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COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 8 (a) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37

Addendum

Summary of communications transmitted to Governments and replies received

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Israel

Information transmitted to the Government

384. By letter dated 14 July 1995 the Special Rapporteur advised the Government that he had continued to receive information according to which Palestinians undergoing interrogation by the General Security Service (GSS or Shin Bet) are often subjected to torture or ill-treatment. The methods of torture reported include: beatings all over the body, sometimes with cables; hooding, sometimes with dirty and wet sacks which interfere with respiration; prolonged standing or sitting in painful and contorted positions (shabeh); sleep deprivation; confinement in closet-shaped rooms (kahzana); food deprivation; threats of disablement; and continuous subjection to loud music.

385. Israeli Criminal Procedure Law permits persons charged with State security offences to be held incommunicado for up to 30 days, the first 15 of which may be kept secret. Such periods of incommunicado detention create conditions which facilitate the practice of torture. Military orders applying to the Occupied Territories were said to permit detention without judicial review for up to 11 days and denial of access to a lawyer for a total of 90 days on security grounds.

386. The Landau Commission guidelines sanctioning "the exertion of a moderate measure of physical pressure" were allegedly applied in a way so as to allow for torture and ill-treatment. Because the guidelines are secret, it was impossible to assess the extent to which the above-mentioned practices were consistent with or a departure from them. The ministerial committee which meets monthly to review the guidelines was said to have allowed for the increased use of physical pressure in the aftermath of the October 1994 suicide bombing in Tel Aviv.

387. The Special Rapporteur also sent the cases of alleged torture summarized in the following paragraphs.

388. Muhammad Ya'qub 'Abd al-Qader a-Nubani, detained on 22 April 1993 and held at the GSS interrogation wing of the military government headquarters in Ramallah, was allegedly beaten severely on his head, chest and back and forced to sit for prolonged periods in a small chair with his hands and feet bound and the chair bolted to the floor. He was permitted only one hour of sleep every 80 hours.

389. 'Abd a-Nasser 'Ali 'Issa 'Ubeid, arrested on 30 August 1993, was allegedly subjected to various forms of ill-treatment by the GSS during 16 days' detention at the Russian Compound in Jerusalem, including prolonged standing, sleep deprivation, and threats to his life. At one point he was placed in a cell with Palestinian "collaborators", who allegedly beat him, sexually assaulted him and burned his arms with cigarettes. He was released on 15 September 1993.

390. 'Abd a-Nasser Isma'il Hussein al-Qaysi, a student at Bir Zeit University, was reportedly arrested on 10 August 1994 and held without charge for 51 days at the GSS interrogation facility in Ramallah. During the course of interrogation he was allegedly seated for prolonged periods in a small chair bolted to the ground with his hands tied in a painful position, deprived of sleep and food and beaten severely in the chest. He was also kept in a variety of contorted positions, including being hooded and tied to a pipe with his hands behind the pipe and the palms of his hands facing outward. He suffered medical difficulties and lost 10 kilogrammes during his ordeal.

391. Amjad Zeghayer, reportedly detained on 12 August 1994 and held at the Russian Compound for 24 days without charge, was allegedly kept tied to a small chair with his head covered with a sack for 15 days and was deprived of sleep. The chair was tilted to prevent him from leaning backwards and to force him to keep sliding off. While he was seated, his handcuffs were affixed to a pipe on the wall.

392. Hamed As'ad Hamed al-Kuni, a 17-year-old high school student, was reportedly arrested on 24 October 1994 on suspicion of involvement with Hamas. At the interrogation wing of Nablus prison he was allegedly kept hooded and in a painful position on a low chair with his hands and legs tied for 120 hours. On 23 November, while being led from court to jail, he was reportedly beaten severely, causing nerve swelling on his back and a 21-day paralysis of his left leg. He was also allegedly beaten continuously on his testicles and penis, causing swelling to his testicles which lasted for more than a month and a half. In addition, his interrogators prevented him from using the toilet and hit him in the head with fists, which caused swelling and severe pain. He was served with a six-month administrative detention order on the grounds that he was a Hamas activist and was transferred to Ketziot camp.

393. Ziyadah al-Qawasma was reportedly arrested on 13 November 1994 and his detention was

extended to 28 March 1995. In Ramallah prison he was allegedly deprived of sleep for periods of up to six days a week, much of which was spent sitting on a small chair in a painful position.

394. Abed el-Samed Harizat, arrested on 22 April 1995, was placed in the Russian Compound in Jerusalem with five Palestinian "collaborators", who were reportedly given a "green light" by the GSS to apply heavy physical pressure. In the cell he was allegedly beaten severely and his body and head were struck against a wall. He died in detention on 27 April 1995. An autopsy, conducted by a team which included an independent pathologist, revealed that he had died of injuries to his head occurring while in detention.

