



**Suggested Issues for Adoption of List of Issues Prior to Reporting UN Human Rights Committee's review of Israel at the 122nd session**

**Submitted by: Physicians for Human Rights – Israel**

<http://www.phr.org.il/en>

**Date: December 2017**

**About Physicians for Human Rights – Israel:**

Physicians for Human Rights – Israel (PHRI) stands at the forefront of the struggle for human rights—the right to health in particular—in Israel and the Occupied Palestinian Territory.

Founded in 1988 by a group of Israeli physicians led by Dr. Ruchama Marton, PHRI works to promote a just society where the right to health is granted equally to all people under Israel's responsibility.

**Issues Covered in this Report:**

Prolonged Use of Solitary Confinement, Solitary Confinement of Mentally Ill and Children

Forced Treatment of Hunger Strikers

Violation of Right to Health of Prisoners

Attacks on Palestinian Medical Teams and medical facilities

Denial and delays of Medical Visas

## Introduction

This report is submitted by Physicians for Human Rights Israel (PHRI). This report provides five major recommendations to the List of Issues Prior to Reporting. These issues relate to Articles 6, 7, 10, and 12 of the ICCPR.

Under Article 7, for the prolonged use of solitary confinement of those with physical or mental illness and minors, PHRI recommends: (1) Steps taken to limit the use of solitary confinement in general, ban the use of solitary confinement for those with mental and physical illness and invest the resources needed to address the shortcomings in the mental health treatment system for prisoners; (2) Steps taken to prohibit any use of prolonged solitary confinement that runs counter to international standards promulgated by Mandela rules, particularly prolonged use of solitary confinement for more than 15 days; (3) Steps taken to ban solitary confinement of juveniles (under the age of 18) and (4) Steps taken to prohibit doctors' involvement in solitary confinement.

Under Article 7, for forced treatment of hunger strikers, PHRI recommends: (1) Steps taken to reduce and limit the use of administrative detention; (2) Steps taken to end the mistreatment and CIDT of hunger-striking prisoners, including repealing the Force Feeding law and abolishing force treatment; (3) Steps taken to shift the responsibility of prisoner health care from the IPS to the Ministry of Health; (4) Steps taken to allow independent physician visits for prisoners, specifically hunger-striking prisoners; and (5) Steps taken to stop punishment of hunger strikers.

Under Article 6 and 12, for denial of medical visas, PHRI recommends: (1) Steps taken to abolish the current/existing exit permit mechanism and allow all Palestinian inhabitants in need of medical treatment, and their escorts, access and free passage to the best medical treatment available to them, without any delay; (2) Steps taken to eliminate the blockade of the Gaza Strip, allow the freedom of movement for people as well as the free passage of medicine and medical equipment; and (3) Steps taken to enhance the social determinants of health—including the status of vital health infrastructures and the health impact of environmental conditions—for residents of the West Bank and Gaza.

Under Articles 6 and 12, for attacks on Palestinian medical teams, PHRI recommends: (1) Steps taken to immediately cease Israeli security force attacks on medical teams providing care to Palestinian residents of the West Bank and East Jerusalem; (2) Steps taken to conduct timely investigations into complaints filed with Israeli security forces alleging attacks on medical teams; and (3) Steps taken to ensure that security forces are aware of and honor the protection of medical teams to facilitate the implementation of the highest attainable standard of health.

## Table of Contents

### 1. Reporting on State Party's Follow-Up Report

#### 2. Article 7: Prohibition of Torture and Cruel, Inhuman or Degrading Treatment

Prolonged Use of Solitary Confinement and Solitary Confinement of Mentally Ill and Juveniles

Forced Treatment of Hunger Strikers

#### 3. Article 10: Conditions of detention

Violation of right to health of prisoners

#### 4. Article 6, 12: Right to life, Freedom of Movement

Denial of Medical Visas

Attacks on Palestinian Medical Teams

### 1. Reporting on State Party's Follow-Up Report, Dated January 2017:

1.1. In Israel's State Party's Follow-Up Report, the Government of Israel (GOI) replied to Concluding Observation 12 that "Israel is currently *permitting the entry of almost any type of goods, as well as humanitarian aid*, into the Gaza Strip, except for munitions and dual-use materials."<sup>1</sup> (emphasis added)

1.2. Additionally, GOI replied, "The transfer of building materials was also approved for 696 large scale building projects, some funded by the Palestinian Authority and some by foreign countries or international organizations. These projects include the construction of infrastructures such as roads, water, electricity, public buildings, *medical facilities* etc. Of these large scale projects, 109 have been completed and 407 are under construction."<sup>2</sup> (emphasis added)

1.3. Regarding the movement of persons, GOI replied, "Permits are also issued for Gaza residents to travel abroad in order to participate in conventions, *special medical treatments abroad, and to pursue academic studies — mainly for advanced academic degrees*. As a gesture of goodwill toward the Palestinian Authority, exit permits from the Gaza Strip for academic studies were granted on several occasions to students studying for first and second degrees."<sup>3</sup> (emphasis added)

---

<sup>1</sup> Para 56.

<sup>2</sup> Para 63.

<sup>3</sup> Para 69.

1.4. For Concluding Observation 14, GOI replied, “Currently, following extensive discussions, the relevant authorities are in the final stages of drafting a Bill on the *prohibition of torture*.”<sup>4</sup> (emphasis added)

1.5. In response to these, as described in depth below, Physicians for Human Rights Israel (PHRI) provides background information as to what is happening in these areas from our vantage and offers recommendations to be included in the List of Issues for more reporting from other civil society organizations (CSOs) and GOI.

