STATE OF ISRAEL

Ministry of Justice

Annex No. I

Attached to Israel's Replies to

6th Periodic Report by the State of Israel presented to

The Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Committee

December 2020

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List of Abbreviations

High Court of Justice – HCJ

Government Resolution – GR

Attorney General – AG

State Attorney's Office – SAO

Public Defender's Office – PDO

Legal Aid Administration – LAA

Ministry of Justice – MoJ

Ministry of Health – MoH

Ministry of Public Security – MoPS

Ministry of Foreign Affairs – MoFA

Population and Immigration Authority – PIA

National Child Representation Unit – NCRU

Israeli Prison Service – IPS

Israel Security Agency – ISA

Department for Investigation of Police Officers – DIPO

Detention Review Tribunal – DRT

Refugee Status Determination – RSD

Trafficking in Persons – TIP

National Anti-Trafficking Unit – NATU

Head of Juvenile Justice – HJJ

Inter-Ministerial Coordinator – IMC

Children in Conflict with the law – CCWL

Israel Defense Forces – IDF

Rules of Engagement – RoE

Question No. 5

The right to consult with a public defender before questioning

1. The rate of applicants whose request for representation was transferred from the Police to the PDO has risen from 24.96% in 2014 to roughly 56.18% in 2018 and 60.94% between January to July 2019. Approximately 39% of the detainees do not exercise their legal right to legal counsel prior to an investigation, but only following its conclusion, or even later, and prior to the extension of detention hearing in court. Regarding minors: in 2018, the rate of notices to minors prior to investigation was 89.4%.

Improper use of handcuffs as a means of investigation

2. In a number of cases in 2019-2020, the PDO witnessed a wrongful use of handcuffs in connection with the investigation of detainees. On March 19, 2019, the National Public Defender contacted the Head of the Investigations Division of the Police Investigations and Intelligence Department to request that the handcuffing procedures regarding handcuffing in the course of an investigation be revised amongst all investigation officers, and that appropriate cases be examined and suitable steps be considered. In response, the Head of the Investigations Division expressed regret over the cases mentioned in the request, noting that, the Investigations Division will bring the relevant judicial decisions pertaining to this matter to the attention of the investigative staff, while revising and refining the appropriate guidelines in these cases.

The right to ensure the availability of legal aid

Representing children in civil and administrative proceedings

3. Based on a sample survey conducted by the NCRU, the median age of representation is fourteen (14); the minimum age – three (3) weeks; the maximum age – seventeen and half (17.5). The majority of children represented are female (60%), while 40% are male. 23% are migrant children. 85% of children are Jewish and 15% are Arabs.

Legal Aid for Family Members of Victims of Homicide

4. In 2009, the Government decided to establish a legal aid system for families whose loved ones were killed. The program allows holistic care for the families, including financial and legal aspects. Since 2011, the Ministry of Labor, Social Affairs and Social Services (MoLSAaSS) established six (6) aid centers in the following cities: Be'er-Sheva, Jerusalem, Tel Aviv-Jaffa, Tira, Haifa and Kfar Kana.

5. An entitlement committee is convened following a homicide, which includes senior representatives of the MoLSAaSS, the Police, and a jurist who qualifies as a judge. The committee is tasked with determining the entitlement of the family of the victim to receive aid based on the circumstances of death. The details of a family that is found entitled are given to the aid center.

6. The aid centers are headed by a social worker, and include therapy and mental care for the family members, for up to two (2) years. Additionally, families of victims are entitled to an allowance of up to 5,000 NIS (1,457 USD) for expenses such as funeral transportation. They are also entitled to participate in support groups free of charge, and to receive legal aid in the criminal proceedings and in any civil proceedings that stem from the homicide, from the LAA.

7. The LAA legal aid and legal representation to the families of the victims, aims to minimize the helplessness of the families dealing with different institutional and legal authorities. The presence of a lawyer benefits the families of victims to express themselves independently at different stages of the criminal proceedings, for example a victim's right to be present at the trial, even if it is held in closed doors.

Question No. 8

8. **The Early Childhood Council** - In August 2017, the Knesset passed the *Early Childhood Council Law* 5777-2017, a new Law which directs the establishment of an Early Childhood Council. This Law aims to further the care of infants and

their physical and intellectual development, ensure their physical and mental health and the fulfillment of their educational, social, physical and emotional needs and to provide an appropriate environment which will enable them to enjoy equal rights in adulthood. The Council has been established and operates under the direction of the MoE.

9. **The Children's and Youth Complaints Commission for Out-of-home Placed Children** - The MoLSAaSS operates out-of-home facilities for children with disabilities. In these facilities any complaint received is immediately and thoroughly inspected by the supervisors in MoLSAaSS. In addition, the Children's and Youth Complaints Commission for out-of-home placed children, which started its work in 2017, operates in accordance with Section 56 of the *Children Foster Care Law* and was appointed by the Minister of Labor, Social Affairs and Social Services. Any child placed in foster care or in out-of-home placement facilities can file complaints to the Commission independently, discreetly and freely, without any fear of harm of consequences. The Commission is accessible to children and includes the accommodations required according to the age, language and level of maturity of the child, and in the case of a child with disabilities - also to her/his disabilities. The results of the inquiry of the complaint will be passed on to the complainant and a copy will be passed on to the supervisor for follow-up on the necessary remedies.

10. Section 66(c) of the Law protects children against harm that might be caused to them due to filing a complaint and determines that such harm constitutes a criminal offence with a punishment of one (1) year imprisonment.

11. Under Section 50 of the Law, the MoLSAaSS has to maintain supervision of foster care agencies, foster care counselors and foster families and review their activities.

12. According to Section 54 of the Law, as part of the supervision, supervisors are authorized and given various authorities, including the authority to demand from any person concerned to pass on information or any document required by the supervisor to carry out her/his duties, and the power to enter places, and, *inter alia*, to visit the foster family home, even without prior coordination and at

any time, if there is concern as to any harm to the well-being of the child placed with the foster family. Likewise, the supervisor may convey to the operating entity, the foster care counselor or the foster family written details of instructions that were not carried out and demand that they rectify shortcomings.

13. On March 30, 2019 the *Foster Care Regulations (Complaint Mechanism for Children in Out-of-home Placement Facilities)* 5779-2019 entered into force. These regulations set forth procedures to ensure that children in foster care and out-of-home placement are informed about the complaint mechanism. For example, the Regulations include the obligation to publish the Commission's information in a public and accessible place, in addition to ensuring each child placed in foster care receives the information in a manner and language suited for them. The Regulations further clarifies the various methods through which a complaint can be filed, and the parameters by which it should be assessed by the Commission.

Question No. 9

Social Services

Inter-Ministerial Committee Reviewing the Social Rights Granted to Migrants Who May Not be Returned to Their Countries of Origin

14. In August 2017, an Inter-Ministerial Committee reviewing the social rights granted in Israel to migrants who may not be returned to their countries of origin was established, at the request of the Attorney General. The Inter-Ministerial Committee headed by the DG of PIA, included representatives of the relevant Ministries: the MoLSAaSS, the MoH, the MoJ, the Ministry of Interior (MoI), the Ministry of Finance (MoF) and the Ministry of Construction and Housing. The Committee's main purpose was to examine the possibility of providing social, welfare and health services to migrants who may not be returned to their countries of origin.

15. In July 2018, the Committee submitted its recommendations to the Ministers of LSAaSS and of Interior for examination. On February 28, 2019, the Minister of LSAaSS adopted the recommendations of the Committee concerning his Ministry. As part of this decision, the Minister ordered a partial provision of welfare services to migrants who may not be returned to their countries of origin in need of out-of-home placements: victims of domestic violence, persons with disabilities and persons in street situations. The budget to be allocated for this is 36 Million NIS (10 Million USD) (out of which 20 Million NIS (5.5 Million USD) is allocated to the MoLSAaSS). As part of these services, a special program was set up in order to provide various welfare services for child migrants at risk who may not be returned to their countries of origin.

16. A petition on this issue was filed to the HCJ and is pending (H.C.J. 8907/16 *Assaf - Aid Organization for Refugees and Asylum Seekers in Israel v. The Minister of Labor, Social Affairs and Social Services*). In March 2019, the Government informed the HCJ that the Minister of LSAaSS agrees to the Inter-Ministerial Committee's recommendations to allocate funds (approx. 30 Million NIS (8.33 Million USD)) to secure social rights for certain groups of migrants who may not be returned to their countries of origin. Most recently (July 2019), the Government informed the HCJ that it is looking into alternatives for purchasing a designated health insurance for migrants who may not be returned to their countries of origin, i.e., purchasing existing insurance packages for them or providing them with medical services through a different arrangement.

Question No. 10

Identification and treatment of vulnerable persons seeking asylum in Israel

17. The Government of Israel invests many efforts in making sure that TIP victims are identified. In addition, training for the purpose of identifying victims is conducted on a regular basis for all relevant staff members including IPS staff in detention facilities. Members of the Police, National Anti-Trafficking Coordinator (the "NATU"), Social affairs and relevant NGOs are involved in this training. The frequent training given to police officers in recent years have enhanced their ability to identify a TIP victim. Every piece of information is

carefully examined, and only initial evidence (*prima facie evidence*) is required in order to recognize a person as a victim.

18. Every TIP victim, identified as such, receives a B1 visa, (or the equivalent permit for Palestinian TIP victims), valid for the year of rehabilitation in the shelters. This visa can be extended upon PIA's discretion.

19. A TIP victim taking part in judicial proceedings is entitled to a B1 visa until their conclusion, following which he/she may request another year for rehabilitation.

20. In light of the above, the PIA Border Control staff, as well as other officials such as the Detention Review Tribunal (DRT) staff, are specifically trained in order to ensure that all trafficking and slavery cases are identified, despite inherent difficulties, and that suspected victims are not deported from Israel before their status as TIP victims is properly evaluated. Therefore, updated forms of trafficking and methods are routinely relayed to the Police and the SAO Anti-Trafficking coordinators. Special awareness is also noticeable in other areas of trafficking. For example, the authorities identified cases concerning persons with physical disabilities (deafness and speech impediment) that may have fallen victim to TIP for the purpose of labor, and in 2018, two (2) cases of servitude within the framework of a marriage where the women were brought from abroad (Ethiopian nationals) were identified and referred to the shelters.

21. Once the rehabilitation period is over, the victims are offered to participate in the "Voluntary Return and Reintegration" Project. The project is funded by the PIA, and it offers a very broad aid package, including: travel arrangements and assistance at the airport in Israel and the country of origin, medical accompaniment, a cash grant of 100 USD for preliminary costs, assistance in the long term in the country of origin for the purpose of finding accommodation, starting a business, vocational training or integration in the labor market (a grant of up to 750 USD), all through the representatives of the IOM in the country of origin.

The IPS referral procedure relating to TIP victims

22. According to IPS procedure, **every** IPS staff member who serves in a detention facility, and who suspects having encountered a TIP victim, is obligated to report this to the detention facilities' social worker, who is obliged to deliver the information to the LAA, for possible referral to the TIP shelters. All IPS staff in "Giv'on" and "Saharonim" facilities are familiar with this procedure and operate accordingly.

23. On May 28, 2017, the IPS conducted a day of training concerning identification and treatment of TIP victims, under the title: "Crossing the Desert". The training was given to 86 staff members of the IPS, including commanders, wardens, social workers and medical staff, from the "Saharonim", "Giv'on" and "Holot" facilities. The participants were given lectures by the NATU, the PIA and the Police Anti-Trafficking Coordinating Unit (PTC), as well as by the Hotline for Refugees and Migrants and UNHCR.

24. In 2018, three (3) cases were referred to the shelters from the "Giv'on" facility. There were no recent referrals from the "Holot" facility, as it stopped operating in March 2018.

Question No. 11

Table No. 1 - Asylum Applications Filed between September 2013 and November 2019 (inclusive)

	2013 (from September)	2014	2015	2016	2017	2018	2019
Total	1,020	2,679	7,274	14,842	14,783	16,259	9,037

Source: Population and Immigration Authority (PIA), 2019.

Table No. 2 – Number of Asylum Applications Filed in Israel between 2011 and May 14, 2019 - by Country

State of Nationality	Total
Ukraine	17,378

Eritrea	16,132
Georgia	6,209
Sudan	6,734
Russia	5,047
Nigeria	1,454
Ethiopia	1,249
India	1,439
Philippines	61
Moldova	1,235
Sri Lanka	1,487
Ghana	730
Ivory Coast	261
Belarus	726
China	234
Uzbekistan	621
South Africa	520
Turkey	350
Nepal	198
Thailand	39
Colombia	217
Congo Rep. Demo.	162
South Sudan	238
Kazakhstan	230
Guinea	96
Other countries	1,495
Total applications submitted	64,542

Source: Population and Immigration Authority (PIA), 2019.

Table No. 3 – Countries to which Israel Extradited Detainees throughout the Reporting Period and the Countries of Nationality of the Detainees

Requesting Countries	Citizenship
United States	United States
Spain	Netherlands
Netherlands	Russia
Belgium	Ukraine
Russia	UK
Germany	France
Ukraine	Israel
UK	The Palestinian Authority
France	

Source: The Department of International Affairs at the State Attorney's Office, 2019.

