



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Concluding observations on the fifth periodic report of Israel

#### Addendum

#### Information received from Israel on follow-up to the concluding observations\*

[Date received: 19 September 2017]

1. As requested by the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its concluding observations dated May 13, 2016, the State of Israel respectfully presents the following information.

#### Independent medical examinations of persons deprived of liberty (concluding observation No. 21)

##### GOI Reply:

2. General — Every Israeli Prisons Service detention facility employs a general physician, a dentist, a narcology specialist and a professional medic who provide regular services. A medical examination is available daily in all Israeli Prisons Service facilities and prisoners may be examined upon request. Examinations by specialists are also provided in prison infirmaries, Israeli Prisons Service medical centers, and hospital clinics. Gynecological examinations are performed when necessary and upon the request of female prisoners.

3. In addition, a prisoner may request to have an examination done by a private physician at her/his own expense. Such a request is considered by the prison's medical team, which conducts a preliminary medical examination, in accordance with criteria set out in Israeli Prisons Service Commission standing order No. 04.46.00.

4. On May 3, 2017, the Lod District Court rejected a petition submitted by two petitioners who requested that specialists be present in prisons regularly, based on recommendations made by the Committee for the Examination of Medical Services Provided to Prisoners of 2002 ("the report"). This report referred to issues such as doctors' training, subordination and supervision of IPS medical staff, appointment of an ombudsman for prisoners' complaints regarding medical issues in the Ministry of Public Security, treatment of prisoners with disabilities, nutrition etc.

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\* The present document is being issued without formal editing.



5. The respondents argued that the report does not require a specialist to be placed in every prison and that prisoners may be seen by specialists at medical centers and nearby hospitals.

6. The Court accepted the respondents' position that the report does not require specialists to be placed in every prison. It also noted that during the lengthy deliberation period, new clinics and medical centers staffed by specialists were established in the Israeli Prisons Service southern, central and northern districts. The Court therefore rejected the petition, but ordered the Israeli Prisons Service to publish the dates on which specialists would be available in the prisons and their area of expertise every month. (Pr.P.C. 5236-11-12 *Mahmud Magadba v. Israel Prison Service*, (03.05.16)).

7. Following this decision, one of the petitioners appealed to the Supreme Court. In its response to the petition, the State reiterated its position that the report does not require a specialist to be permanently present in each prison. Moreover, it stressed its commitment to implementing the recommendations of the report. For example, the State noted that it had authorized the budget for the establishment of a medical center staffed by specialists in the "Hadarim" compound, which is to be renovated this year, and that the IPS is negotiating with one of the nearby hospitals regarding the operation of specialist services in this IPS compound. The State further noted that the IPS is publishing the monthly schedules of specialists, as ordered by the District Court. This petition is still pending. (Ap.R.P. 4026/16 *Mahmud Magadba v. Israel Prison Service*, (14.02.2017)).

8. In addition, prisoners with chronic illnesses are treated in a detention facility that the Israeli Prisons Service operates for prisoners with physical and mental disabilities.

9. **Israeli Prisons Service Physicians** — The duty of physicians working in Israeli Prisons Service facilities is to respond to the medical and health care needs of inmates. These duties supersede any other need or requirement of the Israeli Prisons Service system. Israeli Prisons Service physicians do not approve or take part in the investigation or punishment of an inmate.

10. **Examining Medical Staff Reports on Detainees' Injuries** — In January 2012, the Ministry of Health's Deputy Director General established a Committee to examine medical staff's reports of injuries allegedly sustained by detainees during interrogation procedures. The Ministry of Health notified all hospital staff in Israel of the establishment of the Committee. The Committee is authorized to approach the relevant authorities for their responses to the claims raised and to make recommendations to the Ministry of Health and the Israeli Medical Association's Ethics Board as to the necessary and proper procedures to handle the case. In one instance, the Committee received and examined a complaint from an NGO, after which it found that there was no need for it to continue handling the particular matter because the incident had already been reported to the Department for Investigation of Police Officers in the Ministry of Justice and an indictment was filed.

