



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

Distr.
RESTRICTED*

CAT/C/37/D/259/2004
22 November 2006

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Thirty-seventh session
(6-24 November 2006)

DECISION

Communication No. 259/2004

Submitted by: M.N. (represented by counsel)

Alleged victim: The complainant

State party: Switzerland

Date of complaint: 10 December 2004 (initial submission)

Date of present decision: 17 November 2006

Subject matter: Expulsion of complainant to a country where he is likely to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

Substantive issue: Risk of torture if complainant is expelled to his country of origin

Procedural issue: None

Article of the Convention: 3

[ANNEX]

* Made public by decision of the Committee against Torture.

GE.06-45627 (E) 071206 121206

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. 259/2004

Submitted by: M.N. (represented by counsel)
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 10 December 2004 (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 17 November 2006,

Having concluded consideration of communication No. 259/2004, submitted by M.N. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

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

1.1 The complainant is M.N., a Bangladesh national born on 2 June 1967, who is currently awaiting expulsion from Switzerland. He claims that his deportation to Bangladesh would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel. The Convention entered into force for Switzerland on 2 March 1987.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 17 December 2004. At the same time the Committee, acting under rule 108, paragraph 1, of its rules of procedure, decided that interim measures of protection, as sought by the complainant, were not justified in the circumstances.

Factual background

2.1 The complainant states that he has been a member of the Jatiya Party (JP) in Bangladesh since April 1988 and acted as the JP's Organizing Secretary of ward No. 29. He claims to have been arrested on several occasions in 1991, 1993 and 1995 after participating in protest demonstrations organized by his party.

2.2 The complainant explains that in 1992 he secured a lease for the operation of a fish farm. Every year the lease had to be renewed and it was awarded to the highest bidder. On 20 January 2000 the complainant secured the lease in the face of competition from a bidder named E.S., a member of the Awami League (AL), another political party in Bangladesh. The complainant states that, on 15 or 16 March 2000, he received a letter from E.S. demanding that he pay a protection tax. Eight or nine days later, A., J. and C., members of the AL in the pay of E.S., forced their way into his shop and, since he refused to pay, beat him up. On 10 or 11 April 2000, the complainant found that all his fish were dead. After making his own inquiries, he reached the conclusion that A., J. and C. had poisoned the water. He tried to report these events to the police, but they refused to listen to him, allegedly because he was a member of the JP.

2.3 The complainant states that, in May 2000, on returning home after a JP meeting at its regional office in Mugda, he was arrested by the police and accused of possession of illegal weapons, which had allegedly been found on the first floor of the JP office in Mugda by E.S., A., J., C. and the police. He was detained from 5 May to 6 June 2000 in the central prison in Dhaka. He claims that, during his detention, he was tortured on three or four occasions. He was allegedly beaten with a stick and had boiling water injected into his nose and ears. He states that he is suffering from various physical and psychological after-effects, which have been confirmed by medical certificates: one of his eardrums has been perforated, he is suffering from chronic otitis, some of the bones in his ear have been destroyed, he has serious problems with his vocal cords, chewing is painful for him, he is suffering from depression and he has post-traumatic stress symptoms. Thanks to the intervention of his brother and other members of the JP, he was allegedly released on bail.

2.4 On 10 June 2000, the JP allegedly organized a protest demonstration in which the complainant took part. While returning to their homes, the members of his group were attacked by a group of AL supporters, one of whom was E.S. In the course of this incident the complainant allegedly managed to escape, but one of his friends was killed and another injured. The next day, he learned that E.S. had lodged a complaint against him for the murder of his friend and that the police were looking for him. For this reason, he left Dhaka and sought refuge with a friend in Gazipur.

2.5 The complainant states that on 19 June 2000, the police, together with AL supporters, went to his home in Dhaka to try to find out where he was. They allegedly threatened and beat up his brother, causing grievous injuries which led to his losing an arm. They also stole money and jewels. After this incident, the complainant allegedly went to live with a cousin in Silhet. His brother and the leader of the JP tried to have the charges against him dismissed but were unsuccessful. His own lawyer admitted that he was certain the complainant would be found

guilty and that he would do best to leave the country. A second lawyer, appointed by his brother and the leader of the JP, also expressed the view that it would be preferable for the complainant not to return to Bangladesh before the conclusion of the judicial proceedings.