Table No. 4 – Number of Persons Who Have Been Returned, Extradited or Expelled Since the Committee Considered the State Party's Previous Report by Nationality, 2016-2019, as of November 30, 2019

Country	2016 (from June)	2017	2018	2019 (until end of November)	Total
Ukraine	821	3,361	4,725	2,581	**11,488**
Georgia	226	844	1,263	945	**3,278**
Russia	90	232	539	785	**1,646**
Moldova	79	277	288	260	**904**
Thailand	203	252	153	195	**803**
Philippines	87	143	109	146	**485**
China	55	170	124	102	**451**
India	40	74	106	120	**340**
Belarus	18	52	86	108	**264**
Romania	25	47	61	41	**174**
Sri Lanka	17	34	54	61	**166**
Turkey	11	20	35	100	**166**
Uzbekistan	15	23	37	65	**140**
Nigeria	22	42	31	33	**128**
Colombia	22	20	47	39	**128**
Ethiopia	30	40	17	22	**109**
Nepal	28	29	18	34	**109**
Vietnam	30	22	34	15	**101**
Other countries	135	159	230	316	**840**
Total	**1,954**	**5,841**	**7,957**	**5,968**	**21,720**

Source: Population and Immigration Authority, 2019.

Safe Relocation to Third Countries

25. The AG conditioned legal approval of the safe relocation in safe third countries policy on the following criteria:

1) There are no wars or general disturbances taking place in the third countries.

2) No UNHCR recommendations exist against relocation to the third countries.

3) The life and freedom of the individual are not at risk in the third countries based on race, religion, nationality or membership in a particular social or political group.

4) Relocated individuals in the third countries will have access to the asylum procedure or enjoy temporary protection, or, at the very least, these countries are obligated to abide by the *non-refoulement* principle.

5) Torture or cruel and degrading treatments are prohibited in the third countries.

6) The third countries are obligated to allow the relocated individuals means to live in a dignified manner, or at least the possibility to stay and work for a living.

Table No. 5 - Voluntary Departures to Sudan, Eritrea and Other African Countries between 2015-2019

Year	Sudan				Eritrea				Other African Countries	Total Africa
	Return to country of origin	Departure to third countries	Other destinations	Total	Return to country of origin	Departure to third countries	Other destinations	Total	Total	
2015	133	449	18	600	953	1,058	469	2,480	301	3,381
2016	102	272	16	390	734	564	1,331	2,629	227	3,246
2017	91	113	29	233	468	561	1,866	2,895	247	3,375
2018	49	87	20	156	297	272	1,701	2,270	241	2,667
2019 (Nov. 30th)	72	60	50	182	350	298	1,315	1,963	238	2,383

Source: Population and Immigration Authority (PIA), 2019.

Table No. 6 - Data Regarding Voluntary Departure of Persons Who Entered Israel Illegally 2012-2018

Year	Sudan				Eritrea				Other African Countries	Total Africa
	Return to country of origin	Departure to third country	Other destinations	Total	Return to country of origin	Departure to third country	Other destinations	Total	Total	
2012	No data			**392**	No data			**69**	**1,640**	**2,101**

Year	Sudan				Eritrea				Other African Countries	Total Africa
	Return to country of origin	Departure to third country	Other destinations	Total	Return to country of origin	Departure to third country	Other destinations	Total	Total	
2013	No data			**1,687**	No data			**268**	**657**	**2,612**
2014	3,658	454	0	**4,112**	1,052	639	0	**1,691**	**611**	**6,414**
2015	133	449	18	**600**	953	1,058	469	**2,480**	**301**	**3,381**
2016	102	272	16	**390**	734	564	1,331	**2,629**	**227**	**3,246**
2017	91	113	29	**233**	468	561	1,866	**2,895**	**247**	**3,375**
2018	49	87	20	**156**	297	272	1,701	**2,270**	**241**	**2,667**

Source: Population and Immigration Authority (PIA), 2019.

Question No. 17

The IDF

26. With regard to human rights content, special emphasis is placed on legal obligations towards civilian populations, such as the prohibition against using civilian population for military purposes, the rights of prisoners and detainees, the prohibition against using threats and physical force during questioning in the field, the principle of equality, etc.

27. In addition, specialized professional ethics training is provided to the Military Police officers in the Military Police School's core courses, which include: inmates' instructors course, escort commanders course and intelligence and investigations coordinators course. Following are examples for these courses' contents: detention and escort instructors participate in duties and rights of the inmate training, control and monitoring of force training, treatment of defiant soldier (according to the Directive of the Chief Military Police Officer – 1201) course, coping with stressful situation training and an ethics course. Intelligence and investigation coordinators undergo trainings on basic Law: Human Dignity and Liberty and on questioning simulations (handling cases and exceptions).

The Institute of Legal Training for Attorneys and Legal Advisers in the MoJ

28. In recent years, training has focused on the following issues: equal rights for persons with disabilities (2016 and 2017), TIP (2016 and 2015), the Arab population in Israel (2015), human rights in international law (2014, 2015, 2016, 2017, 2018 and 2019), equality (2014 and 2016), women's rights, equality and LGBT rights (2017), rights of crime victims (three (3) training days throughout 2019), people with disabilities in criminal procedures (2019) and minors and adolescents in the justice system (2019). Additional such seminars were conducted during 2018, for example: transparency v. privacy (2018), meet the Israeli society - Israelis of Ethiopian descent, the Arab community in Israel, persons from the former USSR, ultra-Orthodox Jews and persons with disabilities. There are additional seminars on topics such as freedom of speech versus incitement, social rights, etc.

The Institute of Advanced Judicial Studies

29. The Institute provides training to judges on a wide variety of topics, including: seminars on domestic violence (2015 and 2016), sex offences and TIP (2015, 2016, 2017, 2018 and 2019), persons with mental disabilities (2015 and 2017), children's rights (2015, 2016, 2017 and 2018), women in prostitution (2016 and 2017), refugees and asylum seekers' rights (2015, 2019), and several seminars on detainees' rights and relevant issues, such as prisoner rehabilitation, suspended sentences, requests prior to indictment, detention, community courts, the right to fair trial, constitutional and administrative claims, investigation, documentation and punishment (2019).

30. Additionally, in 2020 a seminar on advanced questions in detention law took place, which included topics such as the rights of detainees and their living conditions, electronic monitoring, mental illnesses in detainees, etc., as well as a seminar on criminology and alternative forms of punishment, which included topics such as therapeutic jurisprudence, changes in punishment policy, house arrest, etc. Other seminar topics include racism and discrimination and human rights in the criminal procedure.

Question No. 18

Table No. 7 – Seminars Offered by the Institute of Legal Training for Attorneys and Legal Advisers in the MoJ to civil service attorneys and legal advisors

Seminar's Topic	Date	Number of participants
Victims of Crime Seminar (Attorney General's Office)	March 16, 2017	55
Witness Questioning Seminar – Civil (Attorney General's Office)	May 16, 2017	55
Victims of Crime	July 18, 2017	100
'Haruv' in depth - Minors and Victims of Crime	July 23, 2018	30
Witness Questioning Workshop	3 workshops per year	100
Victims of Crime	February 21, 2019	100
Victims of Crime – in depth (Attorney General's Office)	April 3, 2019	40
Victims of Crime – in depth (Attorney General's Office)	April 4, 2019	40

Source: The Institute of Legal Training for Attorneys and Legal Advisers in the Ministry of Justice, 2019.

31. As of 2018, the annual Training Program of the School of Military Law includes a legal lecture incorporated into the Medical Cadets Course, for both mandatory and reserve service physicians. The lecture addresses, among others, the following:

    a. The duty of providing medical treatment and making it accessible, including the obligations under the First Geneva Convention, the Third Geneva Convention and the IDF orders relating to the treatment of detainees, such as the Chief Medical Officer Order 232,011 on the medical treatment of prisoners of war and unlawful combatants from July 2014;

    b. The obligation to record the medical treatment, with respect to situations requiring reporting of suspected offenses of injury of interrogatees, detainees and inmates, citing General Staff Order 33.0304 and General Staff Order 61.0113;

c. The training of Military Prosecutors includes diverse legal content, as well as an analysis of case studies. In this context, note that upon a military prosecutor's examination of a case, he/she is required to examine the evidence and identify, *inter alia*, whether the evidence raises suspicion that it was obtained by improper means, and in such cases, due weight is given to the evidence, while considering the particular circumstances of the case. The prosecution is likely to refrain from relying on the evidence obtained by improper means.

Question No. 20

32. The Shapiro Commission - The Commission was appointed by the former Minister of Justice, in February 2014, in order to examine the required adaptations of the *Criminal Procedure (Interrogation of Suspects) Law*, to the investigation of suspects. In the course of 2015-2016, the Commission discussed the issue of minors in prison and examined various adjustments in legislation and the Commission's orders regarding solitary confinement, segregation, measures of restraint, disciplinary law in prison, etc.

33. In addition, in the course of 2017-2018, the Commission discussed various amendments to the *Youth Law (Trial)*. In its interim recommendations submitted to the Minister of Justice on July 29, 2018, the Commission recommended that decisions pertaining to detention of minors will also be brought before a juvenile court judge, that the hearing of these decisions be merged with the primary case after the verdict in the minor's case (and in the event of the parties' consent, even before that), that follow-up hearings will be held following the arrest hearing and that to the extent possible, the various arrest hearings will be held before the same judge. The recommendations of the Commission are to be submitted to the Minister of Justice for adoption (their submission has been postponed due to the absence of a permanent Government following three (3) consecutive elections, as well as the outbreak of the Covid-19 pandemic).

Question No. 21

Criminal Prisoners

Visits and Family Relations

34. With respect to family relations, the State of Israel wishes to draw upon the latest ruling of the Supreme Court in the case of Pr.Ap.Rq.H.C.J. 4277/20 *IPS v. Abed Marai* (June 24, 2020):

35. The respondent is a Muslim prisoner, serving a 27-month sentence. He petitioned the Nazareth District Court requesting to be granted a special vacation in order to attend his daughter's "Akika" ceremony – a traditional Muslim ceremony held in the honor of the birth of a child – scheduled to take place on June 25, 2020. The petition was accepted. The IPS appealed to the Supreme Court against the District Court's ruling, maintaining that it was in contradiction with IPS guidance from May 25, 2020, according to which prisoner special vacations should be limited, in general, to participation in a circumcision/funeral, due to the state of emergency caused by the Covid-19 pandemic. IPS also noted that the respondent was given approval to participate in the ceremony via video conference.

36. The Supreme Court rejected the IPS appeal and ruled that the petition does not justify the involvement of this Court in the lower instance's discretion. The Court asserted that while Covid-19 poses a state of emergency, the lockdown has exceptions, and this case should be considered as one, and that other measures taken to ensure the health of the prisoners, such as fourteen (14) days of isolation upon return, could be used.

Security Prisoners

Family Visits

37. On June 4, 2019, the HCJ denied a petition and affirmed the Minister of Public Security's decision (which followed a security cabinet decision) which denied family visits for Hamas affiliated security prisoners from the Gaza strip. This

step is aimed to pressure the terrorist organization with the aim of advancing the return of Israeli citizens and the remains of Israeli soldiers held by the Hamas terrorist organization. This was approved by the Court, subject to periodic review and to the ongoing provision of other channels of communication with their families (H.C.J. 6314/17 *Fadi Sammy Namnam et. al. v. The State of Israel et. al.* (4.6.19)).

Statistics

38. The total number of criminal prisoners within IPS facilities as of July 2020 is 9,073, and the total number of security prisoners is 4,414. Hereinafter are the figures regarding criminal and security prisoners and administrative detainees:

Table No. 8 - Criminal Prisoners (as of September 2019)

	Arrested			Sentenced		
	Men	**Women**	**Other**	**Men**	**Women**	**Other**
In transfer	17	1	3	58		
Southern District	886	3		1,539		
Central District	1,598	58	1	2,618	76	3
Northern District	907	3		1,622		

Source: Israel Prisons Service, 2019.

Table No. 9 - Security Prisoners (as of September 2019)

	Arrested		Sentenced	
	Men	**Women**	**Men**	**Women**
In transfer	20	--	11	--
Southern District	474	1	2144	
Central District	735	1	336	
Northern District	725	10	442	28

Source: Israel Prisons Service, 2019.

Reducing overcrowding in prisons in the course of the reporting period and imprisonment alternatives

39. **The establishment of new prison facilities and renovation of existing ones:** 24 incarceration wings were added to the prisons – thirteen (13) wings of which

are designated for security prisoners (in Ktzi'ot, Megiddo, Ofer and Ramon), three (3) wings are designated for criminal prisoners (Shita, Eshel and Ela), three (3) wings are designated for detainees (Nitzan, Zalmon and Dekel) and two (2) wings are designated for the purpose of investigation of detainees (Nitzan and Zalmon). In addition, five (5) treatment wings were added to the prisons – two (2) wings in Dekel and one (1) in Hermon, Ela and Rimonim. The new wings were added in addition to the construction of new wings, the renovation and reopening of existing/closed wings or the reestablishment of wings for a different purpose.

40. **Extension of the quota for prisoners and detainees under electronic supervision:** As of August 2020, there are 89 prisoners and 703 detainees who received an imprisonment alternative in the form of electronic supervision. Following is data on the number of adult detainees and prisoners who received an imprisonment alternative in the form of electronic supervision, per year: from June, 2015, until the end of the year – eleven (11) prisoners and 370 detainees; in 2016 – 72 prisoners and 685 detainees; in 2017 – 154 prisoners and 668 detainees; in 2018 – 837 prisoners and 150 detainees; in 2019 – 66 prisoners and 784 detainees; in 2020 (until August 5) 43 prisoners and 861 detainees.

