Asylum and Immigration Tribunal

SH (prison conditions) Bangladesh CG [2008] UKAIT 00076

THE IMMIGRATION ACTS

Heard at Field House
On 30 June 2008

Before

SENIOR IMMIGRATION JUDGE STOREY
SENIOR IMMIGRATION JUDGE MCGEACHY
MR H G JONES, MBE, JP

Between

SH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the appellant: Mr S Jaisri of Counsel instructed by Dexter Montague & Partners
For the respondent: Ms R Brown, Home Office Presenting Officer

1. Prison conditions in Bangladesh, at least for ordinary prisoners, do not violate Article 3 ECHR.

2. This conclusion does not mean that an individual who faces prison on return to Bangladesh can never succeed in showing a violation of Article 3 in the particular circumstances of his case. The individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3.

3. In view of the significant changes in Bangladesh politics in recent years, AA(Bihari-Camps) Bangladesh CG [2002] UKIAT 01995, H (Fair Trial) Bangladesh CG [2002] UKIAT 05410 and GA (Risk-Bihari) Bangladesh CG [2002] UKIAT 05810 are now removed from the list of AIT country guidance cases.

DETERMINATION AND REASONS

1. The appellant is a national of Bangladesh born on 19 October 1977. He entered the United Kingdom illegally on 14 May 1998 and claimed asylum. The basis of his claim was that he feared return to Bangladesh because of his involvement with the Bangladesh National Party (BNP) which had led to members of the rival Awami League laying false charges against him and other BNP members. One set of charges related to a fight between BNP and Awami League supporters which had taken place in June 1996. He had left Bangladesh in April 1998 but in August 1998 had been convicted in absentia and sentenced to seven years imprisonment in respect of these charges. The second set of charges related to a similar fracas in September or October of 1997; however these had been dismissed or discontinued before he left Bangladesh. The appellant said that the police had been searching for him in order to arrest him, that he considered the charges against him had been politically motivated and that upon return he would be arrested and forced to serve his seven years jail sentence even though the charges against him were false.

2. On 9 April 2000 the respondent decided to remove the appellant as an illegal entrant and certified his claim. On 28 January 2003 an Adjudicator, Mr Blandy (hereafter "the first Adjudicator"), dismissed his appeal and upheld the certificate. There was no further appeal. The appellant then made a human rights claim. On 12 March 2004 the respondent issued a human rights refusal letter. The appellant's appeal against that refusal was dismissed by an Adjudicator, Mrs F M Kempton (hereafter "the second Adjudicator"), on 14 September 2004. Permission to appeal was granted by the Immigration Appeal Tribunal on 25 February 2005. By reason of the changes in the appellate regime, the matter came before the Asylum and Immigration Tribunal as a reconsideration. In a determination notified on 22 June 2006 a panel comprising Immigration Judge Grimmett, Mr M E A Innes and Mrs A J F Cross de Chavannes decided that the second Adjudicator had not materially erred in law. Subsequently, however, a Senior Immigration Judge granted permission to appeal to the Court of Appeal. That resulted in a Consent Order dated 2 January 2007. The accompanying Statement of Reasons accepted that the second Adjudicator (Mrs Kempton) had failed to give any reasons for her conclusion that the appellant would not be imprisoned in Bangladesh and that the Tribunal was "obliged to consider prison conditions in Bangladesh in the context of Article 3 of the ECHR and determine whether it would be a breach of the United Kingdom's obligations under that article to return the appellant" (para 4). At para 5 of this Statement it was said that:

> "…it is agreed that…the AIT will have to conduct an assessment, including a consideration of any relevant country guidance decisions, of whether the prison

> conditions in which the Appellant would be placed would give rise to a risk of Article 3 ill-treatment, should it find on reconsideration that there is a relevant risk of the Appellant's imprisonment on return to Bangladesh."

3. Although there is a tension between para 4 and the conditional form of paragraph 5 of this Statement, the parties agreed with us that essentially we were to conduct a second-stage reconsideration confined to two issues: (1) whether there was a real risk that upon return to Bangladesh the appellant would be imprisoned as someone who had been convicted in his absence and sentenced to seven years imprisonment; and (2) whether his imprisonment would expose him to conditions contrary to Article 3 of the ECHR. (Strictly speaking we also need to consider whether his imprisonment would expose him to conditions which would amount to serious harm and so qualify the appellant for humanitarian protection under para 339C of HC395 as amended; but, even leaving aside the issue of whether if accepted as a mere fugitive from justice he would be subject to the exclusion provisions of para 339D in any event, para 339C(iii) is based directly on Article 3 of the ECHR and we consider that our answer, at least to the question of whether the appellant meets the requirements of this subparagraph, stands or falls with our answer to the Article 3 question.)

4. The parties also agreed with us that we should take as our starting-point the findings of fact of the first Adjudicator, in accordance with Devaseelan [2003] Imm AR 1 principles. The first Adjudicator (whose decision was not the subject of an appeal) accepted that the appellant was a member of the Bangladesh National Party (BNP), was involved in student politics and was against the Awami League. He was not satisfied that the appellant had been persecuted by the Awami League and considered that in any event there would be no risk to the appellant from that group now as the BNP were (at the point in time of his hearing of the case) in power in Bangladesh. He did not accept that the police investigation or the criminal court proceedings against the Appellant were politically motivated. However, he did accept that the documents in the appellant's case were genuine. At para 6.4 he stated:

> "I accept that the documents relating to the Applicant's involvement in the first case are genuine. It is quite clear that evidence has been considered by the court in Bangladesh and I am not prepared to accept the Applicant's account of what happened at face value. I do not find it credible that if he had genuinely being the victim of an attack by the Awami League supporters that he would have been convicted and sentenced to seven years imprisonment. It appears to me to be likely that the Applicant left Bangladesh when it became clear to him that the outcome of the case was going to result in a term of imprisonment. He is quite clearly simply fleeing justice. He conceded at the conclusion of his cross-examination that the only reason he had left Bangladesh was to avoid serving the sentence of imprisonment."

5. As was noted in previous proceedings, the above passage is not crystal clear. The second sentence taken on its own could be read as a rejection of the appellant's claim that he had been convicted and sentenced to seven years' imprisonment. However, the parties are agreed (the respondent crucially) that read as a whole the Adjudicator's determination shows an acceptance of the fact that the appellant was convicted and sentenced to seven years' imprisonment on the basis of the particulars set out in the documents he

submitted. Both parties were also agreed that whether or not either or both the first and second Adjudicator should be considered as having addressed the issue of prison conditions correctly in law, that issue was now entirely one for us, applying the law correctly and examining the facts relating to prison conditions in Bangladesh currently.

The background evidence

6. We list the background materials that were before us in a separate Appendix, but note that these included the COIS Report of 31 August 2007, the OGN for December 2007, the Human Rights Watch report for January 2008, the Amnesty International Report for 2008 and the US State Department Report dated 11 March 2008.

