



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

Distr.
RESTRICTED*

CAT/C/41/D/326/2007
26 November 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-first session
(3 -21 November 2008)

DECISION

Communication No. 326/2007

<u>Submitted by:</u>	M. F. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of the complaint:</u>	2 July 2007 (initial submission)
<u>Date of present decision:</u>	14 November 2008

Subject matter: Deportation of complainant to Bangladesh

Procedural issue: Lack of substantiation of claim

Substantive issues: Deportation of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture; Cruel inhuman or degrading treatment.

Articles of the Convention: 3, 16

[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**

Forty-first session

Concerning

Communication No. 326/2007

<i>Submitted by:</i>	M. F. (represented by counsel)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Sweden
<i>Date of the complaint:</i>	2 July 2007 (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 14 November 2008,

Having concluded its consideration of complaint No. 326/2007, submitted to the Committee against Torture by M. F. 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 M. F., a national of Bangladesh, born in 1983. He faces deportation from Sweden to Bangladesh. He claims that his deportation would constitute a violation by Sweden of articles 3 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainant is represented by counsel.

1.2 On 3 July 2007, the Rapporteur for new complaints and interim measures requested the State party not to deport the complainant to Bangladesh while his case is under consideration by the Committee, in accordance with rule 108, paragraph 1, of the Committee's rules of procedures. On the same day, the State party acceded to this request.

The facts as presented by the complainant

2.1 The complainant lived with his family in the city of Munshigonj, Bangladesh. He was a member of the Awami League, one of the main political parties in the country. In this capacity, he took part in demonstrations and political meetings, distributed leaflets and put up posters. On 1 October 2001, the day of the general elections, the complainant and others were at a polling station, protesting about the fact that supporters of the Bangladesh Nationalist Party (BNP) were not allowing people to vote for the Awami League. The complainant was assaulted by BNP supporters with hockey sticks. The Bangladesh Rifles¹ subsequently closed the polling station.

2.2 On 20 October 2001, BNP supporters kidnapped the complainant and took him to a secret, isolated room in Islampur, where he was subject to severe ill-treatment. He was hit with truncheons on his back and burnt with cigarettes on his feet. He was released on 24 October 2001 and taken to Munshigonj City Hospital, where he was treated for burns and for injuries to his back. He was hospitalized until 26 December 2001². After being informed that BNP supporters planned to assault him again, he left the hospital and went to Dhaka and then Chittagong. He complained to the police about this assault, but no action was taken.³

2.3 On an unspecified date in October/November 2002, the complainant was taken by BNP supporters and the police to a police station in Munshigonj. He was kept there for two days and he was allegedly tortured. He was released after his relatives bribed the police. After his release he stayed in the hospital for around 15 days and later travelled to Dhaka, where he stayed for six months.

2.4 On 23 May 2003, the complainant read in a newspaper that one of his friends had been murdered. Fearing for the complainant's security, his family decided that he should leave the country. With the assistance of a smuggler, the complainant left Bangladesh on 13 October 2003. Upon arrival in Sweden, on 14 October 2003, he applied for asylum. The Migration Board rejected his application on 3 March 2004. The Aliens Appeal Board confirmed this decision on 21 April 2005.

2.5 After the complainant's arrival in Sweden, the complainant's father allegedly was threatened several times and the family's house was vandalized. His father also informed him that the complainant was accused of the murder of a BNP supporter in Court Gaon, whose body was found on 25 May 2003.

2.6 On 8 February 2006, the complainant filed a new application for a residence permit. On 11 August 2006, the Migration Board rejected it. In the new application, he submitted new evidence, including two police reports and charge sheets, which showed that M. F. was among those charged for murdering a certain Mr. H. on 10 September 2001 and also that he was charged for

¹ Part of the Bangladeshi armed forces.

² Please note that a "release certificate" allegedly issued by the hospital states that the complainant was hospitalized from 25 September 2001 to 26 December 2001.

³ There are contradictory statements as to whether a complaint was filed or not.

attacking a BNP meeting with bombs in 2005.⁴ He also submitted two letters from M. A. A., the complainants' lawyer in Bangladesh, who allegedly confirmed that the 2001 case had been completed and that life imprisonment or death penalty sentences could be expected. The complainant also referred to a number of reports regarding the general political situation in the country, the situation of the judiciary and the use of torture in Bangladesh.