41. Following is data on the number of minor detainees and prisoners who received an imprisonment alternative in the form of electronic supervision, per year: from June, 2015, until the end of the year - 40 detainees; in 2016 - 61 detainees and six (6) prisoners; in 2017 - 46 detainees and fifteen (15) prisoners; in 2018 - 47 detainees and fifteen (15) prisoners; in 2019 - 40 detainees and ten (10) prisoners; in 2020, until 21 June, 27 detainees and six (6) prisoners.

Table No. 10 - Distribution of Pretrial Detainees (hereinafter: Detainees) and Convicted Prisoners (hereinafter: Convicts) – by Population Group or National Origin

Population Group	Convicts	Detainees
Jewish	2,925	1,794
Bedouin	350	307

Population Group	Convicts	Detainees
Druze	78	34
Muslim	998	1206
Christian	233	245
Arab	4,131	2,245
Others	45	34

Source: Israel Prisons Service, 2019.

Table No. 11 - Distribution of Pretrial detainees (hereinafter: Detainees) and Convicted Prisoners (hereinafter: Convicts) - by Gender

Gender	Convicts	Detainees
Women	105	128
Of which are minors		2
Men	8,676	5,858
Of which are minors	61	232

Source: Israel Prisons Service, 2019.

Table No. 12 - Distribution of Women Detainees and Convicts by Population Group

Nationality/religion	Convicts	Detainees
Jewish	54	50
Bedouin		3
Muslim	15	10
Christian	11	51 (1 minor)
Arab	19	8
Others	1	6

Source: Israel Prisons Service, 2019.

Table No. 13 - Distribution of Prisoners by Age Groups and Population Groups

Age group	Jewish	Arab	Christian	Muslim	Druze	Bedouin	Other	Not specified	Total
Up to 14			2	1					3
14-18	52	116		119	1	4		1	2
18-22	336	721	8	656	10	118			295
22-30	1,059	1,980	78	873	28	259	12	13	1,857
30-40	1,277	2,005	183	351	28	179	27	3	4,302
40-50	934	1,243	122	143	24	75	18	3	4,053
50 and up	1,070	499	97	62	21	28	5	1	2,562
Total	4,729	6,564	490	2,205	112	663	63	31	14,856

Source: Israel Prisons Service, 2019.

Table No. 14 - Occupancy Rate in IPS Detention Facilities

Southern District		Central District		Northern District	
Prison	**Occupancy rate**	**Prison**	**Occupancy rate**	**Prison**	**Occupancy rate**
Eshel	83%	Hadarim	82%	Kishon	65%
Ohalei Kedar	91%	Jerusalem	57%	Gilboa	96%
Ela	64%	Nitzan	74%	Damon	70%
Dekel	72%	Tel Aviv	74%	Hermon	64%
Nafha	73%	Giv'on	57%	Carmel	78%
Saharonim	24%	Ha'Sharon	71%	Megiddo	84%
Ktzi'ot	67%	Ma'asiyahu	87%	Zalmon	85%
Ramon	71%	Neve Tirza	70%	Shita	92%
Shikma	78%	Ofer	85%		
The occupancy rate in all IPS facilities is approx. 75%.					

Source: Israel Prisons Service, 2019.

The High Court of Justice Ruling on Prisoners and Detainees' Living Space (H.C.J. *1892/14 The Association for Civil Rights in Israel et. al. v. The Minister of Public Security et. al.* (13.6.17))

42. On June 13, 2017, the HCJ ruled in favor of the petitioners, several human rights NGOs, in a case concerning the living conditions of prisoners in Israel.

43. The Court ordered that within nine (9) months, the State should make all necessary arrangements so that no prisoner or detainee will have a living space smaller than three (3) square meters (not including the shower and toilet).

44. The Court further ordered that within eighteen (18) months the State shall provide each prisoner or detainee a minimum living space of four and a half (4.5) square meters (including the shower and toilet) or four (4) square meters, not including the shower and toilet, following the standard set in Section 2(8) of the *Prisons Regulation*s *(Imprisonment Conditions)* 5770-2010 and Section 3(e)(3) of the *Criminal Procedure (Arrests) (Terms of Detention) Regulations*, (which originally, according to the regulations, are applicable with regard to new, prospective, facilities), instead of an average of 3.16 square meters, as was the situation previously in most of the prisons in Israel.

45. The Court held that the notion "*appropriate living conditions*" under the Amendment for the *Prisoners Ordinance*, includes the obligation to provide an appropriate living space for a prisoner or detainee. The Court further noted that human rights are reserved for every person, even if he or she are detained or

imprisoned, and that imprisonment alone cannot prevent a person of any other right, except for those which are necessary and stem from the prevention of freedom of movement under the imprisonment itself.

46. **Moreover, the Court stressed that minimal living space is an essential condition for protecting the prisoner's right for human dignity and his or her right for dignified human existence.**

47. In its decision, the Court referred to the right for adequate living space of prisoners under International Human Rights Law, including Article 10(1) of the ICCPR, Article 16 of the CAT, and the Mandela Rules of 2015.

Case Law

48. On July 7, 2020, the Tel-Aviv Magistrate Court ruled on an ex-prisoner's claim against the IPS, requesting compensation for the degrading living conditions he suffered during his time in prison. The plaintiff argued that the State had breached a statutory obligation, thus committing a tortious act, by not supplying him with reasonable lighting and ventilation in his prison cell in accordance with the *Criminal Procedure (Arrests) Law* and the *Prisons Ordinance*. Additionally, the plaintiff noted that the *Prisons Regulations (Imprisonment Conditions)*, 5770-2010 prescribed that the average area per prisoner in a cell will not be smaller than four and a half (4.5) sq. meters, which he claimed he did not receive. He further claimed that during his fifteen (15)-months imprisonment in Sharon Prison he suffered from inhumane conditions due to the temperatures in his cell, in which he spent at least 22 hours a day, and to overcrowding, and that his right to dignity, to body and mental integrity and to privacy had been infringed upon.

49. The Magistrate Court found that the State was in breach of the *Prisons Ordinance (New Version)*, 5732-1971. The Court also ruled that the conditions had caused the plaintiff suffering, and thus that the State was liable for a tortious act.

50. The court ruled that the plaintiff was not entitled to compensation equal to that for unjust imprisonment, as his imprisonment, in and of itself, was legal. Therefore, the Court ruled that the IPS must compensate the plaintiff with 50,000 NIS (14,639 USD), in addition to the plaintiff's legal expenses (Magistrate Court Tel-Aviv Ci.C. 13522-10-18 *Ben Moshe v. State of Israel – Israel Prisons Service* (7.7.20)).

Question No. 22

Minors

Table No. 15 - Number of Minors Convicted and Detained in September, October and November, every year as of 2015

Status of minors	Sep. 15	Oct. 15	Nov. 15	Nov. 16	Sep. 16	Oct. 16	Nov. 16	Sep. 17	Oct. 17	Nov. 17	Sep. 18	Oct. 18	Nov. 18	Sep. 19	Oct. 19	Nov. 19
Convicted	113	111	120	157	161	329	157	129	127	144	112	16	124	57	65	68
Detained	262	404	470	305	303	145	305	358	334	303	249	225	205	221	220	229

Source: Israel Prisons Service, 2019.

Data on Indictments against Minors and Minors Convictions

51. In 2018-2019, 464 minors were convicted and sentenced to a period of imprisonment or to community service. The average length of imprisonment was ten (10) months, while the maximum length of imprisonment was 72 months, and the median length was seven (7) months. 383 of the minors were convicted and sentenced as part of a plea bargain.

52. During 2018-2019, the most common offenses with which minors were charged included assaulting an officer (69), robbery (52), sex offenses (48), arson (39), harm with aggravating intent (25), prevention of infiltration (24), weapons offenses (23), stone throwing or shooting at vehicles (21), rioting (16), assault (16) and severe harm (15). Fifteen (15) minors were convicted of homicide offenses and 110 were convicted of other offenses such as terrorism and drugs offenses.

Restorative Justice: Alternative Models to the Criminal Proceeding

53. The purpose of restorative justice is to help heal the victim and obtain remedy based on the material and non-material wrongs caused to the victim by the offender. The actions may be monetary compensation, apology, service for the victim or the community, and additional acts which are appropriate to the needs of the parties. Assuming responsibility on the part of the perpetrator also means willingness to actively participate in therapy. Accordingly, a treatment program is formed for the perpetrator in order to prevent him/her from reoffending.

54. The Youth Probation Service in MoLSAaSS has been developing, together with the Police, the MoPS and the MoJ, the two (2) following programs based on the principles of restorative justice, which serve as an alternative or supplement to the criminal proceedings, based on the premise that criminal proceedings alone do not suffice for coping with minor perpetrators and victims:

    a. Mediation between the perpetrator and the victim;
    b. Family discussion groups - the program operates all across Israel by an NGO, which was selected in a tender and is supervised by the MoLSAaSS, as an alternative or supplement to the criminal proceeding. The program includes meetings between the minor perpetrator and her/his family, and the victim and her/his supporters, with the participation of a Probation Officer, Police officer and other professionals. The purposes of the meeting are to discuss the offenses and their consequences, to design a treatment program for the perpetrator to prevent the commitment of additional offenses, and to alleviate the damage the perpetrator caused the victim.

Inter-Ministerial Committee on Minors Recidivism

55. In September 2017, the Minister of Justice appointed an inter-ministerial committee to review the release of minors from detention, due to the high recidivism rates among minors released from detention (75% as opposed to 41% for adults). The inter-ministerial committee published its report in December 2017 and it was subsequently adopted by the GR No. 3711 (25.3.18),

establishing a steering committee to determine which of the inter-ministerial committee's recommendations would be implemented immediately.

56. The Inter-Ministerial Committee focused its work on the causes of recidivism among minors released from detention and an appropriate working strategy to decrease the current rates. The committee was composed of three (3) teams that dealt with the continuity of the treatment of minors, the release process of minors and the rehabilitation in the community.

57. The Inter-Ministerial Committee found that overall, due to the short detention periods and subsequent short paroles, it is required that the evaluation and treatment of the minor begin as soon as the minor is arrested. In addition, emphasis should be given to strengthening the minors' commitment to the rehabilitation process, given the general negative attitude of minors towards rehabilitation programs. Only a small number of the minors are released with a rehabilitation plan and some minors who are referred to out-of-home facilities do not stay there.

58. The Inter-Ministerial Committee's recommendations, which were adopted in a GR, included, among others, promoting cooperation between the different authorities responsible for minors and creating an individual long-term treatment strategy through joint inter-ministerial teams aimed at conducting a common thinking concerning the matter of the particular minor. The Committee's recommendations further included developing a Re-entry Court-based Model as part of the release committee, and reviewing out-of-home placement for released minors.

59. The steering committee concluded its work in August 2018 after formulating a holistic work method regarding minors in conflict with the law, from the moment of their arrest until immediately following their release from detention, on the basis of the Inter-Ministerial Committee's recommendations. Emphasis is also given to the re-integration of the minor in society following his/her release, through a comprehensive program addressing the needs of the minor and his/her family. The steering committee devised a unique inter-ministerial work model aimed to ensure the treatment of minors, by translating the Inter-Ministerial

Committee's recommendations into specific tasks for which the relevant ministries are responsible, either separately or jointly. The work model is holistic, ongoing and puts a special emphasis on cooperation between governmental authorities. The steering committee also developed a Re-entry Court-based Model, which will operate similarly to the existing parole board.

60. A pilot of the work model was launched on February 16, 2020. The work model includes an admission committee, which meets following the arrest of a minor. Under the new work model, a parole officer takes part in the admission committee, which contributes to the efficiency of the process. Once the minor is sentenced, a committee for convicted minors meets to discuss his/her matter. This committee now includes a representative of the parole board, as well as a representative of the Authority for Rehabilitation of Prisoners (ARP), which takes the place of the parole board in monitoring the situation of the minor following his/her release.

61. At the next stage, prior to the minor's expected release, a quasi-judicial release committee convenes to discuss the terms of the release. The release committee is composed of a designated juvenile judge, along with public representatives who were qualified for the position, the prosecution and defense attorneys, a representative of the ARP and an IPS social worker. Following the minor's release, follow-up meetings of the committee take place, which enable the Committee to monitor the minor's progress within the rehabilitation process.

62. In June 2020, since the pilot's launching, 35 minors were heard by the admission committees; ten (10) minors were heard by the committee for convicted minors; and eighteen (18) minors were heard by the release committees.

Head of Juvenile Justice (HJJ) and an Inter-Ministerial Coordinator (IMC) at the MoJ

63. In 2017, a new position for a HJJ was established in the SAO. This role includes instructing State Attorneys at the national level regarding juvenile justice and improving the measure of expertise in the field. The HJJ heads the National

Youth Forum, which is composed of representatives from the District Attorneys' Offices and the relevant law enforcement and welfare bodies and is in charge of reviewing juvenile justice issues and implementing its principles. In 2018 and 2019 the HJJ conducted a seminar on children in conflict with the law (hereinafter: CCWL) for State Attorneys who are involved in decisions regarding arrest and the sentence of minors.

