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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT

Questionnaire on the Declaration on the Protection of All  
Persons from Being Subjected to Torture and Other Cruel,  
Inhuman or Degrading Treatment or Punishment

Report of the Secretary-General

Addendum

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BARBADOS

/Original: English/

/6 October 1978/

Question 1

1. The Constitution of Barbados provides for the protection and fundamental rights and freedom of individuals which, of course, include safeguards against torture and other cruel inhuman or degrading treatment for persons detained pending investigation and trial.

2. The Prisons Rules 1974 in rules 15, 24, 33, 38, 43, 46 (1), 54 (1), (2), (3), 55 (1), (2), (3), (4), and 56 safeguard the prisoner from subjection to impositions as mentioned in question 1.

Questions 2 and 3

The 1964 revised Judges Rules are observed by law enforcement officers as a guide in respect of the treatment and custody of persons. Such officers also benefit from lectures given on the Constitution of the country as it relates to the treatment of persons. In addition, the Rules and Regulations of the Police Force provides for the treatment, care and custody of prisoners.

Question 4

No interrogation of the prisoner takes place at the prisons.

Question 5

Yes.

Question 6

The police and prison authorities are competent to receive complaints from alleged victims. Such complaints are thoroughly investigated, the prison authorities using a visiting committee where all parties concerned are heard. If the allegation is found to have substance, the matter is referred to the court.

Question 7

The Superintendent of Prisons replied that an investigation would be held into the believed act, which would be referred for action by the Visiting Justice, who would then take steps on his findings, if the act is proven.

Question 8

There is no known precedent, but criminal proceedings are a possibility.

/...

Question 9

For the Prison Officer, suspension or dismissal may follow.

Question 10

The same replies are pertinent.

Question 11

The Superintendent of Prisons replied that there is no record of allegations of offences of the nature mentioned.

Question 13

The Law Courts of this country would not accept in evidence any statements or proceedings extracted from a person under torture etc. This is specially provided for in the 1964 revised Judges Rules.

KUWAIT

/Original: Arabic/

A

Letter dated 11 July 1978

Question 1

1. Articles 31 and 34 of the Kuwaiti Constitution provide for the prohibition of such acts as follows:

2. "Article 31. No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of law.

"No person shall be subjected to torture or to degrading treatment."

3. "Article 34. An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured.

"The infliction of physical or moral injury on an accused person is prohibited."

4. The Kuwaiti Criminal Code, as amended by Act No. 31 of 1970, prescribes punishment for any act which violates the above provisions in the following articles:

5. "Article 35.\* A penalty of imprisonment for a term not exceeding five years and a fine not exceeding 500 dinars or either of these two penalties shall be imposed on any public official or employee who himself or through the agency of another tortures an accused person, a witness or an informant in order to force him to confess to an offence or to produce oral evidence or other information concerning an offence.

"If the torture leads to or is accompanied by an act legally punishable by a more severe penalty, the more severe penalty shall apply.

"If the torture results in death, the penalty shall be that prescribed for deliberate murder."

6. "Article 56. Any public official or employee and any person entrusted with public service who uses his office to employ cruelty against persons in such a way as to degrade them or cause them physical pain shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding 225 dinars or either of these two penalties."

#### Question 2

This question, concerning information and education about the above-mentioned principles for law enforcement personnel and public officials responsible for persons deprived of their liberty, should be referred to the competent authorities.

#### Question 3

The law is known to all. The question of instructions should be referred to the Ministry of the Interior.

#### Question 4

This question should be referred to the Public Prosecution Office.

#### Question 5

Yes. Such acts are punishable under the Criminal Code. The relevant articles have been cited above.

#### Question 6

The competent authorities are the Public Prosecution Office and after that the courts, if such persons appear before them as accused persons, witnesses, or informants.

#### Question 7

Yes. These authorities are obliged to do so, and the Code of Criminal Procedure is followed in this matter.

Question 8

Yes. The Code of Criminal Procedure is followed in this matter.

Question 9

Under the laws on employment in public office, including the Police Act, such persons are liable to disciplinary sanctions. They may be suspended from their work until the disciplinary trial is completed, and the disciplinary trial may result in dismissal from service and the consequent disability for re-employment in public service until the expiry of a term laid down by law.

Question 11

This question should be referred to the Public Prosecution Office and the Ministry of the Interior.

Question 12

1. The right to compensation for any illicit act is laid down in Act No. 6 of 1961 regulating liabilities arising out of illicit action, as amended by Act No. 42 of 1967 and Act No. 73 of 1976. This compensation covers both material and moral injury.
2. The Government is obliged to pay the compensation, inasmuch as it is regarded as responsible for the actions of its subordinates under the above-mentioned Act.
3. The last part of the question should be referred to the Public Prosecution Office.

