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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under
articles 16 and 17 of the Covenant

Addendum
ISRAEL

[28 November 1997]

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Introduction

1. Israel ratified the International Covenant on Economic, Social and Cultural Rights in August 1991. The Covenant came into force with respect to Israel on 3 January 1992. The following is the combined initial and second reports submitted by Israel in pursuance of articles 16-17 of the Convention and of the guidelines issued by the Committee on Economic, Social and Cultural Rights. The aim of this report is to provide a description of the legal and social situation relevant to the implementation of economic, social and cultural rights in Israel.

2. The information contained in this report relies primarily on materials, data and legal research supplied by the relevant government ministries and institutes. Non-governmental organizations (NGOs) also provided valuable information. Independent and academic research has been surveyed and a reading list is provided at the end of the report. Annexed to the report are legal texts and specialized publications.*

* The reading list and the annexed materials are available for consultation at the Office of the United Nations High Commissioner for Human Rights.

I. BACKGROUND INFORMATION

A. Land and people

Geography

3. Israel's area within its boundaries and ceasefire lines is 10,840 square miles (27,800 sq. km). Long and narrow in shape, it is some 280 miles (450 km) in length and about 85 miles (135 km) across at the widest point.

4. The country may be divided into four geographical regions: three parallel strips running north to south and a large, mostly arid zone in the southern half.

Demographics

5. As of October 1997, the total population of Israel numbered 5,863,000 with over 4.7 million Jews (80.2 per cent of the total population), 872,000 Muslims (14.9 per cent), about 190,000 Christians (3.2 per cent) and around 100,000 Druze and members of other faiths (1.7 per cent).

6. The population of Israel increased in 1996 by 140,000, of whom 88,000 were Jews, representing a lower rate of increase than in 1995. In 1990-91, at the height of immigration from the former USSR and the Commonwealth of Independent States, the average annual growth rate was 250,000. Since the beginning of 1990 the population of Israel has increased by 26.3 per cent!

7. The birth rate in 1995 was 21.1 per 1,000, while the infant mortality rate was 6.8 per 1,000. As of 1993, life expectancy for male Israelis was 75.3 years and for female Israelis 79.5 years. The total fertility rate was

2.9 per 1,000. Twenty-nine point seven per cent of the population was under 14 while 9.5 per cent of the population was 65 or older.

8. Israel has a literacy rate of over 95 per cent.

The economy

9. Israel's Gross Domestic Product (GDP) in 1996 was 272.8 billion new Israeli shekels (NIS) (approximately US\$ 85 billion) in 1995 constant prices. GDP per capita for this period was approximately NIS 48,000 (approximately \$15,000). The external debt was \$44.28 billion.

10. The dollar exchange rate at the close of 1990 was NIS 2.048 per \$1, and at the close of 1995, NIS 3.135 per \$1. The annual average of the dollar exchange rate in 1990 was NIS 2.0162, and in 1995, stood at NIS 3.0113. In 1997 the dollar exchange rate was about NIS 3.5 per \$1.

Language

11. Hebrew and Arabic are the official State languages. They are primary languages of instruction in compulsory education and either may be used by a member of the Knesset (Israel's parliament) to address the House. Israel television and radio broadcast in Hebrew, Arabic and, to a lesser extent, English, Russian and Amharic.

B. General political structure

Recent history

12. The State of Israel was founded on 15 May 1948. Israel represents the culmination of almost 2,000 years of longing on the part of the Jewish people for the re-establishment of an independent State. A guiding principle for all governments of Israel since its inception has been the "ingathering of the exiles", the historic return of the Jewish people to its ancestral land. This concept was enshrined in the Declaration of Independence and has continued to be a major component of Israel's national life to the present day. In the words of Israel's Declaration of Independence, the State "extend(s its) hand to all neighbouring States in an offer of peace and good neighbourliness".

13. In 1977 the late President of Egypt, Anwar Sadat, became the first Arab head of State to visit Israel. In 1979 a treaty of peace was signed between Israel and Egypt. The Madrid Peace Conference was convened in October 1991. It was the first time that Israel, the Syrian Arab Republic, Lebanon, Jordan and the Palestinians had met in an open and public setting for the specific purpose of negotiating peace. In September 1993, Israel and the Palestine Liberation Organization (PLO) signed the Declaration of Principles on Interim Self-Government Arrangements in Washington D.C. and in November 1994, Israel and Jordan concluded a peace treaty, formally ending 46 years of conflict. In September 1995 Israel and the PLO signed the Interim Agreement on the West Bank and the Gaza Strip, and by 1999 the Final Status Agreement regarding these territories is due to be signed.

Structure of government

14. Israel is a parliamentary democracy, consisting of legislative, executive and judicial branches. Its institutions are the Presidency, the Knesset (parliament), the Government (Cabinet), the judiciary and the Office of the State Comptroller.

15. The system is based on the principle of separation of powers, with checks and balances, in which the executive branch (the government) is subject to the confidence of the legislative branch (the Knesset) and the independence of the judiciary is guaranteed by law.

The Presidency

16. The President is the head of State and his office symbolizes the unity of the State, above and beyond party politics.

17. Presidential duties, which are primarily ceremonial and formal, are defined by law. Among the President's formal functions are the opening of the first session of a new Knesset, accepting the credentials of foreign envoys, signing treaties and laws adopted by the Knesset, appointing judges, appointing the Governor of the Bank of Israel and heads of Israel's diplomatic missions abroad, pardoning prisoners and

commuting sentences on the advice of the Minister of Justice. The President's approval is required prior to the dissolution of the Knesset by the Prime Minister.

18. The President, who may serve two consecutive terms, is elected every five years by a simple majority by the Knesset from among candidates nominated on the basis of their personal stature and contribution to the State.

The Knesset

19. The Knesset is the House of Representatives of the State of Israel; its main function is to legislate.

20. Elections for the Knesset and for the Prime Minister are held simultaneously. They are secret, and the entire country constitutes a single electoral constituency.

21. Knesset seats are assigned in proportion to each party's percentage of the total national vote. A party's surplus votes which are insufficient for an additional seat are redistributed among the various parties according to their proportional size resulting from the elections, or as agreed between parties prior to the election.

22. The Knesset is elected for a term of four years, but may dissolve itself or be dissolved by the Prime Minister, with the President's approval, before the end of its term. Until a new Knesset is formally constituted following elections, full authority remains with the outgoing Government.

23. The Knesset operates in plenary sessions and through 13 standing committees: the House Committee; the Foreign Affairs and Security Committee; the Finance Committee; the Economics Committee; the Interior and Environment Committee; the Education and Culture Committee; the Labour and Social Affairs Committee; the Constitution, Law and Justice Committee; the Immigration and Absorption Committee; the Committee for State Audit Affairs; the Committee on the War against Drug Addiction; the Science Committee and the Committee for Advancing the Status of Women.

24. In plenary sessions, general debates are conducted on government policy and activity, as well as on legislation submitted by the government or by individual Knesset members. Debates may be conducted in Hebrew and Arabic; simultaneous translation is available.

The Government

25. The Government (Cabinet of Ministers) is the executive authority of the State, charged with administering internal and foreign affairs, including security matters. Its policy-making powers are very wide and it is authorized to take action on any issue which is not delegated by law to another authority. The Government usually serves for four years, but its tenure may be shortened by the resignation of the Prime Minister or by a vote of no confidence.

26. The Prime Minister is elected directly by popular vote, simultaneously with the Knesset elections. Until the 1996 elections, the task of forming a government and heading it was assigned by the President to the Knesset member considered to have the best chance of forming a viable coalition government.

27. The ministers are responsible to the Prime Minister for the fulfilment of their duties and accountable for their actions to the Knesset. Most ministers are assigned a portfolio and head a ministry; others serve without a portfolio but may be called upon to take responsibility for special projects. The Prime Minister may also serve as a minister with a portfolio.

28. The number of ministers, including the Prime Minister, may not exceed 18, nor be less than 8. At least half of the ministers must be Knesset members, but all must be eligible for candidacy as Knesset members. The Prime Minister, or another minister with prime ministerial approval, may appoint deputy ministers, up to a total of six; all must be Knesset members.

C. The judiciary

29. The absolute independence of the judiciary is guaranteed by law. Judges are appointed by the President, on the recommendation of a special nominations committee comprised of Supreme Court judges, members of the bar, ministers and Knesset members. Judges' appointments are with tenure, until mandatory retirement at age 70.

30. Magistrates' and District Courts exercise jurisdiction in civil and criminal cases, while juvenile, traffic, military, labour and municipal appeal courts each deal with matters coming under their jurisdiction. There is no trial by jury in Israel.

31. In matters of personal status such as marriage, divorce and, to some extent, maintenance, guardianship and the adoption of minors, jurisdiction is vested in the judicial institutions of the respective religious communities: the rabbinical court, the Muslim religious courts (Sharia courts), the religious courts of the Druze and the juridical institutions of the nine recognized Christian communities in Israel.

32. The Supreme Court, seated in Jerusalem, has nationwide jurisdiction. It is the highest court of appeal on rulings of lower tribunals. In its capacity as High Court of Justice, the Supreme Court hears petitions in constitutional and administrative law issues against any government body or agent, and is a court of first and last instance.

33. Although legislation is wholly within the competence of the Knesset, the Supreme Court can and does call attention to the desirability of legislative changes. It also has the authority to determine whether a law properly conforms with the Basic Laws of the State and to declare a law void.

D. The State Comptroller

34. The State Comptroller carries out external audits and reports on the legality, regularity, economy, efficiency, effectiveness and integrity of the public administration in order to assure public accountability. Israel recognized the importance of State audit in a democratic society and in 1949 enacted a law which established the State Comptroller's Office. Since 1971, the State Comptroller has also fulfilled the function of Public Complaints Commissioner (ombudsman) and serves as an address to which any person may submit complaints against State and public bodies which are subject to the audit of the Comptroller.

35. The State Comptroller is elected by the Knesset in a secret ballot for a five-year term. The Comptroller is accountable only to the Knesset, is not dependent upon the Government, and enjoys unrestricted access to the accounts, files and staff of all bodies subject to audit. The Comptroller's activities are carried out in cooperation with the Knesset Committee for State Audit Affairs.

36. The scope of State audit in Israel is among the most extensive in the world. It includes the activities of all government ministries, State institutions, branches of the defence establishment, local authorities, government corporations, State enterprises, and other bodies or institutions declared subject to audit.

37. In addition, the State Comptroller has been empowered by law to inspect the financial affairs of the political parties represented in the Knesset, including election campaign accounts and current accounts. When irregularities are found, monetary sanctions are imposed.

E. Basic Laws

38. Israel has no formal constitution as yet. However, most chapters of the prospective constitution have already been written, and enacted as Basic Laws.

39. The Basic Laws are adopted by the Knesset in the same manner as other legislation. Their constitutional import is derived from their nature and, in some cases, from the inclusion of "entrenched clauses" whereby a special majority is required to amend them.

40. The following are the Basic Laws of the State of Israel:

The Knesset (1958)

State Lands (1960)

The President (1964)

The State Economy (1975)

The Israel Defence Forces (1976)

Jerusalem (1980)

The Judicature (1984)

The State Comptroller (1988)

Human Dignity and Liberty (1992)

Freedom of Occupation (1992)

The Government (1992)

41. A draft Basic Law: Social Rights Bill has been pending in the Knesset since 1993, when for the first time in Israel's history the Government agreed to include social rights in fundamental rights legislation. Even though economic, social and cultural rights are recognized in Israel, whether directly by law, regulations or case-

law, or indirectly by administrative programmes, they still lack constitutional status. This issue is further dealt with in the part of this Report dealing with article 2 of the Covenant.

II. INFORMATION CONCERNING GENERAL PROVISIONS OF THE COVENANT

Article 1 - Self-determination

42. Israel's recognition of the universal right to self-determination is embodied in its Declaration of Independence, which contains a clear commitment to the principles of the Charter of the United Nations. The right to self-determination is central to the establishment of the State of Israel, especially after the Holocaust. In the Supreme Court's words:

"Certainly, all the citizens of Israel - Jews and non-Jews - are 'shareholders' in the State, and the proposition that the State is the 'State of all its citizens' does not detract from it being a Jewish State, and if one wishes: the Jewish State. We must remember - how can we forget - that the Jewish people did not have any other state but the State of Israel, the State of the Jews. However, within the State, all citizens enjoy equal rights."

C.A.P. 2316/96 Issacson v Registrar of Political Parties, Takdin-Supreme vol. 96 (2) 306, 319.

Article 2 - State responsibility, non-discrimination, international cooperation

State responsibility

43. Economic, social and cultural rights are widely recognized in Israel, whether directly by law, regulations or case-law, or indirectly by administrative programmes. Since its creation, the State's commitment to the full realization of these rights has never been politically challenged. Moreover, social services of all sorts have dramatically expanded over the years, notwithstanding Israel's security challenges on the one hand and huge waves of immigration on the other, both of which have had an obvious drastic impact on the State's available resources. This commitment is clearly revealed in each of the substantial parts of this report (arts. 6-15).

44. It is worth stressing here the existence of a definite and steady trend of welfare legalization in Israel. The best example is the Assurance of Income Law 1980, which created a legal right to basic income as a safety net to ensure subsistence. This right, implemented by the National Insurance Institute, replaced the previous administrative programme operated by social workers. Under the previous programme, social workers had the authority to decide whether, in their professional judgement, an individual in need was entitled to a basic allowance, in addition to determining the level of such an allowance. Such examples are found in various parts of this report. It

is fair to say in general that the majority of the rights covered by the Covenant are today legalized, even though the process has still to be completed.

45. Furthermore, there are definite indications that welfare and labour rights might undergo an even greater change with respect to their status - from regular legal rights to constitutional rights. Such indications can be found both in the legislative and the judicial fields.

Basic Law: Social Rights Bill (1993)

46. A draft Basic Law: Social Rights Bill has been pending in the Knesset since 1993. Its main provisions are:

"1. The fundamental human rights in Israel are based on the recognition of the importance of a human being, of the sanctity of his life, and of his free existence, and they shall be respected in accordance with the principles of the Declaration of Independence of the State of Israel.

"2. This Basic Law aims to protect the social rights of man, so as to embody in this Basic Law the values of the State of Israel as a Jewish and democratic State.

"3. Every resident is entitled to his basic needs for the protection of a dignified human existence, inter alia in the field of labour, wage and work conditions, in the field of learning and education and in health and social welfare; this right shall be implemented or regulated by governmental authorities in accordance with law, and subject to the financial ability of the State, as determined by the government.

"4. Workers are entitled to organize in workers' organizations of their choice, and employers are entitled to organize in employers' organizations of their choice; such organizations may conclude collective agreements, all in accordance with the principles of labour law.