The expert's reports

7. The evidence for this case also included two reports from an expert, Professor Andrew Coyle dated May 2007 and June 2008 respectively. Mr Coyle is Professor of Prison Studies in the International Centre for Prison Studies, King's College, University of London. A former prison governor, he acts frequently as an adviser on prison issues to intergovernmental bodies such as the UN and the Council of Europe. He has visited and advised on prison systems in over 50 countries in all regions of the world. He has published widely on prison and criminal justice issues. Although he has visited prison systems in several countries in South Asia he has not visited any prisons in Bangladesh; his reports, he explains, are based on published documents from official and other sources describing and commenting on prison conditions in Bangladesh. His 2007 report states that conditions of detention in Bangladesh have been a cause of national and international concern for some time. According to the World Prison Brief Online its prison system is the seventh most overcrowded in the world. As at February or March 2007 the total prison population was 79,000 spread across 66 prisons. The existing prison population as of November 1 2007 was 82,254, between 15 and 20 percent higher than at the same time in 2006.

8. Professor Coyle describes a report from Bangladesh News published 1 February 2008 as stating that as few as 16 doctors were on hand to treat about 86,000 inmates in the country's 67 jails. The majority of prisoners (55% overall) were "undertrials" (persons awaiting trial). Recreational opportunities were extremely limited and the Munim Commission Report on Jails 1980 had described the regime as one of "enforced idleness". The mission sponsored by the United Nations Development Project (UNDP) in its unpublished 2005 report found that medical services provided to prisoners were inadequate and the prison system had a shortage of medical staff. Deficiencies had been found in provisions for hygiene and sanitation. The US State Department report vouchsafed that in general the government did not permit prison visits by independent human rights monitors; government-appointed committees of prominent private citizens in each prison locality monitored prisons monthly but did not release their findings. Prison staff lacked motivation and professionalism. Access to legal assistance was very limited. The conclusion of Professor Coyle's May 2007 report was that conditions in prisons in Bangladesh

fell far short of the UN Standard Minimum Rules for the Treatment of Prisoners (UN Standard Minimum Rules for the Treatment of Prisoners (663/c(XXIV) 31 July 1957 and 2076 (LXII) of 13 May 1977)). They also violated Article 10 of the International Covenant on Civil and Political Rights (ICCPR) ("All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person") and also breached Article 3 of the ECHR in terms of inhuman or degrading treatment or punishment.

9. Professor's Coyle June 2008 update notes that the World Prison Brief Online now listed the total prison population of Bangladesh as 86,000 spread across 66 jails, with an occupancy level of 315.6% (which compared with 277% in 2005). His update cites the March 2008 US State Department report as describing prison conditions in Bangladesh as remaining "abysmal due to overcrowding and lack of proper sanitation". His update concluded that there was no indication that prison conditions in Bangladesh had improved in the last year: "Based on the new information provided above, one might conclude that they have continued to deteriorate".

The Home Office Operational Guidance Note December 2007

10. Counterposed to Professor Coyle's assessment, the OGN on Bangladesh for December 2007 states that:

> "While prison conditions in Bangladesh are poor with overcrowding in some establishments being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Bangladesh a grant of Humanitarian Protection will not generally be appropriate. However, the individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate."

Submissions

11. Before us Mr Jaisri submitted on the first issue that it remained reasonably likely that the appellant would be arrested and required to serve his sentence on return. That was supported by the 2004 letter from the appellant's advocate which confirmed that the arrest warrant against the appellant was still outstanding. Further, the evidence indicated that under Bangladesh law it was not possible for the appellant to take legal steps to quash his convictions until he arrived back in the country. Given that he had absconded, any kind of bail pending an appeal against conviction and/or sentence would be unlikely. Ms Brown referred to Bangladesh penal provisions showing that appeal against conviction and sentence was possible and pointed out that as the appellant already had an advocate acting for him he would have access to appeal processes. Ms Brown submitted that although there was little assistance in the background evidence as to whether the appellant's sentence would be carried out, it was important to note that the incident was now over 12 years ago, it arose from a dispute between rival political factions who were now in a very different position in terms of power and office in Bangladesh. There would be

no continuing state interest in enforcing a punishment arising out of charges pressed by Awami League supporters years ago.

12. As regards the second issue, which only arose on the assumption that the Tribunal was satisfied the appellant would face having to serve his sentence, Mr Jaisri submitted that the prison conditions the appellant would face whilst serving his sentence would violate his rights under Article 3 ECHR not to be subjected to a real risk of torture or inhuman or degrading treatment or punishment. In assessing these conditions the Tribunal should apply the law as set out in Iqbal [2002] UKIAT 02239, TV (Ukraine Prison conditions) [2004] UKAIT 00222, Harari [2003] EWCA Civ 807, Batayav [2003] EWCA Civ 1489, ZB (Russian prison conditions) Russian Federation CG [2004] UKIAT 00239, Batayav [2005] EWCA Civ 366 and PS (prison conditions; military service) Ukraine CG [2006] UKAIT 00016. The expert's reports, which drew on primary research conducted by the UNDP and the EU Commission, detailed numerous respects in which prison conditions in Bangladesh failed to comply with the UN Standard Minimum Rules. The levels of overcrowding were contrary to Rules 9(1) and 10. The levels currently stood at over three times the acceptable level (315.6%). Contrary to Rules 16, 21, 71, 72 and 77, there were no provisions for prisoners to work and be actively employed during the day; on the contrary there was "enforced idleness" and a "warehousing" approach. Contrary to Rule 77, education and recreation were not afforded. Contrary to Rule 20, food was not up to standard. Sanitary and sewage facilities did not conform to the requirements at Rule 134 relating to health, personal hygiene and sanitation. Rules relating to medical facilities and qualified medical officers (Rules 16(6), 22 and 66) were not met. Nor were rules relating to prison staff (Rules 121,123,139). The use of handcuffs as "fetters" violated Rules 33 and 136. Breaches of these Rules could only be described as both "consistent", "gross" and "systematic". A recent increase in the number of detention facilities in no way obviated the levels of overcrowding. There was a lack of independent monitoring. Further, Amnesty International had found that the use of torture was "routine". Conditions of detention are inhumane and degrading regardless of a country's level of development (an earlier written submission had referred in this regard to the Human Rights Committee case of Mukong v Cameroon (CPPR/C/51/d/458/1991), the case of Neptune v Trinidad & Tobago (CCPR.C.57.D.523.1992) (which found that cramped and unsanitary conditions contravened Article 10 of the ICCPR) and the same Committee's General Comment 21). Taking a line through ECtHR cases dealing with prison conditions, in particular Kalashnikov v Russia [2002] ECHR 596 and Valasinas v Lithuania (2001) 12 BHRC 266, it was plain that Bangladesh prison conditions also violated Article 3. It had also to be borne in mind, when assessing the severity of the harm, that the appellant faced a likely period of up to seven years imprisonment.

