

## **Alternative Report**

To be considered by the UN Committee against Torture

During the examination of the fifth periodic report of

**CAT - Convention against Torture and Other Cruel Inhuman or  
Degrading Treatment or Punishment** by the state of ISRAEL

Submitted by:

**The Hotline for Refugees and Migrants and  
Physicians for Human Rights-Israel**

**March 2016**

### **About the reporting Organizations:**

**The Hotline for Refugees and Migrants** (hereinafter, HRM) is a non-governmental and non-profit organization, that aims to defend and further the rights of refugees and migrants, and to prevent trafficking in persons in Israel. The HRM is the only human rights organization in Israel that holds a permit to visit asylum seekers and migrants inside the detention facilities and its activists visit detainees several times a week since 1998.

**Physicians for Human Rights-Israel** (hereinafter, PHRI) is non-governmental and non-profit organization that strives to promote a more fair and inclusive society in which the right to health is applied equally for all. PHRI's activity focuses on the right to health in its broadest sense, encompassing conditions that are prerequisites for health, such as freedom of movement, access to essential medical services, clean water, modern sanitary conditions, proper nutrition, adequate housing, education and employment opportunities, and non-violence.

### **Contact persons for this report:**

Sigal Rozen

Public Policy Coordinator

Hotline for Refugees and Migrants, Israel

[sigal@hotline.org.il](mailto:sigal@hotline.org.il)

Zoe Gutzeit

The Migrants and Status-Less Department

Physicians for Human Rights-Israel

[zoe@phr.org.il](mailto:zoe@phr.org.il)

## Summary

This submission will focus on articles 2, 3 and 14 of the UN CAT and comment on the answers of the Israeli government to the CAT's following questions:

- **Question no. 12 under Article 2** regarding the impact of Prevention of Infiltration Law, allowing detention of torture survivors for up to a year, and in some cases for even longer.
- **Question no. 13 under Article 2** regarding prevention of human trafficking: the submission will prove a deterioration that allowed the detention for four years of at least three trafficking survivors due to lack of proper screening procedures.
- **Question no. 16 under Article 3** regarding the "Immediate Returns" of asylum seekers at the Egypt-Israel border. The submission will demonstrate how despite the government's statement before the High Court, immediate returns still occur.
- **Question no. 17 under Article 3** regarding legislation of safeguards against refoulement of asylum seekers. The submission will detail the "Rwanda - Saharonim" policy that regulates the refoulement of asylum seekers to Rwanda and Uganda where no legal status awaits them.
- **Question no. 20 under Article 3** regarding recognition of asylum requests: the submission will clarify that only four Eritreans and not even one Sudanese asylum seeker were recognized as refugees according to the convention and that Israeli authorities reject asylum requests regardless of their content only because they were not filed during the first year the asylum seeker entered the country, ignoring the fact that there were no possibility to apply for asylum until 2013.
- **Question no. 21 under Article 3** regarding steps taken to identify at the earliest stage possible asylum seekers who may have been subjected to

torture or ill-treatment and care provided to them. The submission will prove how the Israeli authorities ignore torture survivors and even if identified by NGOs, they deserve no treatment according to the Israeli law.

- **Question no. 43 (first part), under article 14** regarding the application of legal and other mechanisms to ensure fair and adequate compensation granted and programmes or services for rehabilitation to victims of torture and ill-treatment. The submission will show that the only program and rights are granted to a small group of recognized TIP survivors, less than 10% of the torture survivors who reside in Israel.

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## Introduction

At the end of December 2015, Israel hosted 44,599 African asylum-seekers, 73% of whom came from Eritrea (32,595) and 19% came from Sudan (8,531),<sup>1</sup> countries where most of them are likely to face – if returned – major human rights violations, including the risk of death and life imprisonment. Since 2008, the majority of these asylum seekers – over 30,000 – were given a 2A5 “conditional release visa” that needs to be renewed every one to two months in only three offices all around the country. This status only grants suspension from deportation without full access to basic rights. Of this group, up until now, only four Eritreans (and no Sudanese) were granted refugee status. Currently, 3,360 asylum seekers are administratively held in the Holot *de facto* detention facility on the Egyptian border for 12 months or until they succumb to the pressure to return to their homelands, and several hundred asylum seekers and migrant workers are held in the Saharonim detention facility, near Holot.<sup>2</sup> Most detainees in Saharonim will be transferred to Holot. A policy allowing indefinite detention in Saharonim of all Eritreans and Sudanese who have no pending asylum request awaits decision of the High Court of Justice (HCJ).

This briefing focuses mainly on approximately 4,000 Sinai Peninsula torture and CIDT survivors, as well as on approximately 400 Sinai Peninsula TIP survivors, mostly Eritreans and Sudanese still living in Israel as asylum seekers.<sup>3</sup> These people have been kidnapped and smuggled to the Sinai Peninsula, where they were held captive and tortured for months in order to pressure their families to pay ransom money.

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<sup>1</sup>The statistics are available in Hebrew at the PIBA website: [https://newgov.gov.il/BlobFolder/generalpage/foreign\\_workers\\_stats/he/summary\\_2015\\_update.pdf](https://newgov.gov.il/BlobFolder/generalpage/foreign_workers_stats/he/summary_2015_update.pdf)

<sup>2</sup>The numbers of detainees in Saharonim and Holot facilities are based on estimations of the HRM's activists, visiting the detainees several times a week. The numbers are constantly changing due to the fact the asylum seekers held in Holot are sent to imprisonment in Saharonim for violating Holot's regulations and new asylum seekers are summonsed to Holot about twice a week. Information about the situation in the Holot facility can be found at the HRM's report: "From One Prison to Another" dated June 2014, available at: <http://hotline.org.il/wp-content/uploads/Report-Holot-061514.pdf>

<sup>3</sup> Data is based on estimations of the writing NGOs and are supported by the UHNCR Israel

The torture included being chained for days or even months, starvation, beatings, burning, threats of organ harvesting, sexual assaults and rape.<sup>4</sup> The HRM's activists meet many of these survivors in administrative detention in Saharonim or Holot prison. In the absence of access to public health services, many of them frequent the PHRI open clinic for support, especially primary health care treatments.

