



STATE OF ISRAEL

Ministry of Justice

Follow-up to the Oral Presentation by the State of Israel before
The U.N. Committee on Economic, Social and Cultural Rights

**THE IMPLEMENTATION OF
THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS (ICESCR)**

2022

As requested by the United Nations Committee on Economic, Social and Cultural Rights in its concluding observations on the fourth periodic report of Israel, dated October 18, 2019, the State of Israel respectfully presents the following information:

Concluding Observation no. 11 (c) and (d):

GOI Reply:

As has been previously clarified, it is Israel's position that the International Covenant on Economic, Social and Cultural Rights (hereinafter: "the Covenant") is not applicable beyond a State's national territory. For an elaboration of this position, see our Second Periodic Report, pp. 3-4.

Notwithstanding this position, in the spirit of openness with which Israel approaches the constructive dialogue with the honorable Committee, we respectfully present the following information.

Free movement of civilians and goods

According to international law, as a sovereign state, Israel has the authority to decide who may enter its borders. There is no right to enter the territory of the State for persons who are not citizens; this includes Palestinian residents of the West Bank and Palestinian residents of Gaza in particular, as Gaza is in a long-standing armed conflict with Israel.

Unlike in the West Bank, the Gaza Strip has not been under Israeli control since September 12, 2005, when Israel's last IDF forces left the area of the Gaza Strip following the implementation of Israel's "Disengagement Initiative". Since then, Israel clearly does not have effective control in the Gaza Strip. As a consequence, as also affirmed in 2007 by the Israeli High Court of Justice, Israel does not have a general duty to ensure the welfare of the population of the Gaza Strip. Rather, Israel's obligations towards the Gaza Strip stem from the continuing state of armed conflict with the Hamas terrorist organization and other terrorist organizations in Gaza. The Gaza Strip shares a border with Egypt, over which goods and persons transfer actively.

Following Hamas' violent take-over on the Gaza Strip, the area has turned into a "hostile zone" similar to an enemy state engaged in war against the State and its citizens. In light

of the situation, the Israeli Government (GOI) (The Ministerial Committee on National Security Issues) resolved on September 19, 2007, to impose restrictions, *inter alia*, on the passage of goods and to limit movement of persons in and out of the Strip via Israeli sovereign territory, subject to humanitarian exceptions only.

The policy regarding movement between Israel, Gaza and the West Bank is decided based on security considerations, including: Hamas' control over Gaza; the non-stop violent actions of terrorist organizations against Israel from Gaza, which breach all standards of international law by launching rockets at Israel and committing and attempting attacks against Israeli citizens and soldiers; the efforts of terrorist organizations to exploit Palestinian citizens by enlisting them to commit terrorist attacks, pass along information, money or equipment for terrorist actions; and more.¹

In June 2010, the GOI decided on a major shift in Israel's policy towards the Gaza Strip. This policy and its implementation included three (3) major aspects:

- All goods can enter the Gaza Strip freely, with the sole exception of goods that may pose a security risk to Israel, such as dual use materials, which will require authorization;
- A substantial increase in the capacity of the Kerem Shalom crossing, through which goods can enter the Gaza Strip (hundreds of truckloads daily);
- Increased facilitation for projects funded and implemented by the International Community, including the entry of dual-use goods that are required for their implementation, subject to appropriate supervision.

Since then, subject to the security situation, Israel has continued implementing this revised policy towards the Gaza Strip. The policy regarding entry of Palestinians into Israel, including in order to transfer from the West Bank to Gaza and to leave the State, is publicly available on the Civil Administration's website, and is examined regularly by the relevant authorities, based on the developing security situation. The relevant authorities approve hundreds of thousands of requests to enter Israel each year, for a variety of purposes, including employment and commerce. Each week hundreds of thousands of Palestinians enter Israel from the West Bank and Gaza, and recently the

number of permits from Gaza for commerce purposes was increased significantly. Regarding residents of the West Bank, each day approximately 100,000 Palestinian workers enter Israel, alongside tens of thousands of residents who enter for medical, commercial or other purposes. Note that there is no limitation on the freedom of movement within the West Bank, and checkpoints are not operational on a day-to-day basis (checkpoints are only temporarily established following a security incident or pursuant to security-related intelligence). The exit of Palestinian residents to foreign countries is conducted through the Allenby bridge and in many cases through the Ben Gurion Airport.