13. Ms Brown's position on the second issue was that the UN Minimum Rules were aspirational and did not seek to establish basic legal norms. Kalashnikov was not an expulsion case and the Russian Government had indeed accepted that its prisons breached Article 3 ECHR standards at the relevant time. The prison conditions which had led the Court to find a breach of Article 3 in the

Kalashnikov case were plainly worse than those obtaining in Bangladesh in a number of respects: in Kalashnikov prisoners had to sleep in shifts, their cells were infested by pests, smoking was permitted despite there being no ventilation; they were made to share cells with persons suffering from diseases such as TB and syphilis. Not only was the legal test as set out in cases such as Harari and Batayav one which required a "consistent pattern" of gross and systematic violations of basic human rights to be shown, but it had to be shown that such conditions "are universal, or very likely to be encountered by anyone who enters that system" (Batayav [2005], para 5). So far as the expert's reports prepared for this case were concerned, it had to be borne in mind that he had not visited prisons in Bangladesh and the sources he relied on were in some respects unclear: he referred to "unpublished reports" from the UNDP and EU Commission. Neither report appears to have involved visits to more than a handful of prisons (two or four out of 67). There was clearly serious overcrowding but in the 2002 case of Chowdhury [2002] UKIAT 00054, Immigration Appeal Tribunal Vice President Drabu had not regarded overcrowding as being contrary to Article 3 and the latest COIS report referred to the prison population as having dropped somewhat (to 86,000). The latest US State Department Report referred to several major improvements. Going by the news article dated February 2008 there were sufficient qualified medical staff on hand in prison, indeed there were more per prisoner than there were doctors in the general population. There was evidence of a firm government commitment to improve prison conditions by building new prisons with modern facilities. The number of deaths in prison had fallen and was significantly lower than figures for deaths in police custody. Comparison with the situation with Russian prisons at the time of the Kalashnikov case was instructive: there the rate of deaths in prison was around 11 in every thousand (10,000-11,000 deaths per year in a prison population of 1 million) whereas in Bangladesh it was less than one in a 1, 000 (87 deaths per year in a prison population of 86,000). Even in the UK almost 600 persons died in custody per year out of a prison population of 83, 243. The COIS at para 15.03 referred to the calorific content of prison food as being satisfactory. Although there was no provision for international (e.g. ICRC) monitoring of Bangladesh prison conditions, there was evidence of monitoring undertaken by local organisations. By contrast to the Ukraine prison cases before the ECtHR, the use of violence and torture in detention was largely confined to police, not prison, custody.

The first issue

14. We have not found it easy to resolve the first issue, namely whether there is a real risk that upon return to Bangladesh the appellant would be imprisoned as someone who had been convicted in his absence and sentenced to seven years imprisonment. Had we been tasked with deciding the appellant's appeal at first instance we would have had to consider a number of matters for ourselves including whether we accepted that the appellant's documentation was genuine and whether he had in fact been tried and convicted in absentia. We are surprised that if the appellant's advocate was able to write to him in 2004 with some information, he could not have furnished documentary evidence to verify that the appellant had been tried and convicted in absentia.

Be that as it may, we are not so tasked and we accept that in accordance with Devaseelan principles we should take the first Adjudicator's findings of fact as our starting-point. Further, we accept that we have very little in terms of fresh evidence before us and insufficient basis, therefore, for declining to accept as genuine the 2004 letter from the appellant's advocate.

15. Basing ourselves on the first Adjudicator's findings seems to us to remove one of the possible reasons to doubt that the appellant would face a real risk of imprisonment on return. Had it been accepted that the charges against him were politically motivated, that would have made it much more likely, given that the BNP is no longer purely an opposition party and the Bangladesh courts are clearly experienced in dealing with politically motivated charges, that on return he would be able in a relatively short time to have his conviction quashed and his sentence suspended or at least reduced. But that was not accepted by the first Adjudicator. So far as the first Adjudicator was concerned (and so far as we too are concerned) the appellant is a mere fugitive from justice.

16. But as a mere fugitive from justice the appellant is reasonably likely, in our judgement, to face the ordinary course of the law of Bangladesh, namely that he is someone who upon return would face arrest and would then be required to serve at most a period of seven years imprisonment to which he had been sentenced in absentia. We hold significant doubts that he would in fact have to serve seven years. An article from ABC News dated 16 June 2008 quoted National Prisons Chief Brigadier Zakir Hassan as stating that "We have made a list of criminals who have served half of their terms…They would be freed after their cases are scrutinised by police, magistrates and prison officials". The article goes on to explain that this move "comes as the country's National Police Chief Nur Mohammad said about 25,000 people had been detained since 28 May as part of a nationwide crackdown on criminals ahead of elections scheduled for December." However, as the reason given at this point in time for freeing criminals who have served half their terms is one of political contingency, taken together with the absence of evidence from either party regarding patterns of remission of sentence in Bangladesh provided for in Bangladesh law and practice, we are prepared to accept that the period of imprisonment the appellant would serve would be up to seven years. Given that the first Adjudicator did not accept the appellant's claims that his conviction and sentencing had a political dimension, we must exercise caution in taking into account his own evidence that his co-defendants had earlier been convicted and sentenced and had served their sentence. Nonetheless, since the first Adjudicator appears to have accepted at least the fact that his co-defendants had been convicted and undergone imprisonment, we consider that this is a further indication that the Bangladesh legal system would have an interest in making sure the appellant was not treated differently.

The second issue

The general background situation

17. Before turning to consider directly the second issue (namely whether the appellant's imprisonment would expose him to conditions contrary to Article 3 of the ECHR), we remind ourselves of course that prison conditions in a country do not exist in a socio-political vacuum. In that regard it is important to bear in mind that the situation in Bangladesh as a whole in the past two years has become a cause for concern from the point of view of human rights monitors. Drawing on the major country reports placed before us, matters can be summarised thus. In 2006, Khaleda Zia, head of the BNP, stepped down as prime minister when her five-year term of office expired and transferred power to a caretaker government ahead of scheduled elections. However, President Iajuddin Ahmed, the head of state and then head of the caretaker government, declared a state of emergency and postponed the elections. As part of its "minus two" policy of removing the leaders of the two main parties from the political process, the government arrested former prime ministers Khaleda Zia of the BNP and Sheikh Hasina, leader of the Awami League. With the support of the military President Ahmed then appointed a new caretaker government led by Fakhruddin Ahmed. In July 2007 he announced that elections would be held by the end of 2008, after the implementation of electoral, political and judicial reforms. The Emergency Powers Rules of 2007 (EPR) imposed by the government in January 2007 has led to the suspension of many fundamental human rights. In 2007 the government detained around 200 high-ranking politicians, businessmen and officials as part of its anticorruption campaign. The government formed the Joint Forces, composed of police, the RAB - a paramilitary group composed of personnel from different law enforcement agencies – and military and other security agencies and gave the special new team responsibility for enforcing the state of emergency. Whilst the government is acknowledged to have taken significant steps to combat corruption amongst the police, preventive and arbitrary detentions increased after the declaration of the state of emergency. The government was reported to have arrested more than 300,000 persons between January and August 2007 and a further 12,000 since May 28, 2008. Overall around 500,000 persons are said to have been arrested since January 2007.

18. In cases not affiliated with the state of emergency or anticorruption drive, arbitrary and lengthy pretrial detention remained a problem. Fair trial safeguards have been weakened by the use of Special Courts which impose tight restrictions on defendants' access to lawyers and by the denial of bail to defendants charged under emergency regulations. For most of 2007 the government banned political activities. Although figures dropped, extra-judicial killings have continued, with the security forces accused of custodial deaths, arbitrary arrests and detention and harassment of journalists. In 2007 the RAB was said to have killed 94 people. Government enforcement officials overall were said to be responsible for some 184 deaths. 79 deaths were said to be politically motivated. The RAB, military and police frequently inflicted ill treatment as well as psychological abuse during arrests and interrogations. Human Rights Watch states that torture in custody continues to be "routine". Amnesty International's report notes that the government took steps to implement the Supreme Court's 1999 ruling requiring separation of the

judiciary from the executive, with effect from 1 November 2007; however, reports indicated that executive magistrates retained some judicial powers.

