



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

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Committee Against Torture
Thirty-fourth session
(2 – 20 May 2005)

DECISION

Communication No. 220/2002

Submitted by: Mr. R. D. (represented by counsel,
Advokatfirman Peter Lindblom and Per-Erik
Nilsson)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 8 November 2002

Date of present decision: 2 May 2005

[ANNEX]

* Made public by decision of the Committee Against Torture.

** Re-issued for technical reasons.

ANNEX

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

Thirty-fourth session

Concerning

Communication No. 220/2002

Submitted by: Mr. R. D. (represented by counsel,
Advokatfirman Peter Lindblom and Per-Erik
Nilsson)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 8 November 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 2 May 2005,

Having concluded its consideration of complaint No. 220/2002, submitted to the Committee against Torture by Mr. R. D. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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

Adopts the following:

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

1.1 The complainant is R. D., a Bangladeshi citizen, currently awaiting deportation from Sweden to Bangladesh. He claims to be a victim of violations of articles 3 and 16, by Sweden, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel: Advokatfirman Peter Lindblom and Per-Erik Nilsson.

1.2 On 12 November 2002, the State party was requested, pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, not to expel the complainant, while his complaint is under consideration by the Committee. In the State party's submission on admissibility and the merits of 10 April 2003, it acceded to the Committee's request not to expel the complainant.

The facts as presented by the complainant:

2.1 The complainant is a Christian and lived in a village about 10 km from Barisal City, Bangladesh, where his father worked as a clergyman. On 7 April 1986, his father was abducted from his house by unknown men. A few days later, he was found dead and his body mutilated. Shortly thereafter, the same men returned, beat his mother and threatened her and the rest of the family to refrain from complaining to the authorities. The complainant's uncle was also murdered and his family was persecuted because of their religion. As a result of this persecution, he moved with his family to Barisal city.

2.2 The complainant states that he was subjected to threats and intimidation because of his religion. In 1988, he was recruited to the Bangladesh Freedom Party (the BFP) and was politically active from 1990 to 1996. In 1991, he took up the post of deputy coordinator. In 1995, when the Bangladesh Nationalist Party (BNP) was in power, he was arrested after being falsely accused of anti-State activities and kept in custody for 5 days. On release, he continued with his political activities. After the Awami League came to power in June 1996, he ceased his political activities, as the police had started arresting members of the BFP. Several attempts were made to stop him from working with the BFP and to induce him to join the Awami League. At the end of 1996, he went into hiding in another part of the city, before finally moving out.

2.3 In 1998 his mother told him that the police had been looking for him, and that he was accused of murder and anti-State activities. In 1999, when he visited his family in the city, he was warned that the police were going to arrest him, and he fled. Sometime in the same year, when the police could not find the complainant, they arrested his brother, tortured him in the police station and released him after two days. On another occasion in 1999, the complainant was attacked by members of the Awami League while on his way to visit his mother.

2.4 On 5 February 2000, the complainant entered Sweden and applied for asylum on the same day, on the grounds that he had been persecuted because of his religion and his involvement in the BFP. Under the terms of the two arrest warrants issued in 1997, the complainant had been sentenced to life imprisonment for murder and anti-State activities and would be arrested if returned to Bangladesh. On 27 March 2001, the Migration Board denied the application.

2.5 On 18 June 2001, the complainant appealed the decision before the Aliens Appeal Board where he stated that he had been subjected to torture, including rape and beatings for two days, while under arrest in 1997 or 1998. Thereafter, he was treated for a week, under police supervision, at Barisal Medical College. He claims that he was released after his mother had promised that he would join the Awami League.