This briefing raises serious concerns with Israel's adherence to the non-refoulement policy; with Israel's identification process of TIP victims; with Israel refusal to recognize the Sinai survivors as torture and CIDT victims; with Israel's refusal to grant them treatment – denying them access to health services and rehabilitation; moreover it brings up serious issues with the mandatory detention of many of the Sinai torture and CIDT survivors in the Holot facility: All in manifest violation of their basic human rights, in violation of the UN CAT.

#### **CAT Committee Question no. 12 under Article 2; regarding the impact of the Anti-Infiltration Law.**

The State's response refers to the Anti-Infiltration Law until its 4th amendment<sup>5</sup> was abrogated by the HCJ on September 22, 2014.<sup>6</sup> On December 2014, the Israeli Knesset legislated another amendment allowing a three-month detention of new coming asylum seekers, and the detention of others in the Holot facility for 20

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<sup>4</sup>See

<http://assaf.org.il/en/sites/default/files/ASSAF%20we%20are%20also%20human%20beings%20%28english%20pdf%29.pdf>

<https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt>

<sup>5</sup>About the 4<sup>th</sup> amendment of the Anti Infiltration Law (Offences and Jurisdiction) (4<sup>th</sup> amendment and Temporary Provisions) 2013: <http://www.acri.org.il/en/2013/12/16/new-petition-anti-infil/>

<sup>6</sup>HCJ 8425/13 *Gebrselassie v. Knesset et al*, September 22, 2014: <http://hotline.org.il/wp-content/uploads/Gabrislasi-English-Summation.pdf>

months, and reduced role-calls to only one a day.<sup>7</sup> Israeli Human Rights organizations served another petition to the HCJ and on August 2015 the HCJ found the section that allowed detention in Holot for 20 months un-proportional and ordered its reduction, temporarily setting a maximum detention period of 12 months. A new version of the anti-infiltration law that complies with the HCJ's order passed on February 8, 2016. During their three months detention in Saharonim and 12 months detention in Holot, asylum seekers are exposed to tremendous pressure exercised by the authorities, persuading them to leave the country.

**CAT Committee Question no. 13 under Article 2; regarding the prevention of human trafficking**

We will refer only to the Israeli authority's treatment of recognized trafficking in persons (TIP) survivors. During the last year, the HRM observed an improvement in the procedures of recognizing TIP survivors from Sinai torture camps. These survivors, however, are only being recognized if their case is being brought by the NGOs to the Anti-Trafficking Police Unit, after identifying, interviewing, locating witnesses and interrogating them, and preparing their files for the police. While more survivors are being recognized by the police unit, there was deterioration in the identifying and screening procedures of TIP survivors, and therefore, many survivors might not be identified for long years of imprisonment if they are asylum seekers from Eritrea or Ethiopia.

During 2015, NGOs prepared the files of 80% of the recognized victims. The HRM brought to the release of three TIP survivors after more than four years in prison. Other TIP survivors are not being identified because they are tourists from the FSU who have their valid passports with them, and therefore are being detained by the

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<sup>7</sup>The Amendment to the Anti-Infiltration Law and to Ensure the Departure of Infiltrators from Israel (2014): [https://knesset.gov.il/privateLaw/data/19/3/904\\_3\\_1.rtf](https://knesset.gov.il/privateLaw/data/19/3/904_3_1.rtf) (Hebrew)



Immigration Authority, and immediately deported. During 2015, the HRM was able to identify: 28 torture survivors in Saharonim prison. Of them, the HRM managed to release four so far, as they were recognized as TIP survivors.

As far as we know, during 2015 the Police Anti-Trafficking Unit recognized 35 TIP survivors from Sinai's torture camps; 19 of them were identified by the HRM, six of them were identified by ASSAF and three of them were identified by the UNHCR. That means that out of 35 TIP survivors this year, 28 (80%) were identified, interviewed and referred to the Israeli authorities by NGOs.

**Among the 40 African recognized TIP survivors from Sinai who reside in Atlas and Maagan shelters, 23, more than half, were identified and referred by the HRM.**

### **Three TIP survivors spent four years in the Israeli prison because of lack of identification**

In order to make abundantly clear the harrowing difficulties involved in securing freedom even for those survivors of torture who are supposed to be granted TIP survivors status, we've included in the appendix of this submission the testimonies of three survivors who spent four years or more in prison, and their sequence of events in Israel (see Appendix; Case studies 1,2,3). Due to the faulty identification procedure of the Israeli authorities, together with the extremely limited access of the HRM's activists to the prisons, incidents like this occur:

S.M., An Eritrean citizen who entered Israel in September 2011 was imprisoned for four years and two months in Saharonim prison until he was released.<sup>8</sup>

T.T.T., An Eritrean citizen who entered Israel in January 2011 was imprisoned for a

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<sup>8</sup>S.M (Prison number 1408779). First interview with him was conducted by Alexandra Roth Ganor on March 26, 2015 in Saharonim prison.

total period of four years in Saharonim prison before he was released.<sup>9</sup>

M.D., A native of Senegal, who grew up in the Ivory Coast, entered Israel in January 2012, and was released from Saharonim after four years of imprisonment in December 16, 2015.<sup>10</sup>

All three survivors worked for their traffickers and were supposed to be identified and released immediately, provided with social services, and gain the recognition and the rights of those who were TIP Survivors.

In the December 2014 amendment to the Anti-Infiltration Law there is a reference to the survivors of trafficking and slavery, and it is explicitly noted that survivors who are known or suspected to be victims of trafficking or slavery will not be summoned to Holot and will maintain their liberty.<sup>11</sup> Despite the efforts of the HRM and PHRI since 2010, the amendment does not grant the right of liberty to survivors of torture who did not work for their traffickers. These victims are going to the Holot detention facility like all other asylum seekers.

### **Summons of TIP Survivors to Holot under the Anti-Infiltration Law**

One of the most important accomplishments of the Anti-Trafficking Unit in the Justice Department during the 2014 legislation is that for the first time, it is specifically stated in the law that TIP victims who have been identified as such should

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<sup>9</sup>T.T.T. (Prison no 1381869). First interview with him was conducted by Alexandra Roth Ganor on June 2015 in Saharonim prison.

<sup>10</sup>M.D. (Prison number 1423574). First interview with him was conducted by Offer Atar on January 2014 in Saharonim prison.