### **Measures necessary to end the practice of administrative detention and ensure that all persons who are currently held in administrative detention are afforded all basic legal safeguards (concluding observation No. 23 (a))**

#### **GOI Reply:**

11. Administrative detention is a security measure recognized in international law, and explicitly in Article 78 of the Fourth Geneva Convention. It allows for the temporary internment of an individual when required by security exigencies. In accordance with the requirements set out in both international and domestic law, administrative detention orders are used as a preventive measure where there is a reasonable basis to believe that the detention is absolutely necessary for clear security purposes. Administrative detention is not employed where the security risk can be addressed by other legal alternatives, especially criminal prosecution.

12. Note that prior to the issue of an administrative detention order, an internal supervisory procedure is conducted regarding both legal and operational aspects, and only

following this procedure, when it is determined that administrative detention is the only way to prevent the threat posed by the relevant person, the Military Commander signs the order. After an order has been signed, a judicial review is conducted before a military judge, in which the detainee is represented by an attorney and may present his/her arguments. The judge receives all the materials, including any confidential materials, upon which the order was issued. The Court may hold an *ex-parte in-camera* hearing in order to hear additional details from security authorities, in which he/she can ask the State representatives any question. The judge has wide discretion concerning the approval of the order and may approve the order for its entire duration, order to shorten it or not extend it without new intelligence information or a change in circumstances, or cancel the order. Following this decision, each party may file an appeal to the Military Court of Appeals, in which the order is re-examined by a judge. Here, the detainee is again represented by an attorney. Following the Court's decision, each party may appeal to the High Court of Justice (HCJ).

13. In 2017 (until September 10th), about 395 such appeals were filed to the HCJ. Several other aspects, regarding the maintenance of due process when applying this measure, are put in place in the relevant legislation, such as a six (6) months maximum period per order, and a mandatory judicial review of each order.

### **Solitary confinement and other forms of isolation (concluding observation No. 25 (b))**

#### **GOI Reply:**

14. During the dialogue with the Committee on May 3rd and 4th, 2016, Israel gave a presentation regarding "Solitary Confinement and Separation within Israeli Prisons Service facilities".

15. Solitary confinement — The manner and the extent of the use of solitary confinement with regard to **Israeli prisoners** comply with international law standards and must be strongly distinguished from *incommunicado* detention.

16. Solitary confinement is used only in a limited and closed list of 41 **disciplinary offences** set in Section 56 of the *Prisons Ordinance 5732-1971*; thus, the Israeli practice adheres to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

17. Solitary confinement is employed in an extremely restricted manner and for short and limited periods of time, with a maximum of 14 days. Where solitary confinement is prescribed for a period of time exceeding seven (7) days, there must be a seven (7) day break immediately following the first seven (7) days of confinement, such that a prisoner will not spend more than seven (7) consecutive days in solitary confinement. In addition, a period of more than seven (7) days in solitary confinement can be imposed only by the Prison Director or his/her deputy, and must follow a disciplinary hearing. Prior to the disciplinary hearing, the prisoner receives a 48-hour notice, during which he/she can prepare his/her arguments and summon witnesses, if he/she chooses to do so. Thus, the confinement would never be "Indefinite or exceptionally prolonged", in accordance with Rule 43 of the Mandela Rules.

18. During the course of the solitary confinement, contact is maintained with the officials in the ward — prison guards and social workers as well as with physicians/paramedics upon request, and the prisoner's attorneys, unless in exceptional circumstances. A minor will see a social worker every day that he/she spends in solitary confinement. This again differs from *incommunicado* detention, where no one, apart from the authorities, may have contact with the detainee.

19. These rules apply equally to criminal as well as security prisoners. Security prisoners also receive regular visits from the ICRC.

20. Separation is not a punitive measure but rather a preventive procedure which is intended to prevent prisoners from harming themselves or other prisoners, as well as for other reasons such as state or prison security. A prisoner held in separation may be held

alone or together with another prisoner (“separation in a pair”), as decided according to the grounds for his/her separation as well as the prisoner’s characteristics.

21. The conditions provided in separation are similar to the conditions provided to all other prisoners, including: medical care, meetings with his/her attorneys, social workers and family visits. The separation ward is equipped with a television, video game consoles, telephone, books and newspapers.