2.6 On 13 September 2000, the complainant left Bangladesh and arrived in Switzerland on 21 September 2000. On the very day of his arrival he lodged an application for asylum. By a decision of 23 October 2002, the Federal Office for Refugees (ODR) - currently the Federal Office for Migration (ODM) - rejected the application and ordered him to be deported from Switzerland. On 4 August 2004, the Asylum Review Board (CRA) rejected the complainant's appeal, thereby confirming the ODR's decision to deport him.

2.7 The complainant maintains that the CRA essentially bases its decision of 4 August 2004 on the lack of credibility of the alleged events, since they have not been confirmed by the investigations conducted by the Swiss Embassy in Bangladesh. He rejects this reasoning, stating that many pieces of documentary evidence submitted have been declared authentic by a notary, that they are very detailed and that they uphold his account in all respects. He expresses surprise at the lack of detail in the inquiry by the Swiss Embassy, and at the lack of explanation concerning the procedure followed and the sources questioned, and concludes that the result is incomplete. He also notes that the CRA considered as contradictory the fact that he should have submitted attestations by two lawyers, whereas he had only mentioned one, and explains that, when he submitted his application for asylum in Switzerland, he had simply not been aware that his brother had appointed a second lawyer to represent him and that he had convinced the first lawyer to continue to represent him. He considers that this fact in no way detracts from the credibility of his allegations. As to the CRA's statement that the complainant and his group were not attacked by an AL group while returning from the demonstration on 10 June, but that the two groups set on each other, the complainant states that it was difficult, once the fighting had started, to say who had attacked whom and which group had had to defend itself; however, that too in no way detracted from the credibility of his account.

2.8 The complainant notes that the CRA considered that it is impossible for JP members to still be persecuted, given the fact that the JP is now represented in the Government and that, if they were being persecuted, the higher courts would have the necessary independence to punish such persecution. He rejects this argument, stating that, even though they are represented in the Government, JP members can be persecuted since they still constitute a political minority. He adds that the two criminal proceedings initiated against him are very probably linked to his political activities. In reply to the CRA's argument that even if the events had taken place in the manner described by the complainant, he should not have left the country but should have sought assistance from the Bangladesh authorities, he states that he tried to lodge a complaint but the policemen in question ignored him. Lastly, he claims that, even if the higher courts are independent in Bangladesh, as stated by the CRA, he would still have to spend several years in prison, with a high risk of being tortured, before gaining access to the higher courts.

The complaint

3.1 The complainant asserts that there are substantial grounds for believing that he would be subjected to torture if he was returned to Bangladesh and that his expulsion to that country would constitute a violation by Switzerland of article 3 of the Convention.

3.2 Given the two criminal proceedings initiated against him, he fears that he would be arrested as soon as he set foot in Bangladesh and would be subjected to torture, especially since he has already been tortured while he was being held in prison in Dhaka. He states that the Swiss authorities have not called his political activities into question and adds that JP members are still being persecuted, despite the fact that their party is a member of the coalition Government.

3.3 Lastly, the complainant maintains that in Bangladesh torture is still commonly used by the police. Furthermore, many people allegedly die in prison as a result of torture and the Bangladesh authorities undertake no investigation and no action to remedy this problem. Nor is any action taken to prevent torture. In addition, there is the problem of the lack of independence of the courts, in particular the lower courts.

State party's observations on admissibility and the merits

4.1 By a note verbale of 15 February 2005, the State party declared that it would not contest admissibility. An extension for the submission of its observations was granted and on 5 July 2005 it submitted observations on the merits.

4.2 The State party examined the validity of the CRA's decision in the light of article 3 of the Convention, the Committee's jurisprudence and its general comments. It notes that the complainant confines himself to bringing to the Committee's attention the grounds invoked before the Swiss authorities and provides no new element tending to call into question the CRA's decision of 4 August 2004. It also emphasizes that the complainant does not explain to the Committee the inconsistencies and contradictions contained in his allegations and noted by the Swiss authorities, but on the contrary confirms them.

