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ISRAEL

Briefing to the Committee on the Elimination of Discrimination Against Women June 2005 (AI Index: MDE 15/037/2005)

33rd Session of the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee), 5-21 July 2005: Comments by Amnesty International on the compliance by Israel with its obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Introduction

Amnesty International is submitting this briefing to the UN CEDAW Committee ahead of its consideration of Israel's third periodic report¹ on the implementation by Israel of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Israel became a state party on 2 November 1991, with reservation to Articles 7(b) and 16.²

This briefing focuses on Amnesty International's concern about some aspects of violence and discrimination against women, including trafficking of women for forced prostitution and discriminatory policies and practices against women migrant workers in Israel. The organization notes a number of positive measures taken by the Israeli authorities in recent years, including the enactment of laws aimed at increasing the protection of women's rights, and highlights outstanding concerns which have not been addressed or which require further measures.

Amnesty International does not aim to comprehensively review the situation of women's rights in Israel in this briefing, but rather it aims to add its voice to that of

¹ Israel's third periodic report, dated 16 November 2001, is available on:

<http://daccessdds.un.org/doc/UNDOC/GEN/N01/642/01/IMG/N0164201.pdf?OpenElement>

² **Reservations:** 1. The State of Israel hereby expresses its reservation with regard to article 7 (b) of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel. Otherwise, the said article is fully implemented in Israel, in view of the fact that women take a prominent part in all aspects of public life.

2. The State of Israel hereby expresses its reservation with regard to article 16 of the Convention, to the extent that the laws on personal status which are binding on the various religious communities in Israel do not conform to the provisions of that article.

Declaration: 3. In accordance with paragraph 2 of article 29 of the Convention, the State of Israel hereby declares that it does not consider itself bound by paragraph 1 of that article."

the numerous women NGOs, activists and other concerned parties who are assisting women victims of human rights abuses in Israel, and to support their endeavours to end such abuses and protect and promote women's rights.

This briefing only addresses the situation in Israel, whereas Amnesty International's concerns about the situation of women's rights in the Occupied Territories are discussed in a separate report (*Israel and the Occupied Territories Conflict, Occupation and Patriarchy: Women carry the burden*), which was published on 31 March 2005, and which highlights patterns of violations to which Palestinian women in the Occupied Territories are subject both at the hands of Israeli occupying forces as well as within Palestinian society and their own families.³

Israel has an obligation to implement all the international human rights treaties to which it is a state party, including the CEDAW, to the West Bank and Gaza Strip, which have remained under Israeli military occupation for the past 38 years, as well as to Israel itself. However, the Israeli authorities have consistently refused to provide any information or to acknowledge any responsibility for the application of the CEDAW or other international human rights treaties to the Occupied Territories. Israel stands alone in its contention that international human rights law, as well as the bulk of international humanitarian law, does not apply to the Occupied Territories. The international community, including the CEDAW and all the other relevant UN mechanisms, have repeatedly reminded Israel of its obligations in this respect. However, in its report to the CEDAW Committee, Israel has again failed to provide any information about the situation of some 1,500,000 Palestinian women and girls who live under Israel's occupation in the West Bank and Gaza Strip.⁴

Policy Measures (Article 2)

Israel does not have a consolidated single written constitution, but instead 12 Basic Laws.⁵ Although the Declaration of the Establishment of the State of Israel declares that "*the State (...) will ensure complete equality of social and political rights to all its inhabitants, irrespective of religion, race or sex*", no Basic Law - not even the Basic

³ Israel and the Occupied Territories – *Conflict, occupation and patriarchy: Women carry the burden*; 31 March 2005 (MDE 15/016/2005). The situation of women's rights in East Jerusalem, which is in the Occupied Territories according to International law but which was unilaterally annexed by Israel in 1967 and is subjected to Israeli laws, is referred to both in this report and in the briefing.

⁴ Israel's latest report to the CEDAW Committee was submitted on 16 November 2001 and is available on: <http://daccessdds.un.org/doc/UNDOC/GEN/N01/642/01/IMG/N0164201.pdf?OpenElement>

⁵ The Declaration of the Establishment of the State of Israel and 11 Basic Laws.

Law: Human Dignity and Freedom, which deals with basic human rights - explicitly guarantees the right to equality. This right is only embodied in ordinary laws, such as the Equal Rights for Women Law (1951), and other laws, mostly enacted in the 1990s.⁶ In 1997 the CEDAW Committee recommended that Israel should reflect in a basic law “*the right to equality and prohibition of both direct and indirect discrimination against women*”.⁷ However, to date Israel has not taken the necessary steps to implement this recommendation.

This shortcoming is aggravated by the fact that, to date, the Israeli Supreme Court has never ruled that such a right is a protected constitutional right.

Sex Role Stereotyping and Prejudice (Articles 5 and 2(d))

Until 1998, the issue of sexual harassment was dealt with in the Equal Employment Opportunities Law (1988) related to labour relations. In 1998, the Prevention of Sexual Harassment Law was enacted. Its scope is general in nature. This law focuses on the duties of the employer to prevent sexual harassment and persecution, arrange for the submission of complaints, investigate complaints and take effective action.⁸ The law is supplemented by regulations which detail the complaints procedure.⁹ Employers with more than 25 workers are required to make a set of rules which includes the main provisions of the law, to bring these rules to the attention of the employees and to appoint an adviser on sexual harassment. Article 5(d) of the law sets out sanctions of up to 4 years’ imprisonment. The law was amended in 2004 to specify that comments of a sexual nature constitute sexual harassment in cases of hierarchical relations.

However, according to information received by Amnesty International women have often been victims of sexual harassment, mainly at the workplace,¹⁰ and frequently by men in a situation of authority, including the victims’ supervisors. Victims of sexual harassment are often more vulnerable women, including single mothers and new

⁶ These include, for example, the Employment Equal Opportunities Law (1988), the Prevention of Sexual Harassment Law (1998), the Equal Rights of People with Disabilities Law (1998), and the Male and Female Workers Equal Pay Law (1996).

⁷ Concluding Observation of the Committee on the Elimination of Discrimination Against Women (A/52/38/Rev.1 para. 172).

⁸ Articles 7(a)(1) and 7(a)(2).

⁹ The Prevention of Sexual Harassment Regulations (1998).

¹⁰ According to the Israel Women’s Network, 130,000 women aged between 25 and 40 have been victims of sexual harassment at their workplace. (*Advocacy groups tell UN all is not well with women’s rights here*, Haaretz, 2 March 2005).

immigrants. Israeli women's NGOs have expressed concern that not enough has been done to implement laws on sexual harassment, including by local councils.¹¹

According to the Association of the Rape Crisis Centres,¹² some 12% of the thousands of calls it receives on its multiple-language hotlines, concern cases of sexual harassment, which is reportedly more acute in the private than in the public sector.¹³ According to a report compiled by the Civil Service Commission and presented to the Knesset Commission for the Advancement of Women in July 2004, the number of complaints for sexual harassment in the Civil Service dropped slightly in the immediately preceding years.¹⁴ According to the Civil Service Commission and to Israeli NGOs, a significant percentage of the complaints have been dropped for lack of evidence.

The number of complaints filed is not considered to be a reliable indicator of the incidence of sexual harassment, as many women who are sexually harassed at their workplace reportedly do not complain for fear of losing their job. More vulnerable women, such as single mothers, women in less secure employment and women facing economic difficulties are more likely not to lodge complaints if they face sexual harassment at work.

Under the law, victims of sexual harassment have three options: to file a complaint with the police for criminal prosecution, to file a civil action seeking compensation, or to file a complaint in a labour court. Victims of sexual harassment are often unwilling to file complaints seeking criminal prosecution procedures, reportedly because of the lengthy process involved. A disciplinary process is compulsory in the public sector, but it is reportedly rare in the private sector.

According to the National Labour Court, employers may be held responsible for the actions of their staff and for compensating the victims. Although Article 6(b) of the law establishes that the court may grant compensation of up to NIS 50,000 for sexual harassment and persecution without proof of damage, this provision is not known to

¹¹ According to the Israel Women Network (*Council to compensate sexual harassment victim*, Haaretz, 4 June 2003).

¹² The Association of the Rape Crisis Centres groups ten centres nationwide. In 2004, it received 8,049 first calls, of which 12% (i.e. 973) concerned sexual harassment. The others concerned rape, sexual assault, incest, etc. (See section below on "Health" (Article 12)).

¹³ According to the Israel Women's Network.

¹⁴ 81 complaints were filed in 2002 and 65 in 2003; 275 complaints of sexual harassment were filed between 2000 and 2003. Most were found to be justified, while 53 enquiries were closed for lack of evidence.

have been enforced. In a landmark ruling in 2002, the Tel Aviv Labour Court ruled that a victim of sexual harassment at her workplace in a local municipality was to receive NIS 5,000 in compensation from the municipality. The court found that the municipality had “*failed to ... publicize the regulations against sexual harassment ... [and to] appoint a person to administer the regulations*”. The ruling of the Labour Court came after the municipality worker who had sexually harassed the victim was convicted in a criminal case, which lasted four years, and was sentenced to eight months’ imprisonment and a fine of NIS 25,000.¹⁵

Israeli women’s rights NGOs are concerned that insufficient measures have been taken to implement the laws on sexual harassment and have called for the creation of an independent Equal Employment Opportunity Commission which would, among other things, ensure that the relevant laws are enforced and that complaints are investigated.¹⁶

Trafficking in Human Beings (Article 6)

Amnesty International published a report on the trafficking of women into Israel’s sex industry in 2000.¹⁷ Trafficking of women for forced prostitution has occurred over a number of years but appears to have been compounded in the past 15 years by several factors, including increased links between traffickers in Israel and former Soviet republics, in the wake of the large wave of immigration of citizens of these countries to Israel, following of the break-up of the Soviet Union. These combined factors seemingly resulted in an increase in the vulnerability of women from this region to trafficking, and in an increase in the demand for such sex workers in Israel.¹⁸

Many women are lured to work in Israel under false pretence and are then forced into the sex industry. While many are reportedly aware that they will be working as sex workers, they are not aware they will be subject to violent and exploitative environments, working seven days a week and up to 18 hours a day for extremely low salaries or no salaries at all. Many are subjected to other serious human rights violations, including rape, deprivation of their liberty and debt-bondage. Women

¹⁵ See: <http://www.iwn.org.il/iwn.asp?subject=dbmarquee.mdb&id=40&topic=IWN%20UPDATES>

¹⁶ Israeli women NGOs grouped under the Israel Women’s Network.

¹⁷ See Amnesty International *Israel: Human rights abuses of women trafficked from countries of the former Soviet Union into Israel’s sex industry*. (AI Index: MDE 15/17/00), May 2000.