<sup>11</sup>The Amendment to the Anti-Infiltration Law and to Ensure the Departure of infiltrators From Israel, December 18, 2014: [https://knesset.gov.il/privatelaw/data/19/3/904\\_3\\_1.rtf](https://knesset.gov.il/privatelaw/data/19/3/904_3_1.rtf) (Hebrew), section 32, D, b, 6 C.

not be sent to Holot. The law states as well that people who have yet to be recognized, but who are TIP survivors, will be exempted of moving to Holot as well.<sup>12</sup>

Since most survivors did not disclose what they had gone through in Sinai, nor were they asked to before, they have another opportunity during the hearing at the MOI before they receive a Holot summons. However, the manner in which hearings are held discourages and even prevents asylum seekers from doing so.

Employees of the HRM attended many hearings at the MOI premises and understood why torture survivors feel reluctant to tell their testimonies in the conditions they are placed during the interview: "Sometimes two interviews are conducted at the same time in the same small room. A man or woman must talk about their intimate relations, while at the same time another person has to explain their torture-trauma, extortion, and rape at the camps in Sinai on their way to Israel. All the while officials go in and out of the room constantly, and have hostile attitudes towards the interviewees, insinuating that they are lying even before they start talking. This is how the "interview" happens, and at the end, the official, without blinking an eye or having a sign of empathy, decides if they will be imprisoned or not".<sup>13</sup> This description comes from Ofer Attar, a case-worker at the HRM who witnessed many of these interviews.

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<sup>12</sup> The Amendment to the Anti-Infiltration Law and to Ensure the Departure of Infiltrators From Israel, December 18, 2014: [https://knnesset.gov.il/privateLaw/data/19/3/904\\_3\\_1.rtf](https://knnesset.gov.il/privateLaw/data/19/3/904_3_1.rtf) (Hebrew), section 32, D, (b), 6 (C).

<sup>13</sup> Ofer Attar, "What's the color of the pot?", The Hottest Place in Hell Magazine, July 3, 2015: <http://www.ha-makom.co.il/post/doar-ofar-attar> (Hebrew)

“I do not accept what you say now. I have reviewed the minutes of your hearings in the tribunal in Saharonim and one time you didn’t claim that you were raped.”

This was the conclusion of Eran Weintraub, a border control officer at the interview of B.G. on October 19, 2015. B.G. an Eritrean citizen, had been imprisoned in Saharonim for a year and a half, and received a summons to Holot after his release. He had a very difficult time but managed to tell the Border Control officer about his rape in the Sinai. The above quoted reaction of the officer discouraged B.G. from feeling comfortable to continue talking about his experience.<sup>14</sup>

The border control officer based his conviction that B.G. is lying, on previous protocols. Experience of the HRM's activists who witnessed hundreds and maybe thousands of hearings shows that the protocols are usually prepared in advance and that a lot of what the interviewees have to say is not reflected in the protocol. Even if an asylum-seeker is accompanied to their hearing with an assertive human rights activist, it does not ensure that their protocol will be accurately recorded.

**CAT Committee Question no. 16 under Article 3; regarding the "Immediate Returns" of asylum seekers at the Egypt - Israel border**

In its Concluding Observations of June 2009 the Committee against Torture criticized Israel's implementation of the "Coordinated Immediate Return Procedure" established by the Israel Defense Force (IDF) as a basis for the summary deportation of people who crossed the border back to Egypt (Committee against Torture,

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<sup>14</sup> Border Control Officer Eran Weintraub protocol of a hearing of B.G. (Prison no. 1446930), on October 19, 2015.

Consideration of Reports Submitted by States Parties under Article 19 of the Convention – Concluding Observations of the Committee against Torture – Israel, CAT/C/ISR/CO/4, 23 June 2009, para. 24). On April 2011 the Government reported to the High Court of Justice that it will cease the "coordinated returns" to Egypt due to the inability to coordinate the returns with the Egyptian counterparts. Based on this declaration, the Supreme Court erased the petition challenging the legality of the so called "Hot Returns" and remarked that if the Government wishes to resume the returns in the future, it should follow international standards for such returns and receive assurances for the safety of the returnees (Hct 7302/07 The HRM v. The Minister of Defense, decision dated 7.7.2011).

Since the official termination of "coordinated returns" the HRM and the Tel Aviv University Refugee Rights Clinic (hereinafter TAU Clinic) filed several complaints on discrete incidents during which the IDF returned migrants who crossed the Egypt-Israel border back to Egypt without conducting any procedure to ascertain whether those are people in need of international protection (such a complaint was filed on August 2, 2011. The IDF informed the organizations that a military police investigation would be carried out but the case was later closed without an official determination).

On July 2012 the HRM and the TAU Clinic filed a complaint that IDF soldiers were operating within Egypt's territory to stop migrants on their way to Israel and to hand them to Egyptian forces. The IDF Chief Attorney replied that IDF forces are entrusted with preventing migrants from "infiltrating" Israel, particularly where the border fence was not yet been completed and that the forces are operating according to Israeli and international law.

During 2014, the HRM collected eight testimonies from IDF soldiers who served along the border, indicating that the reduction in entrances to Israel is attributed, in

part, to the implementation of a “pushback policy”. According to the testimonies only several individuals still attempt to cross the border every month. A soldier from the Caracal Battalion of the Nahal Brigade testified of her time at the service along the border, during February 2014: “In the reception speech, the Battalion Commander told us about our three enemies: terrorists, smugglers of weapons and drugs, and infiltrators. The order about the infiltrators is clear: no one passes the fence.” The soldiers serving along the fence all reported that their commanders told them that those arriving at the border are not real refugees and are in fact coming to Israel to look for work. When ‘infiltrators’ are spotted in the cameras (that include night vision and can detect objects for distance of 5 KM), the soldiers are ordered to call the coordination unit that calls the Egyptian military stationed at the border. As a female soldier described it: “we call the Egyptians and they do the dirty work for us.” If the asylum-seekers reach the border before the Egyptian forces arrive, the soldiers are ordered to keep guard on their side of the fence. The soldiers tell the asylum-seekers that they cannot cross and shout at them. If the asylum seekers still attempt to climb the fence, the soldiers can hit them with the 2-meter antenna of jeeps, push the barrel of the rifle through the fence to make them fall, “and in case of this fail, we can shoot them in the feet”, as reported by a Nahal soldier.