2.7 In addition, the complainant submitted medical certificates by Dr. P. K., according to which he was treated for mental illness since mid-November 2005. Dr. P. K. concluded that the complainant's history of past ill-treatment and present mental health problems, including sleep disturbances, recurring nightmares, intrusive memories and anxiety, especially related to events reminding him of the trauma, fulfilled the criteria of Post Traumatic Stress Disorder (PTSD).

The complaint

3. The complainant claims that his deportation to Bangladesh would constitute a violation by Sweden of articles 3 and 16 of the Convention. He fears assassination by BNP supporters if returned to Bangladesh. He also fears being arrested and tortured by the police because of the accusations against him. He adds that the prison conditions in the country amount to cruel, inhuman or degrading treatment.

State party's observations on the admissibility and the merits

4.1 On 15 February 2008, the State party challenged the admissibility and merits of the complaint. On admissibility, and as regards article 3, it submits that the complaint is manifestly unfounded and therefore inadmissible. With respect to article 16, it submits that this part of the complaint should be declared inadmissible *ratione materiae* as incompatible with the provisions of the Convention. In addition, the State party submits that the complainant's claim on article 16 lacks the minimum substantiation required, for purposes of admissibility.

4.2 On the merits, the State party submits that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be at risk of being subjected to torture upon his return to that country. Additional grounds must exist to show that the individual would be personally at risk.⁵ As regards the current general human rights situation in Bangladesh, the State party acknowledges that it is problematic, but points to an improvement in the last few years. Nevertheless, violence is a pervasive feature of politics in the country and police reportedly use torture, beatings and other forms of abuse.

4.3 The State party also refers to the Committee's jurisprudence⁶ that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of

⁴ The complainant states that the fact that this second crime took place while he was in Sweden proves that it was a false accusation.

⁵ Communication No.150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3.

⁶ Communication No.103/1998, *S.M.R. and M.M.R. v. Sweden*, Views adopted on 5 May 1999, para. 9.7.

being tortured in the country to which he is returned and that it is for the complainant to present an arguable case.⁷ In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion although it does not have to meet the test of being highly probable. It draws the Committee's attention to the fact that several provisions of the Aliens Act, reflect the same principle as that laid down in article 3, paragraph 1, of the Convention. It points out that the Swedish authorities therefore apply the same type of test as the Committee when examining complaints under the Convention.

4.4 The State party claims that the complainant's return to Bangladesh would not entail a violation of article 3 of the Convention. The complaint is founded on the claim the complainant risks torture upon return to his country of origin, due to his past arrest and torture on two occasions because of his political activity, once by BNP supporters and once by BNP supporters and the police. He claims that he also risks being arrested due to false accusations against him.

4.5 As regards the alleged risk of torture by political opponents, the State party refers to the definition of "torture" of article 1 of the Convention and to the requirement that torture be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". It recalls the Committee's jurisprudence that the issue of whether a State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the State, falls outside the scope of article 3.⁸ In any event, the complainant has not substantiated his claim that he would run such a risk if returned to Bangladesh. In this regard, the State party notes that there is reason to question the credibility of the complainant's statements. In this context, it points to several factual inconsistencies, including inconsistencies on the dates of the alleged arrests. It also indicates that the complainant did not claim to have been subjected to torture at the first interview.

4.6 With respect to the risk of torture by the police, because of a previous instance when he was allegedly tortured by BNP supporters and the police at the Munshigonj police station in 2002, the State party notes that this event was not mentioned during the first interview with Swedish migration authorities. The events in question took place more than five years ago and there is nothing to indicate that his political opponents would have any interest in him at present. The complainant was not in a leading position in the party and any harassment on account of his political activities would have a local character and could be avoided by moving, as he did when he moved to Chittagong and Dhaka. The State party argues that, according to the Committee's jurisprudence,⁹ the requirement for the torture to have occurred in the recent past has not been met.

4.7 Regarding the complainant's allegations that he risks arrest and torture on account of false accusations against him, the State party questions the credibility of his version. The complainant did not mention the murder accusations until his second interview with the Swedish migration authorities. In addition, the charge sheets submitted by the complainant over two years after he

⁷ *S.L. v. Sweden, op. cit.*, para.6.4.

⁸ Communication No. 83/1997, *G.R.B. v. Sweden*, Views adopted on 15 May 1998, para. 6.5.