The expert evidence

19. Before proceeding to give our view on the second issue, it is also salient that we set out our evaluation of the expert witness, Professor Coyle. We agree with Ms Brown that the fact that he does not have any first-hand observational knowledge of conditions in Bangladesh prisons means that his assessment does not carry as much weight as might, for example, assessment based on first-hand monitoring undertaken by a UN Special Rapporteur or the ICRC. That said, the fact that he is an acknowledged expert on prison conditions who has visited prisons in over 50 countries in all regions of the world lends weight to his opinion, since he is plainly aware of the different dimensions to the problem of evaluating prison conditions in foreign countries.

20. Nevertheless, certain features of his reports troubled us. It seemed odd that in making his point about lack of recreation provisions in present-day Bangladesh, he should cite without comment from what was said by a senior Bangladesh judge in a report as long ago as 1980 (the Munim Commission Report 1980). Like Ms Brown we were also troubled by the failure of his reports to either append or clarify the precise scope and remit of the two reports to which he makes reference, that by the UNDP and that by the EU Commission. Further, going by his own accounts of them it appears that neither was based on visits to more than two to four prisons out of 67 in the country. Further, neither of these reports was up to date: both appear to have been written in 2005. As we have seen, Professor Coyle's May 2007 report concluded that prison conditions in Bangladesh contravened Article 3 of the ECHR. Whilst in reaching that conclusion he made reference to the case law of the European Court of Human Rights (the case of Kalashnikov) he does not provide any analysis or reasoning as to how he reached that conclusion, nor does he appear to be aware that in no case in which Strasbourg has found prison conditions to violate Article 3 has overcrowding been seen as sufficient on its own to give rise to a violation; rather it has been the co-existence of overcrowding with other significant exacerbating circumstances: see below, paras 32, 52. To be fair, Professor Coyle does not purport to have any legal expertise in how Article 3 of the ECHR is to be applied in relation to prison conditions, whether in a domestic or a refoulement context. But his assessment that prison conditions in Bangladesh violate Article 3 norms, albeit heavily relied on by Mr Jaisri, is difficult to square with the criteria he in fact utilises. Despite his reference to Article 3 EHCR standards not being met, it seems to us that in practice the benchmarks he applies in his reports are not Article 3 benchmarks but rather those of the UN Standard Minimum Rules and the UN General Assembly Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and several other non-treaty international instruments. We explain below why we do not consider the UN benchmarks can be equated with Article 3 ECHR norms: see below para 52.

21. In the light of these considerations it seems to us that whilst we should attach significant weight to Professor Coyle's two reports we should take care

to read them in the light of what we can glean from more recent country reports, in particular the US State Department Report of March 2008. We remind ourselves also that the issue of whether returning a person to prison conditions in Bangladesh would be contrary to Article 3 ECHR is one which is a matter for this Tribunal basing itself on relevant legal principles and considering the evidence as a whole.

Tribunal country guidance

22. As already noted, the Statement of Reasons sealed by the Court of Appeal Consent Order envisaged that our assessment of prison conditions in Bangladesh would cover, inter alia, "consideration of any relevant country guidance decisions". However, in point of fact there are only three CG cases on Bangladesh: AA (Bihari-Camps) Bangladesh CG [2002] UKIAT 01995, H (Fair Trial) Bangladesh CG [2002] UKIAT 05410 and GA (Risk-Bihari) Bangladesh CG [2002] UKIAT 05810. None of these has any real bearing on the subject of prison conditions. It is also fair to say, in the light of the numerous political changes that have taken place in Bangladesh in the last few years, that none of them has any continuing real utility in interpreting current conditions. There is a previous reported case, of Chowdhury [2002] UKIAT 00054, to which reference has already been made. It is helpful as an historical assessment, but plainly cannot assist with assessment of current-day prison conditions.

23 . So far as the facts are concerned, it is important to note that although the second issue the Court of Appeal has asked us to decide is a general one - whether there is evidence of a consistent pattern of violations of the human rights of prisoners in Bangladesh, such that anyone facing prison in Bangladesh would face a real risk of being exposed to conditions contrary to Article 3 ECHR - this appeal is about the appellant only and so there are some significant specific features of his situation which we shall need in due course to consider also. We mention at this stage, however, that it was agreed by Mr Jaisri that the appellant has no special circumstances relating to his age, health or physical or mental abilities that require us to differentiate his likely situation from that faced by the generality of prisoners in Bangladesh. He also accepted that it is part of the agreed facts that this appellant has no political profile. That is to say, he faces return in order to serve a punishment as a convicted prisoner; he is not (unlike the majority of those in prison in Bangladesh currently) someone awaiting trial. This latter feature means that in this case we are not principally concerned with the evidence noted in the background evidence about the treatment of political prisoners (e.g. Professor Coyle's note at para 23 of his 2007 report that opposition parties and human rights monitors claimed the government arrested many political activists and convicted them on unfounded criminal charges and Human Rights Watch and Amnesty International references to torture against such persons being routine or systematic). Nor are we concerned with the treatment of those held in police or security forces' custody. And the fact that, as Professor Coyle notes a large percentage of those awaiting trial do not have access to legal assistance, is not relevant to the appellant's case, since he is a convicted prisoner and also one who has been able to obtain access to legal assistance, before and after his departure from Bangladesh. On the other side of the scale, there is one specific

feature of the appellant's case that might be said to make his position worse than an ordinary member of the class of prisoners in Bangladesh. In his case, we have to take into account that what he faces is not a short term of imprisonment but a term in jail of up to seven years.

24. So far as the law is concerned, whilst the representatives appeared in agreement as to what the correct approach is (for deciding the extent of risk to a broad class of persons, namely ordinary prisoners in Bangladesh) we need to emphasise that the test as set out in Harari has to be read in the light of subsequent Court of Appeal authority, that of Batayav [2003] , Batayav [2005] and the "generally or consistently happening" test set as approved in AA (Zimbabwe) [2007] EWCA Civ 149, paras 21-23. In our view this test is broadly similar to that applied by the Strasbourg Court: see NA v UK, App.No. 25904/07, judgment, 17 July 2008 paras 116-117.