"5. Workers are entitled to strike, in accordance with the principles of labour law, in order to protect their rights and advance their economic and social interests.

"6. The rights protected in this basic law shall not be impaired, save by way of a law, or through specific authorization in law comporting with the values of the State of Israel as a Jewish and democratic State, for a proper purpose, and not exceeding what is strictly required.

"7. Every authority in any branch of government, and all that act in its name, must respect the rights in this Basic Law.

"8. None of the rights in this basic law shall be invoked in a manner which compromises the State's existence, its democratic regime, or serve to oppress human rights."

47. The future of this draft is not clear. But the fact that for the first time in Israel's history the government agreed in 1993 to include social rights in fundamental rights legislation, is symbolically important. It demonstrates the depth of Israel's commitment to the rights covered by the present Covenant.

The judiciary

48. Constitutional recognition of fundamental rights can come about through case-law, as has happened in Israel in the area of civil rights. This at least means such rights are taken seriously for the purpose of interpretation of statutes or filling legislative lacunae. As far as economic and social rights are concerned, there is yet limited judicial activity, apart from the right to form trade unions and the right to strike, which are regarded as fundamental rights.

49. The Supreme Court made the following interesting remarks as to the State's duty to provide for the weak and poor:

"A democratic government in its very essence, and according to its values, will look after the citizen's present and future welfare. It will strive to provide employment, a minimum wage, and social rights, so that he who has laboured all those years and reached retirement age is insured as much as possible and does not fall as a burden upon society. If a democratic administration can afford to invest the necessary resources, it should provide for citizen pension rights on its own initiative, and in good time ... The Basic Law, as mentioned above, is grounded in the values of the State of Israel as a democratic state. Caring for a citizen's welfare, making sure his needs are met and securing his future comports with the values of the State of Israel as a democratic state and corresponds with the values of Judaism which have always set a priority on caring for the citizen and providing for his basic needs. It has been said, for example, that charity is one of the three most important deeds which constitute the moral basis of this world [cite omitted] ... Open and hidden acts of compassion and charity, being nothing but expressions of care for another, so that he does not suffer hunger or deprivation, are advocated and encouraged in clear and explicit messages rooted in ancient tradition. Ensuring that all the needs of the citizen are met as well as those of the resident and gentile, and preserving their standard of living and quality of life is also amongst the blessed values in Jewish tradition."

H.C. 726/94, 878/94 *Klal Insurance Company Ltd. v. Minister of Treasury*, P.D. vol. 48 (5) 441, 476.

50. Justice Aharon Barak, the President of the Supreme Court has remarked that the "right to decent living conditions" should be construed from the Basic Law: Human Dignity and Liberty (Barak 1994, pp. 416-7), but no case has been brought to the court yet.

51. In sum, since no serious attempt to induce the judiciary to recognize social rights as fundamental rights has yet been made, the exact constitutional status of economic, social and cultural rights under Israeli law still awaits decisive developments, legislative as well as judicial.

Non-discrimination

52. As far as State and public agencies are concerned, the non-discrimination principle is totally binding in Israel. The Israeli Declaration of Independence declares the State's commitment to "civil and social equality". Using this source, among others, the High Court of Justice has long enshrined the right to equality and has repeatedly expressed the following view:

"The rule according to which it is prohibited to discriminate between people on grounds of race, sex, nationality, ethnic sect, state of origin, religion, opinion or social status is a fundamental constitutional principle, inherent to our most basic legal norms."

H.C. 721/94 El Al Israeli Airlines v. Danilovitch, P.D. vol. 48 (5) 749, 760.

53. The courts have created an effective body of jurisprudence, resulting in granting relief to any person able to prove discrimination on the part of any person or body acting under the law. Welfare and other social services are no exception to this rule, as it is clear from the following and representative citation:

"... guaranteeing equal opportunities for the handicapped costs money. A society raised on the values of human dignity, liberty and equality is willing to pay the necessary price ... As we have mentioned, regulations require that special toilets for the disabled be installed in ... the school. The purpose of this provision is to enable the handicapped child to integrate in the school in a manner similar to that of any other child, and to thereby guarantee his dignity and enable him to enjoy equal educational opportunities."

H.C. 7081/93 Botzer v. Municipal Authority Maccabim-Reut, Takdin-Supreme vol. 96 (1) 818, 821-822

54. Statutory entitlements are generally based upon residence, not nationality, let alone race, religion, sex, etc. For example, education rights apply to any "child"; workers rights apply to any "employee"; social security is usually based upon "residence", except for three aspects of social security which apply to all "employees". A detailed account of the application of the non-discrimination principle is given in each chapter of this report. The issue of foreign workers is elaborated on in the chapter dealing with article 6 of the Covenant.

55. Non-discrimination statutory provisions are generally rare in Israeli law. Nevertheless, some of the rights under the Covenant are specifically subject to such provisions, which are discussed in the body of this report. These provisions are the following (the statutes referred to are attached in annex 1A to this report):

The right to work (art. 6) and the right to just and favourable conditions of work (art. 7): Equal Employment Opportunities Law 1988, Article 2 and 2A; Employment Service Law 1951, Article 42 and 42A; (Male and Female) Workers Equal Pay Law 1996, Article 1 and 2; Equal Retirement Age for Male and Female Employees Law 1987, Article 2; Public Service (Appointments) Law 1959, Article 15A; Work and Rest Hours Law 1951, Article 9C;
Health rights (art. 12): National Health Insurance Law 1994, Article 21(a) and 31;
Education rights (arts. 13-15): National Education Law 1959, Article 2.

International cooperation

56. The State of Israel is deeply involved in international cooperation. The Department of International Cooperation of the Ministry of Foreign Affairs (DIC) is devoted to promoting assistance programmes in the fields of training, research and

consultations. Remaining committed to the universal goal of poverty reduction, the focus has been on the enrichment of human resources and institution-building, to enable individuals to participate in the development of their own society in such fields as market-oriented agriculture, women in the development process, environmental conservation, health care, micro-enterprise and community development. In 1996, there were 4,045 participants in 144 training courses conducted in Israel, and 5,327 participants shared in 120 local courses held in 47 countries worldwide.

57. As aid to Africa comprises approximately 25 per cent of the DIC training activities and long-term projects, a special team of experts has been appointed to study the present Africa-Israel relationship in order to formulate a more positive programme for future cooperation. Aside from designing bilateral development cooperation strategies with client countries, according to specific national priorities, high priority has been given to multilateral activities and increasing cooperation with international organizations. A multilateral agreement between Israel, the Palestinian Council, Luxembourg and Morocco was signed relating to an agricultural project in the Gaza Strip, and agreements were signed in 1996 between DIC, UNDP, UNESCO and FAO on development cooperation and institution-building programmes.

58. Peace in the Middle East will be secured only when it takes root in the everyday lives of people in the region. Therefore, cooperation with countries, authorities, NGOs and the private sector in the Middle East/North African region, as well as with the Gulf States, will continue to be a basic objective of Israel's development programme. Comprehensive regional cooperation will begin to be translated into practice when peace agreements are reached, but there is no need to wait until then to begin working together. DIC hopes to serve as a bridge between the people of the region.

59. Many DIC programmes have been achieved through resources generously provided by the United States Agency for International Development (USAID) and the Kingdom of the Netherlands' Ministry of Foreign Affairs. Additional resources are provided by the Danish International Development Agency (DANIDA); Norway's International Development Agency (NORAD); Sweden's International Development Agency (SIDA); the Federal Republic of Germany's Ministry of Economic Cooperation; the Inter-American Development Bank; the Organization of American States and various United Nations bodies and agencies (the Department of Development Support and Management Services of the Secretariat, UNDP, WHO, FAO, UNESCO, WMO). (The DIC Activity Report, 1996, Israel Ministry of Foreign Affairs).

60. All the above accounts for international assistance granted by Israel. Of the international assistance that Israel receives, only a small portion is granted in order to meet social needs and even then, only for the absorption of immigrants. The United States of America grants Israel \$8 million each year; Germany provides Israel with loans the sum of which varies over the years according to immigration rates (DM40 million for the years 1997-1998, which is less than in the midst of the last immigration wave). It should be borne in mind that between the beginning of 1989 and August 1997 Israel has absorbed 742,000 immigrants, with a total population of 4,678,000 by the end of 1988 - an increase of 16.6 per cent in the total population in less than a decade!

Article 3 - Prohibition of discrimination between men and women

61. The guidelines issued by the Committee under the present Covenant do not require a general overview of the equal right of men and women to the enjoyment of all the economic, social and cultural rights set forth in the Covenant. This topic will be elaborated separately in each part of this report.

62. Further reading with special focus on this subject can also be found in Israel's combined initial and second report concerning the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, submitted in May 1997 to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) and published as United Nations document CEDAW/C/ISR 1-2 of 8 April 1997. Reference to the said report will be made easier by using the following chart:

Article of the Covenant	Article and chapter of the Convention
Arts. 2-3: Non-discrimination	Art. 1: Definition of discrimination
	Art. 2: Obligations to eliminate discrimination
Art. 6: Right to work	Art. 4: Acceleration of equality
Arts. 6-7: Work and conditions of work	Art. 11: Employment
Arts. 9 and 11: Social security and subsistence	Art. 13(2): Social benefits and welfare
Art. 10: Family	Art. 16(5),(7),(8),(11): Family
Art. 12: Health rights	Art. 12: Access to health care
Arts. 13-14: Education rights	Art. 10: Education

III. INFORMATION CONCERNING SPECIFIC RIGHTS

Article 6 - The right to work

Related international conventions binding Israel

63. Israel has been a party to the International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122) since 1970; Israel's last report relates to 1995.

64. Israel has been a party to the Forced Labour Convention, 1930 (No. 29) since 1955; Israel's last report relates to 1990.

65. Israel has been a party to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) since 1959; Israel's last report relates to the years 1992-1993.

66. Israel has been a party to the International Convention on the Elimination of All Forms of Racial Discrimination since 1979; Israel's last report was filed in July 1997 and relates to the years 1991-1996.

67. Israel has been a party to the Convention on the Elimination of All Forms of Discrimination against Women since 1991; Israel's last report was filed in May 1997.

68. International covenants ratified by Israel are normally not part of Israeli internal law unless given statutory recognition by the Knesset. Nevertheless, international labour conventions, especially ILO standards, have had a tremendous influence on the development of the Israeli Labour Law, both statutory and judicial. These standards are embodied in the content of the labour statutes. The Labour Courts also frequently use such conventions, even those which have not been ratified, for the interpretation of statutes and as a criterion for testing the validity of contract terms.

Employment and unemployment

Level and trends

69. Over the past 10 years, from 1986 to 1996, Israel's economy has expanded at a rapid rate. Gross domestic product increased by 65 per cent in constant prices between 1986 and 1996, with the majority of the growth (42 per cent) concentrated between 1989 and 1995. This is a significant achievement that has brought per capita GDP in Israel to a level not far below the average among western nations.

70. GDP grew in 1996 by 4.5 per cent to reach NIS 272.8 billion (in 1995 constant prices; approximately \$85 billion). GDP per capita grew in 1996 by 1.8 per cent, reaching about NIS 48,000 (in 1995 constant prices; approximately \$13,000). This growth was at a lower rate than in the previous two years and preliminary forecasts for 1997 indicate a further slowing in the pace of economic activity in the current year.

71. The expansion in economic activity has been accompanied by considerable growth in domestic employment, including the successful absorption of a large wave of immigration which began toward the end of 1989 (generating a rise of 16.6 per cent in the Israeli population by the end of 1997 - less than a decade!).

72. In 1996 there were 2.1 million workers employed in Israel. The unemployment rate was then 6.7 per cent, the lowest since 1992, when unemployment reached 11.2 per cent of the labour force; this was at the height of the influx into the labour market of new immigrants, with some 85 per cent of these coming from the former Soviet Union.

73. Employment trends among particular categories of workers. The following table presents the principal labour force characteristics of various categories of Israeli workers: men, women, Jews, Arabs, younger and older workers, development area residents and new immigrants, showing changes in the number employed and the unemployment rate for these groups in 1986, 1991 and 1996. More extensive data is given table 1 annexed to this section.

	Per cent change in employment		Unemployment rate per cent		
	1991-1996	1986-1991	1986	1991	1996
Total population	27.1	15.7	7.1	10.6	6.7
Jews	26.0	14.4	6.6	10.6	6.7

Arabs and others	35.4	26.4	10.5	10.5	6.2
Men	20.4	12.8	6.5	8.6	5.8
Women	37.3	20.4	7.9	13.4	7.8
Aged 15-17	36.7	-1.7	20.5	23.7	19.7
Aged 18-24	52.6	13.8	18.6	22.2	12.8
Aged 45-54	65.8	19.8	3.3	6.9	4.5
Aged 55-64	25.6	9.3	2.0	7.2	4.8
Residents in development areas	60.7	-	-	15.4	10.5
New immigrants	353.0	-	-	38.5	9.3

74. Generally speaking, from 1991 to 1996, the employment of most categories of workers shown above increased more than the average rate and employment among new immigrants rose particularly rapidly. Interestingly, this growth was smaller amongst Jews and men, which constitute the two broader (but not exclusive) categories of workers in Israel. This pattern could already be discerned before 1991, between 1986 and 1991, but was less pronounced.

75. Regarding unemployment rates, the data indicate that over the past 10 years, the highest rates are to be found among the youngest workers, aged between 15 and 24. Unemployment has been high as well amongst workers living in the country's development areas. Unemployment rates of new immigrants were typically high shortly after their arrival in Israel and declined rapidly as they learned the language and adapted their skills to the local labour market. Over the longer term, the most vulnerable groups of Israeli workers are probably young workers (although the large majority of this age group attends school and does compulsory army service) and the residents of outlying development areas where job opportunities may be limited.

76. Initial figures for 1997 indicate that unemployment may be worsening this year. Rising unemployment will, of course, necessitate a re-evaluation of employment and unemployment policies and measures.

Employment policies

77. As can be seen from the data on unemployment in Israel, the unemployment rate has fallen steadily since 1992, when it stood at 11.2 per cent, to 6.7 per cent in 1996. With unemployment at this level, the Government considers the economy to be at near full employment.

78. In general, difficulties in employment management are associated with cyclical variations in economic growth. Therefore, the objectives of economic policy are the encouragement of long-term economic growth and expansion of job opportunities and the implementation of short-term measures to reduce unemployment.