64. In 2018, an IMC was appointed in the MoJ for preventing children from coming into conflict with the law, pursuant to GR No. 1840 (11.08.16). The functions of the IMC include holding consultations between the relevant professionals, holding training sessions, maintaining cooperation with NGOs and promoting projects and research in the field. The IMC is responsible for coordinating the activity of the Government bodies dealing with CCWL, with the main purpose of promoting the continuity of treatment and with a focus on prevention. The emphasis on prevention is based on the recognition that an early treatment which provides minors with the support system adjusted for their specific needs is proven to be the most effective long-term system to deal with CCWL. The IMC established a youth forum in the MoJ for officials in the Ministry whose work effects youth, such as from the SAO and the PDO.

Question No. 23

65. As of November 2019, 88 prisoners were in **solitary confinement**, of which 74 were criminal prisoners (37 were detainees and 37 were convicted prisoners), and fourteen (14) were security prisoners (nine (9) were detainees and five (5) were convicted prisoners).

66. With respect to separation of prisoners, as of November 2019, 70 prisoners were staying in separation, of which 50 were criminal prisoners (six (6) were detainees and the rest were convicted prisoners), and twenty (20) were security prisoners (four (4) were detainees and the rest were convicted prisoners).

Table No. 16 – Division of Prisoners According to Periods of Separation

Separation period	Number of prisoners

Separation period	Number of prisoners
Up to two (2) weeks	8
Two (2) weeks to a month	3
Month to two (2) months	3
Two (2) months to six (6) months	11
Six (6) months to a year	11
One to two (2) years	10
Over two (2) years	24
Total	**70**

Source: Israel Prisons Service, 2019.

Question No. 24

67. The Supreme Court has recently ruled on the three (3) following petitions, relating to the medical treatment of detainees:

H.C.J. 6369/20 *Maher Akhras v. The Military Commander for Judea and Samaria*

68. Mr. Maher Akhras was put in administrative detention after the Military Commander was convinced, based on classified intelligence, that he was a prominent member of the Islamic Jihad Movement, and involved in organized activity that endangers the West Bank. An administrative detention order was issued against him for four (4) months (the end date set for 26 November, 2020). Following a petition to the Court challenging the legality of his detention, security officials recommended to extend the detention by no more than two (2) additional months (insofar as the threat assessment remains the same). On September 17, 2020, a medical update on Mr. Akhras was brought before the Court, which later on ruled that the Military Commander's conclusion, that Mr. Akhras is a member of the Islamic Jihad Movement, has sufficient basis.

69. However, seeing that at the time Mr. Akhras was on a hunger strike for about 53 days, and was not in a physical state to constitute a threat, the Court decided to suspend the detention order. The Court further ruled that Mr. Akhras will remain hospitalized in "Kaplan" Medical Center, without handcuffs or prison guard, so that if his health were to stabilize, the Military Commander would be authorized to renew the detention.

70. Following the ruling, Mr. Akhras was released of IPS custody in "Kaplan" Medical Center and remained hospitalized, without handcuffs or prison guard. He was also allowed visitation in accordance with regular medical provisions. On September 30, 2020, he petitioned the Court and requested his immediate release due to a deterioration in his medical state. The State presented a medical opinion stating that his physical state was unchanged, in addition to classified material *ex parte*. The Court denied the petition, as the detention order had already been suspended.

71. On October 11, 2020, Mr. Akhras filed another petition requesting, once more, to be immediately released to his home. Once again, the State presented an updated medical opinion according to which his physical state remained unchanged. During the hearing, the Court suggested that the detention order would stay valid but would not be renewed, if Mr. Akhras would immediately cease the hunger strike, and unless new information would emerge or new circumstances would occur that would increase the risk posed by Mr. Akhras. Mr. Akhras refused and insisted he would cease the hunger strike only if he were released to his home. The Court ruled as it had ruled before and added that it hoped Mr. Akhras would consent to receive medical care.

72. On October 18, 2020, Mr. Akhras requested to be moved to An-Najah hospital in Nablus, and the Military Commander refused, as his transfer to that hospital would not allow renewal of the administrative detention, if need be.

73. The security officials received two (2) medical opinions by the "Kaplan" Medical Center on October 21-22, 2020, and a summary of a hospitalization letter on 23 October, 2020. These documents stated that Mr. Akhras' medical state remained unchanged for a long time, that he was conscience but weak, and that as he was refusing treatment and the hospitalization was not ensuring his medical stability, he could be released to his home, as would any other patient refusing treatment. Due to "Kaplan" Medical Center's intention to release Mr. Akhras and as the Military Commander found it was necessary for the security in the West Bank and public safety, the Military Commander ordered the renewal of his detention order, under the supervision of the medical center of the Israeli Prison Service (IPS) until November 26, 2020.

74. On October 23, 2020, a petition was filed against the renewal of Mr. Akhras' detention order. As part of the petition, a request for an interim order, according to which Mr. Akhras would stay at "Kaplan" Medical Center as opposed to being moved to the IPS medical facility, was filed. The Military Commander responded that the stay at "Kaplan" Medical Center would be acceptable, and clarified that he would remain under detainee status. The request for interim order was granted that day.

75. Following the State's response to the petition, which was filed on October 25, 2020, the Court ruled that during the hospitalization of Mr. Akhras, the detention order will be suspended, in accordance with the terms set in its original decision (HCJ 7300/20).

76. On October 27, 2020, Mr. Akhras filed a new petition to the High Court of Justice, requesting that he be moved to An-Najah hospital in Nablus or to Makassed hospital in the Eastern neighborhoods of Jerusalem, where he would be willing to receive medical treatment and to cease the hunger strike. He claimed that as Makassed hospital was in Israeli territory, monitoring and renewal of the detention was possible. On October 28, 2020, the Court ruled that there was no medical advantage to hospitalization in Makassed hospital as opposed to "Kaplan" Medical Center, and that Mr. Akhras' choice of ceasing the hunger strike in one hospital but not in another did not justify accepting the petition.

77. Mr. Akhras was hospitalized at "Kaplan" Medical Center until the date of his release from detention on 26 November, 2020, and has ceased the hunger strike on 6 November 2020.

H.C.J. 7236/18 *Physicians for Human Rights – Israel v. Israel Prison Service*

78. On 15 October, 2018, Physicians for Human Rights petitioned the High Court of Justice on the MoH policy for diagnosing Hepatitis C among prisoners. The MoH had decided to hold a general survey among the general population on Hepatitis C, but not among prisoners. The petitioners asked for the Court to rule that the State must conduct such examinations among prisoners as well, in accordance with the World Health Organization recommendations.

79. On 19 September, 2019, the Court requested the State to explain why both examinations cannot be conducted simultaneously. On June 8, 2020, the Court erased the petition due to the State's announcement according to which a procedure has been adopted in the IPS, which would promote a policy of testing prisoners for Hepatitis C. The procedure entered into force on July 7, 2020, following which all prisoners and detainees have been requested to fill in a questionnaire aimed at diagnosing Hepatitis C carriers upon their entry into the detention facility (the procedure is published online and may be accessed here: https://www.gov.il/he/departments/policies/nohal_hepatitisc). In addition, as of March 1, 2021, the second stage of the voluntary identification of Hepatitis C carriers in IPS facilities will commence, entailing the publication of information brochures in IPS medical clinics, informing prisoners of the availability of Hepatitis C tests to them.

Pr.Ap.Rq.H.C.J. 6214/19 *Wadia Abu Amar v. State of Israel – Israel Prison Service*

80. In 2017-2018, several prisoners petitioned against the IPS decision to halt their provision of Ritalin, afforded due to their ADHD. The IPS claimed that Ritalin was a dangerous and addictive drug, that allowing it into the prison may lead to drug trade, and that it was providing the prisoners with alternative behavioral care. On February 4, 2019, the District Court ruled that in the case of Abu Amar, while the IPS's policy does not prohibit the provision of Ritalin to prisoners, the particular circumstances of the petitioner do not justify the provision of Ritalin and IPS's position was not unreasonable.

81. In 2019, the prisoners filed a request to appeal to the Supreme Court, and Physicians for Human Rights and the Clinique for Rights of Detainees and Prisoners in the Academic Center for Law and Business joined as *amicus curiae*. They presented expert opinions according to which the IPS was not abiding by accepted medical standards.

82. On March 11, 2020, the Court requested the IPS to inform the Court if it is willing to form a committee, which would include external medical officials. On 2 June, 2020, the IPS announced that it would form such a committee which includes mostly external members. As the committee was formed, the Court

erased the appeal, whilst reserving the appellants' right to file a petition after the committee published its findings or if the process is delayed.

Disciplinary and administrative measures relating to hunger striking prisoners

83. On September 11, 2016, the HCJ ruled on a petition filed by the Israeli Medical Association and several NGOs, asking to determine that this Amendment is unconstitutional. The petition focused on Section 19(14)(e) of the Law, instructing a court presiding over a request for medical treatment to take into account *"considerations of threat to human life, or substantial threat of severe harm to the security of the state, according to relevant evidence brought before it"*. The HCJ rejected this petition and determined that the Amendment is constitutional.

84. The Court concluded that the Amendment balances between the values of sanctity of life, public interest and the right of the individual to human dignity. The Court noted that the *Basic Law - Human Dignity and Liberty* not only safeguards the sanctity of life but also obliges the State to actively protect the life of any person. The Court further noted that the State has additional responsibility for the security of the prison, the wellbeing of other prisoners and an obligation and responsibility for the wellbeing and security of the general public that may be affected by events related to hunger strikes by groups of prisoners.

85. With regard to Section 19(14)(e) of the Law – the main purpose of which is to safeguard security – the Court ruled that while this section is constitutional, it must nevertheless be used very narrowly and subject to the required evidence (*H.C.J. 5304/15 The Israeli Medical Association v. The Israeli Knesset* (11.9.16)).

Question No. 25

Saharonim Facility

86. **Note that due to the Covid-19 Pandemic, "Saharonim" was evacuated and most of the foreign detainees were transferred to the "Giv'on" facility.**

87. The "Saharonim" detention facility is located in the Negev, the southern part of Israel. The purpose of this facility was to detain persons who entered Israel illegally initially, immediately following their illegal entry into Israel, mainly from the Sinai Peninsula.

88. Any person detained in "Saharonim" was entitled to a hearing by the MoI. In addition, DRT Judges conducted monthly reviews of the status of detainees.

89. According to the *Prevention of Infiltration (Offences and Jurisdiction) Law* 5714-1954, persons who entered Israel illegally were held at "Saharonim" from the time of their entry into Israel for a maximum of three (3) months. The purpose of this initial period at "Saharonim" was to determine their identity and nationality, and explore alternatives for their departure from Israel. As of 2017, no new illegal entries from the Sinai Peninsula were recorded and therefore there were no new arrivals to the detention facility. However, several dozens were still detained in the facility prior to its evacuation, mostly illegal migrants who violated the terms of their stay in Israel, or those whose release from detention may pose a risk to the national security, the public order or the public health according to Section 13F(b)(2) to the *Entry Into Israel Law*.

90. The facility was managed by the IPS, and the conditions of the facility met the relevant national and international standards and regulations of detention facilities.

91. Detainees followed a routine schedule, which included designated time for walking or partaking in physical activity at a yard equipped with fitness facilities. Furthermore, detainees were eligible for visits, including visits from the ICRC, the UN and other aid organizations. The detainees also retained the right to consult with attorneys and to be visited by consuls and embassy representatives.

92. Detainees were held in wing 10, which contained 102 beds. As of November 2019, there were 52 detainees in "Saharonim" detention facility.

93. Every detainee in need of personal items received a package from the IPS including hygiene products, under garments, bedding, and items of clothing in accordance with the season.

94. The wing was equipped with a washing machine, a dryer and laundry detergent which the detainees may utilize.

95. Detainees who were entitled to assistance from the ICRC received a monthly stipend of 200 NIS (58 USD) for purchasing items at the commissary.

96. The ICRC provided the detainees with a dialing card to Africa at the beginning of each month.

Health services

97. A medic visited the wing twice a day for the purposes of providing prompt medical aid, distributing medications and taking roll call for the sick.

98. A general practitioner and a dentist were present on site. Every detainee requiring their services was able to seek treatment at the clinic.

99. Detainees requiring psychiatric treatment were referred to a psychiatrist who visited the facility on a monthly basis.

100. Additional medical care was provided to detainees in "Saharonim" both by the specialist clinic at the Eshel compound and by specialist doctors who treated inmates at Ktzi'ot prison, and any request for medical treatment was responded to accordingly.

Employment

101. Detainees at "Saharonim" were encouraged to seek employment in the facility. As for November 2019, fifteen (15) detainees were employed in the wing and outside of it.

Social Services

102. Every detainee held in "Saharonim" met with a social worker for the purposes of assessing the detainee's state and for providing the detainee with social services according to his/her needs. Furthermore, the attending social worker held follow-up meetings with detainees who were under supervision on a regular basis. The "Saharonim" staff were receptive to any request made by a detainee regarding the provision of social services.

Education

103. Twice a week the detainees are invited to participate in art classes which were guided by an external instructor.

104. The Education Officer held workshops and interactive meetings and lent books in English, Amharic and Arabic.

Group Discussions

105. Throughout the year, an Education Officer and a social worker held group discussions on life skills.

Question No. 28

Death of an inmate in Police custody

106. The data provided by DIPO indicated two (2) cases in which events of deaths in custody were reported and investigated during the reporting period:

(1) A detainee that died at the Police station – On August 20, 2017, the deceased was arrested by the Police. The arrest required the use of pepper spray and a taser. While at the Police station, the deceased was communicative, yet he later experienced physical distress. The medical treatment provided to the deceased had failed, resulting in his death. The pathological examination could not indicate the cause and the exact time of death. The case was brought before the Police Disciplinary Department, in order to examine the procedures relating to the treatment and supervision of the detainee, as it was found that the police officer in charge of the deceased at the time, was only partly present in the cell prior to the

deceased's death. The case was closed due to lack of sufficient evidence (DIPO Case 3790/17).