25. It is also important to bear in mind that it is well-settled that the Article 3 threshold is a high one. The fact that there is a high threshold is of particular importance when it comes to evaluating the relevance of the extent to which prison conditions in any particular country measure up to the yardstick established by the UN Standard Minimum Rules or by the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly in December 1988). These Rules and principles do not contain a set of peremptory norms (indeed some concern not what is expected of governments, but what is expected of prisoners, see for example Rule 15 of the UN Standard Minimum Rules which requires every prisoner to "keep their persons clean"). They are described in the preamble as a set of "good principles and practice". Professor Coyle himself described them as among a number of non-Treaty instruments that represent "statements of value shared by the major legal systems and cultures"… whose "moral persuasiveness is beyond dispute". They are, as Ms Brown highlighted, aspirational and programmatic rather than obligatory. Further they encompass many aspects of prison conditions, only some of which can be said to impinge in any important way on the issue of torture or inhuman or degrading treatment. Hence the strong reliance placed on them by the expert and by Mr Jaisri gives rise to some difficulty. We agree with Mr Jaisri that by furnishing an objective framework of standards which have been the subject of UN and international agreement, the UN Standard Minimum Rules and Body of Principles documents afford useful tools to help us in our assessment. At the same time, we must be wary of conflating them with the peremptory norms contained within Article 3 of the ECHR. It is only if prisons conditions in Bangladesh give rise to a violation of the latter, that this appellant can succeed.

Strasbourg case law on prison conditions

26. Turning to consider case law on Article 3 of the ECHR in more detail, the approach taken by the ECtHR to applications from persons alleging that prison conditions in High Contracting States violate Article 3 are usefully summarised in Ramirez Sanchez v France App.no. 59450/00 4 July 2006 as follows:

“General principles

115. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.

116. In the modern world States face very real difficulties in protecting their populations from terrorist violence. However, unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999 V; and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 93). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Chahal v. the United Kingdom*, judgment cited above, § 79). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (*Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001).

117. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, for instance, *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 162). In assessing the evidence on which to base the decision whether there has been a violation of Article 3, the Court adopts the standard of proof “beyond reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

118. The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). In considering whether a punishment or treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see, among other authorities, *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2821-2822, § 55). However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

119. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; *Indelicato*, cited above, § 32; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 428, ECHR 2004-VII; and *Lorsé and Others v. the Netherlands*, no. 52750/99, § 62, 4 February 2003).

In that connection, the Court notes that measures depriving a person of his liberty may often involve such an element. Nevertheless, Article 3 requires the State to ensure that prisoners are detained in conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* cited above, § 94; and *Kalashnikov v. Russia* no. 47095/99, § 95, ECHR 2001-XI). The Court would add that the measures taken must also be necessary to attain the legitimate aim pursued.

> Further, when assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (*Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II)."

27. In Khoklich v Ukraine App.no.41709/98, judgement of 29 April 2003, which concerned a prisoner facing a death sentence locked up in is cell for 24 hours with no natural light, the Court noted, inter alia, that:

> "181. The Court has also borne in mind, when considering the material conditions in which the applicant was detained and the activities offered to him, that Ukraine encountered serious socio-economic problems in the course of its systemic transition and that prior to the summer of 1998 the prison authorities were both struggling under difficult economic conditions and occupied with the implementation of new national legislation and related regulations. However, the Court observes that lack of resources cannot in principle justify prison conditions which are so poor as to reach the threshold of treatment contrary to Article 3 of the Convention. Moreover, the economic problems faced by Ukraine cannot in any event explain or excuse the particular conditions of detention which it has found in paragraph 178 to be unacceptable in the present case."

28. It must be borne in mind that above summary relates to the ECtHR cases dealing with prison conditions in Contracting States brought by prisoners in jails inside those Contracting States, e.g. Kalashnikov and Valasinas v Lithuania, and they do not address the extraterritorial issue of whether expulsion to a country where a person will be imprisoned will result in ill treatment contrary to Article 3, an issue which requires having regard to the likely future, not the ascertainable past.

29. One other observation is pertinent, based on the Strasbourg cases on prison conditions which we were made aware by way of the various references and cross-references in the bundles placed before us, which included, in addition to Kalashnikov, Valasinas, Ramariz Sanchez and the Ukraine cases (see below): Weeks v UK App No 9787/82 (1987) 10 EHRR 293, Kudla v Poland App No 30210/96 (2000) 10 BHRC 269, Dougoz v Greece App.No. 40907/98 (2002) 34 EHRR 61, Peers v Greece App.No.28524/95 (2001) 33 EHRR 1192, Keenan v UK 27229/95 [2001] ECHR 242 (3 April 2001, Novoselov, judgment 2 June 2005, Ilascu and ors v Moldova and Russia App no. 48787/99 [2004] ECHR 318 (8 July 2004) and Popov v Russia 26853/04 [2006] ECHR 771 (13 July 2006). We do not understand the cases just mentioned to be a list of all cases dealt with by Strasbourg on prison conditions, although as far as we can tell they are representative.

30. So far as the Ukraine cases are concerned (to which Mr Jaisri made reference) we know from the summary provided by the Tribunal in PS (prison conditions; military service) Ukraine CG [2006] UKAIT 00016 that those cases in which a violation of Article 3 by Ukraine was found concerned prison conditions in which there were aggravating circumstances. In Salov v Ukraine (2005) Application No: 00065518/01 6/9/2005, a decision promulgated on 6 September 2005 and which was a case concerning violations of Article 5(3) and Article 6(1) of the ECHR, it was the applicant's detention for over seven days without any judicial control which was seen to fall outside the strict constraints of time laid down by the Convention and that the criminal proceedings instituted against him were unfair. In Nevnerzhitsky v Ukraine (2005) Application No: 00054825/00 05/04/2005, promulgated on 12 October 2005, the Court found there to be violations of Article 3 and Article 5 of the ECHR in

circumstances where the conditions of the applicant's pre-trial detention and his treatment whilst detained included force-feeding and prolonged pre-trial detention. In Aliev v Ukraine (41220/98 judgement of 29 April 2003, Khoklich v Ukraine 41707/98 [2003] ECHR 207 (29 April 2003), Poltoratskiy v Ukraine (38812/97) (2004) 39 EHRR43 2003 WL 23508990, promulgated on 29 July and Dankevich v Ukraine (40679/98) (2004) 38 EHRR 25 2003 WL 23192423, promulgated on 29 July 2003, what the Court found violated Article 3 were in each of these cases the abusive conditions of the detention, along with the mental anguish, caused by being held on death row. In Aliev, for example, the Court stated at para 148 that it viewed:

> "with particular concern that, until at earliest May 1998, the applicant, in common with other prisoners detained in the prison under a death sentence, was locked up for 24 hours a day in cells which offered only a very restricted living space, that the windows of the cells were covered with the consequence that that was no access to natural light, that there was no provisions for any outdoor exercise and that there was little or no opportunity for activities to occupy himself or for human contact".

31. In Afanasyev v Ukraine (2005) Application No: 00038722/02 5/4/2005**,** promulgated on 5 April 2005 the Court held that there had been violations of Article 3 and Article 13 of the ECHR in relation to circumstances where the applicant had been a victim of violence during his detention in police custody (not prison detention) and had not had effective recourse to a domestic remedy in the form of an adequate investigation.

32. Put shortly, although in these cases overcrowding has very often been an important consideration, it is only when it has been accompanied by other serious abuses of prisoners' rights, that Strasbourg has found a breach of Article 3.

