



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

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COMMITTEE AGAINST TORTURE
Thirty-seventh session
6 – 24 November 2006

DECISION

Communication No. 227/2003

<u>Submitted by:</u>	A. A. C. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of complaint:</u>	6 February 2003 (initial submission)
<u>Date of present decision:</u>	16 November 2006

Subject matter: Deportation from Sweden to Bangladesh; previous experience of torture; effect of deportation on mental health.

Substantive issues: Risk of present, personal risk of torture; relevance of mental health to question of degrading treatment.

Procedural issues: None

Articles of the Convention: 3 and 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

Thirty-seventh session

Concerning

Communication No. 227/2003

<u>Submitted by:</u>	A. A. C. (represented by counsel)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Sweden
<u>Date of complaint:</u>	6 February 2003 (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 16 November 2006,

Having concluded its consideration of complaint No. 227/2003, submitted to the Committee against Torture by A. A. C. 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 complainants,

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

1.1 The complainant is A. A. C., a Bangladeshi national born in 1970 and awaiting deportation from Sweden to Bangladesh at the time of submission of the complaint. He claims that his expulsion to Bangladesh 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. He is represented by counsel.

1.2 On 7 February 2003, 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 was under consideration by the Committee. On 24 March 2003, the State party informed the Committee that it acceded to its request not to expel the complainant.

The facts as presented by the author

2.1 The complainant is a sympathizer of the Bangladesh Freedom Party (the BFP) since 1992 and became a member in 1994. In 1995, he was elected as information secretary of the BFP in the Naria police district. His duties included arranging meetings, putting up posters, writing slogans, recruiting members, holding speeches and acting against the then governing party, the Awami League. When the national leaders of his party were arrested and sentenced for the murder of Sheikh Mujibur Rahman, the father of the then Prime Minister and the founder of the Awami League, the complainant arranged demonstrations in favour of them being freed. On 15 August 1997, he was arrested while holding a demonstration in protest against the Awami League. He was accused of illegal possession of arms, making bombs and distributing anti-State propaganda. He was taken to a cell at the police station in Naria, held during 10 days and subjected to maltreatment from which he still suffers. He was released by paying a bribe.

2.2 The complainant left Naria and went to Dhaka where he stayed with his maternal uncle. After a few days, members of the Awami League saw him and followed him to his uncle's home. On the same night, he saw the police enter through the gate of his uncle's home, and he jumped out of a window and took a train to Sylhet, where his sister lives. After a few days, the police came to his sister's home with a person from Naria. The complainant managed to escape and went to the hills in Sylhet.

2.3 In the first week of December 1997, the complainant returned to his home in Naria and resumed his political activities. He was attacked and maltreated by supporters of the Awami League, on 9 January 1998, on his way home. His brother then took him to another residential area where his wife visited him and told him that the police were looking for him because of accusations made against him, and that the Awami League had also been at his home to collect money. His wife became pregnant and one month before her delivery, he moved back to Naria, where he again resumed, in secret, his political activities.

2.4 On the night of 29 June 1999, the police arrested him at home and took him to the police station. He was accused of possessing illegal arms and explosives, the making of bombs and anti-State propaganda. This time he remained in custody for 15 days. During this period, the police struck him with fists and a metal pipe, and kicked him. He was released after a bribe was paid. Thereafter, he did not dare to stay at home but lived in three different locations.

2.5 In February 2000, the complainant planned to go back to Sonda by boat but a neighbour warned him that she had heard how two supporters of the Awami League planned to use weapons against him in the harbour. He, therefore, returned to Dhaka and after having stayed there for a while, he left for Khulna.

2.6 In August 2000, he went to India for medical treatment for the problems that he had because of the maltreatment he had been subjected to in June 1999 – respiratory difficulties and pain in the back. In October 2000, when he came back to Bangladesh, his family told him that he was accused of possession of illegal arms and explosives, the making of bombs and distributing anti-State propaganda. He had also been accused of crimes against the public order and treason in accordance with the Public Safety Act. During the then Prime Minister's visit to Shariatpur district, the police had found explosives in the district and the complainant

was regarded as being responsible for their presence there. The complainant stayed in hiding until he left Bangladesh on 4 December 2000.

