# STATE OF ISRAEL

**Ministry of Justice**

**Annex No. II - Attached to the**

**5Th Periodic Report by the State of Israel**
**Presented to The U.N. Human Rights Committee**

**Concerning the**

**IMPLEMENTATION OF**

# THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS

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Ministry of Justice

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## Question 1

**Significant Developments – Legislation (additional legislation)**

1. On December 31, 2018, the Knesset approved by second and third readings the *Limitation of Advertisement and Marketing of Tobacco Products Bill* (Amendment No. 7) 5779-2018. This law includes a comprehensive amendment to the *Restriction of Advertising and Marketing of Tobacco Products Law* 5743-1983, which currently applies only to tobacco and tobacco products, so that it will apply to other smoking products, including electronic cigarettes. The Amendment sets a wide ban on advertising for smoking products, except for a list of limited exceptions, subject to certain restrictions.

2. Following the recommendation of the CRC Committee, a 2016 amendment to Section 203C of the *Penal Law* (amendment no. 127) increased the penalty for the offense of obtaining the service of an act of prostitution from a minor from three (3) years to five (5) years imprisonment. The amendment changed the status of the offense to a felony. In the frame of the abovementioned legislation of the *Prohibition of Consumption of Prostitution Services Law (Temporary Provision)* the wording of this offence was changed and the word "obtaining" was replaced by the word "consuming (prostitution services from a minor)" without changing the punishment. These two (2) amendments better reflect the gravity of this act.

**Judicial Measures Relating to Promotion and Protection of Human Rights**

3. On October 1, 2018, the Rishon LeZion Magistrate Court ruled that a public library that prescribes separate opening hours for ultra-Orthodox people is illegally discriminating contrary to the *Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law* 5761-2000. The Court ordered compensation in the total sum of 10,000 NIS (2,700 USD). (Ci.C. (Rishon LeZion) 15978-06-17, *Lee VIezman v. Rishon LeZion Municipality et. al.* (1.8.18)).

4. In another case, the Central-Lod District Court was asked to rule whether a local authority may restrict the acquisition of subscriptions to a country club that it owns and manage solely to residents of that local authority. That, *inter alia,* subject to Amendment No. 4 to the *Prohibition of Discrimination in Products, Services and Entry into Entertainment and Public Places Law* 5761-2000, which prohibits

discrimination based on place of residence that came into effect on March 1, 2017. The Court held that the petitioners failed to prove that discrimination was the basis of the local authority's action, since in the past, and for a long period of time, the respondent permitted persons who were not its residents, entry to the club without any discrimination. It was further noted that the law allows a local authority to limit the provision of services to its residents only, to the extent required for the performance of its functions, in recognition of the fact that the residents are financing its activities. The Court noted that the decision of the local authority does not properly balance its interest with that of the general public, and are not proportionate or necessary to achieve the council's goals. It was held that the restriction the sale of subscriptions to the Country Club to the residents of Kochav Yair - Zur Yigal will remain in force, subject to the requirement of maintaining an additional registration track for nonresident subscribers, to a volume not less than 10% of the total number of subscribers. In addition, it was determined that the registration conditions will be identical in both tracks (aside from the entrance fees that may be higher based on an economic opinion). (Op.P. 18716-08-14, *Ahmad Mantzur et. al. v. Kochav Yair - Zur Yigal Local Authority* (19.9.17)).

5. On December 15, 2015, the Tel Aviv-Jaffa District Court ruled that a firm which operates an amusement park engaged in a discriminatory policy, according to which, between 2011 and 2013, the Park allocated separate days for Jewish and Arab children. In this case a settlement agreement was reached between the parties, according to which, the firm will donate 4,000 tickets to Arab children. The agreement received the approval of the Court. (Pu.S. (Tel Aviv-Jaffa District) 42756-06-13, *Abed Kader Nasser v. Amusement City LTD.* (15.12.15)).

6. Marital age - On November 15, 2015 the Haifa Family Matters Court ruled in favor of a minor plaintiff's mother and the minor's adult partner who requested a permit for the minor's marriage. The plaintiff's noted that the minor, a young woman at the age of 17.5, is at early stages of pregnancy, and that a marriage date has already been set, following the approval of the minor's parents and the consent of the couple themselves. The permit was required in order to open a marriage file. The Court noted that it asked for and received a social worker's assessment concerning the minor. Both the social worker and the representative of the Attorney General noted that there were no special circumstances which relates to the minors best interests

that justifies issuing the permit. The Court decided that in this case there are special circumstances relating for the minor's best interests that justify issuing a marriage permit. The Court stated that the couple's decision to marry was made after thoughtful consideration, freely, without pressure, their relationship has been stable for two (2) years, and is supported by their families, including financial support and since the minor is 17.5. The Court also noted that the minor's partner repeatedly noted that he will support the minor in completing her studies. (M.R. 58940-10-15 *Anonymous et. al. v. The Haifa District State Attorney's Office* (15.11.2016)).

7. On February 23, 2015, the Haifa Family Matters Court rejected a request filed by two (2) minors to permit their marriage. The two requested to be married due to the girl's pregnancy and claimed that the girl's religious family will not accept her unless she is married. A social worker's assessment that was rendered to the Court found the couple not ready for marriage and life as well as the responsibility of raising a baby. The Court noted, *inter alia*, that the CEDAW provides equal right for men and women in relation to marriage and determines that engagement and marriage of minors shall have no legal effect. The Court further noted that in Israel, according to the *Marital Age Law*, marriage of minors under the age of 18 is prohibited, however the law further prescribes that a Family Matters Court is authorized to permit a marriage of a male or female minor if they are above the age of 16 and the Court is of the opinion that there are special circumstances linked to the minors best interest. The Court also noted that according to the Law, a decision will only take place after hearing the minor and that a Court shall not rule on the issue of a marriage of a minor between the ages of 16-17 without a social worker assessment. Here, the Court determined that the reason for requesting an authorization for marriage is the shame of an out-of-wedlock pregnancy which led the families to pressure the minors to marry. The Court rejected the request and noted that the minors will be able to marry once 18, in accordance with their emotional and mental maturity. (M.Rq. 22973-01-15, *Anonymous et. al. v. The Attorney General* (23.2. 2015)).

**Training Provided to Judges, Lawyers and Prosecutors**

8. The Institute of Legal Training for Attorneys and Legal Advisers in the MoJ - In recent years, training has focused on the following issues: equal rights for persons with disabilities (2016 and 2017), anti-trafficking in persons (2016 and 2015), the

Arab population in Israel (2015), human rights in international law (2014, 2015, 2016, 2017, and 2018), equality (2014 and 2016), women's rights, equality and LGBT rights (2017). Additional such seminars were conducted during 2018, for example: transparency v. privacy (2018), meet the Israeli society - Israelis of Ethiopian descent, persons from the former USSR and ultra-Orthodox and persons with disability. There are additional seminars on topics such as freedom of speech versus incitement, social rights, etc.

9. The Institute of Advanced Judicial Studies - In recent years these included: seminars on domestic violence (2015 and 2016), sex offences and trafficking in persons (2015, 2016, 2017 and 2018), persons with mental disabilities (2015 and 2017), children's rights (2015, 2016, 2017 and 2018), women in prostitution (2016 and 2017), refugees and asylum seekers' rights (2015). Other seminars include racism and discrimination and human rights within the criminal process.

**Question 2**

10. Example of Supreme Court ruling which refer to the West Bank and relating to the provisions of the ICCPR and other human rights treaties:

11. The right of freedom of movement - in the case of Deir Samit Village Council, while also taking into account to provisions of the ICCPR, the HCJ ruled that although the Military Commander was obligated to take certain measures in order to protect both the Israeli and Palestinian populations in the West Bank, and the purpose of the road closure was a legitimate security concern, its application did not withstand application of the proportionality principle. Here the Court (H.C.J. 3969/06 *Head of Deir Samit Village Council v. The Commander of the IDF Forces in Judea and Samaria* (22.10.09)).

**Question 3**

12. Additional information on Early Childhood Council and the Children's and Youth Complaints Commission for Out-of-home Placed Children:

13. The Early Childhood Council - In August 2017, the Knesset passed the *Early Childhood Council Law* 5777-2017, which directs the establishment of an Early Childhood Council. This law aims to further the care of infants and their physical and intellectual development, ensure their physical and mental health and the fulfillment of their educational, social, physical and emotional needs and to provide

an appropriate environment, which will enable them to enjoy equal rights in adulthood. The Council has been established and operates under the direction of the MoE.

14. The Children's and Youth Complaints Commission for Out-of-home Placed Children (hereinafter: the "Commission") - The Commission is appointed by the Minister LSAaSS and operates in accordance with Section 56 of the *Children Foster Care Law* 5776-2016, which entered into effect on December 6, 2016. Any child placed in foster care or in out-of-home placement facilities can file complaints to the Commission independently, discreetly and freely, without any fear of harm of consequences. The Commission is accessible to children and includes the accommodations required according to the age, language and level of maturity of the child, and in the case of a child with disabilities - also to her/his disabilities. The results of the inquiry of the complaint will be passed on to the complainant and a copy will be passed on to the supervisor for follow-up on the necessary remedies. The Law protects children against harm that may be caused to them due to filing a complaint and determines that such harm would constitute a criminal offence with one (1) year imprisonment (Section 66(c)). During the first year of the Commission's operation (November 2017 - October 2018), it received 110 complaints, 67 of which related to the Commission's authority. The examination of 54 of the complaints has been completed and 70% of them were found to be justified. Of the 67 complaints mentioned above, nine (9) related to cases of children and youth living in foster families, six (6) of which were found to be justified.

**Question 4**

**Additional information**

15. As stated in the report, over the past ten (10) years, the Israeli authorities have been reviewing the legislation connected to the existence of a declaration on a state of public emergency - in order to enable its termination. In this framework, certain laws were annulled or amended, and laws which continued validity was found to be necessary, were enacted as independent laws, not contingent on the state of emergency (see for example the *Counter-Terrorism Law* 5776-2016, in the reply to Question 11).

**Question 6**

**Additional information**

16. Several Basic Laws, and court rulings serve together to guarantee that no public authority or public institution engage in any act or practice of racial discrimination against persons, groups, or institutions.

**Judicial measures relating to equality between the Jewish and Arab populations**

17. On June 12, 2018, the Nazareth Magistrate Court ruled in favor of two (2) Arab plaintiffs who claimed that they were illegally discriminated based on their race when trying to enter a local club. The respondents claimed, *inter alia*, that the relevant party was a closed event and that one of the plaintiffs was drunk. After hearing both sides, the Court rejected the respondents' claims and noted that since several friends of the two (2) plaintiffs were allowed to enter, the party was evidently not a closed event, that, according to the relevant evidence and testimonies, none of the plaintiffs were drunk and that the testimony of the plaintiffs' witness was credible. The Court found that the plaintiffs proved that they were discriminated based on their race and awarded them with compensation of 33,000 NIS (8,900 USD) each. Plaintiff no. 1 was also awarded with compensation of 5,000 NIS (1,350 USD) for threats and assault he faced while trying to enter the club. (Ci.C. 30239-04-17, *Faizz Najam et. al. v. The Public House (Pub) et. al.* (12.6.18)).

18. On March 31, 2016, The Tel Aviv-Jaffa District Labor Court ruled on a lawsuit filed by an Israeli-Arab who was employed as a driver by "Albar", a car rental company, and claimed that "Albar" fired him on a discriminatory basis due to his ethnic origin and place of residence. The company claimed that the justification for the plaintiff's dismissal was workforce reduction. The Court ruled that the company did not meet the necessary burden of proof in order to prove that the plaintiff's dismissal did not involve any prohibited discrimination. When considering the compensation, the Court noted, *inter alia*, that the level of humiliation experienced by the plaintiff was high, despite the fact that he was considered by the respondent's representatives to be an excellent worker. The Court ruled compensations in favor of the plaintiff in the sum of 80,000 NIS (21,000 USD) and 16,000 NIS (4,200 USD) legal expenses (Ot.La.D. 40543-03-14 *Ihab Nofel v. Albar Car Fleet Ltd.* (31.03.2016)).

19. On March 20, 2016, The Nazareth Labor Court ruled in favor of a Druze plaintiff

who was employed as a sales and marketing representative at the "Shekem Electric" company, owned by the defendant. The plaintiff, who was fired by the defendant, claimed that his dismissal was based on racial discrimination. He noted, *inter alia*, that he suffered from racial remarks from the customers and from his manager. The company claimed the plaintiff was dismissed due to a grave disciplinary offense, and that the company was not aware of his ethnic origin. The company further denied the plaintiff's allegations regarding the nationalistic remarks and claimed that he never complained about this issue. The Court determined that the plaintiff was fired for racial reasons, contrary to Section 2 of *Equal Employment Opportunities Law* 5748-1988. The Court awarded the plaintiff compensation in the amount of 54,804 NIS (14,442 USD), and lawyer fees in the amount of 10,800 NIS (2,850 USD). (L.D. 16211-11-14, *(Nazareth Labor Court) Mansur Mansur v. Electra Consumer Products Ltd.* (20.03.2016)).

20. Further, on September 21, 2015, the Rishon LeZion Magistrate Court ruled on two civil suits against Israir Airlines and Tourism (Defendant 1) and the IAA (Defendant 2) for demanding five (5) Arab persons who were already sitting on a plane on a domestic flight prior to take-off, to disembark the plane for security reasons. The plaintiffs based their suit, *inter alia*, on the *Basic Law: Human Dignity and Liberty*, the *Prohibition of Discrimination in Products, Services and in Entry into Places of Entertainment and Public Places Law* 5761-2000 (the: "*Prohibition of Discrimination law"*). The Court ruled that the plaintiffs had proven they were discriminated against by the two respondents. The Court further noted that the actions of both respondents were contrary to the principle of equality which is anchored in the Israeli legal system as a basic constitutional right. The Court stated that both respondents violated the *Prohibition of Discrimination Law*, for discriminating against the plaintiffs based on their ethnic origin and disguising it as security considerations. The Court also noted that the respondents violated a *statutory duty* (*Section 63 of Torts Ordinance [New Version] 5728-1968),* by not respecting the constitutional right to equality in providing a public service, degrading the plaintiffs and violating their human dignity, contrary to the *Basic Law: Human Dignity and Liberty*. In light of the above, the Court determined that the plaintiffs experienced a prohibited and humiliating experience, although they eventually boarded the flight so no actual harm was caused to them. Nonetheless,

the Court granted compensation in the amount of 25,000 NIS (6,460 USD) to plaintiff No. 1 and 20,000 NIS (5,170 USD) to each of the other four (4) plaintiffs. (*Rishon LeZion Magistrate Court, C.S. 1230-07-13, Ayoub Abu-Sabit et. al. v. Israir Airlines and Tourism et. al.* (21.9.15)).

