



**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. 226/2003

Submitted by: Ms. T. A. (Represented by counsel, Ms. Gunnel Stenberg)

Alleged victims: Ms. T. A. and her daughter S.T.

State party: Sweden

Date of the complaint: 16 January 2003

Date of present decision: 6 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. 226/2003

Submitted by: Ms. T. A. (Represented by counsel, Ms. Gunnel
Stenberg)

Alleged victims: Ms. T. A. and her daughter S.T.

State party: Sweden

Date of the complaint: 16 January 2003

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

Meeting on 6 May 2005,

Having concluded its consideration of complaint No. 226/2003, submitted to
the Committee against Torture by Ms. T. A. 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 Ms. T. A., a Bangladeshi citizen, who acts on behalf of herself and her daughter S.T, born in 1996. Both are awaiting deportation from Sweden to Bangladesh. Ms. T. A. complains that their expulsion to Bangladesh would amount to a violation by Sweden of articles 3 and 16, and possibly of article 2, of the Convention. She is represented by Ms. Gunnel Stenberg.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the complaint to the State party on 20 January 2003. Pursuant to rule 108, paragraph 1, of the Committee's rules of procedure, the State party was requested not to expel the complainant and her daughter to Bangladesh pending the consideration of her case by the Committee. On 11 March 2003, the State party informed the Committee that it would stay the enforcement of the decision to expel the complainant and her daughter to Bangladesh while the case was under consideration by the Committee.

The facts as submitted by the complainant:

2.1 The complainant and her daughter arrived in Sweden on 13 October 2000 on a tourist visa, to visit the complainant's sister residing in Sweden. They applied for asylum on 9 November 2000. On 24 September 2001, the Migration Board denied the application and ordered their expulsion. On 25 February 2002, the Aliens Appeals Board upheld the decision of the Migration Board. Two new applications for a resident permit on humanitarian grounds were subsequently denied by the Aliens Appeals Board. A third application was submitted on 17 December 2002. However, on 19 December 2002, the Aliens Appeals Board denied the application for a stay of execution of the expulsion order. The complainant alleges that she has exhausted all domestic remedies.

2.2 Before the Migration Board, the complainant stated that she became an active member of the Jatiya Party in Bangladesh in 1994, and that her husband had been active in the same party long before that. In 1996, she was appointed women's secretary in the local women's association of the party in Mirpur Thana, where the family lived. Her tasks were to inform people about the work done by the party, to speak at meetings and to participate in demonstrations. In 1999, after the split of the party, she and her husband remained in the faction led by Ershad.

2.3 On 7 September 1999, the police arrested the complainant in connection with a demonstration in which a grenade was thrown. She was mistreated and suffered injury to her toenail. She was released the next day. On 23 November 1999, members of the Awami League mistreated both the complainant and her husband. They accused him of the murder of one of the members of the League, which occurred during a demonstration in which he had participated. Around 21 January 2000 someone left a cut-off hand in front of their home. On 10 April 2000, other members of the League vandalized their home while asking about the whereabouts of her husband, who had by then gone into hiding. She reported the case to the police, who refused to investigate the complaint when it was made clear to them that the perpetrators belonged to the Awami League.

2.4 On 16 August 2000, the police, accompanied by members of Awami League, arrested the complainant and her daughter at her parents' home, where she had moved. Her daughter, then 4 years old, was pushed so hard that she fell and injured her forehead. The complainant was taken to the police station, accused of illegal arm trading, and subjected to torture including rape, to make her confess the crime. She was hit with a rifle belt, strung up upside down until she started to bleed from her nose, stripped and burned with cigarette butts. Water was poured into her nose. She then was raped and lost consciousness. She was released the next day, after her father had paid a bribe to the police. She was forced to sign a document by which she promised not to take part in any political activity and not to leave her town or the country. After her release, the complainant was treated at a private clinic in Bangladesh. After her arrival in Sweden she has been in contact with her relatives, who had informed her that the Bangladeshi police had continued to search for her.

