



## **Solitary Confinement of Prisoners and Detainees in Israeli Prisons**

### **June 2011**

The solitary confinement of prisoners and detainees (hereinafter: prisoners) in prison facilities in Israel is carried out in various ways and for various purposes, but its severe impact on the prisoners is the same. The solitary confinement of Palestinian political prisoners who are classified as “security prisoners” is doubly harsh because of the restrictions imposed on their contacts outside of prison, even when they are not held in isolation. This position paper focuses on the consequences of solitary confinement on the body and spirit of prisoners, and especially Palestinian prisoners held in Israeli prisons. The paper concentrates on one type of solitary confinement, which the prison and justice system refers to as “separation” (*Hafradah* in Hebrew). Adalah, Physicians for Human Rights-Israel and Al Mezan consider the isolation of a prisoner from the general prisoner population – either alone or with another prisoner, deprived of virtually all human contact – to be solitary confinement, regardless of whether it is done for punitive or administrative reasons, or for purposes of interrogation.

**It is the position of Adalah, Physicians for Human Rights-Israel and Al Mezan that all types of solitary confinement in prison should end, given its severe impact on the physical and psychological health of prisoners. Solitary confinement constitutes cruel, inhuman and degrading treatment and punishment and thus violates the International Covenant Against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). The Israel Medical Association and Ministry of Health should strongly oppose its use as a method of imprisonment.**

The solitary confinement of prisoners constitutes a grave violation of their constitutional rights to personal liberty, bodily integrity, and dignity. Serving a sentence in such conditions is cruel, inhuman, and degrading. The violation of these rights becomes more severe and disproportionate when it occurs for long or even unlimited periods of time. Maintaining human contact with others is a basic need that comprises part of the minimal conditions that a prisoner is entitled to receive on an unconditional basis.<sup>1</sup>

A prisoner retains his or her human rights even within the walls of the prison, except for those that are specifically denied by the very fact of imprisonment. In several rulings, the Israeli Supreme Court has emphasized the state’s obligation to protect the constitutional rights of prisoners, in particular the right to dignity. In the words of former Supreme Court Chief Justice Aharon Barak:

The walls of the prison do not separate the prisoner from human dignity. Life in prison intrinsically involves a violation of many liberties that a free person enjoys... But life

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<sup>1</sup> See Request for Appeal 6956/09 *Younis v. Israel Prison Service*, decision delivered on 7 October 2010.

in prison does not require denial of the prisoner's right to bodily integrity or protection against violation of his dignity as a person.<sup>2</sup>

The obligation to treat detainees and prisoners humanely is recognized in numerous international human rights instruments. Article 10(1) of the ICCPR stipulates that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Israel is a State party to the covenant and thus obliged to abide by its provisions. The Israeli Supreme Court ruled that this article was consistent with the Basic Law: Human Dignity and Liberty, in that it protects the dignity of any person, including prisoners. It therefore reflects the criteria according to which a reasonable authority should operate.<sup>3</sup> This obligation is further anchored in Article 16(1) of CAT, to which Israel is also a State party.

## **1. The main types of solitary confinement under Israeli law**

Israeli law provides for three main procedures that result in solitary confinement, as follows:

### 1.1 Solitary confinement of prisoners during interrogation

A person in charge of an investigation is entitled to order a prisoner to be held in solitary confinement, separated from the general prison population, if required for the purposes of interrogation, and as long as it is essential to the purpose of the interrogation.<sup>4</sup> Under Israeli law, an interrogation can last for 30 days prior to the filing of an indictment, and longer with the Attorney General's approval.<sup>5</sup> In practice, most detainees arrested on suspicion of committing security offenses are held during interrogation in solitary confinement that involves other harsh conditions.<sup>6</sup>

### 1.2 Solitary confinement as disciplinary measure

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<sup>2</sup> HCJ [High Court of Justice] 355/79 *Katlan v. Israel Prison Service* PD 34(3) 294, 298 (1980). See also HCJ 4634/04 *Physicians for Human Rights-Israel v. Minister of Public Security* (decision delivered February 12, 2007), paragraph 10; HCJ 2245/06 *Neta Dobrin v. Israel Prison Service* (decision delivered June 13, 2006), paragraph 13; Appeal of Prisoners' Petition 4463/94 *Golan v. Israel Prison Service*, PD 50(4) 136, 152 (1996); HCJ 337/84 *Hukma v. Ministry of the Interior*, PD 38(2) 826, 832 (1984); Appeal of Prisoners' Petition 4/82 *State of Israel v. Tamir*, PD 37(3) 201 (1983); HCJ 540/84 *Yusuf v. Director of the Central Prison in Judea and Samaria*, PD 40(1) 567, 573 (1986); HCJ 221/80 *Darwish v. Israel Prison Service* PD 35(1) 536, 546 (1980).

