



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

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Committee against Torture

Forty-Sixth session

9 May – 3 June 2011

Decision

Communication No. 338/2008

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| <i>Submitted by:</i> | Uttam Mondal (represented by counsel, Gunnel Stunberg) |
| <i>Alleged victim:</i> | The complainant |
| <i>State party:</i> | Sweden |
| <i>Date of the complaint:</i> | 30 November 2007 (initial submission) |
| <i>Date of present decision:</i> | 23 May 2011 |
| <i>Subject matter:</i> | Deportation of complainant to Bangladesh |
| <i>Procedural issues:</i> | Insufficient substantiation |
| <i>Substantive issues:</i> | Prohibition of refoulement |
| <i>Articles of the Covenant:</i> | 3, 16, 22 |

[Annex]

* Made public by decision of the Committee against Torture.

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-sixth session)

concerning

Communication No. 338/2008

Submitted by: Uttam Mondal (represented by counsel, Gunnel Stunberg)

Alleged victim: The complainant

State party: Sweden

Date of the complaint: 30 November 2007 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 23 May 2011,

Having concluded its consideration of complaint No. 338/2008, submitted to the Committee against Torture by Gunnel Stunberg on behalf of Uttam Mondal 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 and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1.1 The complainant is Mr. Uttam Mondal, a citizen of Bangladesh, currently awaiting deportation from Sweden. He claims that his deportation to Bangladesh would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Gunnel Stunberg.

1.2 Under rule 108, paragraph 1, of the Committee's rules of procedure, the Committee requested the State party, not to expel the complainant to Bangladesh while his complaint was under consideration by the Committee.

The facts as presented by the complainant

2.1 The complainant was a political activist in Bangladesh, for a party named Bikolpo Dhara Bangladesh (BDB). The BDB was created in 2003, and the complainant joined it at the end of the same year. In 2004, he became the chairman of the party's youth's organization, Juba Dhara, in the district of Sreenagar. He organized meetings,

demonstrations, held speeches, in close contact with Professor Chowdhury, the founder of the party, and his son Mahi Chowdhury. He also helped in organizing local committees of the party.

2.2 In 2004, Mahi Chowdhury was elected as an MP from the BDB party. The complainant worked actively for the election, and allegedly had received several death threats from the rival Bangladesh National Party (BNP) militants. Both the complainant and the BDB's founder Professor Chowdhury were members of the BNP before founding and joining the BDB. The complainant was warned that he would be killed, that the BNP would make false accusations against him to the police, that his brother would be kidnapped, and that his home would be destroyed. In the meantime, several supporters of the BDB were persecuted by the police.

2.3 On 20 June 2004, during a celebration of the BDB victory, a close friend of the complainant was killed by the BNP supporters. On 21 June 2004, the BDB held a demonstration in protest against the killing. When the complainant returned at his home, the police arrested him and informed him that he was suspected of having killed his friend because of political rivalry. He was brought to the police station and charged with the murder. He was asked to confess guilty, and when he refused, the police officers beat him with iron bars on the sole of his feet, he was hang upside down, beaten with riffle butts and fists, and burned with cigarettes on his back. The officers allegedly have also put a hot iron in his rectum, as a result of what he had lost consciousness. He was kept at the police station for 48 hours and was released only because Mahi Chowdhury bribed the police. After his release, the complainant went to the Dhaka Clinic, and was treated there for a week.

2.4 On 10 August 2004, the complainant was arrested again. He was accused of having attacked "Khaleda Zia's" motorcade in 1999. The complainant was kept in custody for three days, and was again released after the payment of a bribe. In the meantime, however, he was asked to testify against the other accused persons for the attack in question, and after his refusal to cooperate, he was allegedly raped by three officers. After release, he was placed in the hospital and remained there for five days.

2.5 The complainant is a Hindu, a religious minority group which is allegedly harassed and persecuted in Bangladesh. He claims that Muslims try to take possession of the Hindu's land by force or by false papers and destroy their prayer houses. The complainant's family's prayer house was among those destroyed. Hindu women are raped, and Hindus are systematically discriminated against at work.

