



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Fifth periodic report submitted by Israel under  
article 40 of the Covenant pursuant to the optional  
reporting procedure, due in 2019<sup>\*, \*\*</sup>**

[Date received: 11 October 2019]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report may be accessed from the web page of the Committee.

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## Introduction

1. The GOI is pleased to introduce its Fifth Periodic Report. Since the submission of our Fourth Periodic Report, many developments relevant to the implementation of the Covenant have taken place. This report provides a comprehensive account of the most significant developments. Moreover, the comments made in the concluding observations by the Committee (CCPR/C/ISR/CO/4) dated November 21, 2014 are also addressed.
2. Israeli Non-Governmental Organizations (NGOs) were invited to submit comments prior to the compilation of the report, through both direct application, and a general invitation posted on the Ministry of Justice (MoJ) website.
3. This Report was compiled by the Counseling and Legislation (International Law) Department at the MoJ, in cooperation with other Governmental Ministries and agencies.

## Reply to paragraph 1 of the list of issues (CCPR/C/ISR/QPR/5)

### Significant Developments

4. Israel invests great efforts in promoting human rights, including civil and political rights and sees great importance in enforcing and protecting these rights. Since the submission of Israel's Fourth Periodic Report, significant new measures have been taken by the Israeli Parliament (the "Knesset") in this regard as will be detailed below.
5. On October 11, 2018, Israel ratified the 2014 Protocol to the ILO Forced Labor Convention of 1930. This ratification is a part of Israel's continuous commitment to the international efforts to combat and eradicate all forms of modern slavery, including forced labor. The Protocol will enter into force for Israel on October 11, 2019.
6. In March 2016, the GOI ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled of the World Intellectual Property Organization.

### Legislation

7. On December 31, 2018, the Knesset legislated the *Prohibition of Consumption of Prostitution Services Law (Temporary Provision) 5779-2018*, which prohibits the consumption of sexual services. The Law was legislated as part of the ongoing efforts of the State to reduce prostitution and provide assistance and rehabilitation to persons in prostitution. According to the Law, the offense of consumption of prostitution services, which includes the presence in a location which is used for prostitution, is an administrative offense that can be fined for 2,000 NIS (540 USD) for first time offenders and double the sum for repeat offenders. According to the Law, he/she who is present in a location which is principally used for prostitution will be seen as being there for the purpose of consumption of such services, unless proven otherwise. Nevertheless, the Law authorizes the State Attorney's Office to indict an offender, in which case the court could impose a fine of up to 75,300 NIS (20,350 USD). The Law further enables the Minister of Justice to set alternative penalties to fines within the Law's Regulations, by means of indictment. The Law will come into force in 2020 for a period of five (5) years. Its extension will be determined in accordance with research on its effects. In addition, the Ministers of Public Security and of LSASS will conduct periodic reviews of its implementation and the overall progress of the efforts to reduce consumption of prostitution.
8. In June 2018, the Knesset legislated Amendment No. 132 to the *Penal Law 5737-1977*, which criminalizes a proposal to engage in prostitution to both adults and minors (Section 205D). For additional information, see the reply to Question 9.
9. In March 2018, the Knesset enacted the *Blocking of Telephone Numbers for the Prevention of Crimes Law 5768-2018*, which authorizes a police officer to block a publicized telephone number, if he/she has reasonable grounds to believe that this phone number is used for the commission of crime, including by the internet or other technological applications. This further enables the blocking of telephone numbers

publishing prostitution services, including that of a minor and drugs and dangerous substances offences.

10. In July 2017, the Knesset legislated the *Authorities for Prevention of Internet Use for the Commission of Offenses Law 5777-2017*, which authorizes courts to issue an order for blocking access to a website or for its removal from the internet. Such an order will be issued if it is crucial for the prevention of an ongoing offense set by the Law, such as offences relating to prostitution, child pornography, gambling and drugs and dangerous substances or terrorism. This law enables courts to issue three (3) kinds of orders: order for restricting the access to the relevant website, order for restricting the possibility of locating the relevant website or an order for the removal of a website from the internet – provided that the relevant site is stored on a server in Israel or is under the control of a person present in Israel. The aim of the Law is to provide law enforcement authorities with additional tools to combat the phenomenon of prostitution of minors in the virtual world.

11. The *Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law 5761-2000*, was amended twice in 2017 (Amendments No. 4 and 5) in order to add “place of residence” and “wearing uniforms of security and rescue forces or their symbols” to reasons by which discrimination is prohibited. The Law is presumed to be violated, where it has been proven that a person whose business is providing products or public service, or operating a public place, delays the provision of a public service or product in the place of business, or the entrance to a public place – on the basis of race, religion or religious affiliation, nationality, country of origin, gender, sexual orientation, views, political affiliation, age, personal status, parenthood, place of residence or wearing uniforms of security and rescue forces or their symbols – while providing it without delay, in similar circumstances, to persons not related to that group.

12. For information on the *Counter Terrorism Law 5776-2016*, see Question no. 11.

13. Following the recommendation of the CRC Committee, a 2016 amendment to Section 203C of the *Penal Law* (amendment no. 127) increased the penalty for the offense of obtaining the service of an act of prostitution from a minor from three (3) years to five (5) years imprisonment. For additional information, see Annex II.

14. On December 9, 2014, the Knesset approved *Election Law (Legislative Amendments) 5775-2014*, which, *inter alia*, amended the *Knesset Election Law [Consolidated Version] 5729-1969*. The voting in Israel is conducted by notes carrying the letters of a specific party, which are placed in envelopes and inserted by the voters in ballot boxes. Prior to this amendment, notes that were marked by handwritten letters were disqualified. This amendment, *inter alia*, revised Section 76(C) of the *Knesset Election Law*, clarifying that a blank note marked by a handwritten letter or letter and the party/list of candidates’ label, by a blue pen, in Hebrew, Arabic or both, shall be regarded as a legal note.

15. For information on the *Limitation of Advertisement and Marketing of Tobacco Products Bill (Amendment No. 7) 5779-2018*, see Annex II.

### **Administrative Measures**

16. Review and implementation of concluding observations – The work of the joint inter-ministerial team headed by the Deputy Attorney General (International Law), which was established in 2011 for review and implementation of concluding observations of UN human rights committees (for information on this team see Israel’s fourth periodic report) has brought about several significant changes, notably:

17. Raising the marital age from 17 to 18 – Following the Concluding Observations the CEDAW Committee, in December 2013, the Knesset amended the *Marital Age Law 5710-1950* in order to raise the minimum marital age from 17 to 18.

18. For information on the Inspector for Complaints against Israeli Security Agency (ISA) interrogators (“the Inspector”), see Questions 12 and 14.

19. In 2016, The Israeli Prisons Service (IPS) published its standing order No. 02.39.00 titled “Wardens rules of behavior” which includes an obligation to report any complaint or suspicion against ISA interrogators to the Inspector in the MoJ via the prison commander.

20. For relevant case law and information on training provided to Judges and lawyers, see Annex II.

## **Reply to paragraph 2 of the list of issues**

### **A. Israel’s Reservation to Article 23 of the Covenant**

21. Israel’s reservation to Article 23 regarding personal status is reviewed periodically. At present, Israel maintains its position on this matter. This reservation stems from Israel’s constitutional system and respect for religious pluralism, and the autonomy of Israel’s religious communities in matters of personal status.

### **B. Scope of Application of the Covenant**

22. Having carefully reviewed the matter in recent years, Israel continue to maintain that the Covenant applies only to a State territory. The Covenant is implemented by the Government throughout the State of Israel. According to the Israeli legal system, international conventions, as opposed to customary international law, do not apply directly in Israel, unless they were formally legislated. Such is the case with the ICCPR which is implemented through a wide range of legal instruments, such as basic laws, laws, orders and regulations, municipal bylaws, and court rulings.

23. The applicability of the Convention to the West Bank has been the subject of considerable debate in recent years.

24. Moreover, in line with basic principles of treaty interpretation, Israel believes that the Convention, which is territorially bound, does not apply, nor was it intended to apply, to areas beyond a state’s national territory.

25. Israel wishes to note however, that even if one follows the approach outlined, *inter alia*, in the Committee’s GC No. 31 with respect to the scope of application of the ICCPR Covenant, its conduct would remain consistent with the Covenant requirements. Notably, for example, in jurisprudence of Israeli courts, including its Supreme Court, with respect to the West Bank refers to the provisions of the ICCPR and other human rights treaties. For related example, see Annex No. II.

### **C. Applicability of International Humanitarian Law**

26. The relationship between different legal spheres, primarily the Law of Armed Conflict and Human Rights Law remains a subject of serious academic and practical debate. For its part, Israel recognizes that there is a profound connection between human rights and the Law of Armed Conflict, and that there may well be a convergence between these two bodies-of-law in some respects. However, in the current state of international law and state-practice worldwide, it is Israel’s view that these two systems-of-law, which are codified in separate instruments, remain distinct and apply in different circumstances.

### **D. The Covenant Optional Protocols**

27. Despite periodic consideration of its position on the matter, Israel is currently not prepared to ratify the first and second Optional Protocols to the ICCPR at this stage. Regarding the first protocol, as detailed throughout this report and in the previous reports, Israel’s legal system affords numerous opportunities, for individuals and groups alike, to seek remedies and redress for any alleged violations of their rights.

## **Reply to paragraph 3 of the list of issues**

28. Information on National Human Rights Institutions (NHRI) – For information on mechanisms for the protection of human rights, see Israel Core Document of 2008

(HRI/CORE/ISR/2008) and as amended in 2014 (HRI/CORE/ISR/2015) (Article 2(IV)(A)(vi) to (xiii)), additional mechanisms are listed below.

29. In recent years, the State Comptroller has been addressing Israel's adherence to the various Human Rights Treaties, including the ICCPR, in relation to NHRIs and the promotion and protection of human rights (the "Paris Principles"). In addition, in 2018, the State Comptroller Office' Director General (DG) and his chief of Staff published, in their personal capacities, a paper<sup>1</sup> exploring the State Comptroller Office as a suitable institution to serve as NHRI. Also, in December 2018, a seminar was held by the Minerva Center for Human Rights on the issue of NHRI, in which representatives of NGOs, the Academia and the Government took part, discussing this matter. In February 2019, two (2) researchers of the Minerva Center published a research paper on the matter of establishing an NHRI in Israel.<sup>2</sup> It is still early to assess the influence of these individual steps on the establishment of an Israel NHRI, however, these measures clearly indicate the importance provided to this matter in Israel.

30. For information on the Early Childhood Council and the Children's and Youth Complaints Commission for Out-of-home Placed Children, see Annex II.

31. Cooperation with Civil Society – Israel makes concerted efforts to include civil society in the legislation process, in developing public policy, and in a variety of projects within Government Ministries.

32. In particular, Israel strives to raise the level of civil society involvement in the UN Human Rights arena. For example, prior to compiling an initial and periodic report to the Human Rights Treaty Bodies, relevant and leading NGOs are approached, and invited to submit their comments and general remarks; in addition, a general invitation to submit alternative reports or specific remarks is posted on the MoJ web site. Civil Society contributions are given serious consideration during the drafting of the reports.

33. Since 2012, the Ministries of Justice and Foreign Affairs have been participating in a joint project with the Civil Society organizations, specifically relating to the reporting process to the UN Human Rights Committees. This project was initiated with the Minerva Center for Human Rights at the Hebrew University. Through this project, several draft reports are circulated to the relevant NGOs for their comments prior to submission. Additionally, discussions are held following the publication of the concluding observations.

34. In 2017, the Ministries of Justice and Foreign Affairs, have initiated the "Round Tables" project. This project consisted of six (6) sessions, which took place in different academic institutes around Israel – South, Center and North. The sessions were a unique platform, creating a discourse and further cooperation between NGO members, academics and representatives from the Government, on core human right issues: LGBT Rights, Israelis of Ethiopian descent, Bedouin population, women's rights, rights of people with disabilities and social and economic rights in the periphery.

## **Reply to paragraph 4 of the list of issues**

### **Review of the Legislation Governing the State of Emergency**

35. The State of Israel remains in an officially-proclaimed state of public emergency since May 19, 1948, four (4) days after its founding, until the present day. The state of emergency has been extended periodically (currently in force until January 4, 2020) due to the ongoing state of war or violent conflict between Israel and some of its neighbors, and the constant attacks on the lives and property of its citizens.

36. Over the past ten (10) years, the Israeli authorities have been reviewing the legislation connected to the existence of a declaration on a state of public emergency, in

<sup>1</sup> Marzel E., Gutman M. and Rodes A., From State Comptroller to Human Rights Commissioner – A Short but Required Path, State Audit Review, booklet No, 63 (p. 49) (1.8.18).