2.6 The following medical information was provided referring to the conclusions of several Swedish doctors. Dr Edston concluded that the complainant had been subjected to the following torture: hit with blunt instruments; stabbed with a screwdriver and a police truncheon; burned with cigarettes, a heated screwdriver and possibly a branding iron; beaten systematically on the soles of his feet; attempted suffocation by introducing hot water into his nose; "rolling" of the legs with bamboo rods; sexual violence including rape. He found that the complainant had suffered permanent physical damage in the form of pain in his left knee, reduction of mobility in his right shoulder, functional reduction in his left hand, and pain when defecating. Dr Soendergaard found that there was no doubt that the complainant suffered from Post Traumatic Stress Disorder. Dr. Hemingstam, a psychiatrist, stated that his symptoms were characterized by: difficulties to concentrate; lack of appetite; feelings of agony; restlessness; nightmares; and hallucinations with impulses to commit suicide. She concluded that there is a great risk of the complainant committing suicide if he were subjected to pressure and if he loses his supportive and nursing contacts. According to a certificate from the Fittja Clinic, the complainant feels confused, "disappears" and is difficult to reach during the meetings, and that he has flashbacks of the torture to which he was subjected. A further psychiatrist, Dr Eriksson, confirmed that the complainant was admitted to hospital in May 2001 because of a risk of suicide. She confirmed that he was deeply depressed with a risk of suicide.

2.7 On 4 March 2002, the Aliens Appeals Board, although acknowledging that the scars could have been the result of beatings inflicted by his political opponents, found after consideration of the case as a whole that it was not probable that he was a refugee. It cited the fact that the information about the torture to which the complainant had been subjected had not been disclosed prior to the Aliens Appeal Board, as one of the reasons for questioning the complainant's claims.¹

2.8 In May 2002, another application for a residence permit was submitted, together with further medical information. In two new medical reports of 2 and 9 April 2002, the doctors criticized the Aliens Appeal Board decision and, as an explanation for the provision of information on torture at a late stage in the proceedings, suggested that the support the complainant had been receiving from his psychiatrist had given him the confidence to talk openly about his torture. On 5 July 2002, the Appeals Board refused his appeal on the grounds that the new evidence provided did not demonstrate that he was a person in need of protection.

2.9 The complainant invokes reports by Amnesty International and the US Department of State² which he claims support the conclusion that police torture of political opponents to extract information and to intimidate is often instigated and supported by the executive.

The complaint:

3.1 It is claimed that the complainant's forced repatriation to Bangladesh would violate his rights under article 3 of the Convention, as there are substantial grounds for

¹ No further information is provided on the reasoning of the Aliens Appeal Board.

² Amnesty International: International Report 2002 and the U.S. Department of State (Bangladesh: Torture and Impunity (ASA 13/01/2000). Amnesty International Press Release: Bangladesh: Politically Motivated Detention of Opponents Must Stop (ASA 13/012/2002, issued 6 September 2002).

believing that he would be in danger of being subjected to torture. In support of his claim, he refers to his involvement in the BFP, the persecution of his family, the medical reports concluding that he had previously been subjected to torture, his unjustifiable conviction for murder and anti-State activities, and the fact that there is said to be a consistent pattern of gross, flagrant and mass violations of human rights in Bangladesh.

3.2 As to his involvement in the BFP, he states that many of the leaders of this party were convicted of the assassination of Sheikh Mujibur Rahman, in 1975 and have been sentenced to death. He claims that because of the party members support for these imprisoned leaders, the party members themselves have been stigmatized and are personally at risk of persecution by the police even under the BNP regime.

3.3 It is also claimed that his forced expulsion would, in itself, constitute a violation of article 16 of the Convention, in view of his fragile psychiatric condition and severe post traumatic stress syndrome, resulting from the persecution, torture and rape to which the complainant and his family have been subjected.

The State party's submission on admissibility and merits:

4.1 On 10 April 2003, the State party submitted its observations on the admissibility and merits of the complaint. It confirms that the complainant has exhausted domestic remedies but maintains, that his claims have not been substantiated for purposes of admissibility, that he has not shown that there is a foreseeable real and personal risk of being subjected to torture and that the claim of a violation of article 16, in view of his psychiatric condition, is incompatible with the provisions of the Convention.

4.2 The State party invokes to the Committee's general comment on article 3, which spells out that a State party's obligation to refrain from returning a person to another State is only applicable if the person is in danger of being subjected to torture, as defined in article 1. There is no reference to "other acts of cruel, inhuman or degrading treatment or punishment" in article 3, as there is in article 16. Nor does article 16 contain a reference to article 3 as it does to articles 10-13. According to the State party, the purpose of article 16 is to protect those deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment.