<sup>3</sup> See HCJ 5591/02 *Yassin v. Commander of the Ketziot Military Camp* PD 57(1), 403, 412-413 (2002); see also: HCJ 3278/02 *Hamoked v. Commander of IDF Forces*, PD 57(1), 385 (2002); Request for Appeal 6561/97 *State of Israel v. Mendelson* PD 52(5) 849 (2000); Request for Appeal 823/96 *Vanunu v. Israel Prison Service* PD 51(2), 873 (1997); HCJ 221/80 *Darwish v. Israel Prison Service* PD 35(1) 536, 546 (1980); HCJ 540/84 *Yusuf v. Director of the Central Prison in Judea and Samaria*, PD 40(1) 567, 573 (1986); HCJ 253/88 *Sajdiya v. Minister of Defense* PD 42(3) 801 (1988) (hereinafter: the *Sajdiya* case); HCJ 355/79 *Katlan v. Israel Prison Service* PD 34(3) 294, 298 (1980); Appeal of Prisoners' Petition 4/82 *State of Israel v. Tamir*, PD 37(3) 201 (1983); HCJ 2245/06 *Neta Dobrin v. Israel Prison Service*, Takdin-Elyon 2006(2) 3564 (2006); HCJ 4634/04 *Physicians for Human Rights-Israel v. Minister of Public Security*, Takdin-Elyon 2007(1) 1999 (2007); HCJ 337/84 *Hukma v. Ministry of the Interior*, PD 38(2) 826 (1984); HCJ 7837/04 *Borgal v. Israel Prison Service*, PD 59(3) 97 (2004); HCJ 2605/05 *The Academic Center for Law and Business (NGO), Human Rights Division v. Minister of Finance*, Takdin-Elyon 2009(4), 2405, (2009).

<sup>4</sup> Regulation 5(B) of the Prisons Regulations, 1978.

<sup>5</sup> Article 17(B) of the Criminal Procedure Law (Enforcement Powers – Arrests), 1996.

<sup>6</sup> See The Public Committee Against Torture in Israel (PCATI) and Nadi al-Aseer, *When the Exception Becomes the Rule*, December 2010; B'Tselem and Hamoked: Center for the Defense of the Individual, *Absolute Prohibition: Torture and Ill-Treatment of Palestinian Detainees by Israel's Security Forces*, May 2007; B'Tselem and Hamoked, *Kept in the Dark: Treatment of Palestinian Detainees in the Petah-Tikva Interrogation Facility of the Israel Security Agency*, October 2010.

A prisoner who commits a disciplinary offense in prison can be punished by being placed in solitary confinement (hereinafter: punitive solitary confinement), in complete isolation from other prisoners. In this case the solitary confinement cell is small and contains nothing other than a bed or mattress on the floor. A prisoner held in such a cell is not entitled to receive visits or to leave the cell, even for a daily walk.<sup>7</sup>

### 1.3 Solitary confinement for an extended, unlimited period of time – “separation”

This position paper will focus on this type of solitary confinement, referred to as “separation” (*Hafradah* in Hebrew), its scope and the impact it has on prisoners in general and on Palestinian prisoners in particular. In practice, prisoners held in prolonged isolation as “separation” can be divided into two groups: a) those who the security services believe pose a threat to the safety of others or to state security, or who are believed to be threatened by other prisoners; and b) those who suffer from mental problems and thus, in the view of Israel Prison Service (IPS), pose an immediate threat to those around them. This kind of solitary confinement is discussed further below.

## 2. What is solitary confinement (separation)?

According to information received by Physicians for Human Rights-Israel (PHR-I), as of December 2010, approximately 150 prisoners were being held in solitary confinement in Israeli prisons. Of this group 120 have been sentenced and the other 30 are detainees. Around two-thirds of these prisoners were being held alone, and one-third with another prisoner; some have been held in solitary confinement for years. Approximately 40 of the 150 are Palestinian prisoners.<sup>8</sup>

According to the Israeli Prison Ordinance,<sup>9</sup> the solitary confinement of a prisoner under the “separation” procedure should be the option of last resort to ensure the protection of state security or prison security, or the health and well-being of the isolated prisoner or of other prisoners. A prisoner may also be isolated to prevent a severe violation of prison discipline, or a violent offense under Israel’s Combating Criminal Organizations Law, 2003 or a drug transaction under the Dangerous Drugs Ordinance [New Version], 1973.