## **∴ Article 7: Prohibition of Torture and CIDT**

### **2.1. Prolonged Solitary Confinement of Prisoners and Detainees, Including Those with Physical or Mental Illness and Minors.**

2.1.1. Solitary confinement is a form of incarceration that is seriously detrimental to prisoners’ short and long-term mental and physical health, regardless of their mental and physical state. Solitary confinement involves the distancing of a prisoner from other inmates, for 22 or more hours a day,<sup>5</sup> indefinitely at times. Prolonged solitary confinement has been defined as a period beyond 15 days.<sup>6</sup> Solitary confinement fundamentally counters the effort to rehabilitate prisoners, which is one of the purported objectives of the Israeli Prison Service (IPS).<sup>7</sup>

2.1.2. Israeli regulations initiates solitary confinement via 3 main procedures: solitary confinement for and during interrogation,<sup>8</sup> solitary confinement as a form of disciplinary punishment,<sup>9</sup> and solitary confinement under a procedure called separation.<sup>10</sup> Solitary confinement under the separation ordinance is supposed to be a measure of last resort meant to achieve the following goals: prison security, preventing serious disruption of discipline and normal prison routine, maintaining the well-being and safety of the prisoner or other prisoners, state “security” and preventing violence or drug offenses. Individual cases brought to PHRI’s attention demonstrate that the separation order is also used as a form of punishment. Besides

---

<sup>4</sup> Para 78.

<sup>5</sup> *Mandela Rules*. at Rule 44.

<sup>6</sup> *Id.* at Rule 45. Rule 45 also specifically prohibits the use of solitary confinement on minors and those with mental illness when their conditions would be exasperated by such use.

<sup>7</sup> IPS website, “The IPS views as a key objective the treatment and rehabilitation of prisoners and preparing them for re-insertion into society after serving their sentence”.

<sup>8</sup> Regulation 5B of Israel’s Prisons Regulations, 5738 - 1978, S.H. 495.

<sup>9</sup> Article 58 of the Prisons Ordinance [New Version], 5732 - 1971, and IPS Commission Ordinance No. 04.14.00 “Detention in Isolation.”

<sup>10</sup> Article 19B of the Prisons Ordinance [New Version], 5732 - 1971, and IPS Commission Ordinance No. 04.03.00 “Holding Prisoners in Separation.”

these legislated procedures, the Israel Prison Service (IPS) holds prisoners under conditions of solitary confinement, in so-called protected wards.<sup>11 12</sup>

2.1.3. The IPS keeps no data on the number of prisoners placed in solitary confinement for the purposes of interrogation, disciplinary punishment or those on so-called protected wards. However, the IPS does collect minimal data on the number of placements under the separation order. The number of placements by the IPS in solitary confinement, under the separation order, have nearly doubled. In 2012, 390 placements in solitary confinement were recorded. That number jumped to 570 in 2013 and 755 in 2014.<sup>13</sup>

2.1.4. As an example, this chart with figures from July 2015, represents the IPS' use of solitary confinement for a period of longer than 15 days, showing the duration periods of solitary confinement for that month:

Number of Prisoners	Solitary confinement period
28	One day to two months
26	Two to six months
20	Six months to one year
34	One year to three years
2	Three to five years
7	More than five years

14

2.1.5. The negative health effects of solitary confinement can impact all prisoners, regardless of their mental and physical status, and affects different individuals unpredictably. Prison populations generally have high levels of mental and physical illness compared to the general population; with e.g. 57% of prisoners suffer from Attention Deficit Disorder, as compared to 4-5% in the general the population.<sup>15</sup> These are often not diagnosed, which puts those prisoners

---

<sup>11</sup> Ministry of Justice, Public Def., Conditions of detention and incarceration IPS Detention Facilities in 2013-2014. (July 2015), available at <http://www.justice.gov.il/Units/SanegoriaZiborit/DohotRishmi/Documents/prisonreport20132014.pdf>.

<sup>12</sup> Commission Ordinance No. 03.01.00—Rules on the Operation of Prisons for Criminal Prisoners defines the protected ward as: “1. A ward whose purpose is to house prisoners who, due to their negative behavior or to their being at risk or posing a risk, are separated from the rest of the prisoners, and who do not take part in the various prison activities. 2. Life in the ward shall follow a normal routine, with the prisoners in this ward kept separate from the other prisoners in the other wards. 3. Prisoners in this ward are not defined as prisoners held in isolation.” Because the IPS does not define protected wards as solitary confinement, they are neither included in the statistics nor given to any judicial review.

<sup>13</sup> Politics of Punishment: Solitary confinement of prisoners & detainees in Israeli prisons Status Report. Page 18. March 2016.

<sup>14</sup> *Id.* at 19.

<sup>15</sup> As based in a qualitative study reported in Kharuti Sober, Tali. “Fast Track to the Prison: 57% of the prisoners suffer from attention deficit disorder.” The Marker (Hebrew). 1 August 2016. Web. Accessed 3 October 2017. Such statistics are confirmed in prison populations elsewhere, with a recent study by the

in additional risk, as medical literature also demonstrates that solitary confinement exacerbates pre-existing mental and/or physical illness.<sup>16</sup> The Committee Against Torture, in its concluding observations after Israel's 2016 review, therefore recommended that Israel "put an immediate end and prohibit the use of solitary confinement and equivalent measures for...persons with intellectual or psychosocial disabilities."<sup>17</sup> Nonetheless, the IPS isolates prisoners with mental health issues as a way of dealing with the consequences of their mental condition. This was criticized in a recent report of the Public Defender's Office, which noted that prisoners with suicidal tendencies were held in isolation in the absence of appropriate alternatives.<sup>18 19</sup>

2.1.6. While juveniles only account for 2% of the prison population, they account for 6% of the solitary confined population.<sup>20</sup>

2.1.7. PHRI has received many patient files that demonstrate that prison physicians give solitary confinement medical validation. Physicians are required by prison ordinances to provide a medical opinion when a request is made to extend a prisoner's solitary confinement by separation order, including a description of the prisoner's medical condition and possible medical restrictions upon placement in solitary confinement.<sup>21</sup> This is contrary to codes of medical ethics and international standards, and impacts the position of doctors in society in general.<sup>22</sup>

---

U.S. Department of Justice estimating that 32% of prisoners report at least one physical or cognitive disability, compared to the population outside of prisons, where that figure stands at 10.9%. Morgan, J. (2017). Caged In: The Devastating Harms of Solitary Confinement on Prisoners with Physical Disabilities. Retrieved from American Civil Liberties Union Website: <https://www.aclu.org/report/caged-devastating-harms-solitary-confinement-prisoners-physical-disabilities>.

