Submission to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr Tlaleng Mofokeng

Physicians for Human Rights Israel ("**PHRI**")[1] is a non-profit and non-governmental organization that strives to promote a more fair society in which the right to health is equally applied for all. We herein write you concerning the questionnaire "**"Racism and the right to health". We expect that our submission can contribute to shed light on** grave, systematic, and profound violations of the rights to health in Israel the next thematic report on this topic.

Finally, we remain available to provide you with additional information and/or clarifications. Please do not hesitate to contact us by email to zoe@phr.org.il and stella@phr.org.

Yours sincerely,

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[1] More information about PHRI work can be found at https://www.phr.org.il/en/.

1. ***What are the main ongoing manifestations of racism, and related forms of discrimination enabled by racism that may be prevalent in your country in the area of the right to health broadly including in underlying determinants of health, health outcomes and access to health care?***

Some manifestations of racism and related forms of discrimination enabled by racism concerning the right to health in Israel include the following issues, that are better explained along the questionnaire:

- Exclusion of status-less persons from the public health system based on their non qualification to access public medical services under the State National Health Insurance Law, associated to a lack of formulation of more comprehensive health care and welfare policies for these populations. Relying on private insurances is the only way they can access some health care, although still insufficient to cover all their needs, including, for example, treatment for chronic, pre-existing conditions, and pregnancy monitoring and genetic counselling. Private insurance policies terminate in cases of work-incapacitation due to severe illness or injury.

- Denial of work permits to status-less people and lack of a broader network of social protection directly impact social determinants of health including food security and access to health care and medical services in Israel.

- Persons who are not ensured the right to access the public health system end up accessing it only when they find themselves in emergency situations, relying on a provision from the Patient's Rights Law (1996), which recognizes in Chapter 3, Article 3(b), that "in a medical emergency, a person is unconditionally entitled to receive medical care." According to the referred Law, medical emergency is characterized by "circumstances in which there is immediate peril to a person's life or of a severe irreparable handicap if the person does not receive emergency medical care." [2] Refusal of the Israeli State to classify diseases requiring severe and serious treatment, such as cancer, as an emergency under the Patient's Rights Law, to make it more difficult to provide care to populations who cannot access the public health system.

- Transfer of the responsibility for the provision of health care and wellbeing of certain populations to the private sector, more specifically to private insurance companies hinders the access to health in equal conditions, since several health policies exclude "pre-existing conditions" and mental healthcare, which are available only to lawfully employed individuals, as well as to the non-profit sector (civil society organizations) who have limited resources, aid and treatment at their disposal.

- Absence of measures taken by the Ministry of Health towards insurance companies that take advantage of status-less people precarious medical condition (especially those with cancer) to classify them as having "work incapacity" in order to evade footing the bill for further treatment, leaving them without insurance and with no way of paying the prohibitive expenses of the treatments critical to saving their lives.

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[2] Unofficial translation. For the original Hebrew text: https://www.nevo.co.il/law_html/Law01/133_001.htm#med2.

- The spread of the coronavirus and its socioeconomic impact hit the status-less communities particularly hard. The threat of the disease was coupled with precarious living conditions and inability to self-quarantine. When all Israelis struggled with deciphering ever-changing guidelines, the status-less community faced a language barrier resulting from a critical shortage of language-appropriate materials and guidance. These challenges were coupled with rising rates of unemployment, reaching up to 70% among African asylum seekers. To the economic instability and lack of basic social protections provided to this community was added the loss of private health insurance, which was previously provided by employers. This resulted in asylum seekers and others being unable to access even the limited healthcare provided by such insurance policies. [3] In particular, female asylum seekers lost access to ante-natal care, placing them and their future children in danger.

2. ***Who are the most affected people and why? Please describe existing disparities in the provision of and access to health services that affect people of different racial and ethnic origin, descent as well as other groups, such as migrants. The lack of data, analysis or health indicators in this regard may also be reflected.***

According to estimates from the Israel's Population and Immigration Authority, there are over **200,000 migrants and asylum seekers living in Israel who are not classified as residents** and therefore do **not qualify for public medical services** under the State National Health Insurance Law (1994).

We estimate that over half of these people are in Israel lawfully, either as migrant workers who were invited to work in Israel in sectors that are short-handed, such as caregiving, construction and agriculture, or else individuals holding renewable permits which were granted on the basis of Israel's recognition of the danger they face in their homelands.