4.3 The State party submits that although the general human rights situation in Bangladesh is "problematic", it has improved when seen from a long perspective. Bangladesh has a parliamentary democracy since 1991 and following its introduction no systematic oppression of dissenters has been reported. However, it notes that violence is a pervasive feature of politics and the police reportedly use torture, beatings and other forms of abuse while interrogating suspects. The police are said to be reluctant to pursue investigations against people affiliated to the ruling party and the government frequently uses the police for political purposes. Although the Constitution establishes Islam as the State religion, it also contains the right to practise the religion of one's choice. The government generally respects this right but religious minorities are disadvantaged in practice in certain areas, including access to government jobs and political office.

4.4 In addition, the State party refers to a confidential report from a “study tour” of officials from the Aliens Appeal Board in October 2002, which states, *inter alia*, that: false documents are very common in Bangladesh; persecution for political reasons is a rare occurrence at the grass-roots level but leading politicians within the opposition, such as former members of parliament are subjected to false accusations, arrest and torture by the police; a suspect does not have access to an arrest warrant, since such a document is directed by the court to the police; the main reason for seeking asylum is to get a job and an income; and people at grass-roots level in politics who are harassed may seek refuge in other parts of the country.

4.5 According to the State party, the national authority conducting the asylum interview is in the best position to assess the complainant’s credibility. In the present case, the Migration Board took its decision after interviewing with the complainant for three hours. Taken together with the facts and the documentation of this case, the Board had ample time to make important additional observations. The State party relies on the opinions of the Migration Board and the Aliens Appeal Board.

4.6 Regarding the complainant’s allegation that he risks persecution by private individuals because of his religion, the State party submits that the 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. In any event, the complainant has not substantiated his claim that he risks treatment in accordance with article 3. The State party notes that the complainant has not provided any details before the Swedish immigration authorities about the religious persecution that he and his family were allegedly subjected to. The complainant stated that the persecution which had led to his father’s death in 1986 ceased shortly afterwards when the family moved to Barisal City. There is no evidence that the complainant himself was the target of religious persecution.

4.7 Regarding the complainant’s allegation that he risks torture because of his involvement with the BFP, the State party submits that the complainant has repeatedly stated that he was exposed to maltreatment by his political opponents in the Awami League, which was the party in power in Bangladesh at the relevant time and that he fears its supporters may kill him if he returns. But the risk of being maltreated by political opponents who are in the opposition³ cannot be attributed to the State party and must be regarded as falling outside the scope of article 3. Should a risk exist, it would probably be of a local character since the complainant has only been politically active on the local level. There is no indication that he has anything to fear from the BNP, which is currently in power.

4.8 Concerning the allegations of past torture, the State party submits that the complainant did not mention either during the asylum interview held in March 2000 or at the meeting with representatives of the Aliens Appeal Board in July 2002 relating to his new application that he had suffered from torture by the police. It was only in his first appeal to the Aliens Appeal Board on 18 June 2001 that the authorities were informed that the complainant had been tortured by police in 1995 and in 1997 or 1998. When initially examined in August 2001, he complained of

³ The Bangladesh National Party has been in power again since 2001.

torture by the police in 1997 and assaults by political opponents and Muslims in 1996 and 1999 but made no mention of torture in 1995.

4.9 The State party refers to the medical report in which it is concluded that the complainant was subjected to torture in the manner he stated and recalls the Aliens Appeals Board's comment that the scars could be the result of the assault by Awami League supporters. However, the aim of the Committee's examination is to establish whether the complainant would be currently at risk of torture if returned. Even if it were to be considered established through the evidence that the complainant was tortured in 1997, this does not mean that he has substantiated his claim that he will risk torture in the future.

4.10 The State party challenges the validity of the documents provided to prove his conviction for murder and anti-State activities. It states that following enquiries by the Swedish Embassy in Dhaka, it was established, after looking at the court records, that the complainant was not one of the 18 accused and convicted of murder, as claimed by him and allegedly confirmed in a lawyer's affidavit. In the State party's view, the results of this enquiry call into question the complainant's credibility and the general veracity of his claims. As to the two arrest warrants submitted to support his claims, the State party notes that the complainant has not explained how he obtained such documents.