21. In June 2015, the Tel Aviv-Jaffa Regional Labor Court accepted a claim by an Israeli citizen of Arab origin, to compel the defendant, a kosher restaurant, to pay him compensation under the *Equal Employment Opportunities Law* for not hiring him to the position of waiter due to his nationality and/or religion. In this case there was no dispute that the defendant's shift manager told the plaintiff that he could not work for the respondent because the Rabbinate forbade his employment because of his religion. It was noted, that this statement in it of itself is sufficient to establish a claim of prohibited discrimination on religious grounds. The respondent did not prove that the plaintiff was incompetent to work as a waiter or was poorly functioning and that this was the reason why he was not hired. In addition, it has been proven that the respondent does not employ Arab workers and it is doubtful whether they did so in the past. The court ordered on the compensation of 30,000 NIS (8,100 USD). The Court took into account the severity that should be attributed to discrimination based on national and/or religious affiliation, and on the other hand, the objective difficulties involved in employing a non-Jewish employee in a kosher restaurant and the fact that the defendant found the plaintiff alternative work at a nearby restaurant. (Ot.La.D. 28707-10-13 *Omri Kis v. Coffee on the Sea Ltd.* (5.6.15)).

22. In March 2015, the High Court of Justice ruled on a petition regarding alleged ethnic profiling at security examination at Israeli airports. In this case, the Association for Civil Rights in Israel (ACRI) petitioned against different security examinations that were conducted in Israeli airports allegedly based on ethnic origin. After being informed by the respondents that as early as 2006, they began a wide internal examination with the aim of eliminating any differences in these security examinations for all Israeli citizens, the Court allowed several extensions in the trial. In 2014, the Court was informed that in March 2014, the new security examination system became operational. The Court rejected the petition, and ruled 30,000 NIS (7,500 USD) to be paid to the petitioner as expenses (H.C.J. 4797/07 *The Association for Civil Rights Israel v. Israeli Airport Authority et. al.* (10.3.15).

**Question 7**

**Information on national conferences for the integration of minority populations in the MoJ and in the Civil Service**

23. In November 2018, the MoJ held its fifth national conference in Tel Aviv-Jaffa, aimed at encouraging the integration of students, legal practitioners, lawyers and university graduates from minority populations, including persons of Ethiopian descent, the Arab, Druze and Circassian populations and persons with disabilities in the MoJ. The Ministry's representatives presented the Ministry's pool of vacant positions and explained how to apply for these positions. The MoJ attaches great importance to integration of persons of the Ethiopian descent within the Ministry in order to reflect the cultural diversity of Israeli society. Similar national conferences were also held in October 2017, December 2015 in Tel Aviv-Jaffa and in September 2014, in Haifa.

24. "Meet the Arab Society" - In June 2019, the MoJ held a convention titled "Meet the Arab Society" in which the Ministry's employees were invited to meet leading Arab officials within the Ministry, learn about their successes and difficulties, as well as to learn about the Arab society, culture etc. This important convention was held several time since 2017.

**Actions taken to advance women, including Arab women, in the CS**

- A mentoring program aimed to train women managers for middle management positions in the CS.
- Dissemination of information to members of examiners/identification committees for increasing awareness of gender and other orientations in selection proceedings.
- Adding gender-oriented thinking to across-the-board decisions made by the CS Commission.
- Continuing to support and empower gender equality officers in the various ministries.
- Increasing the infrastructure for reducing sexual harassment and discrimination.

**Enhancing the Recruitment of Women in CS Tenders**

25. In 2017, several ventures were initiated in this area, such as: five (5) preparation

courses for tenders were opened for women, high-ranking positions occupied by both men and women were set to include limited tenure so to allow more women to occupy such positions in the CS and gain high-ranking managerial experience. In addition, a conference was held by the Department of Gender Equality in cooperation with the Senior Department for Examinations in the CS, on the issue of gender and cultural biases in human resource tenders in the CS. In 2018, the Department has created training materials for coordinators of the examinations committees on this matter, in order to incorporate effective and practicable tools. In addition, the Department of Gender Equality in the CS Commission (CSC) was included in June 2016 as one of the authorizing entities for job descriptions for positions filled via the headhunting committees of the CS.

**Minorities' Terms of Employment in the CS**

26. The CSC has also taken steps to better accommodate the needs and lifestyles of minority employees. Holiday and vacation time is provided according to the relevant religious holidays, such that Muslim employees are entitled to a day off during Ramadan and Christians can choose Sunday as their day off work. In May 2016, the CSC approved, beyond the letter of the law, that Muslim employees of the MoJ will be able to report on-call shifts during the holy month of Ramadan, since this year it almost parallels the month of June in the Gregorian calendar. Normally, on-call shifts may not be reported during holidays.

**Additional steps by the AASW to promote women participation in political parties**

27. The AASW further approached the elected heads of local municipalities, urging them to appoint women as their deputies. The AASW maintains a routine database on women's representation in local authorities, councils, board members of municipal corporations etc. In addition, in 2018, the AASW issued a general call to women and advertised a special media campaign in various media outlets, calling for women to run for office in the 2018 local elections. These calls and campaign were also published in Arabic.

**Judicial decisions relating to women's participation in political parties**

28. On January 10, 2019, the HCJ ruled in a petition against the codex of a religious political Party, "Agudat Israel", which prevented women from being members of

the Party or included in the Party's list of candidates to the Knesset. Following deliberation on the matter, the Party notified the Court that it agrees to delete the word "man" from Section 6(a) to the codex which prevented women membership in the party and declared before the Court that the instruction set in Section 6(d) to the codex (relating to women's ability join the Party's women's movement, described as a separate body) does not prevent any women from being a member in the party itself. The Party noted however, that this amendment does not change the actual state of this issue. The Court noted it is satisfied by the change to Section 6(a) to the codex and added that if in the future, if women's membership in the party will be prevented despite a lack of any legal prevention, this shall be addressed upon in a separate procedure before the relevant court. (H.C.J 1823/15, *Adv. Tamar Ben-Porat et. al. v. The Political Parties Registrar et. al.* (10.1.19)).

29. On February 11, 2019, the HCJ ruled in a similar petition against the codex of another religious political Party, "Shas", in which it was requested to cancel Section 4(a) and 4(c) to the party's codex, which according to the petitioners, prevented women from being a Party member. The party notified the Court that its codex does not discriminate between men and women, and that Section 4(a) states that any Jewish person, citizen of Israel, which observes the Torah and its religious commandments may join the party. The party further noted, that it accept Section 6 to the *Interpretation Law* 5741-1981, titled "male and female", which set that what is stated in male Grammatical gender also applies to females, and thus the word "Jew "includes both man and woman. Therefore, it follows that the party accepts the absence of gender discrimination in its articles of association. Due to the clarification of the party, the Court rejected the Petition. (H.C.J. 7571/16, *Ruth Kulian v. The Parties Registrar et. al.* (11.2.19)).

**Question 8**

**Additional information on water supply to the ENoJ**

30. Of the four (4) lines laid, two (2) have already been connected to the water network and increased the water amount supplied to these neighborhoods. The remaining two (2) lines are in final stages of completion. The amount of water consumed has indeed increased, but unfortunately measures taken to regulate the registration of consumers per consumption and the collection of payments have been unsuccessful.

Discussions in this regard are held among the Water Authority, the MoJ, the Police and the National Security Council (NSC).

31. Another major project is the fifth water system project to transport water to Jerusalem. This project requires large infrastructure and the placement of a long line system. As part of the planning process, considerable weight was given to reducing environmental harm and disturbance to residents living close to this infrastructure.

**Question 9**

**Gender Based Violence - Legislation Amendments**

32. In July 2018, the *Limitation of Return of a Sex Offender to the Victims' Vicinity Law* 5765-2004 was amended. The amended Law enables the Court to set limitations on a sex offender, after the sentence or after he/she is released from prison. These may include limiting the offender's ability to live, study, or work in the vicinity of the victim's place of residence, education, or work. The Law seeks to prevent mental damage to the victim due to frequent meetings with the offender. The Law is relatively exceptional since it does not assume the sex offender is dangerous to the victim, but is intended to prevent the aforesaid mental damage.

33. With regard to the definition of sex offender - The Amendment expanded the definition of "sex offender" to include those who were minors when the offense was committed, provided that the offender served active prison sentence or was incarcerated in a closed facility, and turned 19 after being released (contrary to an adult when the offense was committed as previously defined).

34. Furthermore, the Law was amended in 2017 in order to allow a victim to file an application to obtain a court order limiting not only the residence and place of employment of a sex offender, but also his place of study.

35. On August 3, 2017, Amendment No. 20 to the *Legal Aid Law* 5732-1972, concerning legal aid for victims of severe sexual crimes, including minors, entered into force. This Amendment grants free legal aid, without means or merit testing, to all victims of severe sexual violence, from the moment an indictment was filed throughout the legal proceedings. For minors who are victims of severe sexual crimes, legal services are provided through the "Lawyer of My Own" Project within the Legal Aid Administration at the MoJ.

36. Amendment No. 122 of 2016 to the *Penal Law*, added Section 347B to the Law, which prohibits consented sexual relations between a clergyman and a person, above the age of eighteen (18), who received consultation from her/him, when the consent was achieved through exploiting substantial mental dependence of the person upon the clergyman. According to the Amendment, a clergyman who engages in intercourse with a woman or performs an act of sodomy on a person in these circumstances will be liable to imprisonment for four (4) years. The Amendment also added Section 348(D2), stating that a clergyman who commits indecent acts with or on a person above the age of eighteen (18) under the circumstances detailed in Section 347B(b), is liable to three (3) years of imprisonment.

37. Amendment No. 14 of 2015 to the *Legal Aid Law* provides that legal aid, including representation in court proceedings will be provided without a financial eligibility test to a victim of sexual offence, in civil proceedings according to the *Limitations on the Return of a Sex Offender to the Victim's Vicinity Law* 5764-2004. The purpose of this amendment is to enable sexual offences victims to file a residence/employment restriction order on the offender, when there is a reasonable ground to believe that without such order the victim may suffer mental harm.

38. Amendment No. 5 of 2015 the *Statute of Limitations Law* 5718-1958 allows for the possibility of extending the statute of limitations if the defendant, or his/her representative, knowingly misled the plaintiff, abused his/her power, threatened or exploited the plaintiff. This amendment allows more women to file claims due to an infringement of their rights in such circumstances, for example, women who were subject to sexual abuse.

39. Amendment No. 11 of 2014 to the *Crime Victims' Rights Law* 5761-2001, which entered into force on January 1, 2018, provides that a victim of a sexual offence is entitled to choose the gender of his/her investigator (under certain restrictions). The investigator must inform the victim on this option at the beginning of the investigation.

**Countering Sexual Harassment - Legislation Amendments**

40. In June 2018, Amendment No. 132 of the *Penal Law* entered into force, which added a new offense prohibiting the publication of proposals to engage in

prostitution (e.g. direct proposals, wanted ads etc.) (Section 205D). According to this offence, the publication of such a proposal is liable to a maximum sentence of three (3) years imprisonment or a fine up to 226,000 NIS (62,700 USD), and if the proposal is aimed at a minor – a maximum sentence of five (5) years imprisonment of the abovementioned fine. If a corporation committed the offense, it shall be liable to double the said fine. This offence in also included in both *Blocking of Telephone Numbers for the Prevention of Crimes Law* and *Authorities for Prevention of Internet Use for the Commission of Offenses Law*, and it complements the offence of publication of prostitution services of 2011.

41. In addition, several recent amendments were made to the *Prevention of Sexual Harassment Law* 5758-1998:

42. Amendment No. 10 of 2014, provides that publishing a photograph, film or recording of a person that focuses on a person's sexuality, in circumstances in which the publication is likely to humiliate or degrade a person, and against that person's consent, constitutes a sexual harassment offence, punished by five (5) years of imprisonment.

43. According to Amendment No. 12 of 2014, when an employee's complaint regarding adverse treatment is submitted, the burden of proof is shifted on the employer to prove that said treatment was not committed due to the sexual harassment complaint which was filed by the employee. This, provided that no more than three (3) years has elapsed from the day the sexual harassment complaint was submitted.

44. Pursuant to Amendment No. 13 of 2014, sheltered employment enterprises (which employ persons with disabilities) have been included in the definition of work relations for the purpose of sexual harassment, thus ensuring better protection of employees with disabilities.

45. In July 2014 the *Prevention of Sexual Harassment Regulations (employer's obligation)* 5758-1998 were amended. According to the Amendment, higher education institutions, are obliged to implement several steps in order to prevent sexual harassment, such as: annual informational activities; informing students and employees about the regulations and ways of filing a complaint; institutions with 2,000 students or more are also obligated to appoint two (2) sexual harassment prevention officers and to provide them with relevant training. The persons that are

elected to serve as a sexual harassment officer, must be from different populations in the higher education institution (for example, student populations, academic staff, administrative staff etc.), in order to enhance their accessibility. These institutions are also obligated to file an annual report to the AASW, to the Knesset Committee for the Advancement of the Status of Women and Gender Equality (2014), and to the relevant regulator (for example, the Ministry of Education (MoE), Ministry of Economy and Industry (MOEI) or the Council for Higher Education). These steps are complementary to the relevant obligations that apply to these institutes as a general employer.

**Countering Sexual Harassment – Administrative Measures**

46. A decision of the Ministerial Committee on Gender Equality, approved by Government Resolution (GR) No. 3229 of December 7, 2017, resulted in the AASW initiating the establishment of a committee to formulate a national plan to combat sexual harassment in Israeli society. In the context of this resolution and for the implementation of the plan, 10 Million NIS (2.7 Million USD) were allocated for a period of three (3) years. The Committee consisted of the Directors-Generals of the Ministries of Social Equality, Justice, Finance, Education, and senior representatives of the Police, the IDF and NGOs. The Committee's work lasted several months and included a broad process to create a deep understanding of the core issues and the critical challenges that require a response in the field, while connecting and learning from dozens of stakeholders in the field. The Committee's report indicated that while sexual harassment occurs in many areas of life, it occur more intensively in workplaces. According to a sample conducted, about 60% of the women who reported being sexually harassed experienced sexual harassment at the workplace or in the army. Accordingly, the Committee decided to focus on the phenomenon of sexual harassment in the workplace. The Committee submitted its recommendations to the Minister for Social Equality on January 28, 2019, in which it recommended that the national plan focus on the following issues: (1) raising public awareness to education to change social norms and to provide information and knowledge about the law; (2) strengthening the commitment and ability of employers and supervisors to prevent and deal with sexual harassment effectively; (3) strengthening the supervision and law enforcement for the prevention of sexual harassment at the workplace, (4) prevention of sexual harassment in the CS; and (5)

developing and deepening the knowledge and research infrastructure in the area of promoting policies which are based on such infrastructures.

47. The AASW invests concrete efforts to prevent gender violence among all populations, including in the Arab population. These efforts include the publication of information booklets on prevention of domestic violence in Arabic, in public bodies, local authorities, hospitals, medical centers and in the private sector. The AASW, in cooperation with the Police, holds self-defense trainings for women and young adults at risk, including in Arab localities (for example, in the Arab City Shfar'am during 2017). These workshops empower young women and girls and allow them to better defend themselves.

