

Israel

**Briefing to the Committee against Torture,
57th Session, May 2016**

**Response to Israel`s 5th Periodic Report/ Israel`s Reply to the
UN-CAT`s List of Issues (questions 17, 43-44)**

Article 14 – Redress for Victims of Torture

**Article 3 - legislation of safeguards against refoulment of
asylum seekers**

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Table of contents

Reporting organizations	3
Summary of main points	4
Asylum seekers victims of torture living in Israel	6
Israel's policy towards asylum seekers victims of torture	7
Status	7
Detention and Danger of deportation.....	8
Lack of Identification of victims of torture	9
Lack of rehabilitation for victims of torture	10
Israel's implementation of victims' rights	12
Non-Refoulement protection to Palestinians fleeing torture and ill-treatment in the West Bank and Gaza	15
Recommendations.....	17

Reporting organizations:

ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel - submits this report to the United Nations **Committee against Torture** (hereinafter: **UN-CAT**).* **ASSAF** is an independent, non-profit, Israeli human rights organization that aims to promote the human rights of asylum seekers living in Israel and to change public discourse and official Israeli policy through public advocacy work. ASSAF also offers psycho-social support programs for the direct benefit of asylum seekers living in Israel without legal status.

IRCT - International Rehabilitation Council for Torture Victims. The world's largest membership-based civil society organization working in the field of torture rehabilitation and prevention, with a network of 144 torture rehabilitation centres across 74 countries. Its key distinctive feature lies in its holistic health-based approach to torture rehabilitation. In addition, the organisation defines itself as private, non-partisan, and not-for-profit, as well as governed by democratic structures.

The report examines Israel's implementation of article 14 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹ regarding the right to redress and rehabilitation for all victims of torture and ill-treatment. It specifically focuses on the situation of victims of torture² committed by non-Israeli perpetrators **outside the State's territory**, specifically with respect to the identification of torture trauma among asylum seekers and their access to rehabilitation.

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¹ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984

² For the purposes of this report, whenever referring to the term "torture", we refer also to "Other Cruel, Inhuman or Degrading Treatment or Punishment".

"In January 2004 the Eritrean authorities arbitrarily detained me. I was accused of helping to smuggle Eritrean people across the Ethiopian and Sudanese border and that I was an informer of an anti-governmental guerrilla group. While detained, I was subjected to torture tactics in order to get me to release information. I was originally in an underground prison. There I was tied in difficult position and left for hours. I was constantly beaten and left in a hole in the ground all day without food or water. At night, they would chain me to a window in standing position so that I would be unable to sleep.

After some time I was transferred to numerous labor camp prisons, where I was forced worked in terrible conditions without shoes and proper equipment. I worked from early morning to late at night, without adequate food or water. The conditions in all the prisons were terrible and inhumane; I was kept in extreme temperatures and dirty condition. I was regularly beaten when I was no longer physically able to work due to exhaustion. After 3 1/2 years in prison, with no trial or any hope for release, I decided to try to flee..."³

Summary of main points:

- 1. Thousands of torture victims had crossed the border to Israel from the Sinai desert, and are living in Israel today. They suffer from trauma as well as various physical and mental illnesses. This has a negative effect on many aspects of their lives, such as their ability to maintain a steady job; sustain a healthy family life; effectively seek asylum and settle in their new country of residence.**
- 2. However, Israel has no concrete legislative or administrative procedures for the identification of torture victims among asylum seeker populations, let alone for their long-term, holistic, appropriate and promptly accessible rehabilitation, as required by international law.⁴**

³ The testimony of B., a torture survivor treated by ASSAF.

⁴ For detailed information on the scope of the state obligation please see: UN Committee Against Torture (CAT), *General Comment No. 3: Implementation of Article 14 by States Parties*, 13 December 2012,