2.5 As evidence of her political activities, the complainant submitted to the Migration Board a receipt for the payment of the membership fee for the party and a certificate from the Jatiya Party, which stated that she joined the party in 1994, and was elected Joint Secretary in January 1996. She also submitted a medical report from a hospital in Bangladesh, dated 17 August 2000, which confirmed that she was physically assaulted and raped. The report stated that there were several cigarette burns over her right thigh and hand, bruises over her wrist, a small incised wound on her right finger, a bluish mark over the back, and bleeding through her vagina and over the vulva. She also submitted a medical certificate, issued by a psychologist on 22 May 2001, which stated that her mental condition had worsened, that she had insomnia, nausea, vomiting, cold sweat, difficulties in concentrating and talking, feebleness, and strong memories of the rape. Another certificate, issued by a Swedish psychologist on 7 September 2001, showed that she had developed a post-traumatic stress disorder syndrome accompanied by nightmares, flashbacks and severe corporal symptoms. The same certificate stated that her daughter suffered from constipation, lacked appetite, and had difficulties to sleep. The child suffered from a special trauma as a consequence of being waiting for a decision about grant of residence permits.

2.6 The complainant points out that the Migration Board did not dispute that she had been tortured and raped. However, the Board concluded that these acts could not be considered to be attributable to the State of Bangladesh but had to be regarded as the result of the actions of individual policemen. The Board also stated that the Jatiya Party was in alliance with the Bangladesh National Party (hereinafter referred to as BNP), currently in government.

2.7 Before the Aliens Appeals Board, the complainant contested the findings of the Migration Board. She denied that the Ershad fraction of the Jatiya Party was allied to the BNP, and pointed out that, at the time of the appeal, the leader of her faction, Mr. Ershad, had left Bangladesh. Regarding the acts of torture and rape, she alleged that the police was part of the State of Bangladesh, that it was futile to complain against the police because the institution never investigated such complaints, and that the situation of the victim usually worsened if he or she decided to complain. She invoked reports of the U.S Department of State and Amnesty International according

to which torture was frequent and a matter of routine in Bangladesh. She also submitted three certificates dated 20 and 22 November 2001, and 22 February 2002, respectively, showing that the post-traumatic stress syndrome had grown worse and that there was a serious risk of suicide. One certificate showed that her daughter had nightmares and flashbacks of the incident in which their home was vandalized in Bangladesh, and that her emotional development had been impaired as a result.

2.8 By its decision of 25 February 2002, the Aliens Appeals Board considered that torture and rape were not attributable to the State but to the isolated action of some policemen, that the complainant had been working for a legal party and had been a common member without noticeable influence, and that because of the political change in Bangladesh there were no reasonable grounds for believing that she would be subjected to arrest and torture by the police if returned to her country.

2.9 As attachments to the new applications for a resident permit on humanitarian grounds, filed on 20 May and 1 July 2002, the complainant submitted additional medical evidence on her declining mental health and that of her daughter. The medical certificates, dated 19 and 22 April 2002, and 7 May 2002, showed that the complainant's mental health deteriorated after the decision of the Aliens Board. She suffered from a dissociate state of mind, experienced a feeling of being present in the trauma she had been subjected to. She displayed increasing suicidal tendencies. Her daughter showed symptoms of serious traumatisation. On 26 May 2002, the complainant tried to commit suicide, and was admitted to the psychiatric ward of St. Goran's Hospital in Stockholm on the same day, for compulsory psychiatric treatment. On 26 March 2002, a psychiatrist certified that she suffered from a serious mental disturbance possibly from psychosis. The compulsory psychiatric treatment was based on the risk of suicide. According to another expert, the complainant's mental health further deteriorated after her release from hospital on 6 August 2002. She could no longer care for her daughter, who had been placed with another family. The expert suggested, however, that she be placed on ambulatory treatment, because while in hospital the complainant's mental health had worsened. As regard to the complainant's daughter, the medical certificate stated that she had fallen into a serious and threatening state and that she would need a long period of psychotherapeutic treatment.

2.10 The Aliens Appeals Board denied the new applications on the basis that the evidence presented, as well as an assessment of the personal situation of the complainant as a whole, were insufficient to justify the issuance of residence permits. Regarding the complainant's daughter, the Board concluded that she had a network in Bangladesh consisting of her father, her maternal great parents and her mother's siblings, that the complainant and her daughter had been in Sweden only for two years, and that it was for the best interest of the child to return to a well-known environment and that her need for treatment would be best satisfied in such environment.

2.11 On 17 December 2002, a new application for humanitarian residence permits was filed. The new evidence consisted of reports from experts who had been in contact with the complainant and her daughter, as well as a report from the family unit of the social security authority in Rinkeby to Bromstergården, an institution entrusted with the task of evaluating the needs of the child, the ability of the mother to take care of the child, and to focus on the questions of reuniting the mother and the child and to conduct supporting meetings. According to this evidence, the complainant's mental health was so bad that she could no longer connect with her daughter. This state of alienation not only had prevented her from giving her daughter the support she needed but also had seriously threatened her daughter's mental balance. Furthermore, one report concluded that the complainant had decided to take her own life and that of her daughter if she were forced to return to Bangladesh. Both the complainant and her daughter were in need of a continuous psychotherapeutic contact.