<sup>16</sup> Shalev, Sharon, A Sourcebook on Solitary Confinement (September 30, 2008). Available at SSRN: <https://ssrn.com/abstract=2177494>

<sup>17</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Concluding observations on the fifth periodic report of Israel. June 3, 2016.

<sup>18</sup> Public Defender's Office, Conditions of detention and imprisonment in incarceration facilities, 2016, p.10, available at <http://www.justice.gov.il/Units/SanegoriaZiborit/DohotRishmi/Documents/PrisonerReport2016.pdf> .

<sup>19</sup> In June 2017, the Ministry of Public Security, which oversees the IPS, circulated for public comment proposed legislation regarding the IPS regulations concerning individuals placed in solitary confinement. Under this legislation, a prisoner's health, the length of time he or she is in solitary confinement, and the reason for the solitary confinement would be considered by the IPS representative or the court when making the determination as to whether to place an individual in solitary or to prolong placement in solitary confinement. While this legislation is in its preliminary phase of consideration, if it is passed, its implications should be clearly monitored by the Committee.

<sup>20</sup> *Id.* at 17.

<sup>21</sup> Physicians for Human Rights Israel, Solitary Confinement of Prisoners and Detainees in Israeli Prisons, June 2011, p. 8

<sup>22</sup> [Code of Ethics for Nurses](#), International Council of Nurses, adopted 1953 and revised 2005, World Medical Association Declaration of Geneva, 1949, amended 1994. The World Health Organisation (WHO) recommends that "doctors should not collude in moves to segregate or restrict the movement of prisoners except on purely medical grounds, and they should not certify a prisoner as being fit for disciplinary isolation or any other form of punishment" (Health in Prisons, A WHO Guide to the essentials in prison health 2007:36). The official commentary on the revised European Prison Rules (EPR) similarly states

2.1.8. PHRI receives regular complaints from prisoners and detainees held in conditions of solitary confinement. These reports describe considerable suffering and deficient and insufficient medical treatment, as well as inadequate imprisonment conditions, in general, in solitary confinement cells.

2.1.9. On 23 February 2017, PHRI submitted a request to the IPS, under Israel's Freedom of Information law, to obtain further information regarding the use of solitary confinement writ large - as all prisoners may be psychologically and physiologically impacted by solitary confinement - but also specifically with respect to the solitary confinement of minors and persons with mental illness.<sup>23</sup> As of the date of this submission, PHRI has yet to receive a response.

## *2.2. List of Issues to Report On:*

*2.2.1 Steps taken to limit the use of solitary confinement in general, including banning its use for those with mental and physical illness<sup>24</sup> and investing the resources needed to address the shortcomings in the mental health treatment system for prisoners.<sup>25</sup>*

*2.2.2.. Steps taken to prohibit any use of prolonged solitary confinement that runs counter to international standards promulgated by Mandela rules, particularly prolonged use of solitary confinement for more than 15 days.*

*2.2.3 Steps taken to ban solitary confinement of juveniles (under the age of 18).<sup>26</sup>*

*2.2.4 Steps taken to prohibit doctors' involvement in solitary confinement.*

## **2.3. Israel's Policies and Practices towards hunger-striking Palestinians<sup>27</sup>**

2.3.1. For generations, Palestinian prisoners and detainees (hereinafter: "prisoners") held in Israeli prisons have used hunger strikes to protest their imprisonment under administrative detention, as well as the conditions of their detention. Hunger-striking is typically used as a last resort when all other forms of recourse are no longer available.<sup>28</sup> The IPS - which defines

---

that "medical practitioners or qualified nurses should not be obliged to pronounce prisoners fit for punishment but may advise prison authorities of the risks that certain measures may pose to the health of prisoners". Council of Europe. (2006). Commentary to recommendation rec(2006) 2 of the Committee of Ministers to Member States on the European Prison Rules.

<sup>23</sup> Letter from PHRI to the Israeli Prison Service (27 February 2017), on file with PHRI.

<sup>24</sup> Similar recommendations by Syria, Turkey from UPR.

<sup>25</sup> Similar recommendations by Cuba, France, Turkey from UPR.

<sup>26</sup> Similar recommendations by Bahrain, UK from UPR

<sup>27</sup> Including the Force Feeding Legislation, policy of shackling hunger strikers, and denial of independent physician visits, constitutes potential mistreatment, violations of the right to health, and/or CIDT.

<sup>28</sup> Administrative detention rates in Israel have been steadily rising over the past few years [http://www.btselem.org/administrative\\_detention](http://www.btselem.org/administrative_detention). Hunger strikes to protest prison conditions include

hunger strikes as a disruption of the prison order - attempts to forcefully subdue hunger strikers and silence their protest through a number of means of punishment, including denying entry of independent physicians, confiscating belongings and withholding medical treatment. Furthermore, the force feeding legislation, recently enacted and upheld by the Supreme Court, places hunger strikers at risk of CIDT.