2.7 On 5 December 2000, the complainant entered Sweden and requested asylum two days later. He stated that he risked being sentenced to at least 15 years in prison because of false accusations if he were forced to return to Bangladesh. He also stated that he risked being arrested by the police and subjected to maltreatment or torture, and subsequently killed by the police as well as being executed by supporters of the Awami League. The complainant stated to the Swedish authorities that his health was very bad – he suffered from anxiety, lack of sleep, nightmares, difficulties concentrating and vertigo. He heard noises from the torture to which he had been subjected, and he heard his son crying. He was feeling such enormous pain after the maltreatment that he had difficulties in sitting still for any length of time. He also submitted medical reports, from which it emerged that because of anguish he suffers from headaches, vertigo, lack of sleep and, sometimes, respiratory difficulties. The complainant invoked reports by Amnesty International and the US Department of State,¹ which, he claims, support the conclusion that police torture of activists and political opponents to extract information and to intimidate is often instigated and supported by the executive branch. He also pointed out that policemen who had been guilty of torture seldom were punished or dismissed from their jobs.

2.8 The Migration Board denied his application on 9 April 2001 stating that the complainant could not be regarded as a refugee according to the 1951 Convention on the Status of Refugees and the Swedish Aliens Act of 1989. Firstly, the Board found that the complainant did not face any risks from the Bangladeshi authorities on account of his political activities since the BFP is a legal party; his political activities had taken place at a relatively low level and had been allowed. Secondly, the Board did not believe the complainant's statement regarding the accusations against him, since it was not credible that he would be released, even by paying a bribe, if he were accused of several offences, new and old. The Board also pointed out that the complainant had had a passport issued on 14 August 2000 in spite of the accusations against him. Thirdly, the Board considered that the complainant had a chance in getting his case reviewed through legal procedures in Bangladesh, which could be considered to be adequate and impartial.

2.9 The Migration Board also found that the complainant could not be regarded as a person otherwise in need of protection in accordance with the Aliens Act, because the maltreatment he suffered in August 1997 and June 1999 was not permitted by the Government or the authorities in Bangladesh, but constituted acts of cruelty committed by solitary policemen who had taken the law into their own hands. The Board applied the same reasoning for maltreatment committed by supporters of the Awami League. Lastly, the Board found that the complainant was not entitled to a residence permit in Sweden on humanitarian grounds.

2.10 In his appeal to the Aliens Appeals Board, the complainant referred to the conclusions of Swedish doctors. One concluded that the police had subjected the complainant on two

¹ The U.S. Department of State (Bangladesh: Country Reports on Human Rights Practices) and Amnesty International (International Report 2002; Endemic Torture since Independence (ASA 13/008/2000); 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).

occasions, in 1997 and 1999, to the following torture: hit with blunt instruments, such as fists, and a weapon; stabbed with a knife and glass; burned with a heated metal pipe; beaten on the soles of his feet with a police truncheon; hung from the ceiling; subjected to electrical shocks in his temples; attempted suffocation by having his head thrust under water in a barrel and by having water infused into his nose; threatening against the complainant's life by putting a syringe filled with poison and a gun to his head. He found that the complainant had suffered permanent physical damage in the form of chronic headache, pain in the lower section of his back, loss of feeling in the left side of his face, sometimes a weakness in the whole of the left section of his body, attacks of vertigo. The second doctor certified that the complainant had been subjected to medical treatment in Sweden since 8 January 2001, when he contacted the medical ward in Östhammar and was diagnosed as being in a condition of anxiety. The complainant was in contact with the other medical wards in January and April 2001. According to the certificate, the complainant's symptoms were characterized by: feelings of being pursued; fear, and having difficulties in feeling confidence in people; physical symptoms in the form of sickness when he sees a police car; pain in his body when he thinks of the torture; lack of sleep; nightmares; attacks of feelings of being absent. The complainant also confessed to having thoughts of committing suicide. The doctor concluded that the diagnosis of Post Traumatic Stress Disorder (PTSD) in all probability was correct, and that it could be described as a case of 'mental illness that had been brought about by very difficult experiences'. The doctor further concluded that there was information, which led to the conclusion that the complainant was in a process of suicidal development. A third doctor's report confirmed that the complainant was in contact with her ward since 11 July 2001 after being referred there by another medical ward and by the psychiatric clinic at St. Göran's Hospital. The complainant was diagnosed with depression and PTSD related, *inter alia*, to the persecution and the torture to which he has been subjected in Bangladesh. A fourth doctor, a psychiatrist, confirmed this diagnosis describing the complainant as showing strong feelings of anxiety, flashbacks from situations of torture, being always on the move and depressive, and having difficulty in concentrating. The complainant insisted that a special doctor should be appointed by the Aliens Appeals Board in order to scrutinize the medical evidence in the case. On 23 May 2002, the Board decided to deny the motion, without giving any reasons for the decision.