3. **Victims of torture, like all asylum seekers, live in Israel without status or rights; they lack access to general health care and welfare services, and are not qualified under the Israeli law for any specialized services, which will enable their proper rehabilitation.**
4. **It is imperative that effective mechanisms and procedures are established to identify torture victims among asylum seekers to ensure that they receive rehabilitation at the earliest point possible and that asylum procedures take account of their physical and mental traumatization.**
5. **Such mechanisms and procedures should be based on international standards including the Convention against Torture and the Istanbul Protocol. Furthermore, the Government of Israel has experience implementing mechanisms and procedures for identification, granting status and providing rehabilitation to victims of human trafficking. The lessons learned from this experience should form part of the basis of the elaboration of an identification and rehabilitation program for victims of torture and ill-treatment.**
6. **Furthermore, Israel is also receiving protection requests from Palestinians fleeing risk of torture and ill-treatment by the Palestinian Authority (in the West Bank) or Hamas (in Gaza) either due to alleged collaboration with Israel, "dishonoring the family name" or homosexuality. Despite having valid protection claims, claims from this group are often summarily rejected based on their status and sometimes false notions that they are eligible for protection from UNRWA.**
7. **It is imperative that Israel ensures that all individuals claiming protection due to a risk of torture and ill-treatment are duly processed and have a substantive consideration of their claims as required under UNCAT Article 3.**

CAT/C/GC/3, available at: http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf (hereinafter: "General Comment 3").

Asylum seekers victims of torture living in Israel:

8. According to the most recent figures by Israel's Ministry of Interior approximately 46,000 asylum seekers live in Israel;⁵ of these around 33,000 are Eritrean asylum seekers and around 8,500 are Sudanese.⁶
9. Since 2009, the Israeli authorities have been aware that activities of torture, as defined in UN-CAT, were taking place in the countries of origin in the Sinai camps,⁷ where Africans were held by traffickers for ransom, with the acquiescence of Egyptian and Sudanese state officials. In a report by Human Rights Watch from 2014, victims of torture stated that Sudanese and Egyptian security officers facilitated the abuse rather than arrested the traffickers and rescuing their victims.⁸
10. There is no official data concerning the number of how many asylum seekers living in Israel were tortured either in their origin states (Eritrea and Sudan), or on their way to Israel.⁹ ASSAF is aware of the release of 236 men and women from Israeli detention facilities in 2013, following their identification as victims of torture by the UNHCR. Furthermore, From December 2013 to December 2015 ASSAF identified and assisted the rehabilitation of 523 men and women asylum seekers victims of torture.
11. However, it has been estimated by Israeli human rights organizations that 7,000 victims who were tortured and held for ransom by traffickers in Sinai live in Israel.¹⁰ Although

⁵ *State Report*, para. 94: 47,000 immigrants stay in Israel after entering illegally through the Egyptian border.

⁶ *State Report*, para. 95: 67% of illegal immigrants are from Eritrea and 25% from Sudan. According to the Israeli Administration of Population and Immigration, as for 10/2015: 73% of illegal immigrants from Eritrea and 19% from Sudan. Population, Immigration and Border Authority (PIBA), Data on Foreigners in Israel, October 2015. Available at: <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/oct2015.pdf>.

⁷ *State Report*, para. 114-116, 184 ; Office of the National Anti-Trafficking Coordinator's Website, available at: <http://index.justice.gov.il/En/Units/Trafficking/HumanTrafficking1/Slavery/Pages/sinaitorture.aspx>

⁸ "[I Wanted to Lie Down and Die](https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt)", Trafficking and Torture of Eritreans in Sudan and Egypt, Human rights Watch, February 2014, available at: <https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt> (hereinafter: *HRW Report*).

⁹ See footnotes 13, 14 and 28.

¹⁰ Van Reisen, Estefanos and Riken, "The Human Trafficking Cycle: Sinai and Beyond [Draft]," Wolf Legal Publishers, 2013, pp. 62-64, http://www.eepa.be/wcm/dmdocuments/Small_HumanTrafficking-Sinai2-web-3.pdf. See also: Sigal Rozen, Hotline for Migrant Workers, "Tortured in the desert, imprisoned in Israel – asylum seekers detained under "Prevention of Infiltration (Offences and Jurisdiction) Law" June-September 2012. (Hebrew: עונו במדבר, נכלאו בישראל "מבקשי מקלט עצורים לפי החוק למניעת הסתננות") Available at: <http://hotline.org.il/wp-content/uploads/TorturedInSinai.pdf>.

almost all of them suffered a similar and even identical torture, only a small group of 250 people gained access to rehabilitation after being recognized by the state of Israel as **victims of human trafficking and slavery**.¹¹

12. Asylum seekers victims of torture, arrive to Israel following suffering some of the most horrific torments. They carry terrible physical and mental scars and are in great need for rehabilitation. Asylum seekers victims of torture living in Israel have elevated rates of anxiety, depression, and adjustment problems. Moreover, their hardship increases considering the circumstances of refugees' ongoing poverty, uncertainty about asylum, separation from or loss of family, change in family and gender roles and difficulties settling in the host country.¹² All of these conditions become more severe due to the lack of basic rights in Israel, as will be elaborated in the following sections.