A senior prison officer is authorized to assign a prisoner to “separation” for up to 48 hours.<sup>10</sup> A prison warden may extend the time for additional periods of up to 48 hours each, provided that the total period does not exceed 14 days.<sup>11</sup> A specially authorized warden can extend the period of solitary confinement for up to one month at a time, provided that the total period does not exceed six months.<sup>12</sup> A prisoner is entitled to submit arguments against his or her solitary confinement after being isolated for 96 hours. The solitary confinement of a prisoner for over six months requires the district court’s approval, which must be renewed every six months thereafter and may continue indefinitely.<sup>13</sup>

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<sup>7</sup> Article 58 of the Prison Ordinance [New Version], 1971 (hereinafter: “Prison Ordinance”); Regulation 19(C) the Criminal Procedure Regulations (Enforcement Powers – Arrests) (Conditions of Incarceration), 1997; Article 10 of the Criminal Procedure Law (Enforcement Powers – Arrests), 1996.

<sup>8</sup> Letter from the Israel Prison Service to Physicians for Human Rights-Israel dated 22 November 2010. On file with PHR-I.

<sup>9</sup> Article 19B of the Prison Ordinance.

<sup>10</sup> Article 19C(A)(1) of the Prison Ordinance.

<sup>11</sup> Article 19C(A)(2) of the Prison Ordinance.

<sup>12</sup> Article 19C(B)(1) of the Prison Ordinance.

<sup>13</sup> Article 19E(A)(1) of the Prison Ordinance.

A prisoner in solitary confinement is held in a cell alone or with another prisoner. The extension of solitary confinement in pairs requires the district court's approval every twelve months,<sup>14</sup> and the court may order an unlimited number of extensions.<sup>15</sup> The court's decision may be based on privileged evidence that is not disclosed to the prisoner and/or his or her attorney.<sup>16</sup> The prisoner is entitled to submit a motion to the Supreme Court to appeal a decision by the district court.<sup>17</sup> Thus Israeli law allows for prisoners to be held in solitary confinement for months and even years at a time.

### **3. Solitary confinement under international and regional courts' case law**

The UN Committee Against Torture has sharply criticized the prolonged solitary confinement of prisoners, regarding it as an act of cruel, inhuman and degrading treatment or punishment (CIDT) that constitutes a violation of Article 11 of the CAT, which requires States parties to ensure systemic review of conditions of incarceration,<sup>18</sup> and of Article 16, which obliges states to protect prisoners under their jurisdiction from CIDT. In its Concluding Observations on Israel from June 2009,<sup>19</sup> the committee criticized Israel's use of solitary confinement against Palestinians during interrogation and imprisonment, demanding that it be used in an exceptional manner and in accordance with international minimal standards.<sup>20</sup>

The UN Human Rights Committee stated in one of its General Comments in 1992 that solitary confinement constituted a violation of Articles 7 and 10(1) of the ICCPR.<sup>21</sup> In 1990, the UN General Assembly declared that the solitary confinement of prisoners should be abolished or used as little as possible.<sup>22</sup>

The Inter-American Court of Human Rights has also stated that prolonged solitary confinement constituted a violation of Article 5(2) of the American Covenant on Human Rights, which prohibits torture and the inhuman treatment or cruel punishment of prisoners.<sup>23</sup>

### **4. Impact on the psychological and physical health of prisoners**

The psychological impact of solitary confinement has been examined in numerous studies worldwide, all of which point to severe mental damage to prisoners including: sleep disorders, depression and anxiety, psychotic disorders such as visual and auditory hallucinations, paranoia, disorientation in time and space, and severe confusion and cognitive

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<sup>14</sup> Article 19E(A)(2) of the Prison Ordinance.

<sup>15</sup> Article 19E(A)(3) of the Prison Ordinance.

<sup>16</sup> Article 19H of the Prison Ordinance.

<sup>17</sup> Article 19G of the Prison Ordinance.

<sup>18</sup> See Rod Morgan and Malcolm Evans, *Combating Torture in Europe*, 2001, p. 118, and Recommendation Rec (2003) 23 Committee of Ministers under the European Council, paras. 7, 20, and 22.4.

<sup>19</sup> Concluding Observations of the Committee against Torture – Israel, CAT/C/ISR/CO/4, 23 June 2009, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/431/65/PDF/G0943165.pdf?OpenElement>

<sup>20</sup> See also Rod Morgan and Malcolm Evans, *Combating Torture in Europe*, 2001, p. 118, and Recommendation Rec (2003) 23 Committee of Ministers under the European Council, paras. 7, 20, and 22.4.