79. Israel has encountered a particular problem as a result of the large influx of new immigrants, mostly from the former Soviet Union, which began towards the end of 1989. Immigration reached a peak in 1990 when about 200,000 entered Israel (and 276,000 more in 1991). Between 1992 and 1996, approximately 75,000 to 80,000 new immigrants arrived annually. Despite the high level of economic activity during most

of the period from 1990 to 1996, unemployment rose significantly, from 8.9 per cent in 1989 to 11.2 per cent in 1992. Thereafter, unemployment declined, reaching 6.7 per cent in 1996. This was achieved through short-term programmes of financial assistance to industrial firms willing to increase the numbers of workers employed, the creation of temporary jobs in the public sector and through the expansion of vocational training, in particular, skill-updating and retraining courses for university graduates and on-the-job training. The number of new immigrants in vocational training rose from an average of about 1,300 per month in 1990 to 6,000 per month in 1993. By 1996, the number of new immigrants in vocational courses declined to about 2,000 per month, as the flow of new arrivals slowed and their absorption into jobs in Israel increased. Unemployment among new immigrants fell from 38.5 per cent in 1991 to 9.3 per cent in 1996, an achievement which was due to a combination of the Government's measures and the economy's expansion during the period.

80. Mention should also be made of a temporary employment programme initiated in 1992, when unemployment reached an unusual peak. Projects were initiated to provide employment in the development of archeological and tourist sites and in environmental improvements. By 1993, 3,500 unemployed persons were working in these jobs each month for an average of 17 days each. This rose to 3,800 workers in 1994 (for 18 days per month each) and has since declined as unemployment fell due primarily to the expansion of economic activity in Israel. In the first six months of 1997, only 700 persons were employed for approximately 15 days per month in these temporary jobs.

81. The Government's long-term economic programmes focus on measures to maximize the economy's productivity. Such measures include privatization of Government-owned enterprises, encouragement of competition among domestic producers of goods and services and between domestic and foreign producers through the reduction of trade barriers, and the minimization of the use of employment projects for the temporary relief of unemployment.

Employment and individual freedom

82. At the most basic level, the employee-employer relationship is a contractual one. The fundamental principle of "freedom of contract" (entrenched since 1992 in the Basic Law: Human Dignity and Freedom) applies to labour contracts as well. This includes both the freedom to enter a labour relation or to choose not to do so, and the freedom to define the content of such a relation. Hence, as a general rule, the individual right to work exists only where there is an individual labour contract or a relevant collective agreement and its scope is to be determined by them.

83. This contractual approach has led Israeli courts to somewhat restrict the availability of enforcement as a remedy for dismissal in breach of a personal labour contract. Such remedy may be granted by statute or by a collective agreement (as described below). It should be noted that this issue is one of the most controversial in Israeli labour law, and differences exist in its regard within the Supreme Court itself.

84. Nonetheless, "freedom of contract" is not the only principle governing the present topic. In light of the basic inequality between the two sides of a labour contract - the employee and the employer - freedom of contract alone is not enough to protect worker's rights. Protective labour law principles and statutes in Israel have important implications for the protection of the right to work.

85. Protection of job security through collective agreements (and extension orders) is in fact very efficient for organized workers, who constitute the vast majority of workers in Israel. It is so deeply entrenched in the system that it is sometimes criticized, mostly by employers.

86. Many collective agreements include a provision that employees dismissed as a result of cutbacks are entitled, during a given period, to be given priority in any return to work. Furthermore, collective agreements also often set procedures for determining the justification for dismissal by the employer. The most common procedure of this sort is the "bipartite committee", composed of the employer and trade union representatives. Should such committee reach a dead end, the dispute is commonly brought to arbitration.

87. Direct statutory protection of security of employment is exceptional and applies to particular kinds of workers as follows (see full text of the laws referred to in annex 1A to this report):

(a) Female workers during maternity leave (including up to six months after giving birth in case of medical grounds for absence) and pregnancy (under certain conditions) - see the Employment of Women Law 1964, article 9;

(b) Workers serving in the army reserve - the Discharged Soldiers Reinstatement Law 1949, articles 37 and 41;

(c) War invalids - regulations issued under the Discharged Soldiers Reinstatement Law 1949, article 31;

(d) Employees who are members of a "safety committee" and "safety delegates" in connection with the fulfilment of their statutory functions - the Labor Inspection (Organization) Law 1954, articles 17 and 24;

(e) Workers who are relatives of fallen veterans, during a five-year period of statutory extension of their retirement age, or in relation with it - the Rehabilitation Law 1950, Fallen Soldiers Families (Pensions and article 33A);

(f) Civil servants and workers in other public services in relation to complaints they have filed with the State Comptroller - the State Comptroller Law (New Version) 1958, article 45C.

88. In addition, there are three forms of State regulation of recruitment and employment, which indirectly enhance individual opportunities for employment.

89. The first is in the Employment Service Act 1959, which created the Israeli Employment Service. This is a national public corporation under the responsibility of the Minister of Labor and Social Affairs, whose main purpose is to match employment seekers with vacancies as notified by employers. An employment service office is provided for in every urban area throughout the country. According to the National Insurance Law (Revised Version) 1995, reporting to the Employment Service office is a precondition for receiving unemployment allowance where no suitable work was offered (see details under article 9 of the Covenant).

90. "Private Employment Services", commonly called "Placement Agencies", are also regulated by the State under the Employment Service Law 1959 (Part 4). They are

required to obtain a permit from the Ministry of Labor and Social Affairs, who supervises them.

91. Replying to public discontent with the proliferation of private agencies operating in various ways in the area of employment management, the Employment of Workers by Manpower Contractors Law 1996 was enacted. The difference between a "manpower contractor" and a private "placement agency" is that the former remains the employer after placing the employee at work at a third party's workplace. The "manpower contractor" differs, in turn, from a regular contractor in that the contract with the third party is limited to the provision of personnel management services. The Law requires any "manpower contractor" to obtain a permit after depositing a satisfactory financial guaranty, to be used by the State for the benefit of workers in the case of breach of contract by the agency. The Law also compels the "manpower contractor" to provide employees with a written contract. It also nullifies the validity of clauses seeking to limit the employee's freedom to be at some point in the future hired by the third party. A petition to the High Court of Justice is still pending waiting for judgement, seeking to declare unconstitutional the legal provisions requiring financial guarantee as a precondition for issuing a permit.

92. The Ministry of Labor and Social Affairs is charged with the enforcement of the Employment of Workers by Labor Contractors Law. Since its entry into force in September 1996, almost 200 agencies have requested permits, about 170 of which have obtained such.

93. The "restraint of trade" doctrine is another important instance of protective principle, sometimes reducing the effect of "freedom of contract" and enhancing working opportunities. Under this doctrine, a clause in a contract of employment which seeks to restrict the freedom of an employee to work at any time at a particular kind of occupation is valid only when the said restrictions are deemed reasonable, for example when their purpose is the protection of the employer's trade secrets or other confidential information. Otherwise, the employee's consent is considered void.

94. The enactment in 1992 of the Basic Law: Freedom of Occupation added a constitutional aspect to the issue of choice of occupation in general and to the courts' reasoning in "restraint of engagement in trade" cases in particular. The reasonability of a restraint of engagement in trade clause is now a complex issue of reaching the right balance between "freedom of contract" and "freedom of occupation", taking into account the competing rights of all parties involved (the employer, the employee and the third party who wishes to hire the latter), as well as the public interests normally taken into consideration in such cases under regular constitutional law.

95. Last but not least, freedom of choice of occupation is also indirectly promoted by the legal provisions and principles prohibiting discrimination in recruitment, dealt with in section 3(a) below.

Technical and vocational training programmes

(i) Vocational guidance

96. Psychological and vocational counselling services are provided by the Vocational Guidance Division of the Employment Service (this State institution is described in greater detail in section 3(a) below). Services include vocational guidance for

individuals (about 5,000 persons per year), vocational diagnosis and testing, job analysis and classification, collection and dissemination of employment information and instruction for personnel involved in vocational guidance activities in schools, local labour exchanges, etc.

97. No data is available on the operations of vocational guidance by the demographic characteristics of those using the services.

(ii) Vocational and technical education within the formal education system sponsored by the Ministry of Education

98. In general, vocational education is available within the formal education system at the secondary and post-secondary levels, with introductory and exploratory vocational courses provided in grade 9 (intermediate level).

99. The vocational schools offer students a variety of both academic and vocational subjects, including commercial and secretarial studies, fashion and textile design, basic technical skills (metalworking, mechanics and electricity, for example), computer science and electronics. In addition, there are agricultural schools and nautical schools combining specific vocational training with academic studies. In recent years, technological development has given rise to increased efforts to adapt vocational school curricula to the economy's need for an expanding supply of skilled workers training in modern technology. To this end, computer studies have been introduced and twelfth-year students work one or two days a week in industrial plants in order to familiarize themselves with innovations in production methods.

100. There are three paths within vocational schools: a combination of a full academic programme (leading to matriculation) with vocational training; vocational studies (leading to a diploma); and practical vocational education stressing practical application (leading only to a certificate).

101. Within the last 10-15 years, the number of students receiving vocational training in secondary schools has grown by 50 per cent, an increase attributed by the Ministry of Education primarily to the growing number of youngsters remaining in school after the age of compulsory attendance. The majority of such youngsters are being absorbed into the vocational education network as opposed to the academic education network.

102. At the post-secondary level, advanced vocational training is available to students who have completed a full secondary school course of study. In 1993/94 (the latest year for which data is available), there were 224 of these institutions throughout the country (in Hebrew and Arab networks), of which 32 provided teacher training (for primary and intermediate schools) and 101 for training of practical engineers and technicians. The remainder offered qualified nurses' training, training in paramedical occupations, business and clerical courses and arts courses (fashion, design, graphics, etc.). In 1993/94, 59,000 students were studying in post-secondary (non-academic) institutions, an increase of 67 per cent over 1985/86, with substantial growth in all fields of study.

(iii) Vocational training for adults and youth sponsored by the Ministry of Labor and Social Affairs

103. In addition to the vocational education frameworks described above, the Ministry of Labor and Social Affairs sponsors an extensive network of vocational training courses for adults (aged 18 and over) and youths (aged 15-18) for the purposes of assisting workers in expanding their employment horizons, enlarging the pool of skilled workers available to the economy and implementing the training aspects of national economic policy in the field of manpower. Training activities are undertaken in close cooperation with industries, employers' organizations and the trade union movement.

104. Adult training activities include:

- (a) Courses for the acquisition of basic skills;
- (b) Short extension and evening courses for supplementing training and refreshing skills;
- (c) Vocational rehabilitation for the handicapped;
- (d) Training of manpower for emergencies;
- (e) Training of practical engineers, technicians and instructors in these subjects;
- (f) Training and retraining programmes for new immigrants, returning Israeli residents and other special groups, as required;
- (g) On-the-job training programmes to train manpower in new and advanced techniques.

105. Training activities are mainly conducted in vocational training centres located throughout the country. Most courses are run by established schools selected by the Ministry, which supervises their operation and subsidizes the trainees (usually unemployed, referred to the schools by the Employment Service). Occupational standards are determined and maintained by the Ministry through supervisors and Ministry licensing examinations. The Ministry of Labor and Social Affairs also offers financial incentives (such as transportation and subsistence allowances, tuition exemptions and scholarships) to students studying preferred trades.

106. In addition to its regular, ongoing training activities, the Ministry of Labor and Social Affairs also initiates and carries out programmes to meet the needs of specific groups in the population requiring special assistance in preparing themselves to join the labour market. Currently, there are special programmes in operation and in the planning stages to offer vocational training to immigrants from Ethiopia, from the former Soviet Union (both adults and young people) and women.

107. In 1996, about 130,000 adults were studying in Ministry of Labor and Social Affairs-sponsored programmes, receiving basic and supplementary vocational training in such fields as practical engineering, metalwork, electricity and electronics, mechanics, domestic economy, hotel management, paramedical occupations and computer science.

108. The Ministry of Labor and Social Affairs is obligated by law to provide training for young people, aged 15 to 18, who have dropped out of the formal education system (see the Youth Labor Law 1953, Part Six and the Apprenticeship Law 1953 in

annex 1 to this report - "Labour Laws"). The Ministry has developed several training frameworks to meet the laws' requirements and to suit the needs of those youngsters coming under Ministry care. Youth Training activities include:

1. Apprenticeship programmes combining practical occupational instruction in craft shops and industrial plants with general school studies one or more days a week.
2. Industrial schools, providing post-elementary general and vocational training. The students acquire their vocation through practical work combined with general studies and theoretical training in their vocation. These schools function in cooperation with automotive repair shops, industrial plants and hotels.
3. Other frameworks for skill acquisition:
 - (a) Work groups, which are intended for young people who, for various reasons, cannot be absorbed into regular employment. This framework also combines work with general studies.
 - (b) Pre-military service courses, coordinated with the army, intended for 16-17½ year-olds to acquire a vocation useful both during the period of army service and after discharge from military service.
 - (c) Programmes for problem youngsters combining vocational training with general studies and social adjustment training.

109. In 1996, approximately 12,500 youngsters aged 15 to 18 studied in programmes sponsored by the Ministry of Labor and Social Affairs, more than 75 per cent of them in industrial schools.

Employment opportunities among particular categories of workers

Prohibition of discrimination

110. Certain labour laws prohibit discrimination among candidates for employment or employees.

111. The Employment Service Law 1959 states (see the full text in annex 1 to this report - "Labour Laws"):

"42.(a) When offering employment the Employment Service shall not discriminate against a person on account of his age, sex, race, religion, nationality, State of origin, views or membership in a political party, and a potential employer will not refuse to admit a worker on these grounds, whether or not he was sent to work through the Employment Service.

(b) It will not be considered discrimination when the nature or essence of the position or matters of State security prevent the referral or admission of a person to the said position.

42A. An employer in need of employees shall not advertise a job offer which constitutes discrimination under Article 42."

112. This law became less central with the enactment in 1988 of the Equal Employment Opportunities Law 1988, and even more so when substantially amended in 1995. The latter law includes various norms, the principal one being the following (see the full text in annex 2 to this report):

"2.(a) An employer shall not discriminate between his employees or job-applicants on account of their sex, sexual orientation, personal status, parenthood, age, religion, nationality, State of origin, views or membership in a political party, in relation to all of the following:

1. Hiring;
2. Job conditions;
3. Job promotion;
4. Vocational training or advanced studies;
5. Firing or Termination Compensations;
6. Retirement benefits and payment granted to an employee;

"(b) For the purposes of subsection (a) the introduction of irrelevant conditions will be considered discriminatory.

"(c) It will not be considered discrimination under this article when the act is necessarily linked to the nature or essence of the job or position.

"2A. (a) an employer shall not require from a job applicant or an employee the details of his military health classification and will refrain from using that information, if he learns about it, in any matter enumerated in article 2(a)(1)-(6).

"(b) ...

"(c) ...

"(d) In this article, 'military health classification' – is the numeric symbol the Israel Defense Force attributes to a person to indicate his medical compatibility to military service in the various units and positions in the Israel Defense Force."