The complaint:

3.1 The complainant contends that there are substantial grounds for believing that she would be subjected to torture if forced to return to Bangladesh. She contends that the criteria established in article 3 of the Convention have been fulfilled. Neither the Migration Board nor the Aliens Appeals Board in any way questioned her statements about her political activities, the arrests by the police, the fact that these arrests were motivated by her political activities, the torture and the rape, or her information that

the police have continued to look for her after she left Bangladesh. She maintains that she risks the same treatment if returned to Bangladesh.

3.2 She contends that, considering the medical evidence in her case, the execution of the deportation order would in itself constitute a violation of article 16 of the Convention, and perhaps also of article 2 of the Convention, in view of her and her daughter's fragile psychiatric condition and severe post-traumatic stress disorder, which is the result of the persecution and torture to which she was subjected.

3.3 The complainant alleges that the description of torture she suffered coincides with what is generally known about torture by the police in Bangladesh. She invokes various reports from governments and international NGOs. According to these reports, torture practiced by the police against political opponents is not only allowed by the Executive, but is also often instigated and supported by it. Moreover, domestic courts are not independent and the decisions of the higher courts are often ignored by the executive.

3.4 The complainant challenges the Aliens Appeals Board's finding, that because of the changed situation in Bangladesh after the elections of October 2001, she is no longer exposed to the risk of torture if returned. She argues that these elections did not constitute such a fundamental change in the political circumstances in Bangladesh that the grounds for persecution could be considered no longer to exist. The change of government did not in itself mean that people who had been subjected to false accusations or charges on account of their political activities would be acquitted of these accusations. They still risked arrest by the police and subsequent ill-treatment and torture.

State party's submissions on the admissibility and the merits of the complaint:

4.1 On 2 April 2003, the State party submitted its observations on the admissibility and the merits of the complaint. It acknowledges that all domestic remedies are exhausted, but contends that the communication is inadmissible since the complainant's claim that she is at risk of treatment in violation of article 3 of the

Convention in the event of return to Bangladesh lacks the minimum substantiation that would render the communication compatible with article 22 of the Covenant.

4.2 The State party also challenges the claim that the execution of the deportation order would, in itself, constitute a violation of articles 2 or 16 of the Convention in view of the complainant and her daughter's fragile psychiatric condition. The enforcement of the expulsion order cannot be considered an act of torture within the meaning of article 1 of the Convention and article 2 only applies to acts tantamount to torture within the meaning of article 1. Therefore, article 2 is not applicable in the context of the present case. Article 16 protects persons who are deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment, and the complainant can hardly be considered as a victim in that sense. The communication is therefore considered inadmissible in accordance with article 22, paragraph 2, of the Convention.

4.3 On the merits, and with regard to the alleged violation of article 3 of the Convention, the State party indicates that although the general situation of human rights in Bangladesh is problematic, improvements have taken place during the last few years. Bangladesh has been a parliamentary democracy since 1991. Under the first government of the BNP during 1991-1996, increasing efforts were made to protect human rights. In 1996 a new government led by the Awami League came to power in elections generally declared free and fair by observers. The BNP returned to power after elections on 1 October 2001. Although violence is a pervasive element in the country's politics and supporters of different political parties frequently clash with each other and with police during rallies and demonstrations, a wide variety of human rights groups are generally permitted to conduct their activities in the country. The police reportedly use torture and ill-treatment during interrogation of suspects and rape of women detainees in prisons or police custody has been a problem. However, there were no reports of such occurrences during 2001. The police are said to be often reluctant to pursue investigations against persons affiliated with the ruling party. The higher levels of the judiciary, however, display a significant degree of independence and often rule against the government in criminal, civil and even politically controversial cases. The Aliens Appeals Board made a study tour to Bangladesh in October 2002. According to its classified report, there is no institutionalized

persecution in Bangladesh and persecution for political reasons is of rare occurrence at the grass-roots level. The State party further adds that Bangladesh is a party to the Convention and since 2001 to the International Covenant on Civil and Political Rights.