2.6 The complainant claims that he is an active homosexual. A Muslim friend of his informed other people about this fact and as a result, the Imam of the area issued a death fatwa against him. Few days after his release from his second arrest, the complainant's house was surrounded by a group of Muslims searching for him, who subjected his family to violence and caused several material damages, vandalizing the family's grocery store. He further claims Hinduism also forbids homosexual relations and that, for this reason, he had had problems with his family. When he was leaving his home town, stones were thrown at him and his family refused to talk to him.

2.7 The complainant then decided to go to Dhaka. There he found out that not only Islamist fundamentalists but also the police was searching for him because of the false accusations against him and because of his homosexuality. He decided then to leave the country. Mahi Chowdhury organized his flight, through a smuggler. He adds that, while in Dhaka, he tried to commit suicide.

2.8 After his arrival in Sweden, the complainant contacted his family, and found out that the local Imam and other individuals forced them to leave the area. The complainant's boyfriend was also obliged to leave Bangladesh shortly after his departure.

2.9 In support of his claims, he had presented his national passport, the Mosque's fatwa against him, as well as certificates of his membership in BDB, a press article, and Swedish medical journal.

2.10 On 15 June 2005, the Migration Board rejected the complainant's asylum application. The Board noted first, that the complainant failed to establish his identity as his passport was damaged. The complainant's political activities were not placed at doubt, but the Board noted that they had been only limited in time and in place. As to the torture allegations, the Board concluded that it was an isolated act, and that the complainant should have complained at higher level in order to report the torture. The Board did not find any evidence that a criminal case against the complainant was ongoing in Bangladesh. The religious faith of the complainant has not, according to the Board, given him problems so as to make him in need of protection. The Board had admitted that homosexuality was criminalized in Bangladesh and could be punished with life imprisonment. In practice, however, there is no active persecution of homosexuals in Bangladesh.

2.11 On appeal, the complainant affirmed that he had been in touch with Mr. Mahi Chowdhury in August 2005, who informed him that the police was still investigating the accusations against the complainant. The procedure was at a preliminary stage and was confidential. The complainant adds that his family has disappeared. Even though a few pages of his passport were missing, they did not include those containing his name, address, photograph, etc. In relation to his political activities, he contended that even though his political activities were conducted only locally, he had been arrested and tortured on two occasions because of them.

2.12 In relation to his religion and homosexuality, the complainant has pointed out that these two grounds combined aggravate his situation in Bangladesh. The fact that he is a Hindu makes it more probable for him to be sentenced to life imprisonment because of his homosexuality than if he would be a Muslim in the same situation. He also pointed out that the Migration Board has omitted to comment on the fatwa issued against him.

2.13 The Migration Board of Appeals ceased to exist in March 2006, and the complainant's case was referred to the Stockholm Migration Court. The complainant added to his complaint, inter alia, medical certificates issued in 2006 and 2007, by Swedish medical specialists, who concluded that the complainant suffered from Post Traumatic Stress Syndrome and depression, and that he would need a long and continuous treatment.

2.14 On 3 April 2007, the Court found that the information before it did not permit it to doubt on Mr. Mondal's credibility. It concluded, however, that the complainant failed to establish that in Bangladesh he would be persecuted because of his past political opinions. The Court further concluded, in relation to the complainant's homosexuality, that he again failed to prove that he would be persecuted on this ground. With regard to persecution based on religion, the Court found that the mere fact that he belonged to a minority group did not constitute sufficient reason. Finally, the Court found that the complainant had not made it probable that there existed reasons to believe that he would be punished with death penalty, or subjected to ill-treatment or torture, in relation to his allegations that there was a risk to be arrested again. The court found no humanitarian reasons to grant a residence permit to the complainant.

2.15 The complainant appealed this decision with the Supreme Court of Migrations Appeals. On 31 August 2007, the Supreme Court of Migrations Appeals rejected the complaint.