2.3.2. The IPS usually denies the requests of hunger-striking Palestinians for an independent physician visit, in contradiction of IPS Directive No. 04.46.00.<sup>29 30</sup> Between May of 2013 and 2016, PHRI filed more than 15 court petitions on behalf of Palestinian prisoners in this regard, and only after filing the petitions did the IPS allow independent doctors to visit Palestinian prisoners.

2.3.3. Such physician visits are necessary, in part, due to the structure of healthcare services in Israeli prisons. Decisions about patient health are made by medical personnel from the IPS, which is subordinate to the security system and thus subject to political and security considerations.<sup>31 32</sup> A problem of dual loyalty exists, whereby IPS doctors, being directly employed by the prison services, are often in a state of conflict between the interests of their employers and their professional and ethical obligations toward their patients.

2.3.4. The denial of independent physician visits and the employment of prison doctors by the IPS were two matters discussed in the concluding observations by the Committee Against Torture after Israel's 2016 review. The Committee recommended that Israel should "consider transferring responsibility for all types of health care of persons deprived of liberty to the Ministry of Health, in order to ensure that medical staff can operate fully independently from the custodial authorities."<sup>33</sup>

2.3.5. Furthermore, along this continuum, the Force Feeding bill,<sup>34</sup> passed in July 2015 by the Knesset, authorizes a district court to permit the administration of forced medical treatment—including force feeding—to a hunger-striking prisoner. The Supreme Court upheld the law,

---

a recent 40-day hunger strike by approximately 1,100 prisoners. In total, around 1,500 prisoners participated. The prisoners protested the conditions of their imprisonment including: family visits, better medical care, and an end to solitary confinement.

<sup>29</sup> Allows for and regulates private doctors' visitations to prisoners for an external medical second opinion.

<sup>30</sup> Also in contradiction to the Patient's Rights Law.

<sup>31</sup> IPS' Budget Leaves Prisoners without Healthcare. June 2016. <http://www.phr.org.il/en/ips-budget-leaves-prisoners-without-healthcare/?pr=56>.

<sup>32</sup> The Palestinian Prisoners Hunger Strike of 2012. January 2013. Page 23. [http://cdn4.phr.org.il/wp-content/uploads/2017/05/PHRI\\_Report\\_The-Palestinian-Prisoner-Hunger-Strikes-of-2012.pdf](http://cdn4.phr.org.il/wp-content/uploads/2017/05/PHRI_Report_The-Palestinian-Prisoner-Hunger-Strikes-of-2012.pdf).

<sup>33</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Concluding observations on the fifth periodic report of Israel. June 3, 2016.

<sup>34</sup> Passed in July 2015. Israel's Prisons Ordinance (No. 48) 5775-2015, "Prevention of the harm of hunger strikers" (hereinafter "the Force Feeding bill"), legalizes force feeding, which constitutes CIDT and can amount to torture, running in contravention to international legal principles.

issuing a decision rejecting arguments challenging the law on grounds insufficient to justify the risk of CIDT the legislation poses to hunger strikers.<sup>35 36</sup>

2.3.6. The IPS punishes hunger strikers by revoking rights, which have an impact on health. The IPS revokes family visits and may put the hunger strikers in isolation.<sup>37</sup>

### 2.3.7. *List of Issues to Report On:*

#### 2.3.7.1. *Steps taken to reduce and limit the use of administrative detention*

#### 2.3.7.2 *Steps taken to end the mistreatment and CIDT of hunger-striking prisoners, including repealing the Force Feeding law and abolishing force treatment.*<sup>38</sup>

---

<sup>35</sup> Israel Medical Association v. Knesset (HCJ 5304/15). September 11, 2016. The Court reasoned that the law proportionally balances detainee's right to autonomy and state security. In actuality, the law completely violates the rights of the hunger-striking prisoner, potentially legitimizes torture, and gives the State increased power and control over a prisoner's body and life, in strict violation of medical ethics. Hebrew version available here <http://www.phr.org.il/wp-content/uploads/2016/09/%D7%94%D7%90%D7%9B%D7%9C%D7%94-%D7%91%D7%9B%D7%A4%D7%99%D7%99%D7%94-%D7%A4%D7%A1%D7%A7-%D7%93%D7%99%D7%9F.pdf>. English translation (translated by an organization with no relationship to PHRI) available here: <http://versa.cardozo.yu.edu/topics/prisoners%E2%80%99-rights>.

<sup>36</sup> While general United Nations treaties do not specifically refer to force feeding, the disregard for individual autonomy coupled with the amount of pain and anguish can amount to torture (Article 2(2) Convention Against Torture). Furthermore, the United Nations Special Rapporteurs on Health and Torture has urged Israel to halt the legalization of the Force Feeding bill (UN experts urge Israel to halt legalization of force-feeding of hunger-striking prisoners in detention - See more at: <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E>. Quoting "We are expressing grave concern at the allegations that the draft Bill amendment would allow the force-feeding and medical treatment of detainees and prisoners on hunger strike against their will. We are also concerned that the draft Bill may oblige doctors to act contrary to their code of medical ethics. In the context of the draft amendment to the Prisons Act to engage to force-feeding detainees, we would like to recall that acts or threats of forced feeding or other types of physical or psychological coercion against individuals who have opted for the extreme recourse of a hunger strike may constitute a cruel, inhuman or degrading treatment or even torture." See also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Concluding observations on the fifth periodic report of Israel. June 3, 2016). Additionally, the International Committee for the Red Cross (ICRC) opposes force feeding (Hunger Strikes in Prison: the ICRC's Position. <https://www.icrc.org/en/document/hunger-strikes-prisons-icrc-position>). In multiple cases, the European Court of Human Rights has ruled on force feeding using Article 3 of the European Convention on Human Rights, which prohibits the use of torture. (Nevmerzhitsky v. Ukraine (2005), Özgül v. Turkey (1998), and Ciorap vs. Moldova (2007)).

