Physicians for Human Rights Israel's Submission to the Human Rights Committee on Israel's Sixth Periodic Review: Alternative Parallel Report on Israel's Violation and Failed Implementation of the International Covenant on Civil and Political Rights

About Physicians for Human Rights Israel (PHRI):
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 Palestinians and Israeli physicians, PHRI works to promote a just society where the right to health is granted equally to all people under Israel's responsibility.

I. Degradation of Palestinian Health System, Resulting in Harm to the Life and Health of Palestinians, Article 6, Article 12

1. Israeli policies have had a devastating impact on the Palestinian healthcare system and the Palestinian Authority's ability to develop the health system. These policies include the exploitation of natural resources and the expropriation of land, fiscal leakage of trade tax revenues, reduced income tax revenues due to high levels of unemployment and the economic impacts on restrictions on movement and access of people, goods and services, as noted in LOI para 8, 18,19 and 22 and in the 2014 concluding observations, art.9 and art. 14. As a result, there has been an ongoing violation of the right to life and health of Palestinians by the Israeli authorities. This has been confirmed by the World Health Organization, which emphasizes that "All aspects of life, encompassing underlying determinants of health, have been profoundly affected by the chronic occupation and situations of long-term displacement and blockade for Palestinians in the West Bank, including east Jerusalem, and the Gaza Strip".[1] These deliberate policies has created a situation whereby there has been a consistent damage to the Palestinian health services, which are — as a result of Israeli policies — inferior and less available than those offered to Israelis; namely, apartheid in health.

2. These striking disparities between the health services available to Palestinians in the oPt and to the population in Israel are apparent in budget allocation, funding for public medicine and number of hospital beds per capita. For example, there are 1.3 hospital beds per 1,000 people in the West Bank, compared to 2.2 in Israel, with 1.45 doctors per 1,000 people in the West Bank, as opposed to 3.1 doctors per 1,000 people, more than double, in Israel.[2]

3. The disparities in medical resources between Israel and the oPt are reflected in health indices, including life expectancy, infant mortality rates and maternal mortality rates. Palestinians in the West Bank also live, on average, nearly 7 years less than Israelis,[3] while infant mortality rates under the age of 5 in the oPt stand at 12.8 per 1,000 live births, four times as high as Israel's 3.1.[4] Major disparities also exist with respect to maternal mortality rates, standing at 47 per 100,000 in the oPt, compared to 2 per 100,000 in Israel.[5]

4. Freedom of movement restrictions have led to a fragmented health care system, which has forced the Palestinian Authority to duplicate health services so as to enable patients to access treatment without needing to relying on the arbitrary Israeli permit system. Moreover, the

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[1] Health conditions in the occupied Palestinian territory, including east Jerusalem, and in the occupied Syrian Golan, Report to the 74th World Health Assembly, 20 May 2021, available at https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_22-en.pdf [accessed November 5th]
[2] Responsibility Shirked: Israel and the Right to Health in the Occupied West Bank during COVID-19, Physicians for Human Rights Israel, August 2021, available at https://www.phr.org.il/wp-content/uploads/2021/08/4601_ResponsibilityReport_Eng_digital-FINAL-VER.pdf [accessed 5th November], p.22
[3] Ibid., p.18
[4] Ibid., p. 18
[5] Ibid., p.19

blockade and policy of restricting development imposed by the occupation, has led to a situation where the Palestinian health system has remained poor in financial resources and personnel and lacking in various spheres of medicine. The Palestinian Authority is therefore obliged to spend a significant portion of its healthcare budget on purchasing external health services. Medical referrals from the oPt to providers that are outside the public health system account for a substantial portion of the Palestinian health budget. In 2019, referrals outside the oPt, including Egypt, Jordan and Israel accounted for 11% of the total referrals.

5. The gaps between the health resources of the Palestinian health system, and that of the Israeli health system, only increased during the COVID-19 crisis. In early 2020, ventilators were in short supply in the West Bank and Gaza, with 10 ventilators per 100,000 people in the West Bank, as compared with 50 per 100,000 in Israel. These gaps continued throughout, with, by the end of August 2021, 1,430 COVID-19 tests per million people per day being carried out in Gaza and the West Bank, compared to nearly 16,000 in Israel - more than 11 times as many.[6] Israel vaccinated more than half of its citizens by March 2021, including Israeli settlers living in the oPt, while - at the time - only 82,000 doses of the Russian Sputnik V vaccine were delivered to Palestinians in the oPt, primarily donated by Russia and the United Arab Emirates. Israel has sent only 2,000 vaccines from its own reserves to the PA, intended for Palestinian health care workers but covering only a fraction of their actual needs.[7]

6. The GOI has argued that, under the 1995 Interim Agreement, the responsibility for the health system was transferred to the PA.[8] However, Israel's power, authority and control over most of the necessary conditions for protecting and promoting the right to health — side by side with its repeated violations of the right to health — has led to a situation where the PA cannot protect the right to health of Palestinians.