4.11 In addition, the State party points to various inconsistencies and contradictions in the complainant's evidence. It refers to the Migration Board's reasoning that it was not probable that the complainant, who was a Christian and whose father had been a clergyman, would have been working for several years for a party whose primary goal is to protect the Islamic character of Bangladesh. Neither did the Board think it credible that a Christian would have been given the post of deputy coordinator. For this reason, the Board found that it was unlikely that the authorities had arrested the complainant for his political activities, or that he had been convicted of murder and anti-State activities. The State party considers it difficult to believe that the complainant would have been released in 1997 by the Magistrates Court following his mother's promise that he would work for the Awami League, considering his claims, allegedly evidenced in the warrants submitted, that in 1997 the police were instructed to arrest him for the purposes of bringing him to court to answer charges of murder. It notes that the complainant had his passport renewed shortly before his departure which strongly indicates that he was not of interest to the authorities.

4.12 The State party enumerates why the complainant should not fear ill-treatment by the Bangladesh authorities in the event of return: he has not been politically involved since 1996; he told the interviewing official of the Migration Board that it was his mother who had planned for him to leave; although he alleges to have been tortured in 1997 he made no effort to leave immediately and stayed on for several years thereafter; the fact that the complainant's mother asked, in an interview with a newspaper, the Bangladeshi authorities to help him makes no sense if the authorities themselves were the ones who he feared would ill-treat him.

4.13 Regarding article 16, the State party refers to the Committee's decisions in the cases of *G. R. B. v. Sweden*⁴ and *S.V. et al. v. Canada*⁵, noting that the Committee did not find violations of article 16 in either case. Although it acknowledges that according to the medical evidence the complainant is suffering from post traumatic stress syndrome and his health has deteriorated, as a result of the decisions of the Swedish authorities to refuse him a residence permit, it considers that there is no basis for his fear of returning to Bangladesh. His family can support him on return and medical care is available for him, at least in the big cities. The State party notes that despite his health problems the complainant has attended school and has also worked in Sweden for considerable periods of time. In enforcing the expulsion order, the State party ensures that his health will be taken into account in deciding how the deportation will be carried out and the Bangladeshi authorities will not be informed of his return. In its view, the complainant has not substantiated his claim that an enforcement *per se* of the expulsion decision would amount to cruel, inhuman or degrading treatment, within the meaning of article 16 of the Convention.

4.14 On a procedural issue, the State party requests the Committee to extend its examination to the merits of the communication, as soon as possible, since the Committee's decision in this case may be of relevance to the Swedish immigration authorities' assessment of other asylum claims from Bangladeshi citizens.

The complainant's comments on the State party's submission:

5.1 On 23 October and 22 November 2003, the complainant commented on the State party's submission and provided an update on the facts. It is stated that for fear that the complainant might commit suicide he was placed in a psychiatric clinic on 23 October 2003. He was discharged at the end of November 2003 and referred to non-institutional care. He claims that there is a direct link between his depressive state and his fear of being sent back to Bangladesh. He maintains that he has fully substantiated his claim and states that the overall purpose of article 16 is to protect an individual's health and welfare.

5.2 As to the information in the confidential report⁶, he claims that such reports are made in close cooperation with domestic authorities and the information is almost always provided by officials who depend on the benevolence of the political powers. He claims that Bangladeshis are looked upon with suspicion by the Swedish authorities and that the burden of proof is higher than that of any other asylum seekers. On the issue of the alleged forged affidavit confirming the complainant's conviction for murder, it is argued that no objective evidence, other than a report from an investigator, was provided to prove that the complainant is not one of the convicted persons. This report does not contain any signature or name of the person purported to have signed it. Neither does it provide information on the competence of the investigator, who is merely referred to in the letter as its "lawyer". Finally, no information has been provided on whether the complainant's lawyer was given an opportunity to comment or refute the accusation of forgery which was directed against him and if so what his response was.

⁴ Case No. 86/1997, Decision adopted on 15 May 1998.

⁵ Case No. 49/1996, Decision adopted on 15 May 2001.

⁶ This report has not been provided but the State party submits that it will provide it at the Committee's request.