113. The Equal Employment Opportunities Law 1988 is a modern statute, including various enforcement mechanisms, some of which were unprecedented in Israeli labour law. Breach of the Law constitutes both a civil wrong and a criminal offence. Civil proceedings can be initiated by a worker, a trade union or a civil rights movement. The courts are given special competence to grant compensation even when no material damage was caused. Special protection is granted to a worker filing a complaint under the Law. Supervision and enforcement authority is given to the Minister of Labor and Social Affairs.

114. The Enforcement Division of the Ministry examines complaints from individuals and initiates its own investigations. In 1996, workplaces employing more than five persons were investigated for possible violations relating to sexual harassment at work, discrimination in hiring, promotion and wages, exercise of parents' rights and discriminatory advertisements offering employment.

115. Since the enactment of the Law in 1988 relatively few cases of discrimination at work have been brought to the courts, most of these being for unlawful publication of job advertisements. The 1995 amendment brought about a few more cases, but the main deterrent factor has continued to be the apparent lenience of the courts, apparent mainly in the small sums awarded in compensation.

116. The National Labor Court recently issued a decision promising to become a landmark case. Not only was the compensation award significantly upgraded, the

Court made important statements that will undoubtedly enhance the importance of this Law:

"Human beings were born in the image of God. However, they did not descend upon this world as identical to each other. Every person possesses an individual character, his own physiological features and different colour of skin. Hence, in some aspects it may be the case that these differences should lead to differentiated treatment. For example, when different physiological features are involved, different medical treatment may be warranted on that account. However, the basic proposition should be that despite the difference between persons, every human should be treated equally as such."

"Equality was considered by our jurisprudence, both that of the Supreme Court and that of the National Labor Court, as a fundamental right, even before the enactment of the Basic Law, 'The right has graduated' and is now a constitutional right. I do not believe that human dignity and freedom can be discussed without equality, and equality on the job even the more so. A substantial part of our lives is spent in work, and discrimination and degradation cannot be tolerated at the workplace.

"... [T]he right to equal treatment is a fundamental value of democratic system of law. When we discuss equality, we address both formal and substantive equality. Formal equality requires *prima facie* that people of equal virtues shall receive equal treatment. On the other hand, substantive equality requires that people, even if they differ in irrelevant features, shall receive equal treatment – not necessarily an identical job, but an equal opportunity to receive a suitable job.

"In light of the above-mentioned, it can be concluded, that the underlying ideas behind the standard of behaviour required from a potential employer, is that the questions [in the job interview] shall not include any trace of a stereotyped approach. It should be asked whether the mere asking of a question characterized by stereotyped thinking during a personal interview or on tender invitation forms, is sufficient to hold the potential employer liable. I believe it is enough.

Furthermore, when the required qualifications are typically better suiting men than women, it must be shown that the required advantage is necessary linked to the position offered, and that it is impossible to settle for any less. The correct avenue is to examine the person on his own merits, and not the features of the group to which he belongs."

National Labor Court case 1997/3-129 Plotkin v. Eisenberg Brothers Ltd., pp. 6, 8-11, 21.

117. The prohibition of discrimination on the basis of sexual orientation was strongly promoted in 1995 by a comprehensive Supreme Court decision, in which an employer was ordered to grant an employee's homosexual partner a certain work-benefit intended for a worker's spouse. This ruling has clear implications for cases of discrimination in hiring.

118. Discrimination on the basis of religion is also specifically covered by article 9C of the Work and Rest Hours Law 1951. This provision prohibits refusal to hire an

employee who refuses to work on his religious holidays and prohibits forcing such a worker to pledge to work on such days as a condition for being hired.

119. The significance of all the above goes beyond discrimination in recruitment and covers the whole of labour relations, but discrimination in recruitment is one of the contexts where the statute should prove most influential. This is particularly so in view of the known tendency of workers to refrain from suing their employer as long as the relation is ongoing, and in view of the fact that discrimination in recruitment results in no labour relations at all.

120. Most discrimination cases concern gender discrimination. There is in Israel no data relating to other kinds of discrimination, besides the complex issue of foreign workers dealt with below.

Factual situation

121. Presented below are statistics available on the actual situation in Israel regarding vocational guidance, vocational training, employment and occupation, according to conditions relevant to the non-discrimination principle. It should be noted at the outset that statistics by race or colour are not considered relevant to Israel and are not collected.

(i) Vocational training

122. Shown below are statistics for 1996 on adults in vocational training programmes of the Ministry of Labor and Social Affairs, by sex and population group:

	Thousands	Per cent
All students	130.0	100.0
Men	76.7	59.0
Women	53.3	41.0
Jews	113.5	87.3
Arabs and others	16.5	12.7

Source: Israel, Ministry of Labor and Social Affairs Vocational Training Division.

(ii) Employment

123. Data for 1996 of employed persons by sex and population group are shown below:

	Thousands	Per cent
All employed persons	2 012.8	100.0
Men	1 147.0	57.0
Women	865.8	43.0
Jews	1 753.3	87.1
Arabs and others	259.5	12.9

Source: Israel, Central Bureau of Statistics, Labour Force Survey, 1996.

(iii) Occupation and continent of birth

124. Data for 1995 of Jewish employed persons by continent of birth and occupation are shown in the following table, presenting, for 1995, employed persons by occupation, sex and population group. According to the data in this table, more than a quarter of employed Israelis work in academic professions or technical occupations; a third are clerical and sales personnel and 25 per cent are skilled workers, primarily in industry and construction:

1995				
Jews				
Occupation and sex	Total	Israel-born	Asia/Africa	Europe N. America
	(Thousands)			
Grand total <u>1</u> /	1 715.3	945.5	267.3	496.4
Academic professionals	212.3	111.7	15.5	84.5
Other professionals and technicians	245.9	146.9	26.3	71.9
Managers	92.7	58.2	12.8	21.6
Clerical workers	309.0	204.9	40.6	62.7
Agents, sales and service workers	300.4	170.4	56.5	72.6
Skilled agricultural workers	36.9	24.3	6.0	6.5
Industry, construction and other skilled workers	364.6	171.8	70.2	121.0
Unskilled workers	136.0	47.3	35.9	51.9
Males - Total	931.9	494.8	163.9	270.1
Academic professionals	112.2	54.4	10.5	47.0
Other professionals and technicians	95.8	54.5	11.1	29.9
Managers	74.2	46.1	11.5	16.6
Clerical workers	83.0	45.4	16.9	20.4
Agents, sales and service workers	137.4	82.0	26.5	28.6
Skilled agricultural workers	31.4	21.5	5.0	4.8
Industry, construction and other skilled workers	316.3	157.5	62.0	95.3

Unskilled workers	68.2	25.9	17.1	24.7
Females - Total	783.4	450.7	103.4	226.3
Academic professionals	100.1	57.3	5.0	37.5
Other professionals and technicians	150.1	92.4	15.2	42.0
Managers	18.5	12.1	1.3	5.0
Clerical workers	226.0	159.5	23.7	42.3
Agents, sales and service workers	163.0	88.4	30.0	44.0
Skilled agricultural workers	5.5	2.8	-1.0	1.7
Industry, construction and other skilled workers	48.3	14.3	8.2	25.7
Unskilled workers	67.8	21.4	18.8	27.2

Source: Israel, Central Bureau of Statistics, Labour Force Survey, 1996.

1/ Includes persons whose occupations are unknown.

125. With respect to the continent of birth, as of 1995, more than half (55 per cent) of the Jewish employed population was born in Israel. Of the remainder, 16 per cent are immigrants from Asian and African countries and 29 per cent from European and North and South American countries. By occupation, almost a third of those Jews born in Europe and the United States worked in academic and professional occupations, compared with 27 per cent of the Israeli-born and 16 per cent of those born in Asia and Africa. Among all three groups, about 20-25 per cent were employed as skilled workers in industry and construction.

126. As apparent from the data in table 2 of this section's annex, among the Israeli Arab working population, of whom the overwhelming majority are men, half worked as skilled labour in industry and construction. Labour force participation is very low among Israeli Arab women. Of those who are employed, a quarter work in academic and professional fields, 35 per cent are clerical and sales workers and an additional 35 per cent are employed in industry as skilled and unskilled labour.

Foreign workers

127. The phenomenon of foreign workers is not unique to Israel. Statistics from the ILO show that around a third of the developed countries have absorbed significant amounts of this workforce. ^{1/} W.R. Buhaning, The Employment of Foreign Workers - A Guide for Policy and Practice, International Labour Office, Geneva, p. 1.1/

128. Until recently the bulk of foreign workers in Israel were Palestinians from the West Bank and Gaza Strip. With the increase in the number of terrorist attacks and the concomitant need to close off the territories, a large number of workers came to Israel from all over the world, in particular from Romania and other Eastern European countries, the Philippines, Thailand and other countries in South-East Asia, Africa and

South America. They are nearly all employed in the building sector, agriculture, nursing and hotels; a small number are employed in industry and public services.

129. Out of around 2,131,400 workers in Israel in 1996, about 118,000 were foreign workers with permits: 94,000 from all around the world and around 24,000 Palestinian workers from the West Bank and Gaza Strip.

130. The exact number of foreign workers without permits is unknown. The estimate of the Israeli Employment Service is that as of summer 1997 there were 100,000 such workers.

131. As the various types of foreign workers now constitute some 10 per cent of the Israeli workforce, the State has been forced to take a number of steps, as set out below, making a definite distinction between the legal and the practical aspects of the problem.

Foreign workers and total employment in Israel: 1996, 1991 and 1988 (thousands)

	1988	1991	1996
All employed	1 497.9	1 652.1	2 131.4
Israelis	1 453.1	1 583.3	2 012.8
Palestinian workers (with permits)	41.5	60.7	24.2
Other foreign workers (with permits)	3.3	8.1	94.4

Source: Israel: Central Bureau of Statistics and Employment Service.

(i) The legal status of foreign workers in Israel

132. It should be noted at the outset that in addition to being a party to the current Covenant, Israel is a party to the ILO. Migration for Employment Convention (Revised) 1949 (No. 97) (Israel's last report covers the years 1988-1994) and to the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48) (Israel's last report covers the years 1979-1982).

133. As prescribed by international law and the basic principles of the legal system in Israel, one can safely say that the law in Israel does not discriminate between foreign workers and resident Israeli workers:

The Equal Employment Opportunity Law 1988 prohibits discrimination on the basis of "nationality" or "State of origin" as regards granting work opportunities and determining conditions of work;

The labour laws in Israel that determine the basic rights of the worker (minimum wage, hours of work and rest, prohibition on delaying salary payment, severance pay, safety in the workplace, etc.) apply to every "worker", irrespective of his/her citizenship. This is also the case with regard to other rights stemming from collective agreements and extension orders;

Educational services are provided without distinction to the children of Israeli residents and to the children of foreign workers;

With regard to health services, a distinction should be made between emergency services, granted without distinction to anyone arriving at

the outpatients emergency ward of hospitals, and health insurance and other services to which the foreign worker is not entitled on the basis of the National Health Insurance Law 1994. The foreign worker is thus required to insure himself. The exception to this are the three branches of National Insurance - work accidents, maternity and childbirth - which apply by law (the National Insurance Law (revised version) 1995) to all "workers", as opposed to the other branches which are dependent on the person being a "resident";

Welfare services are provided to foreign workers and their families without distinction. There is a statutory requirement on the relevant authority to intervene (such as in the event of violence in the family, sexual assault of minors, neglect of minors, adoption, etc.). As regards other services which are provided to Israelis as part of the benefit programme of the Ministry of Labor and Welfare, the policy is to distinguish between legal and illegal workers: legal workers are entitled to the services provided to Israeli residents, while illegal workers are entitled to emergency services only, with the view to assisting them and their families in leaving the country.

(ii) The reality with regard to foreign workers in Israel

134. In reality, as opposed to the legal situation, foreign workers are more vulnerable than other workers to the possibility of being exploited by employers and the various employment agencies.

135. The employing a foreign worker requires a special residence permit which the relevant employer has taken out for the explicit purpose of the worker working with him alone. In applying the Entry into Israel Law 1952, the Ministry of the Interior makes the granting of a residence permit for the purposes of work conditional on receiving a permit from the Employment Service. The Employment Service in this area operates according to a policy which determines those sectors which require foreign workers, setting quotas for each sector. To get a permit from the Employment Service, the employer has to leave a monetary guarantee of several thousand new shekels to guarantee that the worker will remain with him and leave the country on completion of the work. The employer undertakes in writing to provide the worker with adequate housing, to pay his medical insurance, and to give the worker a copy of his employment contract in a language which the worker understands.

136. The authorities are thus faced with a dilemma. On the one hand is the need to reduce the foreign workforce and in particular combat the phenomenon of remaining in Israel illegally. On the other, it is impossible to ignore the vulnerability of foreign workers, including those with proper work permits. Hence government policy is to act on two levels: to improve enforcement and prevent illegal entry into the country, including returning illegal workers to their country of origin; and improving the help provided to legal foreign workers in enforcing their rights.

137. Below are the main steps currently being taken in the legal and administrative spheres so as to achieve the Government's target of reducing the number of foreign workers while combating discrimination against them.

(iii) The Foreign Workers Administration

138. In 1996, the Government decided to set up the Foreign Workers Administration. The move stemmed from the fear of losing control over the number of foreign workers and from the experience of European countries in this area where the increasing number of foreign workers was accompanied by serious social problems (xenophobia, unemployment, crime, etc.). The job of the Administration is to coordinate the activities of the various authorities involved so as to improve both enforcement of the law and the care for the foreign workers themselves, particularly those in Israel with a permit. The Minister of Labour and Social Affairs is the head of the Ministerial Committee dealing with foreign workers. On 1 June 1997 a full-time chairperson was appointed to the Administration and the body began to work.

139. The first goal set by the Government for the Administration is to curb the phenomenon of workers without permits and gradually reduce the number of permits by 500 workers a month. In the four months since its setting up the Administration recorded a drop of 15,000 in foreign workers with permits.

140. The second goal for the Administration is to coordinate the various non-profit organizations on behalf of the foreign workers, in particular those in Israel with permits, and also directly help the workers themselves by providing information on their rights. However, the Administration is currently still preoccupied with trying to curb the increase of foreign workers, so it will be a while before it can concentrate on providing actual help to foreign workers.

(iv) Legal initiatives

141. The Foreign Employees (Unlawful Employment) Law 1991 sets out criminal prohibitions on employers and employment agencies with respect to employment or detention of a worker without a permit.