Israel's policy towards asylum seekers victims of torture

A. Status

13. The state of Israel applies today a "non-return policy" or "non-deportation policy", under which the vast majority of asylum seekers from Sudan and Eritrea are granted temporary stay permits, pursuant to Article 2(a)(5) of the Entry into Israel Law, that do not confer any rights.¹³ By utilizing this policy, the government of Israel acknowledges the danger in these countries and does not deport asylum seekers to their countries of origin, especially to

¹¹ *State Report* para. 186-191. ASSAF has criticized the narrow language of the law, see: ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel, "We are Also Human Beings -Survivors of Torture Camps in Sinai", p.7 May 2014 Available at <http://assaf.org.il/en/sites/default/files/ASSAF%20%20we%20are%20also%20human%20beings%20%28english%20pdf%29.pdf>

¹² Alexis Fogel, ASSAF: Aid Organization for Refugees and Asylum Seekers in Israel, Evidence-Based Treatment and Considerations for Future Study Concerning Effective Therapies for Survivors of Torture, August 2013.

¹³ Yonatan Berman, Hotline for Refugees and Migrants, the Association for Civil Rights in Israel (ACRI), and Physicians for Human Rights exposes the depth of bureaucracy and systematic human rights violations occurring in the systems of the Population and Immigration Authority (PIBA), "The Labyrinth: Migration, Status and Human Rights", January 2016. pp. 50-51. Available at: <http://www.acri.org.il/en/wp-content/uploads/2016/01/The-Labyrinth-English.pdf>

countries with significant well documented evidence of widespread systematic torture and other ill treatment, such as Sudan¹⁴ and Eritrea.¹⁵

B. Detention and Danger of deportation

14. African asylum seekers who illegally enter into Israel are considered infiltrators and face detention and, under some provisions, deportation to a third country.¹⁶ A 5th amendment of Israel's controversial Prevention of Infiltration (Offences and Jurisdiction) Law was re-enacted in February 2016, allowing the imprisonment of newcomers in 'Saharonim' detention facility for 3 months, after which the asylum seeker may be detained in 'Holot' open detention facility for up to further 12 months.¹⁷ 3,050 citizens of Sudan and Eritrea were held in 'Holot' in December 2015.¹⁸ All women and minors are exempted from 'Holot', as well as men over the age of 60, men who are in charge of minor children, men whose detention could significantly harm their health, or if they were recognized as victims of trafficking.¹⁹
15. The detainees in 'Holot' often encounter lack of appropriate health services, shortage in food, lack of heating and other necessary commodities. In consequence, asylum seekers victims of torture who are detained in 'Holot', often suffer from deterioration in their already severe health and mental condition.²⁰ Without a suitable response to their condition, victims of torture suffer during their imprisonment from post-traumatic symptoms, such as nightmares, sleeping disorders, and tantrums.

¹⁴ See: <https://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>; ICC-02/05-01/09. See also Tsai AC, Eisa MA, Crosby SS, Sirkin S, Heisler M, et al. (2012) Medical Evidence of Human Rights Violations against Non-Arabic-Speaking Civilians in Darfur: A Cross-Sectional Study. *PLoS Med* 9(4): e1001198. Available at: <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001198> Amnesty International, *Agents of Fear: The National Security Service in Sudan*, 19 July 2010, AFR 54/010/2010, available at: <https://www.amnesty.org/en/documents/AFR54/010/2010/en/>

¹⁵ See: *UN Commission of Inquiry on Human Rights in Eritrea, Report of the detailed findings of the commission of inquiry on human rights in Eritrea - A/HRC/29/CRP.1*

¹⁶ Art. 30 & 30A, *Prevention of Infiltration (Offences and Jurisdiction) law – 1954*. See also *State Report para. 99-107*.