<sup>37</sup> A hunger strike is considered a disciplinary offense under § 56 (8) of the Ordinance, which deals with a prisoner who "refuses to eat the bread of his law," (literal translation. Basically, "refuses to eat what he's been given). In addition, a hunger strike may also be a disciplinary offense under § 56 (11) and 56 (41) of the Ordinance dealing with the destruction of food and the violation of discipline. The Prisons Service established a special commission order dealing with a hunger strike of prisoners (Commission Ordinance 04.16.00 Update dated January 19, 2005), which defines a hunger strike as a refusal to eat four meals (24 hours).

<sup>38</sup> Similar recommendations by Cuba, Oman, Syria from UPR

*2.3.7.3. Steps taken to move the responsibility of prisoner health care from the IPS to the Ministry of Health.*

*2.3.7.4. Steps taken to allow independent physician visits for prisoners, specifically hunger-striking prisoners.*

*2.3.7.5. Steps taken to stop policy of punishment of hunger strikers.*

### **3. Article 10:**

#### **3.1. Violation of right to health of prisoner**

3.3.1 The healthcare system in Israeli prisons is under the IPS, not the Ministry of Health, while doctors in prisons are not members of the Israeli Medical Association. Therefore, there is no supervision from the two medical bodies charged with health in Israel. Therefore, aside from considerations of dual loyalty detailed above, the prison health system also suffers from insufficient medical expertise of prison doctors and lack of health care quality reviews, with low medical standards and lengthy waiting times, preventing access to adequate medical treatment. According to international standards and ethical codes, the same ethical and professional standards must apply to the relationship between the doctor and the prisoner patient as between the doctor and the patient in the community.<sup>39</sup>

3.3.2. A significant proportion of prison doctors are generalists who have undergone no specializations and no prior training vis-a-vis prison populations. Meanwhile, no nurses are available and prison authorities hire paramedics instead, who do not have the adequate training and therefore skills to deal with the prison population. There are almost no psychologists at all and no psychotherapy treatment. Psychiatrists are available mostly for brief appointments to regulate levels of medicine.

3.3.3. Medical staff in prisons receive inadequate training. Although various committees since 2002<sup>40</sup> have made a variety of suggestions on upgrading the training of doctors, a report commissioned in 2012 indicated that the professional level of doctors was still low, as a result of the absence of training courses, specialization tracks and resources. For example, medical databases are not available to prison doctors, leaving them unable to keep abreast of medical

---

<sup>39</sup> Mandela Rules, rule 32.1

<sup>40</sup> Between 2002 and 2015, 3 committees were established, and 4 independent consultants reviewed the healthcare system within prisons. State Comptroller's Report, Ministry of Internal Security., The medical system for the treatment of prisoners In the Israel Prison Service, available at [http://www.mevaker.gov.il/he/Reports/Report\\_290/6be0a5d6-9d84-4e6f-b923-ca97dc5c21fe/65C-205-ver-3.pdf?AspxAutoDetectCookieSupport=1](http://www.mevaker.gov.il/he/Reports/Report_290/6be0a5d6-9d84-4e6f-b923-ca97dc5c21fe/65C-205-ver-3.pdf?AspxAutoDetectCookieSupport=1), p. 393.

innovations, a practice which is necessary to ensure quality healthcare.<sup>41</sup> According to the 2015 State Comptroller's report, which carried out an overview of the prison medical system, prison physicians in 2011 and 2013 did not undergo any training courses.<sup>42</sup> Although three training courses were held for physicians in 2012, no data is available as to their content. In October 2017, PHRI submitted a request to the IPS under Israel's Freedom of Information law to obtain information about what trainings have recently taken place.<sup>43</sup>

Importantly, paramedics are those effectively managing the prison clinic, as well as acting and clinic assistants, responsible for referrals, patient-screening, ordering medications and so forth. Yet despite the skills needed for such tasks, "they are not required to undergo and do not undergo any trainings related to management in general, and management of clinics specifically. This is despite the fact that the role of the clinic's supervisor requires expertise and expertise adapted to the nature of the work."<sup>44</sup>

3.3.4. Waiting times for treatment or medical examinations that are available only in public hospitals and clinics are often much longer than those for civilians. This is partly as a result of failures to set up appointments in time due to burdens placed on prison clinics, their inability to identify cases that have medical urgency, logistical incidents that prevents IPS staff from being able to accompany patients to their appointments, transfer of prisoners between prisons thereby necessitating making new appointments closer to the prison and so forth. PHRI receives regular complaints from those who, when seeking medical attention, are ignored by prison administration and instead of being referred to specialists are simply given pain relief. As a snapshot, in September 2017, PHRI was in the midst of legal proceedings for 4 prisoners whose medical treatment had been delayed for a time span of 1 week for a cancer patient to 5 years for an amputee.

3.3.5. Prisoners who wish to appeal regarding their medical treatment may turn to the Public Complaints Officer at the Ministry of Health or/and to the officer responsible for prisoners complaints in the Ministry of Public Security. However, these procedures are often difficult to access and inefficient in terms of handling complaints. Meanwhile, there are no external oversight mechanisms with the necessary tools to identify and address existing shortcomings of the medical services provided by the IPS.<sup>45</sup>

---

<sup>41</sup> A physician who is not reasonably updated in the latest medical research in their area of expertise may be liable for medical malpractice. State Comptroller's Report, Ministry of Internal Security, The medical system for the treatment of prisoners In the Israel Prison Service, available at [http://www.mevaker.gov.il/he/Reports/Report\\_290/6be0a5d6-9d84-4e6f-b923-ca97dc5c21fe/65C-205-ver-3.pdf?AspxAutoDetectCookieSupport=1](http://www.mevaker.gov.il/he/Reports/Report_290/6be0a5d6-9d84-4e6f-b923-ca97dc5c21fe/65C-205-ver-3.pdf?AspxAutoDetectCookieSupport=1). p, 408.