¹⁸ For an analysis of the reasons leading to an increase in the sex industry in Israel also see page 5 of the report: *Women as Commodities: Trafficking in Women in Israel*, by Nomi Levenkron and Yossi Dahan, published in 2003 by the Hotline for Migrant Workers, *Isha L’Isha* - Haifa Feminist Center, and the Adva Center.

forced to work as sex workers are reportedly also frequently subjected to threats of abuse and even murder. Half the women interviewed by the Hotline for Migrant Workers were effectively incarcerated by their “pimps” and, according to a 2003 survey, almost half of all women “sold” to pimps reported that policemen were among their clients.¹⁹

According to a report by the Parliamentary Committee of Inquiry on the Trafficking in Women (Summary Report) issued in early 2005, some 3,000 to 5,000 women are brought annually into Israel and forced to work as sex workers and some 10,000 were estimated to be currently in the country. Israeli Police sources, however were quoted as rejecting these figures and contending that “not more than 2,000 such women are in the country”.²⁰

Most of the women known to have been trafficked into Israel are from Ukraine, Moldova, Uzbekistan and Russia and are brought into Israel through the Egyptian-Israeli border. In the course of their journey many are reportedly raped before traffickers sell them for \$8,000 - \$10,000. Cases of Ethiopian women trafficked across the border with Egypt to serve as “slaves” in families, including for sexual purposes, have also been reported. Thousands of male and female migrant workers who enter Israel illegally to work in various sectors also enter the country through the Egyptian-Israeli border.

Given that the border between Egypt and Israel is known to be well guarded to prevent the possible entry into Israel of people who may intend to carry out attacks in Israel (in the context of the ongoing Israeli-Palestinians conflict), the relative ease with which tens of thousands of people have been smuggled into the country from this border may seem surprising. Israeli sources working on trafficked women and foreign workers have told Amnesty International that they have received testimonies from Israeli soldiers and border guards that the smuggling of individuals or groups of foreign workers, including sex workers, is tolerated, so long as the smugglers are known not to bring into the country individuals who may pose a threat to Israel’s security.

In the past year Israeli newspapers in Russian and Hebrew have started publishing advertisements promoting “jobs” abroad, notably in the UK, which were seemingly

¹⁹ See the report published by the Centre for Assistance to Foreign Workers, the Adva Centre and *Isha L’Isha*-Haifa Feminist Centre, in 2003. The report is based on interviews of over 100 victims of the sex trade.

²⁰ Roni Singer, *Police expert rejects committee’s figures on trafficking in women*, Haaretz, 25 March 2005.

intended for would-be sex workers. At the same time, cases of Eastern European women trafficked through Israel en route to Western Europe have also been reported. Those working on human trafficking have expressed concerns that, in addition to being a country of destination for trafficked women, there is a risk that Israel may also become a country of transit or of origin for sex workers.

In spite of a government decision in 2001 that trafficked women who are detained by the police should be transferred to women's shelters, victims of trafficking are still regularly detained pending deportation to their country of origin. Deportation procedures can take weeks, pending receipt of the necessary documents and *laisser-passer* for the deportees. Hundreds of trafficked women are deported from Israel each year and trafficked women reportedly make up the majority of all the women deported from the country.²¹

Legal framework

In 2000 the Israeli Penal Code was amended to explicitly criminalize trafficking in persons for the purpose of prostitution as an offence punishable by a maximum 16-year prison sentence.²² In July 2003, the Penal Code was further amended to set a minimum penalty for the felony of trafficking in women, part of which must include a term of imprisonment.²³

In contrast with the internationally agreed definition set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol), which Israel has signed but not yet ratified, the definition of

²¹ Between 2000 and 2002, out of 1,267 women who were deported from Israel 1,004 were victims of trafficking, according to Nomi Levenkron and Yossi Dahan, in "Women as commodities: trafficking in women in Israel" published in 2003 by the Hotline for Migrant Workers, *Isha L'Isha* - Haifa Feminist Center, and the Adva Center; page 19. Also see the 2004 and 2005 U.S. State Department Reports on Human Trafficking.

²² Article 203(1)(a) of the Penal Code on the trafficking in persons for prostitution purposes states that: "selling or purchasing of a person in order to engage him in prostitution or serving as a middleman in the selling or purchasing of a person for this purpose is punishable by a term of imprisonment of 16 years." According to Article 374 of the 1977 Penal Law, abducting a person with the intention of, among other things, engaging that person in prostitution is punishable by up to 20 years' imprisonment, but this Article was rarely used for cases of trafficked women. See: Ruth Halperin-Kaddari "Women in Israel: A state of Their Own", University of Pennsylvania Press, 2004; pages 212-213.

²³ Article 203A of the Penal Code states that: "the minimum penalty regarding the felony of trafficking in women will represent a quarter of the maximum penalty which is 16 years unless there are special reasons to decide otherwise. (Part of the minimum penalty must be actual incarceration and part can be given as suspended)."

trafficking in the Penal Code is limited to trafficking in human beings for the purpose of prostitution.²⁴

Under Israeli law, receiving the “services” of a sex worker is not prohibited unless it involves violence or the exploitation of a person’s vulnerability. Even before the Penal Code was amended in 2000, explicitly to criminalize trafficking in persons for the purpose of prostitution, it already criminalized offences that are characteristic in trafficking, including “pimping” (procurement), soliciting for the purpose of prostitution, incarceration, rape, assault, slave or forced labour and passport retention.²⁵

Other legislation is also relevant with regard to trafficking for the purpose of forced prostitution, including Article 6(b) of the 1951 Women’s Equal Rights Law, which states that: “*Every woman has a right to protection against violence sexual harassment, sexual exploitation and the commercialization of her body.*”

In mid-2004, several newspapers were found guilty of advertising prostitution services, which is forbidden under the Penal Code²⁶. Since this prosecution, the tone of such advertisements is reported to have become “subtler”.²⁷ Stating that “*there is a connection between sex ads and the increase in women-trafficking*” and that

²⁴ The internationally agreed definition of trafficking set out in the Palermo Protocol, defines trafficking in persons as “*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; “Child” shall mean any person under eighteen years of age.* Unlike the definition in the Israeli Penal Code, this definition does not limit the forms of exploitation. Rather it requires that the purpose of the acts be for exploitation, and states that at a minimum the forms of exploitation shall include not only the exploitation of the prostitution of others but also, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

²⁵ Nomi Levenkron and Yossi Dahan, *Women as Commodities: Trafficking in Women in Israel 2003*, quoted above, page 38.

²⁶ *Shoken* newspaper chain and the dailies *Maariv* and *Yediot Aharonot*, and five individuals were charged under section 205C(a) of the Penal Code. At the time of writing the sentences had not yet been handed down.

²⁷ Such advertisements now use less direct language, for instance obliquely mentioning “new arrivals”.

“newspapers that publish sex ads help the criminals in their women-trafficking”,²⁸ the head of the Parliamentary Committee of Inquiry on the Trafficking in Women said she intends to table a proposal to increase the penalty for advertising prostitution and to criminalise the publication of advertisement for sex services in general.

Protection of the rights and assistance to trafficked women

Practically all foreign sex workers are in the country without valid visas and many entered the country illegally. Because the Entry into Israel Law (1952) provides for the detention of persons unlawfully in Israel, it applies also to trafficked women, none of whom have a valid visa or work permit. The authorities – and in particular the police - still overwhelmingly consider trafficked sex workers simply as “criminals” who violated the Entry into Israel Law, rather than victims of grave human rights violations who should enjoy the effective protection and assistance from state institutions. Consequently, the authorities have focussed their activities on deporting trafficked women instead of protecting their rights and addressing their needs.

Under the Entry into Israel Law, a person unlawfully in Israel is to be detained until s/he leaves or is deported from the country.²⁹ The conditions of their arrest, detention and deportation are regulated by the same law. The application of this law to trafficked women has led to their further victimization. The detention of trafficked persons is contrary to international standards that state that “trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked person.”³⁰

In addition, the Israeli authorities do not carry out any risk assessment of the possible dangers which trafficked women who have testified against their traffickers face after being deported back to their countries, leaving them and their families vulnerable to further human right violations, including reprisals and re-trafficking.

According to a 2001 government decision, trafficked women not legally resident in Israel, including those who are in police custody pending deportation, should be housed in women’s shelters and not in lock-ups, regardless of whether they have

²⁸ Zvi Zrahya, “MK Gal-On battles sex advertising”, Haaretz, 13 January 2005.

²⁹ Article 13A(b) provides for exceptions “when [the person] was released against monetary surety, a bank guarantee or other suitable surety under the provisions of this Law”.

³⁰ Recommendation 7 of the UN Recommended Principles and Guidelines for Human Rights and Human Trafficking.

agreed to testify against those responsible for their trafficking. In May 2003, the Ministerial Committee for the Advancement of the Status of Women in Israel decided to establish a shelter for trafficked women. The shelter became operational in February 2004 and now houses some 70 women victims of trafficking pending their leaving the country.

However, even though the shelter was meant to house all trafficked women until their deportation, by mid-2004 women who did not agree to testify were still detained in detention facilities and not housed in shelters, sometimes for up to three weeks or even longer, pending deportation. The Cabinet Secretary therefore reminded the Police Commissioner to implement the above-mentioned 2001 government decision.³¹ In April 2005, the Parliamentary Committee of Inquiry on the Trafficking in Women noted in its report that “*women who are victims of the trafficking in human beings, but are not testifying in courts of law against traffickers in women, should be referred to shelters*”.³²

Section 13 of the Law of Entry into Israel requires that the rights of persons detained pending deportation be displayed in English and Hebrew in a prominent place, but this reportedly is often not implemented.³³ Articles 13H(f) and 13A(e) of the same law also provides detained persons awaiting deportation to be given “*information about his right to have notice of his detention delivered to a person near him, to a lawyer and to the representative of the state of his citizenship.*” In addition, trafficked women are also entitled to legal assistance under the Legal Assistance Law³⁴. However, Israeli NGOs working on cases of trafficked women and illegal migrant workers report that frequently detainees do not receive information about their rights, in particular about their right to appeal against the deportation order and to apply for release on bail.³⁵ NGOs are also concerned that in some cases trafficked women detained pending deportation were released on bail paid by their traffickers. The 2005 Parliamentary Committee of Inquiry on the Trafficking in Women has recently emphasized that the Legal Assistance Law must be systematically and fully implemented, which is currently not the case.

³¹ Gideon Alon, “*Police told to move sex-trade victims from jails to shelters*”, Haaretz, 12 August 2004.

³² Parliamentary Committee of Inquiry on the Trafficking in Women, Summary Report, 2005.

³³ The Hotline for Migrant Workers, “*For you were strangers: Modern Slavery and Trafficking in Human Beings*”, February 2003, page 57.

³⁴ Under Amendment 4 of the Legal Assistance Law, the Ministry of Justice will provide legal assistance to the victims of trafficking both in the question of their administrative detention and in their civil suits against the pimps. This assistance is limited in time, until 1 August 2006.

³⁵ Kav La’Oved and Hotline for Migrant Workers: “*Immigration Administration or Expulsion Unit?*” May 2003.