<sup>2</sup> Broude T. and Milikowsky N., Establishing an NHRI in Contested Political Space: A Deliberative Process in Israel, The Hebrew University of Jerusalem Faculty of Law, (February 2019).

order to enable its termination. As of June 2019, there were only Eight (8) laws and 23 orders connected (some only partially) to the state of emergency, compared to nine (9) laws and 165 orders in 2009. This process is ongoing.

37. For additional information, see Annex II, for relevant Case law, see Israel's 4th periodic report (p. 59).

### **Reply to paragraph 5 of the list of issues**

38. Amendment No. 30 to the *Entry into Israel Law 5712-1952* (of March 2018) - This Amendment authorizes the Minister of Interior to revoke a permanent residence permit which was issued pursuant to this law, if he/she is convinced that the permit's owner has acted in breach of allegiance against the State of Israel (defined as a terrorist act in accordance to the *Counter Terrorism Law 5776-2016*, aiding and abetting or solicitation of such an act, taking an active part in a terrorist organization; an act of treason (Sections 97 to 99 to the *Penal Law*) or severe espionage (Section 113(b) to that law)). Such a permit will not be revoked in regard to a person that at the time of the offence, 15 years has passed of the time he/she received the permit; or in regard to a person who at the time of his/her birth, one of his/her parents had a permanent residency permit, without the consent of the Minister of Justice and only after consultation with the relevant advisory committee. If following such revocation, the said person will be left without a permanent residence permit outside Israel, without the possibility to obtain such residence permit or without any citizenship, the Minister of Interior will provide him/her a temporary residence permit in Israel. In addition, if a person who had his/her permanent residence permit revoked, appeals this decision, the Minister of Interior will allow his/her entrance until the conclusion of the proceedings, unless the Minister is convinced that by doing so there is a substantial threat to State or public security.

39. As stated, this Amendment applies only to specific and severe offences and therefore there is no basis for any allegations that it will harm or compromise the presence of Palestinian residents in the Eastern Neighborhoods of Jerusalem (ENoJ).

40. The *Counter Terrorism Law 5776-2016* – see Question 11.

### **Reply to paragraph 6 of the list of issues**

#### **Equality and Non-Discrimination**

41. Equality before the law and non-discrimination are basic principles of Israel's legal system. For additional information see Israel Core Document of 2008 (HRI/CORE/ISR/2008) (Article 2(IV)(B)) and as amended in 2014 (HRI/CORE/ISR/2015) (Article 2(IV)(B)).

42. These principles are a cornerstone of the Israeli legal system as apparent in both legislation and adjudication. *Basic Law: Human Dignity and Liberty* serves as a foundation for prohibiting discrimination and as a guiding principle for the creation of further laws promoting equality. Furthermore, all existing laws are to be interpreted in light of this Basic Law's purposes, in a manner which recognizes values such as human dignity and equality. Many laws emphasize the principle of equality in diverse aspects.

43. The judicial effort in this regard is guided by the Supreme Court, which plays a pivotal role in the promotion of the principle of equality and non-discrimination through the development of jurisprudence, strongly relying on the principle of equality and non-discrimination as a constitutional principle, embodied in *Basic Law: Human Dignity and Liberty*. Amending this Basic Law is currently not under consideration.

#### **Basic Law: Israel – National State of the Jewish People**

44. On July 19, 2018, the Knesset legislated the *Basic Law: Israel – National State of the Jewish People 5778-2018* (hereinafter: the "*Basic Law*") by an absolute majority of 62 votes.

45. The purpose of this *Basic Law* is to enshrine in a Basic Law the character of the State of Israel as the nation-state of the Jewish people and the state in which the Jewish people uniquely exercise their right of self-determination. This Basic Law is an addition to the existing Basic Laws which enshrine other aspects of Israel's core democratic values, as described above, and which together make-up the identity of the State of Israel as a Jewish and democratic state as established in its Declaration of Independence. According to the Israeli legal system, the Basic Law is of a constitutional nature, and as such it is formulated in a mostly declarative formulation.

46. The characteristics of the State of Israel as a Jewish state which can be found in this *Basic Law* include its existing name, flag, national anthem and other national symbols. Other features include Jerusalem as the capitol of the State, the Hebrew calendar as an official calendar and the Shabbat (Saturday) and Jewish holidays as official days of rest, while safeguarding rights of members of other religions to maintain their days of rest. The *Basic Law* also refers to Israel's status as the national home of the Jewish people by promising the open admittance of Jewish immigration and affinity between Israel and the Jewish Diaspora.

47. In addition, the *Basic Law* declares that the promotion and development of Jewish residence in the State is a national value, regarded as part of the continuing formation of a Jewish homeland in the State of Israel.

48. Furthermore, according to this *Basic Law*, the official language of the State of Israel is Hebrew, as the historic language of the Jewish people and in accordance with its modern revival. Arabic is granted a special status and its use in state institutions shall be set in law, and the special status previously given to Arabic shall be maintained. This includes the ongoing translation of the Government's Ministries' websites into Arabic by the Israeli Government, Arabic-speaking public schools, broadcasts in Arabic on Israel's national television and radio and the parallel use of Arabic, Hebrew and English, on intercity and local road signs.

49. As formally declared by the Attorney General (AG), this *Basic Law* does not derogate in any manner from human rights protected under other basic laws of Israel.

#### **Petitions to the High Court of Justice (HCJ)**

50. As of October 2019, 16 petitions were filed to the HCJ against the *Basic Law: Israel National State of the Jewish People*. These petitions are currently pending before an extended panel of the Supreme Court.

#### **Equality between Israeli and Arab Population**

51. The GOI is committed and invests great efforts in the promotion and advancement of equality for its nationals of all populations alike, and concerning all spheres of life. In the same manner, great resources are also invested in fighting any form of discrimination.

52. In regard to legislative measures, see information about The Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law 5761-2000, in the reply to Question 1, above.

53. For additional information and case law, see Annex II.

54. Concerning the *Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003*, in regard to family reunification, see Question 23 below.

#### **Reply to paragraph 7 of the list of issues**

##### **Arab Population's Representation in Israel's Civil Service (CS)**

55. Data indicates a steady increase in the rates of Arab, Druze and Circassian employees in the CS. For More information, see Annex I.

56. Over the past several years, the Government instituted affirmative action programs and mandated target goals to significantly increase the number of minority employees

within the CS. For information on national conferences for the integration of Minority Populations in the MoJ and in the CS, on MoJ's conventions and actions to advance women (including Arab women) in the CS, enhancement of recruitment of women in CS tenders and minorities terms of employment, see Annex II.

#### **Arab Representation in Directorates of Government Companies**

57. In 2017, 12% on the total number of directors in government companies were Arabs. In 2017, there has also been an increase in the rate of women in government companies – of the 437 directors, 189 (43%) were women compared to 33% in 2007 and 40% in 2011). Nine (9) (4.7%) of these women were Arab.

#### **Women's Participation in Political Parties**

58. In the municipal elections of October 2018, Amendment No. 12 to the *Municipal Council Law (Funding of Elections) 5774-2014* came into force. This amendment provides for 15% additional funding to bodies that run in the elections (e.g. political parties, independent lists etc.) in which at least one-third (1/3) of their elected and serving members are women. The additional funding begins after the State Comptroller provides a positive audit, and it maintained during their period of service (until the next elections). The Amendment applies to elections of city and local councils, but does not apply to regional councils.

59. In 2013 and in 2018 local elections, the Authority for the Advancement of the Status of Women (AASW) issued a general call to all political parties and local parties to include women on an equal basis on their list of candidates, thus giving due regard to the principle of equality. For additional steps by the AASW, see Annex II.

60. For statistical data on women elected in 2018 local election, see Annex I.

61. Attempts to prohibit or deter women's participation in political parties are regarded very seriously. For example, in the elections to the 20th Knesset, publications appeared arguing that unlawful coercion was exerted on ultra-Orthodox women to keep them from running in the elections. According to the allegations, a rabbi published statements relating to women considering running in any party not under the leadership of the "Great Torah Sages". These statements including threats that such a woman will have to leave her marriage without her ketubah (*the money due to her upon divorce*), harming her livelihood (it would be forbidden to study in her educational institutions or to purchase any product from her) and her children will be removed from their institutions of study. In light of the severity of these comments, the Deputy Attorney General (Public and Administrative Law), approached the Chairman of the Central Elections Committee that consequently issued a strong condemnation of acts of this kind and communicated this matter, together with a strong condemnation of acts of this kind to all the chairpersons of the parties running for the 20th Knesset.

62. For relevant case law, see Annex II.

### **Reply to paragraph 8 of the list of issues**

- A. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above**
- B. Steps to refrain from interfering with the ownership and use of personal property in the ENoJ and the Golan Heights**

63. The right to property is protected in the *Basic Law: Human Dignity and Liberty*. Every person may be the owner of property, including intellectual property, and may use it in any legal manner. A person cannot be denied of property arbitrarily. Any person who believes that his/her right to property was infringed or denied may access a court of law and seek remedies. For more information see Israel's Core Document of 2008 (HRI/CORE/ISR/2008) (Article 2(IV)(A)(iv), (para. 135)).

### C. Water supply in the ENoJ

64. The issue of water supply in the ENoJ, beyond the security fence, has been pending before the Supreme Court since 2014. During this period, the State promoted the establishment of additional water supply infrastructure in these neighborhoods. The plan is to ensure reasonable access to water, and the new lines are intended to increase the amount of water supplied in these neighborhoods, in order to improve accessibility. For information on the water lines and additional water projects, see Annex II.

65. For information on access to land and planning in the ENoJ, see Question 22 below.

### D. The Regularization of Settlement in Judea and Samaria Law – 5777-2017

66. The *Regularization Law* was passed by the Knesset on February 6th, 2017, in order to address the problem of buildings in the West Bank that were built without permit on land that is not “public property”.

67. The *Regularization Law* aims to regulate these buildings by settling their land ownership and zoning status, and in the meanwhile to dismiss administrative measures taken to enforce their removal. According to its terms, the law applies to cases where the buildings were built in “good faith”, namely, without knowing of the status of the lands in question; or alternatively, built with the State’s consent, be it explicit or implicit. The Law only applies to pre-existing construction (built before February 2017). The Law provides two (2) tracks, based on the question of whether a specific individual can show ownership rights in the lands in question, or not. With respect to lands that were proved to be private property, the ownership would remain with the owner. Nevertheless, in certain circumstances, the usage would pass to the authorities and allocated to the current holders. The owner would be compensated, with annual payments of 125% of the value of usage rights of the land, or an equivalent lot in a different location, if possible. This is a temporary arrangement to apply until the question of the status of the West Bank is politically resolved (Section 3(2)). With respect to lands that were not proved to be private property, they will be registered as public property (Section 3(1)).

68. Several petitions<sup>3</sup> were filed to the HCJ claiming, *inter alia*, that the Law is both unconstitutional and constitutes a violation of international law. In another petition, the Court was requested to order the State to begin implementation of the Law.

69. Already during the Law’s legislation process, the AG expressed his opinion that it was unconstitutional. The AG argued that the law constitutes a disproportionate infringement of the basic right to property, which is enshrined in *Basic Law: Human Dignity and Liberty*, and also that its provisions deviate from well-established doctrines of property law and regulatory taking law.

70. Concerning the petitions to the HCJ, the AG announced that he would not be defending the Law on behalf of the Government of Israel, which is being represented in the hearing by private counsel, and responded to the petition separately from the Government. In his response, the AG asked the Court to accept the petition and declare the law to be void (AG Response dated 22.11.17). In the meanwhile, the AG suggested a procedural arrangement, which was accepted by the Court as an interim order (17.8.17), according to which, the implementation of the Law would be suspended until a final ruling is made, while temporarily freezing enforcement measures. In December 4, 2017, the Supreme Court issued an *order nisi* pending oral arguments. In June 3, 2018, the petitions were argued in front of an expanded panel of nine (9) justices, and are now awaiting judgement.

### Reply to paragraph 9 of the list of issues

71. Violence against women, including domestic violence and sex offenses is a social phenomenon that requires special, system-wide treatment, both in the social and in the criminal level. In recent years, the Government has been enhancing its efforts to combat

<sup>3</sup> H.C.J. 1308/17, *Silwad Municipality et. al. v. The Knesset et. al.* (pending).

these phenomena. Hereinafter are several prominent examples of related legislative amendments and administrative measures to counter and fight such violence.

72. For information on legislation amendments relating to gender based violence and legislation amendments and administrative measures on countering sexual harassment, see Annex II.

### **Countering Domestic Violence**

73. A Joint Inter-ministerial Committee on Preventing Domestic Violence was established in 2014. The Committee included representatives from all Ministries. In February 2016, the Committee published its final recommendations. Subsequently on May 2016 a designated sub-committee for implementing the recommendations was established, headed by the Minister of LSAaSS. The Implementation Committee included ten (10) teams; each one focused on different issues: research, protection, information, vulnerable populations, legislation etc. The Implementation Committee recommendations were presented to the Minister of Public Security in October 2016. The recommendations include both aspects of strengthening the current protection and prevention systems, and developing new ones.