7. Since January 2020, 148 patients turned to PHRI to request that we fund medical monitoring and treatments in Israeli hospitals. These patients had their medical monitoring and treatments, including life-saving treatments, discontinued the PA could not afford to continue covering them and after Israel refused to do so, arguing it had no responsibility.

8. International humanitarian law stipulates that, as the Occupying Power, GOI is responsible for the health and welfare of the Palestinian population under its control.[9] This includes: (1) ensuring the population's access to adequate medical treatment (2) ensuring the medical supplies of the population if the resources of the occupied territory are inadequate. (3) guaranteeing prophylactic and preventive measures in case of epidemics.[10]

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[6] Our World in Data, August 31, 2021. Accessed November 15th.
[7] Israel's Vaccine Discrimination against Palestinians must End, Joseph Leone and Dana Moss, Physicians for Human Rights, available here: https://phr.org/our-work/resources/israels-vaccine-discrimination-against-palestinians-must-end/ [accessed November 15th].
[8] Ibid., p. 9
[9] Article 21 Hague Regulations of 1907 states that obligations for the sick and wounded are governed by the Geneva Convention.
[10] Geneva Convention (IV). Articles 14-23, 56.

9. Recommendations:

10. Recognizing the impact of occupation and apartheid on health, end Israeli control of occupied Palestinian territory to enable both the emergence of the necessary conditions for health and the ability of Palestinians to fully exercise their right to health, unhindered by Israel.

12. Provide and fund treatments that are not available, or unavailable at sufficient standards, in the oPt.

13. Allow for free and open passage between the West Bank including East Jerusalem, and the Gaza Strip, and by doing so enable the Palestinian healthcare system to function as a single unit

II. Denial of access to medical treatment by restrictions on freedom of movement, Article 6, Article 12, Article 24
LOI para 18, 19

14. Israel continues to deny Palestinian access to medical care across the oPt, by restricting freedom of movement through the permit system, with grave consequences to the health and life of Palestinians. This may also constitute inhumane, degrading treatment in violation of Article 7 of the ICCPR and Article 1 of the CAT.

15. When the healthcare needs of Palestinian patients extend beyond that which local institutions can provide — partly as a result of the de-development outlined above — Palestinians must apply for and receive a timely permit to enter or cross Israel on the way to Palestinian health facilities in the West Bank and East Jerusalem.

16. Permits, which are provided by the Coordinator of Government Activities in the Territories (COGAT) and Israeli Security Agency (ISA), are routinely denied outright or left unanswered by the Israeli authorities, both of which block patients from accessing appropriate medical care.

17. According to the World Health Organization, from July- September 2021, over 36% of patients from Gaza did not receive a medical exit permit to access their treatments in hospitals in East Jerusalem and elsewhere.[11]

18. From January 2021- December 2021, 139 patients reached out to PHRI after they were unable to secure a medical exit permit to access treatment. This included 68 women. During this time, PHRI succeeded in overturning 60% of the decisions of the Israeli authorities, highlighting the arbitrary nature of Israel's initial response to these patients.

19. Particularly vulnerable groupings are impacted by Israel's medical exit permit policies. The WHO notes that more than a quarter of patients applying for medical exit permits in Gaza are

[11] Health Access: Barriers for Patients in the Opt, WHO Report, July 2021, https://bit.ly/3AWKHPW

oncology patients.From January 2021 - December 2021, 51 cancer patients appealed to PHRI after they were denied access to medical care.

20. This has clear adverse repercussions on the life and health of Palestinians: a study found that mortality in patients unsuccessful in permit applications from 2015–17 was significantly higher than mortality among successful patients, with a hazard ratio of 1·45. [12]

21. Patients who need to leave Gaza for medical treatment are entitled to an accompanier, with, since 2018, a specific accompanier permit available for parents.The presence of an accompanier is especially important in the case of children, for whom parental presence can have an impact on medical recovery, while the reverse - needing to undertake a medical procedure without their parents - can have negative medical consequences on recovery speed and a lasting psychological impact. Since 2018, PHRI has received requests from 146 parents whose request to accompany their children for medical treatment were either refused or left unanswered. Their children therefore underwent critical medical procedures without their parents at their side. These children were aged from 4 months to 18 years, including breastfeeding babies.