33. Given that Mr Jaisri referred us to it, we should also note that in the case of Valasinas v Lithuania, the Court was faced with an application concerning the conditions of the applicant's detention in Pravieniskes Prison and his treatment there from April 1998 until April 2000. The applicant's complaints cited, inter alia, the general conditions of detention including serious overcrowding, lack of windows, light and ventilation, toilets which lacked partitions and lacked windows and a ventilation system (for most of the period), deplorable sanitary conditions, restricted shower facilities, rare visits from doctors, no work, recreation or other meaningful activities, unhygienically prepared food, a sixteen hour a day "standing regime", interference with visits from relatives, a 15 day period in solitary confinement, abusive prison staff, arbitrary disciplining and unpublished prison rules. Albeit accepting that many of the applicant's complaints had a factual content the Court concluded that either taken singly or cumulatively the shortcomings in the applicant's general conditions of detention when considered objectively did not breach Article 3 ECHR.

Our assessment

34. In conducting our assessment we must first of all note that we accept that overcrowding in Bangladesh is at serious levels and we accept that Professor

Coyle is right to point to overcrowding as having significantly worsened from 2005 levels. It may be , as the latest COIS report at para 15.02 notes, that the population has dropped from the earlier figure of 87,000 , at least if one takes the figures given by the Bangladeshi Society for the Enforcement of Human Rights (BSEHR) which states that the existing prison population as of November 2007 was 82,254. However, it is not the prison population per se that is relevant but the prison population in relation to the available prison places. And it remains that the overcrowding levels are still extremely high. It may also be, in the light of the ABC News report dated 16 June 2008 regarding the statement made by National Prisons Chief Brigadier Zakir Hassan concerning the freeing of prisoners who have served half of their terms after their cases have been the subject of scrutiny, that a very significant reduction in prison numbers will occur soon, but bearing in mind the politically contingent context, that of making room for persons who have been detained by the caretaker government as part of its so-called crackdown on corruption, we think it prudent not to factor in any such reduction. We will continue to proceed on the assumption, therefore, that overcrowding remains a major problem and that the levels are running at or around the 300% of normal capacity level.

35. That said, as regards overcrowding we lack information to show that it results in conditions or practices that are humiliating or degrading or inhuman generally. For example, we know from the background evidence and Professor Coyle's two reports that prisoners spend some time each day outdoors and that they are not locked up all the time, but we do not know how much time is normally spent outside cells. Nor do we know whether prison dormitories routinely lack lighting or ventilation, how in general overcrowding affects personal privacy in going to the toilet, whether there is an adequate supply of toilet paper, whether (at least from 2005 onwards) bedding is adequate and whether sanitation and laundry arrangements, even if deficient, are tolerable.

36. We remind ourselves that whilst the Strasbourg case law reveals that poor prison conditions can result in a situation where a country's prisoners generally can be described as living in conditions contrary to Article 3, the cases in which that has been done are ones where there are a number of special exacerbating features.

37. Having considered the evidence as a whole, our conclusion is that prison conditions in Bangladesh do not in general violate Article 3 of the ECHR. Our principal reasons are as follows.

38. First, there is no evidence to suggest that the Bangladesh authorities deliberately seek to impose poor prison conditions on prisoners per se. Of course, Professor Coyle is right to remind us that good intentions on the part of the state concerned are not a sufficient answer to an allegation of ill treatment contrary to Article 3: thus in Kalashnikov the Court found a violation of Article 3 despite accepting that the Russian authorities had no actual intention to humiliate or debase the applicant. Further, as we have noted, the prohibition on ill treatment contained in Article 3 of the ECHR is absolute and the shortage of resources or facilities in a particular country cannot be used as a justification

for failure to avoid ill treatment. At the same time, the fact that we are not dealing with a country where the state deliberately seeks to impose poor prison conditions is a consideration which the Strasbourg Court has also seen to be relevant.

39. Second, the evidence read as a whole indicates that despite overcrowding being as bad as, if not worse than ever, there have been some significant improvements in prison conditions in Bangladesh prisons in other respects since 2000-2005.

40. Where matters stood in 2000 is summarised in the website document, "Crime and Society: a comparative criminology tour of the world" (circa 2001), which stated:

> "…In general, prisons and jails have low standards of hygiene and sanitation and are seriously overcrowded. Rehabilitation programs with trained social workers were rudimentary or nonexistent through the late 1980s. Prison conditions are extremely poor for the majority of the prison population. Rape of female detainees in prison or other official custody has been a problem. Most prisons are overcrowded and lack adequate facilities. Government figures indicate that the existing prison populations of roughly 66, 5000 is 278 percent of the official prison capacity. Of those, approximately 25 percent of those detained had been convicted and 971 percent were awaiting trial or under trial. In some cases, cells are so crowded that prisoners sleep in shifts. The Dhaka Central Jail reportedly houses more than 9,775 prisoners in a facility designed for fewer than 3,000 persons. A 1998 judicial report noted that the physical condition of jails is poor, and food is unhygienically prepared. Drugs are abused widely inside the prisons. The treatment of prisoners in the jails is not equal. There are three classes of cells: A, B and C. Common criminals and low-level political workers generally are held in C cells, which often have dirt floors, no furnishings, and poor quality food. The use of restraining devices on prisoners in these cells is common. Conditions in A and B cells are markedly better; A cells are reserved for prominent prisoners. A new prison facility in Kashimpur, north of Dhaka, opened in September. Few facilities exist for children whose parents are incarcerated. Prisons conditions are extremely poor for most prisoners. One human rights organisation reported that 72 persons died in prison or police custody during the year 2000. According to credible sources, poor conditions were at least a contributing factor in many of these deaths. "

41. The position in 2002 is set out succinctly in the UNDP 2002 report as summarised by the COIS report for August 2007 at para 15.03:

> "The UNDP report specified that there were then 80 prisons in the country; however, 16 of these 80 were *thana jails*, otherwise known as "detention houses", which were not functioning at the time. The Ministry of Home Affairs, through the directorate of prisons, is responsible for their management. Overcrowding had already worsened significantly by 2002, due mainly to the large number of prisoners awaiting trial. Prisoners/detainees were accommodated either in separate cells or in association wards, which are dormitories accommodating about 100 to 150 individuals. Under dormitory rules, each prisoner was entitled to 36 sq.ft. of floor space; however, overcrowding has reduced the space available per prisoner to 15 sq.ft. In certain wards prisoners had to sleep in shifts owing to lack of space. Ordinary prisoners received 2,800 to 3,000 calories of food per day, considered satisfactory by the Institute of Public Health Nutrition; so-called 'classified prisoners' received more. However, prisoners were often required to eat their meals sitting on the ground under the open sky, in all weathers. The striped, coarse uniform worn by ordinary prisoners was considered demoralising. Bedding, consisting of only two blankets, was inadequate, degrading and detrimental to physical and mental health. Prison authorities still followed statutes framed by the British colonial authorities

> in the nineteenth century, the main objective of which was the confinement and safe custody of prisoners through suppressive and punitive measures. There was an absence of training programmes for the reform and rehabilitation of offenders and vocational training programmes did not cater for all classes of prisoners. The recruitment and training procedures of prison officers was inadequate to facilitate the reform of prisoners. The number of medical doctors was disproportionate to the size of the prison population, and women prisoners were attended to by male doctors. There were no paid nurses in prison hospitals; literate convicts worked as hospital attendants, without training. There were no trained social welfare officers or psychologists. Handcuffs and fetters were used as punishment for breaches of prison rules".