Regarding the movement of goods to and from Gaza, all goods that are not limited by Law may be transferred. Dual-use items (from a designated list) require specific authorization to ensure that they are not used by terrorist organizations. Goods are transferred based on the supply capabilities of the "Kerem Shalom" crossing, subject to coordination of their supply and requisite checks. Each week tens of thousands of tons of goods and hundreds of thousands of liters of gasoline and fuel enter Gaza from Israel and Egypt, in unprecedented amounts as compared to recent years.

World Zionist Organization and the Jewish National Fund

Section 6b(b)(1) of the *Status of the World Zionist Organization and the Jewish Agency for the Land of Israel Law* 1952-5713 states that the GOI, with the consent of the World Zionist Organization (WZO), is entitled to delegate some of its authorities regarding housing and certain other issues to the WZO via the Rural Growth and Development Division (the: "Division"). The Section specifies that agreements between the Division and the State will include mechanisms for supervision and control.

In Government Resolution No. 1998 (October 2016), following criticism raised regarding of the Division's conduct on behalf of various parties, the Government regulated the Division's work, delegated certain Government responsibilities to the Division and established a detailed mechanism for reviewing the Division's activities. It further included the establishment of a professional unit now under the Ministry of Hityashvut, which supervises the Division work. Additionally, the Division's financial support committee includes representation of Civil Service employees.

Following a petition to the High Court of Justice, the Court reviewed these delegation arrangements and approved them.² Regarding the supervision of the Division, the Court found that the Division is subject to the review and supervision mechanisms set in the delegation agreements and is forbidden from exceeding the set authorities delegated to it.

The State has authority over the Jewish National Fund (JNF) by law, and it is managed by the Israel Land Authority (ILA), pursuant to Israel Land Council guidelines. Such as all governmental bodies, the ILA is beholden to the principles of equality and non-discrimination regarding land management.

On June 19, 2018 the High Court of Justice ruled in a petition filed by the National Committee for Local Authorities, that requested the Court to cancel Section 4a(a) of the *Israel Land Administration* 1960-5720. This Section raised the respective portion of the JNF representatives. According to the petitioners, the mere involvement of the JNF representatives is a violation on the right to equality and dignity of the Arab population in Israel.

The Court determined that the JNF representation according to this section does not harm the principle of equality, as the land that is administrated by the Council is under the ownership of the Jewish National Fund. The Court emphasized that the Israel Land Council is obligated in its decision to the principle of equality and so does the Jewish National Fund Representative to the Council.³

Concluding Observation no. 17:

GOI Reply:

The Basic Law is only one piece in the Israeli constitutional puzzle, and as was formally declared by the Attorney General, does not derogate in any manner from human rights protected under other Basic Laws of Israel (in particular Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation) and does not affect the enjoyment – and protection – of rights of minority populations in Israel.

² H.C.J. 9518/16 *Harel v. The Knesset* (5.9.17).

³H.C.J. 6411/16 *The National Committee for Local Authorities v. The Knesset*.

The Basic Law has to be read against this background. Alongside the Nation State basic law, Israel has also enacted almost 30 years ago the Basic Law: Human Dignity and Liberty. The High Court of Justice has interpreted this Basic Law as clearly protecting the principle of equality, specifically as an aspect of the right to human dignity, and defined this as a basic constitutional right. The principle of equality is deeply embedded in Israeli law as a fundamental human right that constitutes the highest of values in the Israeli democratic society.

The purpose of the Basic Law is to enshrine the character of the State of Israel as the nation-state of the Jewish people and the state in which the Jewish people uniquely exercise their right of self-determination in a Basic Law. This Jewish character was acknowledged by UN General Assembly Resolution No. 181 that acknowledged the need – and called for – the establishment of a Jewish State, which would serve as the home – and safe heaven - for the Jewish people.

The effect of the Basic Law on the enjoyment of rights covered by the Covenant was deliberated at length by the High Court of Justice, which in July 2021 issued the following ruling.⁴

On July 8, 2021, the High Court of Justice, presiding with a panel of 11 Judges, including the President and Vice President of the Supreme Court, rejected 15 petitions in which the petitioners argued that the *Basic Law: Israel - National State of the Jewish People* (hereinafter: the "Basic Law") is unconstitutional. Moreover, the Court declared that the Basic Law is to be interpreted through "affirmative interpretation," which reflects and realizes all other Basic Laws as well as the core principles and values of our justice system. The Court noted that the Basic Law is a part of Israel's growing constitution, which anchors the protection of Israel's identity as a Jewish state, without derogating from its identity as a Democratic state, as anchored in other Basic Laws, thus reflecting the State's constitutional principles.