The complaint

3.1 The complainant refers to reports on human rights violations in Bangladesh by non-governmental organizations and claims that in case of his forced return to Bangladesh, Sweden would violate his rights under articles 3 and 16 of the Convention.

3.2 On 16 April 2008 under rule 108, paragraph 1, of the Committee's rules of procedure, the Committee requested the State party, not to expel the complainant to Bangladesh while his complaint was under consideration by the Committee.

State party's observations on the admissibility and the merits

On admissibility

4.1 On 30 October 2008, acknowledged that all available domestic remedies have been exhausted. However it maintains that the complainant's assertion that he is at risk of being treated in a manner that would amount to a breach of article 3 of the Convention fails to rise to a basic level of substantiation.

4.2 As for the claims under article 16 of the Convention, the State party questions the applicability of this article. It refers to the Committee's prior jurisprudence and submits that his claims under article 16 should be inadmissible *ratione materiae*. It submits that the claims under article 16 is incompatible with the Convention and fails to raise to the basic level of substantiation.

On the merits

4.3 The State party acknowledges that the human rights situation in Bangladesh is problematic. Even if it has extensive legislation for the protection of human rights, in practice the situation is inadequate. It refers to reports by several human rights organizations and agencies¹ and submits that violence is a pervasive feature of politics in Bangladesh. Supporters of different political parties clash with each other and with police during rallies and demonstrations. Although the Bangladesh Constitution prohibits torture and cruel, inhuman and degrading punishment, the police reportedly use torture, beatings and other forms of abuse while interrogating suspects. Those responsible for torture are rarely punished. In January 2007, after the declaration of state of emergency and postponement of elections, the Government's human rights record has worsened. It adds that although there was a significant drop in extrajudicial killings by security forces, there remain serious abuses. The Government generally respects the rights to practice the religion of one's choice, however religious minorities are disadvantaged in practice in such areas as access to government jobs and political office. Nearly ten percent of the population is Hindu. Homosexual acts are illegal, however the legislation is used selectively.

4.4 The State party refers to the Committee's jurisprudence and submits that concerns regarding the human rights situation in Bangladesh cannot lead to the conclusion that persons liable to be arrested on criminal charges *ipso facto* face a real risk of torture. It submits that the material before the Committee does not indicate that the complainant would now be in danger of politically motivated persecution and that he would be particularly vulnerable during a possible period of detention. Thus, even if it were shown

¹ Swedish Ministry of Foreign Affairs. Report on Human Rights 2007; US State Department Report., 2007; British Home Office Guidance Note, 2007. Amnesty International Annual Report 2008; Human Rights Watch report 2007.

that the complainant is at risk of being detained upon his return to Bangladesh, this does not constitute substantial grounds for believing that he would be in danger of being subjected to torture.

4.5 The State party submits that several provisions of both the 1989 Aliens Act and the 2005 Aliens Act reflect the same principles as that laid down in article 3, paragraph 1, of the Convention. Thus the Swedish authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee. It adds that the national authority conducting the asylum interview is in a very good position to assess the information submitted by the asylum seeker and to estimate the credibility of his or her claims. It mentions that the Migration Board took its decision after two interviews conducted with the complainant. The second interview lasted for two hours. Thus, it had sufficient information which taken together with the facts and documentation in the case, ensured that it had a solid basis for its assessment of the complainant's need for protection.

4.6 The State party adds that in his complaint to the Committee, the complainant has not provided any detailed explanation of why his expulsion to Bangladesh would be in violation of the Convention. He confined only the fact that he risks being arrested on return to Bangladesh and therefore also being subjected to torture. It adds that the complaint is too vague, imprecise and lacking in details on important points to be examined on the merits.

4.7 The political situation in Bangladesh has changed since the complainant left the country. According to the complainant, it was the ruling party, the BNP, that persecuted him and initiated false accusations against him. The complainant submitted an undated letter from Mahi Chowdhuri that he is under the threat from BNP members. However, the BNP is no longer the ruling party in Bangladesh. The country is at the moment run by a caretaker Government and will continue to be so until general elections have been held. Since BNP does not have the same position as it did when the complainant left Bangladesh, the risk of being exposed to harassment by the authorities at the instigation of that party should have diminished considerably.