22. The medical impact of separating children from their parents has been documented. During conversations with PHRI, staff at East Jerusalem hospitals noted that toddlers and young children separated from their parents refused to eat and interact with their environment, repeatedly asking for their parents. Indeed, childhood trauma created by separation from parents has been widely noted in medical literature. Separation threatens the attachment bond, which is critical to a child's inherent sense of protection and security and drives the brain development foundation for subsequent physical, emotional, social and cognitive maturation. When parents are removed from a child's life suddenly and without adequate support, childhood trauma can ensue through dramatically increased stress hormones, which risks becoming toxic, activating inflammatory and immune changes, considered to be a response to the increased risk of physical injury and healing required in situations of danger. Such processes drive the long term development of disease and disorder, while short-term impact includes chest pains, vomiting and significantly increased anxiety.

23. In 2019, as per the Ministry of Defense's response to a freedom of information request by PHRI, it was revealed that only 4,165 accompanier permits were given to parents while 5,289 medical exit permits were given to children.[13] This means that roughly 20% of children may have left without their parents. In 2020, according to an army spokesperson, 40% of children left Gaza without their parents.

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[12] Bouquet B, Barone-Adesi F, Lafi M, Quanstrom K, Riccardi F, Doctor H et all. Comparative survival of cancer patients requiring Israeli permits to exit the Gaza Strip for health care: A retrospective cohort study from 2008 to 2017, PLoS ONE 16(6):e0251058

[13] Forced Separation, How Israel's Permit Regime Separates Children undergoing Medical Treatment from their Parents, Physicians for Human Rights Israel, November 2019, p.2. Available here: https://www.phr.org.il/wp-content/uploads/2019/11/3786_ChildrenPaper_Eng.pdf [accessed 11th December 2021

24. PHRI's success in overturning the permit decisions made by the army for parents accompanying children testifies to the arbitrariness of permit refusal. Out of the 175 cases that PHRI received since the beginning of 2018, PHRI succeeded in overturning at least 110 permit decisions, demonstrating the arbitrary and unjustified nature of these refusals.

26. The List of Issues (LOI) published in 2019 *r*equested that Israel "ensure *an expedited system for approval of permits for medical treatment for patients from Gaza, particularly women and children*". Israel has not done so. The Committee's previous concluding observations, published in 2011, noted with concern that "*the blockade continues to hamper the freedom of movement with only limited categories of persons able to leave Gaza, such as medical referrals; to negatively impact on Palestinians' access to all basic and life-saving services such as food, health, electricity, water and sanitation*". Little has changed since then.

27. Recommendations:

- *Abolish the current medical exit permit mechanism and allow all Palestinian inhabitants in need of medical treatment and their accompaniers access and free passage to the best medical treatment available to them, without any delay. This should be the case for all patients, and especially the most vulnerable, including women and children with cancer.*

- *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.*[14]

- *Ensure all children needing to exit Gaza for medical treatment will be accompanied by at least one of their parents, whose requests for an accompanier permit must be confirmed prior to the child's hospital appointment, so as not to cause delay of treatment.*

III. Right to humane treatment of prisoners, Article 10

LOI para 15 *Treatment of people deprived of their liberty: Inadequate medical care and violation of the right to health of prisoners in IPS detention facilities*

28. The health system within Israeli prisons is solely under the responsibility of the Israeli Prison Service (IPS), unlike the health system provided to all other Israeli citizens and residents, which is under the responsibility of the Ministry of Health (MoH). As such, the health system in prisons operates without oversight or clear definitions of the services it is required to provide, and without the same standards of the Israeli public healthcare system. Contrary to the report of the State Party, the health system in prisons is in fact vastly inferior to the public system. This is particularly problematic as about 6,000 prisoners (out of a total of roughly 14,000 prisoners) suffer from some kind of chronic disease, which means that they require more medical care, not less.[15] The substandard medical care provided to prisoners further harms their health, in violation of article 10., as has been noted in previous Committee concluding observations. [16]

[14] Similar recommendations by Bolivia, Cuba, Egypt, Jordan, Malaysia, Pakistan, Palestine, Qatar, Switzerland, Venezuela from UPR

[15] Data obtained from the IPS by PHRI on January 1, 2019, under a Freedom of Information Request.