395. The Special Rapporteur also informed the Government that he had received new information in the case of Ahmad Ibrahim Sa'id, on whose behalf an urgent appeal had been transmitted on 17 November 1994. In that appeal, the Special Rapporteur had indicated that Ahmad Ibrahim Sa'id, during his detention in Ramallah and Ashkelon prisons, had allegedly been hooded, beaten, shackled in painful positions for prolonged periods, deprived of sleep, forced to stand for up to 18 to 20 hours per day and forced to sit on a chair in an uncomfortable position with his hands tied while interrogators pushed him in an attempt to make him fall. He was also said to have been threatened that he would be paralyzed and unable to have children following his interrogation. The source of this information reaffirmed this account and added that Ahmad Ibrahim Sa'id had been brought to trial on 22 November 1994, charged with illegal possession and transfer of a revolver and passing messages for Hamas. He was sentenced to 30 months' imprisonment, 23 of which were suspended, and was released on 12 January 1995. Urgent appeals sent and replies received

396. On 31 March 1995 the Special Rapporteur sent an appeal in conjunction with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Arbitrary Detention concerning the situation of prisoners held at the Al-Khyam prison, in the Marjouyun region of south Lebanon, territory reported to be controlled by the Israeli Defence Forces. Approximately 260 persons had been detained in the prison for a number of years without being charged or sentenced by any court and without notification of the reasons of their detention. Lawyers and humanitarian organizations were allegedly refused permission to visit them and family visits had been authorized only since 31 January 1995. Many of the prisoners were said to suffer from serious diseases as a result of harsh living conditions, subjection to torture and ill-treatment and denial of medical care. Others had allegedly died in the prison or shortly after being released, such as Selim Awada and Ali Al-Ghoul, who died in September and December 1994, respectively.

397. On 30 May 1995 the Government replied that Khiam prison had always been and remained solely under control of the South Lebanon Army (SLA) and that therefore all inquiries concerning the prison should be addressed to them.

398. The Special Rapporteur sent an urgent appeal on 25 April 1995 on behalf of Khaled Farraj, from Jalazun Refugee Camp near Ramallah, who was reportedly arrested on 21 March 1995 and had since been under interrogation by the GSS at both Ramallah prison and the Russian Compound in Jerusalem. He allegedly was hooded, deprived of sleep, except for three to four hours of sleep every four to five days, tied with hosing to a chair with uneven legs for prolonged periods and subjected to cold temperatures. He was told that his interrogation would continue until a confession was obtained.

399. On 20 September 1995 the Government replied that Khaled Farraj had been released on 16 May 1995 after investigations had been completed. Because of complaints of maltreatment, an investigator from the Ministry of Justice questioned the persons who had interrogated him. According to those interrogators, Khaled Farraj had stated to them that he suffered from asthma and was thus given special consideration during the course of the investigation. He was under continuous medical supervision and his health was found to be satisfactory. Khaled Farraj had failed to respond to requests to meet with the investigator. It is difficult adequately to investigate any allegation of wrongdoing if the detainee making the complaints refuses to give his version of events. The findings of the Ministry of Justice did not indicate any basis upon which action should be taken against those

involved in
his interrogation.

400. On 23 October the Special Rapporteur sent an urgent appeal concerning proposed legislation drafted by a special interministerial committee, which was reportedly about to come before the Israeli Parliament (Knesset). The purpose of the legislation was to incorporate the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the domestic law of Israel. According to an unofficial translation of the text, torture was to be defined in the bill as "severe pain or suffering, whether physical or mental, except for pain or suffering inherent in interrogation procedures or punishment according to law". While noting with satisfaction that the Government was taking measures towards the incorporation of the Convention against Torture into its national law, the Special Rapporteur expressed serious concern that the effect of the bill would be to legalize practices that are irreconcilable with the purposes of the Convention (to prohibit, prevent and punish both the crime of torture and other cruel, inhuman or degrading treatment or punishment). Neither the International Covenant on Civil and Political Rights nor the Convention against Torture allow for any derogation from the proscription against the use of torture or other cruel, inhuman or degrading treatment or punishment and it was difficult to conceive of acts which carry severe pain or suffering that would not amount to torture or prohibited cruel, inhuman or degrading treatment or punishment. Since most torture in most countries takes place during interrogation and given the realities of the Landau principles and the seriousness of the allegations received of ill-treatment of detainees often amounting to torture, it seemed that the exception in the proposed bill was precisely calculated to provide for the law to define torture, so as to permit rather than to prohibit it. The Special Rapporteur appealed to the Government to refrain from adopting legislation that authorizes agents of the Government to use torture under any circumstance and urged that the proposed legislation be reformulated to reflect unambiguously the principle of the non-derogability of the prohibition against torture.

401. On 5 November 1995 the Government informed the Special Rapporteur that the proposed amendment to the Penal Law was a proposal for a draft and would have to undergo various stages of the legislative process before it could be tabled at the Knesset in the form of a bill. Internal discussions were under way with regard to the proposal and the points raised by the Special Rapporteur would be addressed in the framework of those discussions. The tendency would be to ensure that the provisions would conform to the Convention against Torture.

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