¹⁷ *Prevention of Infiltration (Offences and Jurisdiction) law*, Art. 32 (21).

¹⁸ See Ilan Lior, Haaretz, December 22, 2015. available at: <http://www.haaretz.co.il/news/education/.premium-1.2803734>

¹⁹ *Prevention of Infiltration (Offences and Jurisdiction) law*, Art. 32 (D)(b).

²⁰ Robert Tait, The Telegraph (April 2014). ['We are prisoners here', say migrants at Israel's desert detention camp.](#)

16. Many studies indicate high rates of depression and post-traumatic stress disorder (PTSD) among asylum seekers held in detention, as well as deterioration in mental health as imprisonment continues. In order to treat these symptoms and the consequences that come with them, it is essential that victims of torture are able to access comprehensive rehabilitative services.
17. On 31.5.15 Israel has announced a new policy requiring Eritrean and Sudanese nationals who are currently held at Holot facility and have no asylum application pending, either because they did not apply or were rejected, to leave to a third country, under confidential transfer arrangements, or face indefinite imprisonment. A petition against this policy was submitted in July 2015 by the Refugees' Rights Clinic at Tel Aviv University on behalf of a number of human rights organizations, including ASSAF, but was rejected in November 2015. An appeal is pending before the Israeli Supreme Court, temporarily freezing the implementation of this policy.²¹

C. Lack of Identification of victims of torture

18. Israeli Courts have recognized the fact that a vast number of asylum seekers found in its territory, whether in or out of detention, are in fact torture victims. Such a determination should result in a number of special measures being taken to ensure a fair asylum procedure and to ensure that their trauma is addressed. Nonetheless, no identification process for victims of torture arriving in Israel and no provisions for automatic release from the detention facilities have been established.²²

²¹Appeal on administrative petition 8101\15 Zegete v. Minister of the Interior. Available at: <http://www.ruling.co.il>

²²Art.30a(b)(2) of the *Prevention of Infiltration (Offences and Jurisdiction) Law 5772-2012* (hereinafter: *Prevention of Infiltration Law*) provide a number of bases for the release of an *infiltrator* (as defined by the *Prevention of Infiltration Law*). In As noted, Art.30a(b)(2) enables to release an *infiltrator* on the basis of “special humanitarian needs”, when a person’s health is at risk. The Administrative Court in Be'er-Sheva has determined that a recognition of victims of torture should be made on a “case by case basis” as being held in custody if men and women who have suffered “harsh experiences” (including kidnapping, imprisonment, torture and rape), may lead to adverse effects on their mental and physical state. In some cases it might reach the threshold of “special humanitarian need”. (Ad.P. 44920-03-13 (*Be'er-Sheva*), *Saba Tedsa et. al. v. The Ministry of Interior* (30.4.13)).

19. This puts torture victims at a significant disadvantage in terms of effectively engaging with asylum proceedings, avoiding deteriorating in physical and mental health and in securing much needed rehabilitation services.

D. Lack of rehabilitation for victims of torture

20. Lack of identification leads to lack of rehabilitation for torture victims, who are often left in complex psycho-social situations, suffer severe trauma, and are in dire need of medical care, welfare services and other forms of support.²³

21. Many torture victims suffer from medical problems resulting from the torture, such as: Injuries around their feet and ankles as a result of being chained to a wall for weeks or months at a time; mutilations to their arms, caused by the fractures in their bones after being broken by the torturers and left untreated for a long time, thus healing in a deformed manner.²⁴ In addition, victims of torture suffer from various mental disorders, such as: Depression and post-traumatic stress disorders, which involve psychosomatic pain, memory deficiencies, abstention, sleeping disorders and nightmares. Such injuries and disorders can be an obstacle towards earning their living. In consequence, Asylum seekers who are victims of torture often live in small and crowded spaces and deal with severe economic hardship.