**Additional information on measures used to counter domestic violence**

48. **Domestic violence prevention and treatment centers** - Between 2015 and 2018, the MoLSAaSS has significantly expanded the distribution of the domestic violence prevention and treatment centers to 35 additional authorities, and currently there is a total of 116 local and regional centers that provide the following solutions: prevention and identification, emergency intervention, risk assessment, individual and group therapy by social workers who are experts in treatment of domestic violence.

49. **Rehabilitation programs -** The MoLSAaSS operates employment rehabilitation programs for women who are victims of domestic violence and are treated in domestic violence centers, to enable them to develop financial independence.

50. **Procedure for treating women in high risk -** A joint procedure was developed by the MoLSAaSS and the Police, with the aim of holding regular discussions regarding women in high risk with the purpose of improving the solutions provided and maintaining constant updates between these bodies.

51. **Domestic violence call center** – As of January 2019, the MoLSAaSS call center has been expanded to serve as support and assistance center for domestic violence victims. The call center operates as a collaboration of the MoLSAaSS, the Police and Ministry of Health (MoH) to provide callers with a holistic response. Additionally, the call center operates as a unique support line for battering men, so to enable the relevant authorities to reach as many men as possible and help them to reduce domestic violence.

52. **“Gesharim” program** - This program is designed to make the treatment of domestic violence more accessible to new immigrants.

53. **"Police-Social Worker Model" -** This is a joint project operated by the MoLSAaSS and the Police, in which social workers were assigned to operate in police stations. The project's purpose is to strengthen the cooperation between these bodies, ensuring that Police referrals to the welfare authorities were addressed and *vice versa*. Social workers meet with victims who come to file a complaint in order to provide initial assistance (if they are interested), and to prepare an appropriate intervention and assistance program in advance, including risk assessment if needed. In 2018, this program operated in 25 cities. Recently the Police and the social services authorities created a protocol for "efficient data sharing", in order to regulate the cooperation and reporting in each of the treatment stages of domestic violence cases.

**Treatment provided by the MoLSAaSS to battering men**

54. The MoLSAaSS handles the population of battering men who are **involved in criminal proceedings.** These men are referred by the law enforcement agencies, most of them by the courts in the stage of detention and sentencing for diagnosis, risk assessment, and evaluating the odds of therapy and rehabilitation. In addition, the Ministry operates an apparatus of therapeutic solutions on the rehabilitation continuum, according to the level of threat and risk, to provide tailored solution to each of the men.

55. In 2017, 2544 new referrals of men were made for offenses of violence toward spouses, which constitute 12.3% of all referrals. Men who are found appropriate to receive designated treatment after a diagnostic process that includes risk assessment for recurrence of the offense and threat are gradually integrated according to that assessment with respect to their personality characteristics in tailored therapeutic institutions. It is important to note, that all men integrated in treatment are under judicial condition and/or court orders approving the recommendation of the Probation Officer.

56. The current treatment is unique since it is authoritative treatment of men, assisted by the criminal proceeding to recruit the violent men for therapy and the authoritative aspect to retain the men in the therapeutic institution and for

perseverance. The Ministry operates an apparatus of designated group therapy for battering men, whose level of risk enables treatment in the community. These groups are guided by the probation officers and operate all over Israel. In 2017, 22 designated groups operated and treated approximately 300 men. Some of the referred men are integrated at the end of the diagnostic process in designated treatment provided in domestic violence treatment centers in the community. In such cases they are found under the supervision of a probation officer who serves as an investigator, in charge of the treatment for these men.

**Therapeutic institutions for violent men**

57. The Ministry finances and operates therapeutic institutions for battering men. The therapeutic institutions include a range of therapeutic solutions different in their level of intensiveness and are adjusted to a broad variety of men in different risk situations. Six (6) therapeutic tracks operate within these institutions: hostel course, day center course, integrated intensive course, evening center course, alumni course, and halfway house for those who complete such treatment. At any point of time the institution can provide a solution to 55 men in the various courses. In 2017, 140 men were referred as candidates for treatment in the therapeutic institutions. 90 men were received and integrated on that year in one of the institutions treatment tracks.

58. This is a designated model that is unique worldwide, integrating designated treatment in the field of domestic violence and supplementary treatment with emotional means and work, which focuses on the fabric of relationship created in the institution among the men, and among the men and the professionals and staff who provide the treatment. Alongside the group therapy, each patient receives individual therapy once a week. At the same time, all men in all tracks independently manage group and personal tasks that are part of suitable family life. Attention is also provided to issues related to employment and work realm through an employment adviser.

59. Stay in the therapeutic institution is part of the continuum of treatment for the violent men, at the end of which the men resume treatment in the Probation Service for Adults or therapeutic frameworks for violent men in the community. This, according to a program adjusted to the level of risk assessed in their case and

according to their needs, legal status and needs of their families. The Ministry currently operates two (2) therapeutic institutions, in Central and Southern Israel, and during the coming year will act to open an additional institution in the North.

**Programs for preventative rehabilitation to adult sex offenders in the community**

60. The programs are provided under the *Protection on the Public against Sex Offenses Law* 5766-2006 which is intended to protect the public against sex offenses. The Law is composed of three (3) central elements: risk assessment, conducted of the sex offender in various stages of the criminal proceeding; supervision and follow up on sex offenders in the community; and providing a program for preventative rehabilitation. The perception of the Law is that combination of these three (3) elements will reduce the risk of the sex offender and protect the public. The Ministry is in charge for implementing the preventative rehabilitation chapter of the Law.

61. The Law enables a sex offender who was convicted and found fit to be integrated in preventative rehabilitation programs that provide designated treatment to prevent recurrence of sex offenses. These programs are offered either separately or together with additional treatments according to need. The programs are performed with the financing and supervision of the Ministry in authorized centers for preventative rehabilitation all over Israel, which include a gamut of solutions. Treatment is provided by designated professionals who have training, experience, and expertise in treating this unique population, according to professional standards composed by a professional inter-ministerial forum that includes top professionals in the field. The purpose of the interventions is to reduce threat posed by sex offenders in the community and to prevent them from repeating such offenses.

62. The target populations for preventative rehabilitation to adult sex offenders in the community are:

- Adult convicted sex offenders who were sentenced for probation or supervision orders, at a threat level of medium or higher, for whom a condition of treatment was determined by a judicial decision;
- Adult convicted sex offenders at a threat level of medium or higher, after serving imprisonment sentence and released with a judicial condition, either of the parole committee or by supervision order that instructs a condition of treatment;

- Sexual perpetrators, adults above the age of 18 who approached independently or were referred by a public body or a local authority due to concern or history of committing sexual offences (no more than 20% in every preventative rehabilitation center, based on vacancy only). In this group, patients who are on the detention supervision stage who have assumed responsibility for committing the offense and would like to receive treatment may also be included.

63. The therapeutic model in this program is based on the continuum principle, according to the level of insensitivity of care required:
    - Closed institutions intended for patients to stay in 24/7. These institutions include: hostel for sex offenders with a threat level of medium and above, with generally proper functioning skills – can contain up to 24 patients at the same time; hostel for sex offenders with cognitive disabilities and severe behavioral problems – can contain up to 24 patients at the same time; and a therapeutic unit out-of-house for sex offenders who are addicted to drugs and alcohol - can contain up to ten (10) patients simultaneously.
    - A day-center intended for patients for several hours (mornings or afternoons) - intended for approximately 80 patients together.
    - Ten (10) ambulatory centers country wide for providing designated treatment, that includes group or individual therapy (the latter designated for sex offenders who are unable to integrate in group therapy). These centers include, *inter alia*, a center designated for the ultra-Orthodox population and centers that specialize in treatment of sex offenders with disabilities. The capacities of these centers are adapted according to the needs.
    - Therapeutic groups (in 2018 - 21 groups) guided by probation officers with designated therapists in the field of sex offenses. Each group can contain up to ten (10) patients at the same time.

64. Psychiatric treatment or medical treatment to reduce sexual desires may be included in all programs, as per the specific needs. In 2018, 903 new referrals were received for reasons of committing sex offenses in the various stages of the criminal proceeding. The work that is required for the implementation of the *Protection of the Public against Sex Offenses Law* is made in cooperation and coordination between the various related Government Ministries. This collaboration also includes the operation of a professional inter-ministerial forum led by the Probation

Service for Adults with the participation of professionals from the various Government Ministries operating in the field. This forum has been operating for several years. The professional forum accompanies the implementation of the rehabilitation chapter in the Law and helps develop knowledge and provide solutions in principle professional issues.

**Additional information on Police efforts to combat domestic and sexual violence**

65. Control and Supervision - The Police conducts several periodic reviews of the treatment of domestic violence offences each year, in every police district and in several stations, through both initiated and surprise inspections.

66. Public Information - Each police station contains informational signs and leaflets for victims of offences, in several languages, including Hebrew, English, Arabic, Russian and Amharic, and in a form that is accessible to the blind and visually impaired, detailing the possibilities for assistance and treatment of victims in the station's vicinity. Additional information is provided through the Israeli Police website.

67. When investigating domestic violence cases, the Police invest extensive resources, including intelligence and SIGINT resources, and spares no efforts in order to prevent such threats and identifying the offenders.

68. Electronic Monitoring - The Police are currently examining the use of electronic monitoring for suspects and persons under restraining order due to domestic violence, as additional protection for people under threat in domestic violence cases.

**Zero Tolerance Policy to Sexual Exploitation by Security Officials**

**The Israeli Defense Force (IDF)**

69. In accordance with General Staff Order 33.0145, entitled "Prohibition of Sexual Violence," commanders must act to maintain a respectful atmosphere within their unit, and follow the order and the norms enshrined therein amongst their subordinates. In addition, the Chief of the General Staff issued a circular emphasizing the harmful effects of behavior which amounts to sexual violence.

70. In recent years, the IDF adopted a strategic plan for eliminating sexual harassment. This plan includes four (4) pillars: Information; Enforcement and Monitoring; Command reaction; Adjudication and Sanctions; and Victim Support ("Mahut").

71. Recent data shows that there has been an increase in the rate of sexual violence cases reported in the IDF. This is an indication that the legitimacy of reporting and filing complaints has increased, due to various factors, including public discourse, media exposure and efforts both within and outside the IDF, to eliminate this phenomenon, and the establishment of the Mahut Center.

72. For additional information and statistics, please see Annex I and II attached to Israel's 6th Periodic Report, concerning the implementation of the international Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

**The Police**

73. Generally, every criminal offence committed by a police officer, punishable by a year of imprisonment and above, including a sexual offence, is handled by the Department for Investigation of Police Officers (DIPO), which is under the auspices of the MoJ, thereby maintaining its professional independence. The DIPO makes efforts to ensure that incidents of sexual exploitation by police officers towards civilians or co-workers are handled without compromise. These include:

- Training of police units and lecturing on sexual abuse and sexual harassment; greater sensitivity towards victims of sexual offences: The DIPO is working in cooperation with the NGO Association of Rape Crisis Centers in Israel (ARCCI). As part of this cooperation, the DIPO receives instructions on the necessary sensitivity required for handling victims of sexual assaults. In addition, the DIPO and the ARCCI work closely in accompanying victims of crime during the investigation and court proceedings.

- Designated guidelines which stipulate that prior to closing a sexual assault case, an attorney representing DIPO will meet the victim personally, and will explain to her/him the decision, and the reasons behind it, in a personal and sensitive manner. The guidelines focus significantly on the victim's ability to understand the reasons behind the decision to close the case, and underscore the importance of the victim feeling that she/he is seen and taken into consideration.

- An information leaflet in several languages is provided to victims of crimes (both civilian and police officers' victims) at the investigation. The leaflet includes information on the assistance that is available for victims of sexual

offences at ARCCI.

74. Events over the past few years have shown that the DIPO does not spare high-ranking police officers or those who have strong “ties” and connections who allegedly committed sexual offences against their subordinates.

75. The DIPO submits many indictments on charges of sexual exploitation of women and demands the courts to issue severe sanctions. The DIPO’s aim through all these situations is to deliver a message that sexual offences, especially when committed through an abuse of authority, and police authority in particular, are taken seriously and that it is crucial to eliminate wrongful norms and perceptions. In cases where senior police officers committed sexual offences towards their subordinates' or had sexual relationships with them, while exploiting a relationship of authority, the DIPO believes that beyond the significance of handling each individual case, lays the importance of abolishing wrongful norms, and changing the way that women are perceived within the working environment.

76. For Police prevention efforts and recent statistics see Annex I and Table No. 2 in Annex II attached to Israel's 6th Periodic Report, concerning the implementation of the international Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

**The Israeli Prisons Service (IPS)**

77. The IPS maintains a strict policy of enforcing the legislative provisions dealing with the prohibition of all forms of sexual offences to women within the IPS system, in both disciplinary and criminal level.

78. For statistic information concerning sexual harassment in the IPS between 2012-2016 see Table No. 3 in Annex II attached to Israel's 6th Periodic Report, concerning the implementation of the international Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

**Training for IPS officials on domestic and sexual violence**

79. The IPS employees go through several training courses regarding the issue of prevention of domestic and sexual violence. These include:

80. External training by specialized professionals in the field of prevention of domestic and sexual violence to departments and teams that are designated to treat such cases.

In 2018, 26 such trainings were conducted (one (1) every two (2) weeks).

81. A special Course was opened on the issue of prevention of domestic violence (October 2018 – June 2019)

82. The IPS integrates department managers and social workers in order to assist departments who handle cases of domestic violence.

83. Additional training days and trainings in the various IPS districts for new employees are conducted routinely.

**Training programs provided to MoLSAaSS personnel in treating cases of violence against women**

84. The MoLSAaSS operates an extensive training program for professionals in treating domestic violence. Training is provided as part of the understanding that the professionals need to be trained and updated in all skills required for treating families. These training programs are:

- Training for treatment of domestic violence for social workers.
- Advanced training for treating domestic violence with gender perception.
- Training for treatment of men in domestic violence.
- Training of employees and managers in the Arab society in the Negev.
- Training managers for centers of domestic violence prevention and treatment.
- A study team to develop therapeutic tools for therapy assessment.
- Training for treatment of children exposed to and victims of domestic violence.

85. Training and instruction for workers in the field of sex delinquency treatment - The Law prescribes specific conditions for education and experience required from designated sex delinquency therapists. According to these conditions the MoLSAaSS operates courses for diagnosis, treatment, and rehabilitation of sex offenders when required. These courses are attended by probation officers and workers from additional bodies who are partners in implementing the rehabilitation chapter of the Law. In addition, all workers treating sex offenders under the Law receive regular instruction sessions regarding their work from specialist instructors.

**Sexual Harassment - Enforcement Efforts**

86. Under the *Prevention of Sexual Harassment Regulations*, every employer must appoint a sexual harassment prevention officer, to serve as an address for complaints on sexual harassment. Other duties of the officer include providing recommendations to the employer on how to handle a case of sexual harassment in the workplace, and providing the employees with consultation, information and guidance. Employers must issue a code of conduct for the prevention of sexual harassment; allow instruction and explanatory sessions on the subject for the employees; demand that all employees refrain from sexual harassment; establish an efficient way for lodging a complaint in respect of sexual harassment; deal effectively with all cases of sexual harassment, etc. The regulations determine that if possible, the appointed officer should be a woman.