According to INSERT CASE, a physician who is not reasonably updated in the latest medical research in their area of expertise may also be liable for medical malpractice, p. 408.

<sup>42</sup> Ibid. p, 388.

<sup>43</sup> Letter from PHRI to the Israeli Prison Service (2 October 2017), on file with PHRI.

<sup>44</sup> State Comptroller's Report, p. 404.

<sup>45</sup> PHRI, *Prison Oversight and Transparency*, July 2008, available at <http://www.phr.org.il/en/prison-oversight-transparency-2008-phri-report/>

### 3.3.6. List of Issues to Report On:

3.3.6.1. Steps taken to ensure the independence of medical personnel that provides medical care to prisoners, including through transferring the responsibility of prison healthcare from the IPS to the Ministry of Health.

3.3.6.2. Steps taken to raise the professional and ethical standards relating to the medical treatment of prisoners so that they reflect standards within the public medical system.

3.3.6.3 Steps taken in the short term to provide adequate training for medical staff.

## 4. Article 6, 12: Right to Life and Freedom of Movement

### 4.1. Inhibited Access to Healthcare through Denial of Medical Exit Permits

4.1.1. One of the most critical human rights issues facing Palestinians in the occupied Palestinian Territory (oPT) is the restrictions placed on freedom of movement and the denial of the right to health that ensues.<sup>46</sup> When the healthcare needs of Palestinian patients extend beyond that which local institutions can provide, Palestinians cannot transfer to an external medical institution without receiving a medical referral and financial coverage from the Palestinian Ministry of Health.<sup>47</sup> Palestinian patients then have to receive a timely permit to enter or cross Israel on their way from the Coordination of Government Activities in the Territories (COGAT) and Israeli Security Agency (ISA), who is authorized to deny the request without giving any explanation to the applicant.<sup>48</sup> The majority of those seeking PHRI intervention come from Gaza. PHRI provides assistance to Palestinians seeking these permits and transfers whose requests are either delayed or denied outright. PHRI also collects data documenting trends regarding these requests for assistance.

4.1.2. Due to a lack of freedom of movement and the impact of the Gaza closure, critical social determinants of health<sup>49</sup> cannot be safeguarded in Gaza as it affects Gazans' ability to control and develop economic activities, education, and other realms of life necessitating access in and out of Gaza. As a result, when these determinants are not protected, there is an increased

---

<sup>46</sup> Special Rapporteur on the situation of Human Rights in the Palestinian Occupied Territories Office of the United Nations High Commissioner for Human Rights. November 7, 2016.

<sup>47</sup> In the period of time between April to July 2017, there was a significant decrease in the number of financial coverage requests covered by the Palestinian Authority. WHO Monthly Report, June 2017. [http://www.emro.who.int/images/stories/palestine/documents/WHO\\_monthly\\_Gaza\\_access\\_report\\_June-2017-Final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_monthly_Gaza_access_report_June-2017-Final.pdf?ua=1)

<sup>48</sup> Ghassan Mattar, Denied 2 8 (Physicians for Human Rights - Israel, August 2016) available at [http://www.phr.org.il/wp-content/uploads/2013/09/Refused2\\_digital\\_Eng.pdf](http://www.phr.org.il/wp-content/uploads/2013/09/Refused2_digital_Eng.pdf).

<sup>49</sup> Including the wider socio-economic context that influence health. Per the WHO, "The social determinants of health are the conditions in which people are born, grow, live, work and age."

likelihood of disease, mortality, and morbidity.<sup>50</sup> This created a situation that dramatically violates the right to health, including the lack of protection for its basic social determinants.<sup>51</sup> The human resources in the health field have concurrently been severely limited by the blockade, with health professionals prevented from leaving for higher education, trainings and seminars. From January - June 2017, only 35% of Ministry of Health staff in Gaza and health cluster partners were given permits to exit Gaza.<sup>52</sup> As a result, the need of patients to exit Gaza for advanced treatment only rises.

4.1.3. PHRI observations from recent years reflect troubling trends regarding the denial of exit permits to receive medical care in hospitals with necessary treatment and expertise available. The need to acquire a new permit for every appointment means that care is not systematic, and the chances of recovery are reduced compared to regular access to healthcare. The disruptions are more critical in severe diseases (i.e. cancer). In August 2017, 5 cancer patients died while waiting to receive security permits.<sup>53</sup> Upon PHRI's intervention, many earlier decisions regarding a patient's status were rescinded—suggesting arbitrary reasons for the initial response of the Israeli authorities.

4.1.4. In 2013, 88.7% of requests to travel outside the Gaza Strip due to medical needs were approved.<sup>54</sup> The monthly data from the WHO suggest that the rate of applications approved in 2015, stood at 75.8%.<sup>55</sup> So far in 2017, the approval rate has dropped to 46%.<sup>56</sup> There is not much difference between the denial and delay, because patients whose application for a permit is delayed rather than denied still lose their scheduled appointment—depriving them of medical treatment.<sup>57</sup> Once being delayed and rescheduled, patients must reapply for an exit permit—often without knowing why they were originally denied, thereby further delaying treatment options.

---

<sup>50</sup> Safeguarding Gazan Social Determinants of Health. April 2016. <http://www.phr.org.il/en/safeguarding-gazan-social-determinants-health-april-2016/>.

<sup>51</sup> Safeguarding Gazan Social Determinants of Health. April 2016. <http://www.phr.org.il/en/safeguarding-gazan-social-determinants-health-april-2016/>.