<sup>21</sup> UN Human Rights Committee, General Comment 20/44, 3. April 1992, available at: [http://sim.law.uu.nl/SIM/CaseLaw/Gen\\_Com.nsf/3b4ae2c98fe8b54dc12568870055fbbd/abc751d75e39c69ec125688700532c2e?OpenDocument](http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/3b4ae2c98fe8b54dc12568870055fbbd/abc751d75e39c69ec125688700532c2e?OpenDocument). See also *Campos v. Peru*, January 1998, Communication No 577/1994, 6 November 1997.

<sup>22</sup> UN GA, A/RES/45/111, 68th plenary meeting, 14 December 1990, at Principle 7 available at: <http://www.un.org/documents/ga/res/45/a45r111.htm>. See also *Larrosa v. Uruguay* (881/1981), report of the Human Rights Committee.

<sup>23</sup> See Inter-American Court of Human Rights, *Castillo Petruzzi et al.*, decision delivered 30 May 1999.

disorders.<sup>24</sup> While solitary confinement is difficult for people who do not suffer from mental illness, it can be unbearable for the mentally ill, who comprise a significant proportion of the prison population. Solitary confinement is liable to exacerbate psychotic states, or to arouse dormant mental problems. In the words of Dr. Zeev Weiner, an expert in psychiatry and family medicine:

The conditions of solitary confinement cause severe psychological stress and may destabilize the mental state of prisoners who did not have a prior mental disorder or whose illness is under control, causing the disorders to erupt and be manifested in a variety of symptoms... Prisoners in confinement suffer twice as much from mental illness as those who are not in confinement; the common disorders are adjustment disorders and depressive syndromes, but severe dissociative and psychotic disorders may also occur among prisoners in confinement without prior illness.<sup>25</sup>

While some of the mental damage caused by solitary confinement might dissipate once the period ends, some people suffer permanent damage and are left unable to function in society following their release. According to the research, solitary confinement may also cause physiological manifestations as a result of the stress caused:

Victims of solitary confinement suffer from symptoms in the digestive system, cardiovascular system, sexual and urinal system, including tremors, migraines, headaches, sleep disorders and severe exhaustion... repeated accelerated heart beats, excessive perspiration and shortness of breath.<sup>26</sup>

Indeed, during meetings between attorneys and prisoners held in solitary confinement in 2007-2008, prisoners reported suffering from conditions similar to those cited above, including shortness of breath, constipation, intestinal and digestive problems, vomiting, bloating, stomach aches, problems with the spleen and genitalia, and burning sensation when urinating.<sup>27</sup> These problems manifested in some of the prisoners after they were placed in solitary confinement. However, it is not possible to determine whether these problems were a direct result of their being held in solitary confinement.<sup>28</sup>

The IPS has acknowledged the potentially severe mental consequences of solitary confinement and yet it continues to use the practice. Following deliberations by the Israeli Supreme Court on a petition filed by PHR-I and HaMoked,<sup>29</sup> a joint team of the IPS and the

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<sup>24</sup> On this subject, see also, Ruchama Marton "Psychological Effects of Solitary Confinement," *Voices for Vanunu*, published by the UK Campaign to Free Vanunu, 1998, pp. 35-42; Stuart Grassian, "Psychiatric Effects of Solitary Confinement," *Journal of Law and Policy* 22 (2006), pp. 325-383; Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime and Delinquency*, 43 (2003), pp. 124-156; Mary Howells, "A Study of the Effects and Uses of Solitary Confinement in a Human Rights Perspective," 10<sup>th</sup> World Congress on Medical Law, Jerusalem, 30 August 1994.

<sup>25</sup> Dr. Zeev Weiner, an expert in psychiatry and family medicine, from an expert opinion submitted to the Israeli Supreme Court on the psychological repercussions of solitary confinement, dated 19 December 2004.

<sup>26</sup> Ruchama Marton, "The Psychological Effects of Solitary Confinement," a lecture in the framework of the conference – "Security or Political Prisoners?" Tel Aviv University, 8 January 2006.

<sup>27</sup> Physicians for Human Rights-Israel and Addameer, "The Sounds of Silence: Isolation and Solitary Confinement of Palestinians Prisoners in Israeli Detention," May 2008, available at: <http://www.phr.org.il/default.asp?PageID=119&ItemID=190>

<sup>28</sup> Physicians for Human Rights-Israel and Addameer, "The Sounds of Silence", May 2008.