[16] See the following cases: Human Rights Committee 'Concluding Observations: Georgia' (2002) UN Doc A/57/40 vol I 53 para 78(7); Pinto v. Trinidad and Tobago (Communication No. 232/1987) Report of the

29. The IPS has no set health basket, thereby permitting it to decide upon treatment on a case by case basis for prisoners. The medical care funded by the IPS has been subject backtracking over the years - in 2007 the IPS noted that inmates would be entitled to the medical services package as available in one of Israel's 4 HMO's. Later, it was added that this would be subject to financial considerations. In 2019, the IPS added that the medical services provided to inmates would be according to the guidelines of the MoH. However, the MoH has no specific guidelines for the IPS as it does not consider itself responsible for the health of prisoners. This is part and parcel of the IPS's refusal to commit to a specific health basket framework. A recent example is that of Palestinian prisoner, Israa Jaabis, who suffered severe and extensive burns to her nose and hands, and while the IPS funded operations for the latter, it refused to do so for the former, even though these are offered as a routine procedure in the public health system , under the MoH, impacting her physical and mental health.

30. The IPS has an exceptions committee for treatments that cost more than 10,000 NIS (roughly 3,000 USD), but — unlike in the public health system — there is a lack of transparency: not only is there no specific health basket from which to request exceptions, but prisoners are not aware of this committee, nor can they appeal its decisions. The committee has no set timeline, potentially resulting in delays to treatment.

31. Sub-standard medical care was confirmed in an in-depth examination of 32 patient files of individuals suffering from chronic conditions, specifically high blood pressure, diabetes or heart problems by volunteer family medicine physicians at PHRI. These revealed routine failures by the prison health system. These failures include incomplete medical information, incomplete record of test results, no regular follow-up or vital examinations for patients at risk, and prescribing inappropriate medications. In 15 of the 32 cases reviewed, essential treatment was denied or the patient was in danger due to inadequate treatment or inappropriate response to his condition.[17] Inadequate medical care is a result of several factors.

A. Lack of professionalism of medical staff: The professional level of medical staff in IPS detention facilities is significantly lower than that of the medical staff in the community health system. Unlike in the public health system, where practitioners are required to undergo additional training and keep abreast of developments and where about half of the practitioners in family medicine settings are specialists, the IPS employs no specialists in the prison clinics. Moreover, IPS medical services rely mainly on

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Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; K8u90eelly v. Jamaica (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee 'Concluding Observations: Portugal' (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee 'Concluding Observations: Cambodia' (1999) UN Doc A/54/40 vol I 57 para 306; Human Rights Committee 'Concluding Observations: Congo' (2000) UN Doc A/55/40 vol I 43 para 282; Human Rights Committee 'Concluding Observations: Mongolia' (2000) UN Doc A/55/40 vol I 49 para 332; Human Rights Committee 'Concluding Observations: Syrian Arab Republic' (2001) UN Doc A/56/40 vol I 70 para 81(13).

[17] Health remanded to custody: the future of Israel prisons' health care system.Physicians for Human Rights Israel. https://www.phr.org.il/en/health-remanded-to-custody-the-future-of-israel-prisons-health-care-system/. [accessed 3 November 2021] p. 53

emergency medical technicians (EMT's), whose professional training is extremely basic and unsuitable for the extensive responsibilities they are given in prison. This has been confirmed by various State committees.[18]

B. Unavailable expert doctors: Although the GOI alleges that "examinations by expert doctors are available in the …hospital clinics",[19] during the COVID-19 pandemic access to expert doctors outside the prison walls has been limited. As a result of IPS restrictions on leaving and entering IPS facilities, individual prisoners appealing to PHRI confirmed that there was a roughly 3 month period during the first and second quarter of 2020 while specialist health services , medical tests and procedures were largely suspended, while prisoners were often not permitted to exit for treatment in hospital clinics. This was not the case in the public healthcare system outside the prison walls. Even after June 2020, the IPS limited exit during each successive COVID-19 wave. Currently, PHRI is representing 2 inmates who were not permitted to exit during the summer of 2021 to receive treatment for their eye condition, without which they may lose their sight.

C. Prison medics have been known to prevent access to further healthcare: Furthermore, while the State Party report notes that "a medical examination is conducted daily and an inmate can be examined by a physician upon request", in reality, the medical examination is carried out by medics, who distribute medication and who register requests to see a physician, and, as such, act as gatekeepers to the prison physicians. PHRI has received numerous complaints from prisoners who were unable to convince the medic that they deserved to see a physician.

D. Lengthy waiting times: The GOI argues that "Where a need arises for specialists or if there is a need for hospitalization, proper arrangements are made with the relevant hospital", yet in reality, prisoners requiring medical care in public hospitals are adversely affected by lengthy waiting times, impacting their medical care. These have been acknowledged repeatedly by the Israeli authorities, including the IPS, with the former IPS Chief Medical Officer noting that waiting times for medical appointments in the IPS are between seven and twenty times longer than in the community health system.[20] Cases examined by PHRI reveal that often, extraneous, non-medical considerations, such as the availability of a guarded escort to take inmates to hospital appointments, result in the cancellation of appointments.

