainant about the general human rights situation in Bangladesh, in particular recurrent incidents of police violence against prisoners and political opponents. The Committee notes that the State party, while agreeing that there are repeated reports of police torture, nevertheless considers that the judiciary displays a significant degree of independence.
- 6.4 The Committee observes that the main reason the complainant fears a personal risk of torture if returned to Bangladesh is that he was previously subjected to torture for his membership in Shanty Bahini and in the opposition party BNP, and that he risks being imprisoned upon his return to Bangladesh pursuant to his alleged sentence to life imprisonment.
- 6.5 The Committee also notes that the grounds for which the complainant was previously tortured no longer exist, since he was first tortured in 1990 for belonging to an organisation (the Shanti Bahini) but he has not submitted evidence to substantiate that he still belongs to that organisation, and later on for participating in the activities of the BNP, which was then in opposition and is now the ruling party in Bangladesh. This fact has added importance in the case since the events that allegedly prompted his departure from Bangladesh were directly related to his activities in support of that party. Furthermore, although reports of human rights violations in Bangladesh still refer to a widespread practice of ill treatment of prisoners by the police, the complainant

has not submitted information or arguments to substantiate that he personally risks such treatment if he were to be imprisoned upon return to Bangladesh. Moreover, the Committee is not convinced that the complainant risks imprisonment upon his return, since he has failed to substantiate his claim regarding the alleged judgment of 3 September 2001, or in relation to the allegation that he is investigated for murder.

- 6.6 In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.
- 6.7 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 complainant's removal to Bangladesh by the State party 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.]