(2) On July 18, 2017, a detainee committed suicide while in detention at the Police station, shortly after his arrest and arrival at to the Police station. The deceased was found dead with his cuffs wrapped around his neck. The pathological examination of the deceased's body indicated that he committed suicide, while a large amount of alcohol was found in his blood. After an investigation by the DIPO, it was decided that under the circumstances, no suspicion arose of an offense regarding the circumstances of the detainee's suicide (DIPO Case 3158/17).

Question No. 29

ISA

107. **The status of cases handled by the Inspector**- As of August 2020, there were 46 open cases (compared to 147 in August 2019 – a decrease of 68%). The complaints in 71.7% of these cases were received between 2019 and 2020 and 28.2% of the complaints were received prior to 2019.

108. In 2019, the Inspector initiated 36 inquiries into complaints filed by interrogatees, or on their behalf, regarding their interrogation by ISA interrogators.

109. With regard to audio-visual documentation of ISA interrogations (in this regard see detailed information in Question No. 7 above). Also, in 2019, 34 reports concerning exceptional events during interrogations were made to the Unit by the MoJ supervisors who examine the abovementioned control room. Note that as of 2019, such reports include every exceptional event that may occur during an interrogation, and are not limited to exceptional events caused by the interrogator.

The Police

Recent State Attorney Guidelines concerning treatment of complaints made against Police personnel

110. On August 18, 2020, the Deputy State Attorney (Criminal Affairs) published State Attorney Guideline 1.16, regarding the enforcement policy in cases of unlawful use of force by the Police. The Guideline sets out the cases in which criminal charges will be filed against Police personnel following unlawful use of force, as well as those cases in which a disciplinary hearing will be conducted alternatively.

111. On the same day, the Deputy State Attorney (Criminal Affairs) issued an update to State Attorney Guideline 2.18, regarding the prosecution policy in cases where during the investigation of a suspect of a crime committed against Police personnel, the suspect has raised a complaint regarding use of force by the Police. The Guideline is aimed at giving preference to the complaint concerning use of force by the Police, by ensuring that the latter complaint is examined before a decision is taken with regard to whether or not to indict the suspect for offenses allegedly committed against Police personnel.

Statistical data regarding the DIPO

112. In 2019, 66 indictments were filed by the DIPO and 32 conditional arrangements were reached. 60 of these indictments were filed to Magistrate Courts and six (6) to District Courts. Also, of the 80 cases in which a decision was made during 2019, in 63 cases (79%) the defendant was convicted (fully or partially), eleven (11) cases (14%) ended with the prosecution retracting the indictment or with stay or suspension of proceedings, and six (6) cases (7%) ended with an acquittal. Note that 36% of the indictments filed against Police officers by the DIPO concerned violence offences and 18% concerned sex offences. 178 decisions were made in 2019 in cases concerning violence offences following investigation of Police officers under warning. In 13% of these cases criminal charges were filed, and in 13% percent of these cases it was decided to conduct disciplinary hearings.

113. In 2019, the DIPO reached a decision regarding 539 cases in which Police officers had been investigated under warning (every case included one (1) Police officer or more). 225 cases were decided during 2019 following investigation. In 66 of these cases (29%) a criminal indictment was issued, in 32 of these cases (14%) conditional arrangements were reached, and 127 of these cases (57%) were transferred to the Police Disciplinary Department alongside an obligating decision to hold disciplinary hearings. 136 of these cases (43%) were closed for lack of guilt, 71 cases (23%) were closed as they did not justify criminal or legal proceedings (mainly in very minor offences or when the complainant does not cooperate with the investigation), and 107 cases (34%) were closed due to lack of evidence.

114. The DIPO may also initiate an investigation independently based on Police material gathered from the evidence in criminal cases dealt by the Police, which include statements or complaints raised by suspects during police investigations concerning the use of force against the suspects by Police officers. The Police material is automatically submitted to DIPO, towards its independent examination of such cases. During 2019, 2,300 Police materials were received by DIPO. The cases arising from these materials were examined by the DIPO through an administrative procedure. The DIPO invests significant resources in locating the suspects who raised the complaints. However, during 2019, only 368 (16%) of the complainants chose to proceed with their complaint and gave witness, while the remaining complainants (84%) abandoned their complaints.

Case Law

115. H.C.J. 6036/19 *Ahmad Salah Musa v. The Attorney General* – In September 2019, the petitioner applied to the HCJ, requesting that the Inspector reach a decision following his complaint. On November 24, 2019, shortly after the Inspector had reached a decision, the HCJ dismissed the petition in light of the fact that the Inspector had reached a decision concerning the petitioner's complaint. However, in light of the delayed response of the Inspector, the Court charged the respondent with the trial costs. Under Israeli law, an applicant or his/her representative wishing to appeal the decision of the Inspector, may

submit an appeal to the SAO. Such a procedure was initiated by the Public Committee Against Torture in Israel on behalf of the petitioner, and is currently underway.

116. S.Cr.Ca. (Be'er-Sheva District Court) 32966-12-17 *The State of Israel v. Meir Merotzagai* – In January 2020, the Be'er-Sheva District Court convicted a warden for the commission of a variety of sexual offences against an inmate. The Court allocated a significant portion of the ruling to the description and condemnation of these heinous crimes. Moreover, the Court held that the warden's cruel exploitation of his position of power constituted a significant aggravating factor in his sentencing. Thus, the defendant was sentenced to twelve (12) years of imprisonment, in addition to a 150,000 NIS (41,666 USD) fine. In its opinion, the Court expressed its intention that this punishment serve as a clear message regarding the duty to protect prisoners from harm, including potential harm caused by law enforcement officials.

117. On January 24, 2016, the HCJ ruled in the matter of *Anonymous v. The Attorney General*. This petition concerned interrogations of women by the ISA and claims that their gender was misused during the interrogation, and that some of the interrogation measures that were used harmed their dignity. An additional claim concerned the prolonged review process of complaints filed against ISA interrogators in this regard. The petitioners requested the Court to order the respondents to establish a procedure relating to the questioning of women specifically. The petition with respect to the petitioners' private interest was denied after the handling of their specific complaint was completed. The Court also denied the second prong of the petition after being convinced that the questioning of women by the ISA is also carried out in accordance with a regulated procedure that provides adequate protection for the interrogatees and prevents abuse based on their gender. At the same time, the Court ruled that the leaflet on rights distributed to interrogatees should be updated in order to reflect the concrete rights granted to women, and further clarify in the leaflet ISA's procedure, according to which, in the absence of a hindrance, the female interrogatees may demand that another woman will be present in the

interrogation room during her interrogation **(**H.C.J. 8899/13 *Anonymous v. The Attorney General* (24.1.16)).

118. Ci.C. (Ashkelon Magistrate's Court) 39124-05-17, *Yalo et. al. v. The State of Israel* – The case concerned police officers who mistakenly identified the plaintiffs' home as the home address written in a search warrant and therefore proceeded to search the plaintiffs' home without legal grounds and absent their permission. Pursuant to the police officers' denial of the plaintiffs' request to view the arrest warrant, one (1) of the plaintiffs (hereafter: "plaintiff No. 1") attempted to leave the premises. Subsequently, the officers blocked plaintiff No. 1's path, pushed him onto the couch and incapacitated him using handcuffs in order to prevent him from leaving. The altercation escalated as the police officers inflicted physical force against the four (4) other plaintiffs who were present at the house during the illegal search.

119. After realizing their mistake, the officers nevertheless arrested plaintiff No. 1 for assaulting a police officer and led him to their vehicle, handcuffed, in full view of the plaintiffs' neighbors. At the Police station, plaintiff No. 1's hands and feet remained cuffed for four (4) hours, during which time he was subjected to a search. Further, the plaintiff argued that he was dragged across the floor of the station and kicked by a police officer during his detention.

120. In response to these events, the plaintiffs filed a civil suit against the State, seeking reparations for the police officers' negligent conduct which caused them physical pain and emotional distress, as well as for slander and for the violation of their rights to dignity, reputation and privacy. The Court acceded to the plaintiffs' claims concerning the violation of their rights to privacy and respect, in addition to their claims of extreme emotional distress, and ordered the State to compensate them in the sum of 10,000 NIS (2,777 USD) per plaintiff. Plaintiff No. 1 received additional compensation, amounting to a total of 25,000 NIS (6,944 USD) for his illegal arrest and incapacitation. The Court rejected the plaintiff's argument that he was dragged across the floor of the station and kicked by a police officer during his detention.

Question No. 30

The HCJ ruling regarding Fares Tbeish (26.11.18)

121. On November 2011, Mr. Fares Tbeish was arrested by an administrative detention order for suspicion of membership and activity in the Hamas terrorist organization and trafficking of weaponry linked to terrorist attacks within Israel (specifically, harboring and trafficking of weaponry linked to terrorist attacks within Israel). Following his interrogation, he admitted to an amended indictment and was convicted through a plea bargain. Mr. Tbeish was sentenced to 36 months' imprisonment, 36 months of suspended imprisonment for a period of five (5) years and a fine of 20,000 NIS (5,400 USD). On April 2013, Mr. Tbeish filed a petition to the HCJ claiming he was tortured by ISA interrogators. In his petition, he requested the Court to instruct the AG to cancel his decision not to open a criminal investigation against his interrogators, and to cancel an AG's guideline, which according to the petitioner, allows for the use of special interrogation means.

122. On November 26, 2018 the HCJ ruled on Mr. Tbeish's petition. The Court noted that Mr. Tbeish filed a complaint to the Inspector, which examined all the investigations materials in his regard. The Court also noted that the Inspector met with the petitioner in order to further examine his complaint. However, in these meetings the petitioner did not recall the course of his interrogation, nor what actions his interrogators took and the threats against him. The petitioner also refused to be examined by a lie detector. On September 12, 2016, the Inspector's Supervisor, a senior advocate in the SAO, notified the petitioners that the State Attorney decided that the case will be closed due to insufficient findings that justify the opening of a criminal investigation, disciplinary measures or other measures against the ISA interrogators.

123. After careful examination of all the information presented to it, the Court noted, *inter alia*, that the petitioner's version, as presented in his affidavits, did not manage to prove a suspicion of criminal offence by the ISA interrogators, in a manner that contradicts the Inspector and the Supervisor's recommendations.

The Court further noted that there were substantial inconsistencies in the petitioner's version and therefore it did not find any reason to accept it.

124. In regard to the claim that the use of special interrogations means by the ISA interrogators are not covered by the "necessity" defense, the Court noted that the said means were elaborated before the Court in an *ex-parte* hearing, in which it was emphasized that such means did not include violence towards the petitioner as described in his complaint and his petition. In this regard, the Court noted that it accepts the determination of the Supervisor, that the scope and level of these means are substantially far from the petitioner's claims. In these circumstances, the Court noted it is convinced that the use of the special means in the petitioner's interrogation is covered by the "necessity" defense.

125. The Court further noted that the circumstances of the petitioner's interrogation clearly indicate that the investigation was intended to prevent an actual and concrete danger to human life, which took place at a high level of certainty. The "necessity" that underlies at the petitioner's interrogation must be understood and interpreted in light of the complex security reality of the State of Israel. The petitioner was active in a terrorist organization that carried out and continues to carry out serious terrorist attacks, including mercilessly murder of innocent men, women and children. The special means used in the interrogation of the petitioner, as argued before the Court, were proportionate to the severe injury that they were employed to prevent, and the Court confirmed the Supervisor's determination that "the use of the special means of interrogation in the circumstances is protected under the necessity defense".

126. The Court did not accept the argument that in every case in which a complaint is filed regarding the use of torture during interrogations and a defense of "necessity" is raised by ISA interrogators, a criminal investigation must be opened against the interrogators, and only after a decision to prosecute them can they claim the "necessity" defense.

127. The Court found no reason to intervene in the AG's decision to approve the Supervisor's decision not to open a criminal investigation against the petitioner's interrogators and to close the investigation file in the matter of his complaint.

Contrary to the petitioner's claims, the decision that the petitioner was not tortured in his interrogation and therefore the "necessity" defense absolves the interrogators of criminal responsibility for applying "special means of interrogation" in his interrogation, does not deviate from the range of reasonableness. In addition, the petitioner's request for revocation of the AG guideline should be rejected since the said guideline does not contradict the law.

128. On February 25, 2019, the Court rejected a request for an additional hearing in this case (Ad.H.H.C.J. 9105/18 *Fares Tbeish et. al. v. The Attorney General et. al.* (25.2.19)).

The HCJ ruling regarding Abu-Gosh (12.12.17)

129. On December 12, 2017, the HCJ ruled that the AG's decision not to order the opening of a criminal investigation regarding methods used by ISA interrogators during an interrogation of a detainee involved in terrorist activity is reasonable, and rejected the petition. The Court held that the interrogation methods used do not constitute torture and that the interrogators are entitled to the claim that they acted under the "necessity" defense regarding certain exceptional methods that were used.

130. The petitioner was arrested on September 3, 2007 on suspicion that he was the explosives expert of an active Hamas terrorist cell in Nablus, possessing information pertaining to its explosives lab, explosive devices and plans for terrorist attacks. These suspicions were based on highly credible information. Therefore, there were concrete grounds to assume that the petitioner was in possession of information that was crucial to the aversion of a real and substantial threat to human life. Due to the immediate need to attain this urgent information in order to save lives, the interrogators employed certain exceptional measures during his interrogation.

