Date: March 13, 2023

Adar 20, 5783

To: Ms. Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions

Subject: **The State of Israel's Submission to the Special Rapporteur on extrajudicial, summary or arbitrary executions' Report on practices for investigation, documentation and prevention of deaths in custody in the criminal justice context**

The State of Israel is honored to submit information to the Special Rapporteur on extrajudicial, summary or arbitrary executions, for his report on practices for investigation, documentation and prevention of deaths in custody in the criminal justice context to be presented at the Human Rights Council in June 2023. Hereinafter is the State's information as provided by the relevant authorities, pursuant to the questions listed by the Special Rapporteur.

In Israel, several sources establish the practices regarding investigating, data gathering, analysis and reporting of deaths in custody. Among them the *Cause of Death Investigation Law* 5718-1958; *Anatomy and Pathology Law* 5713-1953; *Criminal Procedure Regulations* 5718-1958; Police National Headquarters order No. 14.01.06 *Cause of death investigation*; Israel Prison Services (IPS) Commission standing order No. 04.63.00 *Death of inmate – investigation and reporting*; IPS Commission standing order No. 01.10.00 *inspection authorities*; Attorney General Directive No. 4.2203 *Presence of an Expert for the Defense during an Autopsy*; State Attorney Directive No. 13.2 *Submission of Request to Investigate Cause of Death for the purpose of an Autopsy*; State Attorney Directive No. 13.3 *Representation of the State during Cause of Death Investigation*;State Attorney Directive No. 13.4 *Presence of Representatives of the Family of the Deceased during an Autopsy*; and the documentation characteristics of the IPS information systems.

*Existing practices for data gathering, analysis and reporting of deaths in custody*

According to Section 15 to the IPS Commission standing order No. 04.63.00 *Death of inmate – investigation and reporting*, a deceased inmate shall be detracted from the registry of prisoners one (1) month after the event of death. The reason of the removal shall state "death of inmate". The IPS organizational information systems include documentation of inmates' deaths, and allow various statistical disaggregation, such as classification of the prisoners' legal status, locations of death, frequency of death in custody, etc.

Israel Police gathers statistical data regarding cases of deaths and their location in both police and IPS custody. This data cannot be disaggregated by the legal status of the deceased, which is stated in individual files, or by the cause of death, which in a case of an autopsy may be obtained from the Institute of Forensic Medicine. In the period between January 2019 and March 2023 a total of 34 deaths were documented in both the Police and the IPS custody.

*Measures in place, including policies and good practices, for investigating, documenting and preventing deaths in custody*

According to Section 19 to the *Cause of Death Investigation Law*, in case of a reasonably based concern that a person's death was not of natural causes or the result of an offence, or if the death occurred during detainment or imprisonment or during hospitalization in a mental health institution or a closed institution for children with cognitive-developmental disabilities, the Attorney General or his/her representative, a police officer, a physician or other concerned party (such as the partner, parents, grandparents, children or siblings of the deceased) may request a Magistrate Court judge in which jurisdiction the death occurred or where the body is located (hereinafter: "investigative judge"), to investigate the cause of death. Additionally, Section 22 of the Law establishes that if a person died during detainment or imprisonment or during hospitalization in a mental health institution or a closed institution for children with cognitive-developmental disabilities, the supervisor of the facility must immediately inform the Police of the death. According to the *Criminal Procedure Regulations,* the investigative judge will set a date for the investigation, no later than fifteen (15) days from the submission of the request to investigate the death.

According to Section19a(1) to the IPS Commission standing order No. 01.10.00 *inspection authorities,* the death of an inmate in IPS custody requires the mandatory appointment of an investigative committee. The appointment of the investigative committee is not discretionary. The IPS commissioner, the Deputy Commissioner, IPS head of Planning and Logistics Division, head of Prisoner Division and Imprisonment Alternatives or the head of the Operations Division, are authorized to appoint the investigative committee. According to Section 10 to the IPS Commission standing order No. 04.63.00 *Death of inmate – investigation and reporting*, the committee shall examine the circumstances of the death and the manner in which IPS staff has operated. In the event of a prisoner's death in a hospital, the committee shall examine the entirety of circumstances of death according to its mandate, excluding the medical treatment provided by the hospital.

The Investigations and Intelligence Division Procedure No. 300.01.039 *Dealing with Warden Offenses* states that, as a rule, cases of deaths of inmates in IPS custody shall be investigated by the territorial Police unit. However, if the investigation reveals an actual suspicion of negligence or involvement of IPS wardens in the cause of death, the head of the Investigative Division shall decide whether to assign the investigation to the National Unit for Investigation of Wardens (UIW) or proceed with the investigation of the territorial unit. In cases assigned to the UIW, the IPS shall transfer all relevant material to it.