According to the petitioners, the Basic Law denies the democratic identity of the state because it violates the principle of equality as well as disrupts the balance between the

⁴ H.C.J. 5555/18 MK Akram Hasson et. al. v. The Knesset et. al. (8.7.21)

values of the State of Israel as a Jewish state and its values as a democratic state as enshrined by the Declaration of Independence.

The Court declared in a majority ruling (of 10 to 1) written by the President of the Supreme Court, that so long as the State does not have a full constitution, the Knesset as the constitutive body has but one limitation: it cannot enact a Basic Law that negates Israel's essence as both a Jewish and a democratic state. The Court did not interpret the Basic Law as impairing Israel's character as Jewish and democratic.

The Court noted that the principle of equality is a core principle in Israel's legal system, the principle of equality, which applies to the rights of all citizens of Israel, including persons belonging to a minority population. While noting that it would be preferable that the principle of equality be anchored explicitly in a Basic Law, the Court emphasized that the fact that it is not, does not detract from its status as a constitutional principle.

The Court specified that pursuant to affirmative interpretation, Section 1(c) which anchors the right of self-determination to the Jewish people, does not impair or negate the right to cultural self-determination of persons belonging to a minority population within the state, and furthermore, it does not diminish any of the existing arrangements concerning the rights of non-Jewish persons belonging to a minority population.

In regard to Section 4, which recognizes Hebrew as the official main language, the Court noted, *inter alia*, that it does not impair the stance of the Arabic language as an official language and does not deny development and advancement in the public sphere. The Court further noted that the State and society are to continue to promote the stance of Arabic in the public sphere, expressing that this section "should be interpreted in a way that does not impair the status of the Arabic language neither in practice nor in spirit." In relation to Section 7 of the Basic Law, which declares the development of Jewish settlement as a national value, the Court noted that this section should be fulfilled with flexibility and through balance with the right to equality, and not in a manner which could allow discrimination against individuals who are not Jewish and their rights to land.

In regard to claims raised by the petitioners, arguing that the Basic Law contradicts Israel's obligation according to the International Law, including human rights

conventions, the Court noted that the Sections of the Basic Law on which the petitioners focused do not contradict the provisions of international law and can be interpreted in a manner consistent with them.

In the Court's minority opinion, Justice Karra stipulated that the aforementioned Sections do indeed negate the heart of the State's democratic identity and should be cancelled, and that no interpretative framework could mend the unconstitutionality of the Basic Law.

Concluding Observation no. 23:

GOI Reply:

Improving the refugee status determination procedure

The Refugee Status Determination (RSD) Unit in the Population and Immigration Authority is responsible for processing asylum requests in Israel. The RSD process is anchored in Procedure 5.2.0012 (hereinafter: "the Procedure"), which regulates the process for determining cases of asylum seekers and refugees by the Minister of the Interior, pursuant to the Convention Relating to the Status of Refugees 1951 and the Protocol Relating to the Status of Refugees 1967 (hereinafter: "the Refugee Convention"). The process is conducted in accordance with Israeli law, in consideration of the State's commitments stemming from the Refugee Convention.

On 23 June 2021, the Procedure was updated, with the aim of improving the services offered to asylum seekers as well as the efficiency and professionalism of the determination process itself, while balancing relevant considerations and striving to create the most proficient and effective process possible.

Note that prior to its entry into force, the Procedure was presented to the public as well as to the relevant bodies involved in various aspects of the asylum process, including the United Nations High Commission for Refugees and civil society. After conducting dialogue with the relevant bodies, the Procedure was amended and entered into force.

Allowing asylum seekers to enter the labor market

Asylum seekers in Israel are granted temporary stay permits, which are not categorized as work permits, pursuant to Section 2(a)(5) of the *Entry into Israel Law 5712-1952*. However, in the framework of H.C.J. 6312/10 *Kav L'Oved v. The Government of Israel*, the State declared that despite the aforementioned legal status, there will be no enforcement against the employment of asylum seekers in practice. This declaration has been further anchored in Sections 1(e) and 1(f) of the RSD Procedure. Therefore, asylum seekers are able to enter the labor market, and their employment is protected under the relevant State labor laws, accordingly.

Expanding social assistance benefits

According to Ministry of Welfare and Social Affairs (MoWSA) Director General's Directive No. 100 for at-risk children and their families, all at-risk children, including children with disabilities, and their families, have access to any service, as is provided to any minor with civil status. Under this initiative, five (5) million NIS (approximately 1.38 million USD) is allocated every year for community solutions to be provided to those children and their families.