74. Israel is currently examining the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), a process that entails an in-depth examination of all aspects relating to combatting gender-based violence.

75. The Joint Review Team (established in 2003) continues to conduct periodic meetings to examine cases of femicide in order to prevent their recurrence. The team includes participants from the Police, the Ministry of Labor, Social Affairs and Social Services (MoLSAaSS), and the State Attorney's Office.

76. For additional information on measures used to counter domestic violence, see Annex II.

### **Enhanced Efforts within the Police**

77. The policy of treatment of violence against women in general and domestic violence in particular is enforced by the Israel Police in a uniform, equal manner, regardless of religion, race or gender.

78. The Police have a unique apparatus of investigators and investigating officers to handle domestic violence and sexual offences. Designated training courses on domestic violence and sexual offences are conducted regularly for all investigators and patrol officers, including gender-sensitive courses. These trainings include, *inter alia*, lectures on the relevant legislation and legal aspects, culture-sensitive investigation, visits to assistance-centers and shelters for battered women, victim interview workshop, scene drill, and lectures about sexual harassment, treatment of victims and about domestic and spousal violence. General investigators who are not part of the apparatus also undergo, as part of their basic training, a course that includes detailed review of the guidelines for handling domestic violence offenses. Patrol-police personnel also study the principles of primary treatment of domestic violence offenses according to the relevant protocol.

79. In order to enhance reporting, the Police emphasize the need for better cooperation with a variety of actors relevant to the fight against domestic and sex offences. In this regard, see "Police-Social Worker Model" above. In addition, in order to raise awareness and enhance reporting, an ongoing discourse and collaboration was formed between the Police and leaders of minority groups; mainly concerning improving accessibility and encouraging women to approach the Police and file complaints.

80. For additional information on Police efforts to combat domestic and sexual violence, including: internal supervision, awareness raising, promotion of legislation, the use of electronic monitoring and investment of resources, see Annex II.

81. For additional information on investigation, indictments, sentences, compensation and availability of shelters for Victims of Domestic Violence, see Annex I attached to

Israel's 6th Periodic Report, concerning the implementation of the international Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

82. For information on treatment provided by the MoLSAaSS to battering men, see annex II.
83. For information on training provided to MoLSAaSS officials, see Annex II.
84. For information on enforcement efforts regarding sexual harassments, nationwide protest on December 2018 and New-Year Campaign against "Date Rape" Drug, see Annex II.
85. For statistical enforcement information, see Annex I.

## **Reply to paragraph 10 of the list of issues**

### **Courts Authorized to Impose a Death Penalty**

86. The authority to impose death penalty pursuant to the *Nazis and Nazi Collaborators (Punishment) Law, 5710-1950* and the *Penal Law 5737-1977*, is granted to a District Court. According to the Courts (Offenses punishable by a Death Penalty) Law 5721-1961, such cases must be heard before a panel of three (3) judges, and the presiding judge must be a Justice of the Supreme Court of Israel.

87. In every case in which a death penalty may be imposed, the *Criminal Procedure Law [Consolidated Version] 5742-1982*, requires an automatic appeal to the Supreme Court, even if the defendant has not appealed the sentence or conviction. As with any other convicted person, a person sentenced to death has the right to petition the President of the State for pardon, clemency, or commutation of sentence.

88. A Specialized Military Court has jurisdiction over offenses for which there is a death penalty pursuant to the *Military Justice Law 5715-1955*.

89. In the West Bank a Military Court with a specific panel (as shall be detailed below), has jurisdiction over offenses for which there is a death penalty pursuant to the *Security Provisions Order [Consolidated Version] (Judea and Samaria) (No. 1651) 5770-2009* and the *Defense (State of Emergency) Regulations, 1945*. According to Section 165 of the Order, such cases must be heard before a panel of three (3) judges, all of whom must be ranked Lieutenant Colonel or higher, and their decision must be unanimous. The Order also stipulates an automatic appeal to a Military Court of Appeals, which shall be held before a panel of five (5) judges, and additional procedural guarantees.

### **Imposition of Death Penalty within the Reporting Period**

90. No death penalties were imposed or executed during the reporting period. Although several provisions in Israel's criminal legislation allow for the imposition of the death penalty, the death penalty has been carried out only twice since the establishment of the State. The first time was after a field trial on June 30, 1948, in the case of Meir Tobiansky, an IDF officer who was accused of treason. Tobiansky was later cleared of all the charges against him. The second time was in the case of Adolph Eichmann, a senior Nazi assault unit commander, who was one of the major organizers of the Holocaust. Eichmann was in charged of facilitating and managing the logistics involved in the mass deportation of Jews to ghettos and extermination camps during WWII.

91. The provisions enabling the death penalty refer to: (1) crimes against the Jewish people or crimes against humanity committed during the period of the Nazi regime, and for war crimes committed during the Second WW; (2) Genocide, conspiracy, incitement or attempt to commit genocide, or of acting as an accomplice to genocide; (3) maximum punishment for offenses constituting treason during armed hostilities; (4) offenses involving illegal use of firearms against persons, or use of explosives or inflammable objects with intent to kill or to cause grievous bodily harm (not applied or requested in practice).

92. The imposition of the death penalty on any person who was a minor at the time the offense was committed is prohibited.

93. On January 3, 2018, The Knesset approved by preliminary reading an amendment to the *Penal Law 5737-1977 (Amendment – A Death Sentence for a Person Convicted for Murder in Circumstances of Terrorism)*. This bill dealt with the sentencing of a death penalty for a murder offence, in case it is also considered as an act of terrorism according to the *Counter-Terrorism Law*. The bill also dealt with procedural amendments, according to which, a Military Court will be authorized to inflict the death penalty by a majority decision rather than a unanimous decision, and such a final verdict could not be mitigated. At that stage, the Knesset's Constitution, Law and Justice Committee focused on the cancelation of the requirement of a unanimous decision by a Military Court when sentencing a death penalty. In December 2017, the AG noted his objection to this bill stating that it does not co-inside with Israel's statements in international forums, and that although there are several provisions in Israeli law that allow inflicting a death penalty, these were legislated prior the legislation of the *Basic Law: Human Dignity and Liberty*, and the Current bill does not meet the requirements of this *Basic Law's* limitation clause. Note that during the discussions held in the Knesset regarding this bill, General Recommendation No. 36 regarding Article 6 of the ICCPR (CCPR/C/GC/36) was addressed by the AG, in order to highlight and explain several difficulties in the bill's version. This bill has not been considered further.

## **Reply to paragraph 11 of the list of issues**

### **The Counter-Terrorism Law**

94. On June 15, 2016, as part of Israel's ongoing battle against terrorism, the Knesset enacted the *Counter Terrorism Law 5776-2016*. This detailed and carefully designed law is part of an effort to provide law enforcement authorities with more effective tools to combat modern terrorist threats while incorporating additional checks and balances necessary to safeguard against inappropriate violations of individual human rights. The Law provides, *inter alia*, updated definitions of "terrorist organization", "terrorist act" and "membership in a terrorist organization", detailed regulations for the process of designating terrorist organizations, and enhanced enforcement tools, both criminal and financial. The Law nullified previous legislation in the field of counter-terrorism such as the *Prevention of Terrorism Ordinance 5708-1948*, that was linked to a state of emergency. Additional legislation is currently being reviewed and amended in order to disconnect it from a state of emergency. This law does not create discrimination on the grounds of gender, race, color, decent or national or ethnic origin and does not subject individuals to racial or ethnic profiling or stereotyping. For statistical data on indictments according to this law, see Annex I.

95. On March 7, 2018, the Knesset approved Amendment No. 3 to the Law in which, among other things, it vested a Police District Commander with the authority to issue an order authorizing to delay the transfer of a terrorist's body to his/her relatives for up to ten (10) days for one (1) of the following three (3) grounds: a reasonable threat that the funeral will cause serious harm to life; a reasonable threat of the commission of a terrorist act; or a reasonable threat of incitement to terrorism or identification with a terrorist organization or a terrorist act during the funeral. Such an order may be extended from time to time, as necessary, by the Police General Commissioner until the implementation of the terms set for the funeral (Section 70B). Prior to this Amendment, the Police relied on Sections 3 and 4A to the *Police Ordinance* to delay the provision of a terrorist's remains to his/her relatives for the purpose of protecting public order. However, in the Jabarin case the HCJ ruled that these sections do not constitute sufficient legal basis for such delay and explicit legal authorization is required for such action (H.C.J. 5887/17 *Ahmad Moussa Jabarin et. al. v. The Israeli Police et. al.* (25.7.17)). In addition, this Amendment also vested the Police with the authority to set terms in regard to a funeral of a person who committed or attempted to commit a terrorist act and subsequently died ("a Terrorist"). According to this Amendment a Police District Commander is authorized to issue an order setting certain conditions in regard to a funeral of a terrorist, for the purpose of protecting the safety and

the security of the public, including the prevention of riots, incitement to terrorism or identification with a terrorist organization or a terrorist act. Such conditions may refer to the number and identity of the funeral participants, the funeral time and date, its route and in certain cases the place of burial, while considering the family's position on this issue. A Police District Commander may also order to deposit a guarantee in order to ensure the implementation of these conditions (Section 70A).

96. For related case law, see Annex II.

### Reply to paragraph 12 of the list of issues

97. In February 2013,<sup>4</sup> the Turkel Commission concluded that Israel's mechanisms for examining and investigating complaints and claims of violations of the rules of the Laws of Armed Conflict ("LoAC") generally complied with its obligations under international law. The Commission nevertheless made several recommendations for further improving the Israeli system, among them the adoption of domestic legislation, a number of structural changes and the anchoring of existing policies in written directives and procedures.<sup>5</sup>

98. Since the issuance of the Turkel Report, the Government has steadily worked to implement the various recommendations. Notably, in January 2014, a professional inter-agency team of experts ("the Implementation Team"), headed by Dr. Joseph Ciechanover was appointed. The Implementation Team thoroughly reviewed the Commission's recommendations and considered the most effective measures for their implementation. The Implementation Team submitted its report to the Prime Minister in September 2015.<sup>6</sup> The Israeli Cabinet approved the Implementation Team's Report in July 2016 and instructed the Ministry of Finance (MoF) to address the allocation of the necessary funds. The MoF has allocated the required funds to the relevant agencies and the implementation of these recommendations continues. There is also an inter-agency team, which continues to regularly monitor the completion of this process and reports to the Prime Minister every six (6) months.

99. Below are a few examples of recommendations of the Turkel Commission that have been implemented:

- In accordance with recommendation No. 12, a unit was established in the Department of International Law in the MoJ, which is actively involved in giving legal advice on matters pertaining to the LoAC, thus strengthening the capacity of the AG to exercise his/her supervisory powers over the Military Advocate General (MAG).
- In April 2015, and in accordance with recommendations No. 7 and 13, two (2) new AG guidelines were published,<sup>7</sup> which deal with the relationship between the MAG and the AG and reinforce the avenue of review by the AG of decisions made by the MAG, thereby strengthening civilian oversight of the military justice system. According to the guidelines, the AG reviews appeals on the MAG's decisions

<sup>4</sup> The public commission for the examination of the maritime incident of May 31st 2010, Report Part Two – Israel's mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict according to International Law (5773), <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>.

<sup>5</sup> *Id.*, at 360–461.

<sup>6</sup> The Implementation Team, Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010, regarding Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law (5775), <http://www.pmo.gov.il/Documents/ReportEng.pdf>.

<sup>7</sup> "The Military Advocate General", the Attorney General's Directive 9.1002 (5760), <http://www.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveMilitaryAdvocateGeneral.pdf>; "The review of decisions of the Military Advocate General regarding incidents involving the death of an individual in the course of Israel Defense Forces operational activity, when serious violations of customary international law are alleged", Attorney General Guideline 4.5003 (5775), <http://www.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveRightofReview.pdf>.

regarding investigations and prosecutions of alleged serious violations of international law. The AG may also exercise his review function if he/she considers that it is required due to special public interests or implications. Since the publishing of these guidelines, this avenue of review has been utilized on several occasions.