Most of them are asylum seekers from Eritrea and Sudan, that have temporary protection against expulsion to their countries of origin, and currently receive permits that are renewed once every six months (Eritreans) or once a year (Sudanese).

Among this group an estimated **4,000 African asylum seekers** currently living in Israel **who were held captive in the Sinai torture camps** prior to their entry, where they were victims of abuse until they managed to pay their ransom fees. Only around 500 were officially recognized by the **Israeli police as Human Trafficking Victims**. **The vast majority of the Sinai victims remain unrecognized and thus receive no specialized medical, physical, or mental health support**.

There are also dozens of **Palestinians** recognized as being in danger in the Palestinian Authority, either for suspected collaboration with Israel or because of their sexual orientation, who receive renewable permits. **LGBTQ Palestinians** and **Palestinians accused of collaboration with Israeli authorities that reside in Israel legally, are denied working permits and access to public healthcare services**, except in medical

[3] Additional information available at: https://www.phr.org.il/wp-content/uploads/2021/03/Annual-Impact-Report-2020-PHRI.pdf

emergencies. Severely marginalized and vulnerable, many are forced to resort to life on the streets and prostitution.

It also important to mention Palestinians in family unification. They're barred from becoming Israeli residents and so their right to family unification is compromised. This also compromises their right to health. Officially, after a long legal struggle the Ministry of Health (MoH) agreed to apply the National Health Insurance Law (NHIL) to these people. However, the specific regulations that the MoH applied to them involve very high rates of copayments (premiums). As a result, half of the 10,000 Palestinians who are eligible under the NHIL cannot access public healthcare services and continuously accumulate debts to the health fund despite the fact they have never received treatment.

Even though these people have been living in Israel for an extended period of time, most of them having substantial ties to the country due to many years of work in the country or through family ties, and even though some have fled their homeland to escape persecution and came to Israel seeking asylum, **the state has thus far refrained from developing a comprehensive policy to ensure the health and welfare of these populations.**

Mostly, the State has been transferring responsibility for their health and wellbeing to private insurance companies whose insurance policies are limited in coverage and made available only to lawfully employed[4] and to civil society organizations, whose resources are limited to provide the necessary aid and treatment.

There are no official data, analysis, or health indicators available concerning the right to health broadly, including the underlying determinants of health, health outcomes and access to health care for these populations. Information and data are mostly disclosed as results of the work of several civil society organizations in the field, such as Physicians for Human Rights – Israel.

That said, over the years, after unrelenting efforts by human rights organizations, the Ministry of Health has begun providing specific medical services to a small, designated portion of the status-less groups. Nevertheless, these services are still inadequate, falling short in terms of the care provided, the target population catered to, and their geographic availability.

3. ***Under the right to health, States have a special obligation to refrain from denying or limiting equal access for all persons, comprising minorities, asylum seekers and migrants including undocumented migrants, to preventive, curative and palliative health services; abstain from enforcing discriminatory practices as a State policy as well as to ensure equal access to health care and health-related services provided***

[4] Please note that we are not arguing that private insurance policies enable no access to medical care in the community. In fact, many migrants obtain decent care via private insurance policies, despite their limited coverage. However, these policies are inappropriate for people who live in Israel for extended periods of time, or to the patterns of life and employment of some of the status-less individuals living in Israel. For elaboration, see PHRI's report *Painful Exclusion*, pp. 17-21. These policies fall short most strikingly in the case of individuals who have become ill with serious conditions.

by third parties. Please explain how the above point is implemented in your country, what works well and not so well and illustrate with disaggregated data if possible.

Recognized trafficking victims in Israel are eligible for a year-long stay at a designated shelter, where they receive medical, psychological, and psychosocial support. Israel also grants them a B/1 Visa (a work permit) for that entire year. Many trafficking victims among this group have families in Israel and are therefore reluctant to enter the designated shelters. **Once they waive their right to the shelter, they are denied access to healthcare and to the work visa**.

In the case of the group of recognized trafficking victims who are also asylum seekers that are protected against expulsion to their countries of origin. However, after the year in the shelter, they lack proper protection. Although they are granted protection against deportation when leaving the Israeli shelters, once they leave the shelter, trafficking victims lose their work-visas even though they remain in Israel and **they often lack proper access to medical care**. They can only access health care through private insurance companies, whose policies usually excludes "pre-existing conditions" and mental healthcare.