131. During the course of his interrogation, the petitioner revealed the location of the explosives lab in which he produced explosive materials and explosive devices and the details of a person to whom he had given an explosive belt that he had manufactured. The petitioner also gave his interrogators information about

another explosives lab and a warehouse for chemical substances used in the preparation of explosive materials. The information provided by the petitioner led to the apprehension on September 22, 2007 of a ready-to-use explosive belt that was left in the heart of Tel Aviv-Jaffa, for a terrorist to collect and use to carry out a mass terrorist attack. That information also led to the discovery of two (2) additional explosives labs in which many explosive materials were found.

132. The HCJ ruled that the petitioner's complaints filed regarding the interrogation were examined on a number of separate occasions by the most senior Israeli legal professionals, including the State Attorney and the AG. The Inspector conducted three (3) inquiries of the matter: in 2007 when the initial complaint was filed on behalf of the petitioner, in 2014 and in 2015, after the Inspector became part of the MoJ. On these occasions, the Inspector recommended not to open a criminal investigation on the basis of its findings. The recommendation of the Inspector was brought before the State Attorney and the AG for review on several occasions, when the positions were held by different persons, and time and again it was decided that a criminal investigation was not warranted.

133. The HCJ found that certain exceptional methods of interrogation were used, but they do not constitute torture as they did not cause severe pain and suffering according to Article 1 of the CAT. The Court based this decision on the severity of events described by the petitioner in his initial complaints and in accordance with the material presented by the AG and the ISA, and rejected a more severe description of the events that was raised by the petitioner at a later time (upon his release from prison in 2012). The Court found that a forensic evaluation of the petitioner conducted according to the Manual on the Effective Investigation and Documentation of Torture (Istanbul Protocol), did not have substantial evidentiary weight as it was based on his later complaints, did not have sufficient medical documentation from the time of the interrogation and could not point to a direct and substantial link between the medical assessments and the investigation.

134. The Court stated that according to the AG's guidelines the "necessity" defense cannot be applied when interrogation methods of the ISA amount to torture. Since it was established in this case that the ISA interrogation methods did not constitute torture, and there was a real and substantial threat to human life, the Court ruled that the interrogators are entitled to the "necessity" defense and therefore should not be subjected to a criminal investigation or prosecution (H.C.J. 5722/12 *As'ad Abu-Gosh v. The Attorney General* (12.12.2017)).

Question No. 35

Case law

135. **HCJ 1591/18 *Anonymous v. The Minister of Justice and the Police Inspector General* (17.9.2020)-** The Plaintiff, an Israeli national of Bedouin descent, appealed to the HCJ regarding the State's rejection of her application to be recognized as a victim of trafficking in persons. The plaintiff, then a minor aged sixteen (16), who was subjected to an arranged marriage to an older man by her parents, in exchange for a monetary dowry, endured emotional and physical abuse by both her husband and family, and her freedom was sometimes physically restricted. After two (2) suicide attempts, her father finally agreed to her divorce from her first husband, in return of half the dowry, and within a month of her release from hospital due to the second suicide attempt, at the age of seventeen (17), her parents arranged her marriage to another man, much older than her, who was already married to another woman, who abused her physically and sexually during their wedding night. The plaintiff, after pleading to her sister in law to be allowed to return to her parents' home, was refused and reminded that her father had already agreed to one (1) divorce and would not agree to another, stabbed her second husband to death on the day after her sexual assault. The Plaintiff was subsequently indicted and convicted of threatening her first husband and of intentionally murdering her second husband, and was sentenced to eleven (11) years of imprisonment (in 2018 the Plaintiff was granted pardon and her punishment was reduced to nine (9) years and one (1) month).

136. The issue brought before the HCJ was whether the State erred in its decision not to recognize the Plaintiff as a victim of TIP. Such a status is granted to victims of trafficking in persons proscribed in Section 377a of the *Penal Law*, who underwent acts (including, *inter alia*, organ trafficking, slavery, and involuntary prostitution) accompanied by the required *mens rea*. The Plaintiff's request further relied on Section 375a of the *Penal Law*, which stipulates a criminal prohibition on holding a person under conditions of slavery. TIP victims are accordingly eligible to rights in both criminal proceedings and in civil matters, including a policy of non-punishment for offences stemming from the human trafficking offences performed against them, the right to conduct their hearings behind closed doors, the right to free legal aid in civil proceedings related to those offences, the right to apply for funds for rehabilitation from a designated fund, and the right to receive medical and psychological care in shelters for victims of trafficking for a one (1)-year period. The Police, which has the authority to recognize TIP victims decided not to recognize the plaintiff as such; claiming that there was insufficient evidence to establish that the plaintiff's parents had foreseen the violations that would occur against her, and as such, that the *mens rea* element was not fulfilled.

137. In its decision, the HCJ accepted the plaintiff's petition partially, holding that the relevant authorities must conduct an additional review of the plaintiff's status. While acknowledging that an arranged marriage does not constitute TIP *ipso facto*, the Court recognized that where an arranged marriage includes both elements of the TIP's offence; namely, the transactional action coupled with the intent or knowledge of the potential violations as legislated, then an arranged marriage may be considered as human trafficking *de jure*. Accordingly, the Court held that the Police must review the Plaintiff's status in light of a determination regarding whether her parents could have foreseen the possibility that she would be subjected to sexual offences resulting from the arranged marriage. In this regard it should be mentioned that the evidence in the murder case indicated that it was known that her first husband had divorced a previous wife due to violence against her.

138. In making its decision, the HCJ stressed that the Police must apply the low administrative evidentiary threshold required for the purposes of such status determinations – *prima facie* evidence, a lower threshold than that required in criminal proceedings, as its main purpose is granting access to rehabilitation to victims), and must ensure that the assessment of the evidence in light of this threshold is conducted by an official with expertise in the field and relevant legal training. Moreover, the determination must be based on an interview with the plaintiff, who ought to be treated as a victim rather than as a perpetrator; the Court criticized the process that relied solely on evidence collected during the criminal proceedings against the Plaintiff. In arriving to this conclusion, the HCJ referred to Israel's obligations under international law, as stemming from the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("The Palermo Protocol"), the Slavery Convention of 1926 and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The HCJ further noted both amendments to *Penal Law* and policy measures which have been adopted in order to protect victims of TIP in accordance with Israel's international obligations.

139. **Appeal 5492-17 *Anonymous v. The Population and Immigration Authority*-** On July 3, 2018, the Jerusalem Appeals Tribunal, in Appeal 5492-17 *Anonymous v. The Population and Immigration Authority* accepted an appeal concerning the objection to the decision of the Respondent's CEO. After a discussion at the inter-ministerial committee, it was decided to deny the Appellant's status in Israel for humanitarian reasons, at the end of the rehabilitation year at the "Ma'agan" shelter. The Appellant is an Ethiopian woman who was kidnapped in the Sinai Peninsula and has been subjected to severe violence and heinous crimes and sexual violence. The Tribunal accepted the appeal and ordered the granting of a B/1 visa, which includes a work permit in Israel for two (2) years. The Tribunal ruled that the main consideration was the Appellant's mental state, and the intensity of the harsh encounters she

experienced in her life, in particular the ordeal she suffered in Sinai. The Tribunal ruled that removing the Appellant from the professional support system she has in Israel and her return to Ethiopia at this stage could significantly impair her chances of rehabilitation.

140. **Cr.Ap.Rq. 2707/17 *Anonymous v. The State of Israel*-** On July 6, 2017, the Supreme Court ruled in the appeal of Cr.Ap.Rq. 2707/17, *Anonymous v. The State of Israel*. The Supreme Court discussed whether or not the lower instance may award compensation under Section 38(a) of the *Criminal Procedure (Arrests) Law*, before the prosecution has decided not to indict the suspect. The Court held that the wording of Section 38(a) indicated that in order for award compensation to be paid under section 38(a), it is insufficient that the suspect is released from custody, and that there was no basis for the arrest, but that the termination of the proceeding without an indictment is an essential condition that restricts the Court's authority to award compensation in favor of the suspect. According to the Court's position, the wording of the section creates a firm link between the question of the suspect's guilt and the assessment of the need for detention, suggesting that the possibility of awarding compensation was dedicated uniquely to cases where the decision not to indict raises concern that there was no reason to arrest the suspect in the first place. The Court noted that insofar as the PDO finds it appropriate to allow monetary compensation under Section 38(a) to suspects for false arrest, even in cases in which it was decided to indict them or when it has not yet been decided whether to indict, such compensation should be incorporated into the *Criminal Procedure (Arrests) Law* by way of legislation amendment.

141. On March 6, 2013, the Court ruled regarding the Appellant's request, and ordered her immediate release to her cousin's home in Tel Aviv-Jaffa (Ad.Ap. 22981-02-13 *Tosfay (Prisoner) v. The Ministry of Interior* (the Administrative Court in Be'er-Sheva)). The Appellant, an Eritrean woman, entered Israel in 2012 and was held at "Saharonim". While the State was of the view that the Appellant should be held in a shelter rather than in "Saharonim", at that time there was no vacancy at the "Ma'agan" shelter. She underwent severe violence and heinous crimes in Sinai, was beaten, raped and humiliated daily for two (2)

months. She requested the PIA to be released to her cousin's home until a place is found in the shelter, but the PIA rejected her request, as it believed that she should only be released to a place where she could continue her rehabilitation process. This decision set a precedence according to which, victims of trafficking and slavery shall not be held in custody.

Rights of TIP victims

Medical services

142. In accordance with the *Patients Rights' Law 5756-1996*, any person is entitled to urgent medical care and hospitalization. This right is not conditioned upon pre-payment or requires that the patient would be an Israeli citizen.

143. TIP victims residing in a shelter receive complete medical care free of charge, including, *inter alia*, hospitalization, medical enquiries, free medicines, and counseling. The shelter's assigned physician arrives twice a week at fixed times.

144. In addition, in 2018 the MoH approved the provision of a secondary medical treatment for victims of trafficking who are entitled to a year of rehabilitation but choose not to stay at the shelters. Furthermore, in 2018, an arrangement was made with a gynecologist at the Beilinson Hospital, who now provides gynecological follow-ups, including pregnancy follow-up, to the residents of the shelter and apartments.

145. Children of victims of TIP receive free and full medical care through the health insurance provided to them by the "Meuhedet" health fund. Furthermore, family health centers provide child development screening tests; follow-up examinations during pregnancy, and all the required vaccinations.

146. Childbirth services are provided without a condition of prepayment in every hospital in Israel, including full treatment for babies and for preemies.

147. The "Terem" Clinic, located in Tel Aviv-Jaffa, is funded by the MoH and provides primary medical care, including a doctor's examination, laboratory services and imaging services (x-ray and ultrasound). The clinic provides

36,000 appointments each year, and 260 chronic patients receive full services (including treatment, follow-up, testing, diabetes and hypertension medication and home testing kits). Chronic patients undergo a fundoscopic exam once a year, and blood testing twice a year. Until the end of 2018, "Terem" operated a specialist's clinic that was ran by volunteers.

148. During 2019, the MoH was in the midst of a tender process for the continuation of the provision of the said service for emergency medicine and the treatment of chronic diseases to population without residential status. However, in the absence of a permanent Government and an annual budget for Government Ministries, the tender process was halted, and the services continue to be provided by the said "Terem" clinic based on the existing contract, which is extended periodically.

Treatment of Infectious Diseases

149. The MoH Clinics for Sexually Transmitted Diseases and the MoH Clinic for Foreign Residents, provide free medical services, including gynecology services to all foreign populations in need, including victims of TIP. The clinics offer physicians and nursing services, as well as a social worker and free medicines, in addition to X-ray and an ultrasound machines. It also operates a mobile clinic that provides services to all in need, including victims of trafficking.

150. Diagnosis and treatment of tuberculosis is funded by the MoH, which provides treatment for tuberculosis patients at Centers for the Diagnosis and Treatment of Tuberculosis throughout the country, and hospitalization of tuberculosis patients at "Shmuel Ha'Rofeh" Hospital.

Mental Health

151. Since 2016, psychiatric care at the shelters was provided by a psychiatrist from the MoH "Gesher" clinic, trained and experienced in both cultural sensitivity and treatment of trauma. The psychiatrist visits the shelter every other week, and the services provided to victims were significantly enhanced by her availability and because of the frequency of her meetings with patients. In 2019,

due to the closure of the "Gesher" mental health clinic, the psychiatric care of trafficking victims was transferred to the "Ruth" clinic, operated by "AMCHA" NGO, which has abundant experience in treating persecuted and traumatized populations (such as holocaust survivors).

152. In 2019, psychiatric care was provided in the shelters and transitional apartments to 28 victims: seventeen (17) women and eleven (11) men – in both the shelter and the apartments. Most of the female patients that were treated in 2019 were in a complex mental state, such as psychotic episodes, and needed intense treatment.