Trafficked women have at times reportedly been forced to sign forms in Hebrew (a language many do not read or understand) in which they waived their rights to judicial review of the decision to deport them or collect their belongings.³⁶

According to Article 13 of the Entry into Israel Law, a detainee has the right to be represented by a representative who is not an attorney. However, even when trafficked women appear before the Tribunal for Review of the Detention of Persons Illegally in Israel,³⁷ they do not always enjoy their right to be represented, due to administrative and logistical reasons.³⁸ Hearings are held in Hebrew and organisations defending trafficked women's rights report that at times their request to provide the women with interpreters have not been granted.³⁹ Because Tribunal hearings are held at the place of detention,⁴⁰ and because no official visible sign or uniform indicates the formality of the process, many women detained apparently do not even realize that they are actually attending a judicial hearing and thus do not insist on their rights.

In light of the above, Amnesty International is concerned that the rights of the trafficked women are not sufficiently respected or protected, notably their right to receive adequate information on the proceedings, to legal representation, and to an effective and meaningful judicial review.

Along with many illegal migrant workers in Israel, sex workers, including women trafficked into forced prostitution, who are present in the country illegally and who have been arrested pending deportation have complained of human rights violations during and after their arrest. Between 1999 and 2004, some 81 complaints of police brutality – most of them allegedly occurring during arrest - were forwarded to the Police Investigation Unit. Other complaints concerned allegations of theft of money

³⁶ Kav La'Oved, Annual Report, 2004, p.23.

³⁷ Section two of the Entry into Israel Law provides for a judicial review (within 14 days of arrest) of the detention orders by a Tribunal for Review of the Detention of Persons Illegally in Israel, which cannot revoke an expulsion order but may grant bail.

³⁸ The dates of the hearings of the Tribunal are not published, the records of the sessions are not published, etc. (See Nomi Levenkron and Yossi Dahan, *Women as Commodities: Trafficking in Women in Israel 2003*, p.60.

³⁹ Nomi Levenkron and Yossi Dahan, *Women as Commodities: Trafficking in Women in Israel 2003*, p.59 and Kav La'Oved and Hotline for Migrant Workers, "Immigration Administration or Expulsion Unit?" May 2003.

⁴⁰ According to Article 13R of the Entry into Israel: "The Tribunal shall hold its hearings at the place of detention, where the detainee is kept, and it may hold a hearing in any other place, if it finds that it should do so for the sake of justice or efficiency."

and property during arrest, intimidation, and police complicity with traffickers.⁴¹ By December 2004, seven policemen had been indicted, while many complaints were reportedly shelved because the petitioner had been deported back to her country in the meantime.⁴²

Trafficked women who are not lawfully resident in Israel are legally entitled to specific protection by the state. However, in reality such protection is often reportedly made conditional on the victims agreeing to testify against their traffickers, to the exclusion of the other victims of trafficking. In some cases trafficked women who did not wish to testify in court were reportedly ordered to do so by the police.

In March 2004, the Ministers of Interior and of Industry, Trade and Employment signed an order allowing women who were trafficked into Israel and forced to work in the sex industry, to remain in Israel and to work until they testify against those responsible for their trafficking. The same year, the Minister of Interior also decided to allow women victims of trafficking who had agreed to testify against their traffickers to remain in Israel for one year after they have finished testifying in court.

Trials can last up to two years and many women victims of trafficking have had to wait several months to testify against the traffickers. During this time victims of trafficking have been threatened by their traffickers and in some cases members of their families back in their home countries have also been put under pressure. These factors are believed to have been among the main reasons why, according to police sources, one third of the women housed in the shelter for trafficked women chose to vanish from the shelters before they were due to testify in court.⁴³

In 2003, the Prior Testimony in Trafficking of Women Law was passed, enabling trafficked women to testify within two months of the date on which the court approves the pre-trial testimony, even without the perpetrator being physically present, thus sparing the trafficked women a lengthy wait before they can return to their countries.⁴⁴ However, in its 2005 report, the Committee of Inquiry on the

⁴¹ Hotline for Migrant workers, *The "Hotline for Migrant Workers" Appeals today to the High Court*, 25 April 2005. 74% of the complaints concerned police violence at the time of arrest, 13% theft of money or property by police during arrest and 5% concerned allegations that police had cooperated with the pimps and traffickers.

⁴² *Idem* above. "Some 39% of the petitioners were deported before their complaint was investigated and in 2% of the cases a trial was recommended, but the petitioner was deported and made it impossible to indict the police office involved in his complaint."

⁴³ Statement by police representatives during a meeting of the Knesset Committee of Inquiry on the Trafficking in Women on 16 November 2004.

⁴⁴ See Articles 117 and 2B respectively.

Trafficking in Women stated that provisions relating to prior testimony were not being implemented.

In 2002, the State Attorney's Office issued guidelines concerning the payment of compensation to victims of trafficking.⁴⁵ According to Israeli NGOs, if the State Attorney's Office does not apply for compensation for the victims, the courts do not take the initiative to do so, and the necessary measures are often not taken to compel traffickers to pay the compensation awarded to their victims before the latter are deported back to their countries.⁴⁶ In its 2005 report the Parliamentary Committee of Inquiry on the Trafficking in Women noted that the trafficked women's rights, including the right to compensation, are not upheld and requested the Ministry of Justice to give instructions that "higher compensation be requested for the victims of trafficking" and that the level of compensation be "significantly raised".

Family Reunification (Articles 9 and 16)

A new law passed by the Israeli parliament on 31 July 2003, the Citizenship and Entry into Israel Law (Temporary Order) 5763 – 2003, barred family unification for Israelis who marry Palestinians from the Occupied Territories.⁴⁷ In its effect, it explicitly discriminates against Palestinians from the West Bank and Gaza Strip and implicitly discriminates against Palestinian citizens of Israel, who constitute some 20% of the Israeli population, and against Palestinian residents of Jerusalem,⁴⁸ for it is they who usually marry Palestinians from the Occupied Territories. As such, the law formally institutionalizes a form of discrimination based on ethnicity or nationality. The ban

⁴⁵ The Investigation and Prosecution Policy for Prostitution and People Trafficking Offences, 2002, states that: "*Taking the specific circumstances into account, in cases prosecuted on the grounds of trafficking in women, an application must be made to the court, pursuant to Section 77 of the Penal Code 1977, on the effect that if the defendant is convicted, the court will order that he be required to pay compensation to the person who has suffered because of the crime, for the damage or suffering he has caused to the person.*"

⁴⁶ Nomi Levenkron and Yossi Dahan, *Women as Commodities: Trafficking in Women in Israel*, 2003, p.67; and Nomi Levenkron, "*Cashing in on the trade in women*", *Haaretz*, 29 March 2005.

⁴⁷ The Citizenship and Entry into Israel Law (Temporary Order) 5763 – 2003 was initially enacted for one year. It was subsequently extended in July 2004 for six months, then on 31 January 2005 for 4 months, and again on 30 May 2005 for three months.

⁴⁸ Palestinians who remained in Israel after the establishment of the State in 1948 became Israeli citizens. Immediately after Israel occupied the West Bank and Gaza Strip in 1967, it annexed East Jerusalem and the Palestinians who continued to live there became permanent residents. Today there are about 230,000 Palestinian residents of Jerusalem. They are liable to lose their permanent resident status, and with it the right to live in Jerusalem, if they do not reside in the city or cannot prove that they have lived there for a period of seven years.

was first officially put in place as an administrative procedure by the Interior Minister in May 2002.

On 30 May 2005, the law was extended for a further three months. In May 2005, the Israeli government also announced that it intends to amend this law to permit Palestinian women over the age of 25 and Palestinian men over the age of 35 to apply for family reunification with their spouses who are Israeli citizens. Such criteria are arbitrary in nature and would enable only a small percentage of the couples concerned to seek family reunification, as most marry at an earlier age.

This law has affected thousands of couples, forcing them to live together illegally or to live apart. Even before the May 2002 freeze, the practice of granting permanent residency and citizenship to Palestinians from the Occupied Territories married to Israelis was an arduous and drawn-out process. According to Israeli human rights organizations, the Israeli Ministry of Interior took an average of five years from the submission of an application to grant or deny the application. Thousands of applicants were refused on unspecified “security” grounds, and those whose applications were accepted spent another five years in various statuses before receiving permanent residency or citizenship. Thousands of families are thus under the constant fear of separation, with the Palestinian spouses forced to live “illegally” with their Israeli spouses, permanently at risk of being expelled and separated from their spouses and children.

Although the law does not differentiate between genders, its effects are in some respect more detrimental for women. Because of socio-cultural factors, most Palestinian women do not work outside the home and upon marriage women frequently join their spouses, who are often the sole or main bread winner. Palestinian women who are residing “illegally” in Israel or in East Jerusalem with their Israeli/Jerusalemite husbands are virtually prisoners in their homes out of fear of being arrested and expelled and separated from their husbands and children. They are not allowed to work and are thus forced into a situation of complete dependence on their husbands. Women in such situations are also much more vulnerable when facing difficulties in their marital relations, including domestic violence, as they are cut off from their own parents and relatives and at the same time feel unable to complain to the police for fear of being deported and separated from their children.

Because of their illegal status in Israel, Palestinian spouses of Israeli Arabs/Jerusalemites are not entitled to free health care. Although this situation has had a negative impact on both men and women, it has an immediate and damaging impact on women during pregnancy, curtailing their right to health. The problem has

been compounded by the increasingly stringent closures and restrictions on movement imposed on Palestinians in the past four and a half years. Up to 2000, Palestinian women living illegally in Israel/East Jerusalem could go to the West Bank, where medical care is much cheaper, for anti/post-natal care and to give birth, and return home to Israel/East Jerusalem. However, in recent years this has become virtually impossible. As a result, women in such situations are more frequently at risk of not receiving the medical care they need.⁴⁹

For Palestinian Jerusalemite women married to Palestinian men from the Occupied Territories, the fact that their husbands are denied permission to live with them in Jerusalem, means that they are forced to move out of the city to go to live with their husbands in the Occupied Territories. This entails losing their residency permit, for themselves and their children, and with it their right to ever return to live in Jerusalem again. Over the years, thousands of Palestinian Jerusalemites have had their Jerusalem residency permits rescinded by the Israeli authorities because they had temporarily moved out of the city or because they could not prove that they had maintained their residency there.⁵⁰

Similarly, Palestinian Jerusalemite men married to Palestinian women from the Occupied Territories also lose their Jerusalem residency if they move out of Jerusalem to live with their wives in the Occupied Territories. This leaves little or no choice for their Palestinian wives, other than to live illegally in Jerusalem.

While Israeli officials have sought to justify this law on “security” grounds, they have failed to produce evidence to substantiate such claims. At the same time government officials have repeatedly indicated that such law is motivated by “demographic” considerations.⁵¹ According to a statement concerning this law issued by the Prime Minister Office on 15 May 2005: “...*Prime Minister Sharon said that the Jewish*

⁴⁹ Also see: PHR-Israel:

<http://www.phr.org.il/phr/article.asp?articleid=73&catid=45&pcat=45&lang=ENG>

⁵⁰ For more details on the revocation of resident permits of Palestinian Jerusalemites see the following reports published jointly by B’Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) and HaMoked (Center for the Defence of the Individual): *The Quiet Deportation: Revocation of residency of East Jerusalem Palestinians* (April 1997), and “*The Quiet Deportation Continues: Revocation of residency and denial of social rights of East Jerusalem Palestinians*” (September 1998).