87. **Nation-wide Protest** - On December 4, 2018, nation-wide protests were held following the murders of two (2) teen girls, whose deaths brought the number of women killed in domestic violence-related incidents during 2018 to 24, the highest in years. The protest was initiated by a coalition of dozens of women's organizations. Hundreds of private institutions, municipalities, schools, and organizations allowed their employees to join the protest, and the Government's CS Commissioner has also made concessions to allow a certain level of participation by civil servants. President Reuven Rivlin lent his support to the protest, tweeting photos of his wife, first lady Nechama Rivlin, demonstrating alongside employees of the President's Residence.

88. **New-Year Campaign against "Date Rape" Drug -** in the 2016 New Year's celebrations, the Police conducted a broad operation for increasing public awareness regarding the "date rape" drug. The operation included a wide-ranging public campaign, with videos broadcasted, leaflets distributed, posters and television interviews on this subject. In addition, approximately 20,000 "date rape" drug detection kits were distributed to the public for free. A similar operation was held in 2019 New Year's celebrations.

89. In 2016, five (5) legal aid stations were opened in five (5) courts country-wide, these stations employ MoJ lawyers. An examination of the work carried out by these lawyers, reveals that about 75% of the work, revolve around urgent legal aid concerning protection or prevention of "threatening harassment" orders.

**Judicial measures relating to Sexual offences against women**

90. In December 2018, the Supreme Court accepted the State's appeal against the leniency of the sentence imposed by the Tel Aviv-Jaffa District Court on a sex offender that was convicted of committing an indecent act against a female minor under the age of 14, without her consent. In view of the seriousness of the offense and in light of the defendant's previous convictions of sexual offenses, the Court raised the sentence against the defendant from 45 months of imprisonment to 60 months of imprisonment. (Cr.A 3373/17 *The State of Israel v. Ofer Tzarfati* (5.12.18)).

91. In November 2018, the Supreme Court rejected an appeal filed by a defendant against the sentence of the Nazareth District Court against him. The defendant, a community Rabbi who was convicted by the lower Court of multiple sex offenses in women who sought his assistance and guidance under the guise of treating them. The Supreme Court did not find that the sentence imposed diverted from the normal level of punishment in similar cases and therefore did not find any reason to intervene. Thus the defendant's sentence remained 7.5 years imprisonment, suspended imprisonment and compensation to the victims. (Cr.A 2454/18 *Ezra Sheinberg v. The State of Israel* (2.12.18)).

92. In July 2018 the Ramla Magistrate Court ruled in the case of a defendant accused of committing an indecent assault, indecent assault by using force and sexual harassment against his female colleague. After examining the evidence and hearing the parties, the Court convicted the defendant in the above-mentioned offences, and in January 24, 2019 the defendant was sentenced to eight (8) months of imprisonment, six (6) months of suspended imprisonment and compensation of 20,000 NIS (5,400 USD) to the victim. (Cr.C 42624-01-18 *The State of Israel v. Eliahu Assaf* (14.6.18)).

**Judicial measures relating to offences of domestic violence against women**

93. In 2018, the Tel Aviv-Jaffa Magistrate Court convicted a 19 years old defendant, as part of a plea bargain, for committing two (2) offenses of threats, one (1) offence of assault, one (1) offence of false imprisonment and malicious damage to a vehicle, against his minor sister and his mother. On July 17, 2018, after examining the evidence, hearing the parties and examining probation service reviews regarding the defendant, the Court sentenced the defendant to 180 hours Community Service,

six (6) months suspended imprisonment conditioned that the defendant will not conduct a violent offence for a period of three (3) years and two (2) months suspended imprisonment conditioned that the defendant will not conduct any damage to property for a period of three (3) years. The Court also implemented a previous suspended sentence against the defendant and ordered him to pay a fine of 2,000 NIS (540 USD) of 14 days imprisonment instead (Cr.C (Tel Aviv-Jaffa) 7344-08-15 *The State of Israel v. Shlomo Partush* (17.07.18)).

94. In yet another case in 2018, the Haifa Magistrate Court convicted a defendant who committed four (4) severe violent offenses including offenses grievous harm and threats against his ex-female spouse, according to his own confession. In July 2018, after examining the evidence, hearing the parties and examining probation service review regarding the defendant, the Court sentenced the defendant to six (6) months of imprisonment by way of Community Service, 12 months suspended imprisonment on condition that he will not commit an offence of a violent crime, six (6) months suspended imprisonment on condition that he will not commit an offence of a violent misdemeanor or a threat offence and a compensation of 80,000 NIS (21,620 USD) to the complainant. (Cr.C (Haifa) 22512-03-17 *The State of Israel v. Yosef Botbul* (17.07.18)).

95. In February 2018 the Supreme Court rejected an appeal filed by defendant, against the sentence imposed on him by the Nazareth District Court for committing violent offenses against two (2) of his daughters. The Nazareth District Court sentenced the appellant to 30 months imprisonment, suspended imprisonment and compensation for the victims. The Supreme Court rejected the appeal and held that the appellant's actions were conducted for a long period while exploiting the defendant's status within his family, and they are severe and appalling. The Court rejected the claim that the lower Court provided the appellant with an assurance of not imposing an imprisonment sentence, and noted that the imposed sentence is no different from the level of punishment in similar cases. (Cr.A 6539/17 *Nasrat Abu Tanna v. The State of Israel* (12.02.18)).

**Question 11**

**Judicial decisions relating to delaying the return of terrorists remains**

96. On July 25, 2017, the HCJ ruled that Sections 3 and 4A of the *Police Ordinance* do not constitute a sufficient legal basis for delaying the return of remains of terrorists

to their families and the holding of the remains by the Israel Police for the purpose of protecting public order, and that the Police's interpretation relaying on these sections is inconsistent with the requirement for explicit authorization regarding any action that harms human rights. The Court ruled that some basic rights are at stake, primarily human dignity, and therefore the Police is not authorized to condition the return of the remains of the terrorists on the family's commitment to a certain pattern of funeral. The authority of the Police is limited only to set conditions that are meant to ensure public order during the funeral. In this case, the Court ordered the Police to hand the terrorists' bodies to their families within 30 hours of the Court decision and noted that it is authorized to set conditions in regard to their funerals for the protection of public order and the prevention of riots and violence. (H.C.J. 5887/17 *Ahmad Moussa Jabarin et. al. v. The Israeli Police et. al.* (25.7.17)).

97. On December 14, 2017, the HCJ ruled that Regulation 133(3) of the *Defense Regulations* does not constitute a primary, specific and explicit source of legislation for the IDF military commander to order the temporary burial of the remains of terrorists in order to hold them for the purpose of negotiating the return of Israeli citizens and the remains of Israeli soldiers held by the terrorist organization Hamas. The Court further affirmed that any administrative authority must act within the limits of the authority vested in it by law. The Court noted that this principle is the cornerstone of administrative law, which legally binds administrative authorities, thereby restricting the power of the Government and guaranteeing individual liberties. The Court further noted that when the administrative act violates human rights, not only that the administrative body is required to indicate a source of authority for its action, but also that the authoritative provision must comply with the constitutional requirements. For this it must be enshrined in primary legislation by a special statutory provision intended to allow the infringement of the basic right, and in addition it must be clear, specific and explicit. The Court noted that it grants the State an opportunity to formulate a full and complete legal arrangement, in explicit and specific primary legislation that meets the relevant legal standards, which will be devoted to the subject of holding remains of the terrorists for the required purposes. In light of the above, the Court ordered a suspended annulment of the burial orders of the terrorists' remains, which will grant the State time to formulate a full legal arrangement within six (6) months from the date of issuing this judgment. In case the State does not formulate an arrangement until that date,

the remains of the terrorists whose cases were discussed in the petitions will be returned to their families (H.C.J. 4466/16 *Mohamad Alian et. al. v. The IDF Commander of the West Bank et. al.* (14.12.17)). The State filed a petition for further hearing on this matter which focused on the determination regarding lack of authority, the petition was approved by the Court. In the frame of approving the further hearing, the Court also delayed the execution of the verdict and the case in pending before the Court. On September 9, 2019, the Court issued its ruling, in which it stated that Regulation 133(3) of the *Defense Regulations* authorizes the Military Commander to order on a temporary burial of enemy soldiers or terrorists remains, while protecting the dignity of the deceased and of his/her family, for reasons of State security and the safety of its citizens, for the purpose of negotiating the return of Israeli soldiers (dead or alive) and Israeli citizens held by the terrorist organizations. (Ad.H.H.C.J 10190/17 *The IDF Commander of the West Bank et. al. v. Mohamad Alian et. al.* (9.9.19)).

**Question 14**

**Positive updates concerning the Inspector for Complaints against ISA Interrogators**:

98. In July 2016, the IPS Commission published an amendment to its standing order no. 02.39.00 titled "Rules of Conduct for IPS wardens", in which Section 12 was added. This Section sets the obligation of a warden to transfer any complaint or information regarding a suspicion against ISA interrogators, through the prison commander, to the office of the Inspector in the MoJ. To date, several complaints have been filed through this channel.

99. Please note that due to this significant case load, the Inspector applied for and received two (2) additional positions for her department, that are in the final stages of filling.

**Additional positive updates**

100. In 2018, the ISA began a pilot to examine the replacement of all the lighting infrastructures in its interrogation facilities, so it will allow dimming the lights in the cells at night. As of May 2019, every ISA interrogation facility has been adapted accordingly.

101. The leaflet of rights provided to every ISA interrogatee, has been updated and a woman's right to the presence of another woman during their interrogation was added.

**Question 15**

102. **Official Visitors – Additional information** - These Visitors are appointed by the Minister of Public Security and are comprised of lawyers from the MoJ that are being appointed annually, either for a specific prison or nationwide.

103. Official Visitors are allowed to enter the prisons at any given time (unless special temporary circumstances apply), inspect the state of affairs, prisoners' care, prison management, etc. During these visits, the prisoners may approach the visitors and present their complaints, including grievances pertaining to use of force. Prisoners may also make a complaint with the Prison Director and ask for an interview with an Official Visitor. AG's Guideline (No. 4.1201. (1.5.75), updated – 1.9.2002) broadened the scope of the above to also include detention facilities and detention cells in police stations.

104. **The High Court of Justice Ruling regarding Abu-Gosh (12.12.17)** - On December 12, 2017, the High Court of Justice ruled that the Attorney General's decision not to order the opening of a criminal investigation regarding methods used by Israeli Security Agency (ISA) interrogators during an interrogation of a Palestinian detainee involved in terrorist activity is reasonable, and rejected the petition. The Court held that the interrogation methods used do not constitute torture and that the interrogators are entitled to the claim that they acted under the necessity defense regarding certain exceptional methods that were used.

The petitioner was arrested on September 3, 2007 on suspicion that he was the explosives expert of an active Hamas terrorist cell in Nablus, possessing information pertaining to its explosives lab, explosive devices and plans for terrorist attacks. These suspicions were based on highly credible information. Therefore, there were concrete grounds to assume that the petitioner was in possession of information that was crucial to the aversion of a real and substantial threat to human life. Due to the immediate need to attain this urgent information in order to save lives, the interrogators employed certain exceptional measures in his interrogation.

During the course of his interrogation, the petitioner revealed the location of the explosives lab in which he produced explosive materials and explosive devices and the details of a person to whom he had given an explosive belt that he had manufactured. The petitioner also gave his interrogators information about another explosives lab and a warehouse for chemical substances used in the preparation of explosive materials. The information provided by the petitioner lead to the apprehension on September 22, 2007 of a ready-to-use explosive belt that was left in the heart of Tel Aviv-Jaffa, for a terrorist to collect and use to carry out a mass terrorist attack. That information also led to the discovery of two (2) additional explosives labs in which many explosive materials were found.

The High Court of Justice ruled that the petitioner's complaints filed regarding the interrogation were examined on a number of separate occasions by the most senior Israeli legal professionals, including the State Attorney and the Attorney General. The Office of Inspector for Complaints against ISA interrogators conducted three (3) inquiries of the matter: in 2007 when the initial complaint was filed on behalf of the petitioner, in 2014 and in 2015, after the Inspector became part of the Ministry of Justice. On these occasions, the Inspector recommended not to open a criminal investigation on the basis of its findings. The recommendation of the Inspector for Complaints against ISA interrogators were brought before the State Attorney and the Attorney General for review on several occasions, when the positions were held by different persons, and time and again it was decided that a criminal investigation was not warranted. The inquiry process was extensive and included interviews with the petitioner and the ISA interrogators, in addition to thorough reviews of various evidence, medical records and classified material.

The High Court of Justice found that certain exceptional methods of interrogation were used, but they do not constitute torture as they did not cause severe pain and suffering according to Article 1 of the Convention against Torture, which Israel is a party to. The Court based this decision on the severity of events described by the petitioner in his initial complaints and in accordance with the material presented by the Attorney General and the ISA, and rejected a more severe description of the events that was raised by the petitioner at a later time (upon his release from prison in 2012). The Court found that a forensic evaluation of the

petitioner conducted according to the Manual on the Effective Investigation and Documentation of Torture (Istanbul Protocol), did not have substantial evidentiary weight as it was based on his later complaints, did not have sufficient medical documentation from the time of the interrogation and could not point to a direct and substantial link between the medical assessments and the investigation.

The Court stated that according to the Attorney General's guidelines the necessity defense cannot be applied when interrogation methods of the ISA amount to torture. Since it was established in this case that the ISA interrogation methods did not constitute torture, and there was a real and substantial threat to human life, the Court ruled that the interrogators are entitled to the necessity defense and therefore should not be subjected to a criminal investigation or prosecution. (H.C.J. 5722/12 *As'ad Abu-Gosh v. The Attorney General* (12.12.2017)).

105. **The High Court of Justice Ruling regarding Fares Tbeish** - On November 2011, Mr. Fares Tbeish was arrested by an administrative detention order for suspicion of membership and activity in the Hamas terrorist organization and trafficking of weaponry linked to terrorist attacks within Israel (Specifically, harboring and trafficking of weaponry linked to terrorist attacks within Israel). Following his interrogation, he admitted to an amended indictment and was convicted through a plea bargain. Mr. Tbeish was sentenced to 36 months imprisonment, 36 months suspended imprisonment for a period of five (5) years and a fine of 20,000 NIS (5,400 USD). On April 2013, Mr. Tbeish filed a petition to the HCJ claiming he was tortured by ISA interrogators. In his petition, he requested the Court to instruct the AG to cancel his decision not to open a criminal investigation against his interrogators, and to cancel an AG's guideline, which according to the petitioner, allow the employment of special interrogation mean.

On November 26, 2018 the High Court of Justice ruled on Mr. Tbeish's petition. The Court noted that Mr. Tbeish filed a complaint to the Inspector for Complaints Against ISA Interrogators (the Inspector), which examined all the investigations materials in his regard. The Court also noted that the Inspector met with the petitioner in order to further examine his complaint, however, in these meetings the petitioner did not recall the course of his interrogation, did not recall what actions did his interrogators make or the threats towards him etc. The petitioner

also refused to be examined by a lie detector. On September 12, 2016, the Inspector's Supervisor, a senior advocate in the State Attorney's Office, notified the petitioners that according to the Attorney General and the State Attorney decided that the case will be closed due to insufficient findings that justify the opening of a criminal investigation disciplinary measures or other measures against the ISA interrogators.