4.4 The State party recalls that its authorities apply the same criteria set out in article 3 of the Convention to every asylum seeker. In the complainant's case, the Migration Board took its decision after conducting two comprehensive interviews with the complainant. The State party considers that great weight must be attached to the opinions of the Swedish immigration authorities. It contends that the complainant's return to Bangladesh would not be in violation of article 3 of the Convention.

4.5 The State party considers that, even if it is considered established by medical certificates that the complainant was subjected to torture in the past, it does not mean that she has substantiated her claim that she will risk being tortured in the future if return to Bangladesh. She claims that she risks torture as a consequence of her membership in the Jatiya Party and because she is still wanted by the police. However, in the elections of October 2001 the Jatiya Party won 14 seats in Parliament. The former ruling party and the complainant's persecutor, the Awami League, lost power. Since the Awami League is no longer in government, there is no reason for the complainant to fear persecution from the police. Furthermore, she has not been in any leading position in the Jatiya Party. The complainant has not produced any evidence in support of her assertion that she is still wanted by the police or that she would still be in danger of persecution or torture if returned to Bangladesh.

4.6 The State party contends that even if there is still a risk of persecution from the Awami League, this is a non-governmental entity and its acts cannot be attributed to the Bangladeshi authorities. According to the Committee's jurisprudence such persecutions fall outside the scope of article 3 of the Convention. In addition, such persecution would be localized and the complainant could therefore improve her safety by moving within the country.

4.7 The State party also points out that the complainant was allegedly released by the police on 17 August 2000, and that she apparently made no effort to leave the country then. She was granted a visa on 22 August 2000. Even though she claims that she was hiding and wanted by the police, she could visit the Swedish Embassy in Dhaka on 28 August 2000, to have an entry visa stamped in her passport. These facts indicate that she might not have been in danger of being arrested even then. Moreover, although she claims having been forced to go into hiding in April 2000, she had no difficulty in obtaining a passport for herself and her daughter in May 2000. Furthermore, she did not apply for asylum until almost two months after her arrival in Sweden. It is unlikely that a genuine asylum-seeker would wait for almost two months before approaching the Swedish authorities. Additionally, she has stated that her husband had been in hiding since January or April 2000, due to the persecution of the Awami League, and that she had not been able to contact him since then. Nevertheless, when she applied for a visa she gave the same address for her husband and for herself.

4.8 The State party concludes that the complainant neither produced sufficient evidence, nor do the circumstances invoked by her suffice to show that the alleged risk of torture fulfils the requirement of being foreseeable, real and personal. The State party, in response to a request for additional information from the Committee regarding the complainant's political activities and the status and activities of the complainant's husband, has informed the Committee that it does not have any knowledge and that it is not in a position to provide any information on this.

4.9 With regard to the alleged violation of articles 2 and 16, the State party maintains that the enforcement of the expulsion order cannot be considered an act of torture even if the complainant suffers from psychiatric problems and that she cannot be considered a victim of neither torture within the meaning of article 2, nor cruel, inhuman or degrading treatment within the meaning of article 16. Furthermore, the State party recalls the Committee's jurisprudence on article 16, according to which, the aggravation of the author's state of health possibly caused by his or her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention. The State party states that only if very exceptional circumstances exist and when compelling humanitarian considerations are

at stake, the enforcement of an expulsion decision may entail a violation of article 16. Medical evidence presented by the author indicate that she suffers from severe Post Traumatic Stress Disorder, and that her health condition has deteriorated as a result of the decisions to refuse her entry into Sweden and to expel her to Bangladesh. However, no substantial evidence has been submitted in support of her fear of returning to Bangladesh. In addition, her husband, parents and several others members of her family are in Bangladesh, and could support and help her. Furthermore, the migration authorities have not used any coercive measures against her or her daughter.

Complainant's comments on State party's submissions on the admissibility and the merits of the communication:

5.1 As to the admissibility of the communication, the complainant maintains that the evidence submitted fulfill the minimum standard of substantiation that it is required in order to make the communication compatible with article 22 of the Convention. She alleges that the State party has not contended these facts.

5.2 The complainant maintains that the execution of the order of expulsion should be deemed to constitute at least cruel, inhuman or degrading treatment on the part of Swedish authorities. She contends that the evidence submitted to the Committee clearly shows that the execution of the order would constitute such treatment at least in the case of her daughter. The social security authorities in Sweden could not find such an execution to be at all in the best interests of the child. She also stresses the fact that she and her daughter are under the factual control of the Swedish authorities.