*Investigation procedures and accountability mechanisms for death in custody*

According to the Investigations and Intelligence Division Procedure No. 300.01.315 *Cause of death investigation*, in any case of death, the Police must open an investigation. In any such case, a police officer from a territorial unit shall arrive at the scene in order to assess whether the death was of natural causes or not, based on the findings in the scene. This initial assessment requires the approval of a regional Investigations and Intelligence Division officer. In the absence of sufficient information, the case shall be treated as a suspicious death under unnatural causes. If the death was classified as "unnatural" or a result of a criminal offense, the officer on the scene shall secure the scene until the arrival of the investigative team. Otherwise, the regional Investigations and Intelligence Division officer may release the scene, and the body for burial, by phone, while documenting all findings. This documentation will be forwarded to the Investigations Division and attached to the investigation file.

Section 12 to the IPS Commission standing order No. 01.10.00 *inspection authorities*, lists the separated administrative, judicial and investigative authorities involved in the investigation of a death of an inmate. This Section also states that an investigative Committee shall be established following an appointment letter issued by the relevant authority, detailing its specific mandate. In the circumstances of a death of an inmate, the committee shall complete the examination and submit initial findings in accordance with its mandate. Initial findings shall be submitted within 48 hours from the issuance of the Committee's mandate, but the committee may request an extension of additional 48 hours (to a total of 96 hours).

*The level of forensic medical involvement in the investigation of deaths in custody*

According to Section 14 to the IPS Commission standing order No. 04.63.00 *Death of inmate – investigation and reporting*, in a case of a death of an inmate in IPS custody, the body shall be transferred to the Institute of Forensic Medicine, subject to the instructions of the Israel Police.

The *Anatomy and Pathology Law* establishes the involvement of family members and the necessary degree of consanguinity for participation in the cause of death investigation proceeding. According to the Investigations and Intelligence Division Procedure No. 300.01.315 *Cause of death investigation* in case of death that involves a suspicion of a criminal offense and requires, in the coroner's opinion, an autopsy to determine the cause of death, the consent of the family must be obtained in accordance with the *Anatomy and Pathology Law*. If the deceased is not an Israeli citizen, the National Interpol Unit provides assistance to the Police in obtaining said consent. Family representatives shall receive all necessary information in order to make a free and informed decision, including information regarding the reasons, purpose and implications of the autopsy. After the family representative was given the aforementioned detailed explanation, he/she will have appropriate amount of time to read the consent form and will receive a copy of it. A copy of a signed consent form will also be sent to the Institute of Forensic Medicine. In case the family refused to consent to an autopsy or the *Anatomy and Pathology Law* precludes it under the circumstances, the investigator shall obtain the coroners medical opinion in order for the Regional Attorney's Office to petition the Court on its basis for a decision whether or not to proceed with a cause of death investigation.

According to State Attorney Directive No. 13.4 *Presence of Representatives of the Family of the Deceased during an Autopsy*, family members are not allowed to be present during an autopsy. Nonetheless, in certain cases and with the approval of the coroner, a medical expert representing the family may be allowed to take part in the procedure. Additionally, according to State Attorney Directive No. 4.2203 *Presence of an Expert for the Defense during an Autopsy*, such presence requires the approval of a Regional Attorney or a court’s order.

*Availability and use of national or international protocols*

In any case of death outside of a hospital or a recognized medical facility, the Police acts in accordance with the Investigations and Intelligence Division Procedure No. 300.01.315 *Cause of death investigation*. This Procedure refers to *Cause of Death Investigation Law* 5718-1958; *Anatomy and Pathology Law* 5713-1953; Police National Headquarters order No. 14.01.06 *Cause of death investigation*; Attorney General Directive No. 4.2203 *Presence of an Expert during an Autopsy*; State Attorney Directive No. 13.2 *Submission of Request to Investigate Cause of Death for an Autopsy*; State Attorney Directive No. 13.3 *Representation of the State during Cause of Death Investigation*;State Attorney Directive No. 13.4 *Presence of Representatives of the Family of the Deceased during an Autopsy*; and other directives and procedures. The Police is not authorized to determine cause of death (not even in apparent cases of suicide). The Police is charged with the investigation of the circumstances of death in order to determine whether or not it was caused by a criminal offense.

The IPS Commission standing orders No. 04.63.00 *Death of inmate – investigation and reporting* and No. 01.10.00 *inspection authorities*, provide rules for the investigation of a death of an inmate which comply with international standards such those stipulated in the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), including the conduct of a quick, efficient, transparent, thorough and independent investigation.