<sup>29</sup> HCJ 2089/95 *Israeli-Palestinian v. Minister of Police and Commissioner of the Israel Prison Service* (the petition was withdrawn with the consent of the petitioners on 12 May 1998).

Ministry for Public Security prepared a report on solitary confinement in 1996, which concluded, inter alia, that:

Research findings on the issue are unequivocal and show that imprisonment in isolation causes deep psychotic reactions... Clearly the duration of time a prisoner is held in solitary confinement has direct implications on its side effects, as holding an individual alone in a cell for one day is not the same as isolating him, as stated, for a period of three weeks, months, or years. There is no doubt that there exists a certain time limit after which most people will feel that solitary confinement is intolerable and will suffer, as a result, from long-term effects.<sup>30</sup>

## 5. The physician's role in a harmful situation

Physicians working in prisons face a dilemma of dual loyalty. While a physician's first loyalty is to the patient according to the rules of medical ethics, the IPS is an employer that also demands total loyalty from its staff physicians. According to the Internet site of the IPS, "The Prison Service is a security organization with a social mission, and is part of the law enforcement system. The essence of its role is to hold prisoners and detainees in *secure and appropriate* custody..."<sup>31</sup> [emphasis added]. IPS physicians are also wardens who wear uniforms and have ranks. There is cause for concern that medical treatment and adherence to medical ethics may be compromised in some cases as a result of the definition of the type of custody prisoners are held in, whereby safety considerations are given precedence over the appropriateness of a prisoner's conditions of imprisonment.

According to medical ethics, a physician cannot support or approve any practice that harms a patient. Physicians who treat prisoners cannot approve, support or participate in practices of incarceration that harm their patients, including solitary confinement, a practice that unequivocally damages mental and physical health. In addition to the duty of physicians to provide appropriate treatment and refrain from directly or indirectly supporting a patient's continued solitary confinement, *physicians are also obliged to act to stop the solitary confinement. In this regard, physicians are obliged to act before the prison authorities, and if this is not effective then they must revert to others outside the prison authorities.*<sup>32</sup>

## 6. Solitary confinement and the medical community in Israel

PHR-I has campaigned against the use of solitary confinement since the 1990s. In September 2008, a group of 18 psychiatrists acting on its behalf asked the Israel Psychiatric Association

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<sup>30</sup> A report by the Israeli Attorney General entitled "The Separation of Prisoners", dated 16 April 1996, p. 11. The report is available on the website of Hamoked: Center for the Defense of the Individual (in Hebrew): <http://www.hamoked.org.il/Document.aspx?dID=3613>. However, in our view, it is impossible to define a borderline period after which a person who is held in solitary confinement will suffer from psychological problems, due to differences from person to person.

<sup>31</sup> Prisons Service directives; Article 2 – Prisons Service – Mission, Roles and Structure; Sub-article 2.01. Prisons Service and the Commissioner – Mission, Authorities and Roles; Sub-article 2.01.01. The Organization, Its Objectives and Methods of Achieving Them, available (in Hebrew) at: <http://www.ips.gov.il/Shabas/ODOT/SHABAS+Regulation/purpose-function-structure/שירות+בת+הסוהר+והנציב++ייעוד+סמכויות+ותפקידים/הארגון+יעדינו+ודרכי+השגתם.htm>

<sup>32</sup> Physicians for Human Rights and School of Public Health and Primary Health Care, University of Cape Town, *Dual Loyalty & Human Rights in Health Professional Practice: Proposed Guidelines and Institutional Mechanisms*, 2002, available at: <http://physiciansforhumanrights.org/library/documents/reports/report-2002-duelloyalty.pdf>

(IPA) to express its view on solitary confinement publicly.<sup>33</sup> The physicians wrote that it is established fact that the IPA opposed the use of isolation because it harmed both the mind and the body, and that making the IPA's opposition public would constitute a significant step in the fight against its use. "We also support the association's opposition to conducting periodic checkups of prisoners held in solitary confinement, which was voiced in 2000 in response to proposed legislation submitted to the Knesset at the time, because of the fear that these checkups would involve the psychiatrists in the process of solitary confinement," they stated.

