



A report by Physician for Human Rights-Israel ahead of World Refugee Day, June 20, 2011

# Discriminatory Detention Policy toward Asylum Seekers

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In recent years, Israel has become a destination for thousands of asylum seekers from Africa, Sudan and Eritrea in particular. Since 2010 information has been gathered by human rights organizations that accompany asylum seekers, showing that in addition to the horrific reality from which most of them are escaping in their countries of origin, asylum seekers suffer from torture and harsh abuse by smugglers on their way to Israel. Many of the asylum seekers experience brutal torture and rape in labor camps in Sinai before arriving to Israel.<sup>1</sup>

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<sup>1</sup> For more information see PHR's report from 23 Feb. 2011 that is based on 284 interviews with asylum seekers, victims of torture camps in Sinai that came to the clinic, voluntarily operated by the organization

Physicians for Human Rights –Israel (PHR) views social rights, such as health and welfare, as independent of civil status. Therefore, PHR is leading a struggle for the promotion of “social residency” status for refugees and asylum seekers. Such status, which by law may be established by the Minister of Health<sup>2</sup> and the Minister of Welfare,<sup>3</sup> will give victims of torture and others access to medical services and welfare, independent of their civil status. The Detainees Department at Physicians for Human Rights handles complaints of asylum seekers that are held in prison and do not receive proper medical treatment, as well as cases where asylum seekers are imprisoned based on ‘medical’ reasons. It is important to emphasize that in many cases asylum seekers are unaware of their rights in jail, including the assumption that they do not deserve medical treatment. Since asylum seekers who recently arrived to Israel are unfamiliar with local aid organizations and are unaware of the assistance they can receive, the establishment of a connection between PHR and asylum seekers is often limited. Moreover, communication means are scarce (phone cards are supplied by the Red Cross).

Information reaching PHR regarding asylum seekers who have been arrested is generally received in one of two ways, either from asylum seekers themselves that were released from prison and visit the open clinic that is operated by the organization's volunteers, or through reports that reach PHR (irregularly) from the Custody Inspection Court when decisions are made concerning medical issues. As a result of the main issues which arose in cases from the previous year, the Department of Detention focused on five principle issues: The detention of asylum seekers who suffer from TB, Tuberculosis, (non contagious) until the completion of the drug therapy; Confining asylum seekers who were examined for TB with those who were not; Access of women in *Sharonim* to gynecological treatment; Confining sick asylum seekers in prison since they do not have access to medical treatment after being released; Process of identification and diagnosis of victims of rape and torture.

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<sup>2</sup> Clause no. 56 (a)(1)(d) of the national health insurance

<sup>3</sup> Clause no. 378 (b)(1) of the social security law

## **Detention of asylum seekers who suffer from TB:**

Most of the asylum seekers arrive from countries where the prevalence of TB is substantially higher than in Israel. They are first taken to *Saharonim* Detention Center, that is operated by the Israeli Prison Services (IPS, *Shabas*), where they go through examinations for detecting TB, according to the regulations of the Ministry of Health. The bacterium infection of TB has two main stages: a contagious stage—which with drug therapy, usually lasts from two weeks to one month; and a non contagious stage – which with continuous drug therapy for six months at least, lasts until full recovery from the disease. It is important to emphasize that the infection of others is usually dependent on long-term physical contact with a patient, while chances of infection rise when such contact happens in closed and limited spaces, and is dependent on the strength of the immune system. According to the verdict of the Custody Inspection Court, asylum seekers that were diagnosed with TB, even those not in the contagious stage, are not released from detention until their completion of the full drug therapy. We would like to emphasize that the imprisonment of patients who are not contagious happens in spite of the fact that TB treatment is given for free, even for those lacking civil status, through the clinics of the League for Fighting TB (CLTB) which are operated by the Ministry of Health. PHR believes that using detention as means for ensuing completion of treatment is medically unnecessary (based on similar cases worldwide), is divorced from the Israeli law, and goes against acceptable medical norms in Israel and various other medical systems around the world. PHR's position was reported to the Ministry of Health, the Ministry of Justice and the Attorney General during February 2011. PHR received a reply from Dr. Ronni Gamzo, the CEO of the Ministry of Health in March 2011 – his reply was that asylum seekers receive the best treatment both during their arrest and after their release. The Ministry of Health is concerned that due to existing social conditions of asylum seekers outside the prison they will find it difficult to persist with the treatment, and that there is an agreement with the Ministry of the Interior according to which TB

patients that are not contagious will be released but not receive medical treatment in the community since they do not threaten public health (but merely their own health).<sup>4</sup>