2.11 In his appeal, the complainant stated that the decision by the Migration Board was inconsistent, since the Board seemed not to believe his statement regarding the question of what he had been subjected to by the Bangladeshi authorities. The Board stated that it had not doubted his statement regarding the torture and maltreatment to which he had been subjected, however, it had not believed his statement about the arrests. By decision of 24 July 2002, the Aliens Appeals Board upheld the decision by the Migration Board and shared its findings on the general conditions in Bangladesh and its legal system. The Aliens Appeal Board found that the complainant could not be considered as a refugee or as a person otherwise in need of protection according to the Aliens Act; and that 'considering all the circumstances' he could not be granted a residence permit for humanitarian reasons.

2.12 On 4 February 2003, the complainant was taken into police custody awaiting execution of the deportation order.

The Complaint

3.1 The complainant claims that there are substantial grounds for believing that he would be subjected to torture if he were forced to return to Bangladesh, in violation of article 3 by Sweden of the Convention. The complainant refers to the medical reports (paragraph 2.10 above) concluding that he had previously been subjected to torture and submits that his description of the torture to which he has been subjected coincides with what is generally known through the human rights reports about torture in Bangladesh. Those reports also support the conclusion that police torture of political opponents is often instigated by the executive; that the judiciary system does not provide sufficient protection to the victims, and that the lower courts are not politically independent of the executive, and that the decisions of the higher courts are often ignored or circumvented by the executive. The complainant also claims that the elections in 2001, where the Awami League was replaced by the Bangladesh Nationalist Party (the BNP), did not constitute such a fundamental change in the political circumstances in Bangladesh that the grounds for persecution no longer exist; and that people who had been falsely accused or charged on account of their political activities were acquitted of these accusations or charges. In view of the prevailing situation in the country and of the fact that neither the Migration Board nor the Aliens Appeals Board had questioned the fact the complainant was subjected to torture in Bangladesh, he maintains that he would still run a foreseeable, substantial and personal risk of being subjected to arrest and torture if he were forced to return to Bangladesh.

3.2 He also claims that the execution of deportation order would in itself constitute a violation of article 16 of the Convention, in view of his fragile psychiatric condition and severe Post Traumatic Stress Disorder, resulting from the torture, to which he had been subjected.

The State party's observations on admissibility and merits

4.1 By letter of 24 April 2003, the State party acknowledges that all domestic remedies were exhausted but disputes that the complaint disclosed the minimum level of substantiation required for the purposes of admissibility.²

4.2 The State party also contends that the claim of a violation of article 16 in relation to the execution of the deportation order, in view of the complainant's fragile psychiatric condition and severe PTSD, is incompatible with the provisions of the Convention. 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 1.³ There is no reference to "other acts of cruel, inhuman or degrading treatment or punishment" in article 3, as there is in article 16. The purpose of article 16 is rather 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.

² Reference is made to *Y v. Switzerland*, Communication No. 18/1994, Views adopted on 17 November 1994, para 4.2.

³ The Committee's General Comment on the implementation of article 3, dated 21 November 1997. Reference is made to Peter Burns, "The United Nations Committee against Torture and its role in refugee protection" (Institute of Public Law, University of Bern, 2001).