- In accordance with recommendation No. 5, in July 2014, the IDF Chief of General Staff ordered the establishment of a General Staff Mechanism for Fact-Finding Assessments (FFAM), which would examine exceptional incidents. It is headed by a Major General and relies on high-ranking officers with relevant operational expertise in a variety of fields, who are outside the chain of command for the operational activity being examined. Thus far, it has reviewed hundreds of incidents. The FFAM has broad-ranging powers to obtain information both from within and outside the IDF. Once an FFAM examination is complete, the MAG decides whether the findings and collected materials meet the requirements for opening a criminal investigation. In order to make this decision, the MAG may request supplementary examinations and materials from the FFAM.
- In accordance with recommendation No. 9, in early 2017 a special unit specializing in operational affairs was established within the Military Police Criminal Investigation Division, which consists of experienced officers and investigators who undergo in-depth training with respect to the LoAC as well as operational affairs. This unit has thus far investigated dozens of cases.
- In recommendation No. 15 the Turkel Commission recommended strengthening the thoroughness and effectiveness of the investigations of the Inspector by requiring video recording of interrogations conducted by ISA, to be made according to rules that would be prescribed by the AG in coordination with the Head of the ISA. The Implementation Team recommended that cameras installed in all ISA interrogation rooms will broadcast regularly via closed circuit to a control room located in an ISA facility where interrogations are not conducted. The control room will be accessible and available to an external supervising entity on behalf of the MoJ at any time. The interrogators will have no indication of when the MoJ supervisor is watching them in the control room. The supervising entity must report immediately to the Inspector if he/she believes that illegal means have been used during the interrogation. The Israeli Security Cabinet adopted the recommendations of the Implementation team and after the completion of the necessary technical arrangements and recruitment of suitable supervisors by the MoJ, along with the completion of a work protocol, the supervisors began their work in January 2018. During 2018, hundreds of control and supervision hours were conducted by the supervisors.

### **Reply to paragraph 13 of the list of issues**

100. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above.

## **Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person and treatment of persons deprived of their liberty**

### **Reply to paragraph 14 of the list of issues**

#### **A. Prohibition of Torture in Legislation**

101. Inter-Agency staff work on the Draft bill is still ongoing, thus, it is impossible at this stage to provide definitive information with respect to the specific definition of the offense that will be included in the draft bill or with respect to the time frame for the completion of the drafting process.

## B. The “Necessity” Defense

102. The “necessity defense”, as stipulated in Section 34(11) of the *Penal Law*, is one of the defense claims afforded to a defendant in the criminal proceedings in Israel and remains in Israeli legislation. In H.C.J 5100/94 *The Public Committee against Torture et. al. v. The State of Israel et. al.* (6.9.99), the HCJ held that this defense could apply to a defendant accused of using unnecessary or excessive physical pressure.

103. The use of the so-called “necessity defense” with regard to ISA interrogations, is exceptional and represents a minute percentage of all ISA interrogations of persons that were suspects of terrorist activity.

104. According to the *Israel Security Agency Law 5762-2002*, the ISA internal rules and procedures as well as methods of interrogations are confidential.

105. A petition for disclosure of similar details was submitted to the Jerusalem District Court, in pursuance to the *Freedom of Information Law 5758-1998*, and rejected by the Court (Ad.P 8844/08 *The Public Committee against Torture v. the Supervisor of the Freedom of Information Law within the Ministry of Justice* (15.2.09)).

## C. Steps to Refrain from Inflicting “Moderate Physical Pressure” in “Necessity” Cases

106. According to the *Israel Security Agency Law 5762-2002*, the ISA internal rules and procedures as well as methods of interrogations are confidential.

107. The ISA and its employees act within the limits of the law and are subject to both internal and external supervision and review, including by the State Comptroller, the Inspector at the MoJ, the AG, the State Attorney’s Office, the Knesset and every instance of the courts, including the HCJ.

108. The ISA operates in accordance with the ruling of the HCJ, and specifically the ruling concerning ISA interrogations from 1999 (H.C.J. 5100/94 *The Public Committee against Torture v. The State of Israel*). Accordingly, the ISA interrogators have no authority to use any exceptional measures against interrogatees in the course of an investigation.

109. The detainees undergoing ISA interrogation receive all the rights to which they are entitled according to Israeli law and international conventions to which Israel is a party, including the rights to legal representation, medical care and visits by the International Committee of the Red Cross.

110. Furthermore, any case of alleged wrongdoing by an ISA investigator can be referred to the Inspector.

111. Investigations of Alleged Cases of Torture – complaints submitted to the Inspector are examined independently and impartially. The Inspector conducts a thorough preliminary examination of such complaints. The preliminary inquiry process includes reviewing all the relevant documents, and interviewing the complainant and his/her interrogators, as needed. The Inspector’s unit concludes its inquiry with a recommendation on the measures that should be taken, such as: criminal investigation, prosecution, disciplinary action, drawing conclusions for the organization or recording the complaint.

112. Following such an examination, the Inspector’s findings are transferred to the Inspector’s supervisor, a senior advocate in the State Attorney’s Office, who examines if there is sufficient evidence to recommend opening an investigation. The decision whether to open such an investigation was delegated to the Deputy State Attorney (Special Affairs). A criminal investigation is opened upon a reasonable suspicion that an offence was committed, based on the existing evidence that were gathered by the Inspector.

113. The Inspector’s preliminary inquiry process has been reviewed and approved by the HCJ (H.C.J. 11/1265 *The Public Committee Against Torture in Israel vs. The Attorney General* (14.2.2011)) and its extensive and comprehensive work has been recognized in its ruling (H.C.J. 5722/12 *As’ad Abu-Gosh vs. The Attorney General* (12.12.2017), H.C.J. 9018/17 *Fares Tbeish et. Al. v. the Attorney General et. al.* (26.11.18)).

114. For statistical data, see Annex I.

115. To date, the complaints did not amount to prosecutions.

116. For information on positive updates concerning the Inspector and the ISA, see Annex II.

#### **D. Audio and Visual Recording of Interrogations**

##### *ISA Interrogations*

117. For information on the implementation of recommendation No. 15 of the Turkel Commission regarding ISA interrogations, see Question 12 above.

##### *Police Investigations*

118. The *Criminal Procedure (Investigation of Suspects) Law 5762–2002* (Sections 7 and 11), requires that the Police carry out audio or visual recording of criminal suspect questioning, where the crime carries a penalty of imprisonment of ten (10) or more years.

119. On December 12, 2016, the Knesset approved Amendment No. 8 to the *Criminal Procedure (Interrogation of Suspects) Law*, which stipulates that this documentation obligation does not apply to police investigation of a suspect relating to a security offense. However, according to this Amendment, the questioning of a suspect in relation to a security offence is subject to random inspections and supervision according to police procedures, to be approved by the Minister of Public Security and the AG. The Amendment provides that the supervising authority, high-ranking Police personnel, will be allowed to conduct such inspections about every ongoing interrogation, at any time, without any advance notice and without the interrogators being aware of such inspections. According to this Amendment, the Knesset's Constitution, Law and Justice Committee is to receive annual reports on the implementation of this Amendment. In December 2017, all Special Investigations Branch officers received the "Protocol for Supervision and Control over Police Interrogation of Suspects in Security Offenses", which include the relevant instructions for such supervision and control and methods of reporting. The relevant procedures have been approved and the supervisors had begun operating in January 2018. For information on supervision during ISA security interrogations, see Question 12, above.

120. Several NGOs filed a petition to the HCJ against the constitutionality of this temporary provision. On January 15, 2017, the Court ruled that the petition was not ripe for adjudication, noting that the required implementing procedures were yet to be formulated. The Court stressed that these procedures must be strict, both concerning the number of inspectors and the working procedures. The Court therefore dismissed the petition without prejudice. (H.C.J. 5014/15 *Adalah v. The Minister of Public Security* (15.1.17)).

#### **Reply to paragraph 15 of the list of issues**

121. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above.

#### **A. Measures Taken to Eradicate Torture and Ill-treatment and the Establishment of an Independent Monitoring Mechanisms**

122. See Question 14B and 14C.

##### *Independent Monitoring of Detention Conditions*

123. Every prisoner or detainee under the care of the Israel Prisons Service (IPS) has access to complaint mechanisms concerning grievances regarding the staff and wardens', including claims of wrongful use of force:

- Filing a complaint to the Prison Director;
- A prisoner's petition to a District Court;
- Filing a complaint to the Warden's Investigation Unit (WIU), through the IPS or directly to the Unit;

- Filing complaint to the Prisoners Complaint Ombudsman.

124. The *Prisons Ordinance* establishes rules for Official Visitors in prisons and further grants official visitor's authorities to Supreme Court judges, the AG, and to District and Magistrate Courts judges in prisons in their jurisdiction. For further information on official visitors, see Annex II.

125. Additional monitoring regarding protected persons is conducted by visits of the ICRC personnel.

126. For relevant case law, see Annex II.

## **B. Arrest conditions of Palestinians, including Children**

### *IPS Detention Facilities – Adults*

127. The conditions granted to security prisoners are determined by the IPS Order No. 03.02.00.

128. Due to ongoing security risks security prisoners pose, specific limitations are applied to their vacations, visits and conjugal visit rights. The need to impose such limitations was recognized, scrutinized and affirmed by the Supreme Court in several cases (for example: Pr.P.A 1076/95 *State of Israel v. Samir Kuntar* (13.11.96)).

129. Alongside these limitations, the security prisoners are offered a variety of services and benefits that enable their detention in appropriate and adequate conditions, whilst respecting their distinctive needs.

130. Breaches of order and discipline in detention facilities necessitate the use of disciplinary and administrative measures, which are carried out in accordance with IPS procedures.

131. Medical Care – Every IPS detention facility employs a general physician, a dentist, a necrology specialist, a psychiatrist and a professional medic who provide regular services. Examinations by expert doctors are available in the IPS medical center, prison infirmary and hospital clinics. Inmates are also allowed to consult with private doctors at their own expense. A medical examination is conducted daily and an inmate can be examined by a physician upon request. Where a need arises for specialist or if there is a need for hospitalization, proper arrangements are made with the relevant hospital and the MoH. In addition, the IPS operates a detention facility intended for prisoners with physical and mental problems, which cares for prisoners with chronic illnesses. Gynecological examinations are held when necessary and upon the request of female prisoners.

132. Generally, family visits are allowed for security-related inmates and are held according to IPS procedures. On June 4th 2019, the HCJ denied a petition and affirmed the Minister of Public Security's 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 in captivity. This was approved by the Court, subject to periodic review and as the ongoing provision of other channels of communication with their families. (H.C.J 6314/17 *Fadi Sammy Namnam et. al. v. The Government of Israel et. al.* (4.6.19)).

133. Access to Legal Counsel – Prisoners are entitled to meet with their lawyers and receive consultations; these meetings are held with or without a divider, according to the circumstances. The exchange of legal material between the lawyer and the prisoner is subject to attorney-client privilege and the legal material is forwarded directly to the inmate.

### *Palestinian Minors in Military Juvenile Justice System*

134. According to the law, minors are held in separate wings from adults.

135. In 2008, joint staff work was held by a special task force composed of senior officials from the MoJ, the MAG Office, the Military Courts, the Israel Police, the Ministry of Public Security and the ISA. As a result of this work, a number of significant

amendments have been introduced over the years to the Order, including: raising the age of majority to 18, special statute of limitation, shortening the detention periods and more.

136. Note that ISA's interrogations of minors are conducted by trained minors' interrogators, in accordance with special internal procedures and subject to approval of the senior ranks in the ISA. These procedures provide special protection to the minors, their legal rights, as well as their physical and mental state. The ISA meticulously observes the times of interrogation and hours of sleep provided to the minors.

137. For information on the specific detention periods, see Annex II.

### C. Solitary Confinement

138. Solitary confinement – As will be detailed, there is no *incommunicado* detention in Israel. In Israel, solitary confinement is a punitive measure, and as such, it is imposed only in restricted circumstances, for short and limited periods, and must follow a disciplinary hearing. The manner and the extent of use of solitary confinement fully comply with international law standards.

139. Solitary confinement is used only in a limited and closed list of 41 **disciplinary** offences set in Section 56 of the *Prisons Ordinance 5732-1971*; thus, the Israeli practice adheres to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

140. Solitary confinement is extremely restricted and is used for short and limited periods, with a maximum of 14 days only. Where solitary confinement is prescribed for periods of over seven (7) days, there is a requirement to allow a seven (7) days break, following the first seven (7) days of confinement – which means that a prisoner will not spend more than seven (7) consecutive days in solitary confinement. In addition, a period of more than seven (7) days in solitary confinement can be imposed only by the Prison Director or his/her deputy, and must follow a disciplinary hearing. Prior to the disciplinary hearing, the prisoner receives a 48-hour notice, during which he/she can prepare his/her arguments and summon witnesses, if he/she wishes, to make his/her case.

141. During the course of the solitary confinement, contact is maintained with the officials in the ward – prison guards and social workers as well as with physicians/paramedics per request, and attorneys, except for exceptional circumstances. These rules apply equally to criminal as well as security prisoners.

142. Separation is not a punitive measure but rather a preventive procedure regulated by the *Prisons Ordinance (New Version) 5732-1971* and by IPS Order No. 04.03.00, which is intended to prevent a prisoner, including prisoners with mental disabilities, from harming her/himself or harming other prisoners or the prison's staff. Separation may also be used due to state or prison security. A prisoner held in separation may be held alone or together with another prisoner ("separation in a pair"), according to the reasons for separation as well as the prisoner's characteristics. The conditions provided in separation are similar to the conditions provided to all other prisoners, these include: medical care, meetings with an attorney, an hour in the prison yard, social worker and visits. The living conditions in the separation ward include a television, video game consoles, telephone, books and newspapers. This preventive measure of separation is subject to re-examination procedures, judicial review and appeal. The authority to hold a prisoner in separation is constantly monitored and requires timely reevaluation in order to minimize to separation time.