### **Detaining together both asylum seekers who were tested and not tested for TB:**

In 2008, the Ministry of Health published a CEO Returns 3/2008: “Instructions for health reception of immigrants from Southern to Saharan Africa and instructions for preventing TB among staff who are substantially exposed to TB during their work.” This was published after several guards in *Saharonim* got infected with TB. As part of the CEO Returns, it was stated that asylum seekers should go through medical examination upon arrival to *Saharonim*, which will include tests for TB diagnosis that includes answering a questionnaire for detecting TB and clinical examination, including a chest X-ray if needed. The internal procedures of the Medical Department of the Prison Services states regarding “sifting examinations for infectious diseases and medical treatment for infiltrators that are held in the custody of the Prison Services” from Jan.11<sup>th</sup>, 2011, no. 4 says that those detained who have not gone through examinations and might have TB, will not stay in the same wing as those who have gone through medical examinations and were found healthy. Moreover, in petition no.10077/08 to the High Court– Physicians for Human Rights et al. against the Minister of Health et al., a report was given to the High Court of Justice according to which the Prison Services actively separates detainees prior to medical examination from those who were found healthy. On July 2010 PHR turned to Medical Commander of the Prison Services, the Minister of Interior Security and to the Commander of the *Saharonim* prison after we received information that in reality this regulation is not being followed and that there is no adequate separation. PHR expressed its alarm due to the nature of the disease which is transmitted through air. Due to the crowded conditions in which asylum seekers are held, the medical examination loses its validity after the examined detainee is returned to stay in the

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<sup>4</sup> For more information, including an analysis of the legal state in Israeli and other places in the world, attention to ethical questions that arise, and common ways to treat this issue, see a page position published by PHR in May 2011.

same wing with unexamined detainees. This entails putting the prisoners and the prison staff in unnecessary risk as well as an outrageous waste of public funds. Since no reply was received from the Prison Services or the Ministry of Interior Security, PHR turned on February 2011 to the State Comptroller asking to open an investigation on this matter. The issue is still under the investigation of the Comptroller.

### **Detention of asylum seekers due to unavailability of treatment outside prison:**

During the past year, we witnessed several cases in which asylum seekers that suffer from certain medical problems remain imprisoned. This is in spite of the fact that there is no legal justification for the continuation of their arrest. By this manner, authorities are using detention as an alternative solution instead of taking responsibility for developing and implementing a general policy for receiving asylum seekers and those lacking civil status in Israel. For example, during 2010 PHR was involved in a case of an asylum seeker from Sudan who was diagnosed with schizophrenia and needed permanent drug therapy, including injections that cost hundreds of shekels each month. The Custody Inspection Court in charge of unauthorized residents conditioned his release on finding a source that would commit to supplying him treatment after his release. Through the intervention of his lawyers from 'We Are Refugees', and after nine months of detention while innocent of any crime, one of the medical centers agreed to supply him with treatment free of charge, hence, his release was made possible. In January 2011, PHR discovered another similar case, where again the court conditioned the release on a source that would guarantee treatment outside prison. In addition, the court demanded the participation of a PHR representative in the following sitting in order to assist in finding a solution for the lack of treatment. The Law Court Secretariat did not initiate the referral of the verdict to PHR, as was instructed by the judge, thus the PHR team found out about the verdict by chance a month and a half after it was given. PHR's position, as it was sent to the court, is that indeed it is impossible to release a schizophrenic patient without any treatment, yet it is implausible that permanent imprisonment is the alternative. As

a voluntary organization, PHR does not see itself responsible for replacing state authorities in charge of these patients. In the second case, PHR turned to the CEO of the Ministry of Health, requesting him to find a solution that will enable the release of the patient. The reply of the Ministry of Health was that since this is a person who is not entitled to medical insurance in Israel, and has no ability to fund the treatment, the decision to continue his detention “seems completely reasonable”.<sup>5</sup>