42. We have already noted that in his first report Professor Coyle drew heavily on reports written by the UNDP and the EU Commission in 2005 which described prison conditions as being scarcely better. However, we now have before us the US State Department report of March 2008. In the light of that report we find ourselves unable to agree with Professor Coyle's assessment in his 2008 update that the latest evidence (which includes the US State Department report for March 2008) shows that "one might conclude that [prison conditions] ...have continued to deteriorate".

43. The overall position as set out in the US State Department report March 2008 (on which Professor Coyle relies as one of his main sources) is that although the system "remain[s] abysmal" nevertheless "the government took several major steps to improve prison conditions, such as cracking down on corruption and improving morale of prison employees". The same report also notes that:

> "The inspector general of prisons sought to improve conditions. He introduced several training programs and literacy classes to help rehabilitate prisoners, cracked down on corruption in the system, and improved inmate food and other services
> ...
> The government undertook reforms aimed at improving the situation. The inspector general of prisons took several steps to improve the prison system, including updating the jail code, reducing corruption and drug trafficking in prisons, limiting the use of full shackles on prisoners for reasons other than discipline, improving the quality of food service, creating more prisoner vocational training opportunities and literacy classes, and improving morale of prison staff..."

44. Third, as for Mr Jaisri's reliance on the evidence as to deaths in custody, he is right to point out that Professor Coyle's view that prison conditions are a contributing factor to custodial deaths is based squarely on the US State Department Report. However, we do not think that the figures relating to custodial deaths, when examined more closely, do very much at all to strengthen the argument that prison conditions in Bangladesh are contrary to Article 3. The position as set out in the latest US State Department report is that:

> "According to Odhikar [a local human rights NGO], 87 persons died in prison and 67 died while in the custody of police and other security forces, among them a ten-year old boy who was found with his throat slit in the Juvenile Detention Centre. Of the 87 persons who died, 77 died of natural causes; four died of unnatural causes; and six died of unknown or unspecified causes".

45. Given that what we are considering in this case is someone who will be returning to jail as a convicted prisoner, the figures for persons who died in the custody of police and security forces are only relevant as part of the overall background evidence. Similarly, while the US State Department report (along with the Amnesty International and Human Rights Watch) reports) chronicles the use of ill treatment by security forces (the RAB, police and the military), that is not part of the picture so far as members of the ordinary prison population are concerned. Further, we are told that of the 87 persons who died [in 2007] 77 were from natural causes. Such figures are far from showing that there are a significant number of deaths in custody caused directly by adverse prison conditions or the treatment facing ordinary prisoners. By comparison, we note that in Russia (on the evidence in the Kalashnikov case) there were around 10-11 thousand deaths per year in a prison population of around 1 million. Put another way, whereas in Russia deaths in prison were 11 out of every 1,000, in Bangladesh they were only one out of every 1,000. (In the UK, if one goes by a BBC News report of 29 June 2008 - which noted that out of 83,243 prisoners (83,716 according to 27 June 2008 figures from National Offender Management Service (NOMS)) almost 600 died in custody every year - the figure would appear to be around 7 out of every 1,000.)

46. Fourth, in relation to health, hygiene, sanitation and medical services, the evidence as a whole does not demonstrate a state of affairs contrary to Article 3 ECHR standards. The UNDP report for 2005 (as summarised by Professor Coyle) found that medical services were inadequate and that problems arose when prisoners suffered from serious diseases. It also noted that prevalent ailments were diarrhoea, fever and skin diseases. Diarrhoea was said to be caused by a number of factors, including unsafe drinking water. The conditions in which food was prepared were also said to be a major factor and the kitchen areas were said to be inadequate. However, it was not said that these inadequacies gave rise to a situation in which prisoners generally experienced inhuman or degrading treatment. As regards the number of doctors, we cannot agree with Mr Jaisri that the position is correctly summarised by the Bangladesh News headline of 1 February 2008 as "[o]nly 16 doctors treat 86,000 jail inmates". The body of the report (as described by Professor Coyle in his update report) is far from clear as to the exact situation. The reference to the 16 doctors appears to be a reference to those who man prison hospitals. Further on it states that there are "77 posts of doctors at jails for 27,000 prisoners [this refers to the official capacity]. But since the number of prisoners is always such [sic] high, there should be more than 230 doctors for them". It also quotes Deputy Inspector General (DIG-Prisons) Major Shamsul Hassan as saying that "The hospitals without doctors have paramedics, while the jails which have no hospitals have single rooms for sick prisoners." But, pointing the other way, the newspaper report also states that "[a]s many as 53 jails have no doctors at all, leave [sic] alone hospitals".

47. The above evidence certainly makes clear that there are serious shortages of doctors. It also chimes with the reference to the number of doctors in the UNDP reports of 2002 and 2005 (the latter as summarised by Professor Coyle). However, the Bangladesh News item of 1 February 2008 also appears to

confirm that there are paramedics in jail hospitals. Taking this news item report together with other evidence before us, we do not find it has been demonstrated that the effect of a shortage of prison doctors is that prisoners routinely lack essential equipment, drugs or professional personnel to ensure the protection of their essential health needs when they fall ill. We lack information about, for example, how often prisoners receive a medical check-up or to what extent medical assistance when given is carried out (whether by doctors or paramedics) to a competent professional standard. Some glimpse into how the prison authorities approach medical issues currently is provided by a website entry relating to a study funded by Improved Health for the Poor: Health Nutrition and Population Research Project (HP; HNPRP) of the Government of Bangladesh relating to "Detection and Control of Tuberculosis in Dhaka Central Jail, medical release of 22 April 2008, which refers to TB patients in this Jail being "isolated and given necessary treatments". It noted that the Secretary of the Ministry of Home Affairs gave his approval for implementing all of the recommendations made by the researchers to reduce the chance of transmission of TB to other healthy inmates. He was reported as requesting this same research body to consider conducting similar studies in other central jails. Representatives present at the seminar called on this question included a representative from the World Health Organisation. Although this is a government press release, it appears to record verifiable developments.

48. Fifth, as regards recreation, it is certainly the case that the 2005 report by the European Commission (going by Professor Coyle's summary) found that there was no proper programme of vocational training and income generation for prisoners and the prison service, but it did note that recreation consisted of 'indoor games'. We lack important information about how extensive is the lack of work or educational facilities in relation to, for example, being able to take daily outdoor walks, obtaining books and/or newspapers from a library, watching television, listening to music, playing board games, exercising and the like. We also lack information about to what extent ordinary prisoners are afforded adequate contacts with the outside world by way of personal visits or the extent to which they are allowed to receive correspondence, parcels of food, toiletries, vitamins, books and clothes.

49. Sixth, as regards the quality of food services, Ms Brown contended that the latest COIS report at para 15.03 said that the calorific content of prison food had been considered satisfactory; however, with respect, that report refers to a 2002 UNDP report (which we have already recounted) and is little help in assessing what is the position currently. But there is no evidence that the quality of food and catering has adversely affected prisoners in any serious ways.