#### *Solitary Confinement with regard to ISA interogatees*

143. Solitary Confinement is not used as an interrogation method nor as a punitive measure by the ISA. However, naturally, during interrogations there might be a need to separate between several detainees for the purpose of the investigation.

144. The detainees have continuous and frequent contact with the IPS personnel, as well as the medical personnel. They also meet with representatives of the ICRC and are brought before a judge to extend their arrest, where they are represented by their attorneys, all in accordance with the law.

145. Meeting with a lawyer during this period of time may be suspended for up to 21 days regarding interrogatees held in accordance with Section 35 of the *Criminal Procedure Law (Enforcement Powers – Arrests)*, due to the risk of potential harm of the suspect to national security. Postponing the meeting with a lawyer for more than 10 days and up to the maximum period of 21 days requires court approval.

146. When ISA interrogatee is under investigation, his/her family or their lawyer are informed on their location and on their arrest.

#### *Solitary Confinement and Separation of Minors*

147. As mentioned above, holding a minor in solitary confinement is done only as a last resort. In addition to all the protection measures detailed above, a minor will see a social worker every day that he/she spends in the solitary confinement.

148. When considering holding a minor in separation, such decision is reviewed prior to the beginning of the separation itself. The use of such separation is only permitted when based on professional consideration.

#### *Procedural Protections of Minors' Rights during Arrest and Detention*

149. All aspects of the criminal process, including arrest, interrogation and detention, are conducted according to specific, clear, well-elaborated procedures, and are frequently subject to judicial review. These procedures are available to the public, either online or upon request by interested parties.

150. While in some incidents there might be rare and specific breaches of those procedures, these cases are investigated thoroughly and treated severely, and in no way are these indicative of a general practice.

151. In the event that a procedural violation occurs during any stage of the proceedings, the minor, through his/her parents or attorney (minors are represented by an attorney at all proceedings in the Military Juvenile Courts, including remand hearings), may lodge a formal complaint to the proper authorities. This entails the Investigative Military Police (IMP), the MoJ's Department for Investigation of Police Officers (DIPO), the Inspector for Complaints against ISA Interrogators and the Warden's Investigation Unit (WIU)) and may raise his/her arguments before the military judge during the hearings.

### **D. Allegations of Torture and Ill-treatment**

152. See Question 14C above.

#### *Israeli Police – Treatment of Alleged Ill-Treatment*

153. The DIPO is an independent department within the MoJ. This department is specifically designated to investigate complaints of involvement of police personnel in the commission of offences (defined as offences punishable by one (1) year imprisonment or more).

154. The DIPO views with the utmost severity instances of police officers' ill-treatment and disproportionate use of force. Serious efforts are being undertaken to eliminate any form of such abuse. Cases of alleged violence are investigated thoroughly and meticulously, using all means to exhaust the investigation and bring to justice those found to have used unnecessary violence or acted in an unreasonable manner.

155. The DIPO is responsible for most criminal investigations against police officers. Disciplinary proceedings are initiated by submitting a complaint to the Disciplinary Department of the Personnel Division at the Police Central Headquarters, or to any of its branches.

156. In 2017, the DIPO reached a decision in 641 cases against police officers who were interviewed under caution (every case included one (1) police officer or more); 38.8% of these cases ended in criminal indictments (136 cases) or disciplinary proceedings (113 cases). Also, 85% of the criminal procedures against police officers that were concluded in

2017, ended with conviction, 3% of the cases ended with acquittal and 12% of the cases ended with a different decision.

157. In regards to non-application of Human Rights Conventions in the West Bank see Question 2(B) above.

### **Reply to paragraphs 16, 17, 18 and 19 of the list of issues**

158. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above.

### **Refugees and asylum seekers**

### **Reply to paragraph 20 of the list of issues**

#### **A. Access to Fair and Efficient Asylum Procedures, Protection against Refoulement and an Independent Appeal Mechanism**

159. On October 10, 2019, the PIA notified that Sudanese citizens who entered Israel illegally through the Egyptian Border will receive temporary residence permit pursuant to Section 2(a)(5) to the *Entry into Israel Law* for a period of one (1) one year at a time. Sudanese citizens holding a B/1 visa (temporary employment permit) will receive it for a period of one (1) year at a time. Persons from Darfur, the Blue Nile and the Nuba Mountains will receive temporary residence permit pursuant to Section 2(a)(5) to the law, and the previous notification in their passport will be deleted. Eritrean citizens who entered Israel illegally through the Egyptian Border will receive temporary residence permit pursuant to Section 2(a)(5) to the *Entry into Israel Law* for a period of six (6) months each time and the previous notification in their passports will be deleted. Eritrean citizens holding a B/1 visa (temporary employment permit) will receive it for a period of six (6) months at a time. The updated permits will be issued at the time of renewal of the existing permits.

160. Also, the Population and Immigration Authority (PIA) has issued a specific procedure<sup>8</sup> that regulates this issue (PIA Procedure No. 5.2.0012). The purpose of this procedure is to set the process of caring for asylum seekers in Israel and for those who have been recognized as refugees by the Minister of Interior. According to this procedure, handling of asylum applications is conducted pursuant to the Israeli law while observing Israel's obligations under the Convention and Protocol relating to the Status of Refugees of 1951 and 1967 respectively.

161. According to the procedure, the PIA must ensure that information sheets will be available at places of custody, at the PIA's offices and on its website. The information includes the manner of submitting an asylum application, the procedure for handling applications, obligations of the asylum seeker and the asylum seeker's rights to contact a legal representative of his/her choice and of the scope of representation to which he/she is entitled to in the process. According to the procedure, an asylum seeker will not be expelled from Israel, until completion of reviewing his/her asylum application, subject to the principle of *non-refoulement*.

162. The PIA has a designated unit that handles applications for asylum in Israel. The decisions of the PIA and of the Minister of Interior to deny an asylum application are subject to an appeal to the Detention Review Tribunal, and such appeals are filed frequently. Additional appeals may be filed to a District Court and with the Court's permission to the Supreme Court.

#### **B. Legal Procedure to Relocate African Migrants**

163. Israel had reached arrangements with two (2) third countries for the safe relocation of persons from Sudan and Eritrea who entered Israel illegally through the Egyptian border.

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<sup>8</sup> See: [https://www.gov.il/en/service/apply\\_for\\_asylum\\_in\\_israel](https://www.gov.il/en/service/apply_for_asylum_in_israel) (as of 25.7.19).

The Government considered this plan a more appropriate way to deal with the situation, due to the unique circumstances that Israel is facing and the geo-political context in the Middle East. A certificate of confidentiality signed by the Prime Minister was issued in respect of the identity of these countries and the details of the arrangements. For information on the criteria for such relocation that were approved by the AG, see Annex II.

164. The relocation to third countries policy was approved by the Supreme Court in the *Tzageta* case (after certain amendments made). In this case, in *ex parte* proceedings the State disclosed to the Court the arrangements it had reached with the third country, as well as all the measures that were taken in order to review and supervise their implementation. The Supreme Court rejected the argument that the third country discussed was unsafe, and stated that “[...] the appellants did not prove that the discussed third country is unsafe, that any of the substantive criteria outlined by the AG does not exist in that third country and that the persons being relocated face a threat there”. Note that the ruling dealt with only one of the two third countries (*Ad.P.Ap. 8101/15 Tzageta et. al. v. The Minister of Interior et. al.* (28.7.17)).

165. Ultimately, for various reasons, the arrangements were not fully implemented. Anyone who wishes to leave Israel voluntarily to these countries can still do so with State assistance according to these arrangements. Based on routine examinations conducted by PIA, there have been no known cases of violations of the principle of *non-refoulement*.

### C. The Detention of Asylum Seekers

#### *Legislation update*

166. In recent years a legal and constitutional debate took place between the State and the Supreme Court concerning this issue. On November 19, 2017, the Government approved a Resolution to close the Holot open facility within four (4) months and on March 2018, the facility was closed.

167. Up until several years, tens of thousands of people have entered Israel illegally, not through a border station. Initially, these people had been placed in custody under the *Entry into Israel Law 5712-1952*, for a relatively short period of time, given the limitations on the length of custody as set by this law. In light of the ever-growing dimensions of this phenomenon and its implications for the State of Israel and Israeli society, the Government raised the need to provide tools and additional means to deal with this phenomenon. Thus, the *Prevention of Infiltration (Offences and Jurisdiction) Law 5714-1954* was amended several times. However, several provisions of these Amendments were annulled the HCJ (H.C.J. 7146/12 *Naget Serg Adam et. al. v. The Knesset et. al.* (16.9.13)), (H.C.J. 8425/13 *Gabrislasy et. al. v. The Knesset et. al.* (22.9.14)).

168. On December 17, 2014, Amendment No. 5 to the Law entered into force. This Amendment included three (3) key changes: (a) it stipulated that a person who enters Israel illegally may be held in detention for a period of up to three (3) months. This Section applies only to persons who entered Israel illegally after its enactment. (b) It also stipulated that the following persons would not be sent to Holot open facility: women, minors, persons above the age of 60, a parent who is responsible for a minor, a victim of a trafficking in person offence according to the *Penal Law*, and people who the Border Control Commissioner is convinced that their placement in the “Holot” facility may damage their health due to their age, state of health including mental health, and there is no way to prevent such damage. (c) The Amendment also instructed that the maximum period a person can be placed in “Holot” facility was 20 months. (c) According to the Amendment,

169. On August 11, 2015, the HCJ rejected most of the petition filed against this amendment and ruled that the new amendment is constitutional except for the provision that enabled illegal migrants to stay in “Holot” open facility, for up to twenty (20) months. The Court found this period was non-proportionate and gave the Knesset a six (6) month period to enact a new amendment to the Law. In the interim, the Court set a twelve (12) month period as the maximum. (H.C.J. 8665/14 *Dasseta v. the Knesset* (2.2.2015)).

170. Following this HCJ decision, in February 2016, The Knesset approved Amendment No. 6 to the *Prevention of Infiltration (Offences and Jurisdiction) Law* which sets the

maximum period a person can be held in “Holot” facility at 12 months. However as noted above the Holot open facility was later closed by the GOI.

#### *Saharonim Facility*

171. The “Saharonim” Detention Facility is located in the Negev, the southern part of Israel. The purpose of the facility is to detain persons who entered Israel illegally initially, immediately following their illegal entry into Israel, mainly from the Sinai Peninsula.

172. 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 process these people, determine their identity and nationality, and explore alternatives for their relocation from Israel. Note that as of 2019, no new illegal entries from the Sinai Peninsula were recorded and therefore there are no new arrivals to the detention facility for this reason, but several dozens are still detained in the facility, mostly illegal migrants who violated the terms of their stay in Israel.

173. To date, as part of the Government policy, women and minors are not held at “Saharonim”.

174. The facility is managed by the Israel Prison Service (“IPS”), and the conditions of the facility meet the relevant national and international standards and regulations of detention facilities.

#### *Examination of asylum requests procedure*

175. The rule set by the *Entry into Israel Law*, is that “a person who is not an Israeli citizen or an immigrant pursuant to the *Law of Return 5710-1950*, and is staying in Israel without a stay permit, shall be expelled from Israel as early as possible unless he/she voluntarily leaves before that”. An exception to this rule stems from the State of Israel’s commitment pursuant to the 1951 Refugees Convention. The principle of non-refoulement enshrined in Article 33 of the Refugee Convention constitutes a fundamental principle of international law and was enshrined into Israeli case law, two (2) decades ago through the HCJ ruling of H.C.J. 4702/94 *Al-Tai v. The Minister of Interior* (11.9.95). In the *Al-Tai* case, the former President of the Supreme Court, Justice Aharon Barak, determined that the principle of non-refoulement, according to which a person cannot be deported to a place where her/his life or liberty will be endangered, is not limited only to refugees. Justice Barak held that the principle of non-refoulement is applicable to any government authority decision dealing with the deportation of a person from Israel.

176. A custody order shall not be issued pursuant to the *Entry into Israel Law* against a person who is staying in Israel illegally before allowing him/her the opportunity to voice his/her claims, and the foreign national is provided with information on his/her legal rights, and he/she has the option to be represented in the hearing. According to the abovementioned PIA Procedure, the interview is conducted in the official language of the foreign national’s state or another language he/she understands and if required, with the help of a translator. Within this framework, the Border Control Commissioner considers all the circumstances relating to that person, including his/her age or health. Additionally, should an asylum request be raised, the person will be given the opportunity to submit such request from custody and, the applicant shall not be deported until conclusion of review of the application.

