



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Israel**

Review by Greece and Uzbekistan of the implementation by Israel of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV.

“International cooperation” of the United Nations Convention against Corruption for the review cycle

2010 - 2015

***This Document is made for purposes of transparency regarding the review conducted and regarding the conclusions concerning Israel's compliance with the provisions of the United Nations Convention against Corruption as of the time the review was conducted. It is not intended, nor should it be considered as an authoritative or up-to-date legal source and should not be cited or relied on as such.***

***[Disclaimer added at the request of the country under review]***

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by the Israel of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Israel, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Greece, Uzbekistan and Israel, by means of telephone conferences and e-mail exchanges and involving the following participants.

### Israel:

- Ms. Yael Weiner, Senior Director (International Law), Office of the Deputy Attorney-General (International Law), Ministry of Justice
- Ms. Amit Merari, Director, Legislative Department (Criminal Law), Ministry of Justice
- Mr. Yitzchak Blum, Deputy Director, Department of International Affairs, Office of the State Attorney, Ministry of Justice
- Ms. Tamar Borenstein, Senior Executive, Criminal Division, Office of the State Attorney, Ministry of Justice
- Ms. Lilach Wagner, Legislative Department (Criminal Law), Ministry of Justice
- Mr. Itai Apter, Director, International Civil Affairs, Office of the Deputy Attorney-General (International Law), Ministry of Justice
- Ms. Nurit Inbal, Office of the Deputy Attorney-General (International Law), Ministry of Justice
- Ms. Leehee Goldenberg, Office of the Deputy Attorney-General (International Law), Ministry of Justice
- Ms. Noa Losner, Legislative Department (Criminal Law), Ministry of Justice
- Ms. Jeny Kremnev, Office of the State Attorney, Ministry of Justice
- Mr. Mattan Peretz, Law Clerk, Office of the Deputy Attorney-General (International Law), Ministry of Justice

#### Greece:

- Dr. Ioannis Androulakis, Lecturer of Criminal Law & Criminal Procedure of Athens University
- Mr. Demosthenis Stiggas, Chairman of the First Instance Court of Thessaloniki

#### Uzbekistan:

- Mr. Evgeny Kolenko, Deputy Head of the Directorate for Combating Economic Crime and Corruption, Prosecutor General's Office
- Mr. Uygun Nigmatjanov, Head of the International Law Department, Prosecutor General's Office

#### Secretariat:

- Ms. Tanja Santucci, Crime Prevention and Criminal Justice Officer, CEB.
- Mr. Vladimir Kozin, Crime Prevention and Criminal Justice Officer, CEB.

6. A country visit, agreed to by Israel, was conducted in Israel from 23 to 27 June 2014. During the on-site visit, meetings were held with the Ministry of Justice (including the Office of the State Attorney), Israel Police, Office of the Civil Service Commissioner, Office of the Knesset Legal Adviser, Ministry of Foreign Affairs, Ministry of Public Security, Israel Money Laundering and Terror Financing Prohibition Authority, Administrator General and Official Receiver, Office of the State Comptroller and representatives from the judiciary, civil society and the private sector.

### **III. Executive summary**

#### ***1. Introduction: Overview of the legal and institutional framework of Israel in the context of implementation of the United Nations Convention against Corruption***

*The Convention was signed on 29 November 2005 and ratified by Israel on 4 February 2009. Treaties are not automatically incorporated into Israeli law upon ratification. In order for a treaty to be implemented at the national level, appropriate adjustments are often necessary. For this reason, Israel ratifies international conventions after it has been determined by the Government that Israel's internal law is compliant. This was the case for the Convention.*

*Israeli legislation sets out a comprehensive legal framework for the criminalization, prevention and eradication of corrupt practices. Israel's legal framework against corruption includes provisions from its Basic Laws (a set of basic laws containing constitutional elements, as Israel does not have a formal constitution), Penal Law, Criminal Procedure Law, Protection of Employees Law, Witness Protection Law, Rights of Victims of Crime Law, Public Service Law, Prohibition on Money Laundering Law (PMLL), International Legal Assistance Law, Extradition Law, and Encouragement of Ethical Conduct in the Public Service Law.*

*Israel's law enforcement agencies engage in an intensive campaign to strengthen the rule of law and implement a zero tolerance approach towards corruption. The battle against corruption has been, and remains, a matter of high priority for the executive, legislative and judicial organs. Public officials and private actors engaging in corrupt*

practices are prosecuted without consideration of their position or identity.

Israel has a variety of agencies and authorities responsible for implementing anti-corruption measures that cooperate with each other on a daily basis. Authorities involved in the fight against corruption include the Israel Police (IP), Office of the State Attorney, Israel Money Laundering and Terror Financing Prohibition Authority, Israel Securities Authority, Office of the State Comptroller and Ombudsman, State Control Committee (Knesset), Ethics Committee (Knesset), Government Companies Authority and the Civil Service Commission.

## **2. Chapter III: Criminalization and law enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### Bribery and trading in influence (arts. 15, 16, 18 and 21)

Active and passive bribery of public officials is comprehensively criminalized in Sections 290 and the accompanying sections of the Penal Law. The type of benefit offered — be it monetary or other — and whether it was given for an act or an omission, for suspending expediting or delaying an act, or for causing preferential or adverse treatment, are all irrelevant. In addition, the law does not differentiate between cases where the bribe was given by the person himself or through another person; whether it was given directly to the person who took it or to a third party on behalf of him, whether it was given before or after the event, and whether the ultimate beneficiary was a public official or another person. There is no need for the bribe to have actually been received or even for consent to receive or give it to have been given, in order for a criminal offence to be completed.

The definition of a public official in Israeli law is broad and includes, among others, State employees, employees of entities wholly or partially owned by the government and the holders of offices or functions under enactments, which include judicial and legislative officers. Under Section 293(7), the bribery offence covers both cases where bribes are given for the performance of acts that fall within or outside of the duties and functions of public officials.

Section 291A of the Penal Law enacts the foreign bribery offence and includes all the acts described in article 16(1) of the United Nations Convention against Corruption. The elements of the offence are identical to those of domestic bribery, other than the purpose of the bribe and the definition of the term “foreign public official”, which is in line with the definitions of the terms “foreign public official” and “official of a public international organization” in the Convention. After consideration, and due to policy concerns, it was decided not to establish as a criminal offence the passive bribery of foreign public officials.

The provisions of article 18 are implemented through various provisions of the Law that deal with criminal liability for bribery.

Israel has chosen not to extend the bribery offence to the private sector. However, private entities that provide a public service are included in the definition of “public official” for the purposes of bribery offences.

#### Money-laundering, concealment (arts. 23 and 24)

*Money-laundering is criminalized in the PMLL. The elements of money-laundering and concealment set forth in articles 23 and 24 of the Convention against Corruption are almost all covered. Under Israeli law it is a criminal offence not only to convert and transfer prohibited property or to conceal the illicit origin of such property, but also to retain possession of or use such property in the knowledge that the property is prohibited. There are, however, restrictions regarding the definition of “prohibited property”.*

*Regarding predicate offences Israel uses a list-approach. The offence of money-laundering applies to a wide range of predicate offences, which may be deemed as such even if committed in another State, provided that they also constitute offences under the laws of that State. A comprehensive range of corruption-related offences is included, albeit not all offences established in accordance with the Convention. The prosecution of self-laundering is possible.*

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

*Under section 390 of the Penal Law, any public official who steals an asset of the State or an asset which came into his possession by virtue of his official position is criminally liable if the value of the stolen asset exceeds 1,000 new sheqalim (approximately \$264). Although the Convention establishes no minimum value, given that the value indicated is small, that provision may be regarded as complying with the relevant requirements of the Convention. Additionally, the offence of theft and some counts of theft with aggravated circumstances are not limited by a minimum value.*

*Section 390 states that stolen objects, i.e., the property in question, must pass into the public official's possession, which equates to such forms of theft as misappropriation. The definition of theft in Section 383 applies to Section 390. With regard to other elements of embezzlement by public officials, it is possible to apply other provisions, such as Section 284 (fraud and breach of trust).*

*Embezzlement in the private sector is covered by a range of offences in the Penal Law such as Deceit and Breach of Trust in Body Corporate (Section 425), Theft by an Employee (Section 391), Theft by a Director (Section 392) and Theft by an Agent (Section 393), whereby similar considerations as with embezzlement in the public sector regarding the minimum value of the stolen asset apply. As noted above, the offence of theft is not limited by a minimum value.*

*The abuse of functions is incriminated through sections 278, 280 and 284 PL. Section 284, in particular, does not require the obtaining of an undue advantage by the public official or for another, and any breach of the public trust without these elements is considered an offence.*

*Israel has considered the criminalization of illicit enrichment but decided against it, because it was felt to be contrary to the presumption of innocence as a fundamental principle of criminal law. There is a system of asset declarations for certain public officials, members of government, heads of municipal authorities and their deputies, and members of the Knesset in place, as well as a prohibition on public officials from accepting gifts presented to them in their capacity as public servants.*

*Obstruction of justice (art. 25)*

*The Penal Law has various provisions to address attempts on influencing the legal process. Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), 246 (Subornation of testimony), 249 (Harassment of witness), 250 (Improper influence) and 382A (Assault of a public official) are particularly relevant.*

#### *Liability of legal persons (art. 26)*

*According to section 23 of the Penal Law, a legal person is criminally liable for any offence when certain conditions set out in the provisions of that section are met. Corruption offences by legal persons are mainly punishable with criminal sanctions, although civil and administrative liability is also possible.*

*The result of criminal proceedings against either a corporation or the person who committed the offence does not prevent or influence the institution of criminal proceedings and a finding of criminal liability against the other party.*

*The criminal sanctions that can be imposed on a legal person for corruption offences are fines. Moreover, section 261 of the Companies Law enables the Attorney General to file for the dissolution of a company where such operates illegally.*

#### *Participation and attempt (art. 27)*

*Participation in the commission of corruption-related offences is covered by Sections 29 (Perpetrator), 30 (Enticement), and 31 (Accessory) of the Penal Law. Attempt is covered by Sections 25, 26 and 34D. Relevant case law provides extensive clarification on the nature and elements of attempt and its prosecution. Since proposal is an element included in the bribery offences, and abetting is found in Section 31 of the Penal Law, and in light of the offences of provision of means for commission of felony and conspiracy, Israel has considered but decided not to further criminalize the mere preparation for an offence.*

#### *Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

*The sanctions applicable to corruption-related offences are sufficiently dissuasive. Formulation of the sentences is regulated in a detailed manner and there is a range of custodial, pecuniary and administrative sanctions. In determining sentences for offences under the Convention, the court will use its discretion, taking a variety of considerations into account, such as the circumstances of the offence as well as the offender's personal circumstances.*

*In relation to immunities from prosecution, the members of the national Parliament (Knesset) enjoy such protection regarding "offences within their duty", which does not include corruption-related offences. If the Attorney General determines that the offence was not performed within the MK's duty and decides to prosecute, the concerned MK can invoke his/her immunity by applying to the Knesset, whose decision is subject to judicial review. However, while the personal scope of immunity is fairly limited, certain intrusive investigative measures, such as wiretapping, cannot be undertaken in relation to the investigation of a corruption-related offence, until it is lifted.*

*Prosecution of criminal cases, including corruption-related offences, lies within the discretion of the State Attorney's Office as representative*

*of the Attorney General, whose decisions in the criminal area are subject to judicial review, by the High Court of Justice.*

*There is an array of restrictive measures that can be applied in order to ensure the presence of the defendant at criminal proceedings, including detention when there is no less harmful way to prevent the defendant from evading the proceedings.*

*The minimum eligibility period for early release is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned, especially since release is not mandatory after completion of two thirds of the prison term, but subject to other considerations regarding the individual features of the offence and the offender.*

*Besides criminal sanctions, an official facing charges of corruption is subject to an array of disciplinary measures escalating from warning and reprimand to a range of sanctions, the severest being dismissal and disqualification, temporary or permanent. Disciplinary sanctions can also be imposed by the Civil Service Disciplinary Tribunal.*

*To encourage cooperation of perpetrators in obtaining evidence against co-perpetrators, a variety of incentives are provided for, ranging from mitigated punishment to immunity from prosecution.*

#### *Protection of witnesses and reporting persons (arts. 32 and 33)*

*The Witness Protection Law applies to anyone who reports corruption offences, as the law is not limited to a specific type of offence. Israel's Witness Protection Authority has been set up to protect witnesses who are subject to the highest threat levels. It provides a unique protection programme which includes security, management and support, both in Israel and abroad, if needed. The witnesses and their family members are accompanied by the Authority throughout the entire criminal process in order to provide them with the most independent and normal life possible.*

*The definition of the term "witness" in the above-mentioned law includes victims of the offence. As to the rights of victims in general, the Rights of Victims of Crime Law includes, inter alia, the right to review the indictment, to be informed of the proceedings and express opinions regarding various stages of the proceedings.*

*A fairly comprehensive protective network is in place in terms of legislation, procedures and structures, dedicated to the protection of reporting persons, both in the private and public sectors. In the framework of the latter, the Office of the State Comptroller cooperates with the Witness Protection Authority to enhance available means of protection.*

#### *Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

*Seizure and forfeiture provisions are mainly contained in the Criminal Procedure Ordinance (Arrest and Search) and PMLL. Value-based confiscation is possible for certain offences under the PMLL and Dangerous Drugs Ordinance. In addition, Section 22 of the PMLL provides for the confiscation of property in civil proceedings if the person suspected of committing the crime is not present in Israel on a regular basis, if he cannot be located, and therefore an indictment cannot be filed against him, or if the property was discovered after the conviction.*

*The court may grant a provisional forfeiture order prior to filing an indictment or a request for forfeiture in civil proceedings, if it is satisfied that there are reasonable grounds to assume that the property is likely to disappear or that actions are likely to prevent the subsequent forfeiture of such property. Israeli legislation provides extensive protection to bona fide third parties.*

*Israel has considered the adoption of measures in accordance with article 31, paragraph 8, through the preparation of a draft bill which was under consultation at the time of review.*

*Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided in Section 43 of the Criminal Procedure Law.*

*Statute of limitations; criminal record (arts. 29 and 41)*

*Israel has established a 10-year statute of limitations for most corruption offences in Section 9 (Prescription of offence) of the Criminal Procedure Law. An investigation of an offence, an indictment or any other court proceeding suspends the statute of limitations for that offence. A court may suspend criminal proceedings if it would be impossible to bring the defendant to trial.*

*The police receive foreign criminal records and use them for intelligence purposes. For such records to be used as evidence, mutual legal assistance or INTERPOL channels are used. Relevant provisions are also found in Israel's treaties.*

*Jurisdiction (art. 42)*

*Israeli legislation establishes jurisdiction over offences committed in whole or in part within the national territory and on board Israeli vessels and airplanes. Jurisdiction also applies to acts of preparation to commit crimes, attempts to commit crimes, attempts to influence or incite crimes, or conspiracy to commit crimes, even when committed outside of Israeli territory, where the intended crime was to have been committed in whole or in part in Israel. Israel can also apply extraterritorial criminal jurisdiction under certain circumstances.*

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

*Common law principles of contract rescission and administrative law allow an existing contract or concession to be annulled, rescinded or withdrawn if it was awarded as a result of an act of corruption. This is in addition to tendering procedures, which allow for debarments and disqualifications. Remedies can be awarded to affected claimants, either in the framework of criminal proceedings or following civil suits.*

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

*There are several bodies and authorities with specialized tasks in the area of investigating and prosecuting corruption. Within the Israeli police several fraud units operate, whereas the specialized, highly trained Lahav 433 unit within the IP's Investigation and Intelligence Department incorporates five specialized prosecution and investigative subunits focusing on corruption and international asset recovery.*



*In the State Attorney's Office, the Criminal Department and the Economic Crimes Department (as well as the District Attorneys and their prosecutors) are responsible for the prosecution of corruption offences.*

*In the State Comptroller's Office, the Division for Special Functions is responsible for following up on allegations of corruption against public officials. If the findings of the investigation indicate a likelihood of a criminal offence, the case is then referred to the Attorney General.*

*The different bodies combating corruption are coordinated by an inter-agency Implementation Committee, chaired by the Head of the Criminal Investigations Division of the IP, within a framework of a strong culture of cooperation. The same is evident in regard to cooperation between prosecuting or investigating authorities, on the one hand, and private sector entities, in the other.*

## **2.2. Successes and good practices**

*Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:*

- The definition of bribery is constructed widely, with a view to avoiding potential loopholes.*
- A presumption of fact has developed in Israeli case law stating that when a public official is given a benefit by a person with whom he is in a professional relationship or has an official connection, such benefit would be considered to be given for an act related to his function as a public official.*
- The Israeli legislature has introduced, specifically for bribery offences, the option of imposing fines based not only on the benefit obtained, but also on the intended benefit, as an effective deterrent against bribes in high value transactions.*
- The existence of Guidelines for State Attorneys on sanctions for bribery offences, providing detailed instructions on the application of relevant penalties depending on gravity of corresponding offences, was positively noted as conducive to the implementation of article 30, paragraph 1.*
- The reviewers note the significant number of prosecutions and convictions of Ministers and Members of the Knesset during recent years and consider them as a success and an indication of the overall effectiveness of the system in combating political corruption.*
- Asset forfeiture in Israel can be considered as a prime example of successful policy that has been developed from the ground up. There is extensive implementation involving significant assets, as a result, among others, of the effective cooperation of all relevant institutions.*
- Israel appears in general to promote and cultivate a strong culture of cooperation among its law enforcement and anti-corruption bodies.*
- The Israeli Police, together with the tax and securities authorities, have developed a unique computerized process for the fast, efficient, and secure exchange of information between the police and the financial market.*

### **2.3. Challenges in implementation**

While noting that Israel has a robust criminal justice system and is in large part in compliance with the provisions of the Convention against Corruption, the reviewers identified a few challenges in implementation and/or grounds for further improvement (depending on the mandatory or optional nature of the relevant Convention requirements):

- To promote the goals of article 20, Israel could consider giving the State Comptroller, the legal advisor of the Knesset or some other appropriate body or person authority over the asset declarations of Members of the Knesset.
- With respect to articles 23 and 24, it is recommended that Israel finalize the process of the adoption of the amendments to Schedule 2 of the PMLL, lowering the threshold for the price of the “prohibited property” and removing the differentiation between different kinds of such property.
- Consider including all Convention against Corruption offences as predicate offences for the purpose of money-laundering, including in particular Sections 244 (Obstruction of justice), 245 (Subornation in connection with an investigation), and 246 (Subornation of testimony) of the Penal Law.
- Israel is encouraged to proceed with the reform of the regime governing the criminal liability of legal persons, which appears to be conducive to further deterrence and prevention.
- It is recommended to pursue legislation of a bill aimed at including corruption among the offences that allow the use of special investigative techniques such as wiretapping against Members of the Knesset.
- Israel might consider looking more closely into the matter of out-of-court settlements in regards to corruption offences related to securities, in order to ensure adequate predictability by establishing predetermined criteria.
- Israel is encouraged to continue to strengthen measures to raise awareness of public sector reporting and protection mechanisms.
- Israel may wish to consider entering into international agreements or arrangements concerning the potential provision of preferential treatment by the competent authorities of one State to a cooperating person located in another.
- Israel is encouraged to continue strengthening measures with a view to increasing reporting of corruption offences by private persons.

## **3. Chapter IV: International cooperation**

### **3.1. Observations on the implementation of the articles under review**

Extradition; transfer of sentenced persons; transfer of criminal proceedings  
(arts. 44, 45 and 47)

Extradition is governed by the Extradition Law, as well as multiple international treaties and conventions. Dual criminality is a condition for extradition, and the law provides for a minimum penalty requirement: an extraditable offence is defined as an offence which,

*had it been committed in Israel, would be punishable by imprisonment for at least one year. Nonetheless, to the extent that Israel has criminalized the offences covered by the Convention and has enacted penalties for them in excess of one year, Convention offences are extraditable offences under Israeli law.*

*Israel makes “accessory offences” extraditable, if the main offence satisfies the extradition requirements. As regards “political offences”, a Convention-based offence would not be treated as such, in case the Convention were used as a basis for extradition.*

*Israel indicated that it partially considers this Convention as the legal basis for extradition in respect of corruption-related offences. With respect to States parties with which it does not have an extradition treaty, it has declared that it shall consider each request for extradition for an offence under the Convention with due seriousness and may elect to extradite in such cases pursuant to a special ad hoc agreement with the State party, upon a basis of reciprocity.*

*There are a number of provisions designed to enable the use of expedited extradition procedures, at the wanted person’s option, in appropriate cases. The more time-consuming factor in extradition procedures is the preparation of materials related to the prima facie evidence that must be demonstrated under Section 9(a) of the Extradition Law.*

*Section 5 of the Extradition Law provides that where a petition for extradition has been submitted, the Jerusalem District Court may order the detention of the wanted person. The Extradition Law also permits provisional arrest of a wanted person in cases of urgency even before an extradition request is formally received.*

*Israel can extradite its nationals to another country to stand trial with respect to all extradition offences, including corruption offences. However, if the wanted person was both an Israeli citizen and resident at the time he allegedly committed the crime, he will be extradited only on condition that he be given the option of serving in Israel any sentence of imprisonment imposed upon him in the requesting State.*

*The individual rights of persons wanted for extradition are protected both with respect to the procedural aspects of their extradition and the substantive circumstances under which they may be extradited.*

*A requested person shall not be extradited if there are grounds to suspect, among others, that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person; if it was submitted to prosecute or punish the wanted person for an offence of a political character; and if the wanted person would be extradited to a legal system which would not protect his or her basic human rights. Extradition requests will not be refused for criminal offences on the ground that the offence is also considered to involve fiscal matters.*

*The transfer of sentenced prisoners is regulated in Israel’s Serving of a Prison Sentence in the Country of the Prisoners Nationality Law. The transfer can be either based on a convention or an ad hoc agreement. The transfer of criminal proceedings to another jurisdiction is also possible, as a matter of police or prosecutorial discretion.*

*Mutual legal assistance (art. 46)*

*The International Legal Assistance Law allows Israel to offer full and effective cooperation to authorities in foreign States. All listed forms of assistance under this Convention may be provided or requested with respect to criminal matters, including measures concerning the identification, tracing and freezing of proceeds of crime and the recovery of assets. There are no restrictions regarding legal persons.*

*The existence of a treaty is not a prerequisite to provide mutual legal assistance (MLA). However, Israel has entered into MLA treaties with a large number of States and has acceded to numerous relevant conventions. The spontaneous transmission of information to competent authorities of other States is an inherent part of informal law enforcement cooperation.*

*Dual criminality is not per se a requirement for MLA, with the exception of assistance concerning freezing, seizure and confiscation of assets. Israeli law also takes into account de minimis considerations.*

*The Department of International Affairs of the Office of the State Attorney is the Central Authority for purposes of assistance requests submitted under the Convention. It is expected that requests will be submitted in writing. Urgent requests for MLA may be transmitted by fax. Requests must be submitted either in Hebrew or English.*

*A request for assistance will be performed in the manner in which an act of that kind is performed in Israel. Assistance shall be performed in the particular manner requested so long as this does not violate Israeli law. The rule is that Israel will preserve the confidentiality of MLA requests. Videoconference hearings, both in Israeli cases and on behalf of foreign authorities, are possible and have become increasingly common.*

*MLA requests will not be denied simply on general grounds of bank secrecy. There are a number of discretionary bases upon which the Minister of Justice is permitted to refuse assistance. Israel would not refuse a request relating to a Convention offence simply because it involved fiscal elements. Assistance may be postponed if it would interfere with an ongoing domestic criminal proceeding. Israel will, through dialogue with requesting States, seek to resolve issues that could prevent the execution of requests for assistance, and in the rare cases where a request is denied, a letter is sent to the requesting State informing it of the reasons.*

*Israel will generally assume the ordinary expenses of executing MLA requests. Certain expenses, such as expert witness expenses, may be recognized as exceptions which are borne by the requesting State.*

*Publicly available records, documents and information are routinely provided. Non-publicly available information held by a public authority may be provided if the information is of the kind that may, under Israeli law, be transmitted to another public authority in Israel.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

*Israel has a modern and comprehensive regime for law enforcement cooperation. The Ministry of Public Security has signed several bilateral agreements on cooperation in the fight against crime, and there are also other bilateral agreements and multilateral conventions providing bases for cooperation between Israeli and other law enforcement authorities. Requests are often received via informal and INTERPOL channels.*

*This Convention may be considered as the basis for mutual law enforcement cooperation, although Israel does not require the existence of a treaty. Any form of assistance requested may be performed to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel. There are contact points nominated to facilitate cooperation and the Israel Police has a number of representatives stationed in diplomatic missions abroad.*

*Joint investigations are possible under existing legislation, international conventions or bilateral agreements. Sometimes a protocol is signed between the parties for the purpose of a specific investigation. However, there have not been instances of joint investigations in corruption matters.*

*Israel does not require specific agreements to carry out special investigative techniques. At the same time, Israel is party to several agreements that provide for techniques such as controlled delivery. Wiretapping will be also permitted under certain circumstances.*

### **3.2. Successes and good practices**

*Israel has established a comprehensive and coherent legal framework on international cooperation in criminal matters. In this context, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:*

- The Ministry of Justice (Office of the State Attorney) has recently issued guidelines on the consideration of requests for MLA concerning seizure and confiscation. The application of these guidelines is expected to make international cooperation more effective.*
- Israel is a provider of technical assistance in the form of expert knowledge to foreign law enforcement authorities, for example through the exchange of intelligence and legal information by the Israeli police and the FIU with international counterparts.*

### **3.3. Challenges in implementation**

*The following points are brought to the attention of the Israeli authorities for their action or consideration (depending on the mandatory or optional nature of the relevant Convention requirements) with a view to enhancing international cooperation to combat offences covered by the Convention:*

- It is recommended that Israel adapt its information system to allow it to collect data on the type of MLA and extradition requests, the time frame for providing responses to these requests, and the response provided, including any grounds for refusal.*
- Israel is encouraged to actively promote a policy of acceding to or concluding new bilateral and multilateral agreements or arrangements to carry out or enhance the effectiveness of extradition.*
- Israel may wish to consider adopting more specific guidelines or regulations with regard to the procedure of transferring criminal proceedings among States parties.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. The Convention was signed on November 29, 2005 and ratified by the Government of Israel on February 4, 2009.

#### **The Convention and Israel's legal system**

8. Treaties are not automatically incorporated into Israeli law upon ratification. In order for a treaty to be implemented at the national level, appropriate adjustments are often necessary. For this reason, Israel ratifies international conventions after it has been determined by the Government that Israel's internal law is compliant. This was the case for the Convention.

### **B. Legal system of Israel**

9. Israel is a parliamentary democracy with separation of powers between the legislative, executive, and judicial branches, which includes a system of checks and balances. The President is formally the head of State, holding mostly symbolic functions. The Prime Minister is the head of Government. The legislative branch, the Knesset, consists of 120 elected members. Israel enjoys an independent and accessible judicial system that guarantees all citizens basic access to legal resources.
10. Israel's legal system is primarily based on the common law system, originating in British law. The legislative framework is also influenced by principles derived from civil law, and its Roman-German influences. Accordingly, Israel is considered to have a "mixed jurisdiction" legal system. For example, while the main common law legal institutions, such as trust and equitable rights, are recognized in Israel, so is the principle of "good faith", which is said to derive from civil law. In addition, the common law principle of judicial precedent applies in Israel, but concurrently, judges have the power to fill the gaps in a statute, as is typically the case in civil law jurisdictions.
11. The judicial order is made up of lower courts (Magistrate Courts and District Courts) and a Supreme Court. The Supreme Court is the highest court in the country and its judgments are binding upon the lower courts. Magistrate Court decisions can be automatically appealed to a District Court and most District Court decisions can be automatically appealed to the Supreme Court (the Supreme Court can grant leave to appeal District Court decisions, on automatic appeal from the Magistrate Courts). The Supreme Court, as the High Court of Justice, also has jurisdiction, in some cases, to hear petitions challenging the constitutionality of statutes or administrative decisions.
12. As with other common law jurisdictions, judgments typically elaborate upon the reasoning behind the decision and include majority, minority, and concurring opinions. Litigation is based on the adversarial system, whereby the State (or plaintiff) and defendant must each make their arguments before the court. In this respect, it is similar to the judicial system of common law jurisdictions, although judges in Israel do have some powers similar to those attributed to judges in the continental inquisitorial system.

13. Israel does not have a formal constitution. However, a set of Basic Laws with constitutional value have been adopted, which define the role and structure of the State's principal institutions and provide limitations to their respective powers. Some Basic Laws also enshrine essential human rights protections which, in turn, serve as the basis for principles of judicial fairness and due process in criminal proceedings. The Basic Laws enable the courts to balance between the fundamental rights of the individual and the collective interests of society according to the principle of proportionality. The Supreme Court has ruled that, since the Basic Laws have constitutional value, they are considered the highest law of the land. Thus, parliamentary legislation and administrative decisions are subject to judicial review if they do not conform to the Basic Laws. Moreover, all statutes must be interpreted in light of the Basic Laws.
14. The rule of law, equality before the law, transparency and freedom of information are fundamental principles in Israel. Accordingly, Israeli authorities strive to operate in a transparent, accountable and equitable manner.
15. Please see elaboration on the structure of the office of the state attorney and the independence of the Attorney General under UNCAC article 36.

#### **Israel's policy on the battle against corruption**

16. Israeli legislation sets out a comprehensive legal framework for the criminalization, prevention and eradication of corruption and corrupt practices. The Penal Law includes various offences concerning corruption, including bribery of national and foreign public officials, fraud and breach of trust, and more.
17. As mentioned above, the rule of law is a fundamental principle in Israel. Israel's law enforcement agencies engage in an intensive campaign to strengthen the rule of law. They implement a zero tolerance approach towards corruption. The battle against corruption has been, and remains, a matter of high priority for the executive, legislative, and judicial organs in Israel. Public officials and private actors engaging in corrupt practices are prosecuted without consideration to their position or identity.
18. As will be highlighted below, in recent years several inquiries, investigations and indictments on corruption offences against very senior ranking officials have been carried out.

#### **Government departments and law enforcement agencies which play a role in coping with corruption**

19. Israel has a variety of agencies and authorities responsible for implementing anti-corruption measures. This is in addition to the legal advisors, accountants, and internal auditors working in most government and public entities, who are responsible for the proper and ethical conduct of such entities and for preventing corruption within their respective organizations.
20. All of these bodies cooperate with each other on a daily basis, and their joint activities are a crucial element in combatting all forms of corruption on all levels. The government has funded and encouraged a combined effort against corruption, with specific emphasis on the public sector, and has acted to minimize illicit corrupt practices.
21. The following are relevant examples of the main bodies involved in anti-corruption efforts.

Though these bodies differ in their duties and operate on a wide range of issues, all play an essential role in the fight against corruption. The bodies routinely cooperate with each other, and their joint activities are a crucial element in combatting corruption in all of its forms.

Executive Bodies Responsible for Enforcement and Prosecution of Criminal Anti-Corruption Legislation:

Israel Police

Office of the State Attorney

Israel Money Laundering and Terror Financing Prohibition Authority

Israel Securities Authority

Oversight on the Conduct of Public Entities:

Office of the State Comptroller and Ombudsman

State Control Committee (Knesset)

Ethics Committee (Knesset)

Government Companies Authority

Oversight on the Conduct of Public Officials or Elected Public Officials:

Civil Service Commission

Ethics Committee (Knesset)

Enforcement of Fiscal/Tax Legislation:

Israel Tax Authority

Israel Securities Authority

Israel Anti-Trust Authority

22. A strong tradition of professional independence and impartiality enables all relevant authorities to investigate and inquire into corruption allegations. Appropriate measures in preventing and combatting corruption are given the highest priority by all law enforcement agencies. All these institutions have systems for ensuring the high ethical and professional behavior of their staff.

**Summary of the most significant legislative instruments dealing with corruption and related issues**

1. Penal Law, 1977 - Selected Sections

2. Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997

3. The Witness Protection Law, 2008

4. Rights of Victims of Crime Law, 2001

5. Criminal Procedure Ordinance (Arrest and Search), 1969

6. Public Service Law (Gifts), 1979

7. Prohibition on Money Laundering Law, 2000



8. International Legal Assistance Law, 1998
9. Extradition Law, 1954
10. Combating Criminal Organizations Law, 2003
11. Criminal Procedure Law (Powers of Enforcement - Arrest), 1996
12. Basic Law: The Government, 2001
13. Basic Law: The Knesset, 1958
14. Basic Law: Human Dignity and Liberty, 1992
15. Encouragement of Ethical Conduct in the Public Service Law, 1992
16. Civil Service Regulation 42.7
17. Civil Service Regulation 43.5
18. Criminal Procedure Law, 1982
19. Attorney Guideline No. 6.5000 - Appointments in Government Companies and Public Corporations
20. Torts Ordinance [new version], 1968 Sections 42-63

#### **Previous assessments of the effectiveness of anti-corruption measures**

23. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions establishes legally binding standards to criminalize bribery of foreign public officials in international business transactions. Israel has been reviewed by its OECD peers three times during Phase 1 and Phase 2, and is now in the first stages of the Phase 3 evaluation procedure. Reports on Israel by the OECD Working Group on Bribery in International Business Transactions are attached.
24. Israel is also a member of MONEYVAL (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, established by the Committee of Ministers of the Council of Europe) and has been evaluated twice within that review mechanism. MONEYVAL's report on Israel from 2008 was provided to the reviewers. The final report from the 2013 evaluation has not yet been published.

## C. Implementation of selected articles

### Chapter III. Criminalization and law enforcement

#### **Article 15 Bribery of national public officials**

##### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

25. The prohibition against the active bribery of a public official is a prominent component in Israel's fight against corruption. The main legislation establishing bribery as a criminal offense is the **Penal Law, 1977** (hereinafter: "Penal Law" or "Law"). Section 290 of the Law embodies the basic prohibition on bribe taking. In addition, the following sections of the Penal Law clarify the rules concerning bribery.
26. According to Section 291 of the Penal Law, active bribery is prohibited and is punishable by a maximum sentence of seven years imprisonment and/or criminal fines as detailed in Section 290. The type of benefit offered - be it monetary or other - and whether it was given for an act or an omission, for suspending expediting or delaying an act, or for causing preferential or adverse treatment, are all irrelevant. The Law also states that it is immaterial whether the bribe was given for a specific act or for obtaining preferential treatment in general, and whether the bribe was intended for the performance of an act by the person who took it or for his influence on the act of another person. In addition, the Law does not differentiate between cases where the bribe was given by the person himself or through another person; whether it was given directly to the person who took it or to a third party on behalf of him, whether it was given before or after the event, and whether the beneficiary was a public official or another person (Section 293).

##### **The "promise, offering or giving"**

27. Section 294(b) of the Law stipulates that a person, who offers or promises a bribe, even if met with refusal, is as liable as a person who gives a bribe. Under the Law, there is no need for the bribe to have actually been received or even for consent to receive or give it, in order for a criminal offense to have been completed.

##### **"to a public official"**

28. The definition of a public official (public servant) in Israeli law (Section 34X of the Penal Law) is very broad and includes, amongst others, State employees, employees of entities wholly or partially owned by the government and the holder of an office or function under an enactment, which includes any office holder in the judiciary or the legislative authority.

**"directly or indirectly"**

29. As mentioned above, Section 293(5) provides that it is immaterial whether the bribe was given by the person himself or through another person and whether it was given directly to the person who took it or to another for him.
30. Section 295(a) determines the liability of intermediaries. It provides that if a person received money or other benefit in order to give a bribe, that person shall be treated as someone who took a bribe, regardless of the fact that he acted as an intermediary, and whether or not there was intent to give a bribe.
31. Section 295(c) specifies that a person who gives money, valuable consideration, a service, or some other benefit, as specified in Sub-sections (a) or (b), shall be treated as someone who has given a bribe.
32. Section 295(d) specifies that for the purposes of Section 295, "receiving" includes receiving for or through another person.

**"of an undue advantage"**

33. As detailed above, the term "bribe" is defined broadly in Israeli law and according to Section 293(1) of the Penal Law, a bribe can be in cash or in kind, a service or any other benefit.
34. The term "benefit" has been interpreted broadly in Israeli case law and includes, among others things, sexual bribery and a promise for appointment to a public position.

**"for the official himself or herself or another person or entity"**

35. Section 293(5) provides that a bribery offense includes bribes given personally or through another person, whether directly to the person who takes the bribe, or to another on his behalf, and whether it is for the benefit of the person who takes it or by another person.
36. Thus, it has been held that a contribution to a public body, even where the contribution or benefit was given for a public purpose (not only for personal benefit), can constitute bribery. This also applies where, as a result of the bribery, an interest of the public body is promoted (Cr.C. 5046/93 Hochman v. the State of Israel).

**"in order that the official act or refrain from acting"**

37. The act for which a bribe is given or offered is defined broadly and includes a number of aspects.
38. The Law provides that it is immaterial, for the purpose of the offense, whether the bribe was given in exchange for an act or an omission, for suspending, expediting or delaying an act in the exercise of their official duties or for discriminating in favor of or against any person (Section 293(2)). It is also immaterial whether it was for a specific act (quid pro quo) or to obtain preferential treatment in general (Section 293(3)).
39. Case law has interpreted this provision very broadly and has consistently held that the offense includes bribery given to a public official in the hope that sometime in the future the

public official will reward the person giving the bribe. It is not necessary for the act to be expected of the public official who took the bribe himself: as mentioned above, it may consist of the public official exerting his influence on another person (Section 293(4)).

**"in the exercise of his or her official duties"**

40. Under Section 293(7), the bribery offense covers both the case where the bribe is given for the performance of an act that falls within or outside of the duties and functions of the public official.

**Sentencing and Punishment**

41. In February 2010, the Penal Law was amended to increase the sanctions for the bribery offense. The maximum prison sentence for passive bribery was increased from seven to ten years, and for active bribery it was doubled from 3.5 years to seven years. In addition, the amendment significantly increased the applicable fines: natural persons can now be fined up to about 1.13 million NIS (approx. 321,000 USD) - a fivefold increase of the previous fine - or four times the intended or obtained benefits, whichever is higher. Legal persons can be fined up to about 2.26 million NIS (approximately 642,000 USD) - a tenfold increase of the previous fine - or four times the benefit intended or obtained, whichever is higher. This amendment introduced the option of imposing fines based on an intended benefit, as a deterrent against bribes of high value, particularly in cases where there was merely an offer of a bribe, which makes it difficult to prove a causal link between the bribe and benefit obtained.
42. Following the 2010 amendment, in March of 2010 the State Attorney published guidelines on the matter (the **State Attorney Guidelines on Sanctions for Bribery Offenses, no. 9.15**). The guidelines describe the amendment and highlight the increased punishment and fine for the bribery offense. Israel's international obligations and the conventions it has ratified are mentioned among the reasons for the amendment. The guidelines instruct prosecutors that in cases where the defendant did in fact obtain significant economic profits by committing the offense, the prosecution should argue, according to the circumstances, for the imposition of the maximum fines. In cases where the defendant committed the offense with the expectation of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to this effect in order to enable the court to impose the appropriate fines commensurate with the actual or expected gain.
43. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977**

**Definitions**

34X. In relation to an offense –

**"public official" –**

- (1) a State employee, including a soldier within its meaning in the Military Justice Law 5715-1955;
- (2) an employee of a local authority or of a local education authority;
- (3) an employee of a religious council;
- (4) an employee of the National Insurance Institute;
- (5) an employee of the Bank of Israel;

(6) an employee of the World Zionist Organization, the Jewish Agency for Israel, the Jewish National Fund and the Keren Hayessod - United Israel Appeal, including a member of the board or management of those institutions;

(7) an employee of an Employment Service office;

(8) an employee of an enterprise, institution, fund or other body in the management of which the Government participates, including a member of the board or management of those bodies;

(9) an arbitrator;

(10) the holder of an office or function under an enactment, whether by appointment, election or agreement, even if he is not one of the public officials enumerated in paragraphs (1) to (9);

(11) a director on behalf of the State in a Government company, Government subsidiary company or mixed company, within their meaning in the Government Companies Law 5735-1975, and a person employed by or engaged in the service of an aforesaid company;

### **Bribe taking**

290. (a) a public official who takes a bribe for an act in relation with his functions, is liable to ten years imprisonment or to the higher of the following fines:

(1) Five times the fine specified in Section 61(a)(4); if the offense was committed by a corporation, then ten times the amount specified in Section 61(a)(4).

(2) Four times the benefit obtained or intended to be obtained by the offense.

(b) In this Section, "public official" includes an employee of a body corporate that provides a service to the public.

### **Bribery**

291. A person that gives a bribe to a public official, as defined in Section 290(b), for an act related to their position, is liable to seven years imprisonment or to a fine as provided in Section 290(a).

### **Bribery of a foreign public official**

291A. (a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or another advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291. .

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section –

**"foreign country"** includes, but not limited to, any governmental unit in the foreign country, including national , district or local unit; including the Palestinian Council.

**"foreign public official"** includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization; **"public**

**international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;".

### **Bribery in connection with contest**

292. (a) If a person gave a bribe with the intention of influencing the conduct, progress or outcome of a sports contest or of some other contest, in the conduct or outcome of which the public has an interest, then he is liable to three years imprisonment.

(b) The person who took the bribe shall be treated like the person who gave the bribe.

### **Methods of bribery**

293. In connection with a bribe, it is immaterial –

- (1) whether it consists of money, valuable consideration, a service or any other benefit;
- (2) whether it is given for an act or an omission, or for suspending, expediting or delaying any act, or for discriminating in favor of or against any person;
- (3) whether it is given for a specific act or to obtain preferential treatment in general;
- (4) whether it is given for an act of the person who takes it or for his influence on the act of another person;
- (5) whether it is given personally by the person who gives it or through another person, whether it is given directly to the person who takes it or to a third party on that person's behalf, whether it is given in advance or after the event, and whether it is for the benefit of the person who takes it or by another;
- (6) whether the function of the person who took it is one of authority or provides service, whether his position is permanent or temporary, general or specific, or with or without remuneration, and whether it is performed voluntarily or in the discharge of an obligation;
- (7) whether it was taken for the performance of an act that falls within or outside of the duties and functions of the public official.

### **Further provisions**

294. (a) If a person solicits or stipulates a bribe, even if he meets with no response, he shall be deemed a person who takes a bribe.

(b) If a person offers or promises a bribe, even if he meets with refusal, he shall be deemed a person who gives a bribe.

(c) If a person is a candidate for any position but the position has not yet been assigned to him, or if any function has been assigned to a person but the person has not yet begun exercise this function, the person shall be deemed to exercise that function.

(d) In an action for bribery, the courts shall not entertain the argument –

- (1) that there was a defect or invalidating circumstance in the assignment of the function to, or the appointment or election of the person who took the bribe;
- (2) that the person who took the bribe did not perform or even intend to perform the act, or that he was not competent or authorized to perform it.

### **Bribery intermediaries or prohibited consideration for a person with significant influence**

295. (a) If a person received money, valuable consideration, a service or other benefit in order to give a bribe, he shall be treated like a person who took a bribe, and it shall be immaterial whether or not any consideration is given to him or to another for his action as intermediary, or whether or not he intended to give a bribe.

(b) If a person received money, valuable consideration, a service or any other benefit in order to induce – by himself or through another – a public official mentioned in section 290(b) or a public official mentioned in section 291A(c) to give undue preference or to practice

discrimination, then he shall be treated like a person who took a bribe.

(b1) (1) If a person with significant influence on the election of a candidate for the position of Prime Minister, Minister, Deputy Minister or head of a local authority (in this subsection: candidate) accepted money, a cash equivalent, a service or other benefit in order to influence – himself or through another – a candidate to perform an act connected to his position, then he shall be liable to three years imprisonment; if he received as aforesaid in order to influence a candidate to give undue preference or to discriminate, then he shall be treated as if he had accepted a bribe;

(2) In this subsection –

**"primaries"**, **"contribution"** – as defined in section 28A of the Elections Law;

**"person with significant influence"** – a person who has significant influence on the choice of a candidate in a party or faction, also in primaries and also because he is one of the following:

(1) member of the governing body, of the audit institution or the Court of the party, or if he holds a position the party, which corresponds or is similar to one of these;

(2) he has the right to vote in an election of the candidate, where the number of persons entitled to vote does not exceed five thousand;

(3) he acted for the registration of a number – that is significant under the circumstances – of persons entitled to vote in the election of the candidate; if a persons acted for the registration of fifty or more persons entitled to vote in the election of the candidate, then it is assumed that the provisions of this paragraph apply to him, unless he proves differently;

(4) he contributed, raised contributions or spent money to promote the election of a candidate in a party or in a faction, to an amount equivalent to NS 5,000, or he contributed, raised contributions or spent money as aforesaid for at least two candidate in the same election campaign, to an amount equivalent to NS 15,000;

**"Elections Law"** – the Elections Law 5752-1992;

**"party"** – as defined in the Elections Law;

**"faction"** – as defined in the Parties (Financing) Law 5733-1973.

(c) "If a person gave money, valuable consideration, a service or other benefit to a person mentioned in subsections (a) or (b), then he shall be treated like a person who gave the bribe; if a person accepts the bribe as mentioned in Sub-section (b1), then he shall be liable to half the penalty prescribed in that sub-section..

(d) For purposes of this section, **"receiving"** includes receiving for or through another person.

### **Evidence**

296. In a trial for an offense under this Article the Court may convict on the basis of a single testimony, even if it is the testimony of an accomplice to the offense.

### **Confiscation and reparation**

297. (a) When a person has been convicted of an offense under this Article, the Court may, in addition to the imposed penalty –

(1) order confiscation of what was given as a bribe or what may has taken its place;

(2) obligate the person who gave the bribe to pay to the Treasury the value of the benefit he derived from the bribe.

(b) The provisions of this section shall not preclude a civil claim.

### **Israel State Attorney Guidelines on Sanctions for Bribery Offenses, no. 9.15**

(issued 11 March 2010)

On the 4th of February 2010, an amendment to the Penal Law increasing the level of sanctions for bribery offenses came into force. The amendment affects sanctions adjacent to the following offenses:

Passive Bribery (Section 290 to the Penal Law); Active Bribery (Section 291 to the Penal Law); Bribery of a Foreign Public Official (Section 291A to the Penal Law); Intermediary in Bribery and Provision of Unlawful Consideration to a Person with Significant Influence (trafficking in influence) (Section 295(a), (b), (b1)(1)). Sanctions for these offenses derivate from the sanctions applied to the passive and active bribery offenses. The maximum prison sentence for passive bribery was increased from seven to ten years, and for active bribery increased two fold, from 3.5 years to seven years. The applicable fines for bribery offenses were significantly increased. Prior to the enactment of the amendment, under Section 61(a)(4) to the Penal Law, the maximum fine for bribery offenses, which are liable for more than 3 years imprisonment, was 202,000 NIS. Alternatively, under Section 63(a), the court would have been able to impose a fine of up to four times the benefit obtained by the offense.

Following the amendment, the maximum applicable fine for bribery offenses under Section 290(a) is now: (whichever is higher)

1. For natural persons, a fivefold increase of the previous applicable fine and for legal persons, a tenfold increase of the previous fine.
2. Four times the obtained or intended benefit of the offense.

Increasing the imprisonment sentence expresses the gravity of bribery offenses, the most severe of the corruption offenses. The amendment intends to narrow the gap between bribery and other grave economic offenses.

Increasing the sanction for active bribery narrows the gap, which was prior to the amendment too wide, between active and passive bribery, while persevering the normative distinction between both offenses. Establishing a higher maximum monetary penalty will enable the courts to impose a more proportional and dissuasive sanction in cases where the payment of the bribe was made in aggravated circumstances, such as: Systematic or large scale bribes, or where the briber is a corporation or a strong economical, political or likewise body, compared to the public official who receives the bribe.

The substantial difference in the fines set by the legislature reflect a change in policy concerning the appropriate fines for the bribery offense, which is part of the current approach in regards to combating economically motivated offenses by applying economic measures. The increase of the maximum fine is intended to reduce economic motivation which underlies corruption and to prevent it, contributing to the deterrence of potential offenders.

Setting a severe fine for foreign bribery offenses corresponds with setting particularly severe fines in other offenses which are motivated by the desire to obtain considerable economic gain, or to prevent significant economic loss, in a similar manner to sections 3 and 4 to The Anti-Money Laundering Act, 2000; offenses related to damages to the environment; offenses under The Anti-Trust Act,- 1988, etc. Unlike the sanctions which could have been imposed for bribery offenses prior to the amendment, now, according to Section 290(a) to the Penal Law, it is possible to impose a fine of up to 4 times the benefit the offender (passive as well as active bribery) intended to obtain even when not actually obtained. Setting of a maximum



fine up to 4 times the value of the benefit obtained or intended by the offender will allow imposing proportional fines in many cases when the offender expected to obtain a particularly significant economic profit. While it is true that Section 63(a) to the Penal Law allows to impose a fine of up to four times the damage caused or the benefit obtained, this provision is not sufficient to allow for a proportional fine. This deficiency could arise when there is only an attempt to take a bribe or when the benefit has yet to be obtained (offer of a bribe). As monetary fines constitute the principal sanction for a legal person, the maximum fine for a legal person is double the fine for a natural person. The need to increase the sanctions and sanctions against legal persons in particular, has also risen from Israel's international obligations and especially from the OECD (Organization for Economic Cooperation and Development) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. According to those obligations, the sanctions for the foreign bribery offense must be dissuasive and effective. The substantial change in the legislature's approach which is reflected in the amendment to the Penal Law, particularly with regard to the monetary fines, must also be reflected in the position of the prosecution with regard to the appropriate sanctions for the offense, of course in accordance with the circumstances of each case. In cases where the defendant did in fact obtain significant economic profits by the offense, the prosecution should argue, according to the circumstances, for the imposition of the maximum fines. In cases where the defendant committed the offense with the expectation of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to this effect, in order to enable the court to impose the appropriate fines according to the profit obtained, or intended to be obtained by the defendant. This evidence can be presented at the evidentiary hearings during the prosecution case in the trial - as this would be required in order to prove the components of the offense, and if not - following conviction in the sentencing phase. In any case, particular attention should be given to the need to prove the value of the benefit obtained or intended as early as in the investigation stage, and in appropriate cases seek expert assistance for this purpose. Alongside the need to focus - in both the investigation and preparation of the indictment by the prosecution - on the need to impose adequate fines, prosecutors should consider, in appropriate circumstances, the option of filing an indictment against the relevant legal person, and forfeiture. In this context, it is important to note that Section 297 to the Penal Law provides special provisions concerning forfeiture in bribery offenses. It should also be noted that bribery offenses, including bribery of a foreign public official, are predicate offenses according to the Anti-Money Laundering Act, 2000. Therefore, the prosecution should consider whether offenses according to this Act were perpetrated, as well as other offenses. Finally, all of these measures are intended to utilize maximum steps in combating economically motivated offenses, some of which are already referred to by the Attorney General's Guidelines on the Prosecution and Investigation of bribery of foreign public officials No. 4.1110.

44. Israel reported that there are many examples of the successful use of anti-bribery criminal legislation. The following is a sample of recent cases involving **active** bribery of public officials:

- In Cr.C. 40111/08 (Tel-Aviv) State of Israel v. Avraham Costa, prison sentences and criminal fines were imposed for the payments of bribes to a licensing clerk in order to obtain benefits. Each of the defendants was sentenced to 6 months imprisonment and an additional 16 months suspended sentence for 3 years, as well as a fine of 10,000 NIS (approx. 2,800 USD) each.
- In Cr.C. 1706/06 State of Israel v. Abu Zion, a contractor was convicted for the payment

of bribes to a municipal official in order to obtain a tender for public works.

- In Cr.A. 10627/06 Yehoshua v. State of Israel, a candidate participating in municipal elections was convicted of bribery offenses and sentenced to imprisonment and the payment of fines. The defendant was sentenced to 5 months imprisonment and an additional 5 months suspended sentence for 3 years, as well as a fine of 40,000 NIS (approx. 10,400 USD).
- In Cr.C. 8116/03 (Tel Aviv) State of Israel v. Apple et al., a construction company and a controlling shareholder in the company (Apple) were convicted of bribery offenses. The bribe was given towards the mayoral election campaigns of a number of individuals in exchange for significant monetary advantages in the future, and from which the company and Apple would have benefitted. In the sentence, the Court accepted an argument by the defendants that the tendency in recent case law to give aggravated sanctions for bribery, including the amendment increasing the sanctions for the bribery offense, could not be given substantial consideration in this case since the crimes were committed 12 years prior. However, it is clear that the court acknowledged that the current tendency is to give high sentences for bribery. Apple was sentenced to 3.5 years imprisonment, 1.5 years of probation for 3 years from his release a fine of 1,000,000 million NIS (approx. 285,000 USD).
- In Ap.Cr.A. 5905/98 Ronen v. the State of Israel, the Supreme Court held explicitly that the aim of Section 294(b) was to extend the scope of the bribery prohibition to include acts regarded as attempt or preparation to receive or give a bribe. Even an offer that has been refused will be sanctioned. The Court also held that “the main purpose of the various provisions governing bribery offenses... is to distance the public official as far as possible from the temptation to accept bribes, and the potential giver of bribes from placing the public official in the position of facing such temptation.”. According to the Court, the legislature intended to sanction not only the bribe, but also the acts of preparation and attempting to give or receive a bribe (Section 294(b) and 295(a) of the Penal Law). The Court found the defendant guilty according to section 294(b), despite the fact that the defendant did not intend to pay the bribe himself.

45. Israel provided related statistical data on number of investigations, prosecutions and convictions/acquittals and the following explanatory note.

**\*\*General Data Note: the available data only indicates per annum figures. There is no available aggregate data on the conclusions of specific investigations or prosecutions. In many cases the criminal process can be a long process and this is the reason for the gaps between numbers of investigations, prosecutions and convictions\*\***

#### **Fraud and Breach of Trust (Penal Law Sec. 284)**

Note: In some cases, the fraud and breach of trust provisions of the Penal Law, 1977 includes allegations relating to bribery (this note applies to all offences established under the Convention).

In 2009, 58 investigations took place, while 6 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 67 investigations took place, while 3 cases were prosecuted (there is no available

data for this year on convictions).

In 2011, 41 investigations took place, while 9 cases were prosecuted and there were 2 convictions.

In 2012, 63 investigations took place, while 16 cases were prosecuted and there were 4 convictions.

In 2013, 17 cases were prosecuted and there were 11 convictions (there is no available data for this year on investigations).

#### **Active Bribery (Penal Law Sec. 291)**

In 2009, 129 investigations took place, while 37 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 82 investigations took place, while 42 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 41 investigations took place, while 29 cases were prosecuted and there was 1 Conviction.

In 2012, 84 investigations took place, while 16 cases were prosecuted and there were 4 Convictions.

In 2013, 11 cases were prosecuted and there were 10 convictions (there is no available data for this year on investigations).

#### **Active Bribery in relation to Contest (Penal Law Sec. 292(a))**

In 2009, no investigations took place, while 2 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 4 investigations took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2011, 1 investigation took place, while no cases were prosecuted and there were no convictions.

In 2012, no investigations took place, while no cases were prosecuted and there were no convictions.

In 2013, no cases were prosecuted and there were no Convictions (there is no available data for this year on investigations).

#### **Offer or Promise of Bribe (Penal Law Sec. 294)**

Note: The data could also refer to solicitation of a bribe.

In 2009, 22 investigations took place, while 6 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 82 investigations took place, while 7 cases was prosecuted (there is no available data for this year on convictions).

In 2011, 12 investigations took place, while 1 case was prosecuted and there was 1 conviction. In 2012, 20 investigations took place, while 2 cases were prosecuted and there were 2 convictions.

In 2013, 2 cases were prosecuted and there were 2 convictions (there is no available data for this year on investigations).

#### **(b) Observations on the implementation of the article**

46. An analysis of the information provided by Israel showed that Israeli legislation contains a broad range of criminal law instruments on combating bribery that satisfy the requirements of article 15 of the United Nations Convention against Corruption.
47. During the desk review process and following the country visit Israel further clarified that the definition of a "public employee" in section 34(24) of the Penal Law does not distinguish between employees of different classes, a junior or senior employee. The wording of the offense of taking bribes in section 290 of the Law, similarly, does not distinguish between a senior or junior employee as long as the person takes a bribe for an action **related to the performance of his duties**.
48. A relevant case is that of Barak Cohen ((Ad.Cr.H. 10987/07 *State of Israel v. Cohen*)). Cohen served as a shift manager of a team of security guards in the Population Registry Office of the Interior Ministry. Cohen allowed people waiting to enter to bypass the queue, in return for money and favors. Cohen was an employee of a private security company, which provided services to the Ministry of Interior. The court defined him as an employee of a "corporation which provides public service" and convicted him.
49. Israel explained that cases of Convention related offenses are investigated and conducted over a period of considerable time due to their complexity. This makes it difficult to correlate between the number of cases opened in a given year and the number of convictions or to draw any specific conclusions from the statistical data.
50. Following the country visit, Israel provided additional examples of specific cases where low ranking public officials were convicted of bribe-taking.

Cr.A. 7512-04-10 *State of Israel v. Dr. Figar* – The defendant was a physician employed at a public hospital, who also owned a private clinic in Tel Aviv. He had advised patients to contact him privately in order to gain better access to the same medical services provided by him at the hospital. The Tel Aviv District Court found him guilty of breach of trust and abuse of power. The Court determined that Dr. Figar should be considered a "public official", as defined in the Penal Law, 1977, even though some of the offenses were perpetrated in his private capacity. He was sentenced to one year imprisonment.

Cr.A. 9145/11 *Ata Mara'ai v. State of Israel* – The appellant served as a police officer at a checkpoint in the West Bank. In this position, he accepted financial benefits in exchange for allowing passage for drivers and cars without the required certificates. The Jerusalem District Court found him guilty of bribery and breach of trust. The Supreme Court upheld the conviction but shortened the sentence (imposed by the District Court) to 6.5 years imprisonment due to the circumstances of the case.

Cr.C. 44675-03-12 *State of Israel v. Shatu* – The defendant was an official in the asylum-seeker's unit at the Immigration Division of the Ministry of Interior, where he was responsible for questioning asylum seekers. The Central Region District Court found the defendant guilty of accepting bribes from several applicants in exchange for approving their requests for temporary stay in Israel in violation of applicable procedures. The Court sentenced the defendant to 15 months imprisonment, 12 months probation and a 10,000 NIS fine (approx. 3,000 USD).

Cr.C. 36663-02-12 *State of Israel v. Levi Doron* – The defendant served as an inspector at the Bat-Yam Municipality. He was responsible for conducting unannounced visits to private

businesses regarding their property tax payments. During several of those visits, the defendant suggested that if the business owners bribed him, he would not raise their property tax as he should have in accordance with the municipal bylaws. The Tel Aviv Magistrates' Court found him guilty and sentenced him to six months imprisonment and six months probation.

Cr. C. 8061/03 *State of Israel v. Nathaniel Tritel* – The defendant was an official at the Division of Land Taxation in Ashkelon. He referred taxpayers to a private tax consultant in exchange for commission. The Beer-Sheva District Court found the defendant guilty and sentenced him to 18 months imprisonment, 12 months probation and a 50,000 NIS fine (approx. 14,655 USD).

Cr.C. 9935-02-10 *State of Israel v. Telkar* – The defendant served as an intelligence coordinator at the Eilat Police Station. The Beer-Sheva District Court found him guilty of accepting bribes from criminal organizations in exchange for concealing intelligence in order to prevent the police from investigating those organizations. The defendant was sentenced to 6 months imprisonment, 12 months probation and a 30,000 NIS fine (approx. 8,796 USD).

Cr.A. 6564/04 *Keren Stoya v. State of Israel* – The Supreme Court upheld the District Court's conviction of the defendant, a police officer serving in the Eilat border region. The defendant accepted financial benefits in exchange for allowing the entrance of illegal migrants to Israel through the Port of Eilat. The Supreme Court upheld the District's Court sentence of seven months imprisonment and six months probation.

Cr.C. 2992/08 *State of Israel v. Roza Kahan* – The defendant was an employee of the "Collection for the Environment" Corporation ("ELA"). ELA was a statutory corporation (i.e. not a government entity) designated to collect beverage containers from the public for recycling purposes. The Beer-Sheva Magistrates' Court found the defendant guilty of accepting bribes in exchanges for falsifying the amount of containers deposited by the briber. The Court based its decision on Section 290 of the Penal Law, and held that the defendant was a "public official", and sentenced her to 200 hours of community service and 6 months probation.

Cr.C. 1777/05 *The State of Israel v. Reuven Ben-Lulu* – The defendant worked as an inspector on behalf of the Ministry of Labor and Social Affairs at the Ramla detention facility. He was responsible for working with illegal migrants. In the course of his duties, the defendant arranged for private legal services for the migrants in exchange for bribes. The Ramla Magistrates' Court found him guilty of accepting bribes as a "public official", and sentenced him to six months imprisonment and six months probation.

Cr.C. 242/03 *State of Israel v. Barak Cohen* – The defendant served as a shift manager of a team of private security guards in the Population Registry Office of the Interior Ministry. He was indicted for allowing people waiting to enter to bypass the queue, in return for money and favours. The Jerusalem District Court determined that the defendant was a "public official" even though he was in the employment of a private security company, based on the reasoning that the company was defined as a "corporation which provides public service". The court found him guilty and sentenced him to six months imprisonment, one year probation and 15,000 NIS fine (approx. 4,392 USD).

Cr.C. 9875-12-09 *State of Israel v. Vinogradov* – The defendants were employees of a company providing cleaning services to the municipality building of Nazareth Ilit. Defendant Vinogradov had unlawfully taken a document from the mayor's office and handed a copy to Defendant Rodnizki. Defendant Rodnizki then burned the document upon hearing of the police investigation regarding the event. Defendant Vinogradov was convicted of removing a document

from custody and Defendant Rodnizki was convicted of destruction of evidence and obstruction of justice. The court ruled that defendants betrayed their obligation of trust both to their direct employer and to their "indirect employer", i.e. the municipality, which had contracted for the services of their company. Defendant Vinogradov was sentenced to four months of community service and Defendant Rodnizki was sentenced to six months of community service, which they were to serve at a day-center for the elderly. In addition they were each sentenced to nine months probation for three years and a 1,500 NIS fine (approx. 450 USD) or 30 days imprisonment instead.

51. While most of these cases do not deal with low level public officials such as drivers or cleaning workers, they demonstrate that middle and lower ranked officials are considered to be "public officials" for indictment in corruption related offenses, as well as high level officials such as Members of Knesset and mayors.
52. Israel also noted that in practice low ranked administrative and technical officials are less likely to be offered bribes than senior officials who hold more authority and power, and would have less opportunities to commit corruption related offenses.
53. Israel further noted that there are few cases in which non-financial benefits are provided as bribery, since most of the benefits can be converted into assets with economic value to the recipient or a close friend. The law is unequivocal on this issue, stating clearly that a benefit need not be money, or equal to money. Several cases have held that offering a sexual benefit is considered bribery.
54. For example, C.A. 358/71 *Karp v. State of Israel*, and C.A. 534/78 *Kovilio v. State of Israel*. In the Armon Attias judgment, C.A. 6916/06 *Armon Attias v. State of Israel*, the court held that promoting the appellant's fiancée's conversion (to a different religion) process was considered a non-financial benefit to him. It is important to emphasize the general statement of the court in this case: *"To define bribery, the legislature uses the term benefit. The question is then, under what circumstances can we recognize the taking or receiving of a benefit as bribery? Sections 293-294 of the Penal Law state in detail the methods of bribery involving 'other benefits'. This means that bribes will not include only money and something equivalent to money. Any benefit of any kind may be a bribe, if it is accompanied with the certain corrupt character needed."* It was clear to the court that advancing the conversion process, an issue important to the appellant, is considered a "benefit" and the dispute was over whether the fact that the service provided to his fiancée was a benefit for him. In relation to this question, the court ruled that the conversion was a key issue in the relationship between the persons involved, such that the service should be considered as having benefitted the appellant personally. It should be noted that a benefit falls within the ambit of bribery even when the accused person seeks to have it bestowed to another individual.
55. Summary of the Holyland, Hazera, and Israel Salt Industries cases (recent bribery case law – 19 December 2015) – Ap.Cr.A. 4456-14 (Supreme Court) **Kelner v. State of Israel**. The decision involves three connected cases relating to the promotion of real estate projects through an extensive system of bribery of public servants and elected officials by private entrepreneurs. The actions were uncovered by the state witness, Samuel Dechner, who was a co-conspirator of those convicted of bribery. The information provided by Dechner during the trial revealed corruption in public offices spanning several years. Significantly extensive Funds amounting to hundreds of thousands of dollars were paid to public and elected officials, who in turn hid the funds and concealed their sources. These cases were recently reviewed by the Supreme Court.

**Holyland** - From the mid-90s and for over a decade, Cherny worked with the state witness, Dechner, to plan and develop an exceptionally large residential neighborhood in Jerusalem. During the years 1994-2007, Cherny and Dechner, along with Meir Rabin (Dechner's assistant) provided financial and other benefits to public officials responsible for planning the neighborhood, known as "Holyland", in order to promote their private interests and to facilitate the approval of the project within the Jerusalem Municipality. In 1999, Cherny sold some of the land to Holy Land Park Ltd., managed by another defendant in the case, Kellner. In 2003-2004, Kellner also acted with and on behalf of Holy Land Park Ltd., along with Dechner, in providing financial benefits to elected officials in return for the promotion of the Holyland project. These payments went to a long list of elected officials in the Jerusalem Municipality.

Over the years, a relationship of give and take was established between – the developers (Cherny and Kellner) and public servants. The officials in question included – Olmert (then Mayor of Jerusalem and Chairman of the local planning and zoning committee, and later the Prime Minister of Israel); Lupolianski (Deputy Mayor and Chairman of the local planning and zoning subcommittee and later Mayor and Chairman of the local planning and zoning committee); Shitrit (city engineer); Simhayoff (Deputy Mayor), Finer (city council member) and Zaken (Olmert's chief of staff).

Dechner and Rabin received the bribe money from Cherny, Kellner and the companies, and acted on their behalf to transfer the funds to the public officials listed above. Public employees received financial benefits, directly or indirectly, in the form of donations to third parties or funds transferred to associates. In exchange, public officials promoted the Holyland project and the interests of its developers.

**Hazera** - While promoting the Holyland project, in 2002-2004 Kellner worked towards developing the land owned by the Hazera Company. Dechner and Rabin acted as intermediaries on behalf of Kellner, and bribed the director of the Israel Lands Authority. In turn, the zoning designation of the Chavat Shalem area (on the outskirts of the Gush Dan (Tel-Aviv) area, and owned by the Hazera Company), would be changed. During those years, Dechner gave Olmert, then Minister of Industry and Trade, and Zaken, his chief of staff, financial and other benefits to promote the interests of the Hazera Company.

**Israel Salt Industries** - As of the mid-90s, Danny Dankner, chairman of Israel Salt Industries, started to promote a rezoning agreement between Israel Salt Industries and the Israel Lands Administration. This agreement concerned the rezoning of land in Atlit and Eilat from industrial land to residential, tourist and commercial land. Between 2002 and 2004, in order to promote the rezoning agreement, and in light of the large size of the land, Dankner gave Rabin money, which Rabin was to use to transfer to the Israel Lands Administration manager in order to promote the Company's affairs.

## **Convictions and Sentencing**

In the District Court, Cherny was convicted of bribery of elected and public officials, totaling more than 5.5 million NIS (approx. 1,174,000 Euro), all this with the goal of promoting the Holyland project. He was also convicted of falsifying corporate documents and money laundering. Cherny was sentenced to 3.5 years in prison, a fine of 2 million NIS (approx. 427,200 Euro) and asset forfeiture worth one million NIS. However, in the Supreme Court, Cherny was partially acquitted for some of the bribery charges and was sentenced to 26 months

in prison, 10 months probation, and a 500,000 NIS fine (approx. 117,100 Euro) or 6 months in prison instead.

In the District Court, Kellner was convicted of bribery of elected and public officials to promote the Holyland project and the Hazera Company affairs totaling 2 million NIS (approx. 427,200 Euro) and money laundering offenses. Kellner was sentenced to three years imprisonment, a fine of one million NIS (approx. 213,000 Euro) and asset forfeiture worth half a million NIS (approx. 106,000 Euro). In the Supreme Court, Kellner was also partially acquitted for some of the bribery charges and was sentenced to 2 years in prison and 200,000 NIS (approx. 46,840 Euro) or 3 months in prison instead.

Rabin was convicted of mediating bribes in the Holyland and Israel Salt Industries affairs totaling 1.45 million NIS (approx. 309,720 EURO) and money laundering offenses. Rabin was sentenced to five years in prison, a fine of half a million NIS (approx. 106,000 Euro) and asset forfeiture worth 1 million NIS. Rabin's conviction and sentencing were upheld by the Supreme Court.

In the District Court, Lupolianski was convicted of accepting bribes totaling 2.5 million NIS (approx. 534,000 Euro) through the receipt of donations to the "Yad Sarah" non-profit organization, which he founded and ran for many years. In the Supreme Court, Lupolianski's conviction was upheld and he was sentenced to 6 months of community service, due to his medical condition.

In the District Court, Shitrit was convicted of accepting bribes totaling 1.4 million NIS (approx. 299,000 Euro) and money laundering offenses. Shitrit was sentenced to 7 years in prison, a fine of one million NIS (approx. 213,000 Euro) and asset forfeiture worth half a million NIS (approx. 106,000 Euro). In the Supreme Court, the conviction was upheld but the fine was decreased to 850,000 NIS (approx. 199,070 Euro).

Olmert was convicted in the District Court of accepting bribes totaling 560,000 NIS (approx. 116,000 Euro). Olmert was sentenced to six years in prison, a fine of one million NIS (approx. 213,000 Euro) and asset forfeiture worth 560,000 NIS (approx. 116,000 Euro). However, in the Supreme Court, Olmert was partially acquitted for one of the bribery charges (of 500,000 NIS) and was sentenced to 18 months in prison, 12 months probation, a 200,000 NIS fine (approx. 46,840 Euro) and asset forfeiture worth 60,000 NIS (approx. 14,050 Euro).

Zaken was convicted in the District Court of accepting bribes totaling 150,000 NIS (approx. 32,000 Euro) and receiving benefits and money laundering. Under the terms of a plea bargain, she was sentenced to 11 months in prison, a fine of 25,000 NIS (approx. 5,340 Euro) and asset forfeiture worth 75,000 NIS (approx. 16,000 Euro).

Simhayoff was convicted in the District Court of accepting bribes totaling 165,000 NIS (approx. 35,000 Euro). Simhayoff was sentenced to 3.5 years in prison, a fine of 300,000 NIS (approx. 64,000 Euro) and asset forfeiture worth 165,000 NIS (approx. 35,000 Euro). However, in the Supreme Court, Simhayoff was partially acquitted for one of the bribery charges (135,000 NIS) and was sentenced to 18 months in prison, 12 years probation, a 300,000 NIS fine (approx. 70,260 Euro) and asset forfeiture worth 60,000 NIS (approx. 14,050 Euro).

Feiner was convicted in the District Court of accepting bribes totaling 680,000 NIS (approx. 145,248 NIS) by accepting donations to organizations which he headed. His sentence is pending.



In the District Court, Dankner was convicted of giving bribes totaling 1.3 million NIS (approx. 277,000 Euro), falsifying documents and money laundering. Dankner was sentenced to 3 years in prison, a fine of a half million NIS (approx. 106,000 Euro) and asset forfeiture worth one million NIS (approx. 213,000 Euro). However, in the Supreme Court, Dankner was acquitted from the document falsification charge and his sentence was shortened to 2 years imprisonment and 1 year probation.

Holyland Tourism Ltd., owned by Cherney, was convicted in the District Court of numerous bribery offences and money laundering, and fined. The company was fined 50,000 NIS (approx. 11,000 Euro). Holyland Park Ltd., where Kellner served in its management, was convicted of giving bribes totaling 800,000 NIS (17, 096 Euro)), and fined 100,000 NIS (21,370 Euro). The company was partially acquitted in the Supreme Court but the verdict, determined by the District Court remained the same.

56. It was further clarified during the country visit that all the possible cases of bribery and corruption are carefully examined by the authorities before submitting them to prosecution to avoid possible false accusation and ensure the proper evaluation of available evidence.
57. Notably, many cases are prosecuted based on the offence of fraud and breach of trust (Penal Law Sec. 284) and not only based on the offences of active and passive bribery.

## **Article 15 Bribery of national public officials**

### **Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

58. According to Section 290 of the **Penal Law, 1977** (hereinafter: Penal Law or the Law), the acceptance of a bribe by a public official (including an employee of a corporation that provides a service to the public) in relation to the performance of his duties is punishable by a prison sentence of up to 10 years and/or criminal fines. For additional information considering the recent amendment to the Penal Law see the information under UNCAC article 15(a) above.

#### **The "solicitation or acceptance"**

59. Section 294(a) of the Penal Law provides: "A person who solicited a bribe shall be treated like person who took a bribe, even if he received no response".

**"by a public official"**

60. For information regarding the definition of a public official please see the information under UNCAC article 15(a) above. In addition, the Law clarifies that it is immaterial whether the bribe taker's position is one of authority or providing a service, whether his position is permanent or temporary, general or specific, with or without remuneration, and whether it is performed voluntarily or in the discharge of an obligation (Section 293).
61. For the purpose of this offense, a candidate for a position, even one not yet assigned, is to be considered as already occupying the position. If a person has been assigned a function but has not yet begun to exercise it, that person shall be viewed as having been exercising it (Section 294(c)).
62. The Penal Law provides that courts must disregard the argument that an invalidating circumstance occurred in the assignment of the function or the appointment or election of the public official, as well as the argument that the public official did not perform or intend to perform the act or was not competent or authorized to perform it (Section 294(d)).

**"directly or indirectly"**

63. Please see the reference to this component under UNCAC article 15(a) above.

**"of an undue advantage"**

64. Please see the reference to this component under UNCAC article 15(a) above.

**"for the official himself or herself or another person or entity"**

65. Please see the reference to this component under UNCAC article 15(a) above.

**"in order that the official act or refrain from acting in the exercise of his or her official duties."**

66. For the purposes of the Law it is immaterial whether the benefit was given for an act or an omission, for suspending, delaying or expediting the occurrence of an act or impediment; preference or discrimination. It is also immaterial whether the bribe was intended for the performance of a specific act or to obtain preferential treatment in general, and whether it was for an act by the taker or for his influence on another person. It is also immaterial whether the bribe was taken for the performance of an act that falls within or outside of the duties and functions of the public official (Section 293).
67. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977**

**290. Bribe taking** as cited under paragraph a above.

**293. Method of bribery** as cited under paragraph a above.

**294. Further provisions** as cited under paragraph a above.

68. Israel reported that there are several cases involving the successful use of anti-bribery legislation. The following are examples of recent cases involving the **passive** bribery of public officials:

- Cr.C. 8043/07 (Tel Aviv) State of Israel v. Sarov concerned the conviction of an emergency room physician for accepting bribes in exchange for preferential treatment. The physician was sentenced to 15 months imprisonment, an additional 15 months suspended sentence and as a fine of 15,000 NIS (approx. 4,200 USD).
- Cr.C. 4039/05 (Haifa) State of Israel v. Cohen involved the conviction of a senior official of the Israel Electric Corporation (a government company) for six separate instances of accepting bribes totaling around 1,300,000 NIS (approx. 325,000 USD). Eventually, Cohen was sentenced to six years in prison as well as an additional 12 months suspended sentence. He was also fined approx. 500,000 USD, or an additional 20 months in prison. The court also ordered the forfeiture of two apartments owned by the official.

69. Israel indicated that Israeli courts, when delineating the scope of the offense of bribery, have given a wide interpretation to the phrases "whether given to the recipient or to another person on behalf of the recipient" and "whether the beneficiary of the bribe was the recipient or another person".

- In Cr.C. (Jerusalem District) 2062/06 State of Israel v. Benizri and Elbaz, former government minister Shlomo Benizri was convicted of accepting a bribe from a contractor, Moshe Sella, who had transferred donations to a religious school, headed by Rabbi Elbaz, which provided political support for Benizri. Benizri was charged under Section 293(5) of the Penal Law. The District Court held that a public official can be convicted of accepting a bribe even if the sole beneficiary is a third party. In the case of Benizri, the religious school (the beneficiary) provided strong political support for Benizri and it was therefore in his interest to support the school. There was no distinction between Benizri's interest and the school's. When examining whether the gifts to Elbaz could be considered a bribe, the Court noted: "We are dealing with funds transferred to a specific school of which Benizri is a member in the full sense of the word. Rabbi Elbaz is Benizri's mentor and the latter's interest is intrinsically linked to that of the school, to its existence, expansion and strength. Any transfer of funds to the school directly or indirectly involving Benizri strengthens Benizri's foundation - and hence Benizri and his status. There is no doubt that it was in Benizri's interest to encourage Sella to transfer the funds to the school and that therefore no separation existed between Elbaz's interest in contributing to the school and Benizri's interests. The gifts from Sella to Elbaz were, at the end of the day, initiated and encouraged by Benizri." (The Supreme Court denied Benizri's appeal and increased the sentence imposed by the District Court (18 months imprisonment and a fine of 120,000 NIS (approx. 33,000 USD) to four years imprisonment and a fine of 250,000 NIS (approx. 70,000 USD) in Cr.A. 5083/08 Benizri v. The State of Israel).
- In C.C. (Tel Aviv Magistrate's Court) 8438/03 State of Israel v. Oded Tal, Oded Tal, a former acting director of the Central District's Israeli Land Administration, was convicted of altering the terms of a public tender in favor of the winning company. In return, he had received assistance from the company's owners in obtaining a promotion within the Land Administration and his wife was hired as a company employee. Tal was furthermore

convicted on two additional charges for attempting, in other instances, to arrange employment for his wife. The Court stated clearly that Section 293(5) of the Penal Law provided the basis for Tal's conviction. Tal was sentenced to a total of 5 years imprisonment.

- Cr.A. 8027/04 (Tel Aviv District) Algarisi v. State of Israel - The Court examined whether donations to municipal sport associations at the request of a public official constitute the acceptance of a bribe by that official. In other words, could a gift intended to serve a public need and lacking the element of personal benefit constitute a bribe? The Court closely examined Section 293(5) and held that in some circumstances, bribery could exist even where there was no personal advantage conferred on the recipient of the bribe, so long as the other elements of the offense are fulfilled. The Court held that there are many different kinds of bribes, beyond those explicitly mentioned in Section 293. The bribery offense does not necessarily require an outcome from the bribe and the public official does not necessarily need to act in favor of the one who gave the bribe. The Court sentenced the defendant to 36 months imprisonment as well as an additional 18 months suspended sentence.
- In Cr.A 6916/06 Armon Atias v. State of Israel, the appellant worked as a director in the Jerusalem Municipality's Department of Construction Supervision. His son and daughter-in-law operated a company providing services in the field of planning and construction. The indictment claimed that the appellant's son promoted his clients' businesses by using his relationship with the appellant. The appellant wished to advance his son's business and received a bribe from his son's clients in return for his involvement in expediting the processing of the client's files within the department. The bribe that the appellant received consisted in a salary to the son. The Court held that there was no need for the funds to come directly to the appellant. Regarding Section 293(5) of the Penal Law, the Court determined that in some circumstances, even if the person accepting a bribe did not receive the benefit of that bribe, his actions could still be considered as accepting a bribe, given that the other elements of the offense exist: "The wording of the offense is wide enough to include a variety of conducts. It does not provide an exhaustive list of possibilities. The legislator did not restrict it beyond the guidance set forth in Sections 293-294 of the Law, and there is no limit to the diversity of options in which the offense may take form in everyday life. There will always be a need to examine the intent of the giver on the one hand and the actions and the benefits conferred on the recipient on the other hand - and whether there is a causal relationship between them." In this case, the Court even perceived the conversion of the appellant's family member to Judaism, which was important to his family, as a bribe. The appellant was sentenced to 7 months imprisonment, 12 months suspended sentence and a 50,000 NIS fine (approx. 14,000 USD).
- In Cr.A. 355/88 Rafael Levi v. State of Israel the appellant was charged and convicted with soliciting a bribe. The appellant assisted a hotel owner ('Maman') to obtain construction permits. Maman then purchased paintings from the appellant's son's gallery. While the appellant denied having made his assistance conditional on the purchase of the paintings, conversations between the appellant and his son revealed a clear causal relationship between the assistance provided and the ensuing transactions to establish bribery. According to the Court, "it is not necessary that the public official himself receive [or enjoy] the gift or benefit; it is enough that a person the public official seeks to honor, is the beneficiary of the bribe." The Court based its conclusion on the factual

finding that had the advantage not been guaranteed by Maman, the appellant would not have been inclined to grant Maman the requested permit. The appellant was sentenced to three and a half years imprisonment as well as a fine of 10,000 NIS (approx. 2,800 USD) or an additional 3 months imprisonment.

- In Cr.A 5083/08, *Benizri v. the State of Israel*, in the District Court (Cr.C. (Jerusalem District) 2062/06 *State of Israel v. Benizri*) former government minister Shlomo Benizri was convicted of accepting a bribe from a contractor, Moshe Sella, who had transferred donations to a religious school, headed by Rabbi Elbaz, which provided political support for Benizri. Benizri was charged under Section 293(5) of the Penal Law. The District Court held that a public official can be convicted of accepting a bribe even if the sole beneficiary is a third party. In the case of Benizri, the religious school (the beneficiary) provided strong political support for Benizri and it was therefore in his interest to support the school. There was no distinction between Benizri's interest and the school's. When examining whether the gifts to Elbaz could be considered a bribe, the Court noted: "We are dealing with funds transferred to a specific school of which Benizri is a member in the full sense of the word. Rabbi Elbaz is Benizri's mentor and the latter's interest is intrinsically linked to that of the school, to its existence, expansion and strength. Any transfer of funds to the school directly or indirectly involving Benizri strengthens Benizri's foundation - and hence Benizri and his status. There is no doubt that it was in Benizri's interest to encourage Sella to transfer the funds to the school and that therefore no separation existed between Elbaz's interest in contributing to the school and Benizri's interests. The gifts from Sella to Elbaz were, at the end of the day, initiated and encouraged by Benizri." The Supreme Court ruled that the purpose of the offenses detailed in Section 295 of the Penal Law is to compare the status of those mediating a bribe or helping the mediator of a bribe, to that of the one receiving the bribe. The court interpreted Section 295(b) of the Penal Law to read that if the mediator had intended to push the public official to commit corrupt acts, the latter would be sufficient, even if the offense was not completed. The Supreme Court denied Benizri's appeal and increased the sentence imposed by the District Court (18 months imprisonment and a fine of 120,000 NIS (approx. 33,000 USD) to four years imprisonment and a fine of 250,000 NIS (approx. 70,000 USD).

70. The definition of bribery was constructed widely, with good reason, recognizing that the phenomenon manifests itself in practice in a variety of ways (Cr.A. 155/88 *Lushi v. the State of Israel*). The offense is drafted in order to avoid potential loopholes in the Penal Law. The text of the law should be interpreted in line with the purpose of the legislation which is, as noted, to ensure the proper management of the public sector and the integrity of its officials, who have a duty of fidelity to the public owing to their positions.
71. Section 293(5) of the Penal Law clearly states that in some circumstances, bribery can be established even where the person accepting the bribe received no personal benefit. The giving and the receiving can be done by another person (Section 295(d)). It should be emphasized that this is the case even where the "gift" given provided a public rather than private benefit.
72. It is clear that to establish a bribery offense, there must be a causal relation between the conferral of a benefit to a third party and the public official's position as a public official. This condition was expressed in the aforementioned judgments. However, the courts have not required that the third party benefit be conferred directly by the public official.

- In Cr.A. 4720/98 the State of Israel v. Cohen, the Supreme Court held that if the offense was not successfully completed, both the person attempting to offer the bribe and the person attempting to receive the bribe will be charged with an attempted offense.
- In Cr.A. 355/88 Rafael Levi v. State of Israel the appellant was charged and convicted with soliciting a bribe. The appellant assisted a hotel owner ('Maman') to obtain construction permits. Maman then purchased paintings from the appellant's son's gallery. While the appellant denied having made his assistance conditional on the purchase of the paintings, conversations between the appellant and his son revealed a clear causal relationship between the assistance provided and the ensuing transactions to establish bribery. According to the Court, "it is not necessary that the public official himself receive [or enjoy] the gift or benefit; it is enough that a person the public official seeks to honor, is the beneficiary of the bribe." The Court based its conclusion on the factual finding that had the advantage not been guaranteed by Maman, the appellant would not have been inclined to grant Maman the requested permit. The appellant was sentenced to three and a half years imprisonment as well as a fine of 10,000 NIS (approx. 2,800 USD) or an additional 3 months imprisonment.
- In Ap.Cr.A. 5905/98 Eliahu Ronen v. The State of Israel the Supreme Court held explicitly that the aim of Section 294(b) was to extend the scope of the bribery prohibition to include acts regarded as attempt or preparation to receive or give a bribe. Even an offer that has been refused will be sanctioned. The Court also held that "the main purpose of the various provisions governing bribery offenses... is to distance the public official as far as possible from the temptation to accept bribes, and the potential giver of bribes from placing the public official in the position of facing such temptation.". According to the Court, the legislature intended to sanction not only the bribe, but also the acts of preparation and attempting to give or receive a bribe (Section 294(b) and 295(a) of the Penal Law). The Court found the defendant guilty according to section 294(b), despite the fact that the defendant did not intend to pay the bribe himself.

73. Israel provided the following statistical data on number of investigations, prosecutions and convictions/acquittals. Israel also referred to the General Data Note under UNCAC article 15(a) above.

#### **Enticement to Bribery (Penal Law Sec. 30 combined with Bribery provisions)**

Note: The data could also refer to enticement to active bribery. There is no available data on convictions for this offense and for 2013.

In 2009, 1 investigation took place, while no cases were prosecuted. In 2010, no investigations took place, while 1 case was prosecuted. In 2011, 3 investigations took place, while no cases were prosecuted. In 2012, 2 investigations took place, while no cases were prosecuted.

#### **Attempt Enticement to Bribery (Penal Law Sec. 32 combined with Bribery provisions)**

Note: The data could also refer to enticement to active bribery. There is no available data on prosecutions and convictions for this offense and for 2013.

In 2009, 4 investigations took place. In 2010, 1 investigation took place. In 2011, 2 investigations took place. In 2012, 9 investigations took place.

#### **Passive Bribery (Penal Law Sec. 290)**

In 2009, 155 investigations took place, while 62 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 94 investigations took place, while 20 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 126 investigations took place, while 9 cases were prosecuted and there were no convictions.

In 2012, 93 investigations took place, while 13 cases were prosecuted and there were 7 Convictions.

In 2013, 9 cases were prosecuted and there were 7 convictions (there is no available data for this year on investigations).

#### **Bribery Intermediaries (Penal Law Sec. 295)**

Note: The data could also refer to enticement to active bribery

In 2009, 42 investigations took place, while 10 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 27 investigations took place, while 2 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 32 investigations took place, while 1 case was prosecuted and there were no convictions.

In 2012, 10 investigations took place, while 4 cases were prosecuted and there were 2 convictions.

In 2013, no cases were prosecuted and there were 2 convictions (there is no available data for this year on investigations).

#### **(b) Observations on the implementation of the article**

74. Please see the observations under paragraph (a) above.

### **Article 16 Bribery of foreign public officials and officials of public international organizations**

#### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

(a) **Summary of information relevant to reviewing the implementation of the article**

75. The State of Israel takes part in the international fight against corruption in all its forms, and views the comprehensive and continuous efforts of the international community in that regard, as crucial to effectively combating bribery in international transactions. Along with its membership in UNCAC, Israel became a member of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 2009.
76. Section 291A of the **Penal Law 1977** ("Penal Law" or "Law"), which enacts the foreign bribery offense in Israeli law, came into force on 21 July 2008. Section 291A is part of Article Five of the Penal Law which concerns bribery offenses. The offense includes all the acts described in Article 16 of the Convention. The majority of the elements of the bribery offenses - both domestic and foreign bribery - are set forth in Sections 293 and 294 of the Law.
77. Pursuant to Section 291A, the elements of the offense are identical to those of domestic bribery, other than (1) the purpose of the bribe and (2) the definition of the term "foreign public official", which is in line with the definitions of the terms "foreign public official" and "official of a public international organization" in the Convention.
78. With respect to what constitutes bribery under Section 291A, as is the case with the domestic bribery offense, it is immaterial what kind of benefit was offered, whether it was given for suspending expediting or delaying an act, or for causing preferential or adverse treatment. The Law also states that it is immaterial whether the bribe was given for a specific act or for obtaining preferential treatment in general, and whether the bribe was intended for the performance of an act by the recipient or in order for the recipient to influence the act of another person. In addition, the Law does not differentiate between cases where the bribe was given by the person himself or through another person, whether it was given directly to the intended recipient or to a third party on behalf of the intended recipient, whether it was given before or after the event, and whether the beneficiary was a public official or another person.
79. Regarding the purpose of the bribery of a foreign public official, Section 291A makes it an offense to bribe a foreign public official "for an act in relation with his functions, in order to obtain, to assure or to promote a business activity or other advantage in relation to business activity"
80. The sanctions for the foreign bribery offense are identical to those for domestic bribery: up to seven years imprisonment, a fine of up to about 1.13 million NIS (approx. 321,000 USD) or four times the benefit obtained or intended to be obtained (whichever is higher) for natural persons, and about 2.26 million NIS (approximately 642,000 USD) or four times the benefit obtained or intended to be obtained (whichever is higher) for legal persons.
81. For additional information regarding the elements of the bribery offense according to Article 15 of the Convention, please see Israel's response to UNCAC article 15 above.
82. Israel reported that, since the enactment of the foreign bribery offense in Israel in mid-2008, there have been a number of public allegations of bribery of foreign public officials by Israeli companies including by Israeli State-owned companies.