<sup>52</sup> Unable to leave Gaza for higher education, training or seminars, etc.

<sup>53</sup> WHO Monthly Report, August 2017.

[http://www.emro.who.int/images/stories/palestine/documents/WHO\\_monthly\\_Gaza\\_access\\_report\\_Aug\\_2017\\_Final.pdf?ua=1](http://www.emro.who.int/images/stories/palestine/documents/WHO_monthly_Gaza_access_report_Aug_2017_Final.pdf?ua=1)

<sup>54</sup> <http://www.emro.who.int/pse/publications-who/monthly-referral-reports.html>.

<sup>55</sup> Denied 2: Harassment of Palestinian Patients Applying for Exit Permits. [http://cdn4.phr.org.il/wp-content/uploads/2016/12/2-Refused2\\_digital\\_Eng.pdf](http://cdn4.phr.org.il/wp-content/uploads/2016/12/2-Refused2_digital_Eng.pdf).

<sup>56</sup> Average rate of delay and denial, calculated on WHO monthly reports in 2017.

<http://www.emro.who.int/pse/publications-who/monthly-referral-reports.html>

<sup>57</sup> Denied: Harassment of Palestinian Patients Applying for Exit Permits. <http://cdn3.phr.org.il/wp-content/uploads/2015/06/Denied.pdf>.

4.1.5. In 2015, after a significant percentage of assistance requests (61.7%) received by PHRI, the rejections and delays were overturned upon intervention. This suggests that these rejections were unjustifiable by both Israeli standards and international law principles.<sup>58</sup>

4.1.6. The last year and a half have seen, in line with a steep decrease in approval rates, a decline in PHRI's success in overturning COGAT decision. In the first half of 2016, only 25% of the applicants receiving assistance were granted reversals upon PHRI intervention.<sup>59</sup>In 2017, 37% of applicants receiving assistance received permits following PHRI intervention.<sup>60</sup>

4.1.7. Israeli authorities may condition exit permits from Gaza on being subject to questioning by or collaboration with the ISA, contrary to the patient's right to access treatment. These interrogations are not based on specific threats posed by the patients, but are used more in terms of information gathering. Patients are placed in a situation where they must choose between attending questioning and security for a permit, but being potentially branded as collaborators by their community in Gaza, or not receiving a permit for medical treatment.<sup>61</sup> The WHO has recorded almost a doubling of these security interviews in the past couple of years.<sup>62</sup>

4.1.8 Due to December 2017 8 out of 9 of the cancer patients' requests PHRI assist, were under review for many months with two women waiting 6 months for an answer from the authorities. These delays contradict COGAT's own new regulations, which limits the examination for medical requests to 23 days.

#### 4.1.9. List of Issues to Report On:

---

<sup>58</sup> The right to health is a principle enshrined in numerous international legal treaties stipulating basic human rights, which include Israel as a State party. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), states: "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The "progressive realization" principle, outlined in ICESCR, only requires States to take action according to their abilities and resources. The U.N. Committee on Economic, Social and Cultural Rights (CESCR) observed, "The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement (emphasis added)." Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which states, "Everyone shall be free to leave any country, including his own." Thus, the right to the highest attainable standard of health necessarily depends on the realization of incidental rights such as freedom of movement.

<sup>59</sup> PHRI, *Patients Trying to Exit Gaza Face Increased Difficulties*, September 2016, available at <http://us6.campaign-archive.com/?u=46951e06dc&id=2b77685e33>

<sup>60</sup> Average rate for the months of May - August 2017.

<sup>61</sup> Denied 2, p. 18.

<sup>62</sup> WHO, Right to Health: Crossing barriers to access health in the occupied Palestinian territory 2016.p. 19. In 2016, 755 applicants were invited to an interrogation, compared with 327 in 2014-2015.

4.1.9.1. *Steps taken to abolish the existing exit permit mechanism and allow all Palestinian inhabitants in need of medical treatment and their escorts access and free passage to the best medical treatment available to them, without any delay.*<sup>63</sup>

4.1.9.2. *Steps taken to eliminate the blockade on the Gaza Strip to allow the freedom of movement for people as well as the free passage of medicine and medical equipment.*<sup>64</sup>

4.1.9.3. *Steps taken to enhance the social determinants of health—including the status of vital health infrastructures and the health impact of environmental conditions—for residents of the West Bank and Gaza.*

4.1.9.4 *Steps taken immediately to provide answers for patients who submitted exit requests without any delays .*

## **4.2. Attacks on Palestinian Medical Teams and Investigative Impunity**

4.2.1. Since October 2015, an uptick in attacks against Palestinian medical teams by Israeli security forces has occurred with impunity. These attacks, which are in contravention to the protections afforded to medical teams under international law, have largely remained uninvestigated by pertinent agencies.

4.2.2. The Palestinian Red Crescent Society has documented 421 attacks against team members alone between October 3, 2015 and February 28, 2017. Over 160 staff and volunteers were injured and 108 ambulances sustained various types of damage.<sup>65</sup>

4.2.3.. PHRI, likewise, has investigated and filed complaints concerning 31 incidents where Israeli security forces harmed or hindered medical teams while carrying out their activities to the Police Investigations Unit, the Military Police Criminal Investigation Unit and other relevant departments. These filings explicitly documented injuries experienced by some of the medical personnel and residents in these areas. Injuries include: use of bullets and tear gas on ambulances, removal of injured people from within ambulances, and how the interference with the work of emergency teams resulted in grave consequences for patients.

4.2.4. In the overwhelming majority of cases, the investigations were downgraded, closed, and/or no action was taken—often without justification. At the time of this submission:

- 9 cases have received no response.