However, the IPA refused to issue an official stance on solitary confinement. It argued that since the question involved a matter of principle, it should be determined by the Israel Medical Association (IMA). In response to a request by the IPA, the Ethical Board of the IMA held a discussion involving the following persons: Dr. Alex Adler, the Chief Medical Officer of the IPS; Dr. Moshe Birger, Director of the Psychiatric Service of the IPS; Attorney Dina Lehman, Legal Advisor to the Psychiatric Health Service of the IPS; and Dr. Adi Doron, a representative of the IPA. At the conclusion of the discussion, members of the Ethical Board published a position paper in May 2009,<sup>34</sup> which, according to the IMA, "sought to balance between the needs of the state to defend its security and the security of prisoners, and the obligation to protect the health and dignity of prisoners."

The IMA agrees that prolonged solitary confinement has a negative impact on a prisoner's physical and mental health.<sup>35</sup> It stated that physicians should not play either an active or passive role in punitive action against a prisoner and should not give medical approval for solitary confinement. A physician who examines a prisoner who is likely to be placed in solitary confinement must strictly maintain medical confidentiality and must not use the information in his or her possession for non-medical purposes, it added. The physician must strictly maintain his or her professional independence in selecting appropriate treatment, acting from a sense of responsibility for the mental and physical wellbeing of the prisoner. Physicians who detect a tangible risk to a prisoner's health due to his or her solitary confinement should exercise their professional authority to end it immediately.

The IMA's position is problematic because it is not the role of physicians to balance the state's security needs with their own ethical obligations. The physician's obligation is toward his patient alone, and the patient's well-being must take precedence over any other obligation or need.

According to IPS Commission Ordinance No. 04.03.00,<sup>36</sup> which pertains to the confinement of prisoners in solitary confinement (separation), the IPS's medical system is part of the decision-making process regarding solitary confinement. IPS physicians are involved as consultants in cases of solitary confinement (solitary or in pairs) for over three months, or when the reason for the solitary confinement is the prisoner's health. According to these procedures, the opinion of the prison physician must be attached to a request to extend a prisoner's solitary confinement beyond 14 days. The opinion must include a description of

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<sup>33</sup> Members of Physicians for Human Rights-Israel's ethics board to Prof. Avi Bleich, Chairman of the Israeli Psychiatric Association, 23 September 2008, letter reference number 08-270-08-78.

<sup>34</sup> The position paper can be found in Hebrew on the website of the IMA, at: <http://www.ima.org.il/MainSite/ViewCategory.aspx?CategoryId=1122>

<sup>35</sup> Ibid.

<sup>36</sup> The ordinance (in Hebrew) is available at: <http://www.ips.gov.il/NR/rdonlyres/CEA9F0C9-76AE-4235-93D5-B66A4A8A3649/0/040300.pdf>

the prisoner's medical condition and whether any medical restrictions exist. Up-to-date statements by a physician and social worker are required if the IPS asks the court to extend a prisoner's solitary confinement for more than 6 months, or solitary confinement in pairs for more than 12 months. According to these procedures, IPS physicians examine each prisoner before they are placed in solitary confinement or, if unable to do so, within 48 hours of the solitary confinement. Thereafter, paramedics are supposed to visit the solitary confinement cells on a daily basis and physicians once a week. Every prisoner held in solitary confinement is examined once in two months by a general physician.

In addition, IPS Commission Ordinance No. 04.44.00, which deals with the medical treatment of prisoners,<sup>37</sup> stipulates that medical examinations must be conducted on prisoners held in solitary confinement (punitive and for the purpose of separation). There is concern, however, that the examinations are conducted to determine the "suitability" of prisoners for solitary confinement or the extent of the harm that they have sustained as a result. The Supreme Court also recommended that a medical opinion be provided before a decision is made over whether or not to extend the solitary confinement of a prisoner.<sup>38</sup>

Ordinance No. 04.03.00<sup>39</sup> states that if the medical examination indicates that continued isolation poses a risk to the prisoner's health, the prison warden should promptly forward the medical opinion to the IPS district committee to discuss its cancellation. When discussing such cases, the members of the district committee should include the district physician.

These rules are identical to some of the rules adopted in international covenants. For example, Rule 32 of the UN's Standard Minimum Rules for the Treatment of Prisoners stipulates that disciplinary punishment of solitary confinement can be applied only after approval by a physician.<sup>40</sup> The rules adopted by the Council of Europe use similar wording.<sup>41</sup>

In reviewing prisoners' medical files over the years, PHR-I discovered approvals for solitary confinement that had been signed by IPS physicians on a special form named "Medical Approval for Holding a Prisoner in Conditions of Isolation/Separation." No warnings by an IPS physician over harm caused to a patient due to solitary confinement were found, even though some of these prisoners suffer from mental problems, which worsen over time. Prisoners' psychiatric files include documentation of sessions held with psychiatrists in which prisoners exhibited great distress as a result of solitary confinement and asked to be released from it. However, in only one case did PHR-I find that a psychiatrist had made reference to a prisoner's sentiments and recommended to that the solitary confinement be