Persons who suffer from complex and severe medical conditions may be unable to purchase health insurance at all, as they present a high risk for insurance companies, remaining without proper access to healthcare. They become unemployable, as according to The Foreign Workers' Act (1991), employers must arrange for health insurance for their employees. In 2018 PHRI handled three such cases.

According to the Foreign Workers' Act (1991), certain services and health care procedures are not ensured to status-less people. For example, under the "foreign worker" policy, a female worker is not entitled to pregnancy monitoring services during her first 9 months of working in Israel[5]. Moreover, even when asylum seekers are not excluded from pregnancy monitoring, they must pay for genetic counselling out of their own pocket - something many of them cannot afford.[6]

Concerning the group of recognized trafficking victims who are also asylum seekers that are non-deportable to their countries of origin, Israel should expand health services and access to basic social rights to cover their needs also after the year-long stay at the designated shelter ended, ensuring them to be eligible for medical treatment and psychosocial support. Israel should also render healthcare and other basic social services accessible also in cases where the victims choose not to enter the designated shelter.

The Unrecognized Sinai victims, on the other hand, receive no specialized medical, physical, or mental health support. Their trauma is left unattended even when severe levels of depression, anxiety, and PTSD symptoms are clearly present.[7]

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[5] In practice, this clause is used by insurance companies to completely deny services to many of the insured, who are required to prove that they have already worked over nine consecutive months in Israel.
[6] Additional information available at: painful-exclusion-report-english-phri-2017.pdf, p. 19.
[7] A study on the condition of asylum seekers who crossed the Sinai desert en-route to Israel conducted by the University of Haifa and PHRI indicate a particularly high percentage of psychological distress among the study's participants: 42% to 76% of the men, and 35% to 59% of the women suffer PTSD symptoms,

To date, torture survivors, as well as other vulnerable asylum seekers, have very limited access to medical treatment. Like all African asylum seekers, Sinai victims can receive healthcare services through private insurance policies, which are very limited in scope. Otherwise, they are forced to rely on civil society organizations for primary medical treatment and on the very few and limited services funded by the Ministry of Health.

Moreover, **patients with severe medical conditions, including those in need of surgeries, people suffering from kidney or heart failures, and oncological patients, do not receive the appropriate support**. **The end up awaiting a deterioration in their health condition to be eligible for emergency treatment**.

When it comes to mental health, “Foreign worker” insurances cover mental health services only in emergencies. This exclusion is odd, to say the least, given the current consensus that there is no health without mental health, and particularly considering findings suggesting that forced migration is a major risk. These temporary arrangements have created an ongoing reality of ambiguity regarding the employment of asylum seekers, and consequently their status with reference to the employment laws and the Foreign Workers Law. As a result, their basic rights as employees are frequently violated. Some of the employers also take advantage of the ambiguity to avoid insuring the asylum seekers they employ, leaving them without regulated access to health services, except in emergencies.

Throughout 2018 the Ministry of Health (MoH) has publicly affirmed that it was working to expand mental healthcare services to this community. In November 2018[8] the MoH issued a tender for the provision of mental healthcare to the asylum-seekers' community. This led to the further establishment of the Ruth clinic for Mental health that replaced the previous service (Gesher clinic). Yet despite the MoH’s promises the services have not been expanded – they remain limited, both in their capacity (the clinic is able to cater to the needs of only 200-250 patients out of thousands in need) and geographically (the clinic can mostly cater to patients living in the Tel Aviv area). Currently waiting periods for initial intake can take several months.

In 2018, the Ministry of Justice launched a mapping project to identify the needs of those among the Sinai victims who were not recognized as trafficking victims and who are particularly vulnerable.[9]

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including nightmares, intrusive memories, arousal, fear and disassociation. about 24% of men and 28% of women in the study suffered from depression. Among the general US population the rates of PTSD were 8%, and 7% of depression. In Israel, PTSD rates range between 7-10% and the rates of depression among the general population is 6%.

[8] Zoe Gutzeit. Painful Exclusion. November 2017. http://cdn2.phr.org.il/wp-content/uploads/2017/11/painful-exclusion-report-english-phri-2017.pdf

[9] PHRI was recently informed that despite previous declarations, this project will not lead to the establishment of a mechanism to identify and provide adequate medical and rehabilitation services to Sinai torture victims. Rather, pending an official government decision, it may only provide a humanitarian response to very few (250 people), to relieve the Government’s burden of fully carrying out its responsibilities.