4.3 The State party recalls the procedures governing asylum claims in Sweden. According to the Aliens Act, an alien is entitled to a residence permit in Sweden, *inter alia*, if he has left his country of nationality because of a well-founded fear of being sentenced to death or corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment. Under chapter 8, the national authorities have to consider the same matters when it comes to enforcing a decision to refuse entry or executing an expulsion decision. Even if a decision to refuse entry or an expulsion decision become enforceable after appeal, the alien may be granted a residence permit if he files a so-called new application to the Aliens Appeals Board. An expulsion order is enforced only where an alien has refused to abide by the relevant order voluntarily; coercive measures must be strictly limited to what is necessary and proportionate, and be implemented with due regard to humanitarian considerations as well as respect for personal dignity of the alien. An alien is entitled to a residence permit, *inter alia*, if he for humanitarian reasons should be allowed to settle in Sweden. Serious illness, both mental and physical, may in exceptional cases constitute humanitarian reasons for granting residence permit.

4.4 As to the facts of the complaint, the State party clarifies that at his interview by the Migration Board on 1 March 2001, he stated that he was politically active in Bangladesh and a member of the BFP. On account of his activities he had been persecuted by the police and the Awami League and been subjected to false accusations. In August 1997, he was arrested during a demonstration and was held in custody for ten days. During this time he was maltreated and tortured by the police being accused of possessing illegal weapons, of producing bombs and of subversive activities. A bribe was paid for his release. During the interview the complainant stated in details circumstances preceding an attack on him by the supporters of the Awami League on 9 January 1998, as well as his departure from Bangladesh. The complainant explained that a person who had his passport and who paid bribes to different persons at the airport escorted him to the airplane.

4.5 On 9 April 2001, the Migration Board rejected the complainant's application for asylum and ordered his expulsion to the country of origin. The Migration Board did not find the complainant to be entitled to asylum, in need of protection or entitled to a residence permit for any other reasons. The complainant appealed the decision but the Aliens Appeals Board turned down the appeal on 24 July 2002. After the decision from the Aliens Appeals Board, the complainant went into hiding. He was discovered by the police in connection with a labour inspection on 4 February 2003 and taken into custody.

4.6 On the merits, the State party argues that, in the light of the general human rights situation in Bangladesh and the evidence advanced, the complainant failed to make out a personal and substantial risk of torture, as defined in article 1, which would render his expulsion contrary to article 3. As to the general situation, the State party concedes that it is problematic, but points to progressive improvement over a longer term. Following the introduction of democratic rule in the early 1990's, no systematic oppression of dissidents has been reported, and human rights groups are generally permitted to conduct their activities. The BNP returned to power (after holding power from 1991 to 1996 and being in opposition from 1996 to 2001) following elections on 1 October 2001 that were declared free and fair. Violence is however a pervasive element in political life, with supporters of different parties clashing with each other and with police during rallies and demonstrations. Although the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading treatment, the police reportedly use torture, beatings and other forms of abuse while interrogating suspects.

Acts of torture are seldom investigated, and the police, whose members are allegedly utilized by the Government for political purposes, are reluctant to pursue investigations against persons affiliated with the ruling party. The higher courts are by and large independent and rule against the Government in high profile cases. Persons are occasionally tried in absentia by the courts, although this is rarely done. The Public Safety Act was also repealed by the Government in April 2001.

4.7 In 2002, members of the State party's Aliens Appeals Board visited Bangladesh, meeting with members of Parliament and the Executive, representatives of local embassies and international organizations, and, according to the classified report from this tour, found no institutional persecution. While "high profile" persons may be arrested and harassed by the police, political persecution is rare at the grass roots level. Leading politicians may be subjected to false accusations for murder, subversive activities and possessing weapons. The State party adds that as of 1998 Bangladesh is a party to the Convention against Torture and, since 2001, to the International Covenant on Civil and Political Rights.