22. Moreover, victims of Sinai torture camps often had to pay ransom worth thousands of dollars to traffickers, and owe large sums of money to members in the community who helped them pay the ransom money. At the same time, they are often unable to work. Consequently, victims of torture soon become a burden on their communities, and their susceptibility to exploitation increase significantly. The asylum seekers' community, a weakened community fighting for its own daily survival, lacks the ability to provide for the

²³ Report by ASSAF and Rupin Academic Center, August 2014, p.13, available at: <http://assaf.org.il/en/content/welfare-services-asylum-seekers-recommendations-report> (Hereinafter: Rupin Academic Center Report)

²⁴ Protocol of meeting no. 23 of the Knesset Committee on Foreign Workers, report of Dr. Ido Luria (then PHR-13 Israel's medical Director of the Open Clinic). See also: Physicians for Human Rights, "Captivity, Torture and Rape in the Desert, data on what is happening in Sinai, based on interviews with 284 asylum seekers", 23.02.2011, <http://phr.org.il/uploaded/Phr-israel-Sinai-Report-Hebrew-23.2.2011.pdf>

rehabilitative needs of torture victims, which require resources they don't have. The difficulty of torture victims to adapt to their life in Israel, sometimes leads them to cast themselves out of their community.

23. Despite the horrors and hardships victims of torture have passed through, which lead to their ill condition, mentally and physically, they are not eligible to any particular rights, and lack status, similar to all asylum seekers living in Israel. In consequence, victims of torture are caught in a legal limbo; while being allowed to remain in the country, they lack access to basic services such as formal work permits,²⁵ welfare services and health care, which are necessary in order to survive, advance, and integrate.

24. The policy of The Welfare Ministry denies all asylum seekers access to most services offering therapy, treatment, support and rehabilitation. Under this policy, torture victims are not eligible for health or welfare services, and are thus at risk that their already precarious physical and mental conditions will further deteriorate.²⁶

25. The Israeli National Health Insurance Law does not apply to asylum seekers, victims of torture included, thus denying them access to public health services, other than in times of medical emergency that immediately endangers person life or that may cause severe, irreversible disability²⁷. In principle, asylum seekers should be insured by their work place through private health insurance plans, regardless of their legal status or lack of a formal working permit. Nevertheless, this arrangement has many problems, such as: preliminary

²⁵ However, following pressure from the High Court, a “non-enforcement” policy is applied on the prohibition to employ asylum seekers. See further information in: Yonatan Berman, Hotline for Refugees and Migrants, the Association for Civil Rights in Israel (ACRI), and Physicians for Human Rights exposes the depth of bureaucracy and systematic human rights violations occurring in the systems of the Population and Immigration Authority (PIBA), "The Labyrinth: Migration, Status and Human Rights", January 2016. pp. 47. Available at: <http://www.acri.org.il/en/wp-content/uploads/2016/01/The-Labyrinth-English.pdf>

²⁶ ASSAF, "Asylum Seekers in Israel Lacking Access to Welfare Services", available at: http://assaf.org.il/en/sites/default/files/Welfare%20Services%20Asylum%20Seekers%20ASSAF%20April%202014_0.pdf

²⁷ Patient's Rights Law, 5756-1996, s. 2.

condition uncovered, reliance on the employer due to inability of the worker to insure himself, lack of enforcement, and more.²⁸

26. Instead, victims of torture may receive basic and partial medical care at the Health Ministry's "Terem" clinic, at the new "Gesher" mental-health clinic, or reach one of the very few services offered by human rights organizations, such as ASSAF and PHR. All of these limited services are located solely in south Tel-Aviv region. Consequently, torture victims living outside of Tel-Aviv have no access to medical or welfare services. The lack of accessible, ongoing medical treatment jeopardizes the health of all asylum seekers and especially endangers victims of torture, who suffer from physical disabilities, psychiatric illnesses, and are in great need for social care.²⁹

Israel's implementation of victims' rights:

27. Israel has an obligation to ensure that all victims of torture and other acts of cruel, inhuman or degrading treatment or punishment (hereinafter: "victims of torture"), without discrimination, are able to obtain redress, including "the means for as full rehabilitation as possible", regardless of whether the perpetrator of the violation is identified or convicted. As of march 2016, there is neither legislation nor an administrative procedure for the identification of torture victims, whether for those who were tortured in Israel and whether for those who were tortured abroad.