Shelters and day centers for victims of slavery or human trafficking

153. Israeli legislation provides for the provision of an array of services to individuals that are recognized as victims of slavery or TIP. The MoLSAaSS has been provided with an annual budget of 8,000,000 NIS (approximately 2.2 million USD) for the operating of several shelters that treat TIP victims and their children, as well as a further 580,000 NIS (approximately 160,000 USD) for the operation of a National Center for Survivors of Slavery and TIP (formerly: the Day Center) in Tel Aviv-Jaffa. The shelters include a 35-bed shelter for female TIP victims and a 35-bed shelter for male TIP victims, as well as transitional apartments with eighteen (18) beds for female victims and six (6) beds for male victims. The shelters offer one (1) year of rehabilitative services, including job training, psychosocial support, medical treatment, language training, and legal assistance, and all residents are allowed to leave freely. Victims who choose to cooperate with the enforcement and investigative authorities are entitled to stay in the shelters, and receive all the above mentioned aid and rights, for the entire duration of the investigation and the legal proceedings, following which they are entitled to a further year of rehabilitation in the shelters. All recognized victims of trafficking or slavery are also provided with State-funded legal aid by the Legal Aid Administration (LAA) at the MoJ and work visas provided by the PIA.

154. The aforementioned National Center provided services to 230 male and female TIP victims in 2019, as well as 125 of their children. The individuals treated by

the National Center, the majority of whom are of Eritrean origin, were either waiting for a space at one of the shelters, had already completed one (1) year at a shelter, or had opted not to reside at a shelter. There is no time limit for receiving assistance at the National Center, which has five (5) staff members. Services provided include psychosocial therapy, food aid, financial assistance, mediation and accompanying to various external services, assistance in the exercising of rights, therapeutic groups, and social events.

155. Due to the increase in the number of victims who are treated by the National Center, the MoLSAaSS increased the yearly budget of the National Center by 33% in 2019. Accordingly, the current yearly budget allocated to the National Center by the MoLSAaSS is 771,400 NIS (223, 291 USD).

State funding to victims' protection and assistance

156. *MoH:* In 2019, the MoH invested a total annual budget of 695,000 NIS (200,986 USD) for treatment of TIP victims, as follow:

    a. A budget of 145,000 NIS (41,932 USD) to employ a physician in the shelters;

    b. A budget of 500,000 NIS (144,594 USD) was given to the Rabin Medical Center in Petah Tikvah, for treatment provided to TIP victims who are entitled to a year of rehabilitation but chose not to stay at the shelters;

    c. A budget of 50,000 NIS (14,459) for miscellaneous, such as medicine or health insurance to minors who are residing with TIP victims in the shelters.

157. *Police:* In 2019, the police allocated over 30,000 NIS (8,798 USD) from its witness protection budget for purposes such as plane tickets and housing victims in hotels (for various reasons).

158. *MoLSAaSS:* The yearly operating budget of the shelters and transitional apartments, provided by the MoLSAaSS in 2019, is 7,780,784 NIS (2,252,238 USD).

159. *MoJ*: In 2018, the total annual cost was roughly 3,633,000 NIS (1,000,000 USD). This includes the annual funding of the LAA, the NATU, the SAO and the Office of the Deputy Attorney General (International Law) and the Office of the Deputy Attorney General (Criminal Law).

160. In 2019, a sum of 165,000 NIS (47,924 USD) was paid by the LAA to external lawyers who represented victims of TIP for the LAA in legal proceedings according to law.

The Treatment Centers - Overview

Main Developments and Innovations in the Frameworks for Human Trafficking Victims in 2019

Improvement of the living conditions

161. In 2019, the team of the shelters formed collaboration with a social enterprise named "Social Eyes" project, who re-designed the "Ma'agan" shelter and the family apartments, using donations from different companies and funds. As part of the project, new furniture was purchased (including dressers, closets, beds and mattresses) and the tenants of the "Ma'agan" shelter received a donation of fitness appliances, such as weights, hula-hoops and jump ropes, which were placed in the common room that was re-designed for that purpose.

162. In accordance with the new standards of the MoLSAaSS, during 2019, some of the beds were removed from both of the shelters in order to make the rooms more spacious. According to the guidelines, the staff of the shelters is prepared to remove beds from the family apartments as well, in order to accommodate one (1) family in each apartment, instead of two (2), if possible.

Improvement of the nutrition in the shelters

163. A nutritionist was employed by the shelters, in order to improve the quality of the food provided to the tenants and according to the recommendations of the MoLSAaSS. The nutritionist developed different monthly menus, which are culturally tailored to the tenants' nationalities and include five (5) meals per day.

Due to the tenants' difficulties in maintaining the menus, which concerned the requirement to cook after long days of work, both superintendents were also appointed as full-time cooks.

Medical Treatment - Changes and Innovations

164. In 2019, too, regular medical care was provided in the frameworks, which was characterized by visits by a family physician twice a week in each of the shelters on regular days and times. In situations where hospital referrals were required for specialist medical care and in emergency situations, the women and men continued to receive medical care at the Beilinson and Hasharon Hospitals, funded by the MoH.

165. In 2019, a number of changes and innovations were introduced, as follows:

166. Collaboration with the "Dina" nursing school – in 2019, two (2) students from the "Dina" nursing school arrived to the "Ma'agan" shelter and after observations, formulated a questionnaire for the tenants and staff of the shelter. After the data was gathered and analyzed, it was decided to provide first aid training to the staff of the shelter and the tenants.

167. Collaboration with a medical clinic for treating scars – in 2019, a tenant of the "Atlas" shelter, who suffers from severe scaring of his back due to the heinous crimes that were committed against him at the Sinai camps, was given a pro-bono consultation by a private medical clinic that specializes in treating scars. The diagnosis that was given to the tenant, according to which the scars are untreatable due to the prolonged time they were left untreated, was a milestone in his rehabilitative process.

168. Dental care for children – the shelters financed anesthesia for a dental operation of a child, which was not covered by the child's insurance, by using a part of the grant that was given to the shelters by the Forfeiture Fund.

169. The collaboration with the "Terem" dental clinic, which enabled the tenants of the frameworks to receive dental care with symbolic payment, was discontinued due to the closure of the "Terem" dental clinic at the end of 2019. In exceptional

cases, in which a tenant does not work, the staff of the frameworks may finance the procedure from the grant that was given to the shelters by the Forfeiture Fund.

Question No. 36

Case Law

170. **Cr.C. 893-01-16 *The State of Israel v. C.Y.B (Minor)* (Lod District Court) (1.1.19):** The case involved two (2) defendants accused of participating in the setting on fire of the Dormition Abbey. The ruling concerned the confessions given by one (1) of the defendants, a minor, who challenged the admissibility of his confessions. The judge held that the Police actions in this matter amounted to severe violations of the minor-defendant's rights to human dignity and a fair trial, and therefore the defendant's confessions concerning the alleged setting on fire of the Dormition Abbey were inadmissible. Following the decision to exclude the confessions, the prosecution declared that it lacked further evidence to proceed against both of the defendants, and the Court therefore closed the case on March 11, 2019.

171. **In regard to Cr.C. 932-01-16 *The State of Israel v.* Amiran Ben-Uliel *et. al.* (Lod District Court):** On January 3, 2016, the Central District Attorney's Office filed an indictment with the Central District's Court, against two (2) defendants: Amiran Ben-Uliel (Defendant No. 1), aged twenty one (21) and a minor defendant (Defendant No. 2), aged seventeen (17). Amiran Ben-Uliel was indicted for three (3) counts of murder - the murder of the three (3) Dawabshe family members (the parents Sa'ed and Riham and Ali-Sa'ed, aged eighteen (18) months) in the village of Duma, attempted murder of an additional Dawabshe family member (Ahmad Dawabshe, aged four (4)) and additional offences of attempted murder and arson committed with a racist motive. Defendant No. 2 was indicted for conspiracy to commit murder with a racist motive, malicious damage with a racist motive and additional offences, among them the arson of the Dormition Abbey.

172. According to this indictment, following the murder of Malachi Rosenfeld in June 2015, both defendants conspired to take their revenge against Arabs and kill people. Defendant No. 1, made the necessary preparations, including the preparation of a bag with two (2) bottles filled with a flammable liquid, a lighter, a matchbox, gloves and black spray paint. Subsequently, on the night between the 30 and the 31 of December 2015, he went on to meet Defendant No. 2 in an agreed upon location. However, since defendant No. 2 did not arrive at the meeting point, he decided to continue on his own. According to the indictment, defendant No. 1 tied a shirt around his head and donned his gloves; he then looked for indications for an inhabited house, sprayed "revenge" and "long live the messiah" on the house and threw an incendiary device into the house with the intent of killing its residents. This house was empty. Defendant No. 1 then immediately turned to the home of Sa'ed and Riham Dawabshe, carrying the second incendiary device. After unsuccessful attempts to open two (2) windows, he managed to open the window of the bedroom in which the family was sleeping. Defendant No.1 then lit the incendiary device, threw it through the window and escaped, killing three (3) family members (the parents, Sa'ed and Riham and Ali-Saed aged eighteen (18) months) and causing severe burns to Ahmad Dawabshe, aged four (4). Defendant No. 2, who was a minor at the time of the commission of the offences confessed to an amended indictment, that included the crimes of conspiracy to commit arson, the setting on fire of a taxi in Yassouf village, arson of a warehouse in a close vicinity to a residential house in the village of Akrabe and damage to eleven (11) vehicles in Beit-Tzafafa. The Court accepted his confession and requested, due to his age at the time of the offences, a probation service assessment in his regard. This defendant did not confess to the offence of membership in a terrorist organization. However, after hearing both the prosecution and the defence, on October 24, 2019, the Court convicted defendant No. 2 for membership in a terrorist organization. On September 16, 2020, he was sentenced to three and a half (3.5) years of imprisonment, of which he had already served 32 months, and a suspended sentence of eighteen (18) months. Additionally, he was ordered to pay 25,000 NIS compensation (approx. 7,300 USD) to the victims.

173. On May 18, 2020, the Court convicted Defendant No. 1 for murder of the three (3) members of the Dawabshe family, the additional offences of attempted murder, two (2) offences of arson, and conspiracy to commit a crime with racial motives. The defendant was found not guilty of membership in a terrorist organization.

174. This indictment is the outcome of a thorough investigation conducted by the ISA and the Police (Judea and Samaria District). The AG and the State Attorney approved the filing of this indictment.

175. Following his conviction, on September 14, 2020, the Lod District Court sentenced Defendant No. 1 to three (3) life sentences, to be served consecutively. This, one (1) week after the Court rejected the Defendant's motion to acquit him of all charges based on an alleged contradiction between the indictment and the surviving victim's statements to the press. In addition to the three (3) life sentences, the Defendant was sentenced to seventeen (17) years and additional ten (10) years imprisonment for the attempted murder of Ahmad Dawabshe and Mamun Dawabshe.

Question No. 37

Israel's Investigation and Prosecution of Ideologically Motivated Offences Against Palestinians in the West Bank

176. Cr.A. 1466/20 *The State of Israel v. Anonymous* (22.7.2020) - the Defendant challenged the sentencing rendered by the Jerusalem Juvenile District Court of 26 months' imprisonment, ten (10) months suspended sentence, and a 4,000 NIS (1,111 USD) fine, for a juvenile charged with stone-throwing in one (1) case, and with petrol bombs ("Molotov cocktails") throwing in two (2) further cases. According to the indictment, the respondent and two (2) others brought flammable substances and three (3) petrol bombs to a Jewish residential area. The Defendant, who was supposed to be on house arrest at the time, covered his face and threw the petrol bombs at a house, while its residents were home. Note that less than one (1) year prior to this offense the Defendant committed a similar offense against a vehicle carrying Jewish passengers.

177. During the proceedings in the District Court, the Defendant and the appellant, the State, reached a plea bargain regarding the indictment only. The prosecution charged the respondent with terrorism offenses in accordance with the *Counter-Terrorism Law*, which calls for harsher sentencing in terrorism-related cases. The Supreme Court held that the sentencing rendered by the District Court did not take into account both the policy for harsher sentencing proscribed by Section 37 of the *Counter-Terrorism Law*, and the aggravating circumstances in the defendant's case. Thus, the Supreme Court raised the sentence to 32 months' imprisonment, with the hope that the increased sentence will deter the defendant from committing future acts of terrorism (Cr.A. 1446/20 *The State of Israel v. Anonymous* (22.7.2020)).

178. On September 19, 2017, the Be'er-Sheva Magistrate Court convicted a defendant for several offences of prohibited publication of incitement to racism and incitement to racism or terrorism, after he opened a Facebook group to which he uploaded materials inciting to violence against Arabs. After hearing both parties, the Court convicted the defendant, Lior Cohen, in all the charges against him. On July 7, 2019, the Court sentenced the defendant to six (6) months' imprisonment and an additional suspended sentence which was previously issued against him, of three (3) months' imprisonment – nine (9) months' imprisonment in total that will be served by community service, twelve (12) months' suspended imprisonment for a period of three (3) years and probation supervision order for a period of six (6) months. The Court took into account, *inter alia*, the sincere remorse expressed by the defendant, the rehabilitation process the defendant went through, his understanding of his actions, the close supervision of the Adult Probation Service and the positive social worker's survey in his regard. The Court noted, *inter alia*, that the defendant's statements in his Facebook publications were of a racist dimension and included calls for physical violence against the Arab population. However, due consideration should be given to that fact that the number of viewings and likes these publications received were very low (Cr.C. 41705-08-14 *The State of Israel v. Lior Cohen* (7.7.19)).