E. Substandard facilities for those with mental and physical illness: although, as noted in the State Report, the IPS does operate separate detention facilities for prisoners with mental and physical illness, these do not address the health needs of these prisoners and places are limited. Neither have beds for either women or minors The detention facility for those with mental health illness, termed as Magen, is understaffed and staff is overloadedIndeed, in some of these facilities, the Public Defender's Office has noted

[18] The 2002 Israeli Commission Report, the Berlowitz Commission in 2015
[19] Israel State Party Report, art. 131.
[20] Ibid., p. 47.

their concern with respect to the use of bed restraints, which are used “contrary to the law, as a means of punishment.” As such, these facilities potentially cause further harm to the mental and physical health of individuals in prisons.

F. Substandard conditions of detention, especially impacting Palestinian prisoners: Substandard physical conditions of detention in IPS detention facilities directly and indirectly impact the health of prisoners. This especially so in the case of Palestinian prisoners termed “security prisoners”. These, according to reports of the Ministry of Justice,”suffer from particularly difficult conditions of detention”, including overcrowding. Moreover, Palestinian prisoners are particularly impacted by unavailable leisure, employment and educational frameworks, which appear to be, as confirmed by the Public Defender’s office, a matter of policy.[21] This not only harms the likelihood of rehabilitation but also has an impact on the physical mental health of prisoners and is contrary to the Mandela Rules.

G. Lack of appropriate complaint mechanism: 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, this procedure is 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.[22]

32. As a result, the 2016 Concluding Observations of the UN Committee against Torture, called on Israel to “consider transferring responsibility for all types of health care of persons deprived of liberty to the Ministry of Health” (art.21).[23]

33. Recommendations:

- *Work towards transfering the health system in prisons to a national medical authority.*
- *Ensure that the accepted standards in the public health system also immediately apply to the IPS health system, including through an identical health basket as that provided to Israeli citizens and residents.*

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[21] Conditions of detention and imprisonment in the detention facilities of the Prison Service in the years 2017-2018, Ministry of Justice, available here: https://www.gov.il/BlobFolder/reports/public_defender_detention_and_imprisonment_conditions_reports/he/prison_conditions_report_2017_2018.pdf, [accessed 5th December, 2021], p. 39

[22] Oversight and Transparency in the Israeli Penal System, Physicians for Human Rights Israel, July 2008, available here: https://www.phr.org.il/wp-content/uploads/2017/02/PHRI_Report_Oversight-of-Israeli-Prisons_2008.pdf, [accessed 5th December 2021].

[23] UN Committee Against Torture (CAT), *Concluding observations on the fifth periodic report of Israel*, 3 June 2016, CAT/C/ISR/CO/5, available at: https://www.refworld.org/docid/57a99c6a4.html [accessed 6 February 2022]

- *Ensure that the MoH carries out periodic inspections of the IPS medical system, and require the IPS to regularly provide health indices to the MoH, as all Health Maintenance Organizations are required to do*
- *Ensure the level of training available of IPS medical staff is the same as that of family doctors in the Health Maintenance Organizations*

IV. Article 10: Right to humane treatment of prisoners

Prisoners, including minors, prevented from informing families of their medical condition, even when in critical condition

34. Families of prisoners have no means of communicating with their families regarding their medical situation, either before or during their hospitalization, regardless of its severity. Palestinian prisoners, termed as security prisoners, cannot inform their families of their ordeal, even upon their return to detention facilities, as they are forbidden from using a telephone.

35. The IPS has no ordinance regulating contact between prisoners and their families. Hospital staff, meanwhile, does not work to try and facilitate contacts between these patients and their families, unlike in cases where the patient comes from outside detention facilities. In several cases documented by PHRI, hospital staff have been known to refuse to update families on the prisoner's situation, even when requested to do so by families. For example, in the case of suspected torture victime Samer Arbid, only upon PHRI appeal to the medical teams was Samer Arbid's wife granted information about his medical situation, which she was legally and ethically obliged to receive.

36. PHRI has assisted 11 such cases between 2019-2021, where prisoners and administrative detainees were hospitalized, including in critical condition, and their families were not informed, even for several weeks. Two of these individuals were minors. In some of these cases, even the Red Cross did not receive information regarding the prisoners' situation. In several of these cases, legal intervention was required in order to connect between the families and the hospital. As Palestinian prisoners are not permitted to use the phone, even upon their return to detention facilities, they could not directly update their families following their medical procedures.