83. In some of the cases, as part of preliminary examinations conducted by the Israel Police (IP), Israel made requests for information from the authorities of the countries involved. In some cases additional information was gathered, but the IP concluded that the information did not merit the commencement of a formal investigation. In other cases the IP is still reviewing the information it had gathered in order to conclude whether the information merits opening an investigation.
84. In 2009, the Attorney General issued Guideline No. 4.1110 "Attorney General Guideline - Prohibition of Bribery of Foreign Public Officials - Section 291A of the Penal Law, 1977," in order to clarify the policy regarding the investigation and prosecution of the foreign bribery offense.
85. This Guideline describes Israel's commitment to creating an international climate free from corruption - as expressed by Israel's accession to the OECD Convention and UNCAC - and emphasizes the importance of effective enforcement.
86. The Guideline refers to Section 291A of the Penal Law and describes some of the unique characteristics of the offense, namely, that it will usually be committed, at least in part, in a foreign country involving a public official of a foreign country or an international organization. Given these and other special features, the Guideline stresses the importance of a cohesive investigation and prosecution policy regarding this offense.
87. The provisions of the Guideline outline the procedure for dealing with suspicions and allegations of bribery of foreign officials - from the police's preliminary examination of information and suspicions, through the commencement and conduct of investigations, until the indictment stage.
88. The Guideline instructs the police to examine allegations relating to an offense under Section 291A, whether such allegations stem from a complaint, information from an Israeli or foreign government entity or international organization, a media report in Israel or abroad, or any other source.
89. Due to the importance of enforcement in this field, the Guideline makes it clear that a decision to open an investigation or to record the information or the complaint without commencing an investigation is to be made by the Head of the Investigation and Intelligence Unit of the Israel Police. If an investigation is conducted, then upon completion of the investigation, the file is to be referred to the Deputy State Attorney (Special Affairs), who is authorized to oversee the enforcement of foreign bribery offense laws, and who must make a reasoned recommendation to the Attorney General (through the State Attorney), as to whether to file an indictment or to close the case.
90. Going further than the instructions of the Guideline, the Deputy State Attorney (Special Affairs) closely monitors the status of various relevant cases involving suspicions of foreign bribery and the manner in which they are handled, and is updated periodically on the matter.
91. To date, there have been no prosecutions of the foreign bribery offense in Israel. Israeli authorities are taking steps to increase awareness to the criminal prohibition on bribery of foreign public officials in international transactions. In addition to the awareness-raising measures listed below, a number of activities have been undertaken, including the setting up

of a specialized government website, the publication of a brochure on the subject (a copy of which was provided to the reviewers during the country visit), and the organization of, and participation in, conferences and academic forums.

92. The Ministry of Foreign Affairs (MFA) has introduced and continues to take measures to raise awareness regarding the foreign bribery offense. As part of their missions overseas, Israeli diplomats are in touch with Israeli businesspersons in order to assist in promoting economic and trade ties with foreign countries, and to increase awareness regarding the offense of bribery of foreign public officials. The MFA's legal department circulated several internal memorandums to all Ambassadors and Consuls abroad, and to all heads of departments in the MFA headquarters, explaining the provisions concerning bribery and the requirements regarding detection and reporting of foreign bribery. The MFA requested that Israel's officials abroad continue to implement these provision at all levels.
93. In addition, the MFA conducts sessions on the issue in the training curriculum of all training and preparatory programs, from the basic courses for new Cadets, training future diplomats, through to advanced courses for diplomats preparing for ambassadorial postings. In addition, as part of their appointment, all diplomatic representatives (that is, all Israeli officials stationed abroad under the authority of an Israeli Embassy or Consulate, including police and military attachés) are required to sign an acknowledgment of awareness of the information.
94. Israel's Ministry of the Economy has similarly incorporated a special session covering the foreign bribery offense into its training program for officials serving abroad.
95. The Ministry of Public Security (responsible for the Israel Police (IP)) has collaborated with the Ministry of Justice in an effort to raise awareness of the foreign bribery offense amongst senior officers in the IP Investigation and Intelligence Department. One example of such efforts is a conference regarding the foreign bribery offense held in 2009 which included senior IP officials responsible for investigating economic crimes. Another example is a training session conducted by FBI officials to share best practices on foreign bribery investigations. The session was attended by senior officials from the IP and additional law enforcement agencies. During the session, FBI agents presented case studies and case typologies on ways to conduct foreign bribery investigations.
96. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977** - Please see Section 291, 291A, 293 and 294 in the attached legislative compilation.

**Attorney General Guideline No. 4.1110**

**Prohibition on Payments of Bribes to a Foreign Public Official - Section 291A of the Penal Law, 1977**

#### **General**

97. In recent years, the world is witnessing a growing need to effectively deal with the phenomenon of corruption and bribery in international business transactions. The international community has decided to join forces in the international fight against corruption, as expressed by the obligations undertaken by the international community in the

United Nations Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The underlying perception of these conventions is the commitment and dedication by each of the member states, to act together to eradicate bribery and corruption, which are key in successfully creating an international climate free from corruption. Israel is a party to both conventions, reflecting its belief in this perception and its willingness to take part in the joint global effort.

98. Setting a criminal prohibition on bribing a foreign public official and effectively enforcing it comprise an important tier in the struggle to create an international climate free from corruption. This prohibition complements the internal legislative framework, while making a contribution to the strengthening of domestic ethical standards. Additionally, effective enforcement of the prohibition will place Israel in line with many countries in the world which enforce the prohibition on paying bribes in international transactions. Maintaining these international standards will render it easier for Israeli companies to operate in international business transactions and will increase the competitiveness of the Israeli market.
99. On 14 July 2008, the Knesset approved the Penal Law (Amendment No. 99), 2008 adding Section 291A to the Penal Law, 1977, which set forth an offense of bribing a foreign public official in business activity (hereinafter: "the offense").
100. The wording of the offense is as follows:

**"291A Bribing a Foreign Public Official**

(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291.

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section:

**"foreign country"** includes, but not limited to, any governmental unit in the foreign country, including national, district or local unit.

**"foreign public official"** includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

**"public international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;"

101. The offense is included in the bribery offenses section in the Penal Law, and all the general provisions applicable to offenses in this section apply to it as well. The offense has unique characteristics, amongst other reasons because it will usually be committed, at least in part, in a foreign country, engaging a public official of a foreign country or an international

organization. Given these and other special features, it is immensely important that the investigation and prosecution policy regarding this offense will be cohesive and applied in light of the protected values the criminal statutory provision seeks to promote and Israel's international commitments.

## **Procedural Guidance**

1. When the Israel Police (hereinafter: IP) learn of any suspicion relating to an offense under Section 291A, the information must be looked into in order to examine whether there is a sufficient evidentiary basis to merit the opening of an investigation. The source of such a suspicion may be, inter alia, a complaint, information from any Israeli or foreign government entity or international organization, a media report in Israel or abroad, or any other source.
2. While examining whether to open an investigation as mentioned above, the IP will consider whether the initial evidentiary basis justifies opening an investigation, and, inter alia, consider the content of the suspicions, the alleged authenticity of the information which was the basis of the suspicion, etc.
3. Among the considerations as to whether to open an investigation or to prosecute for this offense, considerations concerning national economic interests, potential effect on the relations with a foreign country, or the identity of the person or the corporation involved, can not be taken into considerations.
4. Due to the importance of enforcement in this field, a decision to open an investigation or to archive the information or the complaint without an investigation shall be made by the Head of the Investigation and Intelligence Unit of the IP.
5. In cases where it was decided to conduct an investigation, upon its completion, the file shall be referred to the Deputy State Attorney (Special Functions) who will be responsible for making a reasoned recommendation to the Attorney General (through the State Attorney), as to whether to file an indictment or to close the case.
6. If an accompanying attorney has been assigned to the case, the IP will refer the file, following the conclusion of the investigation, to the accompanying attorney, which in turn would refer it, with his recommendations, to the Deputy Attorney General (Special Functions).
7. In Accordance with the provisions set in Section 291A(b) of the Penal Law, an indictment, for this offense, shall not be filed unless prior written consent was given by the Attorney General. This authority has not been delegated at this stage.
8. Where offense was perpetrated, in its entirety, outside of Israel, i.e. a "foreign offense", the applicability of the Penal Law to the foreign offense should be verified. In this case, the written consent of the Attorney General should also be given with regards to prosecution of the foreign offense, as required in Section 9(b) of the Penal Law.
9. Given the characteristics of the offense under Section 291A, it is important to cooperate with law enforcement authorities of other countries - in accordance with relevant statutory provisions, and common practice. Such cooperation may substantially assist, in many cases, with the conduct of investigations. The importance of international cooperation in the investigation of the foreign bribery offense is highlighted by Israel's commitment to collaborate with other countries to establish a corrupt free climate.
10. In cases where it was decided to open an investigation, the IP shall also consider whether it would be possible to forfeiture the bribe, its worth, or its proceeds, as the matter may be, and shall collect evidence for this purpose. The use of tools such as forfeiture and provisional remedies is highly significant in such cases, as the motivation for bribery offenses is economic, and these tools - which are essentially instruments of "economic enforcement" - carry great effectiveness and deterring power.

11. In addition to the question of the existence of evidentiary basis for commission of an offense under Section 291A of the Penal Law, the investigation and prosecution authorities shall also consider whether there is an evidentiary basis for including charges for additional offenses from the Penal Law or other laws, such as money laundering offenses, tax evasion, offenses under the Securities Law, etc. Where possible, indictments should be filed against the cooperation, as well as against the persons directly responsible.

12. Where the indictment includes an offense under Section 291A of the Penal Law in addition to offenses from other laws which contain provisions on confiscation (such as the Prohibition on Money Laundering Law, 2000 and the Income Tax Ordinance [New Version], 1961), the differences between the forfeiture provisions in each of the laws should be taken into account, and consideration must be given to the question under which statutory provisions should the forfeiture be requested.

13. Supervisory bodies in the Defense Establishment and other relevant bodies within the Defense Establishment and the Ministry of Foreign Affairs shall assist and provide information they have at their disposal, as will be required, during the examination and investigation proceedings conducted with regard to this offense.

102. Israel indicated that related statistical data on number of investigations, prosecutions and convictions/acquittals is not available.

**(b) Observations on the implementation of the article**

103. According to section 291A, paragraph (a), of the Penal Law, any person who gives a bribe to a foreign public official in exchange for an act in relation to his or her functions, in order to obtain, ensure or promote business or any other advantage in relation to business activity shall be treated in the same manner as a person who commits an offence under section 291.

104. Following the desk review, Israel additionally clarified that as Article 16(1) of the Convention includes the undue advantage element in two places: regarding undue advantage given to a foreign public official, and in the part of the article concerning its purpose (*in order to obtain or retain business or other undue advantage in relation to the conduct of international business*), section 291A of the Penal Law also includes the provision (or promise) of a bribe in order to obtain an undue advantage regarding business activity. It is important to note that in Israel, the offense is broader than that contained in the Convention, as it applies to all business activity in general and not just to international business.

105. The term “bribe” is defined broadly in Israeli law. Section 293(1) provides that a bribe can consist of money, monetary equivalent, a service or any other benefit. The term “benefit” has been interpreted in Israeli case law to include a very wide range of subjects, including sexual bribery and a promise for appointment to a public position.

106. The **act** for which a bribe is given or offered is defined broadly and includes a number of aspects. Section 293(2) of the Penal Law, which applies also to Section 291A (the offence of bribery of a foreign public official), provides that a bribe can be given or offered for an act or omission; delaying an act; expediting an act, retraction of an act; and discriminating in favor of or against any person.

107. Section 293(3) provides that the offence of bribery not only includes bribes given for specific acts (*quid pro quo*), but also bribes given for preferential treatment in general. Case

law has interpreted this provision in a very broad manner and has held many times that bribery is considered to have been given to a public official even in the manner of “*cast thy bread upon the waters*”, in the hope that some time in the future the public official will reward the person giving the bribe in some way. Thus, for example, the Court held that a Deputy Mayor who requested building contractors who were constructing a building project in the city to contribute funds to municipal sports organizations, had committed an offence of receiving a bribe, even though it was not proven in the course of the trial that there was a specific act that he was required to do for the benefit of those contractors.

108. Furthermore, case law (in domestic bribery cases) has also held that if a public official has been given a benefit by a person with whom he is in a professional relationship has an official connection, a presumption of fact arises that such benefit was given for an act related to his function as a public official. It has also been held that a presumption of fact arises as to the mental element, whereby the public official taking such benefit is presumed to be aware that the benefit was given to him for an act related to his function.
109. Section 291A of the Penal Law contains a clause according to which an indictment shall not be issued in respect of an offence under that section unless written consent is given by the Attorney General.
110. Following the desk review Israel additionally clarified that such consent is required whenever an offence occurs outside of Israel (a “foreign offence”), in accordance with Section 9 of the Penal Law. The considerations that the Attorney General takes into account are not listed in the guidelines, and they include general considerations regarding the strength of the evidence, the availability of evidence to be presented in the proceedings and public interest in prosecution. However, in Attorney General Guideline No. 4.1110 Prohibition on Payments of Bribes to a Foreign Public Official, published further to the enactment of Section 291A, it was explicitly noted that among the considerations for deciding whether to open an investigation or to prosecute this offence, considerations of national economic interests, potential effect on the relations with a foreign country or the identity of the person or the corporation involved, **cannot be taken into consideration**.
111. There are no set procedures for the process and timeframe for obtaining the Attorney-General’s consent under these provisions. The relevant investigating unit normally refers an investigation file to a prosecutor at the relevant District Attorney’s (Criminal Division) office, and the IP will normally indicate whether there appears to be an evidential basis to prove the offence, although this does not amount to a recommendation to the prosecution service. The prosecutor will examine the material and give an opinion on the indictment. Where the AG’s consent is required, the file will then be referred to the Attorney-General’s Office.
112. There was some consideration during the country visit of whether consent at such a high level is an obstacle to effective criminal prosecution and what action must be taken by the investigating bodies in order for such consent to be given. In this context it was explained by Israeli authorities that the Attorney General’s consent was considered to add an extra level of assurance that significant prosecutorial decisions were exercised properly and consistently. Consequently, a consent requirement is in place not only with respect to the foreign bribery offence, but also for extraterritorial matters and foreign relations, as well as cases involving national security and high ranking public officials. Various safeguards, such as the Attorney General Guideline No. 4.1110 and the possibility of judicial review, govern the actions of the

Attorney General relating to applications for indictment in cases concerning the bribing of foreign public officials and other offences. Please see article 30, paragraph 3 below for further observations on the role of the Attorney General.

113. According to section 291A of the Penal Law (on bribing a foreign public official), the term "foreign public official" includes any employee of a public international organization and any person holding a public office or exercising a public function for a public international organization.
114. Following the desk review Israel additionally clarified that the definition of a foreign public official includes a public international organization and any public office holder or public office holder on behalf of that organization. The definition does not refer to the official's nationality, and even if he is by chance an Israeli national, for the purposes of the offense he would be considered as a **foreign** public official. In addition, the term "public international organization" is broadly defined in Section 291A to include any organization founded by two or more countries, or founded by another organization which itself was founded by two or more countries. Accordingly, organizations like the International Bank for Reconstruction and Development would be also included.
115. The self-assessment shows that over the course of more than five years (since July 2008), since the adoption of changes to Israeli legislation to introduce criminal liability for the bribery of foreign public officials, there has not been a single criminal case opened relating to that offence. In that regard, following the desk review Israel additionally noted that a forum of senior prosecutors carries out an in-depth examination whenever any information arises regarding allegations of bribery of foreign public officials. In addition, it was noted that Israel cooperates fully with other states investigating such offenses.
116. During the country visit Israel provided additional information emphasising the importance the Israeli authorities give the prevention and prosecution of the offence of bribery of foreign officials. Ministry of Foreign Affairs in cooperation with Israel's Agency for International Development Cooperation. (Mashav), the Ministry of Economy and the Ministry of Justice organise training workshops on foreign bribery and distribute information leaflets and instructions on the subjects among Israeli businesses operating abroad. Additionally a special team on the investigation of foreign bribery cases was jointly created by the Ministry of Justice and the Ministry of Foreign Affairs.
117. The representatives of the private sector also confirmed that the authorities take the issue seriously and closely engage with private sector entities to raise awareness of and prevent the bribery of foreign officials.
118. Regarding the Attorney-General's consent and the matter of sanctions, please see article 30.

**(c) Successes and good practices**

119. The presumption of fact developed in Israeli case law (in domestic bribery cases) stating that when a public official is given a benefit by a person with whom he is in a professional relationship or has an official connection, such benefit would be considered to be given for an act related to his function as a public official, can be regarded as a good practice conducive to the successful prosecution of bribery offences.

## **Article 16 Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

120. As required in Article 16(2) of the Convention, the Israeli authorities have considered the adoption of such a measure.
121. After consideration, and due to policy concerns, it was decided not to establish as a criminal offense the solicitation or acceptance by a foreign public official or an official of a public international organization of an undue advantage.
122. In reaching this decision, the following factors were taken into account:
123. The home State party is obligated to investigate and prosecute all alleged offenses under Article 15(2) involving one of its domestic official. It should remain the home state party's responsibility and interest to prosecute its own officials who have committed illegal acts of corruption in their capacity as that state's public official. As Article 16(2) does not require any link between the state criminalizing the act and the offender, according to our legal system this could be problematic.
124. Israel indicated that it believes that these are among the reasons that this provision was drafted as a discretionary one.

#### **(b) Observations on the implementation of the article**

125. Following the desk review Israel additionally clarified that prior to ratification of the Convention, Israeli authorities consulted extensively on this Article and concluded that there was no need to enact an offense of passive bribery by foreign public officials as, this was guided by the consideration that the criminalization of this kind of offenses constituted in an overreach into the domestic matters of the state that employs the foreign public official. Israel considers itself a part of the struggle to reduce, insofar as possible, the phenomenon of bribing foreign public officials. However it strives to do this through enforcing the prohibition on active foreign bribery and passive domestic bribery when its own citizens are involved as payers of a bribe, or when they are recipients of a bribe as domestic officials.
126. It was further explained during the country visit that procedurally the consultations were conducted during the series of meetings between relevant authorities.



## Article 17 Embezzlement, misappropriation or other diversion of property by a public official

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### (a) Summary of information relevant to reviewing the implementation of the article

127. Israel indicated that it has various measures in place aimed at preventing public officials from exploiting public property for their personal benefit. These measures provide a comprehensive legislative framework to support the ongoing efforts to promote ethical conduct by public officials and to prevent embezzlement, misappropriation and diversion of public funds.
128. Section 390 of the **Penal Law, 1977** (hereinafter: "Penal Law" or "Law") provides that a public official who steals a State asset, or an asset which came into his possession by virtue of his employment, and which is worth more than 1,000 NIS (approx. 264 USD) is liable to up to ten years imprisonment. This Section is supplemented by Sections 278 and 284 of the Penal Law, which cover cases of conflicts of interest of public officials (one of which is a private interest), so as to deter public officials from making a decision regarding a personal matter or one concerning their associate.
129. Section 278 of the Law provides that a public official who exercises any power obtained by virtue of his position, over assets or over business activities of any kind, while possessing a personal interest in the said assets or activities, is liable to up to three years imprisonment. Gifts to public officials, given in the course of the performance of official duties, are considered to be the property of the State (Section 2 of the **Public Service Law (Gifts), 1979**). In addition, a public official must give notice of the receipt of a gift, failing which he is liable to a fine of three times the value of the gift (Section 3(b) of the Public Service Law).
130. According to Section 284 of the Penal Law, public officials who commit fraud or a breach of trust in the performance of their duties are liable to up to three years imprisonment. This provision is the basic offense in Israeli law defining governmental corruption.
131. The main Israeli court case which dealt with the interpretation of Section 284 was Ad.Cr.H. 1397/03 *State of Israel v. Shimon Shavas*. In its ruling, the Court noted that despite the lack of clarity surrounding the offense, the fundamental prohibition against fraud and breach of trust by a public official plays an important part in ensuring the proper functioning of the public administration. The Court stated that allegations of breach of trust should "...be examined just like any other danger found at the Court's doorstep. The offense should not be interpreted too broadly, so as to deprive Israeli society of an important tool which preserves the values that underlie the civil service. However, there are situations in which the conduct constitutes both a criminal and disciplinary offense, while in other cases disciplinary action is not applicable and the only alternative is through criminal enforcement." The offense, which is a behavioral offense (i.e. does not depend on the outcome), protects three values: public trust in the civil service, the integrity of public officials (which has a constitutional status in

Israel) and the public interest for which civil servants are responsible (ensuring the proper functioning of the civil administration). An act constitutes a breach of trust if it significantly harms one or more of these values. The court must determine if the behavior is a breach of trust according to objective tests. The offense's *mens rea* is one of awareness and it relates only to the intent to commit the act constituting fraud or breach of trust, and not to the fact that the act results in a breach of trust or that it undermines the values that the criminal prohibition is meant to protect.

132. Israel further clarified that according to the Supreme Court, a public official's conduct will be considered a breach of trust if it significantly damages one or more of the following protected values: public trust in the civil service, the integrity of public officials (which has a constitutional status in Israel) and the public interest for which civil servants are responsible (ensuring the proper functioning of the civil administration). This test supports the approach that not any improper act by a public official is a criminal offense, rather only if it is accompanied by "a graver element" (Ad.Cr.H. 1397/03 *State of Israel v. Shavas*). Case law has determined that when the impetus for the public official's act is financial this makes up the required "grave element" (Ad.Cr.H. *Shavas*). In most cases where the public official reaped an improper benefit from his public position (for himself or someone else), his actions will fall into the definition of the offense – this would even more be the case so when the individual is a senior public official or the benefit is financial.
133. Israel additionally clarified that with regard to the prosecution of different elements of embezzlement by public officials as envisaged by the Convention, it is possible to apply one of the alternatives found in the definition of theft found in Section 383 of the Penal Law. The offense includes two alternatives: the first, "classic" alternative, is found in subsection (a)(1) and concerns the actual taking away of possession without the owner's consent; the second alternative – found in subsection (a)(2) is misappropriation – and defines a person committing theft while he has lawful possession – either serving a role as depositary or through partial ownership – of an object capable of being stolen, and if he fraudulently converts it to his own use or to the use of another person who is not the owner of that object. This refers to theft by a person serving in the role of depositary, without actually taking possession (this is a version of embezzlement found in the British common law). In this second alternative, possession is achieved through the rightful owner's consent.
134. Israel's Supreme Court has determined that to examine if there has been misappropriation one must use the fundamental "insubordinate owners" test. This means that the person acting as the depositary used the object in a manner different from which was intended by the owner when the deposit of the object was made (Cr.C. 27/56 *Zolberg v. the Attorney General* (1956); Cr.C. 7193/04 *Yekirevitch v. State of Israel*).
135. The Court also determined that the value protected through the classic alternative is the property interest of the owner. Regarding misappropriation, an additional value must be considered that of the trust based relationship between the owner and the person serving as a depositary (Ad.Cr.H 2334/09 *Perry et al. v. State of Israel*). In addition to these alternatives to the theft offense, Chapter A of the Law (Offenses against Property, in particular Sections 390 and 393) determines theft in aggravated circumstances, such as theft by a public official or theft by an agent. These offenses are based on the *mens rea* and *actus reus* of theft and they occur in conjunction with the factual requirements regarding the thief's identity (i.e. a public official or agent).

136. Regarding an "agent", Section 393 of the Penal Law determines who is authorized to take action regarding property and determines, *inter alia*, that this includes an individual who received a power of attorney for the property, having received instructions to use them or someone who was given property for another natural (or legal) person or for their credit.
137. Regarding the term "thing", section 383(c)(4) of the Penal Law determines that property for the purpose of the theft offense is a "thing which can be stolen." This is a broad definition, which includes anything of value which is a natural (or legal) person's property, and includes any non-tangible financial right (Cr.A. 232/93 *State of Israel v. Harnoy*).
138. It was further determined that theft (both of its alternatives) occurs only if the act "affected the finances or inventory of property" of the owner. In this case it would have to affect the State's finances or inventory of properties (Ad.Cr.H *Perry*). So long as a public official took (illegally) or misappropriated the State's property, while affecting the State's or the public's inventory of property, they are liable to be convicted for one of the alternatives of the theft offense (under the aggravated circumstances of theft by a public official).
139. In some cases this may be considered to be "obtaining anything by deceit" in accordance with Section 415 of the Penal Law. The offense applies to cases where through deceit and false premises the deceiver receives an undue advantage. This offense has been widely interpreted in case law (Cr.A. 752/90 *Barzel v. State of Israel* (1992) and Ad.Cr.H *Perry*). The offender is liable to three years imprisonment or five years imprisonment if the offense is committed under aggravated circumstances.
140. Regarding the question of what is deceit section 414 of the Penal Law, determines that deceit can be in writing, orally, behaviourally, by an act or omission. The Supreme Court has even determined that silence or not divulging facts can be considered deceit (Cr.A. 593/81 *Mendelbaum v. State of Israel*). When the situation involves false premises (either actively or through the non-divulging of certain facts) by a public official, it is possible that the obtaining anything by deceit prohibition will be relevant.
141. According to section 414 of the Penal Law, a "thing" which can be obtained by deceit includes a "right" or a "benefit." The Supreme Court has gone so far as to determine that the thing which has been obtained by deceit isn't required to have a pecuniary nature or even be tangible, it must only afford the deceiver with some sort of advantage (Ad.Cr.H *Perry*).
142. Israel cited the following applicable policy(s), law(s) or other measure(s).

## **Penal Law, 1977**

### **278. Public official who has private interest**

If a public official, by virtue of his office, has judicial or administrative powers over assets of a certain kind or over activity in the manufacture, trade or business of a certain category, and if he exercised those powers - either himself or through a third party - while he had a direct or indirect private interest in them, then he shall be liable to three years imprisonment.

### **284. Fraud and breach of trust**

If a public official, in the performance of his functions, committed fraud or a breach of trust that harms the public, even if the act would not have constituted an offense if committed against an individual, then he shall be liable to three years imprisonment.

### **390. Theft by public official**

If a public official steals a thing which is an asset of the State or which came into his possession by virtue of his employment, and if its value exceeds NS1,000, then he is liable to ten years imprisonment.

### **393. Theft by an agent**

If a person does one of the following, then he shall be liable to seven years imprisonment:

- (1) he steals an asset that he received pursuant to a power of attorney which entitled him to handle it;
- (2) he steals an asset handed over to him - or to him alone or with a third party - for the purpose of keeping it in safe custody, or that he use it or its value, all or part of it, for some purpose, or that he hand over all or part of it to some person;
- (3) he steals an asset which he received - alone or with a third party - for or to the credit of another person;
- (4) he steals from the proceeds of a security or of an act carried out in an asset received pursuant to a power of attorney, having received instructions to use them for a purpose or for making a payment to a third party.

## **Public Service Law (Gifts), 1979**

### **2. Gift to a public servant**

(a) If a gift was given to a public servant in his capacity as a public servant - whether in Israel or abroad, whether to him in person or to his spouse who lives with him or to his dependent child - and if the public servant did not refuse to accept it and did not return it to its donor immediately, then the gift shall become property of the State;

if no ownership is involved in the gift, then the public servant must pay its value to the State Treasury.

(a1) A public servant may request authorization for a gift that he received to be vested in him, but such authorization shall not be given, if the gift is of value for the State beyond its economic value, or if vesting it in the public servant involves the suspicion of a breach of integrity; obtaining a permit under this section is conditional on payment to the State Treasury, all in the manner, by the time and in accordance with what the Minister of Justice shall prescribe.

(b) Subsection (a) shall not apply to -

- (1) a gift of small and reasonable value, given as is customary under the circumstances;
- (2) a gift from his colleagues at work, in the service or in the position of the public servant;
- (3) a prize awarded to the public servant out of the State Treasury for his achievements, and also a prize awarded to the public servant not by the State Treasury for his achievements, if the grant of the prize was made public as prescribed in regulations.

(c) A gift that became State property and the amount that must be paid under subsection (a) shall be handled by returning it to the donor, by granting it to the public servant or in some other manner, all as prescribed in regulations.

### **3. Obligations of a public servant**

(a) A public servant must give notice of the receipt of a gift to which section 2 applies and deal with it at the time and in the manner prescribed in regulations.

(b) If a public servant knowingly violated an obligation imposed on him under subsection (a), then he shall be liable to a fine three times the value of the gift on the day it was received or on the day he was found guilty, whichever is greater.

(c) The Minister of Justice may, in regulations, designate instances in which monetary compensation may be accepted from a public servant who violated an obligation imposed on him under subsection (a) or who is suspected of such a violation; the amount of the composition shall not exceed the greatest fine that may be imposed for the offense; when the composition has been accepted, every legal proceeding in respect of the violation shall cease, but when an indictment has been brought, then no compensation shall be accepted as long as the Attorney General has not announced a stay of legal proceedings.

## **Penal Law, 1977**

### **Definition of theft**

383. (a) A person commits theft if he –

(1) takes and carries away a thing capable of being stolen, without the owner's consent, fraudulently and without the claim of a right in good faith, intending when he takes it to deprive its owner of it permanently;

(2) while he has lawful possession – either as a deposit or as partial ownership – of a thing capable of being stolen, and if he fraudulently converts it to his own use or to the use of another person who is not the owner of that thing.

b) In respect of theft under subsection (a), it is immaterial that the person who takes or converts is a director or officer of the body corporate to which the thing belongs, on condition that the other circumstances add up to theft.

(c) For purposes of theft –

(1) "**taking**" includes obtaining possession –

(a) by a trick;

(b) by intimidation;

(c) by the owner's mistake, the person who takes the object knowing that its possession was thus obtained;

(d) by finding, if – at that time of the find the finder believes that the owner can be discovered by reasonable means;

(2) "**carrying away**" includes the removal of a thing from the place which it occupies, and in the case of an attached object, its removal after it was completely detached;

(3) "**ownership**" includes part ownership, possession, the right of possession and control;

(4) "**thing capable of being stolen**" – a thing which has a value and is the property of a person, and in the case of an object

## **Penal Law, 1977**

### **Theft by agent**

393. If a person does one of the following, then he is liable to seven years imprisonment:

- (1) he steals an asset that he received with a power of attorney to deal with it;
- (2) he steals an asset deposited with him – alone or with another – that he keep it in safe custody, or that he use it or all or part of the consideration for it for a certain purpose, or that he deliver all or part of it to a certain person;
- (3) he steals an asset which he received – alone or with another – for or to the credit of another person;
- (4) he steals from the proceeds of a security, or of the disposition of an asset under a power of attorney, having received instructions to use it for a certain purpose or to pay it to a certain person.

## **Penal Law, 1977**

### **Obtaining anything by deceit**

415. If a person obtains a thing by deceit, then he is liable to three years imprisonment; if the offense is committed under aggravating circumstances, then he is liable to five years imprisonment.

## **Penal Law, 1977**

### **Definitions**

414. In this Article –

**"thing"** – real estate, movables. rights and any benefit;

**"deceit"** – an assertion about any matter in the past, present or future, made in writing, orally or by conduct, which the person who makes it knows to be untrue or does not believe to be true; and **"to deceive"** – to induce a person by deceit to perform or to refrain from performing any act;

...

143. Israel reported that, as mentioned above, the fight against corrupt public officials has been, for many years, a key component in the policy set out by Israel's executive, legislative and judicial branches. There are many examples concerning the investigation and prosecution of fraud and embezzlement offenses committed by public officials, which reflect Israel's commitment to upholding a high standard of conduct for public officials.

144. The following are some representative examples:

- In Cr.A. 5083/08 Shlomo Benizri v. State of Israel, Benizri, a former minister, was indicted of accepting bribes, breach of faith, obstructing justice, and conspiracy to commit a crime. Benizri accepted favors worth millions of shekels and various discounts from a contractor (Moshe Sella), in exchange for favors for the contractor. The Supreme Court denied Benizri's appeal and increased the sentence imposed by the District Court (18 months imprisonment and a fine of 120,000 NIS (approx. 33,000 USD) to four years imprisonment and a fine of 250,000 NIS (approx. 70,000 USD). Consequently, the Court defined the former minister's offenses as offenses of moral turpitude (i.e. offenses which limit a defendants ability to be elected for public office for a pre-determined period). Concerning the offense of breach of trust, the Court stated that "the criminal prohibition concerning a breach of trust is a "framework" prohibition whose purpose is to include within it a wide range of cases whose occurrence risks undermining the foundations of good governance, and may damage the Civil Service's image in the eye of the public it is meant to serve."

- In Cr.C. 40361/07 (Tel- Aviv) State of Israel v. Orna Lugasi a postal worker was convicted for the offense of theft by a public official. The defendant was sentenced to six months which could be served as community service. In addition, the defendant was sentenced to a 12 month suspended sentence for a period of three years, as well as a 10,000 NIS fine (approx. 2,800 USD) or an additional five months imprisonment.
- In HCJ 1262/06 the Movement for Quality Government v. the Shas Party, an employee of the Ministry of the Interior (Yehuda Avidan) ensured that requests to the Ministry on behalf of the members of the political party to which he belonged were handled expediently. Avidan was convicted of a breach of trust and was sentenced to three months of community service. After his conviction, elections were held in Israel and Avidan was selected to serve as the Deputy Chairman of the Central Elections Committee. The Supreme Court determined that Avidan's conviction prevents him from serving in a public position and cancelled his nomination.
- In Cr.C. 2060/06 (Jerusalem) State of Israel v. Tali Shalom Zaken, a municipal employee was convicted for theft by a public official. The defendant was sentenced to six months imprisonment which could be served as community service. In addition, the defendant was sentenced to a 18 month suspended sentence for a period of three years, as well as a 2,500 NIS fine (approx. 700 USD) and additional damages of 10,000 NIS (approx. 2,800 USD) to be paid by the municipality.
- In Cr.A. 499/11 Sharon Hajaj v. State of Israel, the court affirmed the conviction of a police officer of theft by a public official, fraud and breach of trust. The appellant served as a manager at the Kfar-Saba police station, and was responsible, inter alia, for the employment of police officers by private bodies. This responsibility gave him access to funds transferred by the private entities to the Israel Police (IP), for the officers' salaries and for the IP's expenses. The Appellant received cash payment from two contractors, and while charging less than the usual fee for the employment of police officers, he stole at least 64,000 NIS (approx. 18,000 USD). In order to conceal the theft, he entered false data into the police computer system. The appellant was sentenced to 36 months imprisonment, was fined and ordered to pay damages to the IP.
- In R.Cr.A. 7120/09 Yehoshua Forer v. State of Israel, the mayor of a city (Rehovot) was convicted of fraud and breach of trust, for granting rights in large-scale projects to an acquaintance of his without a tender process. The appellate Court decided not to interfere in the punishment handed down by the lower Court which stood at 200 hours of community service, five months suspended sentence and a fine of 75,000 NIS (approx. 21,000 USD) or an additional three months imprisonment.
- In Cr.C. (Tel Aviv) 40778-12-09 the State of Israel v. Yehoshua Vita, Vita served as an assessor in the Dan Region of Israel. Vita's personal attorney was Jacob Weinroth. While Weinroth represented Vita, Vita was the assessor on the tax assessments of Weinroth's other clients. The Court determined that this behavior was a breach of trust as Vita was in a severe conflict of interests and had strayed from correct public governance standards by failing to report the conflict of interests, by not keeping records of his assessments and involving other employees in determining the taxation. Vita was sentenced to six months imprisonment to be served as community service, an 18 month suspended sentence and a fine of 40,000 NIS (approx. 2,800 USD) or an additional two months imprisonment.

- In Cr.A. 7641/09 Avraham Hirshzon v. State of Israel, the Supreme Court affirmed the sentence of the former Minister of Finances, who had been convicted on counts of theft by a director, deceit and breach of trust in body corporate, money laundering, false entry in documents of body corporate and obtaining anything by deceit under aggravating circumstances. It had been alleged that Hirshzon spent NIS 60,000 (approx. 15,000 USD) on 104 meals at restaurants during weekends and charged such meals to the account of the National Workers Labor Federation (the NLF, a trade union which he had previously headed), that he had received another NIS 53,000 (approx. 13,000 USD) from the same source for meals at the Knesset cafeteria, and that he had embezzled millions of shekels from the NLF. He was sentenced to five years and five months imprisonment, an additional suspended imprisonment and a fine of NIS 450,000 (approx. 128,000 USD).

145. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It further referred to the General Data Note under UNCAC article 15(a) above.

#### **Abuse of Power by a Public Official due to a Private Interest (Penal Law Sec. 278)**

In 2009, 2 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2010, no investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, no investigations took place, while no cases were prosecuted and there were no convictions.

In 2012, 1 investigation took place, while no case was prosecuted and there were no convictions. In 2013, no cases were prosecuted and there were no convictions (there is no available data for this year on investigations).

#### **Theft by a Public Official (Penal Law Sec. 390)**

In 2009, 27 investigations took place, while 13 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 39 investigations took place, while 3 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 17 investigations took place, while 1 case was prosecuted and there were no convictions.

In 2012, 9 investigations took place, while no case was prosecuted and there were no convictions.

In 2013, 7 cases were prosecuted and there were no convictions (there is no available data for this year on investigations).

#### **(b) Observations on the implementation of the article**

146. Under section 390 of the Penal Law, any public official who steals an asset of the State or an asset which came into his or her possession by virtue of his or her official position is criminally liable if the value of the stolen asset exceeds 1,000 NIS (approximately 264 USD). Despite the fact that the Convention establishes no minimum value, given that the value indicated in the Penal Law is small, that provision may be regarded as complying with the relevant requirements of the Convention. Additionally, the offence of theft and some counts of theft with aggravated circumstances are not limited by a minimum value.



147. Section 390 of the Penal Law states that the stolen object, i.e. the property in question, must pass into the public official's possession, which equates to such forms of theft as misappropriation. The definition of theft in Section 383 applies to Section 390. With regard to other elements of embezzlement by public officials as envisaged by the Convention, it is possible to apply other provisions, such as t Section 284 (fraud and breach of trust) of the Penal Law.
148. Based on the above-provided information, Israel has implemented the provision under review.

## Article 18 Trading in influence

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

### (a) Summary of information relevant to reviewing the implementation of the article

149. The articles of the Convention are applied to public officials in the manner described under UNCAC article 15(a) above. As mentioned above, Section 293 of the **Penal Law, 1977** specifies the ways in which an act can constitute a bribe (whether it is given personally by the person who gives it or through another person; whether it is given directly to the person who takes it or to another for him; whether it is given in advance or after the act; and whether it is for the benefit of the person who takes it or by another). Furthermore, according to Section 293(4), it does not matter if the action for which the bribe was given was carried out by the person who actually received the bribe or someone under that person's influence.
150. As for a bribe provided to other persons (not in an official capacity), Section 295(b) provides: "If a person received money, valuable consideration, a service or any other benefit in order to induce - by himself or through another - a public servant mentioned in section 290(b) or a public servant mentioned in section 291A(c) to give undue preference or to practice discrimination, then he shall be treated like a person who took a bribe."
151. Section 295(c) applies to the individual who gave the bribe. It provides as follows: "If a person gave money, valuable consideration, a service or other benefit to a person mentioned in subsections (a) or (b), then he shall be treated like a person who gave the bribe; if a person accepts the bribe as mentioned in Sub-section (b1), then he shall be liable to half the penalty prescribed in that sub-section."

152. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977** - see Sections 290-295 as cited under paragraph a of article 15 above.

153. Israel provided the following examples of cases and case law.

- In Cr.A 6916/06 Armon Atias v. State of Israel, the appellant worked as a director in the Jerusalem Municipality's Department of Construction Supervision. His son and daughter-in-law operated a company providing services in the field of planning and construction. The indictment claimed that the appellant's son promoted his clients' businesses by using his relationship with the appellant. The appellant wished to advance his son's business and received a bribe from his son's clients in return for his involvement in expediting the processing of the client's files within the department. The bribe that the appellant received consisted in a salary to the son. The Court held that there was no need for the funds to come directly to the appellant. Regarding Section 293(5) of the Penal Law, the Court determined that in some circumstances, even if the person accepting a bribe did not receive the benefit of that bribe, his actions could still be considered as accepting a bribe, given that the other elements of the offense exist: "The wording of the offense is wide enough to include a variety of conducts. It does not provide an exhaustive list of possibilities. The legislator did not restrict it beyond the guidance set forth in Sections 293-294 of the Law, and there is no limit to the diversity of options in which the offense may take form in everyday life. There will always be a need to examine the intent of the giver on the one hand and the actions and the benefits conferred on the recipient on the other hand - and whether there is a causal relationship between them." In this case, the Court even perceived the conversion of the appellant's family member to Judaism, which was important to his family, as a bribe. The appellant was sentenced to 7 months imprisonment, 12 months suspended sentence and a 50,000 NIS fine (approx. 14,000 USD).
- In Cr.C. (Tel Aviv) 4004/09 State of Israel v. Dan Cohen, a former district court judge was an office holder of the Israel Electric Corporation's board of directors' Assets Committee, and a member of its principal tender committee. Cohen also owned a number of foreign companies holding foreign accounts. He was indicted on a number of charges. Taking a bribe in exchange for promoting a transaction whereby the Israel Electric Corporation (IEC) would purchase adjacent lands owned by another public company, Rogozin. Cohen suggested the purchase of Rogozin's lands and exerted his influence on the IEC's board of directors and management in order to approve the transaction. In another charge, Cohen was accused of fabricating a transaction which involved fictitious consultation services provided by an off-shore company. He was also charged with using his influence, contracts and status as the IEC's dominant board director, to influence the outcome of a tender in favor of Siemens, in exchange for 1/3% of the value of the transaction (approx. 1,300,000 USD). Before he could be brought to trial, Cohen fled to Peru and remained there for eight years. However, he was extradited to Israel on March 2013 based on UNCAC and was recently convicted of passive bribery, fraud and breach of trust as part of a plea bargain. The plea bargain included a sentence of six years of imprisonment and a fine of NIS 6,000,000 (approx. 1,700,000 USD). An additional NIS 4,000,000 (1,100,000 USD) were confiscated under Section 297 [Confiscation and reparation] of the Penal Law.

154. Israel provided the following related statistical data on number of investigations,

prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a) and to the data pertaining to bribery offences.

### **Methods of Bribery (Penal Law Sec. 293)**

Note: There is no available data for 2009-2010 and for investigations concerning this offence. The data also refers to solicitation.

In 2011, 1 case was prosecuted and there were 3 convictions. In 2012, 1 case was prosecuted and there were no convictions. In 2013, 1 case was prosecuted and there were no convictions.

#### **(b) Observations on the implementation of the article**

155. The provisions of article 18 of the Convention are implemented through various provisions of the Law that deal with criminal liability for bribery.
156. The understanding that the instances of trading of influence are in practice covered by the Penal Law provisions on bribery was also confirmed during the country visit.

### **Article 19 Abuse of functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

157. The main offenses concerning abuse of functions in Israel's **Penal Law, 1977** are the following: Public Servant who has Private Interest (Section 278), Abuse of Office (Section 280) and Fraud and Breach of Trust (Section 284).
158. For additional information concerning the interpretation of Section 284, please see the information under UNCAC article 17.
159. Israel cited the following applicable policy(s), law(s) or other measure(s).

#### **Penal Law, 1977**

**278. Public servant who has private interest**, as cited under article 17 above.

#### **280. Abuse of office**

If a public servant does one of the following, then he shall be liable to three years imprisonment: (1) in abuse of his authority he performed or ordered to be performed an arbitrary act that adversely affects the rights of another person;

(2) he enters the residence of a person against that person's will, without legal authorization and not pursuant to arrangements prescribed by law.

**284. Fraud and breach of trust**, as cited under article 17 above.

160. Israel provided the following examples of cases and case law.

- On September 24 2012, the Jerusalem District Court sentenced former Prime Minister Ehud Olmert to a one-year suspended prison sentence and a NIS 75,300 (approx. 19,000 USD) fine for breach of trust, while acquitting him of several other charges (Cr.C. 426/09 State of Israel v. Ehud Olmert). On November 7, 2012, the State Attorney's Office filed an appeal in the Supreme Court of Israel regarding the acquittal on two counts: (1) fraud with aggravating circumstances and breach of trust in what was known as the "Rishon Tours Affair" and (2) breach of trust in what was known as the "Talansky Affair". In its appeal, the State Attorney's Office is arguing that even in light of the trial court's factual determinations, Olmert should have been convicted on both counts under applicable law and the relevant legal principles.

161. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a) and the data under UNCAC article 17.

**Abuse of Office by a Public Official (Penal Law Sec. 280(1))**

In 2009, 11 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2010, 14 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, 9 investigations took place, while 1 case was prosecuted and there were no convictions.

In 2012, 10 investigations took place, while no cases were prosecuted and there were 7 convictions.

In 2013, 2 cases were prosecuted and there were 2 convictions (there is no available data for this year on investigations).

**Abuse of office - a Public Official Entering a Residence Unlawfully (Penal Law Sec. 280(2))**

In 2009, no investigations took place (there is no available data for this year on prosecutions or convictions).

In 2010, no investigations took place (there is no available data for this year on prosecutions or convictions).

In 2011, 1 investigation took place, (there is no available data for this year on prosecutions or convictions).

In 2012, no investigations took place, (there is no available data for this year on prosecutions or convictions).

**(b) Observations on the implementation of the article**

162. The requirements under article 19 of the Convention relating to the establishment of abuse of functions or position as a criminal offence, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity, are reflected in sections 278, 280 and 284 of the Penal Law of Israel.

163. Analysis of those sections shows that section 278 is limited in scope to the areas of activity in which public officials engage, specifically the powers that such officials have with respect to assets of a certain kind or to certain activities in industry, trade or business.
164. Under section 280, violation of the rights of another person is an essential element of the offence.
165. Following the desk review, Israel additionally clarified that the offenses under Article 19 to the Convention are also reflected, alongside Sections 278 and 280 of the Penal Law, in Section 284 of that Law, which is a general provision. Section 284 criminalizes a wide variety of acts of breach of trust by a public official (as interpreted in the Ad.Cr.H. 1397/03 *State of Israel v. Shimon Shavas* case (cited under article 17 above) and as detailed above). This Section will apply, *inter alia*, to cases where the public official acted in violation of the applicable rules and regulations when such a violation is against protected values. A public official who violates laws in order to obtain an illicit benefit for himself or an associate can also be charged with a breach of this offence. As mentioned above, the involvement of a financial motive in the public official's act usually testifies to the severity of the act and therefore includes the grave element (Ad.Cr.H. *Shavas*). This is also true when the public official is senior. In Cr.A. 9347/08 *Algarisi v. State of Israel*, the defendant served as the Deputy Mayor of Eilat, the chair of the zoning and planning committee, and the chair of the local basketball team. In the latter capacity, the defendant loaned money to the team and at the same time provided personal collateral to the team's debts. The defendant applied to a bank to cover the debts owed by the team, and the bank required that the Eilat Municipality provide guarantee to secure the loan. The defendant persuaded the members of the city council to vote in favor of the provision of the guarantee to the sum of 5 million NIS (approx. 1,086,000 Euro). The defendant did not inform the other council members of the fact that the team owed money to him and also voted in favor of the decision. After the bank provided the funds to the team, the defendant's loan was repaid the sum of 282,000 NIS (approx. 60,235 Euro).

The Supreme Court held as follows:

"With all due respect, the argument that the defendant did not derive a personal benefit can not be accepted, even if the defendant was entitled to receive the payment of the relatively substantial sum. The defendant operated under the knowledge that if the loan will not be provided the team would become insolvent and the chances that he receives payment will diminish, the more so because he was aware that the team had eight additional creditors. In order to advance his self interest, the defendant convinced the Eilat city council to guarantee the bank loan, without disclosing his personal interests to secure the loan. Several months later the team, in which he served as the chairman, paid the defendant his debt in full. "Surprisingly", after the dissolution of the team, the Eilat city council was required by the bank to give effect to the guarantee. The result was that this sophisticated move by the defendant made sure that his own funds would be protected, while the city council – public funds – had to assume the burden of the failed management of the team. It could be that the city council would have, in any case, provided a guarantee to the loan, but this we will never know, because the defendant acted in breach of trust and in grave conflict of interests in order to ensure his personal benefit at the expense of the public benefit."

166. It is important to note that Section 284 does not require the obtaining of an undue advantage by the public official or for another, and any breach of the public trust without

these elements is considered an offence (making the offence wider than what is required by Article 19).

167. In CC. (Tel Aviv District) 5303/08 State of Israel v. Shalom Krwani, the defendant served as the chairman of the Council of Cemeteries and as a member of the Council. In these capacities he was considered a "public official". The Council issued a fictitious tender to operate a parking garage. The court held that the defendant was aware that the tender was fictitious, or at least should have been aware of that fact. The defendant was convicted of fraud and breach of trust although it was not proven that he obtained a benefit from the act. The rationale for the conviction was that because the defendant was aware, or at least suspected, that the tender applicant acted fraudulently to obtain the bid, and did not disclose this to the other council members, in effect allowing the process to advance, he violated the public trust and acted against what is expected from a public official.
168. In R.Cr.A 7120/09 Forer v. State of Israel, the defendant served as the mayor of Rehovot, and was convicted of breach of trust (without the element of fraud) because he acted to provide projects, without a tender process, to a contractor, despite the determination by the municipality's legal adviser that such a process must take place. Additionally, due to his inability to transfer funds to the contractor without a tender, the defendant caused, by the use of fictitious contracts, a false representation that the funds were transferred to a municipal company while he was aware that the funds were actually paid directly to the contractor. The Supreme Court held that the fact that the defendant had reasonable motives and did not intend to obtain a benefit for himself or his associates did not detract from the wrongfulness of the act.
169. Based on the information provided above, Israel has implemented the provision under review.

## **Article 20 Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

170. Israel indicated that its authorities have considered the adoption of such a measure. However, after consideration, it was decided not to establish illicit enrichment as a criminal offense.
171. The enactment of a criminal offense as suggested in Article 20 would be contrary to the fundamental principles of the Israeli legal system. The presumption of innocence is a fundamental principle of Israel's criminal law. In Israel, the prosecution bears the burden of proving beyond a reasonable doubt all elements of the criminal offense. It is rare for criminal offenses to place the burden of proof on the defendant. Establishing illicit enrichment as a criminal offense in Israel as set forth in Article 20 could result in a criminal offense

conviction even where the increase in the defendant's assets does not stem from any corrupt or otherwise illegal conduct. Corrupt conduct is criminalized by offenses such as Bribery, Fraud and Breach of Trust, and the provisions of Israel's **Public Service Law (Gifts), 1979**. In addition, certain provisions under various Israeli laws pertaining to conflicts of interest and ethical conduct reflect the underlying rationales of Article 20 and its purpose, as detailed below.

172. The Public Service Law (Gifts) prohibits certain public officials from accepting gifts presented to them in their capacity as public servants. Along with the **Civil Service Regulations**, the Public Service Law (Gifts) mandates the reporting of such gifts and sets the standards for the lawful acceptance of proposed gifts by public servants. The prohibition on accepting any form of gift applies broadly to public servants and includes employees of the state and local authorities as well as elected officials.
173. The **Civil Service Regulations** (the "Takshir") includes, inter alia, prohibitions on gaining personal benefit from public positions and operating in conflicts of interest. The "Takshir" is published on the Civil Service Commission's website. Section 42.7 of the Takshir (Chapter 11 of the rules of ethics) provides that a civil servant may only receive a salary or other payments from the State Treasury, and may not receive any other benefit from another person for his public work or in connection with such work. These particularly apply when a civil servant has a private business, i.e. an additional source of funding, and are meant to minimize the use of such businesses as a source through which to receive illicit enrichment. Circular notes on this matter, addressed to governmental units, are published online and distributed regularly via group emails to government officials.
174. The **Civil Service Law (Appointments), 1959**, requires that certain public officials declare assets, debts, loans and past or additional sources of income (if these might apply in the future), for themselves and their families. According to Section 35 of this law, as well as the **Civil Service Law (Appointments) (Declaration of Assets), Regulations, 2008**, senior officials or employees with access to sensitive and/or confidential information who may be susceptible to outside influence are obligated by law to submit extensive reports, including a declaration of assets. Senior officials in the public service must declare their assets when beginning their appointment and must update this information at least once every four years. The Civil Service Commissioner must protect the confidentiality of these declarations, and the information cannot be revealed without the employee's consent or by a court order given after the court considered the level of invasion of privacy entailed.
175. Ministers and deputy ministers are required to make such declarations to the State Comptroller with respect to themselves and their families, pursuant to the **Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers, 2003**. Ministers and deputy ministers are required to submit their declaration of assets within sixty (60) days of their appointment date, annually thereafter, and within sixty (60) days of the end of their appointment. Rule 6(3)(a) of the Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers states that a minister may not receive a salary or a benefit other than the salary paid by the state. According to Rule 6(5), a minister may not invest funds in or hold securities except through a "blind trust." Rule (6)(6) of the Rules for the Prevention of Conflicts of Interests by Ministers and Deputy Ministers provides that a minister may not purchase or receive State assets, directly or indirectly, other than assets sold or given to the public according to predetermined principles and which the public has had an equivalent opportunity to purchase or receive.

176. Similarly, heads of municipal authorities and their deputies are also required to submit such declarations, pursuant to the **Heads of Municipal Authorities and their Deputies Law (Financial Statement), 1993**. According to this law, their declarations of assets are submitted to a former Supreme Court justice or a district court justice appointed by the President of the Supreme Court. This obligation also applies to Israeli Parliament Members (Members of Knesset, MK) by virtue of Article 13b of the **Knesset Members Immunity, Rights and Duties Law, 1951** and Article 15 of the **Rules of Ethics for Members of the Knesset, 1984**.

177. The aforementioned declarations serve as a method of comparing civil servants' assets before, during and after their tenure and therefore a way to identify undeclared assets.

178. On the disciplinary level, Section 17 of Israel's **Civil Service Law (Discipline), 1963** includes more general offenses that allow for more flexibility in defining disciplinary offenses than that available in criminal law. If a civil servant's behavior falls into one of the law's offenses such as "conduct unbecoming a civil servant" or "dishonest conduct", they may be tried for disciplinary offenses.

**(b) Observations on the implementation of the article**

179. The self-assessment indicated that the Israeli authorities had considered the possibility of adopting measures as provided for in article 20 of the Convention but, after consideration, it had been decided not to establish illicit enrichment as a criminal offence. It was additionally explained during the country visit that procedurally the consultations were conducted during the series of meetings between relevant authorities. It was decided not to establish a criminal offense of illicit enrichment, and therefore no corresponding bills were drafted. There is a system of asset declarations for certain public officials, members of government, heads of municipal authorities and their deputies, and members of the Knesset in place, as well as a prohibition on public officials from accepting gifts presented to them in their capacity as public servants.

180. Following the desk review, Israel additionally clarified that Section 413 of the Penal Law is fundamentally different from article 20 of the Convention, as Section 413 places the burden on the prosecution to prove that there is a reasonable suspicion that the property in the defendant's possession was stolen. Failure to provide an explanation for possession of the property is not enough to convict the defendant of the offense – this was established, for example, in Cr.C.244/99 *The State of Israel v. Nafez Shatya*. Only after the prosecution has proven that there is a reasonable suspicion that the objects was stolen, does the burden pass to the defendant to show that the property was acquired legally and in good faith. By contrast, in Israel's view, article 20 creates an overly broad presumption that any significant asset increase was obtained illegally.

181. The reviewers were of the view that consideration could be given to the State Comptroller, the legal advisor of the Knesset or some other appropriate body or person taking over the asset declarations of Members of the Knesset. This could help streamline and consolidate reporting functions.



## Article 21 Bribery in the private sector

### Subparagraph (a) of article 21

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

#### (a) Summary of information relevant to reviewing the implementation of the article

182. Israel indicated that it has partially implemented the provision under review. Following consideration of the issue, Israel has chosen not to extend the bribery offense to the private sector at this time. However, private entities that provide a public service are included in the definition of "public official," for the purposes of bribery offenses.

183. Section 290 of the **Penal Law, 1977** states:

#### **290. Bribe taking**

(a) a public official who takes a bribe for an act in relation with his functions, is liable to ten years imprisonment or to the higher of the following fines:

(1) Five times the fine specified in Section 61(a)(4); if the offense was committed by a corporation, then ten times the amount specified in Section 61(a)(4).

(2) Four times the benefit obtained or intended to be obtained by the offense.

(b) In this Section, "public official" includes an employee of a body corporate that provides a service to the public.

184. The term "body corporate that provides a service to the public" has been interpreted broadly by the courts. In Ad.Cr.H. 10987/07 *State of Israel v. Cohen*, the Supreme Court stated: "...the Court's rulings... have taken a broad approach to the interpretation of the term "body corporate that provides a service to the public," which resulted in the application of the bribery offense to an increasing variety of corporations. In this context...various flexible criteria have been developed in order to determine if a corporation should be considered a "body corporate that provides a service to the public" for the purpose of the bribery offense. Amongst this list of criteria, which is not exhaustive, one can include the necessity of the service provided by the corporation, the nature of the service, the identity of the owner [of the corporation], the extent of government supervision on the corporation's activities, the funding of the corporation and the subsidies it receives from public funds, the corporation's discretion in selecting its clients and the public's ability to make an informed decision when selecting from the different corporations that provide the same service. Together with these criteria, the term "body corporate that provides a service to the public" should be interpreted consistently with the purposes of the bribery offense from which this term stems."

185. In Cr.A. 122/84 *Moshe Manzur v. State of Israel*, it was held that a bank is a body corporate that provides a service to the public, even though it is a private-commercial body whose goal is to maximize profits. In Cr.A. 477/79 *Ben Itzak v. State of Israel*, it was held that a Health Fund Company employee is also included in this definition.

186. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977 290. Bribe taking** as cited under paragraph a of article 15 above.

187. Israel provided the following examples of cases and case law.

In Cr.A. 8573/96 *Markado v. State of Israel*, the Supreme Court ruled that bank and trust funds managers and employees paid and received bribes, among other offences. The court determined that since trust funds and banks provide an important public service and since they owe their investors a heightened duty of loyalty under the law, they are considered to be "a body corporate that provides a service to the public" under Section 290 of the Penal Law. The defendants were sentenced to different terms of imprisonment (up to six years imprisonment plus an addition two years suspended sentence and to fines amounting to millions of shekels.

188. Regarding related statistical data on number of investigations, prosecutions and convictions/acquittals, Israel referred to the General Data Note under UNCAC article 15(a) above and to the data pertaining to bribery offences.

**(b) Observations on the implementation of the article**

189. The self-assessment indicated that the Israeli authorities had considered the possibility of adopting measures as provided for in article 21 of the Convention but, after consideration, it had been decided not to establish bribery in the private sector as a criminal offence. It was additionally explained during the country visit that procedurally the consultations were conducted during the series of meetings between relevant authorities.

190. Bribery in the private sector is partially covered by those provisions of criminal law concerning private organizations that provide services to the public.

**Article 21 Bribery in the private sector**

**Subparagraph (b) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

191. Israel indicated that it has partially implemented the provision under review. Israeli law does not include an offense of solicitation or acceptance of an undue advantage by a person who works for a "private sector entity". However, if the undue advantage is given to an employee of a legal person, the conduct referred to in the Article could constitute an offense

under Section 425 of the **Penal Law, 1977**, which reads as follows:

**425. Deceit and breach of trust in body corporate**

If a director, business manager or other employee of a body corporate, or a receiver, liquidator, temporary liquidator, asset manager or special manager of a body corporate committed, in connection with his position, deceit or a breach of trust that harms the body corporate, he shall be liable to three years imprisonment.

192. Although Section 425 applies only to legal persons, the wording of the provision is broader than that of Article 21(b) of the Convention in respect of the acts constituting the offense, in that Section 425 covers all acts of breach of trust, and not only the solicitation or acceptance of undue advantage.
193. Israel also highlighted the reference to the term "employee of a body corporate that provides a service to the public" in Section 290(b), of the Penal Law which has been interpreted broadly by the courts, as described under UNCAC article 21(a) above.
194. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Penal Law, 1977**

**290. Bribe taking** as cited under paragraph a of article 15 above.

**425. Deceit and breach of trust in body corporate**

If a director, business manager or other employee of a body corporate, or a receiver, liquidator, temporary liquidator, asset manager or special manager of a body corporate committed, in connection with his position, deceit or a breach of trust that harms the body corporate, he shall be liable to three years imprisonment.

195. Israel provided the following examples of cases and case law.

In Cr.A. 281/82 *Abu-Hatzera v. State of Israel*, the defendant - who directed a charity - was convicted of an offense under Section 425, for using money from the charity to promote his interests and those of his associates.

In addition see the abovementioned, Cr.A. 8573/96 *Markado v. State of Israel*, where trust fund managers and employees were convicted of paying and receiving bribes, and of deceit and breach of trust in body corporate.

196. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. Israel also referred to the General Data Note under UNCAC article 15(a) above.

**Deceit and breach of trust in a corporation (Penal Law Sec. 425)**

In 2009, 28 investigations took place, while 3 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 13 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, 17 investigations took place, while 2 cases were prosecuted and there were no

convictions.

In 2012, 10 investigations took place, while 4 cases were prosecuted and there were no convictions.

In 2013, 8 cases were prosecuted and there were 5 convictions (there is no available data for this year on investigations).

**(b) Observations on the implementation of the article**

197. According to Israeli legislation, it is not a specific criminal offence for a person who directs or works, in any capacity, for a private sector entity to solicit or accept an undue advantage for himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting. Nevertheless that kind of conduct can be covered by section 425 of the Penal Law, as a deceit and breach of trust in a corporation as long as the essential element of “harm to the body corporate” is present in actus reus of the offence.
198. During the country visit the Department of Securities, Tel Aviv District Attorney (Economic Crimes Division) provided additional case examples illustrating the implementation of the provision under review.
199. In case Cr.C 47038-10-12 State of Israel v. Dankner. the defendant served as the chairman of the HaPoalim Bank (one of the biggest banks in Israel). He was convicted by the Tel Aviv District Court of several counts of breach of trust offenses, including Section 425 of the Penal Law (Deceit and breach of trust in body corporate), Section 14B(b) of the Banking Ordinance (Damaging the proper management of the business of a banking corporation) and Section 416 of the Penal Law (Obtaining by a scheme). The Tel Aviv District Court sentenced Dankner to one year imprisonment, a one year suspended sentence and 1,000,000 NIS fine (approximately 300,000 USD). The defendant appealed to the Supreme Court, which affirmed the conviction but shortened the sentence to 8 months imprisonment (Cr.A. 677/14 Dankner v. the State of Israel).
200. The defendant admitted to having committed breach of trust and harmed the proper management of business of the bank by intermingling his private businesses and his position as chairman. This stemmed from his personal interest and involvement in a number of transactions as chairman. For example, he was involved in a transaction with individuals and entities that had business relations with a company held in part by him and his family. He also concluded a transaction with a business associate of Hapoalim Bank and owner of a Dutch bank that had given him a 5,000,000€ loan, information which was not disclosed to the Bank's Board of Directors at the time of the transaction.
201. The defendant was investigated regarding offenses under Section 290 of the Penal Law during his tenure as chairman of the bank. Banks have been recognized as corporations that provide a public service. However, since there was insufficient evidence to file an indictment based on that section, he was indicted on counts based on Section 425 of the Penal Law relating to breach of trust in the body corporate.
202. In its decision, the Supreme Court emphasized the need to protect, by use of a criminal offense, the required trust in a corporate entity, especially when a publicly traded corporation is concerned. The Court added that when considering the offense, the damage to the corporation should be taken into account, alongside the role of the official involved and the nature of the corporation. In implementing this principle to the case, the Court classified the

acts of the defendant as an injury to the body corporate. Even though there was no specific injury identified the involvement of the chairman of the bank in such acts and conflict of interest in itself brings the bank into disrepute, which fosters distrust on the part of Israeli and foreign investors (as they can potentially view the bank as a "third world bank").

203. The term "breach of trust" includes many different types of acts, including acts that constitute independent criminal offenses, such as theft, taking bribes, fraud and more. Section 425 covers two types of offenses: deception and breach of trust, in cases where the corporate official does not act in accordance with his duties. Dankner, as mentioned in the judgment, was convicted under Section 425 of the Penal Law without the need to prove deception.
204. With respect to the damage to the corporation, in accordance with the precedent set in the Shavas Case (para. 120 to the Draft Desk review), the offense is regarded as a behavioural offense (similar to Section 284), and therefore the damage to the corporation element should not be interpreted as requiring a result, but rather only the behavioural element (the act in itself) – i.e. it is sufficient that the employee's actions have the potential to damage the corporation. The damage to the corporation is not limited to material or financial damages, but may also include other important interests such as the corporation's image and reputation. In addition, concealing facts, presenting an incorrect image of a corporation's financial and economic status or preferring the personal interests of a manager over those of the corporation could constitute "injury to the body corporate".
205. During the country visit Israel also reported that following the Markado supreme court ruling (Cr.A. 8573/96 *Markado v. State of Israel* ) regarding the application of section 290 of the penal law with respect to private financial institutions where the Supreme Court ruled that since trust funds and banks provide an important public service and since they owe their investors a heightened duty of loyalty under the law, they are considered to be “a body corporate that provides a service to the public” under Section 290 of the Penal Law, Israel Securities Authority (ISA) conducted several investigations against trust fund managers and other investment managers suspected of receiving bribe for acts in relation with their functions in the financial institutions. Among those:
206. In 2011, a providence fund manager was suspected of receiving bribe for performing transactions in the funds under his management. The manager was charged with fraud, theft and deceit and breach of trust in body corporate.
207. In 2011, a CEO of an investment company was suspected of receiving bribe for performing transactions in trust funds under his management, and another individual was suspected of giving bribe to several investment managers in institutional bodies, including the abovementioned CEO.
208. In 2008, one of Israel's largest banks and its trust funds subsidiaries were charged with violations of the mutual trust investment law, for granting unlawful incentives to investment advisors employed by the bank to promote and solicit the bank's funds to their customers. The orientation of the offence in this case is partly similar to bribery, although it is viewed upon as a customer protection law.
209. It was concluded, based on the above, private sector bribery is partially criminalized in Israeli legislation.

## **Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

210. Israel indicated that several offenses established in the **Penal Law, 1977** fulfill the purpose and scope of Article 22, such as Deceit and Breach of Trust in Body Corporate (Section 425), Theft by an Employee (Section 391), Theft by a Director (Section 392) and Theft by an Agent (Section 393).

#### **Penal Law, 1977**

##### **391. Theft by an employee**

If an employee steals anything that is an asset of his employer or which came into his possession for his employer, whose value exceeds NS1,000, then he shall be liable to seven years imprisonment.

##### **392. Theft by a director**

If a director or officer of a body corporate steals anything that is an asset of the body corporate, he shall be liable to seven years imprisonment.

##### **393. Theft by an agent**

If a person does one of the following, then he shall be liable to seven years imprisonment:

- (1) he steals an asset that he received pursuant to a power of attorney which entitled him to handle it;
- (2) he steals an asset handed over to him - or to him alone or with a third party - for the purpose of keeping it in safe custody, or that he use it or its value, all or part of it, for some purpose, or that he hand over all or part of it to some person;
- (3) he steals an asset which he received - alone or with a third party - for or to the credit of another person;
- (4) he steals from the proceeds of a security or of an act carried out in an asset received pursuant to a power of attorney, having received instructions to use them for a purpose or for making a payment to a third party.

**425. Deceit and breach of trust in body corporate** as cited under paragraph b of article 21 above.

211. Israel provided the following examples of cases and case law.

- In Cr.A. 2103/07 *Avihu Horowitz v. State of Israel*, four individuals were convicted of financial offenses and of deceit and breach of trust in a body corporate. The Court noted

that the purpose of this offense is to protect a corporation from breach of trust and to expand the circle of those who are criminally liable so as to cover individuals who, through their functions, are in a position to harm the corporation. The most severe sentence imposed was 40 months imprisonment, including 16 months suspended sentence and a fine of 800,000 NIS (approx. 223,000 USD) or another 9 months imprisonment.

- In R.Cr.A. 10904/08 *Yergman v. State of Israel*, the accused were convicted of abusing their positions in a public company by making use of the company's assets and business operations for their personal benefit. One of the defendants was sentenced to 2 years imprisonment, an additional year of suspended sentence and a fine of NIS 300,000 (approx. 85,000USD); the other defendant was sentenced to 3 months of community service and a fine of NIS 25,000 (approx. 7,000USD).
- In Cr.A. 3587/12 *Esther Dadon v. State of Israel*, the appellant, who worked as an accountant and bookkeeper in a corporation, was accused of forging the owner's signature on company checks that she had written out to herself, and of forging salary data and attendance records in order to produce false salaries and transfer money between accounts. She was convicted of theft by an employee, forgery under aggravating circumstances, use of forged document under aggravating circumstances, deceit and breach of trust in a body corporate, making false entries in documents of body corporate and conspiring to commit a felony. She was sentenced to 4.5 years imprisonment and another 1.5 years suspended sentence.
- In Cr.C. 40182/02 *The State of Israel v. Eti Alon and Avigdor Maximov*, the defendant Alon was sentenced to 17 years imprisonment in 2003 for her role in the embezzlement of about 300 million shekels from the Trade Bank, where she had been the deputy chief of investment. She confessed in 2002 to stealing the money over a five-year period, in order to help her brother, Ofer Maximov, pay off his gambling debts. Maximov was sentenced to 15 years in prison. Alon was sentenced to 17 years imprisonment and an additional two years suspended sentence, and a fine of 5 million NIS (approx. 1,430,000 USD).

212. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a) and the data under UNCAC article 17 and 21(b).

#### **Theft by an employee (Penal Law Sec. 391)**

In 2009, 570 investigations took place, while 184 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 605 investigations took place, while 216 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 653 investigations took place, while 30 cases were prosecuted and there were 6 convictions.

In 2012, 592 investigations took place, while 41 cases were prosecuted and there were 13 convictions.

In 2013, 56 cases were prosecuted and there were 23 convictions (there is no available data for this year on investigations).

### **Theft by a director (Penal Law Sec. 392)**

In 2009, 13 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2010, 10 investigations took place, while 5 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 7 investigations took place, while no case was prosecuted and there were no convictions.

In 2012, 4 investigations took place, while 1 case was prosecuted and there were 2 convictions. In 2013, 1 case was prosecuted and there were no convictions (there is no available data for this year on investigations).

### **Theft by an agent (Penal Law Sec. 393)**

In 2009, 98 investigations took place, while 124 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 201 investigations took place, while 78 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 102 investigations took place, while 7 cases were prosecuted and there was 1 conviction.

In 2012, 113 investigations took place, while 28 cases were prosecuted and there were 5 convictions.

In 2013, 36 cases were prosecuted and there were 10 convictions (there is no available data for this year on investigations).

### **(b) Observations on the implementation of the article**

213. Section 391 of the Penal Law establishes that any employee who steals an item that is an asset owned by his or her employer or that was intended for the employer but came into the possession of the employee is criminally liable if the value of the stolen asset exceeds 1,000 NIS (approximately 264 USD). Despite the fact that the Convention establishes no minimum value, given that the value indicated in the Penal Law is small, that provision may be regarded as complying with the relevant requirements of the Convention.

214. During the country visit Israel additionally reported that in several cases in recent years, the Department of Securities, Tel Aviv District Attorney (Economic Crimes Division) filed indictments against defendants charged with fraud and embezzlement in financial institutions and publicly traded companies:

215. In several cases, investment managers were charged with theft of property held by them under fiduciary duty. Typical cases involved theft through fraudulent trading in the Tel Aviv stock exchange and creating matched transactions that resulted in the transfer of funds from the customers' accounts to the investment managers' accounts. In recent cases courts have sentenced such defendants to substantial periods of incarceration (e.g. Cr.A. 4666/12 **Gorbach v. State of Israel**; Cr.C. 51462-12-10 (Tel Aviv) **State of Israel v. Kaufman**).

216. Other typical mode of embezzlement treated by the department involves unlawful transfer of funds and benefits from publicly traded companies to controlling shareholders and managers. In several recent cases, controlling shareholders of traded companies were



convicted of hiding their personal interest in transactions conducted by the company. Such personal interest arises, for example, from the controlling shareholder's relations to the contracting entity or from private benefits that the controlling shareholder gains from the transaction. In such cases the defendants were charged with fraud, deceit and breach of trust, and disclosure violations under the Israeli securities law, and sentenced to substantial periods of incarceration (e.g. Cr.A. 3896/04 **Arad Hashkaot U'Pituach Ltd. v. State of Israel**; Cr.A. 5307109 **Davis v. State of Israel**).

217. In other cases, controlling shareholders and managers of publicly traded companies were convicted of transferring funds from the public company to private companies owned by them or to related entities without due disclosure and without proper authorization by the company's organs. In such cases the defendants were charged with theft, fraud, deceit and breach of trust, and disclosure violations under the Israeli securities law, and sentenced to substantial periods of incarceration (e.g. Cr.C. (Tel Aviv) 40213/05 **State of Israel v. giv'oni et al.**).

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (a) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

218. Israel indicated that it has a well-established, comprehensive and effective regime for combating money laundering. This regime is constantly being examined, reviewed and updated in order to address new problems and the ever-increasing sophistication of crimes. The main applicable law is the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL" or "Law"), which is supplemented by additional legislation in related fields.

219. The main principles of the PMLL are as follows:

220. The PMLL provides that a person carrying out a transaction in prohibited property with the purpose of concealing or disguising its source, the identity of those who own the rights therein, its location, its movements or a transaction in it, is liable to up to ten years' imprisonment or a heavy fine (Section 3(a) of the Law).

221. Similarly, the PMLL states that a person executing a transaction in "prohibited property" or delivering false information concerning it, with the object of preventing or causing

incorrect reporting, shall be liable to up to ten years imprisonment or a heavy fine (Section 3(b) of the Law).

222. "Prohibited property," according to Section 3 of the Law, refers to property originating directly or indirectly in an offense, property used to commit an offense or to facilitate the commission of an offense, and property against which an offense has been committed. In order to prove an individual's "knowledge" under Section 3, it is sufficient to show that the person carrying out the act knew that it was prohibited property, even if the person did not know to which specific offense the property was connected (Section 5 of the Law).
223. The PMLL defines almost all of the criminal offenses established in accordance with the Convention as predicate offenses.
224. Section 7 of the PMLL requires financial institutions to identify their clients before performing a transaction, to maintain appropriate records and to report to Israel's Money Laundering and Terror Financing Prohibition Authority (IMPA). Financial institutions, as listed in the First Annex to the PMLL, are required, pursuant to regulations issued by the Governor of the Bank of Israel and other authorities, to report to IMPA any activities they perceive as being unusual (Unusual Activity Report - UAR) in view of information in their possession, including transactions that appear to have been performed in order to circumvent reporting requirements.
225. In addition, financial institutions report to IMPA's Currency Transaction Reports (CTR) when they perform financial transaction above a certain threshold (i.e. cash deposits above 50,000 NIS (approx. 14, 000 USD) and international wire transfers above 1,000,000 NIS (approx. 70,000 USD)).
226. Israel sees the involvement of such institutions as holding tremendous potential in assisting the enforcement efforts against money laundering. The volume of financial information and transaction records gathered by these institutions makes them key players in identifying and recording irregularities that might indicate money laundering, and consequently the predicate offense - including bribery and bribery of foreign public officials.
227. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Prohibition on Money Laundering Law, 2000** - Sections 1, 2, 3, 4, 5 & 7 in the attached legislative compilation.

Chapter 1: Interpretation

### Section 1

In this Law -

"gems" - a stone listed in Schedule 1.1;

"precious stones" gems or diamonds, whether set in jewelry or in other objects or not, unless they have been integrated or are intended to be integrated into work tools;

"stock exchange" - as defined in section 1 of the Securities Law;

"The Postal Bank" - the company as defined in the Postal Authority Law, 5746-1986, in its capacity as a provider of financial services as defined in that Law, through the subsidiary as defined in section 88K of the said Law;

"stock exchange member" - a member of the stock exchange as determined by the stock exchange rules referred to in section 46 of the Securities Law, excluding a banking corporation;

"the Prohibition on Financing Terrorism Law" – the Prohibition on Financing Terrorism Law, 5765-2005;

"the Banking (Licensing) Law" - the Banking (Licensing) Law, 5741-1981;

"the Companies Law" - the Companies Law, 5759-1999;

"the Value Added Tax Law" - the Value Added Tax Law, 5728-1968;

"the Penal Law" - the Penal Law, 5737-1977;

"the Securities Law" - the Securities Law, 5728-1968;

"diamond" - a clear, colored or opaque carbon crystal having a monocrystalline or polycrystalline structure and which is harder than any other form of carbon, including a man-made crystal;

"monies" - cash, bank or travelers cheques; "money changer" - (deleted);

"money services provider" - one to whom the registration obligation stipulated in section 11C applies;

"money services" - the service described in section 11C(1)-(8);

"portfolio manager" - as defined in section 1 of the Regulation of Investment Advice and Investment Portfolio Management Law, 5755-1995;

"dealer in precious stones" - anyone trading in precious stones, even if this is not his sole vocation, provided that he entered into one or more precious stones transactions during the calendar year beginning on the date which shall be stipulated in an order made pursuant to section 8A in return for a sum of money equivalent to at least 50,000 NIS;

"precious stones transaction" - the acquisition or receipt of ownership of one or more precious stones, including as a result of the realization of a charge on the precious stone by anyone other than a banking corporation, provided that the precious stone or the sum of money paid for it was handed over in Israel;

"property transaction" - the acquisition or receipt of ownership or any other proprietary interest, whether gratuitously or in return for payment, as well as a disposition involving delivery, receipt, holding, conversion, a banking transaction, investment, a transaction in or the holding of securities, brokerage, the granting or receipt of credit, import, export, creation

of a trust and the mixing of prohibited property or of prohibited property with non-prohibited property;

"the Dangerous Drugs Ordinance" - the Dangerous Drugs Ordinance [New Version], 5733-1973;

"the Arrest and Search Ordinance" - the Criminal Procedure (Arrest and Search) Ordinance [New Version], 5729-1969;

"customs officer" - anyone who the director, as defined in the Income Tax Ordinance, has authorized with regard to this Law;

"property" - land, chattels, money and rights, including proceeds or property attributable to or acquired from the sale of or profits generated by such property.

"banking corporation" - as defined in the Banking (Licensing) Law, 5741-1981, as well as an auxiliary corporation as defined in that Law which was incorporated in Israel.

## Chapter 2: Offences

### Section 2

(a) In this chapter, "offence" shall mean one of the offences listed in Schedule 1.

(b) For the purposes of this chapter, an offence as stated in subsection (a) shall be regarded as an offence notwithstanding that it was committed in a foreign country, provided that it also constitutes an offence under the laws of that country.

(c) The condition stipulated at the end of subsection(b) shall not apply with respect to those offences listed in paragraph (18) of Schedule 1, or to those listed in paragraphs (19) and (20) of that Schedule which involve the commission of an offence listed in paragraph (18).

### Section 3

(a) A person undertaking a property transaction of a type referred to in paragraphs (1)-(4) below (in this Law - "prohibited property") with the object of concealing or disguising its origin, the identity of those owning the rights therein, its location, movements or a transaction in it, shall be guilty of an offence punishable by ten years imprisonment or a fine of twenty times that stated in section 61(a)(4) of the Penal Law -

- (1) property obtained directly or indirectly through the commission of an offence;
- (2) property which was used to commit an offence;
- (3) property which facilitated the commission of an offence;
- (4) property against which a crime was committed.

(b) A person undertaking a property transaction or giving false information in order to circumvent or prevent the submission of a report as required under sections 7, 8A or 9 or in order to cause an erroneous report to be submitted pursuant to one of those sections, shall be guilty of an offence for which the same punishments as stated in subsection (a) shall apply; for the purposes of this subsection, "giving false information" shall include not giving an update regarding any detail which must be reported.

#### Section 4

A person undertaking a property transaction in the knowledge that the property in question is prohibited property of a type and worth the amount listed in Schedule 2, shall be guilty of an offense punishable by seven years imprisonment or a fine of ten times that stated in section 61(a)(4) of the Penal Law; for the purposes of this section, "knowledge" does not include turning a blind eye to the matter as defined in section 20(c)(1) of the Penal Law.

#### Section 5

An offence shall be committed under sections 3 and 4 where it is proved that the person undertaking the transaction knew that the property was prohibited property, notwithstanding that he was unaware of the specific offence with which it was connected.

#### Section 6

(a) A person shall not bear criminal liability under section 4 if he did one of the following:

- (1) He reported to the police in a manner and on a date to be determined, prior to undertaking the property transaction, of his intention to do so, and complied with its instructions pertaining thereto, or reported to the police as aforesaid as soon as possible under the circumstances, after carrying out the property transaction.
- (2) He reported in accordance with the provisions of sections 7 or 8A - where the provisions of those sections apply to him.

(b) The Minister for Internal Security in consultation with the Minister of Justice shall determine the date and manner of reporting under subsection (a)(1).

#### Section 7

(a) For the purpose of enforcing this Law, the Governor of the Bank of Israel, after consulting with the Minister of Justice and the Minister for Internal Security, shall issue an order stating that with regard to the type of matters and property dispositions specified therein, a banking corporation -

(1) shall not undertake a property transaction while providing the service unless he has in his possession the identification details, as specified in the order, of the person receiving the service from the banking corporation; the Governor shall define in the order who the person receiving the service from the banking corporation shall be in this regard, and that definition may include the beneficiary of the transaction or the person creating a trust or endowment (in this section - the service recipient); where the service recipient is a corporation or the transaction is being undertaken at the request of a corporation or through the account of a corporation, the definition may include the person who has control over the corporation; for the purposes of this paragraph -

- (a) "beneficiary" - a person for whom or for whose benefit the property is being held, the transaction is being undertaken, or who has the ability to direct the disposition, and all whether directly or indirectly;

(b) "control" - as defined in the Securities Law, and each term used in that definition shall be interpreted as it is in that Law;

(2) shall report the service recipient's property transactions which shall be referred to in the order in the manner which shall be stipulated in the order, including the transactions as aforesaid which were only partially completed;

(3) shall keep and maintain records in such manner and for such period as shall be stipulated in the order with regard to the following matters:

- (a) the identification details as stated in paragraph (1);
- (b) the transactions with respect to which the reporting obligation specified in paragraph (2) applies;
- (c) any other measure as specified in the order which needs to be taken in order to enforce this Law.

(b) For the purpose of enforcing this Law, in relation to any entity listed in Schedule 3 for which he is responsible and following consultations with the Minister of Justice and the Minister for Internal Security, a Minister shall determine within the framework of an order the obligations to identify, report and to make and preserve records referred to in subsection (a) which apply to it *mutatis mutandis*, as the case may be; such Minister shall likewise specify the methods by which the obligations stipulated in the order are to be discharged.

(c) Notwithstanding the provisions of any law, the order may stipulate the types of reports in relation to which the disclosure of anything pertaining to them, including an internal clarification leading up to their preparation, the contents of the report or the fact that a request made in connection with the report was received, as well as the granting of a right to inspect the documents attesting to them, shall be forbidden or restricted; a person disclosing any matter or allowing the inspection of a report in violation of an order issued pursuant to this subparagraph shall be guilty of an offence punishable by up to one year's imprisonment.

(d) A report being submitted pursuant to this section shall be transferred to a database as stated in section 28.

(e) The methods by and dates on which a report shall be transferred to the database shall be decided upon by the Minister of Justice after consultations with the Minister for Internal Security and -

(1) in the case of a banking corporation, the Governor of the Bank of Israel;

(2) in the case of an entity listed in the Third Schedule, the Minister who is responsible for that entity.

## **Schedule 2**

(section 4)

A. The following categories of property if sold for NIS 150,000 or more within the framework of a single transaction or a series of transactions carried out during a three month period:

- (1) objets d'art
- (2) ritual objects and Judaica;
- (3) transportation vehicles, including sailing vessels and aircraft;
- (4) precious stones and precious metals;
- (5) securities;
- (6) real estate;
- (7) antiquities;
- (8) carpets.

B. Monies in excess of NIS 500,000 transferred within the framework of a single transaction or a series of transactions during a three month period; where that sum was given as consideration for one of the items of property listed in paragraph A, the value limitation specified therein with respect to that item shall apply; "monies" in this context shall include travelers cheques, bank cheques and financial assets in the form of pecuniary deposits, savings, investments in provident and pension funds, as well as options and future contracts as defined in section 64 of the Joint Investment Trusts Law, 5754-1994.

228. Israel provided the following recent examples of successful prosecutions of money laundering offenses:

- Defendants convicted of violating Section 3(b) of the **PMLL**, sentenced for imprisonment, payment of criminal fines and confiscation of funds (Va.R. 1062/06 (Nazareth) State of Israel v. Ochaion).
- Defendants convicted of violating Section 3(a) of the PMLL, sentenced for imprisonment, payment of substantial criminal fines and confiscation of substantial funds (over 250,000 USD) (Cr.C. 219/03 (Haifa) State of Israel v. Tanach).
- Defendants convicted for violation of Section 3(a) of the PMLL, sentenced to imprisonment and payment of criminal fines (Cr.C. 371/04 (Jerusalem) State of Israel v. Seida).
- Defendants convicted of violation of Section 3(b), sentenced to imprisonment and payment of criminal fines (922/05 (Jerusalem) State of Israel v. Gartner).
- Defendants convicted, inter alia, for violation of Sections 3(a) and 4 of the PMLL and sentenced to imprisonment, payment of criminal fines and confiscation of substantial funds (over 4,000,000 USD). Some of the defendants were convicted of violations of the aforementioned offenses without being convicted of the offenses in which the prohibited property originated (40099/08 (Tel Aviv) State of Israel v. Ben David).
- Defendant convicted for violation of Section 3(a) of the PMLL and sentenced to imprisonment (7162/08 (Haifa) State of Israel v. Sinai).
- Defendant convicted, inter alia, for violation of Sections 3(b) of the PMLL and sentenced to imprisonment and payment of damages (4072/09 (Tel Aviv) State of Israel v. Pearl).
- In Cr.A. 8551/11 Cohen Salkagi v. State of Israel, the Supreme Court determined that the "mens rea" required to prove an offense according to Section 3(a) of the PMLL, is the

"intent to conceal" property. This intent need only be proved at one stage of the laundering process and not with regard to each and every stage as the appellant had claimed. However, concealment of property for the sole purpose of hiding the fact that a predicate offense (in this case - supplying fake medicine) was conducted is not "concealment" for the purpose of Section 3(a). "There should be a distinction between concealment for the purpose of preventing the exposure of the predicate offense or maintaining the possibility of performing the predicate offense, and concealment for the purpose of using the fruits of the predicate offense." In Obiter Dictum, it was stated that the general rule, where it is reasonable to infer that a person intended that the obvious and probable consequences of any act occur (referred to in Israel "the "probable consequences rule") applies to Section 3(a). The appeal was denied and the Supreme Court affirmed the sentencing handed down by the District Court: for Salkagi two years imprisonment, a one year suspended sentence and a fine of 200,000 NIS (approx. 57, 000 USD). The other appellant fined of 50,000 NIS (approx. 14,000 USD) and forfeiture of property.

- In Cr.A.4980/07 Alon Cohen v. State of Israel, the Court rejected the claim that predicate offenses must be related to drugs or organized crime (in that case the predicate offense was a scheme of speedometer forgery in used cars). The Court upheld the 42 separate money laundering convictions regarding separate cases of concealment of funds, and rejected the idea that these were all one count of money laundering. The Court also rejected the defendant's claim and convicted him of an additional count of money laundering when funds stemming from the forgery were withdrawn for the purchase of real estate. The Court stated that several incidents for money laundering can stem from the same original predicate offense. The Court sentenced Cohen to seven years imprisonment and forfeited money as well as an apartment
- In Cr.A. 2333/07 Ta-anach v. State of Israel one of the defendants, a real estate appraiser, was convicted of money laundering offenses (Section 3(a) of the PMLL) for acts of concealment of money that he had obtained fraudulently, by transferring funds from his account to those of his family. The Supreme Court determined that the acts significantly damaged ethical conduct, to the extent that they border on acts of corruption, which was made possible due to the defendant's position which included the exercise of public authority. The Court determined that the PMLL does not differentiate between a "sophisticated" act of concealment and a "simple" one, nor does it differentiate between easily traceable or difficult to detect concealment. Ta-anach and the second appellant were sentenced to four years imprisonment and a fine of three million NIS (approx. 856,408 USD) as well as forfeiture of monies. The third appellant was sentenced to three years imprisonment and a fine of 2.5 million NIS (approx. 713,673 USD). The fourth appellant was sentenced to six months imprisonment.
- In Cr.A. 7593/08 Roni Ritbalt v. State of Israel, the appellants were convicted in the District Court for bribery, money laundering and tax evasion offenses. The first appellant, Asher Cohen (Cr.A. 7666/08) received the bribe while working as the chairman of the tenders committee of Israel's Electric Corporation. He was convicted of receiving a bribe of approx. 370,000 USD as well as additional benefits, as well as for crimes of money laundering, using the bribe money. The other appellant, Roni Ritbalt, was convicted of providing some of the bribes, but the prosecution could not prove beyond a reasonable doubt that he knew about the others. The Court held that both the predicate offense (bribery) and the laundering offense were "internal offenses" which



give jurisdiction to the Israeli court, even though the funds were deposited abroad and a number of transactions were in foreign bank accounts. This is because the victims (the Israel Electric Corporation) were in Israel; the planning of the offense and control over its execution (telephone call to the bank in Austria) all occurred in Israel. Ritbalt was sentenced to four years in prison as well as an additional 12 months suspended sentence. He was also fined approx. 566,000 USD which could be served instead as an additional 24 months in prison. The court also ordered the forfeiture of approx. 848,400 USD of his property. The appeal was denied.

229. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals, and additional data on investigations, prosecutions and convictions for money laundering offenses (2008-2012). It referred to the General Data Note under UNCAC article 15(a) above.

**Prohibition on money laundering (Prohibition on Money Laundering Law Sec. 3)**

In 2009, 29 investigations took place, while 44 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 68 investigations took place, while 27 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 33 investigations took place, while 30 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 105 investigations took place, while 67 cases were prosecuted (there is no available data for this year on convictions).

There is no available data for 2013.

**Prohibition on prohibited property transactions (Prohibition on Money Laundering Law Sec. 4)**

In 2009, 1 investigation took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2010, 8 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, 4 investigations took place, while 4 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 5 investigations took place, while 7 cases were prosecuted (there is no available data for this year on convictions).

There is no available data for 2013.

**Providing money services without a registration certificate (Prohibition on Money Laundering Law Sec. 11L)**

In 2009, 2 investigations took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2010, 4 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, 5 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2012, no investigations took place, while no cases were prosecuted (there is no available

data for this year on convictions).  
There is no available data for 2013.

### **Money Laundering Offenses (2008-2012)**

2008												
Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated		
cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)	
48	126	8	35	10	22	-	-	9	9,528,533 <sup>1</sup>	4	1,582,655 <sup>2</sup>	

2009												
Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated		
cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)	
36	84	18	58	8	17	-	-	7	13,155,665	5	998,476 <sup>3</sup>	

2010												
Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated		
cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)	
70	156	21	82	13	27	-	-	24	23,408,833	9	7,054,248 <sup>4</sup>	

2011												
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<sup>1</sup>In addition, 8 apartments, 3 cars, 8 shops and a plot of land were seized but have not yet been sold or evaluated.

<sup>2</sup>In addition, 4 apartments have been confiscated but have not yet been sold or evaluated.

<sup>3</sup> In addition, 5 vehicles (including luxury cars) and real estate have been confiscated but have not yet been sold or evaluated.

<sup>4</sup> In addition, 2 vehicles have been confiscated but have not yet been sold or evaluated.

	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
	108	315	28	71	12	29	-	-	23	26,798,019	14	2,251,393 <sup>5</sup>

2012												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	Persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
	168	314	33	113	17	37	-	-	49	32,911,526	21	13,151,044 <sup>6</sup>

**(b) Observations on the implementation of the article**

230. Israel implemented the provision under review via section 3 (a) of the Prohibition on Money Laundering Law, 2000.

231. Israel additionally provided the statistical information on the number of referrals from the FIU to law enforcement agencies involving corruption offenses.

In 2013, IMPA exchanged with law enforcement authorities and counterparts FIUs, 50 corruption-related intelligence reports.

In 2013, 10% of the intelligence reports that IMPA disseminated to the police were related to bribery.

In 2012 8.3% were related to bribery and 7.1% were related to PEPs (Politically Exposed Persons).

232. Israel additionally provided the following statistical information on prosecutions and convictions for money laundering offences.

	<b>Total</b>
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<sup>5</sup> In addition, 1 real estate property, 2 cars (1 luxury car), 2 bank accounts, and a dozen digital appliances (computers, cellular phones, digital cameras, etc.) have been confiscated but have not yet been sold or evaluated.

<sup>6</sup> In addition, rights on 1 apartment, 1 luxury car and 1 motorcycle have been confiscated but have not yet been sold or evaluated; also, 196,200 EUR in fines, 8,000 EUR in ransom, and 5,000 EUR in administrative fine.

	Convictions	Prosecutions
<b>Section 3(a)</b>	65	190
<b>Section 3(b)</b>	37	63
<b>Section 4</b>	57	125
<b>Autonomous ML</b>	11	6

**Section 3(a):** transaction in prohibited property with the object of concealing or disguising its origin, the identity of those owning the rights therein, its location, movements or a transaction in it.

**Section 3(b):** property transaction or giving false information in order to circumvent or prevent the submission of a report (CTR\UAR).

**Section 4:** undertaking a property transaction in the knowledge that the property in question is prohibited property of specific type and value.

**Autonomous ML:** an offense of 3(a) with no predicate offense.

233. During the country visit Israel reported on the developed institutional network on the investigation and prosecution of money laundering offences. Police and the State Attorney Office have dedicated teams which are specifically focused on the money laundering and financial crimes offences. In particular, the unit in the Attorney General's Office includes experts on money laundering, taxation and civil law which makes the prosecution and investigation more efficient.
234. Relevant information is also actively shared via the Israeli law enforcement agencies "Fusion Center" (described further under article 38).

## Article 23 Laundering of proceeds of crime

### Subparagraph 1 (b) (i) of article 23

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

(a) **Summary of information relevant to reviewing the implementation of the article**

235. Israel indicated that it is not only a criminal offense in Israel to convert and transfer prohibited property or to conceal the illicit origin of the property, but also to hold or to use such property, knowing its character. According to Section 4 of **The Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL"), a person performing any property transaction knowing that it is "prohibited property", for the purpose of that Section, is liable to up to seven years imprisonment or a heavy fine. The types of property to which the section applies - provided that the value of the property is 150,000 NIS (approx. 43,365 USD) or more - are: works of art, Judaica and religious objects, vehicles, including ships and aircraft; precious metals and gems, securities, immovable property, antiques, rugs and money, above the amount of 500,000 NIS (approx. 142,000 USD). For the purposes of the section it is sufficient to prove that the person who performed the act knew that it was prohibited property, even if they did not know to which specific offense the property was connected (PMLL, Section 5).
236. Additionally, a person who maliciously receives, assumes control of or deals with money, securities or any other asset, knowing it was stolen, procured by blackmail, or obtained or was being used during a felony, is liable to up to seven years imprisonment. However, the person may be tried by the same court that tries the person who committed the felony and is liable to the same penalty as that person (Section 411 of the Penal Law, 1977). A person who receives and assumes control of money, securities or any other asset, knowing that it was taken, obtained, converted or dealt with by a misdemeanor is liable to the same penalty as the person who committed the misdemeanor (Section 412 of the Penal Law). Also, a person who is in possession of money, a security or another asset, in respect of which there is a reasonable suspicion that it was stolen, and the person is not able to establish to the Court's satisfaction that he acquired possession of it lawfully, will be liable to six months imprisonment (Section 413 of the Penal Law).
237. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Prohibition on Money Laundering Law, 2000**

**4. Prohibition on Prohibited Property Dispositions**, as cited under subparagraph 1 (a) (i) above.

**5. Proof of knowledge**, as cited under subparagraph 1 (a) (i) above.

**Penal Law, 1977**

**Article Five: Stolen Property**

**411. Receiving property obtained by felony**

If a person, in person or through an agent, maliciously receives - in person or through an agent - money, securities or any other asset, knowing it to have been stolen, procured by blackmail, or obtained or dealt with by a felony, or if he - in person or through an agent, alone or with another - assumes control of or deals with a said asset, then they are liable to seven years imprisonment; however, they may be tried by the Court competent to try the person who committed the felony and shall be liable to the same penalty as that person.

**412. Receiving assets obtained by misdemeanor**

If a person - in person or through an agent - receives a thing, money, securities or another asset, knowing it to have been taken, obtained, converted or dealt with by a misdemeanor, and if he -in person or through an agent, alone or with another - assumes control of or deals with a said asset, then he is liable to the same penalty as the person who committed the misdemeanor.

#### **413. Possession of suspect property**

If a person has possession of a thing, of money, a security or another asset, in respect of which there is a reasonable suspicion that it was stolen, and the person is not able to establish to the Court's satisfaction that he acquired possession of it lawfully, then he is liable to six months imprisonment.

238. Israel provided the following examples of cases and case law.

- Defendant convicted of violating Section 4 of the PMLL and sentenced to imprisonment, fines and confiscation of substantial funds (approx. 250,000 USD) (Cr.C. 40193/02 (Tel Aviv) State of Israel v. Avizmil).
- Defendant convicted of violating Section 4 of the PMLL and sentenced to imprisonment, substantial fines (approx. 250,000 USD) and confiscation of funds (Cr.C. Cr.C. 3088/02 (Jerusalem) State of Israel v. Malka).
- Defendant convicted of violating Section 4 of the PMLL and sentenced to imprisonment, fines as well as compensation to the complainants (Cr.C. 1046/06 (Nazareth) State of Israel v. Dahan).
- Defendant convicted of violating Section 4 of the PMLL and sentenced to imprisonment. The defendant was also extradited to the United States to stand trial for similar offenses there (Cr.C. 6709/05 (Tel- Aviv) State of Israel v. Misolovin).
- Defendant convicted, inter alia, of violating Section 4 of the PMLL and sentenced to imprisonment as well as confiscation of funds (approx. 45,000 USD) (9523/08 (Jerusalem) State of Israel v. Brikashvily).
- Defendants convicted, inter alia, for violations of Sections 3 and 4 of the PMLL as well as offenses under the Combating Criminal Organizations Law, 2003; they were sentenced to imprisonment and substantial fines (S.Cr.C. 1049/07 (Tel Aviv) State of Israel v. Abotbul).

239. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the data under UNCAC article 23(1)(a)(i) and the General Data Note under UNCAC article 15(a) above.

#### **Receiving property obtained by felony (Penal Law Sec. 411)**

In 2009, 463 investigations took place, while 222 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 415 investigations took place, while 167 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 422 investigations took place, while 243 cases were prosecuted (there is no

available data for this year on convictions).

In 2012, 517 investigations took place, while 263 cases were prosecuted (there is no available data for this year on convictions).

### **Receiving property obtained by misdemeanor (Penal Law Sec. 412)**

In 2009, 155 investigations took place, while 127 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 185 investigations took place, while 90 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 210 investigations took place, while 79 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 151 investigations took place, while 55 cases were prosecuted (there is no available data for this year on convictions).

### **Possession of suspect property (Penal Law Sec. 413)**

In 2009, 5363 investigations took place, while 970 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 5744 investigations took place, while 762 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 4881 investigations took place, while 593 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 3507 investigations took place, while 339 cases were prosecuted (there is no available data for this year on convictions).

## **(b) Observations on the implementation of the article**

240. Under Israeli law it is a criminal offence not only to convert and transfer prohibited property or to conceal the illicit origin of such property, but also to retain possession of or use such property in the knowledge that the property is prohibited. According to section 4 of the Money-Laundering Law of 2000, any person who performs a property transaction in the knowledge that the property concerned is “prohibited property”, as defined for the purposes of that section, is liable to up to seven years’ imprisonment or a heavy fine. The types of property to which the section applies — provided that the value of the property is no less than 150,000 NIS (approx. 43,365 USD) — are works of art, ritual objects and Judaica, vehicles, including ships and aircraft, precious metals and gems, securities, immovable property, antiques, rugs and money above the amount of 500,000 NIS (approximately 142,000 USD). As further described under article 24, the monetary threshold detailed in section 4 of the PMLL is not relevant when the offense is carried out intentionally as detailed in section 3(a) of the Law. In that regard, Israel has additionally clarified that in order to address potential concerns regarding the monetary threshold in the legislation, a draft bill was prepared. The draft bill proposes to lower the threshold to 50,000 NIS (14,455 USD) and removes the differentiation between different kinds of property.

241. The self-assessment indicated that under section 411 of the Penal Law, in order for an individual to be criminally liable for the offence in question, it must be proven that he or she was aware that the asset concerned was stolen, obtained through blackmail or obtained through or used in the commission of a felony. In that regard, Israel additionally clarified that the term “felony” is defined in section 24 of the Penal Law as an offense with a penalty of

more than three years imprisonment. "Misdemeanour" is defined as an offense with a penalty of more than three months imprisonment but no more than three years imprisonment and in some cases where the penalty only consists of a fine. Section 61(a)(1) provides that the court is authorized to impose a fine of up to 14,000 NIS (4,074 USD) if no fixed amount is prescribed for the offense.

242. Section 413 of the Penal Law (possession of suspect property) establishes that if a person has possession of an item, money, a security or any other asset in respect of which there are grounds to suspect that the asset was stolen, and if he or she is unable to satisfy the Court that the asset was acquired lawfully, that person is criminally liable. In that regard, Israel reiterated that Section 413 of the Penal Law places the burden on the prosecution to prove that there is a reasonable suspicion that the property in the defendant's possession was stolen. Therefore, it does not violate the principle of presumption of innocence. Failing to provide an explanation for possession of the property is not enough to convict the defendant of the offense.

243. Following the country visit, Israel additionally provided the following case examples illustrating the practical implementation of the provision under review.

In Cr.C 44540-06-12 *State of Israel v. Eran Mizrahi*, the defendant, who owned an investment company, fraudulently induced people to deposit funds with his company based on false promise that all the funds would be invested, while in fact he kept some of the money to himself. The Tel-Aviv District Court found him guilty of 84 counts of theft by agent (Section 393, Penal Law, 1977), 101 counts of obtaining something by deceit (Section 415), 28 counts of aggravated forgery offense (Section 418) and use of forged documents (Section 420), and other counts under Section 3(b) and Section 4 of the Prohibition on Money Laundering Law - 2000.

The defendant was sentenced to 12 years imprisonment, 18 months probation and 300,000 NIS fine (approx. 87,690 USD) or 9 months imprisonment instead. The Court also ordered that the defendant compensate the victims, in an amount equal to the stolen funds as described in the indictment, up to 250,000 NIS (approx. 73,050 USD) (the maximum compensation amount that the Court is authorized to award).

In Cr.C 40217/02 *State of Israel v. Offer Maximov*, the defendant was involved in a severe embezzlement affair, which ultimately led to the collapse of the Bank of Commerce. The defendant was accused of theft and fraud over a period of five years, in an amount estimated at over 254 million NIS (approx. 74 million USD). The defendant had asked his sister, who served as the Deputy Director of the Investment Unit at the Bank of Commerce, for her help to cover his gambling debts.

The defendant was convicted of several offenses including conspiracy, theft, obtaining something by deceit, forgery and use of forged documents. He was also found guilty of disposing of prohibited property (Section 4, Prohibition on Money Laundering Law, 2000). The Court sentenced him to 15 years imprisonment, 2 years' probation and a 3,000,000 NIS fine (approx. 875,400 USD) or 3 years imprisonment instead.



The Supreme Court (Cr.A 7075/03) in *Esther Alon v. State of Israel* (2006)) denied his appeal and granted the State's counter-appeal and increased Maximov's sentence to 17 years imprisonment.

244. Based on the above, it can be concluded that Israel partially implemented the provision under review. Israel is recommended to finalise the process of the adoption of the amendments to Schedule 2 of the Prohibition on Money Laundering Law, 2000 lowering the threshold for the price of the prohibited property and removing the differentiation between different kinds of such property.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 1 (b) (ii) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system: ...*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

245. Israel indicated that the legislative framework which applies to all criminal offenses in Israel and well as the offenses set forth in the Convention also applies to money laundering offenses. This legislative framework is detailed under UNCAC article 27 (Participation and attempt) below.

246. Israel referred to the policy(s), law(s) or other measure(s) and the examples of cases and case law cited under UNCAC article 27 (Participation and attempt) below.

247. Regarding related statistical data, Israel referred to the General Data Note under UNCAC article 15(a) and the data pertaining to bribery offences above.

#### **(b) Observations on the implementation of the article**

248. Israel appears to be in compliance with the provision under review.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraphs 2 (a) and 2(b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

249. Israel uses a list-approach rather than a threshold-approach regarding predicate offenses.

250. The **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL") applies the offense of money laundering to all serious offenses and includes a wide range of predicate offenses which may be deemed offenses even if committed in another State, including a comprehensive range of criminal offenses established in accordance with the Convention. These are serious offenses from which offenders generally stand to profit significantly. According to Section 2 of the PMLL, the predicate offenses are detailed in the PMLL's First Schedule.

251. For example, according to Section 6 of the First Schedule, all bribery offenses under Article 5 of Chapter 9 in Part 2 (Sections 290-297) of the **Penal Law, 1977** are predicate offenses, including the bribery of domestic as well as foreign public officials.

252. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Prohibition on Money Laundering Law, 2000** - Section 2, as cited under subparagraph 1 (a) (i) above.

**Schedule 1**  
(section 2)

List of Offences

The following offences:

(1) All offences under the Dangerous Drugs Ordinance other than personal use of a drug, possession for personal use of a drug, possession of premises for personal consumption of a drug and possession of instruments for personal use of a drug;

(2) Illegal trading in weapons under section 144 of the Penal Law;

(2A) Piracy under section 169 of the Penal Law;

(3) Offences relating to acts of prostitution under sections 199, 201, 202, 203, 203B, 204 and 205 of the Penal Law;

(4) sale and distribution of obscene material under section 214 of the Penal Law;

(5) gambling offences under sections 225 and the opening lines of section 228 of the Penal Law;

(6) bribery offences under Article 5 of Chapter 9 in Part 2 of the Penal Law;

- (7) murder and attempted murder under sections 300 and 305 of the Penal Law;
- (8) infringement of liberty offences under Article 7 of Chapter 10 in Part 2 of the Penal Law;
- (9) offences against property under sections 384, 390-393, 402-404 and 411 of the Penal Law;
- (10) vehicle theft, receipt of and trading in a stolen vehicle or stolen vehicle parts under Article 5.1 of Chapter 11 in Part 2 of the Penal Law, excluding those offences contained in sections 413C, 413D(a), 413H, the opening lines of 413F and 413G;
- (11) offences under Article 6 of Chapter 11 in Part 2 of the Penal Law, excluding offences under sections 416, 417 and 432;
- (11A) offences under sections 439-444 of the Penal Law;
- (12) forgery of money and coins under Articles 1 and 2 of Chapter 12 in Part 2 of the Penal Law, excluding offences under sections 463, 466, 467, 480, 481 and 482, as well as installation of a franking device under section 486;
- (13) offences under sections 16, 17 and 18 of the Debit Cards Law, 5746-1986;
- (14) offences under sections 52C, 52D and 54 of the Securities Law, 5728-1968;
- (15) smuggling goods under sections 211 and 212 of the Customs Ordinance or under the Import and Export Ordinance [New Version], 5739-1979;
- (16) offences relating to infringement of copyright, patents, industrial designs and trademarks under the Copyright Law, 5768-2007, the Patents Law, 5727-1967, the Patents and Industrial Designs Ordinance, the Trademarks Ordinance [New Version], 5732-1972, and the Merchandise Marks Ordinance;
- (17) an offence under section 117(b)(3) of the Value Added Tax Law, 5735-1975, which was committed in aggravated circumstances;
- (18) offences under the Prevention of Terrorism Ordinance, the Defense (Emergency) Regulations, 1943 or under Articles 2-6 of Chapter 7 in Part 2 of the Penal Law;
- (18A) offences under sections 2, 3 and 4 of the Struggle Against Criminal Organizations Law, 5763-2003;
- (18B) an offence under section 80(b) regarding a foreign worker or under section 80(c) of the Employment Service Law, 5719-1959;
- (18C) an offence of carrying out work on or using land without a permit or deviating from a permit under section 204 of the Planning and Building Law, 5725-1965, or an offence under section 14 of the Business Licensing Law, 5728-1968, in connection with a refuse disposal site, a refuse transfer station, the collection, transportation, processing, utilization and reprocessing of refuse, or in connection with a petrol or gas station, or the

combustion, transportation, storage, parking of tankers containing or sale of petrol and gas, petrol additives, filling gas tankers and the distribution of gas; as well as an offence under section 111 of the Mines Ordinance in connection with the quarrying of sand;

(18D) an offence under section 3 of the Trading with the Enemy Law, 1939;

(18E) an offence under section 29(a) of the Struggle Against the Iranian Nuclear Program Law, 5772-2012;

(18F) an offence under section 7C(b) of the Prevention of Infiltration Law (Offenses and Jurisdiction) 5714-1954, as amended in section 1(1) of the Prevention of Infiltration Law (Offences and Adjudication) (Temporary Provision) 5573-2013;

(19) money laundering offences under section 3 of this Law attributable to one of the offences listed in this Schedule;

(20) conspiracy to commit one of the offences listed in this Schedule.

**Penal Law, 1977** - Sections 290-297 in the attached legislative compilation.

253. Regarding examples of cases and case law, Israel reported that Israeli authorities make regular use of anti-money laundering provisions in conjunction with predicate offenses. The following are a number of recent examples:

- In Cr.A. 7641/09 Avraham Hirshzon v. State of Israel, the Supreme Court affirmed the sentence of a former Minister of Finance, who was convicted of several counts of theft by a director, deceit and breach of trust in a body corporate, money laundering, false entry in documents of body corporate and obtaining anything by deceit under aggravating circumstances. Hirshzon embezzled millions of shekels from the NLF, the trade union he used to head. He was sentenced to five years and five months imprisonment, as well as suspended imprisonment and a fine of NIS 450,000 (approx. 128,000 USD).
- Cr.C. 4039/05 (Haifa) State of Israel v. Cohen involved the conviction of a senior official of the Israel Electric Corporation (a government company) for six separate instances of accepting bribes totaling around 1,300,000 NIS (approx. 325,000 USD) and money laundering offenses. In this case, the bribery occurred in Canada and in Australia, and the defendant claimed that they could not be convicted of bribery, since the prosecution did not prove that the bribery of a local public official offense was an offense in those countries. However, the Court determined that since part of the bribe was received in Israel, the offense was a domestic offense according to the Penal Law. Eventually, Cohen was sentenced to six years in prison and as an additional 12 months suspended sentence. He was also fined approx. 500,000 USD, or an additional 20 months in prison. The court also ordered the forfeiture of two apartments owned by the official.
- In Cr.C. 40099/08 (Tel Aviv) State of Israel v. Ben David, the defendants were convicted, inter alia, for violations of Section 3(a) and 4 of the PMLL. The defendants were convicted of carrying out a plan to defraud the head of the Israeli Tax Authority and the National Insurance Institute. The 16 defendants were all convicted in a plea bargain. Of the 16 defendants, the most severe punishment was 78 months imprisonment and a fine of 1,000,000 NIS (approx. 284,000 USD). In addition, substantial funds of theirs

were seized and forfeited.

254. Israel indicated that related statistical data on number of investigations, prosecutions and convictions/acquittals is not available.

**(b) Observations on the implementation of the article**

255. According to the self-assessment, the "Prohibition of Money-Laundering Law" defines as predicate offences almost all of the criminal offences established in accordance with the Convention.

256. As can be observed from the list of offences set out in the Money-Laundering Law, bribery offences are considered to be predicate offences. Israel also clarified that the main offence for purposes of embezzlement, i.e. section 390 (Theft by public official) of the Penal Law is also included in Schedule 2 as a predicate one. However, it appears that the offences in the Penal Law covering the offence of obstruction of justice are not listed as predicate offences for purposes of money laundering.

257. Israel partially implemented the provision under review. Israel is recommended to consider including all UNCAC offences, including in particular section 244 (Obstruction of justice), section 245 (Subornation in connection with an investigation), section 246 (Subornation of testimony) and 246 (Subornation of testimony) of the Penal Law as predicate offences in Schedule 2 of the Prohibition on Money Laundering Law.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

**(a) Summary of information relevant to reviewing the implementation of the article**

258. Israel indicated that under the predicate offenses regime, an offense shall be deemed an offense when committed in another state, provided that it also constitutes an offense under the laws of that state (Section 2(b) of the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL")).

259. According to Section 2(c) of the PMLL, the rule of dual criminality does not apply to offenses related to terrorism, financing of terrorism, money laundering and conspiracy to commit offenses related to terrorism or financing terrorism, which shall be deemed offenses when committed in another state even if they do not constitute offenses under the laws of that state.

260. It is important to emphasize that under Section 7 of the **Penal Law, 1977**, an offense will be considered a domestic offense even if just part of it was committed in Israel, or if it was intended to be committed in Israel (and in that case it is not relevant that the offense is not considered an offense under the law of the other country).

261. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Prohibition on Money Laundering Law, 2000**

**2. Predicate Offenses**

(a) In this chapter, "offence" shall mean one of the offences listed in Schedule 1.

(b) For the purposes of this chapter, an offence as stated in subsection (a) shall be regarded as an offence notwithstanding that it was committed in a foreign country, provided that it also constitutes an offence under the laws of that country.

(c) The condition stipulated at the end of subsection(b) shall not apply with respect to those offences listed in paragraph (18) of Schedule 1, or to those listed in paragraphs (19) and (20) of that Schedule which involve the commission of an offence listed in paragraph (18).

**Penal Law, 1977**

**7. Offenses by location**

"**Domestic offense**" means

(1) an offense, all or part of which was committed within Israeli territory;

(2) an act in preparation for the commission of an offense, an attempt, an attempt to induce another to commit an offense, or a conspiracy to commit an offense committed abroad, on condition that all or part of the offense was intended to be committed within Israel territory;

"**foreign offense**" - an offense that is not a domestic offense;

"**Israel territory**", for the purposes of this section - the area of Israel sovereignty, including the strip of its coastal waters, as well as every vessel and every aircraft registered in Israel.

262. Israel provided the following examples of cases and case law.

In one court case, defendants charged in Israel with money laundering offenses and predicate offenses including counterfeiting, claimed double-jeopardy since they were already facing an indictment in Belgium for money laundering and other predicate offenses. The Court ruled that the only offense that is similar in both countries is the money laundering offense. However, the charge in Belgium relates to money laundering activities that took place in Belgium, and the charges in Israel relate to offenses committed in Israel. In addition, the Court referred to Section 2 of the PMLL that states that a person can be charged with a money laundering offense in Israel, even when the predicate offense was committed in another state, and that this interpretation is justified to ensure that Israel does not become a money laundering haven.

263. Israel indicated that related statistical data on number of investigations, prosecutions and convictions/acquittals was not available.

**(b) Observations on the implementation of the article**

264. Israel would generally require dual criminality for criminal offences based on Section 2(b) of the Prohibition on Money Laundering Law, 2000; however, under Section 7 of the **Penal Law, 1977**, an offense would be considered as a domestic one even if just part of it

was committed in Israel, or if it was intended to be committed in Israel, in which case it is not relevant that the offense is not considered an offense under the law of the other country.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

265. Israel provided its anti-money laundering legislation to the UNODC Secretariat on October 31, 2010 (as attached to Israel's voluntary Response to the Self-Assessment Checklist of the same date). It also provided an enclosed, updated version of this legislation.

266. For additional relevant legislation, Israel referred to the website of the Israel Money Laundering and Terror Financing Prohibition Authority:  
<http://www.justice.gov.il/MOJEng/Halbanat+Hon/Legislation/>.

#### **(b) Observations on the implementation of the article**

267. Israel implemented the provision under review.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

268. Israel indicated that its domestic system does not contain fundamental principles as referred to in the provision above.

269. Israel's fundamental principles do not preclude self-laundering. Money laundering offenses in Israel, as described under UNCAC article 23(2) above, apply also to the individuals who committed the predicate offense.

270. Israel referred to the information provided under UNCAC article 23(2) above.

271. No related statistical data on number of investigations, prosecutions and convictions/acquittals is available.

**(b) Observations on the implementation of the article**

272. The fundamental principles of the domestic law of Israel do not preclude the prosecution of self-laundering.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

273. Israel indicated that the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL") makes it a crime to execute a property transaction on prohibited property with the purpose of concealing or disguising its source, owners, location or a transaction in it (Section 3(a) of the PMLL).

274. Criminal liability applies to a person executing any property transaction in such property knowing that it is prohibited property (Section 4 of the PMLL). For the purposes of this section, "knowing" does not include "willful blindness".

275. "Prohibited property" according to the Law, is property which originated directly or indirectly through the commission of an offense, property used to commit an offense, property which facilitated the commission of an offense or property against which a crime was committed.

276. In order to prove an individual's "knowledge" under Section 3, it is sufficient to show that the person carrying out the act knew that it was prohibited property, even if they did not know to which specific offense the property was connected (Section 5 of the PMLL). As described under UNCAC article 23(2) (a) and (b), the PMLL defines almost all of the criminal offenses established in accordance with the Convention as predicate offenses, including bribery and the bribery of foreign public officials.

277. According to Schedule 2 of the PMLL, property is defined as:

(a) The following categories of property, if sold for 150,000 NIS (approx. 43,365 USD) or more within the framework of a single transaction or a series of transactions carried out during a three month period: (1) objects of art; (2) ritual objects and Judaica; (3) transportation vehicles, including sailing vessels and aircraft; (4) precious stones and precious metals; (5) securities; (6) real estate; (7) antiquities; (8) carpets.

(b) Monies in excess of 500,000 NIS (approx. 140,000 USD) transferred within the framework of a single transaction or a series of transactions during a three month period;



where that sum was given as consideration for one of the items of property listed in paragraph a, the value limitation specified therein with respect to that item applies; "monies" in this context includes travelers' cheques, bank cheques and financial assets in the form of pecuniary deposits, savings, investments in provident and pension funds, as well as options and future contracts as defined in Section 64 of the **Joint Investment Trusts Law, 1994**.

278. Concealment offenses are also found in the **Income Tax Ordinance, 1961**. Section 220 of the Ordinance details the offenses which, when carried with the intent of evading taxes or assisting another person in tax evasion, constitute fraud. This Section includes the deliberate non-reporting of income, or reporting information with the intent of committing tax evasion. The Section provides that the penalty for a taxpayer convicted of fraud according to this Ordinance is seven years imprisonment, or a fine, as detailed in Section 61(a)(3) of the **Penal Law, 1977** and double the amount of income concealed, or both penalties combined.

279. Israel cited the following applicable policy(s), law(s) or other measure(s).

**Prohibition on Money Laundering Law, 2000**

**3. Prohibition on money laundering**, as cited under subparagraphs 23 (a)(i) of article 23 above.

**4. Prohibition on prohibited property dispositions**, as cited under subparagraphs 23 (a)(i) of article 23 above.

**5. Proof of knowledge**, as cited under subparagraphs 23 (a)(i) of article 23 above.

**Schedule 2 (section 4)**

**Categories of property**, as cited under subparagraphs 23 (a)(i) of article 23 above.

**Penal Law, 1977**

**61. Indeterminate fine**

(a) Notwithstanding anything provided in any Law, when a Court is empowered to impose a fine, it may -

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(3) if imprisonment for more than one year, but not more than three years is prescribed for the offense - impose a fine of up to NIS 75, 300

**Income Tax Ordinance, 1961**

**220. Fraud, Etc.**

Any person who willfully, with intent to evade or to assist any other person to evade tax, commits one of the offenses specified below, shall be liable to imprisonment for a term of seven years or to a fine of NIS 37,500 or double the amount of income concealed or intended to be concealed by him or which he helped to conceal:

(1) He omitted from a return made under this Ordinance any income which should be included;

(2) He made any false statement or entry in any return made under this Ordinance;

(3) He gave any false answer, whether verbally or in writing, to any question or request for information in accordance with the provisions of this Ordinance;

(4) He prepared or maintained or authorized another to prepare or to maintain false account books or other false records, or

he falsified or authorized the falsification of account books or records;

(5) He made use of or authorized the use of any fraud, artifice or contrivance whatsoever.

280. Israel provided the following examples of cases and case law. It referred to the General Data Note under UNCAC article 15(a) and the data under UNCAC article 23(1) (a) (i) above.

- In Cr.A. 2333/07 Ta-anach v. State of Israel, one of the defendants, a real estate appraiser, was convicted of money laundering offenses (Section 3(a) of the PMLL) for acts of concealment of money he had obtained fraudulently, by transferring funds from his account to his family's accounts. The Supreme Court determined that the acts severely undermined public trust in the public service, to the extent that they border on corruption. Ta-anach and the second appellant were sentenced to four years imprisonment and a fine of three million NIS (approx. 856,408 USD) as well as forfeiture of monies. The third appellant was sentenced to three years imprisonment and a fine of 2.5 million NIS (approx. 713,673 USD). The fourth appellant was sentenced to six months imprisonment.
- In Cr.A. 7593/08 Roni Ritbalt v. State of Israel, the appellants were convicted in the District Court for bribery, money laundering and tax evasion offenses. The first appellant, Asher Cohen (Cr.A. 7666/08) received bribes while working as the chairman of the tenders committee of Israel's Electric Corporation. He was convicted of receiving a bribe of approx. 370,000 USD as well as additional benefits, and of money laundering (Section 3(a) of the PMLL) for acts of transferring money received through a bribe abroad through a middleman. The other appellant, Roni Ritbalt, was convicted of providing some of the bribes, but the prosecution could not prove beyond a reasonable doubt that he knew about the other bribes. Cohen was sentenced to six years imprisonment and an additional 12 months suspended sentence. He was also fined approx. 500,000 USD, or an additional 20 months imprisonment. The court also ordered the forfeiture of two apartments owned by Cohen or a fine equivalent to their value. Ritbalt was sentenced to four years imprisonment and an additional 12 months suspended sentence. He was also fined approx. 566,000 USD or an additional 24 months in prison. The court also ordered the forfeiture of approx. 848,400 USD of his property. The appeal was denied.
- The examples relating to Section 3(a) of the Penal Law under UNCAC article 23(1) (a) (i) above.

**(b) Observations on the implementation of the article**

281. Following the desk review, Israel additionally clarified that the monetary threshold detailed in section 4 of the PMLL is not relevant when the offense is carried out intentionally as detailed in section 3(a) of the Law. Every property transaction with the intent to conceal or cover up is an offense in Israel regardless of the value of the property. The term "property transaction" is defined broadly in section 1 of the PMLL and includes a variety of actions, including retention. Section 411 of the Penal Law bans the receipt of any property knowing that the property was obtained through a felony. Section 412 determines a similar offense for property obtained through a misdemeanor. Theoretically it is possible to use those Sections in order to prosecute an individual who received property that stems from money laundering offenses (which are felonies).

282. Israel also clarified that section 5 of the PMLL does not apply any additional burden, but rather extends the money laundering offenses, in order to make it easier for the prosecution to prove them and to prevent situations where individuals claim that they knew that property

stemmed from a predicate offense but did know the nature of the offense. For example, a professional money launderer who receives money from a criminal organization and hides the monies with middlemen abroad could not claim as a defense that he did not engage in money laundering because he didn't know if the monies stemmed from drugs or extortion.

283. Based on the above, it can be concluded that Israel criminalized concealment to the extent limited by the retained proceeds amount and types as stipulated in Schedule 2 of the Prohibition on Money Laundering Law. The observations under article 23 are referred to in this context.

## Article 25 Obstruction of justice

### Subparagraph (a)

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

### (a) Summary of information relevant to reviewing the implementation of the article

284. Israeli criminal law is based on the principle of a fair legal process. Obstruction of justice through the use of violence, or any of the other means detailed in the law, is a threat to the effectiveness of the justice system, as well as to democracy and the rule of law. The criminalization of attempts to influence legal proceedings is the fundamental measure by which the integrity of the legal process can be protected.

285. Israel has various measures in place to address attempts on influencing the legal process. Chapter Nine of Israel's **Penal Law, 1977** (hereinafter: "Penal Law") includes several provisions concerning the obstruction of justice [Article One]. For example:

Section 237- "Perjury", criminalizes the giving of false testimony. The criminal offense is punishable by seven years imprisonment. However, if the false testimony was given in exchange for a benefit (Section 237(a)) the offense is punishable by nine years imprisonment.

Section 242 - "Destroying evidence", criminalizes the destruction of objects required, or likely to be required, as evidence in a judicial proceeding when done with the intention of preventing such objects from being used as evidence. This offense is punishable by five years' imprisonment.

Section 244 - "Obstruction of justice", criminalizes actions that are done to prevent a judicial proceeding or cause it to fail (for this purpose, "judicial proceeding" also includes a criminal investigation and the execution of a court order) or to cause a miscarriage of justice, whether by frustrating the summons of a witness, by concealing evidence or in some other manner. This offense is punishable by three years imprisonment.

Section 245 - "Subornation in connection with an investigation", criminalizes the inducement or the attempt to induce a person not to make a statement in a lawful investigation, to make a false statement or to withdraw a statement which he made. This offense is punishable by five years imprisonment (Section 245(a)). If this offense is under aggravating circumstances (that is, if the offender carried a firearm or other weapon when committing the offense, or while two or more persons were present who combined for perpetration of the act by one or several of them, then each of them is liable to seven years imprisonment (Section 249A of the Penal Law). According to Section 245(b), if the aforementioned inducement or attempt to induce is done by means of fraud, deceit, force, threats, intimidation or the granting of a benefit or by any other improper means, it is punishable by seven years imprisonment. When this offense is committed under aggravating circumstances, as detailed above (Section 249A of the Penal Law), it is punishable by ten years imprisonment. This provision was interpreted broadly by the Supreme Court, which decided in several cases that the offense also covers a future anticipated statement (C.A. 689\82 *Meirov v. The State of Israel*; C.A. 38\85 *Ben Yaakob v. The State of Israel*). For example, when the offender induces the victim not to file a complaint, he is guilty of the offense in Section 245, even if the investigation has not yet begun.

Similarly, Section 246 - "Subornation of testimony", criminalizes the inducing or attempt to induce another person not to testify in a legal proceeding, to give false testimony or to withdraw testimony given or statements made in a judicial proceeding. This offense is punishable by seven years imprisonment, or 10 years if committed under aggravating circumstances (Section 249A). According to Section 246(b), if the aforementioned inducement or attempt to induce is done by means of fraud, deceit, force, threats, intimidation or the granting of a benefit or by any other improper means, it is punishable by nine years imprisonment, or 14 years if committed under aggravating circumstances (Section 249A).

Section 249 - "Harassment of witness", provides that if a person harasses another person in connection with a statement that person made or is about to make in a lawful investigation or in connection with testimony that person gave or is about to give in a judicial proceeding, he is liable to three years imprisonment. Under the conditions of Section 249A, this offense is punishable by five years' imprisonment.

Section 250 - "Improper influence", criminalizes endeavors to influence the result of a judicial proceeding in an improper manner, by inducements or by a request addressed to a judge or court officer. This offense is punishable by one year imprisonment.

286. Israel cited the following implementation measures.

## **Penal Law, 1977**

### **Definitions**

236. In this Article, "**testimony**" – oral or written statements made for purposes of evidence, exclusive of unsworn statements by a defendant in a criminal proceeding, but including opinion given in evidence and translations by a translator in a judicial proceeding.

### **Perjury**

237. (a) If a person knowingly gives false testimony in a judicial proceeding on any matter

material to a question dealt with in that proceeding, that constitutes perjury and is liable to seven years imprisonment; if he did so in return for a benefit – then he is liable to nine years imprisonment.

(b) In respect of perjury, it is immaterial –

(1) whether or not the testimony is given on oath or under some other sanction permitted by law;

(2) what form or ceremony was used to swear in the person who gave the testimony or to bind him to speak the truth, on condition that it was with the consent of the witness;

(3) whether the Court, Tribunal, judicial authority or commission of inquiry is properly constituted or sat in the proper place, on condition that it acted – each in its proper capacity – in the proceeding in which the testimony is given;

(4) whether the witness is a competent witness and whether the testimony is admissible in a judicial proceeding.

### **Fabricating evidence**

238. If a person fabricated evidence, otherwise than by means of perjury or subornation of perjury, or if he knowingly makes use of aforesaid fabricated evidence, all with the intention to mislead a judicial authority or a commission of inquiry in a judicial proceeding, then he is liable to five years imprisonment.

### **False oath**

239. If a person knowingly makes a false declaration before a person authorized to receive it, whether on oath or affirmation or not on oath or affirmation, then he is liable to three years imprisonment.

### **Conflicting evidence**

240. (a) If a person makes statements or gives evidence on the same matter before different authorities, and if his statements or evidence conflicting on a point of fact that is material for the matter and he did so with the intention to mislead, then he is liable to five years imprisonment.

(b) For purposes of this section, "**authority**" – a Court that tries a criminal matter, a disciplinary tribunal, and a policeman or other authority who lawfully investigated a matter prior to an indictment in a Court or disciplinary tribunal, a commission of inquiry under the Commissions of Inquiry Law 5729-1968, or a person appointed under section 13 of that Law.

(c) The record of the trial, and the statement or testimony duly recorded in the said investigation shall be prima facie evidence of the witness' statements therein.

### **Refusal to testify**

241. (a) If a person is obligated to testify or to give other evidence in a judicial proceeding and refuses to do so, then he is liable to two years imprisonment.

(b) The imposition of imprisonment under section 5 of the Contempt of Court Ordinance on a person who refused as aforesaid, shall not prevent his being tried under subsection (a), but a person sentenced to imprisonment under subsection (a) shall have the period of imprisonment served by him under the said section 5 deducted from his penalty.

### **Destroying evidence**

242. If a person knows that a book, document or other object is required, or that it is likely to be required as evidence in a judicial proceeding, and if he maliciously destroys it or renders it illegible, undecipherable or incapable of identification, all with the intention to prevent it from being used in evidence, then he is liable to five years imprisonment.

### **False information**

243. If a person gives information of an offense to a policeman or to a person authorized to institute a criminal prosecution in the knowledge that the information false, then he is liable to three years imprisonment and, if the offense is a felony, to five years imprisonment; it is immaterial whether a criminal prosecution was instituted in consequence of the information or not.

### **Obstruction of justice**

244. If a person does anything with the intention to prevent or foil a judicial proceeding or to cause a miscarriage of justice, whether by frustrating the summons of a witness, by concealing evidence or in some other manner, then he is liable to three years imprisonment; for this purpose, "**judicial proceeding**" includes a criminal investigation and the implementation of a direction by a Court.

### **Subornation in connection with investigation**

245. (a) If a person induces or attempts to induce another not to make a statement in a lawful investigation, to make a false statement or to withdraw a statement which he made, then he is liable to five years imprisonment.

(b) If a person induces or attempts to induce as said in subsection (a) by means of fraud, deceit, force, threats, intimidation, the conferment of a benefit or by any other improper means, then he is liable to seven years imprisonment.

### **Subornation of testimony**

246. (a) If a person induces or attempts to induce another not to testify in a legal proceeding or to give false testimony or to withdraw testimony given or statements made in a judicial proceeding, then he is liable to seven years imprisonment.

(b) If a person induces or attempts to induce as said in subsection (a) by means of fraud, deceit, force, threats, intimidation, the conferment of a benefit or any other improper means, then he is liable to nine years imprisonment.

### **Limitation on application**

247. Sections 245 (a) and 246 (a) shall not apply to any act that is intended to inform a person of his legal right to refrain from testifying or from making a statement, or to any act lawfully performed in the course of a trial or investigation.

### **Defense**

248. When a person is accused of the prevention of a statement or testimony, or of the withdrawal of a statement under sections 245(a) or 246(a), it shall be a defense for the defendant to prove that he did so for of discovery the truth or the prevention of a falsehood.

### **Harassment of witness**

249. If a person harasses another in connection with a statement he made or is about to make in a lawful investigation or in connection with testimony that person gave or is about to give in a judicial proceeding, then he is liable to three years imprisonment.

### **Aggravating circumstances**

249A. If an offense under section 245, 46 or 249 was committed while the offender carried a firearm or other weapon, or while two or more persons were present who combined for perpetration of the act by one or several of them, then each of them is liable – for an offense

- under section 245(a) – seven years imprisonment;
- (2) for an offense under section 245(b) – to ten years imprisonment;
- (3) for an offense under section 246(a) – to ten years imprisonment;
- (4) for an offense under section 246(b) – to fourteen years imprisonment;
- (5) for an offense under section 249 – to five years imprisonment.

### **Improper influence**

250. If a person endeavors to influence the result of a judicial proceeding in an improper manner, by inducements or by a request addressed to a judge or Court officer, then he is liable to one year imprisonment.

287. Israel indicated that one recent example of the successful prosecution for obstruction of justice offenses relating to corruption charges is Cr.A. 5083/08 Shlomo Benizri v. State of Israel, which concerned the conviction of a former government minister. The former minister was convicted of bribery, breach of trust and obstruction of justice offenses in relation to investigations conducted against him for accepting bribes. These included creating false records and coordinating testimonies. The Supreme Court denied Benizri's appeal and increased the sentence imposed by the District Court, from 18 months imprisonment and a fine of 120,000NIS (approx. 33,000USD), to four years imprisonment and a fine of 250,000NIS (approx. 70,000USD).
288. Israel's courts have determined that at times the circumstances of the case will justify that the punishment for obstruction offenses be added to the sentence handed down for corruption offenses: "The circumstances of this case justified the adding the sentence that the defendant received for fabricating evidence to that for the bribery committed. Here, the offenses were committed while undermining the foundations of the law, and it should not be assumed that there is some sort of proximity between these different offenses, other than the fact that the defendant tried to evade punishment and was ready to use any means necessary to do so. In this case, there is no reason to hand down overlapping penalties. The defendant's public position should lead to a more severe rather than lighter punishment. An elected official with status and serving as the Deputy Mayor should have a higher moral level than that displayed by the defendant." (Cr.A. 670/08 Abuhatzaira v. State of Israel).
289. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a).

### **Obstruction of justice (Penal Law Sec. 244)**

In 2009, 636 investigations took place, while 198 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 617 investigations took place, while 191 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 640 investigations took place, while 199 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 654 investigations took place, while 204 cases were prosecuted (there is no available data for this year on convictions).

### **Destroying evidence (Penal Law Sec. 242)**

In 2009, 168 investigations took place, while 56 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 207 investigations took place, while 56 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 275 investigations took place, while 70 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 243 investigations took place, while 90 cases were prosecuted (there is no available data for this year on convictions).

#### **Subornation in connection with investigation (Penal Law Sec. 245)**

In 2009, 247 investigations took place, while 113 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 253 investigations took place, while 97 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 226 investigations took place, while 80 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 203 investigations took place, while 66 cases were prosecuted (there is no available data for this year on convictions).

#### **Subornation of testimony in a legal proceeding (Penal Law Sec. 246)**

In 2009, 44 investigations took place, while 27 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 43 investigations took place, while 18 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 58 investigations took place, while 9 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 49 investigations took place, while 13 cases were prosecuted (there is no available data for this year on convictions).

#### **Harassment of witness (Penal Law Sec. 249)**

In 2009, 67 investigations took place, while 30 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 55 investigations took place, while 29 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 68 investigations took place, while 20 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 58 investigations took place, while 22 cases were prosecuted (there is no available data for this year on convictions).

#### **Obstruction of justice in Aggravating circumstances (Penal Law Sec. 249A)**

In 2009, 1 investigation took place, while 5 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 13 investigations took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2011, 14 investigations took place, while 3 cases were prosecuted (there is no available data for this year on convictions).



In 2012, 4 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

**(b) Observations on the implementation of the article**

290. Following the desk review, Israel additionally clarified that the obstruction of justice offense is broadly worded and applies to a spectrum of situations. The offense applies if a person does "anything" with the intention to prevent or foil a judicial proceeding, whether by concealing evidence or in some other manner. This offense is usually included in indictments for other offenses, as it may occur in any case where, after committing the main offense, the offender attempts to conceal his actions, for example, by swallowing drugs or flushing them down the toilet when the police arrive on the scene, or by covering up a car accident. In addition, according to case law, attempting to influence a potential witness, which is part of the more specific offense found in Section 245, can also be considered obstruction of justice in accordance with Section 244.

291. Based on the above, it can be concluded that Israel implemented the provision under review. In that regard sections 244, 245, 246, 249 and 250 of the Penal Law are particularly relevant.

**Article 25 Obstruction of justice**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

292. Israel indicated that the use of physical force or intimidation to interfere with the exercise of official duties by public officials is a criminal offense under Israeli law. The following are examples of the relevant provisions of the Penal Law:

293. As mentioned under UNCAC article 25(a), Section 250 - "Improper influence", criminalizes attempts to influence the result of a judicial proceeding in an improper manner, by inducements or by a request addressed to a judge or court officer. This offense is punishable by one year imprisonment.

294. Section 273 criminalizes the offense of assaulting a policeman in the lawful performance of his duty. This offense is punishable by up to three years and not less than one month imprisonment.

295. Section 274 - "Assault on a policeman under aggravating circumstances", specifies conditions under which the assault of a policeman will be considered to have been done

under aggravating circumstances: if the act was carried out with the intent to impede upon, prevent or hinder the policeman in the performance of his duty, if the offender was armed with a firearm, a club, a stick, a stone or any other instrument or if the assault was carried out by more than three persons.

296. Section 275 - "Interference with policeman in the performance of his duty", criminalizes acts performed with the intention of interfering with or impeding upon, a policeman in the lawful performance of his duty, or to interfere with, or impede upon, a person who assists a policeman in the lawful performance of his duty. This offense is punishable by up to three years and not less than two weeks imprisonment.
297. Section 288 - "Insulting a public servant", criminalizes insulting a public official, a judge, an officer of a religious tribunal or a member of commission of inquiry in the course of performing his duties or in connection with them. The insult could be in gesture, word or act. This offense is punishable by six months imprisonment.
298. Section 192 - "Threats", criminalizes threatening another person with unlawful injury to him or another person's body, freedom, property, reputation or livelihood with the intention of intimidating or heckling him. This offense is punishable by up to three years imprisonment. Sections 378-382 of the Penal Law define and criminalize different kinds of assaults. Threats and assault-related offenses, apply, *inter alia*, when the act is conducted against law enforcement officials.
299. Section 382A - "Assault of a public official", criminalizes the assault of a public official when the act is related to the fulfillment of his job or duty. This offense is punishable by three years imprisonment. If the act was carried out with the intent to impede upon, prevent or hinder the public official in the performance of his duty, or if the offender was armed or the assault was carried out by more than two people, the offense is punishable by five years imprisonment.
300. Section 427 - "Blackmail with use of force", criminalizes the use of force in order to induce a person to do something or from doing anything he is entitled to do. This offense is punishable by seven years imprisonment, but if the use of force resulted in the performance or omission of the act, then the offender is liable to nine years imprisonment.
301. Section 428 - "Blackmail by threats", criminalizes threats made in writing, verbally or by conduct, through unlawful injury to the body, freedom, property, livelihood, reputation or privacy of the individual threatened or those of another person, or if a person threatens to make public or to refrain from making public anything that relates to the individual threatened or to another person, or if he terrorizes a person in any other manner, all in order to induce that person to do something or to refrain from doing anything which he is entitled to do. This offense is punishable by seven years imprisonment, but if the act was performed or omitted because of or during the said threat or terrorization- then he is liable to nine years imprisonment.
302. Both these forms of blackmail apply, *inter alia*, when the act is conducted against law enforcement officials.
303. In any case involving the use of physical force, threats or intimidation against officials, of any institutional affiliation, in connection with the investigation of corruption charges, the

offenses described above would most likely be included in the indictments concerning corruption offenses.

304. Israel cited the following implementation measures

### **Penal Law, 1997**

#### **Threats**

250. If a person in any manner threatens another with unlawful injury to his or to another person's body, freedom, property, reputation or livelihood with the intention of intimidating or annoying him, then he is liable to three years imprisonment.

Section 250, as cited under subparagraph a above.

#### **Assault on policeman in the performance of his duty**

273. If a person assaults a policeman in the lawful performance of his duty or another person who assists a policeman, then he is liable to up to three years and no less than one month imprisonment.

#### **Assault on policeman under aggravating circumstances**

274. If a person assaults a policeman in the lawful performance of his duty and if one of the following applies, then he is liable to not more than five years and not less than three months imprisonment:

- (1) with the intent to impede upon, prevent or hinder the policeman in the performance of his duty;
- (1) if the offender was armed with a firearm, a club, a stick, a stone or any other instrument;
- (3) the assault was carried out jointly by more than three persons.

#### **Interference with policeman in the performance of his duty**

275. If a person performed any act with the intention of interfering with or impeding upon, a policeman in the lawful performance of his duty, or to interfere with, or impede upon, a person who assists a policeman in the lawful performance of his duty, then he shall be liable to up to three years and not less than two weeks imprisonment.

#### **Interpretation**

276. In this Article, "assault" – within its meaning in section 378.

#### **Insulting a public official**

288. If a person by gesture, word or deed insulted a public official, judge, officer of a religious tribunal, or member of a commission of inquiry under the Commissions of Inquiry Law 5729-1968, in the course of performing his duties or in connection with them, then he is liable to six months imprisonment.

#### **Obstructing a public official**

288A. If a person did one of the following, then he is liable to one year imprisonment:

- (1) he knowingly interfered with a public official or a person empowered to perform the function of a public official in the lawful performance of his duty;
- (2) he failed to perform an obligation imposed on him by law to deliver information or a document.

### **Definition of assault**

378.If a person strikes, touches, pushes or otherwise applies force to another person, whether directly or indirectly, either without his consent or with his consent, which was obtained fraudulently, then that constitutes assault; for this purpose, "**application of force**" includes the application of heat, light, electricity, gas, smells or any other thing or substance, if it is applied to a degree that causes injury or discomfort.

### **Common assault**

379.If a person unlawfully assaults another, then he is liable to two years imprisonment and that if no different punishment is provided in this Law for that offense or due to its circumstances.

### **Assault that causes actual bodily harm**

380.If a person commits assault that causes actual bodily harm, then he is liable to three years imprisonment.

### **Various kinds of assault**

381. (a) If a person does one of the following, then he is liable to three years imprisonment:

- (1) he assaults another person in order to commit a felony;
- (2) he assaults another person in order to steal anything;
- (3) he assaults another person in order to resist the lawful arrest or apprehension of himself or of another, for any offense, or he prevents an aforesaid arrest or apprehension.
- (4) Repealed
- (5) Repealed
- (b) (repealed)
- (c) if a person commits an offense under section (a), and it was a joint assault of more than two people, he is liable to five years imprisonment

### **Assault under aggravating circumstances**

382. (a) If any offense under sections 379 or 380 was committed in the presence of two or more persons who combined for the commission of the act by one or several of them, then each of them is liable to double the penalty set for the offense.

(b) If a person commits an offense under section 379 against his relative, then he is liable to double the penalty set for the offense; for purposes of this section,

"**relative**" includes a person who was his relative in the past and is one of the following:  
his spouse, including the person publicly known as his spouse;

(2) a minor or helpless person, for whom the offender is responsible, as said in the definition of "guardian of minor or helpless person" in section 368A.

(c) If a person commits an offense under section 380 against his spouse, within the meaning of the term in subsection (b), then he is liable to double the penalty set for the offense.

### **Assault of a public official**

382A. (a) a person who assaults a public official or a person who is filling a duty or a role imposed on him under the law or who provides a service to the public on behalf of a body that provides a public service, and the assault is connected to his duty or the role of the attacked, is liable to three years imprisonment,

(b) A person who commits an offense according to subsection (a), and meets one of the following, is liable to five years imprisonment:

- (1) with the intent to impede upon, prevent or hinder the public servant in the performance

of his duty;

(2) if the offender was armed

(3) the assault was a joint assault of more than two persons

(c) A person who assaults an emergency worker while he is treating another person in a life threatening position or a severe threat to his physical integrity or when he works in an Emergency Room, is liable to five years imprisonment.

In this section:

- "Emergency worker"- a doctor, an intern, a nurse, an obstetrician, a medic, or any other who fills a role in "Magen David Adom" (Israel's national aid society) or any other person fulfilling a role in the ER.
- "a doctor", "an intern", "an obstetrician" and "ER" as defined in the Rights of the patient law, 1950.
- "Magen David Adom" – the Magen David Adom society in Israel, established under the Magen David Adom Law, 1950.

### **Blackmail with use of force**

427. (a) If a person unlawfully uses force to induce a person to do something or to refrain from doing anything which he is entitled to do, he shall be liable to seven years imprisonment. If the use of force resulted in the performance or omission of the act, he shall be liable to nine years imprisonment.

(b) For purposes of this section, if a person administers drugs or intoxicating liquors, then he shall be treated like a person who uses force.

### **Blackmail by threats**

428. If a person threatens another person in writing, verbally or by his by conduct, through unlawful injury to the body, freedom, property, livelihood, reputation or privacy of the individual threatened or those of another person, or if a person threatens to make public or to refrain from making public anything that relates to the individual threatened or to another person, or if he terrorizes a person in any other manner, all in order to induce that person to do something or to refrain from doing anything which he is entitled to do. This offense is punishable by seven years imprisonment, but if the act was performed or omitted because of or during the said threat or terrorization– then he is liable to nine years imprisonment.

305. No examples of cases or case law were available.

306. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a).

### **Insulting a public official (Penal Law Sec. 288)**

In 2009, 748 investigations took place, while 358 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 832 investigations took place, while 301 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 858 investigations took place, while 214 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 781 investigations took place, while 144 cases were prosecuted (there is no available data for this year on convictions).

### **Obstructing a public official (Penal Law Sec. 288A)**

In 2009, 187 investigations took place, while 72 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 220 investigations took place, while 86 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 191 investigations took place, while 64 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 205 investigations took place, while 49 cases were prosecuted (there is no available data for this year on convictions).

### **Blackmail with use of force (Penal Law Sec. 427)**

In 2009, 134 investigations took place, while 50 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 140 investigations took place, while 71 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 114 investigations took place, while 59 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 124 investigations took place, while 76 cases were prosecuted (there is no available data for this year on convictions).

### **Blackmail by threats (Penal Law Sec. 428)**

In 2009, 861 investigations took place, while 280 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 856 investigations took place, while 191 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 833 investigations took place, while 466 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 752 investigations took place, while 300 cases were prosecuted (there is no available data for this year on convictions).

## **(b) Observations on the implementation of the article**

307. Analysis of the self-assessment reveals that Israeli legislation does not expressly establish the use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official as a separate offence, but that such acts are covered by the various offences in the Penal Law, including sections 250 (Threats); 192 (threat); 382A (Assault of a public official); 427 (Extortion by use of force); and 428 (Extortion by use of threats), and therefore the provisions of article 25(b) of the Convention are implemented.

## **Article 26 Liability of legal persons**

### **Paragraphs 1 and 2**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) **Summary of information relevant to reviewing the implementation of the article**

308. Under Israeli law, a corporation can incur civil, criminal or administrative liability.

309. Section 4 of Israel's **Interpretation Law, 1981** (hereinafter: "Interpretation Law") provides that "a reference to a person includes any body of persons, corporate or unincorporated."

310. Section 4 of Israel's **Companies Law, 1999** (hereinafter: "Companies Law") refers to a company's legal personality: "A company is a legal person; it is qualified for every right, obligation and act that conforms to its character and nature as an incorporated body."

**Criminal liability:**

311. Section 23 of the **Penal Law, 1977** (hereinafter: "Penal Law"), which was enacted in 1994, is based on the "Organic Theory of Corporations" (Organic Theory) as developed in English case law, according to which the acts and mental elements of each organ of a legal person are attributed to the legal person. Accordingly, under Israeli law, criminal liability may be attributed to legal persons.

**Required Mens Rea**

312. Section 23 of the Penal Law provides two alternatives as to the mens rea required in order for a corporation to have criminal liability:

- Section 23(a)(1) provides that a corporation bears criminal responsibility for strict liability offenses where the offense was committed by a person in the course of the performance of his functions in the corporation (the "functional standard test").
- Section 23(a)(2) provides that a corporation can incur criminal responsibility for offenses requiring proof of *mens rea* or negligence if, in the circumstances of the case and in light of the function of the person concerned, his authority and responsibility for managing the affairs of the corporation, it is warranted to consider the act whereby he committed the offense and his *mens rea* or negligence shall be regarded as the act, *mens rea* or negligence of the corporation. That is to say, the *mens rea* required in order to impose responsibility on the corporation is determined by the specific offense committed by the individual (the organ).

313. In most of the offenses set forth in the Convention, including bribery, the mental element required is one of criminal intent. Therefore, the criminal responsibility of a corporation depends on whether its organ has criminal intent. The above is also reflected in a leading Supreme Court decision: "The organ's mental element is considered the corporation's mental element..." (CR.A 3027/90 *Modiim Construction and Development Corporations Ltd. v. State of Israel* (hereinafter: "*Modiim*").

### **The organ upon which the liability is applied to the legal person**

314. In the abovementioned decision of *Modiim*, it was determined that an organ, for the purposes of a corporation's criminal liability, is defined from organizational, hierarchical and functional standpoints. Although Organic Theory places great importance on the organ's status within the corporation, the Supreme Court determined that the group of people who may constitute an organ for the purposes of a corporation's criminal liability does not necessarily overlap with the corporation's senior officers. The Court stated that a functional test is sufficient in order to define an organ as such. Following the *Modiim* judgment, various courts applied this test and convicted corporations for the acts of different types of employees, including relatively low level employees.
315. In the following cases, the court convicted corporations for the acts of one of their non-executive employees: In Cr. A. (Tel Aviv) 1435/87 *State of Israel v. Modi'in Publishing Ltd*, the court determined that a newspaper editor, who was not part of the senior management staff, was nonetheless an "organ" of the corporation, as he had the "last say" regarding the publishing of sections in the newspaper; in Cr.A. 20/58 *Even ve Sid Industries v. the Attorney General*, which discusses the offense of negligence, it was determined that a "work manager" can also be considered a company's organ in the commission of certain offenses; in Cr.A. 1825/95 *State of Israel v. Baranovitz*, which deals with false invoices, the court held that "a person who does not hold the title of director could also engage responsibility of the corporation" and that a human resources manager in a contracting company is an organ whose actions affect the company's debts and credit through his authority to make payments to workers and subcontractors.
316. The discretion granted to the court under Section 23, via the phrase "in the circumstances of the case", serves as a protective barrier, enabling courts to selectively impose criminal liability only in those cases in which they deem it appropriate to do so. Israel's case law has referred to this discretion particularly in connection with the following:
1. Where the type of offense is not normally performed by a body corporate (bigamy, sexual offenses).
  2. Where the acts caused damage to the company. In CC 2665/2007 (Tel Aviv) *State of Israel v Leumi Investment Bank*, the Court held that activities of the organ directed against the corporation will not trigger the corporation's criminal liability. For example, when an organ steals from the company, the company will not be held liable. However, where an organ bribes a third party so that the company can obtain an advantage or other benefit, then the company can be held liable. It should be noted that even though the Court in *Leumi* held that it can consider the question of whether the activities of the organ were directed against the company or not, there is no pre-requisite to prove that the bribe benefited the corporation in order to impose criminal liability on the company due to the act of an organ.
  3. In respect of acts of an organ of the corporation that are not connected to the corporation's operations.

### **Definition of a legal person**

317. A corporation is defined in Section 3 of the Interpretation Law as: "a legal person competent in respect of obligations, rights and legal acts." Case law has interpreted this definition as follows: "Legal personality is an entity upon which the law confers capacity to



bear rights and duties (in the broad sense)... Such recognition is explicit when a statutory provision establishes a particular entity as a legal personality... Recognition of such entity as a legal personality -distinct from the legal personality of the persons acting within the scope thereof - requires the existence of a statutory provision recognizing such entity, expressly or implicitly, as a legal personality... It is not sufficient for a statutory provision to be neutral regarding the possibility of applying legal personality to a non-natural person. Anyone seeking to attribute statutory recognition of legal personality must demonstrate that the provision, by its very purpose, implicitly creates legal personality."

318. The main statutes that define corporations and that specify their characteristics, rights and obligations are the Companies Law, the **Associations Law, 1980**, the **Partnership Ordinance [New Version], 1975** and the **Cooperative Societies Ordinance, 1933**.
319. It should be noted that there is no legal principle preventing the prosecution of state-owned or state-controlled companies for criminal offenses, such that these companies can bear criminal liability. For example, there have been cases against municipalities and state-owned corporations in the field of environmental protection.

### **Prosecution of Corporations**

320. During recent years, the overall trend of the Israeli authorities has been to combat economically motivated crimes by creating strong economic and penal disincentives. These are applied through a multi-layered approach which includes intensive training and awareness-raising of law enforcement authorities to different aspects of economic enforcement, forming specialized units in the Israel Police and the prosecution, appointing a Deputy State Attorney (Financial Enforcement); training sessions for police units and prosecutors, and enhanced coordination between the Israel Police and State Attorney's office and such bodies as the Tax Authority, the Israel Money Laundering and Terror Financing Prohibition Authority, and the Israel Securities Authority.
321. Awareness raising steps have been taken within the prosecution service as well. Attorney General Guideline No. 4.1110: Investigation and Prosecution of the Foreign Bribery Offense, issued in November 2009, contains specific guidance regarding the indictment of legal persons for foreign bribery. A reference highlighting the applicable sanctions against legal persons was also included in State Attorney Guideline No. 9.15: The Aggravation of Sanctions and Sanctioning Policy for Bribery Offenses. The topic is also discussed within the framework of professional meetings of district attorneys, as well as in seminars dedicated to financial enforcement conducted in each district, with the oversight of the Deputy State Attorney (Financial Enforcement).
322. The aforementioned State Attorney Guideline No. 9.15 (2010) changed the sanctioning policy for bribery offenses following the amendment to the Penal Law. The Guideline requests that prosecutors argue, based on the circumstances, for the imposition of the maximum fines for the bribery offenses, reflecting the change in approach and policy towards these offenses. In addition, the Guideline also notes: "Alongside the need to focus - in both the investigation and preparation of the indictment by the prosecution - on the need to impose adequate fines, prosecutors should consider, in appropriate circumstances, the option of filing an indictment against the relevant legal person, and forfeiture."

### **Civil Society's Involvement**

323. Every year, Maala, an umbrella organization made up of some 130 of Israel's largest companies, whose goal is to promote corporate social and environmental responsibility (CSR) in Israel, ranks dozens of companies according to their commitment to CSR principles.
324. Companies are judged based on their performance in six major areas: environment, business ethics, human rights and work environment, community involvement, corporate governance and social and environmental reporting. Questions include those concerning the companies' actions in preventing offenses of bribery and corruption from within.
325. Israel cited the following applicable measure(s).

### **Interpretation Law, 1981**

3. The following words and expressions shall have the meanings set out beside them:  
"body corporate" means a legal person competent in respect of obligations, rights and legal acts;

### **Penal Law, 1977**

#### **22. Enhanced liability and its extent**

(a) A person bears enhanced liability for an offense, if in an enactment it is prescribed that the offense does not require proof of criminal intent or of negligence; however, the provisions of this subsection shall not void liability for offenses legislated before this Law went into effect and it was lawfully determined that they do not require proof of criminal intent or of negligence; for purposes of this section, "lawfully" includes by judicial precedent.

(b) No person shall bear liability under this section if he acted without criminal intent and without negligence and did everything possible to prevent the offense; the person who so argues bears the burden of proof.

(c) For purposes of liability under this section, a person shall not be sentenced to imprisonment unless criminal intent or negligence was proven.

#### **23. Extent of Criminal Liability of a Body Corporate**

(a) A body corporate shall bear criminal liability -

(1) under section 22, if the offense was committed by a person in the course of the performance of his functions in the body corporate;

(2) for an offense that requires proof of criminal intent or negligence, if - under the circumstances of the case and in light of the position, authority and responsibility of the person in the management of the affairs of the body corporate - the act by which he committed the offense, his criminal intent or his negligence are to be deemed the act, the criminal intent or the negligence of the body corporate.

(b) If the offense was committed by way of omission, when the obligation to perform is directly imposed on the body corporate, then it is immaterial whether the offense can or cannot be related also to a certain officer of the body corporate.

### **Companies Law, 1999**

#### **4. The company's legal personality**

A company is a legal personality qualified for every right, obligation and act that conforms to its character and nature as an incorporated body.

#### **46. Organs**

The company's organs are the General Meeting, the Board of Directors, the General Manager and any person whose action on a certain matter - according to an enactment or by virtue of the by-laws - is deemed the company's action on that matter.

#### **47. Action by organ is action by the company**

The action and intentions of an organ are actions and intentions of the company.

#### **State Attorney Guideline No. 9.15:**

##### **The Aggravation of Sanctions and Sanctioning Policy for Bribery Offenses:**

(Issued 11 March 2010)

On the 4th of February 2010, an amendment to the Penal Law increasing the level of sanctions for bribery offenses came into force. The amendment affects sanctions adjacent to the following offenses: Passive Bribery (Section 290 to the Penal Law); Active Bribery (Section 291 to the Penal Law); Bribery of a Foreign Public Official (Section 291A to the Penal Law); Intermediary in Bribery and Provision of Unlawful Consideration to a Person with Significant Influence (trafficking in influence) (Section 295(a), (b), (b1)(1). Sanctions for these offenses derive from the sanctions applied to the passive and active bribery offenses.

The maximum prison sentence for passive bribery was increased from seven to ten years, and for active bribery increased two fold, from 3.5 years to seven years.

The applicable fines for bribery offenses were significantly increased. Prior to the enactment of the amendment, under Section 61(a)(4) to the Penal Law, the maximum fine for bribery offenses, which are liable for more than 3 years imprisonment, was 202,000 ILS. Alternatively, under Section 63(a), the court would have been able to impose a fine of up to four times the benefit obtained by the offense.

Following the amendment, the maximum applicable fine for bribery offenses under Section 290(a) is now (whichever is higher):

1. For natural persons, a fivefold increase of the previous applicable fine and for legal persons, a tenfold increase of the previous fine.
2. Four times the obtained or intended benefit of the offense.

Increasing the imprisonment sentence expresses the gravity of bribery offenses, the most severe of the corruption offenses. The amendment intends to narrow the gap between bribery and other grave economic offenses. Increasing the sanction for active bribery narrows the gap, which was prior to the amendment too wide, between active and passive bribery, while persevering the normative distinction between both offenses. Establishing a higher maximum monetary penalty will enable the courts to impose a more proportional and dissuasive sanction in cases where the payment of the bribe was made in aggravated circumstances, such as: Systematic or large scale bribes, or where the briber is a corporation or a strong

economical, political or likewise body, compared to the public official who receives the bribe.

The substantial difference in the fines set by the legislature reflect a change in policy concerning the appropriate fines for the bribery offense, which is part of the current approach in regards to combating economically motivated offenses by applying economic measures. The increase of the maximum fine is intended to reduce economic motivation which underlies corruption and to prevent it, contributing to the deterrence of potential offenders. Setting a severe fine for foreign bribery offenses corresponds with setting particularly severe fines in other offenses which are motivated by the desire to obtain considerable economic gain, or to prevent significant economic loss, in a similar manner to sections 3 and 4 to the Anti-Money Laundering Act -2000; offenses related to damages to the environment; offenses under the Anti-Trust Act - 1988, etc.

Unlike the sanctions which could have been imposed for bribery offenses prior to the amendment, now, according to Section 290(a) to the Penal Law, it is possible to impose a fine of up to 4 times the benefit the offender (passive as well as active bribery) intended to obtain even when not actually obtained.

Setting of a maximum fine up to 4 times the value of the benefit obtained or intended by the offender will allow imposing proportional fines in many cases when the offender expected to obtain a particularly significant economic profit. While it is true that Section 63(a) to the Penal Law allows to impose a fine of up to four times the damage caused or the benefit obtained, this provision is not sufficient to allow for a proportional fine. This deficiency could arise when there is only an attempt to take a bribe or when the benefit has yet to be obtained (offer of a bribe).

As monetary fines constitute the principal sanction for a legal person, the maximum fine for a legal person is double the fine for a natural person.

The need to increase the sanctions and sanctions against legal persons in particular, has also risen from Israel's international obligations and especially from the OECD (Organization for Economic Cooperation and Development) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. According to those obligations, the sanctions for the foreign bribery offense must be dissuasive and effective.

The substantial change in the legislature's approach which is reflected in the amendment to the Penal Law, particularly with regard to the monetary fines, must also be reflected in the position of the prosecution with regard to the appropriate sanctions for the offense, of course in accordance with the circumstances of each case. In cases where the defendant did in fact obtain significant economic profits by the offense, the prosecution should argue, according to the circumstances, for the imposition of the maximum fines.

In cases where the defendant committed the offense with the expectance of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to this effect, in order to enable the court to impose the appropriate fines according to the profit obtained, or intended to be obtained by the defendant. This evidence can be presented at the evidentiary hearings during the prosecution case in the trial - as this would be required in order to prove the components of the offense, and if not - following conviction in the sentencing phase. In any case, particular attention should be given to the need to prove the

value of the benefit obtained or intended as early as in the investigation stage, and in appropriate cases seek expert assistance for this purpose.

Alongside the need to focus - in both the investigation and preparation of the indictment by the prosecution - on the need to impose adequate fines, prosecutors should consider, in appropriate circumstances, the option of filing an indictment against the relevant legal person, and forfeiture. In this context, it is important to note that Section 297 to the Penal Law provides special provisions concerning forfeiture in bribery offenses. It should also be noted that bribery offenses, including bribery of a foreign public official, are predicate offenses according to the Anti-Money Laundering Act. Therefore, the prosecution should consider whether offenses according to this Act were perpetrated, as well as other offenses.

Finally, all of these measures are intended to utilize maximum steps in combating economically motivated offenses, Some of which are already referred to by the Attorney General's Guidelines on the Prosecution and Investigation of bribery of foreign public officials.

**Attorney General Guideline No. 4.1110:**

**Prohibition on Payments of Bribes to a Foreign Public Official - Section 291A of the Penal Law, 1977**

**General**

In recent years, the world is witnessing a growing need to effectively deal with the phenomenon of corruption and bribery in international business transactions. The international community has decided to join forces in the international fight against corruption, as expressed by the obligations undertaken by the international community in the United Nations Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The underlying perception of these conventions is the commitment and dedication by each of the member states, to act together to eradicate bribery and corruption, which are key in successfully creating an international climate free from corruption. Israel is a party to both conventions, reflecting its belief in this perception and its willingness to take part in the joint global effort.

Setting a criminal prohibition on bribing a foreign public official and effectively enforcing it comprise an important tier in the struggle to create an international climate free from corruption. This prohibition complements the internal legislative framework, while making a contribution to the strengthening of domestic ethical standards. Additionally, effective enforcement of the prohibition will place Israel in line with many countries in the world which enforce the prohibition on paying bribes in international transactions. Maintaining these international standards will render it easier for Israeli companies to operate in international business transactions and will increase the competitiveness of the Israeli market.

On 14 July 2008, the Knesset approved the Penal Law (Amendment No. 99), 2008 adding Section 291A to the Penal Law, 1977, which set forth an offense of bribing a foreign public official in business activity (hereinafter: "the offense").

The wording of the offense is as follows:

### **"291A Bribing a Foreign Public Official**

(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291.

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section:

**"foreign state"** includes, but is not limited to, any governmental unit in the foreign country, including national, district or local unit, and also includes a political entity that is not a state, including the Palestinian Council;

**"foreign public official"** includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

**"public international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;"

The offense is included in the bribery offenses section in the Penal Law, and all the general provisions applicable to offenses in this section apply to it as well. The offense has unique characteristics, amongst other reasons because it will usually be committed, at least in part, in a foreign country, engaging a public official of a foreign country or an international organization. Given these and other special features, it is immensely important that the investigation and prosecution policy regarding this offense will be cohesive and applied in light of the protected values the criminal statutory provision seeks to promote and Israel's international commitments.

### **Procedural Guidance**

1. When the Israel Police (hereinafter: IP) learn of any suspicion relating to an offense under Section 291A, the information must be looked into in order to examine whether there is a sufficient evidentiary basis to merit the opening of an investigation. The source of such a suspicion may be, inter alia, a complaint, information from any Israeli or foreign government entity or international organization, a media report in Israel or abroad, or any other source.

2. While examining whether to open an investigation as mentioned above, the IP will consider whether the initial evidentiary basis justifies opening an investigation, and, inter alia, consider the content of the suspicions, the alleged authenticity of the information which was the basis of the suspicion, etc.

3. Among the considerations as to whether to open an investigation or to prosecute for this offense, considerations concerning national economic interests, potential effect on the relations with a foreign country, or the identity of the person or the corporation involved, cannot be taken into considerations.

4. Due to the importance of enforcement in this field, a decision to open an investigation or to archive the information or the complaint without an investigation shall be made by the Head of the Investigation and Intelligence Unit of the IP.

5. In cases where it was decided to conduct an investigation, upon its completion, the file shall be referred to the Deputy State Attorney (Special Functions) who will be responsible for making a reasoned recommendation to the Attorney General (through the State Attorney), as to whether to file an indictment or to close the case.

6. If an accompanying attorney has been assigned to the case, the IP will refer the file, following the conclusion of the investigation, to the accompanying attorney, which in turn would refer it, with his recommendations, to the Deputy Attorney General (Special Functions).

7. In Accordance with the provisions set in Section 291A(b) of the Penal Law, an indictment, for this offense, shall not be filed unless prior written consent was given by the Attorney General. This authority has not been delegated at this stage.

8. Where offense was perpetrated, in its entirety, outside of Israel, i.e. a "foreign offense", the applicability of the Penal Law to the foreign offense should be verified. In this case, the written consent of the Attorney General should also be given with regards to prosecution of the foreign offense, as required in Section 9(b) of the Penal Law.

9. Given the characteristics of the offense under Section 291A, it is important to cooperate with law enforcement authorities of other countries - in accordance with relevant statutory provisions, and common practice. Such cooperation may substantially assist, in many cases, with the conduct of investigations. The importance of international cooperation in the investigation of the foreign bribery offense is highlighted by Israel's commitment to collaborate with other countries to establish a corrupt free climate.

10. In cases where it was decided to open an investigation, the IP shall also consider whether it would be possible to forfeiture the bribe, its worth, or its proceeds, as the matter may be, and shall collect evidence for this purpose. The use of tools such as forfeiture and provisional remedies is highly significant in such cases, as the motivation for bribery offenses is economic, and these tools - which are essentially instruments of "economic enforcement" - carry great effectiveness and deterring power.

11. In addition to the question of the existence of evidentiary basis for commission of an offense under Section 291A of the Penal Law, the investigation and prosecution authorities shall also consider whether there is an evidentiary basis for including charges for additional offenses from the Penal Law or other laws, such as money laundering offenses, tax evasion, offenses under the Securities Law, etc. Where possible, indictments should be filed against the cooperation, as well as against the persons directly responsible.

12. Where the indictment includes an offense under Section 291A of the Penal Law in addition to offenses from other laws which contain provisions on confiscation (such as the Prohibition on Money Laundering Law, 2000 and the Income Tax Ordinance [New Version], 1961), the differences between the forfeiture provisions in each of the laws should be taken into account, and consideration must be given to the question under which statutory

provisions should the forfeiture be requested.

13. Supervisory bodies in the Defense Establishment and other relevant bodies within the Defense Establishment and the Ministry of Foreign Affairs shall assist and provide information they have at their disposal, as will be required, during the examination and investigation proceedings conducted with regard to this offense.

326. Israel provided the following example of implementation.

In Cr.C. 8116/03 (Tel Aviv) State of Israel v. Apple et al., a construction company and a controlling shareholder in the company (Apple) were convicted of bribery offenses. The bribe was given towards the mayoral election campaigns of a number of individuals in exchange for significant monetary advantages in the future, and from which the company and Apple would have benefitted. In the sentence, the Court accepted an argument by the defendants that the tendency in recent case law to give aggravated sanctions for bribery, including the amendment increasing the sanctions for the bribery offense, could not be given substantial consideration in this case since the crimes were committed 12 year prior. However, it is clear that the court acknowledged that the current tendency is to give high sentences for bribery. Apple was sentenced to 3.5 years imprisonment, 1.5 years of probation for 3 years from his release a fine of 1,000,000 million NIS (approx. 285,000 USD).

327. Israel indicated that it was not possible to make a distinction between the data on offences perpetrated by natural persons and offences perpetrated by legal persons.

**(b) Observations on the implementation of the article**

328. As section 23 of the Penal Law of Israel shows, a legal person is criminally liable for any offence when the conditions set out in the provisions of that section are met. There are no limitations on the criminal liability of a body corporate for corruption offences. Section 261 of the **Companies Ordinance [New Version], 1983** enables the Attorney General to file for the dissolution of a company where such operates illegally. Corruption offences by legal persons are mainly punishable with criminal sanctions, although civil and administrative liability of legal persons is also possible.

329. During the country visit the Department of Securities of Tel Aviv District Attorney (Economic Crimes Division) provided some additional statistical information with regard to criminal corporate liability.

330. From 2011 to 2013, 11 indictments were filed by the department against legal persons with connection to economic crimes committed by their organs. Indictments included, inter alia, such offences as:

- Manipulation of the corporation's securities prices by senior organs of the corporation.
- Investor fraud.
- Violation of investment management regulations.
- Misleading statements with respect to the corporation's business and financial



statements.

- From 2011 to 2013, 9 legal persons were convicted by Israeli courts on the basis of indictments filed by the department.

331. It was also noted that in 2011, Israeli Securities Law was amended, granting the ISA administrative enforcement powers, including, inter alia, enforcement measures against asset management corporations with respect to violation of fiduciary duties to investors.
332. In addition, the 2011 amendment authorized the district attorney to enter into a deferred prosecution agreement (DPA) with persons suspected of violation of the Securities Law, including legal persons, in lieu of criminal proceedings (in 2013, a general authorization to enter into DPA's by prosecutors was established in the Criminal Procedure Law, but was limited to a list of specific felonies and to a restricted list of enforcement measures. The arrangement under the Securities Law is much broader in scope and measures). Under a DPA, the suspected person may agree to be subjected to various enforcement measures. According to section 54 (e) of the Securities Law, a district attorney will enter into a DPA if she finds that the fulfillment of the terms of the DPA will satisfy the public interest in the enforcement of the case. In this framework, the district attorney may consider such factors as the gravity of the offence, the position and rank of the suspected person, and the damage caused by the violation.
333. In addition, in recent years the Israel Securities Authority conducted several "fit and proper" administrative proceedings against asset-management corporations, resulting in the cancellation of the corporations' license.
334. In 2013, a working group led by Deputy Attorney General, Adv. Raz Nizri, presented its recommendations with respect to reform in criminal liability and sanctioning of legal persons, including: Supervisory liability of legal persons for offences committed in the course of business by the legal person's employees or related persons. According to the proposal, a legal person would be liable for offences committed in the course of its business unless "all reasonable measures" were taken by it in order to prevent the offence.
335. Courts would also have authority to warrant probation for legal persons, including measures to prevent reoccurrence of offences, such as implementation of internal compliance programmes.
336. Based also on other country experiences, the reviewers welcome the adoption of the supervisory regime described above, which would be effective to deterrence and prevention.

## **Article 26 Liability of legal persons**

### **Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

337. Israel indicated that it is possible to hold liable both the corporation and the person who committed the offense. The imposition of criminal liability either on a corporation or on the person who committed the offense does not prevent the institution of criminal proceedings and a finding of criminal liability against the other party. Furthermore, it is possible to convict a legal person even where the individual responsible for the bribery has not been convicted (for example, in *Modiim* the corporation was convicted even though the identity of the specific organ who committed the offense was not known).

338. Israel cited the following applicable measures.

#### **Penal Law, 1977**

##### **23. Extent of Criminal Liability of a Body Corporate**

(a) A body corporate shall bear criminal liability -

(1) under section 22, if the offense was committed by a person in the course of the performance of his functions in the body corporate;

(2) for an offense that requires proof of criminal intent or negligence, if - under the circumstances of the case and in light of the position, authority and responsibility of the person in the management of the affairs of the body corporate - the act by which he committed the offense, his criminal intent or his negligence are to be deemed the act, the criminal intent or the negligence of the body corporate.

(b) If the offense was committed by way of omission, when the obligation to perform is directly imposed on the body corporate, then it is immaterial whether the offense can or cannot be related also to a certain officer of the body corporate.

#### **Companies Law, 1999**

##### **46. Organs**

The company's organs are the General Meeting, the Board of Directors, the General Manager and any person whose action on a certain matter - according to an enactment or by virtue of the by-laws - is deemed the company's action on that matter.

##### **47. Action by organ is action by the company**

The action and intentions of an organ are actions and intentions of the company.

339. Regarding examples of implementation, Israel referred to the information under UNCAC article 26(1) and (2) above (Cr.C. 8116/03 (Tel Aviv) *State of Israel v. Apple et al.*).

340. Israel indicated that it was not possible to make a distinction between the data on offences perpetrated by natural persons and offences perpetrated by legal persons.

#### **(b) Observations on the implementation of the article**

341. Israel is compliance with the provision under review. Israel implemented the provision under review.

#### **Article 26 Liability of legal persons**

##### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

342. Israel indicated that the criminal sanctions that can be imposed on a legal person for corruption offenses are fines. In a number of offenses, including bribery offenses, these fines are higher than the fines that can be imposed on a natural person. For example, in regard to bribery, legal persons can be fined up to about 2.26 million NIS (approx. 642,000 USD) - a tenfold increase of the previous fine, or four times the benefit obtained or intended to be obtained, whichever is higher.
343. This amendment introduced the option of imposing fines based not only on the benefit obtained, but also on an intended benefit, as a deterrent against bribes of high value, particularly in cases where there was merely an offer of a bribe, which makes it difficult to prove a causal link between the bribe and benefit obtained.
344. The Israeli legislature has decided to introduce, specifically for bribery offenses, the option of imposing fines based on an intended benefit, as an effective deterrent against bribes in high value transactions. Such a fine would be effective when the sum of four times the benefit intended exceeds the set fines for the offense. The fine is also meant to address a situation of a mere offer of a bribe and the possible difficulties in proving a causal link between the payment of the bribe and the benefit obtained. The grounds for determining the severity of the sentence include the value of the bribe or its proceeds and the scope of the criminal activity (e.g. number of acts of bribery that were included in the indictment). Lack of prior convictions was a consideration in some cases, but in others it was held that the absence of prior convictions should not be a major consideration when dealing with corruption offenses.
345. Israel cited the following applicable measure.

**Penal Law, 1997**

**290. Bribe taking**

(a) a public official who takes a bribe for an act in relation with his functions, is liable to ten years imprisonment or to the higher of the following fines: If a public servant took a bribe for an act connected with his position, then he is liable to seven years imprisonment.

(1) Five times the fine specified in Section 61(a)(4); if the offense was committed by a corporation, then ten times the amount specified in Section 61(a)(4).

(2) Four times the benefit obtained or intended to be obtained by the offense.

(b) In this Section, "public official" includes an employee of a body corporate that provides a service to the public.

**291. Bribery**

A person that gives a bribe to a public official, as defined in Section 290(b), for an act related to their position, is liable to seven years imprisonment or to a fine as provided in Section 290(a).

**291A. Bribing a Foreign Public Official**

A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or another advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291. .

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section -

"**foreign country**" includes, but not limited to, any governmental unit in the foreign country, including national, district or local unit;

"**foreign public official**" includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

"**public international organization**" means an organization formed by two or more countries, or by organizations formed by two or more countries;".

346. Israel referred to the cases and case law under UNCAC article 26 (1) and (2) (Cr.C. 8116/03 (Tel Aviv) State of Israel v. Apple et al.) above. It also to the General Data Note under UNCAC article 15(a) and data pertaining to bribery offences above.

347. It was not possible to make a distinction between the data on offences perpetrated by natural persons and offences perpetrated by legal persons.

**(b) Observations on the implementation of the article**

348. Under Israeli law, fines may be imposed on legal persons as criminal sanctions for corruption offences.

349. Analysis shows that the amount of the fines prescribed by law for the commission of corruption offences may be regarded as a proportionate and dissuasive criminal sanction, as required by the Convention.

**(c) Successes and good practices**

350. Moreover, the option of imposing fines for intended benefits and not only for benefits obtained as a deterrent against bribes of high value can be regarded as a good practice.

## **Article 27 Participation and attempt**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

351. Israel indicated that the principles of complicity and assistance in Israeli law are established in the **Penal Law, 1977** (hereinafter: "Law" or "Penal Law") and apply to corruption related offenses.
352. The definition of "accomplice" to an offense, and the liability of accomplices are set forth in Article 2 of Chapter Five of the Law [Parties to the Offense]. The Penal Law covers most of the forms of complicity mentioned in the Convention.
353. Section 29(a) of the Law defines a "perpetrator of the offense" as including a person who commits an offense together with others or through a third party. Section 29(b) defines joint perpetrators as follows: "Participants in the commission of an offense who perform acts for its commission are joint perpetrators; it is immaterial whether all acts were performed jointly, or some were performed by one person and some by another person."
354. The definition of solicitation is provided in Section 30 [Enticement] of the Law. Section 30 defines the "solicitor" of an offense as a person who causes another person to commit an offense by means of persuasion, encouragement, demand, cajolery or any other means of exerting pressure. Section 34D of the Law provides that unless legislation explicitly or implicitly provides otherwise, any provision that applies to the commission of a completed offense also applies to the attempted incitement, or abetting for the commission of the offense.
355. If the offense solicited was not committed, whether due to the refusal of the person solicited to perform the offense, or because the solicitation efforts are unknown to the person being solicited, the act will constitute an offense of attempted solicitation, punishable by half the punishment prescribed by law for the offense that the solicitor attempted to cause to be committed (Section 33 of the Penal Law). If the person being solicited attempted to perform the offense but the offense was not completed, both the solicitor and the person solicited will be charged with an attempted offense (Cr.A. 4720/98 *the State of Israel v. Cohen*). Under Section 32 of the Law, the punishment for aiding and abetting is also up to half the punishment prescribed by law for the completed offense. In addition, in the case of aiding, it is sufficient for the primary offender to have attempted to commit the offense. Furthermore, it is not necessary for the primary offender to be charged (Cr.A. 320/99 *John Doe v. the State of Israel*).
356. Section 31 of the Penal Law defines an abettor as a person who, before the offense is committed or during its commission, does anything to make its commission possible, to support or protect it, or to prevent the capture of its perpetrator, the discovery of the offense or its proceeds, or to contribute in any other way to the creation of the conditions for the commission of the offense. Case law has explained that the abettor's contribution consists of assisting, by acting or refraining from acting, in a manner that creates the conditions to commit the offense. His contribution can be either physical help or emotional support (CR.A. 2796/95 *John Doe v. the State of Israel*; Cr.A. 7085/93 *Najar v. the State of Israel*; Ap.Cr.A 3626/01 *Weitzman v. the State of Israel*).
357. In most cases, the authorization of an act of corruption would be considered a form of joint perpetration of a corruption offense, as the person authorizing usually has control over the commission of the offense. However, the Penal Law does not refer explicitly to the matter of "authorization."