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<sup>37</sup> The ordinance (in Hebrew) is available at: <http://www.ips.gov.il/NR/ronlyres/5AF86A67-E07D-43D3-9BBA-3A5C97148031/0/044400119רפואיבאסיר97148031/0/044400119רפואיבאסיר.pdf>

<sup>38</sup> See, Request for Appeal 5089/08 *Mughrabi v. Israel Prison Service* (decision delivered 2 February 2009), and Request for Appeal 10251/08 *Anonymous v. Israel Prison Service* (decision delivered 23 April 2009).

<sup>39</sup> Ordinance No. 04.03.00, paragraph 26f(4), is available (in Hebrew) at:

<http://www.ips.gov.il/NR/ronlyres/CEA9F0C9-76AE-4235-93D5-B66A4A8A3649/0/040300.pdf>

<sup>40</sup> The UN Standard Minimum Rules for the Treatment of Prisoners. Rule 32 states that, "Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it." Available at:

<http://www2.ohchr.org/english/law/treatmentprisoners.htm>

<sup>41</sup> Council of Europe, Rec(87)3E 12 February 1987 on the European prison rules (replaced by rec(2006)2, available at:

<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=607507&SecMode=1&DocId=692778&Usage=2>

stopped. In the other cases there was no documentation of any action by the psychiatrists that sought to bring an end to this harmful form of incarceration.

*Adalah, PHR-I and Al Mezan strongly oppose the involvement of physicians in solitary confinement proceedings, regardless of the objective that underlies it.* Their involvement is contrary to the moral, ethical and even legal obligations of physicians towards their patients. Physicians are obliged to oppose solitary confinement vigorously and to refrain from collaborating in it in any way. There is concern that the presence of a physician seeks to grant legitimacy to such a proceeding, despite its harmful nature. A physician who is complicit in solitary confinement acts in the same improper manner as a physician who is complicit in torture. Both cause great harm to the prisoner, and in both cases, a physician's role is to take every possible measure to prevent their occurrence.

## **7. Physical conditions in solitary confinement and the special impact on Palestinian prisoners**

Solitary confinement affects the basic conditions of a prisoner's life. In general, prisoners are permitted to leave their cells for daily walks for two hours a day and in order to participate in various programs, rehabilitation and educational activities, and employment. Prisoners in solitary confinement, held in "separation," are allowed out of their cells for only one hour per day,<sup>42</sup> and may not participate in rehabilitation or employment programs. Consequently, these prisoners are left alone in their cells for at least 23 hours a day.

The size of a solitary confinement cell ranges from 1.5 x 2 meters to 3 x 3.5 meters. The cells include a toilet and shower, which are not always separated from each other or from the main part of the cell. The cell door is usually made of iron, and is fitted with an opening for the purpose of passing food to the prisoner which closes immediately afterwards. As a consequence, the prisoners have no eye contact with other prisoners in the solitary confinement wing or with the prison guards. There is sometimes a 50 x 100 cm window in the cell, but whether or not the cell is fitted with a window, almost no natural light or fresh air can enter from outside. The cells are lit with fluorescent bulbs. It is the IPS's policy, apparently for security reasons, to transfer prisoners held in solitary confinement to another prison every six months.<sup>43</sup> The prisoners are allowed to bring in a television, DVD player and books, and to send and receive letters. Prisoners in solitary confinement who are not classified as "security prisoners" are entitled to use a telephone for one hour per day.<sup>44</sup> Prisoners in the solitary confinement wing are entitled to receive visits from first-degree relatives only, while Israel has banned all prisoners from Gaza from receiving any family visits since June 2007. Only prisoners who are not classified as security prisoners are allowed to receive "open visits", which are not conducted across a glass barrier, and via an internal telephone system.

In December 2010, the Israel Bar Association published a scathing report on the physical conditions in which prisoners are incarcerated in solitary confinement wings of Israel's prisons. The report exposes a severe and gloomy picture of the conditions in these wings, as well as the mental distress of most prisoners held in solitary confinement. The authors of the report conclude that the conditions in the solitary confinement cells "in most of the various

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<sup>42</sup> A prisoner in punitive isolation is not allowed out of his cell at all and may remain in the cell for 14 consecutive days without seeing the light of day.

<sup>43</sup> See IPS Commission Ordinance 04.03.00.