37. Such a situation has a direct mental health impact on prisoners and detainees, as well as their families. Support from friends and family aids recovery efforts, while the current Israeli policy increases feelings of anxiety and solitude, negatively impacting likelihood of recovery.

38. In response to a PHRI request for information, the IPS stated that where the medical situation is complex, there is a practice in place of giving notice to the family, including the possibility of a phone call. This was not present in the 11 aforementioned cases. The IPS has previously justified its lack of ordinance by claiming that "when the medical condition is reasonable, the family is not updated for security grounds, so that they do not come to the hospital". [24]

[24] Letter from the IPS to PHRI, sent on 26.7.20, on file with PHRI.

39. A 2003 MoH circular has stated that all patients must, upon entry to the hospital, inform medical staff who should receive their medical information and that it is the responsibility of the health staff to, where the patient is unconscious, inform first degree family. This is done as a matter of routine by hospital staff, in cases where the patient is not a prisoner or an administrative detainee.[25]

40. Recommendations:

- *Ensure the IPS, the Ministry of Health and the Coordinator of Government Activities in the Territories (COGAT) publish a policy regarding the update on families of administrative detainees and prisoners who are hospitalized in public hospitals that enables immediate and ongoing communication between the families and the medical staff, and enable the families to be full partners in taking medical decisions.*

V. Prohibition of Torture and CIDT, Article 7

LOI 15 *The rules governing the use of solitary confinement for prisoners, including children and people with mental disabilities; Prolonged solitary confinement of individuals suffering from mental illness*

41. As demonstrated above, the Israeli authorities do not provide adequate medical care to prisoners. Moreover, the health of prisoners and their right to freedom from torture and CIDT is further harmed through the use of solitary confinement, which does not abide by international law standards.

42. The use of solitary confinement as a punitive measure is applied to all individuals in prisons, including minors, the mentally ill, pregnant and postpartum women and people with disabilities. This is contrary to the Mandela Rules, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as the Bangkok Rules).

43. Moreover, although the GOI claims that “solitary confinement is used only in a limited and closed list of 41 disciplinary offenses set in Section 56 of the *Prisons Ordinance* 5732-1971”[26], this is not the case. The separation procedure used by the Israeli Prison Service (IPS) and mentioned in the State Party report is, for all intents and purposes, de-facto solitary confinement. The IPS also uses solitary confinement for and during interrogation[27], and -

[25] Ministry of Health Circular, 53/2003, available here: https://www.gov.il/BlobFolder/policy/nd53-03/he/files_circulars_nd_ND53_03.pdf
[26] Israel: Fifth Period Report CCPR/C/ISR/5 (2019), para. 142.
[27] Regulation 5B of Israel’s Prisons Regulations, 5738 - 1978, S.H. 495.

besides these legislated procedures, the IPS holds many prisoners under conditions of solitary confinement, in so-called protected wards.[28] [29]

44. PHRI has received regular complaints from prisoners held in conditions of solitary confinement, including individuals with mental illness, who have been held in solitary confinement as a means of dealing with their condition, including e.g. the violent behaviours which may arise as a result of it. This routine placement of individuals suffering from mental illness in solitary confinement has been confirmed by reports of the Ministry of Justice, which noted that prisoners with suicidal tendencies were held in isolation in the absence of appropriate alternatives and that "the holding in separation stemmed from the difficult mental state of the prisoner". [30] [31] Indeed, the GOI explicitly confirms this in the State Report, attempting to justify solitary confinement under the separation order as "intended to prevent a prisoner, including prisoners with mental disabilities, from harming her/himself or harming other prisoners or the prison's staff."[32] However, medical literature demonstrates that solitary confinement exacerbates pre-existing mental and/or physical illness and even causes depression, anexiety and increased thoughts and attempts at self-mutilation and suicide.[33] [34] Notably, individuals who spent time in solitary confinement commit a disproportionate amount of prison suicides.[35] For this reason, the Nelson Mandela Rules, the 2019 World Medical Association Declaration on Solitary Confinement and Istanbul Protocol forbid the placement of individuals with mental illness in solitary confinement. As such, the GOI's very justification for the placement of individuals in solitary confinement contradicts international law.

45. The case of Y.D - who suffers from, interalia, schizophrenia - is a prime example of the way in which the IPS places individuals suffering from mental illness in solitary confinement, contrary

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[28] Ministry of Justice, Public Defender's Office., 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.

[29] 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.

[30] Ministry of Justice, 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.

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[32] Fifth periodic report submitted by Israel under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019: International Covenant on Civil and Political Rights, art. 142.