22. This preventive measure of separation is subject to reconsideration procedures, judicial review and appeal.

### **Effective measures to ensure that interrogation methods contrary to the Convention are not used under any circumstances ((concluding observation No. 31 (b))**

23. According to the *Security Agency Law 5762-2002*, the Israeli Security Agency (ISA) internal rules and procedures, as well as its methods of interrogation, are confidential, for security reasons.

24. It should be emphasized, that the Israel Security Agency and its employees are required to act within the limits of the law and are subject to both internal and external supervision and review. This includes the Inspector for Complaints against Israeli Security Agency (ISA) Interrogators, the State Attorney, the Attorney General and every instance of the courts, including the High Court of Justice.

### **Additional Information**

#### **The Counter-Terrorism Law 5776-2016**

25. On June 15, 2016, as part of Israel’s ongoing battle against terrorism, the Government of Israel enacted the *Counter Terrorism Law 5776-2016*. This detailed and carefully-designed new law is part of an effort to provide law enforcement authorities with more effective tools to combat modern terrorist threats while incorporating additional checks and balances necessary to safeguard against unreasonable violations of individual human rights. The Law provides, among other things, updated definitions of “terrorist organization”, “terrorist act” and “membership in a terrorist organization”, detailed regulations for the process of designating terrorist organizations, and enhanced enforcement tools, both criminal and financial. This Law allows the relevant authorities to fight terrorism without being dependent on a declaration on a state of emergency. The Law nullified previous legislation in the field of counter-terrorism such as the *Prevention of Terrorism Ordinance 5708-1948*, which was linked to a state of emergency. Additional legislation is currently being reviewed and amended in order to disconnect it from the requirement of having a declared state of emergency.

#### **Positive updates concerning the Inspector for Complaints against Israel Security Agency Interrogators:**

- In July 2016, the Israeli Prisons Service Commission published an amendment to its standing order titled “Rules of Conduct for Israeli Prisons Service wardens”, in which Section 12 was added. This Section lays out the obligation of prisons to transfer any complaint against Israel Security Agency interrogators, or information that has otherwise come to their attention, to the Office of the Inspector in the Ministry of Justice.
- The leaflet of rights provided to every Israel Security Agency interrogate was updated recently to include a woman’s right to the presence of another woman during her interrogation.
- The Inspector’s Case Status — as of June 2017, there were 139 open cases. The complaint in 50% of these cases was received in 2016-2017, in 47% of these cases

the complaint was received in 2014-2015, and in 3% of these open cases the complaint was received in 2013.

- The Inspector recently received two (2) additional positions for her department. One position has already been filled and the second is in advanced stages of staffing.

### **Audio or Visual Documentation of Interrogation**

#### *Israel Security Agency Israel Security Agency Interrogations*

26. The Turkel Commission<sup>1</sup> recommended that there be full visual documentation of Israel Security Agency interrogations, according to rules that will be determined by the Attorney General in coordination with the Head of the Israel Security Agency (Second Report, Recommendation No. 15).

27. In this regard, the Implementation Team recommended that cameras be installed in all Israel Security Agency interrogation rooms. According to the recommendation, these cameras are to broadcast, regularly and in “real-time”, via closed Ministry of Justice-circuit, to a control room located in an Israel Security Agency facility in which interrogations are not conducted. The broadcast is to be accessible and available to a Ministry of Justice supervisor at any time without prior notice. The interrogators will have no indication of when the Ministry of Justice supervisor is watching them in the control room. In the event that the Ministry of Justice supervisor believes that illegal means have been used during the interrogation, he or she has an obligation to immediately report the matter to the Inspector for Complaints against Israel Security Agency Interrogators.

28. The Israeli Security Cabinet adopted the recommendations of the Implementation team. Consequently, the Ministry of Justice is currently conducting advanced stages of the staff work required to implement this recommendation.

#### *Police Investigations*

29. The *Criminal Procedure (Investigation of Suspects) Law 5762-2002* (Sections 7 and 11) requires Israeli Police to carry out audio or visual recording of criminal suspect questioning, where the crime carries a penalty of imprisonment of ten years or more. A temporary provision in the law, which has been extended several times, states that this obligation to document does not apply to the investigation of a suspect relating to a security offence. Note that the Law does not apply to Israel Security Agency interrogations.