5.3 The complainant reiterates that he has been sentenced to life imprisonment and for this reason will be arrested by the police. In addition, he states that as his case has attracted interest in the Swedish mass media, there is a risk that it may also have attracted the attention of the Bangladeshi authorities, thus adding to the risk that he may be subjected to torture if returned. As to the issue of his passport, the complainant states that “everything – passports included- are for sale”.

Supplementary submissions of the State party and the complainant:

6.1 On 19 February 2004, the State party submitted that the complainant’s condition had improved as he had been discharged from the psychiatric clinic. As to the confidential report, the State party submits that a copy of the report was sent to the complainant’s former counsel on 19 May 2003. A copy of the Swedish embassy’s report was also sent on the following day.

6.2 The State party highlights some of the notes made in his medical records while in compulsory psychiatric care including: the fact that although his emotional and formal contact with the doctors was bad, he was not inhibited with the other patients; he did not cooperate to any appreciable extent; it is unclear how much is in fact attributable to acting on his part, in view of his present situation. The State party also refers to the recent case of *T. M. v. Sweden*⁷, in which the Committee referred to the significant shift in political power in Bangladesh in reaching its conclusion that the complainant has failed to substantiate his claim of a risk of torture.

6.3 On 19 and 28 March 2004, the complainant sent a further medical report to highlight the severe form of post traumatic stress syndrome he is suffering from.

6.4 On 26 October 2004, in response to a request by the Secretariat for a copy of the judgment, in which the State party claim the complainant’s name is not one of the 18 accused and convicted of murder, the State party expresses its regret that it is not in a position to provide this judgment at short notice and would need around two months in order to obtain a copy. In any event, it argues that the burden is on the complainant, who invoked the judgment, to produce a copy. Neither has he presented a copy to the Swedish authorities or to the Committee. Nor has he provided any explanation as to why this has not been done. On 31 November 2004, the Committee, through the Secretariat, requested a copy of this judgment in English. On 22 April 2005, the State party provided the Committee with a copy, in which the complainant’s name is not included as one of the accused and/or convicted persons.

Issues and proceedings before the Committee:

Consideration of admissibility

7.1 Before considering any claim contained in a complaint, the Committee must decide whether or not 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

⁷ Case No. 228/2003, Views adopted on 18 November 2003.

the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement.

7.2 Concerning the claim under article 16 relating to the complainant's expulsion in light of his mental health, 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 16.⁸ The Committee notes the medical evidence presented by the complainant demonstrating that he suffers from severe post-traumatic stress syndrome, most probably as the consequences of the torture suffered by him in 1997. The Committee considers, however, that the aggravation of the complainant's state of health which might be caused by his deportation is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible.⁹

7.3 As to the claim under article 3 concerning torture, the Committee considers, particularly in light of the complainant's account of his previous torture, that he has substantiated this claim, for purposes of admissibility. In the absence of any further obstacles to the admissibility of this claim, the Committee accordingly proceeds with its consideration on the merits.

Consideration on the merits

8.1 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 to 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.

8.2 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 this risk, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. The aim, however, is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute 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.

8.3 The Committee observes that the State party has not contested the complainant's claim that he was tortured and notes that the Aliens Appeal Board was of the view that the complainant's political opponents may have been responsible for this torture. However, the Committee notes that seven years have passed since the torture took

⁸ Case No. 83/1997, Decision adopted on 15 May 1998, Case No. 49/1996, Decision on 15 May 2001, and Case No. 228/2003, Decision adopted on 18 November 2003.

place, that the complainant's alleged level of responsibility in the Bangladesh Freedom Party was low and his participation was at the local level only. In addition, it observes that the complainant has provided no evidence, documentary or otherwise, either to the State party or to the Committee, to demonstrate that he had been convicted and sentenced to life imprisonment for murder. In fact, it is clear from the judgment provided by the State party on 22 April 2005 that the complainant's name is not among those convicted. For these reasons, and considering the fact that the government has changed since the alleged torture, the Committee considers that the complainant has failed to show that substantial grounds exist, to prove that he would be at a real and personal risk of being subjected to torture if removed from Sweden.

9. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Bangladesh and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party 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.]