Question 13

1. There are many provisions in the Code of Criminal Procedure which prohibit compulsion of an accused person to answer against his will. These include article 98, the second paragraph of which provides that:

"An accused person may refuse to speak or may request postponement of interrogation until such time as his counsel is present or until any other time. He may not be put on oath or subjected to any measures of incitement or compulsion."
2. Article 159 of the above-mentioned Code stipulates that statements made by an accused person which have been extracted under compulsion or torture are null and void. It stipulates that:

"Where the court finds that the evidence or confessions of an accused person have been extracted under torture or compulsion, it must hold such evidence or confessions null and void."

Questions 14 and 15

These relate to measures taken to give publicity to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel Treatment and to the progress accomplished and difficulties encountered in its implementation as regards the prevention and punishment of torture. The Public Prosecution Office and the Ministry of the Interior should be consulted on these matters.

B

Letter dated 25 July 1978

Question 1

1. The Constitution of the State of Kuwait regulates the basic principles concerning human rights. Article 7 provides that:

"Justice, liberty and equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens."

2. Article 8 provides further that:

"The State safeguards the pillars of society and ensures security, tranquillity and equal opportunities for citizens."

3. Article 29 declares that:

"All people are equal in human dignity and in public rights and duties before the law, without distinction as to race, origin, language or religion."

4. Article 30 guarantees personal liberty.

5. Article 31 provides that:

"No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or liberty of movement be restricted, except in accordance with the provisions of the law."

6. The Kuwaiti Code of Criminal Procedure regulates the basic principles for the rules of criminal prosecution. Article 1 of the Code provides that:

"No criminal sentence may be imposed except after a trial conducted in accordance with the principles and procedures laid down by this Code."

7. Article 12 of the Code provides that:

"Neither the investigating magistrate nor any person holding judicial authority is permitted to use torture or force in order to obtain statements

from an accused person or witness or to prevent him from giving such evidence as he may wish during the trial or the investigation. Any person committing an act of this type shall be punished in accordance with the relevant provisions of the Criminal Code."

8. It is clear from the above that fundamental human freedoms are safeguarded by the Constitution and that no one may interfere with another person or place any restriction on his liberty except in accordance with legal procedure.

#### Question 2

The State of Kuwait is extremely concerned to ensure that all law enforcement personnel and other public officials responsible for prisoners and detainees should have a high degree of ethical awareness and an awareness of the rules of humane conduct to give them an understanding of human rights and obligations. The Government of the State of Kuwait organizes training courses and animation courses for certain sectors of its public officials, including investigating magistrates, with a view to raising the informational and educational level of such officials.

#### Question 3

Act No. 26 of 1962 concerning the organization of prisons and Decree of the Minister for the Interior No. 25 of 1976 establishing prison regulations govern procedures for the treatment of prisoners, the method of disciplining them and the provision of medical and social care for them inside and outside prison.

#### Question 4

Act No. 26 of 1962 concerning the organization of prisons gives the Director of Prisons the right to inspect them at any time and gives any prisoner the right to meet with the Director during the inspection and to submit any complaint to him. The Director must investigate the complaints submitted to him and take the necessary measures to ensure that the grounds for them are removed. The authorities concerned must always ascertain that no person has been wrongfully imprisoned. No person may be imprisoned without a written order issued by the competent authority or detained in prison longer than the term specified in such order (Prisons Act, arts. 15, 16 and 18).

#### Question 5

1. Chapter III of Act No. 31 of 1970 amending certain provisions of the Criminal Code designates as punishable offences acts of torture and maltreatment by individual public officials. Article 53 provides that:

"A penalty of imprisonment for a term not exceeding five years and a fine not exceeding 500 dinars or either of these two penalties shall be imposed on any public official or employee who himself or through the agency of another tortures an accused person, a witness or an informant in order to force him to confess to an offence or to produce oral evidence or other

information concerning an offence. If the torture leads to or is accompanied by an act legally punishable by a more severe penalty, the more severe penalty shall apply.

"If the torture results in death, the penalty shall be that prescribed for deliberate murder."

2. Article 54 provides that:

"Any public official and any official entrusted with public service who orders the infliction of or himself inflicts on a convicted person a punishment more severe than that legally prescribed or a punishment not legally prescribed shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding 500 dinars or either of these two penalties."

3. Article 56 provides that:

"Any public official or employee and any person entrusted with public service who uses his office to employ cruelty against persons in such a way as to degrade them or to cause them physical pain shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding 225 dinars or either of these two penalties."

4. Article 57 provides that:

"Any public official or employee and any person entrusted with public office who forces persons to work in circumstances not permitted by the law or who uses persons for work other than that prescribed for them by the law shall be liable to imprisonment for a term not exceeding two years and, in addition, be sentenced to pay the value of the wages earned by those whom he has wrongfully employed."