⁵¹ This was explicitly recognized by Prime Minister Sharon during a meeting on 4 April 2005, when in the context of discussions about the Citizenship and Entry into Israel Law, he declared that “*there is no need to hide behind the security arrangements. There is a need for the existence of a Jewish state.*”

*nature of Israel must be preserved and that the issue at hand is the existence of Israel...*⁵²

The government of Israel must ensure that measures addressing its security concerns conform with international human rights standards – including the principle of non-discrimination - and are applied on an individual basis, and not to persons who themselves are not considered to be a specific genuine security threat. Even before the May 2002 freeze, family reunification for Palestinians from the Occupied Territories married to Israelis was an arduous and drawn-out process, which lasted up to 10 years and entailed stringent security conditions for the applicants. Thousands were rejected on security grounds and those rejected were not provided with any information to justify the rejection and were thus not allowed to challenge the grounds for the rejection.

In its current form the law is discriminatory and violates fundamental principles of equality, human dignity, personal freedom and privacy, enshrined in the Basic Law: Human Dignity and Liberty, as well as the right of children to live with both parents, and other fundamental rights enshrined in international human rights treaties to which Israel is a party and which it is obliged to uphold. The UN Committee for the Elimination of Racial Discrimination has called on Israel to repeal this law.⁵³

The Right to Education (Article 10)

The gap in education between girls and boys is narrowing. Indeed, more girls than boys who attend school have a matriculation or a higher certificate and more girls than boys studied at university in 2003. However, the number of women with no schooling at all is double the number of men,⁵⁴ and illiteracy among women is more than double that of men.⁵⁵

Equal access to education is not always guaranteed for Israeli Arab women, who may face discrimination on two levels, based on their gender and on their ethnicity.⁵⁶ While the global rate of school enrolment is higher for girls aged 14-17 than for boys,

⁵² See: <http://www.pmo.gov.il/PMOEng/Government/Government+Secretary/Press/govmes150505.htm>

⁵³ CERD/C/63/Misc.11/Rev.1 (63rd Session, 4-22 August 2003) and CERD/C/65Dec.2 (Sixty-fifth session, 2-20 August 2004).

⁵⁴ According to the Central Bureau of Statistics, in 2002, more than twice the number of women than men had no schooling at all⁵⁴.

⁵⁵ 7.3% vs. 3% according to the Israel Women Network: *Women in Israel, Compendium of Data and Information 2004*.

⁵⁶ Palestinian citizens of Israel are usually referred to, and refer to themselves, as Israeli Arabs

Israeli Arab girls do not enjoy the same access to education as Jewish girls.⁵⁷ Poor access to education has been particularly acute for Bedouin women and girls in the Negev region, where, according to a 2001 survey,⁵⁸ more than 75% of Bedouin women had no schooling at all or had not completed their elementary school. The lack of government investment for the Bedouin population in this region (see below, “**Rural women**”) stands in stark contrast to the resources allocated to developing infrastructure for Jewish communities in the Negev region, as well as in Israeli settlements in the Occupied Territories.

The construction of the fence/wall, which is currently being built throughout the West Bank, including around the East Jerusalem area and which, upon completion, will completely cut off East Jerusalem from the rest of the West Bank, will also have a negative impact on the right to education of Palestinian women. Several universities and colleges around Jerusalem will be cut off from East Jerusalem. Affected universities include al-Quds University near Jerusalem, (whose main campus is now cut off from Jerusalem, along with 36% of its students) and Bir Zeit University in Ramallah, where women make up 62% of all students from East Jerusalem, as well as other West Bank universities and colleges attended by East Jerusalem students. These students will need special permits to cross from East Jerusalem to other parts of the West Bank. These restrictions will impact on the right to education of all students from East Jerusalem and in particular female students. Any measure that may force more students to live on campus, as has happened elsewhere throughout the Occupied Territories as a result of increased difficulties for students to cross Israeli army checkpoints between different areas of the Occupied Territories, will have a particularly detrimental impact on female students. Families who are unable to cover such additional expenses of living on campus for all their children may prioritize higher education for boys over girls and socio-cultural factors will make it more difficult for a young woman to live alone away from her family than for a man. In recent years movement restrictions elsewhere in the Occupied Territories have resulted in limiting the right to higher education for girls, raising concerns that such situation may encourage early marriage rather than prioritizing higher education.⁵⁹

⁵⁷ 89% and 98% respectively, according to the Central Bureau of Statistics, June 2004.

⁵⁸ Survey carried out by J. Cwikel and N. Barak, Health and Welfare of Bedouin Women in the Negev, The Centre for Women’s Health Studies and Promotion, Ben Gurion University, 2001.

⁵⁹ See Amnesty International report *Israel and the Occupied Territories- Conflict, occupation and patriarchy: Women carry the burden* (31 march 2005; AI Index: MDE 15/016/2005); chapter 2.3.

The Right to work, and rights at work (Article 11)

The Employment (Equal Opportunities) Law of 1988 prohibits any discrimination in hiring, working conditions or promotion. The law also applies to contracted workers in matters relating to working conditions, dismissal and hiring.

Inequality of wages and substandard working conditions are particularly acute among workers employed through employment agencies, which hire some 10% of the workforce and where women make up two thirds of the workers hired and on average earn 60% of the salary of regular workers.⁶⁰ Women workers are also kept on contract to employment agencies for longer periods of time than male workers: in the public sector, they are kept almost twice as long as men.⁶¹ Legislative measures to combat this phenomenon have so far not been implemented and in any case they are not applicable to subcontractors.⁶² In many instances, it is the State itself that resorts to subcontractors, such as cleaning companies, who don't even pay the minimum wage to the workers – a majority of whom are women. Women make up a high percentage of temporary workers and are thus more negatively affected by the fact that employers are not required to pay social benefits (such as sick pay, convalescence pay, pension fund payments and severance pay) to workers defined as “temporary”.

Salaries are generally lower for women than for men⁶³ and the dismissal of pregnant women is reportedly widespread. Even though employers can be criminally prosecuted under the Article 9(a) of the 1954 Employment of Women Law, only two employers are known to have been prosecuted.⁶⁴ The dismissal of pregnant employees who have worked for more than six months for the same employer is forbidden, but employers who want to dismiss a pregnant employee can request a special permit from the Ministry of Labour and Social Affairs, provided the dismissal is not pregnancy-related. The fact that more than half of the requests for permits to dismiss pregnant women are granted,⁶⁵ raises concerns that this provision is abused.⁶⁶

⁶⁰ Kav LaOved, Annual Report 2004, p. 3 and Concise Summary of parts II, III & IV, p.5.

⁶¹ The public sector employs 35,000 subcontracted workers. Source: idem above.

⁶² The Employment via Manpower Contractors Law was enacted in 2000. It provides for workers who have been employed by personnel companies for more than 9 months to be hired by their actual employer, but its implementation has been deferred each year.

⁶³ The male salary rates are 23% higher than female rates, according to the Israeli Central Bureau of Statistics.

⁶⁴ According to the World International Zionist Organisation (WIZO).

⁶⁵ According the Ministry of Labour and Social Affairs (quoted by the Israeli Women's Network in its report: “We keep running, but are we getting somewhere else?”; March 2005), 56% of the 1,600 requests for dismissal is granted.

⁶⁶ Out of the 3,000 calls regarding maternity issues received by WIZO, 36% concern women who were dismissed because they were pregnant.

Women's rights NGOs have complained that no effective action has been taken to address hundreds of cases of abusive dismissals they have submitted to the Ministry of Labour and Social Affairs. Some NGOs have called for the creation of an independent Equal Employment Opportunity Commission to ensure that laws in this field are enforced and to investigate complaints.

Migrant workers

Israel is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. However, Israel has ratified the ILO Convention No 97, Migration for Employment Convention (Revisited) 1949. As Israeli protective labour laws apply without discrimination to all workers in the country, basic provisions regarding minimum wages, paid annual leave and other rights also apply also to migrant workers who are legally present in Israel.⁶⁷

Women migrant workers are mainly employed in the agriculture and care giving sectors. In the latter, 90% of the workers are women,⁶⁸ most of them from the Philippines and other Asian countries. The number of migrant women workers in Israel now exceeds the number of male migrant workers, with some 30,000 women working as care givers,⁶⁹ as the government has encouraged the immigration of women workers in this sector as an alternative to setting up and running institutions for elderly and disabled people.

Although working conditions for care givers are often very demanding, with live-in arrangements making caregivers on call virtually 24 hours a day for six days a week, the Labour Court set wages below the official minimum rate.⁷⁰ In addition, private employers often do not pay care givers the salaries set by the Labour Court.⁷¹ Even though complaints regarding wages and conditions of work are frequent, the Ministry of Industry, Trade and Labour tends to intervene only when salaries are not paid at all.

Article 7 of the International Covenant on Economic, Social and Cultural Rights – to which Israel is a party – requires State Parties to recognize the “*right of everyone to*

⁶⁷ Notably, the Minimum Wages Law (1987), the Annual Leave Law (1951) and the Protection of Wages Law (1958).

⁶⁸ *Kav LaOved*, Newsletter, October 2003.

⁶⁹ *Kav LaOved*, Annual Report 2004, p.12.

⁷⁰ In 2004, the National Labour Court ruled that care workers were to be paid the minimum wages for an 8-hour day, plus a 30% extra, irrespective of the actual number of hours workers. *Kav LaOved* has appealed this decision and the case is pending.

⁷¹ Most of the salary is paid by the National Insurance Institute (NII), while the employer covers the difference between the NII payment and the total salary.

the enjoyment of just and favourable conditions of work". This right is not limited to citizens, but applies to all workers, including migrant workers. The UN Committee on the Elimination of Racial Discrimination has also recommended that States Parties to the International Convention on the Elimination of Racial Discrimination (CERD), which Israel has ratified, "*take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects*".⁷²

Although home healthcare migrant workers can remain in the country longer than migrants working in other sectors,⁷³ their right to reside and work in Israel is also tied to a specific employer, like other migrant workers. Exploited caregivers who leave their employer thus lose their legal right to remain in Israel and their presence in the country becomes illegal. Many have been arrested on these grounds and detained for up to three weeks pending deportation.

Migrant workers who have a first-degree relative in Israel are refused extensions of their visas by the Ministry of Interior, lest it "*induce[s] [them] to remain permanently in Israel*". In 2002, the Supreme Court endorsed this policy, stating that: "*based on the policy of denying approvals for first-degree relatives for fear that their stay be an inducement for staying permanently in Israel, and in the light of the increase of this phenomenon, the above policy was formulated (...) we do not regard [the Ministry of Interior's] decision as inappropriate in a way that would justify our involvement in, and substitution to, the Ministry of Interior's judgment*".⁷⁴ Given the high number of migrant women caregivers, this policy impacts especially on women.