142. The power of enforcement under the above law resides with the Minister of Labour and Social Affairs. In the enforcement unit of the Ministry of Labor and Social Affairs 63 inspectors are currently employed, half of whom are assigned to the subject of foreign workers. Eighteen of these are employed in tracking down foreign workers in Israel without permits, 6 investigate the living conditions of foreign workers and 10 investigate their conditions of work and pay. The inspectors are empowered to impose fines on employers who have not paid workers; however, they are unable to compel the employer to pay the unpaid salary. In special cases the inspectors can bring an indictment, such as where the offences are recurrent or particularly serious. For the purposes of tracking down and expelling illegal workers a joint operation is conducted with the Police and the Ministry of Interior, since inspectors of the Ministry of Labor and Social Affairs are not empowered to deport individuals.

143. A government bill is designed to compel employers to provide proper living conditions for their foreign workers, to issue each foreign worker with a copy of his or her contract in a language the worker understands, and to provide health insurance. The bill increases the severity of the punishments that can be meted out to employers, improves the supervision capacity of the Minister of Labour and Social Affairs, and confers supervisory powers on the new bodies described above. The bill is currently at an advanced stage of becoming law.

144. It should be noted that the proposed law is exceptional in terms of the duties it imposes on employers in Israel. It is not normally acceptable in Israeli labour law (as elsewhere) to impose such direct duties on the employer by means of legislation. These are normally obligations which employers accept on themselves, as part of collective agreements, if at all. The measure being introduced here stems from regarding legal foreign workers as requiring greater protection than that granted local workers.

145. Thus, government policy is on the one hand to increase supervisory control and enforcement so as to reduce the phenomenon of foreign workers, and on the other to take steps for the protection of the rights and welfare of legal foreign workers.

Distinctions explicitly permitted

146. Article 2 (c) of the Equal Employment Opportunities Law 1988 cited above explicitly states that the non-discrimination prohibition does not apply when a distinction is "necessarily linked to the nature or essence of the job or position". It is not clear yet how this rule will be interpreted, but inference can be made by analogy from the famous High Court of Justice decision in the Alice Miller case. The court overturned the Israeli Air Force's refusal to recruit a woman to its air-pilot training course. The argument that the position was inherently suitable for men only was rejected by the court, which forced the Air Force to recruit Mrs. Miller, stating:

"The right to dignity, which encompasses the prohibition of discrimination against women, is one of the most important and fundamental human rights. As a rule, humiliating a woman through discrimination on a gender basis constitutes a grave insult to her person."

H.C. 4541/93 Miller v. Minister of Defense, P.D. vol. 49 (4) 94, 141.

147. There also exist statutory provisions giving priority to military veterans, single mothers and new immigrants in the domains of recruitment and vocational training. Such preferences are considered legitimate in the light of the special difficulties these categories of workers usually face because of their social condition. They have never been challenged in the courts.

Table 1. Employment and unemployment of Israelis: situations, levels and trends: 1996, 1991 and 1986

				Per cent change		
	1996	1991	1986	1986-1996	1991-1996	1986-1991
Total population						
Aged 15 and over (thousands)	4 019.9	3 427.7	2 906.3	38.3	17.3	17.9
In civilian labour						

force:						
Number (thousands)	2 156.9	1 770.4	1 471.9	46.5	21.8	20.3
Participation rate (%)	53.7	51.7	50.6			
Employed (thousands)	2 012.8	1 583.3	1 367.9	47.1	27.1	15.7
Unemployed						
Number (thousands)	144.1	187.2	104.0	38.6	-23.0	80.0
Unemployment rate (%)	6.7	10.6	7.1			
Jews						
Aged 15 and over (thousands)	3 362.6	2 902.2	2 479.7	35.6	15.9	17.0
In civilian labour force:						
Number (thousands)	1 880.2	1 556.4	1 302.9	44.3	20.8	19.5
Participation rate (%)	55.9	53.6	52.5			
Employed (thousands)	1 753.3	1 391.6	1 216.4	44.1	26.0	14.4
Unemployed						
Number (thousands)	127.0	164.7	86.5	46.8	-22.9	90.4
Unemployment rate (%)	6.7	10.6	6.6			
Men						
Aged 15 and over (thousands)	1 959.7	1 678.9	1 429.8	37.1	16.7	17.4
In civilian labour force:						
Number (thousands)	1 217.8	1 042.7	903.6	34.8	16.8	15.4
Participation rate (%)	62.1	62.1	63.2			
Employed (thousands)	1 142.0	952.8	844.9	35.8	20.4	12.8
Unemployed						
Number (thousands)	70.8	89.9	58.7	20.6	-21.2	53.2
Unemployment rate (%)	5.8	8.6	6.5			
Women						
Aged 15 and over (thousands)	2 060.1	1 748.9	1 476.8	39.5	17.8	18.4
In civilian labour force:						

Number (thousands)	939.1	727.9	568.6	65.2	29.0	28.0
Participation rate (%)	45.6	41.6	38.5			
Employed (thousands)	865.8	630.4	523.7	65.3	37.3	20.4
Unemployed						
Number (thousands)	73.3	97.5	44.9	63.2	-24.8	117.1
Unemployment rate (%)	7.8	13.4	7.9			
Arabs and others						
Aged 15 and over (thousands)	657.3	525.5	427.1	53.9	25.1	23.0
In civilian labour force:						
Number (thousands)	276.6	214.1	169.4	63.3	29.2	26.4
Participation rate (%)	42.1	40.7	39.7			
Employed (thousands)	259.5	191.6	151.6	71.2	35.4	26.4
Unemployed						
Number (thousands)	17.2	22.4	17.8	-3.3	-23.2	25.8
Unemployment rate (%)	6.2	10.5	10.5			
Population aged 15 to 17						
Aged 15 and over (thousands)	303.2	287.7	240.1	26.3	5.4	19.8
In civilian labour force:						
Number (thousands)	38.5	31.6	30.2	27.5	21.8	4.6
Participation rate (%)	12.7	11.0	12.6			
Employed (thousands)	30.9	22.6	23.0	34.3	36.7	-1.7
Unemployed						
Number (thousands)	7.6	7.5	6.2	22.6	1.3	21.0
Unemployment rate (%)	19.7	23.7	20.5			
	1996	1991	1986	1986-1996	1991-1996	1986-1991
Population aged 18 to 24						
Aged 15 and over (thousands)	698.9	580.2	490.5	42.5	20.5	18.3

In civilian labour force:						
Number (thousands)	304.2	238.5	198.7	53.1	27.5	20.0
Participation rate (%)	43.5	41.1	40.5			
Employed (thousands)	265.3	173.9	152.8	73.6	52.6	13.8
Unemployed						
Number (thousands)	38.9	52.9	37.0	5.1	-26.5	43.0
Unemployment rate (%)	12.8	22.2	18.6			
Population aged 45 to 54						
Aged 15 and over (thousands)	553.1	397.3	341.0	62.2	39.2	16.5
In civilian labour force:						
Number (thousands)	422.1	284.3	231.4	82.4	48.5	22.9
Participation rate (%)	76.3	71.6	67.9			
Employed (thousands)	402.9	243.0	202.8	98.7	65.8	19.8
Unemployed						
Number (thousands)	19.2	19.5	7.7	149.4	-1.5	153.2
Unemployment rate (%)	4.5	6.9	3.3			
Population aged 55 to 65						
Aged 15 and over (thousands)	383.3	336.0	309.0	24.0	14.1	8.7
In civilian labour force:						
Number (thousands)	188.7	167.2	147.0	28.4	12.9	13.7
Participation rate (%)	49.2	49.8	47.6			
Employed (thousands)	179.6	143.0	130.8	37.3	25.6	9.3
Unemployed						
Number (thousands)	9.1	12.1	3.0	203.3	-24.8	303.3
Unemployment rate (%)	4.8	7.2	2.0			
Residing in development areas						
Aged 15 and over	417.9	304.9	N/A	-	37.1	-

(thousands)						
In civilian labour force:						
Number (thousands)	218.9	159.9	N/A	-	36.9	-
Participation rate (%)	52.4	52.4	N/A	-		
Employed (thousands)	195.9	121.9	N/A	-	60.7	
Unemployed						
Number (thousands)	23.0	24.6	N/A	-	-6.5	
Unemployment rate (%)	10.5	15.4	N/A	-		
New immigrants ^{1/}						
Aged 15 and over (thousands)	523.8	211.0	N/A	-	162.5	
In civilian labour force:						
Number (thousands)	296.0	96.4	N/A	-	207.1	
Participation rate (%)	53.4	45.7	N/A	-		
Employed (thousands)	268.6	59.3	N/A	-	353.0	
Unemployed						
Number (thousands)	27.4	37.1	N/A	-	-26.1	
Unemployment rate (%)	9.3	38.5	N/A	-		

Source: Israel Central Bureau of Statistics, Labour Force Surveys.

^{1/} Arrivals from 1990 onwards.

Table 2. Employed persons by occupation, sex and population group, 1995

	Grand total			Jews			Arab s and other s		
	(in thousands)								
Occupation	Total	Male s	Female s	Total	Male s	Female s	Total	Male s	Female s
Total	2 012.8	1 146.	865.8	1 753.	941.9	811.4	259.5	205.0	54.5

		9		3					
Academic professionals	243.3	130.9	112.4	230.6	121.2	109.3	12.7	9.7	3.1
Other professionals and technicians	274.5	111.2	163.3	253.9	102.4	151.5	20.6	8.58	11.9
Managers	104.3	83.3	21.0	100.3	79.6	20.7	3.9	3.7	0.3
Clerical workers	332.2	89.5	242.7	316.6	82.9	233.7	15.6	6.6	9.0
Agents, sales workers and service workers	343.3	164.0	179.3	308.0	139.0	169.1	35.3	25.0	10.3
Skilled agricultural workers	41.5	36.2	5.3	34.0	30.0	4.7	6.8	6.2	0.6
Industry, construction and other	487.6	427.3	60.4	359.8	310.1	49.7	127.9	117.2	10.7
Unskilled workers	170.4	92.4	78.0	135.7	66.1	69.6	34.7	26.3	8.4
Unknown	15.6	12.2	3.4	13.7	10.6	3.2	1.9	1.6	0.3
	Percentage distribution								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Academic professionals	12.2	11.5	13.0	13.3	13.0	13.5	4.9	4.8	5.7
Other professionals and technicians	13.7	9.8	18.9	14.6	11.0	18.7	8.0	4.3	21.9
Managers	5.2	7.3	2.4	5.8	8.5	2.6	1.5	1.8	0.6
Clerical	16.6	7.9	28.1	18.2	8.9	28.9	6.1	3.2	16.6

workers									
Agents, sales workers and service workers	17.2	14.5	20.8	17.7	14.9	20.9	13.7	12.3	19.0
Skilled agricultural workers	2.1	3.2	0.6	2.0	3.2	0.6	2.6	3.0	1.1
Industry, construction and other	24.4	37.7	7.0	20.7	33.3	6.1	49.7	57.6	19.7
Unskilled workers	8.5	8.1	9.0	7.8	7.1	8.6	13.5	12.9	15.5

Source: Israel, Central Bureau of Statistics, Labour Force Survey, 1996.

Article 7 - Just and favourable conditions of work

Related international conventions binding Israel

148. Israel is a party to numerous related ILO conventions. The following are those of the most general application:

Equal Remuneration Convention, 1951 (No. 100) since 1965; last report relates to the years 1991-1993;
Weekly Rest (Industry) Convention, 1921 (No. 14) since 1951; last report relates to the years 1990-1993;
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) since 1961; last report relates to the years 1990-1993;
Labor Inspection Convention, 1947 (No. 81) since 1955; last report relates to the years 1989-1990;
Holidays with Pay Convention, 1936 (No. 52) since 1951; last report relates to the years 1990-1993;
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) since 1958; last report relates to the years 1991-1995.

Remuneration

Methods for fixing wages

149. The Wage Protection Law 1958 is the legal source in Israel of an employee's right to remuneration for his or her work. This law defines "wages" in the broadest fashion, determines the time for the payment of wages, creates a right to "wage delay compensation" (including "compensation for delay in severance pay"), prohibits certain deductions from wages and creates a supervisory system under the authority of the Ministry of Labor and Social Affairs (see the full text in annex A to this report).

150. It is fair to say, however, that wages are fixed in Israel primarily by collective agreements and extension orders and only secondarily by individual labour contracts (notwithstanding the Minimum Wage Law dealt with under the next section). The Wage Protection Law does not stipulate the level of remuneration. Even with respect to modes of payments, it leaves much room for collective bargaining to set different arrangements than those prescribed by the law. Moreover, according to section 21 of the Collective Agreements Law 1957, collective agreements can only add to the minimum rights laid down by protective labour statutes - as they in fact do. Similarly, individual labour contracts can only add to the employee's rights laid down by statute or by an applicable collective agreement.

151. As a matter of fact, the vast majority of employees in Israel are covered by collective agreements. The exact number is hard to determine, but it is normally estimated at around 80 per cent. Collective agreements determine scales of wages unique to each trade union. This has created a complex system of occupational and national wage scales. Even when these scales are formally autonomous, they interact with one another in the course of collective bargaining because of workers' demands for adjustments and linkages.

152. The effectiveness of collective bargaining in wage-fixing is enhanced by the use of "extension orders" under sections 25-33G of the Collective Agreements Law 1957 (see the full text in annex A to this report). The most significant example in this respect relates to "cost-of-living increment". This wage adjustment system, essential in a market used to high levels of inflation, is activated by collective bargaining at the national level, between the most representative organizations of employees and employers. The outcome is then extended by administrative order to all employees in Israel.

153. Were it not for the Labor Courts, the complexity of the wage system would lead to abuses of workers. The Courts have already produced a tremendous corpus of case law, and they are still playing a crucial role in securing workers' rights. A good illustration is the complex task of distinguishing the "basic wage" from special "wage supplements". Such supplements come into being for various reasons, some genuinely related to aspects of the work done, others merely bogus. Bogus wage supplements endanger the basis of wages in general, and undermine the wage protection rules laid down by the law. The Courts' contribution here is in looking beyond the denomination of a wage supplement and at its real substance, always bearing in mind the legitimate interests of the employee.

Minimum wages

154. The Minimum Wage Law 1987 imposes a duty to pay no less than the determined minimum wage. Violation of this is both a civil wrong and a criminal offence.

155. The main feature of this statute is that its provisions determine the minimum wage and the mechanism for its adjustment, leaving no room for collective or individual bargaining.

156. "Minimum wage" means, after the 1997 amendment, 47.5 per cent of the "average wage". The "average wage" is in turn determined by the National Insurance Law 1995 according to the actual distribution of income in the market (see further

information on "average wage" under article 9 of the Covenant). In setting the minimum wage at 47.5 per cent of the average wage, the Minimum Wage Law takes into account the needs of workers and their families. As recognized by the National Labor Court:

"The machinery for adjusting the minimum wage was also amended in 1997. The basic calculation is made on the 1st of April each year. This basis must be increased in accordance with changes made in wages by general collective agreement, each time such changes occur (section 4)."