After careful examination of all the information presented to it, the Court noted, *inter alia*, that the petitioner's version, as presented in his affidavits did not manage to prove a suspicion of criminal offence by the ISA interrogators, in a manner that contradicts the Inspector's and the Supervisor's recommendations. The Court further noted that there were substantial inconsistencies in the petitioner's version and therefore it did not find any reason to accept it.

In regard to the claim that the use of special interrogations means by the ISA interrogators are not covered by the "necessity" defense, the Court noted that the said means were elaborated before the Court in an *ex-parte* hearing, in which it was emphasized that such means did not include violence toward the petitioner as described in his complaint and his petition. In this regard, the Court noted that it accepts the determination of the Supervisor, that the scope and level of these means are substantially far from the petitioner's claims. In these circumstances, the Court noted it is convinced that the employment of the special means in the petitioner's interrogation is covered by the "necessity" defense.

The Court further noted that the circumstances of the petitioner's interrogation clearly indicate that the investigation was intended to prevent an actual and concrete danger to human life, which took place at a high level of certainty. The "necessity" that underlies at the petitioner's interrogation must be understood and interpreted in light of the complex security reality of the State of Israel. The petitioner was active in a terrorist organization that carried out and continues to carry out serious terrorist attacks, including murder in cold blood, mercilessly, of men, women and children for no fault of their own, solely because they are Israelis. The special means used in the interrogation of the petitioner, as argued before us were proportionate to the severe injury whose operation was intended to foil – the Court believes that the Supervisor's determination that "the use of the special means of interrogation under the circumstances is protected under the

necessity defense" – is legally correct.

The Court did not accept the argument that in every case in which a complaint is filed regarding the use of torture during interrogations and a defense of necessity is raised by ISA interrogators, a criminal investigation must be opened against the interrogators, and only after a decision to prosecute them can they claim the necessity defense.

The Court found no reason to intervene in the Attorney General's decision to approve the Supervisor's decision not to open a criminal investigation against the petitioner's interrogators and to close the investigation file in the matter of his complaint. Contrary to the petitioner's claims, the decision that the petition was not tortured in his interrogation and therefore his interrogators have a "necessity defense" that absolves them of criminal responsibility for applying "special means of interrogation" in his interrogation, does not deviate from the range of reasonableness, nor should the petitioners' request for revocation of the Attorney General guideline should not be upheld since it does not contradict the law. H.C.J. 9018/17 *Fares Tbeish et. al. v. The Attorney General et. al.* (26.11.18).

On February 25, 2019 in the Court rejected a request for an additional hearing in this case. (Ad.H.H.C.J 9105/18 *Fares Tbeish et. al. v. The Attorney General et. al.* (25.2.19)).

106. On June 13, 2017, the Israeli Supreme Court ruled in favor of the Petitioners, several human rights NGOs, in a case concerning the living conditions of prisoners in Israel. The Court required the State to provide, within 18 months, a 4.5 square meter of living space for each prisoner or detainee, as required according to Section 2(8) of the *Prisons Regulation (Imprisonment Conditions)* 5770-2010, instead of 3.16 square meters, as in most of prisons in Israel today.

The Court held that the notion of "*appropriate living conditions*" under the Amendment for the *Prisons Ordinance* 5772-2012, includes the obligation to provide an appropriate living space for a prisoner or detainee. The Court further noted that human rights are reserved for every person, even if he or she are detained or imprisoned, and that imprisonment alone cannot prevent a person of any other rights, except for those which are necessary and stem from the prevention of freedom of movement under the imprisonment itself. Note that the

State did not contest this issue, but only on the time frame that is required for making the necessary arrangements following this decision.

Moreover, the Court stressed that minimal living space is an essential condition for protecting the prisoner's right for human dignity and his or her right for dignified human existence.

In its decision, the Court included a detailed reference to the right for adequate living space of prisoners under International Human Rights Law, including Article 10(1) of the ICCPR, Article 16 of the CAT, and the Mandela Rules of 2015.

The Court further ordered that within nine (9) months, the State should make all necessary arrangements that no prisoner will have a living space that is less than three (3) square meter (not including the shower and toilet). Within 18 months, the living space of each prisoner or detainee should be at least 4.5 sq.m. (including the shower and toilet) or 4 sq.m. not including these areas (H.C.J. 1892/14 *The Association for Civil Rights in Israel et. al. v. The Minister of Public Security et. al.* (13.6.17)).

On March 15, 2018, a State request for an extension in the implementation of this decision, based on a Government Resolution on improvement of incarceration conditions and expansion of prisoners' living space, was filed to the Court. On March 19, 2018, The Court ordered the State to issue within a week, a plan for an expansion of the prisoners' living space to 3 sq.m. within a short and reasonable schedule, and such a plan was filed by the State on March 29, 2018. In August 2018, the State further updated the Court in regard to several laws that were legislated in order to enable the expansion of a prisoner's living space, including in regard to Amendment No. 54 to the *Prisons Ordinance (Administrative Releas*e) 5778-2018, according to which, several hundreds of prisoners were administratively released on December 20, 2018.

The State is working on implementing the second stage – expanding the prisoners' living space to 4.5 sq.m.

**Shortening of minors' detention periods**

107. Shortening of detention periods – Following additional staff work, on April 18,

2017, the High Court of Justice issued a permanent order[1], which calls for shortening the periods of detention of Palestinians from the West Bank in the Military Justice System. The following provisions entered into force on May 1, 2018.

108. Initial detention period prior to being brought before a judge

- *Minors Between the ages of 12 and 14*
  - Security offences - the maximum detention period prior to being brought before a judge is 24 hours (with the option of an additional 24 hours for urgent investigation purposes).
  - Criminal offences - the maximum detention period prior to being brought before a judge is 24 hours (with the option of an additional 12 hours for urgent investigation purposes).
- *Minors between the ages of 14 and 18*
  - Security offences
    - *Between the ages of 14 and 16* - the maximum detention period prior to being brought before a judge is 48 hours (with the option of an additional 48 hours for urgent investigation purposes).
    - *Between the ages of 16 and 18* - the maximum detention period prior to being brought before a judge is 72 hours (with the option of an additional 72 hours for urgent investigation purposes).
  - Criminal offences – (14 to 18) the maximum detention period prior to being brought before a judge is 48 hours (with the option of an additional 24 hours for urgent investigation purposes).

109. Detention period determined by a judge prior to submission of an indictment

- Security *offences* (between 12-18) the maximum detention period that may be set by a judge prior to the submission of an indictment is 15 days (with the option of extending this period by additional ten (10) days periods that will not exceed 40 days in total). A Military Court of Appeals may extend this period to a maximum detention periods of 45 days each time.
- *Criminal* offences

[1] H.C.J. 3368/10, *The Ministry of Palestinian Prisoners et. al. v. The Minister of Defense* and H.C.J. 4057/10, *The Association for Civil Rights in Israel et. al. v. The IDF Commander in the West Bank Area* (18.4.17).

- Minors Between the ages of 12 and 14 - the maximum detention period that may be set by a judge prior to the submission of an indictment is ten (10) days (with the option of an extending this period by a maximum detention periods of ten (10) days each that will not exceed 40 days in total). A military Court of Appeals may extend this period a maximum detention periods of 45 days each time.
- Minors Between the ages of 14 and 18 - the maximum detention period that may be set by a judge prior to the submission of an indictment is 15 days (with the option of extending this period by additional ten (10) days periods that will not exceed 40 days in total). A military Court of Appeals may extend this period for by maximum detention periods of 45 days each time.

110. Detention period for the purpose of filing an indictment - Minors (between 12-18) – Security and Criminal offences - a maximum detention period of eight (8) days.

111. Detention period after filing an indictment prior to the beginning of a trial - Minors (between 12-18) - Security and Criminal offences - a maximum detention period of 45 days with the option of extending this period by up to 15 additional days at the request of the defendant. A Military Court of Appeals may extend this period by up to 45 additional days each time.

112. Detention period of minors until the conclusion of proceedings

- *Security offences* - The maximum detention period until the conclusion of proceedings is nine (9) months. A Military Court of Appeals may extend this period by a maximum period of three (3) months each time.
- *Criminal offences* - The maximum detention period until the conclusion of proceedings is six (6) months. A Military Court of Appeals may extend this period by a maximum period of three (3) months each time.

**Question 20**

**Legal Procedure to Relocate African Migrants – Additional Information**

113. The Attorney General conditioned legal approval of the safe relocation to the safe third countries policy on the following criteria:

1. There are no wars or general disturbances taking place in the third countries.
2. No UNHCR recommendations exist against relocation to the third countries.
3. The life and freedom of the individual are not at risk in the third countries based on race, religion, nationality or membership in a particular social or political group.
4. Relocated individuals in the third countries will have access to the asylum procedure or enjoy temporary protection, or, at the very least, these countries are obligated to abide by the *non-refoulement* principle.
5. Torture or cruel and degrading treatments are prohibited in the third countries.
6. The third countries are obligated to allow the relocated individuals means to live in a dignified manner, or at least the possibility to stay and work for a living.

114. Prior to reaching third party arrangement, GOI has ensured that the relevant third countries are committed to international legal standards for the treatment of asylum seekers; these countries are parties to the 1951 Convention Relating to the Status of Refugees and other major human rights conventions, and that they meet the Attorney General's criteria.

115. In April 2015 the PIA implemented a procedure whereby Eritreans or Sudanese residing in the "Holot" facility were given the option of relocating to a safe third country.

**Health Services for Non-Residents**

116. A number of medical services are available to migrants and foreign workers, as follows.

117. <u>*Emergency medical treatment*</u> - The *Patient's Rights Law* 5756-1996, entitles any individual in a state of medical emergency to urgent medical care without preconditions. Accordingly, any person, even one who is undocumented or uninsured, will receive urgent medical care at an emergency room and will be admitted to inpatient department with no prepayment strings attached, in the following situations: inpatient admission in emergency cases, including surgery (no advance payment required); termination of pregnancy for minors and rape

victims (funded by the MoH); giving birth, including intensive care for premature babies (no advance payment required).

118. *Family health stations* - These provide preventive medical services to infants, toddlers and pregnant women, including routine immunizations. The service is provided free of charge. The MoH grants the asylum seekers' population with a preventative medicine services basket which includes: growth and development monitoring of infants and toddlers, and routine vaccines in the family health stations. The service is provided free of charge. Most asylum seekers and children of foreign workers are located and receive treatment in Tel Aviv-Jaffa mother and child healthcare stations, as well country-wide cities where they reside.

119. *Intervention program for Eritrean families* ("healthcare centers" (previously - "*Hatishma Koli*")) - This is a family health intervention program for Eritrean families without legal status. It includes cultural mediation programs which are operated in relevant family health stations in order to coordinate preventative medical services for this community. This program was constructed in order to answer the needs of foreign workers and asylum seekers families, mostly from Eritrea, who reside in the City of Ashdod. This is a multi-professional program operated by the nursing staff in the station, jointly with the District Health Promoter, mediators to Tigrinya and an expert for play and developmental incentives. Individual and group meetings are held for parents and children. The contents deal with the healthcare differences between Israel and the origin country, parenting, child development, age-appropriate nutrition, safety, family planning and prevention of infectious diseases. A nurse and a mediator are present in every meeting. During the meetings, breakfast is provided. The group has become a support group where people share their hardship with the staff and more than once, the nurses serve as change agents towards other community frameworks.

120. *General medical services* - The "*Terem*" Clinic, located in the new Tel Aviv-Jaffa central bus station provides medical services to the migrant population without legal status. It is funded by the MoH and operated by *Terem* healthcare chain. The clinic provides primary medical services including doctor's examinations, laboratory and imaging services. It includes a volunteer clinic where specialist doctors offer their services. The clinic handles roughly 37,000 appointments

annually.

121. *Mental health services* - The "*Gesher*" clinic, based in Jaffa, provides mental health services, including psycho-social assistance and pharmacotherapy. The clinic operates nine (9) hours a week. The clinic treated hundreds of patients in a professional and culturally-adjusted manner, with recognition of the need to provide an appropriate solution to this population. The MoH has recently completed a tender process for the provision of mental health services to persons who lack legal status instead of the *Gesher* clinic, with emphasis of accessible, high-quality and available treatment, for the first time, all across Israel.

122. *Treatment for venereal diseases* - The "Levinsky Clinic" of the MoH in Tel Aviv-Jaffa operates under the auspices of the Tel Aviv-Jaffa city council. It was established in 2002 for the diagnosis and treatment of veneral diseases. Services are provided free of charge and anonymously regardless of age, gender or legal status. The clinic operates five (5) days a week at various hours and *inter alia*, it deals with primary prevention, and subsequently, promotes secondary prevention. About 50% of the patients are Israelis, about 30% are Eritrean and the rest are tourists, citizens of other countries with no official status or immigrants from the former Soviet Union.

123. *Treatment for the homeless and persons engaged in prostitution* - In the frame of the "Levinsky Clinic", a mobile clinic provides services to the homeless and to women engaged in prostitution. Several thousends persons recieve treatment by this clinic each year.

124. *The Sheba Medical Center* - This hospital, situated near Tel Aviv-Jaffa, operates a clinic for the uninsured, focusing primarily on oncology.

125. *Community Program for HIV/AIDS treatment* - The MoH operates a community follow-up and treatment program for HIV positive migrants without medical insurance. This is a joint project which involves AIDS clinics, NGOs, pharmaceutical companies and other commercial organizations. This progam is to be further expanded, with the MoH assuming full responsibility for its financing. Treatment is also provided to pregnant women who have no health insurance, including monitoring during pregnancy and six (6) months after birth, in the regular course of operation of the MoH.

126. *Diagnosis and treatment of tuberculosis* - The treatment of tuberculosis patients in the tuberculosis diagnosis and treatment center in Tel Aviv-Jaffa, and hospitalizing tuberculosis patients in "Shmuel Harofe" hospital, is fully funded by the MoH as part of the national tuberculosis treatment program.

127. *Health insurance to children under 18 years' old of migrants and foreign workers and unaccompanied minors* - parents are entitled to purchase healthcare insurance for their children (under the age of 18) in 'Meuhedet' HMO, with a cost of 120 NIS (32.5 USD) per month for the first and second child. The MoH subsidizes the insurance by additional 160 NIS (43 USD) per month. As of the third child - the MoH pays the full monthly premium for that child. The insured children are eligible to full service basket, similar to Israeli residents, except for the eligibility for treatments abroad. Nearly 80% of the children of this population are insured.

128. *Maternity insurance* - A female foreign worker or the wife of a foreign worker employed in Israel is entitled to a hospitalization grant (a grant paid to the hospital where the birth occurred to cover hospitalization costs) and a birth grant (financed by the National Insurance Institute). These allowances are paid even if the mother is unemployed. The insurance terms are similar to those of Israeli residents, subject to two (2) additional terms - that the birth took place in Israel and that the mother or her spouse have at least six (6) consecutive months of employment in Israel (Section 40(a)(2) of the *National Insurance Law (Consolidated Version)* 5755-1955). A female foreign worker who was employed for the minimum period in Israel is also entitled to maternity allowance, under similar terms to those required of an Israeli resident.