#### **D. The “Holot” Facility and Legislation Initiatives**

177. As of July 2019, the Government has not brought forward any plans to reopen the facility.

178. In 2018, a private bill titled “Bill to Amend Basic Law Human Dignity and Liberty (Amendment – Validity of an Exceptional Law Regarding Persons Who Entered Israel Illegally)” was filed by a Knesset member. According to this bill, a law concerning the prevention of illegal entrance into Israel, including instructions therein regarding the period

of stay in Israel or concerning exiting Israel of persons who entered Israel illegally, will be valid even if it does not meet subsection 8 to the Basic Law: Dignity and Liberty.

179. As of December 2018, this bill was taken off the Knesset's legislation schedule. The AG strongly opposed this bill and in his opinion he noted, *inter alia*, that "[...] This stands in direct contradiction to the most basic principles of Israel's constitutional law, which are based on its definition as a Jewish and democratic state, and recognize the fundamental rights given to every human being. These basic principles guarantee protection of human rights from harm by the Government that is not for a worthy purpose and is not proportionate. This recognition is anchored in international treaties to which the State of Israel is party, and is a cornerstone of international law."

#### **E. Health Services for Non-Residents**

180. For information on medical services available to migrants and foreign workers, see Annex II.

181. *Health Care for Foreign Workers* – In 2016, an amendment was made to the *Foreign Workers Order (Employee Health Benefits Package) 5761-2001*, which regulates the health services to which legal foreign workers in the care-giving field are entitled. According to this Amendment, a foreign worker in the nursing-care field who is found unable to fulfill his/her work duties due to a medical condition and had made the necessary arrangements to return to his/her country of origin is entitled to compensation in the amount of 80,000 NIS (20,800 USD), if ten (10) years have passed since they received a permanent working permit in Israel. The compensation is given towards medical expenses in the country of origin, given that their medical insurance will no longer apply. This amendment entered into force in November 2017.

182. Training – For information on national interpretation call center and training courses operated and provided by the MoH, see Annex II.

183. For relevant case law, see Annex II.

## **Administration of juvenile justice**

### **Reply to paragraph 21 of the list of issues**

184. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above.

## **Arbitrary or unlawful interference with private life and protection of family**

### **Reply to paragraph 22 of the list of issues**

**A. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above**

**B. Planning in Arab Localities**

#### *Outline Plans and Basic Planning for the Arab Population*

185. As of June 2018, 132 of 133 Arab localities have approved outline plans. Of these 133 localities: 76 have approved updated outline plans (from 2005 and onward) and 18 have new outline plans undergoing statutory approval. In the next two (2) years, these approval procedures are to be completed. New outline plans are in preparation for additional 29 localities, including updating seven (7) of the above-mentioned approved plans. Note that these updated outline plans, comprise 96% of the Arab population in the said 133 localities.

186. Note that local authorities do not have the authority to approve outline plans and these are usually examined and approved by the relevant district authority. The National Planning Administration (NPA) has promoted 95 of the aforementioned outline plans for the Arab localities. Five (5) outline plans are currently promoted by the Authority for Development and Housing of the Bedouin Population in the Negev; The rest of the plans are promoted by the local authorities of the local councils.

187. The outline plans promoted by the NPA have added, on average, 70% to the localities' existing development lands, in addition to existing areas within the locality which are approved, but not yet developed. The vast majority of the outline plans allow for a larger population than the population prediction for the relevant planning period.

188. In 2015, an inter-ministerial team headed by the MoJ was established with the aim of examining barriers in the field of housing for the Arab population (the 120 days team). In July 2015, the team published its recommendations, which were later adopted in relevant GRs that *inter alia*, refer to this issue. In the course of its work, the team became aware of a number of barriers regarding housing, both in the general population and in the Arab population. In order to break these barriers, in recent years an additional joint team headed by the MoJ and the MoF was established to review these barriers and recommend on solutions. The joint team is yet to form its final recommendations.

#### *Access to Plans Information*

189. Every outline plan promoted by the NPA, regardless of the nature of the locality concerned, is done with cooperation and close consultation with the head of the said local authority. The planning process includes public participation meetings and various other means for public information about the plan and the planning process.

190. The plan documents, when ready to be submitted for statutory approval, are first submitted for approval of the local authority. As of 2018, an outline plan for an Arab locality includes explanatory notes in Arabic, describing the main subjects of the plan, its purpose and objectives.

191. The statutory approval process of every plan includes depositing the plan for 60 or 90 days for public reference and objections. The plan's deposition is advertised on an official website, consisting all the main plans and its documents, alongside visible publication on billboards within the locality concerned, at the local and regional Building and Planning Committees and in (at least) three (3) newspapers. In localities where 10% or more of the population is Arab, all the advertisements are posted in Arabic and Hebrew and advertised in Arabic in at least one (1) local Arab newspaper.

192. Implementation of the Outline Plans – This is carried out by detailed plans by each locality. Since many of the Arab localities encounter difficulties in promoting the required detailed plans, and due to the plans' significance towards obtaining building permits, the NPA has taken upon itself to initiate a pilot of detailed planning, designating a budget (54 Million NIS (14.6 Million USD)) and professional support for promoting 45 detailed plans in 13 Druze localities. A similar project for other Arab localities will follow.

193. Parallel to supporting detailed plans by the NPA, the importance of strengthening the ability of Arab localities to promote and implement detailed planning within their own locality also became evident. This was addressed in GR No. 922 (see below), determining measures for achieving this goal, including strengthening Arab Local councils and setting up new Arab Local Building and Planning committees, allotting a budget of 100 Million NIS (27 Million USD) for this task.

194. To this end, the possibility of establishing new local building and planning committees by splitting them from the regional committees in which these councils currently belong is being examined. This, while addressing the difficulties that arose in many aspects, including some challenges regarding the local authorities' refusal to regulate enforcement of building and planning regulations, and the need to provide a comprehensive solution for the rest of the local committees.

195. As part of this task, a budget of 29 Million NIS (7.83 Million USD) was approved for supporting the financing of strategic planners in 33 minority local authorities with more

than 9,000 residents each, who are also members of regional building and planning committees. This, in order to strengthen planning capacities in these authorities.

196. For additional information (including on GR No. 4078 (29.7.18) and on the Committee for the Promotion of Priority Housing Areas, see Annex No. II.

197. As of September 2018, eleven (11) plans of priority housing areas were approved by the said Committee, totaling in over 14,500 housing units. Nine (9) additional plans are in various stages of approval (roughly 33,000 housing units). All these plans enable the acquirement of a building permit without needing any further planning process.

198. The position of the NPA is that lack of an updated outline plan should not delay approving a detailed plan that is compatible with the national planning policy. Thus, in the majority of the localities lacking approved updated outline plan, detailed plans were, and are, promoted continually in order to issue building permits.

#### *Relevant Government Resolutions*

199. For relevant GRs, see Annex II.

200. Druze and Circassian populations – The population of Druze and Circassians in Israel includes about 141,000 people in 22 localities. All these localities have approved updated outline plans, or are in the process of planning.

201. In accordance with Government Resolutions No. 2332 (December 14, 2014) and 959 (January 10, 2016), concerning the Development and Empowerment of the Druze and Circassian Localities for the Years 2016–2019, which include the preparation of detailed plans for localities of these populations, the National Planning Administration is promoting such detailed plans concerning private lands in 13 localities.

202. Affordable Housing – The Ministry of Construction and Housing (MoCH) has established a special website in Arabic containing the information presented in the Hebrew website and additional information designated for the Arab population. Such information covers the governmental program for affordable housing (“A Price for Residents”), the procedure for participating and upgrading participation in the program, financial benefits, the technical specifications of the available apartments, etc.

203. Furthermore, in 2015–2016, the MoCH widely published campaigns aimed at the Arab population through advertising “A Price for Residents” projects in Nazareth and Sakhnin. The MoCH continues to operate to promote linguistic accessibility for the Arab population.

#### *Planning in the Eastern Neighborhoods of Jerusalem (ENoJ)*

204. The new outline plan for the city of Jerusalem, which is currently under approval procedures, determines the planning policy in all of the city’s neighborhoods and jurisdictions areas. This plan incorporates two (2) mechanisms in order to expand the residential building percentage in the ENoJ.

205. The first mechanism is an expansion of the residential building percentage in all the approved residential areas in the ENoJ. Currently the approved residential building percentage in these neighborhoods is between 37% to 70%, of permitted building from the overall size of the plot, while the new outline plan increases this percentage up to 180% (by allowing multi-story building), which, under certain conditions, may even reach 240%. According to the new outline plan in the boundaries of the Old City, the additional building rights may only reach 160%. Since 2005, hundreds of plans that are compatible with the abovementioned outline plan have been promoted, considerably expanding the residential building rights in the ENoJ.

206. In addition, the new plan sets 14 new polygons titled “proposed urban residential areas”. The plans for some of these polygons are promoted by either the Jerusalem Municipality or the residents themselves. Hereinafter are several examples: a master plan for A-Swakra (2,500 residential units) and a detailed-plan for Dir Al-Amud and Al-Muntar (750 residential units) are promoted by the Municipality, a detailed-plan for Ein-Iluza (1,000 residential units) is promoted by the residents and an outline plan for Tel-Adessa

(2,500 residential units) is promoted by the residents. Note that every plan that is filed in accordance to the policy of the new Jerusalem outline plan receives the support of the planning institutions.

207. In the frame of every master plan promoted by the Jerusalem municipality, there is a structured procedure of public participation throughout all the planning stages.

208. The Jerusalem municipality, *via* the local committee for planning and construction, issues building permits in the ENoJ similar to any other area in the city. Following the submission of building permits applications, these applications are examined and if they correlate with the approved outline plans, a permit is issued. In 2019 (until mid July), 102 construction permits were given in the ENoJ out of 173 applications. In 2018, 184 construction permits were granted out of 331 applications and in 2017, 115 such permits were granted.

209. For relevant case law, see Annex II.

#### *Educational Initiatives in the ENoJ*

210. For information on GR No. 3790 (April 13, 2018) on the mitigation of social and economic gaps and the economic development of ENoJ, regarding education in the ENoJ, and information on the number of Classrooms under construction in the ENoJ, see Annex II.

#### *Demolition of Illegal Structures*

211. Illegal construction harms the local population, as it does not take into consideration planning policies and parameters that are required to ensure quality of life, the welfare of the population and public needs, and in many cases prevent the option of optimal development of the neighborhood (e.g. by building on future planned roads, public building plots etc.). Enforcement measures against illegal structures are taken in accordance with legal guarantees and following due process, subject to judicial review and the right to appeal.

### **C. The Bedouin Population**

#### *General*

212. Bedouin population – There are more than 250,000 Bedouins living in the Negev desert area. About 76% of them live in urban and suburban centers which have been legally planned and constructed. The remaining 24% reside in hundreds of unauthorized and unregulated clusters mainly within the Al-Qasoum and Neve Midbar regional authorities. These clusters spread over roughly 500,000 dunams (500 Sq. Km), obstructing urban expansion in the greater Negev area and the common good of all Bedouin population.

#### *Planning for the Bedouin population*

213. There are 18 Bedouin localities with approved outline plans, including the city of Rahat, Lakiya, Hura, Kuseife, Tel-Sheva, Segev Shalom and Ar'ara. All of these plans include infrastructure such as schools, health clinics, running water, electricity, roads, pavements, etc. Additional 11 localities that are under the jurisdiction of the Neve Midbar and A-Kasum Regional Councils also have approved outline plans.

214. In addition, the planning procedures for six (6) additional localities are ongoing.

215. The strategic work of examining and setting rules for the planning of construction solutions for the Bedouin population in the Negev has been undertaken and completed. This process is conducted with the participation of the population in each region and with emphasis on land arrangement and a wide range of housing arrangements. For additional information, see Israel's 4th Periodic Report to the CESCR (p. 35).

216. Additional development plans are in process in several other Bedouin towns; Rahat, for example, will be approximately tripled in size (from 8,797 dunams (8.8 Sqr. KM) today to 22,767 dunams (22.8Sqr KM)). The project is estimated to cost approximately 500

Million NIS (135.13 Million USD). Other localities are also in the process of expansion, development of infrastructures and construction of industrial and employment areas.

217. The Government's current policy is to provide residence possibilities in the recognized localities. This is done either by encouraging relocation by offering financial and/or land incentives or by on-the spot regularization. Note that movement incentives are available to all residents of the Bedouin unauthorized who seek such movement, regardless of their economic situation and independently of any entitlement test. These benefits include, *inter alia*, provision of free of charge land plots or for a very low cost, and compensation for the demolition of unauthorized structures. On the spot regularization will enable a large majority of those currently residing in unrecognized areas to continue residing there in the future within regularized localities without the need to relocate anywhere else. Note that an unauthorized village with no acceptable planning prospects cannot be regulated.