In late August 2014, the HRM received information from a soldier about ten South Sudanese asylum-seekers who previously lived in Israel, were deported in 2012, and attempted to re-enter Israel. The information first arrived from an Israeli activist who kept contact with the families. He was told by their relatives that they crossed the border to Israel. Among the ten, there were three mothers with small children, two of them only one-month old. The HRM failed to locate the families in the Israeli prison, but shortly after, received information from a soldier at the border, according to which families who fit the description reached the border and their entry was denied. The soldier could not tell from where was the group since they did not check,

but he reported that they were told that the Egyptian branch of the ICRC took the family into Egypt. According to the activist, the families were held in Egyptian prison for several months and only at the beginning of 2015 the activist managed to bring to their deportation after financing their flight tickets from Egypt.

On July 2015, a similar complaint was made by the HRM and the TAU Clinic. According to the information received by the NGOs two groups of asylum seekers, 43 men and women, who entered Israel through its Egyptian border, were captured by the Israeli Defense Force, on two separate occasions and were immediately returned to the hands of Egyptian soldiers, without being given a chance ask for asylum and without even conducting a basic interview required according to the "Coordinated Immediate Return Procedure".

It should be emphasized that Israel and Egypt never signed a formal readmission agreement to ensure the safe transfer of asylum seekers back to Egypt and to protect their rights there. Moreover Egypt has a record of violating the non-refoulement principle and detaining and refouling Eritrean and Sudanese asylum seekers and refugees back to their countries of origin.

Deportation of new arrivals without any procedural safeguards and without a readmission agreement to Egypt violates the international prohibition on direct and indirect *refoulement* and may result in a violation of article 3 to the Convention. As mentioned above, current IDF regulations prohibit any such returns and the Government made an undertaking to the High Court of Justice that such returns would not be renewed without a written order and that such order would only be made in coordination with the Chief Military Legal Advisors.

In a response to the TAU Clinic's urgent appeal on the matter, the Chief of Staff in the

Ministry of Defense admitted that two events of unsanctioned returns did take place on June 2015, but that it was done based on the decision and coordination of the "tactical field forces". The letter stated that since such returns are a breach of the Military orders, the IDF re-informed its officers about the current policy prohibiting such returns. In reply to a follow-up question, the Chief of Staff replied that no individual measures were taken but the IDF clarified its policy to higher officers and to officers in the field and that future cases would be handled strictly.

Finally it should be mentioned that during November 2015 several incidents of shooting and killing migrants by Egyptian forces at the border occurred. The HRM received anonymous information from soldiers at the border, who were anxious that shooting light-torches to light the section when there is a suspected crossing of the border may endanger lives of migrants and expose them to shooting by Egyptian border guards.

**CAT Committee Question no. 17 under Article 3 regarding legislation of safeguards against refoulement of asylum seekers**

When discussing safeguards against refoulement we would like to draw to committee's attention to the "Rwanda - Saharonim" policy of the state of Israel which can be defined as constructive refoulement. If until March 2015 Israel only deceived Eritrean and Sudanese national to think that they can leave to Uganda and Rwanda where they will receive protection and work opportunities, as of April 2015, several dozen detainees in Holot were told they would be transferred to Saharonim if they refuse to leave to Rwanda.

**Deportation to Uganda and Rwanda**

**Israel's secret arrangements for the transfer of Eritrean and Sudanese nationals violate obligations under Article 3 of the Convention against Torture**



**Background:** As of 31 March 2015, Israel requires Eritrean and Sudanese nationals who are currently held at Holot facility and have no asylum application pending to leave to either Rwanda or Uganda or face indefinite imprisonment.

The threat of indefinite imprisonment of those who refuse to be transferred is an escalation of Israel's so-called "voluntary return" procedure. Despite the authorities announcement that only Eritreans and Sudanese who have no asylum application pending will be subjected to this policy, the HRM have information of at least three Sudanese nationals held in Saharonim prison who arrived Israel during 2015, submitted asylum request at Sahronim prison and are now demanded to leave to Rwanda or Uganda despite their open asylum claim.

According to the Israeli authorities, the procedure has seen 2,788 Eritrean and Sudanese nationals, including asylum seekers, transferred from Israel to third countries in 2014 and 2015 under secret transfer arrangements. The alleged transfer arrangements have not been open to scrutiny of their accordance with international standards by an objective third party, including UNCHR.

Israel has claimed that the secret arrangements guarantee the rights of those transferred to Rwanda and Uganda, including offering legal status, work permits and access to asylum procedures in the receiving states. Israeli authorities also claim that transferred individuals are protected against *refoulement* to home countries (chain *refoulement*).

However, testimonies collected by human rights organizations and UNHCR raise serious concerns that individuals transferred under such arrangements have not received the documentation promised to them and as a result have been subjected to arbitrary detention and risk chain *refoulement* to their home countries upon arrival to third countries.

Even prior to the current policy, the Israeli authorities have systematically coerced

Eritrean and Sudanese asylum-seekers to leave Israel though through less direct means and as part as their general policy towards African asylum seekers. The methods of pressures to leave have so far included administrative detention in the Holot centre, withholding of status, withholding of work permits, requirement to frequently renew the "Conditional Release" permits, as well as degrading and humiliating treatment by the authorities. The new policy does away with the so-called "voluntary" nature of the procedure by introducing for the first time a directly punitive measure for refusing to leave Israel in the form of indefinite imprisonment.

**Evidence of risk of *refoulement* and arbitrary detention in the receiving countries:**

In July 2015, the TAU Clinic together with a number of human rights organizations, have petitioned to the Israeli Court on behalf of two Eritrean nationals, claiming that the secrecy of the arrangements means that they cannot offer necessary safeguards and protections to individuals. The petitioners presented evidence collected by various bodies, including UNHCR, showing that the Israeli authorities inform individuals that their travel has been coordinated by the Rwandan authorities and that they will be met by a representative of the Rwandan authorities upon arrival to Kigali. Once in Kigali, all travel documents are taken away from the newly-arrived; individuals are taken to a closed compound, and are typically barred from leaving the premises. According to testimonies, individuals are told they must leave Rwanda and are offered the option of paying to cross the border irregularly to Uganda. During the journey to Uganda many are vulnerable to robbery, extortion and threats of arrest. Once in Uganda and without any documentation they are forced to pay bribes, apply for asylum while hiding the fact they have arrived from Israel or continue crossing borders irregularly.