### **Access to gynecological treatment in *Saharonim*:**

Around 150 women are held at *Saharonim* Detention Center. This number changes according to both the pace of asylum seekers' arrival to Israel and to the pace of their release from prison by the Ministry of the Interior. During 2010 PHR received several complaints from asylum seekers regarding gynecological problems that were not being properly treated. Some of the cases involved women who were raped in captivity camps in Sinai. In November 2010 PHR turned to the Medical Commander of the Prison Services asking to receive information about the gynecological services at *Saharonim* and asked the following questions: Does a gynecologist visit the center regularly? How many times were women referred from *Saharonim* to a gynecological clinic? Is there adequate equipment for gynecological examinations in *Saharonim*? IPS's reply was that gynecologists do not visit *Saharonim* Detention Center, that the center's clinic has no equipment for a gynecological examination, and that during 2010 (until November) 16 patients were referred to a gynecological clinic outside of *Saharonim*. In a following petition of PHR to the IPS's Medical Commander we asked to find out whether the IPS thinks that the number of petitions reflects the true need of patients or whether the number is influenced by the limited ability of the IPS to locate asylum seekers that need gynecological treatment and properly refer them (reasons of budget and human resources). PHR also demanded to find out whether asylum seekers are presented with the option of receiving a gynecological examination. Furthermore, PHR demanded to receive a copy of the questionnaire

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<sup>5</sup> Letter from Dr. Igor Bersh, Head of the Department for Clinical Alignment in the Ministry of Health, Feb. 9 2011.

written by the IPS, used for questioning victims of abuse and torture. In spite of numerous reminders, a reply has not been received.

When receiving this information one must remember that a large percentage of this population has experienced sexual abuse on their way to Israel. For comparison, at the same time 165 abortions took place at the PHR open clinic, which according to the clinic staff, half of them needed the abortion as a result of rape in Sinai. IPS's team is aware that in a center where detainees are held permanently there is constant and frequent need for a gynecologist visit, as is the case in IPS's *Neve-Tirtsa* prison that inhabits a similar number of women, and where a gynecologist visits once a month. At the clinic at *Neve-Tirtsa*, gynecological equipment is available. Over the next few days PHR will appeal to the IPS's Medical Commander demanding immediate action to ensure accessibility of gynecological treatment at *Saharonim*, and warn that if no action is taken the organization will be forced to turn to higher courts.

### **Identifying and locating victims of torture:**

In March 2011, PHR petitioned to the IPS's Medical Commander after receiving several cases in which asylum seekers at *Saharonim* who were pregnant as a result of rape requested to have abortions, but their requests were not passed on to the relevant authorities. Time was a critical factor in most cases as women were in an advanced stage of pregnancy. Thus, each day that passed increased the medical, ethical, and bureaucratic difficulties. PHR asked the IPS's Medical Commander to initiate questioning of pregnant women by female medical personnel or social workers. PHR also demanded that in cases where asylum seekers are interested in an abortion, the IPS's team will operate in accordance with the Ministry of Health to enable the abortion as quickly as possible, as well as to enable the release of the asylum seeker from prison. In cases where it is impossible to release the asylum seeker, we demanded that the IPS coordinate the abortion in a public hospital and escort the asylum seeker. In IPS's Medical Commander's reply, which was sent to the Public Complaints Commissioner of the Ministry of Health, it was argued that PHR has a direct channel of communication with the Commissioner and that in such cases PHR

should contact the commissioner directly. From there the commissioner should take care of the cases immediately by contacting the Ministry of the Interior or by coordinating an abortion under IPS's funds. Moreover, the Medical Commander emphasized that in such cases abortions usually take place the following business day. This reply does not supply a satisfactory solution for locating asylum seekers, and demonstrates IPS shirking from its responsibility locating these women.