With the same intent, the Ministry of Interior has frequently refused to extend visas to pregnant women, and many female migrant workers have reported that they were asked about possible pregnancy when applying for extensions of their visas. Such practices violates Article 11 of the Women's Convention, as well as several provisions of Israeli law, including the Employment (Equal Opportunities) Law, the Employment of Women Law⁷⁵ and the Basic Law: Human Dignity and Freedom⁷⁶.

⁷² General Recommendation No. 30: Discrimination Against Non Citizens. (General Comments), issued by the UN Committee on the Elimination of Racial Discrimination, on 1 October 2004.

⁷³ Migrant workers may be allowed to stay in Israel for up to 5 years and 3 months. Both categories must renew their work permit each year.

⁷⁴ HCJ ruling 5001/01; Madas Floare and Spanicioc Lavinia Alina vs. Ministry of Interior, 13 February 2002.

⁷⁵ Article 9(a): "*An employer shall not dismiss a woman employee who is pregnant and has not yet begun her maternity leave....*"

⁷⁶ Article 7 "*Every person is entitled to privacy and to the confidentiality of his life*".

Prior to October 2004, female migrant workers in a late stage of pregnancy and whose employment had been terminated for some reason (such as death of the cared-for person or his/her transfer to an institution/home) were deported within a month. Since October 2004, female migrant workers may not be not deported until their child is 3 months old,⁷⁷ at which point they must choose between leaving Israel with their baby or sending their baby away if they want to continue working in Israel (provided they can do so according to the regulations). This practice violates the right to family life, guaranteed by Article 23 of the International Covenant on Civil and Political Rights (to which Israel is a party) and more generally by the Article 16 of the Universal Declaration of Human Rights. It also violates Article 9 of the Convention on the Rights of the Child, according to which State Parties have a duty to “*ensure that a child shall not be separated from his or her parents against their will.*”

Most migrant workers pay commissions to placement agencies in order to obtain work in Israel. According to the Israeli NGO Kav LaOved, a caregiver from the Philippines may pay some \$5,000 to an agency, which will take her about one year to reimburse. Such women may thus find themselves in a debt-bondage situation for an extended period of time and be more vulnerable to exploitation by their employers. If they end up with an employer who does not pay them or exploits them, caregivers feel they cannot leave as their stay in the country would become illegal and they would be at risk of deportation – while still indebted to and unable to pay back the agency which placed them in their job.

Arab Israeli women

The employment rate of Israeli Arab women is three times lower than that of Israeli Jewish women.⁷⁸ The towns and villages where Israeli Arabs live are amongst the poorest in the country and most do not figure on the list of priority development areas for government investment to develop infrastructure, set up industrial areas and other projects. The lack of transport infrastructure in these areas negatively affects Israeli Arab women’s mobility, and consequently their access to employment centres, to a greater extent than their male counterparts, as fewer women in these areas have cars. Few job opportunities exist in the Negev region⁷⁹ and in the Northern Triangle region many Israeli Arab women who worked in textile factories lost their jobs in the past decade after the production facilities were moved to Jordan or Turkey.

⁷⁷ This duration corresponds to the standard length of maternity leave in the country.

⁷⁸ 53% and 17% respectively. Source: Mossawa Centre, *The 2005 State Budget and the Arab Citizens: A socio-economic report*.

⁷⁹ See below “Rural women” (Article 16).

Human rights organizations have also expressed concern that army service is often a prerequisite for clerical and other jobs for which such experience does not seem relevant, and that such a prerequisite automatically excludes Israeli Arab women, who do not serve in the Israeli army.⁸⁰

Even though a 2000 amendment to the Public Services Law requires governmental offices and companies to have fair representation of Israeli Arabs among their employees, in the past four years there has been a decrease in the number of Israeli Arab women hired by the public sector, which employs a large percentage of women.⁸¹ This trend seemingly runs counter to the UN Human Rights Committee recommendation of 2003,⁸² which called on Israel to “*adopt measures to improve the participation of Arab Israeli women in the public sector and accelerate progress towards equality.*”

The right to health (Article 12)

Migrant workers

Israel has ratified the ILO Convention No 93, Article 6 of which relates to social security (including maternity care and healthcare) and remuneration on the basis of equality with nationals for regular migrants.

However, according to Article 2A(b)(3) of the National Insurance Law (1995), migrant workers are not entitled to the same level of health care services from the National Insurance Institute (NII) as Israelis. Exclusions for migrant workers include high-risk pregnancy benefit (the payment of 96% of their salary for a 30-day period of complete bed rest for women at risk during pregnancy) or the right to free amniocentesis test. Maternity-related hospital costs for migrant workers are covered (provided that their employer has paid the worker’s Social Security fees) only if they have worked until 42 days before giving birth, a requirement which does not apply to Israeli women. This condition puts pressure on pregnant migrant workers to work until 42 days before giving birth, even if they are unwell.

⁸⁰ Israeli Arabs are not required to serve in the Israeli army. A small percentage of the Israeli Arab male population, most of them Bedouins, volunteer for army service. Israeli Arab women never serve in the army.

⁸¹ 66 Arab women were hired in 2003, 80 in 2002, 90 in 2001 and 93 in 2000. Source: The Mossawa Centre: *The 2005 State Budget and the Arab Citizens: A socio-economic report.*

⁸² Concluding Observations of the Human Rights Committee of 2003 (CCPR/CO/78/ISR), para 23.

As migrant workers do not have equal access to health care as a matter of right, by law, private employers must arrange health insurance for all migrant workers.⁸³ Private insurance companies, however, often do not guarantee comprehensive medical cover during pregnancy, leaving pregnant migrant workers at risk of not having access to necessary medical care.

Many migrant workers do not receive maternity benefits from the NII, because their private employers have not paid the necessary contribution to the NII, but the women are often not aware of the problem until it is too late, and in other cases they are reluctant to complain for fear of losing their job, and their visa and work permit with it. These difficulties compound other above-mentioned violations and pressures to which pregnant migrant workers are subjected, such as arbitrary dismissal during pregnancy, exploitative working conditions, and being forced to choose between being separated from their babies or leaving the country.

Violence against women (Article 12)

Legal framework

Several Israeli laws address the issue of violence against women.⁸⁴ The Penal Law (1977) was amended in 1998 to set a minimum four year prison sentences for those convicted of rape, indecent acts and incest. The minimum four year prison sentence can be reduced in mitigating circumstances but cannot be entirely replaced by probation. In 2001, the Penal Code was further amended to expand the definition of rape.⁸⁵ As noted below, however, marital rape is not specifically criminalized.

The Victims of Offences' Rights Law of 2001 grants certain rights to women victims of assault throughout the criminal procedure, notably the right to be notified of the proceedings' developments, to be accompanied by a companion during investigations, to be notified if the accused escapes from custody and to be consulted before the offender may be granted early release from custody. However, implementation of this law was delayed, apparently for financial reasons. Women victims of sexual assault

⁸³ According to Chapter Two "Medical Insurance" (I(d)(a) of the Foreign Workers Law (1991)), employers have to arrange at their own expenses medical insurance that "shall include such baskets of services as the Minister of Health shall prescribe for this purpose by order".

⁸⁴ Including the Stalking Prevention Law (2001), the Prevention of Family Violence Law (1991), the Victims of Offences' Rights Law (2001), the Sexual Harassment Law (1998) and the Equal Rights for Women Law (1951).

⁸⁵ Article 345(a) defines rape as the penetration of a woman's sexual organs without her free consent. The question of the use of force or the possible causes for the lack of the woman's free will is no longer part of the definition.

who testified in courts have reportedly often complained that they were not sufficiently informed of the developments in their case. Implementation of the law reportedly began in April 2005.

In January 2005, the Statute of Limitations for Sexual Felonies against Minors was amended to make it possible for adults up to the age of 28 to file police complaints for sexual abuse to which they were subjected during childhood. This amendment was introduced to respond to the needs of victims who were sexually assaulted as children but who did not feel able to report the assault for many years.⁸⁶

Current situation

The precise extent of violence against women is not known because many victims do not report the incidents, either to the police or to rape crisis centres. Even those who do call the hotlines, in the vast majority of cases, do not file complaints with the police.⁸⁷ Specialized organisations estimate that the number of women victims of attacks is likely to be at least four times the number of women who call the hotlines.⁸⁸ The large volume of calls received by hotlines,⁸⁹ the number of women murdered by their partners⁹⁰ and the number of women who took refuge in shelters for battered women⁹¹ testify to the extent of the problem. According to the Association of the Rape Crisis Centres in Israel, in 2004 rape was the most frequent type of sexual violence reported by women who called the rape crisis centres for the first time.⁹²

Organisations working on violence in the family have also reported an increase in the number of calls received by rape crisis centres about gang rapes among youngsters, and about violent and abusive behaviour of young men (aged about 20 or younger)

⁸⁶ Gideon Alon, "Sexually abused minors can file complaint until age 28", *Haaretz*, 18 January 2005.

⁸⁷ According to the Association of the Rape Crisis Centres only some 10% of the new callers go to the police. See also *The Israel Women's Network: Women in Israel: Compendium of Data and information 2002*, p.202.

⁸⁸ Hilary Leila Krieger, "Reports of sexual assaults skyrocket", *Jerusalem Post*, 22 February 2005.

⁸⁹ In 2004, hotlines dealing with domestic violence received some 8,000 first calls, 80% of which related to cases of rape, sexual assault, incest and ongoing rape (Association of Rape Crisis Centres, Annual Report 2005).

⁹⁰ In 2003, 22 women were murdered by their spouses or partners (L.O. Violence against Women, 2004).

⁹¹ More than 600 women took refuge in battered women's shelters in the country (Israel Women's Network, "*Women in Israel, Compendium of Data and Information, 2003-2004*").

⁹² 2,371 callers reported rape. Source: Annual Report 2004. Association of the Rape Crisis Centres in Israel. The term "sexual assault" includes rape, attempted rape, sodomy, coercive sexual relations over time, sexual relations with a minor, incest, group rape, indecent acts, indecent exposure and peeping and sexual harassment.

towards their partners.⁹³ There are concerns that these may be indications of a developing trend.

Prosecution

It is believed that most victims of sexual assaults do not file police complaints, as many victims are often reluctant to report such crimes. In 2003, more than half the cases filed with the police concerned assault and battery, and more than 20% concerned threats.⁹⁴ Rape Crisis Centres' staff estimate that more than half of the cases of rape do not lead to prosecution. While the number of files on sexual assault opened by the police for the last three years has remained almost stable,⁹⁵ the number of men convicted of sex crimes is reported to have almost quadrupled over the last ten years.⁹⁶

Victims of violence may file a complaint for criminal prosecution and/or seek compensation in a civil procedure. The civil suit for damages/compensation does not require that the alleged perpetrator be convicted in a criminal procedure. According to the Association of Rape Crises Centres, victims of rape often prefer to use the civil procedure, through which they are more likely to obtain an order of compensation to be paid by the defendant and a judicial acknowledgement that the rape has occurred, than the criminal procedure which is more traumatic and is perceived as too lenient towards the perpetrators and more likely to end in acquittal.