4.8 Turning to the real, personal and foreseeable risk of torture which the complainant is required to face under article 3 in the event of a return, the State party points out that its authorities explicitly applied the relevant Convention provisions. In addition, the competent authorities are in an advantageous position in assessing applications, particularly in the light of the experience gained in granting 629 cases on article 3 grounds in 1'427 cases from Bangladesh over a 10-year period. Accordingly, weight should be given to the decisions of the Immigration and Aliens Appeals Boards, whose reasoning the State party adopts.

4.9 The State party submits that the complainant in this case bases his claim on a presumption that he risks being tortured upon return to Bangladesh as a consequence of his membership in the BFP and because of the accusations against him under the Public Safety Act, now repealed. Given that the Bangladeshi political context has significantly changed by virtue of the 2001 electoral defeat of the Awami League government, the complainant's alleged persecutor, there would appear no reason for the complainant to fear persecution from the police, let alone a danger of being subjected to torture.

4.10 In addition, the State party observes that the complainant had not held any leading position within the party, while as stated in the report of the Aliens Appeals Board (paragraph 4.7 above), party members at grass-root level are rarely persecuted by the authorities. Even if the complainant may have been subjected to torture in the past, it has not been shown that he is still wanted by the police today, nor that he would still be in danger of being persecuted if he returned to Bangladesh now.

4.11 The State party notes that if there is a current risk of persecution from the Awami League, this is a wholly non-governmental entity and the acts of the Awami League cannot be attributable to the authorities. According to the jurisprudence of the Committee, such persecution falls outside the scope of article 3 of the Convention.⁴ In addition, this persecution would be of a local character and the complainant could therefore secure his safety by moving within the country.

⁴ Reference is made to *G.R.B. v Sweden*, Communication No 83/1997, Views adopted on 15 May 1998, para 6.5.

4.12 The State party notes that the complainant resumed his political activities in December 1997 after being allegedly released from custody in August 1997. Furthermore, after his second detention in June 1999, the complainant made no attempt to leave the country but stayed there until December 2000, with the exception of a visit to India in August and September 2000. The State party suggests that this indicates that not even the complainant believed himself to be in danger of being arrested and tortured even at that time. The State party questions the fact that the complainant, allegedly arrested by the police and accused of possessing illegal weapons and subversive activities in August 1997 and in June 1999, would have no difficulty in obtaining a passport from the authorities in August 2000.

4.13 On the claim under article 16, the State party refers to two cases in which there was medical evidence of PTSD and a claim that state of health prevented expulsion. In G.R.B. v Sweden,⁵ the Committee considered that an aggravation of state of health possibly caused by deportation did not rise to the threshold of treatment proscribed by article 16, attributable to the State party, while in S.V. v Canada,⁶ the Committee considered the claim insufficiently substantiated.⁷

4.14 The State party acknowledges that according to the medical evidence the complainant suffers from PTSD and his health has deteriorated during consideration of his asylum application. It considers, however, that there is no substantial basis for his fear of returning to Bangladesh. The State party notes that in March and April 2001, the complainant applied for an exception from the requirement to have a work permit, since he had been offered a job. After the decision of the Aliens Appeals Board in July 2002, the complainant has remained in hiding. When he was discovered by the police, he was working as a greengrocer. Thus, the State party submits, the complainant's psychiatric condition should be assessed in that light and has not been of such seriousness that it prevented him from working. In addition, in enforcing the expulsion order, the State party ensures that it is carried out in a humane and dignified manner, taking into account the complainant's state of health. The State party, therefore, contends that the possible aggravation of the complainant's state of health that his deportation may cause would not amount to cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party.

The complainants' comments on the State party's observations

5.1 On 18 July 2003, the complainant maintained that his communication fulfils the minimum standard of substantiation for the purposes of admissibility of a claim under article 3. He also contends that the communication fulfils the minimum criteria of article 16 and that the execution of the expulsion order would be in violation of this article by the Swedish authorities. Despite his poor mental health, he was taken into custody and the speedy manner

⁵ *Supra* n.4, para 6.7.

⁶ Reference is made to *S.V. v Canada*, Communication No 49/1996, Views adopted on 15 May 2001, para 9.9.