358. If the person with the relevant authority approved the action, then even if he did not commit the act himself, he will be considered an accomplice as if he had actually committed it.
359. According to Section 498 of the Penal Law, a person who provides someone with tools, materials, money, information or any other means, knowing that they may be used in the commission of an offense, is liable to up to three years imprisonment. For the purposes of this Section, it does not matter whether the object was given permanently or temporarily, for consideration or without, and whether an offense was actually committed.
360. Section 499(a) of the Penal Law provides that if a person conspires with another person to commit a felony or misdemeanor abroad, or to commit an act abroad which would have constituted a felony or misdemeanor had it been committed in Israel and which is also an offense under the laws of the place where it was committed, that person bears criminal liability. If the offense is a felony, the punishment is up to seven years imprisonment or the punishment prescribed by law for that offense, whichever is lower. Sub-section (b) provides that a conspirator is also criminally liable for the offense that he conspired to commit or which was committed in order to further the objective of the conspiracy, only if he was party to its commission. According to case law, conspiracy offenses are comprised of two elements: (1) a conspiracy between two or more people to achieve a particular goal through the commission of an offense (whether or not the goal was achieved), and (2) the offense is a felony or a misdemeanor.
361. A "felony" is defined in Section 24(1) of the Penal Law as an offense punishable by a prison term of more than three years. Since the penalty for the bribery of a foreign public official exceeds three years, the offense constitutes a felony. Indictment for conspiracy is not dependent on indictment on the primary offense (although in practice, in most cases, conspiracy is not prosecuted separately when there is a completed offense).
362. The defenses from criminal liability, enumerated in Chapter Five "A" of the Penal Law, are applicable to all criminal offenses, including bribery offenses and those committed in complicity. The following are some relevant defenses: Justification (Section 34M); Lack of importance (De-Minimis) (Section 34Q); Mistake of Fact (Section 34R); Mistake of Law (Section 34S); Insanity (Section 34H); and Duress (Section 34L).
363. In addition to the usual defenses from criminal liability, an exemption due to remorse will apply to offenses of soliciting and aiding and abetting, under certain circumstances, as stipulated in Section 34 of the Penal Law. In addition, Section 28 provides an exemption from liability for "attempt." Both will apply in the case where, due to remorse and out of his own free will, a person stops the commission of the offense or substantively contributes to the prevention of the results upon which the completion of the offense depends.
364. Israel cited the following implementation measures

### **Penal Law, 1977**

#### **Exemption due to remorse**

28. If a person attempted to commit an offense, he shall not bear criminal liability therefor, if he proved that – of his own free will and out of remorse – he stopped in the commission of the act or substantively contributed to prevention of the results, on which

the completion of the offense depends; however, the aforesaid does not derogate from his criminal liability for another completed offense connected to the act.

### **Perpetrator**

29. (a) Perpetrator of the offense – includes a person who commits an offense together with others or through a third party.

(b) Participants in the commission of an offense who perform acts for its commission are joint perpetrators; it is immaterial whether all acts were performed jointly, or some were performed by one person and some by another person.

(c) The perpetrator of an offense through another is a person who contributed to the commission of the act by another who acted as his instrument, the other person being in one of the following situations, within their meaning in this Law:

- (1) minority or mental incompetence;
- (2) lack of control;
- (3) without criminal intent;
- (4) misunderstanding of the circumstances;
- (5) under duress or with justification.

(d) For the purposes of subsection (c), if the offense is conditional on a certain perpetrator, then the person in question shall be deemed to have committed that offense even if the condition is only met by the other person.

### **Enticement**

30. If a person who causes another person to commit an offense by means of persuasion, encouragement, demand, cajolery or any other means of exerting pressure, then he entices to an offense.

### **Accessory**

31. If a person does anything – before an offense is committed or during its commission – to make its commission possible, to support or protect it, or to prevent the capture of its perpetrator, the discovery of the offense or its proceeds, or to contribute in any other way to the creation of the conditions for the commission of the offense, then he is an accessory.

### **Penalty of accessory**

32. The penalty for being an accessory to the commission of an offense is half the penalty prescribed by law for the commission of the main offense; however, if the prescribed penalty is –

- (1) the death penalty or mandatory life imprisonment, then his penalty shall be twenty years imprisonment;
- (2) life imprisonment, then his penalty shall be ten years imprisonment;
- (3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;
- (4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

### **Attempt to entice**

33. The penalty for attempting to entice a person to commit an offense is half the punishment prescribed by law for the commission of the main offense; however, if the prescribed penalty is –

- (1) the death penalty or mandatory life imprisonment, then his penalty shall be

twenty years imprisonment;

(2) life imprisonment, then his penalty shall be ten years imprisonment;

(3) a minimum penalty, then his penalty shall not be less than half the minimum penalty;

(4) any mandatory penalty, then it shall be the maximum penalty and half thereof shall be the minimum penalty.

#### **Exemption due to remorse**

34. (a) If a person incited another or was an accessory, then he shall not bear criminal liability for enticement or for being an accessory, if he prevented the commission or completion of the offense, or if he informed the authorities of the offense in time in order to prevent its commission or its completion, or if – to that end – he acted to the best of his ability in some other manner; however, the aforesaid does not derogate from criminal liability for another completed offense connected to the same act.

(b) For purposes of this section, "**authorities**" – the Israel Police or any other body lawfully empowered to prevent the commission or completion of an offense.

#### **Restrictions on attempt, accessories and incitement**

34D. Unless legislation explicitly or implicitly provides otherwise, any provision that applies to the commission of a completed offense also applies to the attempt, incitement, attempted incitement or abetting for the commission of the offense.

#### **Burden of proof**

34E. Unless otherwise provided by law, any act shall be assumed to have been committed under conditions that do not include a restriction of criminal liability.

#### **Mental incompetence**

34H. No person shall bear criminal responsibility for an act committed by him, if – at the time the act was committed, because of a disease that adversely affected his spirit or because of a mental impediment – he lacked any real ability –

(1) to understand what he did or the wrongful nature of his act; or

(2) to abstain from committing the act.

#### **Duress**

34L. No person shall bear criminal responsibility for an act, which he was ordered to commit under a threat, which posed danger of injury to his own or another person's life, freedom, bodily welfare or property, and which he consequently was forced to commit.

#### **Justification**

34M. No person shall bear criminal responsibility for an act, which he committed under any of the following circumstances:

(1) he was lawfully obligated or authorized to commit it;

(2) he committed it under the order of a competent authority, which he was obligated to obey under Law, unless the order was obviously unlawful;

(3) in respect of an act which lawfully requires consent, when the act was immediately necessary in order to save a person's life or his bodily welfare, or to prevent severe injury to his health, if – under the circumstances – he was not able to obtain the consent;

(4) he committed it on a person with lawful consent, in the course of a medical procedure or treatment, the objective of which was that person's or another person's



benefit;

(5) he committed it in the course of a sports activity or of a sports game, such as are not prohibited by law and do not conflict with public order, in accordance with rules customary for to them.

### **Lack of importance**

34Q. No person shall bear criminal responsibility for an act, if – when the nature of the act, its circumstances, its consequence and the public interest are taken into consideration – it is of minor importance.

### **Mistake of Fact**

34R.(a) If a person commits an act, while imagining a situation that does not exist, then he shall bear criminal responsibility only to the extent that he would have had to bear it, had the situation really been as he imagined it.

(b) Subsection (a) shall also apply to an offense of negligence on condition that the mistake was reasonable, and to an offense of enhanced liability subject to the provisions of section 22(b).

### **Mistake of Law**

34S. For the purposes of criminal liability it is immaterial whether a person imagined that his act was not prohibited, because of a mistake on the existence of a criminal prohibition or on his understanding of the prohibition, unless the mistake is reasonably inevitable.

### **Provision of means for commission of felony**

498. (a) If a person gives another tools, materials, money, information or any other means, knowing that they may directly or indirectly be used for the commission or to facilitate its commission, then he is liable to three years imprisonment.

(b) For purposes of this section, it does not matter whether the thing was given permanently or temporarily, for consideration or without consideration, and whether a felony was committed or not.

(c) The provisions of this section shall not derogate from other provisions of this Chapter and from the provisions of Chapters Four and Five and of sections 260 to 262, but shall add to them.

### **Conspiracy for a felony or misdemeanor**

499. (a) If a person conspires with another to commit a felony or misdemeanor, or to commit an act in a place abroad which would have constituted a felony or misdemeanor if it had been committed in Israel – and which also is an offense under the laws of that place, then he is liable –

(1) if the offense is a felony, to seven years imprisonment or to the punishment prescribed for that offense, whichever is the lighter punishment;

(2) if the offense is a misdemeanor, to two years imprisonment or to the punishment prescribed for that offense, whichever is the lighter punishment.

(b) A conspirator shall also bear criminal liability for the offense that he conspired to commit or which was committed in order to advance its objective, only if he was party to its commission under Article Two, Chapter Five.

365. Israel provided the following examples of cases and case law.

- In Cr.A 3575/99 Arye Deri v. the State of Israel - Three individuals, Arye Weinberg,

Moshe Weinberg and Yom-Tov Rubin, were indicted for bribery-related offenses in connection with a fourth individual, former Government minister Arye Der'i. Arie Weinberg and Moshe Weinberg were said to have "authorized" the bribe (in this case, the court refers to consent instead of authorization), and were considered joint perpetrators. The Court stated: "It was concluded that the requirement set forth in Section 29(b) - "who perform acts for its commission" - can also be fulfilled through consent to the commission of an offense, when under the relevant circumstances, execution requires consent...Such is the present case: the consent of Arie Weinberg and Moshe Weinberg for the money to be given to Der'i by Rubin, constituted an "initial and requisite step" in making the joint decision to give it. The legal conclusion resulting from the above is that all three - Arie Weinberg, Moshe Weinberg and Yom-Tov Rubin - bear criminal liability for the offense of giving a bribe to Der'i". Der'i was sentenced to three years imprisonment, as well as a fine of 250,000 NIS (approx. 70,000 USD) or an additional 10 months imprisonment. Rubin was sentenced to 6 months imprisonment and an addition 12 months suspended sentence. Moshe Weinberg was sentenced to 6 months imprisonment and an addition 12 months suspended sentence. Arie Weinberg was sentence to one year imprisonment and an additional one year suspended sentence.

366. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a).

Note: sometimes participants of any kind are prosecuted for the complete offence.

#### **Enticement and Attempt to entice (Penal Law Sec. 30, 33)**

In 2009, 5 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2010, 1 investigation took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2011, 5 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2012, 3 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

#### **Accessory (Penal Law Sec. 31)**

In 2009, 16 investigations took place, while 3 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 15 investigations took place, while 9 case was prosecuted (there is no available data for this year on convictions).

In 2011, 30 investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2012, 12 investigations took place, while 11 cases were prosecuted (there is no available data for this year on convictions).

#### **Provision of means for the commission of a felony (Penal Law Sec. 498)**

In 2009, 20 investigations took place, while 14 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 24 investigations took place, while 4 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 17 investigations took place, while 15 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 17 investigations took place, while 11 cases were prosecuted (there is no available data for this year on convictions).

#### **Conspiracy to commit a felony (Penal Law Sec. 499(a)(1))**

In 2009, 1985 investigations took place, while 831 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 1788 investigations took place, while 656 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 2234 investigations took place, while 975 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 2140 investigations took place, while 1292 cases were prosecuted (there is no available data for this year on convictions).

#### **Conspiracy to commit a misdemeanour (Penal Law Sec. 499(a)(2))**

In 2009, 82 investigations took place, while 14 cases were prosecuted (there is no available data for this year on convictions).

In 2010, 100 investigations took place, while 21 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 115 investigations took place, while 20 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 129 investigations took place, while 19 cases were prosecuted (there is no available data for this year on convictions).

#### **(b) Observations on the implementation of the article**

367. Israel criminalized different degrees of participation in corruption offences via section 29 (Perpetrator), section 30 (Enticement), section 31 (Accessory) of the Penal Law, 1977.

### **Article 27 Participation and attempt**

#### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

368. Israel indicated that according to Section 25 of the **Penal Law, 1977** (hereinafter: "Law" or "Penal Law"), "attempt" to commit an offense is defined as the perpetration of an act that does not merely constitute preparation, with the intention to commit an offense, where the offense was not completed. Section 26 states that, for the purposes of determining whether there was an attempted offense, it is immaterial whether the commission of the offense was

impossible due to a factual situation of which the offender was unaware or in respect of which he was mistaken.

369. Case law (Cr.A. 2776/97 *Moshe Madar v The State of Israel*) has clarified the distinction between the concepts of "preparation of an offense" and "attempt to commit an offense":

*"In order to prove the factual basis for an attempted offense, it is necessary to prove behavior that goes beyond preparation and reaches the level of an act or acts that are part of a chain of events which, if left undisturbed, would constitute the actus reus of the offense. In particular, it is not necessary for the actus reus to constitute the last or final act; it is sufficient for it to fall within "the range of attempt", that is to say - between minimal behavior that goes beyond preparation and behavior that concludes the completed offense".*

370. Section 34D of the Penal Law considers the criminal attempt and the completed criminal act to be equally severe. In the case of the Penal Law's bribery offenses, there is no requirement for the bribe to have actually been received or even for consent to receive or to give it for a criminal offense to be completed. An offer of a bribe or a request thereof is sufficient, even if the offer or request was refused (Section 294(b)). As a result, with regard to corruption related offenses, acts that would be considered an attempt to commit an offense would be considered full commission of the offense under Israeli criminal law. However, the fact that the offense was not completed, the circumstances surrounding the offense and the point at which the commission of the offense ceased could still be taken into consideration in sentencing.

371. In addition to the usual defenses from criminal liability, as is the case with offenses of soliciting and abetting, under certain circumstances, an exemption due to remorse will apply to attempted offenses, as provided in Section 28 of the Penal Law. This exemption would apply in cases where a person has proven that - due to remorse and out of his own free will - he stopped in the commission of the offense or substantively contributes to prevention of the results upon which the completion of the offense depends. The foregoing does not derogate from a person's criminal liability for a different completed offense.

372. Israel cited the following applicable policy(s), law(s) or other measure(s).

## **Penal Law, 1977**

### **25. What constitutes an attempt**

A person attempts to commit an offense, if - with intent to commit it - he commits an act that does not merely constitute preparation, on the condition that the offense was not completed.

### **26. Commission of offense is not possible**

For purposes of attempt, it is immaterial that commission of the offense was not possible, due to circumstances of which the person who made the attempt was not aware or in respect of which he was mistaken.

### **34D. Restrictions on attempt, accessories and incitement**

Unless legislation explicitly or implicitly provides otherwise, any provision that applies to the commission of a completed offense also applies to the attempt, incitement, attempted incitement or abetting for the commission of the offense.

#### **294. Further provisions**

- (a) If a person solicits or stipulates a bribe, even if he meets with no response, he shall be deemed a person who takes a bribe.
- (b) If a person offers or promises a bribe, even if he meets with refusal, he shall be deemed a person who gives a bribe.
- (c) If a person is a candidate for any position but the position has not yet been assigned to him, or if any function has been assigned to a person but the person has not yet begun exercise this function, the person shall be deemed to exercise that function.
- (d) In an action for bribery, the courts shall not entertain the argument -
  - (1) that there was a defect or invalidating circumstance in the assignment of the function to, or the appointment or election of the person who took the bribe;
  - (2) that the person who took the bribe did not perform or even intend to perform the act, or that he was not competent or authorized to perform it.

373. Israel provided the following examples of cases and case law.

- In Cr.A. 8430/11, 8679/11 State of Israel v. Karshi and Cr.A. 2144/11 Matzah v. State of Israel, a case concerning the Israeli Tax Authority, a senior official within the Tax Authority, Jackie Matzah, sought to be appointed as head of this agency. In order to advance his candidacy he met with a businessman and accountant (Ben-Gur) who suggested that he meet with Yoram Karshi and his sister Shula Zaken. Zaken who at the time worked as a senior assistant to the Minister of Finance. Matzah met with Karshi and Zaken in order to obtain their help with his advancement, knowing that they had personal interests in the Tax Authority and aware of the fact that as the head of the Tax Authority, he would be expected to allow them to influence certain decisions that would be taken there. Eight years later, he was asked to promote a number of employees on behalf of Ben-Gur and Karshi. For these acts, Ben-Gur was found guilty of bribing Matzah. Karshi was convicted of aiding Ben-Gur in bribing Matzah and Matzah was indicted for breach of trust. Ben-Gur and Karshi were also convicted of soliciting a breach of trust. The Supreme Court increased Karshi's sentence to 12 months imprisonment and a 12 months suspended sentence. Matzah, was sentenced to a 12 months imprisonment and a 12 months suspended sentence, in a plea-bargain.

374. Israel provided the following related statistical data on number of investigations, prosecutions and convictions/acquittals. It referred to the General Data Note under UNCAC article 15(a) above and the data pertaining to bribery offences.

#### **Attempt (Penal Law Sec. 25)**

In 2009, 5 investigations took place, while 2 cases were prosecuted (there is no available data for this year on convictions).

In 2010, no investigations took place, while no cases were prosecuted (there is no available data for this year on convictions).

In 2011, 1 investigation took place, while 1 case was prosecuted (there is no available data for this year on convictions).

In 2012, 1 investigation took place, while no cases were prosecuted (there is no available data for this year on convictions).

#### **Offer or a promise of a bribe (Penal Law Sec. 294)**

In 2009, 22 investigations took place, while 6 cases were prosecuted (there is no available

data for this year on convictions).

In 2010, 30 investigations took place, while 7 cases were prosecuted (there is no available data for this year on convictions).

In 2011, 12 investigations took place, while 2 cases were prosecuted (there is no available data for this year on convictions).

In 2012, 20 investigations took place, while 4 cases were prosecuted (there is no available data for this year on convictions).

**(b) Observations on the implementation of the article**

375. Israel criminalized attempts in sections 25 (What constitutes an attempt), 26 (Commission of offence is not possible) and 34D (Restrictions on attempt, accessories and incitement) of the Penal law, 1977. Relevant case law additionally provides extensive clarification on the nature and elements of attempt and its prosecution.

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

376. Israel indicated that it has not implemented the provision under review. In Israeli criminal law, other than in a few rare cases, the preparation of an offense is not considered an offense. This is clarified in the definition of an "attempt" in Section 25 which provides: "What constitutes an attempt: A person attempts to commit an offense, if,- with the intent to commit it - he commits an act that does not merely constitute preparation, on the condition that the offense was not completed."

377. For clarifications regarding the distinction between preparation and an attempt in Israeli law, see the information under UNCAC article 27(2).

378. Since proposal is an element included in most offenses, and abetting is found in Section 31 of the Penal Law, in light of the relevant case law as cited under UNCAC article 27(2), following consideration, Israeli authorities decided not adopt the discretionary measures under this Article.

379. In addition, many of the acts that constitute bribery under Israeli law are essentially acts which could be considered "preparation" and which the Israeli court chose to include in expanding the bribery offense. In R.Cr.A. 5905/98 *Ronen v. State of Israel* the court interpreted preparation in bribery offenses as follows:

"The purpose of Section 294 is to extend the prohibition involving bribery. An act that was considered as an attempt or preparation to receive a bribe, is defined in Section 294 as a completed offense of giving or taking a bribe". The latter was detailed as follows in the explanatory report of the Amendment to the Penal Law (Bribery): "*Most of the rules and existing laws in the country do not distinguish between actually giving or taking a bribe and*

*the acts which lead up to or that are carried out for in preparation of the act of corruption and are both punished in the same fashion. The proposed law will follow this path."*

380. Israeli authorities indicated that they considered this discretionary provision, and decided not to implement it.

**(b) Observations on the implementation of the article**

381. Since proposal is an element included in the bribery offences, and abetting is found in Section 31 of the Penal Law, and in light of the offences of provision of means for commission of felony and conspiracy, Israel considered but decided not to further criminalize the preparation for an offence.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

382. Israel indicated that it has established a long statute of limitations period in which to commence proceedings for any offense established in accordance with this Convention.

383. Under Section 24(1) of the **Penal Law, 1977** (hereinafter: "Penal Law"), an offense punishable by over three years imprisonment is a felony, whereas a misdemeanor is an offense with a penalty of imprisonment of more than three months, but not more than three years. The **Criminal Procedure Law, 1982** (hereinafter: Criminal Procedure Law") provides the statute of limitations for each offense, and in Section 9(a)(2), it states that, where no specific rule applies, the statute of limitations for a felony will be ten years from the date on which the offense was committed. For misdemeanors, the statute of limitations is five years. The statute of limitations is the same for legal persons and natural persons. Many corruption offenses such as passive and active bribery are felonies in Israel, though some, such as breach of trust, are misdemeanors.

384. In addition, according to Section 9(c) of the Criminal Procedure Law, an investigation of an offense suspends the statute of limitation for that offense. The statute of limitation period is also stopped in cases where, during the course of the limitation period, an indictment was issued or a court procedure was held regarding the offense. In such cases, the limitation period begins on the later of (1) the date of the last procedure of the investigation, (2) the date of the last court proceedings and (3) the date on which the indictment was issued.

385. According to Section 9(d), Section 9(c) of the Criminal Procedure Law also applies to extradition requests submitted to the State of Israel by foreign states and vice versa. In such cases, certain actions conducted in the requesting State, as listed in Section 9(c), could extend the period of limitations in the same manner as those that apply to acts conducted in Israel. In Cr.A. 739/07 *Yonatan Efrat (Kenneth Frank) v. the Attorney General*, the Supreme Court affirmed the decision to extradite the appellant to the United States, where he was convicted of rape fourteen years before he was located in Israel. The Court rejected the

appellant's claim regarding the statute of limitations, ruling that his escape would have suspended the statute of limitations had the offense taken place in Israel.

386. According to Section 94A of the Criminal Procedure Law, at any point from the issuance of the indictment until sentencing, a court may suspend criminal proceedings if it is convinced that it will be impossible to bring the defendant to trial. The Section further stipulates that if the defendant is brought to court after his trial was suspended due to his escape or evasion of justice, then proceedings against him can be resumed, on condition of approval by the Attorney General, even after the periods stipulated in Section 9 have passed. According to Section 10 of the Criminal Procedure Law, the statute of limitations for the execution of a conclusive sentence of a felony offense is twenty years.

387. Israel cited the following applicable policy(s), law(s) or other measure(s).

### **Criminal Procedure Law, 1982**

#### **9. Prescription of offense**

(a) Unless otherwise provided in another law, a person will not be brought to trial for an offense if a period as stated below has elapsed since the date of its commission:

- (1) In the case of a felony punishable by death or imprisonment for life - twenty years;
- (2) In the case of any other felony - ten years;
- (3) In the case of a misdemeanor - five years;
- (4) In the case of a contravention - one year.

(b) There will be no statute of limitation with regard to offenses under the Crime of Genocide Law (Prevention and Punishment), 1950, or the Nazis and Nazis Collaborators Law (Punishment), 1950.

(b1) The felonies of murder and attempted murder in accordance with sections 300 and 305 of the Penal Law, 1977, and the offense of conspiracy to commit one of the aforementioned felonies in accordance with Section 499 of the aforementioned law, if committed against the person serving as the prime minister when the offense was committed - will have no statute of limitation.

(c) With respect to a felony or misdemeanor concerning which, within the periods set out in Subsection (A), an investigation under any act was conducted, an indictment was submitted or a proceeding was conducted on behalf of a court, the time periods will begin on the date of the last proceeding of the investigation, or on the date on which the indictment was submitted or on the date of the last proceeding on behalf of the court, whichever is the latest of those dates.

(d) The provisions of Subsection (C) apply to an extradition offense for which an extradition request has been made to the State of Israel, and any of the actions listed in that subsection that were conducted in the requesting country will extend the statute of limitations for that offense in accordance with this section, as if they were conducted in Israel.

#### **10. Prescription of penalties.**

If a penalty has been imposed, its implementation will not begin, and where the implementation of a penalty has been interrupted, it will not be continued, if a period as stated below has elapsed since the date on which the judgment became conclusive or the date of the interruption, whichever is later:

- (1) In the case of a felony - twenty years;
- (2) In the case of a misdemeanor - ten years;
- (3) In the case of a contravention - three years



#### **94A. Suspension of proceedings**

(A) At any time after the filing of an indictment and before imposing a sentence, the court is entitled to suspend the proceedings, either at the initiative of the court or at the prosecutor's request, if the court is convinced that it is impossible to bring the defendant to the court for the continuation of his trial.

(B) If after suspension of the proceedings in accordance with Subsection (A), it becomes possible to bring the defendant for the continuation of the trial, the prosecutor is entitled to give written notice to the court of his wish to renew the proceedings and after having given that notice, the court will renew the proceedings and will be entitled to renew those proceedings from the stage reached before their suspension.

(C) Notwithstanding the provisions of Section 9, proceedings may be renewed with authorization from the Attorney General, for reasons that must be put on record, even if between the date of the suspension of the proceedings and the date on which it will be possible to bring the defendant for the continuation of the trial, the periods provided in Section 9 have passed, and on condition that the proceedings were suspended because the defendant was evading the law.

388. Israel provided the following example of implementation. No related statistical information was available.

In HCJ 6972/96 The Movement for Quality Government in Israel v. the Attorney General, the Supreme Court discussed the term "investigation" for the purposes of suspending the statute of limitations in respect of an offense. This case involved a former Member of Knesset who was investigated for fraud and breach of trust. The Court noted that "stopping the statute of limitations, or suspending it, is justified first and foremost when the accused carries out acts that pull the rug out from under the rationale of statute of limitation. When the offender escapes from the grasp of the law enforcement authorities and therefore his prosecution is avoided, one cannot claim that society has forgotten the crime and forgiven him for it. Society does not forgive an individual who thwarts the criminal proceedings against him, nor can his right to a speedy trial shield him [from such proceedings]."

#### **(b) Observations on the implementation of the article**

389. Israel has established a 10 year statute of limitations for most corruption offences in section 9 (Prescription of offence) of the Criminal Procedure Law. According to section 9(c) of the Criminal Procedure Law, an investigation of an offense, an indictment or any other court proceeding suspends the statute of limitation for that offense. Based on section 94A of the Criminal Procedure Law, a court may suspend criminal proceedings if it is convinced that it would be impossible to bring the defendant to trial.

390. Based on the above, Israel implemented the article under review.

### **Article 30 Prosecution, adjudication and sanctions**

#### **Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

(a) **Summary of information relevant to reviewing the implementation of the article**

391. Sanctions in Israeli criminal law include prison sentences and fines. The sentences and fines provided by the law are maximum sentences. There are few exceptions to this rule whereby the law provides mandatory or minimal sentences regarding specific offenses. For example, murder has a mandatory sentence of life imprisonment. Offenses established under the Convention are not included among these offenses and therefore the court is guided by the maximum sentence rule, while using its discretion. In determining the sentence in connection with an offense under the Convention, the court will use its discretion, taking different considerations into account, such as the circumstances of the offense as well as the offender's personal circumstances, including: circumstances surrounding the commission of the offense, the offender's role in planning and executing the offense, his criminal record, the extent to which he cooperated with the police during investigation, an evaluation of his chances of rehabilitation and the risk that he poses to society.

392. Unless determined otherwise in the relevant law, the fine is derived from the period of imprisonment provided in Section 61 of the **Penal Law, 1977** (hereinafter: "Penal Law"). For example, if the period of imprisonment is six months to one year, the fine will be up to 29,200 NIS (approx. 8,290 USD). If the period of imprisonment is between one and three years, the fine will be up to 75,300 NIS (approx. 21,379 USD). If the period of imprisonment is more than three years, the fine will be up to 226,000 NIS (approx. 64,168 USD). Listed below are a number of key corruption offenses and their respective maximum penalty:

Bribe taking (Section 290 of the Penal Law) - 10 years' imprisonment and/or a fine.

Bribery (Section 291 of the Penal Law) - 7 years' imprisonment and/or a fine.

Fraud and breach of trust (Section 284 of the Penal Law) - 3 years' imprisonment.

Deceit and breach of trust in body corporate (Section 425 of the Penal Law) - 3 years' imprisonment.

Theft by a public servant (Section 390 of the Penal Law) - 10 years' imprisonment.

Theft by an agent (Section 393 of the Penal Law) - 7 years' imprisonment.

Money laundering (Section 3 of the PMLL) - 10 years' imprisonment or a fine.

393. In February 2010, the Penal Law was amended to increase the sanctions for the bribery offense. The maximum prison sentence for passive bribery was increased from seven to ten years, and for active bribery it was doubled from 3.5 years to seven years. In addition, the amendment significantly increased the applicable fines: natural persons can now be fined up to about 1.13 million NIS (approx. 321,000 USD) - a fivefold increase of the previous fine - or four times the intended or obtained benefits, whichever is higher. Legal persons can be fined up to about 2.26 million NIS (approximately 642,000 USD) - a tenfold increase of the previous fine - or four times the benefit intended or obtained, whichever is higher. This amendment introduced the option of imposing fines based on an intended benefit, as a deterrent against bribes of high value, particularly in cases where there was merely an offer of a bribe, which makes it difficult to prove a causal link between the bribe and benefit obtained.

394. Following the 2010 amendment, in March 2010, the State Attorney published the **State Attorney Guideline on Sanctions for Bribery Offenses, no. 9.15**. The Guideline describes the amendment and highlights the increased punishment and fine for the bribery offense. The Guideline explicitly refers to Israel's international obligations and the conventions it has ratified as one of the reasons for the amendment. The Guideline instructs prosecutors that in cases where the defendant obtained significant economic profits by committing the offense, the prosecution should argue, according to the circumstances, for the imposition of the maximum fines. In cases where the defendant committed the offense with the expectation of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to that effect in order to enable the court to impose appropriate fines commensurate with the actual or expected gain.

395. According to State Attorney Guideline no. 9.15: The Aggravation of Sanctions and Sanctioning Policy for Bribery Offenses:

*"In cases where the defendant committed the offense with the expectance of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to this effect, in order to enable the court to impose the appropriate fines according to the profit obtained, or intended to be obtained by the defendant. This evidence can be presented at the evidentiary hearings during the prosecution case in the trial - as this would be required in order to prove the components of the offense, and if not - following conviction in the sentencing phase. In any case, particular attention should be given to the need to prove the value of the benefit obtained or intended as early as in the investigation stage, and in appropriate cases seek expert assistance for this purpose."*

396. The prosecution and the defense attorneys present their arguments to the court regarding sentencing, including fines. The defense attorneys also usually present to the court the sentencing imposed in other cases of similar or equivalent circumstances to support their arguments. In principle, the court determines the sentence taking into consideration equivalent cases, while guided by precedent and the relevant case law in determining and weighing the circumstances to be considered. For example, the Supreme Court has often held that when considering offenses of corruption, breach of trust, financial offenses etc., the defendant should serve actual prison time and not community service, and that the purpose of the sentence will be achieved only if the defendant serves the sentence in prison. The Court stated that corruption offenses are very serious crimes and that sentencing must have a significant deterrent effect.

397. In 2012, the Penal Law was amended to include a chapter concerning the court's discretion in sentencing. The guiding principle, according to Section 40A, is that the sentence imposed correspond with the severity of the offense, the circumstances of the act and the defendant's level of guilt. To do so, the court determines the appropriate range of available punishment in accordance with Section 40C, but it may diverge from that range for reasons such as rehabilitation of the defendant (Section 40D) or the protection of public well-being (Section 40E). The court may also consider individual (Section 40F) or general (Section 40G) deterrence.

398. Section 40I sets out the circumstances that may be taken into consideration when determining the appropriate range of punishment. Regarding corruption, the relevant considerations include: the scope of the planning, the defendant's role, the damage incurred or expected to be incurred by the offense and the defendant's abuse of his power or position.

399. In accordance with the recent amendment, the court must relate first of all to the circumstances of the offense itself. The court must weigh the severity of the act and the culpability of the perpetrator, and then decide, in terms of retribution, what is the reasonable range of punishment. After deciding what the retributive range is, the court sets the final sentence within that range. In doing so, the court considers the other goals of punishment - rehabilitation, preventing future criminal behavior, public and private deterrence - and the offender's personal circumstances, including his prior records, the extent to which he cooperated with the police during investigation, etc. It should be noted that in certain circumstances, the court is allowed to set the final punishment either below the retributive range, when the chances of rehabilitation are high, or above the range, in cases of repeat offenders or dangerous offenders.
400. The amendment applies to all offenses and not just those concerning corruption. However, it is important to note that the amendment has a significant effect on corruption-related offenses. The amendment compels the court to first establish the range of the sentence according to the circumstances of the act, regardless of the offender's personal circumstances (such as a clean personal record), which would normally have been to the benefit of the offender. Only after having established the applicable range may the court apply the offender's personal circumstances to the determination of the sentence.
401. The amendment also requires the court to refer to each criminal act separately, for example each time a bribe was given or for each offense the defendant was charged with.
402. Regarding corruption offenses, the grounds for determining the severity of the sentence include, *inter alia*, the value of the bribe or the proceeds stemming from the acceptance of the bribe and the scope of the criminal activity (e.g. number of acts of bribery included in the indictment). In addition, a lack of prior convictions has been taken into consideration in some cases, while in others it was held that in corruption cases, lack of prior convictions will not be a major consideration.
403. Israel cited the following text regarding applicable sanction(s) or other measure(s).

**Penal Law, 1977** - Sections 40A - 40O, 284, 290, 291, 390, 393 & 425 in the attached legislative compilation.

**State Attorney Guideline no. 9.15:**

**The Aggravation of Sanctions and Sanctioning Policy for Bribery Offenses:**  
(issued 11 March 2010)

On the 4th of February 2010, an amendment to The Penal Law, 1977 (hereinafter: the Penal Law or the Law) increasing the level of sanctions for bribery offenses came into force. The amendment affects sanctions adjacent to the following offenses: Passive Bribery (Section 290 to the Penal Law); Active Bribery (Section 291 to the Penal Law); Bribery of a Foreign Public Official (Section 291A to the Penal Law); Intermediary in Bribery and Provision of Unlawful Consideration to a Person with Significant Influence (trafficking in influence) (Section 295(a), (b), (b1)(1)). Sanctions for these offenses derive from the sanctions applied to the passive and active bribery offenses. The maximum prison sentence for passive bribery was increased from seven to ten years, and for active bribery increased two fold, from 3.5 years to seven years.

The applicable fines for bribery offenses were significantly increased. Prior to the enactment of the amendment, under Section 61(a)(4) to the Penal Law, the maximum fine for bribery offenses, which are liable for more than 3 years imprisonment, was 202,000 NIS. Alternatively, under Section 63(a), the court would have been able to impose a fine of up to four times the benefit obtained by the offense.

Following the amendment, the maximum applicable fine for bribery offenses under Section 290(a) is now: (whichever is higher)

1. For natural persons, a fivefold increase of the previous applicable fine and for legal persons, a tenfold increase of the previous fine.
2. Four times the obtained or intended benefit of the offense.

Increasing the imprisonment sentence expresses the gravity of bribery offenses, the most severe of the corruption offenses. The amendment intends to narrow the gap between bribery and other grave economic offenses. Increasing the sanction for active bribery narrows the gap, which was prior to the amendment too wide, between active and passive bribery, while persevering the normative distinction between both offenses. Establishing a higher maximum monetary penalty will enable the courts to impose a more proportional and dissuasive sanction in cases where the payment of the bribe was made in aggravated circumstances, such as:

Systematic or large scale bribes, or where the briber is a corporation or a strong commercial, political or likewise, body, compared to the public official who receives the bribe. The substantial difference in the fines set by the legislature reflect a change in policy concerning the appropriate fines for the bribery offense, which is part of the current approach in regards to combating economically motivated offenses by applying economic measures. The increase of the maximum fine is intended to reduce economic motivation which underlies corruption and to prevent it, contributing to the deterrence of potential offenders. Setting a severe fine for foreign bribery offenses corresponds with setting particularly severe fines in other offenses which are motivated by the desire to obtain considerable economic gain, or to prevent significant economic loss, in a similar manner to sections 3 and 4 to The Anti-Money Laundering Law -2000; offenses related to damages to the environment; offenses under The Anti-Trust Law -1988, etc. Unlike the sanctions which could have been imposed for bribery offenses prior to the amendment, now, according to Section 290(a) to the Penal Law, it is possible to impose a fine of up to 4 times the benefit the offender (passive as well as active bribery) intended to obtain even when not actually obtained.

Setting of a maximum fine up to 4 times the value of the benefit obtained or intended by the offender will allow imposing proportional fines in many cases when the offender expected to obtain a particularly significant economic profit. While it is true that Section 63(a) to the Penal Law allows to impose a fine of up to four times the damage caused or the benefit obtained, this provision is not sufficient to allow for a proportional fine. This deficiency could arise when there is only an attempt to take a bribe or when the benefit has yet to be obtained (offer of a bribe).

As monetary fines constitute the principal sanction for a legal person, the maximum fine for a legal person is double the fine for a natural person. The need to increase the sanctions and sanctions against legal persons in particular, has also risen from Israel's international obligations and especially from the OECD (Organization for Economic Cooperation and Development) Convention on Combating Bribery of Foreign Public Officials in International

Business Transactions. According to those obligations, the sanctions for the foreign bribery offense must be dissuasive and effective. The substantial change in the legislature's approach which is reflected in the amendment to the Penal Law, particularly with regard to the monetary fines, must also be reflected in the position of the prosecution with regard to the appropriate sanctions for the offense, of course in accordance with the circumstances of each case. In cases where the defendant did in fact obtain significant economic profits by the offense, the prosecution should argue, according to the circumstances, for the imposition of the maximum fines.

In cases where the defendant committed the offense with the expectance of major economic gain, or obtained such a gain, the prosecution must present evidence to the court to this effect, in order to enable the court to impose the appropriate fines according to the profit obtained, or intended to be obtained by the defendant. This evidence can be presented at the evidentiary hearings during the prosecution case in the trial - as this would be required in order to prove the components of the offense, and if not - following conviction in the sentencing phase. In any case, particular attention should be given to the need to prove the value of the benefit obtained or intended as early as in the investigation stage, and in appropriate cases seek expert assistance for this purpose.

Alongside the need to focus - in both the investigation and preparation of the indictment by the prosecution - on the need to impose adequate fines, prosecutors should consider, in appropriate circumstances, the option of filing an indictment against the relevant legal person, and forfeiture. In this context, it is important to note that Section 297 to the Penal Law provides special provisions concerning forfeiture in bribery offenses. It should also be noted that bribery offenses, including bribery of a foreign public official, are predicate offenses according to the Anti-Money Laundering Law, 2000. Therefore, the prosecution should consider whether offenses according to the Anti-Money Laundering Law, 2000 were perpetrated, as well as other offenses.

Finally, all of these measures are intended to utilize maximum steps in combating economically motivated offenses, Some of which are already referred to by the Attorney General's Guideline on the Prosecution and Investigation of bribery of foreign public officials.

404. Israel provided the following examples of implementation

- In Cr.A. 355/88 *Rafael Levi v. State of Israel*, the appellant was convicted of soliciting a bribe. The appellant assisted a hotel owner ('Maman') to obtain construction permits. Maman then purchased paintings from the appellant's son's gallery. While the appellant denied having made his assistance conditional on the purchase of the paintings, conversations between the appellant and his son revealed a clear causal relationship between the assistance provided and the ensuing transactions to establish bribery. According to the Court, "it is not necessary that the public official himself receive, or enjoy, the gift or benefit; it is enough that a person that the public official seeks to honor is the beneficiary of the bribe." The Court based its conclusion on the factual finding that had the advantage not been guaranteed by Maman, the appellant would not have been inclined to grant Maman the requested permit. The Court also held that bribery offenses significantly damage the image of the public service and Israeli society and therefore the Court should not be deterred from taking severe punitive measures. The appellant was sentenced to three and a half years imprisonment as well as a fine of 10,000 NIS (approx.

2,800 USD) or an additional 3 months imprisonment.

- In Cr.C. (Tel Aviv) 4004/09 *State of Israel v. Dan Cohen*, a former district court judge was an office holder of the Israel Electric Corporation's board of directors' Assets Committee, and a member of its principal tenders committee. Cohen also owned a number of foreign companies holding foreign accounts. He was indicted on a number of charges. Taking a bribe in exchange for promoting a transaction whereby the Israel Electric Corporation (IEC) would purchase adjacent lands owned by another public company, Rogozin. Cohen suggested the purchase of Rogozin's lands and exerted his influence on the IEC's board of directors and management in order to approve the transaction. In another charge, Cohen was accused of fabricating a transaction which involved fictitious consultation services provided by an off-shore company. He was also charged with using his influence, contracts and status as the IEC's dominant board director, to influence the outcome of a tender in favor of Siemens, in exchange for 1/3% of the value of the transaction (approx. 1,300,000 USD). Before he could be brought to trial, Cohen fled to Peru and remained there for eight years. However, he was extradited to Israel on March 2013 based on the Convention and was recently convicted of passive bribery, fraud and breach of trust as part of a plea bargain. The plea bargain included a sentence of six years imprisonment and a fine of NIS 6,000,000 (approx. 1,700,000 USD). An additional 4,000,000 NIS (approx. 1,100,00 USD) were confiscated under Section 297 (Confiscation and reparation) of the Penal Law.
- In Cr.C. 40182/02 *State of Israel v. Eti Alon and Avigdor Maximov*, the defendant Alon was sentenced to 17 years imprisonment in 2003 for her role in the embezzlement of about 300 million NIS from the Trade Bank, where she had been the deputy chief of investment. She confessed in 2002 to stealing the money over a five-year period, in order to help her brother, Ofer Maximov, pay off his gambling debts. Maximov was sentenced to 15 years in prison. Alon was sentenced to 17 years imprisonment and an additional two years suspended sentence, and a fine of 5 million NIS (approx. 1,430,000 USD).
- In Cr.C. (Jerusalem District) 2062/06 *State of Israel v. Benizri and Elbaz*, former government minister Shlomo Benizri was convicted of accepting a bribe from a contractor, Moshe Sella, who had transferred donations to a religious school, headed by Rabbi Elbaz, which provided political support for Benizri. Benizri was charged under Section 293(5) of the Penal Law. The District Court held that a public official can be convicted of accepting a bribe even if the sole beneficiary is a third party. In the case of Benizri, the religious school (the beneficiary) provided strong political support for Benizri and it was therefore in his interest to support the school. There was no distinction between Benizri's interest and the school's. When examining whether the gifts to Elbaz could be considered a bribe, the Court noted: "We are dealing with funds transferred to a specific school of which Benizri is a member in the full sense of the word. Rabbi Elbaz is Benizri's mentor and the latter's interest is intrinsically linked to that of the school, to its existence, expansion and strength. Any transfer of funds to the school directly or indirectly involving Benizri strengthens Benizri's foundation - and hence Benizri and his status. There is no doubt that it was in Benizri's interest to encourage Sella to transfer the funds to the school and that therefore no separation existed between Elbaz's interest in contributing to the school and Benizri's interests. The gifts from Sella to Elbaz were, at the end of the day, initiated and encouraged by Benizri." (The Supreme Court denied Benizri's appeal and increased the sentence imposed by the District Court (18 months imprisonment and a fine of 120,000 NIS (approx. 33,000 USD) to four years

imprisonment and a fine of 250,000 NIS (approx. 70,000 USD) in Cr.A. 5083/08 *Benizri v. State of Israel*). The Supreme Court defined the former minister's offenses as offenses of moral turpitude (i.e. offenses which limit their ability to be elected for public office for a pre-determined period).

- In Cr.A. 267/13 *State of Israel v. Eshkol Levi*, Levi was the secretary and treasurer of a local municipality and was convicted of bribery and theft. The Supreme Court increased Levi's punishment (from 12 months to 20 months imprisonment), on the basis of the need to encourage the fight against public corruption. Even though there were personal circumstances that might have supported a lighter sentence, given the characteristics of the crimes for which he was convicted, the court favored the public interest and maintaining the integrity of public administration, including the need to increase deterrence in preventing corruption. The court also ruled that when an act of corruption by a public official is concerned, limited weight should be given to lack of a criminal record. It is a typical circumstance in cases of public corruption, as the very nature of these offenses is that they are usually committed by ordinary people.
- In Cr.A. 8430/11, 8679/11 *State of Israel v. Karshi* and Cr.A. 2144/11 *Matzah v. State of Israel*, a case concerning the Israeli Tax Authority, a senior official within the Tax Authority, Jackie Matzah, sought to be appointed as head of this agency. In order to advance his candidacy he met with a businessman and accountant (Ben-Gur) who suggested that he meet with Yoram Karshi and his sister Shula Zaken. Zaken who at the time worked as a senior assistant to the Minister of Finance. Matzah met with Karshi and Zaken in order to obtain their help with his advancement, knowing that they had personal interests in the Tax Authority and aware of the fact that as the head of the Tax Authority, he would be expected to allow them to influence certain decisions that would be taken there. Eight years later, he was asked to promote a number of employees on behalf of Ben-Gur and Karshi. For these acts, Ben-Gur was found guilty of bribing Matzah. Karshi was convicted of aiding Ben-Gur in bribing Matzah and Matzah was indicted for breach of trust. Ben-Gur and Karshi were also convicted of soliciting a breach of trust. The Supreme Court increased Karshi's sentence to 12 months imprisonment and a 12 months suspended sentence. Matzah, was sentenced to a 12 months imprisonment and a 12 months suspended sentence, in a plea-bargain.

405. Israel indicated that, since the sentencing amendment is relatively new, there have been no rulings by the Supreme Court in the matter. However:

- In Cr.C 1015/08 *State of Israel v. Meir Luski* a construction inspector was indicted and convicted of large scale bribery and fraud crimes in the local zoning and planning committee for having taken bribes in exchange for building permits. In its sentencing, the Magistrates court considered the impact and damage of the offense to social values, as well a number of other considerations in the sentencing amendment . The Court considered each charge separately and gave its sentencing accordingly. The defendant was sentenced to 3 years and 10 months imprisonment, and a fine of 220,000 NIS (approx. 62,252 USD) or an additional year imprisonment.

406. Israel provided information on the execution of sentences.



**Number of Prisoners Serving Sentences for Corruption Offenses (December 2012)<sup>7</sup>**

<b>Penal Law Section No.</b>	<b>Offense</b>	<b>No. of Prisoners</b>
280(1)	Abuse of office - in abuse of his authority he performed or ordered to be performed an arbitrary act that injured the rights of another person	4
284	Fraud and breach of trust	27
290	Bribe taking	16
291	Bribery	15
292	Bribery in connection with contest	1
294	Further provisions – offering or promising a bribe	2
390	Theft by public servant	10
391	Theft by employee	36
392	Theft by director	4
393(1)	Theft by agent - an asset that he received with a power of attorney to deal with it	15
393(2)	Theft by agent - an asset deposited with him	11
393(3)	Theft by agent - an asset which he received – alone or with another – for or to the credit of another person	2
393(4)	Theft by agent - from the proceeds of a security, or of the disposition of an asset under a power of attorney, having received instructions to use it for a certain purpose or to pay it to a certain person	4
425	Deceit and breach of trust in body corporate	12

407. For a perspective from the judiciary on sentencing, please see Annex 1.

**(b) Observations on the implementation of the article**

408. In view of the detailed manner in which the country under review regulates the formulation of the applicable sentence, as well as of the range of custodial, pecuniary and administrative sanctions described in the provided texts, Israel seems to meet the requirements of the provision in question.

**(c) Successes and good practices**

409. The option of imposing fines in bribery cases based on an intended benefit, as a deterrent against bribes of high value, and the existence of Guidelines for State Attorneys on sanctions for bribery offenses, no. 9.15 providing detailed instructions on the application of relevant penalties for corruption offences depending on gravity of corresponding offences were positively noted as conducive to the implementation of the provision under review.

**Paragraph 2 of article 30**

<sup>7</sup> The total number of prisoners serving sentences for corruption offenses is 115 (December 2012). 32 of these prisoners were serving sentences for two or more corruption offenses. There were a total of 8,634 prisoners serving criminal sentences in December 2012.

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) **Summary of information relevant to reviewing the implementation of the article**

410. Israel provided the following information.

**Legislative Branch:**

411. Israel's **Knesset Members Immunity, Rights and Duties Law, 1951**, while granting Members of the Knesset both substantive and procedural immunity, does not make anyone immune from prosecution for corruption-related offenses. The immunity ensures that a Knesset Member will not bear criminal or civil liability for any act performed in the fulfillment of his duties. Corruption offenses clearly cannot be considered as such.
412. In 2005, Section 4 of the **Knesset Members Immunity, Rights and Duties Law**, regarding procedural immunity, was amended, so that an MK indicted for acts not within the scope of his or her duties does not automatically benefit from immunity; rather, the Knesset may, but is not required to, grant immunity, upon the MK's request. According to the amendment, if the Attorney General determines that the offence was not performed within the MK's duty and decides to prosecute, the concerned MK can invoke his/her immunity by applying to the Knesset, whose decision is subject to judicial review. There have been few cases where the accused Knesset members have insisted on maintaining their immunity.
413. In 2001, Israel's **Basic Law: The Knesset, 1958** was amended such that the tenure of an MK is automatically terminated in the event that he or she is convicted, even if the sentence does not include prison time. According to Article 42A of Israel's **Basic Law: The Knesset, 1958**, if a member of the Knesset is convicted of a criminal offense and the court determines that the offense involves moral turpitude, his tenure ceases on the day on which the verdict becomes final. This Article is relevant for offenses committed during the MK's term or before.

**A. Immunity from prosecution with regard to acts of corruption *related* to the duties of Members of the Knesset (MK)**

414. The exclusion of corruption offenses from the immunity granted to Knesset Members is not explicitly stated in the law. Rather the law uses the broader language of "offence within their duty." However, in practice, the Knesset Members Immunity, Rights and Duties Law is read in conjunction with the relevant case law, from which it is evident that corruption offenses are not considered to be part of a Knesset Member's duties. Immunity is meant to apply to actions which lawfully stem from the fulfilment of a Knesset Member's duties. The case of HCJ 1843/93 *Pinhasi v. The Knesset* (falsifying corporate documents and an attempt to receive something by deceit) is considered a leading decision regarding corruption and immunity. Here, the then Deputy Chief Justice of the Supreme Court Aharon Barak determined the test to be used when examining immunities. This test, also adopted in future verdicts, is known as the "area of risk test" wherein a Knesset Member's duty includes only permissible actions. These permissible actions might, at times, slip into inappropriate and

illegal actions. This "slip" is protected by immunity only when the illegal act falls within the "risk area" which the MK's legal action inherently creates. Serving in the Knesset does not shelter a MK from liability for illegal activities during his or her tenure. However, it does provide immunity regarding forbidden activities considered to be within the boundaries of "professional risks". In the above case, the court decided there was no immunity and that the MK was to be prosecuted. However, in a later case, (HCJ 11225/03 MK *Bishara v. Attorney General*), the Supreme Court emphasized that public statements made by MKs enjoy very broad immunity. In another case, MK Gorolovski was charged and convicted of double voting in consideration of a parliamentary matter, which was clearly outside his professional duties (HCJ 11298/03 *Movement for Quality Government in Israel v. Knesset Committee* [2005] Isr.S.C. 59(5) 865).

415. Section 4 of the MK's Immunity, Rights and Duties Law allows the Knesset to grant procedural immunity for any type of crime according to the grounds listed in the section. However, in accordance with the wording, it is difficult to see how immunity could be granted for corruption offenses (for example, immunity may be granted if criminal proceedings would significantly damage the Knesset's day-to-day operations, or voter representation. This, however, is dependent on the question of whether refraining from criminal proceedings would significantly damage the public interest). In any event, this immunity applies only during an MK's tenure and ceases to apply thereafter.

416. In recent years, several MKs were indicted for integrity related charges. In all of the cases, the MKs did not claim substantive immunity, nor did the Knesset itself, and the MKs were prosecuted (for example- Shlomo Benizri - convicted of bribery and breach of trust (Cr.C. 2062/06), Tzachi Hanegbi - convicted of perjury (Cr.C. 4063/06), Avraham Hirshzon - convicted of theft and money laundering (Cr.C. 40138/08, Cr.A. 7641/09), Avigdor Liberman - acquitted of fraud and breach of trust (Cr.C. 57926-12-12)). Israel further cited the cases of Michael Gorolovski (2003), Yechiel Hazan (2004), Salah Tarif (2006), Naomi Blumental (2006) and Omri Sharon (2006). These cases are summarized below. Other cases, such as those of Ofer Hugi and former Prime Minister Ehud Olmert (also MKs) are detailed elsewhere in the report.

## **B. Concept of Moral Turpitude**

417. In 2010, MK Tzachi Hanegbi, who also served as Chairman of the Knesset's Security and Foreign Affairs Committee, was convicted of perjury and his tenure in the Knesset ended on the day that the judgment became final; Shlomo Benizri, an MK, was convicted of bribery and his tenure in the Knesset also ended.

418. Israeli law does not define what constitutes an offense with moral turpitude with respect to Knesset members. There are no specific offences which specifically include moral turpitude as this is contingent upon the circumstances of each case.

419. Israel's Supreme Court has referred to the subject in a number of decisions, for example:

### The nature of moral turpitude

"Moral turpitude associated with an offense adds an element of negativity that goes beyond being a mere violation of the law. It is a term that carries with it negative moral baggage, fed from the moral and ethical standards prevailing in society. This is a multi-

faceted concept that changes form in accordance with the nature of the offense committed and the circumstances" (HCJ 11243/02 Feiglin v. Chairman of Central Elections Committee, Justice Prokachia, 162). The distinction between the various offenses so as to examine the element of moral turpitude is carried out, "according to a criterion which is essentially moral" (HCJ 251/88 Udah vs. Head of Jaljulia Local Council, Justice Barak's verdict, 839). As inherent in similar concepts of the law, moral turpitude is **"a general term without an exhaustive definition. It mainly involves behavior involving corruption, a moral blemish which brings shame upon the perpetrator and which could undermine public trust in the offended** [emphasis not in the original text]. These are actions which contain injustice and lack in good faith; moral turpitude is a concept of an 'open nature' whose implementation is tightly linked with the special circumstances of the matter, in view of the system of norms and values prevalent in society" (La.A. 9449/06 Zazon v. Jerusalem City Council (2007) Judge Procaccia, Paragraph 7).

The decision regarding existence of moral turpitude is derived from the circumstances of the case: "Some of the circumstances surrounding the individual convicted are already known at the time of conviction. I mean the nature of the acts committed, their frequency, the identity of the victims and the offender's state of mind. But among the circumstances relevant in deciding the question of moral turpitude, there are circumstances that cannot be detected until a later stage. Take, for example, the nature of the public activity that the person wishes to engage in. Clearly, an individual convicted of minor drug offenses interested in serving as the public's representative to the Poultry Council...is not the same as an individual convicted of the same crime looking to be nominated to the National Anti-Drug Authority" (HCJ 5699/07 *John Doe v. Attorney General*, Justice Levi, Paragraph 32).

**"The court is therefore required to examine the case's circumstances from a broad normative perspective, while striving to ensure the cleanliness of the civil service** (emphasis not in the original text)." (HCJ 6614/13 *Hamud v. Chairman of Central Elections Committee*). "The concept of moral turpitude is vague, and can bear different meanings in different contexts. The essence of moral turpitude 'is to be determined according to the legislation's purpose wherein there appears the provision concerning an offense bearing moral turpitude' (HJC 251/88, 839). When it appears in the context of an offense bearing moral turpitude' or, as it appears here, 'in light of the circumstances the offense bears moral turpitude,' it describes the immoral element inherent in the offense or in the circumstances of its perpetration" (HCJ 184/73, 750; HCJ 436/66, 566). Not every criminal offense involves moral turpitude. Moreover, under certain circumstances an offense may include moral turpitude while in others it might not (HCJ 436/66, 566), such that 'the center of gravity of the decision does not lie in the formal foundations of the offense, but in the circumstances in which the offense was committed ...' (HCJ 251/88, 839). Being that moral standards change from time to time and from situation to situation, there is no point and it is not possible to try and strictly define 'moral turpitude', what it is, and under what circumstances it exists. Undeniably, the laws using the term 'moral turpitude' as a characteristic of an offense do not define or interpret the term... (See: R. Gavison, 'Offences of Moral Turpitude and Disqualification for Public Office' *Mishpatim*, 1968, 177)."

### **C. The Knesset Members Immunity, Rights and Duties Law does not cover bank secrecy**

420. Regarding wiretapping, Section 2(a) of the Law provides for immunity from wiretapping and determines that a Supreme Court Justice may permit wiretapping when an MK is suspected of committing certain crimes - felonies which threaten to damage national security, or murder, manslaughter, endangering state security, drug offenses or a conspiracy to commit one of these offenses. There is no reference to corruption offenses. The law does not explicitly refer to other kinds of wiretapping (computers etc.).
421. Immunities in this regard stem from their status as members of Knesset under Section 23(b) of Basic Law: The Government. It is important to note that the immunities and obligations also apply to Ministers and deputy Ministers that are not Knesset Members, as mentioned in Section 15 of the Knesset Members Immunity, Rights and Duties Law, which determines: "for the purposes of this law, a Minister or Deputy Minister is not a member of the Knesset shall benefit from the law as if he were a Minister or Deputy Minister who is also a Knesset member."

### **D. Regulation prohibiting a Knesset member to receive anything from other parties (except a limited amount for primaries) - Members of the Knesset and the Prohibition on Accepting Gifts or Benefits**

422. The Public Service Law (Gifts), 1979, which prohibits public officials from accepting gifts, also applies to MKs. While the law does not clearly state that it is applicable to MKs, the Supreme Court held that it does, in the H CJ 10339/05 *Ometz Association v. Legal Advisor of the Knesset* case, and in practice it is applied to MKs.
423. The Knesset's Ethics Committee has issued a special guideline regarding the prohibition on accepting gifts by MKs. For example, Section 1.(4) of that guideline states that: "MKs shall refuse to accept any benefit, directly or indirectly, which may be interpreted as an attempt to influence the way they perform their duties". The guideline also defines the term "benefit" as including money, in kind, assets, products, service or any other benefit including gift certificates, holidays, concert tickets, tickets to facilities which require payments such as sports and entertainment facilities, gym memberships, museums, restaurants, hotels, and shows, discounts, upgrades and more. Nonetheless, there are certain benefits that MKs are allowed to accept, but these require the approval of the ethics committee and are mostly related to public events which require the participation of an MK.
424. MKs can accept donations for primaries in accordance with the Parties Law, 1992. This is the only regulatory mechanism allowing such receipt of funds and it is subject to the review of the State Comptroller. Each donation received must be reported upon receipt and is made public on the website of the State Comptroller.
425. It should also be noted that MKs are not entitled to hold any other position or work during their tenure, unless it is voluntary and they are not being paid (in accordance with Section 13A of the Immunity, Rights and Duties Law).

### **Government Members:**

426. Israel's **Basic Law: the Government, 2001**, deals only with a minister's conviction for an offense that involves moral turpitude (Section 23(b)). According to this Article, if a minister is convicted of this type of crime, his tenure will cease on the day on which the guilty verdict is handed down. It can therefore be understood that a minister does not have to actually resign in such a case. However, two important Supreme Court decisions have clarified that if a minister or deputy minister does not resign of his own accord after he has been indicted for serious offenses, the Prime Minister must on his own accord, use his authority to end the minister's tenure.
427. This article does not apply to the Prime Minister. Article 18 of Israel's **Basic Law: The Government, 2001** governs the Prime Minister's removal from office in case of conviction. If the Prime Minister is convicted of an offense which the court defines as involving moral turpitude, the Knesset may remove him from office, pursuant to a majority decision. If the Knesset reaches this decision, the Government shall be deemed to have resigned. Even if the Knesset decides not to remove the Prime Minister from office, once the verdict becomes final, the Prime Minister will cease to serve in office and the Government shall be deemed to have resigned.
428. The law concerning the termination of a government member's tenure is Basic Law: The Government, Section 23(b), which states: "If the court convicts a minister of an offense, it shall determine in its verdict whether the offense involves moral turpitude; should the court determine that the offense involves moral turpitude, the minister's tenure shall cease on the day the verdict is given." The cessation of office of deputy ministers is provided by Section 27 of the Basic Law: The Government, that states: "if the court convicts a deputy minister, it shall determine in its verdict whether the offense involves moral turpitude; should the court determine that the offense involves moral turpitude, the deputy minister's tenure shall cease on the day the verdict is given."
429. For ministers and deputy ministers, according to the case law of Israel's Supreme Court in the *Pinhasi* and *Arye Der'i* cases, the Prime Minister has the discretion to remove a minister or deputy minister from office if they have been indicted for serious offenses, while taking into consideration all of the circumstances of the case (HCJ 3094/93 *Movement for Quality Government in Israel v. Government of Israel*, 404; HCJ 4267/93 *Amitai- Citizens for Clean Administration and Integrity v. Prime Minister of Israel*, 441).

### **Public Officials:**

430. While public employees do have a certain immunity from civil damages suits for an act committed in the performance of their duties (Section 7A, 7B and 7C of Israel's Tort Ordinance (New Version), 1968 (hereinafter: "the Tort Ordinance")), there is no immunity from prosecution concerning corruption offenses.

### **Judiciary:**

431. According to Section 8 of Israel's **Tort Ordinance**, the judiciary is exempt from liability under this law. However, **there is no immunity from prosecution concerning corruption offenses.**
432. Israel cited the following applicable measure(s) or rules.

## **Basic Law: The Government, 2001**

### **18. Removal from office pursuant to an offense**

- (a) Should the Prime Minister be convicted of an offense which the court defined as involving moral turpitude, the Knesset may remove him from office, pursuant to a decision of a majority of the Knesset members. Should the Knesset so decide, the Government shall be deemed to have resigned.
- (b) Within 30 days of the verdict becoming final, the Knesset Committee of the Knesset will render its decision regarding its recommendation pertaining to the removal of the Prime Minister from office, and shall present its recommendation to the Knesset plenum; should the committee fail to bring its recommendation to the plenum during the prescribed period, the Speaker will raise the issue in the Knesset plenum.
- (c) No decision shall be made by either the Knesset or the Knesset Committee regarding the removal of the Prime Minister from office, before the Prime Minister has been given an opportunity to state his case before them.
- (d) Should the Knesset decide not to remove the Prime Minister from office, and should the verdict as per section (a) above become final, the Prime Minister will cease to serve in office and the Government shall be deemed to have resigned.
- (e) The provisions of sections 42(a) and 42(b) of the Basic Law: the Knesset, shall not apply to the Prime Minister.

### **23. Termination of tenure of Minister pursuant to an offense.**

- (a) An indictment against a Minister, except for offenses to be determined by law, will be presented and judged in a district court; procedures regarding indictments filed before a Minister assumed tenure will be determined by law.
- (b) Should a Minister be convicted by the court, it shall state in its verdict whether the offense involves moral turpitude; should the court so state, the Minister's tenure shall cease on the day of such verdict.
- (c) This section does not apply to the Prime Minister.

## **Tort Ordinance (New Version), 1968**

### **7A. Immunity of Public Employee**

- (a) A claim will not be brought against a public employee in respect of an action performed in the fulfillment of a government office as a public employee, forming the base of a liability for damages; this provision will not apply to such action knowingly committed with the intent to cause damage or carelessness of the possibility of causing said damage.
- (b) The prescriptions of Subsection (a) will not derogate from the responsibilities of the State or a public authority in accordance with sections 13 and 14 and under the law. .
- (c) Immunity under this section will also apply to anyone who was a public employee when the action subject of the claim was carried out.

### **7B. Claim Against a State Employee**

- (a) If a claim has been filed against a State employee for an action carried out while holding a public office as a State employee, and in a statement to the court the State has claimed immunity under section 7A in respect of the actions of the employee, if such action is committed, the State will be adjoined to the proceedings, if not adjoined as a defendant.
- (b) If the State has requested in its notification in accordance with subsection (a) that the claim against a State employee be denied the claim against him will be denied, and the claim

will be deemed as submitted against the State by virtue of its responsibility for the action of a State employee under sections 13 and 14, and the action of a State employee deemed as an action performed in the fulfillment of his duties.

(c) Notwithstanding the prescriptions of subsection (b) a claimant may request, within the period to be prescribed by ordinance, that the court rule that the conditions for immunity have not been met in accordance with section 7A; the court having thus ruled, the claim against a State employee will not be denied and the provisions of subsection (b) will not apply.

(d) In the event that the State does not submit such notice as prescribed in subsection (a) or does not request to reject the claim against an employee of the State as prescribed in subsection (b), the employee of the State may request, within a period to be prescribed by ordinance, that the court rule that the conditions for immunity exist in accordance with section 7A; the employee having requested as aforesaid, the State will be adjoined to the proceeding, if it has not been adjoined as defendant; in the event that the court has ruled that the conditions for immunity exist in Section 7A the claim against the State employee will be denied, and the prescriptions of subsection (b) will apply, mutatis mutandi; in the event that the court has ruled that a State employee committed the action while not fulfilling his office - the claim against the state will be denied.

(e) The court will decide on the claimants request as prescribed in subsection (c) or on a State employee's request as prescribed in subsection (d), immediately

#### **7C. Claim Against a Public Authority Employee**

(a) If a claim has been filed against an public authority employee with respect to an action performed while fulfilling his office as an employee of a public authority, the public authority or the employee may request, within a period to be prescribed in the ordinances, that the court rule that the conditions for immunity in accordance with section 7A are applicable to the employee's action, if such action was performed; if such a request has been filed, the public authority will be adjoined to the proceeding, if it has not been adjoined as a defendant, and the court will decide whether the conditions for immunity are applicable in accordance with section 7A.

(b) If the court has ruled that the conditions for immunity are applicable in accordance with section 7A, the claim against the public authority employee will be denied, and the prescriptions of section 7B(b) will apply, mutatis mutandi; in the event that the court has ruled that a public employee committed the action while not fulfilling his office - the claim against the public authority will be denied.

(c) The court will decide on the request of a public authority or employee as aforesaid in subsection (a), immediately.

#### **8. Judicial Authority**

No action will be brought against any person constituting, or being a member of, any court or tribunal or against any person lawfully performing the duties of any such person, or against any other person performing judicial functions, including an arbitrator, in respect of any civil wrong committed by him in his judicial capacity

#### **Knesset Members Immunity, Rights and Duties Law, 1951**

##### **1. Immunity while carrying out duties**

1. (a) The Knesset Member shall not bear criminal or civil liability, and shall be immune from any legal action, due to voting, or for expressing an opinion orally or in writing, or for any acts – in the Knesset or outside of it - if the vote, expression or action are part of his duty, or for the performance of his duty as a member of the Knesset.



#### **4. Criminal Immunity**

(a) (1) an indictment against a Member of Knesset, for an offense that Section 1 does not apply to, which was committed when he was a Member of Knesset or before he was a Member of Knesset, will be submitted with the approval of the Attorney General.

(2) if the Attorney General authorized the indictment submitted against a Member of Knesset, he will give a copy of the indictment, before it is submitted to the Court, to the Member of Knesset, the Chairman of the Knesset and to the Chairman of the Knesset's Committee.

(3) the Member of Parliament may, within 30 days from the day he is presented with the indictment, to request that the Knesset determines that he has immunity from criminal jurisdiction regarding the charge included in the indictment, for one of the following reasons:

(a) the offense he is accused occurred in the framework of his position or in order to execute his position as a Member of Knesset and the provisions of Section 1 are applicable;

(b) the indictment was filed not in good faith or in a discriminatory fashion;

(c) all of the latter are fulfilled: the Knesset or whoever is authorized to do so therein held proceedings or took steps according to the laws and regulations acceptable in the Knesset against Members of Parliament for the act which is the offense according to the indictment, the offense was committed in the Knesset's premises in the framework of the work of the Knesset or one of its committees, and the lack of a criminal proceeding, considering the severity of the offense, its character or circumstances will not significantly damage the public interest;

(d) a criminal proceeding will significantly damage the functioning of the Knesset, one of its committees or the representation of the electorate, and the lack of a criminal proceeding, as mentioned above, considering the severity of the offense, its character or circumstances will not significantly damage the public interest;

(a1) the provisions of Sub-section (a) are not applicable to the following offenses and a Member of Parliament's liability concerning these offenses will be the same as any person's:

(1) a traffic offense as defined in Section 1 of the Traffic Ordinance; (2) an offense which has been determined by any law as fine offense; (3) an administrative offense which incurs a limited administrative fine.

(b) If a Member of Knesset has not requested as aforementioned in Sub-section (a)(3) and the period mentioned above. Or that he has retracted his request in a written notice to the Chairman of the Knesset and to the Chairman of the Knesset's Committee, or the Knesset has refused his request according to Section 13(a) or that the Knesset's committee decided as mentioned in Section 13(c1), the Attorney General may submit the indictment to the court, and the Member of Knesset's liability, for anything related to that offense, will be equivalent to any person's.

(c) if the Knesset determined that the Member of Knesset will have immunity as detailed in this Section, the Attorney General will not authorize during the tenure of that Knesset the submitting of an indictment against a Member of Knesset for the same charge unless there has been a change in the circumstances.

(d) this Section will not apply regarding an indictment submitted before the person became a Member of Knesset.

#### **42A.**

(a) If a Knesset member has been convicted of a felony in a final verdict, and the court has determined, on its own initiative or at the request of the Attorney General, that the offense bears moral turpitude, his membership in the Knesset shall cease on the day the verdict becomes final, whether the offense was committed when they were a member of the current

seat of Knesset, a member of a the previous seat of Knesset, or before they were a member of Knesset.

(b) Sub-article (a) shall apply also to an MK whose verdict was made final after he began to serve as a member of Knesset; the Attorney General's request in accordance with sub-article (a) may be submitted as long as the verdict has not been made final; the request shall be submitted to the court that issued the sentencing, and if an appeal has been filed, to the court of appeal.

433. Israel provided the following examples of implementation.

- Cr.A. 5083/08, 5189/08 and 5208/08 *Benizri v. State of Israel* (24 June 2009) - Shlomo Benizri, an Israeli politician served as a Knesset member between 1992 and 2008, as Deputy Health Minister, Minister of Health, and Minister of Labor and Social Welfare during the late 1990s and early 2000s. For additional details regarding this case, please see the information under UNCAC article 30(1).
- Cr.A. 3575/99 *Arye Der'i v. the State of Israel* - Der'i, an Israeli politician, was both a Minister without portfolio and the Minister of Interior during his tenure. After Deri was convicted of taking bribes while serving as Interior Minister, he was convicted of moral turpitude. Deri was sentenced to four years imprisonment, as well as a fine of 250,000 NIS (approx. 70,000 USD) or an additional 10 months imprisonment.
- In HCJ 1843/93 *Pinhasi v. Knesset* - Rafael Pinhasi was elected to the Knesset in 1985 and served as Deputy Minister of Labor and Social Welfare, Deputy Internal Affairs Minister, Minister of Communications, Deputy Minister of Finance and Deputy Minister of Religious Affairs. Pinhasi was forced to resign from the cabinet by the High Court of Justice in September 1993 after being convicted for making false declarations, a crime deemed to be one involving "moral turpitude".
- In Cr.A. 7641/09 *Avraham Hirshzon v. State of Israel*, the Supreme Court affirmed the sentence of a former Minister of Finances, who had been convicted on counts of theft by a director, deceit and breach of trust in body corporate, money laundering, false entry in documents of body corporate and obtaining anything by deceit under aggravating circumstances. It had been alleged that Hirshzon embezzled millions of shekels from the NLF. He was sentenced to five years and five months imprisonment, an additional suspended imprisonment and a fine of NIS 450,000 (approx. 128,000 USD). He resigned following allegations of corruption.
- Michael Gorolovski (2003) – The Attorney General initiated criminal proceedings against MK Gorolovski regarding double voting in the Knesset's plenum. However, the Knesset decided not to revoke his immunity (unlike in the Hazan case detailed below where Hazan agreed to waive his immunity and was therefore tried during his tenure). A petition was filed before the High Court of Justice, which held that double voting is not an offense protected by substantive immunity. The Court set forth a number of principles in order to determine what is protected by substantive immunity. It stated that one must consider whether the inappropriate act was done in the framework of the MK's duty. This test is called "the professional risk test". It acknowledges that a lawful act in the Knesset occasionally leads to a potential "slip" into something unlawful. The slip is only protected by immunity in cases where the unlawful act falls into the risk zone inherent to an MK's duties. Immunity is not meant to encourage MKs to act illegally, but rather to prevent situations where they would refrain from taking legal actions out of fear that they

will slip into the terrain of unlawful acts. The Court applied this test and held that double voting does not fall within the professional risk zone that the immunity protects, stating as follows: **"expressing one's opinion or voting in the Knesset in connection with the payment of a bribe is not part of an MKs professional risk...."**

- Yechiel Hazan (2004) – the Knesset revoked the MK's immunity and he was found guilty of offenses of forgery in order to obtain something fraudulently and of breach of trust regarding double voting in the Knesset's plenum. The Court held that his act is one which involves moral turpitude, and he was sentenced to ten months imprisonment, which he served through community service (Cr.A. 30595/06).
- Salah Tarif (2006) – MK Salah Tarif was convicted of bribery and breach of trust for giving bribes to the head of the Population Authority in the Ministry of the Interior. The offenses were committed during his tenure as an MK and as the Chairman of the Knesset's Committee for Internal Affairs. The indictment was filed before the amendment of the Immunity, Rights and Duties Law and the Knesset revoked his immunity. The Court determined that the offense involved moral turpitude and Tarif was sentenced to community service (Cr.A 71700/04; P.Cr.A. 2642/06). As a result of the conviction, the MK's tenure was automatically terminated in accordance with Section 42A of the Basic Law: the Knesset.
- Naomi Blumental (2006) – MK Blumental was convicted of bribery and obstruction of justice regarding her party's primaries. The indictment was filed during her term as MK and before the law was amended, therefore the Knesset revoked her immunity (Cr.C 10072/03).
- Omri Sharon (2006) – MK Omri Sharon was convicted of falsifying corporate documents and perjury as well as various offenses stemming from the Parties Law, 1992. The offenses were related to his father's (former Prime Minister Ariel Sharon) electoral campaign. While the offenses were committed before he became an MK, the indictment was filed during his tenure and he did not request the Knesset to grant him immunity. After his conviction and before his sentencing, he resigned from the Knesset (Cr.C 4837/05).
- Tzachi Hanegbi (2010) – MK Hanegbi was convicted of perjury regarding political appointments. The indictment was filed and the proceedings took place during his term as an MK. He did not request immunity from the Knesset. The Jerusalem District Court convicted him and held that the offenses involved moral turpitude. In accordance with the Basic Law: the Knesset his tenure as an MK was terminated (Cr.C. 4063/06).
- Avigdor Liberman (2013) – Liberman was acquitted of fraud and breach of trust. The indictment was filed while he was an MK and he did not request immunity from the Knesset; therefore, the criminal proceedings were conducted during his tenure (Cr.C. 57926-12-12).

**(b) Observations on the implementation of the article**

434. As regards procedural privileges and especially the execution of intrusive measures, the country under review reports that Section 2(a) of the “Knesset Members Immunity, Rights and Duties Law, 1951” provides for immunity from wiretapping and determines that a

Supreme Court Justice may permit wiretapping when an MK is suspected of committing certain crimes - felonies which threaten to damage national security, or murder, manslaughter, endangering state security, drug offenses or a conspiracy to commit one of these. Since interception of communications is possible against members of Knesset for a number of serious offences, following permission of a Supreme Court Justice, and no constitutional or other legal obstacle - which could hinder such investigative measures against members of the Knesset - is reported, there appear to be no reason for such measures not to be available in case of corruption related offences, under the same procedural guarantee of a S.C. Justice oversight, as stipulated by article 30 par. 2 of the Convention. It should not be overlooked that these offences, more often than not, are especially challenging for prosecuting authorities in the field of proof, and such investigative tools can therefore be of particular relevance.

435. In view of the above, Israel should be deemed to regulate immunities and jurisdictional privileges accorded to public officials mostly in line with the Convention. It is recommended to pursue legislation of a bill aimed at including corruption among the offences that allow the use of special investigative techniques such as wiretapping against Members of the Knesset.

**(c) Successes and good practices**

436. The reviewers note the significant number of prosecutions and convictions of Ministers and Members of the Knesset during recent years and consider them as a success and an indication of the overall effectiveness of the system in combating political corruption.

**Paragraph 3 of article 30**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

437. According to Israeli Law, the Israel Police (IP) is obligated to initiate a criminal investigation whenever it receives information regarding an offense (Section 59 of the **Criminal Procedure Law, 1982**) (hereinafter: "Criminal Procedure Law"). When the IP learns that an offense has been committed, it can decide to open an investigation. However, with regard to offenses that are not felonies, police officers ranked Chief Inspector and higher are authorized to order that an offense not be investigated, in cases where they believe there is no public interest or if there is another authority legally competent to investigate the offense. Under Section 60 of the Criminal Procedure Law, the general rule is that in felony cases, such as corruption-related offenses, the IP is required to provide the materials obtained in the course of the investigation to the District Attorney. The prosecution may order the IP to continue the investigation if the prosecutor considers it necessary in order to make a decision whether to prosecute, or to enable the efficient conduct of the trial. Where it appears to the prosecutor that there is sufficient evidence to issue an indictment, the offense will be prosecuted, unless he is of the opinion that there is no public interest to do so. In felony cases, decisions not to prosecute due to lack of public interest require approval from the District Attorney or a senior attorney empowered by him. The principles that must be taken into account when determining whether there is public interest to conduct a criminal

investigation are determined by case law of the High Court of Justice (the Israel Supreme Court). These principles can also be found in IP Internal Guidelines - National HQ order no. 14.01.01 and in IP Procedure no. 03.300.152 "Justifications and Considerations for Closing Criminal Cases". According to IP Procedure no. 03.300.152, there are six possible grounds for the closure of criminal cases: lack of public interest, lack of sufficient evidence for prosecution, lack of guilt, unknown offender, death of suspect or defendant, and the defendant is not punishable by law.

438. The Public Prosecution in Israel is headed by the Attorney General. This position entails, *inter alia*, representing the State before the court in all legal areas including law enforcement, and professional responsibility over public prosecutors, including appearances in court.
439. Regarding corruption related offenses, the primary professional body in charge of most prosecutions is the Office of the State Attorney, which is subject to the Attorney General, although consultations are held only in special or high-level cases. Structurally, the Office of the State Attorney is divided into two levels: the Office of the State Attorney (which is made up of 12 departments) and six districts. The Office of the State Attorney is the coordinating body responsible for setting policy and litigating appeals before the Supreme Court. Criminal cases are handled by the Criminal Department and economic crimes and white-collar felonies are handled by the Economic Department, according to the nature of the case. The district offices are in charge of criminal prosecution within their respective jurisdictions. This entails examining and evaluating evidence gathered by the IP and deciding, based upon an assessment of the evidence, whether to indict. When a the decision is made to pursue an indictment, the district office is also responsible for carrying out the entire criminal proceeding before the Court.
440. The State Attorney himself is also involved in the enforcement of corruption cases, at various stages. The State Attorney sets the general policy on this matter and in certain cases approves indictments. The authority to approve indictments is delegated in some cases to other high ranking officials in the Office of the State Attorney. As noted above, in felony cases, such as corruption related offenses, the investigation material is sent by the IP to the prosecution. The prosecution decides if there is sufficient evidence to issue an indictment and, if an indictment has been issued, it prosecutes the case, unless it concludes that there is no public interest to do so. According to High Court of Justice case law and to State Attorney Guideline Number 1.1 (Considerations for Closing a Case due to Lack of Public Interest), the underlying assumption is that if the legislator determined that a certain kind of behavior constitutes an offense, there is public interest to prosecute those suspected of such behavior. However, a suspect will not be brought to justice if, for example, his prosecution will cause severe harm to social interests and values, outweighing the harm caused by not bringing him to justice. Within this context, prosecutors should take account of considerations for and against prosecution. In doing so, prosecutors must consider, *inter alia*, the severity of the act, the personal circumstances of the suspect and the victim, institutional considerations of the public prosecution and the court and other vital interests of the State. Decisions not to prosecute due to lack of public interest must be made by the prosecutor after considering all the listed factors, and these factors alone, in good faith, in a non-arbitrary manner, without discrimination, fairly and reasonably. The Guideline adds in this context that in exercising discretion, prosecutors must be free from any external pressure.
441. In felony cases, decisions not to prosecute due to lack of public interest require approval from the District Attorney or a senior attorney authorized by him. The High Court of Justice

has extended its authority with respect to judicial review regarding all governmental authorities, including the prosecution, to the exercise of discretion by the prosecution. The prosecutor's decision to close a file on grounds of lack of public interest is subject to review by the High Court of Justice. According to Section 291A(b) of the Penal Law, regarding bribery of foreign public officials, the issuance of an indictment under the Section is subject to written consent from the Attorney General. Other examples of cases where the Attorney General's consent is required for the issuance of an indictment include:

- Cases involving national security matters and foreign relations;
- Cases involving extraterritorial offenses;
- Cases involving high ranking public officials (President, Prime Minister, Ministers, Knesset members, judges);
- Indictments issued against a defendant who is a minor, together with a defendant who is an adult;
- Indictment of a minor over a year after the offense was committed;
- Offenses involving incitement and other forms of speech or crimes against national symbols, all of which may involve considerations of freedom of expression.
- Certain cases involving offenses of sexual abuse against minors where many years have passed since the offenses were committed.

442. Essentially, this category requires the Attorney General's consent to issue an indictment even where the usual statute of limitations has expired. It may be noted that in addition to the issuance of indictments in the aforementioned cases (and other similar examples), there are a number of decisions that are subject to the Attorney General's direct discretion, including, for example, cases involving extended periods of arrest before trial and responses to motions for retrial following conviction.

443. The Attorney General is required to exercise his authority in the area of prosecution using independent discretion and without being subject to the orders or policies of the Government or the Minister of Justice.<sup>8</sup> In cases having special political, security, or public importance, the Attorney General will consult, depending on the matter and the need, with the Minister of Justice, with another Minister, or with the Government. The considerations for requiring the Attorney General's consent to indict on bribery of a foreign public official are similar to those that apply in cases involving extraterritorial offenses and in other circumstances where special legal considerations (such as the assessment of foreign evidence) may be at stake. As stated above, the requirement of an Attorney General's consent is not routine in criminal cases, but it is not exceptional either. Here too, decisions not to prosecute due to lack of

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<sup>8</sup> Attorney General's Guideline 4.1000 (51.000A) "Independent Power of the Attorney General – Criminal Proceedings". See also Attorney General's Guideline 4.0000 (Independent Power of the Attorney General – Criminal Proceedings), which cites the report of a special commission of jurists, appointed by the government in 1962 to examine the question of the status and powers of the Attorney General, including the power to stay legal proceedings against defendants. According to the Committee's report, as cited in the Guideline "the Attorney General must exercise the criminal powers given him based on independent judgment and without being subject to the orders or policy of the government or of the Minister of Justice."

public interest must be made by the prosecutor after considering all the listed factors, and these alone. The Guideline adds in this context that in exercising discretion, prosecutors must be free from any external pressure. The decision not to prosecute would usually be taken in circumstances where the act itself and the circumstances surrounding the offense renders it as a minor act. Examples of such cases are acts of minor assaults committed by suspects without criminal records.

444. According to Section 63 of the Criminal Procedure Law, a "decision not to investigate or prosecute shall be notified to the complainant in writing, indicating the reason for the decision". Following such a decision not to prosecute, the complainant, according to Section 64 and Section 65 of the above mentioned Law, can lodge an objection to the Attorney-General or the State Attorney (according to the conditions stipulated in the Law) within 30 days after the notification.

445. It should be emphasized that it is hard to conceive of a decision not to prosecute due to lack of public interest when there is evidence for corruption-related offenses, as such offenses are considered severe offenses which undermine the public order. Furthermore, with regards to investigations and prosecutions based on the offense of bribery of foreign official, there is a special procedure in **Attorney General Guideline No. 4.1110 Prohibition on Payments of Bribes to a Foreign Public Official**. According to the procedure, every suspicion of bribery of a foreign official, even if it is not an established one, will be strictly investigated by the team headed by the Deputy State Attorney. The Guideline also states that, when deciding whether an investigation should be opened or whether the offense should be prosecuted, considerations concerning national economic interests, potential effects on the relations with a foreign country, or the identity of the person or the corporation involved, cannot be taken into account.

446. Israel cited the following applicable measures.

**Criminal Procedure Law, 1982** - Sections 59, 60, 61, 62, 63, 64, 65, 93, 94, 231, 236.

**Penal Law, 1977** - Section 9(b) in the attached legislative compilation.

**Attorney General's Guideline no. 4.1004 Prior approval for filing of indictment**

**State Attorney's Guideline Number 1.1 (Considerations for Closing a Case due to Lack of Public Interest)**

**Directives of the Attorney General, Criminal Law Public Prosecutor's Office Policy - General Date: 25 Heshvan 5742 (1 November 1983) Revisions: 5758 (1995); 5760 (3 April 2000); 5761 (15 Feb. 2001); 5762 (6 Dec. 2001); 5763 (16 Feb. 2003); 5765 (23 June 2005) (25 Aug. 2005)(22 Feb. 2006); Heshvan 5767 (Oct. 2006); Kislev 5768 (Dec. 2006); Heshvan 5768 (Nov. 2007) Directive Number: 4.1004 (50.008, 51.002); Prior approval for filing of indictment**

**Prior Approval for Filing of Indictment**

1. Indictments are filed by the State Attorney's Office and other prosecution officials as representatives of the Attorney General (section 12 of the Criminal Procedure Law, 1982). Some legislative enactments contain provisions requiring that an indictment is to be filed by

the Attorney General himself or with his consent, these instances generally relating to matters that entail a special public sensitivity. For example, filing an indictment against the Prime Minister, a Knesset member, or a member of the judiciary requires the Attorney General's prior approval. The same is true for other matters that might entail public sensitivity, such as harm to foreign relations, incitement, racism, or other speech offenses. Also when the law does not require an indictment to be filed by the Attorney General or with his consent, there is good reason to require such consent in particular cases, either on grounds of logic, similar to the reason underlying the requirement of the statutory-based approval, or because of the subject's importance or sensitivity.

2. In light of the above, in addition to cases in which, by statute, an indictment is not to be filed other than by the Attorney General or with his consent, the filing of an indictment requires the Attorney General's prior approval in the following cases as well:

- a) When an indictment is filed for an offense punishable by death;
- b) If it contains an offense under the **Emergency Defense Regulations, 1945**, in an indictment filed in a civil court;
- c) When an indictment is filed for an offense under the **Prevention of Terror Ordinance, 1948**, or under the **Flag and Emblem Law, 1949**;
- d) When an indictment is filed against a local authority, the head of a local authority, or other elected official of the local authority; for the purpose of this paragraph, "local authority" means a municipality, local council, regional council, association of towns" within its meaning in **The Association of Towns Law, 1955**, "streams authority" within its meaning in **The Streams and Springs Authorities Law, 1965**, or a "drainage authority" within its meaning in **The Drainage and Flood Control Law, 1957**;
- e) When an indictment is filed against a person for causing death, and the death occurred more than one year from the day on which the last of the forbidden acts that caused the death took place;
- f) When an indictment is filed against an attorney, and the charge relates to the relations of the attorney or his client with the police, the State Attorney's Office, or other prosecutorial or investigative authority, in the framework of carrying out his function as an attorney, such as a charge for obstructing a police officer in the performance of his duty, insulting a public servant, fabricating evidence, destroying evidence, or subornation in connection with an investigation;
- g) When an indictment is filed for an offense under section 71 of **The Courts Law, 1984** [In accordance with Attorney General's Directive 4.1102, "directives to prosecutors with respect to prosecution for "sub-judica" offenses, the State Attorney also has this power];
- h) When an indictment is for an offense under section 144F of **The Penal Law, 1977**;
- i) When an indictment is filed for an offense under section 11A2 of **The Safety in Public Places (Amendment No. 3) Law, 2005**.

3. This directive does not apply:

- a) To offenses entailing a fine under Chapter Seven of **The Criminal Procedure Law, 1982**;
- b) To administrative offenses punishment for which is a fixed administrative fine, provided that an administrative fine is imposed on the person and he wished to stand trial (as specified in section 13 of **The Administrative Offenses Law, 1985**).

4. This directive does not prevent a request for approval of the Attorney General to file an indictment when the State Attorney or the person heading another prosecutorial authority is of the opinion that, under the special circumstances of the matter, it is desirable to obtain his approval, such as where the basis of the complaint, in his opinion, raises the fear of harassment of the suspect.

5. The Attorney General may empower the State Attorney or his deputies to approve filing of an indictment as to which his approval is required under this directive other than pursuant to



statute, with respect to a particular matter or kinds of matters.

6. As a rule, in every case in which filing of the indictment requires approval pursuant to this directive, the approval is to be requested in advance. Where the request is made solely under the directive, and is not enshrined in statute, and due to mistake or other reason the Attorney General's approval is not requested in advance, approval may be sought subsequently, upon giving the reasons prior approval was not sought. The Attorney General may approve retroactively filing of the indictment, at his discretion. Retroactive approval is not permissible when approval is required by statute (Crim.