28. Redress includes the means for as full rehabilitation as possible, which has been interpreted by the Committee to be "holistic and include medical and psychological care as well as legal and social services". Effective rehabilitation services should be provided to all victims, taking into account a victim's background, and without any discrimination, regardless of a victim's identity or status including asylum seekers and refugees. In addition, state authorities should adopt a long-term integrated approach to rehabilitation, ensuring that

²⁸ Knesset center for Research and Information (June 2013). [Health services for foreign workers and status-less people \(Hebrew\)](#), 8.

²⁹ ASSAF (April 2014). [Asylum Seekers with Physical Disabilities and Mental health disorder](#), available at: <http://assaf.org.il/en/sites/default/files/Health%20Services%20Asylum%20Seekers%20ASSAF%20A pril%202014.pdf>

specialist services are accessible and appropriate to victims' needs. According to the Committee, this should include "a procedure for the assessment and evaluation of individuals' therapeutic and other needs based on, inter alia, the Istanbul Protocol". It is required to be objective and broad and include a comprehensive examination, which is adapted to the specific characteristics of torture victims, and include physical and psychological evaluations, and not be based solely on a legal review.

29. Furthermore, *UN-CAT* has emphasized that monetary compensation alone may not be sufficient redress³⁰ and that access to rehabilitation programs by all victims should not depend on identifying the perpetrator or pursuing judicial remedies,³¹ and must be readily accessible to victims, especially of marginalized and vulnerable groups.³²

30. Israel has experience with identifying and rehabilitation of vulnerable populations. As part of its efforts to address human trafficking, a procedure of identification, granting status and rehabilitating victims of human trafficking and slavery was published in 2007 and updated in 2010. The process of identification and rehabilitation for victims of trafficking was established by amending the Israeli Penal Law in 2006 creating five offenses criminalizing trafficking.³³ The procedure addresses the victims' status and length of rehabilitation.³⁴ The Israeli Department of Justice has also founded a Vocational Training for identifying victims of slavery and forced labor to train the personnel in the Saharonim facility, and *the Department of refugees and infiltrators at the Administration of Border Crossings, Population and Immigration*.³⁵ The identification process for victims of trafficking takes place either in detention, by the *Legal Aid Department* and a specialized department in the police, or

³⁰ *General Comment 3*, para. 9, 11-13.

³¹ *General Comment 3*, para. 3; 15; 26.

³² *General Comment 3*, para. 29. Para. 15 emphasizes that rehabilitation services should be accessible also to asylum seekers and refugees.

³³ *Prohibition of Trafficking in Persons (Legislation Amendments) Law - 2006*. See *State Report*, para. 108-110.

³⁴ Procedure of the Population, Immigration, and Border Authority, "Procedure for granting status to victims of 17 slavery and of human trafficking for purposes of slavery and forced labor" (06/15/2010), available at:

<http://www.piba.gov.il/Regulations/165.pdf>. Recently we are aware of information about a possible reduction and change in the unit's responsibility and funding. see: <http://www.haaretz.co.il/news/education/premium-1.2841385>

³⁵ Maria Ravinovitch, **Victims of exploitation for sexual purposes and slavery among infiltrators and asylum seekers in Israel** (Hebrew: המקלט בישראל ומבקשי המסתננים וקורבנות ניצול למטרות מין ועבודות בקרב המסתננים ומבקשי המקלט בישראל) p.5, available at: <https://www.knesset.gov.il/mmm/data/pdf/m02534.pdf>.

outside of detention, by the assistance of aid organizations. In both cases, identification as a victim of human trafficking is a long and complicated process.³⁶

31. Once identified, victims of trafficking have access to rehabilitation shelter for a year, during which they are given safe accommodation, food, hygienic supplies, legal aid, legal work permits, social and psychiatric services, medical treatment (excluding dental care), pocket money and programs during leisure time at the shelter.³⁷
32. This means that the Government of Israel already knows how to implement identification and rehabilitation programs and had accumulated experience in this matter. All that is missing is political decision making.
33. Meanwhile, ASSAF continues to identify and rehabilitate independently the most clear and severe cases of torture victims who arrive at its' door step.³⁸ ASSAF's team has developed several tools, responding to the variety of needs of torture victims, focusing on personal psycho-social care and the development of support systems.³⁹ In addition, PCATI has established the first provisional voluntary team for evaluations of torture victims in accordance with the Istanbul protocol, which has limited capacity.⁴⁰