⁹ Communication No. 191/2001, *S.S. v. The Netherlands*, Views adopted on 5 May 2003, para. 6.6.

first mentioned the accusations, do not refer to the murder that took place in May 2003, but to crimes allegedly committed in 2001 and 2005.¹⁰ With the assistance of the Swedish Embassy in Dhaka, the State party was able to conclude that the police reports and charge sheets submitted by the complainant were not authentic. Indeed, a sub-director of the Munshigonj Magistrate Court indicated that the seals, signatures and contents of the charge sheets, police reports and the complaint allegedly filed by the author's father were forged. In addition, the case numbers referred to in those documents, when checked with the Court's register, were not related to cases involving the complainant. As regards the letters sent by the complainant's lawyer, they did not state a correct address, but that of a tribunal where hundreds of lawyers practice. Furthermore, the information on the letters sent by the complainant's lawyer does not coincide with the findings of the local investigations and contains fake case numbers, which could either not be verified or referred to a theft case unrelated to the complainant. The Swedish Embassy in Dhaka did not find any evidence that the complainant had been sentenced, prosecuted or accused for any of the crimes that he mentioned.

4.8 On the alleged violation of article 16, the State party recalls the Committee's jurisprudence¹¹ that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of said provision. It maintains that no such other factors are present in the instant case. It also draws the Committee's attention to the jurisprudence of the European Court of Human Rights,¹² which held that ill-treatment must attain a minimum level of severity for it to fall within the scope of article 3 of the European Convention on Human Rights and established that only where there are compelling humanitarian considerations at stake may the enforcement of an expulsion decision entail a violation of article 3. The State party submits that such exceptional circumstances do not exist in the present case.

4.9 The State party refers to the two medical certificates submitted by the complainant, which state that he has been treated for mental illness since 18 November 2005 and that he has seen the doctor on five occasions. That the complainant did not receive any treatment prior to November 2005 and that he did not invoke any medical evidence until his application was pending before the Aliens Appeal Board, may indicate that his mental condition deteriorated primarily as a consequence of the Migration Board's decision to reject his asylum request. Furthermore, there are reports indicating that mental care is available in Bangladesh.¹³ Consequently, the State party

¹⁰ See paras. 2.5 and 2.6.

¹¹ *Inter alia*, *G.R.B. v. Sweden*, *loc. cit.*; Communication No. 49/1996, *S.V. v. Canada*, Views adopted on 15 May 2001, para. 9.9; Communication No. 220/2002, *R.D. v. Sweden*, Views adopted on 2 May 2005, para. 7.2.

¹² *Cruz Varas and others v. Sweden*, judgment of 20 March 1991 (Series A no. 201, para. 83); *Bensaid v. the United Kingdom*, judgment of 6 February 2001, (Reports of Judgments and Decisions 2001-I, p. 319, para. 40); and *D. v the United Kingdom*, judgment of 2 May 1997, (Reports of Judgments and Decisions 1997-III, p. 793, paras. 51-54).

¹³ Home Office, Border and Immigration Agency, Country of Origin Information Report: Bangladesh, published 31 August 2007, para. 28.09.

argues that the possible aggravation of the complainant's state of mental health due to his deportation would not amount to cruel, inhuman or degrading treatment.

5. On 11 September 2008, the complainant submitted that he did not have any comments on the State party's observations.

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.

6.2 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.

6.3 In accordance with article 22, paragraph 5 (b), of the Convention, the Committee does not consider any communication unless it has ascertained that the complainant has exhausted all available domestic remedies. The Committee notes the State party's acknowledgment that domestic remedies have been exhausted and thus finds that the complainant has complied with article 22, paragraph 5 (b).

6.4 Concerning the claim relating to the aggravation of M. F.'s mental condition on account of his expulsion to his country of origin, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16.¹⁴ The Committee notes the medical certificates presented by the complainant which state that he suffers from PTSD. The Committee also notes the State party's contention that mental health care is available in Bangladesh, a statement not refuted by the complainant. In the absence of exceptional circumstances and in view of complainant's failure to respond to the State party's argument that medical care was available in Bangladesh, the Committee considers that he has failed sufficiently to substantiate this claim, for purposes of admissibility, and it must accordingly be considered inadmissible.