App. 6/80, *Hasabala v. State of Israel*, P. D. 34 (4) 725, whereby filing of an indictment without the Attorney General's approval, contrary to statutory requirement, renders the indictment null and void. An exception occurred in the case discussed in Crim. App. 401/83, *Elkayal et al. v. State of Israel*, P. D. 38 (1) 354, where the court allowed approval by the Attorney General after the indictment was filed, inasmuch as the need for approval was revealed before the hearing began, and at that stage the Attorney General had given his consent in writing. If such an indictment is filed by mistake, it shall be withdrawn. It should be mentioned that, under section 14 of **The Nazis and Nazis Collaborators (Punishment) Law, 1950**, an indictment for an offense under this statute may be filed only by the Attorney General or his representative. In addition, directives of the Attorney General state that an indictment of this kind shall only be filed with the *prior* consent of the Attorney General.

**Directives of the Attorney General Criminal Law Prosecutor's Office Policy - General Date: 26 Sivan 5745 (15 June 1985) Revision: Adar B 5763 (March 2003) Directive Number: 4.1000 (50.000A) Independent power of the Attorney General - criminal proceedings**

### **Independent Power of the Attorney General - Criminal Proceedings**

A question of the status and powers of the Attorney General, including the power to stay legal proceedings against defendants, was examined in 1962 by a special commission of jurists, appointed by the government and headed by Justice Agranat. On this point, the Commission noted (at p. 433) that the Attorney General must consult with the Minister of Justice from time to time on his mode of operation in the criminal field, and that, in particular, he must consult with the Minister of Justice, and sometimes also with the entire government, on matters having security, political, or public importance. However, as the Commission stated, where there are differences of opinion, the final decision is made by the Attorney General. The broad rule, in the language of the Commission (*supra*), is this: "The Attorney General must exercise the criminal powers given him based on independent judgment and without being subject to the orders or policy of the government or of the Minister of Justice." Thus the Commission concluded with respect to the legal situation, as was customary at the time, and this conclusion has been accepted, without challenge, ever since. This independence of the Attorney General is intended to ensure that his decisions in the criminal field are made based solely on substantive considerations, and not on political considerations, which are extraneous in the exercise of powers of a judicial nature.

However, this does not mean that the Attorney General acts in this area, or in any other area, without substantive review. After the Attorney General decides in one case or another, his decisions in the criminal area are subject to judicial review by the High Court of Justice. In practice, this kind of review of the decisions of the Attorney General in the criminal area is made from time to time. Attached hereto is a letter sent by the Attorney General to a minister regarding the question of the minister's interference in legal proceedings.

**Directives of the Attorney General Directive No. 4.1000 State of Israel**  
**Appendix 1 Ministry of Justice The Attorney General Jerusalem, 7 Sivan 5745**  
**27 May 1985**

Dear Mr. Minister, Re:

I acknowledge receipt of your aforementioned letter of 22 Iyar 5745 (13 May 1985) and the request that the prosecutor's office forego the appeal that was filed in the aforesaid matter, taking into account the institution's work with youth in distress. As you know, the said institution is represented by counsel, who made a detailed request to stay the proceedings against the institution, and after examining the matter, in accord with normal practice, we sent our response to him. The said attorney again wrote to us in the same matter, and received our response to that inquiry as well. Of course, nothing prevents him from writing to us again, and each inquiry will be examined and responded to on the merits. However, it is not acceptable that a member of the government make a request to the Attorney General or directly to the State Attorney with respect to a criminal trial against a particular person or entity. The reason for this is that the Public Prosecutor's Office has always operated in accord with substantive and professional considerations, and carefully maintains its independence, which requires detachment from the political system. If members of the government, or the government as a body, interfere in criminal proceedings by making a request or recommendation, substantial harm will likely occur to the judicial system and the fundamental principles under which Israel operates. Such interference, regardless of the motives underlying it, is liable, ultimately, to impair the proper system of considerations of the State Attorney's Office, and also impair the proper system of relations between the government and the legal service of the government; in any event, it is liable to endanger the status and image both of the Attorney General and the State Attorney's Office, on whom the public relies as professional and independent bodies. In addition, such interference inherently harms the principle of equality before the law, a fundamental principle of the legal system, inasmuch as ministers cannot serve as advocates of the integrity of only some of the defendants, either by chance or for particular reasons, and such action raises the concern of oppression of other defendants, those who do not have a way to bring their matter before a minister and motivate him to interfere on his behalf in that matter.

I am certain that your request to me was based only on a good intention to assist an organization that has served the public. However, given that I have recently received other requests of this kind, all based on good intentions, I fear that the long-standing and important tradition of separation of the Public Prosecutor's office and the political system will be impaired. Therefore, I feel obligated to point out, from the perspective of the legal system, the problem to you, and I hope that you understand.

Respectfully, [signed] Yitzhak Zamir  
Attorney General

**Directives of the State Attorney Directive No. 1.1 - Considerations in closing file for lack of "public interest" 2 January 1994; 2 August 2002; Last revision: 27 Tevet 5762 (1 January 2003) 1.1 Considerations in Closing File for Lack of "Public Interest"**

1. Section 62 of the **Criminal Procedure Law, 1982** states: Where it appears to the prosecutor to whom the investigation material has been transmitted that there is sufficient evidence to charge a particular person, he shall prosecute him, unless he is of the opinion that

no public interest is involved. ...

2. In HCJ 935/89, *Ganor v. The Attorney General*, Justice Barak outlined the criteria for not prosecuting on grounds of lack of “public interest.”

3. In the judgment, the Honorable Justice Barak held: The fundamental point of departure is that, when the legislator determined that a particular conduct is criminal, there is a public interest that the person suspected of the offense be prosecuted. . . (supra, 509) Only when the public interest in not prosecuting is greater than in prosecuting may the prosecutor conclude that there is a public interest in not prosecuting (supra). This occurs, for example, in cases in which a prosecution results in great harm to social interests and values, harm incomparable to the harm resulting from the failure to prosecute.

4. Justice Barak further held that the prosecutor must place the opposing considerations, for and against prosecution, against each other. In doing this, he must take into account, inter alia, the severity of the act, the personal circumstances of the suspect and the victim of the offense, and institutional considerations with respect to the Prosecutor’s Office and the court.

*A. Severity of the act* - The greater the severity of the act, the greater the interest in prosecuting. Severity of the act is measured by the severity of the offense itself, the circumstances in which the offense was committed, the magnitude of the injury caused, the frequency of the criminal behavior, the length of time that the criminal activity lasted, the length of time since commission of the act, and other relevant facts.

*B. Personal circumstances of the suspect* - In this context, it is acceptable to take into account the defendant’s age, his health, criminal record, attempts to rehabilitate him, extent of cooperation with the investigation authorities, administrative and other proceedings that have been conducted against him, sanctions imposed on him, and possible consequences if a criminal proceeding is initiated against him.

*C. Personal circumstances of the victim of the offense* - “The greater the injury to him, the extent to which the injury caused him cannot be rectified or was not rectified, the greater the public interest in prosecuting the suspect” (supra, 510).

*D. Other vital interests of the State* - Sometimes, a matter involving a security, political, or public value might require that an indictment not be filed. In such cases, this consideration may also be taken into account.

*E. Institutional considerations of the Prosecutor’s Office and the courts* - Given that the personnel available to the Prosecutor’s Office is limited and there is a lack of judicial time needed to hear cases, an order of priorities should be set in

prosecuting suspects, but this should be done while taking into account the aforesaid considerations. Therefore, when a serious act has been committed, the harm to the victim is great, and the personal circumstances of the defendant are not exceptional, the personnel and lack of judicial time are not to be taken into account with respect to closing a file on grounds of lack of public interest.

5. The decision with respect to the aforesaid must be made by the prosecutor upon considering all the relevant factors, and these factors alone, in good faith, in a non-arbitrary manner, without bias, and based on logic and reasonableness. Justice Barak also held that: “In exercising discretion, the prosecutor must be free of any external and extraneous pressure. Even if he must consult with various government officials. . . the final decision is his and his alone” (supra, 512). Discretion must be “reasonable.” This means that all the relevant considerations must be taken into account, proper weight is to be given to these considerations, and the aspiration is to bring about a benefit from the decision, with respect to social values and principles, is greater than the harm that might be caused to these values and principles. See also HCJ 3425/94, *Ganor et al. the Attorney General* (P. D. 50 (4) 1, pp. 15-16).

6. As appears from the comments in section 5, the High Court of Justice applied the grounds

of judicial review used in regard to all governmental authorities, including the Public Prosecutor's Office, with respect to exercise of discretion. Therefore, the prosecutor's decision to close a file on grounds of lack of public interest is subject to review by the High Court of Justice.

7. "In the case in which the District Attorney foresees important ramifications of a political, security, or public kind resulting from his decision, the District Attorney shall consult with the State Attorney or the Attorney General." (See Attorney General's Directive 51.050, of 1 October 1985.)

**Directives of the Attorney General Criminal Law Prosecutor's Office Policy - General  
Date: 14 Heshvan 5764 (9 November 2003) Directive Number: 4.1001 (51.050, 51.050A, 51.050B)**

**Prosecutorial independence**

**A. General**

- 1) The policy of the Public Prosecutor's Office is determined by the authorities responsible, by law, for law enforcement, in accordance with the directives of the Attorney General. In this matter, see, in particular, the **Criminal Procedure Law, 1982**, sections 11 and 12.
- 2) The prosecutor's office operates independently in every case.
- 3) The decision to file an indictment in a particular case is made by the State Attorney's Office, the Police, or the representative of the Attorney General in the various bodies, based on the facts of the case, the relevant law, professional judgment, and the prosecutor's office's policy that is set as stated above.
- 4) Where, in the opinion of the District Attorney, important ramifications of a political, security, or public nature are foreseen, the District Attorney shall consult with the State Attorney or the Attorney General, depending on the matter.
- 5) The Attorney General will exercise the powers given him by statute in criminal matters based on his independent judgment in each and every case, in accordance with the facts, the law, and the prosecutor's office's policy, without being subject to the instructions or policy of a minister or of the government. According to the recommendations of the commissions headed by chief justices Agranat and Shamgar, in cases having especial importance from the political, security, or public spheres, the Attorney General will consult, depending on the matter and the need, with the Minister of Justice, with another minister, or with the government. Such consultation shall be reserved for extremely exceptional cases, to prevent, to the extent possible, involvement of the political echelon in decisions in the criminal area, and indeed, in only rare cases is the possibility of consultation realized.

**B. Prosecutors in government ministries, local authorities, and planning and building committees**

- 1) For the avoidance of doubt, it is clarified that the provisions in Part A of this directive applies to all prosecutors operating under the authorization of the Attorney General, mutatis mutandis.
- 2) Under section 12 of **The Criminal Procedure Law, 1982** prosecutors in criminal trials include, in addition to attorneys in the State Attorney's Office and police officers appointed for this purpose by the Inspector General of the Police, and "any person whom the Attorney General empowered to be a prosecutor, either generally for a particular class of cases or for particular courts or for a particular case." Pursuant to this section,, the Attorney General authorizes attorneys working in various government ministries to be prosecutors in particular cases, based on the areas of responsibility of the unit or ministry, and also attorneys serving as legal advisors to local authorities [municipality, local council, regional council, or

association of towns] and to planning and building committees (whether holding the status of employee of the local authority or committee, or by special contract with the local council or committee), to serve as prosecutors on his behalf in criminal trials for particular offenses that were committed in the jurisdiction of the local authority.

3) The prosecutor in the government ministry shall exercise independent judgment in each and every case, and is subject, in the area of the criminal prosecution only to the instructions and policy of his supervisor in the legal system, contrary to the person in charge of him in the administrative system. In cases involving difficulty or doubt, the prosecutor shall consult with the legal advisor of the unit or with the legal advisor of the relevant ministry.

4) An attorney authorized to represent the Attorney General, to serve as prosecutor in particular criminal trials on behalf of a local authority or planning and building committee is also required to exercise independent judgment in each and every case. He is not subject, in the area of the criminal prosecution, to directives of the head of the local authority, or other elected officials or senior employees of the authority, with respect to the question or whether to file an indictment in one case or another, the proper punishment to demand that the court impose, whether to withdraw the accusation after the indictment has been filed, and the like.

5) In every case, the prosecutor shall reject instructions given by elected public officials or senior employees in the body in which the prosecutor is employed, with respect to the manner in which he shall act in a particular case, and in no event shall the prosecutor take into account political considerations. Attempts by the public's elected officials to interfere in criminal proceedings being conducted by the prosecutors are inappropriate and improper. These acts impair the prosecutors' independence, a fundamental element of the Israeli system, and is liable to harm the principle of equality of the criminal proceeding and give it a political hue - either in substance or in appearance - and in particular cases, is liable also to constitute a criminal offense. On the matter of independence of prosecutorial independence, see, inter alia, HCJ 337/85, *R'S Faction in the Ramat Hasharon Local Council v. Head of the Ramat Hasharon Local Council*,

6) Where, in the opinion of the legal advisor or the prosecutor, it is anticipated there will be important public ramifications, or if difficulty or doubt arises in a particular case, the legal advisor or prosecutor shall consult with the Deputy Attorney General or with the Attorney General, depending on the matter.

7) A copy of this directive shall be attached to every letter of authorization given by the Attorney General. In the matter of authorization of prosecutors in local councils and planning and building committees, see, also, Attorney General's Directive 8.1100.

**Attorney General Guideline No. 4.1110: Prohibition on Payments of Bribes to a Foreign Public Official - Section 291A of the Penal Law, 1977**  
**General**

In recent years, the world is witnessing a growing need to effectively deal with the phenomenon of corruption and bribery in international business transactions. The international community has decided to join forces in the international fight against corruption, as expressed by the obligations undertaken by the international community in the United Nations Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The underlying perception of these conventions is the commitment and dedication by each of the member states, to act together to eradicate bribery and corruption, which are key in successfully creating an international climate free from corruption. Israel is a party to both conventions, reflecting its belief in this perception and its willingness to take part in the joint global effort.

Setting a criminal prohibition on bribing a foreign public official and effectively enforcing it comprise an important tier in the struggle to create an international climate free from corruption. This prohibition complements the internal legislative framework, while making a contribution to the strengthening of domestic ethical standards. Additionally, effective enforcement of the prohibition will place Israel in line with many countries in the world which enforce the prohibition on paying bribes in international transactions. Maintaining these international standards will render it easier for Israeli companies to operate in international business transactions and will increase the competitiveness of the Israeli market.

On 14 July 2008, the Knesset approved the Penal Law (Amendment No. 99), 2008 adding Section 291A to the Penal Law, 1977, which set forth an offense of bribing a foreign public official in business activity (hereinafter: "the offense").

The wording of the offense is as follows:

**"291A Bribing a Foreign Public Official**

(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291.

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section:

**"foreign state"** includes, but is not limited to, any governmental unit in the foreign country, including national, district or local unit, and also includes a political entity that is not a state, including the Palestinian Council;

**"foreign public official"** includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

**"public international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;"

The offense is included in the bribery offenses section in the Penal Law, and all the general provisions applicable to offenses in this section apply to it as well. The offense has unique characteristics, amongst other reasons because it will usually be committed, at least in part, in a foreign country, engaging a public official of a foreign country or an international organization. Given these and other special features, it is immensely important that the investigation and prosecution policy regarding this offense will be cohesive and applied in light of the protected values the criminal statutory provision seeks to promote and Israel's international commitments.

## Procedural Guidance

1. When the Israel Police (hereinafter: IP) learn of any suspicion relating to an offense under Section 291A, the information must be looked into in order to examine whether there is a sufficient evidentiary basis to merit the opening of an investigation. The source of such a suspicion may be, inter alia, a complaint, information from any Israeli or foreign government entity or international organization, a media report in Israel or abroad, or any other source.
2. While examining whether to open an investigation as mentioned above, the IP will consider whether the initial evidentiary basis justifies opening an investigation, and, inter alia, consider the content of the suspicions, the alleged authenticity of the information which was the basis of the suspicion, etc.
3. Among the considerations as to whether to open an investigation or to prosecute for this offense, considerations concerning national economic interests, potential effect on the relations with a foreign country, or the identity of the person or the corporation involved, can not be taken into considerations.
4. Due to the importance of enforcement in this field, a decision to open an investigation or to archive the information or the complaint without an investigation shall be made by the Head of the Investigation and Intelligence Unit of the IP.
5. In cases where it was decided to conduct an investigation, upon its completion, the file shall be referred to the Deputy State Attorney (Special Functions) who will be responsible for making a reasoned recommendation to the Attorney General (through the State Attorney), as to whether to file an indictment or to close the case.
6. If an accompanying attorney has been assigned to the case, the IP will refer the file, following the conclusion of the investigation, to the accompanying attorney, which in turn would refer it, with his recommendations, to the Deputy Attorney General (Special Functions).
7. In Accordance with the provisions set in Section 291A(b) of the Penal Law, an indictment, for this offense, shall not be filed unless prior written consent was given by the Attorney General. This authority has not been delegated at this stage.
8. Where offense was perpetrated, in its entirety, outside of Israel, i.e. a "foreign offense", the applicability of the Penal Law to the foreign offense should be verified. In this case, the written consent of the Attorney General should also be given with regards to prosecution of the foreign offense, as required in Section 9(b) of the Penal Law.
9. Given the characteristics of the offense under Section 291A, it is important to cooperate with law enforcement authorities of other countries - in accordance with relevant statutory provisions, and common practice. Such cooperation may substantially assist, in many cases, with the conduct of investigations. The importance of international cooperation in the investigation of the foreign bribery offense is highlighted by Israel's commitment to collaborate with other countries to establish a corrupt free climate.
10. In cases where it was decided to open an investigation, the IP shall also consider whether it would be possible to forfeiture the bribe, its worth, or its proceeds, as the matter may be,

and shall collect evidence for this purpose. The use of tools such as forfeiture and provisional remedies is highly significant in such cases, as the motivation for bribery offenses is economic, and these tools - which are essentially instruments of "economic enforcement" - carry great effectiveness and deterring power.

11. In addition to the question of the existence of evidentiary basis for commission of an offense under Section 291A of the Penal Law, the investigation and prosecution authorities shall also consider whether there is an evidentiary basis for including charges for additional offenses from the Penal Law or other laws, such as money laundering offenses, tax evasion, offenses under the Securities Law, etc. Where possible, indictments should be filed against the cooperation, as well as against the persons directly responsible.

12. Where the indictment includes an offense under Section 291A of the Penal Law in addition to offenses from other laws which contain provisions on confiscation (such as the Prohibition on Money Laundering Law, 2000 and the Income Tax Ordinance [New Version], 1961), the differences between the forfeiture provisions in each of the laws should be taken into account, and consideration must be given to the question under which statutory provisions should the forfeiture be requested.

13. Supervisory bodies in the Defense Establishment and other relevant bodies within the Defense Establishment and the Ministry of Foreign Affairs shall assist and provide information they have at their disposal, as will be required, during the examination and investigation proceedings conducted with regard to this offense.

447. Israel indicated that the discretionary legal powers of the prosecution are used routinely to maximize the effectiveness of law enforcement measures, and that it has therefore not provided any specific examples.

448. No related statistics were available.

**(b) Observations on the implementation of the article**

449. Prosecution of offences in the State under review is subject to prosecutorial discretion. Yet, this discretion is extensively regulated and subject to judicial review by the High Court of Justice, when lack of public interest is at issue. The Attorney General appears to carefully maintain his independence and is not subject to the orders or policy of the government or of the Minister of Justice, ensuring that his decisions in the criminal field are made solely on substantive considerations. As it is aptly pointed out by the State under review, it is hard to conceive of a decision not to prosecute due to lack of public interest, when there is evidence of corruption-related offenses. With the issuance of Attorney General Guideline No. 4.1110, special measures have also been taken with regard to the prosecution of the offence of bribery of foreign public officials, with a view to curbing possible abuses.

450. As noted above under article 16, there was some consideration during the country visit as to the role of the Attorney General (AG) and in particular the requirement that consent be given in foreign bribery cases and prosecutions involving high level officials. In this context it was explained by Israeli authorities that the Attorney General's consent was considered to add an extra level of assurance that significant prosecutorial decisions were exercised properly and consistently. Consent was also sometimes delegated to senior officials such as the State Attorney or Deputy State Attorney in extraterritorial matters. Various safeguards,



such as the above-cited Attorney General Guideline and the possibility of judicial review, govern the actions of the Attorney General relating to applications for indictment in these cases. It was explained that the consent requirement has not hindered investigations and was exercised judiciously, taking into account the need to balance various considerations and after considering all the listed factors in the Attorney General Guideline.

451. In evaluating the role of the Attorney General, and the consent requirement in the outlined areas, the reviewers considered a number of issues, which were confirmed during meetings with different Government and non-Government counterparts in the country visit:

- In prosecutorial matters, the AG is not bound by the decisions or policies of either the government or the Minister of Justice. As described under UNCAC article 36, according to Israeli law the AG (and consequently all prosecutors under the authority of the AG) must perform his functions and exercise his authority in criminal matters independently, including in cases involving public figures, such as acting Ministers, the Prime Minister and the President. No government agency or office, in the executive or legislative branches, has the right or authority to question the AG's decision to bring a prosecution or to file an indictment in any criminal proceeding.
- The AG is appointed by the government, based on the recommendation of a public professional committee, composed of former government officials, academics and lawyers, and headed by a former Supreme Court Justice. This appointment procedure is meant to ensure the independence of the AG when making prosecutorial decisions and thus provides an additional safeguard in relation to other legal systems in which the AG is a political appointee. The AG's independence is intended to ensure that his decisions in the criminal field are made based solely on substantive considerations and not on political or other extraneous ones in the exercise of powers of a judicial nature. The independence of the AG was confirmed by all stakeholders the review team met with.
- The Attorney General's acts and decisions in the criminal area, and in other areas, are not exempt from review. The Attorney General's decisions in the criminal area are subject to judicial review, including by the High Court of Justice, and also to auditing by the Knesset. It was explained that most prosecutorial decisions are given deference and not challenged in court. However, during the country visit reference was made to two cases (not involving corruption-related offences) in which the Supreme Court reviewed a prosecutorial decision: one involving the military Advocate General where the court urged that more serious charges be pressed, and one involving offences of sexual misconduct against the former Israeli President, Moshe Katsav, where the plea bargain reached by the Attorney General was challenged and the Supreme Court upheld the AG's decision and ultimately the former President withdrew his plea and was sentenced to seven years' imprisonment.

452. Taking the above into account, prosecution of offences established in accordance to the Convention, although discretionary in principle, does not seem likely to overlook a case of corruption and the State under review should be deemed to be in compliance with the provision in question.

453. Israel might nonetheless consider looking more closely into the related matter of out-of-court settlements in regards to corruption offences related to securities, which have reportedly been used in a few cases since 2011 where no indictment was filed as civil measures to diminish the public interest in prosecutions, including in the Holyland case. In order to ensure adequate transparency and predictability, Israel should ensure that settlements are subject to judicial scrutiny independent from the prosecutor's office or through an independent body, which would have a formal role in reviewing sensitive cases. Israel is further encouraged to publish guidance and criteria on its website on what factors are taken into account in determining recoverable amounts, including self-reporting, the severity of the offence, the offender's history, and detail on civil settlement terms. Moreover, companies that reach settlements could be asked commit to compliance programmes and the appointment of independent expert monitors where remedial action is warranted. Officials during the country visit expressed that steps were being taken in this direction (for example, through a recognition of liability and corporate governance measures being taken on by corporate defendants) but that there was no clear and consistent practice or any guidelines outside the related area of administrative (non-criminal) settlements by the Israel Securities Authority (ISA) and District Attorneys.

#### **Paragraph 4 of article 30**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

454. Israel's laws on release on bail seek to balance due process rights and the need to ensure the presence of the defendant at the criminal proceedings. **The Criminal Procedure Law (Powers of Enforcement - Arrest), 1996** (hereinafter: "Criminal Procedure Law") states that prior to the filing of an indictment, a judge may not issue an arrest warrant if a less harmful alternative is sufficient. The scope of an arrest warrant in the investigation stage is limited, and a suspect can only be arrested for a limited number of days. However, the IP can periodically request an extension . When an indictment is filed, the defendant may be detained until the end of the proceedings, only for a just cause and when there is no less harmful alternative. Recently, the IP has made procedures for release on bail more efficient. It is now possible to deposit bail (including by debit or credit card) 24 hours a day, thus reducing delays in the release procedure.

455. In general, the court may order different alternatives to an arrest with a variety of restrictive conditions. Section 48 of the Criminal Procedure Law provides the court with wide discretion on the terms for release on bail, including terms that will prevent disruption of court proceedings. Section 48A provides a non-exhaustive list of terms that the court may consider to guarantee this or other purposes. The court may decide to release a person suspected of a criminal offense to full house arrest with or without electronic monitoring, a partial house arrest, supervision by guarantors, financial guarantees, third party guarantees,

stay of exit orders, restrictions on movement, restrictions on occupation, etc.

456. If the court orders an arrest until the end of the proceedings and there is no verdict after 9 months, the defendant must be released, unless the court has extended this period for an additional 90 days, or 150 days in special cases.
457. Both the State and the defendant can appeal a decision concerning an arrest, as well as a decision of a release on restrictive terms, as well as submit a request to review the decision if the circumstances have changed.
458. Section 21 of the Criminal Procedure Law provides that the court may authorize an arrest of a defendant until the end of proceedings when there are reasonable grounds for concern that his release will lead to obstruction of justice or evasion from the proceedings. The court may also order an arrest when there is fear that the defendant will endanger the safety of a person, the public or national security (presumption of dangerousness). These are all conditional upon an determination by the court that there is prima facie evidence to establish guilt and that the aim of the arrest cannot be reached through other measures such as release on bail or other release conditions with less limiting effects on a suspect's liberty.
459. In corruption-related offenses, there is no presumption of dangerousness. The evidentiary complexity of these offenses requires a long period of investigation. It is usually difficult to establish the necessary evidentiary basis within the permitted arrest period before indictment (up to 75 days according to Section 59 of the Criminal Procedure Law). Therefore, such offenses will generally not lead to detention until the end of proceedings, but rather to release with restrictive conditions. However, in cases where additional grounds exist for detention, such as concerns regarding evading justice or obstruction of justice, the individual can be detained until the end of proceedings.
460. Israel cited the following applicable measure.

**Criminal Procedure Law (Powers of Enforcement - Arrest), 1996** - Sections 12, 13, 17, 21, 21A and 41-62 in the attached legislative compilation.

461. Israel provided the following examples of implementation
- In Cr.C 5816/09 State of Israel v. Avraham Zaguri, an elected municipal council member, who was also a senior official in the Israel Rescue and Fire Services, took advantage of his positions and systematically embezzled funds. He was indicted for charges of obtaining anything by deceit under aggravated circumstances, theft by a public servant, theft by an agent, forgery by a public servant, deceit and breach of trust in a body corporate, fraud and breach of trust, theft by a director, false entry in documents of a body corporate and money laundering. The defendant was subject to house arrest during the proceedings. The Supreme Court dealt with the question of whether the restrictive terms of his house arrest should be more flexible to allow him to participate in the municipal council meetings. The Court ruled that under the circumstances of this case and based on known information regarding the defendant and the charges, the need to preserve the integrity of criminal proceedings prevails over the defendant's right to exercise the position of an elected official and continue his activities as a council member.

- In Cr.C 5853/11 Hadiga v. State of Israel, a former mayor was charged with serious offenses of blackmail, having allegedly threatened one of the members of the city council. He was also charged with bribe taking, fraud and breach of trust. Once the indictment was submitted, the District Court ordered that Hadiga be detained until the end of proceedings. On appeal, the Supreme Court held that the seriousness of the offenses was insufficient to justify ruling out lesser conditions such as bail and restrictive terms. The defendant was eventually released to house arrest under restrictive terms, including constant supervision, electronic monitoring, a ban on contacting any of the prosecution witness, a stay of exit order, a cash deposit of 60,000 NIS (around 17,000 USD) in cash as well as an additional third party guarantee of 100,000 NIS (around 28,400 USD).
- In Cr.C. (Tel Aviv) 4004/09 State of Israel v. Dan Cohen, a former district court judge was an officer in the Israel Electric Corporation's board of directors' Procurement Committee, and a member of its tender committee. Cohen also owned a number of foreign companies holding foreign accounts. Cohen was indicted on a number of charges: bribe, fraud and breach of trust; obtaining anything by deceit under aggravating circumstances, accessory to obtaining anything by deceit under aggravating circumstances, false entry in documents of body corporate and obstruction of justice. Cohen fled the country during the investigation stage and was extradited to Israel in 2013. After his extradition, the District Court (Cr.C 2474/13 Dan Cohen v. State of Israel) decided to detain him until the end of proceedings and denied his request to be released. On appeal, the Supreme Court decided that the circumstances in which the offenses were committed need to be taken into consideration as well as his actions once he knew he was a suspect. The Supreme Court upheld the District Court's decision to detain Cohen until the end of proceedings. For additional details regarding this case please see the information under UNCAC article 30(1).

462. Related statistics were not available.

**(b) Observations on the implementation of the article**

463. The legislation cited seems to provide the Israeli law enforcement authorities with an array of restrictive measures in order to ensure the presence of the defendant at criminal proceedings, including detention when there is no less harmful way to prevent the defendant from evading the proceedings, in a manner proportional to the circumstances of each individual case or defendant.

464. Thus, Israel's implementation of the provision in question should be deemed satisfactory.

**Paragraph 5 of article 30**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

465. Israel indicated that under Israeli law, there are two forms of early release. The first is a conditional release pursuant to the **Conditional Release from Imprisonment Law, 2001**

(hereinafter: " Conditional Release from Imprisonment Law). This form of release is decided by a committee headed by a judge. The committee may decide (based on certain considerations specified in that law) to release an offender who has completed at least two thirds of his prison term. The second form of early release is pursuant to the **Prisons Ordinance (New Version), 1971** (hereinafter: "Prisons Ordinance). According to the Prisons Ordinance, if the prison population exceeds its official capacity, as established by the Minister of Public Security with the approval of the Knesset Committee for Internal Affairs and the Environment, the Prisons Service Commissioner alone is authorized to deduct specific periods of time from the sentences imposed on prisoners. The number of days deducted from the sentence is proportional to the length of the sentence (at most a deduction of 24 weeks, for prisoners sentenced to terms of over 132 weeks).

466. Recently, an amendment to the Prisons Ordinance limited the application of this form of early release to prisoners whose sentence is less than 4 years, or prisoners whose sentence is over 4 years and that the release committee has decided to grant them conditional release. The purpose of this limited application is to ensure that the release of more dangerous prisoners is restricted.

467. According Section 9 to the Conditional Release from Imprisonment Law, the release committee may reach a decision based on the following considerations: the potential risk to the public, to the victim and to State security, the expected success of the prisoner's rehabilitation and the prisoner's behavior.

468. In addition, the committee will consider, among other things:

1) The offense for which the prisoner is serving the sentence, including the circumstances of the offense, its kind, its gravity, scope and consequences, the term of imprisonment ordered by the court, fines or damages to the victim ordered by the court, whether these were paid, the reasoning for the non-payment, and any commutation of the sentence as granted by the President;

2) The prisoner's criminal record including: the nature of offenses for which he was accused, the circumstances of their execution and their consequences;

3) Prior convictions, the number, frequency and the nature of the offenses, their gravity, circumstances, consequences, scope and the term of imprisonment the prisoner served.

4) Prior discussions in the committee regarding the prisoner and decisions, including the non-granting of parole.

5) Any commutation of the sentence if granted by the President for prior sentences;

6) Conduct of the prisoner in prison during his term, positive or negative. In addition, if the prisoner served additional prison sentences his behavior during these terms will also be considered;

7) The opinion of the police, the prison authority or the security service regarding the prisoner;

8) The opinion of the Rehabilitation of Prisoners Authority regarding the prisoner, if

provided;

9) The opinion of the Probation Service regarding the prisoner, if probation was provided;

10) Personal data, including age and marital status.

469. According to Section 10 of the Conditional Release from Imprisonment Law, the committee may consider the following factors in addition to those mentioned in Section 9: in extreme cases where there are special circumstances and the committee believes that the release on parole of the prisoner will severely harm public faith in the judicial system, in law enforcement and deterrence capabilities; and when there is an unreasonable correlation between the severity of the offense, its circumstances and the sentence imposed on the prisoner and the term of imprisonment the prisoner will actually serve if he is released,. The weight of these factors will decrease the longer the prisoner has already served his sentence.

470. Israel cited the following text.

### **Conditional Release from Imprisonment Law, 2001**

#### **9. The Committee's considerations**

When considering if early release is appropriate, it will take into account the danger the prisoner's release will have on the public, including his family, the victim and state security, the chances of rehabilitation and his behavior in prison; the committee will take into account, *inter alia*, the following information:

- 1) The offense for which the prisoner is serving the sentence, including the circumstances of the offense, its kind, its gravity, scope and consequences, the term of imprisonment ordered by the court, fines or damages to the victim ordered by the court, whether these were paid, the reasoning for the non-payment, and any commutation of the sentence as granted by the President;
- 2) Any existing indictments filed against the prisoner, the nature of offenses for which he was accused, the circumstances of their execution and their consequences, according to the charges;
- 3) Prior convictions, the number, frequency and the nature of the offenses, their gravity, circumstances, consequences, scope and the term of imprisonment the prisoner served for them;
- 4) Prior discussions in the committee regarding the prisoner and decisions, including the non-granting of parole;
- 5) Any commutation of the sentence if granted by the President for prior sentences;
- 6) Conduct of the prisoner in prison during his term, positive or negative, as detailed below:
  - (a) Good behavior during the prisoner's incarceration;
  - (b) Positive behavior displayed by the prisoner towards work and steps taken for his rehabilitation;
  - (c) Use of a dangerous drug, as per the Dangerous Drugs Ordinance, 1973 (hereinafter: "Dangerous Drug");
  - (d) Rehabilitation from the use of Dangerous Drug;
  - (e) Criminal offense carried out by the prisoner and the nature of the offense;
  - (f) Behavior which results in the injury of a other prisoners, wardens or disrupts prison order;
  - (g) Involvement in criminal activity, whether in our outside of the prison;
  - (h) Escape from prison or not returning on time;
- 7) Opinion regarding the prisoner by the police, the prison authority or the security services regarding the prisoner, and in appropriate cases a professional opinion concerning, *inter alia*,

incest, domestic abuse and mental health;

8) Opinion of the Rehabilitation of Prisoners Authority regarding the prisoner, if provided, regarding the prisoner's early release, as detailed below, which will carry less weight the shorter the term served by the prisoner:

(a) An opinion which includes the prisoner's rehabilitation plan, the possibility of integrating him into employment or care programs; for this matter the supervision included in the proposed plan by the Rehabilitation of Prisoners Authority should be taken into account;

(b) An opinion according to which the prisoner does not require a rehabilitation plan and that he does not display any criminal behavior patterns;

(c) An opinion according to which the prisoner is not suitable for rehabilitation;

9) Concerning a prisoner who have been given a probation order according to the Probation Ordinance, wherein he will be supervised by a probation officer after he is released from prison - the opinion of the Probation Service regarding the prisoner, if provided;

10) Personal data, including age and marital status.

#### **10. Additional circumstances for the committee's decision**

(a) In severe cases and those with special circumstances where it is the commission's opinion that the early release of the prisoner when severely damage public trust in the judicial system, law enforcement and public deterrence, as there is an unreasonable ration between the severity of the offense, its circumstances and the punishment imposed on the prisoner and the actual prison sentence imposed on the prisoner if he is release, the committee may take this information into account in its decision, in addition to the information listed in Section 9; the weight of the information in this Sub-section will carry less weight the longer the prison sentence the prisoner has already served;

(b) A special release committee, when making a decision concerning the early release of a prisoner serving a life-sentence, will consider, in addition to the other considerations in this law, if there has been a substantial and significant change in the prisoner's understanding of the severity of his actions and his readiness to integrate into and contribute to society.

Prisons Ordinance (New Version), 1971 In this paragraph -

"Prisoner" means -

(1) A prisoner sentenced to a term of imprisonment which does not exceed four years;

(2) A prisoner sentenced to a term of imprisonment which exceeds four years who has been release on probation from serving the remainder of his sentence by the Release Committee pursuant to Sections 3, 4 or 5 of the Conditional Release from Imprisonment Law, 5761-2001;

"Remainder of Term" means the term of imprisonment remaining for the Prisoner until his release upon completion of his prison term or until the date determined for his early release pursuant to the decision of the Release Committee or pursuant to any law, whichever term is shorter;

"Group of Prisoners" means A group of prisoners characterized by the term imposed on whoever is included therein, as specified in the First Schedule;

"Administrative Release" means The early release of prisoners pursuant to Section 68C;

"Prisoner Occupancy" - the number of prisoners held in all prisons, including prisoners hospitalized in hospitals pursuant to Sections 15(a) and 16, or who are away on leave pursuant to Section 36 as well as detainees held in all prisons;

"Detention Facility" - all the places of detention in all prisons.

471. Israel provided the following statistics and indicated that statistical data collected by the release committees is categorized according to the type of committee hearing the plea

("Regular Committee", "Special Committee", "Life-Sentence Committee") rather than by offense. There is no statistical information concerning the offences established under the Convention specifically.

**Number of Inmates Per Committee:**

Regular Committee

2010 - 14535

2011 - 16700

2012 - 17709

First half of 2013 - 9552

Special Committee

2010 - -

2011 - 44

2012 - 69

First half of 2013 - 47

Life-Sentence Committee

2010 - -

2011 - 88

2012 - 53

First half of 2013 - 78

**(b) Observations on the implementation of the article**

472. The provisions cited seem to allow the competent bodies to consider a wide spectrum of factors and circumstances regarding the gravity of the offence. Although no distinction is made regarding the offences established in accordance with the Convention, the minimum eligibility period is considered high enough and should be deemed to take sufficiently into account the gravity of the offences concerned, especially since release is not mandatory after completion of the 2/3 of prison term, but subject to many other considerations regarding the individual features of the offence and of the offender

473. Israel is in compliance with this provision.

**Paragraph 6 of article 30**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

474. Israel indicated that, in addition to a criminal prosecution, when the offender is a civil servant, he can be also prosecuted for a disciplinary offense by the Civil Service Disciplinary Tribunal. According to Israel's **Civil Service Law (Discipline), 1963**, the Tribunal has the



authority to impose on the civil servant concerned various disciplinary measures, including warning, reprimand, forfeiture of salary, demotion in rank, transfer of the civil servant to a different position, suspension from service (Section 47), disqualification from fulfilling certain functions, dismissal with or without severance pay (Section 34(1)), and dismissal together with disqualification from serving in the civil service (Section 34(9)). These dismissals may be temporary or permanent and can apply against a civil servant against whom a complaint has been filed with the Tribunal or if there is a criminal investigation concerning an offense which involves moral turpitude.

475. Israel cited the following text. Further information regarding disciplinary measures and the suspension of civil servants, even before a claim has been filed with the Disciplinary Tribunal or an indictment, is found below under par. 8.

### **Civil Service Law (Discipline), 1963**

#### **34. Disciplinary Measures by the Tribunal**

The tribunal is authorized to decide upon one or more of these disciplinary measures:

- (1) Warning;
- (2) Reprimand;
- (3) Severe reprimand
- (4) Demotion or freeze, to the extent and for such period as determined;
- (5) Confiscation of salary at a sum prescribed by the tribunal and which shall not exceed one sixth of the employee's monthly salary, for a period not exceeding six months; with regard to this paragraph,  
"Monthly Salary" means the determining salary according to which the employee would have been paid a pension if he had retired on the date of the decision;
- (6) His transfer - in coordination with the Director General of the ministry or whoever the Director General has appointed therefor - to another job or to another workplace in his ministry, for a restricted or non-restricted period.
- (7) Disqualification, after transfer to another job or another workplace, from fulfilling particular positions, to such extent and for such period as determined;
- (8) Dismissal with the payment of severance pay, wholly or partly, or without the payment of severance pay; the tribunal may order that the severance pay he has been deprived of be paid, wholly or partly, as it may decide, to whomever the employee is obligated to support;
- (9) Disqualification, after dismissal or the employee's retirement from the Civil Service in another way, from fulfilling particular positions permanently or for such period as is prescribed;
- (10) Disqualification, after dismissal or the employee's retirement from the Civil Service in any other way, from the Civil Service permanently or for such period as is prescribed;
- (11) Together with another disciplinary measure - publication of the tribunal's decision, wholly or partly, in such manner as the tribunal prescribes.

476. Israeli case law has addressed the question of allowing public officials associated with alleged criminal activity to remain in public office. The underlying principle under current case law is that the eligibility criteria for a given public office position are not the sole applicable criteria for determining whether an official can accede to and retain the position. In the appropriate circumstances, the authority may have an obligation to terminate the tenure of the public official or not to appoint a candidate for public office even if the eligibility criteria are otherwise met. The court can review the decision of the authority and, where appropriate, order the removal of the official from office (the court can also order the

authority not to appoint a candidate for public office in similar circumstances). However, the court has clarified that not every case of misconduct will necessarily result in the public official's removal from office and that each case must be examined on its own merits.

477. The following are some representative examples:

HCI 3094/93 *The Movement for Quality of Government v. The Government of Israel* (the Drei case). Drei, serving as Minister of Interior at the time, was indicted for offenses of bribery, breach of trust, obtaining a thing by deceit, etc. The plaintiffs argued that the Prime Minister should have exercised his authority under the Basic Law: the Government, to remove Drei from office due to the indictment. The High Court of Justice held that the circumstances of the case mandated Drei's removal from office, even though he had not yet been convicted, and despite the fact that he met the formal eligibility criteria.

HCI 4267/93 *Amiti – Citizens for Proper Administration and Public Integrity v. the Prime Minister of Israel* (Pinhasi case). Pinhasi, serving as a Deputy Minister at the time, was indicted for false entry in documents of a body corporate, false statements, and attempt to obtain a thing by deceit. The plaintiffs argued that he should be removed from office. The Court made clear that even though an indictment has less severe implications than a conviction (and the public official is entitled to the presumption of innocence), if the indictment relates to severe offenses, the Prime Minister is obligated to remove a Deputy Minister or Minister from office. The Court explained that the presumption of innocence does not prevent removal from public office, if the relevant authority has evidence that justifies such removal. Due to the severe allegations in the indictment, the Court held that it would be an extremely unreasonable exercise of discretion to allow Pinhasi to remain in office and that the Prime Minister must terminate his tenure. As with the Drei case, the fact that Pinhasi met the formal eligibility criteria did not shield him from the rule set by the case law regarding termination of tenure in the circumstances described above.

In these two cases, the court first determined the rule that eligibility criteria for public office is independent of executive authority discretion, by holding that a Minister and Deputy Ministers must be removed from office when an indictment for severe offenses has been filed.

In the period subsequent to these cases, the Court was frequently requested to order the removal of officials from public office due to indictments. The Court did not always grant the orders, defining the scope of the Drei and Pinhasi decisions.

In HCI 2553/97 *The Movement for Quality in Government v. The Government of Israel*, for example, the Court held that the Prime Minister's decision not to remove from office a minister (Hanegbi), which was alleged to have acted not in accordance with normative behavior in the process of the nomination of the Attorney General, is reasonable. The underlying reasoning for the decision was that there was no indictment filed.

Recently, in HCI 4921/13 *Ometz – Citizen for Proper Administration and Social Justice v. the Mayor of Ramat Hasharon*, the Court somewhat expanded the scope of the Drei and

Pinhasi decisions, holding that a public official can be removed from office following an indictment, even if he was elected to the position (in Israel, mayors are personally elected for office, unlike in general elections), and not appointed to it by an administrative decision by the relevant executive authority. The decision was based on the principle of judicial review of the Municipal Council's decisions. Section 22(a) of the Municipalities Law (the Election and Tenure of the Head of the Municipality and his Deputies), 1975) grants certain discretionary powers to the Municipal Council. The court interpreted this discretion as including the power to remove the head of a Municipality from office if the Municipal Council finds that he acted in a manner unbefitting the stature of the position. The Court held that, in light of the severe indictments, allowing the mayors in question to stay in public office was not in accordance with the principle of rule of law and protection of public integrity, and held that the decision by the Municipal Councils to allow them to remain in office was extremely unreasonable.

Following the decision, the Municipalities Law (the Election and Tenure of the Head of the Municipality and his Deputies), 1975 was amended to address the situation of heads of municipalities who have been indicted. In accordance with the amendment, when an indictment involving serious allegations has been filed against a head of a municipality, such as to render him unfit for public office, a special commission established for that purpose can suspend the official from office in accordance with the procedures set by the law. The amendment diverges from the existing case law in that it mandates suspension, not removal from office. The suspension is temporary, allowing the official to be reinstated if this is warranted due to a change in circumstances. This mechanism attempts to strike a balance between the interest of protecting integrity in the public service, giving expression to the public's democratic will and the official's rights. Additionally, the suspension mechanism is in line with the rule that a head of a municipality must be suspended following a conviction of an offense of moral turpitude until a final judgment (i.e. a judgment not subject to appeal) is rendered.

478. Israel provided the following example of implementation.

In Ap.Civ. Serv. 4/81 *Shlomo Ohayon v. the State of Israel*, a former government employee was convicted by the Civil Service Disciplinary Tribunal of an offense according to Section 17(6) of Israel's **Civil Service Law (Discipline), 1963**, which offense involved moral turpitude, after having already been convicted for taking bribes by the District Court. The court determined that "taking bribes is offense which brings shame (moral turpitude) on a government employee and it is unlikely to come up with circumstances wherein taking a bribe by a civil servant does not lead to this conclusion."

Regarding the suspension from office of accused officials, a case example was referred to during the country visit where three mayors had been suspended from office as a result of disciplinary proceedings before a criminal indictment was filed.

479. No related statistics were available.

**(b) Observations on the implementation of the article**

480. The provisions cited seem to contain all the disciplinary sanctions required by the Convention.

**Paragraph 7 (a) of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office;*

**(a) Summary of information relevant to reviewing the implementation of the article**

481. Israel indicated that corruption and bribery offenses normally involve a question of “moral turpitude”. Conviction of offenses involving moral turpitude can disqualify an individual from holding certain public positions, or prevent the person from practicing certain professions.

482. In HCJ 11744/04 *Ziv v. the Tel-Aviv District Committee of the Israel Bar Association*, a lawyer had had assaulted his neighbor over an argument about parking space, and was convicted of aggravated assault and battery. A disciplinary tribunal of the Israel Bar Association subsequently determined that the offense involved moral turpitude. The Supreme Court ruled that the standard of behavior expected of lawyers is a high one and that the disciplinary tribunal was correct in its decision that there was moral turpitude.

483. In HCJ 11243/02 *Feiglin v. The Chairman of the Central Elections Committee*, the applicant was disqualified from the list of parliamentary candidates for concealing from the Central Elections Committee the fact that he had been convicted in the past of an offense involving moral turpitude, and for missing the deadline for submission of a request to “erase” the moral turpitude. The Supreme Court ruled that there are no grounds to intervene in the Central Elections Committee's decision, because the schedule of the election process is strict and was determined by law. According to the minority opinion, the Chairman of the Central Elections Committee should have made a specific determination on whether the offense involved moral turpitude, and if his decision is that there was no moral turpitude, the applicant should be allowed to remain a candidate.

484. As noted under UNCAC article 30(6), when the offender is a civil servant, he can be prosecuted by the Civil Service Disciplinary Tribunal for a disciplinary offense. According to Israel's **Civil Service Law (Discipline), 1963**, the Tribunal has the authority to impose on the civil servant various disciplinary penalties, including warning, reprimand, forfeiture of salary, demotion in rank, transfer of the civil servant to a different position, disqualification from fulfilling certain functions, dismissal with or without severance pay (Section 34(1)), and dismissal together with disqualification from serving in the civil service (Section 34(9)). These dismissals may be temporary or permanent.

485. A similar provision applies to candidates for local authority councils: Sections 7-7a of the

**Local Authorities Law (Elections), 1965** provide that an person who has been convicted of an offense and sentenced for more than 3 months in jail is prohibited from running for a position in local authority council in the seven years following the end of the jail term, unless the chairman of the Elections Committee determines that the offense does not involve moral turpitude.

486. Section 7a of **The Courts Law [Consolidated Version], 1994** provides that the Committee for the Nomination of Judges shall not nominate anyone who was convicted of an offense involving moral turpitude, and section 44 of the **National Health Insurance Law, 1994** also a similar restriction regarding the appointment of the ombudsman responsible for the public health system of Israel. There is also a duty to notify the Civil Service Commission of any criminal history upon assuming public office.

487. For additional details regarding this matter Israel referred to the information under UNCAC article 30(2).

488. Attorney General Directive 1.1500 entitled "Government Legal Advisers' review of appointments of public officials" is also relevant to the application of Article 30(7). This Directive addresses appointments made by Ministers or by the Government, not subject to the regular competitive public service hiring process (tenders or quasi-tenders), and consequently not reviewed by a nomination review board. The reasoning for the Directive is the approach that any non-competitive appointment must undergo a preliminary review process, conducted by the Legal Adviser of the relevant government office. The preliminary review is intended to provide advice to the appointing authority as to the candidate's suitability for the position, in terms of both professional and public integrity. In this process, the Legal Adviser must examine the candidate's criminal record, *inter alia*, to verify whether the candidate has been convicted of an offense which, on account of its gravity, nature, or circumstances, precludes the nomination. In addition, the Legal Advisor must inquire as to the candidate's other occupations in order to assess whether there exists any potential conflict of interests.

489. It should be noted that the Directive is also applicable to nominations in statutory bodies (bodies established by law) in non-competitive hiring procedures, when the appointing authority is a Minister or a Director General. The preliminary review must also be undertaken in such cases, including regarding potential conflicts of interests and the existence of a criminal record, if applicable.

490. Israel cited the following text(s)

**Basic Law: The Knesset, 1958** - Sections 6 & 42A in the attached legislative compilation.

**Basic Law: The Government, 2001** - Sections 6, 18, 23 & 27 in the attached legislative compilation.

**Courts Law [Consolidated Version], 1984**  
**Restriction on the appointment of a Judge**

7A. The Committee shall not propose the appointment of a Judge if the candidate was found guilty of a criminal offense, which under the circumstances is considered heinous.

**Civil Service Law (Discipline), 1963**

### 34. Disciplinary Measures by the Tribunal

The tribunal is authorized to decide upon one or more of these disciplinary measures:

(1) Warning;

...

(9) Disqualification, after the employee's dismissal or his termination of employment from the Civil Service in another way, from fulfilling particular positions permanently or for such period as prescribed;

### National Health Insurance Law, 1994

#### 44. Conditions in appointing the Commissioner

No person shall be appointed or serve as Commissioner –

(1) If he is not an Israeli citizen;

(2) If he has been convicted of an offence which in the opinion of the Attorney General contains moral turpitude;

(3) If he is associated, directly or indirectly, by himself or via his relative, agent or partner in a contract or transaction with a health fund or with a provider of services or with whoever is an interested party in a corporation associated with them.

491. Israel provided the following example of implementation

- In Ap.Civ. Serv. 4/81 *Shlomo Ohayon v. the State of Israel*, a former government employee was convicted by the Civil Service Disciplinary Tribunal of an offense according to Section 17(6) of Israel's **Civil Service Law (Discipline), 1963**, which offense involved moral turpitude, after having already been convicted for taking bribes by the District Court. The court determined that "taking bribes is offense which brings shame (moral turpitude) on a government employee and it is unlikely to come up with circumstances wherein taking a bride by a civil servant does not lead to this conclusion."

492. Related statistical information was not available.

#### (b) Observations on the implementation of the article

493. Some of the provisions cited as well as common law principles contain explicit disqualifications for distinct public offices. The reviewers are satisfied with the information provided.

### Paragraph 7 (b) of article 30

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

#### (a) Summary of information relevant to reviewing the implementation of the article

494. According to Section 17(a)(5) and (6) of the **Government Companies Law, 1975** (hereinafter: "GCL"), a person convicted of an offense which - in the Attorney General's

opinion - is dishonorable or which warrants that he not be appointed, or a person disqualified from serving as director under the Companies Law or any other statute, cannot serve as a Director in a Government Company or its subsidiaries or in mixed company where the State appoints directors on its behalf. This applies also to General Managers (CEOs) of Government Companies and their subsidiaries.

495. Directors on behalf of the State are appointed in the aforementioned companies by the relevant minister and the Minister of Finance after having consulted with the Appointment Review Committee. CEOs of Government Companies and subsidiaries are appointed by the board of directors of the company, following the aforementioned appointment process.
496. If the Appointment Review Committee decides not to appoint a director or a CEO in accordance with Sections 17(a)(5) and (6), its decision can only be challenged by submitting an appeal to the relevant courts.
497. Israel's Attorney General issued a guideline concerning appointments in Government Companies and Public Corporations (Guideline No. 6.5000). One of the issues discussed in the Guideline is the disqualification of candidates in accordance with administrative law principles. The Guideline notes for example a situation where a nominee is suspected of committing a criminal offense which might affect their suitability to be nominated due to damage done to the public trust. It is also possible to consider disqualifying a candidate when their act raise doubts concerning their integrity. For example, in one case, the court disqualified an applicant who signed falsified documents in order to obtain a personal benefit (HCJ 932/99 *The Movement for the Quality of Government in Israel v. Chairperson of the Appointments Review Committee*). The evidentiary requirement is that, the evidence must suffice to prove the individual's involvement in a crime whose nature, severity or circumstances are such that the person committing the crime is not fit to serve in a public position.
498. The GCL also provides that if a director in a Government Company or Public Corporation is suspected of such an offense, then the Minister who appointed him as director may suspend him by providing notice to the company.
499. According to Sections 42(a)(6) and (7) of the GCL, the CEO shall cease to hold office when convicted of an offense which - in the Attorney General's opinion - is serious and requires that his tenure be discontinued, or where he becomes barred from this position according to the Companies Law or any other statute.
500. According to Section 43(a) of the GCL, the Board of Directors may suspend a CEO if it has reason to believe that he has committed a criminal offense which damaged the company, and the Board of Directors **must** suspend him if an indictment was filed against him for an offense.
501. As for other senior officials in Government Companies, a recent change in the **Crime Register and Rehabilitation of Offenders Regulations**, adopted in 2012, enables the CEO of a Government Company may demand and receive criminal data from the crime register concerning candidates for senior positions in the company in accordance with section 32(a)(4) of the GCL. The Government Companies Authority has published a circular describing the amendment and relevant procedures required concerning the change in Government Companies and instructing the CEOs of Government Companies on requesting

and considering criminal data in hiring senior officials.

502. In recent years there have been no reported cases of candidates suspected or convicted of corruption offenses, that have reached the Appointments Review Committee in the Government Companies Authority.
503. The following also applies to appointment to public office in governmental companies. According to the **Attorney General's Guideline No. 6.5000** (pages 22-23), which regulates appointments in government companies and statutory corporations, an Appointments Review Committee, which approves the appointment of directors, CEOs and chairmen of the board of directors in government companies, may reject an appointment based solely on the general principles of administrative law. An example of these principles would be the suspected involvement of the candidate in criminal activity, as this may be detrimental to the candidate's suitability to the position.
504. Israel cited the following applicable procedures or other measures.

**Attorney Guideline No. 6.5000 - Appointments in Government Companies and Public Corporations** - please see the Guideline in the attached legislative compilation.

## **Government Companies Law, 1975**

### **17. Reservations**

- (a) The following are not fit to be a director:
- (1) A minister, deputy minister and a member of the Knesset;
  - (2) A company employee and whoever is retained in its service, excluding the Director General and an elected representative of the company's employees. The chairman of the board shall not be deemed to be a company employee in this matter;
  - (3) A person from among the general public whose other affairs are liable to create a conflict of interests with his position as a director in such company;
  - (4) The director of the authority and its employees, except if the company is in the process of dissolution or liquidation of its affairs;
  - (5) Whoever has been convicted of an offense which in the opinion of the Attorney General is dishonourable or which warrants the non-appointment;
  - (6) Whoever has been disqualified from serving as a director in the company pursuant to the Companies Ordinance [New Version], 5743-1983, or pursuant to any other law.

### **42. Expiry of Office**

- (a) The Director General shall cease to hold office in each one of the following cases:
- (1) He has resigned by sending a letter of resignation to the chairman of the board;
  - (2) The Government has transferred him from his position;
  - (3) The board has transferred him from his position by a resolution passed by a majority of the votes of the participants in the vote;
  - (4) The board has determined, during the first year of his office, that he is not suitable for his position;
  - (5) The board has determined that he is permanently unable to fulfill his position;
  - (5A) The Ministers Committee has determined, with the recommendation of the Minister of Finance and according to the authority's opinion, that he is not fulfilling his position in a manner which is conducive to the implementation of the privatization decision, or has acted by act or omission in a manner affecting the company's ability to comply with a provision or requirement duly given pursuant to Sections 59D or 59E;



- (6) He has been convicted of an offense which in the opinion of the Attorney General is dishonourable or which in his opinion warrants the termination of his office;
- (7) He has been disqualified from holding office pursuant to the Companies Ordinance or pursuant to any other law;
- (8) The company has been dissolved.

#### **43. Suspension**

- (a) The board may suspend the Director General if it has grounds for suspecting that he has committed a criminal offense which has caused the company damage. The board must suspend him if he has been charged in respect of an offense which in the opinion of the Attorney General justifies his suspension.
- (b) When the Director General has been disqualified, the board may appoint an acting Director General for the period of his suspension.

505. No examples of implementation or statistical information was available.

#### **(b) Observations on the implementation of the article**

506. According to the provisions cited, occupants of offices in enterprises owned in whole or in part by the State will be disqualified, if convicted for a dishonorable offence, according to the Attorney General's opinion. The reviewers are satisfied with the information provided.

#### **Paragraph 8 of article 30**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

507. Israel indicated that, when a person who commits an act of corruption is a civil servant, that person may also be prosecuted by the Civil Service Disciplinary Tribunal for a disciplinary offense. In addition to the sanctions available to the Disciplinary Tribunal, pursuant to Section 47 of Israel's **Civil Service Law (Discipline), 1963**, the Civil Service Commissioner is empowered to suspend a civil servant against whom a complaint has been filed (on the basis of which a claim is filed with the Tribunal) or if there is a criminal investigation concerning an offense which involves moral turpitude. The suspension may remain in effect until the end of the disciplinary/criminal proceedings, and it is subject to periodic review by the Commissioner. The authority to suspend exists even before a claim has been filed with the Disciplinary Tribunal or an indictment. The suspension is subject to the employee's right to a hearing. The foregoing applies to the offenses under the Convention.

508. According to Section 48 of the Civil Service Law (Discipline), the Minister and Director General of a government ministry also has the authority to immediately suspend an employee when they have reasonable grounds to believe that the employee has abused their position, maliciously breached disciplinary rules or committed a criminal offense which entails moral turpitude, if their continued employment would cause serious damage to the Civil Service. This suspension lasts 14 days, which can be extended to 30 days, and is subject to a hearing.

509. Beyond the legislative framework, Israeli authorities regard the public official as a public

trustee, and as such they expect him to act for the public interest and not for his own personal benefit. The Civil Service must maintain integrity, impartiality, professionalism and equality. The need to ensure an ethical and reliable Civil Service, as well as the need to enhance public trust in government, require in certain circumstances, the imposition of disciplinary sanctions on an official who has committed any of the offenses in this Convention. The Tribunal has the authority to impose on a civil servant various disciplinary penalties, including warning, reprimand, forfeiture of salary, demotion in rank, transfer of the civil servant to a different position, suspension, disqualification from fulfilling certain functions, dismissal with or without severance pay, dismissal together with disqualification from serving in the civil service. In addition to the disciplinary offenses, public officials are subject to general **principles of conduct**:

S. 1.01 of the Rules of Ethics provides that a public official is obligated to be faithful to the state of Israel and its laws and to fulfill, honestly and faithfully, any duty imposed on him as a public official.

S. 1.02 provides that a public official must act in a way befitting his status, functions and obligations as a public official. This principle applies to acts outside the realm of his functions.

S. 201 provides that the public official must to fulfill his functions loyally and must comply with any obligatory procedure.

S. 4.02 provides that a public official is obligated to report to his superiors acts and matters that should be reported in the circumstances, and to provide the relevant information. As indicated earlier, failure to report may be considered as an inappropriate conduct and lead to disciplinary actions in appropriate circumstances.

510. The Knesset's Ethics Committee, responsible for overseeing the conduct of Parliamentarians, is authorized to take disciplinary actions against Knesset members for acts of corruption, and the Committee for State Reviewing, which works closely with the State Comptroller and is also authorized to discuss complaints by citizens and media reports concerning corruption.

511. No examples of implementation or related disciplinary cases were available.

**(b) Observations on the implementation of the article**

512. Besides bearing criminal liability according to par. 1 of article 30 for criminal offences established pursuant to the Convention, Israeli civil servants are also concurrently and independently answerable to the Civil Service Disciplinary Tribunal and to the Civil Service Commissioner. Decisions by the Civil Service Commission are subject to judicial review.

513. Israel should be deemed to be in compliance with the provision in question.

**Paragraph 10 of article 30**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

514. Israel indicated that one of the goals of the Israel Prison Service (IPS) is to enhance the inmates' potential for successful reintegration in the community. This is done in part by ensuring that their incarceration takes place in a safe, secure environment, respecting their dignity, accommodating their basic needs and assisting them in acquiring rehabilitative skills in collaboration with government agencies and community organizations. The IPS places great emphasis on rehabilitating criminals; it offers many rehabilitation programs and allocates budgets for the education and professional training of prisoners.
515. Great efforts are made to provide each prisoner with a rehabilitation program aimed at improving his ability to become integrated into society upon his release. At the beginning of the incarceration period, each prisoner's needs are identified in order to fulfill his rehabilitation potential. Each prisoner's personal profile, which includes his socio-economic data and the type of offense, determines the rehabilitation program that will apply, and includes educational activities and treatment; all are tailored to the prisoner's abilities, will, and duration of his sentence.
516. One underlying principle guiding the actions of correctional facilities is that a prisoner who has used their time in prison to receive treatment and rehabilitation has a very small chance of returning to prison. Studies conducted in Israel indicate that Israel's recidivism rates are much lower compared to other states, and are dropping. According to data from the Ministry of Public Security, the financial damage caused by crime in 2010 is estimated at about 14.7 Billion NIS. Further reducing the rate of recidivism and increasing prisoners' chances of re-integrating into society is a shared goal of society as a whole and of the IPS in particular.
517. The IPS, in cooperation with the Hebrew University in Jerusalem's Institute of Criminology, is currently conducting a study for the assessment of the therapeutic effectiveness and economic efficiency of about 30 corrective programs run in correctional facilities. The study indicates that there is a gap between the IPS's investment in correctional programs and the public's response to prisoner upon their release, something which affects their success outside of prison. Therefore, cooperation between the IPS and civil society is crucial, as it can help the prisoner reintegrate society following their release.
518. The IPS runs several rehabilitative programs dealing with a number of subjects, including: domestic violence, addiction (drugs and alcohol), sex offenders, religious rehabilitation and life skills.
519. Most recently, the IPS has focused on fraud offenders: last year a support group for offenders was established by the Probation Service in order to provide them with emotional support and to better understand the motivation for their crimes. Three such groups have already been successfully run, with new groups currently running in various prisons in Israel.
520. Regarding the applicable reintegration programmes or measures, Israel cited the following text.

**Prisons Ordinance (New Version), 1971**

**11C. Educational and Leisure Activities**

A prisoner shall be entitled to be integrated into the leisure or educational activities, in the scope and according to the conditions prescribed in the Regulations and the Service Ordinances.

#### **11D. Rehabilitation**

(a) The Prisons Commissioner shall examine the rehabilitation options of a prisoner who is an Israeli citizen or a resident of Israel and shall take steps to ensure his maximum integration into rehabilitation activities within the prison walls.

(b) A prisoner mentioned in Sub-section (a) shall be integrated into rehabilitation activities, insofar as he is found to be suitable for them, at such time, in the scope and according to the conditions prescribed in the Regulations and in the Service Ordinances.

(c) The Minister shall prescribe provisions regarding this section, with the approval of the Knesset's Interior and Protection of the Environment Committee.

521. Israel indicated that it collects information on recidivism rates. The recidivism rate for released prisoners (not including terror prisoners) is 42.1%. This rate refers to 5 years re-imprisonment of prisoners released in 2006.

#### **(b) Observations on the implementation of the article**

522. In view of the above information Israel should be deemed to be in compliance with the provision of article 30 par. 10.

### **Article 31 Freezing, seizure and confiscation**

#### **Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

523. Israel indicated that search, seizure and confiscation orders are routinely issued in cases of bribery and fraud related charges. Under Israeli Law, seizure and forfeiture authority is prescribed in Section 39 of the **Criminal Procedure Ordinance (Arrest and Search) (new version), 1969** (hereinafter: "Criminal Procedure Ordinance" or "Ordinance"), and applies to the majority of offenses in the **Penal Law, 1977**, including, amongst others, bribery offenses. It is a discretionary power, in line with the general rule applying to sentencing.

524. In addition, under Section 32 of the Criminal Procedure Ordinance, the police may seize an object when there is reason to believe that the object was used or is about to be used for the commission of an offense, that it is likely to serve as evidence in a legal proceeding, that it was given as payment for the commission of an offense or that it was used as means of committing it. Under this Section, a police officer is authorized to seize such objects without

a court order. According to Section 1 of the Ordinance, the definition of an "object" includes certificates, documents, computerized materials or animals. In Cr.C. 5015/99 *Association of Independent Jurists v. State of Israel*, the Court held that the definition in Section 1 is not exhaustive, and that its aim is to expand the regular meaning of the term "object". The Court gave a broad interpretation to the term "object", to include also intangible assets, for example, a bank account.

525. Under Sections 34 and 35 of the Ordinance, the court may order the extension of the period of time during which the police is entitled to seize the item. Section 34 provides that following a request from a police officer or a person claiming a right to the item, the court may exercise wide discretion as to the handling or the possession of that item.

526. Israeli authorities have applied a broad and creative approach to the interpretation of these provisions, enabling confiscation in a variety of contexts (e.g. in respect of substitute assets) which are not explicitly addressed in the respective texts. This provides a practical route to confiscation in many instances in relation to the proceeds of predicate offenses when a money laundering charge is not available.

527. In addition, forfeiture can be applied to any penalty imposed by the court. Section 297 of the Penal Law expands the overall forfeiture authority prescribed in the Criminal Procedure Ordinance by including a special provision for criminal forfeiture in bribery offenses, whereby the court may order, at the time the sentence is imposed and in addition to any other penalty, the forfeiture of what was given as a bribe, or any assets into which it was converted. The court may also order the person who gave the bribe to pay to the State the value of the benefit he derived from the bribe.

528. In Cr.A. 7475/95 *State of Israel v. Ben Shitrit*, the defendant was convicted of drug-related offenses (to which specific forfeiture provisions apply). In addressing the difference between a fine and forfeiture, the Supreme Court stated that while the role of a fine is punitive, and while the fine is paid from the defendant's legitimate assets, forfeiture is not a punitive act per se, but rather it removes from the convicted person's possession property obtained illegally, regardless of its worth, and treats it as property which does not rightfully belong to the convicted person but is held by him illegally.

529. The main statute through which the proceeds of crime derived from offenses established in accordance with UNCAC or property the value of which corresponds to that of such proceeds may be forfeited is the **Prohibition on Money Laundering Law, 2000** (hereinafter: "the Prohibition on Money Laundering Law" or "PMLL"). In addition, in cases where organized crime offenses are connected to the bribery offense, funds may be forfeited according to the **Combating Criminal Organizations Law, 2003** (hereinafter: "CCOL"). Forfeiture under these statutes is mandatory unless the court concludes that there are special grounds not to do so.

530. Most of the offenses under the Convention are considered predicate offenses according to the PMLL. Pursuant to the PMLL, an offense of money laundering applies both to persons who commit the predicate offense ("self-laundering") as well as to persons who laundered the proceeds of crimes committed by others. Section 21 of the PMLL provides that, where a person has been convicted of an offense under Sections 3 or 4 of the PMLL, then in addition to any penalty, the court shall order - unless it decides not to do so on special grounds that it shall specify - the forfeiture of property of the defendant equal to the value of property that

constitutes one of the following:

- (1) Property on which the offense was committed;
- (2) Property used in the commission of the offense;
- (3) Property which enabled the commission of the offense or was intended for that purpose;
- (4) Property which is the profit of the offense.

531. Under Section 21(a) of the PMLL, the forfeiture of property of equivalent value is possible for certain offences because the provision is value-based and does not require forfeiture of actual proceeds. Value-based confiscation is also possible under the Dangerous Drugs Ordinance. Property of the convicted person which may be forfeited includes any property found in his possession, control or account (Section 21(b) of the PMLL).

532. According to Section 21(c) of the PMLL, if the property found is insufficient to implement the forfeiture order in full, the court may decide that the order should be implemented from the property of another person, the acquisition of which was financed by the convicted person or which he transferred to that person without consideration. However, property which the convicted person financed or transferred to the same person prior to the commission of the offense for which he was convicted, and with regard to which the forfeiture order was made cannot be the subject of forfeiture.

533. Under Section 21(d) of the PMLL, the Court may not order the forfeiture of property unless it has granted the convicted person, the owner of the property, the person in possession or control of the property or the individual claiming a right to the property, if known, an opportunity to state their case. According to the PMLL, it is not necessary that a person be convicted of a predicate offense in order to establish that certain assets were the proceeds of a predicate offense and to convict any person of laundering such proceeds.

534. The CCOL enables the conviction-based forfeiture for criminal offenses according to that law. Section 5 of the CCOL provides that when a person has been convicted of an offense under Sections 2 (not related to bribery), 3 (offense within the framework of a criminal organization -aggravating circumstance) or 4 (public servant aiding a criminal organization), the Court shall order, unless it decides not to do so based on special circumstances that it shall specify, that in addition to any penalty, the following property shall be forfeited:

- (1) Property connected to the offense (as detailed in paragraphs 1-4 above regarding money laundering) found in the possession of the convicted person, under his control or in his account;
- (2) Property of the convicted person which is equal in value to the property connected to the offense.

535. Seizure and forfeiture sanctions apply to convicted legal persons in the same manner. To date, the "special circumstances" detailed in the Section have not been interpreted in Israeli case law.

536. Sections 6, 7 and 8 of the CCOL provide for discretionary forfeiture. According to Section 6, if there is no property which meets the requirements of Section 5, the Court may issue a forfeiture order relating to the property of another person, when the defendant purchase or was transferred by the defendant to that person without consideration. The Court will not issue such an order if the relevant assets became the property of the other person

prior to the commission of the offense, unless the payment or transfer was made with the purpose of preventing the forfeiture. Furthermore, Section 7 provides that if a person was convicted of offenses under Sections 2, 3 or 4 of the Law, the Court may order forfeiture of property connected to the offense even if that property is not in the possession, control or bank account of the defendant.

537. Forfeiture of a bribe or its proceeds when they have been transferred to a non-bona fide third party is possible in two situations:

1. Section 39(b) of the Criminal Procedure Ordinance grants the courts the discretion to forfeit an object if it was given by its owner (or person who has legal possession of it) as payment for the commission of an offense of which the defendant was convicted, or as a means of committing it, or as payment for the commission of another offense that is related to the offense of which the defendant was convicted, or as a means of committing the other offense, even if the defendant did not commit the other offense and even if the defendant did not intend to commit it.

2. When the transfer of the object or its ownership from the defendant to a third party was fictitious. For example, in Cr.C. (Nazareth) 3689/02 *State of Israel v. Bolus*, the Court discussed a request to confiscate a car and held as follows: "The question of clarifying the right of a person who claims to be the owner of the object is clearly a civil matter. While determining whether the aforesaid right has been established, and to what extent, the Court will decide based upon the standards in a civil case."

538. In Cr.A. 1982/93 *Bank Leumi v. State of Israel* the Court stated: "It has been held more than once, that a car's registration in the name of John Doe does not establish an "immunity" from confiscation, if it is proven that the registration was made for the sake of appearances only, and the true owner of the vehicle is the offender, who used the car for committing a criminal offense."

539. Section 39(c) of the Criminal Procedure Ordinance provides that the forfeiture order can be included as part of the sentence and can be issued in response to a petition filed by the prosecution, even after issuing the sentence (Cr.A. 5905/04 *Salomon v. State of Israel*).

540. As a general rule, in deciding whether to forfeit, the Court is guided by the principle of restitution: a wrongdoer should not be rewarded, and therefore if the grounds enumerated in the Section are met, the Court will usually order forfeiture.

### **Civil confiscation**

541. Section 22 of the PMLL provides for the confiscation of property in civil proceedings if the person suspected of committing the crime is not present in Israel on a regular basis, if he cannot be located, and therefore an indictment cannot be filed against him, or if the property was discovered after the conviction.

542. Property that can be confiscated includes property on which the offense was committed, property used in the commission of the offense, property which enabled the commission of the offense or was intended for that purpose, and property obtained directly or indirectly as remuneration for the offense, or in consequence of commission of the offense, or which was intended for that purpose. The confiscation in civil proceedings is also carried out in

accordance with Section 36B(a) of the **Dangerous Drugs Ordinance, 1973**.

543. Section 14 of the CCOL enables confiscation of property in civil proceedings without prior criminal proceedings if one of the following conditions has been fulfilled:

- (1) the property is connected with an offense within the framework of a criminal organization -aggravating circumstance or a public official aiding a criminal organization;
- (2) the property is that of a criminal organization.

544. According to the CCOL, “property connected with an offense” is defined as property satisfying one of the following:

- (1) the offense was committed in the property, it was used for the commission of the offense, it enabled the commission of the offense or was intended for commission of the offense;
- (2) it was directly or indirectly obtained as remuneration for commission of the offense, intended to be remuneration for commission of the offense or obtained in consequence of commission of the offense.

545. Israel cited the following texts.

#### **Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969 CHAPTER FOUR: SEIZURE OF OBJECTS**

##### **32. Power to seize objects**

- (a) A police officer may seize an object, if he has reasonable grounds to assume that an offense was or is about to be committed, or that it is likely to serve as evidence in a judicial proceeding for an offense, or that has been given as remuneration for the commission of an offense or as the means of committing it.
- (b) Notwithstanding the provisions of this chapter, a computer or anything that constitutes computer material shall only be seized by a court order, if it is used by an institution as defined in Section 35 of the Evidence Ordinance [New Version], 5731-1971; if the order was given otherwise than in the presence of the person in possession of the computer or anything that constitutes computer material then it shall be given for a period of not more than 48 hours; for this purpose, the Sabbath and festivals shall not be taken into account; the court may extend the order after the person in possession has been granted an opportunity to state his arguments. (b1) If a computer which is not used by an institution as defined in Sub-section (b) has been seized and it may be separated from anything that constitutes computer material, and the computer is not required for the purpose of forfeiting it or presenting it as evidence in court, the Police shall return the computer to the person from whom it was taken within 30 days from the date it was seized, however the magistrates court may order the extension of the aforesaid period for a period not exceeding 30 days, and so re-order from time to time.
- (c) The Minister of Justice may make regulations for purposes of this section.

##### **39. Confiscation order**

- (a) Notwithstanding the provisions of any enactment, the Court may - in addition to any penalty which it imposes - order an object that was seized under section 32 or which reached the police as said in section 33 to be confiscated, if the person convicted of committing the offense with or in respect of the object is the object's owner; this order shall be treated like a



penalty imposed on the defendant.

(b) If an object was given as remuneration for the commission of an offense or as a means for its commission and if none of the other conditions said in section 32 applies to it, then the object shall not be confiscated unless it was given by its owner or by its lawful possessor or with his consent as remuneration or as a means for the commission of the offense of which the person on trial was convicted, or as remuneration or as a means for the commission of another offense of which the person on trial was convicted; it is immaterial whether the person on trial did or did not commit the other offense, and even that he did not intend to commit it.

(c) A confiscation order under this section may be issued either in the sentence or according to the prosecutor's petition.

### **The Penal Law, 1997**

#### **297. Confiscation and reparation**

(a) When a person has been convicted of an offense under this Article, the Court may, in addition to the imposed penalty -

(1) order confiscation of what was given as a bribe or what may have taken its place;

(2) obligate the person who gave the bribe to pay to the Treasury the value of the benefit he derived from the bribe.

(b) The provisions of this section shall not preclude a civil claim.

**Prohibition on Money Laundering Law, 2000** - Sections 3, 4, 21 and 22 in the attached legislative compilation.

### **Dangerous Drugs Ordinance, 1973**

#### **36B. Forfeiture of property in civil proceedings**

(a) Where the District Court is of the opinion, on the application of a District Attorney, that certain property:

i. has been used as means of committing an offense under sections 6 or 13 or for enabling the commission of such an offense;

ii. is a conveyance which has been used as means for committing a drug trafficking offense, or for enabling the commission of such an offense; or -

iii. was acquired directly or indirectly as payment for a drug trafficking offense, or as a result of committing such an offense, the court may order its forfeiture even if no person has been charged or convicted of an offense under the Ordinance (hereafter: civil Forfeiture).

(b) The District Attorney's application shall specify the property whose forfeiture is requested, and notice of such application shall be given to the claimant of any right in the property if he is known.

(c) The respondent to the application shall be the claimant of a right in the property if he is known. Where the court prescribes as specified in section 36A(d), the person proceeded against shall also be a respondent to an application under this section.

(d) A decision of the court under this section shall be appealable in like manner as a decision in a civil matter is appealable.

**Combating Criminal Organizations Law, 2003** - Sections 2-8 & 14 in the attached legislative compilation.

546. Israel provided the following examples of implementation

- In Cr.C. 4039/05 (Haifa) State of Israel v. Cohen, one of the defendants, the manager of the Israel Electric Company's supply department, was convicted of taking bribes over several years, valued at approx. 390,000 USD, in addition to money laundering offenses. Another defendant was convicted of giving bribes and tax offenses. The Court ordered a forfeiture of approx. 900,000 USD from the assets of the defendant convicted of giving bribes, in accordance with Section 297 of the Penal Law. The Court held that although the exact value of the benefit the defendant derived from the bribe had not been determined, it was possible to estimate the financial gain attained based on the volume of sales of the company established by the defendant, during the years when the bribery was given. The prosecution did not point to specific assets constituting the fruits of the bribery, and therefore in the circumstances the Court refrained from ordering the forfeiture of specific assets from among the defendant's property. However, this did not prevent the forfeiture of money, because even if such forfeiture is not valued at the total amount of the gain derived from giving the bribe, it reflects the legislator's intent in Section 297.
- In Cr.C. (Haifa) 5001/07 State of Israel v. Yahav, the defendant was convicted of taking bribes and stealing from his employer. The Court stated that the approx. 120,000 USD which was forfeited did not constitute a fine, but rather an object (money) with relation to which the offenses were committed. Therefore, the Court determined that it was authorized to order the forfeiture of this amount in accordance with Section 39 of the Criminal Procedure Ordinance.
- In Cr.A, 7593/08 Roni Ritbalt v. State of Israel the appellants were convicted in the District Court for bribery, money laundering and tax evasion offenses. The first appellant, Asher Cohen (Cr.A. 7666/08) received the bribe while working as the chairman of the tenders committee of Israel's Electric Corporation. He was convicted of receiving a bribe of approx. 370,000 USD as well as additional benefits, as well as for crimes of money laundering, using the bribe money. The other appellant, Roni Ritbalt, was convicted of providing some of the bribes, but the prosecution could not prove beyond a reasonable doubt that he knew about the other bribes. Cohen was sentenced to six years in prison and as well as an additional 12 months suspended sentence. He was also fined approx. 500,000 USD, or an additional 20 months in prison. The court also ordered the forfeiture of two apartments owned by Cohen or that he pay a fine equivalent to their value. Ritbalt was sentenced to four years in prison as well as an additional 12 months suspended sentence. He was also fined approx. 566,000 USD which could be served instead as an additional 24 months in prison. The court also ordered the forfeiture of approx. 848,400 USD of his property. The appeal was denied.

Additional examples:

- An Israeli public official was suspected of accepting bribes in exchange for issuing government permits: in this case the suspect's bank account was frozen, but forfeiture has not yet been ordered.
- A municipality employee who was suspected of accepting bribes in exchange for building permits: as part of the arrest, funds were found in the suspect's personal bank safe. The funds remain in the Israel Police's possession, pending the outcome of the trial relating to the bribery charges.

- An Israeli public official suspected of accepting bribes in relation to recycling projects: the bribery proceeds were forfeited.
- An Israeli public official suspected of accepting bribes in relation to an infrastructure project: as part of the arrest, funds were confiscated from the suspect's personal account.

547. Regarding information on the number and types of cases in which proceeds were confiscated, Israel indicated that its approach to money laundering and profit-generating crime more generally has been significantly prioritized and has therefore had a direct and positive impact on the seizure and confiscation of criminal proceeds.

548. This is illustrated in the following table detailing the year-to-year increases in the number of cases involving confiscation. The numbers of cases included below include, but are not solely, corruption offenses.

No. of cases involving confiscation:

2008 - 0  
2009 - 102  
2010 - 277  
2011 - 259  
2012 - 493

549. Israel provided the following data for 2010-2012 on the amount of criminal proceeds confiscated.

**Forfeiture Data 2010-2012 (approx. USD)**

Including, but not limited to, corruption offenses

Prosecution districts/years	2010		2011		2012	
	<u>Seized</u>	<u>Forfeited</u>	<u>Seized</u>	<u>Forfeited</u>	<u>Seized</u>	<u>Forfeited</u>
<b>Taxation and Economy</b>	23,000,000	-	2,000,000	-	19,000,000	11,000,000
<b>VAT</b>	5,700,000	5,000,000	59,500,000	0	23,300,000	0
<b>Southern</b>	3,000,000	3,500,000	4,500,000	116,000	11,500,00	277,000
<b>Northern</b>	885,000	625,000	1,021,000	0	14,000	1,016,000
<b>Central</b>	731,000	-	4,500,000	1,420,000	15,83,000	4,261,000
<b>Jerusalem</b>	156,000	96,000	3,107,000	119,000	3,101,000	460,000
<b>Economic</b>	426,000	372,000	17,000,000	1,371,000	2,412,000	720,000

<b>Haifa</b>	397,000	103,000	1,011,000	0	5,177,000	136,000
<b>Tel Aviv</b>	250,000	633,000	5,912,000	313,000	1,055,000	1,195,000
<b><u>TOTAL</u></b>	34,530,000	10,184,000	98,561,000	3,338,000	80,816,000	18,626,000

**Cases of Confiscation and Seizure Conducted by the Israel Tax Authority**

<b>Year</b>	<b>No. of Cases</b>	<b>Predicate Offense</b>	<b>Case Status</b>	<b>Amount Seized/Confiscated</b>	<b>Comments</b>
<b>2010</b>	1	V.A.T. + Fraud (Fuel Dilution)	In court	Seizure of approx. 11,000,000 USD	Joint investigation with the police, indictment filed by V.A.T.'s prosecution service
<b>2011</b>	3	V.A.T. + Fraud	v	Seizure of approx. 21,000,000 USD	One case handled independently by the tax authorities and the other two are joint investigation with the police, with indictments filed by V.A.T.'s prosecution service
<b>2012</b>	4	V.A.T. + Fraud (Fuel Dilution)	V.A.T. + Fraud (Fuel Dilution)	Seizure of approx. 14,000,000 USD	Joint investigation with the police, indictments filed by V.A.T.'s prosecution service

**(b) Observations on the implementation of the article**

550. In view of the above information, Israel should be deemed to be in compliance with the present provision.

**(c) Successes and good practices**

551. Asset forfeiture in Israel can be considered as a prime example of successful policy that has been developed from the ground up. As evidenced by the cited statistics, there is extensive implementation involving significant assets. This is due to a number of practical steps that were taken to enhance the implementation of the legislative framework including, inter alia, the increased allocation of manpower, in field units as well as headquarters, the appointment of forfeiture officers as well as designated persons in other authorities, and the creation of a specific position within the Office of the State Attorney to coordinate enforcement efforts.

552. Successful confiscations have been a product, in particular, of the effective cooperation of all relevant institutions from the early stages of investigations through the conclusion of court proceedings, an increased dedication of resources, and the training and deployment of

specialized staff who operate according to established targets and performance measures, specifically in the Israeli Police, the District Attorneys and the Tax Authority. One example of such cooperation is a 2011 Forfeiture Forum, in which the relevant agencies were represented, guidelines were distributed and coordination matters were discussed. Moreover, a single database, accessible by different law enforcement agencies, including the Israeli Police, Tax Authority and the prosecution, can be used to trace assets from the point of seizure until forfeiture. Last but not least, there is evidence of a change of mentality in implementing the relevant provisions, in the sense that there is no longer a “fear of dealing with money”, but rather a determination to put in use the legal instruments at hand.

### **Subparagraph 1 (b) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

553. Israel referred to UNCAC article 31(1)(a) above for information about Sections 32, 34 & 35 of the **Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** (hereinafter: "Criminal Procedure Ordinance" or "Ordinance").

554. Section 39(a) of the Ordinance authorizes the Court to order forfeiture of an object that was seized according to Section 32 of the Ordinance (as detailed under UNCAC article 31(1)(a) above), or of an object that came into the police's possession and regarding which the requirements set by Section 32 apply, if the said object belongs to a person who was convicted of the offense committed in relation to the object. Section 39(b) provides that where the requirements listed in Section 32 do not apply to an object that was given as payment for the commission of an offense or as a means of committing it, this object may not be forfeited, unless it was given by its owner or a person who has legal possession of it, or on their behalf, as payment for the commission of an offense of which the defendant was convicted, or as a means of committing it, or as payment for the commission of another offense that is related to the offense of which the defendant was convicted, or as a means of committing the other offense, even if the defendant did not commit the other offense and even if the defendant did not intend to commit it.

555. Section 39(c) provides that the forfeiture order can be included as part of the sentence and can be issued in response to a petition filed by the Prosecution, even after issuing the sentence.

556. As mentioned under UNCAC article 31(1)(a) above, the criminal and civil forfeiture of property through which the offense was committed, property used in the commission of the offense and property which enabled the commission of the offense or was intended for that purpose, is also possible through the PMLL.

557. Regarding criminal organizations, civil and criminal forfeiture of property in which the offense was committed, that was used for the commission of the offense, or that enabled the commission of the offense is also possible through the CCOL.

558. Israel cited the following text.

**Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** - Sections 32 and 39 under UNCAC article 31(1)(a) above or in the attached legislative compilation.

559. Israel provided the following example of implementation

- The Egg Affair (Including: Ar.H. 50698-07-12 State of Israel v. Moshe Shai et al.): This case involved a smuggling network that was responsible for the smuggling of millions of eggs from the Palestinian Authority to Israel. Some of the smugglers held official positions in a number of bodies and used their authority and connections to move at least 72 trucks of eggs from the Palestinian Authority to Israel, without clearing any security checks. They were charged with giving and receiving a bribe, forgery, and other offenses, including offenses of money laundry under the PMLL. The forfeitures and seizures thus far in the ongoing case include, but are not limited to, trucks and cash.

560. Regarding statistics on property, equipment or other instrumentalities confiscated, Israel indicated that it confiscates a variety of assets, including shares, companies, land, property, bank accounts, cash and more. Israel referred to the example above, the Egg Affair.

**(b) Observations on the implementation of the article**

561. The reviewers were satisfied with the information provided by the State under review.

**Paragraph 2 of article 31**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

562. Israel referred to the information under UNCAC articles 31(1)(a) and 31(1)(b) above.

563. In addition, as mentioned above, bribery offenses may be related to offenses according to the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL") and the **Combating Criminal Organizations Law, 2003** (hereinafter: "CCOL"). If the offense was committed in the framework of these laws, then objects can be seized, property can be frozen and provisional measures can be granted as per Section 23 of the PMLL (which references the provisional measures in Section 36 of the **Dangerous Drugs Ordinance, 1973**) and Sections 21-27 of the CCOL.

564. The court may grant a provisional forfeiture order prior to the filing of an indictment or a request for forfeiture in civil proceedings, as the case may be, if it is satisfied that there are reasonable grounds to assume that the property with respect to which the order is requested is likely to disappear or that actions are likely to be done with such property preventing the realization of the forfeiture later.

565. Israel's case law has determined that while temporary forfeiture is usually carried out through the PMLL and the Dangerous Drugs Ordinance, it is also possible to apply the provisions of the **Criminal Procedure Ordinance (Arrest and Search) (new version), 1969**.

566. Concerning identification and tracing, the police can identify assets both directly and indirectly (as part of an investigation). The main measures available are as follows: (1) Section 43 of Israel's Criminal Procedure Ordinance, which allows the court to receive information on the object from any person. This is the main way to obtain banking information as well as other information, during an investigation; (2) Section 23 allows officers to request search warrants from the court, (3) wiretapping according to Israel's **Wiretapping Law, 1979**.

567. Israel cited the following texts.

**Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** - Section 23, 32 and 43 in the attached legislative compilation.

**Combating Criminal Organizations Law, 2003** - Sections 21-27 in the attached legislative compilation.

**Prohibition on Money Laundering Law, 2000** - Sections 23, 26 and 27 in the attached legislative compilation.

**Dangerous Drugs Ordinance, 1973**

**36C. "Restrictions as to forfeiture of property.**

(a) The court shall not order the forfeiture of any property under section 36A or 36B if the claimant of a right in the property proves that the property was used for the offence without his knowledge or without his consent or that he acquired his right in the property for a consideration and in good faith and without being able to know that it had been used or obtained in connection with an offence.

(b) The court shall not order the forfeiture of any property under section 36A or 36B unless it is satisfied that the owner of the property and the members of his family living with him will have reasonable means of support and reasonable housing.

(c) The court shall not order the forfeiture of movables not attachable according to section 22 of the Execution Law, 5721-1961

**36D. Cancellation of forfeiture**

(a) Where the claimant of a right in any property forfeited under section 36A or 36B (hereafter in this section referred to as "the applicant") has not been summoned to state his case concerning the forfeiture order, he may ask the court which ordered the forfeiture to cancel the order

(b) An application for cancellation of a forfeiture order shall be made within two years from the date of the order or within a longer time prescribed by the court if it believes it just to prescribe it.