In October 2010 PHR's offices received the protocol of the Custody Inspection Court describing a series of harsh abuses in Sinai experienced by three Eritrean asylum seekers who were chained, beaten (including electric shocks), and deprived of food and drink for days. In light of this protocol, PHR turned to the CEOs of the Ministry of Health, the Ministry of Welfare and the Ministry of Internal Security requesting to work together in order to establish an official authority that would be in charge of locating and identifying victims of torture and abuse. Such a process would require training and specific hired personnel, which currently do not exist at *Saharonim* or the IPS in general. This creates a situation where asylum seekers who suffer from harsh injuries, physical and/or mental, might not be diagnosed and/or treated for long periods of time. IPS's reply, which was also in the name of the Ministry of Interior Security, was that there are 4 social workers at *Saharonim*. One of the many assignments these social workers are responsible for is locating cases of abuse and torture in a population of 1900 detainees who reside at *Saharonim* (practically, the amount of cases social workers treat is exceptionally high because of the high turnover of detainees).<sup>6</sup> IPS admits that the social workers at *Saharonim* lack relevant training. Mr. Nahum Atskovitch, CEO of the Ministry of Welfare, replied that he intends to turn to the CEOs of the other offices during November in order to try and promote this issue. To our knowledge, nothing has been done so far.

### **Conclusion and Recommendations:**

During our work over the past year with detained asylum seekers, we got the impression that beyond the numerous difficulties involved in the treatment they receive, there is a problem with the fundamental approach characteristic to many of

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<sup>6</sup> The data is based on letters of warder Dr. Eyal Gover, Head of the IPS's Prisoner Treatment Section from 16 Nov. 2010 and 22 Dec. 2010.



the courts of governmental offices, which can be described as contempt for asylum seekers basic right to liberty and dignity. This is evident in legal norms that nobody in the medical and legal system would consider applicable to Israeli citizens, as seen by the detention of asylum seekers with TB and those that suffer from Schizophrenia.

Also regarding medical practices, it is clear that asylum seekers receive a different standard of health care compared to other detainees, as is the case with access to gynecological treatment at *Saharonim* (in comparison to *Neve Tirtsa*). PHR argues that such discriminating attitude is incomprehensible without examining the general policy towards asylum seekers in Israel, that includes: continuous incitement and defining them as 'infiltrators'; a controversial decision about not examining asylum requests for most of those arriving from Eritrea and Sudan; preventing any possibility of receiving a status that would allow them to work and live in minimal humane conditions; and their complete exclusion from health and welfare services.

PHR believes that a major part of asylum seekers' problems in prison could be solved if they had the possibility to express their problems and needs, and receive effective aid. Since this is a weakened population, which struggles more than others for its rights, and since the state has found it difficult to fulfill its needs, we believe that part of the solution lies in allowing aid organizations to enter the prison, particularly organizations of medical and social nature. In August 2011 PHR turned to IPS's Medical Commander requesting a single visit of medical specialists from the organization to *Saharonim*. PHR has acquired much experience over the years operating the open clinic for those with no status and the goal was to provide aid in diagnosis and staff training. In spite of IPS's Medical Commander's positive view on this matter, the IPS's South District Commander denied the request with no explanation. It is worth mentioning that the entrance of aid organizations to detention centers holding asylum seekers is an acceptable norm in many places around the world, as exemplified in directive no. EC/2008/115 of the European Parliament in section 16.4 which determines that it is necessary to enable the entrance of international and non-governmental organizations to detention centers for those in the

country with no permit,<sup>7</sup> a directive that applies to all EU countries apart from Denmark and the UK. Nevertheless, in the UK there is an example of a volunteer medical organization that regularly visits detention centers for asylum seekers.<sup>8</sup>

**PHR calls the authorities:**

- To work to establish a system for locating and identifying victims of torture and abuse and supply satisfactory treatment.
- To prevent detention of asylum seekers based on ‘medical’ reasons and to arrange their entitlement to medical treatment from the public medical system.
- To enable free entrance of aid organizations to the asylum seekers’ detention centers.
- To grant a status of social residency and to make the national health law applicable for asylum seekers and those lacking status.

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<sup>7</sup> Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedure in Member States for returning illegally staying third-country nationals

<sup>8</sup> See: <http://www.medicaljustice.org.uk>