4.3 The State party recalls the Committee's jurisprudence whereby the existence of a consistent pattern of gross, flagrant or mass violations of human rights does not constitute sufficient reason for concluding that a particular individual is likely to be subjected to torture on return to his or her country, and that additional grounds must therefore exist before the likelihood of torture can be deemed to be, for the purposes of article 3, paragraph 1, "foreseeable, real and personal".¹ The State party points out that the complainant makes a vague reference to "the various annual reports of different human rights organizations" to illustrate the human rights situation in Bangladesh, and in particular the frequent and unpunished use of torture by the security forces. The State party recalls that, when considering a number of communications from complainants invoking the risk of being tortured in the event of return to Bangladesh, the Committee has taken note of the overall human rights situation in Bangladesh, and in particular the repeated cases of police violence against prisoners and political opponents, and also the existence of acts of torture attributed to the police and violent clashes between political opponents.² The State party notes that, in order to assess the personal risk of being tortured in the event of return, notably of complainants opposed to the AL, the Committee has, inter alia, deemed as pertinent the change of government after the 2001 election, the fact that the AL is currently in the opposition, the fact that there is no longer a great risk that someone may be harassed by the authorities at the instigation of members of this party and the fact that members of one of the coalition parties in power have nothing to fear from the political groups making up the coalition.³

4.4 As to the risk of the complainant being arrested because of any criminal charges against him and his allegation that he would inevitably be subjected to torture while in prison, the State party refers to the Committee's consistent jurisprudence whereby the fact that torture is practised in places of detention does not, as such, warrant the conclusion that there has been a violation of article 3 if the complainant has not demonstrated that he personally is at risk of being tortured.⁴ The State party considers that the situation in Bangladesh as described by the complainant does not in itself constitute sufficient grounds for concluding that he would be at risk of being subjected to torture on his return to that country.⁵

4.5 The State party recalls the Committee's jurisprudence whereby the torture or ill-treatment suffered by the complainant in the past constitutes one of the elements that must be taken into account in assessing the risk of the complainant being subjected to torture or ill-treatment in the event of return to his country. The State party notes that the Swiss authorities have not, at any stage of the proceedings, contested the serious physical and psychological disorders from which the complainant is suffering and which he has substantiated by means of medical certificates. They nevertheless considered that those disorders are related to causes other than those adduced, since the author's allegations concerning ill-treatment during his supposed detention in May and June 2000 in Dhaka central prison are not credible. The State party adds that, even if the complainant's allegations were credible, he does not adduce any fact to justify a conclusion that he would still be at risk of being tortured in the event of his return.

4.6 The State party is not unaware of the existence of strong rivalries between the leaders of the two dominant political parties, namely the AL and the Bangladesh National Party (currently supported, *inter alia*, by the JP). It notes that the Swiss authorities have not questioned the complainant's membership of the JP or his activities within that party. It nevertheless considers that he is not at risk of being subjected to treatment contrary to article 3 of the Convention because of his political activities. Furthermore, it notes that he has not adduced any argument based on political activities he may have undertaken outside his State of origin.

4.7 The State party draws attention to the numerous inconsistencies in the complainant's account, inconsistencies which were mentioned in the CRA's decision. It points out that the complainant does not explain to what extent his alleged arrests in 1991, 1993 and 1995 would still be relevant today in exposing him to a risk of torture. Similarly, no explanation is given as to why the complainant would be at particular risk of being persecuted when he is a member of a legal political party which participated in the elections and is represented in the Government. The State party adds that the complainant provides no information that might cast doubt on the results of the investigations made by the Swiss Embassy in Dhaka. In its view, the fact that a notary has confirmed the authenticity of the documents submitted cannot be considered as decisive, especially since the complainant does not clarify the contradictions between his allegations concerning the events of June 2000 and the police report; according to the latter, a police officer lodged the criminal complaint whereas the complainant claims that it was E.S. who lodged the complaint.

4.8 The State party expresses surprise at the fact that the investigations conducted by the Swiss Embassy in Dhaka did not yield any indication of possible criminal proceedings against the complainant, even though, according to the complainant, a criminal complaint for illegal

possession of weapons was lodged in May 2000, he was detained from 5 May to 6 June 2000, he was released on bail in June 2000, and he was reported to the police for murder in June 2000. It also notes that the circumstances of the complainant's defence are not clear and that he does not explain the contradictions noted by the CRA. The State party points out that the second lawyer is the same person as the notary confirming the authenticity of certain documentary evidence and that he submits different information according to his role. The State party recalls the Swiss authorities' conclusion that the allegations of the existence of an outstanding criminal inquiry concerning the complainant are not credible. It affirms that, if these allegations were credible, in accordance with the Committee's jurisprudence article 3 of the Convention would afford no protection to a complainant who simply alleged that he was afraid of being arrested on return to his country.

