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Israel/Denmark: Amnesty International calls on Denmark to fulfil its obligations under the UN Convention against Torture

On 15 August, Carmi Gillon, former head of the Israel's General Security Services (GSS), is scheduled to arrive in Copenhagen, where he is expected to take up his new post as Ambassador of Israel with the agreement of Denmark.

Carmi Gillon first joined the GSS in 1988, and became overall head of the service from March 1995 to February 1996. During his tenure, and until the Israel High Court of Justice ruled against such methods in 1999, GSS interrogators were officially sanctioned to use "moderate physical pressure" on detainees (the vast majority of them Palestinians). From October 1994, when a suicide bomb killed 23 people, they were allowed to use "increased physical pressure". Secret government guidelines set down what "moderate physical pressure" and "increased physical pressure" allowed; according to court testimonies of GSS members themselves, this included subjecting detainees to sleep deprivation, prolonged shackling in painful positions, hooding with filthy sacks, being forced to squat like a frog (*gambaz*) and violent shaking (*tiltul*). During Carmi Gillon's period of service with the GSS such methods of interrogation were used against several hundred Palestinian detainees every year, many of whom were later released without charge.

After the death of a detainee, 'Abd al-Samad Harizat, in April 1995 from a brain haemorrhage as a result of violent shaking, the ministerial committee which oversees the GSS were reportedly divided as to whether to allow an extension of the "exceptional dispensation" granted to the GSS to use "increased physical pressure". The GSS, then headed by Carmi Gillon, argued strongly that such means were necessary and that 48 attacks over the previous six months had been foiled as a result of special interrogation methods. At a meeting of the ministerial committee on 16 August 1995 the exceptional dispensation to use increased physical pressure was renewed until October 1995. The committee agreed that violent shaking was no longer "regular" and would continue to be used but only with the special authorization of the head of the GSS.

According to detainees' testimonies, violent shaking of detainees normally took place with the legs shackled below a low chair and the hands handcuffed behind and between the back bars of a chair; this diminishes the support for the detainee's back and thus his ability to resist the shaking. Detainees have frequently reported falling unconscious while being subjected to violent shaking; others said they felt they were choking.

A number of cases of violent shaking by special authorization of the head of the GSS, at that time Carmi Gillon, are recorded. On 24 August 1995 the head of the GSS was reported to have announced that, following the 21 August 1995 suicide bus-bombing in Jerusalem which had killed

four people and wounded 80 others, he had authorized the shaking of two militants, Naser 'Isa and Hatem Isma'il, whose confessions had enabled the GSS to discover a bomb factory.

The assertion that suicide bomb attacks could have been prevented by GSS interrogation techniques which amount to torture cannot be independently verified. However, international human rights treaties to which Israel is a state party forbid the use of torture under all circumstances, without exception. In May 1997 the Committee against Torture, the expert body which examines states' implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, found that the interrogation methods employed and not denied by Israel "also constitute torture as defined in article 1 of the convention".

Thus, not only was Carmi Gillon head of the GSS while it used interrogation techniques constituting torture, but he also authorized violent shaking - and continued to authorize this method even after it had directly caused the death of a detainee. Carmi Gillon has stated in interviews with the Danish media that he was involved in about 100 cases in which detainees were tortured or ill-treated; he effectively advocated the reintroduction of torture by stating in an interview to *Jyllands Posten* on 9 July 2001 that "Now it looks as though we have to use [techniques of physical pressure] again and I am sorry about that".

On 3 August, Amnesty International wrote to the Danish Government, reminding it of its duty under Article 6 (1) of the UN Convention against Torture, ratified by Denmark in 1987, to detain persons found in their territory suspected of responsibility for torture or to take other measures to ensure their presence pending criminal or extradition proceedings and, under Article 6 (2), "immediately [to] make a preliminary inquiry into the facts". The organization also reminded the Danish Government of its duty under Article 146 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, to which Denmark is a High Contracting Party, to search for and bring to justice persons responsible for grave breaches of that convention.

The Danish Government has traditionally opposed the use of torture, and has criticised Israel for using torture as an interrogation technique. However, the Danish Government has also refused to block Carmi Gillon's appointment and stated that it is obliged under the 1961 Vienna Convention on Diplomatic Relations to grant immunity to the diplomatic representative of a government.

However, the Vienna Convention was adopted some 25 years before the crime of torture was defined and codified in the Convention against Torture. The drafters of the Vienna Convention clearly did not envisage that it would reverse the fundamental rule of international law, as reflected in the Nuremberg and Tokyo Charters, and most recently in the Rome Statute of the International Criminal Court, that no public official is immune with respect to crimes under international law.

Likewise, the drafters of the Convention against Torture and the Geneva Conventions did not provide for any exceptions to the duty of a state party to extradite a suspect or to submit the case to its competent authorities for the purpose of prosecution, and their failure to do so is strong evidence that diplomatic immunities are not applicable to the crime of torture.

The Rome Statute, ratified by Denmark some six weeks ago, but not yet in force, is the latest instrument to make clear that there is no official immunity for crimes under international law. Article 27 (1) unambiguously states: "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute..."

The prohibition of torture in international law is absolute; affirming that the world community finds no circumstance in which torture could possibly be justified or excused. Some human rights may be temporarily suspended for various reasons to do with state security. But torture has been set apart, as one of the gravest violations possible, inexcusable under all circumstances. The use of diplomatic immunity to protect an alleged torturer from investigation and possible prosecution would be inconsistent with the international recognition of the extreme gravity of the offence.

By accepting Carmi Gillon's appointment to Denmark and the condition that he will be immune from prosecution in Denmark, the Danish authorities appear to be condoning the granting of impunity through appointments to diplomatic posts. However, under long settled international law, the government is not under any obligation whatsoever to accept Carmi Gillon's credentials. Indeed, as a state party to the Convention against Torture, Denmark has a duty not to provide a suspected torturer with a safe haven. The government should inform other states that they will not accept such a person except on the condition that the sending state agree to waive diplomatic immunity if the person is indicted by a national court or to agree to recall the suspect and conduct a prompt criminal investigation itself, and if there is sufficient admissible evidence, initiate a prosecution.

The Danish Government has announced that it intends to admit Carmi Gillon to take up his post and to accept his credentials as Israel's ambassador. If this is the case, Amnesty International would urge the Danish Government to initiate an investigation into the claims of torture against Carmi Gillon as soon as he arrives on Danish territory. Such an investigation must be prompt, thorough, independent and impartial. If there is sufficient admissible evidence to warrant it, a prosecution should be permitted to proceed, in Denmark, Israel or any state able and willing to conduct a fair trial without the possibility of the imposition of the death penalty or other cruel, inhuman or degrading treatment or punishment.

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