---

<sup>63</sup> Similar recommendations by Australia, Canada, Italy, Japan, Malaysia, Morocco, Pakistan, Palestine, Tunisia from UPR

<sup>64</sup> Similar recommendations by Bolivia, Cuba, Egypt, Jordan, Malaysia, Pakistan, Palestine, Qatar, Switzerland, Venezuela from UPR

<sup>65</sup> PALESTINIAN RED CRESCENT SOCIETY, PRCS' OPERATIONAL UPDATE (1/ 7/ 2016 - 31/12/2016), *available at* <https://www.palestinercs.org/reports/PRCSOperationalUpdateEn53.pdf.pdf>.

- The Police Investigations Unit<sup>66</sup> closed its investigations in 7 cases, claiming that they only investigate offenses that carry a punishment of more than one year even though these cases involved behavior with a potential risk to life, such as instances of shooting at ambulances. PHRI asked for an appeal in 6 of these cases.<sup>67</sup>
- In 5 other cases, the authorities argued that the circumstances did not justify the opening of an investigation.<sup>68</sup>
- Where the authorities have apparently opened investigations, through to PHRI's knowledge, they have never closed an investigation that resulted in accountability or disciplinary action.<sup>69 70 71 72</sup>

4.2.5. In July 2017, Israeli security forces raided al Makassed hospital in East Jerusalem. As stated to the hospital Director, forces raided the hospital to arrest a patient suspected of participating in riots and demanded a list of all injured patients from the hospital. Forces assaulted medical staff and delayed patient care.<sup>73</sup> Al Makassed is publicly licensed by the Israeli Ministry of Health (MoH), but despite PHRI complaints, the MoH has not publicly condemned this raid, which took place contrary to the MoH's own regulations regarding patient confidentiality. At the time of this submission, the MoH informed PHRI that they requested the police to initiate an investigation into the raid. When PHRI requested a timetable for the response, no answer was given.

4.2.6. The barriers placed on medical teams by security forces and the pattern of denial and delay of medical treatment to Palestinians suspected of carrying out attacks or taking part in protests are in contravention to international law and human rights standards, including the

---

<sup>66</sup> Unit for Public Complaints within the Israeli police department, which handles complaints dealing with inappropriate conduct by a policeman or improper conduct in policing duties.

<sup>67</sup> An appeal occurred at the end of October 2016, but authorities have failed to contact PHRI. After closing these cases, Makhash refereed them to the Unit for Public Complaints within the Israeli police department, which handles cases of inappropriate police conduct. In effect, this downgraded the complaints.

<sup>68</sup> In 1 case, authorities inaccurately attributed the closing of the investigation to the complainant refusing to be interviewed.

<sup>69</sup> In 3 cases, after Makash reached out for the complainant's details, PHRI asked Makash investigators to contact the complainant through the Palestinian coordination and liaison office (known as DCO), to ensure the additional safety to the complainant. No effort was made to do so.

<sup>70</sup> Two cases were apparently moved to the State Attorney's office, but since PHRI was informed of this, no movement has been made.

<sup>71</sup> In 1 case, Makhash requested the complainant's details on 1.11.2016, and made contact with the complainant, but PHRI has not been informed of any movement in the case since then.

<sup>72</sup> In 3 cases, the complainant did not want to give information, and so the investigation was closed.

<sup>73</sup> Armed Raid on al-Makassed, PHRI Report, July 2017. <http://www.phr.org.il/en/armed-raid-al-maqassed-hospital-report-2017/?pr=3579>

Geneva Convention provisions,<sup>74</sup> UN Resolutions,<sup>75</sup> and standards by the World Health Organization.<sup>76 77</sup> According to these standards, the wounded and sick must be cared for and the operations of the relief societies must be facilitated.

#### *4.2.7. List of Issues to Report On:*

*4.2.7.1. Steps taken to immediately cease Israeli security force attacks on medical teams providing care to Palestinian residents of the West Bank and East Jerusalem.<sup>78</sup>*

*4.2.7.2. Steps taken to conduct timely investigations into complaints filed with Israeli security forces alleging attacks on medical teams.*

*4.2.7.3. Steps taken to ensure that security forces are aware of and honor the protection of medical teams to facilitate the implementation of the highest attainable standard of health.<sup>79</sup>*

---

<sup>74</sup> Per the Geneva Conventions, civilian medical personnel shall be respected and protected (Article 15(1). Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977). Additionally, the Occupying Power should assist civilian medical personnel to perform their humanitarian functions (*Id.* at Article 15(2) and 15(3). Civilian medical teams should have unobstructed freedom of movement and access (*Id.* at Article 15(4). Article 13 states that "protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy."

<sup>75</sup> Humanitarian personnel are to be respected and protected ("Recognizing the particular challenges faced by humanitarian personnel exclusively engaged in medical duties and medical personnel and reaffirming that all humanitarian personnel are entitled to respect and protection under international humanitarian law,"). Civilian medical personnel are not to be attacked to ensure medical treatment to all needing persons ("Recalling further the specific obligations under international humanitarian law to respect and protect, in situations of armed conflict, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, and hospitals and other medical facilities, which must not be attacked, and to ensure that the wounded and sick receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required." U.N. Resolution 2286 (2016)).

<sup>76</sup> The Constitution of the World Health Organization (WHO) states that "protection of health is of value to all."

<sup>77</sup> The WHO recognized the importance for ensuring the safety and protection of medical workers (Outcome Resolution of the World Health Organization Executive Board Special Session on Ebola (54 I.L.M. 550; Special Session on Ebola).

<sup>78</sup> Similar recommendations by Australia, Canada, Malaysia, Morocco, Japan, Pakistan, Palestine, Tunisia, United States from UPR

<sup>79</sup> Similar recommendations by Canada, France from UPR