4.9 Lastly, although it in no way contests the existence of the after-effects suffered by the complainant, the State party endorses the CRA's conclusions, considering that, in the light of the numerous contradictions relating to essential points in the complainant's account, it is highly probable that these after-effects were not caused by acts of torture but were rather the consequences of an accident or fights. The State party concludes there is no indication of serious grounds for supposing that the author would be specifically and personally at risk of torture on his return to Bangladesh.

Author's comments

5.1 By a letter of 29 September 2005, the complainant reiterates that, contrary to the opinion of the State party, there is for him a personal, actual and serious risk of being subjected to torture if he is deported to Bangladesh. He explains that his purpose in describing in the communication the general human rights situation in Bangladesh was not in itself to establish a sufficient ground for concluding that he would be at risk of being tortured on his return to his country, but to clarify the context in which the events which put him personally at risk are situated.

5.2 The complainant emphasizes that the change of government after the 2001 election and its relevance to the assessment of the risk of political persecution do not apply to his situation. He thus points out that he worked for the "Ershad" faction within the JP, which is still in opposition to the current Government, and consequently its members are still liable to arrest by the police and torture. He says that this fact has been confirmed by the Committee in its decision of 21 May 2005.⁶ Furthermore, he claims that he is still wanted by the police and that, despite the fact that he left the country five years ago, his children and brothers are still being threatened by his opponents. He adds that his brother, who had been looking after his children, has received such serious threats that he has had to flee and leave the children in the custody of an uncle, and that there has been no news of him since. He maintains that his uncle is in turn under threat and that the police have refused to protect his family because they are still looking for him. He encloses a letter from his uncle confirming his statements. He recalls that the State party has not contested his political activities and that, contrary to the State party's claims, he does not maintain that he is simply afraid of being arrested on his return, but has serious grounds for believing that he would be tortured.

5.3 The complainant recalls that he is wanted for murder and that, consequently, he would be arrested and imprisoned as soon as he arrived in Bangladesh since he fled after he had been

released on bail. He considers that, since he was tortured at the time of his most recent arrest, he would be tortured again because the situation has deteriorated since that time. Moreover, he doubts whether the judges would conduct a fair trial in his case since his party faction is still in opposition to the Government and he would have to fight charges when in fact he had begun by running away. He recalls that, in accordance with paragraph 6 of the Committee's general comment No. 1, the risk of torture does not have to be highly probable, but must simply go beyond mere theory or suspicion.

5.4 The complainant encloses a new medical certificate confirming that his psychological condition is consistent with his allegations of torture. He acknowledges that, like the other medical certificates already submitted, this certificate does not prove that he has been tortured, but it does make the allegation very probable. He recalls that the State party does not contest the serious physical and psychological disorders from which he is suffering; he nevertheless contests the State party's attribution of the disorders to causes other than the alleged torture. As to the result of the investigations by the Swiss Embassy in Dhaka, the complainant emphasizes that they do not provide answers to all the questions asked and that there is no indication of the inquiries on which the results are based. He observes that, according to the State party, the only deficiency in the notarized documents which he submitted, and which have not been deemed false by the State party, consists in the fact that they do not tally with the results of the Embassy's investigations.

5.5 The complainant explains the apparent contradiction concerning the source of the complaint for murder lodged in June 2000: he had heard that E.S. had lodged that complaint against him, but since he has never seen the complaint, it is possible that it was recorded not under the name of E.S., but under that of a police officer in order to give the case a more official character.

5.6 The complainant considers that, in relation to the circumstances of his defence, there are no contradictions. The fact that his first lawyer wrote in November 2002 that for political reasons he could no longer conduct his defence and advised the complainant to leave the country does not exclude him from representing him at a later stage. As to his second lawyer, the fact that he did not give his details in an identical manner as a notary and as a lawyer does not undermine the credibility of the complainant's allegations. Lastly, in support of the credibility of his statements, the complainant submits a photo of his brother in which it is clear that he has lost an arm. He concludes that it is not acceptable for the State party to concentrate on a few contradictions which do not relate to essential points and do not concern the other allegations made. He reiterates that, given the torture he has suffered in the past and his political activities, it is highly likely that he would again be tortured on his return to Bangladesh, which would constitute a violation by the State party of article 3 of the Convention.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has

not been, and is not being, examined under another procedure of international investigation or settlement. In the present case, the Committee further notes that domestic remedies have been exhausted and that the State party does not contest admissibility. It accordingly finds the complaint admissible and proceeds to consideration of the merits.