[33] Shalev, Sharon, A Sourcebook on Solitary Confinement (September 30, 2008). Available at SSRN: https://ssrn.com/abstract=2177494

[34] Craig Haney & Mona Lynch, 'Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement' (1997) 23 NYU Rev L & Soc Change 477 512-13), Haney 2003, p. 134, ———. 2003. "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement." Crime and Delinquency 49(1):124–56. https://www.ncbi.nlm.nih.gov/pubmed/24521238

[35] Shalev, *A Sourcebook*, p. 17. Add also ref to Kaba et al 2014 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/

to international law.[36] Prior to his placement in solitary confinement for a, Y.D. was not diagnosed with any mental health illness. He was diagnosed as schizophrenic following his initial placement in solitary confinement in July 2016. Since April 2019, he has been held in solitary confinement, with the exception of several hospitalizations in a psychiatric hospital. The IPS has argued that it placed him in solitary confinement because of the threat of violence posed by Y.D.. This, however, cannot justify placing him in solitary confinement, where his mental state - from which his violent actions stem - will deteriorate further. Y.D. Already a medical opinion submitted to Israel's Supreme Court by PHRI, who represent Y.D., noted that a causational link must be assumed between a new outbreak of a psychotic disorder from which Y.D never suffered before and his lengthy solitary confinement.

46. It is the responsibility of the Israeli authorities to find solutions for individuals in prisons who commit acts of violence that do not actively damage their mental health and infringe upon their basic human rights. These alternatives exist in various jurisdictions around the world and are tailored for cases such as Y.D, from temporary transfers to Mental Health Units in e.g. Pennsylvania to temporary stays in-house psychiatric hospitals in Norway.

47. According to Israeli Prison Ordinance 04.03.00, once an individual has been held in solitary confinement for 6 months, a District Court must approve the order of renewal of solitary confinement. On more than 6 different occasions, Israeli District Courts confirmed and lengthened Y.D's stay in solitary confinement - despite his clearly deteriorating mental state. Cases received by PHRI reveal that the Courts rarely contradict the position of the IPS and require the exit of these individuals from solitary confinement, therefore acting as a rubber stamp for IPS policy which contradicts international law both in terms of the duration of solitary confinement and the individuals placed within it. As such, the GOI's argument that "This preventive measure of separation is subject to re-examination procedures, judicial review and appeal"[37] is insufficient, bearing in mind the near-automatic renewal of solitary confinement by the Israeli courts.

48. IPS policy impacts many individuals with mental illness : prison populations generally have high levels of mental and physical illness compared to the general population. Internationally, studies have shown that as much as 37% of prisoners had been told in the past by a mental health professional that they had a mental disorder.[38]

49. The GOI's claim that "conditions provided in separation are similar to the conditions provided to all other prisoners"[39] has also been refuted by the Ministry of Justice's own reports. The Public Defender's 2019-2020 report underlines that there are "serious deficiencies prevailing in the segregation divisions, including inhumane physical conditions of incarceration, unavailability

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[36] Supreme Court petition number 7935/21, filed 18.11.21
[37] Israel: Fifth Period Report CCPR/C/ISR/5 (2019), para. 142
[38] Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12, U.S. Department of Justice, June 2017, found here https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf [accessed 2nd January, 2022]
[39] Ibid., para. 142

of social and medical care and lack of frameworks for rehabilitation, employment, education and leisure" and that there was great variability between different detention facilities.[40]

50. The IPS's use of solitary confinement demonstrates the lack of humanity and respect for the inherent dignity of the human person with respect to prisoners, especially when compared to decisions the Israeli authorities have taken with respect to other vulnerable populations. Since 2016, the use of solitary confinement in psychiatric institutions — which are under the responsibility of the MoH — was reduced by 60%.[41]

51. As such, the GOI's claims that "The manner and the extent of use of solitary confinement fully comply with international law standards" is incorrect.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."[42]

52. *Recommendations:*

- *Explicitly prohibit the placement of individuals in solitary confinement, especially of all vulnerable groups in solitary confinement, especially those with mental illness in solitary confinement and provide alternatives that do not cause harm to their mental health, including through investing the necessary resources to address the shortcomings in the mental health treatment system for prisoners.*
- *Prohibit District Courts from renewing solitary confinement orders for individuals with mental illness and provide training for judges on norms of international law relevant to prisoners and detainees*

VI. Freedom from Torture and CIDT, Free consent in Medical and Scientific Experimentation, Article 7

53. In Israel, a legal loophole exists regarding human trials conducted outside of hospitals. This definition excludes e.g. soldiers and prisoners, contrary to the HRC's General Comment 20.[43] Clinical trials are not regulated in primary legislation but by the outdated Public Health