The paucity of forensic experts in Israel has been raised as a serious concern and a hindrance to the successful prosecution of rape cases. Israel has one forensic pathology Institute [in Bat Yam], and only three doctors - all based in Tel Aviv - are authorized to perform forensic examinations.⁹⁷ Women from other regions do not have access to these services unless they come to Tel Aviv – a trip some victims do not have the energy to undertake after a traumatic event. These limited resources in collecting forensic medical evidence have reportedly had a negative impact on the ability of prosecutors to gather evidence for use in court.

⁹³ 187 calls in 2003 and 270 calls in 2004 (Association of the Rape Crises Centres, Annual Report 2004).

⁹⁴ Source: Annual Report, Israeli National Police, 2002 and Israel National Police website, Statistical data, 2003

⁹⁵ 3,554 in 2001, 3,511 in 2002 and 3,425 in 2003, according to The Israel Women's Network, "Compendium of Data and Information 2004", p. 193

⁹⁶ According to *Haaretz*, 9 March 2005: "25% of prisoners in jail for sex crimes or domestic violence", between 1995 and 2005, the number of men jailed for sex crimes has increased from 287 to 1,000 and the number of people convicted for domestic violence has gone up from 400 to 2,000.

⁹⁷ Association of the Rape Crisis Centres in Israel, Annual Report 2005

The length of criminal proceedings (some reportedly lasting up to 6 years when the accused is released on bail and one to two years if the accused is detained pending trial) has also been cited by NGOs as a reason why many victims of sexual violence decide to abandon criminal proceedings. Organizations have expressed concern that long delays in prosecution cases can cause mounting psychological pressure on the victims and impair their ability to get on with their lives and put the ordeal behind them.

Protection and assistance to the victims

The Association of Rape Crisis Centres, created in 1990, groups 10 centres nationwide and provides crisis-oriented assistance to victims of sexual assault. The Association is financially supported by the Ministry of Labour and Social Affairs, which also provides funding for the shelters for battered women and the domestic violence prevention centres.⁹⁸

According to the Association of Rape Crisis Centres, in 2005 the authorities stopped subsidizing therapy for battered women and reduced by 25% their contribution to the budget of the Association of Rape Crises Centres. As a consequence, the Association cancelled training courses in forensic pathology for doctors and decreased planned educational programmes for attorneys and policemen, even though there is a need for such training. While the government covers the costs of such training for judges and lawyers, it does not for the training of police.

In addition, the authorities cut by half funding to two centres for victims of sexual assault (one in Rishon the Zion, and one in Haifa), which had been set up two years ago, even though organizations assisting the victims believe that there is a need for additional centres for the treatment of sexual assault. These cuts have occurred against the backdrop of a progressive decrease in the overall social budget of the state in recent years.

Domestic violence

Legal framework

The Law on Domestic Violence (1991) sets out criteria and procedures for issuing protection orders for victims of domestic violence. According to Article 3 of this law, victims can request a court to issue a protection order, in cases of specific threats from

⁹⁸ The State Bequests Committee of the Ministry of the Interior and the local municipalities also financially contribute to these organisations, but to a lesser extent.

a family member.⁹⁹ Protection orders can be issued for up to 3 months, and can be extended for up to 6 months, and in special circumstances for up to 12 months (Article 5). Plaintiffs may also request protective injunctions in other jurisdictions, such as religious courts (Article 10).

As noted above, there is no specific crime of marital rape in Israeli law. Organisations working on domestic violence and rape report that in cases of marital rape and rape in the context of a relationship, the perpetrators do not receive jail sentences but only fines, as the courts are apparently more lenient in these cases.

Current situation

The full extent of domestic violence in Israel is not known, as many victims, including women from religious and conservative sectors of society (including Jewish, Muslim, and Christian women) and women from new immigrant communities (notably women from Ethiopia and former Soviet Republics), among others, are often reluctant to report such abuses. Official figures indicate that domestic violence is a major concern. According to the Health Minister, “in 2003, 40,000 women came to hospital emergency rooms (...) as a result of domestic violence, out of which 15,000 were hospitalized.”¹⁰⁰ The Association of Rape Crisis Centres in its 2005 Annual Report, stated that in 2004, more than 1,200 new callers reported that they had been victims of incest.

Prosecution

The reluctance of sexual abuse victims to report attacks is even more marked in the case of family violence. One third of the victims who contacted the rape crisis centres reported that their attacker was a family member or partner, and 20% of the women who report that they were victims of sex offences when under age 12 disclosed the abuse 10 years or more after it occurred.¹⁰¹

The percentage of arrests for violence against women by their partners more than doubled over the last ten years and reached a peak in 2002,¹⁰² and the number of men convicted of domestic violence has reportedly grown five-fold over the last decade.

⁹⁹ Including a physical threat (Article 3(1)), the risk of a sexual offence (Article 3(2)) or when the behaviour does not permit the family member to run her life in a reasonable manner (Article 3(3)).

¹⁰⁰ Gideon Alon and Ruth Sinai, “40,000 battered women hospitalized in 2003”, *Haaretz*, 26 November 2003.

¹⁰¹ Association of the Rape Crisis Centres: Annual Report 2005.

¹⁰² 22.9% in 2002 and 20.0% in 2003, According to: Annual report, Israel National Police, 2002 and Israel National Police website, statistical data, 2003. (as reported in Israel Women Network: *Women in Israel: Compendium of Information and Data*, 2004, p.188)

It is considered that the increase in the arrest rate may reflect the combined impact of changes in the Powers of Enforcement-Arrest Law, the setting up in 1998 by the police of a unit for investigating domestic violence and the creation of a new Domestic Violence Investigator.¹⁰³

Assistance to victims

In 2004, 14 shelters for victims of domestic violence were operational in Israel, which provided immediate physical protection for women and children. Social welfare agencies, as well as municipalities and local councils refer women to these shelters. The number of women finding refuge in such shelters, after doubling a few years ago, has now stabilized at around 640 for the last three years

According to Article 7(c)(5) of the Employment of Women Law of 1954 the absence from work of women who stay in shelters for battered women should be considered as leave without pay, and Article 9(d) of the same law forbids employers from dismissing a woman employee who stays in such a shelter.

Battered women who leave their homes because of domestic violence are entitled to a one-year housing allowance, although in practice it is often reportedly difficult for victims of domestic violence to benefit from this assistance.

Israeli Arab women

In September 2004, the authorities closed the only hostel for Arab girls in Shfar'am, near Haifa, which had been opened in 1996 and which was the only structure taking care of Israeli Arab girls aged 14 to 18, who had dropped out school or who had become drug addicts or prostitutes. Girls in such situations are at risk of family violence, and some are even at risk of being killed by their families.

In 2003, the Minister of Labour and Social Affairs also closed a hostel in Akko, which was the only state-funded secured hostel providing shelter for Israeli Arab young women in danger of physical abuse from their families. In spite of repeated promises by the Ministry to reopen it, and a petition filed by several Israeli NGOs, the shelter is still closed.¹⁰⁴

¹⁰³ Source: Israel Women's Network: "Women in Israel: Compendium of Information and Data, 1999-2000"

¹⁰⁴ H.C. 9111/03, *Women against Violence, et. al. v. Minister of Labour and Social Affairs* (case pending), filed in October 2003 by Adalah, Women against Violence, Assiwar, The Palestinian Feminist Centre in Support of Victims of Sexual Abuse and *Kayan*. Also, the Director of the National

As a result of the closure of these shelters, many Israeli Arab women and girls find themselves at risk, with no place to go for adequate protection. According to NGOs working with Israeli Arab women and girls, existing shelters which cater mostly for Jewish women and girls do not provide an adequate option for Arabic-speaking women and girls, and lack knowledge of their socio-cultural background.¹⁰⁵

While the Ministry is able to fund shelters for Jewish teenagers (boys and girls) and for Arab male teenagers, it has been unwilling to open a similar facility for young women at risk, disregarding the specific problems faced by young vulnerable Arab women.

Rural women (Articles 14, 10 and 12)

The Israeli Bedouin community living in the Negev desert is the poorest and most economically deprived, with a 60% poverty level and the highest unemployment rate in the country. Bedouin women are one of the most deprived population groups in Israel in socio-economic terms.

The hardship suffered is the most acute in the “unrecognized” Bedouin villages,¹⁰⁶ where about half of the Bedouin population, up to 70,000 people, live.¹⁰⁷ For decades, the Israeli government and local authorities have provide no infrastructure or basic services, including water, electricity, health facilities, roads, sewage or refuse disposal. On the contrary, the Bedouin population in the unrecognized villages is forbidden to build homes and many families have had their homes, animal sheds and other structures destroyed by the security forces.¹⁰⁸

The overwhelming majority of Bedouin women do not enjoy any of the rights guaranteed by Article 14.2(h) of the Convention. They do not receive basic services

Council for the Child referred to the continuous postponement of the opening of the shelter as an “ongoing scandal”.

¹⁰⁵ Also see: Adalah News Update, 13 October 2003.

¹⁰⁶ “Unrecognized villages” are villages which do not exist and do not have the right to exist, according to the Building and Planning Law of 1965 – even though most existed prior to the enacting of this law. There are currently some 46 unrecognized villages.

¹⁰⁷ The rest of the Bedouin population live mostly in seven nearby purpose-built townships, which rank at the bottom of the Israeli social-economic scale, with high unemployment and little or no economic prospects.

¹⁰⁸ For further details, see Amnesty International report *Israel and the Occupied Territories. Under the rubble: House demolition and destruction of land and property* (AI Index: MDE/15/033/2004, May 2004).

which the Israeli authorities provide to other sectors of the population, increasing their economic and social vulnerability. This in turn curtails women's development possibilities and contributes to high school drop out rates, early marriage, very high fertility rate (not always out of women's choice), polygamy, and family violence. There is a lack of awareness and information amongst girls/young women about their rights and there is little, if any, assistance available to them to deal with these issues. Women therefore continue to be trapped in a circle of marginalization, with many living without recognized status - the socio-economic consequences of polygamy (which is illegal under Israeli Law).

Right to education of Bedouin girls

The right to education of Bedouin girls in the Negev region is curtailed by multiple forms of discrimination: because of their gender, their ethnicity and poverty.¹⁰⁹ Because of their gender, as girls, they are often prevented by Bedouin cultural traditions from being away from home and mixing with boys from other tribes. However, the lack of educational facilities in unrecognized villages requires students to travel some distance to reach such facilities. At the same time, due to the lack of roads and transport facilities in and around unrecognized villages, even a distance of a few kilometres necessitates a lengthy journey which parents are often reluctant to allow their daughters to make.