One Eritrean who left for Rwanda via Israel's "voluntary" returns procedure said: "I have suffered by my decision to leave to Rwanda. When you [sic] reach Rwanda they

take our [travel] documents. Without documents you are nothing....anyone can ask you for a bribe. People arrive and they are arrested in Uganda or Rwanda and in South Sudan. I am not safe."

According to UNCHR, several Eritrean nationals who have remained in Rwanda were detained and were denied protection, including clear protection from *refoulement*. In other cases, Eritrean nationals who ended up in Uganda were also detained on the grounds of "illegal entry" and faced threats of deportation to Eritrea.

In court, representatives of the State of Israel claimed that as of May 2015 Israel has started monitoring the transfer procedure, but refused to openly share the findings of such monitoring in court. The State mentioned that Israeli representatives conducted talks and meetings with relevant representatives of the third countries and that in May 2015 Israeli delegations met with five individuals (either Eritrean or Sudanese nationals) in one third country and 13 individuals in another third country. The meetings were arranged by representatives of the third country and were conducted in their presence. Israel has also allegedly conducted phone conversations with 52 individuals (out of 163 that the Israeli authorities attempted to contact) who have been transferred and "only" four reported "special issues". The State representative also reported in court that some of the individuals transferred have called to "thank" Israel.

The State representative also informed the court that individuals receive prior to departure the contact details of an Israeli official who they can reach in case of a problem. Eritrean nationals who presented affidavits to the court, however, claimed the details were written in English, which they couldn't read and that the papers with the details were taken away from them immediately upon arrival to Rwanda alongside other documentation. In addition, testimonies indicate that the individuals concerned had no means of contacting the Israeli authorities in the compound they

were taken to. One phone call, from Israel, to the phone number given by PIBA, was given the reply that the contact person cannot help with issues arising after landing in Rwanda.<sup>15</sup>

The petition to the court was rejected in November 2015 following two hearings in the presence of the State representative and the judge only. The court ruled that the petitioners have not managed to provide sufficient proof of arrests in Rwanda or threats of deportation from Rwanda to Eritrea and that the State of Israel can request Eritrean or Sudanese nationals to leave to Rwanda or face indefinite imprisonment. An appeal has been submitted to the Israeli Supreme Court.

The current legal procedure has halted the implementation of the policy, according to which Eritrean and Sudanese nationals who are required to leave Israel to a third country are summoned to a hearing and given 30 days to make their decision. Individuals who refuse are called to another hearing and given their imprisonment orders. More than 40 Eritrean nationals have been required to leave to Rwanda under the new policy so far. More than 10 have refused to leave and subsequently face imprisonment. In a hearing held in the Supreme Court on March 15, 2016, in front of five Judges, The lawyers representing human rights NGOs presented the findings of the NGOs on the subject and stressed the inherent problems with a secret agreement - asylum seekers are supposed to agree to be sent to a foreign country without knowing whether there are guarantees to their safety. In addition, the lawyers argued that there is no objective mechanism that supervises and keeps track of asylum-seekers departing Israel. The justices asked the representatives of

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<sup>15</sup>More detailed information and testimonies of deportees can be found in the HRM and ASSAF's report "Where there is no free will", April 2015, available at: <http://hotline.org.il/en/publication/where-there-is-no-free-will/> . Ten affidavits of deportees can be found in the HRM's report "Deported to the Unknown", December 2015, available at: <http://hotline.org.il/en/publication/deported-to-the-unknown-2/>

the State to expound on the issue of whether an independent judiciary exists in Rwanda and suggested placing an Israeli representative there who will be able to address complaints. Following this, the State argued alone, behind closed doors, due to the confidentiality of the agreement with Rwanda. An additional hearing was set for the end of April in the presence of the State alone. The state will be required to provide answers to the questions raised by the justices during the hearing.

**CAT Committee Question no. 20 under Article 3 regarding asylum requests - Lack of access to effective asylum procedures in Israel**

The requirement to leave Israel under the secret arrangements is mostly directed at individuals who either had their asylum application rejected or have failed to submit an application for asylum. In practice, the policy targets Eritrean nationals as most applications submitted by Sudanese nationals are yet to be decided upon by the Israeli authorities. Israel's Population and Immigration and Border Agency (PIBA) has decided that the undisputed risks faced by Eritrean nationals who fled national service in the country do not fall under the grounds for refugee status as described in Article 1 of the Refugee Convention. PIBA continues to reject asylum applications by Eritrean nationals despite a number of ongoing appeals. The majority of Eritrean nationals who are held in administrative detention in Holot are not able to afford the legal counsel required for such appeals and therefore are subject to the policy demanding them to choose between indefinite detention in Saharonim or deportation to Rwanda.

Refugee recognition rate in Israel stands at 0.36% for the period between July 2009 and February 2015. As of January 2016, there were 10,571 applications awaiting response. Israel offers no recourse to other forms of protection other than the Refugee Status Determination process. Eritreans and Sudanese have not been able to make individual applications for asylum until 2013 and there was no formal

announcement regarding the change of policy in 2013, the process and the procedures. The Israeli authorities have recently announced that they will reject out of hand application submitted longer than a year after entry into Israel and NGOs assume that several hundred Eritreans and Sudanese were already rejected, regardless of their circumstances, based on the fact that they entered Israel more than a year before applying for asylum.

Israel's extremely low refugee recognition rate raises serious concerns that individuals subjected to forced removal to third countries under threat of indefinite imprisonment could in fact be deserving of international protection.

Eritrean nationals in Israel are under a collective non-deportation policy. Those who have applied for asylum receive the same conditional release permits as those who have not applied for asylum are as vulnerable to administrative detention.