4.8 The State party adds that the complainant has not, with the exception of the above statement from Mahi Chowdhuri, submitted any documents supporting his claim that he is currently of interest to the Bangladeshi authorities owing to his political involvement or for any other reason. During the second interview by the Migration authorities he stated that he had no documents regarding the false accusations against him. He also stated that he had not filed any complaint against the police officers who maltreated him. Nor has he provided any details or further information as to the present situation concerning the alleged accusations. He has argued that it is not possible to get hold of any evidence as long as the preliminary investigation is going on. However, the State party contends that in the proceedings before the Migration Board the complainant mentioned a document that was shown to him at the clinic in Dhaka, containing a list of suspected persons and including his name. He has also been able to get other documents from Bangladesh, allegedly from the same person who showed him the aforementioned list. It has therefore been questioned why it has been impossible for him to get hold of evidence of the alleged cases against him.

4.9 The State party also refers to the decisions by the Migration Board and Migration Court that the complainant does not appear to have held any leading position within the party. It contends that due to the length of his political involvement (less than a year) and also the amount of time that has passed since the political involvement and the alleged instances of torture the complainant would not be a political figure of such importance and of such interest to the authorities to believe that he would be in danger of being subjected to persecution upon his return. The complainant's former party has joined the Liberal Democratic Party and ceased to exist. Should the risk of persecution still exist it would be of a local character and he could therefore in any event secure his safety by moving within the country.

4.10 Regarding the complainant's past experience of torture, the State party notes that his request for a torture injuries examination was rejected by the Migration Board. It contends that he does not seem to have insisted on the examination after that, nor has he had the alleged torture injuries documented at his own initiative. The medical documentation that has been submitted by the complainant to both the Swedish Migration authorities and the Committee, focuses on the complainant's mental health. The only exception is the two Discharge certificates from the Dhaka Clinic that certify "cut injuries and laceration analfimere." The State party refers to the Committee's jurisprudence and states that the aim of the Committee's examination is to determine whether the complainant would risk being subjected to torture now, if returned to his home country. It submits that should the Committee consider it to be established that the complainant has been subjected to torture by the Bangladeshi police in the manner he has asserted, this does not mean that he has thereby substantiated his claim that he will risk torture if returned to his country of origin.

4.11 The State party refers to the Migration Court relating the complainant's sexual orientation and his family's knowledge about this. He had had a relationship with his boyfriend since 1997 and they lived together in his house. He stated that no one found it strange as it was not unusual for two men to live together. It questions how he was able to keep his sexual orientation from his family as he had been living for such a long time in a relationship with another man. It states that homosexual acts are illegal in Bangladesh under its Penal Code. The sanction may be imprisonment for life. However, according to the information provided in human rights reports on Bangladesh it rarely happens that a person is prosecuted under this section. It also adds that the human rights reports do not support the conclusion that Bangladeshi authorities are actively persecuting homosexuals or that there is a general need of protection for homosexual asylum seekers from Bangladesh. The biggest problem for homosexuals is the social stigma that follows for homosexuals and other persons living outside the social norms of the Bangladeshi society. The complainant did not submit any documents supporting his claim or otherwise substantiated his claim that he is currently of interest to the Bangladeshi authorities owing to his sexual orientation. However should he be of interest to Bangladeshi authorities, he would most probably be able to live and work in other places in Bangladesh where he is not previously known. The certificate from the Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights submitted by the complainant is not an expert opinion as has been alleged by the complainant. The same is in relation to the later certificate from the same federation dated 27 January 2007 also submitted to the Committee.