Additionally, there are various Government Resolutions pertaining to the provision of rehabilitation services to all victims of human trafficking without civil status. Under these resolutions, 580,000 NIS (approximately 160,000 USD) are transferred for the operation of a day center in Tel Aviv-Jaffa, and the annual budget for this shelter in 2020 was 771,400 NIS (242,355 USD). Migrants who may not be returned to their country of origin who are victims of trafficking or torture are integrated in these shelters and as of 2020, shelters for victims of prostitution as well. In 2020, 14 migrant women were integrated into a shelter for rehabilitation from prostitution, and in 2021 (as of November) an additional ten (10) were integrated.

The MoWSA Director General Circular No. 168 relates to the treatment of members of the migrant community who may not be returned to their country of origin – specifically those who are homeless, people with disabilities, and battered women at risk. Pursuant to the Circular, the Ministry offers 100% government subsidized placement in these frameworks, at the annual cost of over 10 Million NIS (approximately 2.78 Million USD).

Additionally, twenty (20) new social worker positions were opened in relevant localities in order to provide rehabilitation, support, and assistance to this population.

Regarding victims of domestic violence, according to current procedures, the Israel Police convene a meeting every six (6) months with officials from the MoWSA and local authorities to discuss general opportunities for cooperation and individual cases related to addressing domestic violence against migrant women. When a child is at risk, whether due to domestic violence or any other hardship, the child and their family are provided with solutions in the community just as any child with civil status. Additionally, as of the year 2020, two (2) Million NIS (approximately 642,258 USD) were allocated for treating migrant women who may not be returned to their country of origin who are victims of violence.

Note that during the COVID-19 pandemic, the MoWSA offered need-based prioritized additional grants to assist migrants who may not be returned to their country of origin that were in need.

Medical care

Pursuant to *Patients' Rights Law* 1996-5756, all persons are entitled to urgent medical care in a situation of medical emergency. Specifically, migrants, including minors, are offered the following health services (in addition to the aforesaid urgent medical treatments): preventive medicine for pregnant women, babies and infants at family health centers; primary health care in the *Terem* clinic for persons without civil status in Tel Aviv-Jaffa; and psycho-social and medicinal treatment in the *Ruth* clinic for mental health in Tel Aviv-Jaffa; and more. In addition, minors without civil status in Israel are offered subsidized medical treatments, through the Meuhedet Health Fund (an HMO). Foreign workers and employed persons without civil status are entitled to health insurance sponsored by their employer.

In addition, there are several specialized clinics and services which offer treatments to migrants in Israel, facilitated by non-governmental organizations or hospitals.

During the COVID-19 pandemic, migrants were ensured health services. In March 2020, hospital administrators and General Managers, as well as the General Manager of *Magen David Adom*, were instructed by the Ministry of Health to offer all relevant

COVID-19 tests, treatments and hotlines to all migrants in Israel. COVID-19 testing locations were open to all free of charge. Hospitals offered full treatment, including complex intensive care ventilation, ECMO and rehabilitation, free of charge.

Migrants were offered to vaccinate against COVID-19, in centers established throughout the country, including a specialized center in Tel Aviv-Jaffa. As of June 2021, the level of vaccination among migrants was high and comparable to that of the general Israeli population.

Moreover, an inter-ministerial committee was formed to examine offering subsidized health services to migrants who may not be returned to their country of origin. The committee reviewed the "Meuhedet" Health Fund 2001 arrangement for providing subsidized health services to minors without civil status, due to the ambiguity regarding its scope of application. Accordingly, the committee also discussed the possibility to extend the arrangement to adult migrants granted temporary group protection who may not be returned to their country of origin. On December 14, 2021, the Committee submitted its report to the Minister and Director General of the Ministry of Health, recommending that certain groups of foreign minors and adults granted temporary group protection that may not be returned to their countries of origin will receive health care plan subsidized by the State. The recommendations are being examined by the Minister of Health.

Repealing the Deposit Law

On April 23, 2020, the High Court of Justice ruled that the obligation requiring people who entered Israel illegally through the Egyptian border to deposit 20% of their salary as an incentive to leave Israel is unconstitutional and ordered its nullity. The Court determined that the deposit would be based only on the employer component (16%) and approved the operation of the "administrative deduction" mechanism, according to which, certain amounts can be deducted from the employee's deposit, if the employee leaves the country after the departure date as set by the authorities. The law determines deduction levels in accordance with the length of the delay, and states that the deduction will not exceed 33% of the deposit.⁵

⁵ H.C.J. 2293/17 *Esther Tsgey Garsgher et. al. v. The Knesset et. al.* (23.4.2020)