For example, there are very few education facilities for the population of the seven unrecognized Bedouin villages in the Abu-Tulul al-Shihabi area near Beer Sheva and Dimona, and the right to education of the population has been overlooked for years.¹¹⁰ The nearest high school for a population of 12,000 is 15 kilometres away. This has had particularly negative impact on girls who account for 77% of the drop out rate.¹¹¹ Such situation is particular to the Bedouin villages; by contrast and the Israeli authorities have promptly provided much smaller Jewish villages in the Negev region

¹⁰⁹ The lack of equal access to education for the Israeli Bedouin population was recognized in a recent High Court ruling by Justices Procaccia, Gronis and Haydut, who stated that: "*the gap in education – in which the phenomenon of dropping out is a part – between the Jewish and the Arab Bedouin sectors of the Negev necessitates the application of a policy of minimizing the gap by means of affirmative action, in order to bring (...) the Arab Bedouin sector to a starting point similar to that of the Jewish sector, in order to achieve equal opportunities within all social groups.*" (cited in Adalah's Newsletter, Volume 9, January 2005).

¹¹⁰ The first primary school in the area was opened over 20 years after the establishment of the State of Israel.

¹¹¹ Adalah's petition to the High Court of Justice, H.C. 2848/05; pending:
<http://www.adalah.org/newsletter/eng/mar05/fet.pdf>

and elsewhere in Israel, as well as Israeli settlements in the Occupied Territories, with road networks and education and other facilities.

In 2002 the UN Committee on the Rights of the Child expressed concern that “investment in and the quality of education in the Israeli Arab sector is significantly lower than in the Jewish sector” and recommended that Israel “prioritize and target budgetary allocation for children belonging to the most vulnerable groups (e.g. Israeli Arab children, Bedouin...)”.¹¹²

The fact that in recognized villages where secondary schools are available graduation rates for Bedouin girls are equal to, or higher than those of boys,¹¹³ indicates that the lack of facilities and infrastructure in the unrecognized Bedouin villages is a major factor curtailing the right to education of Bedouin girls living in these villages.

Right to health of Bedouin women

Very few health care facilities are available in the unrecognized Bedouin villages in the Negev, mostly basic mobile clinics or caravans,¹¹⁴ and according to the Israeli NGO Physicians for Human Rights (PHR-Israel) the number of doctors is a third of the norm.¹¹⁵ Thirty-eight villages have no medical services,¹¹⁶ and ambulances do not serve the unrecognized villages, denying residents ready access to emergency health care. Their right to health is further compromised by the paucity of Arabic-speaking medical workers, as most Bedouin women do not speak Hebrew, and by the lack of public transportation from unrecognized villages.

The denial of basic services and infrastructure to the unrecognized villages has a major impact on health, and women are totally dependent on the goodwill and ability

¹¹² CRC/C/15/Add.195, Paragraphs 19 and 54.

¹¹³ Ben-Gurion University, *Statistical Yearbook of the Bedouin in the Naqab* (2004).

¹¹⁴ Physician for Human Rights-Israel (PHR) and the Regional Council for Unrecognized Negev Villages: *No Man's Land*, July 2003, p. 60

¹¹⁵ Cf. Prof. Michael Weingarten, *Calculating the Suitability of a Clinic for Residents according to the Proportion of Physicians to the Community*, PHR-Israel, internal document.

¹¹⁶ Until 1995, none of the unrecognized villages had a clinic. In 2000 the Association for Civil Rights in Israel (ACRI), PHR-Israel and other NGOs filed a petition to the High Court of Justice (HCJ 4540/00) on behalf of the residents of 3 villages. It requested that clinics be set up in three villages and that criteria for the establishment of clinics be formulated, as required by the National Health Insurance Law. Although the State agreed to set up clinics in these three villages and the Ministry of Health added five other villages on this list, by April 2005, only two primary medical services clinics had been established in the area.

of their husbands to supply water to their homes.¹¹⁷ Water storing facilities are inadequate, and often cause serious health problems,¹¹⁸ presenting a constant challenge to providing for a safe household and ensuring the health of children, the elderly and pregnant women in particular.

PHR-Israel has highlighted the link between the lack of accessibility and poor quality of water on one hand, and child mortality on the other in the unrecognized villages.¹¹⁹ It concluded that although congenital defects due to endogamy are indeed one of the causes for the high infant mortality rate, “*it is reasonable to assume that another explanation for the high mortality rate is the lack of accessibility to water*”.¹²⁰

The Committee on Economic, Social and Cultural Rights has recognised that access to sufficient clean water and sanitation is essential to the realization of the right to health, food, secure livelihoods (e.g. in food production), and the right to life with dignity.¹²¹

However, to date, the Israeli authorities have not taken the necessary steps to remedy the long-standing problem of lack of access to water for the inhabitants of the unrecognized villages. Rather, they have indicated their intention to the contrary. In response to a petition to the High Court (HCJ Petition 3586/01) filed by several Israeli NGOs on behalf of the residents of several unrecognized Bedouin villages, the Bedouin Development Authority acknowledged in October 2004 that the current provision of drinking water was inadequate in some of the unrecognized villages but stated that in four of the six villages the houses were illegal and that “*access to drinking water and other facilities would only be made available if the villagers relocated to the recognized village of Hura*”.¹²²

¹¹⁷ The State has provided no water infrastructure for the unrecognized villages. In some villages residents have managed by buying containers of water, and, more recently, pipes have been installed to bring water into some villages.

¹¹⁸ Due to the high desert temperatures, fungi, bacteria and rust develop very quickly in the plastic containers or metal tanks, leading to numerous infections and skin diseases (e.g. scabies).

¹¹⁹ In 2003, the infant mortality rate (IMR) was 13.3 per 1,000 births in the Negev, when it was 3.9 among the Jewish population and 5 among the Israeli population at large.

¹²⁰ *Without Water! Position Paper on the Right to Water in Unrecognized Villages*. PHR-Israel September 2004.

¹²¹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15, *The Right to Water*, 12 November 2002.

¹²² Adalah News Update, 27 April 2005.

The right to adequate housing: house demolitions and forced evictions¹²³

Because many villages inhabited by Palestinian and Bedouin citizens of Israel which existed prior to the establishment of the state of Israel were re-classified as non-residential, they remain unrecognized and many of the houses in these villages are under permanent threat of demolition. In other villages in Israel and in the East Jerusalem area, after Israel's occupation and subsequent unilateral annexation of East Jerusalem in 1967, Israel has made it virtually impossible for Palestinian Jerusalemites to obtain building permits. Consequently, thousands of Palestinian homes in the East Jerusalem area are considered illegal and are at risk of demolition. The constant potential threat of eviction and house demolition increases the psychological burden on women, many of whom are already facing socio-economic difficulties.

The phenomenon of house demolition is particularly widespread in the Palestinian neighbourhoods in the East Jerusalem area, in the unrecognized Bedouin villages in the Negev region of Israel, and in Israeli Arab villages and towns in the North of Israel. Hundreds of homes belonging to Israeli Arabs and Bedouins and to Palestinian Jerusalemites have been demolished in recent years and tens of thousands of others are considered illegal and liable to be demolished.

The vast majority of Israeli Arab and Bedouin women do not work outside the home¹²⁴ and house demolition has had a particularly negative impact on women, as it has entailed the loss of the place that they feel is their own and over which they feel they have control and responsibility. Families whose homes have been demolished often cannot afford to pay for alternative accommodation and are forced to move in with relatives, and having to share an already limited space increases family tensions and undermines women's ability to manage the family space and activities.

Marriage and Family Life (Article 16)

Upon ratification of CEDAW, Israel made a reservation recognizing that "*the laws on personal status which are binding on the various religious communities in Israel do not conform with the provisions of that article*". No measures have been taken to implement the Committee's previous recommendation that Israel "*complete the*

¹²³ For further details also see Amnesty International reports: *Israel and the Occupied Territories: Under the rubble: House demolition and destruction of land and property*, May 2004 (AI Index: MDE/15/033/2004), and *Israel and the Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes*, December 1999 (AI Index MDE 15/59/99).

¹²⁴ Some 5% of Bedouin women work outside the home.

secularization of the relevant legislation, place it under the jurisdiction of the civil courts and withdraw its reservations to the Convention".¹²⁵ In its Concluding Observation in October 2002, the UN Committee on the Rights of the Child also expressed concern that "*religious laws, particularly in the area of personal status, may not be in compliance with the principles and provisions of the Convention*". (CRC/C/15/, paragraph 19).

There is no provision in Israeli law for a civil marriage, although the Ministry of Interior recognizes civil marriages performed overseas. According to Article 1 of the Jurisdiction of Rabbinical Tribunals (Marriage and divorce) Law (1953), "*matters of marriage and divorce of Jews in Israel, who are citizens or residents of the State, shall be under the sole jurisdiction of the Rabbinical Courts.*" Article 2 of the same law stipulates that "*marriages and divorces of Jews shall be held in accordance with religious laws*".

Until 1995, only religious courts had jurisdiction over personal status issues. In 1995, the Family Court Law was enacted, granting Family Courts parallel jurisdiction to the Rabbinical Courts in matters concerning maintenance, child custody and property issues (referred to as "associated matters"). In 2001, the Law was amended and Family Courts received jurisdiction for these "associated matters", in parallel with *Shari'a* courts, which regulate marriage, divorce and other personal status matters for the Muslim population.¹²⁶ In March 2004, the High Court ruled that "associated matters" could be taken out of the sole purview of the Druze religious courts. As a result of these successive amendments, all three religions now have parallel jurisdiction systems for "associated matters".

Polygamy

To date, Israel has not taken the necessary steps to implement the CEDAW Committee's recommendation to "*take the necessary steps to eliminate practices which could not be justified on any grounds, such as (...) polygamy*". (A/5238/Rev.1. Paragraph 178).

¹²⁵ Concluding Observation of CEDAW (A/5238/Rev.1. Para 173).

¹²⁶ Religious and Family courts thus have parallel jurisdiction regarding "associated matters". The court that is approached first by one of the parties in a divorce suit has the authority to rule with respect to the divorce itself and the "associated matters". In many cases, the husband, hoping that the rabbinical courts will be more favourable to him, will sue for divorce in the religious court and declare "associated matters" included in the suit before his wife has had time to approach a civil court (in this respect, see also below "Arab women", on the importance of Arab social workers for support units in the Family Courts.)

Polygamy is forbidden by Article 177 of the Penal Law (1977) and is punishable by up to 5 years in prison. However, no polygamous husbands are known to have been prosecuted for the offence, and polygamy continues to occur among Israeli Bedouins. Precisely because it is a punishable offence, the extent of the phenomenon of polygamy is not known. According to survey carried out amongst Israeli Bedouin women in the Negev region in 1999 by the Nazareth-based Arab Association for Human Rights, 40% of Bedouin women were living in polygamous households.

Often Bedouin men formally marry their first wife and subsequently unofficially marry a second or a third woman. In some cases the man formally divorces from his first wife in order to formally marry a second wife; in such cases the divorce is a purely administrative procedure and the couple remains “informally” married. Situations in which the divorcees continue to live in the same household are common amongst Israeli Bedouin in the Negev region.