Israel should establish a mechanism for proper identification of torture victims and a mechanism for treatment – medical, mental, and psychosocial – tailored to their specific needs, to allow for their proper rehabilitation.

4. ***Please share examples of good legal and policy frameworks that address past or ongoing racism and racial and related forms of discrimination, specifically in relation to access to underlying determinants as well as quality health care, goods, services and facilities, including sexual and reproductive health.***

There are currently a few dozen (less than 100) status-less Palestinians in Israel, who were issued designated stay-permits because Israel recognizes them as having suffered persecution in the Occupied Palestinian Territory, mainly due to their sexual orientation and/or gender identification.

LGBTQ+ Palestinians have been granted stay permits, so they can reside in Israel legally but are denied working permits. Since they can only work informally, they have no access to the public health system and its services, not even to the few government-funded Refugee Clinics available to refugees and asylum seekers who are currently excluded from the public health system. They only access the health system in case of medical emergencies. These communities live in extreme poverty. Severely marginalized and vulnerable to exploitation, many are forced to resort to life on the streets and prostitution.

In 2021, an interesting discussion on social rights for persecuted Palestinians (LGBTQ+ and those accused of collaboration) took place on the Israeli Supreme Court, based on a petition presented by Physicians for Human Rights – Israel. In the context of our petition, the State of Israel updated the Court about its **willingness to grant work permits to those among the group of Palestinians that were persecuted due to suspected collaboration with Israeli authorities – but not to Palestinians who received stay permits for being persecuted due to their sexual orientation.** The working permits would enable Palestinians accused of collaboration to theoretically secure private health insurance through their employers, who are required to do so according to the Foreign Workers law.

According to the partial verdict issued, the judges were satisfied and considered satisfactory the States' response on Palestinians persecuted for suspected collaboration. As per those persecuted for their sexual orientation, the Court demanded the State to present another update, detailing the exact number of individuals affected by the current policy and whatever support the State offers them, to accurately evaluate their needs and the existing gaps and to make an informed decision.

Finally, the Court issued an Order Nisi, transferring the burden of proof to the State, which must now explain within the next 90 days why it has not issued work permits for this group. This is a positive step forward in our lengthy struggle to secure basic rights for this group.

This development has taken place after the State's response to the Court on the 6th of January and PHRI detailed counter-response on the 31st of January. In its response, the State continued to refuse to provide work permits to this group, in contrast to the provision — following our petition — of work permits for Palestinians persecuted due to suspicion of collaboration with Israeli authorities.

The State alleged that individual requests for work permits can still be submitted, thereby ignoring the bureaucratic barriers, as well as the personal difficulties in coming out to one's future employer and the potential for exploitation by employers.

Moreover, although the State referenced the welfare solutions that it offers to LGBTQI Palestinians, the various obstacles involved — including age limits and lack of complementary services including healthcare services — were left unmentioned.

This is reflective of the State's systematic discrimination towards status-less Palestinians: this refusal to grant work permits is due to fears of increased numbers of Palestinians fleeing from persecution and seeking asylum in Israel, as well the concern granting them work permits will decrease their chances of resettlement.

PHRI's response to the Court stressed the ways in which the State's refusal to grant work permits impacts the health and endangers the lives of these Palestinians, pushing them into informal employment and abject poverty. Moreover, the State's refusal compromises their likelihood of rehabilitation.

While pleased with such an achievement, we know that those individuals would have limited access to healthcare services, available only when they were employed. Moreover, the referred policy discriminates against those who are persecuted based on their sexual orientation and who are left without access to healthcare, are prohibited from working in Israel, and receive little or no psychosocial support.

Please share examples of public health financing, non-governmental sector funding practices, inter-agency finance solutions, medical insurance products that show manifestations of ongoing or past racism and related discrimination, at the local and global levels that impact racialized people, as well as other factors such as poverty, or discrimination based on age, sex, gender identity, expression, sexual orientation, disability, migration status, health status eg HIV, Albinism etc. and the rural and urban divide."

Israeli private insurance companies offer limited health policies, excluding "pre-existing conditions" and mental healthcare, and are available only to lawfully employed individuals.