**CAT Committee Question no. 21 under Article 3; regarding steps taken to identify at the earliest stage possible asylum seekers who may have been subjected to torture or ill-treatment and care provided to them**

Israel explicitly admits the existence of the Sinai camps as well as the existence of Sinai survivors living in its territories. For instance in reply to question 13 on art. 2) (CAT/C/ISR/5/P.23), Israel admits the existence of “Sinai victims”:

120. Persons who entered Israel illegally through the Egyptian border crossed through the Sinai Peninsula, and in some cases, while on Egyptian ground, such individuals were held in camps (“Sinai Camps”) where they suffered heinous crimes and grave abuse at the hands of their captors, for the purpose of obtaining ransom from their family members in their countries of origin (“Sinai victims”).

But despite Israel’s explicit acknowledgment of the events in the Sinai and of the so

called Sinai victims (that we prefer to call "survivors"), **Israel chooses to ignore completely the rights and needs of these survivors.** This is most evident in Israel's reply to question No. 21 on art.3) (CAT/C/ISR/5/p.38), where Israel chooses to shift from addressing the issue of the entire group of the Sinai survivors to addressing the relatively small sub-group of those among the Sinai survivors who have been recognized as TIP survivors, thereby **creating a false impression** as if most Sinai survivors are receiving treatment and protection of TIP survivors:

200. Persons who entered Israel illegally through the Sinai desert were, in some cases, held in camps ("Sinai Camps") where they suffered heinous crimes and grave abuse at the hands of their captors, for the purpose of obtaining ransom from their family members living in Israel or abroad ("Sinai Victims"). Some of them, who were brutally injured, and in many cases were raped by the Bedouins, on their way to Israel, can be recognized in Israel as victims of trafficking in persons for the purposes of slavery or prostitution **despite the fact that the offences against them were conducted outside of Israeli borders, by foreign nationals.**

201. For further information on Sinai Victims please see Israel's reply to Question 13 above.

But in fact, the opposite is correct. Unlike the small group of about 300 recognized TIP survivors who went through the Sinai, where Israel has taken some measures for their recognition and protection (albeit in an insufficient manner, for details see our comment to question no. 13), to this day **(1) There is no proper identification procedure for torture survivors, and moreover, (2) Israel actively refuses to acknowledge the Sinai survivors as survivors of torture and CIDT, eligible for protection and rehabilitation from the state of Israel under the UN CAT. As a result, and together with Israel's overall hostile policy towards asylum seekers (3) The Sinai survivors living in Israel have no protection and no access to treatment and**

**rehabilitation**, in violation of their basic human rights, and in violation of their rights as torture and CIDT survivors.

- **No identification procedure for torture** survivors: to date, there is no actual procedure for recognizing torture survivors in Israel, despite the ongoing work, done especially by The Public Committee against Torture in Israel (PCATI) to assimilate the guidelines of The *Istanbul Protocol* in the work of medical teams. Such **absence of identification** prevents their recognition as torture survivors, thereby **blocking their rights for protection, redress, and rehabilitation**, in violation of Art. 14 of the UN CAT and furthermore of General Comment No. 3 of the Committee against Torture- Implementation of article 14 by States parties (for further details see below)

During the year 2011, the year during which the largest number of asylum seekers arrived in Israel, out of 1996 women, only 54 complained before Israeli authorities in prison about their sexual assault, PHRI referred 1,585 women to gynecologist and assisted in facilitating 21 abortions, during the same period.<sup>16</sup> While not every woman who needs the services of the gynecologist was raped, one needs to keep in mind that not all rape survivors find their way to PHRI clinic. All women were detained in Saharonim prison upon their entry to Israel.

- **Refusal to recognize the Sinai torture survivors as such:** While Israel admits the existence of the so called “Sinai victims”, Israel maintains that those who were tortured in camps in the Sinai desert do not fall within the ambit of the UN CAT because the alleged acts of torture were not perpetrated by the government, and therefore it refuses to grant them their rights for redress, compensation and rehabilitation.

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<sup>16</sup>The number reflects the overall referrals to gynecologists giving in PHR-IL Open clinic, where the majority of its patients are from Eritrea and Sudan.



This view runs contrary to the thorough reports by Human Rights Watch, the US Department of State, and others regarding the level of complicity and collusion of the Egyptian authorities.<sup>17</sup>

Moreover, the Israeli government's position is that international law does not require that it rehabilitate and finance treatment for acts perpetrated on a foreign territory against foreign nationals, and by foreign actors, when there is no connection to Israel other than the presence of the victim in its territory. This interpretation is contradicted by the fact that Article 14 is not limited in scope to acts occurring on the territory of the state or by its nationals (as are other articles within the CAT). It is also contradicted by General Comment 3 to the CAT which requires states to provide such treatment to asylum seekers

Following a request under the Freedom of Information Act, the HRM succeeded in receiving from the Ministry of Justice the protocols and decisions from the Director Generals' Committee for Combating Human Trafficking. The protocols were received on February 15<sup>th</sup> 2016, not including protocols and decisions from 2015, only protocols from 2007 until the end of 2014.

From the Protocols and the Decisions the HRM received, the following picture emerged:

Between 2007 and 2014, the Director Generals' Committee met 10 times. In the years 2013 and 2014, the committee only met twice each year. During the

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<sup>17</sup>see, for example, "I Wanted to Lie Down and Die" Trafficking and Torture of Eritreans in Sudan and Egypt, 11 February 2014, <https://www.hrw.org/report/2014/02/11/i-wanted-lie-down-and-die/trafficking-and-torture-eritreans-sudan-and-egypt> and United States Department of State, "Trafficking in Persons Report 2013," pp. 157-159, <http://www.state.gov/documents/organization/210737.pdf>). These acts easily rise to the level of consent or acquiescence under Article 1 of the CAT.

Committee meeting held on May 13<sup>th</sup>, 2012, it was agreed that the Government of Israel will provide a humanitarian solution to the survivors of Torture Camps in the Sinai. It was also decided in this meeting to establish units which would detect and treat the survivors. During the two and a half years following, the committee only met four times: one meeting was a discussion about the US State Departments TIP report, and allocation for funding to women's shelters. The second meeting discussed the establishment of a day-center for recognized trafficking survivors. The third meeting discussed the business of underage prostitutes and the fourth meeting was concluded with a decision to wait for the new government to take control.

Despite the welcoming of the establishment of a day center for recognized trafficking survivors as well as the expansion of shelters for them; the decisions of the Director General's committee demonstrate that there has not been any progress in treating and helping the majority of Sinai Torture survivors.