In the Bedouin community in the Negev region, the combination of high level of poverty, very conservative social structures, and stringent logistical constraints, which make it impossible to build additional houses, prevents women from starting new independent households away from their former spouses and families. In addition to the practical problems of lack of financial resources, and children’s custody, it is socially more acceptable for a woman to be in a polygamous marriage than to return to her family as a divorcee. Hence in most cases the only option is to remain in the house of the former spouse.

Certain government policies compound the problem of Bedouin women living in polygamous situations, rather than assisting women to get out of such situations. The authorities do not prosecute men for violating the law forbidding polygamy, but often penalize divorced women who live near their former spouse by denying them the single mother benefits, even in cases where the women are no longer living with their former spouse.

The authorities are currently in the process of amending the Penal Law. The authorities’ explanation of the proposed amendment, which passed the first reading in the Knesset in March 2005, is that the phenomenon of polygamy has increased among the Bedouin population and that “*the tool in usage for circumventing the legal prohibition is ‘apparent’ divorce from the first wife, when in actual fact she continues to live in the husband’s house or in proximity and continues to take care of the*

children and the household while this is full polygamy".¹²⁷ The proposed amendment would extend the definition of polygamy to include divorced women who live "close to" the former spouse.

The adoption of this amendment in its current form would have widespread and detrimental financial consequences for all formally divorced women who continue to live near their former husbands' home – which applies to many divorced Bedouin women because they want to be near their children and continue to take care of them, and/or because their parents home is in the same area (in the Bedouin society marriage between relatives is very common). The fact that the proposed amendment does not define the term "in proximity/close to" widens the scope for denying single mother benefits to divorced women on the grounds that they live "near" their former spouses.

In addition to Israeli Bedouin women in polygamous marriages, there are also hundreds, possibly thousands, of Palestinian women from the Occupied Territories who are living in polygamous marriages with Israeli Bedouin men. Since their husbands are already officially married, their own marriages are not registered and they are therefore living in Israel illegally. Their situation is further complicated. For them, leaving the polygamous marriage would mean having to leave Israel and return to the Occupied Territories (since they are not allowed to work and are not entitled to any benefit/assistance, they would have no means of survival) and be separated from their children for good, because it would be almost impossible for them, as Palestinians, to obtain permits to enter Israel to visit their children. In some cases their children are registered under the name of the first (official) wife, which increases the risk that they would be cut off from their children for good.

The measures which the Israeli authorities take to enforce the law prohibiting polygamy and to prevent and discourage such practice, must not lead to a worsening of the situation of thousands of women who are in polygamous marriages – to some extent because the authorities have failed to enforce the law. Such measures should not penalize divorced women just because they live near their former husbands. Neither should the law criminalize men who live near their former wives.

The continuing prevalence of polygamy in the Bedouin community in Israel is the result of long-standing inaction on the part of the authorities, who have been unable or unwilling to enforce the prohibition of polygamy. In order to solve the problem,

¹²⁷ Explanation of the Office Services of the Knesset to the Penal Law amendment, 12 July 2004 (unofficial translation).

concrete measures are necessary to empower women who are in such a vulnerable situation and to ensure that their rights are respected and enhanced. The Committee's General Recommendation 21 is particularly relevant in this case.

Agunah/Agunot (“chained/anchored woman/women”)¹²⁸

As mentioned above, matters of marriage and divorce of Jews in Israel are under the sole jurisdiction of the Rabbinical Tribunals. Jewish religious divorce laws discriminate against women by making divorce for a woman conditional on her husband's consent, whereas a man can be “released” from his marriage through the signature of 100 rabbis. Even though religious courts can take certain measures (including imposing fines and even prison sentences) against a husband whose refusal to grant a divorce to his wife is considered unjustified by the competent religious authorities, ultimately a woman whose husband refuses to grant her a *get* (divorce decree) has no recourse.

Women in this situation are known as *agunot* (chained/anchored – singular: *agunah*). Under religious laws they are forbidden to have relations with other men and if they do and have children, these children are considered *mamzerim* (“bastards”/illegitimate – singular: *mamzer*) and are subjected to a variety of restrictions for life (See below for further more details on *mamzerim*). Hence, women in this situation find it difficult or impossible to get on with their lives, as the personal stigma of giving birth to a “bastard” child would be prohibitive.

Men, for their part, are not subjected to such restrictions. They can obtain a divorce even without the consent of their wives, and even if they remain married and have children with another woman, their children are not considered *mamzerim*.

Being dependant on their husbands' consent to divorce leaves women more vulnerable to pressure by their husbands to agree to unfavourable divorce conditions. In exchange for their husbands' agreement to grant them a divorce, women have been forced to agree to forfeit custody of their children, to give up their rights to alimony or to their share of joint assets, or to pay large sums of money to their husbands.¹²⁹

¹²⁸ According to the Halakha definition, a woman is considered *agunah* if her husband cannot be found (e.g. he left or went missing) and is thus unable to grant her a *get* (divorce decree). The term *agunah* is however widely used in lay circles and the media to refer to a woman whose husband refuses her the divorce.

¹²⁹ In 2003, 77% of the custody applications with the Rabbinical Courts were filed by men. According to the Ruth and Emanuel Rackman Center for the Advancement of the Status of Women (which provides these figures): “it seems that most such divorce petitions tied together with custody

The number of *agunot* is not known, as divorce files handled by the Rabbinical Courts are classified and their access is limited. Some sources estimate that some 100,000 women in Israel have been or are currently being refused divorce and/or are or have been victims of extortion by their husbands to get a divorce.¹³⁰ Religious authorities give a much smaller figure,¹³¹ however, this figure does not include the thousands of women whose divorce requests are not considered sufficiently well founded by the religious courts to take measures against their husbands.¹³²

In June 2004, a new law was passed providing for tougher sanctions for recalcitrant husbands when the rabbinical courts summon them to grant a divorce. Rabbinical courts can impose solitary confinement up to 14 days, with the possibility of extensions for a further 7 days, and the jail sentence can be extended weekly for up to three months. Until 2004, rabbinical courts had the authority to impose lesser sanctions.¹³³ The sanctions however have proved no deterrent at all, and by May 2004,¹³⁴ only four men had been imprisoned for refusing to grant a divorce to their wife.

In December 2004, the Knesset rejected a bill that would have made it easier for *agunot* to obtain a divorce even without their husbands' agreement.¹³⁵ The bill proposed that marriages would be automatically annulled, if the husbands who were ordered by rabbinical courts to grant a divorce did not comply with the order within a year.

These discriminatory laws prevent women who find themselves in unhappy marriages, or whose husbands beat them up, rape them or otherwise abuse them, to

applications aim at pressuring wives into various concessions in return for the Get" (2005 Report Women and Family in Israel)

¹³⁰ Survey by the Committee for the Advancement of the Status of Women (2004), cited by Dr. Ruth Halperin-Kaddari, director of the Rackman Center for the Advancement of Women at Bar-Ilan University, Israel.

¹³¹ Rabbi Eli Ben Dahan, director of the rabbinical courts, quoted by Zahava Fischer in the article *Unchain their hearts*, Haaretz 10 December 2004, put the number of men who refused to grant a divorce to their wives at 200.

¹³² Conservative interpretations consider that a woman is not an "*agunah*" if the rabbinical courts do not consider her request for a divorce sufficiently well founded and that there is no grounds for divorce (even when the woman herself wants and asks for a divorce), or when the court has only recommended and not ordered the husband to grant a divorce to his wife. .

¹³³ For example, preventing men from having bank accounts, from obtaining/renewing a driver's license or a passport, or from leaving the country (Article 2, The Rabbinical Tribunals Law (1995)).

¹³⁴ Cf. *New bill extends jail for divorce refusers*, Haaretz, 11 May 2004. The number has not changed in 2005.

¹³⁵ By a vote of 48-24.

obtain divorce if their husbands refuse. These laws and their implementation violate the right to equality and the right to marry and found a family. In 2003, the Committee on Economic, Social and Cultural Rights also expressed concern about the discriminatory interpretation of personal status law and recommended that the State take steps to “*modify the Jewish religious courts’ interpretation (...) to ensure equality between men and women, as provided for in article 3 of the Covenant.*”¹³⁶

Mamzer (“bastard, illegitimate, child”)

Jewish religious laws prohibit marriage between certain people and in certain circumstances.¹³⁷ These marriages are never valid, and offspring from such relations are considered *mamzerim*¹³⁸ and are subject to a variety of restrictions. *Mamzerim* may only marry among themselves or with converted Jews.¹³⁹ In any case, their children will also be considered *mamzerim* and subjected to the same restrictions. Rabbinical courts reportedly have lists of *mamzerim* and consult these lists before granting marriage authorizations.

A wife whose husband refuses outright to give her a *get* or who procrastinates in order to get the “best price” for the divorce, lives the agonizing situation of a “chained woman” and is thus even being denied the right to start a new relationship and have children with another man, as the personal stigma of giving birth to a “bastard” child would be prohibitive. Such provisions seemingly also contradict Article 2 of the Convention on the Rights of the Child that recalls the responsibility of the State Party to “*ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents legal guardians, or family members*”.¹⁴⁰

Migrant workers

The right to establish a family is denied to migrant workers in Israel. As mentioned above (under Article 11), their work visa is not renewed if it is known that they are pregnant, have family members living in Israel, or have a non-Israeli partner. If they

¹³⁶ Concluding Observation of the Committee on Economic, Social and Cultural Rights: Israel, May 2003 (E/C.12/1/Add. 90, paragraphs 9 and 23).

¹³⁷ In particular: close blood relatives, the ex-wives of certain close blood relatives, a woman who has not been validly divorced from her previous husband, the daughter or granddaughter of a man’s ex-wife, or the sister of the man’s ex-wife during the ex-wife's life time.

¹³⁸ *Mamzerim* is the plural form of *mamzer*.

¹³⁹ See Deuteronomy 23:3 and Encyclopédie Juive (<http://www.jewpedia.com/Mamzer>).

¹⁴⁰ Article 2 (2)

give birth in Israel, migrant women have to choose between resuming their work and sending the baby out of the country, or giving up work and going back home with the baby, which violates the right to private life and to establish a family,¹⁴¹ and the right of children not to be separated from their parents.¹⁴²

Israeli Arabs

The Family Courts Law (1995) required the state to set up a support unit at the Family Court to “provide diagnostic services, counselling and the handling of family matters, including the provision of experts for the Court”.¹⁴³ The role of the social workers staffing the support units is particularly important, as they offer advice on child custody or family disputes and also make recommendations to the court. Such important services, however, are almost non-existent to the Arab community, as the 13 assistant units currently employ only one social worker for a total of 43. This is particularly detrimental to Arab women, since the lack of social workers from the same community may lead them to seek the advice of less professional people.

¹⁴¹ See Article 23 of the International Covenant on Civil and Political Rights.

¹⁴² Article 9 of the Convention on the Rights of the Child, to which Israel is a party.

¹⁴³ Family Courts Law (1995), Article 5(a).