50. Seventh, so far as the monitoring of prisons is concerned, it is a relevant fact that they are not monitored by independent human rights monitors in any regular way, but Professor Coyle's own report refers to a 1980 Commission inquiry and to two recent reports (based on visits to 2-4 prisons) carried out by international bodies (UNDP, in conjunction with Penal Reform International and

an EU Commission/"Justice Identification Mission" report. In the COIS report summarising the UNDP 2002 report, there was a reference to a 1998 judicial inquiry. He also notes that there are government-appointed committees of prominent private citizens in each prison locality monitoring prisons monthly. On the strength of the press report from the New Nation dated 3 March 2008 headed "Row over accommodation in [Chittagong] Jail: Prison Unrest" and the press report from the Bangladesh News 1 February 2008, there is a climate of government openness about prison conditions. The New Nation article notes that: "Talking to *reporters, who recently visited the jail*, Senior Superintendent of the Chittagong Central Jail Ataur Rahman said the suffering of the prisons would largely reduce after completion of the work [construction of 6 new barracks due to be completed by 2010 enhancing the accommodation capacity to 5,000] "(emphasis added). The Bangladesh News article quotes two inspectors general of police (Prisons) and two senior jail administrators, each of whom was prepared to furnish details which did not on their face put the government in a good light. It is important in our view to bear in mind that whilst Professor Coyle is right to point out that the conditions in Bangladesh prisons must be measured by international standards, not local standards, equally they are not to be judged by the standards of a liberal democracy and the fact that the prisons in Bangladesh are under the control of a government that is not a liberal democracy is immaterial in assessing whether conditions in them give rise to treatment contrary to Article 3. Professor Coyle's observation in his May 2007 report that "[c]rucially, there is no independent inspection mechanism that reports to Parliament annually" is indicative in our view that the core of his evaluation is concerned not with the issue of whether prison conditions violate Article 3 of the ECHR but whether they breach non-treaty standards which are features to be found (so far as we are aware) only in the prison systems of advanced liberal democracies.

51. By way of conclusion, we agree with Ms Brown that apart from the evidence about overcrowding, there are no clear indications that other shortcomings are of a grave or severe nature. It is our view that although there are serious deficiencies in the Bangladesh prison system and although conditions in them can be properly described as "abysmal", the evidence falls short of demonstrating that ordinary convicted prisoners generally face a real risk of treatment contrary to Article 3.

52. We reiterate at this point that whilst the Strasbourg case law confirms that poor prison conditions can result in a situation where prisoners generally can be described as living in conditions contrary to Article 3, the cases in which that argument succeeded were those where there were a number of special exacerbating features. In Kalashnikov, for example, the applicant was forced to share a cell which was not only infested with pests but in which there were people suffering from disease including TB and syphilis. Overcrowding, where it has featured as a serious problem, has never been seen enough on its own to establish a real risk of ill treatment.

53. Considered in the light of Strasbourg cases, we think it significant that the evidence before us as to prisons in Bangladesh does not suggest, for example

any consistent pattern of ordinary prisoners being locked in cells for periods of 24 hours with no lighting or ventilation, being in pest-infested cells or in contact with prisoners carrying dangerous infectious diseases such as TB, or to solitary confinement, or suffering sleep deprivation or a pattern of arbitrary punishment for any breaches of prison discipline. Whilst the evidence before us does record serious shortcomings past and/or present in numbers, hygiene, bedding, recreation, educational facilities, sanitation, medical facilities and the like, it does not identify that these shortcomings result in a consistent pattern of inhuman or degrading treatment or punishment.

54. We conclude , therefore, in answer to the second question we were directed to decide, that prison conditions in Bangladesh at least for ordinary prisoners, do not violate Article 3 ECHR. This conclusion does not mean that an individual who faces prison on return to Bangladesh can never succeed in showing a violation of Article 3 in the particular circumstances of his case. We think that a useful starting-point is afforded by the OGN approach that:

> "…However, the individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate."

55. However, we also bear in mind the evidence we have before us in this case about the increasing use of detention by the authorities where there is a political element. This leads us to consider that detainees of this kind may face treatment different from that meted out to ordinary prisoners. Also, we have considerable evidence about the delays in those detained awaiting trial being brought to trial. In the light of these factors, we would modify the OGN approach for our purposes to read as follows.

> The individual facts of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being, inter alia, whether there is a political element to the person having been detained, whether it is detention awaiting trial or detention in service of a sentence, the likely length of detention, the likely type of detention facility, and the individual's age and state of health.

The appellant's case

56. It remains to set out our conclusions on the appellant's case, bearing in mind our earlier observation that we must consider whether there are any significant specific features of the appellant's situation that might mean that his position is not to be considered as being like that of any other prisoner.

57. In our judgement there are no special circumstances relating to his age, health or physical or mental abilities that require us to differentiate his likely situation from that faced by the generality of prisoners in Bangladesh. The fact that he faces return as an ordinary prisoner serving a sentence, may indeed

make his lot less difficult than that of those awaiting trial who do not have access to legal assistance. We say that because the appellant is someone who has already been able to obtain access to legal assistance, before and after his departure from Bangladesh and it is reasonably likely such legal assistance will be available to him on return.

58. The only specific feature of the appellant's case which causes any concern from the point of view of assessing his claims for international protection, is that (in view of our earlier findings) what he faces is not a short term of imprisonment but a term in jail of up to seven years. In this regard we bear in mind the importance attached by the Strasbourg Court (and also by the Home Office OGN) to considering the likely length of detention as a relevant factor when examining the cumulative impact of prison conditions.

59. However, bearing in mind our earlier findings on prison conditions in Bangladesh generally (at least for prisoners to whose detention there is no political element) taken together with the fact that there are no special circumstances relating to his age, health or physical or mental abilities, we do not consider that the likelihood that he will have to serve a prison sentence of up to 7 years would cause him serious harm or violate his right under Article 3 of the ECHR.

60. For the above reasons we conclude that the decision we should substitute for that of the panel (whose decision was legally flawed) is to dismiss the appellant's human rights appeal. We also conclude that the appellant does not meet the requirements governing eligibility for humanitarian protection under para 339C(iii) of HC 395 (as amended)

Signed:

Dr H H Storey

Appendix of Background Materials

- Munim Commission Report on Jails 1980 (cited by Professor Coyle in his May 2007 report)
- "Crime and Society: a comparative criminology tour of the world", website document (circa 2001)
- US State Department Report 2001
- Home Office Country Assessment October 2002
- UNDP report 2002 (as summarised in COIS report August 2007 at para 15.93)
- Penal Reform International, 2005. Formulation mission on penal reform in Bangladesh: Report for UNDP 2005 (unpublished) (as summarised by Professor Coyle in his May 2007 report)
- Baguenard J et al, "Activating the justice system in Bangladesh: A report by the Justice Identification Mission", European Commission report 2005 (as summarised by Professor Coyle in his May 2007 report)

- “Top Bangladeshi to stay in jail”, BBC News 4 June 2007
- COIS Report of 31 August 2007
- OGN for December 2007
- Human Rights Watch report for January 2008
- Amnesty International Report for 2008
- Report from Bangladesh News published 1 February 2008
- Report from the New Nation dated 3 March 2008 headed “Row over accommodation in [Chittagong] Jail: Prison Unrest”
- US State Department Report dated 11 March 2008
- World Prison Brief Online, www.prisonstudies.org (accessed on 8 June 2008)
- Extracts from Vol 1 The Penal Code, 1860 (as amended)