(c) If the court cancels the forfeiture order, it shall order the return of the property to the applicant or the payment of the value out of the Treasury if it is impossible to return the property or if the applicant agrees to accept its value. If the court orders the payment of the value of the property, it shall determine the amount of the payment, by order, in accordance

with the value of the property on the free market on the date of the forfeiture order or on the date of the payment order, whichever is the higher. The payment order shall be made not later than six months from the date of the court's decision to cancel the forfeiture order.

(d) Where the court cancels the forfeiture order, it may order the payment of a fee for the use of the property during the period when it was withheld from the applicant and the payment of compensation for damage or depreciation caused to the property during that period.

(e) An order for the return of property and the order for payment shall be carried out as soon as possible and not later than sixty days from the date when they were made.

### **36E. Appeal.**

An appeal by the claimant of a right in property forfeited under section 36A and an appeal from a decision of the court under section 36D shall be filed in like manner as an appeal in a civil matter is filed; however, where a decision to forfeit has been included in the sentence and an appeal is filed against the judgment, the appellate court may hear also the appeal of the claimant of the right in the property.

### **36F. Relief to ensure forfeiture.**

(a) Where an information or an application for civil forfeiture has been filed, the court may, on an application signed by a District Attorney specifying the property whose forfeiture is sought, make a provisional order as to guarantees on behalf of the accused or another person in possession of the property, a restraining order, an attachment order or directions as to other means ensuring the possibility of carrying out the forfeiture, including directions to the Administrator-General or another person as to the provisional management of the property (any of these hereafter in this section referred to as "a provisional order"). For this purpose, "the court" means the District Court with which the information or the action, as the case may be, is filed.

(b) The District Court may, before an information is filed, make a provisional order under subsection (a) in pursuance of an application signed by a District Attorney, supported by a sworn declaration that there is reasonable cause to assume that the property in respect of which the order is sought may disappear or may be treated in a manner preventing the implementation of its forfeiture. A provisional order under this subsection shall become void if an information is not filed within ninety days from the date on which it is made.

(c) The court may make a provisional order under subsection (a) or (b) ex parte if it considers that some immediate action with regard to the property will impede its forfeiture. The validity of an ex parte provisional order shall not exceed ten days, and the application shall be heard in the presence of the parties as soon as possible during the period of validity of the order. The court may, for reasons which shall be recorded, extend the validity of the ex parte provisional order for an additional period not exceeding ten days.

(d) A decision of the court under this section shall be appealable to the Supreme Court, which shall hear the appeal by a single judge. The appeal shall be filed within thirty days from the day on which the decision is notified to the appellant.

(e) Where the court has ordered as specified in subsection (a) or (b) and the property is not forfeited, the court may direct that a person prejudiced by the order shall be compensated out of the Treasury.

### **36G. Forfeiture of other property.**

Where the court directs that any property shall be forfeited under section 36A or 36B, then, if the property is not located or has been transferred to a bona fide purchaser, or has been smuggled away or has depreciated by an act or omission of the person proceeded against or has been mingled with other property and cannot be separated without difficulty or if the



person proceeded against so requests, the court may order the forfeiture of some other property of that person equivalent to the property whose forfeiture it has directed. In this section, "the person proceeded against" includes a person against whose property a forfeiture order has been made under section 36B.

### **36H. Management and use of forfeited property.**

(a) The court's decision for forfeiture under this Ordinance shall be a warrant for the Administrator-General to seize the forfeited property. The forfeited property or its equivalent shall be transferred to the Administrator General and deposited by him in a fund managed by him subject to regulations made for this purpose.

(b) The Minister of Justice and the Minister in charge of the Drug Control Authority Law, 5748-1988 3/, shall, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, prescribe, by regulations, the modes of managing the fund established under subsection (a), the use to be made of the assets of the fund and the mode of apportioning them for the following purposes:

(1) the payment of the cost of the forfeiture proceedings and the disposal of the assets;

(2) the carrying out of the functions of the Drug Control Authority under the Drug Control Authority Law, 5748-1988;

(3) payments in respect of information, assistance in enforcing the Ordinance and the discovery of property subject to forfeiture.

(4) payments under section 36D(c) and (d). 36I. Regulations concerning forfeiture.

The Minister of Justice shall, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, enact by regulations, provisions as to procedure concerning applications for a forfeiture order under a criminal or civil proceeding, proceedings for this hearing of opposition to forfeiture, applications for relief for the preservation of property, appeals, and also as to the carrying out of forfeiture, the management of assets and notices to persons having an interest in property, including any other matters required for the implementation of the provisions of this Ordinance relating to forfeiture.

### **36J. Use of fines.**

A fine imposed by the court under this Ordinance shall be deposited in the Fund established under section 36H(a)."

568. For examples of implementation and related statistics, Israel referred to the information under UNCAC article 31(1)(a) above.

### **(b) Observations on the implementation of the article**

569. It was confirmed that all measures regarding freezing and confiscation apply to "property" and not only to "money". Under the the Prohibition on Money Laundering Law, 2000 (PMLL) "property" is defined broadly and includes "land, chattels, money and rights, including proceeds or property attributable to or acquired from the sale of such property." In the Combating Criminal Organizations Law, 2003 "property" is defined as "immovable and movable property, monies and rights, including property which is the proceeds of any such property, and any property accruing or originating from the profits of any such property".

570. According to section 297 of the Penal Law, when a person has been convicted of a bribery related offence, the court may confiscate what was given as a bribe or what may have taken its place. A bribe is defined as cash, service or any other benefit. In the Dangerous Drugs Ordinance, 1973 the measures apply to "property" which is defined as including real

estate, immovable property and rights.

571. With regard to measures enabling the identification and tracing of assets, the work of specialized authorities in this field is noted.
572. Specifically, the Israeli Money Laundering and Terror Financing Prohibition Authority (IMPA) plays an essential role in the tracing of assets. IMPA monitors Unusual Activity Reports (UAR) filed for corruption-related activities and delivers intelligence reports to the police for investigation.
573. Additionally, six task forces were established for pursuing and investigating financial crimes. The task forces include representatives from the Israel Police (IP), Tax Authority, the prosecution and IMPA. Since corruption is perceived to be an AML risk, a task force has been established to combat this phenomenon. The Intelligence Fusion Centre – comprised of members of the IP, the Tax Authority and IMPA – cross-references information for the purpose of exposing multi-domain criminality and enabling inter-agency enforcement initiatives.

### Paragraph 3 of article 31

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

#### (a) Summary of information relevant to reviewing the implementation of the article

574. According to Section 33 of the **Criminal Procedure Ordinance (Arrest and Search) (new version), 1969**, frozen, seized or confiscated property is managed by the Israeli Police. None the less, Section 34 also provides the police with the option of asking the court to appoint a special administrator for said property.
575. Assets forfeited in a final forfeiture order based on the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL"), the **Dangerous Drugs Ordinance, 1973** and the **Combating Criminal Organizations Law, 2003** as well as the **Combating Criminal Organizations Regulations (Ways of Managing and Realizing Forfeited Property), 2012** are administered by the Administrator General. The forfeited property (originating in offenses under the PMLL and the Dangerous Drugs Ordinance) or its equivalent is transferred to the Administrator General and deposited in a fund that he manages (Section 36H of the Dangerous Drugs Ordinance).
576. These provisions are applicable to property frozen, seized or confiscated in relation to offenses under the Convention.
577. Institutionally, there are two main roles regarding the management of forfeited property – managing forfeited property during the stages when a temporary order or final order has been issued, and managing the forfeiture fund. The General Receiver is a statutory corporation within the Ministry of Justice, established by the Administrator General Law, 1978 and is responsible, *inter alia*, for managing and administrating forfeited property.
578. The General Receiver's authority stems from a number of sources – both legislative and

administrative:

1. **The law's provision which authorize him to manage these funds** – the PMLL, the Tax Ordinance, the Combating Criminal Organizations Regulations and the Prohibition on Human Trafficking legislative amendments. In addition to the role of forfeiting the property, the Administrator General is also responsible for managing the forfeited property through three designated funds:
  - a. The Drug Forfeiture Fund, in accordance with the Dangerous Drugs Ordinance, 1973.
  - b. The Prohibition on Money Laundering Fund, in accordance with the Prohibition on Money Laundering Law, 2000.
  - c. The Human Trafficking Fund, in accordance with the Prohibition on Human Trafficking (Legislative Amendments), 2006.
2. **A decision given by a court to manage the property during the legal proceedings and until the final forfeiture decision** - The Administrator General is also responsible for the administration of seized property designated for forfeiture, after being declared as such by a judicial authority. Such judicial decisions are issued as a result of a broad interpretation of Article 32 of the Criminal Procedure Ordinance (Arrest and Search), 1969 as well as the above mentioned legislation.

**3. The establishment of a forfeiture unit by the Director General of the Ministry of Justice**– The Forfeiture Unit (administration and actualization of property) was established on 26.3.2014 as a designated organ responsible for the administration (and sale) of property in order to support and provide professional service to the enforcement authorities in their fight against crime, particularly organized crime. The Forfeiture Unit is responsible for the administration of the property from the time it is seized by the enforcement authorities until its sale following a final forfeiture order. The Unit will be responsible for determining a uniform policy with respect to the forfeiture proceedings, the working relations and interfaces of the relevant authorities involved in the forfeiture process. The Unit will also participate in the planning of property seizure, including the evaluation of the economic viability of the seizure against the costs and the benefit to the State in each case, taking into consideration deterrence and other purposes of economic enforcement.

579. The General Receiver is responsible for the seizure process of property once the forfeiture order is granted; management and administration of the forfeited property; actualization of the property at its discretion; deposit of the property in the forfeiture funds and distribution of the forfeited property in accordance with the forfeiture committee's decision.
580. The authority of the General Receiver with respect to forfeited property is expected to grow further in the near future due to upcoming legislation.
581. Israel cited the following texts.

#### **Prohibition on Money Laundering Law, 2000**

##### **Applicability of enactments and use of fines**

23. The provisions of sections 36C to 36J of the Dangerous Drugs Ordinance shall apply, mutatis mutandis, to the confiscation of property and to property confiscated under this Law,

and also to the fines imposed under it; for purpose of this section, "fines" - including monetary sanctions imposed under this Law.

### **Dangerous Drugs Ordinance, 1973**

#### **36H. Management and use of forfeited property.**

(a) The court's decision for forfeiture under this Ordinance shall be a warrant for the Administrator-General to seize the forfeited property. The forfeited property or its equivalent shall be transferred to the Administrator General and deposited by him in a fund managed by him subject to regulations made for this purpose.

(b) The Minister of Justice and the Minister in charge of the Drug Control Authority Law, 5748-1988 3/, shall, with the approval of the Constitution, Legislation and Juridical Committee of the Knesset, prescribe, by regulations, the modes of managing the fund established under subsection (a), the use to be made of the assets of the fund and the mode of apportioning them for the following purposes:

- (1) the payment of the cost of the forfeiture proceedings and the disposal of the assets;
- (2) the carrying out of the functions of the Drug Control Authority under the Drug Control Authority Law, 5748-1988;
- (3) payments in respect of information, assistance in enforcing the Ordinance and the discovery of property subject to forfeiture.
- (4) payments under section 36D(c) and (d).
- (5) performance of the duties by the Police and Customs according to the Prohibition on Money Laundering Law, 2000, including forfeiture of property in accordance with said laws.
- (6) performance of the duties by the authorized authority according to the Prohibition on Money Laundering Law, 2000, including the funding of the data base un accordance with the said law.

### **Criminal Procedure Ordinance (Arrest and Search) (new version), 1969**

#### **33. Keeping seized objects**

When an object has been seized as said in section 32, or if an object to which one of the conditions said in section 32 applies has reached the police, then the police may - subject to the provisions of section 34 - keep it until it is presented to the Court.

#### **34. Delivering seized object by order**

On application by a policeman, who was generally or for a specific matter so authorized by a police officer of the rank of Sub inspector or higher (hereafter: authorized policeman) or on application by a person who claims a right in the object, a Magistrates Court may order that the object be delivered to the person who claims a right to it or to some specific person or that it be dealt with otherwise as the Court shall order, all on conditions to be prescribed in the order.

### **Combating Criminal Organizations Regulations (Ways of Managing and Realizing Forfeited Property), 2012**

#### **4. Management of Property where a Forfeiture Order has been granted by the Administrator General**

The Administrator General -

- (1) Shall collect the property which has been forfeited pursuant to Sections 5 to 8 or 14 of the Law, and shall manage it in a manner likely to make its realization more efficient;
- (2) He may realize property whose management has been entrusted to him, and send the consideration therefor to the State Treasury; unless a petition has been filed for a stay of

execution of the forfeiture order and the petitioner has duly served the chief office of the Custodian General with a court decision ordering the stay of execution of the forfeiture order granted pursuant to Sections 5 to 8 or 14 of the Law.

582. Regarding reports or assessments of the administration of frozen, seized or confiscated property, Israel referred to the table below on Forfeited Funds Managed by the Administrator General,

**Forfeited Funds Managed by the Administrator General**  
**(Section 36H of the Dangerous Drugs Ordinance)**  
**(approx. USD)**

Including, but not limited to corruption offenses

Year	Total Forfeited	Fines	Total
2008	588,100	859,100	1,447,170
2009	782,260	866,640	1,648,900
2010	809,420	540,300	1,349,720
2011	1,012,650	1,342,330	2,354,980
2012	1,285,960	1,228,680	2,514,650
2013	516,120	675,280	1,191,410

As per 30 June 2013

**(b) Observations on the implementation of the article**

583. The State under review is in compliance with this provision.

**(c) Successes and good practices**

584. During the country visit meetings were held with representatives from the Administrator General and Official Receiver as well as the forfeiture unit in the Israeli Police to clarify outstanding issues related to the use to be made of the assets of the fund and the mode of apportioning them for law enforcement and other purposes. In this context, it was explained that a portion of confiscated assets from the Money Laundering Fund are returned to fund the operations of the Israeli Police and Tax Authority, while assets from the Drugs Fund can be returned to the Police, Tax Authority and IMPA. However, confiscated funds are not used to finance the operations of the Attorney General or District Attorney's offices, to avoid any appearance of impropriety or influence.

585. The Deputy State Attorney (Economic Enforcement) issues internal guidelines related to both practical and legal aspects of enhancing effectiveness of investigation and prosecution of money laundering, confiscation of criminal assets, and related fiscal matters, in order to maximize the legal and economic impact of law enforcement on the proceeds of crime.

586. Examples for topics covered by these guidelines are – methodology for calculating the benefit in organizing of illegal gambling - both for money laundering purposes and for fiscal ones; the scope of the Prohibition on Money Laundering Law, 2000 (PMLL) (i.e. - can a bank check written to a beneficiary by the beneficiary himself be considered a transaction subject to the reporting requirements of the PMLL?); registration of a forfeiture order in the land registry; drafting an indictment for money laundering – regarding the scope of possible

confiscation and fiscal consequences; legal forms needed to ensure the effectiveness of the processes after a final confiscation order is given by the court; and claims of bona fide third parties (e.g. spouses) in confiscation cases.

#### **Paragraph 4 of article 31**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

587. Israel referred to the information, statistics and examples of implementation under UNCAC article 31(1)(a) above.

#### **(b) Observations on the implementation of the article**

588. This requirement is implemented through a broad interpretation of the relevant provisions of the Criminal Procedure Ordinance, as well as the explicit reference to converted assets in section 297 of the Penal Law.

589. Israel confirmed that the requirement is also implemented according to the wording of section 21 of the PMLL, which states that the court shall order the confiscation of "property having the same value" as the proceeds of crime.

#### **Paragraph 5 of article 31**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

590. Under the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL"), as well as the reference to the **Dangerous Drugs Ordinance, 1973** in Section 23 of the PMLL, the offense of money laundering extends to any type of property that directly or indirectly represents the proceeds of crime. Proceeds of the crime that have been intermingled with property acquired from legitimate sources can also be forfeited, when the forfeiture is of the value of the property obtained through the offense, such as under Section 297(a)(2) of the **Penal Law, 1977**, Section 5(2) of the **Combating Criminal Organizations Law, 2003** or Section 21(a)(2) of the PMLL.

591. Israel cited the following texts.

#### **Prohibition on Money Laundering Law, 2000**

##### **21. Confiscation of property in criminal proceedings**

(a) If a person was convicted of an offense under sections 3 or 4, then the Court shall order, unless it decided not to do so for special reasons which it shall specify, in addition to any other penalty, to confiscate property out of the convicted person's property, to the value of

the property which is -

(2) property directly or indirectly obtained as remuneration for the offense or in consequence of the commission of the offense, or which was intended therefor.

### **23. Application of laws and designation of fines**

The provisions of sections 36C-36J of the Dangerous Drugs Ordinance shall apply, mutatis mutandis, to forfeiture of property, forfeited property and fines imposed under this Law; for the purposes of this section, "fines" - including a financial sanction imposed within the framework of this Law.

### **Penal Law, 1977 Confiscation and reparation**

297. (a) When a person has been convicted of an offense under this Article, the Court may, in addition to the imposed penalty -

(2) obligate the person who gave the bribe to pay to the Treasury the value of the benefit he derived from the bribe.

592. Regarding examples of implementation and related statistics, Israel referred to the information under UNCAC articles UNCAC article 31(1)(a) and 31(1)(b) above.

#### **(b) Observations on the implementation of the article**

593. Israel confirmed that intermingled property can also be frozen for the duration of a criminal investigation.

### **Paragraph 6 of article 31**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

594. Israel's **Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** refers simply to proceeds of crime and does not expressly detail if said proceeds stem "directly or indirectly" of the crime. However, in Cr.C. 5015/99 Association of Independent Jurists v. State of Israel, the court extended the application of the provisions of the law to any type of property that directly or indirectly represents the proceeds of crime.

595. The forfeiture of income or other benefits derived from such proceeds of crime is possible under the **Prohibition on Money Laundering Law, 2000** (hereinafter: "PMLL"). The offense of money laundering extends to any type of property that directly or indirectly represents the proceeds of crime. Under the **Combating Organized Crime Law, 2003** (hereinafter: "CCOL") and Israel's **Penal Law, 1977**, the definition of "property related to the offence" in Section 1 of the CCOL, includes property that was obtained directly or indirectly from the offence.

596. "Prohibited property," according to Section 3 of the PMLL, is property which originated directly or indirectly through the commission of an offense, property used to commit an

offense or property which facilitated the commission of an offense or property against which a crime was committed.

597. Israel cited the following texts.

### **Combating Criminal Organizations Law, 2003**

#### **1. Definitions**

“property connected with an offense” means property satisfying one of the following:

- (1) the offense was committed in it, it was used for the commission of the offense, it enabled the commission of the offense or was intended for commission of the offense;
- (2) it was directly or indirectly obtained as remuneration for commission of the offense, intended to be remuneration for commission of the offense or obtained in consequence of commission of the offense.

### **Prohibition on Money Laundering Law, 2000**

#### **3. Prohibition on money laundering**

(a) A person undertaking a property transaction of a type referred to in paragraphs (1)-(4) below (in this Law - "prohibited property") with the object of concealing or disguising its origin, the identity of those owning the rights therein, its location, movements or a transaction in it, shall be guilty of an offense punishable by ten years imprisonment or a fine of twenty times that stated in section 61(a)(4) of the Penal Law -

- (1) property obtained directly or indirectly through the commission of an offense;
- (2) property which was used to commit an offense;
- (3) property which facilitated the commission of an offense;
- (4) property against which a crime was committed.

(b) A person undertaking a property transaction or giving false information in order to circumvent or prevent the submission of a report as required under sections 7, 8A or 9 or in order to cause an erroneous report to be submitted pursuant to one of those sections, shall be guilty of an offense for which the same punishments as stated in subsection (a) shall apply; for the purposes of this subsection, "giving false information" shall include not giving an update regarding any detail which must be reported.

598. The Olmert case was cited as an example of a case where actual benefits derived from the offence were seized.

#### **(b) Observations on the implementation of the article**

599. Israel is in compliance with this provision.

### **Paragraph 7 of article 31**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

600. Section 43 of Israel's **Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** empowers the court to summon any person or organization - including banks



and other commercial entities - to present an object to the court for the purposes of an investigation or a trial. This article applies to all offenses.

601. An object may include bank records or documents.

602. Israel referred to the information under UNCAC article 40 regarding bank secrecy.

603. Bank secrecy alone does not make up the grounds for denying requests for Mutual Legal Assistance and indeed, obtaining confidential bank records is one of the most common forms of assistance granted by the Israeli authorities to foreign authorities, within the framework of Israel's **International Legal Assistance Law, 1999**.

604. Israel cited the following text.

**Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969**

**43. Summons to present object**

If a judge concludes that the presentation of any object is necessary or desirable for purposes of an investigation or trial, then it may summon any person who is assumed to have the object in his possession or under his control to appear and to present the object, or to deliver it at the time and place stated in the summons.

605. Israel provided the following example of implementation

Israel's Department for Financial Enforcement, within the Office of the State Attorney, is currently working on a project meant to facilitate the transfer of financial information between the Israel Police and financial institutions (particularly banks). This project is meant to computerize both the court orders issued by the courts and the information received from the financial institutions, and to allow them to be transferred easily.

**(b) Observations on the implementation of the article**

606. The provision has been implemented.

**Paragraph 8 of article 31**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

607. Israel indicated that it has partially implemented the provision under review.

608. A draft bill on confiscation is in its first stages of preparation by the Israeli government. This proposal is intended to allow the confiscation of the property of a person whom a court has declared to have led a "criminal lifestyle", unless he proves that the property has a lawful origin. The draft bill refers to certain offense, including money laundering offenses and those related to criminal organizations, which also include offenses related to corruption.

According to the draft bill, an offender can be declared an individual who has led a criminal lifestyle if he was convicted of three offenses, if the total proceeds of the crime are at least 100,000 NIS (approx. 28,000 USD). This would be relevant for corruption offenses.

609. A similar presumption exists in Section 31 of the Dangerous Drugs Ordinance, 1973.

### **Dangerous Drugs Ordinance, 1973**

#### **31. Presumptions**

In proceedings against any person for an offense under this Ordinance or any regulation made thereunder -

(1) a person who alleges that he possesses any certificate, license, permit, register or document for the purposes of this Ordinance, shall bear the burden of proof:

(2) the accused shall, if the proceedings relate to an offense in respect of a drug, be presumed to have known that the drug was dangerous, and if he alleges in his defense that he did not know it he shall bear the burden of proof;

(3) a person who had possession of a quantity of a drug specified in the Second Schedule exceeding the quantity specified therein in respect of such drug shall be presumed not to have had possession of the drug for his own consumption and shall have to prove the contrary.

(4) the testimony of an expert witness in accordance with regulations made by the Minister of Justice on a sample test of a drug shall, pending proof to the contrary, be evidence as to the nature, weight, quantity and form of the drug;

(5) where a dangerous drug has been destroyed under section 36(a), a certificate given in accordance with regulations made by the Minister of Justice as to the nature, weight, quantity and form of the drug and signed by two witnesses shall, pending proof to the contrary, be evidence as to the drug destroyed;

(6) where the court has established under section 36A(b) that a sentenced person is a dealer in drugs -

(a) any property of that person, and any property of his spouse and his children under twenty-one years of age, and any property of another person the acquisition of which by the other person was financed by the sentenced person or which was transferred to the other person by the sentenced person without consideration shall be regarded as property of the sentenced person obtained by a drug transaction offence unless the person proves -

(aa) that the property was obtained by legal means or

(bb) that the property came into his hands or the hands of its owner not later than eight years before the filing of the information concerning the offence for which he was sentenced;

(b) any property found in the possession or in an account of the sentenced person shall be regarded as his property unless he proves that it belongs to another person who is not one of these specified in paragraph (a).".

610. Regarding civil forfeiture, the burden of proof is less than that of "beyond a reasonable doubt." Section 22 of the PMLL, which provides for the confiscation of property in civil proceedings, only requires proof that the property was obtained illegally and that the suspect is not physically in Israel or cannot be found, or that the property was discovered after the conviction. In C.A. 9796/03 Justice Cheshin, in obiter, stated that "forfeiture of property under section 22 demands a burden of proof as required in civil proceedings, however the quantity and weight of the evidence is to go beyond that required in normal civil law" (Para. 49).

611. The new bill will provide that civil forfeiture will not enable forfeiture of property equal

in value to the property that is the subject of an enforcement order (but only forfeiture of the "marked" property itself), in order to ensure that the property received is "marked" as criminal and not the individual.

**(b) Observations on the implementation of the article**

612. The State under review has considered the adoption of measures in accordance with the provision under review through the preparation of a draft bill on confiscation which was under consultation at the time of review.

**Paragraph 9 of article 31**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

613. Israeli law provides protections for the rights of bona fide third parties.

614. Under Sections 21 and 22 of the **Prohibition on Money Laundering Law, 2000** (PMLL), where confiscation of property of a third party is under consideration in a criminal or civil proceeding, the affected party has the right to present relevant claims. In addition, Sections 36C and 36D of the **Dangerous Drugs Ordinance, 1973** which provide protections for the rights of bona fide third parties, have both been adopted in Section 23 of the PMLL, concerning the confiscation of property for offenses according to the PMLL.

615. Section 36C of the Dangerous Drugs Ordinance restricts the right to forfeit property if a claimant to a right in the property proves that the property was used for the offense without his knowledge, without his consent or that he purchased his right in the property for a value and in good faith and without being able to know that it had been used or obtained in connection with an offense. Section 36D permits the court to cancel a confiscation order when the claimant to a right in any property forfeited under the Ordinance has not been summoned to state his case concerning the confiscation order.

616. Under Section 11 of **Combating Criminal Organizations Law, 2003** (hereinafter: "CCOL") the court shall not order the confiscation of property except after having given the person claiming a right to the property, if known, an opportunity to state his case.

617. According to the CCOL, forfeiture against third parties is possible if the acquisition of property was financed by the convicted person or of property which was transferred to the other person without consideration (Section 6). In addition, under Section 7, after the conviction of an offense under to the law, the court may order the forfeiture of property connected with the offense, even if it is not found in the possession of the convicted person, under his control or in his account. Forfeiture of proceeds of a crime is possible when such proceeds have been transferred to a non-bona fide third party in several situations.

618. Section 11, together with the restrictions on forfeiture of property found in Sections 18-20 of the CCOL, is meant to limit the cases whereby a third party's rights are impinged upon in accordance with Sections 6 and 7 of the CCOL.

619. Under the **Criminal Procedure Ordinance (Search and Seizure) (New Version), 1969**, a third party claiming rights in property has the right to present their claims before the court at any time after the property has been seized or frozen. Section 39 of the Criminal Procedure Ordinance provides that forfeiture is subject to some conditions, meant to protect third parties: it is only permitted if the person convicted of committing the offense with or in respect of the object is the object's owner or, if the object is owned by a third party, it must be proven that the object was used as remuneration or as a means for the commission of the offense and the third party consented to this use (i.e. the third party has not acted in good faith).
620. It is possible to forfeit the proceeds of a crime if they have been transferred to a non-bona fide third party in several situations. Proceeds of a bribe can be seized or confiscated under Sections 32 and 39 of the Criminal Procedure Ordinance, even if such proceeds are in the possession or control of a non-bona fide third party, as long as the conditions of the relevant provisions apply, for example the aforementioned provisions of Section 39.
621. As a general rule, in corruption cases, the Israel Police routinely applies its power to seize objects pre-trial under Section 32 of the Criminal Procedural Ordinance. Section 39(b) gives the courts the discretion to forfeit an object in a number of situations: if it was given by its owner (or person who has legal possession of it) as a payment for the commission of an offense of which the defendant was convicted; as a means of committing it; as payment for the commission of another offense that is related to the offense of which the defendant was convicted; as a means of committing the other offense. This is relevant even in case where the defendant did not commit the other offense and even if the defendant did not intend to commit it.
622. Given that some of the forfeiture provisions in Section 39, which provides several options to forfeit property connected to an offense, may adversely affect the rights of bona fide third parties, Section 40 of the Criminal Procedure Ordinance allows a party that has acted in good faith to apply to the court with a request to cancel the confiscation order within one year of the issuance of the said order.
623. Section 297 of the **Penal Law, 1977** does not contain any exceptions regarding bona fide third parties, i.e. there are no limitations as to the use of this Section. However, according to the interpretation of Section 297, the court can by analogy apply the provisions of Section 23 of the PMLL which, as mentioned above, provides protections for the rights of bona fide third parties. However, in practice, a case like this has not yet arisen.
624. Israel cited the following texts.

**Criminal Procedure Ordinance (Arrest and Search) (New Version), 1969** - Sections 32, 39 and 40 in the attached legislative compilation.

**Combating Criminal Organizations Law, 2003** - Sections 6, 7, 11 and 18-20 in the attached legislative compilation.

**Dangerous Drugs Ordinance, 1973**

**36C. "Restrictions as to forfeiture of property.**

(a) The court shall not order the forfeiture of any property under section 36A or 36B if the claimant of a right in the property proves that the property was used for the offence without his knowledge or without his consent or that he acquired his right in the property for a consideration and in good faith and without being able to know that it had been used or obtained in connection with an offence.

(b) The court shall not order the forfeiture of any property under section 36A or 36B unless it is satisfied that the owner of the property and the members of his family living with him will have reasonable means of support and reasonable housing.

(c) The court shall not order the forfeiture of movables not attachable according to section 22 of the Execution Law, 5721-1961

### **36D. Cancellation of forfeiture**

(a) Where the claimant of a right in any property forfeited under section 36A or 36B (hereafter in this section referred to as "the applicant") has not been summoned to state his case concerning the forfeiture order, he may ask the court which ordered the forfeiture to cancel the order

(b) An application for cancellation of a forfeiture order shall be made within two years from the date of the order or within a longer time prescribed by the court if it believes it just to prescribe it.

(c) If the court cancels the forfeiture order, it shall order the return of the property to the applicant or the payment of the value out of the Treasury if it is impossible to return the property or if the applicant agrees to accept its value. If the court orders the payment of the value of the property, it shall determine the amount of the payment, by order, in accordance with the value of the property on the free market on the date of the forfeiture order or on the date of the payment order, whichever is the higher. The payment order shall be made not later than six months from the date of the court's decision to cancel the forfeiture order.

(d) Where the court cancels the forfeiture order, it may order the payment of a fee for the use of the property during the period when it was withheld from the applicant and the payment of compensation for damage or depreciation caused to the property during that period.

(e) An order for the return of property and the order for payment shall be carried out as soon as possible and not later than sixty days from the date when they were made.

**Prohibition on Money Laundering Law, 2000** - Sections 21-23 in the attached legislative compilation.

### **Penal Law, 1977**

#### **297. Confiscation and reparation**

(a) When a person has been convicted of an offense under this Article, the Court may, in addition to the imposed penalty -

(1) order confiscation of what was given as a bribe or what may have taken its place;

(2) obligate the person who gave the bribe to pay to the Treasury the value of the benefit he derived from the bribe.

(b) The provisions of this section shall not preclude a civil claim.

625. No examples of implementation were available.

#### **(b) Observations on the implementation of the article**

626. Israeli legislation provides extensive protection to bona fide third parties and should be

considered in compliance with the provision under review.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

627. Israel indicated that the **Witness Protection Law, 2008** (hereinafter: "Witness Protection Law" or "Law") applies to anyone who reports corruption offenses, as the law is not limited to a specific type of offense, so long as they meet the law's conditions. Section 1 of the Law defines a witness as "any person who provides information to the investigating authority and any person who cooperates with or consents to cooperate with the said authority or with the prosecution, in the framework of the investigation or prosecution." The Law provides, under certain circumstances (dependent on the level of threat to the witness), a variety of modes of protection for those who agree to cooperate with law enforcement and prosecution authorities.
628. The Witness Protection Law established the Israel Witness Protection Authority (hereinafter: "Authority") within the Ministry of Public Security. The Authority was set up in order to protect witnesses who are subject to the highest threat level. Following an initial preparation stage, the Authority began operating in April 2010.
629. The Authority provides a unique protection program which includes security, management and support. The witnesses and their family members are accompanied by the Authority throughout the entire criminal process in order to provide them with the most independent and normal life possible. If it is decided that there is a need for protection for a specific witness, such protection may continue after the criminal proceedings, as long as according to a professional assessment the danger still exists.
630. The Law has set forth a number of criteria in order to determine whether to include a witness in the witness protection program. These include: the level of threat to the witness, the public interest regarding the trial, the necessity of the witness' testimony as well as the witness' individual suitability. Corruption whistleblowers may be included in the witness protection programs to the extent they meet these criteria. Any inclusion of a witness in the witness protection program will be carried out in accordance with the procedure determined in Section 15 of the Witness Protection Law).
631. To date, the Authority has protected dozens of witnesses, each of whom was given their own personalized protection plan depending on their needs and a variety of parameters.
632. Concurrently with the establishment of the Israel Witness Protection Authority, a Witness Protection Unit was established within the Investigations Division of the Israel Police. The Unit is made up of officers from the legal, intelligence and investigation fields. The Unit is

involved in witness protection at all stages of the criminal process and is responsible for the protection of the following groups of witnesses: (1) witnesses at high threat levels, who do not meet the requirements of the Israel Witness Protection Authority, (2) witnesses at other threat levels. Accordingly, corruption whistleblowers who do not qualify for the witness protection program run by the Authority may be granted protection by the police.

633. The Israel Police has been involved in the protection of a number of witnesses over the years, including, together with the Israel Witness Protection Authority, of the former moneyman of a criminal organization who testified on charges of money laundering and tax offenses.

634. Section 43.523(a) of the **Civil Service Regulations** provides that a complaining public official may not be fired, nor will their working conditions change, as a result of their complaint, or for having assisted another official in filing a complaint. This also applies to public officials who report an offer of a bribe received by them or another official. To qualify for the said protections, the complaint must be filed in good faith, it must concern violations of integrity and good governance and the damage incurred must be causally connected to the complaint.

635. According to the **Protection of Employees (Exposure of Offenses of Unethical Conduct and Improper Administration) Law, 1997**, which is applicable to both public and private sector employees, an employer may not punish an employee who filed a complaint against him or against another employee, and may not fire such an employee. The law provides the courts with the authority to order compensation for unlawful termination stemming from whistleblowing. In addition, when the termination occurs in a public body or in a place of employment with more than 25 employees, the court may order the employee's reinstatement under certain circumstances. In governmental bodies, the State Comptroller and Ombudsman are empowered to investigate complaints of employees following their exposure of acts of corruption, and to issue provisional or permanent orders to protect their rights. This power, provided in Sections 45A-45C of the **State Comptroller Law, [Consolidated Version] 1958**, also includes the protection of internal auditors from actions taken in response to their having fulfilled their function. For such complaints to come within the Ombudsman's investigative power, they must meet certain cumulative conditions, which are specified in Section 45A.

636. Section 24 of the **Prohibition on Money Laundering Law, 2000** (PMLL), provides protection from criminal or civil liability to anyone who reports in accordance with the PMLL, but in doing so breaches an obligation imposed on them in another law or agreement. Hence, the reporting duty under the PMLL prevails over any other obligation provided in other laws or agreements.

637. According to Section 25 of the PMLL, the identity of anyone who acted as stated in Section 6 (provision concerning reporting - limitation of criminal liability) shall not be disclosed except regarding legal proceedings for a breach of the reporting obligation under Section 6 or for false or misleading reporting under this Law, or as intelligence material which was presented for a judge to inspect only within the framework of an application for a judicial order.

638. Israel cited the following texts.

## **Penal Law**

### **Subornation in connection with investigation**

245. (a) If a person induces or attempts to induce another not to make a statement in a lawful investigation, to make a false statement or to withdraw a statement which he made, then he is liable to five years imprisonment.

(b) If a person induces or attempts to induce as said in subsection (a) by means of fraud, deceit, force, threats, intimidation, the conferment of a benefit or by any other improper means, then he is liable to seven years imprisonment.

**Protection of Employees (Exposure of Offenses of Unethical Conduct and Improper Administration) Law, 1997** - please see the law in the attached legislative compilation.

## **State Comptroller Law, 1958**

### **45A. Complaint by public servant who has exposed acts of corruption**

Notwithstanding anything contained in section 38(8) -

(1) a complaint by an employee referred to in section 36(3), other than a police officer, prison officer or soldier (such an employee hereafter in this chapter referred to as "the employee"), about an act referred to in section 37 by which his superior reacted to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed, shall be investigated under the provisions of this chapter, subject to sections 45B to 45E.

(2) a complaint by an employee, who is an internal auditor in a body referred to in section 36(1) or (2), other than a police officer, prison officer or soldier, relating to his removal from that post or to an act contrary to the provisions of any law or regulations, the Civil Service Regulations, a collective agreement, or general arrangements prescribed on behalf of the Civil Service Commissioner, or similar general arrangements, which is directly injurious to or directly withholds a benefit from the complainant and which was committed by his superior in reaction to his activities in fulfilling his function as internal auditor shall be investigated under the provisions of this chapter, subject to sections 45C to 45E. Complaint only to be investigated for special reason

### **45B. Complaint only to be investigated for special reason**

Where the Ombudsman finds that there is a reason justifying it, he may investigate a complaint under section 45A(1) even if the employee reported the acts of corruption otherwise than in accordance with proper procedure.

### **45C. Relief**

(a) The Ombudsman may make any order he deems right and just, including a provisional order, to protect the rights of the employee, having regard to the proper functioning of the body in which he is employed.

(b) Where the complaint relates to the dismissal of the employee, the Ombudsman may order revocation of the dismissal or the award of special compensation to the employee, in money or in rights.

(c) The Ombudsman may order the transfer of the employee to another post in the service of his employer.

(d) An order under this section shall be binding on any superior of the employee and on the employee himself, and a person who contravenes it commits a disciplinary offense. But their responsibility for a disciplinary offense shall not detract from their criminal responsibility for



the contravention of that order.

## **The Prohibition on Money Laundering Law, 2000**

### **24. Exemption from Liability**

(a) Failure to undertake any property transaction, including one involving prohibited property, disclosure or non-disclosure, reporting or any other action taken or omission made under the provisions of this Law, in good faith, shall not constitute a breach of confidentiality, trust or any other obligation under the provisions of any law or agreement, and no person shall be held liable for a crime, civil wrong or disciplinary offense because he took or failed to take action as aforesaid.

(b) Where a person is exempt from civil liability as stated in subsection (a), the court may, if it deems it equitable to do so given the circumstances of the matter, and in such manner as it sees fit, order him:

(1) to return what he received from the other party or to pay the value thereof; or, (2) to fulfill all or part of his half of the bargain, if the other party fulfilled his.

(c) Notwithstanding the provisions of this Law, the lawyer shall act in accordance with the provisions of section 90 of the Chamber of Advocates Law, 5721-1961.

### **25. Non-disclosure and admissibility of reports**

(a) Notwithstanding the provisions of any law, apart from vis-à-vis an inspector appointed under Chapter 4B so that he can discharge his obligations, the identity of anyone who acted as stated in section 6 shall not be disclosed except in accordance with subsection (b).

(b) A report received by the police pursuant section 6(1) or transferred to a database pursuant to section 7(d) shall not be regarded as investigation material under section 74 of the Criminal Procedure Law [Consolidated Version], 5752-1992 and shall not be admissible as evidence in any legal proceeding, other than -

(1) one taken under this Law for breach of the reporting obligation under this section or for false or misleading reporting under this Law;

(2) as intelligence material which was presented for a judge to inspect only within the framework of an application for a judicial order.

## **Witness Protection Law, 2008**

### **15. Inclusion of witness in the Israel Witness Protection Authority program**

(a)(1) Where the Authority receives a recommendation under section 14, the Director shall decide whether to include the threatened witness in a protection program; the Director is not to include a witness in the Authority's program unless the danger the witness faces is extremely severe, except in special circumstances and for special reasons that shall be documented.

(2) The Director is not to decline a recommendation under section 14, unless he has heard opinion of the attorney in charge and the Police officer or a person on their behalf, as shall be specified in the cooperation procedures.

(3) Supporting reasons for a decision made under this subsection shall be documented.

(b) In whether to include a threatened witness in an Authority's protection program, the Director shall examine the suitability of the person in accordance with the professional Doctrine, and shall consider, inter alia, the following:

(1) the nature of the perceived danger to the witness or his family members;

(2) the public interest in conducting the criminal proceeding for which the testimony is needed, and the relative importance of the testimony;

- (3) the alternative means that the Israel Police can provide for safeguarding the witness;
- (4) the personal suitability of the witness for a protection program, including matters such as -
  - (a) his criminal record and history, if any, and his involvement in additional judicial proceedings, including civil proceedings and personal-status proceedings;
  - (b) his marital situation;
  - (c) his psychological and sociological suitability;
  - (5) any other consideration that the Director thinks is relevant, in accordance with the professional doctrine, taking into account the budget at the disposal of the Authority for protecting witnesses.
- (c) In whether to include a threatened witness in an Authority's protection program as stated in subsection (a), the Director may also take into account additional opinions if such are submitted to him, these to include -
  - (1) the opinion of the Israel Security Agency;
  - (2) the opinion of the Israel Prison Service with respect to a witness who is, or will subsequently be, in the custody of the Prison Service;
  - (3) the professional opinion of a social worker or psychologist with respect to the witness's suitability for a protection program.
- (d) Where the Director decides not to include a witness in a protection program, the police officer may, with the agreement of the attorney in charge, request that he reconsider his decision; where the Director does not change his decision, the police officer may, with the agreement of the attorney in charge, request the Attorney General, or the deputy Attorney General whom the Attorney General authorized for this purpose, to review the Director's decision and make the final decision in the matter.
- (e) In this section, "witness" or "threatened witness" includes a family member of a threatened witness who is included in the recommendation under section 14.

639. Israel provided the following examples of spontaneous action by witness protection authorities without a court order.

#### Protection by the Witness Protection Authority (WPA)

As part of the witness protection program, the protection provided to a witness by the WPA may be given during and after criminal proceedings, as long as according to a professional assessment the danger to the protected witness still exists (the WPA conducts examinations in order to determine the level of threat). The specific measures available to the WPA include relocation (within Israel, and if necessary to another receiving State), renaming, and if necessary change of identity in accordance with the Witness Protection Law. Also, as long as the witness is included in the Witness Protection Program, the witness and his family members, remain under protective surveillance of the WPA in Israel and/or a similar authority of a receiving State. The surveillance includes monitoring activities of the witness (with his consent), such as monitoring his computer and installing a tracking detective device if necessary. The WPA may also provide occupational training, language studies and employment integration designated to assure the witness an independent and normative alternate life framework (whether in Israel or another receiving State).

#### Protection by the Israeli Police (IP)

For individuals who do not qualify for the full witness protection program, the IP provides only security protection, subject to its discretion and in accordance with the relevant police guidelines. Such protection may include guarding the witness' apartment,

providing a security detail, car replacement, mobile phone number replacement, relocation within Israel, providing a tracking device, installing panic buttons and security cameras, building additions as needed (such as adding a wall around the house), change of a person's name, and financial support as necessary.

**(b) Observations on the implementation of the article**

640. The State under review reports that the Witness Protection Law applies to anyone who reports corruption offenses; that the Law provides, under certain circumstances (dependent on the level of threat to the witness), a variety of modes of protection for those who agree to cooperate with law enforcement and prosecution authorities; and that the Witness Protection Law established the Israel Witness Protection Authority within the Ministry of Public Security Authority, which provides a unique protection program including security, management and support. Witnesses and their family members are accompanied by the Authority throughout the entire criminal process in order to provide them with the most independent and normal life possible.
641. Turning to milder forms of retaliation (which would be better dealt with under article 33), the State under review reports that the law provides the courts with the authority to order compensation for unlawful termination stemming from whistleblowing, and that when the termination occurs in a public body or in a place of employment with more than 25 employees, the court may order the employee's reinstatement under certain circumstances. Also, internal auditors and persons who report instances of money laundering are protected from criminal or civil liability.
642. More details regarding the duration of the protection provided, the compensation that can be awarded and some examples of the specific measures that are available (surveillance, relocation, change of identity, etc.) is provided under this article and article 33 below.
643. The information provided is in alignment with the requirements of the Convention.

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (a)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

644. Israel referred to the information under UNCAC article 32(1) above, and the Witness Protection Law, 2008.

**Witness Protection Law, 2008** - please see the law in the attached legislative compilation.

645. Concerning examples of implementation Israel indicated that since the establishment of the Witness Protection Authority in 2010, dozens of witnesses have been granted protection by the Authority. Any other information relating to administrative costs of protection is confidential.

**(b) Observations on the implementation of the article**

646. During the country visit, the Witness Protection Authority referred to a number of types of protection available under the Witness Protection Programme (2008), including the adoption of a new identity, relocation, compensation, assistance in securing new employment and training. Moreover, the Israeli Police explained that every witness coming to the police who reported a threat receives security until the threat is gone and thereafter, if necessary, which can include: 24/7 police escort, replacement car or home, tracking device, ‘panic button’, CCTV, paid living allowance. It was explained that witnesses protection is rarely needed in corruption cases (see subparagraph 2(b) below).

**Article 32 Protection of witnesses, experts and victims**

**Subparagraph 2 (b)**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

647. Israel indicated that it has partially implemented the provision under review.

648. As of today, it is not possible to testify by video, because such a provision would not be consistent with the fundamental principle of the right of the defendant to confront their accusers. However, other measures can be taken in order to protect the safety of witnesses. For example, courts may use tools such as gag orders in order to protect the identity of such witness as was the case in the Holyland affair (see below under "examples of implementation").

649. Israel's **Courts Law [Consolidated Version], 1984**, also limits which details conveyed in a courtroom can be published or shared. According to Section 70(a) of the Courts Law, hearings held behind closed doors will not be published unless given permission by the Court. Section 70(b) bans photographs from being taken inside the courtroom and from being published thereafter, unless allowed by the Court. Section 70(c) protects minors, whether they are witnesses or defendants. Finally, Section 70(d) empowers the Court to forbid any publication in connection with hearings in the Court in order to defend the security of a party, witness or other person whose name was mentioned at the hearing, or in order to prevent severe violation of the privacy of any of such individuals, or in order to prevent the violation of the privacy of a person with intellectual or mental disabilities, as defined in the Interrogation and Testifying Procedures of Persons with Disabilities Law.

650. Article 68 to the Courts Law, 1984 further allows the court to conduct a court hearing in closed doors when a protected witness testifies (this provision followed the enactment of the Witness Protection Law). Accordingly, in every such case, the WPA requests the court to exercise this authority, including in regards to exclusion of the general public from the deliberations. In cases where the relevant officials in the WPA consider it necessary, the witness will testify behind a transparent glass screen for security purposes only (while allowing the court and defense attorneys to be able to have a direct impression of the testimony, as the witnesses' identity is usually known to the defendants).

## **Courts Law [Consolidated Version], 1984**

### **70. Prohibition of publication**

(a) No person shall publish anything about hearings held by a Court behind closed doors, except by permission from the Court.

(b) No person shall take a photograph in a courtroom and no person shall publish such a photograph, except with permission by the Court.

(c) No person shall, without permission by the Court, publish the name of a minor who has not reached age eighteen and who is a defendant or a witness in a criminal trial, or who is a plaintiff or an injured person in a trial for an offense under sections 208, 214, 345 to 352 and 377A of the Penal Law 5737-1977, and also not his picture, address or other particulars that may lead to the identification of the minor.

(d) A Court may forbid any publication in connection with hearings in the Court, to the extent that the Court deems it necessary in order to defend the security of a party, witness or other person whose name was mentioned at the hearing, or in order to prevent severe violation of the privacy of any of such individuals, or in order to prevent the violation of the privacy of a person with intellectual or mental disabilities, as defined in the Interrogation and Testifying Procedures of Persons with Disabilities Law,

(e) A Court may forbid publication of the name of a suspect who has not yet been indicted or of any other particular of the investigation, if such publication is liable to cause harm to a lawful investigation.

(e1)(1) A Court may forbid publication of the name of a suspect who has not yet been indicted or of any other particular of the investigation, if it finds that such publication could cause the suspect severe harm and the Court concludes that preventing the harm takes precedence over the public interest in the publication.

(2) The suspect shall be informed of his right to request that the Court prohibit publication of his name under the provisions of this subsection, in a manner that shall be prescribed in regulations to be made by the Minister of Justice in consultation with the Minister of Internal Security and with approval by the Knesset Constitution, Law and Justice Committee.

(3) The Minister of Justice shall, with approval by the Knesset Constitution, Law and Justice Committee, prescribe a form for the submission of a petition to the Court requesting that the publication of the suspect's name be prohibited under the provisions of this subsection.

(e2) For the purposes of this section -

"suspect" means a person against whom a criminal investigation was launched;

"suspect's name" includes any other particular that can identify the suspect.

(f) If a person violates any of the provisions of this section, he shall be liable to six months imprisonment.

651. Israel provided the following examples of implementation

- In Holyland corruption case (Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*), charges were filed, inter alia, against the then Mayor of Jerusalem and Minister of Industry, Trade and Labor (and who eventually served as Prime Minister), the Deputy Mayor of Jerusalem, the former Jerusalem Municipal Engineer, and others. This case concerned the construction of luxury apartments overlooking one of the mountains in Jerusalem. The plan, however, would require significantly changing the area's landscape via the construction of tower blocks. According to the indictment, concerning one of the corruption charges, contractors involved in the project gave significant bribes to a number of senior officials in the Jerusalem Municipality, in exchange for approving the project's planning, determining the project's improvement tax and in order to advance the project. Throughout the trial the court protected the identity of an individual who became a state witness. The identity of the state witness, Shmuel Dechner, who passed away in May of 2013, was not released to the media during the trial and until after his death in order to protect his identity, as is customary when an individual involved in a criminal case becomes a state witness. It was also explained that the witness was given a 'panic button,' video surveillance and detective escorts.

**(b) Observations on the implementation of the article**

652. The State under review may be considered to be in compliance with this provision. Regarding the possibility of permitting testimony to be given through the use of "live" communications technology, such as closed circuit television or real time video streaming, as well as other measures aimed at ensuring the protection of witnesses and experts (such as placing them behind a screen, voice alteration methods etc.), Israel provided the following information.
653. In 2011, a task force led by a former Deputy Attorney General for Criminal Law issued published recommendations regarding the use of video conferencing, among other things concerning witness protection, even in cases when the accused has not consented to the use of video conference technologies. The recommendations were submitted to then Minister of Justice Yaakov Neeman.
654. It was proposed to expand the use of video conferencing for exceptional circumstances where such testimony is required, for example in cases of witnesses in protective custody or witnesses residing outside the country.
655. Article 2(b) of the Law of Procedure (Examination of Witnesses), 1957 states that in a criminal case involving a sex offense or trafficking of persons, the court may order that the complainant give evidence in the presence of the defendant's attorney and not the defendant himself. The testimony can be given out of court or in any other fashion. The defendant and the court should be allowed to watch the testimony, hear it and ask questions. In addition, the defendant should be allowed to maintain contact with his attorney, and to present questions to the witness through him. Section 2(g)(a)(1) of the law provides, with regards to certain offences listed in the law's schedule, that the court may allow a minor to testify through video conference. This recommendation corresponds with the position of criminal section of the Office of the State Attorney.

**Article 32 Protection of witnesses, experts and victims**

### Paragraph 3

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

#### (a) **Summary of information relevant to reviewing the implementation of the article**

656. Israel indicated that, as part of its protection programs, the protection of witnesses under the care of the Witness Protection Authority is often handed over to parallel authorities abroad. In order to enable such transfers, the Authority is party several types of agreements including: agreements between directors of witness protection authorities, bilateral and multilateral agreements regarding or which deal with this matter indirectly (i.e. the Palermo Convention). These agreements include matters such as responsibility for the witness' protection, the level of support to be provided to integrate them into their new home and the principles of the protection program in the host state. In addition, these agreements ensure that the information concerning these witnesses remains confidential and that witnesses can be transferred over quickly as required in these situations. The Authority's goal is to ensure that the witness, with the tools provided throughout the program will be able to be independent in their new life. It is important to note that the Authority is required to work in accordance with the host state's procedures. These agreements are relevant for witnesses in corruption cases when the witnesses are included in the Witness Protection Program.

657. Israel cited the following text.

#### **Witness Protection Law, 2008**

##### **37. International agreements and arrangements**

(a) Protection of witnesses that the State of Israel requests be provided in another country or protection of witnesses that another country requests be provided in Israel will be done in accordance with the bilateral or multilateral treaty to which the State of Israel and the other country are parties, which includes provisions with respect to this matter, or in accordance with a special agreement between the two countries that the Minister entered into with the consent of the Minister of Justice and the Minister of Foreign Affairs.

(b) The provisions of this Law shall apply, mutatis mutandis, to protection of witnesses that another country requests be provided in Israel, as stated in subsection (a), subject to the provisions of the treaty or agreement referred to in the said subsection.

658. Israel indicated that several bilateral and multilateral treaties provide the legal framework for relocation to a receiving State. These treaties enshrine the responsibility of the receiving State's authority for the witness' safety, the degree of assistance to be afforded to the witness for his integration in the receiving State, and the key principles of the protection program in the receiving State.

659. The purpose of the witness protection program is to enable the witness to maintain a normal, independent life in his new receiving State. It should be noted that the WPA is obligated to act in accordance with the rules and guidelines of the receiving States and that the relocation process occurs in a way that ensures confidentiality and within a short timetable (if required). Such relocation may also occur by a specific arrangement between the head of the Israeli authority and its counterpart in the receiving State. Such an arrangement requires the approval of the Minister of Public Security and the State Attorney.

660. No examples of implementation or information on the number of witnesses or experts who have been relocated to other States were provided.

**(b) Observations on the implementation of the article**

661. The legislation provided reflects the goal of entering into relocation agreements with other States and is in conformity with the provision in question. Given also the discretionary character of art. 32 par. 3, the State under review should be deemed in compliance with the aforementioned provision. It was explained by the Ministry of Public Security that some bilateral or multilateral agreements (apart from the Palermo Convention which includes an identical provision to the present one) are in place, which provide for, but are not limited to, relocation. According to these arrangements, Israel generally provides the cost of relocation, and the receiving State makes other necessary arrangements for receiving the witness, such as physical security or employment support.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

662. The term "witness" is defined in Section 1 of Israel's **Witness Protection Law, 2008**, and includes those who have cooperated with or provide information to law enforcement agencies. The provisions of this law are relevant to victims of crimes who provide information of this kind.

**Witness Protection Law, 2008**

**Section 1 - Definitions**

"witness" means any person who provided information to the investigation authority and any person who cooperated with or consented to cooperate with the said authority or with the prosecution, in the framework of investigation or prosecution;

663. No examples of implementation or data on victim protection were available.

**(b) Observations on the implementation of the article**

664. According to the legislation cited, all measures provided for witnesses are also available for victims of offences established under the Convention, if they provide information regarding the crime. The definition of the term "witness" in the above-mentioned Witness Protection Law includes victims of the offence. As to the rights of victims in general, the Rights of Victims of Crime Law includes, inter alia, the right to review the indictment, to be informed of the proceedings and express opinions regarding various stages of the proceedings. The State under review should be deemed to be in compliance with the Convention regarding the issue in question.



## Article 32 Protection of witnesses, experts and victims

### Paragraph 5

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### (a) Summary of information relevant to reviewing the implementation of the article

665. The main law regulating victims' rights is Israel's **Rights of Victims of Crime Law, 2001** (hereinafter: "Rights of Victims of Crime Law"). The law grants victims with statutory rights, particularly in the following three fields: (1) Protecting the victim from the perpetrator and his agents during the criminal procedure, (2) providing the victim with access to information concerning the criminal procedure, (3) including the victim in the criminal procedure - which comprises the victim's right to review the indictment before it is filed and grants the victim an opportunity to express their opinion regarding various stages of the criminal procedure.
666. These rights are granted to "victims of a crime" which is defined in Section 2 of the Rights of Victims of Crime Law as anyone who is affected by the crime, whether directly or indirectly, and who has expressed an interest in receiving the rights afforded by the law.
667. In general, victims of corruption offenses who meet the statutory criteria are entitled to above-mentioned rights. However, many corruption offenses have no "victim of a crime" in the ordinary sense of the phrase - the public as a whole is affected but there is not always a clearly identifiable victim. In these cases, the person filing the complainant would not be considered a victim, and would not benefit from the rights provided to victims of crimes. The rights concerning the victim's inclusion in the criminal procedure (i.e. expressing their opinion before a stay of proceedings is issued, regarding a plea agreement, to a parole board and regarding amnesty, as well as the right to submit an affidavit concerning the damage they incurred) are only granted to victims of sexual crimes or victims of violence/serious violence (dependent on the specific right). As far as victims of corruption offenses are concerned, to the extent that they involve violence (such as under Sections 427 and 428 of Israel's **Penal Law, 1977**, which detail blackmail offenses), they fall into the aforementioned categories of "violence" or "serious violence."
668. According to Section 63 of the **Criminal Procedure Law, 1982**, a "decision not to investigate or prosecute must be notified to the complainant in writing and must indicate the reason for the decision. "Following the receipt of a decision not to prosecute (due to lack of evidence, lack of public interest, or lack of criminality), the complainant has the right (according to Section 64 of the Criminal Procedure Law) to file an administrative appeal before the Attorney General or before the State Attorney, requesting that the file be reopened.
669. Israel cited the following texts.

#### **Criminal Procedure Law (Consolidated Version), 1982**

##### **63. Notice of decision not to investigate or prosecute**

A decision not to investigate or not to prosecute shall be communicated to the complainant in

writing, indicating the reason for the decision.

### **65. Appeal**

(A) The complainant will be entitled to appeal, the decision not to investigate or bring to trial due to lack of public interest in the investigation or the trial, because insufficient evidence was found or when no guilt was determined, as follows:

(1) Regarding the decision of an investigating or prosecuting body as provided in sections 12(A)(1)(B) or (2): before the district attorney, an attorney from the State Prosecutor's Office appointed to direct the field of appeals or an attorney from the State Prosecutor's Office who is ranked no lower than "senior deputy A" and who is authorized by the state prosecutor for such purpose;

(2) Regarding the decision given by the district attorney or an attorney from the State Prosecutor's Office not to bring to trial because of a lack of evidence or a lack of guilt, with the exception of a decision in an appeal in accordance with Paragraph (1): before the state prosecutor;

(3) Regarding the decision given by the state attorney or his deputy, not to bring to trial, with the exception of a decision on an appeal according to paragraph (2) and the decision made by the district attorney or an attorney from the State Prosecutor's Office, not to bring to trial because of a lack of public interest, except for a decision on an appeal according to paragraph (1): before the attorney general.

(B) The attorney general is entitled to delegate the authority granted to him under Subsection (A)(3) to the state prosecutor except regarding matters pertaining to a decision of the state prosecutor, and to the deputy state prosecutor except regarding matters pertaining to a decision of the state prosecutor or his deputy. The state prosecutor is entitled to delegate to his deputy the authority granted to him under Subsection (A)(2), and the district attorney is entitled, with approval from the state prosecutor, to delegate the authority granted to him under Subsection (A)(1) to an attorney ranked no lower than "senior deputy" to the district attorney.

### **65. Date for an appeal**

The appeal must be submitted via the police or the prosecutor, as, the case may be, within thirty days from the date on which the complainant was given notice in accordance with Section 63. However, the person with the appropriate authority to hear the appeal as provided in Section 64 may extend the date for the submission of the appeal.

### **68. Private complaint**

Notwithstanding the provisions of Section 11, any person is entitled to bring a charge concerning one of the offenses listed in the Second Addendum by filing a private complaint with the court.

## **Penal Law, 1977**

### **427. Blackmail with use of force**

(a) If a person unlawfully uses force to induce a person to do something or to refrain from doing anything which he is entitled to do, he shall be liable to seven years imprisonment. If the use of force resulted in the performance or omission of the act, he shall be liable to nine years imprisonment.

(b) For purposes of this section, if a person administers drugs or intoxicating liquors, then he shall be treated like a person who uses force.

#### **428. Blackmail by threats**

If a person threatens another person in writing, verbally or by his by conduct, through unlawful injury to the body, freedom, property, livelihood, reputation or privacy of the individual threatened or those of another person, or if a person threatens to make public or to refrain from making public anything that relates to the individual threatened or to another person, or if he terrorizes a person in any other manner, all in order to induce that person to do something or to refrain from doing anything which he is entitled to do. This offense is punishable by seven years imprisonment, but if the act was performed or omitted because of or during the said threat or terrorization- then he is liable to nine years imprisonment.

**Rights of Victims of Crime Law, 2001** - Sections 1, 6, 7, 8, 9, 10, 16, 17, 18, 19 and 20 in the attached legislative compilation

670. Israel indicated that Israeli citizens make relatively extensive use of the right to file administrative appeals. Thus, for instance, in the year 2011, over 2,000 administrative appeals were filed, regarding a wide range of criminal complaints. Informal statistics indicate that approximately 48 of these administrative appeals dealt with allegations of corruption, with the following breakdown:

#### Administrative Appeals Filed in 2011

In 2011, 21 administrative appeals regarding allegations of corruption in the public sector were submitted: 15 administrative appeals were filed for Fraud and breach of trust (Section 284 of the Penal Law), 2 for Bribe Taking (Section 290 of the Penal Law), 1 for Public servant who has private interest (Section 278 of the Penal Law, 2 for Theft by public servant (Section 390 of the Penal Law) and 1 for Forgery by Public Servant (Section 421 of the Penal Law).

#### Administrative Appeals Filed in 2011 Regarding Allegations of Corruption in the Private Sector

In 2011, 25 administrative appeals were filed regarding allegations of corruption in the private sector: 5 for Deceit and breach of trust in body corporate (Section 425 of the Penal Law), 5 for Theft by director (Section 392 of the Penal Law) and 15 for Theft by employee (Section 391 of the Penal Law).

#### **(b) Observations on the implementation of the article**

671. According to the legislation cited, victims of crimes – the notion of a victim comprising anyone who is affected by the crime, whether directly or indirectly, and who has expressed an interest in receiving the rights afforded by the law – enjoy the statutory right to be involved in the criminal procedure, and that includes the victim's right to review the indictment before it is filed and grants the victim an opportunity to express their opinion regarding various stages of the criminal procedure. These provisions correspond to the requirement of the Convention to “enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders” and thus the State under review should be deemed to be in compliance with the Convention.

## Article 33 Protection of reporting persons

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

672. The Israeli legislator is aware of the role of public employees in exposing acts of corruption in their workplace and of the need to protect such employees. Two enactments are aimed at protecting whistle-blowers who suffer from harassment by their superiors as a result of having exposed corruption: the **State Comptroller Law, 1958**, which empowers the Ombudsman to investigate complaints of such employees about harassment and to issue any protective order he deems just and correct to protect their rights, and the **Protection of Employees (Exposure of Offenses and Harm to Integrity or Proper Administration) Law, 1997**, which grants labour courts similar powers.
673. It should be noted that the power of the Ombudsman concerning whistle-blowers includes protecting internal auditors in audited bodies from retaliatory steps in response to the auditor's fulfilment of his functions.
674. It should also be noted that the term "corruption" is not defined in the State Comptroller Law or other laws. In light of the role of the institution of the State Comptroller – to preserve the integrity and the proper administration of the public sector and to protect employees who protest against highly improper actions committed in their workplace, especially those employees who suffer retaliation as a result – the term "corruption" has been given a broad interpretation, in accordance with the circumstances of each case.
675. The Ombudsman may issue a protective order if his investigation leads to the conclusion that the complaint meets the conditions set forth in section 45A of the State Comptroller Law, particularly the existence of a causal connection between the alleged retaliatory act and the disclosure of the corruption by the whistle-blower or the actions of the internal auditor.
676. The legislator has granted the Ombudsman broad discretion with respect to the content of the protective order, and he may issue any order he deems just and correct to protect the rights of the employee, while endeavouring to minimize the disruption to the body employing the complainant so that it can continue to function properly.
677. The Ombudsman may issue a temporary protective order, which is valid until the completion of the investigation or until the Ombudsman decides otherwise. The purpose of the temporary order is to prevent additional injury to the complainant during the course of the investigation and to forestall changes to the employee's status, salary and working conditions, especially where there is cause for concern that upon completion of the investigation, it will not be possible to undo any harmful changes made or to restore the employee to his current situation.
678. Although in general the decisions of the Ombudsman are characterized as recommendations (which are almost universally carried out except in very rare instances), a protective order issued for the benefit of a whistle-blower or internal auditor is legally binding upon the complainant's employer and superior, and noncompliance with the order is

a disciplinary infraction.

679. To date every protective order issued by the Ombudsman has been honoured. During the year 2013, the Ombudsman issued nine temporary and permanent orders.

680. The State Comptroller and Ombudsman considers protection of whistle-blowers a national interest. Therefore, he has made extensive use of the powers granted to him in the State Comptroller Law to issue protective orders for those employees. Simultaneously, he has acted to extend the scope of protection given to them, by promoting a bill intended to extend the protection granted to additional types of employees, and to expand the scope of such protection. The State Comptroller and Ombudsman has also obtained assistance from bodies that might aid in protecting these employees, for example:

- Whistle-blowers sometimes face threats against their lives and property, as well as suffering actual injury, after they have exposed corruption. Since the Office of the State Comptroller does not have the expertise to deal with this phenomenon, it has approached the Witness Protection Authority (WPA) in the Ministry of Public Security, to examine the feasibility of cooperation between the two bodies, whereby the Authority would provide protection and support for whistle-blowers who may be deemed "threatened witnesses" as such term is defined in the Witness Protection Law, 2008. The WPA has advised the Ombudsman and aided Office of the State Comptroller in several cases.
- Often, whistle blowers are forced to pay out of their own pockets to retain an attorney to aid them in dealing with the employer's harassment, following exposure of corruption. The current Israeli Legal Aid Law, 1972 conditions eligibility for legal aid on financial need, among other things, a precondition which many employees do not meet. However, the financial costs required to pay for legal representation are likely to deter public officials from exposing corruption and submitting complaints. As the State of Israel has declared the battle against bribery and corruption to be of paramount value and importance, both on an internal and an international level, the Ministry of Justice, in cooperation with the State Comptroller and Ombudsman, has recently initiated a bill to amend the Legal Aid Law and make it easier for whistle-blowers to obtain governmental legal aid. The amendment, which entered into force at the end of February 2015, waives the financial need test for employees who seek legal representation in private or public proceedings related to injurious changes in their terms of employment due to their exposure of corruption or improprieties in the workplace.

681. Under the **Protection of Employees (Exposure of Offenses of Unethical Conduct or Improper Administration) Law, 1997**, an employer may not adversely affect the employment conditions of an employee who filed a complaint against his employer or against another employee, and the employer may not fire an employee for that reason. The law is applicable to both public and private sector employees. The law provides the courts with the authority to order compensation for unlawful termination due to whistle-blowing and, in public bodies or in employers with more than 25 employees, to order the reinstatement of the employee under certain circumstances. Section 3a of the Protection of Employees Law requires the defendant to prove that they were dismissed or had their work conditions altered, and that there was nothing in their behavior or actions that could have been a reason for the dismissal or altered conditions.

682. In regard to government bodies and state-owned companies, as well as entities that

receive public funds or are provide services to the public sector (e.g., trade unions), the State Comptroller and Ombudsman is empowered, pursuant to Sections 45A-45C of the **State Comptroller Law, 1958**, to investigate complaints of damages incurred by employees following the exposure of acts of corruption in their place of employment, and to issue provisional or permanent orders to protect the rights of these workers. The State Comptroller and Ombudsman can also protect internal auditors in an audited body from measures taken in retaliation for their actions, when these actions were taken in the fulfillment of their duties. For such complaints to come within the Ombudsman's jurisdiction, they must meet certain cumulative conditions, which are specified in Section 45A of the Law, as follows:

### **Complaint by an employee who has exposed acts of corruption**

- a. The complainant was an employee of an audited body, concerning an measure taken by his superior at his place of work in reaction to the employee's reporting of acts of corruption that were committed in that audited body.
- b. The said measure was directly injurious to the complainant and it was contrary to law, done without lawful authority, contrary to proper administration, excessively rigid or flagrantly unjust.
- c. The complainant reported the acts of corruption committed in the body in which he is employed.
- d. The reporting was done in good faith and in accordance with proper procedure. "Good faith" in this regard means that the employee believed that the acts of corruption that he reported indeed were committed, and that he had a prima facie reasonable basis for this belief. However, under section 45B of the Law, the Ombudsman may investigate the complaint even if the employee did not report the acts of corruption in accordance with proper procedure, if he considers such an investigation to be justified.
- e. The measure that is the subject of the complaint was taken in reaction to the reporting of the acts of the corruption, meaning that there is a causal connection between the complaint and the measure taken against the complainant.

683. The protection provided to employees may include injunctions against their dismissal and the Ombudsman is authorized to provide a protection order. He can also award compensation and provide remedies to the complainant, similar to those given by the labor court in regular labor relations' cases and can also provide alternative employment in the private sector.

### **Complaint of an internal auditor**

- a. The complaint is against an act committed by a superior of the internal auditor, provided that the act is contrary to the provisions of law, regulations, Civil Service Regulations, collective agreement, or similar general arrangements, or involves the transfer of the internal auditor from his post.
- b. The measure was taken in reaction to the actions of the internal auditor fulfilling his functions.

684. The State Comptroller also addressed the issue, inter alia, in a number of notices

circulated to civil servants: “Protection of Persons Who Expose Corruption - Notice of the State Comptroller” (Civil Service Notice No. 62/4) and “Opinion of the State Comptroller on Protection of Persons who Expose Acts of Corruption” (Civil Service Notice No. 68/11).

685. The State Comptroller and Ombudsman accepts anonymous complaints and also conducts awareness raising in the form of leaflets published in 6 languages in different communities on how to report and file complaints. The office works together with civil society organizations on corruption reporting and also uses social media networks to raise awareness of reporting mechanisms.
686. In addition, the **Encouragement of Ethical Conduct in the Public Service Law, 1992**, and the regulations enacted pursuant to that law also seek to protect a public employee who exposes acts of corruption from harm and abuse resulting from the exposure of acts or corruption or an improper act.
687. Section 43.523(a) of the **Civil Service Regulations** provides that a complaining public official may not be fired and his working conditions may not be adversely altered as a result of his complaint or his assistance to another official to make a complaint. For this protection to be granted, the complaint must have been filed in good faith and it must concern violations of integrity or proper administration. In addition, such protection is only extended to the employee if the harm he suffered from the measure taken by his superior was in retaliation to the complaint. A public official who reports that he or another official received an offer of a bribe will be entitled to the protection set forth in the Civil Service Regulations, as long as the conditions for that protection are fulfilled.
688. In addition, in October 2009 the Civil Service Commission published a Circular instructing public officials to report offers of bribes to their supervisor or to enforcement authorities. This obligation also applies to acts of bribery to which they are exposed in the performance of their duties. The Circular deals, among other issues, with the protection given to civil servants who expose corruption, and lists legislation and procedures covering this issue. It should be noted that the Convention is specifically referred to in the Civil Service Commission Circular.
689. Finally, concerning the encouragement to expose corruption cases, the President grants prominent whistle-blowers with certificates of appreciation underlining their substantial achievements and contribution to the morality of the public institutions in Israel, in accordance with the Encouragement of Ethical Conduct in the Public Service Law, 1992. The First ceremony was held in the President's Residence, on 31 December 2015, and was attended by representatives of the Ministry of Justice and the State Comptroller, who were also involved in the winners' selection process. Three whistleblowers were provided with certificates of appreciation.
690. Israel cited the following texts.

**Protection of Employees (Exposure of Offenses of Unethical Conduct or Improper Administration) Law, 1997** - in the attached legislative compilation.

**State Comptroller Law, 1958**

**45A. Complaint by public servant who has exposed acts of corruption**

Notwithstanding anything contained in section 38(8) -

(1) a complaint by an employee referred to in section 36(3), other than a police officer, prison officer or soldier (such an employee hereafter in this chapter referred to as "the employee"), about an act referred to in section 37 by which his superior reacted to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed, shall be investigated under the provisions of this chapter, subject to sections 45B to 45E.

(2) a complaint by an employee, who is an internal auditor in a body referred to in section 36(1) or (2), other than a police officer, prison officer or soldier, relating to his removal from that post or to an act contrary to the provisions of any law or regulations, the Civil Service Regulations, a collective agreement, or general arrangements prescribed on behalf of the Civil Service Commissioner, or similar general arrangements, which is directly injurious to or directly withholds a benefit from the complainant and which was committed by his superior in reaction to his activities in fulfilling his function as internal auditor shall be investigated under the provisions of this chapter, subject to sections 45C to 45E. Complaint only to be investigated for special reason

#### **45B. Complaint only to be investigated for special reason**

Where the Ombudsman finds that there is a reason justifying it, he may investigate a complaint under section 45A(1) even if the employee reported the acts of corruption otherwise than in accordance with proper procedure.

#### **45C. Relief**

(a) The Ombudsman may make any order he deems right and just, including a provisional order, to protect the rights of the employee, having regard to the proper functioning of the body in which he is employed.

(b) Where the complaint relates to the dismissal of the employee, the Ombudsman may order revocation of the dismissal or the award of special compensation to the employee, in money or in rights.

(c) The Ombudsman may order the transfer of the employee to another post in the service of his employer.

(d) An order under this section shall be binding on any superior of the employee and on the employee himself, and a person who contravenes it commits a disciplinary offense. But their responsibility for a disciplinary offense shall not detract from their criminal responsibility for the contravention of that order.

Encouragement of Ethical Conduct in the Public Service Law, 1992 - please see the Law in the attached legislative compilation.

**Civil Service Regulations - Regulation 43.5** in the attached legislative compilation.

#### **CIVIL SERVICE COMMISSION CIRCULAR: UNOFFICIAL TRANSLATION**

"State of Israel

Civil Service Commission Discipline Department

1 Heshvan 5770 19 October 2009

To: Senior Deputy Directors General for Administration and Human Services in Government Ministries and Auxiliary Units

Deputy Director General for Administration and Human Services, National Insurance Institute  
Deputy Director General for Administration and Human Services, Airports



Authority

Deputy Director General for Administration and Human Services, Israel Postal Company

Deputy Director General for Administration and Human Services, Employment Service

Deputy Director General for Administration and Human Services, Broadcasting Authority

Deputy Director General for Administration and Human Services, Nature Reserves and National Parks Authority

Deputy Director General for Administration and Human Services, Antiquities Authority

Deputy Director General for Administration and Human Services, The Knesset

Deputy Director General for Administration and Human Services, The State Comptroller

Deputy Director General for Administration and Human Services, The President's House

Dear Sir/Madam,

Re: OECD Convention on Combating Bribery of Foreign Public Officials

1. Acts of corruption and bribery constitute a threat to democratic institutions, impair the rule of law, and impede economic development. For years, the State of Israel has been committed to combating corruption and to advancing norms of honesty and integrity and creation of an apparatus to eradicate corruption in public administration and in the private sector.

2. The Discipline Department in the Civil Service Commission is committed to combating corruption and promoting norms among civil servants, and accordingly views the battle against corruption and bribery as a matter of supreme importance.

3. Some two years ago, the State of Israel began the process of joining the OECD, a process that is expected to be completed in 2010. Simultaneously, Israel recently joined the Convention on Combating Bribery of Foreign Public Officials. The conception underlying the commitment of the OECD and of the parties to the convention is a joint effort of the international community to effectively combat corruption, in general, and bribery, in particular, with the objective of enforcing the prohibition on bribery of foreign public officials.

4. In this circular, I want to bring to your attention and to the attention of all employees Amendment No. 99 to the Penal Law, and also to clarify the modes of operation required of an employee who, in the course of carrying out his functions, received an offer of a bribe or who has substantial information that another employee received a bribe or offered a bribe to a foreign public official and did not report it.

**Prohibition on bribing a foreign public official - Section 291A of the Penal Law, 5737 - 1977**

5. The State of Israel, as a partner in the battle to create an international climate free of corruption, added to its Penal Law the offense of giving a bribe to a public official of a foreign country or to an official of a public international organization - Section 291A of the Penal Law.

6. On 14 July 2008, the Knesset enacted the Penal (Amendment No. 99) Law, 2008, which adds Section 291A to the Penal Law. Under this Section, it is an offense to give a bribe to a foreign official, where it is given for the purpose of promoting business activity, or to achieve an advantage in such activity.

7. The wording of the offense is as follows:

**"291A. Bribing a Foreign Public Official**

(a) A person who gives a bribe to a foreign public official for an act in relation with his functions, in order to obtain, to assure or to promote business activity or other advantage in relation to business activity, shall be treated in the same manner as a person who commits an offense under Section 291.

(b) No indictment shall be issued in respect to an offense under this section unless given written consent from the Attorney General.

(c) For the purpose of this section:

**"foreign state"** includes, but is not limited to, any governmental unit in the foreign country, including national, district or local unit, and also includes a political entity that is not a state, including the Palestinian Council;

**"foreign public official"** includes any of these:

(1) An employee of a foreign country and any person holding a public office or exercising a public function on behalf of a foreign country; including in the legislative, executive or judiciary branch of the foreign country, whether by appointment, by election or by agreement;

(2) A person holding a public office or exercising a public function on behalf of a public body constituted by an enactment of a foreign country, or of a body over which the foreign country exercises, directly or indirectly, control;

(3) An employee of a public international organization, and any person holding a public office or exercising a public function for a public international organization;

**"public international organization"** means an organization formed by two or more countries, or by organizations formed by two or more countries;"

8. The offense specified in Section 291A of the Penal Law prohibits the offer or giving of a bribe to a foreign public official with the objective of promoting business activity, or to achieve an advantage related to such activity. The objective of a prohibited bribe can be to promote a transaction or grant an advantage in promoting it directly, for example by a payment to the foreign public official who has such influence, or by promoting business indirectly, for example by a payment to a foreign public official for information that is transmitted unlawfully, for the purpose of granting the person who gives the bribe an advantage in attaining a transaction.

**Reporting by civil servant of cases of bribes to foreign public officials**

9. In advance of the visit of the examining delegation from the OECD in Israel in July 2009 regarding implementation of the Convention on Combating Bribery of Foreign Public Officials, in which the undersigned also participated, the question arose as to the obligation of reporting by civil servants of suspicion of cases of payment of bribes to foreign public officials or acceptance of bribes from a foreign or local company.

10. I want to clarify the modes of operation required of a civil servant who, in the framework of his functions, received, directly or indirectly, an offer for payment of a bribe, or has substantial information that another employee received a bribe or was offered a bribe, or offered a bribe to a foreign public official (hereafter - suspicion of cases of payment of a bribe).

11.As is known, bribery is an offense containing the element of corruption and as such is liable to breach the trust of the individual in government and undermine social stability. The offense of bribery corrupts the system of public administration, and impairs the delicate structure of the system of relations between the individual and civil servants, which is based on honesty, substance, impartiality, equality, and the like.

12.A civil servant is a public trustee, and as such has special responsibility to act in the framework of his functions with fairness, honesty, and integrity. A civil servant in the framework of his functions does not represent himself for his private needs, but represents the citizens of the state in accord with the public interest. Therefore, a civil servant who, in carrying out his functions, obtains substantial information on suspicion of cases of payment of a bribe, it is expected that he will not treat this information as a private matter and refrain from exposing it, but will report the suspicion. The duty of civil servants to provide this information is a natural part of the obligations of a civil servant.

13. Article 4.02 of the Code of Ethics states:

A civil servant must report fully to his supervisors and to the relevant persons about actions and matters that must be reported under the applicable circumstances, and provide them with all the information that seems to him to be relevant.

14.This Section teaches that civil servants have the duty to report "matters that must be reported under the applicable circumstances," which includes reporting a substantial suspicion of cases of payment of a bribe.

15.Furthermore, in a long list of court judgments, it has been held that, regarding Section 17 of the **Civil Service (Discipline) Law, 1963** (hereafter - the Discipline Law), that the Section has an "open structure," containing general criteria. For example, the norm as to "unbecoming conduct" is an extremely broad concept that refers to values, principles, and interests that shape public service and is filled with content from time to time.

16.Pursuant to the sub-sections of Section 17 of the **Discipline Law**, we try employees in disciplinary hearings for a wide variety of conduct that harms other persons, that taints the work environment, disrupts labor relations, undermines the public's trust in the civil service, or impairs harms in another way the proper functioning of the civil service, and in appropriate circumstances, the Discipline Department in the Civil Service Commission will consider taking disciplinary measures, among them trying in a disciplinary hearing a civil servant who obtains substantial information of suspicion of cases of payment of a bribe and refrains from reporting it to the person in charge in the ministry or to the law enforcement authorities, for conduct unbecoming a civil servant or for dishonest conduct, depending on the specific circumstances of the case presented before us.

### **Protection of persons who expose corruption**

17.This issue automatically raises the question of the protection given to civil servants who expose acts of corruption where they work. For an extensive discussion of this matter, see, inter alia, Notice No. 62/4, "Protection of Persons Who Expose Corruption - Notice of the State Comptroller," and also Notice No. 68/11, "Opinion of the State Comptroller on Protection of Persons who Expose Acts of Corruption."

18.As is known, the Israeli legislator sought, by means of a number of statutes, to protect an employee who exposes acts of corruption from harm and abuse resulting from the exposure of acts or corruption or an improper act. Among these statutory enactments are:

A. Sections 45A-45F of the **State Comptroller Law, 1958**

B. **The Protection of Employees (Exposure of Offenses and Harm to Integrity or Proper Administration) Law,1997;**

C. **The Encouragement of Ethical Conduct in the Public Service Law, 1992**, and the regulations enacted pursuant to the statute.

19.In addition to the aforesaid statutes, Article 43.523(a) of the Civil Service Regulations states that, “A person holding authority shall not harm the work conditions of the complaining employee and shall not dismiss him for filing a complaint, or for assisting another employee in filing a complaint.” Such protection is provided upon meeting a number of conditions, among them that the complaint that the employee files is made in good faith, and that the complaint deals with “harm to integrity or proper administration.” Furthermore, a condition for the protection given to an employee is that the harm to him by his supervisor is a reaction to exposure of acts of corruption.

20.As a result, a civil servant who reports a suspicion of cases of payment of a bribe as stated in this circular is given the protection set forth in the Civil Service Regulations, to the extent that he meets the aforesaid conditions.

## **Conclusion**

21.“A public servant is a public trustee. He does not act for himself, but for the public interest” [HCJ 669/86, Ya’akov Rubin v. Haifa District Committee of the Bar Association et al.].

22.Public trust in the Civil Service requires that a civil servant be a public trustee, and as such must act to promote the public interest, and not his personal interest, certainly when matters relating to his work are involved. Therefore, a civil servant who, in the framework of his functions, obtains substantial information of suspicion of cases of payment of a bribe, he must not treat the information as his private interest, and he is expected to report it to the supervisor in his office or to the law enforcement authorities.

23.The suspicions referred to in this circular relate to acts of corruption that endanger society and governmental procedures, acts that gnaw at the ties that link us together as members of one society, breach the trust that individuals have in government, and encourage contempt for public authorities and public servants. Conduct that conforms to the comments in this circular will assist in combating corruption and promoting norms of honesty and integrity.

24.I would like to take this opportunity to update you about a relevant matter: in the spirit of this circular, we are presently examining, together with the Ministry of Justice, the possibility of imposing, in primary legislation, a general duty of public servants to report substantial information the public servant obtains in the course of performing his functions or relating to performing his functions which indicate that a serious criminal offense has been committed.

Also, the Ministry of Justice has recently established a website intended to promote awareness of the criminal prohibition on bribing foreign public officials and of actions that have been taken by Israel relating to the OECD Convention on Combating Bribery of Foreign Public Officials and the UN Convention against Corruption. The website includes regular and updated information on the measures taken domestically and internationally to advance the participation of Israel in the international battle against corruption in all its forms. The address of the website is <<http://www.corruption.justice.gov.il>>.

Sincerely,

Asaf Rosenberg, Attorney Senior Supervisor (Discipline)”

691. Regarding examples of implementation, Israel indicated that it takes the protection of those who report misdeeds very seriously and works to ensure that those raising justified claims concerning their reporting are protected to the utmost extent of the law. There is no existing case law regarding unjustified treatment for individuals who report in good faith and on reasonable grounds to the competent authorities any facts concerning offenses established in accordance with this Convention, though this may be due to the high level of protection afforded to individuals raising said claims.
692. A recent investigation (file no. 409983) carried out by State Comptroller and Ombudsman concerned a complaint by a parking attendant in the Municipality of Haifa. The attendant claimed that he was dismissed for having reported irregularities and corruption in the Municipality. Further to the filing of the complaint, and in order to protect the complainant's rights during the investigation, the State Comptroller and Ombudsman issued a provisional order pursuant to Sections 45C of the **State Comptroller Law, 1958**, forcing the municipality to continue employing the complainant and to ensure that his work conditions were not adversely altered. Based on the investigation, the State Comptroller and Ombudsman determined that the complainant was dismissed due to his complaint and not due to the Municipality's claim that he was dismissed as he often missed work. Further to these findings, the State Comptroller and Ombudsman issued a permanent order to the Municipality ordering that the complainant continue working as a parking attendant or, if this was not possible, that he be transferred to another position in the municipality subject to his agreement.
693. In one case, the State Comptroller's Office accompanied the whistleblower, a secretary in the labor union, throughout the process. First, the whistleblower met immediately with the State Comptroller and his office. At that meeting, it was decided that the WPA should be involved, and the State Comptroller's Office connected the whistleblower and relevant WPA officials. Second, the State Comptroller arranged her to transfer to a different workplace. Today, the whistleblower leads a normal life and seems to be doing very well. However, it should be noted that all these processes did take some time.
694. Another case involves a whistleblower who exposed severe maltreatment of patients at a psychiatric hospital, which led to her dismissal. Her complaint to the State Comptroller Office (acting as National Ombudsman) was filed after her dismissal, such that she was unemployed for several months. The acts that occurred at the institution led to a police investigation. The State Comptroller succeeded in helping the whistleblower to find alternate employment in another city, while also convincing her bank to allow the transfer of her mortgage to a new residence. This assistance removed a major financial obstacle faced by the

whistleblower in finding a way to move forward with her life.

695. The Civil Service Commission may also provide unofficial assistance to whistleblowers beyond its official role. This stems from a desire to correct injustices resulting from whistleblowing. For example, in a case against a hospital administrative manager, the employee approached the Commission claiming that due to his complaints his work was disturbed and his responsibilities were taken away from him, and eventually a termination of employment process was initiated. As a response, the Commission contacted the hospital's management which suspended the termination process until the end of the disciplinary case against his direct manager. That is just one of many examples, whereby an unofficial procedure used during most of the Commission's investigations, which is not kept on file, is effective in protecting whistleblowers.

696. Israel provided the following statistics.

**Provisional and Permanent Orders Granted by the State Comptroller and Ombudsman to Individuals who Filed Reports Related to Corruption**

In 2010, the State Comptroller and Ombudsman granted 7 provisional orders and 2 permanent orders to individuals who filed complaints.

In 2011, the State Comptroller and Ombudsman granted 4 provisional orders and 1 permanent orders to individuals who filed complaints.

In 2012, the State Comptroller and Ombudsman granted 2 provisional orders and 1 permanent orders to individuals who filed complaints.

In 2013, the State Comptroller and Ombudsman granted 5 provisional orders and 2 permanent orders to individuals who filed complaints.

697. Examples of case law relevant to the protection of whistleblowers includes the following (additional cases were provided to the reviewers during the country visit):

In L.A. 61646-10-10 *Yair Ben Shimon v. State of Israel*, the appellant worked as a Tourism Ministry official. His complaints to the state comptroller about corruption and improper use of Ministry funds led to harassment at work and eventually to his dismissal. The court ruled that the Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997, applies. The National Labor Court awarded him 150,000NIS (approximately 30,000 Euro) in compensation.

In HCJ 86/89 *Simcha Shenker v. Moshe Rabin* (Mayor of Ramat Hasharon), Shenker worked as the Comptroller of Ramat Hasharon Municipality, and filed a complaint to the State Comptroller that he was allegedly fired by the municipality in response to his allegations revealing acts of corruption in the municipal council. The State Comptroller decided to examine the issue of the petitioner's dismissal, and ordered a temporary order forbidding filling the petitioner's former position until further notice. The Court acknowledged this step taken by the State Comptroller, which led to the reinstating of the Plaintiff to his former position (although he filed the petition to the court in order to challenge the Municipality's decision to subject his work to an audit committee).

In L.A. 48067-10-11 *Moshe Hazut v. Israel Railways*, the plaintiff was employed by Israel Railways in various capacities since 1996. After revealing that elections to the Northern District Employees Committee have not been held for the past four and a half years (while procedures required that elections be held every three years), Hazut turned the attention of his fellow employees to the issue and complained to the labor union. Hazut also alleged indiscrepancies in the makeup of the current Employees Committee. Following Hazut's actions, members of the Employees Committee began to humiliate and harass him, and he was eventually dismissed.

The Court ordered to reinstate Hazut to his former position. The court also ordered the defendant to pay Hazut's salary from the date of termination due to its wrongfulness. The court acknowledged Hazut as a "corruption whistleblower" and awarded him 50,000 NIS (approx. 14,450 Euro) in compensation, in addition to covering attorney's fees.

In L.A. 17365-11-11 *Swissa v. Municipality of Yehud*, the Court held that the plaintiff was unlawfully dismissed due to her allegations of corruption in the conduct of the Mayor and the Municipality of Yehud, and that she should be entitled to protection as a whistleblower. The court found that while it can not, for a variety of reasons, reinstate Swissa to her former position, the defendant must pay her compensation to reflect 24 monthly salaries.