5. Article 58 provides that:

"Any public official who uses the authority of his office to force a person to sell or dispose of his property or to abrogate any of his rights, whether in favour of the official himself or in favour of another, shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding 225 dinars or either of these two penalties."

Question 6

The police authority is the one competent to receive complaints in cases of torture or other cruel, inhuman or degrading treatment. The police officer investigates the complaint and refers it to the Public Prosecution Office if the complaint involves a felony and to the investigating officers of the Ministry of the Interior if the complaint involves a misdemeanor. The investigation authority exercises its competence in accordance with the provisions set forth in the Code of Criminal Procedure.



Question 7

1. Any policeman who learns of or witnesses the commission of acts of torture must immediately take action regarding the occurrence, even if there has been no official complaint, and must take the legal measures incumbent upon him, including apprehension of the accused person. After the policeman has put on record the measures which he has taken, he must inform the investigation authority of the event.
2. Any person who fails to give such notification shall, on grounds of complicity with the accused, be liable to the penalty for refusal to give testimony.

Question 8

1. After completion of the investigation, if the investigating magistrate finds that a crime of torture has been committed and that the evidence against the accused is sufficient, he must bring him before the competent court for trial (Code of Criminal Procedure, art. 102). If the court sentences the accused to imprisonment for a term not exceeding two years or a fine, it may issue an order for suspension of the execution of the sentence, where the court believes, on the basis of the past or age of the accused or the circumstances in which he committed the crime, that he is unlikely to revert to crime, and the sentenced person must sign an undertaking to that effect.
2. The Criminal Code provides that no penalty shall be imposed on an accomplice in a crime if he desists from participating in it and so informs the perpetrator or perpetrators before they commence its perpetration.
3. Any person who informs the public authorities of the existence of a criminal agreement to commit a crime and of the persons participating in it before the authorities have undertaken any investigation and before any crime has taken place is also exempted from punishment. If such information is given after the investigation, it must actually lead to the apprehension of the other parties to the agreement.
4. With regard to the question of pardon and amnesties, article 238 of the Code of Criminal Procedure provides that:

"The Amir may at any time issue an amnesty for a specific offence or specific offences. Such amnesty shall be regarded as equivalent to a verdict of innocence and entails the rescission of all previous measures and judgements conflicting with it. An amnesty for an offence does not preclude the bringing of a suit for civil compensation."

Question 9

1. Article 110 of Amiri Decree No. of 1960 concerning the Civil Service Act provides that any public official who violates the obligations laid down by law acts ultra vires in the performance of his duty or conducts himself in a way

degrading to his office shall be liable to disciplinary sanctions. Article 68 of the Criminal Code provides that:

"Any criminal sentence shall definitively entail the barring of the sentenced person from the following rights:

(a) The holding of public office or work as a contractor or concessionaire for the account of the State;

(b) Nomination to membership of public councils and bodies or appointment to membership therein;

(c) Participation in the election of members of public councils and bodies."

2. Article 69 of the Criminal Code provides that:

"Where a person on whom a criminal sentence has been passed enjoys at the time when the sentence takes effect any of the rights enumerated in the preceding article, he shall be divested of them forthwith."

3. The action which may be taken by occupational associations are governed by the laws and regulations of each association.

#### Question 10

There is nothing to report except what has been stated in the replies to questions 8 and 9.

#### Question 11

No investigations have been carried out or any proceedings instituted concerning crimes of torture since the adoption of the Declaration.

#### Question 12

1. Article 111 of the Code of Criminal Procedure provides that:

"Any person who has sustained injury by reason of a crime may bring a civil suit before the court which is hearing the criminal case, at any stage of the proceedings, until their completion. In such event, he has the status of joint plaintiff in the criminal case. The civil plaintiff may claim his right during the initial investigation by an application submitted to the investigating magistrate; in that event, he is treated as a party to the prosecution during the investigation."

2. Article 115 of the Code of Criminal Procedure provides that:

"If the court finds the accused guilty, it may, of its own accord, impose on him payment of compensation for the damages caused by the crime,

provided that the person in whose favour the award is made undertakes not to claim any other compensation for the same crime."

3. Any person who sustains injury may bring his suit before the civil courts and seek compensation for the injury done to him. The authority employing the public official is held liable for the compensation, in accordance with the principle respondeat superior, if the offence was committed in the course of or by reason of the performance of official duty. No judicial awards for compensation for crimes of torture have been handed down since the adoption of the Declaration, because there has been nothing to justify such an award.

#### Question 13

Article 159 of the Code of Criminal Procedure provides that:

"Where the court finds that the evidence or confessions of an accused person have been extracted under torture or compulsion, it must hold such evidence or confessions null and void."

#### Question 14

The competent State authorities have given publicity to this Declaration through all the publicity media.

#### Question 15

No difficulties have been encountered in the application of legislative rules and texts since the promulgation of the Declaration.

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