218. For information on building plans for the Bedouin population (deposited and approved), see Annex I.

#### *Demolition of Illegal Structures – Bedouin Population*

219. Unauthorized building by some of the Bedouin population is carried out without any plans as required by the *Planning and Building Law 5725-1965*, and with no pre-approval by the planning authorities. It causes many difficulties in terms of providing services to the residents of these unauthorized villages.

220. Israel cannot overlook such disregard to the planning and zoning rules and is compelled to issue demolition warrants for these unauthorized structures. Initially, a warning is granted to the person who constructed the structure, so he/she may challenge the demolition through the judicial process. If the person fails to overturn the demolition warrant, he/she is required to demolish the unauthorized structure. Only in cases where the unauthorized structure is not demolished by the person who constructed it, the authorities will act to demolish it. Note that enforcement activities are conducted only against structures that were constructed after 2010 and are found in areas that do not belong to any local authority. All enforcement activities are conducted in accordance with the law.

221. Note that in regard to 2016, 2017 and 2018, the majority of the illegal structures (more than 90%) that were demolished by the State authorities were not used for residence, but were makeshift structures such as animal sheds, huts, shipping containers, fences, concrete floors, iron scaffolding, dirt piles etc. Only a very small percent of the demolished structures were inhabited, since the owners of these illegal structures that were built on State land without permits as required by Law, did not adhere to stop work orders that were issued during the building period.

222. For relevant statistics and case law, see Annex II.

### **Reply to paragraph 23 of the list of issues**

#### **The Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003**

223. In May 2002, following a horrendous wave of terrorist attacks against Israeli population, the Government decided to temporarily suspend granting individuals legal status in Israel through the process of family reunification, regarding individuals who live in an enemy state or in an area from which terrorist activity is emanated against Israel. Subsequently, the *Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003* was enacted in July 2003, limiting the possibility of granting residents of the West Bank and Gaza Israeli citizenship or permanent residency pursuant to the *Citizenship Law* or the *Entry into Israel Law*, including by means of family reunification. This, due to the fact that dozens of Palestinians that received such Israeli status for the purpose of family reunification, had used it in order to engage in terrorist activities. The wave of terrorist attacks that began in October 2015 has shown that status given for the purpose of family reunification is still being misused for terrorist activity.

224. That said, the possibility of family reunification remains available in accordance with the law, the PIA procedures and lack of security preventions. The Law sets several easements regarding population with low security risk, to which, subject to all the relevant examinations, family stay permit may be granted (for example, a male spouse over the age of 35, who is a resident of the West Bank, or to a female spouse over the age of 25, who is a resident of the West Bank, with their minor children).

225. In addition, The Law enables entry to Israel for the purposes of medical treatment, employment, or other temporary grounds, for an overall period of up to six (6) months. In addition, the Law allows the granting of a temporary residence permit or a stay permit for humanitarian reasons or if he/she identifies with the State of Israel and its goals and he/she has significantly acted for the promotion of state's security, economy or another important matter of the state, or for another special state interest.

226. The Law's constitutionality has been scrutinized and upheld by the majority of the Supreme Court sitting twice in an extended panel of eleven (11) judges for the second time in January 2012. (H.C.J. 466/07, 544/07, 830/07, 5030/07 *MK Zehava Galon et. al. v. The Minister of Interior et. al.*).

227. The Law was extended several times and was valid until June 30, 2019. Due to the Knesset's dispersal, the law was extended automatically until December 17, 2019.

228. Nevertheless, following statements of the Supreme Court, the Minister of Interior has decided on a number of changes aimed at providing humanitarian relief for those to whom the Law applies. The Government gave notification that holders of temporary residency (A/5) visas will be able to extend the visa for a period of two (2) years, instead of one (1) year at a time.

229. In addition, the Government notified the Court that holders of temporary permits for stay in Israel granted by the Coordinator of Government Activities in the Territories (COGAT), whose family reunification applications were filed before the end of 2003 (the year the Temporary Provision was enacted) and there is no security prevention, would be granted temporary residence. This status includes registration in the Population Registry, entitlement to social security benefits and national health insurance for them and their minor children who were born after January 1998. They will also receive an Israeli identity document. This upgrade will be made available to persons who comply with several standard criteria (namely, that their marriage is an authentic and sincere one, that they live in Israel and that there are no security or criminal impediments to the upgrade).

230. For relevant statistics, see Annex I. for relevant case law, see Annex II.

231. In regards to health care, the National Health Insurance Regulations (Registration to a Health Fund, Rights and Obligations of Persons Who Receive a Permit Pursuant to the Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003) 5776-2016, which entered into force on August 1, 2016, established a health insurance that includes similar health services (according to different provisions) to those set by the National Health Insurance Law relating to persons who hold temporary stay permits pursuant to Sections 3, 3A(2) or 3A1(a)(2) of the Citizenship and Entry into Israel Law.

## **Freedom of expression, assembly and association**

### **Reply to paragraph 24 of the list of issues**

#### **A. The Entry into Israel Law 5712-1952**

232. As a general rule, a person who is not an Israeli national does not have a vested right, or any constitutional right, to enter the State. The principle of sovereignty dictates that entry and stay in a state and the control of its national borders is subject to the state's discretion.

233. On March 6, 2017, the Israeli Knesset amended the *Entry into Israel Law 5712-1952* (Amendment No. 28). According to this amendment, a person who is not an Israeli citizen or a permanent resident will not be granted a visa or any residency permit, if she/he or the

organization or body that she/he acts on its behalf, has knowingly published a public call to boycott Israel, as defined under the *Prevention of Damage to State of Israel through Boycott Law 5771-2011*, or if she/he has made a commitment to participate in such boycott. According to this amendment, the Minister of Interior has discretion to grant a visa or a residency permit despite this provision, under special grounds that will be noted.

234. In July 2017, The Population and Immigration Authority (PIA) published criteria that clarify the kind of organizations that this amendment refers to. The criteria clarifies that the Amendment refers to an organization that actively, consistently and continually supports and promotes a boycott of Israel; activist which hold high-ranking positions in such organizations; and prominent independent activists who take substantial, consistent and continuous action for the promotion of boycotts and similar activity against the State of Israel. An organization that is merely promoting a critical agenda against Israeli policy would not be banned from entering the State. As noted above, additional criteria were also set for exceptional cases of activists which although fall under the definition, their entry will be considered by the Minister of Interior. The Ministers' decisions under this law are subject to possible judicial review.

235. For additional relevant case law, including concerning Ms. Lara Alqasem and Mr. Omar Shakir, see Annex II.

236. Due to the lack of any constitutional right of non-nationals to enter Israel, claims raised that Amendment No. 28 breaches the constitutional rights of foreign nationals, including freedom of thought, opinion and speech, are unfounded.

237. For statistical data on the number of persons who were denied entry into Israel pursuant to this Amendment, see Annex I.

238. A petition regarding the constitutionality of the Amendment was filed to the HCJ. On February 28, 2018, after hearing comments made by the Court and after consulting with his attorney, the petitioners retracted their petition without prejudice. (H.C.J 3965/17 *Prof. Alon Harel et. al. vs. The Knesset et. al* (28.2.18)). For additional relevant case law, see Annex II.

#### **B. Disclosure Requirements Concerning Beneficiaries of Donations by a Foreign Political Entity Law 5771–2011 (Hereinafter: “the Disclosure Requirement Law”)**

239. In 2016, an Amendment to the *Disclosure Requirement Law* introduces quarterly and annual reporting requirements to the Registrar of Non-profit Organizations applicable to non-profit organizations and charitable companies that receive contributions from foreign states, federations of states, and state-affiliated entities (hereinafter: “foreign political entities”).

240. The quarterly report must include the identity of the contributor, the amount of the contribution, the purposes of the contribution, and the terms of the contribution. Quarterly reports submitted to the Registrar, as well as a list of beneficiaries that submitted such a report, are available on line. Failure to submit quarterly reports constitutes, in the case of a non-profit organization, a strict liability offense according to Section 64A of the *Non-profit Organization Law 5740–1980*, warranting a maximum fine of 29,200 NIS (7,900 USD), and in the case of a charitable company, an administrative offence warranting a fine of roughly 7,500 NIS (2,000 USD).

241. In addition to reporting requirements, the Law also requires the aforementioned organizations and companies to (a) publish the information included in their quarterly reports on their website, and, (b) when a foreign political entity provided funding designated specifically for a special public campaign, to publish the fact of the donation on the campaign.

242. According to the Amendment No. 1 to the law (detailed below), this reporting requirement applies only to donations that were made from 2017 onward. As of July 2019, 26 non-profit organizations filed reports on such foreign donations for 2017 and 20 organizations reported for 2018, respectively. As required by the law the details are published on the Registrar's website. Additional reports are expected to be filed during 2019.

243. Note that this legislation does not place any limits on the funding of NGOs, does not discriminate between NGOs and does not place any limit or restrictions on the activity of NGOs or their freedom of association.

*Disclosure Requirements Concerning Beneficiaries of Donations by a Foreign Political Entity Law (Amendment-Increasing the Transparency of Donations from a Foreign Political Entity to Beneficiaries whose Primary Funding is from Contributions by a Foreign Political Entity) 5776-2016*

244. This amendment aims to further enhance transparency with respect to those non-profit organizations and charitable companies whose primary source of funding is foreign political entity.

245. According to the amendment, non-profit organizations and charitable companies that receive the majority of their funding from foreign political entities within a given reporting year, are required to clearly indicate this fact in publications directed towards the public, including in publications appearing on billboards, television, newspaper, a website homepage, or internet campaigns. With respect to written reports prepared by the organization/company that are designated for a public audience, there is an additional requirement to provide a written notice to the reader that the names of the foreign political entity funders can be found on the Registrar's website.

246. The Amendment also introduces enhanced transparency requirements in such beneficiaries' interactions with public and elected officials. Letters or emails sent by such beneficiaries to public and elected officials on matters relating to the official's professional duties must mention the fact that the majority of their funding comes from foreign political entities. A representative of such a beneficiary wishing to participate actively in a Knesset Committee session must inform the chairperson of the committee that she/he is a representative of a beneficiary within the meaning of the amendment prior to the session, and if there was no opportunity to do so, then during its course. If, during the session, a representative is asked by a Member of Knesset (MK) whether she/he is a representative of a beneficiary within the meaning of the amendment, the representative is required to respond.

247. A violation of the aforementioned transparency requirements regarding publications and written correspondence with public and elected officials constitutes a strict liability offense in the case of non-profit organizations and an administrative offense in the case of public companies, warranting the aforementioned fines.

248. This amendment was approved by the Knesset plenary on July 12, 2016. Its application began on January 1, 2017.

249. The Law, whether in its previous or amended form, does not impose restrictions on the ability of civil society organizations to raise funds in support of their activities. Rather, it aims to enhance transparency with respect to non-profit organizations and charitable companies whose primary source of financing is from foreign political entities.

**C. Human Rights Defenders and Aspects Regarding Freedom of Expression and Association in Israel**

250. Israel has a very active civil society, with hundreds of NGOs active in a large number of issues, including human rights issues. Israel values such organizations that advance and promote human rights.

251. For information on Israel's constructive discourse with different NGOs, see Question no. 3, above.

252. The State of Israel, as a democratic society, places no legal restrictions on the right of organizations to engage in activities for the promotion and observance of human rights, which fully enjoy the freedom to associate and to pursue their various aims, according to the applicable law.

253. Accordingly, every person and every organization in Israel enjoy the freedom of assembly. The right of assembly was recognized in the Israeli legal system as a basic right,

which either derives from or stands alongside the right to freedom of expression. The Supreme Court has recognized it as a fundamental right of the Israeli legal system and as a cornerstone of our democracy (H.C.J. 148/79 *Sa'ar v. The Ministry of Interior and The Police*).

254. To enable the full exercise of this right, AG Guideline 3.1200, further requires the allocation of police forces with the objective of protecting the demonstration and its participants from any form of external harassment.

255. Note that every complaint regarding harassment of human right defenders is examined thoroughly by the relevant authorities.

256. The Police does not discriminate between different populations and acts with equality according to the powers vested in it by law.

257. For relevant case law, see Annex II.

#### **D. Inflammatory Comments made by Government Ministers**

258. Indeed, there have been a few cases in which a number of politicians have made in the past inflammatory comments regarding certain persons or populations.

259. The freedom of political opinion and of expression of a political nature has been rigorously defended by Israeli courts as essential to the existence of democracy. The Supreme Court has consistently upheld the principle that freedom of expression entails the freedom not only to express popular opinions, but also those which the majority despises,<sup>9</sup> as well as the freedom to criticize government action.<sup>10</sup> The Supreme Court has repeatedly held that freedom of political expression is entitled to the highest degree of protection.<sup>11</sup>

260. According to the Israeli law, a MK has substantive immunity against legal action in regard to any spoken or written expressions of opinion or in regard to any act carried out either within or outside the Knesset, if these actions were carried out in the course of fulfilling his/her duties, or in order to fulfill his/her duties as a MK. This Immunity is absolute and cannot be lifted.