6.5 With respect to the complainants' claim under article 3 of the Convention, the Committee finds no further obstacles to the admissibility of the complaint and accordingly proceeds with its consideration on the merits.

Consideration of the merits

7.1 The issue before the Committee is whether the complainants' removal to Bangladesh would constitute a violation of the State party's obligation, under article 3 of the Convention, not

¹⁴ See *G.R.B. v. Sweden*, *op.cit.*, para.6.7; Communication No. 183/2001, *B.S.S. v. Canada*, Views adopted on 12 May 2004, para.10.2; and Communication No. 245/2004, *S.S.S. v. Canada*, Views adopted on 16 November 2005, para.7.3.

to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 In assessing whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if returned to Bangladesh, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such an analysis is to determine whether the complainant runs a personal risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on 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 flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

7.3 The Committee recalls its General Comment No.1 on article 3,¹⁵ which states that the Committee is obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable, 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 Furthermore, the Committee observes that considerable weight will be given, in exercising the Committee's jurisdiction pursuant to article 3 of the Convention, to findings of facts that are made by organs of the State party concerned; but that it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.¹⁷

7.4 In the present case, the Committee observes that the main reasons for which the complainant fears a personal risk of torture if returned to Bangladesh are that he was previously subjected to torture for his membership in the Awami League by BNP supporters, and that he risks imprisonment and torture by the police upon return to Bangladesh because of his alleged homicide charges. In addition, the complainant states that, if convicted, he risks being subjected to inhuman or degrading treatment in prison.

7.5 As to his claims of past torture, the Committee notes that the assault of 1 October 2001, the kidnapping and torture of 20 October 2001 and the arrest and torture that took place in October/November 2002 allegedly involved BNP supporters. In this regard, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State

¹⁵ General Comment No. 1: Implementation of article 3 of the Convention in the context of article 22 (1996), paras. 6 and 7, U.N. Doc. HRI/GEN/1/Rev.8., p. 347.

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

¹⁷ A/53/44, annex IX, CAT General Comment No. 1, paragraph 9.

where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee recalls its jurisprudence that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.¹⁸

7.6 The Committee observes that the October/November 2002 events, allegedly involved torture by BNP supporters in collaboration with the State party's police. Even if the Committee were to accept the claim that the complainant was subjected to torture in the past, the question is whether he *currently* runs a risk of torture if returned to Bangladesh. It does not necessarily follow that, six years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to Bangladesh in the near future.¹⁹ In this regard, the Committee notes that, other than being wanted for alleged homicide charges, the complainant has failed to provide information on why he would be of interest to the local authorities.

7.7 In relation to the charges which the complainant contends were filed against him, the Committee notes the State party's submission that the charge sheets, police reports and letters submitted by the complainant are not authentic. It also notes the State party's contention that the complainant has not been sentenced, prosecuted for or accused of any of the crimes alleged by him. The complainant has not contested these observations, nor has he submitted any evidence to the contrary, even though he was given the opportunity to do so. In this regard, the Committee recalls its jurisprudence that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion.²⁰

7.8 In view of the above, the Committee does not consider it necessary to examine the complainant's allegation that he risks inhuman or degrading treatment if imprisoned in a Bangladeshi prison on account of the above-mentioned charges.

¹⁸See, inter alia, *G.R.B. v. Sweden, loc. cit.*; *S.S. v. The Netherlands, op.cit., para. 6.4.*; Communication No. 138/1999, *M.P.S. v. Australia*, Views adopted 30 April 2002, para. 7.4.

¹⁹*S.S.S. v Canada, op.cit.* and Communication No. 126/1999, *Haad v. Switzerland*, Views of 10 May 2000.

²⁰General Comment No. 1, *op. cit.*, para. 6. See also Communication No. 256/2004, *M.Z. v. Sweden*, Views adopted on 12 May 2006, para. 9.3; Communication No. 214/2002, *M.A.K. v. Germany*, Views adopted on 12 May 2004, para. 13.5; and Communication No. 150/1999, *S.L. v. Sweden, op.cit.*, para. 6.3.

7.9 On the basis of the information submitted, the Committee considers that the complainant has not provided sufficient evidence that would allow it to consider that he faces a foreseeable, real and personal risk of being tortured if he is expelled to his country of origin.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, therefore concludes that the return of the complainant to Bangladesh would not constitute a breach of article 3 of the Convention by the State party.

[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.]