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[40] Conditions of detention and imprisonment in the IPS detention facilities, 2019-2020. Public Defender's Office, Ministry of Justice, p. 18, available at https://www.gov.il/BlobFolder/reports/public_defender_detention_and_imprisonment_conditions_reports/he/Detention_Conditions_Report_2019-2020.pdf

[41] "Breaking the Restraints: the Restraining of Patients in Psychiatric Hospital, a Chronicle of Rights Violations", Bizchut Organisation, 2016, available here https://www.bizchut.org.il/_files/ugd/c0271d_ae795d26989d4bb594f11e07e36b6c1c.pdf, p.7 [accessed January 25, 2022]

[42] UN Committee Against Torture (CAT), *Concluding observations on the fifth periodic report of Israel*, 3 June 2016, CAT/C/ISR/CO/5, art. 25, available at: https://www.refworld.org/docid/57a99c6a4.html [accessed 17 January 2022]

[43] Under customary international law everyone has the right to health and integrity of their body, placing a severe prohibition of medical experiments, except in cases of informed consent.

Ordinance 1940 and the 1980 Public Health Regulations.[44] As a result, trials take place despite a lack of monitoring and control mechanisms, and without adequate legislative protections. This has enabled the unethical trial (1998-2006) on hundreds of soldiers for a vaccination for anthrax, which had serious implications on the life and health of soldiers.[45]

54. Although proposals to rectify this dangerous situation have been discussed in the Knesset since 2007, the MOH has not yet given it's input to these proposals, blocking any transformation of proposals into government-initiated legislation.[46]

55. With the purpose of attracting more pharma-initiated research into Israel, the MoH has led a more lenient policy for clinical trials. In 2021, aided by a lack of relevant primary legislation and an insufficient regulatory framework, the MoH adapted its informed consent form. This was carried out without transparency. This change - which was not announced publicly,[47] effectively deprives placebo patients participating in clinical trials from accessing the trial product. As such, it violated free and informed consent.

56. The current informed consent form states that "*"There is the option to continue and receive the trial's product free of charge even once the clinical trial has ended for a period of up to three years. This option … includes the following terms:*

- *It is known that **you have been taking the trial's product** at its determined dosage. (emphasis added)"*

57. Those currently participating or under recruitment for trials may - had they known they were not eligible - have refused to participate, as, for some, access to the trial product is the biggest motivator for participation. Therefore, this lack of transparency violates the free and informed consent of those individuals who are participating in clinical trials, including those hoping to access innovative, life-saving treatment.

58. Following pressure from PHRI, the MoH finally initiated an internal hearing, without public participation. The MoH clarified its position but did not change the distinction between those who had received the trial product and those who received a placebo. The updated informed consent form still does not explicitly warn participants that should they receive the placebo, they may not have access to the trial product at the end of the clinic trial.[48]

59. The UN Committee on Economic, Social and Cultural Rights, in its 2019 review of Israel, urged Israel to *"adopt framework legislation to regulate clinical trials on human beings and protect the right to health of persons participating in such trials, and put in place effective oversight mechanisms. It also recommends that the State party ensure that thorough investigations are carried out in cases of unregulated medical trials, and appropriate remedies are provided to participants."*[49] No such steps have been taken.

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[44] In it's Response to the List of Issues, Israel cites the 1999 Amendment to the Nation's Health Regulations, yet this applied only to genetic experiments. General regulations regarding clinical trials have not been amended since 1980.

[45] Sfard, Michael, 2016. Anthrax Experiment - Omer 2 - Failures in Legal Regulation. https://goo.gl/uNA9iR

[46] This issue was raised in various Committees since 2007 and legislation was proposed in June 2016.

[47] The forms are available online, but there was no public update regarding the change.

[48] Response of the Pharmaceutical Division to PHRI, 21 December 2021. Letter on file with PHRI

[49] U.N. Committee on Economic, Social and Cultural Rights, observations on the fifth periodic report of Israel, 12 November 2019, ¶ 61, E/C.12/ISR/4. Available here [accessed November 2019]

60. Recommendations:

- *Ensure the MoH supports and advances legislation governing all human trials, including through giving input on proposed legislation. Special attention must be given to the protection of vulnerable populations including soldiers, asylum seekers and prisoners.*

- *Ensure the authorities ban unregulated human trials until they are brought under the aforementioned legislation.*

- *Ensure Israel amends it's informed consent form in a transparent manner and ensures that all those participating in the trial may access the trial product.*