**Judicial measures relating to refugees and asylum seekers**

129. On December 17, 2018, the High Court of Justice denied a petition regarding the high illegal recruitment fees foreign workers were required to pay in order to work in Israel, after twelve (12) years in which the petition was pending. Throughout the proceedings, the State was ordered by the Court to address its policy on this issue and explain why additional measures to eliminate the practice have not been adopted. The State recognized the importance of the issue and over the years that the petition was pending, and has ratified a number of bilateral agreements regarding foreign workers coming into Israel, through agreements

with Romania, Bulgaria, Ukraine, Moldova and China on employment in the construction field. The State also ratified an agreement with Thailand regarding foreign workers in agriculture field, and recently signed an agreement in the caregiving field with the Philippines. The aim of these agreements is to reinforce the practice of legal, transparent, fair and well informed recruitment and temporary employment of foreign workers, to combat human trafficking, illegal migration, undocumented and illegal manpower recruitment practices, and illegal employment of foreign workers. The Court found that such agreements, alongside other measures, are effective in combatting the high illegal recruitment fees. Due to the State's progress in this area, the Court rejected the Petition without prejudice while maintaining that additional efforts are required, and that a new petition on the matter could be filed in the future (H.C.J. 2405/06 *Kav LaOved v. The Director of the Auxiliary Unit for Foreign Workers, The Ministry of Economy and Industry et. al.* (17.12.18)).

130. Following an investigation, the company "Green Flower - Human Resources Management, Training and Services Ltd." was convicted of violating employees' rights. In addition, the company manager was convicted of failing his due diligence obligation to prevent the offenses - a breach of the duty of supervision. The Tel Aviv-Jaffa Regional Labor Court stated that the company deducted money from the employees' wages without transferring them to the pension and advanced training funds, in violation of the *Wage Protection Law*. In addition, the Company was also convicted of engaging as a service contractor in the cleaning field without a license, as required by law. The Court emphasized that: "In order to ensure the basic rights of every employee employed by manpower agencies, there is a need to comply with the requirements of the law…". The Company was criminally fined in the sum of 350,000 NIS (94,600 USD). The Company undertook to refrain from committing such offenses for a period of three (3) years. (Cr.C. (Tel Aviv) 35528-12-16, *The State of Israel v. Green Flower - Human Resources Management, Training and Services Ltd.* (15.12.18)).

131. On May 3, 2017, the Nazareth Regional Labour Court ruled in favor of three (3) plaintiffs, foreign employees from China, who worked for the respondents as cooks for nine (9) months, and claimed that the respondents refused to provide them with rights and payments as required by law, such as payment for over-time,

compensation for holding back wages, compensation for illegal dismissal and without a hearing process, lack of pay slip etc. The Court accepted the suit against the restaurant (Respondent No. 1) however rejected it in regard to its owners and managers (Respondents No. 2 and 3). The Court noted that the plaintiffs managed to prove that they received a lower salary than what was agreed upon and contrary to the Population and Immigration Authority's employment permit and also contrary to their pay slips. The Court further noted that the plaintiffs proved that they worked extra hours beyond the working hours they were committed to, and therefore are entitled to additional payments and benefits. The Court further found that the plaintiffs did not receive early notice regarding their dismissal. The Court ordered that each of the plaintiffs shall be compensated in the total sum of 286,176 NIS (81,750 USD) and 10,000 NIS (2,850 USD) as legal fees (a total sum of 888,528 NIS (245,250 USD)) (La.D. 6178-11-14 *Shen Fhuqing et. al. v. Lido Kinneret Ltd. et. al.* (3.5.17)).

132. On July 7, 2016, The National Labour Court ruled over the issue of the rights of caregivers who reside with their patients regarding their weekly day of rest. The Court ruled that that the weekly day of rest of a caregiver that lives in the house of the patient, begins from the moment when he/she has finished his/her last assignment of care and it should last for at least 25 hours continuously, until he/she returns to take care of the patient, according to the regular work scheme. The respondent, a foreign citizen of Moldova, was employed as a caregiver of the appellant for a period of three (3) years and resided in his house, before she had terminated her employment. The Court stated that the *Work and Rest Hours Law* 5711-1951 in its current format is not suitable to be applied to the circumstances of employment of caregivers who reside in the houses of their employers, therefore, the Court ruled that the employer shall clearly notify, both in writing and orally, to the caregiver residing with him/her their right for a 25 hours day of rest, in which he/she may stay inside or outside the house as he/she desires. Regarding the reward a caregiver should receive if he/she had worked during the day of rest, the Court ruled that the caregiver shall be seen as a full-time employee, and therefore, the reward for such working hour or working day shall be derived from his/her regular salary, in the sum of 150% of a regular working hour/day (La.A. 47576-10-12 *Arie Zatelman (deceased) et. al. v. Valentina*

*Patrov* (7.7.2016)).

**Judicial measures relating to children and minors residing in ENoJ**

133. In this case, the Court discussed an appeal concerning the right to health insurance under the National *Health Insurance Law* of minors aged two and a half (2.5) and up to the age of fourteen (14), whose custodial parent is a resident of Israel. The period of entitlement that was examined is a period of two (2) years in which the minors are required to stay in Israel with the resident custodial parent, in order to examine their application for a permit to reside in Israel under the *Entry into Israel Law*, and the additional required examination period after the end of the two (2) years (the: "interim period"). The Court decided that the minors should be temporarily registered, for the interim period, in the National Insurance Institute's health file, and accordingly they will be covered by health insurance under the *National Health Insurance Law*. This is subject to the fact that they submitted an application to the Population Registry for a residence permit in Israel. The period of insurance under the *National Health Insurance Law* according to this arrangement will be until the decision of the Minister of Interior on the application for a residence permit in Israel. (N.I.Ap. 13304-07-13, *H. et. al. v. The National Insurance Institute et. al.* (13.3.18)).

**Additional information on health services for non-residents**

134. ***National interpretation call center*** – in 2013, the MoH established a national interpretation call center. This center provides services in Arabic, Russian, Amharic, Tigrinya, French and Yiddish. Tigrinya was specifically added to provide a solution for asylum seekers. The center provides interpretation services to all government healthcare facilities. Two HMOs, Maccabi and Meuhedet, as well as the medical centers Hadassah, Assuta and Sha'arei Tzedek - purchase interpretation services from this call center.

135. ***Cultural accessibility*** - Persons responsible for cultural accessibility at hospitals and health funds received training regarding healthcare disparity and cultural differences, and especially linguistic differences. Since 2014, over 120 employees in various healthcare institutions underwent designated training for the position of cultural competency instructors. In addition, the MoH as well as the system organizations (HMOs and hospitals) initiate and provide training and

seminars to employees in various professions about cultural competency.

136. ***Training*** - The MoH has also developed workshops and materials for practitioners on these matters, including a CD with simulations demonstrating interactions between a caregiver and a patient from a different cultural background.

137. ***Inspections*** - professional teams of the MoH hold inspections in healthcare institutions that also examine cultural and language accessibility of the healthcare services, specifically availability of professional interpretation services. In 2018, the Ministry conducted an expanded inspection regarding accessibility in the community and hospitalization institutions. The results will enable review the system's preparation to supply service to target populations.

**Question 22**

**Implementation of Outline Plans – Additional Information**

138. In the frame of GR No. 4078 (29.7.18), entitled "Emergency plan in the field of public housing", an inter-ministerial team was established in order to form and recommend on an action plan for the expansion on the number of apartments intended to public housing. This Resolution also instructed the MoCH and the MoF to examine a need for change in the existing tools for rental assistance, *inter alia*, for low-income families. The inter-ministerial team held a series of discussions, in which different ways of increasing the number of the apartments were examined. Since the dispersal of the Knesset at this stage, the recommendations were not implemented. Regarding the impact of the measures taken in this field - It is still early to try and predict the impact of the measures taken on the recipients of public housing and the private rental market.

139. Thirty one (31) detailed plans are promoted by the NPA as a Priority Housing Areas Plans.[2] These plans include 70,000 housing units in Arab local authorities country-wide.

[2] The *Planning and Building Proceedings for the Acceleration of Residential Construction (Transitory Provisions) Law* 5771-2011 was enacted in order to expedite the construction of affordable housing, creating a new planning committee for this purpose. This was replaced in 2014 by the *Promotion of Construction in Preferred Residential Sites (Transitory Provisions) Law* 5774-2014 which established special planning procedures for preferred residential sites, in order to accelerate the construction of housing in these areas. In particular, these provisions provide fast track for setting detailed plans in order to enable issuing building permits and provide sufficient housing supply.

140. In May 2018, the Committee for the Promotion of Priority Housing Areas decided to deposit a building plan for new neighborhoods in the city of Jadeidi Makr (15,000 housing units). This is the largest building plans for the Arab population in recent years. This committee is a rather new statutory organ, that promotes broader and faster processes, relying on a preliminary decision of the Government Housing Cabinet, constituting a real and important need for the special process. This committee enables a faster approval of mass existing and new housing in the planned area.

**Government Resolutions – Relating to Housing in the Arab Population**

141. In August 2015, the Government approved Resolution No. 346, which includes a set of recommendations based on a comprehensive report, analyzing housing issues in Arab localities. This Resolution deals with the promotion and advancement of various aspects concerning housing in Arab localities, including: Promoting detailed planning and facilitating its approval, specifying measures to increase suitable land for housing development, facilitating registry issues especially in already built areas, increasing the number of independent Arab building and planning committees and strengthening them.

142. The recommendations of Resolution No. 346 were implemented, detailed and budgeted, in Resolution No. 922 from December 30, 2015. This resolution deals with the promotion and advancement of various aspects of life in Arab localities, including outline and detailed planning, various aspects of housing and public services, infrastructures, accessibility to public transportation, industry and commerce, employment, public security and various levels of education. In total, a budget of 10 Billion NIS (2.7 Billion USD) over five (5) years was allotted, with assigned tasks to the various Government Ministries.

143. Following Resolution No. 922, on June 2, 2016, the Government approved Resolution No. 1480, an additional separate resolution for the empowerment and socio-economic strengthening of the Bedouin localities in the North. This resolution includes various tasks, some of which were determined by Resolution No. 922, adding focus to the needs of the 22 localities stated in the plan, and some are additional activities for the said localities, in accordance with their special needs. In total, a budget of 854 Million NIS (231 Million USD) over five (5) years

was allotted, with designated tasks to the Government Ministries.

**Educational initiatives in the ENoJ**

144. On April 13, 2018, GR No. 3790 on the mitigation of social and economic gaps and the economic development of ENoJ was adopted. This Resolution, *inter alia*, addresses the education system in the ENoJ and established a sub-committee on education headed by the MoE's DG, which is charged with forming a plan to advance the education system. The goals set for the advancement of education in the ENoJ include: strengthening the Hebrew knowledge among pupils, advancing technological knowledge, broadening the non-formal sectors of education and creating incentives for adopting the Israeli education program. The educational plan that will be formulated by the sub-committee, in accordance with this Resolution, shall set the goals of each educational institution, based on their unique characteristics. For information on the number of Classrooms under construction in the ENoJ, see Annex II.

145. As of July 2019, there is a shortage of 4,000 classrooms and kindergartens in Jerusalem, for all the city's populations, 2,000 of which are required in the ENoJ. This is a result of an increase in the number of children, the demand for education frameworks and decades of under-budgeting this issue.

146. In February 2018, the Jerusalem Municipality published a multi-annual operative plan for reducing the classroom gaps in Jerusalem during the next five (5)-year term, following the decision in H.C.J 6183/16 *Parents' Organization for the Education System v. The State of Israel*. This program presents the classroom construction data in the Jerusalem Municipality, the unique challenges in building classrooms in Jerusalem, the actions required for lessening the shortage in classrooms, including budget and increasing efficiency of governmental and municipal processes. The goal of the Jerusalem Municipality five (5)-years program for 2018-2022 is to add approximately 5,000 classrooms and kindergartens to the existing classes in Jerusalem, almost half of them in the ENoJ (for the Arab population in Jerusalem (2,350 classes)). **The total program budget** is just over nine (9) Billion NIS (2.516 Billion USD) (excluding existing budgetary designations at a sum of 400 Million NIS (111.6 Million USD)). The plan's implementation is carried out in cooperation with the relevant Ministries,

while allocating the required budgets, removing barriers and making the whole process more efficient. In addition, the MoE has informed the Supreme Court that the criterion for the allocation of the construction budget to municipalities has been amended to address the need in further classrooms country-wide.

147. Aimed at dealing with the immediate problem, the municipality rented 850 classrooms all over the city with an estimated cost of 50 Million NIS (13.9 Million USD). An additional 1,000 classes are in planning and construction stages and land required for additional 400 classes is in the process of expropriation. As part of this plan regular meeting are held between the municipality and senior officials, including the MoE DG.

148. For statistical data, see Annex I.

**Judicial measures**

149. An appeal was filed in the Supreme Court in relation to the ruling of the Court of Administrative Affairs, which rejected a petition for the State to be required to translate the documents of a plan concerning the establishment of a national park in Jerusalem, thus ensuring the ability of Arab residents to exercise their right to object to the plan. The notice on the submission of the plan had been published in both Hebrew and Arabic; however, the petitioners were not satisfied with this, and requested that all of the plan's documents be translated into Arabic.

On May 12, 2014, the Supreme Court ruled that the parties are required to submit a notice regarding "a proper arrangement that would take into account the practical needs of the citizens and residents who speak the Arabic language". The Court noted as an example that a practical solution would allow citizens and residents who speak Arabic to study, in a general manner, the contents of submitted city zoning plans, for example, by posting plan briefings on Internet websites.

In accordance with the State Attorney's Office's notice dated October 25, 2015, the outline that had been formulated in response to the Court's ruling, determines that the introduction of each plan would contain comprehensible explanatory notes containing the purpose of the plan, and shall enable a review of its main provisions. The translation requirement would apply only to plans covering an area exceeding 200 dunams within a local planning area, in which the Arabic-speaking population constitutes a minimum of 10% of the general population. In addition, the outline

sets forth that various auxiliary documents would be posted on the Planning Authority's website, such as: "A permanent document translated into Arabic of the land designations' list and the color set for such", as well as a document of the "permanent parts of the plan's provisions [...] translated into Arabic, in which the headings and permanent fields appearing in the plans' provisions would be translated". On October 26, 2015, the Supreme Court approved the agreement reached between the parties. (Ad.P.A 758/13, *The Jerusalem Center of Human Rights et. al. v. The Jerusalem Planning and Building Committee* (26.10.15)).