261. Actions of a MK that are not in the course of fulfilling his/her duties, may be subject to criminal charges, with the authorization of the AG.

#### **Reply to paragraph 25 of the list of issues**

262. In regards to non-application of Human Rights Conventions in the West Bank, see Question 2(B) above.

#### **Freedom of Expression**

263. The right to freedom of expression has long been recognized as a supreme, constitutional norm in Israel, and any limitations on its exercise for reasons related to public interest, public order human rights or the rights and reputation of others must meet strict standards of scrutiny regarding their justification and scope. While *Basic Law: Human Dignity and Liberty* 1992, does not directly articulate the right to freedom of expression and opinion, the Supreme Court regards these rights as constitutional rights protected in this Basic Law.

264. Generally, freedom of expression may be restricted only if the speech in question gives rise to at least "near certainty" that the public peace, broadly construed, will be endangered, and only if other means to lessen the severity or the likelihood of such a violation of public peace are of no avail. (H.C.J. 73/53, *Kol Ha'am Ltd. v. The Minister of Interior*).

<sup>9</sup> E.A. 2,3/84, *Neiman v. Chair of the Central Elections Committee of the Eleventh Knesset*.

<sup>10</sup> H.C.J. 351/72, *Kenan v. Council for Review of Films and Plays*.

<sup>11</sup> See for example H.C. 6396/96, *Zakin v. The Mayor of Be'er-Sheva*.

265. Certain types of speech are expressly forbidden by Knesset legislation. For example, The *Denial of the Holocaust Prohibition Law 5746-1986*, prescribes a maximum punishment of five (5) years' imprisonment for publications which deny or minimize the extent of the crimes against the Jewish people and humanity committed during the Nazi regime in Germany, with the intent of defending perpetrators of such crimes or of praising or identifying with them. In addition, various provisions in the *Penal Law* prohibit seditious utterances, incitement to racism, insult of a public servant, and speech that is calculated to outrage the religious beliefs of others.

266. Note that according to Police' procedure No. 03.300.227, any decision on an investigation of a reporter concerning an offense related to his/her professional work and any search at the reporter's home require authorization of a Police officer in the national level and the State Attorney's Office and will be conducted according to a court order.

#### **The Annulment of the Press Ordinance Law 5777-2017**

267. This law annulled the *Press Ordinance* which was enacted in 1933 and greatly infringed upon the freedom of speech, an important milestone in the area of the freedom of expression.

268. The *Press Ordinance* was Mandatory legislation enacted in 1933, which set the requirement to receive a Government license in order to print and issue a newspaper. The Ordinance also established the Minister of Interior's authority to close a newspaper that published information which is likely to endanger the public peace. The Ordinance later became part of Israel's legal system.

269. Due to its restricting nature on the freedom of expression several petitions were filed against this Ordinance. Following a 2014 petition to the HCJ against this Ordinance by the Association for Civil Rights in Israel, in June 2016, the abovementioned bill was issued, and later approved by the Knesset. (H.C.J. 6175/14, *The Association for Civil Rights in Israel et. al. v. The Minister of Interior et. al.* (26.6.17)).

#### **A Bill concerning the prohibition on photographing and documenting of IDF soldiers**

270. In 2018, several Knesset Members issued a Bill titled "*A Bill to Amend the Penal Law (Amendment – Prohibition on Documentation of IDF Soldiers)*" 5778-2018. This bill is aimed at adding a new offence to the Law, according to which, filming, photographing or recording IDF soldiers carrying out their duty, and publishing the content, including on social media and media networks, when the recordings are made with the intention of undermining the spirit of IDF soldiers and Israel residents, will be considered an offence punishable with up to five (5) years imprisonment. Moreover, if the person making the recording or the publishers are acting with the intent to harm state's security, the offence is punishable by up to ten (10) years imprisonment. During the legislation process before the Ministers Legislation Committee (The "Committee"), the AG voiced his objection to this version of the bill and noted a significant concern that this bill will fail to achieve its objectives while causing harm to individual rights and liberties. Specifically having a chilling effect on the freedom of expression, which receives strong constitutional protection in Israel, and possibly significantly harming the freedom of the press and the public's right for information. The AG noted that he is of the opinion that this bill is therefore unconstitutional and should not be advanced as it is. Instead, a proposal was made to amend Section 275 to the *Penal Law*, concerning obstruction to a police person in the line of duty, so that it will also include an obstruction to an IDF soldier in the line of duty. According to the proposal, such an offence will be punishable with up to three (3) years imprisonment (instead of one (1) year imprisonment). On June 2018, the Committee rejected the original wording of this bill and decided to approve the alternative version. This version was approved in a preliminary hearing. The Committee further decided that the matter of a minimum punishment will be discussed in a later stage before the Knesset's Constitution, Law and justice Committee. Due to the current elections, this bill was not brought before the Knesset Constitution, Law and justice Committee, and in order to renew its legislation process it should be resubmitted.

## Freedom of conscience and religious belief

### Reply to paragraph 26 of the list of issues

#### Conscientious Objection

271. Since its inception, the IDF has respected the freedom of conscience as a fundamental human right. In this regard, Section 36 of the Israeli *Defense Service Law* provides the Minister of Defense with the authority to exempt a person eligible for conscription, or a person who is a member of the IDF reserves forces, on the grounds of conscience.

272. Persons eligible for conscription under the *Defense Service Law* may submit a request for an exemption to the regional military conscription bureau.

273. Request which show *prima facie* substantial grounds for an exemption for reasons of conscience are brought before the Special Military Committee. The committee is headed by the IDF's Chief Enlistment Officer at a rank of a lieutenant colonel or higher and comprised of a representative of the human resources branch, an officer at a rank of captain or higher with psychological training from the behavior science branch, a legal advisor from the Military Advocate General's Corps, and a civilian representative, usually from the Academia. All of the committee members are independent in formulating their recommendation.

274. The committee examines the requests in accordance with the law and the jurisprudence of the HCJ. The applicant may present evidence and call upon witnesses before the committee, in order to support his/her request and has the right to be represented by an attorney throughout the proceedings.

275. The committee is authorized to grant an exemption or to deny the request. The committee is also authorized, in certain cases, to recommend certain leniencies and adjustments to the applicant's service, such as permission not to carry arms or to wear uniforms during his/her service, or assignment to a non-combat unit, so as to ensure the applicant's military service will meet, to the extent possible, the requirements of their conscience and personal beliefs.

276. Where an applicant's request has been denied, that applicant is obligated by law, as is every other eligible person, to complete the enlistment procedures and conduct his/her military service. In the event that such a person continues to attempt to avoid enlistment, the military authorities are provided with legal authority to take certain steps in order to enforce the enlistment.

277. In the event that such a person continues to disregard the orders given to him/her by his/her commander to complete the enlistment process, the military authorities may order disciplinary proceedings and even file a criminal indictment in a military court against him/her. Criminal proceedings are, of course, filed based on the person's disobedience of a lawful order, rather than on the basis of their particular political views.

278. For related case law, see Annex II.

## Right to take part in the conduct of public affairs

### Reply to paragraph 27 of the list of issues

#### A. Amendment No. 62 to the Knesset Elections Law

279. Every four (4) years Israel holds general elections for the Knesset. According to Section 4 of *Basic Law: The Knesset*, these election are to be general, national, direct, equal, secret and proportional to the total number of votes. According to these principles, every Israeli citizen over the age of 18 (with few exceptions), present in the country on the day of elections, has the right to vote freely. One hundred (100) persons or more who are Israeli

citizens and residents may establish a party by registration, and every Israeli citizen that on the date of serving the party's list is over the age of 21 has the right to run and be elected in the democratic elections for the Knesset. Knesset seats are assigned in proportion to each party's percentage of the total national vote.

280. In March 2014, the Knesset approved Amendment No. 62 to the *Knesset Elections Law*. In the scope of this amendment, the electoral threshold for political parties to be elected to the Knesset was raised from 2% to 3.25%. In the explanatory notes for this amendment, the Knesset notes that the purpose of this threshold is to reduce the number of political parties represented in the Knesset by preventing the representation of very small parties and encouraging them to unite with other parties in one electoral list. The explanatory notes further state that such a rate for this threshold is common in other countries as well, and that several parties may run in a unified list, but still remain separate parties in the Knesset, provided that an advanced notice is provided to the Knesset Chairperson.

281. Minorities vote for Knesset lists (political parties) along with the entire political spectrum. In addition, Arab political parties have been consistently represented in the Knesset, as is the case in the current 21th Knesset. As of October 2019 (22th Knesset), there are 14 Arab Knesset Members (note that the total representation of the Arab population stands on 15 MK as MK Ofer Cassif was also entered the Knesset via the Joint Arab List Party. Of the 14 Arab MK, one (1) is Bedouin MK and three (3) are Druze MK. Also note that three of the Arab MKs are women. As of July 2019, (21st Knesset), there are 13 Arab MKs, of whom Eight (8) are Arab MK, two (2) are Druze and one (1) Jewish MK (including three (3) women). As of January 2019 (20th Knesset), there are 18 Arab Knesset Members, three (3) of whom are Druze, and three (3) are Bedouin MKs (two (2) of whom are women).

282. For information on two (2) petitions that were filed to the HCJ against this Amendment No. 62, see Annex II.

**B. Amendment No. 44 to The Basic Law: The Knesset (Dismissal of a Knesset Member in accordance with Section 7A) 5777-2016**

283. The right to vote and to be elected are of the most important rights in a democratic state, as they implement the public right to be represented in the House of Representatives, and express the fact that the electing public has legitimate positions that deserve to be heard be involved in the political discourse of shaping policy in the country. For this reason, the restrictions on this right should be reduced to minimum, and they must protect vital interests. In the past, the Knesset established within *Basic Law: The Knesset*, limitations on candidates and Knesset members in order to preserve the public's trust in the Knesset. Along with these restrictions, the Knesset, in section 7A of the *Basic Law*, established the right of democracy to protect itself against those who attempt to exploit the democratic tools in order to deny the very existence of the state or to violate its basic principles (see below). However, up until this Amendment, these limitations did not allow for the dismissal or suspension of the elected Knesset member.

284. This Amendment authorizes the Knesset to decide on the dismissal of a Knesset member from his/her tenure in the Knesset, if he/she acted, expressly or implicitly to incite to racism or in order to support an armed conflict, by of an enemy state or a terrorist organization, against the State of Israel. The proposed dismissal is dependent upon the approval of 90 Knesset Members in the Knesset Plenary, and can only be brought to a vote after it was approved by a three quarters (3/4) majority of the Knesset Committee, upon a request of 70 Knesset members (ten (10) of which are not obligated to agreements requiring their support to the Government).

285. The dismissed Knesset member has the right to appeal such decision to the Supreme Court.

286. Two (2) petitions were filed to the HCJ against the constitutionality of this Amendment. On May 2018, the Court affirmed this Amendment and rejected both of these petitions. The Court stated, *inter alia*, that although this amendment entails substantial infringement to basic rights, it does not infringe the Israel's basic principles. The Court

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added that due to the purposes of this Amendment and the checks and balances prescribed therein, it does not negate Israel's core democratic identity. (H.C.J. 5744/16 *Adv. Shahar Ben Meir v. The Knesset et. al.* (27.5.18)).

**C. Amendment No. 46 to *The Basic Law: The Knesset* 5777-2017**

287. On March 14, 2017, the Knesset approved Amendment 46 to Section 7A(a) to the *Basic Law: The Knesset*. According to the previous version of the Section, a list of candidates will not participate in an elections to the Knesset, and no person shall be nominated in such elections, if the list's goals or actions or the acts of the person, as the case may be, include, specifically or implicitly, one of those: (1) the negation of the existence of the State of Israel as a Jewish and democratic state, (2) incitement to racism, (3) support in an armed struggle of an enemy state or a terrorist organization against the State of Israel. Amendment No. 46 added the possibility of preventing a person from being nominated in such election statements made by this person include one (1) or more of the three (3) prohibitions noted in this section. Note that this Amendment does not discriminate in its application against specific person or population, nor it refers only certain political side.

288. For relevant case law on political expression of Knesset Members, see Annex II.

289. For information about Arab representation in the 20th, 21st and 22nd Knessets and key roles in the 20th Knesset, see Annex I.

## **Dissemination of information relating to the Covenant**

### **Reply to paragraph 28 of the list of issues**

290. Since the submission of Israel's Fourth Periodic Report, the following measures have been taken to further disseminate the Covenant and related human rights issues among judges, lawyers and prosecutors.

291. For training of judges and lawyers on human rights, see Question 1 above.

292. Dissemination of Human Rights Conventions – see Israel's 4th periodic report (p. 7).

293. For information on cooperation with civil society organizations, see Question 3 above.