5.3 As to the merits of the communication, the complainant maintains that the situation of human rights in Bangladesh is far worse than that described by the Government. Furthermore, the Migration Board, in making its assessment, did not have access to the medical evidence presented later in domestic proceedings. Its findings can therefore be considered to have rested on insufficient evidence.

5.4 The complainant contests the State party's allegation according to which as Awami League no longer is in power in Bangladesh, it does not seem to be any reason for her to fear persecution by the police. She alleges that she belongs to a fraction of

the Jatiya Party (Ershad) which is still to a large extent in opposition to the present government of Bangladesh. According to unanimous reports from several sources, torture by the police is routine, widespread and carried out with total impunity. According to a recent report of Amnesty International torture has been for many years the most widespread human rights violation in Bangladesh, the opposition politicians are among those who are subjected to torture, the BNP blocks judicial processes against torture, and impunity for perpetrators is general. She alleges that no fundamental changes have taken place in Bangladesh: those who work for the Ershad fraction of the Jatiya Party are still in opposition to the present government; political opponents, whether or not they work at a high-up level or more on a grass-root basis, are subjected to arrests by the police and to torture. In 2002 , 732 women were raped, 106 of whom were killed after rape, 104 people were killed in police custody, and 83 died after torture.

5.5 The complainant clarifies that her and her daughter's passports were issued on 14 May 2000 and that they applied for a visa at the Swedish Embassy in Dhaka on 25 June 2000, in order to visit the complainant's sister. These events took place prior to her arrest of 16 August 2000. After her release on 17 August 2000 she was first committed to a clinic because of her injuries, where she got notice of the visa having been issued. Since she was still ill it took her sometime to get everything into order for the departure. She explains that she did not apply for asylum immediately upon her arrival in Sweden because she was still not feeling very well after the torture. She decided to apply for asylum when she learned that the Bangladeshi police was still looking for her. She also states that she gave the same address for her husband in the passport for practical reasons, to avoid being questioned by the Embassy personnel and because is common in Bangladesh for a wife to do that. The complainant's sister visited Bangladesh from December 2002 to February 2003, where she learned that the police was still looking for T.A.

5.6 The complainant notes that the authorities of the State party should take into particular consideration how its treatment may affect a child and also whether a treatment which might not constitute inhuman or degrading treatment when inflicted on an adult may nevertheless constitute such treatment when it is inflicted on a child.

5.7 The complainant, in response to a request for additional information from the Committee regarding the complainant's political activities and the status and activities of the complainant's husband, has informed the Committee that she has not been able to be politically active in Sweden, because the Jatiya Party does not any longer have any active organization there. Nor has she been able to be active in Bangladesh. However, Bangladeshi authorities are still interested in her. The complainant has been in contact with her parents. They have told her that four policemen in civilian clothes came to their home in September 2004, asking about her whereabouts and that of her husband. When they received a negative answer from Ms. T. A.'s relatives, they searched their home looking for them. Ms. T. A.'s parents have also stated that the police search Ms. T. A. at regular intervals.

Issues and proceedings before the Committee:

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. 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 further notes that domestic remedies have been exhausted, as acknowledged by the State party, and that the complainant has sufficiently elaborated the facts and the basis of the claim for the purposes of admissibility. Accordingly, the Committee considers the complaint admissible and proceeds to its consideration of the merits.

7.1 The first 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.

7.2 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 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 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 on 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 or her 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.

7.3 The Committee has noted the State party's contention that since the Awami League is currently in political opposition, the risk for the complainant to be exposed to harassment by the authorities at the instigation of members of the party no longer exists. The State party further argues that the complainant does not have anything to fear from the political parties now in power, since she is a member of one of the parties represented in Congress. However, the State party has not contested that the complainant had in the past been persecuted, detained, raped and tortured. The Committee notes the complainant's statement that she belongs to a faction of the Jatiya Party which is in opposition to the ruling party, and that torture of political opponents is frequently practiced by state agents. Furthermore, the acts of torture to which the author was subjected to, appear not only to have been inflicted as a punishment for her involvement in political activities, but also as a retaliation for the political activities of her husband and his presumed involvement in a political crime. The Committee also notes that her husband is still in hiding, that the torture to which she was subjected occurred in a recent past and has been medically certified, and that the complainant is still being searched by the police in Bangladesh.

7.4 In the circumstances, the Committee considers that substantial grounds exist for believing that Ms T. A. may risk being subjected to torture if returned to

Bangladesh. Having concluded this, the Committee does not need to examine the other claims raised by the complainant.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that, given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention.

9. The Committee urges the State party, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the decision expressed above.

[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.]