150. As part of a land arrangement procedure in the northern Negev area that began in 1971, Appellant No. 1 (deceased) claimed ownership to six (6) land lots. The State also claimed ownership to these lots and based its claim on the fact that the lots were located in areas that were expropriated by it in 1954 in accordance to the *Land Acquisition Law (Authorization of Activities and Compensation)* 5713-1953 (hereinafter "the *Acquisition Law"*). The arrangement procedure in regards to these lots was never finalized, and in 2006, the heirs of Appellant No. 1 (Appellants no. 2-16) filed six (6) petitions to the Be'er-Sheva District Court in order to receive ownership of these lots. The Court dismissed these claims, noting that land expropriation was duly carried out in accordance with the *Acquisition Law* and that the plaintiffs failed to prove their claims in relation to title of the plots that were the subject matter of the claim. The Court ordered that the land referred to as Blocks 400367, 400371, and 400369 were to be registered in the name of the Development Authority (a government agency created in 1951 to manage the lands acquired by the State, in accordance with the *Acquisition Law*), whereas the land known as Blocks 400526 and 400527 were to be registered in the name of the State of Israel (C.C. 7161/06, *Suleiman Mahmud Salaam El-Uqbi (deceased) et. al. v. The State of Israel* (15.3.12)).

On May 14, 2015, the Israeli Supreme Court, presiding as a Court of Civil Appeals, rejected the appeal on the above-mentioned decision of the Be'er-Sheva District Court.

The Court rejected the appellants' claims in regards to the validity of the 1954 expropriations that were carried out in accordance with the *Acquisition Law* and stated that there was no reason to intervene in the lower court's decision to register the State and the Development Authority as the owners of these lands.

The Court, however, further examined whether the appellants had any other rights or benefits with respect to these lands, which entitled them to alternative land or compensations in accordance with Section 3 of the *Acquisition Law*.

The appellants claimed that the lands, to which they claimed ownership, were "Mirie" type lands – land owned by the State in which certain usage rights were given to a private person (Section 1 to the *Ottoman Land Law*). After reviewing the relevant laws and evidence presented by the appellants, the Court noted that not only had the appellants not acquired any rights on the lands which they claimed ownership to, but that they did not present any evidence that proved that the lands in question were in fact "Mirie" type lands.

Following a detailed examination, the Court held that the lands in question were "Mawat" lands, i.e.: barren land owned by the State that and not allocated for the use of any person (Section 1 to the *Ottoman Land Law*) in which, according to the relevant legislation, no rights can be acquired even by way of limitation – an alternative claim that was presented by the appellants.

Thus, the Court rejected the appeal. The Court further noted that it was not an issue of dispute that the rights of the Bedouin population to the Negev lands is a wide issue worthy of a solution that will be acceptable by all parties (C.Ap. 4220/12 *Sliman Mhammad El-Okby (deceased) et. al. v. The State of Israel* (14.5.15)).

## Question 23

**Judicial measures**

151. On March 4th, 2018, the NGO *Center for the Defense of the Individual*, along with other petitioners, submitted a petition to the High Court of Justice, requesting to instruct the State of Israel to equalize the employment conditions of Palestinians that are residing in Israel, including the ENoJ, with their families pursuant to temporary stay permits or B/1 visas, to those of permanent residents of the State of Israel, as their center of life is in Israel. The petition described the difficult employment situation of the Palestinians who reside in Israel pursuant to the *Citizenship and Entry into Israel (Temporary Provision) Law* 5763-2003, and noted that their classification as foreign workers severely harms their ability to find employment and earn a salary. Due to such classification, their employers

are required to pay a foreign worker tax, making their employment more expensive and subsequently, many employers refrain from hiring them. The petitioners further claimed that these Palestinians are living in Israel with their families for many years, do not meet the definition of a foreign worker, since they are not here for a limited employment period only. On May 27th, 2018, the State responded to the petition, and noted that it re-examined its legal position, and determined that the relevant statute can be interpreted so employers of these workers will be exempt from paying the foreign workers levy. Moreover, it was determined that the legislation also allows these workers to be entitled to tax credits, as Israeli residents are. Thus, the State provided a practical solution to the difficulties pointed out by the petitioners, making a significant improvement in their employment conditions that opens additional employment opportunities in the Israeli labour market for them. On March 3, 2019, the State and the petitioners submitted a joint request to dismiss the case since the two (2) main issues of the petitions were resolved and the remaining issues will be examined separately, while saving their legal claims. On May 4, 2019 the Court affirmed this request and the petition was rejected. (H.C.J. 1889/18 *Tab'ouni et. al. v. The Services to Employers and Foreign Workers Branch, The Population and Immigration Authority, Ministry of Interior et. al.* (5.3.19)).

152. On June 4, 2017, the Jerusalem District Court accepted the appeal of a mother in the name of her minor children, requesting family reunification, against the Ministry of Interior. The case concerned the Ministry's procedure relating to the issuance of visa or permits to stay in Israel for a minor under the age of 14, during the interim period until the completion of two (2) years during which the minor's center of life is in Israel. The Petitioner is an Israeli resident, who is married to a resident of the West Bank. The two have seven (7) children, some of whom were born in Israel and some were born in the West Bank. In 2013, the family moved to Israel, and the mother filed a claim for family reunification for her husband and three (3) children who were not born in Israel. Her claim was rejected by the Ministry of Interior, on the grounds that she has not completed two (2) years of residence in Israel. Upon the rejection of the claim, the three (3) minor children of the petitioner were left with no legal status. The Court ruled that the principle position of the Ministry of Interior, according to which children up to the age of

14 are not entitled to any legal status in the "interim period" until the fulfillment of the demand that the center of life will be in Israel for two (2) years, is unreasonable. The Court further ruled that the plea is accepted in the sense that the Ministry of Interior and the Population and Immigration Authority must amend the procedure within a reasonable period, so as to set forth rules and guidance for the issuance of visa or permit to stay in Israel for a minor under the age of 14, at the discretion of the Minister of Interior, in the "interim period", until the fulfillment of the demand that the center of life will be in Israel for two (2) years (Ad.P.Ap. (Jerusalem) 39174-11-13 *Iman Abu Sarhan et al. v. The Minister of Interior – The Ministry of Interior* (4.6.17)).

**Question 24**

**Judicial measures**

153. On August 17, 2018, the Jerusalem District Court rejected an appeal filed by Mr. Omar Shakir, allowing for his removal from Israel according to the Amendment 28 to the *Entry into Israel Law*. Mr. Shakir, a representative of the NGO "Human Rights Watch" in Israel, appealed against a decision of May 2018, of the Minister of Interior, to refuse his request to extend his work visa in light of his support of the BDS movement. Mr. Shakir argued, *inter alia*, that Amendment No. 28 (specifically Section 2(D) of the law) is unconstitutional and is implemented in a disproportionate and unreasonable manner. It was further argued that Mr. Shakir's expressions in support of the BDS are from his time as a student. The State responded that the sheer volume and intensity of Mr. Shakir's support of the BDS movement as a student legitimize the Minister's decision. The State further argued that during his stay in Israel Mr. Shakir continued to call for a boycott against Israel. The Court found that indeed the volume of Mr. Shakir's work as a student, in addition to his continued support of the BDS movement side with the Minister's decision. The Court ruled that in order for the law not to apply to a former BDS activist they must prove they have forgone such activity for a long period, which was not the case with Mr. Shakir. The Court noted that the State has proven that Mr. Shakir continues to call for a boycott against Israel, while at the same time requesting it to allow him to enter and therefore found that the Minister's decision is reasonable in the case circumstances. (Ad.P. 36759-05-18, *Human Rights Watch et. al. v. The Minister of Interior et. al.* (16.4.19)). On April 30, Mr. Shakir

filed an appeal to the Supreme Court against this decision. The case is still pending. (Ad.P.Ap. 2966/19 *Human Rights Watch et. al. v. The Minister of Interior et. al.* (pending)).

154. In December 2018, during a demonstration that was held in Tel Aviv-Jaffa on December 4, 2018, in a protest against violence against women, the Police arrested the appellant for refusing to adhere to the orders of the police personnel on the scene and evacuate a road that was blocked by the protesters. The appellant was taken to the police station where she was held for five (5) hours. She was questioned and later was released under the condition that she is forbidden to arrive to a Rabin square in Tel Aviv-Jaffa for 15 days. On December 6, 2018, an appeal was filed against the said condition, *inter alia*, for the infringement caused to the appellant freedom of speech and movement, and her right to assemble and demonstrate. On the following day, during a court hearing, the Police cancelled the condition. (O.Ap. 14709-12-18 *Sapir Sluzker Amran v. The Israeli Police* (7.12.18)).

155. In October 2018, the High Court of Justice issued its ruling in the Lara Alqasem's case. The case began with the decision of the Ministry of Interior to cancel the visa granted to Alqasem to study in Israel due to her activity in an organization affiliated with the BDS movement. She appealed this decision to the Appeals Court, and was rejected. She appealed again to the Administrative District Court, which again rejected her appeal. Until the case reached the High Court of Justice in her request for an additional appeal. The Court noted that in addition to the broad discretion entrusted to the Minister of Interior with regard to the granting of visas and permits, by virtue of the general arrangement in Section 2(a) of the *Entry into Israel Law*, the legislator formulated Sections 2(d) and (e) of the Law concerning persons involved in boycotting Israel. Article 2(d) provides that a visa and residency permit shall not be issued to a person if he/she, the organization or body for which he/she is acting, knowingly published a public call for a boycott of the State of Israel. Section 2(e) states that the Minister of Interior may grant a visa and residence permit as stated in that subsection, for special reasons to be recorded. The parties agreed that this arrangement is preventive and not punitive. The Court noted that the arrangement mentioned above in section 2(e) does not refer to persons who operated in the past as part of boycott organizations, but

have clearly and convincingly demonstrated - in accordance with the burden imposed on them, that they have abandoned such activity and are not likely to exploit their stay in Israel in order to undermine it.

The Court noted that in this case, the main fact is the aspiration of the appellant to integrate into Israeli academia, and to begin advanced studies at the Hebrew University. This behavior is completely opposite to the definition of the term "boycott" in Section 1 of the law. It was noted that there is no evidence of the applicant's boycott activity since April 2017. In view of the long period of time since then and the relatively minor nature of the activity in question, her decision to study in Israel is sufficient in order to tip the scales and to eliminate the fear of abuse of her stay in Israel. In light of the above, the Court did not accept the argument that preventing the appellant from entering Israel serves the purposes of the Law. The minor activity in which she was involved as a young student cannot negate the change that has occurred in her and her desire to convert the boycott method by way of dialogue and direct exposure to academia and Israeli society. The struggle against the boycott is desirable and essential, as are the actions taken by the State of Israel in this matter. However, the court ruled, that cancellation of the visa clearly deviates from the range of reasonableness (when the circumstances of the case also have significance for the reliance on the visa given to the applicant). The Court overturned the District Court's ruling and canceled the decision of the Minister of Interior. The entry visa and the temporary residency permit granted to the appellant will therefore remain in effect. (H.C.J. 7216/18, *Lara Alqasem v. The Ministry of Interior – The Population and Immigration Authority et. al.* (18.10.18)).

156. In May 2018, the Court addressed the question of who should pay the security costs for conducting a gay pride parade in more conservative cities. The case regarded the decision of the Sharon District Police Commander, that the organizers of the pride parade in the city of Kfar-Saba, should pay the cost of placing a security fence around the parade, a cost estimated at around 25,000 NIS (6,800 USD). In light of the court proceedings, the Commander changed his decision and the State undertook the security costs. (H.C.J. 4160/18, *Maya Hagay et. al. v. The Sharon District' Police Commander* (29.5.18)).

157. On May 6, 2019, the HCJ accepted an appeal against the decision of the Minister

of Defense not to allow the entrance of 176 Palestinian residents of the West Bank into Israel for the purpose of participation in a private Israeli-Palestinian memorial ceremony. This ceremony was organized by Petitioner No. 1 – an association established by persons who lost a family member during the Israeli-Palestinian hostilities, and which operates for ending the dispute in peaceful ways. The Court accepted the petition and annulled the Minister's decision, stating, *inter alia*, that this case related to the core of freedom of expression and personal autonomy. The Court also noted that it fails to see the harm that will be caused to public security, upon conducting this ceremony, and that the respondents did not take into account the protection of freedom of expression in their decision. It was further noted that the Court attaches great importance to the security consideration presented by the respondents, however, there should be by individual examination of each person and not a total refusal of entry. The Court ordered the Minister to issue entrance permits for participation in the ceremony for 100 Palestinians, subject to lack of security (or other) prevention. (H.C.J. 3052/19 *The Parents Circle Families Forum (PCFF) et. al. v. the Minister of Defense et. al.* (6.5.19)).

158. On May 14, 2018, the Jerusalem District Court ruled in an appeal on a decision of the Magistrate Court, which determined that a person with disabilities, charged for intimidation and assault of civilians and police officers, would not be allowed access to the areas where the crimes were allegedly committed (near the Prime Minister's Office during a protest, a public bus and the welfare office in the southern district) and would not be allowed to participate in public protests for 180 days. The appellant objected these restrictions and claimed that he should not be deprived of the right to protest. The District Court ruled in favor of the appellant and determined that if a person commits an offence he/she must be indicted and punished if convicted, however the right to protest cannot be infringed upon as part of the conditions for release from custody. The Court therefore annulled the restriction of staying near the Prime Ministers Office and attending protests there. The Court did not annul the restriction regarding the arrival at the southern district's welfare office, due to the appellant lawyer's notice that the appellant had since resides in another area, but noted that if the appellant will return to his former place of residence he may apply for mitigation of this

restriction as well. (AP. 24424-05-18 *Or'el Rahamim v. The State of Israel* (14.5.18)).

159. In another case, the HCJ was asked to order the Police to follow the law which requires it to publish the requirements for conducting demonstrations and rallies and the approvals of requests thereof. All through the case a dialogue was conducted between the sides which led to the creation of a technical solution by the Police which allowed the access to the requested information on their site. In light of which, the case was closed. (H.C.J 35527/16, *The Association for Civil Rights in Israel v. The Police* (17.10.17)).

160. On October 8, 2017, the HCJ rendered a decision regarding a petition that concerned freedom of assembly in which it ruled that demonstrations which are held adjacent to the Attorney General's home are legal and are protected as part of the right of the freedom of expression. The Court further emphasized that although the Law (*Police Ordinance (New Version)* 5731-1971) authorizes the Police to demand a permit for a demonstration when the issue which is protested is political (a section left in the Ordinance from the British mandate legislation), this authority must be interpreted narrowly. (H.C.J. 6536/17 *The Movement for Quality Government in Israel v. The Police* (8.10.17)).

161. On June 26, 2017, the Israeli Supreme Court ruled on an appeal filed by the Giv'at Shmu'el Municipality regarding the Court for Administrative Affairs' ruling. The Arik Institute for Reconciliation, Tolerance and Peace filed a lawsuit against the municipality regarding its policy according to which notices and advertisements bearing political content cannot be displayed in areas designated to commercial advertisements. The municipality argued that it is authorized to designate areas to different types of content, and emphasized that there is an equal number of areas designated which are evenly distributed and similar nature to each type of advertisements. The appellant argued that the municipality is authorized to oversee the esthetics of advertisements, but not their content. The Supreme Court affirmed the lower court's decision and determined that the municipality is unauthorized to differentiate political content from commercial content in regard to the placement of the advertisement, *inter alia*, since the relevant municipality's by-law itself, does not differentiate between the two (2) contents. The Court noted that according to the municipality's by-laws, the municipality is only authorized

to criticize the esthetics of a publication, not its contents, unless it is a criminal offence or hurtful towards the public sentiments. It was not argued that the publication was of criminal nature, and the municipality did not uphold the necessary burden of proof in order to prove that the publication was hurtful towards the public sentiments. The Court also stated, by *obiter dictum*, that when determining whether the public sentiments were hurt, the Court must do so with due caution and objectively, assessing the content, style and form of the publication. Only in severe cases should the right to free speech be infringed upon due to this consideration (L.Af.Ap. 4085/16 *Giv'at Shmu'el Municipality v. Arik Institute for Reconciliation, Tolerance and Peace* (26.6.17)).