**CAT Committee Question no. 43 (first part), under article 14 regarding the application of legal and other mechanisms to ensure fair and adequate compensation granted and programmes or services for rehabilitation to victims of torture and ill-treatment.**

The absence of identification mechanisms, and moreover the refusal to acknowledge the Sinai torture and CIDT survivors as such, leads to:

**(a) Lack of protection; (b) Lack of treatment; and moreover, (3) Threat of detention.**

Below is a brief discussion of each:

**(a) Lack of protection:**

Despite their vulnerable condition, Sinai torture survivors remain in a state no different than all other African asylum seekers currently living in Israel: with

extremely narrow protection, with limited access to the public health and welfare services, living in ever growing fear from detention at Holot detention facility. Regarded as “infiltrators” in the eyes of the Israeli law, these extremely vulnerable individuals are treated with an ever increasing hostility by the authorities and the general public alike.

While Israel maintains that it grants protection to more than 45,000 people and provides these individuals “access to certain basic human rights without the need to prove prima facie that they have individual claim to stay in Israel” (see Israel’s answer to question no.12 CAT/C/ISR/5/p.19 para. 101), it is important to stress that the general protection awarded by the Israeli authorities via the 2A5 (conditional release) visa does not provide the right to work; it grants very limited access to medical or welfare services only in cases of emergency; and no social rights like housing, food or any other assistance from the State.

Moreover, in the light of the extremely low numbers of refugee recognition in Israel (four Eritreans and no Sudanese so far), and given that almost 100% of all asylum requests are being rejected by the Israeli authorities, **torture and CIDT survivors cannot hope to receive access to health and welfare services through the RSD route, as they may hope to in other states.**

**(b) No treatment: No access to medical and rehabilitation services**

Being asylum seekers in Israel, Sinai survivors enjoy very limited access to the public health and welfare services. In fact, the few services that are provided for this community are provided mostly by NGO’s and volunteers. Thus, the volunteer-based open-clinic of PHRI, as well as more recently, the TEREM refugee-clinic, both provide only very basic medical care to the survivors; psycho-social support is provided by ASSAF - Aid Organization for Refugees and Asylum Seekers in Israel, as well as more

recently by the Gesher clinic<sup>18</sup> which provides mental health care services to asylum-seekers. Torture survivors' access to medical and mental health care services is thus **severely limited**, both in its scope and geographically, as these services are confined mainly to the Tel-Aviv area. It is therefore not surprising that the number of torture survivors who are able to benefit from these services is very low.

Initial findings of a study on the mental health of asylum seekers who passed in the Sinai Peninsula<sup>19</sup> currently in progress, indicate a **disturbing mental health crisis**. The study, conducted in the department of psychology at Haifa University in association with PHRI, included 78 participants (out of them 48 women), and found that the rate of psychological distress in these asylum seekers is extremely high – between 38% and 61% suffer from symptoms of post-traumatic stress disorder, including nightmares and intrusive memories, hyper-arousal, fear and dissociation, and about 25% suffer from depression.<sup>20</sup>

In the appendix, you can find three examples of Sinai torture camps' survivors who have recently sought help from the PHRI clinic and the PHRI Migrants and status-less persons department. The examples illustrate the severe conditions of these survivors and the consequences of lack of essential services in Israel (See Case studies no. 5,6,7 in the appendix) **These stories, along with the recent findings concerning the mental health of the Sinai survivors, all serve to underline the urgent need for**

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<sup>18</sup>According to Dr. Ido Lurie, the head of the Gesher Clinic, during 2015 the clinic provided services to 82 torture camps survivors (544 visits). During 2014 Gesher provided services to 81 survivors (547 visits). There is a waiting list of survivors and the reception time can be one day in most urgent cases, to four months.

<sup>19</sup>The study included 78 subjects who passed through the Sinai since 2010. These subjects, averaging 31 years of age, sought medical aid in the PHRI open clinic in Jaffa, and have been living in Israel for an average of 4.4 years.

<sup>20</sup> In comparison, 3.5% of the general population in the United States suffers from PTSD, and 7% from depression. In Israel, approximately 7-10% of the population suffers from PTSD and 6% from depression.

**establishing a comprehensive mechanism for the identification, evaluation, and rehabilitation of Sinai torture and CIDT survivors living in Israel.**

**(c) Threat of detention:**

In light of the recent attempt to reach the full capacity of the Holot detention facility, the MoI has expanded its Holot summons criteria in a way that all asylum seekers can be summoned. These new expanded criteria thus allow for the *de-facto* summons of Sinai torture survivors to Holot. Whereas recognized Sinai trafficking survivors are exempt from Holot detention facility, other Sinai survivors who underwent torture and CIDT in the Sinai, sometimes even at the same camp as their fellow recognized TIP survivors, but who did not qualify as TIP survivors themselves, remain unrecognized, and can be sent to a year-long detention in Holot, in accordance to the last amendment to the Anti-Infiltration Law.

Both NGOs have witnessed a sharp rise – a doubling of the number of visits – of Sinai torture victims who received summons to Holot and who came to the PHRI clinic seeking help. In November and December 2015 PHRI received more than 35 direct appeals from patients who underwent torture at the Sinai regarding their Holot summons. The HRM received 235 requests for cancellation of summons to Holot during the second half of 2015. Whereas the effects of detention on asylum seekers and torture victims have been well researched and documented,<sup>21</sup> the very possibility of detention in Holot itself has added tremendous stress and anxiety to the lives of these already vulnerable people.

**Torture Survivors at Holot under the Present Anti-Infiltration Law**

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<sup>21</sup>See for instance, Filges, T., Montgomery, E., Katstrup, M., Jorgensen, A-MK. “The Impact of Detention on the Health of Asylum Seekers: A systematic Review”. The Campbell Collaboration, Campbell Systematic Reviews 2015:13 DOI: 10.4073/csr.2015.13

During 2015, some 2,000 asylum seekers were detained in Holot. In the first few months of the year there were among them torture camp survivors who had yet to be identified. In April 2015 with the expansion of the criteria, that enabled the sudden summons to all asylum seekers regardless of the date they came into Israel, this number grew exponentially. This included asylum seekers who entered in 2011, and 2012, before the creation of the 3<sup>rd</sup> amendment to the Anti-Infiltration Law. The vast majority of these asylum-seekers were imprisoned in Saharonim until at least September 2013, and then gradually were released after one to two years in custody, due to the abrogation of the amendment by the High Court of Justice. It is not clear how many survivors who were summoned to Holot indeed showed up at the facility, and how many are hiding in fear of arrest from the Immigration Authority and what is in store for them if they are caught. These survivors, who in the last year or two, after long imprisonments, were finally successful in beginning to rebuild their lives, had it destroyed when all of the sudden they were called back to Holot.