30. On December 12, 2016, the Knesset approved Amendment No. 8 to the *Criminal Procedure (Interrogation of Suspects) Law* whereby the questioning of a suspect in relation to a security offence is subject to random inspections and supervision according to police procedures that are to be approved by the Minister of Public Security and the Attorney General. The Amendment provides that the supervising authority will be allowed to conduct such inspections in regard to all ongoing interrogations, at any time, without any advance notice and without the interrogators being aware of such inspections. The Knesset’s Constitution, Law and Justice Committee is to receive annual reports on the implementation of this Amendment.

31. Several NGOs filed a petition to the High Court of Justice against the constitutionality of this temporary provision. On January 15, 2017, the Court ruled that the petition was not ripe for adjudication, noting that the required implementing procedures were yet to be formulated. The Court stressed that these procedures must be strict, both in regard to the number of inspectors and the working procedures. The Court therefore dismissed the petition without prejudice. (H.C.J. 5014/15 *Adalah v. The Minister of Public Security* (15.1.17)).

<sup>1</sup> The Public Commission to Examine the Maritime Incident of May 31, 2010 (hereinafter “**the Turkel Commission**”). For further details of the composition of the Turkel Commission and its mandate, please see: [www.turkel-committee.gov.il](http://www.turkel-committee.gov.il).

## Hunger Strikes by Prisoners

### GOI Reply:

32. On July 30, 2015, the *Amendment to the Prisons Ordinance Law (Prevention of Harm Caused by Hunger Strikes)* 5775-2015 (Amendment no. 48) was approved by the Knesset. To date, **the Law has not been applied**, even though several long and life threatening hunger strikes have since taken place, including in the last few months.

33. On September 11, 2016, the High Court of Justice ruled on a petition filed by the Israeli Medical Association and several additional NGOs against the constitutionality of this Amendment. The Court ruled that the Amendment is constitutional as it delicately balances the values of sanctity of life and public interest on the one hand and the right of the individual to human dignity, including autonomy and freedom of speech on the other hand.

34. In regard to Section 19 (14) (e) of the law, the main purpose of which is to safeguard security, the Court ruled that this section is constitutional but that it must be used very narrowly and is subject to appropriate evidence. (*H.C.J. 5304/15 The Israeli Medical Association v. The Israeli Knesset* (11.9.16)).

## Procedure for Handling Asylum Seekers in Israel

### GOI Reply: Gender Sensitivity in Request for Asylum

#### Gender Sensitivity in Request for Asylum

35. In February 26, 2017, the Government of Israel Regulation processing Asylum Requests (Population and Immigration Authority Regulation No. 5.2.0012) was updated as follows. A section entitled “*Gender Sensitivity in the process of refugee status determination (RSD)*” was added to existing regulations and procedures, with the aim of highlighting gender sensitivities. The underlying idea of the Gender Sensitivity Section is the acknowledgement that gender is an important attribute in asylum requests and their processing, and thus, the Population and Immigration Authority’s policy must be adjusted accordingly. Please note that the Gender Sensitivity Section does not create an additional form of persecution under the 1951 Convention.

36. This Section provides that RSD interviews will be conducted with sensitivity to gender issues that might affect the interviewee’s feelings or behavior or impact on his/her testimony. Furthermore, the Section stipulates that victims of gender-based violence, including sexual violence, must be treated with the utmost respect and sensitivity.

37. The Section further requires the following: (1) The training program of RSD Unit employees must include training regarding gender issues such as: the psychological effect of traumatic experiences (unwillingness to provide all details, difficulties in remembering past events and in providing testimony, etc.); cultural perceptions of women in countries of origin and their influence on asylum seekers; (2) Guidelines for the interview process: (a) The interviewer must inform the interviewee at the beginning of the interview of her/his right to request an interviewer of the same gender, subject to personnel availability at the RSD Unit; (b) Family members, including spouses should not be present at the interview, and each interview should be held individually; (c) The interviewee shall be given a proper opportunity to share her/his experience of any gender-based persecution or gender-based violence that she/he has suffered. This testimony shall be taken into consideration in the deliberation of her/his asylum application; (d) Additional caution should be taken in order to prevent repeated trauma to the interviewee; the interviewer must abstain from any request for extensive description of the traumatic event which is unnecessary for the final decision. An interviewee that has difficulty in completing her/his testimony shall be given an opportunity to complete the interview at another time.