6.2 The Committee must determine whether, by sending the complainant back to Bangladesh, the State party would fail to meet its obligation, under article 3 of the Convention, not to expel or return a person to a State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 In order to determine 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, in accordance with article 3, paragraph 2, including the existence of a pattern of gross, flagrant or mass violations of human rights. However, the aim 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 particular country does not as such constitute sufficient reason for determining that a particular person would be in danger of being tortured 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 considered as being at risk of being tortured in specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, namely that “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” (A/53/44, annex IX, para. 6).

6.5 In the present case, the Committee considers that the main reason why the complainant is afraid that he will be tortured if he returns to Bangladesh is that he was allegedly tortured there while being held in Dhaka prison in May and June 2000 and that he would be at risk of being arrested on his return because of the criminal charges against him. The Committee notes that the State party has not contested the complainant’s political activities in Bangladesh. However, as regards the physical and psychological after-effects from which the complainant is suffering, the State party considers that they were caused by other events - accident, fighting - and not by the acts of torture as described by the complainant. The Committee has taken note of the medical reports furnished by the complainant attesting to the various problems from which he is suffering, but nevertheless considers that they do not warrant the conclusion that the after-effects described were caused by acts of torture. It also considers that, as the State party maintains, the complainant has not proved conclusively that the injuries he sustained resulted from actions by the State.

6.6 The Committee also takes note of the State party’s argument that, since the Awami League is currently in the opposition, there is no longer a high risk of the complainant being harassed by the authorities at the instigation of members of this party. The State party further

asserts that the complainant has nothing to fear from the political groups currently in power since he is a member of one of the coalition parties. While taking note of the complainant's explanation that he is a member of a faction of the Jatiya Party opposed to the faction currently in the Government, the Committee does not consider that this in itself would warrant the conclusion that the complainant is at risk of being persecuted and tortured by supporters of the Jatiya Party faction currently in the Government or the Bangladesh National Party.

6.7 Lastly, regarding the complainant's allegation that he risks being arrested because of the criminal proceedings against him and that in prison he would inevitably be subjected to torture, the Committee notes that the fact that torture is practised in places of detention does not, in itself, warrant the conclusion that there would be a violation of article 3, given that the complainant has not shown that he is personally at risk of being subjected to torture. The Committee recalls that, in conformity with its general comment No. 1, the burden is on the complainant to present a convincing case, to establish that he would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present. In the present case, the Committee takes note of the State party's argument that, on investigation, its embassy in Dhaka found no trace of criminal proceedings pending against the complainant. The Committee also considers that the complainant has not sufficiently substantiated his allegations that there are two criminal proceedings pending against him. In any event, it is inappropriate to refer to the possibility of arrest on his return to Bangladesh for ordinary offences with which he is charged. The Committee further considers that the complainant has failed to indicate the reasons for which he reportedly tried to lodge a complaint with the Bangladesh authorities and was forced to leave the country.

6.8 In view of the foregoing, the Committee considers that the complainant has not demonstrated the existence of substantial grounds for believing that his return to Bangladesh would expose him to a real, specific and personal risk of torture, as required under article 3 of the Convention.

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

[Done in English, French, Russian and Spanish, the French 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.]

Notes

¹ The State party cites communications No. 94/1997, *K.N. v. Switzerland*, decision of 19 May 1998, para. 10.5; and No. 100/1997, *J.U.A. v. Switzerland*, decision of 10 November 1998, paras. 6.3 and 6.5.

² Communications No. 220/2002, *Ruben David v. Sweden*, decision of 2 May 2005; No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005; No. 223/2002, *S.U.A. v. Sweden*, decision of 22 November 2004; No. 226/2003, *T.A. v. Sweden*, decision of 6 May 2005; No. 243/2004, *M.S.A. v. Sweden*, decision of 6 May 2005.

³ Communications No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005, para. 8.6; and No. 243/2004, *M.S.A. v. Sweden*, decision of 6 May 2005, para. 4.2.

⁴ Communication No. 221/2002, *M.M.K. v. Sweden*, decision of 3 May 2005, para. 8.7.

⁵ Communication No. 106/1998, *N.P. v. Australia*, decision of 6 May 1999, para. 6.5.

⁶ Communication No. 226/2003, *T.A. v. Sweden*.