³⁶ Maria Ravinovitch, **Mapping the State of Israel's attempts to combat trafficking of women**, (Hebrew: סקירת פעילות), (של מדינת ישראל בתחום המאבק בסחר בבני אדם: הטיפול בתופעת הסחר בנשים), Knesset center for research and information, p. 21, available at: <http://www.knesset.gov.il/mmm/data/pdf/m03296.pdf>

³⁷ Vika Goltsman, "Migrating birds: Services for victims of human trafficking – monitoring report, 2011" (Hebrew: "ציפורים נודדות" - שירותים לטיפול בקורבנות סחר בבני אדם, סיכום פעילות שנת 2011)

Available at: <http://www.macom.org.il/wp-content/uploads/2014/02/maagan.pdf> See also: Daphna Hacker and Orna Cohen, "Research Report – Israel shelters for women and men survivors of human trafficking, Tel-Aviv University March 2012.

(Hebrew: "דו"ח מחקר – המקלטים בישראל לנשים ולגברים שורדי סחר בבני אדם") Available at: <http://www2.tau.ac.il/InternetFiles/news/UserFiles/The%20Shelters%20in%20Israel%20hebrew.pdf>

³⁸ Apart from the testimony of the victim himself, ASSAF relies in its identification process on objective evidence, such as: day of arrival to Israel, time spent in the Sini desert, physical and mental condition and family or other community members testimonies.

³⁹ ASSAF, **"We are Also Human Beings" Survivors of Torture Camps in Sinai**", available at:

[http://assaf.org.il/en/sites/default/files/ASSAF%20-%20we%20are%20also%20human%20beings%20\(english%20pdf\).pdf](http://assaf.org.il/en/sites/default/files/ASSAF%20-%20we%20are%20also%20human%20beings%20(english%20pdf).pdf)

⁴⁰ UN Office of the High Commissioner for Human Rights (OHCHR), *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")*, 2004, HR/P/PT/8/Rev.1, available at: <http://www.refworld.org/docid/4638aca62.htm>

Non-Refoulement protection to Palestinians fleeing torture and ill-treatment in the West Bank and Gaza:

34. In recent years, Palestinians who fled from the Palestinian Authority- controlled West Bank or the Hamas-controlled Gaza Strip into Israel have cited torture and other ill-treatment by officials, armed groups and family members. The grounds for persecution were mostly alleged collaboration with Israel, "dishonoring the family name" or homosexuality. They face numerous obstacles in accessing protection in Israel and are under threat of being refouled to a danger of being subjected to torture. Around 20 cases are known to have reached the courts in Israel. However, due to lack of data, the exact numbers of Palestinian seeking protection in Israel under similar circumstances is unknown.

35. The only recourse for seeking international protection in Israel is regulated under the 1951 Convention relating to the Status of Refugees ("1951 Convention") to the exclusion of all other international legal frameworks, including the Convention against Torture. Those seeking protection by Israel have no other choice but to apply for Refugee Status Determination under the 1951 Convention.

36. Israel's position is that Palestinians who flee persecution in the Palestinian Authority or the Gaza Strip are not covered by the 1951 Convention under Article 1D of the Refugee Convention, according to which:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

37. This Article excludes from the benefits of the 1951 Convention "those Palestinians who are refugees as a result of the 1948 or 1967 Arab-Israeli conflicts, and who are receiving

protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East ("UNRWA"). Israel's position is that all Palestinians who have fled persecution, including torture on the grounds of their gender or sexual orientation should seek the protection of UNRWA. The State of Israel therefore refuses to accept asylum (RSD) applications made by those Palestinians or rejects such applications out of hand for this reason.