157. The table below shows minimum and average wages in 1986, 1991 and 1996 in relation to the cost-of-living index:

Period	Minimum wage per month	Average wage per month	Cost-of-living index	Minimum wage to average wage
	(Current NIS)		(1987 = 100.0)	(%)
1986	347	1 071	83.4	32.4
1991	1 161	2 656	194.9	43.7
1996	1 996	4 876	333.1	40.6
	Per cent changes			
1986-1991	234.6	148.0	133.7	-
1991-1996	71.9	83.6	70.9	-
1986-1996	475.2	355.3	299.4	-

Source: Israel, Ministry of Labor and Social Affairs and Central Bureau of Statistics.

158. Since the coming into effect of the Minimum Wage Law in 1987, there has been a serious erosion in the minimum wage. The minimum wage in 1991 was in fact 44 per cent of the average wage and even dropped to 41 per cent in 1996. This failure of the minimum wage to keep pace with the rise in the general level of wages between 1991 and 1996 was a principal factor behind the 1997 amendments, which both raised the minimum wage from 45 per cent to 47.5 per cent of the average wage and improved the machinery of adjustment, mostly by increasing the frequency of adjustments.

159. Another important feature of this law is that it applies to all "employees". A distinction is nevertheless made in the law itself on the basis of age. The legal arrangements described above constitute the general rule and apply to employees aged 18 or over (sect. 2). Employees under the age of 18 also have the right to a minimum wage, but the content of the rules differs. Section 16 of the Law empowers the Minister of Labor and Social Affairs, with the approval of the Knesset Committee for Labor and Social Affairs, to set different standards for young employees. Ministerial Orders issued under this authority in 1987 set a lower minimum wage, ranging from 60 per cent to 83 per cent of the regular minimum wage, according to the youngster's age, the kind of wages paid and whether he or she is an "apprentice".

160. The Minimum Wage Law also gives the Minister of Labor and Social Affairs supervisory and enforcement powers. The Enforcement Division of the Ministry investigates reports from the public of suspected violations of the Law. The Enforcement Division also initiates its own inspections of the various sectors of the economy and in the regions, industries, and enterprises known to be especially problematic with regard compliance with the the Law (i.e. employers of foreign workers).

161. When a violation is discovered, a letter of warning is sent to the employer. If the violation is rectified, including compensation for any prior periods of failure to pay the legal minimum wage, then no further action is taken. Almost all cases (99 per cent) are settled in this way rather than through taking legal action against the employer. The Enforcement Division reinvestigates former violators periodically to check on continued compliance with the Law.

162. During 1996, the Enforcement Division investigated close to 3,000 enterprises, employing approximately 50,000 workers, with respect to compliance with the Minimum Wage Law. As a result of this supervision, more than 3,000 workers received compensation totalling NIS 1.5 million.

163. Finally, various provisions were added to the law in 1997 in an attempt to encourage employees to file complaints, in order to further promote the implementation of this basic right. Section 7A prohibits an employer from harming an employee with regard to his or her wage, promotion or other conditions of work or from dismissing him or her after claiming violation of the terms of this law. Section 8A empowers the courts to enforce the labour contract when compensation only is judged insufficient sanction. Last but not least, section 14A is intended to help workers of "manpower contractors" (see definition and details under article 6 of the Covenant), by rendering liable under the law the actual person for whom the employee works, in addition to the manpower contractor's liability as the legal employer. Considering that this category of workers seems to be one of those most affected by non-compliance with the Minimum Wage Law, this latter amendment should prove significant.

Equal pay for work of equal value

164. The legal history in the domain of equality of remuneration in Israel reveals an evolving public awareness. The Male and Female Workers Equal Pay Law 1996 totally reshaped the Male and Female Workers Equal Pay Law 1964. The main progress to be noted is a change of conception, from "equal pay for equal work" to "equal pay for work of equal value". The concept of "job analysis", crucial for comparing "work of equal value", is now for the first time given legal significance. The new law enables workers to go beyond the commonly used job descriptions, so as to conduct substantial comparisons between apparently different jobs.

165. The Law empowers the Labor Court to appoint a job analysis expert, whether by request of a party or on its own initiative (sect. 5). Discretion is left to the court to decide if the party or the State Treasury will bear the costs. Due to this Law, this field of expertise will undoubtedly develop. Mention should be made in this context of job analysis and classification undertaken by the Vocational Guidance Division of the Employment Service, for the use of individuals as well as the Vocational Training Department of the Ministry of Labor and Social Affairs.

166. These concepts are relatively new in the Israeli labour market, so it is too soon to evaluate the Law's impact. But the legal development is in itself remarkable. This relative activism on the part of the legislator is due to recognition of the fact that the legal system has traditionally failed to secure equality of remuneration between men and women. The fact that this is the case in most, if not all, industrial countries has not deterred the Knesset from action.

167. Nevertheless, the overall trend in Israel is one of slow improvement. Women's hourly average wages are still lower than those of men. Over the past 20 years, women's hourly wages have risen somewhat on the average relative to those of men: from 77 per cent in 1975 to about 81 per cent in 1995. By occupation, as shown below, women earned most compared to men (89.5 per cent) in the category "other professionals and technicians" which includes principally kindergarten and primary school teachers, practical engineers and technicians, nurses and paramedical workers. Women earned least relative to men (57 per cent) as skilled workers in industry and construction.

Urban wage and salary workers:

Women's hourly wages as a per cent of
men's hourly wages, 1995

Occupation	Per cent
Total	80.7
Academic professionals	79.4
Other professional and technicians	89.5
Managers	75.3
Clerical workers	75.8
Sales and services workers	64.2
Skilled workers in industry and construction	56.9
Unskilled workers	78.3

Source: Israel, Central Bureau of Statistics, Income Surveys, 1995.

168. In the civil service there was a salary gap of 29 per cent between men and women's average monthly salary for full-time work in 1988, slightly diminishing to 28 per cent in 1990 (Efroni 1990). Recent data supplied by the Treasury Department indicates a further decrease down to a gap of 24 per cent in 1996 (CEDAW, pp. 139-142).

Income distribution of employees

169. Shown below are the few data available on income distribution in Israel. No differentiation is made here between workers in the public and private sectors, nor between actual pay and non-monetary benefits.

Urban employees by sex and by income from wages and
per hour salaries, 1995

Hourly wage group (NIS)	Total	Men	Women
All employees (thousands)	1 535.0	837.9	697.1
Percentage distribution	100	100	100
Up to 7.9	6.1	4.3	8.3
8.00 - 11.99	17	14.2	20.3
12.00 - 15.49	16.7	17.3	16.1
15.50 - 19.99	16.5	17.4	15.4
20.00 - 29.99	19.8	20.3	19.1
30.00 - 49.99	17.1	17.8	16.4
50.00 and over	6.9	8.8	4.6
Average hourly wage (NIS)	24	25.9	20.9

Source: Israel, Central Bureau of Statistics, Income Surveys, 1995.

170. Additional data on distribution of income is gathered in Israel not by wage and salary of workers, but by households headed by such workers. The table below provides further data on income distribution among such households:

Urban households headed by wage-earning and salaried workers by deciles of gross
monthly
money income per household and by characteristics of household head, 1995

Deciles of income											
	Total	1	2	3	4	5	6	7	8	9	10
Upper limit of decile (NIS)	-	2 834	3 810	4 679	5 606	6 655	7 850	9 397	11 820	15 809	-
Gross money income per household (NIS)	8 320	2 050	3 340	4 234	5 161	6 127	7 237	8 578	10 547	13 667	22 228
Average age of	40.4	36.5	37.6	37.6	38.7	39.5	40.8	40.8	42.5	44.0	45.9

household head											
Average persons per household	3.9	2.6	3.4	3.9	3.9	4.1	4.0	4.1	4.4	4.1	4.2
All household heads	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Year of schooling up to 8	12.5	23.6	19.2	17.0	16.2	13.4	10.7	9.1	8.9	5.4	1.4
9-12	43.5	43.2	50.9	47.7	49.9	49.5	47.9	44.6	45.7	34.5	21.5
13+	44.0	33.1	29.9	35.3	34.0	37.2	41.4	46.3	45.3	60.1	77.1
Age up to 34	35.4	56.2	49.3	46.0	40.3	38.0	34.8	33.2	24.2	20.0	12.3
35-54	50.7	30.4	37.8	43.3	46.6	50.6	50.7	53.7	63.0	61.2	69.4
55-64	11.4	8.4	9.7	8.8	10.9	9.6	11.7	11.5	11.3	16.3	16.3
65+	2.5	5.0	3.2	1.9	2.2	1.8	2.9	1.5	1.5	2.6	2.0
Jews - Total	88.1	81.2	80.6	80.8	81.1	88.8	90.5	91.7	93.7	95.1	97.5
Continent of birth Asia-Africa	16.2	17.4	17.6	12.9	12.6	16.4	18.0	19.8	19.3	16.6	11.7
Europe-America	28.8	31.0	27.0	27.8	31.5	31.2	29.4	28.4	24.4	28.9	28.2
Israel	42.7	32.3	35.1	39.6	36.6	44.0	42.6	43.1	50.0	49.7	57.4
Non-Jews - Total	11.9	18.8	19.4	19.2	18.9	11.2	9.5	8.3	6.3	4.9	

Source: Israel, Central Bureau of Statistics, Income Surveys, 1995.

171. The data shown above is of relative value for the present purposes, but is the best available. It relates to "income" from all jobs held by all earners in a household, together with allowances, overtime, premiums, income from self-employment, property, interests and dividends, pensions, etc. Non-recurrent income is not included. The demographic and educational characteristics detailed in the table refer to the head of household - i.e. the oldest working person. These data are not available by gender.

172. The data in the above table indicate a correlation between income in Israel and both the level of education and age. Income also tends to be higher among Jews than among non-Jews.

Occupational health and safety

173. Occupational health and safety at the workplace are protected in Israel by different legal arrangements. At the most basic level, social security and regular torts law entitle employees to compensation in the event of work-related injuries (see further detail under article 9 of the Covenant). In addition, protection of workers from work risks is promoted by different laws which create a rather complex regulatory scheme of standards and of institutions to monitor these standards.

174. The Work Safety Ordinance (New Version) 1970 is the main law defining standards for an appropriate environment for people to work in (see the full text in annex A to this report). It deals with safety in areas such as machinery, prevention of falls, entry into confined space, means of escape in the event of fire, etc. It also regulates health hazards, including the control of exposure to hazardous materials, medical supervision, the welfare of employed persons and the control of environmental factors such as temperature, ventilation, lighting, etc.

175. Many regulations have been enacted, in addition to this ordinance, which concern work safety and hygiene, including regulations which control exposure by setting occupational standards. These involve the periodic monitoring of the workplace environment and biological monitoring in order to detect early and minor changes of workers' health at a sub-clinical stage and remove workers from further exposure. These regulations refer to: asbestos, arsenic, benzene, noise, ionizing radiation, metals (lead, mercury, cadmium, chromium, etc.), organic solvents, pesticides and other substances. Some regulations prohibit the use of dangerous agents such as certain carcinogens. Others deal with issues such as safety on building sites or in electricity works, protecting workers by the obligatory use of personal protective gear and other measures.

176. The Labor Inspection (Organization) Law 1954 creates the legal basis for most of the organizations which deal with issues relating to safe and healthy working conditions in the State of Israel (see the full text in annex 1 to this report). The law creates regulatory organizations of various sorts: State organs, public corporation and private bodies. The following is a brief survey of this rather complex system.

The Inspection Service of the Ministry of Labor and Social Affairs

177. The Inspection Service is legally mandated to supervise labour safety, occupational hygiene and welfare in places where people work or are intended to work. The main targets of the inspection service are:

To prevent work accidents;

To prevent occupational diseases which can be caused by exposure to chemicals or physical hazards;

To raise the level of safety in workplaces where there are machines, processes, handling of materials, storage, etc.;

To maintain appropriate working conditions.

178. For these purposes the law empowers the Inspection Service's inspectors to issue safety orders, prohibiting the use of any machine, installation, equipment or material which endangers the welfare or health of a person. Another instrument is the improvement order by which the occupier of a workplace is required to comply with legal provisions relating to the safety, health, hygiene or welfare of persons working in the workplace. The inspectors carry out regular inspections, investigate work accidents and in general seek to use their authority to achieve the above-mentioned goals. They also supply technical information and advice to employers and workers on the most effective means of complying with legal requirements.

179. The Inspection Service employs 75 labour inspectors and runs the Industrial Hygiene Laboratory. In addition, there are 15 assistant labour inspectors whose main role is to visit workplaces to check working conditions; safety and occupational hygiene, and to instruct managers, supervisors and employees on the safety and health aspects of their work.

180. In 1996 the Inspection Service performed 60,761 inspections of workplaces: more than half of the visits were in industry and workshops, about 15,700 of the inspections were made on building sites, while the rest were at agricultural workplaces, harbours, gas and oil storage facilities, etc. The inspectors carried out 957 investigations of work accidents and cases of occupational disease. The Industrial Hygiene Laboratory performed 3,204 environmental tests in places of work measuring the levels of hazardous materials such as dust, gases and fumes in the air inhaled by workers. Other tests were performed to measure the levels of noise, temperature and other environmental factors.

181. There is a serious problem with traditional health and safety inspection techniques, because of the inability to supervise all places of work with the limited staff available. An inspector today has to check and inspect some 1,000 workplaces, a task which is virtually impossible to carry out in full. As a result, the Ministry of Labor and Social Affairs is now developing a new approach as follows:

Providing the opportunity for workplaces to adopt health and safety management standards which they may maintain themselves, allowing the labour inspectors to take a supervisory "back seat" role;
Emphasizing the prevention of hazards at source by obliging manufacturers and importers to introduce only equipment and materials which meet safety and health standards;
Creating a newly revised and up-to-date information system which will enable inspectors to focus their resources in areas needing priority attention. This information system will also be shared with other institutions like the Institute for Safety and Industrial Hygiene (see below) in deciding upon policy.

The Institute for Safety and Hygiene

182. The Labor Inspection (Organization) Law 1954 also created a specialized public corporation - the Institute for Safety and Hygiene. This institute is legally autonomous from the State but is under the ministerial responsibility of the Minister of Labor and Social Affairs. Its roles are to conduct courses and activities aimed at heightening safety awareness and to carrying out research and publishing its findings.

Private regulatory bodies

183. The law also mandates the occupiers of workplaces of more than 50 workers to appoint safety officers, who must be authorized by the Inspection Service. These officers have an important role. Their duty is to use their professional skills and knowledge to promote safety issues in workplaces. They have the legal power to stop any work, machine or process in the workplace if it creates an immediate danger to a worker.