⁷ The State party refers to the jurisprudence of the European Court of Human Rights on equivalent provisions that have held that ill-treatment must rise to a minimum level of severity, and that there is a high threshold where the case does not concern the State party's responsibility for infliction of harm. See, *Cruz Varas and others v. Sweden*, judgment of 20 March 1991, Series A no. 201, para 83 and the *Bensaid v. the United Kingdom* judgment of 6 February 2001, para 40.

in which the execution was planned to take place, shows that it would not have taken place in the humane and dignified way. He refers to a report of the European Commission Against Racism and Intolerance (the ECRI),⁸ which in turn refers to the criticism that has been raised against the Swedish authorities for executing expulsion orders without respect for the dignity of the individual involved.

5.2 In addition to already submitted reports on the general human rights situation in Bangladesh, the complainant also invokes an additional Amnesty International report.⁹ The report concludes that torture has been widespread in Bangladesh for years, that successive governments have not addressed the problem, and that there is a climate of impunity. Court proceedings against a public employee, such as a police officer, are only possible with the government's agreement, which is rarely forthcoming. The complainant challenges the State party's assessment that activists at grass roots level are not the subject of false accusations. He also reminds the Committee of the 'declaration' made by the People's Republic of Bangladesh that it would apply paragraph 1 of article 14 of the Convention against Torture 'in accordance with the existing laws and legislation in the country'. The complainant submits that contrary to the provisions of this article, victims of torture in Bangladesh have not been able to obtain redress and or compensation to which they are entitled. He refers to the enactment of the so-called Joint Drive Indemnity Act that granted immunity from prosecution to military and government officials for the instances of torture that allegedly occurred during the so-called Operation Clean Heart.

5.3 In relation to his personal circumstances, the complainant reiterates that he faces a foreseeable, real and personal risk of torture if he is returned to Bangladesh. Without contesting the statistics presented by the State party (paragraph 4.8 above), the complainant argues that the State party did not show how many of those who applied for asylum were granted asylum or a residence permit as person otherwise in need of protection. He also submits that compared to other categories, the asylum seekers from Bangladesh are very few each year.¹⁰ Thus, the experience of the State party's immigration authorities regarding this category is far less than that concerning other categories of asylum seekers. The complaint further argues that no fundamental changes of the political situation in Bangladesh have taken place. The BFP is a party that in so far as it still exists, is in opposition to the present Government of four-party coalition headed by the BNP. The complainant argues that neither the State party nor its migration authorities contested this fact or his evidence of past torture. He submits that, where it is established that a person has been subjected to torture in the past, there should be a presumption that this person runs a risk of torture in the future, unless circumstances have manifestly changed. The complainant adds that a number of laws in Bangladesh, such as the Code of Criminal Procedure and the Special Powers Act, create conditions that facilitate torture by enabling the police to arrest a person on vaguely formulated grounds, or without charge, and to keep him/her in prolonged detention. While accepting that the Public Safety Act was repealed in April 2001, the complainant argues that

⁸ Reference is made to the Report of the European Commission Against Racism and Intolerance made public on 15 April 2003.

⁹ Amnesty International, Bangladesh: Urgent need for legal and other reforms to protect human rights (ASA 13/015/2003), published in May 2003.

¹⁰ Reference is made to the UNHCR Report of November 2001 'Asylum Applications in Industrialized Countries: 1980-1999'.

the Special Powers Act and the other legislation referred to by Amnesty International¹¹ are still applicable and that it is not known of any case raised on the basis of Public Safety Act which has been closed or withdrawn.

5.4 The complainant further explains (see paragraph 4.12 above) that he obtained his passport in August 2000, that is before the accusations of harbouring explosives, and illegal arms, making of bombs, distribution of anti-State propaganda, crimes against public order and treason were made against him.

Supplementary submissions from the State party and the complainant's comments

6.1 In a further submission dated 1 September 2003, the State party acknowledges that ECRI had had certain remarks on Sweden as regards the removal of persons whose asylum application has been turned down. ECRI observed, specifically, that there had been cases of persons who had against their will been deported to countries completely unknown to them because of difficulties in establishing their nationality. There were also cases of excessive use of force and/or unusual means of restraint used by officers during the expulsion of foreign nationals from Sweden. The State party refers to an appendix of the report where the State party acknowledged that there had been forced removals to countries that were not countries of origin when there were difficulties in verifying the nationality of asylum seekers but stated that ECRI 'pictures the situation in Sweden incorrectly'. The State party confirms that the aim is always to remove persons to the country of origin or a country where the person has a right to legally remain.