Israeli private insurance companies often take advantage of some status-less people precarious medical condition (especially those with cancer) to classify them as having "work incapacity" to evade footing the bill for further treatment, leaving them without insurance and with no way of paying the prohibitive expenses of the treatments critical to saving their lives.

5. ***Please share good practices and examples of public health interventions resulting in adequate access (inside and outside the health sector), support knowledge production***

or implementation of programs that successfully address inequalities in particular the impact of racism and related racial discrimination, as well as other factors such as poverty, or discrimination based on sex, gender identity, expression, sexual orientation, disability and migration status.

- **Tuberculosis, Mental Health Services and HIV**

In the 2010s, the Ministry of Health together with the Israel Lung Association began to offer tuberculosis treatment for status-less individuals. In 2013 the Ministry of Health began funding the Terem Clinic for Refugees in Tel Aviv's Central Bus Station. https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(15)60704-8.pdf.

A year later, the Gesher Clinic was established to provide mental health services to refugees. It has recently been relocated to operate within the compound of the aforesaid Terem Clinic, and is run by the NGO Amcha[10], the largest provider of mental health and social support services for Holocaust survivors in Israel, and the Terem company[11], a private company with a widespread network of clinics located in major cities throughout the country, who provides for urgent care in the community. (Ruth Clinic).

In 2014, after years of a determined struggle on the part of civil society organizations, the Ministry of Health took on responsibility for treatment of HIV-positive individuals who are status-less and have no insurance, and began offering them treatment at hospital AIDS clinics.

- **Status-less Children**

Most of the status-less minors are eligible for the agreement reached between the Ministry of Health and the Meuhedet Health Fund. Under this arrangement, these minors are eligible for services similar to those available to Israeli children under the National Health Insurance Law.

- **Subsidized health insurance for asylum seekers**

In 2021, the Israeli Ministry of Health announced[12] in Haaretz, an important local newspaper, the intention to establish a subsidized health insurance scheme for the 28,000 Eritrean and Sudanese asylum seekers who have been living in Israel for over a decade**, adopting PHRI´s proposal.** Such a scheme will allow asylum seekers access to health services similar in scope to those offered through the National Health Insurance Law.

Following the Haaretz article, the Minister of Health, Mr. Nitzan Horwitz, published a Facebook post titled "Asylum seekers have a right to health as well" (Hebrew) affirming his commitment to securing asylum seekers' access to healthcare through the public system as "…it is our moral duty to take care of their health". Both announcements follow intensive efforts led by PHRI, including advocacy and lobbying work as well as a

[10] For additional information on the work of Amcha: https://www.amcha.org/node/390.

[11] More information on the Terem Company available at: https://www.terem.com/Clinics.aspx?pageID=12&lang=2

[12] To reach the article published in Haaretz: Israeli Government Nearing Plan to Give Health Insurance for Asylum Seekers - Haaretz.com

detailed report on the costs of excluding asylum seekers from the public healthcare system – medical, ethical, and financial (see "The Costs of Exclusion" in Hebrew).

on April 24th the MoH made a small but significant stride towards realizing its promise and issued a draft of the director general's circular that includes the main tenets for the health insurance plan for status-less minors and for a sub-group of adults – those who are protected against deportation. The draft was issued for public scrutiny, and we shall soon submit our comments and proposals.
https://www.gov.il/he/Departments/publications/Call_for_bids/580122922

While a lot is still unknown and while the future of this initiative remains highly uncertain given the shaky political climate – all in all the circular seems promising and this is a very significant step towards the realization of what we have been working on for so many years.
In the absence of access to social-welfare and medical services, as years go by the needs of these populations grow as their difficulties. [13]Medical treatment options available to status-less individuals remains partial, decentralized, and limited, both geographically and in the services provided.

- **COVID-19 and access to information**

During the pandemic PHRI continued to serve as an information focal point for health queries from both beneficiaries and healthcare workers. Because of the importance of accessing information on prevention and care during the pandemic, PHRI's appeal to the MoH to provide translations for health directives in Tigrinya, Thai and other languages gradually bore fruit, and PHRI promptly disseminated these translations among the numerous communities with whom we work. PHRI simultaneously created and circulated a video in Tigrinya — viewed nearly 5,000 times — to answer the community's questions about the outbreak.

[13] Additional information can be found at: Available at: painful-exclusion-report-english-phri-2017.pdf