184. The law also mandates the establishing of safety committees in workplaces with 25 employees or more. The duties of these committees are: to clarify causes and circumstances of work accidents; to propose measures for their prevention; to recommend improvements and to advise regarding safety regulations.

185. In addition, the employer has to provide all workers with updated information about hazards that exist in the workplace, and to instruct them on how to perform their work safely and to avoid occupational hazards. Furthermore, in every workplace with 50 employees or more a safety programme has to be prepared which includes a timetable to perform all changes and improvements needed to raise the level of safety in the workplace and maintain the workplace with minimum risk to workers.

186. All workers in the State of Israel are included in the existing protective schemes provided by law and benefit equally from them.

Data on work injuries, fatalities and injury compensation

187. The following table relates to work injuries in the State of Israel from 1992 to 1996:

Year	Number of injuries	Number of workers	Incidence (%)
1992	74 213	1 650 200	4.50
1993	74 701	1 846 900	4.04
1994	81 179	1 969 200	4.12
1995	84 884	2 093 000	4.05
1996	92 140	2 133 700	4.31

188. The following table relates to fatalities from work accidents 1995/1996:

Sector	1996	%	1995	%
Industry	22	25	24	30
Building	49	55	40	49
Agriculture	5	6	5	6
Quarries	1	1	1	1
Ports	1	1	0	0
Trains	1	1	0	0
Other	10	11	11	14
Total	89	100	81	100

189. The following statistics relate to the number of people receiving injury compensation in 1996 according to branches of work:

Total 92 274

Self-employed 10 418

Employed (salaried) 81 856

of which:

Agriculture, forest, fishing 5 050 6.2%

Industry, small industry 26 200 32.0%

Building 10 634 13.0%

Electricity, water 1 013 1.2%

Commerce, finance 7 827 9.6%

Transportation, communication 5 791 7.1%

Services 24 455 29.9%

Other 886 1.1%

(including Palestinian workers and foreign workers)

190. The following information relates to injury compensation in 1996 according to sex and age:

	Total	-17	18-24	25-34	35-44	45-54	55-60	61-64	65+
Total	92 274	793	13 550	24 428	22 892	18 605	7 187	2 833	1 986
%	100	0.86	14.68	26.47	24.81	20.16	7.79	3.07	2.15
Males	73 599	718	11 284	20 655	18 332	13 646	5 105	2 268	1 591
%	100	0.98	15.33	28.06	24.91	18.54	6.94	3.08	2.16
Females	18 675	75	2 266	3 773	4 560	4 959	2 082	565	395
%	100	0.4	12.13	20.2	24.42	26.55	11.15	3.03	2.12

More detailed data are not available and will hopefully be provided in the next report under the Covenant.

Equal opportunity for promotion

191. The Equal Employment Opportunities Law, 1988 prohibits discrimination in the area of promotion. This law was discussed above in the context of the right to work. There are only a few additions that need to be made here.

192. The first landmark decision in Israel on the issue of discrimination at work, given by the National Labor Court in 1974, dealt directly with the issue of promotion. In the absence of an immediate statutory source, the Court based its reasoning on the illegality of a collective contract contradicting public policy, discrimination being seen as such a contradiction.

193. Promotion rights are primarily found in collective agreements. Consequently, equality of opportunity in promotion remains a question of non-discrimination in collective agreements. Factual data are hard to gather on such matters.

194. Finally, equal opportunity in promotion should be indirectly enhanced by the development of "job analysis", which is developing for the sake of claims under the Female and Male Workers Equal Pay Law, 1996. This should be so because opportunities for promotion are obviously dependent on the jobs available, which are in turn dependent on the job descriptions considered relevant by the employer. Using job analysis should widen the range of factors to be considered in granting promotion and make it more difficult for employers to discriminate in promoting workers.

Rest and leisure

195. Rest and leisure-related rights are secured in Israel on two levels: several protective laws define binding minimum standards; additional rights stem from collective agreements and sometimes from extension orders.

196. The Hours of Work and Rest Law 1951 defines the length of the working day, the working week, weekly rest and work breaks (see full text in annex A to this report). It sets the procedure for employing workers beyond the quota of hours provided for in the law or during the weekly rest, including the compensation to be paid for such overtime work. Breach of this law is grounds for a civil suit by the employee, and in some instances constitutes a criminal offence of the employer. In addition, the law provides the Ministry of Labor and Social Affairs with various powers, mainly for supervision, inspection and the issuance of exceptional work permits.

197. The Annual Leave Law 1951 defines the right to annual leave and its duration, as well as remuneration during such leave (see full text in annex A to this report). It also covers such issues as the amount of leave that may be accumulated and the limitation period for bringing actions to court under the law. The law also includes criminal and regulatory provisions similar to those of the Work and Rest Hours Law 1951.

198. Collective agreements commonly grant more generous rights than those laid down by the above two laws and extension orders are commonly issued. As a result, for about 80 per cent of workers these statutes are of little importance.

199. A shift took place in Israel between 1995 and 1997 from a six to a five-day working week. This shift is one of the best examples of the importance of collective bargaining. A general collective agreement was first reached in 1995 at the national level by the most representative organizations of employees and of employers. This agreement was a year later extended to the vast majority of workers in Israel. Accordingly, the maximum "working week" for most workers went down, firstly to 45 hours a week and, as from 1 July 1997, to 43 hours. The legislator then amended the law in 1997 so that the maximum "working week" was set to 45 hours a week (instead of 47 hours).

200. Neither of the above laws applies to all employees. Each law specifies certain types of workers excluded from coverage (section 30 (a) of the Hours of Work and Rest Law 1951 and section 35 (a) of the Annual Leave Law 1951). But none of the

categories is based on discrimination. The exclusions stem from the characteristics of specific sorts of employment, not from personal characteristics of the employee.

201. A distinction between Jews and non-Jews is made in the Hours of Work and Rest Law 1951, which requires explanation. For Jews, weekly rest must include Saturday - the Jewish religious rest day (Sabbath), whereas for non-Jews it must include either Friday, Saturday or Sunday, according to the worker's custom (sect. 7). The Israeli courts have explained this difference by noting the two objects of the law: one, social - to protect workers' health by providing for rest - the other being to conserve the Jewish people's heritage and to respect the religious feelings of broad parts of the population. One should bear in mind that a large number of non-religious Jews still define themselves as "traditionalist" and cherish the fact that Sabbath is a common special day.

202. In addition to the above laws, below are the laws enumerating the public holidays employees are entitled to without pay deduction:

- (a) Religious holidays of members of the Jewish, Muslim, Christian and Druze communities in Israel;
- (b) Independence Day;
- (c) Election Day.

203. The employers' obligation to pay workers for public holidays is stipulated in the collective bargaining agreements for each economic sector.

Article 8 - Collective labour rights

Related international conventions binding Israel

204. Israel has been a party to the International Covenant on Civil and Political Rights since 1991. Israel's initial report is to be submitted this year.

205. Israel has been a party to the ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), since 1957; the last report relates to the years 1992-1993.

206. Israel has been a party to the ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98), since 1957; the last report relates to the years 1993-1994.

207. As already mentioned, the ILO standards have had and still retain tremendous influence on the shape of Israeli labour law. This is even more so as far as collective labour law is concerned. In the first place, a central statute in this field, the Collective Agreements Law 1957, was deliberately drafted so as to comply with the ILO Convention No. 98. Secondly, important issues in this field are not covered by legislation but by judicial precedents, which have always been primarily influenced by ILO conventions and standards.

Formation of trade unions and membership

208. While trade unions in Israel have statutory status and powers (described below), there is no law regulating their formation and the conditions for joining them.

Nevertheless, the right to organize in trade unions is recognized by Israeli courts as a fundamental principle, whether as part of the civil right to organize or as a specific worker's right. As the High Court of Justice stated in a recent landmark case:

"The right of association is 'one of the human liberties' [cite omitted], and it is deeply entrenched and well protected in the jurisprudence [cite omitted]. This is so in general, and also in respect of the right to organize in a trade union [cite omitted] ... Indeed, in Israel too, workers of all kinds are entitled to establish an organization of their choice, without any prior authorization requirement.

"The right to freedom of association, and its various components, is not written in a code of legislative acts. This right was recognized in two international labour conventions ... Those treaties were not incorporated into Israeli law. Nevertheless, the trend to reconcile domestic law and the State's international obligations as undertaken in treaties, has led to the recognition that 'according to the international labour law which is binding in Israel, the right of workers to organize is ensured' [cite omitted]. In light of the essence of this right, it can be said that 'the freedom of Israeli workers to form trade associations is one of the fundamental bases of our democratic society ... and the Court has been and will continue to be diligent in securing its existence and giving optimal meaning and validity to its protection' [cite omitted]. It should be noted, that not long ago it was proposed that the right to organize in trade unions be incorporated in the draft Basic Law: Social Rights Bill, and thereby accord it a constitutional status ... Although this proposed legislation was not adopted, the status of freedom of association as a fundamental principle of the system was not impaired."

H.C. 7029/95 The New General Workers' Histadrut v. The National Labour Court, Amit et al., Takdin-Supreme vol. 97 (1), 38, pp. 51 and 89-90.

209. The right thus includes the right to form a union, the freedom of operation of a union, and the right to freely join a union, including the right not to join one.

The right to form a trade union

210. As a general rule, any group of workers can form a labour union, but for this union to have legal power it must meet the recognized characteristics of a workers' organization and it must be representative.

211. The Labour Courts have developed a significant set of tests for the identification of an organization as a trade union:

Stability: the organization needs to be created with no time limit or for a long period, not for a particular bargaining session;

By-laws: the organization has to have by-laws regulating its aims, its institutions and their power, conditions for membership, and the like;

Personal and voluntary membership: a trade union must be based on the personal and free consent of workers to accept membership. This applies to becoming a member as well as to forfeiting membership;

Workers' representation: the vast majority of members have to be employees;

Aims: the organization's aims have to be first and foremost collective bargaining with the employer for the purpose of fixing working conditions and workers' rights within collective agreements;

Independence: a trade union has to be independent from the employer and free to operate without external intervention;

Internal democracy: a trade union has to respect minimal democratic principles such as periodic, free and equal elections of representatives, with the participation of all member workers, public accountability of representatives, freedom of speech of workers and principles of non-discrimination.

Incorporation: there is no requirement to be formally incorporated.

212. Representation requirements are defined in the Collective Agreements Law 1957 according to the type of agreement (see full text in annex A to this report). Section 2 of this law distinguishes between a "special collective agreement", which relates to a particular undertaking or employer, and a "general collective agreement", which relates to branches of employment in the whole country or in a particular area. For both types, the basis of representation is the "greatest number of organized employees to whom the agreement is to apply"; for a "general" agreement, representation is a function of membership only; for a "special" agreement, it is either membership or other form of representation (i.e. by a special decision by workers), but the organization must represent not less than one third of the total number of employees to whom the agreement is to apply (see sections 3 and 4 of the Law).

Number and structure of trade unions in Israel

(i) The Histadrut

213. There exist in Israel a relatively large number of trade unions. The most prominent is the General Federation of Labor - Histadrut. It was created in 1920, long before the creation of the State. Its name was then the General Federation of Jewish Workers in Israel and it was changed in 1966, reflecting the fact that the Histadrut had become representative of all workers, including non-Jews. In 1996 it was renamed again The New Histadrut, reflecting a change in leadership. According to its by-laws, any worker aged 18 or over who is not a member of another labour organization may become a member. In fact, Histadrut membership extends across a broad spectrum: production workers and clerks, blue and white collar workers, urban and rural workers, academicians and unskilled labourers, retired persons and students, Jews and non-Jews, men and women, and so on.

214. The Histadrut's highest legislative institution is its National Conference, whose candidates are elected in proportional and secret elections on the basis of political party lists. The main Israeli parties are represented. The Labour Party retained its majority until 1994, when it had to enter a coalition with a new list that had taken over. The Secretary-General has always been a Labour Knesset member, except for a period of about two years between 1994 and 1996.

215. Histadrut's activities traditionally aim to be of a holistic nature, including trade union, social security and mutual aid, labour economy, culture and education. However, trade union activities are today undoubtedly the most important. These are

conducted according to the Histadrut by-laws on three levels: the workers' committee in every plant which represents all workers in the plant; a local or regional worker's council representing the Histadrut at the local level; and the national union, which is organized by profession, occupation or industry. There are 37 national unions operating under the Histadrut umbrella. Each national union is empowered to sign collective agreements on behalf of the Histadrut.

216. The vast majority of Israeli employees belong to the Histadrut. Up until 1995 membership in the Histadrut was linked with membership in the General Health Fund, the main provider of health services in the country, which is affiliated to the Histadrut. As a result there were many members who were not workers and a portion of the General Health Fund was transferred to the Histadrut. This link was severed in 1995 when a new National Health Insurance Law remodelled the system of funding of health providers in Israel, resulting in a certain cut in the Histadrut membership. There is no doubt, however, that the Histadrut still remains the largest and most representative workers' organization in Israel. Exact membership numbers are no longer disclosed by the Histadrut.

217. The prominence of the Histadrut gives it a special status. General collective agreements between the Histadrut and the Coordinating Council of the Economic Organizations (relating to the private sector) or between the Histadrut and the Government (relating to the public sector) are the most influential instruments shaping labour relations and working conditions in Israel today, especially when extended by extension order. Examples of the sort can even be found in various parts of this report, as with regard to "wage fixing" and the "cost-of-living increment", or the shortening of the "working week". A dramatic illustration of the importance of this instrument was in 1985, when the inflation rate had got out of control, reaching around 400 per cent annually, and an emergency economic plan was badly needed. An economic package was eventually finalized at the highest level on a tripartite basis - between the Finance Minister, the Secretary-General of the Histadrut and the Chairman of the Coordinating Council of the Economic Organizations. This deal is considered to have greatly contributed to saving the Israeli economy.

(ii) Labour organizations other than the Histadrut

218. Some of the free professions are organized within the Histadrut, but a few others are organized in independent trade unions: the Medical Federation, the Journalists' Union, the High School Teachers' Union and the University Teachers' Union. Some unions, although organized within the Histadrut, enjoy a high degree of autonomy, such as the Union of Engineers and Architects.

219. Other unions in Israel are of a general character, like the Histadrut, but with far fewer members and less political and social influence. The differences between them and the Histadrut are ideological. The largest such organization is the National Workers' Federation, which offers a more nationalist platform than the somewhat socialist one of the Histadrut. It does not publish numerical information on its membership and usually has not been successful in becoming the representative organization in places of employment. There also exist a few small labour organizations of religious orientation. These organizations have never really competed with the Histadrut, but have come to agreements with it, granting them representation in delimited places of employment.

220. Although one can doubt the significance of the role played by non-Histadrut labour organizations in shaping Israeli labour relations, their continued existence does attest to the reality of freedom of formation and operation of trade unions. Furthermore, national unions within the Histadrut have sometimes threatened to step out and gain independence, affirming their legal right to do so. This aspect of trade unions' rights has had its influence on the Histadrut itself.