<sup>44</sup> Prisoners held in solitary confinement for ten consecutive years are entitled to receive up to two hours of telephone calls per day.

Prisons Service facilities do not meet minimal standards and are not suitable for living and certainly not for an unlimited period of time.”<sup>45</sup>

The conditions of the 40 Palestinian prisoners being held in solitary confinement<sup>46</sup> are doubly severe because their classification as “security prisoners” means they are subject to additional restrictions. Palestinian prisoners, who account for the overwhelming majority of prisoners classified as “security prisoners”, are not allowed to use the telephone, and many are denied family visits for long periods of time, even years, as a result of the Israel Security Agency’s policy of not permitting Palestinians from the OPT to enter the State of Israel. Moreover, even when a prisoner’s family is allowed to visit, the visit takes place across a glass barrier and family members communicate using an internal telephone and by shouting. It was only following a Supreme Court petition submitted by Adalah that children under the age of eight have been permitted to have physical contact with their incarcerated parent, only during the final minutes of a visit, which lasts for a total of 45 minutes.<sup>47</sup> As a rule, security prisoners held in solitary confinement do not receive visits from social workers and are not permitted furloughs, unlike criminal prisoners.

In addition, Palestinian prisoners held in solitary confinement are denied their rights to due process, including the lack of compulsory legal representation before the courts which rule on whether or not to extend their period of solitary confinement. They also encounter additional problems including language barriers and “secret evidence”. As a result, legal proceedings on the extension of solitary confinement for Palestinian prisoners are perfunctory and predictable. The only information that is submitted to the courts is the previous court ruling extending the solitary confinement. The matter is dealt with summarily, demonstrating the extent to which the prison authorities ignore the cumulative harm that is likely to be caused to the person. Furthermore, the IPS does not adhere strictly to the internal regulation requiring an updated opinion of the prisoner’s condition. Thus, the separation of Palestinian prisoners is even more severe than the isolation of other prisoners held in solitary confinement.

### **Summary and recommendations**

Solitary confinement should not be used by the IPS for any reason, as it undeniably causes harm to the physical and mental health of prisoners and constitutes illegal and disproportionate punishment and cruel, inhuman and degrading treatment.

Solitary confinement should not be used as a solution to hold mentally-ill prisoners who may pose a threat to themselves and/or those around them. As psychiatric hospitals do not hold violent patients in solitary confinement, there is no justification for treating violent patients who are prisoners differently. Prisoners should be permitted to have social interaction with other prisoners under professional supervision and provided with adequate activities.

Solitary confinement is also not a legitimate solution for prisoners who constitute a security threat or who face the threat of harm from other prisoners. The definition determining “a security risk” is overly broad and vague, and even in cases in which prisoners do constitute a security risk, they should be placed with appropriate groups of prisoners to whom they do not pose a danger and are not exposed to harm.

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<sup>45</sup> Israel Bar Association, *Report of Official Auditors: Separation Cells in the Prisons Service*, December 2010. The report was written by Attorney Moran Kabalo of the Israel Bar Association.

<sup>46</sup> Letter from the Israel Prison Service to Physicians for Human Rights-Israel dated 22 November 2010.

<sup>47</sup> HCJ 7585/04 *Kna'aneh v. Israel Prison Service* (decision delivered 25 March 2010).

Prisoners whose contact with other prisoners is limited should be provided with opportunities to engage in suitable activities to help them pass time and they should be permitted greater contact with the outside world through increased visits and the use of telephones for Palestinian prisoners, for example.

Due to the clear negative health implications of solitary confinement, medical organizations and authorities should play an active role in opposing it. Physicians who examine and treat prisoners held in solitary confinement should demand an end to their isolation in every case, not only in cases in which they specifically detect harm to the prisoner's health.

Moreover, until the use of solitary confinement ends, Adalah, PHR-I and Al Mezan demand that prisoners held in solitary confinement have access to fair legal proceedings and that secret evidence should no longer be used as a justification its continuation. The discrimination between Palestinian prisoners and those classified as criminal prisoners in solitary confinement should cease immediately, and the physical conditions of incarceration in solitary confinement cells should be improved to ensure a minimally dignified existence.

**It is the position of Adalah, Physicians for Human Rights-Israel and Al Mezan, as human rights organizations, that all types of solitary confinement in prison should end, given the severe impact on the physical and mental health of prisoners. Solitary confinement in prison is a cruel and harsh punitive and administrative act, and constitutes a violation of CAT and the ICCPR. The Israel Medical Association and the Ministry of Health should also strongly oppose the use of solitary confinement.**



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