4.12 It submits that in order to support his claim that he risks being persecuted and even killed by Islamic fundamentalists because of his sexual orientation, the complainant submitted a poster with a proclamation of the fatwa that has been put on him. The poster with the fatwa and his face on it has been spread in various areas but he does not know if it has been spread in the whole country. It submits that the Government in Bangladesh is secular, even if a religion forms a platform for certain political parties and Shari'a is not formally implemented. It also questions whether there is a risk that the complainant may now be of interest to Islamic fundamentalists, considering the time that has elapsed since he left Bangladesh. According to information available on Bangladesh fatwa does not gain legal force. However if such a risk exist, it would most certainly be of a local character so that the complainant would be able to secure his safety by moving within the country. The State party admits that the Migration Board did not consider the fatwa but the complainant does not know to what extent the fatwa has been spread and he has no evidence of this being the case.

4.13 As to the complainant's claim that Hindus are hindered in their religious activities, that the Muslims try to get their lands by illegal means and that they are disadvantaged as regards to access to jobs, the State party submits that the kind of difficulties that minority groups like Hindus may experience in Bangladesh can hardly be considered to amount to

persecution on the part of the Bangladeshi authorities, let alone torture within the meaning of article 1. It refers to human rights reports and concludes that any persecution of Hindu people on religious grounds that may occur does not emanate from the state. Nor does such persecution take place with the consent or acquiescence of the State. Furthermore, regarding the complainant's reference to an occasion when the members of his family were attacked due to their Hindu belief and their place for prayer was destroyed, it notes that the complainant himself was not at home at that time and there is nothing to indicate that he himself was the target of religious persecution.

4.14 As to the allegations of violation of article 16, the State party submits that the complainant does not provide any reason why there would be such a violation. It refers to the Committee's jurisprudence² and contends that aggravation of the complainant's health due to deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention.

4.15 The State party refers to the medical opinion by one Dr. Ziad Yanes, a specialist in psychiatry which was submitted by the complainant and which the State party contends is a reproduction of his story. The complainant has also invoked two medical certificates by Dr. Asa Magnusson. The State party submits that at the initial interview the complainant stated that he was worried but not suffering from any mental illness, however from the medical documentation it is evident that his health has deteriorated during his time in Sweden. Dr. Magnusson's certificate states that his health has improved due to the treatment he has been given. The State party submits that should he need medical care in his native country because of his mental health problems, it appears that such care is available at least in the big cities. Therefore, the possible aggravation of his health that his deportation might cause would not amount to the type of treatment covered by article 16.

Complainant's comments on the State party's observations on the admissibility and the merits

5.1 On 4 September 2009, the complainant submitted executive summaries of the medical investigation into his torture injuries, which state that he was tortured twice in 2004 by the Bangladeshi police. He describes the methods of torture which include, being hit with fisteriron, iron rods, rifle butts and police batons. He also claims being cut by bayonets, burnt with cigarettes, whipped under the feet, hung upside down, water treatment, rape and others. As a result, he developed chronic pain in his joints, pain in his feet while walking and itch in his skin. He also provides the summaries of the conclusion by one Dr. Edston, who found scar tissue in his head, both arms, his torso and both legs.

5.2 The complainant submits a summary of examination by one Dr Soegndergaard, which states that he was committed to hospital care due to suicide attempts and confirms that he has clear symptoms of PTSD.

5.3 As to the State party's argument that his complaint does not rise to the basic level of substantiation, the complainant submits that he has shown grounds that he would be personally at risk if returned to Bangladesh. He claims that the evidence submitted, including the medical certificates, show that he has been subjected to torture by Bangladeshi authorities and claims that there continues to exist a substantial, personal and foreseeable risk of torture, if he is returned to Bangladesh.

5.4 The complainant contends that the State party did not in any way specify its argument that his claims are manifestly unfounded. The documents submitted as well as his statement provide detailed and specific information. Being highly traumatized, he cannot be

² G.R.B. v Sweden 83/1997. Views adopted on 15 May 1998.

demanded to give exact and detailed account of everything that has taken place, as it was not humanly possible.

5.5 As to the general situation in Bangladesh he submits that the situation has developed even further, namely the Awami League has won the election in December last year, however he points out that BNP has still a power and the opponents of BNP are still being subjected to persecution.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, 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.

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

6.3 The Committee notes that no arguments or evidence have been submitted in substantiation of the claim under article 16 of the Convention, and therefore the Committee concludes that this claim has not been substantiated for the purposes of admissibility. This part of the communication is thus inadmissible.