179. A further example is the 2018 Supreme Court decision to harshen the punishment against a defendant who was convicted and sentenced under a plea bargain. In this case, according to the indictment, prior to June 17, 2015, **defendant No. 1 (Yinon Reuveni) and defendant No. 2 conspired with other persons, whose identity is unknown (hereinafter: "the others"),** to set fire to the Church of the Multiplication of the Loaves and Fish in Nahum Village in order to damage sanctities of the Christian faith. On July 3, 2017, defendant No. 2 was acquitted of all the charges against him and defendant No. 1 was convicted by the Court. On December 12, 2017, defendant No. 1 was sentenced to four (4) years' imprisonment, twelve (12) months suspended imprisonment for a period of three (3) years, six (6) months suspended imprisonment for a period of three (3) years, compensation to the Church in the sum of 50,000 NIS (13,500 USD) and a fine of 5,000 NIS (1,350 USD). Following this sentence, two (2) appeals were filed against the verdict and sentence, one by the defendant and the other by the State against the leniency of the sentence.

180. On August 16, 2018, the Supreme Court rejected the defendant's appeal, and accepted the State's appeal, noting, *inter alia*, that "the characteristics of this case are more severe than in other cases that were mentioned in regard to the sentence. Apart from the fact that this is an arson committed based on a religious-ideological motive, it was specifically aimed at harming a historic religious center that is a central symbol of the Christian religion in Israel". The Court therefore increased the defendant's sentence from four (4) to five and a half (5.5) years' imprisonment (without changing the other components of the sentence) (Cr. Ap. 6928/18 *The State of Israel v. Yehuda Asraf* (16.8.18)). As of January 2017, the Government of Israel had transferred 1.5 Million NIS (431,925 USD) for the complete renovation of the Church. On September 21, 2015, the Jerusalem District Court convicted Itzhak Gabay (the third person), of arson, defacing property, possession of a knife, incitement to violence, incitement to racism and support of a terrorist organization. On December 1, 2015, the Court sentenced Mr. Gabay to 36 months' imprisonment, fourteen (14) months' suspended imprisonment for a period of three (3) years and compensation to the school in the sum of 10,000 NIS (2,500 USD) (*Cr.C.*

31351-12-14 The State of Israel v. Itzhak Gabay (1.12.15)). Here also, both sides appealed to the Supreme Court in regard to the sentence. The State claimed among other things, that the lower court's sentence is too lenient and does not reflect the substantial severity of the arson and the threat still posed by the defendant. On September 28, 2016, after hearing both sides and receiving additional information about the defendant, the Court raised the defendant's sentence by additional four (4) months (from 36 to 40 months' imprisonment) (Cr.A. 401/16 *The State of Israel v. Yitzhak Gabay* (28.9.16)).

181. One of the most egregious examples was the kidnapping and murder of a sixteen (16) year old Palestinian, **Muhammed Abu Khdeir** from the neighborhood of Shuafat in Jerusalem. Following an intensive investigation of Abu Khdeir's murder by the Police, the State filed an indictment to the Jerusalem District Court against three (3) Israelis, of which two (2) were minors.[1] On November 30, 2015, the Court convicted both minor defendants in the murder of Abu Khdeir and determined that defendant No. 1, Yossef Haim Ben David, was also involved in the murder.

182. On February 4, 2016, the Court sentenced Defendant No. 2 (minor) to **life imprisonment**, an additional three (3) years' imprisonment to be served concurrently, compensation of 5,000 NIS (1,300 USD) to the family of another boy the three (3) had tried to kidnap and compensation of 30,000 NIS (7,800 USD) to Abu Khdeir's family. In addition, the Court sentenced defendant No. 3 (minor) to **21 years' imprisonment**, one (1) year suspended imprisonment and compensation of 30,000 NIS (7,800 USD) to the victim's family. On April 19, 2016, after reviewing psychiatric expert opinions provided by both sides, the Court accepted the opinion provided by the prosecution and noted, *inter alia*, that at the time of the incident, defendant No. 1 was not in a psychotic state, he understood what he was doing and was responsible for his actions. The Court

[1] For detailed information on this case, see Criminal Proceedings in the Murder of Mohammad Abu-Khdeir, State of Israel, Ministry of Justice, The Legal Counseling and Legislation Department (International Law) (Jan. 29, 2015), available at http://index.justice.gov.il/Units/InternationalAgreements/InternationalRelations/Faq/Criminal%20Proceedings%20in%20the%20Murder%20Case%20of%20Mohammad%20Abu-Khdeir.pdf.

therefore concluded that defendant No. 1 had initiated the crimes and convicted him of Abu Khdeir's murder, in addition to kidnapping for the purpose of murder, assault causing grave bodily harm and attempted arson. On May 3, 2016, the Court sentenced Yossef Haim Ben David to **life imprisonment, an additional 20 years' imprisonment to be served concurrently**. Ben David was also sentenced to compensation of 20,000 NIS (5,260 USD) to the family of the other boy the three (3) had tried to kidnap and compensation of 150,000 NIS (39,500 USD) to the victim's family (*The Jerusalem District Court, S.Cr.C. 34700-07-14, The State of Israel v. Yossef Haim Ben David* (19.4.2016)).

183. Another such example is the Supreme Court decision to harshen the punishment against two (2) defendants who were convicted and sentenced under a plea bargain. In this case, according to the indictment, on November 28, 2014, Shlomo Tweeto (Defendant No. 1), Nachman Tweeto (Defendant No.2) and a third person conspired to set fire to a bilingual school in Jerusalem and deface real estate in protest against co-existence between Jews and Arabs. According to the indictment, on November 29, 2014, the three (3) made the necessary preparations, and broke into the school, spilled gasoline and sprayed racial slurs on walls outside the classrooms. After Defendant No. 1 left the school, the third person set fire to the classrooms and they all ran to their car and escaped.

184. Following an investigation of this case and the indictment of the three (3) men, the Jerusalem District Court convicted Defendant No. 1 of arson and of the defacing property and sentenced him to 24 months' imprisonment, eight (8) months suspended imprisonment for a period of three (3) years, a fine of 1,500 NIS (375 USD) and compensation in the sum of 10,000 NIS (2,500 USD) to the school. Defendant No. 2 was convicted of arson, defacing real estate and incitement to violence (for the publication of terrorist organizations' symbols and content inciting violence and racism on his Facebook account) and was sentenced to 30 months' imprisonment, ten (10) months suspended imprisonment for a period of three (3) years, and compensation to the school in the sum of 15,000 NIS (3,750 USD). (*Cr.C. 4001-05-15 The State of Israel v. Shlomo Tweeto et. al.* (22.7.15)).

185. The State decided to appeal this sentence to the Supreme Court, arguing among other things, that the sentences were too lenient and do not reflect the substantial damage to the social values that were harmed, the aggravated circumstances in which these offences were committed and the need to deter others from committing such offences. The Court raised both defendants' sentences by an additional eight (8) months imprisonment, stating, *inter alia*, that "with their actions the defendants harmed the entire society. Acts such as these may increase tension and inflame hatred between various groups in the population. They […] harm values of tolerance, equality and co-existence". Justice Rubinstein added that "Anyone who considers engaging in such acts […] should know that the punishment will be severe. The State of Israel is a Jewish and democratic state and anyone who sets fire to those who seek co-existence between Jews and Arabs, even if he disagrees with them, harms not only Israel's democratic values but its Jewish values as well. Instead of acting in tolerance and peace, he wages war and inflames hatred. This court and all courts have the duty to fight this" (*Cr.A. 5794/15 The State of Israel v. Shlomo Tweeto et. al.* (31.1.16)).

Question No. 40

The return of bodies of deceased Palestinians to their relatives

186. On December 14, 2017, the HCJ ruled that Regulation 133(3) of the *Defense Regulations* does not constitute a primary, specific and explicit source of legislation for the IDF military commander to order the temporary burial of the remains of terrorists in order to hold them for the purpose of negotiating the return of Israeli citizens and the remains of Israeli soldiers held by the Hamas terrorist organization. The Court decided to allow the State an opportunity to formulate a full and complete legal arrangement, in explicit and specific primary legislation that meets the relevant legal standards, which will be devoted to the subject of holding remains of terrorists for the required purposes. In light of the above, the Court ordered a suspended annulment of the burial orders of the terrorists' remains, which will grant the State time to formulate a full legal arrangement within six (6) months from the date of issuing this

judgment. In case the State does not formulate an arrangement until that date, the remains of the terrorists whose cases were discussed in the petitions were to be returned to their families (H.C.J. 4466/16 *Mohamad Alian et. al. v. The IDF Commander of the West Bank et. al.* (14.12.17)).

187. The State filed a request for further hearing on this matter which focused on the Court's determination regarding the lack of authority. The request was approved by the Court. On September 9, 2019, the Court issued its ruling, in which it stated that Regulation 133(3) of the *Defense Regulations* authorizes the Military Commander to order a temporary burial of enemy soldiers or terrorists remains, while protecting the dignity of the deceased and of his/her family, for reasons of state security and the safety of its citizens, for the purpose of negotiating the return of Israeli soldiers (dead or alive) and Israeli citizens held by the terrorist organizations. The Court further stated that this authority should be implemented in a proportionate manner, both in policy decisions made by the Government and in concrete decisions made by the military commander in this regard (Ad.H.H.C.J. 10190/17 *The IDF Commander of the West Bank et. al. v. Mohamad Alian et. al.* (9.9.19)).

Question No. 41

Human rights defenders and aspects relating to freedom of expression in Israel

188. **Freedom of Assembly-** On October 8, 2017, the High Court of Justice rendered a decision regarding the freedom of assembly and ruled that demonstrations which are held adjacent to the AG's home are legal and are protected as part of the right to freedom of expression. The Court further emphasized that although the Law (*Police Ordinance (New Version) 5731-1971*) authorizes the Police to demand a permit for a demonstration when gathering for a political protest (a section originating from the previous British Mandate Ordinance), this authority must be interpreted narrowly and implemented with great caution (*The Movement for Quality Government in Israel v. The Police (H.C.J. 6536/17))*.

Question No. 43

Indictments pursuant to the *Counter Terrorism Law*

189. During 2018, 59 indictments that included offences pursuant to the *Counter Terrorism Law*, were filed to the relevant courts. In twelve (12) of these indictments, the offenders were convicted. In addition, in 41 of the total 59 cases, the indictment's main offence was an offence set by the *Counter-Terrorism Law*, and in ten (10) of these 41 cases the offenders were convicted.

Question No. 44

190. On May 10, 2020, the Lod District Court ruled in a petition concerning the reward received by prisoners working in private entrepreneur factories inside the prisons. The petitioner, serving a life sentence of 40 years' imprisonment, petitioned for a raise in prisoners' reward and for a change in the form of payment, from a productivity wage, to an hourly wage.

191. In accordance with the previous ruling of the HCJ on the matter of **Sadot**,[2] the Court ruled on the four (4) issues brought before it by the petitioner. First, the petitioner argued that according to the *Penal Law*, prisoners' work "outside of state facilities", will only be done with the prisoner's agreement and with accepted working conditions. The petitioner claimed that the term "outside of state facilities" should not be understood geographically, but rather as referring to the relation of the employing establishment to the state. Therefore, the petitioner claimed, as private factories are not state entities, employment by them, even if on prison grounds, was employment "outside of state facilities". The Court ruled against the petitioner, as was ruled in the **Sadot case**, and determined that the term "outside of state facilities" should be understood literally-geographically, meaning employment on prison grounds, even if by a non-state entity, was not employment "outside of state facilities".

[2] HCJ 1163/98 *Sadot et. al. v. Israel Prisons Service*.

192. On the petitioner's claim that the employment of prisoners in private entrepreneur factories on a basis of productivity was done with lack of authority, the Court ruled that the authority to determine the form of payment and size of reward was given to the Prisons Service Commissioner. This includes the authority to set productivity-based payments, as long as reasonable rewards, provided all relevant considerations, are payed. However, the wording of the *Employment Order* on the matter is unclear, and should be clarified to apply to private entrepreneur factories. The Court also pointed out that the petitioner's place of employment is classified as "contractor activity in IPS factories" and not as a private factory.

193. The petitioner also made the claim that regardless of the authority to do so, it was unjust to set productivity wages, as they were significantly lower than hourly wages, and harm the weaker or older prisoners. The Court ruled that using productivity wages incentivizes diligence, and is suitable for the purposes of prisoners' work. It also protects entrepreneurs. The sum of the payments to all the prisoners remains the same, and only the distribution is affected by productivity, which prevents exploitation by the employer. However, the Court noted that this form of payment may cause discrimination on the basis of age, medical state, disabilities or other objective features, which causes harm to the weakest prisoners. The Court instructed the IPS to find appropriate solutions, especially for physical work or work that entails special skills.

194. Lastly, the petitioner argued that the hourly wage should be determined in relation to the general minimum wage, even if not made equal to it, according to the ruling in the **Sadot** case. He claimed that setting the prisoners' reward at about 47% of the general minimum wage was unreasonable, and infringed upon the prisoners' human dignity. In response, the respondent pointed out that according to the HCJ ruling, there are other considerations to determining prisoners' reward. On this issue the Court sided with the petitioner and ruled that the Commissioner did not consider the general minimum wage as a central consideration, as decided in the **Sadot** ruling. The Court did not determine what the reasonable reward was or change the petitioner's reward, as it would have significant financial implications and in light of the ongoing examination

process of the hourly wage within the IPS, but stated that the Commissioner must determine the new prisoner reward within six (6) months, in the framework of which, appropriate weight will also be given to the minimum wage and the reasonable gap between it and the rewards of prisoners in entrepreneur factories. (Pr.P. 4051-01-19 *Kariv v. Israel Prisons Service* (District Court Lod) (10.5.20)).