In L.A. 2371/02 *Drocker v. Municipality City of Ashdod*, plaintiff worked in a municipal dental clinic. The court held that Drocker was dismissed due to her allegations of mismanagement irregularities and corruption in the running of the clinic by the Municipality, and ordered the defendant to pay her 50,000 NIS (approx. 14,450 Euro) in accordance with the then applicable legislation

In L.D. 4017/03 (Tel-aviv) *Kobisi v. Municipality of Rishon Lezion*, the plaintiff exposed corruption and improper behavior in workplace, which led to his firing. The court ordered that the plaintiff is entitled to monetary compensation for dismissal, worth six months' salary.

In Cr.A. 7641/09 Avraham Hirshzon v. State of Israel (noted above), the whistleblower who reported the corruption matter to the State Comptroller and Ombudsman received protection. The case involved the former Minister of Finances of Israel.

698. Recently, extensive work has been done on the subject of protection and assistance to corruption whistleblowers in the civil service. In 2013, a bill to amend the Legal Aid Law was prepared through a joint initiative between the State Comptroller and the Ministry of Justice, which would provide for free legal aid, in both the public and private sectors, without being means-tested. The bill, which is currently being reviewed by the Knesset where it has passed a first reading, proposes to provide wider legal aid to whistleblowers in proceedings conducted by the State Comptroller as well as in proceedings in the Labour Court. According to the proposed bill, the Legal Aid Bureau (in the Ministry of Justice) is to represent whistleblowers in such proceedings. This is a significant achievement compared with the situation in practice today, in which the whistleblower represents himself in the labor courts. The decision to grant legal representation by the Legal Aid Bureau will be made on the basis of the likelihood of the success of the claim, without relevance to the financial capability of the whistleblower.

699. Today, in proceedings in the Labour Court, purported corruption is a common argument of employees against their employers, along with other claims related to their termination,

suspension or transfer. It should be noted that the Labour Court accepts corruption claims made by the employee in very few cases. If such a claim is accepted, then in accordance with section 3 of the Employees Protection Law (exposing crimes and violation of integrity or proper administration), 1997, the court may award compensation to the employee, at the rate it deems fit considering the circumstances, even if he did not sustain financial damages. The court may, in addition, order the defendant to pay, according to Section 2 of the law, damages of up to 50,000 NIS (approx. 14,450 Euro), independent of the damage inflicted.

700. The new legislative framework, when concluded, is expected to significantly increase the protection given to whistleblowers.

**(b) Observations on the implementation of the article, successes and good practices**

701. The country under review displays a fairly comprehensive protective network in terms of legislation, procedures and structures to protect reporting persons, both in the private and in the public sector. Israel is in compliance with the present article.

702. An issue that came up as a possible area of concern during the on-site discussions is the visibility of the protection available, since some interlocutors did not seem to be fully aware of the extent of protection that can be afforded to people who come forward with disclosures regarding instances of corruption. Equally, some representatives from civil society expressed concerns about the difficulties associated with the application of the existing framework. The reviewers positively note Israel's efforts in this area, in particular the draft bill to amend the Legal Aid Law, which entered into force at the end of February 2015, in respect of proceedings in both the public and private sectors, and encourage the State under review to continue to strengthen measures to raise awareness of public sector reporting and protection mechanisms.

## **Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

703. The **Mandatory Tenders Act, 1992** combined with the **Mandatory Tenders Regulations, 1993** enable a public authority issuing a tender to consider, in appropriate cases, a bidder's criminal record, whether as a threshold condition for the exclusion or removal of a bidder from the tender process or as a consideration in the selection of the winning bidder, provided that the record is relevant to the nature and character of the tender. The same applies to the criminal convictions of bidders that are corporations.

704. Regarding criminal information, a tender conductor is entitled to receive this information, in accordance with the **Crime Register and Rehabilitation Law, 1981**. A public authority issuing a tender (whether the State, a local authority or a statutory corporation) is also entitled to obtain criminal record information from the Crime Register, in accordance with



the Crime Register and Rehabilitation Law. Specifically, the public authority may obtain information regarding those criminal offenses listed in the Second Schedule of the Crime Register and Rehabilitation Law, including offenses referred to in the **Penal Law, 1977** and relating to bribery - including the crime of bribery of a public official -, fraud, theft and as certain tax offenses. However, the officials listed in the First Schedule of the Crime Register and Rehabilitation Law (including, inter alia, the President, the Minister of Justice and the Civil Service Commissioner) are entitled to receive any information from the crime register, and are not limited to the crimes listed in the Second Schedule. It should be noted that criminal information in the Crime Register includes not only convictions, but pending criminal cases as well.

705. Accordingly, it is possible (although not automatic) for a public authority issuing a tender to suspend bidders from participation in the tender if they have been charged or convicted of bribery (including bribery of a local or foreign public official), fraud, theft, or certain tax offenses. Furthermore, if the tender is conducted by the government or by one of its units, the public authority is entitled to consider any offense committed by the bidder, or any pending criminal case against him, provided the offense that was committed or that is being investigated, is relevant, as stated above.

706. Moreover, Israeli law recognizes the State's option to be released from existing contracts it has signed, if it determines that the public interest justifies it (when such a determination is reasonable). This rule was affirmed by the High Court of Justice, for example, in the HCJ 4915/00 *"Reshet" Communications and Production Company v. The State of Israel* and C.A 2064/02 *Tishlovet H. Aloni v. Municipality of Nesher*. These cases can be interpreted as providing the legal basis for the State to be released from contracts if their signing was tainted by corruption.

707. Israel cited the following texts.

**Penal Law, 1977** - Sections 290-297 in the attached legislative compilation.

**Crime Register and Rehabilitation Law, 1981**

#### **8. Conveying Information for the Purpose of a Tender**

(a) The Police shall convey information from the register about the offenses specified in the Second Schedule to a Public Body, so that an individual may participate in a public tender on behalf of that Body, if such person has consented thereto; in this regard, "Public Body" - the State, a local authority or a corporation established by law and is required by law to hold tenders.

(b) Conveying information pursuant to this Section shall be, with regards to the State - to the Comptroller General or to the comptroller of the relevant government ministry; with regards to a local authority - to the head of the authority; and with regards to a corporation - its chairman; each of these may authorize a person to receive the information.

#### **SECOND SCHEDULE**

##### **(Section 8)**

(a) The Purchase Tax Law (Goods and Services), 5712-1952; (b) The Income Tax Ordinance;

(c) The Customs and Excise Ordinance;

(d) The Value Added Tax Law, 5736-1975; (e) The Currency Control Law, 5738-1978;

(f) Sections 290 to 297, 383 to 393 and 414 to 438 of the Penal Law, 5737-1977.

## **The Mandatory Tenders Regulations (Defense Establishment Contracts), 1993**

### **9. Conditions Precedent For Participation In Tender**

The Ministry of Defense may condition participation in a tender on the bidder being a recognized supplier or recognized contractor in accordance with Regulation 10, as the case may be, as well as additional pertinent conditions, including conditions with regard to the experience of the person wishing to participate in the tender, his ability, skills, scope of activity, compliance with the requirements of the unofficial Israeli standard, the importance of the place where his business is conducted and recommendations.

### **10. Recognized Suppliers And Contractors**

(a) The Ministry of Defense shall keep lists of Israeli suppliers, according to types and financial scope - that the Suppliers Approval Committee has found suitable to be suppliers to the Ministry of Defense (in these Regulations - Recognized Suppliers); in this Regulation, "Supplier" excludes a contractor which the Inter-ministerial Committee has found suitable to be a building contractor for government ministries.

(b) The Ministry of Defense shall operate committees for the approval of Recognized Suppliers. Each such committee shall be headed by a representative of the director or his appointee and its members shall include, inter alia, a public representative, within the meaning thereof in Regulation 16, the Ministry of Defense's Comptroller or his representative and the Defense Establishment's legal advisor or his representative.

(c) The main criteria for including a supplier in the lists of Recognized Suppliers are:

(1) Compliance with the requirements of conducting a quality assurance system, according to the levels prescribed under the known rules based upon international standards; (2) Obtaining security clearance from the competent bodies;

(3) The ability to supply goods or services or to perform the work for which the supplier wishes to be recognized, at a defined financial scope;

(4) The financial capability to satisfy its obligations vis-à-vis the Ministry of Defense; (5) Credibility, including meeting prior commitments based on accumulated experience.

(c1) Notwithstanding Sub-regulation (c), a different set of criteria may be determined for each type of supplier.

(d) Every supplier may request to be included in the list of Recognized Suppliers and the Committee for Approval of Recognized Suppliers shall consider its request. Requests from suppliers who have not provided the licenses or approvals required pursuant to any law or who have not obtained security clearance from the competent bodies shall not be presented for approval before the Committee for Approval of Recognized Suppliers.

(e) Decisions of the Committee for Approval of Recognized Suppliers not to include a supplier in the list of Recognized Suppliers or to remove a supplier from the list shall be reasoned and shall only be given after the supplier has been given the option of presenting his claims to the Committee.

(f) The Ministry of Defense shall keep lists of contractors which the Inter-Ministerial Committee has found suitable to act as building contractors for government ministries, and who have obtained security clearance from the competent bodies at the Ministry of Defense (in these Regulations - Recognized Contractors).

708. Israel provided the following example of implementation.

In C.A. 8189/11 Dayan v. Mif'al Hapayis, the Supreme Court ruled that an issuer of a tender is entitled to take into consideration factors including their reliability and the bidder's record, as long as the issuer's decision is based on factual evidence. The tender committee decided to disqualify the appellant's bid since he allegedly brokered a bribe concerning a previous tender. The Court ruled that this information was relevant to the tender and even though the criminal investigation against the appellant had been closed due to insufficient evidence. If the tender issuer wishes to compel bidders to disclose details of criminal record or ongoing criminal investigation, the demand should be relevant to the tender. The court ruled that the Crime Register and Rehabilitation Law, 1981 does not preclude the issuer from demanding bidders to provide relevant information regarding their criminal history.

**(b) Observations on the implementation of the article**

709. According to the aforementioned regulations a person (whether an individual or a corporate body) can be excluded from bidding for public sector contracts, inter alia, if a conviction for bribery or corruption offences is shown in the bidder's criminal record.
710. The state under review subsequently reports that common law principles of contract rescission and administrative law provisions allow an existing contract or concession to be annulled, rescinded or withdrawn from if it was awarded as a result of an act of corruption, even in the absence of a criminal conviction. This is in addition to the tendering procedures, which allow for debarments and disqualifications. To the extent that annulment of an existing contract is possible according to the aforementioned principles of common law, Israel stands in accordance with the provision of article 34 of the Convention.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

711. According to Section 77 of the Penal Law, in the framework of a criminal proceeding, the court may grant victims, including those of corruption offenses, punitive damages. This option exists in addition to the possibility of filing a civil suit. The damages are paid by the individual convicted of the offense and the victim may be granted damages of up to 258,000 NIS (approx. 80,000 USD). This sum is updated regularly. The arrangement provided for by this Section is also available when the State is a victim of the offense. When the damage incurred by the individual is equal to or less than 258,000 NIS, and the court awards the victim the amount of the damage, a civil lawsuit becomes unnecessary. However, when the court does not take it upon itself to award the victim with punitive damages or when the damages are more than 258,000 NIS, the victim can file a civil suit in order to receive the rest of the damages.
712. It is also worth noting Section 77 of the **Courts Law [Consolidated Version], 1984**, which provides for the judge or the panel that convicted an individual in a final judgment to

hear the civil suit instituted against him, so long as the civil suit is only against him and the person who submitted the claim has requested it.

713. When a civil claim is relevant, private individuals who are victims of corruption may file civil suits for monetary damages against the offender. These lawsuits can be premised on fraud, contract, tort, or civil-rights. The **Torts Ordinance [new version], 1968** can be used by victims in such suits. Public officials, legal persons and the State may be sued for damages stemming from acts of corruption.

714. A person or entity may seek compensation as a result of a decision in criminal proceedings (including regarding corruption offenses) within the criminal proceeding itself under the terms of Section 77 of the Penal Law, 1977, by filing a connected civil suit (Section 77 of the Courts Law [Consolidated Version], 1984 and Section 17 of the Civil Procedure Regulations, 1984) or by filing a civil suit using the results of the criminal proceedings as evidence (Sections 42(a) and 42(c) of the Evidence Ordinance [New Version], 1971).

715. These suits must fulfill the conditions of the above mentioned sections, and regarding civil suits, they must also comply with the principles of civil law (tort law or the law of unjust enrichment, etc.); i.e. tort law requires that the claimant prove damage and causation. This significantly facilitates proving certain elements in a civil suit, but does not eliminate the need to prove them. For example, a verdict that concluded that a theft had been committed obviates the need to prove the theft in a civil suit; however, if the amount stolen was not determined in the original proceedings, this must still be proved in the civil suit. Additionally, any person or entity enjoys the right to review the evidence, in accordance with the principles specified in State Attorney Guidelines 14.8, and can attempt to prove the elements of the claim based on this evidence.

716. There is no bar on filing a civil suit against a public authority for corruption related damages.

717. For offenses such as bribery, there is a possibility for the State to file a civil suit against a civil servant convicted of bribery, demanding the return of the bribe received. The courts have held this to be in accordance with the principle of "let not a sinner profit from his sin". In Civ.A. 304/70 *Aviam v. The State of Israel*, the court ruled that the public official committed the corrupt acts in connection with his official duties, and that the State has a right to what he gained. In Civ.A. 531/76 *Lokman v. Shiff*, the court held that the restitution of the bribe to the State is in accordance with the civil principle of unjust enrichment. The duty of fidelity and agency relationship of the public official to the State were also mentioned in similar cases.

718. In some cases, property seized by the State in connection with an ongoing criminal prosecution was awarded to successful plaintiffs of a civil suit against the defendant, giving precedence to the victims of corruption over the State (Cr. A. 8679/06 *Cavich v. State of Israel* (2008); F.Cr.A. 8439/10 *State of Israel v. Alon Cohen* (2011)).

719. Israel cited the following texts.

#### **Penal Law, 1977**

## 77. Compensation

(a) When a person is convicted, the Court may require him - in respect of each offense of which he was convicted - to pay to a person who sustained damage through the offense an amount of not more than 258,000 NIS , as compensation for the damage or suffering caused to him.

(b) Compensation under this section shall be set according to the value of the damage or suffering caused, on the day the offense was committed or on the day the decision on compensation is handed down, whichever is greater.

(c) For purposes of collection, compensation under this section shall be treated like a fine; any amount paid or collected on account of a fine when compensation is also due, shall first be allocated to compensation.

## Courts Law [Consolidated Version], 1984

### 77. Derivative civil powers in criminal cases

(a) If a person was found guilty by a Magistrates Court or by a District Court and if a civil suit was instituted against him - and against him alone - because of the facts that constitute the offense of which he was convicted, then - after the criminal judgment became final - the judge or the panel that convicted him may hear the civil claim, if the person who submitted the claim so requested; in such case, a District Court is competent to hear the matter also if the claim, according to its value, is under the jurisdiction of a Magistrates Court.

(b) The Minister of Justice shall prescribe the law procedure for the civil claim in regulations, including provisions on when and how the claim is to be submitted and on appeal proceedings.

**Torts Ordinance [new version], 1968** – Sections 42-63 in the attached legislative compilation.

720. Israel provided the following examples of implementation.

- In C.C. 3068/09 *State of Israel v. Ofer Hugi*, the State filed a civil case further to the Cr. C. (Jerusalem) 264/03 *State of Israel v. Ofer Hugi*. In the criminal case, the defendant, Hugi, who worked as the deputy General Manager of the Nir'e Or Association, was convicted of fraudulently receiving millions of shekels from the State, through misrepresentations he had made to the Ministry of Education and other government ministries. In the civil suit, the State claimed that Hugi obtained this money, fraudulently and illegally, while taking advantage of his position in the association and the fact that he was trusted. The suit was based on Israel's Torts Ordinance [new version], 1968 as well as the Unjust Enrichment Law, 1979. The State claimed almost 3,000,000 NIS (approx. 850,000 USD) in damages. The suit was settled out of court, and Hugi agreed to pay 800,000 NIS (approx. 220,000 USD) in damages to the State.
- In the case of a **Ministry of Justice employee** who, through abuse of his functions, obtained funds fraudulently, the State filed suit of return of the funds. Eventually the case was settled and substantial funds were returned.
- **Dudi Apale** – In Cr.C. 8116/03 (Tel Aviv) *State of Israel v. Apale*, a construction company and a controlling shareholder in the company (Apale) were convicted of bribery offenses. The bribe was given towards the mayoral election campaigns of a number of individuals in exchange for significant monetary advantages in the future, from which the

company and Apale would have benefitted. In the sentence, the Court accepted the defendants' argument that the tendency in recent case law to impose higher punishments for bribery offenses should not be given substantial consideration in this case since the crimes were committed 12 year prior. In the civil suit, damages of millions of NIS were awarded. The company has filed for bankruptcy, and the Office of the State Attorney has engaged debt collection proceedings.

721. During the on-site visit, a question arose regarding cases in which the State files a civil suit resulting from bribery offenses even though the State has not sustained damages or injury directly as a result of that offense. When a public official takes bribes or is unjustly enriched as a result of a bribe, the State has a cause of action stemming from unjust enrichment. This remains true even in cases where the State did not incur financial damages, as the funds were obtained in the course of public duty and the act was facilitated by the authority invested in the public officials. See one case example:

- 15026-01-10 (Haifa Magistrate's Court) *Director of the Courts v. Ana Rakir* – 20,000 NIS (approx. 5,846US USD). An employee at the execution unit took a bribe in exchange for exercising her powers within the unit. The case was withdrawn because the defendant returned the illicitly obtained sum.

**(b) Observations on the implementation of the article**

722. The ratio legis of article 35 is to urge State parties to provide legal ground for individuals who have suffered financial damage as a result of acts of corruption, which will enable them to pursue compensation from actors involved in such actions (as these are described in arts 15 to 22 of the Convention) even if the perpetrators have not directly interacted with the claimant(s) and may not even be aware of the damage inflicted to the particular claimants' interests because of their illegal acts. Causality and extent of whatever damage inflicted to the claimant because of an act of corruption ("... damage as a result of ...") will have to be substantiated under the same principles of the State's domestic law that govern causality and extend of due compensation, in general.

723. In regard to intent, the Convention means to secure that lack of personal interaction between the perpetrator and the claimant, or the fact that the perpetrator was not aware of the specific damage that would be inflicted to every specific claimant's interests, will not serve as a defence for the latter, nor as a legal obstacle for those who have suffered damage and will try to pursue compensation.

724. The State under review has cited measures allowing persons or entities, and especially the State – as demonstrated through the cases provided as examples of implementation – to seek compensation in criminal and corruption-related proceedings. Israel reports that, in the framework of a criminal proceeding, the court may grant victims, including those of corruption offenses, remedies even if the claimant is not directly connected to the perpetrator so long as the elements of the claim under the applicable law are met. Civil suits are also possible in corruption-related cases and the State may file civil claims against former State officials following the criminal proceedings to recoup losses, even where there was no direct damage to the State but the case involved unjust enrichment or breach of public trust or fiduciary duty. There have also been class actions against municipalities in cases of fraud and theft.

725. Based on the provided examples of cases and on the reported possibility of awarding remedies to any affected claimant, besides the State, Israel should be deemed to be in compliance with article 35 of the Convention.

### **Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

726. Israel indicated that several bodies in the Israeli government are involved in the fight against corruption.

#### **The Israel Police**

727. The Israel Police (IP), as provided for in Section 3 of the **Police Ordinance, 1971** and in accordance with the authority vested in the IP by relevant criminal legislation, is authorized to investigate the offenses established under the Convention. This work is done in conjunction with other bodies and authorities, also authorized to investigate specific offenses (for example, money laundering).

728. Israel's firm stance against corruption has led to the establishment of a comprehensive enforcement and investigative apparatus, equipped to contend with the challenges posed by corruption investigations. As a result, a number of units within the IP are responsible for investigating corruption offenses. Every one of the districts of the IP has a Fraud Unit which specializes and works on cases, inter alia, regarding corruption offenses. In addition, forfeiture officers have been appointed in every district.

729. In addition, the specialized, highly trained Lahav 433 unit is assigned with the task of combating organized crime and corruption in all of its forms. Lahav 433 is a police unit within the IP's Investigation and Intelligence Department. Lahav 433 incorporates five specialized prosecution and investigative units focusing on corruption and international asset recovery:

- National Unit for the Investigation of Fraud - responsible for complex cases, especially those with international ramifications, as well as corruption offenses under the Convention
- National Unit for the Investigation of Economic Crimes
- International Unit
- Forfeiture Task Force - a national task force that also deals with international cases

- Special units funded by the Asset Recovery Fund - specializing in areas of money laundering, corruption and taxes.

730. The main advantage in establishing Lahav 433 was that it enabled a consolidation and reorganization of the units under a single structure. With the establishment of Lahav 433, the National Unit for the Investigation of Fraud saw an increase in both financial and human resources and therefore has been able to gain full access to professional, investigative and intelligent support systems. Lahav 433 consists of highly talented police officers; it is considered an elite police unit and is budgeted accordingly. The work of Lahav 433 is complemented by a reinforced prosecutorial structure, as detailed below.

### **Prosecution\Attorney General\Ministry of Justice**

731. Corruption and bribery offenses are prosecuted by the State Attorney's Office. The State Attorney's Office (the Public Prosecution) is headed by the State Attorney who is subject to the Attorney General in his role as head of the general prosecution. Within the State Attorney's Office, the Criminal Department and the Economic Crimes Department (as well as the District Attorneys and their prosecutors) are responsible for the prosecution of corruption offenses. The Department of International Affairs in the Office of the State Attorney is responsible for handling requests for extradition and mutual legal assistance.

732. The Criminal Department and the Economic Crimes Department, who each have national and district offices, are both subdivisions of the State Attorney's Office. These departments are made up of a staff of dedicated, highly trained prosecutors with expertise in complex criminal and economic prosecution, usually with many years of experience in prosecuting and litigating complex economic crimes, including government corruption and money laundering. Either of these departments may be assigned to prosecute a case involving corruption offenses. The budget of both departments is part the Ministry of Justice's budget, which facilitates the conduct of intricate criminal litigation as expected in the prosecution of corruption offenses. This includes overseas travel if necessary.

733. In 2010, Israel established the office of the Deputy State Attorney (Economic Enforcement), whose office is responsible for establishing procedures and guidelines in this area and for supervising matters related to confiscation, forfeiture and economic enforcement.

734. In addition, the State Attorney's Office has specialized divisions responsible for corruption and asset recovery - these are the Economic Crimes Department and the Office for the District Attorney for Economic and Financial Crimes in Tel Aviv. Beyond these, other District Attorneys may also become involved in asset recovery cases. In 2011, Economic Enforcement Teams were established and are supervised by the Deputy State Attorney (Economic Enforcement).

735. Moreover, further to Israel's membership in the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions, a team, headed by the Deputy State Attorney (Special Affairs), was established to closely monitor and follow the status of treatment of the various relevant cases involving suspicions of foreign bribery.

736. As many corruption offenses are predicate offenses to money laundering, resources dedicated to the enforcement of anti-money laundering provisions would apply to corruption



cases connected to money laundering. Regarding money laundering, the resources available are as follows: the Israeli **Money Laundering and Terror Financing Prohibition Authority** (hereinafter - IMPA) is adequately structured and funded (partially by the asset confiscation fund), staffed, and provided with sufficient technical and other resources to fully perform its functions. IMPA has up to date sophisticated technical and other resources. Most of the persons employed by IMPA are graduates in relevant fields e.g., certified accountants, law, economics or information technology. The nature of work of IMPA requires multi-disciplinary approach and extensive training focused on the complex subject matter.

### **The State Comptroller**

737. The State Comptroller and Ombudsman's Office (hereinafter: "State Comptroller" or "State Comptroller's Office") is responsible for examining the activities of the executive authority. In the past, much of the focus of the state audits conducted by the State Comptroller concerned acts of corruption in local and central government. Within the State Comptroller's Office, the Division for Special Functions is responsible for following up on allegations of corruption against public officials. If the findings of the investigation indicate a likelihood of a criminal offense, the case is then referred to the Attorney General, for consideration of a possible indictment.

### **The Civil Service Commission**

738. Regarding offenses committed by civil servants, the IP and the Civil Service Commission work in cooperation with one another. When a criminal investigation is opened regarding a civil servant, the IP automatically sends a report including the details of the allegations upon which the investigation was launched to the Unit for Claims, Investigation and Discipline of the Civil Service Commission. This allows the Unit to monitor the ongoing criminal proceedings concerning civil servants. Furthermore, it enables the Unit to consider the suspension of civil servants. Such cooperation results in disciplinary rather than criminal proceedings.

739. When the offender is a civil servant, he can be prosecuted by the Civil Service Disciplinary Tribunal for a disciplinary offense. According to Israel's **Civil Service Law (Discipline), 1963**, the Tribunal has the authority to impose on the civil servant various disciplinary penalties, including a warning, reprimand, forfeiture of salary, demotion in rank, transfer of the civil servant to a different position, disqualification from fulfilling certain functions, dismissal with or without severance pay, dismissal together with disqualification from serving in the civil service. These dismissals may be temporary or permanent.

740. Israel provided the following examples of implementation

- Israel's National Unit for the Investigation of Fraud, which as mentioned above is part of Lahav 433, investigated the Holyland Case (Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*). The District Court case was prosecuted by the Office for the District Attorney for Economic and Financial Crimes in Tel Aviv. This case concerned the construction of luxury apartments overlooking one of the mountains in Jerusalem. The plan, however, would require significantly changing the area's landscape via the construction of tower blocks. According to the indictment, with respect to one of the corruption charges, contractors involved in the project gave significant bribes to a number of senior officials in the Jerusalem Municipality, in exchange for approving the project's planning,

determining the project's improvement tax, and in order to advance the project. The indictment concerning the Holyland construction project was filed, *inter alia*, against the then Mayor of Jerusalem and Minister of Industry, Trade and Labor (and who eventually served as Prime Minister), the Deputy Mayor of Jerusalem, the former Jerusalem Municipal Engineer, and others. See above for more information regarding this case.

- A number of additional important corruption cases investigated by the National Unit for the Investigation of Fraud along with the Jerusalem Office of the Prosecutor were the corruption related cases involving former Prime Minister Olmert (Cr.C. 429/09 (Jerusalem) *State of Israel v. Ehud Olmert*): the 'Talansky' case (also known as the 'money envelopes' affair, where Olmert was accused of unlawfully taking campaign contributions from the Jewish-American businessman Morris Talansky), the 'Rishon Tours' case (where Olmert was allegedly illegally double-billing charities and a government ministry for the same flights booked through Rishon Tours, sending them falsified receipts for travel expenses and using the surplus to finance family trips abroad), and the 'Investment Center' case (which involved allegations that Olmert, during his term as Minister of Industry, Trade and Labor, granted personal favors to Uri Messer, his former business partner and attorney). Olmert was acquitted by the District Court for the Talansky and Rishon Tours affairs and an appeal has been filed with the Supreme Court. However, Olmert was found guilty by the District Court of breach of trust concerning the Investment Center case.

#### **741. Measures adopted to ensure the independence of the specialized bodies**

##### **Israel Police**

742. The IP operates autonomously when conducting its investigations, subject only to the restrictions of law. It is guided by professional guidelines pertaining to investigation and prosecution policies, as outlined by the Attorney General.

##### **Prosecution\Attorney General\Ministry of Justice**

743. The Attorney General (AG) and the staff of the State Attorney's Office, all operate independently of elected officials. In prosecutorial matters, the AG is not bound by the decisions or policies of either the government or the Minister of Justice. According to Israeli law, the AG (and consequently all prosecutors under the authority of the AG) must perform his functions and exercise his authority in criminal matters independently, including in cases involving public figures, such as acting Ministers, the Prime Minister and the President. No government agency or office, in the executive or legislative branches, has the right or authority to question the AG's decision to bring a prosecution or to file an indictment in any criminal proceeding.
744. The AG is appointed for a renewable, six-year term by the government, based on the recommendation of a public professional committee, composed of former government officials, academics and lawyers, and headed by a former Supreme Court Justice. Before the committee takes its decision, the names of candidates are published for public scrutiny. In one case in 1996 this led to a challenge of the committee's recommended candidate. This appointment procedure is meant to ensure the independence of the AG when making prosecutorial decisions.

745. The AG's independence is intended to ensure that his decisions in the criminal field are made based solely on substantive considerations and not on political or other extraneous ones in the exercise of powers of a judicial nature. However, this does not mean that the Attorney General's acts and decisions in this area, or in any other area, are exempt from review. After the Attorney General decides in one case or another, his decisions in the criminal area are subject to judicial review, including by the High Court of Justice, and also to auditing by the Knesset.

### **The State Comptroller**

746. The State Comptroller, elected by the Knesset (Israel's parliament), is, by virtue of the **Basic Law: The State Comptroller, 1988**, wholly independent of the government and any other executive authority. In carrying out his functions, he answers only to the Knesset. It is the State Comptroller who decides on the subjects to be audited, unless he is requested to look into something by the Knesset or the Committee for State Reviewing, or asked by the Government to submit an "opinion." This means that the government can instruct the State Comptroller to investigate a matter, but cannot prevent him from conducting investigations of his own initiative. The budget of the State Comptroller's Office is determined by the Finance Committee of the Knesset based on the State Comptroller's proposal, and is approved separately from the State Budget. This includes funding for fighting corruption. Other than the Division for Special Functions, about 20% of the overall activity of the other divisions in the State Comptroller's Office is dedicated to fighting corruption.

### **747. Information on how staff is selected and trained**

#### **Prosecution\Attorney General\Ministry of Justice**

748. State attorneys are selected after a recruitment process led by the Civil Service Commission. Candidates go through a number of screening stages, including psychometric exams, professional tests and interviews. Only the highest ranking candidates are hired.

749. The prosecutors, like other lawyers and attorney-advisers in the Ministry of Justice, undergo regular professional training in matters relating to their functions, such as, *inter alia*, criminal litigation, white collar crimes and investigative techniques.

750. The prosecution sees great importance in the in-depth training of its prosecutors engaged in corruption-related work. In this framework, yearly workshops are held to expand the knowledge of prosecutors and to update them on the recent innovations in the field of economic enforcement, forfeiture and other related matters. In addition, training sessions on these subjects are held for prosecutors and police officers from Lahav 433. These sessions are tailored to the target audience and there are sessions for newer employees as well as more advanced sessions. The Deputy State Attorney (Economic Enforcement) is responsible for incorporating prosecutors in said workshops.

### **Israel Money Laundering and Terror Financing Prohibition Authority**

751. It is important to ensure that these professionals are constantly updated regarding legal developments abroad and patterns and methods of money laundering and terror financing. Due to the unique skills required to carry out their work, IMPA personnel has been provided, as of 2004, with a special promotion and advancement training plan by the Civil Service

Commission, aimed to prolong their employment at IMPA. IMPA has made it a high priority to train its employees and those of other related bodies, both in public and in the private sectors. The training aims to enhance awareness of the reporting requirements according to the PMLL and to ensure that IMPA's employees are in the forefront of knowledge in their field.

### **Customs Authorities**

752. All customs officials responsible for the enforcement of the **Prohibition on Money Laundering Law, 2000** undergo professional training. Courses are given periodically, covering relevant topics such as enforcement, legislation, investigation and typology in the field of money laundering.

753. Professional training and courses of the Israel Tax and Customs Authority include the following topics:

1. The relevant legislation for the enforcement of the obligation to report entering or exiting monies at the crossings, methods of reporting, violations of reporting - cases and responses, suspicious behavioral signs of couriers, seizing of unreported monies, investigations, monetary sanction committees and indictments.

2. Relevant legislation for the enforcement of predicate offenses handled by the Israel Tax Authority, money laundering investigations, confiscation of assets originating in an offense, cooperation with enforcement agencies and intelligence gathering.

3. Typology of money laundering and concealment of monies.

754. Instructors include experts from the Israel Tax Authority and officials from other enforcement and intelligence agencies.

755. Israel provided the following statistics for the Customs Authorities.

Customs - Number of training sessions in the field of money laundering for Israel Tax Authority and Israel Police officials

2008 - 12 training sessions

2009 - 11 training sessions

2010 - 15 training sessions

2011 - 17 training sessions

2012 - 9 training sessions

756. In addition, the Israel Tax Authority, with the assistance of TAIEX, international seminars on money laundering, VAT Fraud and Tax Evasion and Asset Forfeiture ("**TAIEX**" - Technical Assistance and Information Exchange instrument - Managed by the Directorate-General Enlargement of the European Commission. TAIEX supports partner countries with regard to the approximation, application and enforcement of EU legislation).

### **(b) Observations on the implementation of the article**

757. The State under review enumerates several bodies and authorities with specialised tasks

in the area of preventing and prosecuting corruption. Within the Israel police several Fraud Units operate, whereas Lahav 433 incorporates five specialized prosecution and investigative units focusing on corruption and international asset recovery:

- National Unit for the Investigation of Fraud - responsible for complex cases, especially those with international ramifications, as well as corruption offenses under the Convention,
- National Unit for the Investigation of Economic Crimes,
- International Unit,
- Forfeiture Task Force - a national task force that also deals with international cases,
- Special units funded by the Asset Recovery Fund - specializing in areas of money laundering, corruption and taxes.

758. Within the State Attorney's Office, the Criminal Department and the Economic Crimes Department (as well as the District Attorneys and their prosecutors) are responsible for the prosecution of corruption offenses. The Department of International Affairs in the Office of the State Attorney is responsible for handling requests for extradition and mutual legal assistance.

759. Within the State Comptroller's Office, the Division for Special Functions is responsible for following up on allegations of corruption against public officials. If the findings of the investigation indicate a likelihood of a criminal offense, the case is then referred to the Attorney General, for consideration of a possible indictment.

760. The Civil Service Commission is competent to impose disciplinary sanctions for corruption related offences.

761. The Attorney General is appointed by the government, based on the recommendation of a public professional committee, composed of former government officials, academics and lawyers, and headed by a former Supreme Court Justice. This appointment procedure is meant to ensure the independence of the AG when making prosecutorial decisions.

762. The State Comptroller, elected by the Knesset, is, by virtue of the relevant Basic Law of 1988, wholly independent of the government and any other executive authority.

763. In view of the above, Israel appears to have in place independent and effective mechanisms to combat corruption in accordance with article 36 of the Convention.

764. Israel is in compliance with this article.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraphs 1 and 2**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

765. Israel indicated that the Israel Police (IP), in all fields, including corruption related offenses, makes efforts to ensure it has access to all of the intelligence information necessary to carry out its investigative work. When the IP receives intelligence information which it believes to have added value, it makes a decision to gather additional information and evidence. In cases where the information presents an evidentiary basis for an offense, the IP will commence an investigation. In relevant cases, where a criminal investigation is opened and the evidence proves that there is a connection between the offense and the proceeds, steps are taken to seize and forfeit these proceeds in accordance with applicable law.
766. Israel indicated that the prosecution and defence can reach an agreement on specific factual details in the indictment which may form the basis for a guilty plea and for the corresponding sentence. A mutually agreed sentence either relates to a specific sentence, or an agreement to limit arguments in the sentencing phase of the trial to an agreed range of sentences. A plea bargain is subject to the court's approval, and is then affirmed as a judgment.
767. Plea bargains have been concluded in relation to offenses under the Convention in accordance with State Attorney Guideline No 8.1: Guideline for Reaching a Plea Agreement (December 2005). According to the Guideline, a plea agreement may be used in cases where it is in the "public interest" to do so. Among the factors that should be considered are possible evidentiary or other difficulties in proving the case in court, the severity of the crime and other factors that relate to the offense, the victim or the defendant. The Guideline states that public interest will be determined on a case by case basis and refers to the decision of Cr.A. 4722/92 *Markovitz v State of Israel*, in which it is stated that one of the relevant factors in this determination will be the "circumstances related to the defendant himself (such as his status at the time of committing the offense, his age, his past, health, personal and familial circumstances and so forth)." The Attorney General is not involved in all plea negotiations, which can also be concluded by the State Attorney's office.
768. The Court uses its discretion in determining the sentence, taking different considerations into account, each case according to its specific circumstances. These considerations relate both to the circumstances of the offense itself, as well as the offender's personal circumstances. Included in those considerations is the assistance that the defendant provided to the authorities. Today, following an Amendment to the **Penal Law, 1977** (2012) concerning judicial discretion in sentencing, once sentencing has been determined based on the circumstances of the offense, the court may take into account mitigating circumstances not related to the commission of the offense. The most pertinent circumstances to be considered, relating to this Article, are the defendant's efforts to repair the results of the offense and compensate for the damage caused, and his cooperation with law enforcement authorities, including assisting them during the investigation and trial phases.
769. Israel cited the following text.

**Penal Law, 1977** - see Section 40A-40O in the attached legislative compilation.

770. Israel provided the following example of implementation

In Cr.A. 5083/08 Benizri v. the State of Israel, Benizri (a former government minister) was convicted of offenses of accepting a bribe and breach of trust. In this case, the prosecution concluded a plea-bargain agreement with the person who bribed Benizri. The agreement signed between the prosecution and the individual included provisions which allowed for his testimony in the prosecution's case against Benizri.

771. No related statistical information was available.

**(b) Observations on the implementation of the article**

772. Israel cited the text of sections 40A-40O of the Penal Law, 1977, which allows the court to take into account mitigating circumstances not related to the commission of the offense during formulation of the sentence. Such a mitigating factor is the defendant's cooperation with law enforcement authorities. The court may also be called to approve a plea agreement among the prosecution and the defendant, based on the cooperation or testimony of the latter against a co-defendant.

773. Israel should be deemed to be in compliance with the provisions in question. The observations under article 30, para. 3 regarding civil settlements are also referred to.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

774. In Israel, it is possible to provide immunity from prosecution to an individual who has committed an offense, including corruption-related offenses, in exchange for cooperation in obtaining evidence against co-perpetrators.

775. The work of the law enforcement authorities, particularly that of the prosecution, is guided by Attorney General Guideline No. 4.2201. The Guideline clarifies the conditions under which a state witness agreement can be agreed upon. In addition, the Guideline clarifies, *inter alia*, the state witness' status in the case and the benefits that can be granted.

776. In suitable cases it is possible to grant partial immunity for offenses, by trying the state witness for lesser offenses. It is also possible, in relevant circumstances, to have an agreement that provides for a lesser sentence.

777. Israel cited the following text.

**Penal Law, 1977** - see Section 40A-40O in the attached legislative compilation.

778. Israel provided the following examples of implementation

- In the ongoing Holyland corruption case (S.C. Appeal Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*), charges were filed, inter alia, against the then Mayor of Jerusalem and Minister of Industry, Trade and Labor (and who eventually served as Prime Minister), the Deputy Mayor of Jerusalem, the former Jerusalem Municipal Engineer, and others. This case concerned the construction of luxury apartments overlooking one of the mountains in Jerusalem. The plan, however, would require significantly changing the area's landscape via the construction of tower blocks. According to the indictment, concerning one of the corruption charges, contractors involved in the project gave significant bribes to a number of senior officials in the Jerusalem Municipality, in exchange for approving the project's planning, determining the project's improvement tax and in order to advance the project. Throughout the trial the court protected the identity of an individual who became a state witness. The identity of the state witness, Shmuel Dechner, who passed away in May of 2013, was not released to the media during the trial and until after his death in order to protect his identity, as is customary when an individual involved in a criminal case becomes a state witness.
- In Cr.C. 61784-01-12 (Tel Aviv) *State of Israel v. Zvi Bar*, the former mayor of a Ramat-Gan (a large city) was indicted for offenses including taking a bribe, breach of trust, money laundering and obstruction of justice. The bribe, in the amount of 1,000,000 NIS (approx. 280,000 USD) was given to Bar by one of the defendants and an individual who became a state witness. The state witness is expected to testify against both defendants. The state witness was indicted in 2011 for bribery offenses, but due to his willingness to cooperate with the investigative authorities, the authorities signed an agreement with him and the charges were dropped.
- In Cr.C. (Tel Aviv) 18525-03-11 *State of Israel v. Vanunu*, a former senior tax assessor at Tax Authority, was indicted by the District Court of corruption offenses based, inter alia, on the testimony of a state witness. Vanunu gave breaks in his tax assessments in exchange for the bribes. The defendant was sentenced to six years imprisonment, an additional twelve months suspended sentence and a fine of 750,000 NIS (approx. USD) or an additional two years imprisonment. The appeal in the Supreme Court is ongoing.

**(b) Observations on the implementation of the article**

779. The State under review cited again the text of sections 40A – 40O of the Penal Law and Attorney General Guideline No. 4.2201 and indicated that under its laws, it is possible to provide immunity from prosecution to an individual who has committed an offense, including corruption-related offenses, in exchange for cooperation in obtaining evidence against co-perpetrators. According to this statement Israel is in compliance with the provision in question.

**Article 37 Cooperation with law enforcement authorities**

**Paragraphs 4 and 5**



4. Protection of such persons shall be, *mutatis mutandis*, as provided for in article 32 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

**(a) Summary of information relevant to reviewing the implementation of the article**

780. Israel indicated that the provisions of the **Witness Protection Law, 2008** apply *mutatis mutandis* to cooperating defendants. For additional information on this law, please see UNCAC article 32 above.

781. Israel referred to the examples of implementation under UNCAC article 32 above.

782. Israel indicated that since the establishment of the Witness Protection Authority in 2010, dozens of witnesses have been granted protection by the Authority. Any other information relating to administrative costs of protection is confidential.

783. As noted above under article 32, in the Holyland corruption case (Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*), the actions were uncovered by the state witness, who was a co-conspirator of those convicted of bribery and whose identity was protected by the court throughout the trial. The identity of the state witness was not released to the media during the trial and until after his death in order to protect his identity, as is customary when an individual involved in a criminal case becomes a state witness. The witness was also given a 'panic button,' video surveillance and detective escorts.

784. In another case mentioned during the country visit, the cooperation of a state witness led to an indictment in the Tax Authority. The witness was given physical and other protection and cooperated in the investigation due to the protection afforded to him and other defendants.

**(b) Observations on the implementation of the article**

785. Based on the information provided, Israel is in compliance with par. 4 of the present article.

786. With regard to par. 5, Israel does not appear to have considered entering into international agreements or arrangements concerning the potential provision of preferential treatment by the competent authorities of one State to a cooperating person located in another.

**Article 38 Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its*

*public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

**(a) Summary of information relevant to reviewing the implementation of the article**

787. Israel indicated that the anti-corruption bodies referred to under UNCAC article 36 above cooperate with each other on a daily basis, and their joint activities are a crucial component of the fight against corruption in Israel.

788. As part of the national plan to combat severe crime and organized crime, in January of 2006, the Israeli Government adopted Government Decision no. 4618 entitled "The Battle Against Severe Crime and Organized Crime and their Outcomes," aimed at intensifying the fight against criminal organizations engaged in serious crimes, and organized crime in general. The Decision includes a policy of combining the respective capabilities of all relevant agencies.

789. The Decision also provides for the integration of various bodies involved in the fight against crime, including corruption. The agencies involved include the prosecution, the Israel Police (IP), the Tax Authority, the Israel Securities Authority, the Israel Prison Service and the Israel Money Laundering and Terrorist Financing Prohibition Authority (IMPA).

790. In order to give effect to these policies, the Decision establishes an Executive Committee, tasked with elaborating the programme's objectives and developing a work plan. The Executive Committee is headed by the Attorney General and is composed of the State Attorney, the Chief of Police, the Head of the Tax Authority and the Chairman of the Israel Securities Authority.

791. An inter-agency Implementation Committee, chaired by the Head of the Criminal Investigations Division of the IP and also characterized by its cross-sectoral composition, is charged with overseeing the programme's practical implementation. The Implementation Committee has adopted a detailed multi-year work plan in which the establishment of multi-agency task forces (focusing on specific offenses and criminal organizations) plays a prominent role. The Implementation Committee holds bimonthly meetings during which it discusses the issues requiring cooperation, monitors and dictates the work of the task forces.

792. The above-mentioned Decision provides for the creation of an "Integrated Intelligence Center" (IIC). The IIC was established in March of 2007 and is made up of forces from the IP, the Tax Authority and the Money Laundering Prohibition Authority. The IIC provides analytical support to all field units. It supplies strategic intelligence (an intelligence overview, including suggested topics of interest for joint enforcement) and tactical intelligence (specific intelligence for investigative-operational use by task forces/joint investigative units). It also initiates new cases by cross-referencing new information with existing intelligence. As a result, the flow of information between entities has improved, enhancing the overall quality of enforcement.

793. In 2010, the Deputy State Attorney (Criminal Law) established an Anti-Corruption Forum. The Forum is made up of prosecutors from the Office of the State Attorney as well as from the different Districts and representatives from the police, based on the understanding that fighting corruption is a goal shared by the police and the prosecution. It is headed by a prosecutor from the State Attorney's Economic Department. The Forum creates a framework for dedicated dialogue between these bodies on corruption related issues. The main objectives of the Forum are to help create a mechanism to answer questions arising from corruption cases, to monitor corruption cases and improve their management, to develop an investigative model; to establish a database of information (indictments, verdicts, decisions and legal opinions), to map out the prosecution's work and to initiate and assist with legislative amendments on these matters.
794. Regarding offenses committed by civil servants, the IP and the Civil Service Commission work in cooperation with one another. When a criminal investigation is opened regarding a civil servant, the IP automatically sends a report including the details of the allegations upon which the investigation was launched to the Unit for Claims, Investigation and Discipline of the Civil Service Commission. This allows the Unit to monitor the ongoing criminal proceedings concerning civil servants. Furthermore, it enables the Unit to consider the suspension of civil servants. Such cooperation results in disciplinary rather than criminal proceedings.
795. Additionally, when the act committed can be classified as a borderline case of either a criminal or disciplinary one, a procedure has been established between the IP and the Unit for Claims in order to resolve the matter. A number of factors, including the severity and complexity of the offense and the civil servant's rank, are examined when deciding which authority will take the lead on the investigation.
796. At the conclusion of criminal proceedings, the Unit for Claims receives a copy of the final judgments of the court (Section 61 of the **Civil Service Law (Discipline), 1963**) in order to consider conducting a disciplinary hearing based on the acts which led to the prosecution.

### **Civil Service Law (Discipline), 1963**

#### **61. Criminal jurisdiction does not exclude disciplinary jurisdiction**

A public servant's liability pursuant to this Law on account of any disciplinary offence does not derogate from his criminal liability on account of the same act or omission and disciplinary measures may be taken against him pursuant to this Law even if he is punished or acquitted for the same act or omission in a court of law.

797. Israel provided the following additional information regarding reporting obligations by public officials.

#### **Reporting by public officials of acts of corruption to appropriate authorities**

In October 2009, the Director of Discipline of the Civil Service Commission issued a Circular setting out the requirements for the reporting of corruption offences by public officials. The Circular provides instructions to employees of the civil service who, in the course of carrying out their functions, have either been personally offered a bribe or have obtained information of a bribe offered or accepted by a peer employee which has not been reported. Additionally, the Circular includes instructions for civil servants who have obtained

information of a bribe offered by a peer civil servant to foreign public officials. Under the Circular, civil servants are obligated to promptly report any such information to their supervisors or to law enforcement authorities.

According to the circular, a civil servant is a public trustee and as such has special responsibility to carry out his or her duties with fairness, honesty, and integrity. The duty of civil servants to report information regarding suspicions of corruption is an integral part of a civil servant's duty of loyalty. This notion is further expressed in **Article 4.02 of the Code of Ethics** and **Article 17 of the Civil Service Law (Discipline), 1963**. Accordingly, the Discipline Department of the Civil Service Commission will consider taking disciplinary measures, including disciplinary hearings, against a civil servant failing to report as required any such substantial information concerning the payment of a bribe to either the relevant superior within the civil service or the law enforcement authorities. Civil servants in such actions would be charged of engaging in conduct unbecoming a civil servant or dishonest conduct.

The Circular also addresses the issue of protecting persons who expose acts of corruption. Under the Circular, any civil servant reporting suspicions of bribery is afforded protection as set forth in the **Civil Service Regulations**, in addition to the protections granted under the **Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law, 1997**. Finally, the circular refers to the Ministry of Justice's anti-corruption website.

798. Israel provided the following examples of implementation

1. A memorandum of understanding was signed in July 2012 between the supervisor of banks, the head of Israel's Securities Authority (ISA), the commissioner of Capital Markets, Insurance and Savings Division at the Ministry of Finance, the registrar of Money Services Businesses (MSBs or "currency service providers"), the supervisor of the postal bank, the tax authority and the head of IMPA (Israeli Money Laundering and Terror Financing Prohibition Authority). The MOU creates a framework for collaboration between the various bodies responsible for the regulatory regime in Israel concerning the prohibition money laundering and financing of terrorism.

2. A memorandum of understanding was signed on June 24, 2007, in order to create a framework for cooperation and information exchange between the supervisors of the financial markets in Israel - the Supervisor of Banks, the Securities Authority and the Commissioner of the Capital Market, Insurance and Savings. The purpose of the MOU is to promote effective, fair, uniform and coordinated supervision in order to enhance the stability, transparency and fairness of the financial markets in Israel, and to promote the development and competitiveness of these markets, all this with the aim boosting the confidence of the investors in those markets. The supervisors act within the framework of the MOUs in order to promote the application accepted international supervisory standards and best practices to the financial markets in Israel.

**(b) Observations on the implementation of the article**

799. The State under review appears to promote and cultivate a strong culture of cooperation among its law enforcement and anti-corruption bodies, including initiatives such as a national plan to combat severe and organized crime, the creation of an "Integrated

Intelligence Center", the establishment of an Anti-Corruption Forum and the signing of MOUs between various regulatory bodies. In the area of foreign bribery, in particular, it was explained that meetings are held on a monthly basis between the Ministry of Justice (International Law Department), Israeli Police and State Attorney's office to discuss foreign bribery cases and related mutual legal assistance requests.

800. Additionally, as noted above, six task forces were established for pursuing and investigating financial crimes. The task forces include representatives from the Israel Police (IP), Tax Authority, the prosecution and IMPA. Since corruption is perceived to be an AML risk, a task force has been established to combat this phenomenon. The task forces have medium- to long-term (2-3 year) missions and established criteria to measure success.
801. The Intelligence Fusion Centre – comprised of members of the IP, the Tax Authority and IMPA – cross-references information for the purpose of exposing multi-domain criminality and enabling inter-agency enforcement initiatives. Through the Fusion Centre, the databases of individual agencies are accessible, such as the IMPA (Israel Money Laundering and Terror Financing Prohibition Authority), Israel Tax Authority, Israel Police and civil registry (covering company and land matters).
802. Awareness raising of corruption reporting is conducted by the Ministry of Justice, which has published a brochure and information referring to this Convention on its website, and also by the Ombudsman and the Civil Service Commission. Moreover, investigating authorities have no apparent obstacles to obtaining information from public authorities and have used joint investigations to share information among agencies.
803. Finally, the duty of civil servants to report information regarding suspicions of corruption is considered an integral part of a civil servant's duty of loyalty. A civil servant failing this duty may face disciplinary measures, for engaging in conduct unbecoming a civil servant or dishonest conduct.

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

804. Israel indicated that Israeli authorities pursue a multifaceted approach to cooperation with the private sector, including, *inter alia*, through awareness-raising steps. This approach includes not only activities initiated by government agencies but also, and to a wide extent, encouragement of business and industry associations to take independent initiatives in this regard. In the framework of Israel's obligations under the Convention and other international obligations, the Ministry of Justice (MOJ) and a number of other governmental offices and ministries are continuously engaged with awareness-raising relating to offenses established in accordance with this Convention.

805. These cooperation efforts include presentations by MOJ officials at many conferences and forums attended by the private sector. As elaborated below, these conferences included industry forums, seminars organized by law firms, academic forums as well as conferences involving accountants, auditors and representatives from financial institutions. A very positive development, stemming from the MOJ's work, is that the initiative to include discussions and presentations in conferences, forums and seminars on anti-corruption issues stems from the private sector, rather than from the government.
806. Publications - Complementing these and other efforts, the MOJ has collaborated with its counterparts in government and the private sector to promote publications regarding bribery offenses. One example is a chapter dedicated to the offence of bribery of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in Israel in a publication sponsored by Israel's Ministry of Finance and the OECD (published in September 2010). A second example is a joint effort by the MOJ and an accountant in a large private hi-tech firm in Israel which led to the publication of an article in "The Accountant," the main professional journal of the Institute of Certified Public Accountants in Israel (ICPAS). The article was published in October 2010. In January 2010, an article dedicated to the global fight against corruption was published in another ICPAS publication.
807. Presentations - In the past few years, the MOJ has led the effort in making presentations on anti-corruption issues, including by having MOJ officials on national public radio, giving presentations in the Annual Internal Auditors Convention, and participating in an internal auditors' forum organized by one of Israel's most prominent accounting firms. These presentations were part of a concerted effort by the MOJ to focus on awareness raising activities for accountants and internal auditors. In addition, Israel Auditor's Council (IAC- a statutory body, subordinate to the Ministry of Justice, which grants accounting licenses and supervises the accounting profession in Israel) has posted information on corruption offenses on its website.
808. Ministry of Defense - The Ministry of Defense (MOD) also continuously takes measures to raise awareness in the defense export sector regarding bribery and anti-corruption compliance. This includes, inter alia, the following:
- Routinely presenting at conferences and seminars of the Defence Export Controls Directorate (DECD).
  - A seminar focusing on anti-bribery corporate compliance programs held by the MOD in November 2010. The keynote speaker was the Director General of the MOD. Additional presentations were given by the MOJ, MOD, a representative of an Israeli defense industry and a group of lawyers from a leading global law-firm who shared their extensive experience in the field of anti-corruption compliance. The seminar was attended by over 200 representatives of leading defense exporters and Israeli law firms. One of the main objectives of the seminar was to provide defense exporters with practical tools in order to formulate and implement appropriate anti-corruption compliance programs.
  - The MOD's Legal Adviser participated in a conference organized by a prominent Israeli law firm dedicated to compliance with regards to anti- bribery in October 2010. The

Legal Adviser made a presentation on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the offense of bribery of foreign public officials.

809. The MOD continues to inform defense exporters of major anti-corruption conferences and seminars in Israel and abroad, and to encourage their participation in such conferences. The MOD has also been informed that defense exporters have taken part in such activities, as well as conducted internal training on the matter.
810. Manufacturers Association in Israel (MAI) - Further to the Israeli authorities' intensive work in promoting cooperation with the private sector relating to matters involving the commission of offenses established in accordance with the Convention, the MAI, Israel's largest business organization, whose members include most of the Israeli private sector, has also taken measures to increase awareness of corruption offenses in the private sector. The highlight of these efforts was the establishment, in July 2010, of the Anti-Bribery Business Forum. In 2011, the scope of activities undertaken by this Forum was broadened to include corporate social responsibility. The purpose of establishing the Forum was to facilitate awareness of international regulations on the prevention of foreign bribery in the business sector. The forum serves as a knowledge center for the business sector in issues relating to the Israeli legislation and international legal documents in this field. The Forum aims, inter alia, to help companies in Israel apply the anti-bribery statutory regime. The forum also serves as a connecting point between the business sector and the government, while coordinating with NGOs. Forum participants include directors, legal advisors and compliance officers of leading Israeli companies, from a variety of industry sectors, including, pharmaceuticals, defense, foods and chemicals. Forum meetings are also regularly attended by MAI officials, government officials and NGOs, and are chaired by the legal counsel of one of Israel's prominent corporations.
811. Since its establishment, the Anti-Bribery Business Forum convened twice a year, and participants were given lectures on related matters. Amongst its activities, the Forum hosted the Dean of the International Academy against Corruption (IACA), for an intensive discussion about developing tools to combat corruption, with a particular emphasis on corporate compliance. In addition, the Forum hosted a presentation from the former head of the International Department in the Office of the State Attorney on the topic of international cooperation in combating crime
812. The MAI Foreign Trade Division also hosted two conferences in the course of 2010 and 2011 on the issues of the offense of bribery of foreign public officials and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In December 2011, the Division held a conference under the title "Bribery, Terror & Frauds - Risk Management in the International Sphere". Nearly 100 participants from all sectors and industries attended the event (CEO's, Export Managers, Compliance Officers, Legal Advisors, Etc.) in order to learn about the existing and new risks they may encounter in the rapidly changing global business environment. Special emphasis was placed on the enforcement of the foreign bribery offense and the importance of due-diligence in fighting corruption. This conference was part of the MAI's ongoing campaign to involve the private sector in deploying strategies of compliance mechanisms to prevent corruption and foreign bribery.
813. Complementing the activities of the Anti-Bribery Forum, the MAI's website provides

direct links to the MOJ anti-corruption website, and the MAI regularly distributes the MOJ updated Anti-Bribery Brochure to industrialists and businessmen attending various MAI's seminars. The updated version of the MOJ Anti-Bribery Brochure was also distributed, in its electronic version, to approximately 2000 members of MAI and is available on MAI's website.

814. Maala - Similarly, the MOJ is involved with the work undertaken in the context of the Maala CSR Index. Maala is a not-for-profit organization that works with businesses to develop and implement Corporate Social Responsibility (CSR) strategies. Since 2003, Maala has produced the Maala Ranking, which rates Israel's largest companies on their commitment to CSR, and in 2005 Maala launched the Maala Index - a ranking of dozens of companies according to their commitment to CSR principles, in which companies are ranked based on their performance in six major areas: environment, business ethics, human rights and work environment, community involvement, corporate governance and social and environmental reporting. Participation in Maala and in its Index ranking occurs on a voluntary basis. Currently their membership includes some 130 of Israel's largest companies, representing almost a quarter of the country's workforce and around half of Israel's economic product.
815. In order to develop the Maala Index, Maala sends out an annual questionnaire that companies can answer. The Index, including the ratings of the various companies, is published annually. Since 2012, the issues of corruption and bribery have been incorporated into the Index, in the questionnaire's chapter on ethics which was updated to include questions on these issues. The process of formulation of the new criteria regarding corruption and bribery took into account suggestions, input and meetings with multiple stakeholders from the business, social and public sectors.
816. Maala's annual conference, which draws hundreds of participants representing the various sectors of Israeli society, is considered an important forum for discussion of corporate social responsibility and the impact of business on society in Israel.

#### Other Key Private Sector Partners

817. The updated version of the Anti-Bribery Brochure appears on the website of Ashra, Israel's Export Insurance Corporation Ltd., responsible for providing officially supported export credit. Ashra also maintains on its website a page dedicated to anti-bribery and corruption, which provides links to the MOJ anti-corruption website.
818. It is also noteworthy that other business and trade organizations have taken awareness-raising steps amongst their members. One such example is a special board meeting held in February 2011 by the Africa-Israel Chamber of Commerce, which included a presentation by an MOJ official regarding the offense of bribery of foreign public officials and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
819. These efforts by business organizations were accompanied by similar events held by the legal community. One such example is a half day seminar held by one of Israel's largest law firms, attended by representatives of leading Israeli corporations engaged in international activity, including those from the defense export sector. A second example is a forum held by the Israel Bar Association on May 2011, during which MOJ officials made presentations on the Convention on Combating Bribery of Foreign Public Officials in International



Business Transactions and its implementation in Israel with a particular focus on the offense of bribery of foreign public officials and on economic enforcement in general.

820. Israeli authorities will continue their work and efforts to engage with the private sector and raise awareness regarding the Convention's offenses.

821. Regarding examples of recent cases in which entities of the private sector have collaborated with national investigating or prosecuting authorities, Israel indicated that cooperation between entities of the private sector and Israel's national investigating and prosecuting authority is important and therefore noted here. The Department for Financial Enforcement at the Office of the State Attorney is currently working on a project meant to enable the easy transfer of financial information between the Israel Police and financial institutions (particularly banks). This project is meant to computerize both the court orders issued by the courts and the information received from the financial institutions, and will allow such information and documents to be easily transferred.

822. Israel provided the following data on referrals of suspicious transaction reports (STRs) from the Israel Money Laundering Prohibition Authority to law enforcement agencies for further investigation.

2011 – 37,000 STR referrals.

2012 – 45,000 STR referrals.

2013 – 50,000 STR referrals.

**(b) Observations on the implementation of the article**

823. Israel should be deemed to be in compliance with this provision. There are numerous cooperation initiatives and awareness-raising efforts involving the private sector.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 2**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

824. In order to encourage the public to use a reporting mechanism to report offenses, the Israeli authorities have ensured that the public can report crimes to the Israel Police (IP) through a number of channels. Reporting can be done through the general IP emergency phone number for reporting suspicions of crimes, by filing complaints in person at the various police stations around the country, by sending a written complaint to the Investigative and Intelligence Department, through the IP's website. The information received is then referred to the relevant investigative unit.

825. The Ministry of Justice (MOJ) has published brochures containing information on the offense of bribery of foreign public officials. These brochures, distributed to relevant

ministries and government authorities, as well as to business organizations and the business sector, contain important information concerning this offense and the different means through which the public can report offenses to the IP (as noted above). The brochures have been translated into English and Arabic for distribution to the relevant target audiences and have also been posted on the MOJ's website on bribery and corruption ([www.corruption.justice.gov.il](http://www.corruption.justice.gov.il)) and on the websites of several other relevant ministries. Awareness raising of corruption reporting is also conducted by the Ombudsman and the Civil Service Commission.

826. Although Israel does not have a hotline in place through which corruption offenses may be reported, as detailed above, suspicions of offenses established under this Convention can be reported in a number of manners. Whether by submitting a complaint to the Israel Police - through one of the Police stations located throughout Israel, calling 100 (the Israel Police) or through the Israel Police's website <<http://www.police.gov.il>>.
827. Israel does not offer financial incentives to encourage such reports. However, the President may issue a citation of merit to whistleblowers in deserving cases.
828. The State Comptroller and Ombudsman accepts anonymous complaints and also conducts awareness raising in the form of leaflets published in 6 languages in different communities on how to report and file complaints. The office works together with civil society organizations on corruption reporting and also uses social media networks to raise awareness of reporting mechanisms.

**(b) Observations on the implementation of the article**

829. The country under review is encouraged to continue strengthening measures with a view to increasing reporting of corruption offences by private persons, such as raising social awareness of existing possibilities, providing to the extent possible for confidentiality and ensuring that anonymous reports are followed up by appropriate authorities.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

830. Israel's case law has established a bank-client privilege that protects the confidentiality of bank documents. However, the privilege is relative and can be removed. Israeli law allows investigative authorities to overcome confidentiality considerations and to obtain the requisite information from banks through a court order as provided in Section 43 of Israel's **Criminal Procedure Ordinance (Arrest and Search) [New Version], 1969** (hereinafter: "Criminal Procedure Ordinance"). Obtaining confidential bank records is a common investigative tool. To receive such a court order the request must contain information which connects the account information to the alleged crime. In such cases generally, there must be a factual basis for (a) the suspicion that a crime has occurred and, (b) that the disclosure of

the confidential bank records is necessary or is likely to facilitate the investigation of that crime. Through these court orders, it is possible to obtain bank statements and original documents relating to the account (checks, deposit slips and any other document). In addition, the court may order the bank to refrain from informing the account owner of the criminal investigation or regarding the fact that the bank has provided the investigating authorities with information. In addition, Section 32 of the **Criminal Procedure Ordinance** allows the investigative authorities to request a court order to freeze the bank account.

831. In practice, the court may issue orders allowing access to bank records, including their transfer for the investigation of criminal offences, and regularly does so in corruption cases.
832. Israel's Department for Financial Enforcement within the Office of the State Attorney is currently working on a project meant to ease the transfer of financial information between the Israel Police and financial institutions (mainly banks). This project is meant to computerize both the court orders and the information received from the financial institutions, and to allow the information to be easily transferred.
833. Israel cited the following texts.

#### **Criminal Procedure Ordinance (Arrest and Search) [New Version], 1969**

##### **32. Power to seize objects**

- (a) A policeman may seize an object, if he has reasonable grounds to assume that an offense was or is about to be committed with it or that it is likely to serve as evidence in a judicial proceeding for an offense, or if it was given as remuneration for the commission of an offense or as a means for its commission.
- (b) Notwithstanding the provisions of this Chapter, a computer or anything that constitutes computer material shall only be seized by order of a Court, if it is used by an institution, as defined in section 35 of the Evidence Ordinance (New Version) 1971; if the order was made not in the presence of the person who is in possession of the computer or of the thing that constitutes computer material, then it shall be made for a period of not more than 48 hours; for this purpose, Sabbath and festivals shall not be taken into account; the Court may extend the order after the possessor was given an opportunity to state his arguments.
- (c) The Minister of Justice may make regulations for purposes of this section.

##### **43. Summons to present object**

If a judge concludes that the presentation of any object is necessary or desirable for purposes of an investigation or trial, then it may summon any person who is assumed to have the object in his possession or under his control to appear and to present the object, or to deliver it at the time and place stated in the summons.

834. Israel provided the following example of implementation
- Cr.A. 1761/04 Gilad Sharon v. State of Israel is the main case regarding the interpretation of Section 43 of the Penal Law in relation to the Convention's offences. During investigations of the Israel Police's Fraud Investigative Unit, the son of the former Prime Minister of Israel Ariel Sharon refused to hand over documents requested by the investigators. The case surrounded the alleged taking of bribes by Ariel Sharon, with his sons serving as mediators of the said alleged bribes. The court determined that "Section 43 establishes two cumulative conditions that the prosecution must prove so that the

court may use its discretion and issue the requested order. First, the item is necessary or warranted for the investigation or trial. Second, it is assumed that the object is in the possession of, or available to, the person designated to receive the court order once issued. These two conditions are necessary, but their existence does not automatically lead to the issuance of the order pursuant to Section 43, which remains subject to the court's discretion. The court "may" issue the order, but does not have to do so. These kinds of orders should not become a matter of routine." The Court went on to detail when it will make use of its discretion and not authorize the order: "When the police has other ways of obtaining these documents, there is no justification in making the individual provide them, whether the individual is the suspect or not." Although this case does not directly refer to bank documents, it is generally understood as applying to such documents.

**(b) Observations on the implementation of the article**

835. The country under review reported that obtaining confidential bank records is a common investigative tool. During the country visit, several cases were discussed in which bank and financial records were obtained by investigating authorities. There are no apparent obstacles to obtaining court orders, which are routinely issued.

**(c) Successes and good practices**

836. The Israeli Police, together with the tax and securities authorities, have developed a unique computerized process for the fast, efficient, and safe workflow between the IP and the financial market (at this stage, banks). The project's goals are to provide Israeli authorities with tools for receiving information from banks (mainly bank transfers and checks or credit card activity) in a specialized universal data format, in order to analyze all the data that has been collected in a faster, commutable and more efficient way. The project was devised to overcome difficulties faced by investigating teams in analyzing the documents sent to them by the banks. Instead of documents, the information will be available in digital files all in the same format. The files would be uploaded to a system, which will allow every investigation team to open investigation folders and analyze case data using a special investigation system for financial transfers.

837. The mechanism that has been developed by the IP does not require any new legislation or regulations concerning the banking system or bank secrecy. The legal framework consists only of agreements between the authorities and the banks, as a national project, in order to make the process and the investigation clearer, simpler, cheaper, more secure and efficient for both sides. The court order, obtained by the investigation teams, can be digitally signed and sent electronically through a secure line to the relevant banks. In response, the banks can transmit the information in their systems via a secure line to the IP case management in a special format, and the data will be delivered from there to the officer investigating the relevant case. The project is in a pilot status, and the IP believes that by the end of 2015 it could be used by all of its relevant units.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

838. Section 187(a) of the Criminal **Procedure Law [Consolidated Version], 1982**, allows a prosecutor to submit to the court the convicted person's criminal record, found in Israel's Crime Register, and all other forms of evidence regarding past offenses.

839. Israel's Crime Register does not include previous convictions from other States; however, there is no legal impediment from introducing such convictions in court proceedings. In practice, when introducing criminal records from other States, the court will take into account the same considerations it would have considered had it been presented with a domestic record.

840. The foregoing applies to offenses established in accordance with the Convention.

841. Israel cited the following text.

**Criminal Procedure Law [Consolidated Version], 1982**

**187. Evidence for the determination of sentence**

(a) If the court convicts the defendant, the prosecution will, for the purposes of determining the sentence, bring evidence of the defendant's previous convictions and the courts' decisions pertaining to his committing of offenses, even if not convicted of such; the prosecution will also be entitled to submit further evidence pertaining to that matter.

842. No examples of implementation were available.

**(b) Observations on the implementation of the article**

843. Article 41 is an optional provision. It was explained during the country visit that the police receive foreign criminal records and use them for intelligence purposes. For such records to be used as evidence, mutual legal assistance or INTERPOL channels are used. Relevant provisions are also found in Israel's treaties and treaties of the Council of Europe .

**Article 42 Jurisdiction**

**Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

844. Israel's **Penal Law, 1977** (hereinafter: "Penal Law" or "Law") establishes in Chapter 3 a

number bases of jurisdiction over criminal offenses.

845. The primary basis is territorial. According to Israeli law, a "domestic criminal offense" will include an offense committed wholly or partially within Israeli territory (Section 7(a)(1) of the Penal Law). Furthermore, the Law provides that an act of preparation to commit a crime, an attempt to commit a crime, an attempt to influence or incite a crime, or conspiracy to commit a crime, even when committed outside of Israeli territory, will nevertheless constitute a domestic criminal offense where the intended crime was to have been committed in whole or in part in Israel (Section 7(a)(2)). The question of whether a certain act (i.e. a telephone conversation, an email or a fax transmission originating in Israel) constitutes "part of an offense" in this regard, does not necessarily depend on the nature of the act itself, but rather by the act's relationship to and significance within the specific context of the offense at issue.
846. "Part of an offense" includes circumstances where at least part of the actual commission of a crime was committed within Israeli territory, or where an act of assisting, inducing or conspiring to perform the offense occurred in Israel, even though the offense itself was committed outside of Israel (Cr.A.84/88 *State of Israel v. Abergil*).
847. Thus, the definition of domestic criminal offenses allows for a significant range of domestic jurisdiction with respect to acts committed outside of Israel. This can be of major significance in establishing jurisdiction in corruption cases. In the modern world, it is often the case that serious offenses, including corruption offenses, involve actions committed in a number of states. Even if one of these many acts was committed in Israel, there may be domestic jurisdiction over the offense.
848. Israel cited the following text.

#### **Penal Law, 1977**

##### **7. Offenses by location**

(a) "**Domestic offense**" means -

- (1) an offense, all or part of which was committed within Israel territory;
- (2) an act in preparation for the commission of an offense, an attempt, an attempt to induce another to commit an offense, or a conspiracy to commit an offense committed abroad, on condition that all or part of the offense was intended to be committed within Israel territory;

(b) "**foreign offense**" - an offense that is not a domestic offense;

(c) "**Israel territory**", for the purposes of this section - the area of Israel sovereignty, including the strip of its coastal waters, as well as every vessel and every aircraft registered in Israel.

##### **(b) Observations on the implementation of the article**

849. The State under review is in compliance with this provision. Jurisdiction also applies to acts of preparation to commit crimes, attempts to commit crimes, attempts to influence or incite crimes, or conspiracy to commit crimes, even when committed outside of Israeli territory, where the intended crime was to have been committed in whole or in part in Israel. Israel can also apply extraterritorial criminal jurisdiction under certain circumstances.

## Article 42 Jurisdiction

### Subparagraph 1 (b)

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

#### (a) Summary of information relevant to reviewing the implementation of the article

850. Section 7(c) of the **Penal Law, 1977** provides that for the purpose of territorial jurisdiction Israeli territory includes vessels and aircrafts that are registered in Israel.

#### **Penal Law, 1977**

##### **7. Offenses by location**

(c) "**Israel territory**", for the purposes of this section - the area of Israel sovereignty, including the strip of its coastal waters, as well as every vessel and every aircraft registered in Israel.

#### (b) Observations on the implementation of the article

851. The State under review is in compliance with this provision.

## Article 42 Jurisdiction

### Subparagraph 2 (a)

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

#### (a) Summary of information relevant to reviewing the implementation of the article

852. Section 14 of the **Penal Law, 1977** provides additional grounds for applying jurisdiction over extra-territorial offenses (passive personality jurisdiction) when the offense is against the lives, freedom or wellbeing of Israeli citizens or residents. There exists jurisdiction over these offenses if they are punishable by more than one year imprisonment and they were also constituted offenses in the state in which they were committed.

853. For additional information regarding the other bases for exerting jurisdiction over extra-territorial committed against Israelis offenses see UNCAC article 42(6) below.

854. Israel cited the following text.

#### **Penal Law, 1977**

#### **14. Offenses against Israel citizen or Israel resident**

(a) The penal laws of Israel shall apply to foreign offenses against the life, body, health or freedom of an Israel citizen or of an Israel resident, for which the maximum penalty is one year imprisonment or more.

(b) If an offense was committed on a territory that is subject to the jurisdiction of another state, then Israel penal laws shall apply to it only if all the following conditions are met:

(1) it is an offense also under the Laws of that state;

(2) no restriction on criminal liability applies to the offense under the Laws of that state;

(3) the person was not already found innocent of it in that state, or - if he was found guilty - he did not serve the penalty imposed on him for it.

(c) No penalty shall be imposed for the offense that is more severe than that, which could have been imposed under the Laws of the state in which the offense was committed.

#### **(b) Observations on the implementation of the article**

855. Section 14 Penal Law does not cover offences established according to the Convention. However, given the optional character of par. 2(a) of article 42, the State under review should be deemed to be in compliance with this provision.

#### **Article 42 Jurisdiction**

##### **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*...*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

856. Section 15 of the **Penal Law, 1977** provides jurisdiction for crimes committed abroad by a person who - when the offense was committed or thereafter - was an Israeli citizen or Israel resident, where the crimes are punishable in Israel by more than three months imprisonment.

857. Such jurisdiction under Section 15 is available only if these offenses are also crimes in the state in which they were committed, no restriction on criminal liability applies to the offense under the laws of that state, and no double jeopardy is involved. The basis of jurisdiction in Section 15 are particularly important for crimes relating to bribery or corruption, as it assures that Israel will be able to take legal action against Israelis who commit such crimes even if they are committed entirely outside of Israel and with no direct connection to Israel. Therefore an offense consisting of bribery of foreign public officials can be prosecuted even if the act of bribery would not be unlawful in the country in which it was committed.

858. Section 15(b) of the Penal Law includes a list of offenses in which the dual criminality requirement does not apply. This list includes the offense bribery of a foreign public official



or an official of a public international organization (Sub-section (2A)).

859. Israel cited the following text.

### **Penal Law, 1977**

#### **15. Offense committed by Israel citizen or Israel resident**

(a) The penal laws of Israel shall apply to a foreign offense of the categories of felony or misdemeanor, which was committed by a person who - when the offense was committed or thereafter - was an Israel citizen or an Israel resident; if a person was extradited from Israel to another country because of that offense, and if he was tried for it there, then Israel penal laws shall no longer apply.

(b) The restrictions said in section 14(b) and (c) shall also apply to the applicability of Israel penal laws under this section; however, the restriction said in section 14(b)(1) shall not apply if the offense is one of these, committed by a person who - when he committed it - was an Israel citizen:

(1) polygamy under section 176;

(2) an offense under Article Ten of Chapter Eight, committed by a minor or in connection to a minor;

(2A) bribery of a foreign public official under section 291A;

(3) conveying beyond the borders of the State under section 370;

(4) causing departure from the State for prostitution or enslavement under section 376B; (5) trafficking in human beings under section 377A.

#### **(b) Observations on the implementation of the article**

860. Israel is in compliance with the provision in question.

### **Article 42 Jurisdiction**

#### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

861. The **Penal Law, 1977** provides that an act of preparation to commit a crime, an attempt to commit a crime, an attempt to influence or incite a crime, or a conspiracy to commit a crime, even when committed outside of Israeli territory, will nevertheless constitute a domestic criminal offense where the intended crime was to have been committed in whole or in part in Israel (Section 7(a)(2)).

862. Additionally, under Section 2 of the **Prohibition on Money Laundering Law, 2000**

(PMLL) the laundering of the proceeds of a criminal offenses will constitute a crime in Israel even if the predicate offenses itself was committed abroad (as long as the laundering of the proceeds occurs completely or in part) in Israel.

863. Israel cited the following texts.

#### **Penal Law, 1977**

##### **7. Offenses by location**

(a) "**Domestic offense**" means -

(2) an act in preparation for the commission of an offense, an attempt, an attempt to induce another to commit an offense, or a conspiracy to commit an offense committed abroad, on condition that all or part of the offense was intended to be committed within Israel territory;

#### **Prohibition on Money Laundering Law, 2000**

##### **2. Predicate offense**

(a) In this chapter, "**offense**" shall mean one of the offenses listed in Schedule 1.

(b) For the purposes of this chapter, an offense as stated in subsection (a) shall be regarded as an offense notwithstanding that it was committed in a foreign country, provided that it also constitutes an offense under the laws of that country.

(c) The condition stipulated at the end of subsection(b) shall not apply with respect to those offenses listed in paragraph (18) of Schedule 1, or to those listed in paragraphs (19) and (20) of that Schedule which involve the commission of an offense listed in paragraph (18).

##### **(b) Observations on the implementation of the article**

864. Israel is in compliance with the provision in question.

#### **Article 42 Jurisdiction**

##### **Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when: ...*

*(d) The offence is committed against the State Party.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

865. Israel's Penal Law establishes a number of additional grounds for exerting jurisdiction over extra-territorial offenses. These include crimes directed against Israel's State organs and interests (Section 13). These grounds for applying jurisdiction relates to crimes specifically directed against the State of Israel, its organs and interests. In particular, related to corruption offenses, Sub-sections 3, 4 and 5 are the most relevant offenses. In additionally if a crime is directed intentionally against a Jew or a Jewish institution because of the victim is a Jew or a Jewish institution will also provide a basis for jurisdiction.

866. Israel cited the following text.

## Penal Law, 1977

### 13. Offenses against the State or against the Jewish people

(a) Israel penal laws shall apply to foreign offenses against -  
(1) national security, the State's foreign relations or its secrets;  
(2) the form of government in the State;  
(3) the orderly functioning of State authorities;  
(4) State property, its economy and its transportation and communication links with other countries;  
(5) the property, rights or orderly functioning of an organization or body enumerated in subsection (c).

(b) Israel penal laws shall also apply to foreign offenses against -

(1) the life, body, health, freedom or property of an Israel citizen, an Israel resident or a public official, in his capacity as such;  
(2) the life, body, health, freedom or property of a Jew, as a Jew, or the property of a Jewish institution, because it is such

....

(c) "**Organization or body**", for the purposes of subsection (a)(5) -

(1) World Zionist Organization;  
(2) Jewish Agency for Israel;  
(3) Jewish National Fund;  
(4) Keren Hayessod - United Jewish Appeal;  
(5) an audited body, within its meaning in the State Comptroller Law, 1958.

The Minister of Justice may, with approval by the Knesset Constitution, Law and Justice Committee, prescribe in Regulations additional organizations or bodies for purposes of this section.

### (b) Observations on the implementation of the article

867. Israel is in compliance with this provision.

## Article 42 Jurisdiction

### Paragraph 3

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

### (a) Summary of information relevant to reviewing the implementation of the article

868. Israeli law allows for the extradition of its nationals so long as none of the restrictions to extradition contained in its Extradition Law apply. Israel can extradite its nationals to another state to stand trial with respect to all extradition offenses. However, if the requested person was both an Israeli citizen and resident at the time they allegedly committed the crime, he will be extradited only on condition that the State requesting has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the

event he is convicted and a prison sentence is imposed (Section 1A of the **Extradition Law, 1954**, hereinafter: "Extradition Law"). Israel views that the option of extradition subject to such condition fulfills the obligation to extradite. If the wanted person had been both an Israeli citizen and resident at the time of the offense and had already been convicted and sentenced in the requesting State, he would under the Extradition Law have the option of serving that sentence in Israel in lieu of extradition.

869. See UNCAC article 44(1) below under the heading Extradition of Nationals.

870. In any case, as discussed under UNCAC article 44(2)(b) above, Section 15 provides a broad basis for jurisdiction over nationals who commit corruption offenses abroad.

871. Israel cited the following text.

## **Extradition Law, 1954**

### **1. No extradition except under this law**

A person who is in Israel shall not be extradited to another State except in accordance with this law.

#### **1A. Restriction on the extradition of citizens**

(a) If a person committed an extradition offense according to this Law, and if - when the offense was committed - he was an Israel citizen and an Israel resident, then he shall not be extradited unless the following two conditions are met:

(1) the purpose of the request for extradition is to put him on trial in the requesting state;

(2) the state that requests his extradition assumed in advance the obligation to return him to Israel, to serve his sentence here if he is found guilty and is sentenced to imprisonment.

(b) The provisions of subsection (a) shall not prevent the Israel citizen from waiving his return to the State of Israel in order to serve his sentence here.

(c) The provisions of section 10 of the Penal Law 5737-1977 shall apply, mutatis mutandis, to imprisonment in Israel under the provisions of this section.

### **2. Extradition offense**

(a) In this Law, an extradition offense is an offense which, had it been committed in Israel, would be punishable by imprisonment for one year or by a more severe penalty.

(b) Notwithstanding the provisions of Subsection (a), where a person has been declared extraditable for at least one extradition offense, he may also be extradited for an offense that is not an extradition offense.

#### **2A. Conditions of extradition**

(a) A person may be extradited from the State of Israel to another State if the following conditions have been fulfilled:

(1) an agreement on extradition of offenders exists between the State of Israel and the requesting State;

(2) the person is accused or has been convicted in the requesting State of an extradition offense (hereinafter: "wanted person").

(b) The State of Israel shall act with reciprocity in extradition relations, unless the Minister of Justice determines otherwise.

(c) For purposes of this Law --

"agreement" - means a bilateral agreement or multilateral treaty, including all of the

following:

(1) An agreement or treaty not specifically dealing with extradition of offenders, but containing provisions on this subject;

(2) A special agreement concluded between the State of Israel and the requesting State concerning the extradition of a wanted person, pursuant to the provisions of this Law;

“the requesting State” - means each of the following:

(1) a State requesting the extradition of a person in order to try him, to sentence him or in order that he serve a sentence of imprisonment imposed on him in that State;

(2) an international tribunal, as set out in Part A of the Schedule, requesting the surrender of a person in order to try him, to sentence him or to determine the place where the person will serve a sentence imposed on him by that tribunal;

(3) other state entity as set out in Part B of the Schedule;

“convicted” - includes a person who has been convicted but has not yet been sentenced.

**(b) Observations on the implementation of the article**

872. In view of the possibility to extradite Israeli nationals under certain conditions, as well as the existence in principle of a jurisdictional basis over corruption offences committed by Israeli nationals abroad, the State under review’s legislation should be considered to be in line with the provision in question.

**Article 42 Jurisdiction**

**Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

873. Israel indicated that it has not implemented the provision.

874. As discussed above under UNCAC article 42(3), Israel is able to extradite its nationals upon request where they have committed a crime further to any of the offenses under the Convention. In addition, Israel's Extradition Law also permits extradition, even in the absence of an outstanding convention or treaty between Israel and the requesting State, on the basis of an ad-hoc "special agreement between" the State of Israel and the requesting State concerning the extradition of a wanted person.

**(b) Observations on the implementation of the article**

875. The present (optional) provision has not been implemented.

**Article 42 Jurisdiction**

**Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

876. Israeli authorities may choose, under certain circumstances, or due to a legitimate interest, to defer a case to the authorities of another state and to allow for the prosecution to take place there. Where this occurs, cooperation between the states involved, in the form of effective legal assistance, will often be necessary. Israel endeavors to cooperate in such a manner as to assure that criminal offenders will be prosecuted and that the interests of justice served.

877. There is no supporting statutory framework for this procedure and it is a matter of police or prosecutorial discretion. This is subject to essential fairness considerations provided for in administrative law.

878. Israel provided the following example of implementation.

In a major corruption case involving the investigation of a high-ranking public official for having allegedly accepted bribe payments, a foreign jurisdiction was also investigating the matter as a possible foreign bribery. Ultimately, the other jurisdiction did not prosecute and the public official was prosecuted in Israel for a breach of trust and fraud. He was acquitted.

**(b) Observations on the implementation of the article**

879. This provision appears to be implemented through informal arrangements on the basis of established principles of mutual legal assistance.

## **Article 42 Jurisdiction**

### **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

880. Israel indicated that it has adopted grounds of criminal jurisdiction other than those described above.

881. Israel's **Penal Law, 1997** establishes a number of additional grounds for exerting jurisdiction over extra-territorial offenses. These include crimes under international treaties to which Israel has acceded (Section 16). Where Israel has undertaken in a multilateral international treaty that is open to accession, to punish certain criminal offenses, it shall have jurisdiction to do so even if there are no other grounds for exerting jurisdiction.

882. It should be noted that, due to the special considerations involved, where jurisdiction

over a wholly extra-territorial offense exists, an indictment will be issued by the Attorney General or with his written consent, if he concluded that doing so was in the public interest (Section 9(b)). It should be emphasized, that where jurisdiction over actions committed abroad is exerted based on the broad definition of domestic offenses, discussed under UNCAC article 42(1)(a) above, such authorization by the Attorney General is not required. It may be noted that if there are a variety of jurisdictional grounds for exerting jurisdiction over an offense committed outside of Israel, the requirements of the least restrictive basis for jurisdiction will apply (Section 9(d)).

883. Israel cited the following text.

### **The Penal Law, 1997**

#### **9. Conditions of applicability**

(a) The applicability of Israel penal laws - also in respect of foreign offenses - is not restricted by any foreign enactment or any act of a foreign Court of Law, unless otherwise is provided by Law.

(b) No person shall be put on trial for a foreign offense, except by the Attorney General or with his written consent, if he concluded that doing so is in the public interest.

(c) Israel penal laws shall not be applicable to an offense, if the person was tried for it abroad at the request of the State of Israel, and - if he was convicted there - if he also bore his penalty therefor.

(d) In any case, to which Israel penal laws can be applied by virtue of several ways of applicability, they shall be applicable by the least restricted applicability.

#### **16. Offenses against international law**

(a) Israel penal laws shall apply to foreign offenses, which the State of Israel undertook - under multilateral international conventions that are open to accession - to punish, and that even if they were committed by a person who is not an Israel citizen or an Israel resident and no matter where were committed by a person who is not an Israel citizen or an Israel resident and no matter where they were committed.

(b) The restrictions said in section 14(b)(2) and (3) and (c) shall also apply to the applicability of Israel penal laws under this section.

#### **(b) Observations on the implementation of the article**

884. Israel is in compliance with this provision.

## IV. International cooperation

### Statistical information on extradition and MLA requests

885. Israeli authorities provided that a review of the database of the Department of International Affairs in the State Attorney's Office indicated that between the years 2010-2014, approximately 20-25 MLA requests were submitted by Israel in cases related to corruption. It appears that all the requested States were UNCAC members, although in most cases the request was not issued pursuant to UNCAC but rather pursuant to bilateral or regional MLA agreements. In some instances, several MLA requests were sent to different States regarding the same case.
886. Data regarding incoming MLA requests was not available.
887. Records indicate that over the past five years (2009-2014), Israel submitted five corruption-related extradition requests. In two of the cases, the person was returned to Israel, including in the case of Dan Cohen, where Israel requested extradition based, inter alia, upon UNCAC. In all five cases referred to above, the requested States were UNCAC members.
888. Between the years 2012-2014 Israel received 9 corruption-related extradition requests. Most of these were being processed pursuant to Israel's extradition law at the time of review. All requests were received from UNCAC States parties.
889. Israeli authorities may provide any form of assistance requested to the same extent and subject to the same safeguards as those that would apply in Israeli law to similar domestic offences. That approach allows Israeli authorities to take all measures, that would have been available in a domestic criminal matter in the context of legal assistance, while still ensuring that the execution of the requests is in accordance with the particular evidentiary or legal requirements of the requesting State, and can be regarded as a good practice.
890. *It should be noted that the records in the Department of International Affairs' database are not maintained for statistical purposes, such that the above figures are not necessarily exhaustive.*
891. As a general observation, it is recommended that Israel adapt its information system to allow it to collect data on the type of mutual legal assistance and extradition requests (e.g., underlying offences), the timeframe for providing responses to these requests, and the response provided, including any grounds for refusal.

### Article 44 Extradition

#### Paragraph 1

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

- (a) **Summary of information relevant to reviewing the implementation of the article**



## **The Extradition Law and Relevant Treaties and Agreements**

892. Extradition in Israel is regulated by Israel's **Extradition Law, 1954** (hereinafter: "the Extradition Law"). The Extradition Law underwent comprehensive amendments in 2001 to enable extradition, including the extradition of Israeli nationals. Under the Extradition Law, extradition is possible regarding persons who are either wanted for trial or who have already been convicted in the requesting State with respect to any offenses for which under Israeli law is punishable by one year imprisonment or longer. Thus, most of the crimes involving corruption and covered by UNCAC are extraditable offences.
893. Israel's international legal obligations to extradite are governed by the international treaties and conventions which Israel is party to. Several of these extradition conventions are multilateral, such as the European Convention on Extradition, 1957 and others are bilateral, such as the treaties between Israel and the United States, Australia, Canada, Swaziland and Fiji. Israel has further acceded to other multilateral conventions, pertaining to specific forms of criminal activity, that contain provisions that govern, enable and obligate extradition between the parties to the Convention. These treaties include, *inter alia*, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and the OECD Convention on Combating Bribery of Foreign Public Officials, 1998, the International Convention for the Suppression of the Financing of Terrorism, 1999, the United Nations Convention against Transnational Organized Crime, 2000.
894. Israel's Extradition Law provides that extradition may be carried out when there is an extradition agreement between Israel and another State (Section 2A(1)). The Extradition Law specifically provides that "extradition agreement" includes multilateral conventions as well as agreements "not specifically dealing with extradition of offenders, but containing provisions on this subject" (Section 2A(c)(1)). Thus, it is clear that multilateral conventions, such as UNCAC, are considered extradition agreements for the purposes of Israel's Extradition Law.
895. In addition, Israel's Extradition Law also permits extradition, even in the absence of an outstanding convention or treaty between Israel and the requesting State, on the basis of an ad-hoc "special agreement between" the State of Israel and the requesting State concerning the extradition of a wanted person (Section 2A(c)(2)). In all cases, extradition must be based on reciprocity unless the Minister of Justice determines otherwise (Section 2A(b)).
896. In addition to the treaties mentioned above Israel has recently negotiated extradition treaties with India, Brazil and Hong Kong which are awaiting ratification.
897. There have been no cases of extradition from Israel pursuant to a treaty that was not purely an extradition treaty. Israel, however, has received the extradition of persons from other countries on the basis of UNCAC, as well as on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and the possibility of extradition from Israel on the basis of such treaties or conventions is clear. Such extraditions would be subject to all the conditions of the Extradition Law.
898. Israel has also received extradition requests from States with whom it has no treaty relations, on the basis of the state's domestic extradition law and upon an undertaking of reciprocity. As noted, extradition from Israel requires at least an ad hoc agreement with the authorities of the requesting State, as provided for under Section 2A(c)(2).