38. However, the majority of Palestinians residing in the West Bank and some of Palestinians who reside in the Gaza Strip are not eligible for protection or assistance from UNRWA as they do not fall under the definition of 1948 or 1967 refugees or are no longer eligible for such protection for various reasons. In cases where the individual is eligible for assistance by UNRWA, and still cites fear of persecution, including torture, in their place of residency, such claims must be given due consideration and examination. As a result, Palestinians seeking international protection in Israel, including victims of torture and other ill-treatment, are barred from any protection and thus face arrest and deportation to the Palestinian Authority or the Gaza Strip in violation of Article 3 of the Convention against Torture. In some cases, while in Israel they are exposed to criminal charges for unlawful entry into Israel and unlawful stay in Israel, and have no access to documentation, legal employment, or welfare and health services.
39. Individuals who petitioned to the Israeli High Court with the aid of the Refugees Rights Clinic at the Tel Aviv University or, in cases or arrests, the Public Defender's Office, were granted interim injunctions that protected them from arrest and deportation. They were still, however, prohibited from working (a prohibition that is not enforced in the case of other asylum seekers in Israel but is enforced in the case of Palestinians) and continue to get no access to health and welfare services. The vast majority of those Palestinians are forced into a life of prostitution, crime and drug abuse.
40. During several lengthy legal cases, the State of Israel was asked for its position regarding solutions for Palestinians fleeing persecution for reasons other than alleged collaboration

with Israel. In November 2014, Israel proposed a procedure whereby individuals could turn to Welfare Coordinator at the Israeli Civil Administration at the Ministry of Defense. Under this procedure, the Coordinator, a social worker, would examine the cases and seek welfare-based solutions for the asylum seekers within the territories of the Palestinian Authority, and with the aid of relevant bodies there. Only in exceptional circumstance can the Coordinator recommend granting short, temporary and limited leave to remain in Israel that includes no access to basic services. Such "solution" falls short of international standards for protection to those fleeing persecution, not least because it seeks to return ("refouler") a person to a place where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

41. Under The Citizenship and Entry into Israel Law (temporary provision) 5763 – 2003, Palestinians residents of the West Bank or the Gaza Strip are ineligible for legal status in Israel. However, the Law does allow the granting of status in cases of "special interest to the State". Such cases of "special interest" , it has been argued in the Israeli Court, should include granting protection to those eligible for it under International conventions signed and ratified by Israel, including the Convention against Torture.

Recommendations:

- 1) The establishment of an adequate mechanism for identification of victims of torture in Israel, which complies with Israel's obligations under UNCAT and the guidelines set by the Istanbul Protocol, and based on the knowledge accumulated through the existing mechanism of identification of victims of trafficking. The identification mechanism for victims of torture should be accessible to all asylum seekers in Israel, inside the detention facilities and outside of them, regardless of the date they entered the state of Israel.
- 2) Following the identification and recognition of victims of torture, rehabilitation should be provided, as required under Art.14 through:

- a. The eligibility of all recognized victims of torture to full access to public medical care, welfare services, and work permits.
 - b. The development and dissemination of public policies regarding full and complete redress to victims of torture and ill-treatment, based on the knowledge accumulated through the existing mechanism of rehabilitation for victims of trafficking. This includes access to the existing daytime rehabilitation centers and shelters in which they would be eligible for medical and psychosocial treatments appropriate for treating trauma of victims of torture, as well as cultural and linguistic accessibility.
 - c. The development of new specialized services that are of a sufficient quality to enable all victims of torture to achieve as full rehabilitation as possible. These services should take into account holistic rehabilitation methodologies such as combination of medical and psychological care as well as legal, social, community and family-based, vocational, educational services, and interim economic and reintegration support and that services are available for that purpose in all parts of the country.
 - d. The establishment of automatic exemption from detention or detention-like facilities to those recognized as victims of torture, for example by amending article 30A and 32D of the Prevention of Infiltration (Offences and Jurisdiction) Law.
- 3) The State of Israel should incorporate into its procedures a clear and effective process for individuals fleeing torture and are seeking international protection under the Convention against Torture even in cases where such persecution do not fall under the grounds of the 1951 Refugee Convention.
- 4) The state of Israel must ensure that Palestinians seeking protection for whatever grounds are able to apply for asylum in Israel and be granted a leave to remain for the duration of time such application is being considered
- 5) The State of Israel must state clearly, in its Procedure for Handling Political Asylum Seekers in Israel (Population, Immigration and Border Authority) and elsewhere that no application for protection will be rejected or dismissed at the point of submission solely on the grounds of the applicant's nationality.

- 6) The State of Israel must ensure that no asylum application is rejected on the grounds of Article 1D of the 1951 Convention without due process, including an interview with the applicant to determine whether he or she are legible for protection from UNRWA in its area of operations and, taking into consideration the nature of persecution, whether he or she can return to such territory and avail himself or herself of such protection.