6.2 In a further submission dated 11 November 2003, the complainant maintains that the Swedish authorities have been criticized not only because they sent an asylum seeker to the wrong country but also for the manner in which the expulsion order has been executed. He submits that this is an issue in his case and that the manner in which he has been treated by the Swedish authorities violate article 16 of the Convention.

6.3 On 16 November 2005, the State party submitted that since a new remedy to obtain a residence permit had come into force under temporary legislation, the complaint should be declared inadmissible for non-exhaustion of domestic remedies, or at least be adjourned awaiting the outcome of the application of this new procedure. On 9 November 2005, temporary amendments were enacted to the 1989 Aliens Act. On 15 November 2005, these amendments entered into force and were to remain in force until a new Aliens Act entered into force on 31 March 2006. These temporary amendments introduced additional legal grounds for granting a residence permit with respect to aliens against whom a final refusal-of-entry or expulsion order has been issued. According to the new Chapter 2, section 5 b of the Aliens Act, if new circumstances come to light concerning enforcement of a refusal-of-entry or expulsion order that has entered into force, the Swedish Migration Board, acting upon an application from an alien or of its own initiative, may grant a residence permit, inter alia, if there is reason to assume that the intended country of return will not be willing to accept the alien or if there are medical obstacles to enforcing the order. Furthermore, a residence permit may be granted if it is of urgent humanitarian interest for some other reason. When assessing the humanitarian aspects, particular account shall be taken of whether the alien has been in Sweden for a protracted period and if, on account of the situation in the receiving country, the

¹¹ Supra n.9.

use of coercive measures would not be considered possible when enforcing the refusal-of-entry or expulsion order. It shall further be taken into account whether the alien has committed crimes and a residence permit may be refused for security reasons. No refusal-of-entry or expulsion order will be enforced while the case is under consideration of the Migration Board. Decisions made by the Migration Board under Chapter 2, Section 5 b, as amended, are not subject to appeal. Applications lodged with the Migration Board under the new legislation, which are still pending by 30 March 2006, will continue to be handled according to the temporary amendments of the Aliens Act. The same applies to cases that the Board has decided to review on its own initiative.

6.4 On 31 March 2006, the complainant responded that on 18 November 2005 the Swedish Migration Board decided to take up his case for examination under the temporary legislation. On 3 March 2006 the Board decided not to grant a residence permit, and to uphold the expulsion order. In the complainant's further submission dated 12 April 2006, the complainant explained that in the application before the Board he maintained the reasons for asylum that he had given earlier before the Migration Board, the Aliens Appeals Board and the Committee against Torture. He also referred to new medical evidence of January-February 2006 which corroborated that the complainant had been in contact with psychiatric care in Sweden since 2001 and that his initial diagnosis was PTSD.

6.5 The Migration Board based its decision of 3 March 2006 on the grounds that these reasons had already been taken up by the migration authorities and that no new circumstances had emerged regarding them and the risks which the complainant would run if he would have to return to Bangladesh. The Board, therefore, found that he could not be granted asylum or a residence permit as a person otherwise in need of protection. Secondly, the Board found, based on its practice under the temporary amendments to the Act that a single person must have been in Sweden for at least eight years before a residence permit can be granted on those grounds, that the length of the complainant's stay in Sweden since 2000 was not sufficient. Thirdly, the Board found that his medical evidence did not show that he suffered from such a serious mental illness or comparable condition that a residence permit should be granted for medical reasons and that he could receive adequate treatment in his home country. Therefore, no grounds existed for granting a permit for humanitarian reasons.