162. On February 18, 2016, the Rehovot Magistrate Court convicted a defendant for seditious act, possession of a publication that incites to violence or terrorism, and possession of racist publication. On March 17, 2016, the defendant was sentenced to 24 months imprisonment. The defendant created, edited, and held a document that contained clear incitement and called upon the commission of acts of violence, causing physical damage or damage to property against Arabs, and contained guidance on how to execute them. In addition, the document included encouragement for the persecution, hostility, violence and strife between the Jewish and Arab populations. This document was meant to be distributed among a Jewish extremist population, and therefore created a real possibility that such acts will be implemented (Cr.C. 675-08-15, *The State of Israel (North District Attorney's Office) v. Moshe Haim Orbach* (17.3.16)).

163. Also, in February 2016, The Jerusalem Magistrate Court convicted a person for three (3) counts of incitement to racism (Section 144B(a) to the *Penal Law* 5737-1977). According to the indictment, from May 2015 until October 2015, the defendant exploited his position by giving religious speeches and lessons to a small audience at Al Aqsa mosque, administering five (5) summer camps for about 80 children between the ages of 5 to 16 since 2008, in which he taught religious lessons including one (1) about martyrs, as well as giving religious lessons to a small audience in Jerusalem. The defendant did so in order to disseminate racial ideas and incite others to commit violent acts against Jews and Israeli security forces. According to the indictment, these speeches and lessons were filmed and later uploaded to an internet website. After examining the

defendant's lessons and hearing both sides, the Court convicted the defendant on three (3) counts of incitement to racism. However, after balancing the defendant's words with freedom of speech and freedom of religion, the Court acquitted the defendant from two (2) counts of incitement to violence. The defendant was sentenced to 11 months imprisonment and six (6) months suspended imprisonment for a period of three (3) years from the date of his release (Cr.C. 29733-11-15 *The State of Israel v. Haled Mougrabi* (14.3.2016)).

**Question 26**

**Judicial measures related to conscientious objection and freedom of religion**

164. Conscientious objection – In 2017, the IDF's Advisory Committee reviewed the request of Ms. Atalya Ben-Abba to be exempted from security service for reasons of conscience. The Committee determined that the reasons for Ms. Ben-Abba's exemption request do not constitute general conscientious objection to military service and therefore her request was denied. Ms. Ben-Abba was tried several times for disciplinary offences, including unauthorized absence from military service and refusal to obey orders. Ms. Ben-Abba was held in military detention for 110 days. In light of her conduct, Ms. Ben-Abba was ultimately discharged from military service on June 28, 2017 on grounds of unsuitability.

165. In 2016, the IDF's Advisory Committee reviewed the request of Ms. Tair Kaminer to be exempted from security service for reasons of conscience. The Committee determined that the reasons for Ms. Kaminer's exemption request do not constitute general conscientious objection to military service and therefore her request was denied. Ms. Kaminer was tried several times for disciplinary offences, including unauthorized absence from military service and refusal to obey legal orders. For these offences Ms. Kaminer spent 137 days in detention. Ms. Kaminer was ultimately dismissed from military service on July 20, 2016 for being unfitting for military service in light of her misconduct.

166. Freedom of religion - Conservative and Reform conversions conducted in Israel are recognized for the purpose of registration in the Population Registry. Therefore, a person who has undergone such a conversion may register as "Jewish" in the Population Registry. However, for the purposes of marriage in Israel, the legal framework is such that, of the conversions conducted in Israel,

only those conducted by the National Conversion Body, which operates under the religious guidance of the Chief Rabbinate, are recognized. This means that all other conversions – including other Orthodox conversions – are not recognized for this purpose.

167. In 2016, the High Court of Justice ruled that conversions other than those conducted by the National Conversion Body may be recognized for the purposes of naturalization under the *Law of Return* 5710-1950, if the conversion was performed by a recognized Jewish community whilst the convert was legally resident in Israel (HCJ 7625/06 *Martina Rogachova et. al. v. The Ministry of Interior et. al.*). This ruling was given in relation to a number of Orthodox conversions that were conducted by private bodies.

168. Use of Public Ritual Baths for Non-Orthodox Conversions - The final step in the conversion process to Judaism is immersion in a ritual bath (*Mikveh*). Local religious councils run public ritual baths which may be used for the purpose of conversion, as well for other purposes. In 2016, the Supreme Court ruled that local religious councils are not permitted to refuse Conservative and Reform movements who wish to perform conversions access to these public ritual baths (Ad.P.A. 5875/10 *The Conservative Movement v. Local Religious Council of Be'er-Sheva*).

169. Ritual baths are also used for Jewish women's ritual immersions. Generally, these are performed in the presence of another woman, an assistant in the ritual bath. Following a petition to the High Court of Justice in 2015, the State agreed that a woman who so requests may use the ritual bath without the presence of the assistant (H.C.J 5022/15 *Itim v. The Ministry of Religious Services*).

170. Kashrut - the High Court of Justice recently addressed this prohibition in the framework of a petition submitted by restaurant owners in Jerusalem who had represented their establishments as kosher, on the basis of a private undertaking towards their clients, although they had not applied for, or been granted, certification by the Chief Rabbinate.

171. The High Court of Justice confirmed the prohibition enshrined in the *Prohibition of Kashrut Fraud Law*. However, importantly, it ruled that the law does not prohibit establishments from displaying an accurate, written representation of the

kashrut standards by which they abide, including any supervision of these standards, as long as this includes a clarification that they do not hold a certification from the Chief Rabbinate (Ad.H.H.C.J 5026/16 *Gigi v. The Chief Rabbinate*)..

**Question 27**

**Judicial measures related to participation in public affairs**

172. **Appeals prior to recent Israeli elections** - Prior to the recent Israeli elections, which took place on April 9, 2019, the Supreme Court addressed several appeals regarding decisions of the Central Elections Committee regarding specific individuals and parties eligibility to run. The Court upheld the committee's decision to prohibit Dr. Michael Ben-Ari from running in the elections. The Court found that inciting racism against the Arab community is a dominant and prevalent purpose of his work. The Court emphasized that "the criteria of inciting racism, due to which the participation of Dr. Ben-Ari was barred, is an independent claim and has special and reinforced importance in Israel the state of the Jewish people, which have suffered from persecution and torment incomparable to any other world nations. Approving the participation of Dr. Ben-Ari under such circumstances would legitimize racist public discourse as acceptable in the State of Israel". In addition, the Court upheld the Committee's decision to allow Dr. Ofer Cassif and the Ra'am and Balad party to partake in the elections. Stating that both did not qualify for neither the denying Israel's right to exist nor the supporting armed struggle against Israel criteria. The Court noted that although it detest some of their statements, they may be infuriating and provocative, but do not meet the required threshold to be barred from participation in the elections. (El.Ap. 1806/19, *Mk Avigdor Limerman et. al. v. Dr. Ofer Cassif et. al.* (21.3.19).

173. **Petitions against Amendment No. 62 to the *Knesset Elections Law*** - Two petitions were filed to the High Court of Justice against Amendment No. 62 to the *Knesset Elections Law* that raised the electoral threshold for political parties to be elected into the Knesset from 2% to 3.25%. The Court was requested to determine that such an amendment is unconstitutional and may lead to the exclusion of minority groups, particularly the Arab population, from the Knesset.

The petitioners argued that the possibility that the Arab parties may form a unified list does not mitigate the harm caused, since it is wrong to force such a step upon the Arab parties due to the ideological differences between them, just as it is wrong to do so in regard to other parties. The Court stated, *inter alia*, that representation of minority groups in the Knesset is of high importance, although the question which of the many minority groups is entitled to be represented in the Knesset, as a matter of constitutional obligation, is a complex one. However, the Court noted that certain minorities have been recognized by the Court as having a special status in Israel. One of these is the Arab population due, among other things, to its size and to the complex relations between this population and the Jewish majority in Israel. However, the Court decided to reject the petition stating, *inter alia*, that the petitioners were not able to demonstrate any harm caused to the rate of representation of minority groups, including the Arab population, since it was too early to predict the political outcome of the amendment to the electoral threshold. The Court further noted that at the time of the petition, the Arab parties had already decided to form a unified list, a step that according to the Court may negate any harm to the rate of representation of the Arab population. Please note that the outcome of the Knesset elections following this amendment indicated an increase in the representation of the Arab population to a total of 18 Knesset seats, the highest number of seats for this population until then. In the recent April 2019 elections, the number of seats decreased to a total of 13 as it was prior to the amendment.

174. **Political expression of Knesset Members** - In July 2014, two (2) Arab police officers filed a complaint against MK Zoabi, according to which, during extensions to arrest hearings of Israeli-Arabs suspected of disturbance to public order arrested during demonstrations against operation "Protective Edge" at the Nazareth District Court, MK Zoabi verbally assaulted them and *inter alia*, said that “they should be used to wipe the floor with" and that "their face should be spit on". Subsequently, the Attorney General decided to open criminal investigation against MK Zoabi for suspicion of incitement to violence and insulting a public servant. The Attorney General's position was that in these circumstances, when these statements were directed at police officers due to the fact that they were Arab, it raises real suspicion of the aforementioned offenses.

In February 2016, the Nazareth Magistrate Court sentenced MK Zoabi as part of a plea bargain and in accordance to her own admission to six (6) months suspended imprisonment and 3,000 NIS (770 USD) for insulting a public servant. According to the indictment, the MK insulted the officers who carried out their duties, degraded them, and made them feel threatened. According to the plea bargain, MK Zoabi will submit an apology letter to the prosecution and the offence of incitement to violence will be stricken off the indictment. The Court noted, *inter alia*, that MK Zoabi's words were not a slip of the tongue or a single sentence but rather a type of speech that was carried out in front of a large audience, containing harsh and hurtful words towards the officers who were present at the scene (Nazareth Magistrate Court, Cr.C. 12957-01-16, The *State of Israel v. Hanin Zoabi* (7.2.16)).

175. **MK Sa'id Naffaa** - On December 26, 2011, MK Sa'id Naffaa was indicted for illegal travel abroad to an enemy state, aiding approximately 280 persons in illegal travel abroad to an enemy state, and two (2) counts of contact with a foreign agent. This indictment followed MK Naffaa's trip to Syria in September 2007, despite a refusal of the Minister of Interior to approve his trip. During his visit to Syria, MK Naffaa knowingly met twice with a foreign agent without a reasonable explanation. On January 26, 2010, following a long debate, the Knesset Committee decided to revoke MK Naffaa's parliamentary immunity. MK Naffaa claimed that the immunity provided to Knesset members applies to his case since he discussed political issues and not security issues with the persons he met.

On April 6, 2014 the Nazareth District Court convicted the then-former MK Naffaa (Mr. Naffaa was not re-elected to Israel's 19th Knesset in 2013) of one (1) count of contact with a foreign agent and one (1) count of travel abroad to an enemy state. In addition, the Court convicted the former MK of having aided the illegal travel to an enemy state. The Court, however, acquitted him of an additional count of contact with a foreign agent, stating such contact had not been proven beyond a reasonable doubt. The Court stated that the former MK had failed to provide a reasonable explanation for his contact with foreign agent, as required under Section 114(b) of Israel's *Penal Law* 5737-1977. On September 4, 2014, the Court sentenced former MK Naffaa to one (1) year imprisonment and

six (6) months suspended imprisonment for a period of three (3) years (*S.Cr.C. 47188/12/11 The State of Israel v. Sa'id Naffaa* (6.4.2014)).

Following this sentence, MK Sa'id Naffaa filed an appeal, claiming, *inter alia*, for parliamentary immunity and that his actions did not harm the State's security. The Court rejected the appeal, stating among other things, that by his actions the appellant harmed the State's security to a degree that justifies severe measures against him. The Court also rejected the appellant claims for inequality of law enforcement against him, and noted that the examples brought by the appellant in this regard were substantially different in their severity (Supreme Court Cr.A. 6833/14. *Sa'id Naffaa v. The State of Israel* (31.8.15)).

176. **MK Basel Ghattas** - On December 20, 2016, MK Ghattas was interrogated by the Police, after he was photographed smuggling an envelope containing letters, 12 cell phones, 16 SIM cards, two (2) chargers and other objects for security prisoners in Ketziot Prison, while exploiting his parliamentary immunity in order to evade the security check at the prison gates. On December 22, 2016, after he agreed to lift his parliamentary immunity, MK Ghattas was arrested. He was later released into house arrest under restrictive conditions. On January 5, 2017, the Attorney General informed MK Ghattas lawyers that he had decided to approve the filing of an indictment against him subject to a hearing in which MK Ghattas and his lawyers may present their arguments On February 15, 2007, a hearing was held, after which negotiations were held between the parties, and an agreement was reached for a plea bargain.

On March 17, 2017, an indictment was filed against MK Ghattas to the Be'er Sheva Magistrate Court, along with a notice of the plea bargain. As part of the plea bargain, it was agreed that MK Ghattas would resign from the Knesset, confess the facts of the indictment and be convicted of the offenses attributed to him. With regard to the sentence, the parties also agreed to impose on MK Ghattas a prison sentence of two years and a suspended sentence for a period to be determined by the court. It was further agreed that the State would petition for a monetary fine and that MK Ghattas would not be limited in its statements on this matter, and that the State would also request to determine in the sentence that the actions of MK Ghattas were a disgrace.

On March 19, 2007, as part of the implementation of the Agreed Argument Agreement, MK Ghattas notified the Speaker of the Knesset of his resignation from the Knesset. The resignation took effect on March 21, 2017.

On March 22, 2017, in the Be'er Sheva Magistrate's Court, MK Ghattas agreed to the plea bargain and confessed to the charges against him. The court convicted him of deceit and breach of trust, providing means to commit an act of terrorism, and entering electronic equipment into a prison and transferring it and transferring a prohibited letter under the *Prisons Ordinance*. MK Ghattas was sentenced to two years imprisonment, 18 months of suspended imprisonment for a period of three (3) years a fine of NIS 120,000 (33,300 USD) and a disgrace. On July 2, 2017, Ghattas began serving his sentence in Gilboa Prison, he completed serving his sentence and was released in May 2019 (Cr.C. 36995-03-17 *The State of Israel v. Basel Ghattas* (9.4.17)). A petition to the HCJ against the leniency of the plea bargain was rejected by the Court (H.C.J. 2559/17 *Dr. Michael Ben Ari et. al. v. The Attorney General et. al.* (26.3.17)).