6.4 On the alleged violation of article 3, the Committee is of the opinion that the arguments before it raise substantive issues, which should be dealt with on the merits and not on admissibility alone. Accordingly, the Committee finds this part of the communication admissible and proceeds to its consideration.

Consideration of merits

7.1 The Committee must determine whether the forced return of the complainant to Bangladesh would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return ('refouler') an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture upon return to Bangladesh. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this regard, the Committee notes that the State party acknowledged that the general human rights situation in Bangladesh has worsened and that torture, beating and other forms of abuse are used by the police while interrogating suspects.

7.3. The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Bangladesh after his return. A consistent pattern of gross, flagrant or mass violations of human rights in Bangladesh, would not as such constitute sufficient grounds for determining that he would

be in danger of being subjected to torture after his return to that country; specific grounds must exist indicating that he would be personally at risk.³ The Committee notes the complainant's claim that he is at a particular risk of torture in Bangladesh due to his religion and sexual orientation. The State party argued that any persecution of Hindu people on religious grounds that may occur does not emanate from the State and noted that the complainant did not submit any documents supporting his claim. As for his sexual orientation, the State party acknowledged that homosexual acts are illegal under the Penal Code and can entail imprisonment for life in Bangladesh. In this regard, the Committee notes that the State party's argument that Bangladeshi authorities are not actively persecuting homosexuals does not rule out that such prosecution can occur.

7.4 Concerning the fatwa issued against the complainant because of his sexual orientation, the Committee considers that the State party's argument that the complainant did not know to what extent the poster with the fatwa had been spread within Bangladesh, and that it may only have been of a local character, is unjustified as it would be impossible for the complainant to prove the contrary given that he is outside the country, it would be impossible for him to prove the contrary. Furthermore, the notion of "local danger" does not provide for measurable criteria and is not sufficient to dissipate totally the personal danger of being tortured. The Committee also notes the State party's argument that the complainant does not appear to be of interest to Islamic fundamentalists, considering the time that has elapsed since he left Bangladesh, however it considers that the State party did not provide sufficient argument on how lapse of time has diminished the risk of persecution based on the complainant's sexual orientation.

7.5 As for the complainant's arguments that he will be persecuted because of his past political activities, the Committee notes the State party's argument that the BNP is no longer the ruling party in Bangladesh and does not have the same position as it did when the complainant left Bangladesh. The Committee however notes that the political situation in Bangladesh remains unstable with violence and rivalry among various political parties and there continues to be many instances of violence based on political beliefs. The Committee also notes that the State party did not question that the complainant was subjected to torture in the past, albeit that in the State party's view this was an isolated act. Furthermore, the State party acknowledged that torture is still practiced in Bangladesh and that those responsible are rarely punished.

7.6 As for the medical documentation submitted by the complainant regarding the consequences of past torture, while recalling its jurisprudence⁴ that 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, the Committee notes that the medical reports confirm a causal link between the complainant's bodily injuries, his current psychological state and the ill-treatment he suffered in 2004.

7.7 In light of the arguments provided above, and in particular the findings in the medical report, the complainant's political activities in the past and the risk of persecution on the basis of his homosexuality combined with the fact that he belongs to a minority Hindu group, the Committee considers that the complainant has provided sufficient evidence to show that he personally runs a real and foreseeable risk of being subjected to torture were he to be returned to his country of origin. In the circumstances, the Committee concludes that the expulsion of the complainant to Bangladesh would constitute a violation of the State party's obligations under article 3 of the Convention.

³ *MAK v. Germany*, 214/2002. Views adopted 5 May 2004.

⁴ *M.S.H. v. Sweden* 235/2003. Views adopted on 14 November 2005.

7.8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, considers that the State party's decision to return the complainant to Bangladesh would constitute a breach of article 3 of the Convention.

8. In conformity with article 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, on the steps taken by the State party to respond to this decision.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Russian and Chinese as part of the Committee's annual report to the General Assembly.]