6.6 The complainant submits to the Committee that on 11 January 2006 he had been in contact with his brother in Bangladesh who informed him of the continuing interest of the police in the complainant and his wife and children. Allegedly, they have to move around the country to avoid the police and militant members of the Awami League.¹² The complainant refers to the U.S. Department of State and the Swedish Foreign Office's Reports of 2005 in support of his claim that the situation regarding torture in police jails has not improved but worsened. The complainant further claims that restrictive practice used by the Swedish authorities regarding the granting of a residence permit has led to unnecessary suffering on his part and in itself constitutes a violation of article 3 or 16 of the Convention.

¹² Neither further information nor supporting documents were provided.

Issues and proceedings before the Committee

Consideration of the admissibility

7.1 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. 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 notes that the exhaustion of domestic remedies was not contested by the State party in its initial submission and on 3 March 2006 a final decision on the complainant's renewed application was reached by the State party's authorities under the temporary amendments to the 1989 Aliens Act.

7.2 With regard to the complainant's allegation raised in the latest submission of 12 April 2006 that the treatment that he has been subjected to by the Swedish authorities by the restrictive practice used by them regarding the granting of a residence permit, which leads to unnecessary suffering on his part, in itself constitutes a violation of article 3 or 16 of the Convention, the Committee considers that the complainant has not submitted sufficient evidence in substantiation of this claim.

7.3 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 16.¹³ The Committee notes the medical evidence presented by the complainant demonstrating that he suffers from PTSD, most probably as the consequences of the treatment suffered by him in 1997 and 1999. 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.

7.4 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 of the merits

8.1 The issue before the Committee is whether the removal of the complainant to Bangladesh violated the State party's obligation under article 3 of the Convention not to expel or to return (*'refouler'*) 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 Sweden. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the

¹³ Supra n.4 and supra n.6.

Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.3 In assessing the risk of torture in the present case, the Committee has noted the complainant's submission that he was twice previously tortured in Bangladesh. However, as the State party points out, according to the Committee's General Comment, previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin; in this regard, the Committee must consider whether or not the torture occurred recently, and in circumstances which are relevant to the prevailing political realities in the country concerned. In the present case, the torture to which the complainant was subjected occurred in 1997 and 1999, which could not be considered recent, as well as in quite different political circumstances, specifically when the BFP, a party the complainant is a member of, was in opposition to the then ruling party, the Awami League.

8.4 The Committee has taken note of the submissions regarding the general human rights situation in Bangladesh and the reports that torture is widespread; however, this finding alone does not establish that the complainant himself faces a personal risk of torture if returned to Bangladesh. 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 the BFP, and that he risks being imprisoned and tortured upon his return to Bangladesh pursuant to his alleged charges under the Public Safety Act.

8.5 The Committee notes that the complainant and the State party are at considerable odds as to the extent to which the BFP can currently be considered in opposition to the current government. However, the State party's information on this issue is to the contrary. The Committee recalls that in accordance with its General Comment,¹⁴ it is for the complainant to present an arguable case and 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 is not persuaded that the current political situation in Bangladesh, coupled with the low alleged level of responsibility in the BFP, place the complainant at present danger of being tortured on the basis of membership of the BFP in a non-prominent position.

8.6 The Committee also notes that the complainant and the State party disagree with each other over the issue of probability of obtaining a new passport by a person against whom the charges of possession of illegal weapons and subversive activities have been instituted by the police. In the present case, the Committee is not in a position to deliberate on the matter, given the fact that the complainant did not provide any documents proving that these charges

¹⁴ *Supra* n.3.

had been instituted against him either in 1997, 1999 or 2000 with the exact dates on which it had happened.

8.7 In relation to the charges which the complainant says were filed against him under the Public Safety Act, the Committee has noted that the current status of these charges against him remains unclear. While the State party's argument that the Act has been repealed has not been contested by the complainant, he doubts any cases raised on the basis of this Act had been closed or withdrawn. In the absence of evidence indicating continued police interest in the complainant, the Committee considers that the complainant has not been able to substantiate his claims that the prosecution of charges filed against him will proceed, even though the relevant legislation has been repealed. As a consequence, it does not consider it likely that the complainant risks detention and torture for this purpose on return.

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, concludes that the removal of the complainant to Bangladesh 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.]