The testimonies of the survivors, collected by the HRM, along with the protocols of the Administrative Review Tribunal hearings paint a disturbing picture of how torture survivors are imprisoned in Israeli jail for years, released following a High Court Ruling, and then regardless of being TIP survivors are re-summoned and detained in Holot. All of this while the system doesn't miss an opportunity to ignore their precarious situation and deteriorating mental state due to their prolonged detention. The system also ignores the fact that some of the torture survivors provided services to their captors, and therefore are entitled to recognition as victims of slavery, protection from imprisonment, rehabilitation and shelter services under the Israeli law.

**Since April 2015, the HRM received 235 clients who were survivors of torture**

**camps in the Sinai who had been summoned to Holot and came to the HRM to request help dismissing the summons.**

Israeli authorities call the Holot an "Open-Stay-Centre". However, the justices acknowledged that "detention" at the facility should be limited to a maximum of one year:

*"The Obligation to stay in the centre...is not the same thing as free choice of staying. As such it violates the freedom of movement and living and amounts to a violation of the rights of liberty. The violation of liberty is strengthened by the obligation to stay in the centre, and the central registration that happens in the evening, which makes people unable to leave at night, as well as the ban from working outside its borders".<sup>22</sup>*

### **Lack of proper mental health care at Holot detention facility**

According to the NGOs estimations, there are at least 200 torture survivors in Holot. Currently, the Holot detention facility lacks any mental health services at its premises. Holot detainees who are in psychiatric emergencies, for instance those who experience psychotic episodes that put them and/or others at risk, are referred to the Beer-Sheva Mental health center. Other than that, people suffering from mental and emotional distress in the light of their tortuous past and their current incarceration, have no access to psychological support inside Holot. There are currently only four social workers inside Holot, with whom that the detainees can meet that is, if they realize what is their role there. One of them speaks Tigrinya and two others speak Arabic.

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<sup>22</sup>HCI verdict 8665/14 Desta v. the Knesset, December 18, 2014 : <http://www.acri.org.il/he/33661> (Hebrew), article 59 of Judge Naor.

## Conclusion & Recommendations

In the light of Israel's non-functioning RSD system, refusal to establish proper identification, rehabilitation and support mechanisms, and in the light of Israel's hostile policy towards asylum seekers in general, the lives of Sinai torture and CIDT survivors become an ongoing series of struggles. The struggle is not just that of facing the physical and emotional trauma of their past in the Sinai; but in addition, it is a struggle with the difficult economic, social, and emotional experiences of uncertainty, hostility, incarceration and displacement of their present as asylum seekers in Israel.

In order for Israel to respect these people's basic human rights as well as the UN CAT signed and ratified, the HRM and PHRI recommend the following:

### Non Refoulement

- **Israel should respect the right of people in need of international protection to access its territory and to seek asylum/protection from torture;**
  1. Careful adherence to Military orders should be maintained at all times. When violations occur, investigations should be carried out and those responsible should be prosecuted to prevent an atmosphere on impunity;
  2. Border control measures should not endanger the lives of migrants seeking protection.

### Asylum requests

- **Israel should fully guarantee and facilitate access to a fair and impartial individual asylum determination procedure including the provision of adequate information about the procedure and the implication of such a procedure on status in Israel.**



1. Due to the multiple, ongoing deficiencies in the procedure, Israel should agree to examine applications submitted even after a year has passed from the asylum seeker's entry into Israel.
2. Israel must recognize as refugees Eritrean asylum seekers who have a well-founded fear of persecution as a result of fleeing national service in Eritrea.
3. Israel should incorporate into its procedures a clear and effective process for individuals fleeing torture who seek protection under the UN CAT, even in cases where such persecution do not fall under the grounds of the 1951 Refugee Convention.
4. Israel should ensure that administrative detention on the grounds of irregular entry is not applied to asylum seekers. Detention of asylum seekers should be used only as a measure of last resort, on grounds specifically prescribed by law, and then only for the shortest possible time.
5. Israel should ensure that any transfer arrangements with third countries are transparent, adhere to international standards and, at the very first instance, are governed by clear guarantees of protection against *refoulement*. Such arrangements, and their implementation, must be subject to review by an external and independent body. Until such time, Israel must refrain from coercing Eritreans and Sudanese to leave Israel to a third country, most notably by means of threat of indefinite imprisonment.

### **Rehabilitation and recognition**

- **Israel should establish a comprehensive mechanism for the identification, evaluation, and rehabilitation of Sinai torture and CIDT survivors living in Israel**

1. **Identification and evaluation:** after a **preliminary identification** carried out by social workers/psychologists or nurses who received a short training, people who are suspected of being torture survivors would then be referred to a more **thorough identification and evaluation by medical professionals** in accordance with the guidelines of the Istanbul Protocol.<sup>23</sup>
2. **Rehabilitation:** To allow for the process of rehabilitation it is necessary first and foremost:
  - (a) **To apply the National health care act** to the Sinai torture victims.
  - (b) **To supply welfare services** and to **apply welfare rights** to those among asylum seekers who have been recognized as torture victims.
  - (b) To give **legal work permits (B1 visas)** to recognized torture victims.

With these basic human rights in place, the survivor would then be directed to one of three treatment options:

- (a) **Minimal rehabilitation – access to general health and welfare services**
- (b) **Moderate rehabilitation within the community: A designated day-center**
- (c) **Intensive rehabilitation: in-patient treatment** in the safe environment of a shelter that provides housing, food, medical, psycho-social, and psychological support for a year ought to be provided.

It is important to note that the aforementioned treatment programs already exist in Israel. Our demand is that these be made available and adjusted for the specific needs of the Sinai torture victims.

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<sup>23</sup><http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