Individual freedom to join a trade union

221. No employee in Israel can be forced to join a labour organization. This clearly derives from the norm mentioned above, according to which "voluntary membership" is an inherent characteristic of a labour union. This was stated by the Labour Court on various occasions such as the following:

"Whereas 'freedom of association' is directed, essentially, towards the relevant public, the 'right to associate' is directed at the individual. The 'right to associate' ensures that the individual is always able to join an organization of his choice."

1975/5-1 Markovitz Leon et al. v. Histadrut, PDA 6, 197.

222. As to the meaning of "voluntary membership" the court has made it clear -

"Voluntarism in our context means that membership in the association is the result of the will of the person in question; if he so chooses - he may join the association; if he so chooses - he may leave it. The answer to the question whether membership in an association is voluntary may be found in its code."

1982/5-2 Histadrut v. The Paz Senior Workers' Association, PDA 14, 367, 385.

223. Collective agreements in Israel also reflect this principle. These commonly set arrangements of the "agency shop" type: the employer recognizes the labour organization with which the agreement is made as his or her counterpart for collective bargaining, and agrees that collective agreements with this organization should apply to all workers employed by him or her. But in contrast to "closed shop" arrangements, according to which the employer undertakes not to hire employees who do not join the labour organization with which the agreement was made, "agency shop" arrangements leave the individual workers the choice whether to join the union or not. However, this arrangement requires employees who choose not to be members of a union to pay a "trade union service fee".

224. The said service fee, which is lower than the membership fee and does not confer membership rights or duties, is considered a fair contribution in return for services. One should remember that collective agreements can only add to the workers' rights and may apply also to workers who are not members of the union but who are employed at the workplace covered by the agreement. The trade union service fee gained statutory recognition in 1964, when the Wages Protection Law 1958 was amended to include "trade union service fees" among the permissible deductions from a worker's wages.

225. The legitimacy of "closed shop" arrangements was dealt with in brief by the Labour Court in a relatively recent case.

Freedom of operation of trade unions

226. Labour unions in Israel are free to formulate their constitutions without any interference on the part of the State. This basic principle is clearly recognized by the Labour Court:

"One of the elements of 'freedom of association' is the right of the organization to make its own constitution, in accordance with the laws of the State, as long as such laws are not contradictory to the principle of freedom of association."

1975/5-1 Markovitz Leon et al. v. Histadrut, PDA 6, 197.

227. Freedom to organize goes with its accompanying rights; these together make up the civil liberties necessary to the continuous and routine operation of trade union activities, such as personal freedom, protection from arbitrary arrest or imprisonment, freedom of expression and so on. Labour organizations have always enjoyed such liberties in Israel, and their application to labour relations is taken for granted.

228. A union's freedom also means autonomy in collective bargaining. This would have no meaning without collective agreements being granted recognition. The Collective Agreements Law 1957 not only recognizes collective agreements and grants them the power to determine workers' rights, it also keeps to a minimum the possibility for State interference. Thus, to be recognized a collective agreement need only be filed for registration, the registrar having no discretion on the matter. Furthermore, a claim with regard to representation can only be initiated by another employees' organization (art. 6 of the Collective Agreement Law 1957).

229. Nevertheless, since collective agreements have the effect of law for the workers to whom they apply, commonly recognized restrictive principles apply. Although the content of a collective agreement is left to the parties to define, it is not allowed to contravene the law or fundamental public interests. In this spirit, the Labour Court decided that principles of regular contracts law in Israel - such as the duty of "good faith" in negotiations or the various grounds for nullity of contracts - apply to collective bargaining and agreements. The doctrine of "fair representation" is applied as well.

The right to strike

The status of the right to strike

230. The right to strike as such is not regulated by an explicit legal provision, however, it is uncontested that such a right exists under Israeli law. On countless occasions the Labour Courts and ordinary courts of Israel have recognized explicitly or implicitly the right of workers to strike as a basic liberty. In a landmark case, the Supreme Court of Israel analysed the status of the right to strike:

"The statutory law in Israel does not include a specific provision granting workers the right to strike, but the issue of striking is mentioned in many legislative acts ... [list of provisions omitted]. Despite the lack of a positive legislative provision concerning the 'right' to strike, its existence has been recognized by the Labour Courts and the ordinary courts. In Case 31/4-4 [Labour Court cite omitted], it was stated that 'the view that participation in a strike suspends the

labour contract, and does not constitute a breach of contract is derived from the right to strike, and although in Israel this right is not explicitly provided for in a legislative act, it arises from the ILO Right to Organize and Collective Bargaining Convention, ratified by Israel, and is supported by the various provisions in labour laws' [additional citations omitted]. In C.A. 573/68, P.D. vol. 23 (1), 516, the Supreme Court (opinion of Judge Berenson) recognized the legality of a strike which 'conformed with and was legal under tort laws'. In C.A. 25/71, P.D. vol. 25 (1) 129, 131, Judge H. Cohen wrote the following: 'It can be said that nothing could be further from the Israeli legislator's mind than the intent to abolish the institution of strikes: if one of the English judges referred in a recent judgement to the right to strike as a "sacred cow", we should consider it at least a sacred tradition which can no longer be doubted.' In C.S.A. 1, 2/86, P.D. vol. 40 (2) 406, 415, [Supreme Court] President Shamgar held that Article 19 of the Collective Agreements Law, 1957 is designed to protect the right to strike. Consequently, it can be said that the 'right' to strike has gained a strong position in Israeli legislation and case law."

C.A. 593/81 Ashdod Car Factories Ltd. v. Chizik, P.D. vol. 41 (3) 169, 191.

231. In parallel, the courts have recognized as a corollary of the right to strike the employer's right to order a lock-out. However, such action on the part of the employer can only be taken as a defensive measure (i.e., as a reaction to a strike) and must be proportional in its effect to the measures taken by the employees.

232. The already mentioned Basic Law: Social Rights Bill addresses the right to strike (in art. 5). Its adoption would build upon the existing recognition of the right to strike and afford it additional constitutional protection, thus securing not only the status of this right but also its scope. Such protection is needed to counter the possible restrictive effects of the existing Basic Laws which gave constitutional status to the rights to property and to freedom of contract.

The content of the right to strike

233. The term "strike" has been defined by judicial precedents. A strike is basically a collective measure applied in the context of a labour dispute between recognized parties. Even though protection is given to the individual employee, the exercise of this right is not left in his hands but to the recognized party to a labour dispute - his or her labour organization. Or, in the wording of the Settlement of Labour Disputes Law 1957 (art. 3):

"In a labour dispute between the employer and his employees or some of his employees, the parties to the dispute are the employer and the labour organization representing most of the employees affected by the dispute, and in the absence of such a labour organization, the representatives elected by most of these employees, whether for general matters or for the specific labour dispute."

234. The right to strike is implemented in Israel by granting special protection to workers and their organizations when going on strike:

(a) First and foremost, participation in a strike shall not be considered a breach of individual labour contract, including individual obligations under a collective agreement (art. 19 of the Collective Agreements Law 1957). The strike only suspends the labour contract, but does not provide legal justification for its termination;

(b) Second, a strike does not constitute a breach of contract for the purposes of presenting a tort claim for "causing a breach of contract" (art. 62 (b) of the Torts Ordinance (Revised Version));

(c) A strike does not interrupt continuity in employment for the purposes of calculating benefits under the various protective labour laws, such as pension (art. 3 (2) of the Public Service (Pensions) Law (Consolidated Version) 1970), severance compensation (art. 2 (6) of the Severance Pay Law 1963), annual leave (art. 4 (4) Annual Leave Law 1951), rights of veterans (art. 4 (b) of the Discharged Soldiers Reinstatement Law 1949) and soldiers in reserve service (art. 7 (c)(3) of the Reserve Service (Benefits) Law 1952);

(d) A strike regarded as legitimate by the courts will not give grounds for an injunction against the strikers' union, and no relief will be granted in favour of a party to a strike who acts unlawfully or in bad faith. The courts are guided in this regard by general principles as well as by the Settlement of Labour Disputes Law 1957. This law places limitations on strikes (described below), hence supporting the view that strikes that meet those conditions are legitimate.

(e) Lastly, the Employment Service may not interfere with strikes, and is prohibited from referring potential employees to replace workers on strike (art. 44 of the Employment Service Law 1959).

Restrictions placed on the right to strike

235. The right to strike in Israel is not unlimited, and certain restrictions have been recognized by the courts based on various sources - legislation, labour organizations' by-laws, collective agreements - and with the guidance of ILO standards. It should be noted that similar restrictions, created by all three alternative sources of law, apply with regard to lock-outs.

(i) Restrictions in legislation

236. Article 5 A of the Settlement of Labour Disputes Law 1957 imposes a technical prerequisite on the right to strike:

"Notwithstanding Article 5, a party to a dispute must give notice [of dispute] to the other party and to the chief official, on every strike or lock out, whichever is relevant, at least fifteen days before their initiation."

This provision has been explained by the Supreme Court as introducing a compulsory "cooling off" period designed to enable the parties to the dispute to resolve their differences through negotiations.

237. The Labour Courts have placed a broad construction on this provision and required prior notice in a range of partial work sanctions such as slow-downs, refusal to work overtime and partial strikes. In the public sector, failure to serve notice would automatically lead to the classification of the strike as unprotected.

238. Article 37 A and B of the Labour Dispute Settlement Law 1957 provides that a strike in the public sector which takes place within the duration of a collective agreement (with the exception of a strike unrelated to wages or social conditions, approved by a qualified labour union), or in the absence of such agreement and not authorized by the qualified labour union organs, will be classified as an unprotected strike.

239. The classification of a strike as unprotected does not necessarily imply that it is also unlawful, but such determination will result in the loss of some of the privileges accorded to participants in a lawful and protected strike.

240. Article 37 A of the Labour Dispute Settlement Law 1957 permits political strikes (i.e. strikes unrelated to wages or social conditions) in the public sector, even during the life of the collective agreement, on condition that they are approved by the qualified union organ. No similar provision can be found with regard to the private sector. Thus, no strike will be recognized as lawful in that sector during the life of a collective agreement.

(ii) Restrictions in union by-laws

241. The labour unions have voluntarily provided, in their constitutive instruments and other by-laws, for certain procedures to be complied with in every case a strike is to be called. For instance, the constitution of the Histadrut lays down a system of consultations and voting procedures involving the national union representatives, the local workers' committees and the Histadrut Workers' Council. Failure to comply with these procedures would lead to the classification of the strike as an unlawful (or a "wildcat") strike.

(iii) Restrictions in collective agreements

242. In many collective agreements a provision prohibiting strikes for their duration can be found. Furthermore, the Labour Courts have held that an implicit presumption of non-strike obligation can be found in any collective agreement. In addition, any difference pertaining to the implementation of the agreement should be resolved through the mechanisms provided for in the agreement, or, in their absence, through the Labour Courts. Thus, unless there is some indication to the contrary in the agreement itself, strikes conducted during the life of a collective agreement are unlawful. This line of decisions of the Labour Courts has been significantly narrowed by the Supreme Court, which has held that the obligation not to strike is valid only if the other party keeps his or her obligations under the agreement.

(iv) Additional restrictions in case law

243. The main restriction imposed by the Courts on the right to strike stems from a Supreme Court decision that the immunity granted under article 62 of the Torts Ordinance (Revised Version), dealing with the tort of "causing a breach of contract", does not extend to encompass other torts. Consequently, strikers can be held liable under several wrongs, such as negligence, trespassing, misappropriation of personal property and nuisance. This decision implies that the right to strike can only be applied subject to the non-commission of a tort vis-à-vis third parties.

244. Another limitation involves the purpose of the strike. A strike cannot be considered lawful if it has nothing to do with labour relations. Hence, a political

protest can only lead to a short protest strike. The exact definition of "political strike" in this sense is rather dynamic and hard to grasp.

245. Additional restrictions apply to unprotected strikes in the Public Sector:

- (a) The Employment Service may send replacement workers to substitute the strikers;
- (b) A strike can be deemed a breach of the collective employment agreement;
- (c) Immunity under article 62 of the Tort Ordinance (Revised Version) is lost (but only vis-à-vis the direct parties to the labour dispute).

Statistics on strikes in Israel

246. The following figures amply demonstrate the frequent use made of the right to strike by employees in Israel and of employers' lock-outs.

Year	No. of slow-downs	No. of strikes and lock-outs (excluding slow-downs)	No. of persons involved in strikes and lock-outs	Work days lost
1960		135	14 420	49 368
1965		288	90 210	207 561
1970		163	114 941	390 260
1971		169	88 265	178 621
1972		168	87 309	236 058
1973	54	96	122 348	375 023
1974	49	71	27 141	51 333
1975	62	117	114 091	164 509
1976	76	123	114 970	308 214
1977	57	126	194 297	416 256
1978	55	85	224 354	1 071 961
1979	97	117	250 420	539 162
1980	54	84	91 451	216 516
1981	59	90	315 346	782 305
1982	79	112	838 700	1 814 945
1983	47	93	188 305	977 698
1984	74	149	528 638	995 494
1985	64	131	473 956	540 232
1986	92	142	215 227	406 292
1987	89	174	814 501	995 546
1988	93	156	327 193	516 071
1989	58	120	209 841	234 073
1990	75	117	571 172	1 071 279

1991	52	77	38 776	97 923
1992	64	114	211 833	386 658
1993	40	73	462 208	1 636 866
1994	38	75	106 047	792 533

The armed forces, the police and the administration of the State

247. Any group of workers can form a trade union, with a few exceptions. Members of the police force are prohibited by law from creating an organization of their own, but they are allowed to join regular trade unions. Judges traditionally do not consider themselves ethically free to organize, even though there is no statutory provision on the matter. In any case, the courts have ruled that the status of judges is a special one, and that they are not "employees". Civil servants, on the other hand, are under no limitation whatsoever to organize and they have done so.

248. Furthermore, the courts have held that in circumstances where the exercise of the right to strike would cause detriment to another vital interest in an irreconcilable way, the right to strike may be restricted. Thus, soldiers and policemen cannot strike.

249. Regarding civil servants, the right to strike may be restricted for "indispensable" workers in specific key positions, who perform crucial tasks for the safeguard of vital public interests (i.e. certain medical functions, vital social services, supply of vital public commodities, and so on). Use of governmental emergency powers is then made to order individual workers to stay at work. Breach of such orders can be sanctioned by penal law.

250. It should be stressed, however, that the use of emergency orders is dependent upon specific approval by the Cabinet. Furthermore, according to the Attorney-General's Directives, consultation with the Attorney-General's office is also required, and each individual order to be issued is then checked.

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