### **Dual Criminality**

899. Dual criminality is required for extradition in that Israel cannot extradite for offenses that are not offenses in Israel as well. Thus, under Section 2(a) of the Extradition Law, an extradition offense is defined as "an offense which, had it been committed in Israel, would be punishable by imprisonment for one year or by a more severe penalty". As already discussed in the answers regarding Chapter III, to the extent that Israel has criminalized the offenses covered by UNCAC and has enacted penalties for them in excess of one year, the UNCAC offenses would be extraditable offenses under Israeli law.
900. The dual criminality requirement in Israeli law has generally been interpreted to mean that the essential elements and underlying conduct of the offense concerned are crimes in both Israel and the requesting State and it is not required that they be denominated under the same name or title (Va.R. (Jerusalem) 4023/05 *State of Israel v. Zeev Rosenstein*). In a recent Israeli Supreme Court case, it was determined that the relevant time for determining the existence of double criminality is the time at which the offense was committed. In the case concerned (Va.Cr.R. 725/09 *Attorney General of the State of Israel v. Abergil*), it was determined that extradition for an offense of activity in a criminal organization could not take place with respect to an offense allegedly committed prior to the time that the Combatting Criminal Organizations Law, 2003 came into effect in Israel. The wanted persons were, however, extradited for the specific criminal offenses involved and for organized crime offenses that were committed or that continued subsequent to the enactment of the Combatting Criminal Organizations Law.

### **Evidentiary Showing**

901. Following its common law origins, Israel's Extradition Law permits extradition only where a basic evidentiary showing has been made. The evidentiary showing required is that which would have been sufficient to have enabled the issuance of a criminal indictment against the wanted person in Israel for a corresponding offense had the crime been committed in Israel (Section 9(a) of the Extradition Law). Israeli Courts have interpreted this as being equivalent to the "prima facie evidence standard". The Israeli Supreme Court has held and cautioned on numerous occasions that the evidentiary requirements are not intended to allow issues of fact or law to be litigated in the extradition proceeding. These are issues for the trial court in the requesting State following extradition. To cite one important decision: The Court has repeatedly ruled that the decision in an extradition request is not a decision of the extradition candidate's innocence or guilt. The evidence is not to be examined on its merits in order to determine its weight; nor is the extent to which each piece of evidence fits with others to be examined. All that is examined is "whether the indictment has any support in the evidence" (Cr.A. 4596/05 *Zeev Rosenstein v. State of Israel*, Cr.A. 308/75 *Pesachovitz v. State of Israel*, see also Cr.A. 318/79 *Engel et al. v. State of Israel*).
902. Israel's statutory evidentiary requirements for extradition are further set forth in the Reservations made by Israel to the Council of Europe Convention on Extradition. Since Article 44(8) of UNCAC provides that extradition shall be subject to the conditions provided for by the domestic law, the requirement for prima facie evidence would apply to extraditions conducted pursuant to UNCAC.

### **Extradition Procedures**

903. Although not specifically required by Israel's Extradition Law, all treaties and conventions to which Israel is party provide that extradition requests made to Israel be submitted through diplomatic channels. (In cases of emergency provisional arrest, as discussed below, action can be undertaken prior to submission of a formal request).
904. Under Israel's Extradition Law (Section 3(b)), extradition requests, once received, are submitted to the Minister of Justice who is authorized to direct that the wanted person be brought before the Jerusalem District Court for a determination as to whether he is, under the law, extraditable (i.e. legally subject to extradition). The extradition petition in such cases is submitted to the Court by Israel's Attorney General or his representative.
905. As a matter of practice, and on the basis of appointment by the Attorney General, the Department of International Affairs in the State Attorney's Office (hereinafter: "the Department of International Affairs") deals with both incoming and outgoing extradition requests and serves as the Attorney General's representative in extradition proceedings. Prior to the submission of a foreign Extradition Request to the Minister of Justice, attorneys in the Department of International Affairs will review the extradition request, including the attachments and evidentiary material accompanying it. The Department of International Affairs will reach a professional determination as whether the legal requirements and conditions for extradition under the extradition law are met, including relevant evidentiary requirements under Section 9(a).
906. The determination of the Department of International Affairs will be provided to the Minister of Justice in order to allow him to make his determination, under Section 3(b), as to whether an extradition petition will be submitted to the Court. It is the Department of International Affairs, representing the Attorney General, who will prepare the extradition petition, submit it to court and appear in any relevant hearings related to the extradition or to the detention of the wanted person.
907. After hearing the parties, the District Court under Section 9(a) will reach a judicial determination as to whether the wanted person is legally subject to extradition under the requirements, restrictions and conditions of the extradition law. The decision of the District Court is subject to appeal as of right to Israel's Supreme Court.
908. When the judicial determination regarding extraditability has been rendered final, after any relevant appeal, the matter will return to the Minister of Justice who, under Section 18 of the Extradition Law, will issue the order that the wanted person be surrendered to the requesting State and, for that purpose, be transferred outside of Israel. Extradition, however, can only take place if the requesting State has agreed to specialty restrictions, prohibiting the requesting State from proceeding against the extradited individual for any offenses committed prior to extradition and not included in the Minister's Order of Extradition (unless the extradited individual voluntarily remains in the requested State 30 days after he is free to leave or leaves the requested State and voluntarily returns). Treaty provisions may alter the specialty provisions but not in a manner that would offer less protections to the extradited person than the statutory provision.
909. After a determination by the Minister of Justice to extradite an individual pursuant to Section 18, or not to extradite someone who has been declared extraditable, a petition may be submitted to the Israeli Supreme Court, sitting as the High Court of Justice (Israel's highest

administrative court) claiming that the Minister's determination is invalid under administrative law principles. Where the issues raised are those that have already been determined during the extradition proceedings, the High Court of Justice will generally not reconsider the issues.

910. Extradition must take place within 60 days of the date that a judicial determination of extraditability becomes final unless that period is extended due to special circumstances by Israel's Supreme Court (Section 19 and 20).
911. Expedited procedures for extradition are possible under section 9(b) where the wanted person waives consideration of the evidence. Furthermore, under Section 20B and 20C of Israel's Extradition Law, the wanted person may at any point ask to be returned voluntarily to the requesting State and such transfer may be affected immediately without further extradition procedures.

### **Extradition Procedures**

912. The wanted person, as well as the Attorney General, has a right of appeal against the decision of the District Court on a petition. In cases where a person whose extradition is requested has asked to be tried in Israel and his request has been granted, Israel will seek legal aid from the requesting State in order to prosecute the offender.
913. Israel cited the following texts.

**Extradition Law, 1954** - Sections 1A, 2, 2A, 2B 3, 9, 10, 13, 16, 18, 19, 20 & 20B in the attached legislative compilation

### **The Penal Law, 1977**

#### **Penalty imposed abroad**

10.(a) If a person who was adjudged abroad by a final judgment in respect of an offense to which the Israel penal laws apply is in Israel, and if he did not bear the full penalty there, then the Attorney General may - instead of bringing him to trial - apply to a Court that the penalty imposed abroad - or that part of it which was not carried out - be carried out in Israel, as if the penalty had been imposed in Israel by a final judgment; in an order said in this section the Court may shorten the period of imprisonment which the convicted person must serve in Israel and set it at the maximum set in Israel's penal laws for the offense for which the penalty was imposed, on condition that it is possible to do so under the agreement between the State of Israel and the state in which the penalty was imposed.

(b) If, in the requesting state, a fine of compensation for another person was adjudged against the convicted person said in subsection (a), in addition to imprisonment, and if the requesting state gave notice that the convicted person has not yet paid the fine or compensation or part thereof, then the Court in Israel shall order - at the application of the Attorney General or his representative - that he be obligated to pay the fine or compensation or the part thereof that was not yet paid by him in the requesting state, as if they had been imposed in Israel, and the statute applicable in Israel to the nonpayment of a fine or compensation and their collection shall apply to the matter;

for purposes of this section, "**compensation to another person**" - compensation to a person who suffered harm from the extradition offense of which the convicted person was found guilty in the requesting state.

(c) If the State of Israel collected a fine or compensation said in subsection (b), then it shall transfer it to the requesting state according to an arrangement to be made for this matter between the State of Israel and the requesting State, including regarding the deduction of the cost of collecting the fine or compensation.

914. Israel provided the following example of implementation, including cases where dual criminality issues were raised and resolved.

Former district court judge Dan Cohen who fled to Peru eight years ago following allegations of passive bribery and fraud was extradited to Israel on March 2013 and remanded to police custody. This is the first successful extradition of persons to Israel based essentially on UNCAC, as Peru and Israel do not have a bilateral extradition treaty.

**(b) Observations on the implementation of the article**

915. In Israel extradition is governed by the Extradition Law, as well as multiple international treaties and conventions. Dual criminality is a condition for extradition, and the law also provides for a minimum penalty requirement: An extraditable offence is defined as "an offense which, had it been committed in Israel, would be punishable by imprisonment for one year or by a more severe penalty". Nonetheless, to the extent that Israel has criminalized the offenses covered by UNCAC and has enacted penalties for them in excess of one year, the UNCAC offenses would be extraditable offenses under Israeli law.

916. The State under review is in compliance with par. 1 of article 44.

**Paragraph 2 of article 44**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

917. Israel indicated that it has not implemented the provision. Israel does not allow for extradition for offences that are not punishable under its law.

918. Israel referred to the information under UNCAC article 44(1)(a) above. Israel's law only permits extradition for offences where dual criminality has been established.

919. As aforementioned, the dual criminality requirement in Israeli law has generally been interpreted to mean that the essential elements and underlying conduct of the offense concerned are crimes in both Israel and the requesting State and it is not required that they be denominated under the same name or title (Va.R. (Jerusalem) 4023/05 *State of Israel v. Zeev Rosenstein*). In a recent Israeli Supreme Court case, it was determined that the relevant time for determining the existence of double criminality is the time at which the offense was committed. In the case concerned (Va.Cr.R. 725/09 *Attorney General of the State of Israel v. Abergil*), it was determined that extradition for an offense of activity in a criminal organization could not take place with respect to an offense allegedly committed prior to the time that the Combatting Criminal Organizations Law, 2003 came into effect in Israel. The wanted persons were, however, extradited for the specific criminal offenses involved and for

organized crime offenses that were committed or that continued subsequent to the enactment of the Combatting Criminal Organizations Law.

**(b) Observations on the implementation of the article**

920. Par. 2 of article 44 contains an optional provision which the State under review has selected not to adhere to.

**Paragraph 3 of article 44**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

921. According to Article 2(b) of Israel's **Extradition Law, 1954** where a person has been declared extraditable for at least one extradition offence, he may also be extradited for an offence that is not an extradition offence, i.e. an offence which is punishable by less than one year imprisonment.

922. Israel cited the following text.

**Extradition Law, 1954**

**2. Extradition offence**

(b) Notwithstanding the provisions of Subsection (a), where a person has been declared extraditable for at least one extradition offence, he may also be extradited for an offence that is not an extradition offence.

923. No examples of implementation were available.

**(b) Observations on the implementation of the article**

924. Israel appears to make “accessory offences” that are punishable by less than one year imprisonment extraditable, if the main offence satisfies the extradition requirements, being thus in line with the spirit of article 44 par. 3 of the Convention.

**Paragraph 4 of article 44**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

925. Israel indicated that most of Israel's extradition treaties cover offenses that are punished by a period of imprisonment of one year or more (offences under the treaty with Canada, which takes a list approach, are deemed extraditable in accordance with the paragraph under review). As noted, this would essentially cover the offenses covered by Chapter III of UNCAC.

926. While Section 2B(a)(1) of the Extradition Law prohibits extradition for offenses of a "political character", Section 2B(b)(1) specifically provides that "an offence which both States have an obligation to extradite in accordance with a multilateral treaty" shall "not be deemed offenses of a political character". For this reason, UNCAC offenses are not political offenses for purposes of Israel's Extradition Law. Extradition, however, will still be subject to other conditions of the law, including the condition that the extradition request was not submitted with the aim of punishing the wanted person for an offence of a political character". Section 2B(a)(1). In any case, the political offence exception to extradition has been very narrowly construed by the Courts in Israel.

927. Israel cited the following text.

**Extradition Law, 1954**

**2B. Restrictions on Extradition**

(a) A wanted person shall not be extradited to the requesting State in any of the following circumstances:

(1) the request for extradition was submitted for an offense of a political character, or was submitted to prosecute or punish the wanted person for an offense of a political character, although prima facie his extradition is not requested for such an offense;

(2) there are grounds to suspect that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person;

(3) the request for extradition was submitted for a military offense, being one of the following: (a) an offense for which a person can only be charged if he was a soldier at the time of its commission;

(ii) an offense contrary to defense service

928. Israel indicated that it is not aware of any case in recent years where the Courts have rejected an extradition request on grounds of political offence.

929. Israel is signatory to the Council of Europe Convention on Extradition, 1957. The Council of Europe Convention regulates Israel's extradition relations with the 47 states of the Council of Europe, as well as with South Africa and South Korea. Israel, in addition, is party to bilateral extradition treaties with the United States, Australia, Canada, Swaziland and Fiji. Please note that in an effort to expand Israel's ability to provide extradition to the United States a comprehensive Protocol Amending the 1962 treaty on Extradition between the State of Israel and the United States, entered into force in January 2007. The Protocol eliminated the exhaustive list of offences for which extradition was allowed between the two countries and defined an "extraditable offence" as any offence punishable by at least one year imprisonment.

930. A list of Israel's current extradition treaties is included under UNCAC article 44(18)

below.

931. As noted, Israel has recently negotiated extradition treaties with India, Brazil and Hong Kong which are awaiting ratification.
932. In addition, Israel is party to several multilateral conventions, pertaining to specific forms of criminal activity, that contain provisions that govern, enable and obligate extradition between the parties to the Convention. These treaties include, inter alia, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, the OECD Convention on Combating Bribery of Foreign Public Officials, 1998, the International Convention for the Suppression of the Financing of Terrorism, 1999 and the United Nations Convention against Transnational Organized Crime, 2000.

**(b) Observations on the implementation of the article**

933. Israel appears to consider as implemented the main obligation undertaken under article 44 par. 4, namely to deem corruption offences as included in any extradition treaty already in existence with other States parties, since the offences contained in UNCAC have been established under domestic law and the penalties provided for are in any case within the specifications stated in the existing treaties.
934. As regards “political offences”, the significant provision is section 2B(b)(1) of the Extradition Law, which specifically provides that "an offence which both States have an obligation to extradite in accordance with a multilateral treaty" shall not be deemed to be an offence of a political character. This allows the conclusion that a Convention-based offence would not be treated as a political offence, in case UNCAC were used as a basis for extradition.
935. The State under review is in compliance with the provision in question.

**Paragraph 5 of article 44**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

936. Israel indicated that it partially makes extradition conditional on the existence of a treaty.
937. Section 2A of the **Extradition Law, 1954** (hereinafter: "the Extradition Law") states that a person may be extradited from the State of Israel to another state if an agreement on extradition of offenders exists between Israel and the requesting State and if the person is accused or has been convicted in the requesting State of an extradition offence. The term “agreement” means, according to the same Section, a bilateral agreement or multilateral treaty, including an agreement or treaty not specifically dealing with extradition of offenders, but containing provisions on this subject, or a special agreement concluded between the State



of Israel and the requesting State concerning the extradition of a wanted person, pursuant to the provisions of the Extradition Law.

938. Israel indicated that it partially considers this Convention as the legal basis for extradition in respect of corruption-related offences.

939. Israel has made the following Declaration in this regard to the United Nations against Corruption (UNCAC)<sup>9</sup>:

“Declaration regarding Article 44(6) of the Convention:

Israel’s extradition law requires an extradition agreement in order for extradition to occur. Under Section 2A(c) of Israel’s Extradition Law, an agreement can include a special agreement concluded between the State of Israel and the requesting State concerning the extradition of a wanted person, pursuant to the provisions of the Extradition Law. With respect to States Parties with which the State of Israel presently has an extradition treaty, extradition for the offences under the Convention shall be undertaken pursuant to the requirements of those treaties. With respect to States Parties with which the State of Israel does not have an extradition treaty, it shall not in every case consider the Convention as the legal basis for extradition cooperation with such States Parties but shall consider each request for extradition for an offence under the Convention with due seriousness in light of the purposes and provisions of this Convention and may elect to extradite in such cases pursuant to a special agreement with the State Party, pursuant to Israeli law and upon a basis of reciprocity.”

940. Israel cited the following text.

### **Extradition Law, 1954**

#### **2A. Conditions of extradition**

(a) A person may be extradited from the State of Israel to another State if the following conditions have been fulfilled:

(1) an agreement on extradition of offenders exists between the State of Israel and the requesting State;

(2) the person is accused or has been convicted in the requesting State of an extradition offense (hereinafter: “wanted person”).

(b) The State of Israel shall act with reciprocity in extradition relations, unless the Minister of Justice determines otherwise.

(c) For purposes of this Law --

“agreement” - means a bilateral agreement or multilateral treaty, including all of the following:

(1) An agreement or treaty not specifically dealing with extradition of offenders, but containing provisions on this subject;

(2) A special agreement concluded between the State of Israel and the requesting State concerning the extradition of a wanted person, pursuant to the provisions of this Law;

“the requesting State” - means each of the following:

(1) a State requesting the extradition of a person in order to try him, to sentence him or in order that he serve a sentence of imprisonment imposed on him in that State;

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<sup>9</sup> <https://treaties.un.org/doc/Publication/CN/2009/CN.92.2009-Eng.pdf>

- (2) an international tribunal, as set out in Part A of the Schedule, requesting the surrender of a person in order to try him, to sentence him or to determine the place where the person will serve a sentence imposed on him by that tribunal;
  - (3) other state entity as set out in Part B of the Schedule;
- “convicted” - includes a person who has been convicted but has not yet been sentenced.

941. Concerning examples of implementation, Israel indicated that there have been no cases of extradition by Israel pursuant to a treaty that was not an extradition treaty. Israel, however, has received the extradition of persons from other countries on the basis of the Vienna Convention (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988) and UNCAC and the possibility of extradition from Israel on the basis of such conventions is clear. Such extraditions would be subject to all the conditions of the Extradition Law.

**(b) Observations on the implementation of the article**

942. Israel reports that it “partially” makes extradition conditional on the existence of a treaty. Indeed, Israel's Extradition Law permits extradition even in the *absence* of an outstanding convention or treaty, on the basis of an ad-hoc “special agreement between” Israel and the requesting State concerning the extradition of a wanted person (Section 2A(c)(2) Extradition Law), upon a basis of reciprocity. It was explained that Israel's declaration pursuant to article 44 (6) of UNCAC, was drafted within the context of this possibility.

943. Taking into account that Israel has already successfully carried through an extradition based essentially on UNCAC, it was discussed whether, in cases where no extradition treaty exists with another State party, the State under review should consider the Convention as the legal basis for extradition cooperation with such State in respect of corruption-related offences. In this context, it was explained that Israel can enter into ad-hoc agreements or arrangements with other States (the case of Dan Cohen cited above is an example (Cr.C. (Tel Aviv) 4004/09 State of Israel v. Dan Cohen)) and that it would, in any event, require an agreement or arrangement due to the *prima facie* evidence requirement (see para. 9 below). Israel provided the following additional information:

944. Israel's Declaration took into account the fact that UNCAC created treaty relations between Israel and a large number of States whose legal and law enforcement systems were not familiar to Israel and had never been given the consideration and examination that usually precedes the entry into by Israel of extradition relations with other States. Because Israel extradites even its own citizens (and indeed most extraditions from Israel involve Israeli citizens), Israel is particularly cautious in such matters.

945. The Declaration as drafted permits Israel to utilize UNCAC as a treaty basis in all appropriate circumstances pursuant to special agreements recognized under Section 2A(c)(2). This mechanism allows Israel to consider all relevant factors regarding the process of justice in the requesting State before determining whether an agreement will be entered into to allow extradition pursuant to UNCAC. Israel's Declaration obligates Israel to make its decisions regarding such possibility in each case “with due seriousness in light of the purposes and provisions of this Convention”.

946. Israel has recently, and in light of the current review process, conducted inter-Ministerial discussions in order to assess whether the Declaration remains relevant in its current form. At

present, the consensus is that the Declaration continues to provide maximum flexibility to Israel, under its law, to extradite to UNCAC partners in all appropriate circumstances. Furthermore, the discussions reached a consensus that Israel would additionally continue to pursue and strengthen on-going efforts to negotiate and enter into further extradition treaties with States parties to UNCAC with which Israel does not presently have extradition treaties (as contemplated in UNCAC article 44(6)(b)).

## **Paragraph 6 of article 44**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

947. Israel partially makes extradition conditional on the existence of a treaty and consider this Convention as the legal basis for extradition, as described under UNCAC article 44(5) above.

948. Israel has made the requisite notification to the United Nations. As noted, Israel has made the following Declaration to the Secretary-General of the United Nations<sup>10</sup>:

“Declaration regarding Article 44(6) of the Convention:

Israel’s extradition law requires an extradition agreement in order for extradition to occur. Under Section 2A(c) of Israel’s Extradition Law, an agreement can include a special agreement concluded between the State of Israel and the requesting State concerning the extradition of a wanted person, pursuant to the provisions of the Extradition Law. With respect to States Parties with which the State of Israel presently has an extradition treaty, extradition for the offences under the Convention shall be undertaken pursuant to the requirements of those treaties. With respect to States Parties with which the State of Israel does not have an extradition treaty, it shall not in every case consider the Convention as the legal basis for extradition cooperation with such States Parties but shall consider each request for extradition for an offence under the Convention with due seriousness in light of the purposes and provisions of this Convention and may elect to extradite in such cases pursuant to a special agreement with the State Party, pursuant to Israeli law and upon a basis of reciprocity.”

### **(b) Observations on the implementation of the article**

949. See the observations on the previous provision.

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<sup>10</sup> <https://treaties.un.org/doc/Publication/CN/2009/CN.92.2009-Eng.pdf>

## Paragraph 7 of article 44

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

### (a) Summary of information relevant to reviewing the implementation of the article

950. Israel referred to the information under UNCAC article 44(5) above.

951. Regarding examples of implementation (i.e. recent extradition cases with other States parties for offences established in accordance with this Convention), Israel referred to the case noted above of former District Court Judge Dan Cohen, who fled to Peru eight years ago following allegations of passive bribery and fraud was extradited to Israel on March 2013 and remanded to police custody. This was the first successful extradition of persons to Israel based essentially on this Convention (UNCAC), as Peru and Israel do not have a bilateral extradition treaty.

### (b) Observations on the implementation of the article

952. See the observations under par. 5.

## Paragraph 8 of article 44

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

### (a) Summary of information relevant to reviewing the implementation of the article

953. Extradition in Israel is regulated by Israel's **Extradition Law, 1954** (hereinafter: "the Extradition Law"). The Extradition Law underwent comprehensive amendments in 2001 to enable extradition, including the extradition of Israeli nationals. Under the Extradition Law, extradition is possible regarding persons who are either wanted for trial or who have already been convicted in the requesting State with respect to any offenses for which under Israeli law is punishable by one year imprisonment or longer. Thus, the majority of crimes involving corruption and covered by UNCAC are extraditable offences.

954. Israel referred to the Reservation made by Israel to the Council of Europe's Convention on Extradition:

Israel will not grant extradition of a person charged with an offence unless it is proved in a court in Israel that there is evidence which would be sufficient for committing him to trial for such an offence in Israel.

955. Israel referred to the information under UNCAC article 44(1) above.

956. Regarding the applicable conditions and grounds upon which extradition requests have been refused, Israel indicated that extradition requests will generally not be implemented if review of the request indicates that the conditions and requirements for extradition are not met, including the requirement for prima facie evidence under Section 9(a) of the Extradition Law. Where the review indicates that the requirements for extradition exist, the request will be brought to the Minister of Justice so as to begin proceedings for a declaration of extraditability. We are not aware of any examples where it was recommended to the Minister that an extradition request be implemented and the Minister, nevertheless, chose not to proceed with extradition.
957. If a petition for a declaration of extraditability is submitted to the District Court (or upon appeal at the Supreme Court), and the Court finds that the wanted person is not extraditable under the law, Israel must, of course, inform the requesting State that extradition cannot be implemented.
958. It is extremely rare that, once a person is declared extraditable, that the Minister of Justice will choose not to order his extradition under Section 18 of the Extradition Law. Indeed, the Israel Supreme Court, sitting as the High Court of Justice in an important case many years ago determined that the Minister's authority to refuse to extradite in such cases was quite narrow (HCJ 852/86 MP Shulamit Aloni v. Minister of Justice). The Israeli Supreme Court has, however, recognized that in certain appropriate circumstances, for humanitarian reasons, the Minister of Justice may condition the extradition of a wanted citizen on granting him the option to serve any sentence imposed in Israel, even if the wanted citizen had not held Israeli citizenship or residence at the time of the commission of the offence but had obtained and held such citizenship and residence afterwards (Cr.A. 6914/04 Ze'ev Feinberg v. the Attorney General). It may be noted that the Feinberg case dealt with an extradition under the Council of Europe Convention on Extradition that, in any case, does not require the extradition of nationals and allows for the option of trial and punishment in the requested State. In recent years, the Court has conditioned the extradition of a wanted citizen with conditions to be upheld in the requesting State, including supplying the individual with kosher food while in prison, or conditions to be upheld by the Israeli authorities abroad, such as consular visits.

**(b) Observations on the implementation of the article**

959. The State under review can be considered to be in compliance with the present provision.

**Paragraph 9 of article 44**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

960. The 2001 amendment to the Extradition Law added a number of provisions designed to enable the use of expedited extradition procedures, at the wanted person's option, in appropriate cases. One of the more time-consuming aspects of extradition procedures is the preparation of materials related to the prima facie evidence that must be demonstrated under

Section 9(a) of the Extradition Law.

961. Section 9(b), however, allows the Court to declare a person extraditable "without examination of the evidence, if the wanted person so requests". This provision, which has been utilized successfully in appropriate cases, provides the wanted person with the protections of the extradition process, such as the rule of speciality, while greatly shortening the extradition process. An even more expedited procedure, at the wanted person's option, is provided pursuant to Sections 20B of the Extradition Law. This section provides that "at any time", a wanted person, by written application to the Minister of Justice may request to be returned to the requesting State. Under this provision, the wanted person may be then transferred to the requesting State without further extradition procedures.
962. The provision contemplates that such return will be accomplished within 15 days of his request. In special circumstances, this period may be extended to a maximum limit of 30 days. The procedure operates effectively as a waiver of extradition and enables a rapid transfer to the requesting State without lengthy formal procedures. The procedure contained in Section 20B can even be utilized before any formal extradition request has been received, such as in the case of a person provisionally arrested pending receipt of an extradition request. Because this procedure waives extradition, the wanted person, under Section 20C is not entitled to protections, such as the rule of specialty, peculiar to the extradition process. Nevertheless in a number of cases, wanted persons have requested this expedited procedure and it has operated successfully.
963. Where extradition is contested, these expedited procedures are not available. Nevertheless every effort is made to expedite extradition, insofar as possible. The time for considering extradition requests is dependent on the clarity and sufficiency of the request. The Department of International Affairs attempts, subject to available human resources, to review extradition requests as rapidly as possible and to communicate with the requesting State regarding any problems in the request. Delays most commonly arise when the request fails to meet the requirements of the Extradition Law, including the requirement for *prima facie* evidence. In reviewing extradition requests a priority is given to urgent requests (where there is a danger of flight) and to serious crimes. If a request were submitted under UNCAC, this in itself would be viewed as a basis to give it priority of consideration.
964. Israel's Supreme Court has held that a failure to process a request in a reasonable period of time could violate the rights of the wanted person and could be a basis to deny extradition under the Law's *ordre publique* provisions. No extradition has, however, been denied on that basis but this principle itself ensures that there will be a strong incentive to consider even complex extradition requests on a timely basis.
965. Once an extradition petition has been submitted, extradition procedures are, under Regulation 10(b) of the **Regulations to the Extradition Law, 1970**, supposed to be conducted on a day-to-day basis until completion - absent circumstances which prevent this. Unfortunately, delays in completion of the judicial procedures often arise, primarily out of requests or issues raised by the wanted person or his counsel. Attempts are made, subject to the due process rights of the wanted person, to expedite the hearings on extradition as swiftly as possible.
966. As noted above, once a judicial determination of extraditability has been made, extradition must be effectuated within 60 days or the wanted person will be released. Further

delays due to special circumstances must be approved by Israel's Supreme Court pursuant to Section 20 of the Extradition Law.

967. Israel cited the following texts.

#### **Extradition Law, 1954**

##### **9. Declaration of wanted person as extraditable**

(a) If at the hearing of a petition under Section 3 it is proved that the wanted person has been convicted of an extradition offense in the requesting State, or that there is evidence which would be sufficient for committing him for trial for such an offense in Israel, and that the other conditions laid down by law for his extradition are fulfilled, the Court shall declare the wanted person extraditable.

(b) Notwithstanding the provisions of Subsection (a), the Court may declare the wanted person extraditable, without examination of the evidence, if the wanted person so requests.

##### **20B. Voluntary return**

(a) A wanted person may, at any time, submit a written request to the Minister of Justice to return to the requesting State in order to stand trial, in order to be sentenced or to serve a penalty (in this Law - a request for voluntary return).

(b) Where a request for voluntary return has been submitted, the Minister of Justice shall promptly notify the requesting State thereof.

(c) Where a request for voluntary return has been submitted after a petition has been submitted to the Court pursuant to Section 3, the Attorney General shall notify the Court thereof, and the Court shall cease the hearing of the petition.

(d) A wanted person who has requested voluntary return shall be kept in lawful custody for the period that he remains in Israel until his return to the requesting State, provided that this period shall not exceed fifteen days; the District Court may, at the request of the Attorney General, extend this period for an additional period of up to fifteen days, if it is of the opinion that there are special circumstances justifying the delay in the return of the wanted person to the requesting State.

##### **20C. Inapplicability of extradition laws to voluntary return**

The provisions of this Law on the extradition of a person shall not apply to a wanted person who has requested to voluntarily return to the requesting State.

#### **Regulations to the Extradition Law, 1970**

##### **10. Continuity of the hearing**

(a) The Court may postpone the hearing to a later date, as it deems fit, if it feels that the accused person was not given sufficient time to prepare their case.

(b) Once the Court began hearing a case, it shall continue to do so daily until the case is concluded, unless it deemed, for reasons that must be noted, that there is no reasonable way to do so.

##### **(b) Observations on the implementation of the article**

968. Attached as Annex 2 to this report is a "Practical Guide to Israel's Prima Facie Evidence Requirements regarding matters of Extradition", which was prepared in the context of Israel's Reservations to the Council of Europe Convention on Extradition and is equally useful in the

context of UNCAC to provide a practical understanding of Israel's prima facie evidence requirements..

#### **Paragraph 10 of article 44**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

969. Section 5 of the Extradition Law provides that where a petition for extradition has been submitted, the Jerusalem District Court may order the detention of the wanted person. In considering detention, the Court will consider the usual considerations relating to detention (e.g., risk of flight, danger to public, possibility of obstruction of justice) but also will give weight to the additional special consideration of Israel's international obligations to effectuate extradition pursuant to the treaties to which it is partner. The Court may order such detention until the completion of proceedings on the extradition, but may also release the wanted person earlier if the considerations supporting his detention are no longer applicable. Detention orders by the District Court are appealable as of right to the Supreme Court.

970. The Extradition Law also permits provisional arrest of a wanted person in cases of urgency even before an Extradition Request is formally received. Under Section 6 of the Extradition Law, the Attorney General or his representative, or a police officer of the rank of Chief Superintendent or higher, may order in writing the detention of a wanted person prior to the submission of the extradition petition, where there is reasonable reason to believe that he is extraditable and that a request for his extradition will be submitted, if it appears that the detention is necessary to ensure extradition. Under Section 7 of the Extradition Law, a person arrested under Section 6 must be brought within 48 hours to the Magistrates Court. The Magistrates Court, which applies the same criteria relevant under Section 6, may order the continued arrest of the wanted person for a period of up to 20 days. This period may be extended in 20 day increments to up to 60 days to permit receipt of the extradition request. Under Section 7(c), after the Extradition Request is received, an additional 10 days of detention may be granted, at the Court's discretion, to permit review of the request and preparation of the petition of extradition. Following submission of the petition, the issue of detention is considered by the District Court under Section 5 of the Extradition Law.

971. Generally, provisional arrest takes place pursuant to a request for such arrest, stating the grounds thereof, by the state intending to request the wanted person's extradition. It may be noted that some treaties to which Israel is party establish a shorter period of maximum provisional arrest before receipt of an extradition request (such as the Council of Europe Convention on Extradition which sets a period of 40 days).

972. Israel cited the following text.

#### **Extradition Law, 1954**



## **5. Detention following petition**

Where a petition has been submitted, the Court may, at any stage of the proceedings, order the detention of the wanted person. The order shall have effect until a decision is given on the petition, unless the Court revokes it before then.

## **6. Detention without warrant pending petition**

The Attorney General or his representative, or a police officer of the rank of Chief Superintendent or higher, may order in writing the detention of a wanted person prior to the submission of the petition, and also the detention of a person of whom there is reason to believe that he is extraditable and that a request for his extradition will be submitted, if it appears to the person making the order that the detention is necessary to ensure extradition.

## **7. Detention under warrant**

(a) A person detained under Section 6 shall, within forty-eight hours, be brought before a Judge of a Magistrates Court for the purpose of obtaining a warrant of arrest against him; however, if a petition has been submitted in accordance with Section 3 within the aforesaid period, the person detained shall be brought before a Judge of the District Court.

(b) A warrant under Subsection (a) shall have effect for not more than twenty days; however, a Magistrates Court may permit and re-permit the detention under arrest for additional periods beyond twenty days if the Attorney General has so requested on the basis of circumstances delaying the submission of a petition pursuant to Section 3.

(c) The aggregate period of detention under Sections 6 and 7 shall in no case exceed sixty days; however, if after the requesting State has submitted a Request for Extradition of the detained wanted person the Attorney General has notified that there are prima facie grounds for submitting a petition as set out in Section 3, the Judge may extend the detention, on these grounds, for an additional period not exceeding ten days.

973. Israel took into custody persons whose extradition was sought and who were present in Israel's territory, as exemplified in the following case.

Va.R. (Jerusalem) 8864/06 the Attorney General v. Gilbert Nissim Shikli - three Jerusalem residents wanted by France for bank fraud and money laundering were arrested until the French authorities could apply for their extradition. The three men were suspected of calling French bank branch managers while impersonating as the bank CEO. They would tell branch managers to cooperate with French undercover agents who would shortly be in contact as part of investigations into the financing of terrorism. The three suspects would then call the branch managers in the guise of these undercover agents and ask for information about large-scale financial transfers. Most of the acts were carried out from Israeli territory.

## **(b) Observations on the implementation of the article**

974. The national legislation appears to be in line with the provision in question.

## **Paragraph 11 of article 44**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those*

*authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

(a) **Summary of information relevant to reviewing the implementation of the article**

975. Under the Extradition Law, Israel can extradite its nationals to another country to stand trial with respect to **all** extradition offences, including corruption offenses. However, if the wanted person was both an Israeli citizen and resident at the time he allegedly committed the crime, he will be extradited only on condition that he be given the option of serving in Israel any sentence of imprisonment imposed upon him in the requesting State. In such a case, the **State requesting the extradition must undertake, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event they are convicted and a prison sentence is imposed on them** (Section 1A of the Extradition Law). If the wanted person, both a citizen and resident of Israel, is someone who has already been tried and finally convicted in the requesting State, he has the right not to be extradited but to instead have his sentence carried out in Israel. In such circumstances, the sentence would be carried out in accordance with Section 10 of Israel's Penal Law which provides that in cases where a person was sentenced abroad in a final judgment and if he did not bear the full penalty there, then the Attorney General may - instead of bringing him to trial - apply to a Court that the penalty imposed abroad, or that part of it which was not carried out, be carried out in Israel.

976. Israel considers that the option of extradition subject to such condition fulfills the obligation to extradite.

977. As discussed under UNCAC article 44(2)(b) above, Section 15 of the Penal Law provides a broad basis for jurisdiction over nationals who commit corruption offenses abroad.

978. The Israeli Supreme Court has recognized (Cr.A. 6914/04 *Ze'ev Feinberg v. the Attorney General*) that in certain appropriate circumstances, for humanitarian reasons, the Israeli Minister of Justice may condition the extradition of a wanted citizen on granting him the option to serve any sentence imposed in Israel, even if the wanted citizen had not held Israeli citizenship or residence at the time of the commission of the offence but had obtained and held such citizenship and residence afterwards. It may be noted that the Feinberg case dealt with an extradition under the Council of Europe Convention on Extradition that, in any case, does not require the extradition of nationals and allows for the option of trial and punishment in the requested State. In recent years, the Court has conditioned the extradition of a wanted citizen with conditions to be upheld in the requesting State, including supplying the individual with kosher food while in prison, or conditions to be upheld by the Israeli authorities abroad, such as consular visits.

979. Israel cited the following text.

**Extradition Law, 1954**

**1A. Restriction on extradition of nationals**

(a) A person who has committed an extradition offense under this Law and at the time of the commission of the offense,\*\* was an Israeli national and an Israeli resident, shall not be extradited except in accordance with the following two conditions:

(1) the extradition request is intended to bring the wanted person to trial in the requesting State; (2) the State requesting the extradition has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event he is convicted and a prison sentence is imposed on him.

(b) Subsection (a) shall not prevent the Israeli national from waiving his return to the State of Israel for the purpose of serving his sentence.

(c) The provisions of Section 10 of the Penal Law, 5737-1977 shall apply, mutatis mutandis, in regard to the serving of a sentence in Israel in accordance with this Section.

#### **20B. Voluntary return**

(a) A wanted person may, at any time, submit a written request to the Minister of Justice to return to the requesting State in order to stand trial, in order to be sentenced or to serve a penalty (in this Law - a request for voluntary return).

(b) Where a request for voluntary return has been submitted, the Minister of Justice shall promptly notify the requesting State thereof.

(c) Where a request for voluntary return has been submitted after a petition has been submitted to the Court pursuant to Section 3, the Attorney General shall notify the Court thereof, and the Court shall cease the hearing of the petition.

(d) A wanted person who has requested voluntary return shall be kept in lawful custody for the period that he remains in Israel until his return to the requesting State, provided that this period shall not exceed fifteen days; the District Court may, at the request of the Attorney General, extend this period for an additional period of up to fifteen days, if it is of the opinion that there are special circumstances justifying the delay in the return of the wanted person to the requesting State.

#### **Penal Law, 1977**

##### **15. Offense committed by Israel citizen or Israel resident**

(a) The penal laws of Israel shall apply to a foreign offense of the categories of felony or misdemeanor, which was committed by a person who - when the offense was committed or thereafter - was an Israel citizen or an Israel resident; if a person was extradited from Israel to another country because of that offense, and if he was tried for it there, then Israel penal laws shall no longer apply.

(b) The restrictions said in section 14(b) and (c) shall also apply to the applicability of Israel penal laws under this section; however, the restriction said in section 14(b)(1) shall not apply if the offense is one of these, committed by a person who - when he committed it - was an Israel citizen:

(1) polygamy under section 176;

(2) an offense under Article Ten of Chapter Eight, committed by a minor or in connection to a minor;

(2A) bribery of a foreign public official under section 291A;

(3) conveying beyond the borders of the State under section 370;

(4) causing departure from the State for prostitution or enslavement under section 376B; (5) trafficking in human beings under section 377A.

980. No examples of implementation were provided.

#### **(b) Observations on the implementation of the article**

981. Israel is in compliance with the combined requirements of pars 11-13 of article 44.

## Paragraph 12 of article 44

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

### (a) Summary of information relevant to reviewing the implementation of the article

982. Israeli law allows for the extradition of its nationals so long as none of the restrictions to extradition contained in the Extradition Law apply, according to Article 1A of the **Extradition Law, 1954**. See elaboration under UNCAC article 44(11) above.

983. Israel cited the following text.

#### **Extradition Law, 1954**

##### **1A. Restriction on extradition of nationals**

(a) A person who has committed an extradition offense under this Law and at the time of the commission of the offense,\*\* was an Israeli national and an Israeli resident, shall not be extradited except in accordance with the following two conditions:

(1) the extradition request is intended to bring the wanted person to trial in the requesting State; (2) the State requesting the extradition has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event he is convicted and a prison sentence is imposed on him.

(b) Subsection (a) shall not prevent the Israeli national from waiving his return to the State of Israel for the purpose of serving his sentence.

(c) The provisions of Section 10 of the Penal Law, 5737-1977 shall apply, mutatis mutandis, in regard to the serving of a sentence in Israel in accordance with this Section.

984. No examples of implementation were provided.

### (b) Observations on the implementation of the article

985. Israel is in compliance with the combined requirements of pars 11-13 of article 44.

## Paragraph 13 of article 44

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

### (a) Summary of information relevant to reviewing the implementation of the article

986. If the wanted person had been both an Israeli citizen and resident at the time of the offence and **had already been convicted and sentenced in the requesting State**, he would, under the Extradition Law, have the option of serving that sentence in Israel in lieu of extradition. This would be accomplished pursuant to Section 10 of the Penal Law, as described under UNCAC article 44(2) above above.

987. Israel cited the following texts.

### **Extradition Law, 1954**

#### **1A. Restriction on extradition of nationals**

(a) A person who has committed an extradition offense under this Law and at the time of the commission of the offense was an Israeli national and an Israeli resident, shall not be extradited except in accordance with the following two conditions:

(1) the extradition request is intended to bring the wanted person to trial in the requesting State;

(2) the State requesting the extradition has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event he is convicted and a prison sentence is imposed on him.

(b) Subsection (a) shall not prevent the Israeli national from waiving his return to the State of Israel for the purpose of serving his sentence.

(c) The provisions of Section 10 of the Penal Law, 5737-1977 shall apply, mutatis mutandis, in regard to the serving of a sentence in Israel in accordance with this Section.

### **Penal Law, 1977**

#### **Penalty imposed abroad**

10.(a) If a person who was adjudged abroad by a final judgment in respect of an offence to which the Israel penal laws apply is in Israel, and if he did not bear the full penalty there, then the Attorney General may - instead of bringing him to trial - apply to a Court that the penalty imposed abroad - or that part of it which was not carried out - be carried out in Israel, as if the penalty had been imposed in Israel by a final judgment; in an order said in this section the Court may shorten the period of imprisonment which the convicted person must serve in Israel and set it at the maximum set in Israel's penal laws for the offence for which the penalty was imposed, on condition that it is possible to do so under the agreement between the State of Israel and the state in which the penalty was imposed.

(b) If, in the requesting state, a fine of compensation for another person was adjudged against the convicted person said in subsection (a), in addition to imprisonment, and if the requesting state gave notice that the convicted person has not yet paid the fine or compensation or part thereof, then the Court in Israel shall order - at the application of the Attorney General or his representative - that he be obligated to pay the fine or compensation or the part thereof that was not yet paid by him in the requesting state, as if they had been imposed in Israel, and the statute applicable in Israel to the nonpayment of a fine or compensation and their collection shall apply to the matter; for purposes of this section,

**"compensation to another person"** - compensation to a person who suffered harm from the extradition offence of which the convicted person was found guilty in the requesting state.

(c) If the State of Israel collected a fine or compensation said in subsection (b), then it shall transfer it to the requesting state according to an arrangement to be made for this matter between the State of Israel and the requesting State, including regarding the deduction of the cost of collecting the fine or compensation.

(b) **Observations on the implementation of the article**

988. Israel is in compliance with the combined requirements of pars 11-13 of article 44.

**Paragraph 14 of article 44**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

(a) **Summary of information relevant to reviewing the implementation of the article**

989. The individual rights of persons wanted for extradition are protected both with respect to the procedural aspects of their extradition and with respect to the substantive circumstances under which they may be extradited.

990. The high consideration given to the rights of the wanted person, whether he be of Israeli or foreign nationality, are given expression in the Extradition Law, in the case law of Israel's Court and in Israel's **Basic Law: Human Dignity and Liberty, 1992**, which provides the constitutional underpinning for the protection of such rights.

991. Section 5 of the Basic Law, read together with Section 8 of the Basic Law, sets forth explicitly that "There shall be no deprivation or restriction of the liberty of a person by imprisonment, **arrest, extradition** or otherwise...except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required".

**Procedural Rights in Extradition**

992. Under the Extradition Law, a person subject to an extradition request, when arrested or when the petition is filed, has the right to oppose arrest and to oppose his extradition. He has the right to appeal any order of arrest up to the Supreme Court and may seek at any stage a hearing of the arrest decision if circumstances have changed. If he is declared extraditable by the District Court the wanted person, has a right of appeal of that decision to the Supreme Court (Section 13 of the Extradition Law). If the Supreme Court upholds the extradition decision, the wanted person may seek to convince the Minister of Justice not to sign an Extradition Order. If the Minister of Justice decides to sign the Extradition Order, the wanted person may bring a petition before the High Court of Justice (also the Supreme Court) seeking to have the Minister's decision reversed as unreasonable.

993. The wanted person at all stages has the right to be represented by counsel and has the right to be represented if he chooses, at no charge, by an Attorney of the Public Defender's Office. It is the responsibility of the State to inform him of that right (**Public Defenders Law, 1995** Section 18(a)(10) and Section 20A). He has the right to receive the materials which are submitted to support his extradition, including the prima facie evidence, and to receive other materials held by the Israeli authorities where such disclosure is necessary to assure the fairness of the proceeding (Cr.A. 8801/09 *Guy Mayo v. the Attorney General*).

## Substantive Rights

994. In addition to the procedural rights afforded to a wanted person, the Extradition Law, complemented by the constitutional protections of the Basic Law: Human Dignity and Liberty, protects the rights of the wanted person by restricting the situations in which he might be extradited in a manner that would violate his basic human rights. Thus, Section 2B stipulates, inter alia, that a wanted person shall not be extradited to the requesting State if the request for extradition was submitted for an offence of a political nature; if there are grounds to suspect that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person; if the request for extradition was submitted for a military offence; and if the extradition of the wanted person would violate the *ordre publique*. Under *ordre publique*, the Israel Supreme Court has included situations where the wanted person would be extradited to a legal system which would itself not protect his basic human rights. Similarly, under Section 2B, a person cannot be extradited if he has already been tried or acquitted or convicted in Israel for the offenses for which his extradition is sought, if the statute of limitations for the offense which would have been applicable in Israel has run, or if the person was already pardoned for his offense or had his sentence remitted.
995. If any of these conditions are not fulfilled, the Israeli Court cannot declare him extraditable. Additionally, if the crime carries the death penalty in the requesting State and not in Israel, Section 16 of the Extradition Law prohibits the extradition unless an undertaking is provided by the requesting State that the death penalty will not be applied.
996. Israel cited the following text.

**Basic Law: Human Dignity and Liberty, 1992** - in the attached legislative compilation.

### **Extradition Law, 1954**

#### **2B. Restrictions on extradition**

- (a) A wanted person shall not be extradited to the requesting State in any of the following circumstances:
- (1) the request for extradition was submitted for an offence of a political character, or was submitted to prosecute or punish the wanted person for an offence of a political character, although prima facie his extradition is not requested for such an offence;
  - (2) there are grounds to suspect that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person;
  - (3) the request for extradition was submitted for a military offence, being one of the following:
    - (a) an offence for which a person can only be charged if he was a soldier at the time of its commission;
    - (b) an offence contrary to defense service laws;
  - (4) the wanted person has been tried in Israel for the criminal act for which his extradition is requested and has been acquitted or convicted;
  - (5) the wanted person was convicted in another State of the criminal act for which his extradition is requested and has served his punishment, or the remaining part thereof, in Israel;
  - (6) the request for extradition was submitted for an offence which has lapsed due to time or for punishment which has lapsed due to time, according to the laws of the State of Israel;
  - (7) the request for extradition was submitted for a criminal act for which the wanted person

has been pardoned or has had his punishment remitted, in the requesting State;

(8) allowing the request for extradition is likely to harm public order or a vital interest of the State of Israel.

(b) For the purposes of Sub-article (a)(1), the following offences shall not be deemed to be offences of a political character:

(1) an offence for which both States have an obligation to extradite in accordance with a multilateral treaty;

(2) murder, manslaughter or causing grievous harm;

(3) false imprisonment, abduction or hostage-taking;

(4) sexual offences under Articles 345, 347 or 348(a) and (b) of the **Penal Law, 1977**;

(5) preparation or possession of a weapon, an explosive substance or other destructive substance, or use of any such weapon or substance, all with the intent to endanger human life or to cause serious damage to property;

(6) causing damage to property with the intention of endangering life;

(7) conspiracy to commit any of the offences set out in Sub-articles (1) to (6).

### **3. Request by a foreign State**

(a) In this Law, "the District Court" means the District Court of Jerusalem.

(b) A Request for Extradition on behalf of the requesting State shall be submitted to the Minister of Justice, and he may direct that the wanted person be brought before the District Court to determine whether he is extraditable; such a petition shall be submitted by the Attorney General or his representative.

(c) A Request for Extradition on behalf of the State of Israel shall be submitted to the State in which the wanted person is situated by the Attorney General or any person who has been authorized for this purpose by him

### **9. Declaration of wanted person as extraditable**

(a) If at the hearing of a petition under Article 3 it is proved that the wanted person has been convicted of an extradition offence in the requesting State, or that there is evidence which would be sufficient for committing him for trial for such an offence in Israel, and that the other conditions laid down by law for his extradition are fulfilled, the Court shall declare the wanted person extraditable.

(b) Notwithstanding the provisions of Sub-article (a), the Court may declare the wanted person extraditable, without examination of the evidence, if the wanted person so requests.

997. No examples of implementation were provided.

### **(b) Observations on the implementation of the article**

998. Israel is in compliance with this provision.

## **Paragraph 15 of article 44**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*



**(a) Summary of information relevant to reviewing the implementation of the article**

999. Israel referred to the information under UNCAC article 44(14) above. In particular, Section 5 of the Basic Law, read together with Section 8 of the Basic Law, sets forth explicitly that "There shall be no deprivation or restriction of the liberty of a person by imprisonment, **arrest, extradition** or otherwise...except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required".

1000. Furthermore, Israel's Extradition Law, which prohibits extraditions which would violate Israel's ordre public, as well as Israel's Basic Law on Human Freedom and Dignity (which by its specific terms applies to extradition (Section 5 of the Basic Law)) would prohibit Israel from extraditing someone in circumstances where grounds existed to believe that "the request has been formulated with a view to persecuting or punishing the sought person on account of his sex, nationality or ethnic origin."

1001. It may be noted, that although UNCAC is not self-executing in Israel, in any extradition proceeding based directly or indirectly on UNCAC, a person against whom an extradition petition has been issued could and would argue before the Court the exceptions to the obligation to extradite contained in article 44(15) and if the Court felt these arguments had merit it would not approve the extradition.

1002. There have been no recent court or other cases where extradition was refused on such grounds.

**(b) Observations on the implementation of the article**

1003. According to the domestic law of the State under review, a requested person shall not be extradited if there are grounds to suspect, among others, that the request for extradition was submitted for reasons of racial or religious discrimination against the wanted person; if it was submitted to prosecute or punish the wanted person for an offence of a political character, although prima facie his extradition is not requested for such an offence; and if the wanted person would be extradited to a legal system which would itself not protect his or her basic human rights.

1004. It was discussed during the country visit that there is no explicit measure providing that a person shall not be extradited where grounds exist to believe that the request has been formulated with a view to persecuting or punishing the sought person on account of his or her sex, nationality or ethnic origin, or that compliance with the request will cause prejudice to that person's position for any one of the above reasons. In this context, Israeli officials explained that there have been legal challenges raised on these grounds, in particular gender and anti-Semitism, which have failed and no requests have been refused on these grounds.

**Paragraph 16 of article 44**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1005. Extradition requests will not be refused for a criminal offense on the ground that the offense is also considered to involve fiscal matters. Thus, a corruption offense covered by UNCAC would be extraditable even if the offenses also involved fiscal violations. It may be noted that under certain of its treaties, such as the Council of Europe Convention, Israel is not obligated to extradite for fiscal offenses. Israel, however, has interpreted this to refer to offenses that are solely fiscal in nature and not to regular criminal offenses which may have fiscal aspects.

1006. Israel provided the following information on recent cases in which extradition involving fiscal matters was not refused.

In one case involving the United States (Cr.A. 7376/10 Franklin Novak v. the Attorney General), Israel extradited an individual who had participated in fraudulent conduct, including acts of forgery, in order to defraud the US Internal Revenue Service to receive tax refunds to which he was not entitled.

**(b) Observations on the implementation of the article**

1007. Israel is in compliance with this provision.

**Paragraph 17 of article 44**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1008. Israel indicated that it consults as a regular matter with other States regarding extradition requests to consider problems or deficiencies in the request and how these can be remedied. Consultations often result in a corrected request which will permit extradition.

1009. No examples of implementation were provided.

**(b) Observations on the implementation of the article**

1010. Although UNCAC, under Israel's legal system, is not self-executing, officials explained that the duty to consult, in their view, arises not only out of international comity and good practice but also out of Israel's obligation under international law to apply the provisions of UNCAC in good faith. The reviewers were satisfied with the explanations provided.

**Paragraph 18 of article 44**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1011. Israel cited the following texts.

Multilateral

- European Convention on Extradition, 1957
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- OECD Convention on Combating Bribery of Foreign Public Officials, 1998
- International Convention for the Suppression of the Financing of Terrorism, 1999
- United Nations Convention against Transnational Organized Crime, 2000
- United Nations Convention against Corruption, 2003

Bilateral

- Convention on Extradition between the Government of the State of Israel and the Government of the United States of America, 1962
- Extradition agreement between the Government of Canada and the Government of the State of Israel, 1967
- Israel-Swaziland Agreement on Extradition, 1970
- Treaty between Australia and the State of Israel concerning extradition, 1975
- Israel-Fiji - Agreement for the Reciprocal Extradition of Criminals, 1981

1012. Israel referred to the examples of implementation under UNCAC article 44(2) above.

**(b) Observations on the implementation of the article**

1013. Although Israel can be considered to be in compliance with this provision, it is encouraged to actively promote a policy of acceding to or concluding new bilateral and multilateral agreements or arrangements to carry out or enhance the effectiveness of extradition. In this context, Israel referred to current efforts and intentions to enter into such agreements and arrangements, including treaties recently signed with Brazil, Hong Kong and India, as well as an initiative to expand Israel's extradition relations with States in Latin America.

**Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

(a) **Summary of information relevant to reviewing the implementation of the article**

1014. The transfer of sentenced prisoners is regulated by Israel's **Serving of a Prison Sentence in the Country of the Prisoners Nationality Law, 1996**. This law allows for the transfer of Israeli prisoners serving their sentences abroad (Section 2(a)) as well as foreign prisoners serving their sentences in Israel (Section 2(b)). The transfer can be either based on a convention (bilateral or multilateral) or through an ad-hoc agreement. The transfer is subject to certain conditions set forth in the law, including the condition that the prisoner has agreed to the transfer (for transfer to Israel, Section 7, for transfer out of Israel, Section 13 and 7). Prisoners sentenced for offenses under the Convention may also be transferred pursuant to this law so long as the above conditions are met.

1015. Transfer of prisoners is generally a procedure that requires tripartite consent - by the sentencing state, the state accepting the prisoner and the prisoner himself. There is one situation under Israeli law where transfer is a matter of right, namely, where a previously extradited Israeli citizen or resident is involved. Thus, Section 1A(a)(2) of the **Extradition Law, 1954** provides that a requested person who was both an Israeli citizen and resident at the time they allegedly committed the crime, will be extradited only on condition that they be granted by the requesting State the option of serving any sentence of imprisonment in Israel.

1016. Israel cited the following text.

1. European Convention on the Transfer of Sentenced Prisoners (Ratification by Israel -1997, Entry into Force - 1998)
2. Treaty on Cooperation in the Execution of Penal Sentences between the Government of the State of Israel and the Government of the Kingdom of Thailand (1997)

**Serving of a Prison Sentence in the Country of the Prisoners Nationality Law, 1996**

**2. Transferring a prisoner to serve his imprisonment term in his state of nationality**

- (a) An Israeli citizen imprisoned in a foreign state may be transferred to Israel in order to serve his imprisonment term in Israel in accordance with the provisions of this law.
- (b) A citizen of a foreign state imprisoned in Israel may be transferred to a state of his nationality, in order to serve his imprisonment term there, in accordance with the provisions of this law.
- (c) The provisions of this law shall not apply to a person convicted of an offense pursuant to the Nazi and Nazi Collaborators (Punishment) Law, 5710-1950 or pursuant to the Crime of Genocide (Prevention and Punishment) Law, 5710-1950.

**7. Conditions for the transfer of a prisoner to Israel**

- (a) A prisoner may be transferred in order to serve his imprisonment term in Israel upon a finding by the ministers as to the following:
  - (1) At the time the offense was committed the prisoner was a citizen of the State of Israel.
  - (2) The prisoner's permanent residence is in Israel.
  - (3) The circumstances of the case justify incarceration in Israel.
  - (4) The act for which the prisoner was convicted would be considered a criminal offense, if committed in Israel.
  - (5) There is no reason, relating either to public order or to public safety to prevent the transfer of the prisoner to Israel.

(b) The ministers may exempt a prisoner from any of the terms specified in sub-section (a) clauses (1), (2) and (4), if they see fit.

### **13. Transferring a prisoner convicted in Israel to a foreign State**

(a) The conditions set out in section 7 above, shall apply, mutatis mutandis to the transfer of a prisoner convicted in Israel who is being transferred to a foreign state according to this law.

(b) The aforesaid transfer shall be carried out according to an order issued by the Minister of Justice, which shall specify the nature of the offenses for which the prisoner was convicted, the term of imprisonment to which he was sentenced, and the remaining term of imprisonment which he must undergo in the foreign state.

(c) An order issued according to sub-section (a) above, shall not invalidate any other lawful order ordering that the prisoner shall be kept in custody or prohibiting him from leaving the state.

(d) The transfer of a prisoner pursuant to an order issued according to sub-section (a) above, shall be carried out while the prisoner is kept in lawful custody.

### **The Extradition Law, 1954**

#### **1A. Restriction on extradition of nationals**

(a) A person who has committed an extradition offense under this Law and at the time of the commission of the offense, was an Israeli national and an Israeli resident, shall not be extradited except in accordance with the following two conditions:

(1) the extradition request is intended to bring the wanted person to trial in the requesting State;

(2) the State requesting the extradition has undertaken, in advance, to return the wanted person to the State of Israel for the purpose of serving his sentence in the event he is convicted and a prison sentence is imposed on him.

(b) Sub-section (a) shall not prevent the Israeli national from waiving his return to the State of Israel for the purpose of serving his sentence.

(c) The provisions of Article 10 of the Penal Law, 1977 shall apply, mutatis mutandis, in regard to the serving of a sentence in Israel in accordance with this Section.

1017. Israel cited the following example of implementation.

In March 2009, Boris Sheinkman, an Israeli businessman, was arrested in Kazakhstan for charges of bribery of a foreign public official (a senior officer in the Kazakh Ministry of Defense) regarding a deal to purchase military hardware. In 2010, Sheinkman was convicted in a military court and sentenced to 11 years imprisonment. Israel and Kazakhstan do not have an agreement concerning the transfer of sentenced prisoners. However, following Sheinkman's request to carry out his prison sentence in Israel, in 2011 the Kazakh authorities agreed to transfer Sheinkman to Israel if he would serve his entire prison sentence and pay damages. As the punishment in Israel for the bribery of foreign public officials is 7 years and the Israeli court has the discretion to reduce the sentence given to a prisoner transferred to Israel it was agreed that Sheinkman would serve 7 years in prison. Sheinkman was transferred to Israel in March 2012 based on an ad-hoc agreement between the two governments.

#### **(b) Observations on the implementation of the article**

1018. The State under review is in compliance with this article.

## Article 46 Mutual legal assistance

### Paragraph 1

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

##### **The Legal Assistance Law**

1019. The **International Legal Assistance Law, 1998** (hereinafter: "Legal Assistance Law" or "Law") allows Israel to offer full and effective cooperation to authorities in foreign states. The law regulates legal assistance in both civil and criminal cases. Evidence may be obtained through the Law for proceedings in a civil case although some forms of assistance, such as investigative activities, are limited to investigations relating to criminal offenses.
1020. In criminal cases, the Legal Assistance Law permits assistance in both the investigative and judicial stages. The Legal Assistance Law, and the Regulations promulgated thereunder (**International Legal Assistance Regulations, 1999**), specifically relate to many forms of legal assistance, including taking witness statements, court testimony (including via video-conference), search and seizure operations, authentication of documents, service of judicial documents, i.e. the Law essentially permits all lawful actions relating to the investigation or prosecution of offenses, including in corruption cases. These regulations, like all the provisions concerning mutual legal assistance, are applicable to the offences established under this Convention.
1021. Under the Law, the authority competent to receive requests for legal assistance is the Minister of Justice (Section 3) who may delegate his or her authority in this area. However, the authority to refuse a request is exclusive to the Minister of Justice. Thus, requests for legal assistance in cases involving investigations or prosecutions of criminal offenses are generally received by the Directorate of Courts, the office that deals with administrative matters on behalf of Israel's judiciary. Requests received from competent foreign judicial authorities will be reviewed and transferred for execution to an appropriate judicial authority, or, if the request involves investigative activities, will be transferred to the Legal Assistance Unit of the Israel Police (IP) for consideration and ultimate execution by an investigative unit. In most cases requests are passed on to the Israel Police Legal Assistance Unit for execution.
1022. The authority competent to issue requests for legal assistance on behalf of the State of Israel is the Attorney General who may delegate this authority to anyone who has received authority from the Minister of Justice to receive requests. Such authority has been delegated to the Department of International Affairs of the Office of the State Attorney (hereinafter: "the Department of International Affairs") and, as a practice, the Department submits all requests for assistance under the Law on behalf of the State of Israel.

1023. Thus, Israel indicated that it has the full capacity under its law to afford effective mutual legal assistance in matters relating to this Convention.

#### Legal Assistance Outside of the Legal Assistance Law

1024. It must be stressed that the Legal Assistance Law is not an exclusive means of providing cooperation in the investigation of crimes. Section 2(d) of the Law specifically provides that the "provisions of this Law shall not derogate from the authority to extend or to accept legal assistance under any other Law". A number of investigative or regulatory bodies in Israel, including the Israel Securities Authority; the Prohibition of Money Laundering Authority (IMPA); the Israel Tax Authority; etc., possess under Israeli law and under applicable agreements and memoranda of understanding, the ability to provide information and other forms of assistance to similar bodies in other States. Thus, by way of example, the Israel Tax Authority has entered into more than 40 treaties for the avoidance of Double Taxation with foreign states permitting the exchange of information relating to tax matters in order to avoid double taxation of income and in order to prevent tax evasion. Similarly, the PMLL specifically permits IMPA to transmit information from its database to a foreign authority of its kind to assist it in the investigation of criminal offenses related to money laundering (Section 30(f) of the PMLL).

1025. The main mutual legal assistance law and arrangements are listed above.

1026. It should be noted that under Israeli law, the existence of a treaty is not required as a prerequisite to the providing of legal assistance. Assistance may be provided to any state, and to certain designated international bodies, when the request is submitted by an authority competent to do so. However, in order to facilitate the provision and obtainment of legal assistance in criminal matters, the State of Israel has entered into legal assistance treaties with a large number of States including the United States, Canada, Australia and Hong Kong. Israel has also acceded to the Council of Europe's Convention on Mutual Legal Assistance in Criminal Matters, 1959 and to the Second Additional Protocol to that Convention, 2001.

1027. With respect to civil and commercial matters, Israel is party to many of the important multilateral conventions and treaties in the area of mutual legal assistance, including the Hague Convention on the Abolition of the Requirement of Legalization for Foreign Public Documents, 1961, the Hague Convention on the Taking of Evidence in Civil and Commercial Matters, 1971 and the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, 1969.

1028. In the criminal area, in addition to the treaties outlined above, Israel is also party to numerous international conventions containing provisions on mutual legal assistance, including the United Nations Convention Against Illicit Traffic in Narcotic Drugs, 1998, the OECD Convention on Combating Bribery of Foreign Public Officials, 1998, the International Convention for the Suppression of the Financing of Terrorism, 1999 and the International Convention for the Suppression of Terrorist Bombings, 1997.

1029. Israel provided the following examples of implementation.

As noted, Requests for Legal Assistance in cases involving investigations or prosecutions of criminal offenses are generally received by the Directorate of Courts and in most cases are passed on to the Israel Police Legal Assistance Unit for execution. Neither the Directorate of

Courts nor the Legal Assistance Unit possesses statistics regarding the types of crimes which are the subject of requests and therefore it is not possible to give statistical information on this point. It may, however, certainly be said that a number of requests that related explicitly or implicitly to possible crimes of bribery or corruption have been received and are handled in conformance with the Legal Assistance Law and Regulations.

Where a crime of public corruption is involved, diligent efforts will be made to execute the request. Cases involving corruption are among the most labor-intensive requests to execute and significant resources are dedicated to their execution.

It should be stressed that requests for legal assistance for serious crimes will rarely be rejected. Issues that arise relate more to clarity or sufficiency in the descriptions in the request as well as of the facts, circumstances and offenses involved. For example, to obtain confidential bank information, it is necessary to possess a factual basis to indicate that a crime has been committed and that information in the account is likely to be relevant to the investigation of those crimes. In the case of complex transactions, it is not unusual for the request, or at least the translation of the request, to be less than clear on these points. This will not lead to a rejection of the request but to an invitation to the requesting State to supplement the information. These requests for further information are commonly quite specific in delineating the problems or omissions and through communication and dialogue the necessary information can usually be obtained.

One example that might be given regarding corruption offenses, was a request from Canada involving a domestic bribe to a Canadian official to receive an approval involving a large real estate project. A wide series of investigative actions including telephone information, bank records, and location of witnesses were involved. A large amount of documentation and explanation were required to support the necessary court orders. Although legal assistance requests in investigative matters are traditionally heard *ex parte*, in this case the account holders learned of the request (apparently through the bank) and contested the providing of the assistance and raised a number of procedural contentions. The issues raised were ones that were novel and a significant amount of litigation ensued - including litigation before the Supreme Court, in which the Department of International Affairs appeared (R.Cr.A. 11364/03 *John Doe v. State of Israel*). In the end the Supreme Court ruled in favor of the request. The results of the execution of the request engendered, as is not uncommon, further requests which were partially executed and partially required further explanation. This case lasted for many years and involved the expenditure of major resources. This, however, is almost inevitable in complex cases. The willingness to devote such time and resources was based on the understanding that absent the willingness to do so such cases cannot be meaningfully investigated.

With respect to requests in corruption cases submitted by Israel to foreign states, responses to Israeli requests vary from state to state and from case to case. In some cases, we have received excellent and speedy responses. In other cases, we have had to wait a significant amount of time for a response. Where requests were rejected, in part or in full, the cause usually related to the absence of a treaty relationship, the absence of double criminality, or highly stringent evidentiary or factual requirements to conduct searches and seizures, to obtain bank information or to subpoena witnesses. This has been particularly an issue where definitions of bribery or legislation of corruption offenses vary between States. It should be noted that recent years have seen a marked improvement in the acceptance and handling of requests involving corruption, particularly where money laundering suspicions are also



involved. Israel attributes this to the improved international regime encouraging international cooperation in such cases. It cannot be denied, however, that receiving investigative assistance in corruption and bribery cases is still an uncertain process greatly impacting on the momentum and ultimate success of such investigations.

1030. Regarding statistical information, Israel noted that according to the database of the Department of International Affairs in the State Attorney's Office, between the years 2010-2014, approximately 20-25 MLA requests were submitted by Israel in cases related to corruption. It appears that all the requested states are UNCAC members, although in most cases the request was not issued pursuant to UNCAC but rather, pursuant to bilateral or regional MLA agreements. In some instances, several MLA requests were sent to different states regarding the same case. Israel did not have detailed information regarding incoming MLA requests.

1031. It was also reported that the Legal Assistance Unit of the Israel Police (IP) processes approximately over 220 requests per year of which only a few are refused. The time for processing requests is not legislatively formalized; however, in practice it does not take more than a few months.

**(b) Observations on the implementation of the article**

1032. It is notable, however, that although the provision of legal assistance by Israel is not connected to the dual criminality rule, with the exception of assistance concerning confiscation, section 8(d) of the Legal Assistance Law, as cited under subparagraphs **3 (a) to 3 (i) of article 46** below, states that if the requested action is in connection with a criminal matter, then the provisions of the Law (on legal assistance) will apply, as if **the offence in respect of which the action is requested was committed in Israel**. In that regard it was additionally clarified by Israel that the provisions of Section 8 of the Legal Assistance Law are more generally understood to relate to the manner in which assistance is provided and not to the nature of the offenses for which assistance is requested. It was noted, however that the provisions of Section 8 and, in particular Section 8(d) have not been the specific subject of judicial interpretation regarding this matter. Furthermore, it is conceivable that in some cases, depending on the circumstances, it could be seen as a violation of *ordre public* to provide assistance to another state in prosecuting conduct that would be considered fully permissible in Israel

1033. Israel reiterated that unlike for extradition, dual criminality is not *per se* a requirement for legal assistance under Israel's Legal Assistance Law even with respect to searches and seizures. It may be noted that Israel did not and has not entered into the Reservation permitted under Article 5 of the Council of Europe Convention to refuse to conduct searches and seizures in the absence of dual criminality. Thus, for example, Israel provided legal assistance to other states in money laundering cases even prior to the enactment of Israel's own money laundering statute.

1034. Israel further clarified with regard to the factual and evidentiary basis for assistance, that it is governed by Section 8 of the law which generally establishes that Israel will apply the same criteria that would apply in Israel for the form of the assistance requested. In Israel, certain forms of assistance, such as searches and seizures can be undertaken only upon the existence of facts and evidence that indicate that there is a reasonable basis to suspect that a

crime has been committed and that the search and seizure requested is reasonably calculated to uncover information or evidence regarding those crimes.

1035. Furthermore, Section 4(c)(2) of the Legal Assistance Law requires that in order for a request for legal assistance in a criminal matter to be considered it must set forth "the facts that constitute the basis for the suspicion that the offense, which is the subject of that request, was committed and the connection between those facts and the requested assistance".
1036. Thus, Israel explained that the underlying facts must at least be described in the legal assistance request including, where appropriate, an indication of the evidence. Unlike extradition, and unlike requests involving seizure and forfeiture of assets there is no general requirement that evidence be transmitted to secure legal assistance. However, in exceptional cases where it is unclear if a basis for the requested assistance exists, the Israeli authorities may request to see portions of the evidence. Generally, it was explained that the requirement to set forth the facts and to describe or provide evidence, where appropriate, is applied on a common sense basis so as to allow effective assistance to be provided while protecting the rights of individuals and the rule of law.
1037. Israel further clarified with regard to the confidentiality applied that the rule is that Israel will on request preserve the confidentiality of legal assistance requests. This is provided for in Section 11 of the Legal Assistance Law. In cases where confidentiality is requested and bank information is requested, the appropriate court order served on the bank to disclose the account information will generally include a provision prohibiting the bank from disclosing to its client the existence of the request or the court order or the disclosure of the bank information. There have been rare cases where an order inadvertently did not contain this clause or where disclosure was made in violation of the order. Such disclosure by a bank in violation of a court order would be a criminal offense in Israel.
1038. It can be concluded, based on the above, that the provisions of article 46, paragraph 1, are satisfactorily implemented in Israel.

#### **Paragraph 2 of article 46**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1039. All of the assistance available in criminal matters would also be available if the proceeding was directed against a company or other legal person. Similarly, assistance in civil matters would be equally available where the proceeding involved was directed against a legal person.
1040. Israel indicated that the **International Legal Assistance Law, 1998** does not limit

provision of assistance in cases of legal persons.

1041. No examples of implementation were provided

**(b) Observations on the implementation of the article**

1042. The International Legal Assistance Law of Israel does not restrict the provision of legal assistance with respect to legal persons. Moreover, the Penal Law of Israel establishes criminal liability for corporations (section 23). Therefore, the provisions of article 46, paragraph 2, of the Convention are implemented in Israeli law.

**Subparagraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

1043. Israel indicated that the basic philosophy of the Law is contained in Section 8 which provides that: (a) any form of assistance requested may be performed to the same extent and subject to the same safeguards that such act could have been performed had the crime involved occurred in Israel; and (b) assistance shall be performed in the particular manner requested so long as this does not violate Israeli law. The effect of this is to allow as legal assistance all measures that would have been available in a domestic criminal matter, while ensuring that their execution proceeds in accordance with the particular evidentiary or legal requirements of the requesting State.

1044. One exception, however, is that arrest is not permitted as a form of legal assistance but only in connection with extradition proceedings pursuant to the **Extradition Law, 1954** (Section 2(b)(1)). The extraordinary assistance represented in wiretapping will also only be

permitted where the crime at issue is punishable by at least three years imprisonment in the requesting State and where the wiretapping would have been permitted for such a crime under Israeli law (Section 31 of the Legal Assistance Law).

1045. Where investigative assistance is involved (for example, under Sections 28-31 of the Legal Assistance Law), such assistance is available, inter alia, when the act is carried out "in order to investigate an offense or prevent an offense" (See the definition of "investigative act" in Section 1 of the Legal Assistance Law). In this context, the question of whether the particular proceeding in the requesting State is denominated as criminal, civil or administrative may be less pertinent than whether the purpose of the requested investigation is related to the investigation or prevention of a criminal offense (such as bribery or another corruption offense) and if that were the purpose of the investigation then the investigative assistance could be available. It should further be noted that civil forfeiture proceedings are explicitly considered "criminal matters" for purposes of Israel's Legal Assistance Law (Section 1) and full investigative assistance for such proceedings is available under the Legal Assistance Law.

1046. All the listed forms of assistance under this UNCAC provision are covered by the Legal Assistance Law as forms of assistance which may be provided or requested with respect to criminal matters.

1047. Israel cited the implementation measures.

#### **International Legal Assistance Law, 1998 - Sections 1, 2, 8 & 28-31.**

##### **Definitions**

1. In this Law -

"person restricted by order" - a person in respect of whom a restricting order was made;

"prisoner" - includes detainee;

"foreign prisoner" - a prisoner under an order of imprisonment or an arrest warrant of another state;

"taking evidence" - taking testimony or presenting an article in Court;

"legal proceeding" - a proceeding in a civil or in a criminal matter;

"investigator" - a person who belongs to a governmental agency and is authorized to investigate under law;

"body search of suspect" - a blood test and an external search, as defined in the Criminal Procedure Law (Powers of Enforcement - Body Search of Suspect) 5756-1996;

"body search upon a person" - as defined in section 22 of the Criminal Procedure (Arrest and Search) Ordinance (New Version) 5729-1969;

"article" - includes documents, money, computer material as defined in the Computers Law 5755-1995, and animals;

"legal document" - each of the following:

(1) a document of or on behalf of a judicial authority;

(2) a document, in respect of which the Law in the place where it was prepared requires that it be prepared by or served by means of the holder of a judicial office;

(3) a document, the service of which by a judicial officer enhances the validity of its service or of its contents under the Law in the place where it was made;

(4) for purposes of a criminal proceeding - a Court document or an investigator's summons;

"foreign legal document" - a legal document made in another country;

"military labor" - within its meaning in section 541 of the Military Justice Law 5715-1955

(hereafter: Military Justice Law);

"service labor" and "service for the benefit of the community" - within their meanings in Article Two "A" and Article Four "A" of Chapter Six of the Penal Law 5737-1977 (hereafter: Penal Law);

"fiscal offense" - a violation of tax laws of any kind whatsoever, including an offense in connection with currency control;

"military offense" - one of the following:

- (1) an offense in connection with military service;
- (2) an offense tried only before a military tribunal;
- (3) an offense under military law that would not be an offense under ordinary criminal law;

"criminal matter" - an investigation, a criminal proceeding, a forfeiture of property in a criminal proceeding and a forfeiture of property in a civil proceeding;

"investigative act" - an act carried out by a governmental authority competent to do so in order to investigate an offense or to prevent an offense, or for the purpose of obtaining an order for the forfeiture of property or execution of an order to forfeit property as set out in Article Six of Chapter Three, it being one of the following:

- (1) collecting information;
- (2) interrogation and taking a statement;
- (3) the search of a place, the body search upon a person or the body search of a suspect;
- (4) seizure of evidence or of an article and their examination;
- (5) locating and surveillance of a person, property or a financial transaction;
- (6) secret monitoring;
- (7) any other investigative action, which the authority is competent to perform, exclusive of arrest;

"financial transaction" - includes a bank transaction;

"foreign forfeiture order" - an order to forfeit property made by a foreign judicial authority, either in a criminal or in a civil proceeding;

"restricting order" - any of the following:

- (1) a license under section 28 of the Prisons Ordinance (New Version) 5732-1971 or under section 49 of the Penal Law;
- (2) a probation order under any enactment;
- (3) a Court's decision that the convicted person serve his sentence of imprisonment by service labor under Article Two "A" of Chapter Six of the Penal Law;
- (4) an order for service for the benefit of the community under Article Four "A" of Chapter Six of the Penal Law;
- (5) a determination by a Military Court that the convicted person serve his penalty by military labor under section 541 of the Military Justice Law;

"property" - real estate, movables, money and rights, including consideration of any kind for aforesaid property, and any property that represents the proceeds of or that represents the profits of aforesaid property;

"foreign judicial authority" - a Court or a Tribunal in another country, as well as any other governmental authority competent to issue an order to forfeit property in that country.

### **The nature of legal assistance**

2. (a) Legal assistance between the State of Israel and another state (in this Law: legal assistance) is every one of the following: service of documents, taking evidence, search and seizure operations, transmittal of evidence and other documents, transfer of a person in order to testify in a criminal proceeding or to participate in an investigative act, investigative acts, transmittal of information, forfeiture of property, provision of legal relief, authentication and certification of documents or the performance of any other legal act, all in connection with a

civil matter or a criminal matter.

(b) Legal assistance under this Law does not include the following:

(1) arrest or any other proceeding connected to extradition;  
(2) execution of a judgment, except for execution of a judgment set out in Article Six of Chapter Three;

(3) transfer of prisoners for purposes of serving their sentence.

(c) (1) The provisions of this Law shall also apply, mutatis mutandis, to legal assistance between the State of Israel and a body that is not a state and that is one of the bodies specified in Schedule One.

(2) Wherever this Law refers to "another state", that also implies a body set out in paragraph (1).

(d) The provisions of this Law shall not derogate from the authority to extend or to accept legal assistance under any other Law.

### **Subject to provisions of Law**

8. (a) Any act in Israel in accordance with a request for legal assistance by a foreign state shall be performed in the manner in which an act of that kind is performed in Israel, and the provisions of enactments that apply in Israel to an act of that kind shall apply to it, except if a different provision is made in this Law or under it.

(b) Any act on a foreign state's request for legal assistance shall be performed in Israel only if the act is permissible under Israel Law.

(c) The requested act shall be carried out in a manner that complies with the requesting state's request, as long as the act is permitted under Israel Law.

(d) If the requested act is in connection with a criminal matter, then the provisions of this Law shall apply, as if the offense in respect of which the act is requested was committed in Israel.

### **Extradition Law, 1954 - Section 2**

2. (a) In this Law, an extradition offense is an offense which, had it been committed in Israel, would be punishable by imprisonment for one year or by a more severe penalty.

(b) Notwithstanding the provisions of Subsection (a), where a person has been declared extraditable for at least one extradition offense, he may also be extradited for an offense that is not an extradition offense.

1048. No examples of implementation were provided.

### **(b) Observations on the implementation of the article**

1049. Israeli law permits, within the framework of legal assistance, any measure that would be applicable in respect of a criminal case concerning an offence committed within the territory of Israel.

1050. Israel further clarified that regarding the taking of statements from witnesses or suspects, Israel does not distinguish between citizens and non-citizens. It is possible to take the statement of a suspect in Israel although, of course, he will possess his right against self-incrimination. Generally, statements are taken according to the procedures followed under Israeli law unless the requesting state requests an alternate procedure due to the requirements of its own law. In such cases, pursuant to Section 8(c) of the Legal Assistance Law, efforts will be made to accommodate the request as long as the requested procedure does not actually violate Israeli law. It was explained that issues will sometimes arise where the nature

of the warning to be provided to a suspect or witness, the nature of the self-incrimination protections or the right to presence of counsel differ between Israel and the requesting state. Generally a practical solution is found.

### **Subparagraphs 3 (j) and 3 (k) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### **Investigative Assistance and Tracing of Proceeds**

1051. As discussed above, the Law essentially permits the provision on a broad basis of investigative assistance with respect to criminal offenses. This includes assistance with respect to the tracing of criminal proceeds in money laundering and other criminal cases. Criminal matter for the Law's purposes includes proceedings related to the forfeiture of assets connected to a criminal offense even if the proceeding is denominated as civil rather than criminal. Thus, full investigative assistance is available for the purposes of Article 46(3)(j) of UNCAC.

#### **Forfeiture and Recovery of Criminal Proceeds under the Legal Assistance Law**

1052. The freezing and forfeiture of assets on the basis of a foreign request is regulated by Article Six of the Legal Assistance Law. Section 33 of the Law provides that upon a foreign request, Israeli authorities may petition an Israeli Court to enforce a foreign order for the forfeiture of property in a criminal matter. The International Legal Assistance Law specifically provides that a "foreign forfeiture order" which can be enforced under the International Legal Assistance Law includes "an order to forfeit property made by a foreign judicial authority, either in a criminal or civil procedure ..." (Section 1).

1053. Section 33(a) provides the conditions under which enforcement of a foreign forfeiture order is possible. Under Section 33(a)(2), enforcement of a foreign order is possible only where a sufficient evidentiary basis exists to support a finding that the assets in question are proceeds or instrumentalities of a criminal "offense". Under Section 33(a)(1), the criminal "offenses" to which the provisions of Article Six apply are limited to the offenses listed in a schedule (Schedule 2) attached to the International Legal Assistance Law. The offenses included in Schedule 2 include a comprehensive variety of offenses under Israel's criminal law. When Israel enters into a foreign convention providing for the forfeiture of assets, the offenses covered by the convention are routinely added to the Schedule. Consequently, in 2009, as part of Israel's measures to ensure compliance with UNCAC prior to Israel's ratification of the Convention, this schedule was amended to include all the offenses relevant to corruption in the Israeli Penal Law, 1977. Thus, forfeiture of assets is available with respect to the corruption offenses covered by Chapter III of UNCAC, provided that the other

requirements of Article Six of the law are fulfilled.

1054. Under the procedures of Article Six, after preliminary determinations regarding the above matters have been made by the Competent Authority (i.e., the Minister of Justice or one to whom he has delegated his authority), the request for enforcement of the foreign forfeiture order is to be transmitted to a District Attorney to examine the evidence and to determine "whether the evidence on the strength of which the foreign confiscation order was handed down would have sufficed for the issuance of a forfeiture order under Israeli law" in a domestic case (Section 33(b)). If the District Attorney reaches such a determination, he will then submit a petition to the Israeli District Court in whose jurisdiction the property in question is located to "issue an order for the enforcement of the foreign forfeiture order"(id.). If the District Court agrees that the requirements of Section 33 (a) and (b) have been met, it can issue an enforcement order, pursuant to which "the foreign forfeiture order shall be treated, for all intents and purposes, as if it had been issued in Israel.
1055. Article Six of the Legal Assistance Law provides, in Sections 35 and 36, measures to protect the interests of parties affected by proceedings under its provisions. Section 35(a-b) provides that all persons with a legitimate interest in the property in question may be heard in the forfeiture proceedings and that enforcement orders will not penalize persons who can prove that the property had been utilized in the offense without their knowledge or consent, or that they acquired their rights in the property "for a consideration and in good faith and without the possibility of knowing that it had been used in or obtained in connection with an offense". Section 35(c) also provides that enforcement of a forfeiture order must still assure that the owner of the property "will have reasonable means of support and reasonable housing". Section 36 allows for the possibility of the cancellation of an enforcement, in cases where the individuals were not summoned to present their arguments concerning the order, so long as the request for cancellation is submitted within two years after the order was made, or by a later date set by the Court, if it concludes that it is just to do so.
1056. Orders for enforcement of forfeiture under Article Six are appealable in the same manner in which any civil order may be appealed (which generally means a request for leave to appeal to the higher court).
1057. Once an enforcement order is issued under Article Six, this will constitute, under Section 41, an authorization for the Administrator General to seize the property and transfer it to the forfeiture fund established under Israeli law. While proceeds forfeited to this fund are thus forfeited to the State of Israel, under Section 42, the Minister of Justice, in consultation with the Minister of Finance, may prescribe that "the property forfeited, or part of it, or its equivalent be transferred to the state where the foreign forfeiture order was made". The ability to effectuate such transfers comprises the means available under the law to effectuate recovery and return of assets for purposes of UNCAC Article 46(3) (k) and Chapter V.

#### Freezing of Assets

1058. In order to enable eventual forfeiture, it is often essential that there be an ability to undertake temporary measures to freeze and seize suspect assets, pending an eventual determination on forfeiture in the requesting State and in Israel. Provisions for such temporary measures are also provided in Article Six of the Law and recent amendments and proposed amendments to the Law are calculated to increase Israel's ability to undertake such measures effectively.



1059. Temporary seizure measures are provided for under Section 39 and 40 of the Legal Assistance Law. Under Section 39(a), upon the request of a foreign state, it is possible to request that "temporary relief be provided in order to secure property located in Israel in connection with a legal proceeding" which "is or will soon be in progress before a foreign judicial authority for an act which - had it been committed in Israel - would be one of the offenses enumerated in Schedule Two". The Competent Authority (i.e. the Minister of Justice or one to whom he has delegated his authority) will then consider if the requirements for forfeiture in Sections 33(a-b) (i.e. a sufficient evidentiary showing and a criminal offense included in Schedule Two) are *mutatis mutandis* also met with respect to the requested seizure of freezing. The directive that these requirements be applied "*mutatis mutandis*" will never be as complete or straightforward as when a final forfeiture order had already been entered in the requesting State.
1060. If a request for temporary measures is made by the foreign state under Section 39(a) and the Competent Authority has determined that the requirements of that provision are met, the Competent Authority may transfer the request to a District Attorney who may apply under Section 39(b) to the relevant District Court for an appropriate order.
1061. Section 39 thus enables freezing and seizure orders or other appropriate measures to be taken to secure funds and assets regarding which forfeiture proceedings are or soon will be undertaken in the requesting State.
1062. Originally, two aspects of the Law operated, however, to reduce its effective use. The first of these was that, under the original version of the Legal Assistance Law (Section 39(c) and 40(g)), action could not be taken pursuant to foreign request for freezing or other temporary measures unless the foreign state provided a sufficient undertaking guaranteeing that the foreign jurisdiction would cover any damages arising to private parties as a result of the seizure or temporary measure should the forfeiture ultimately not take place or be found invalid. While this requirement existed for obvious reasons, it proved to be the case that most foreign jurisdictions were unable or unwilling to provide such an undertaking, negating, in large measure, the utility of the procedures provided under Article Six. Consequently, an amendment to the International Legal Assistance Law (Amendment No. 7) was enacted in October 2010, authorizing the Minister of Justice, on a case by case basis and for appropriate cause, to exempt requesting foreign jurisdictions from providing undertakings for compensation. The amendment has already been used to provide such an exemption, and it is anticipated that such exemptions will be issued whenever appropriate and when the request satisfies the other requirements of the International Legal Assistance Law.
1063. Following this amendment, however, there remained a second obstacle in facilitating the effective seizure of assets upon foreign requests which related to the maximum period of time for which a temporary seizure or freezing order could be maintained. Under Section 40 of the International Legal Assistance Law, as originally enacted, a freeze order issued by an Israeli court on the basis of a foreign request was limited to the maximum of one year (actually a six-month period subject to one renewal).
1064. At the end of that one-year period, a final forfeiture order had to be issued in the foreign state or the frozen assets would have to be released. As a practical matter, it was realized that very few complex forfeiture cases are concluded or decided upon within that time period. For this reason a further amendment to the Legal Assistance Law was approved by the

Government and is being submitted to the Knesset (Israeli parliament) which would enable freezing orders to be extended by the courts, upon petition by the state authorities, an indefinite number of times. While this requires the issuance of an Israeli court order every time the period in the previous order has elapsed, there is no limit on the number of times that such orders can be extended. Thus, as long as good cause is shown as to why the proceedings in the foreign state have not been completed, the freezing of the assets in Israel can continue. This legislation is expected to result in major changes in ability of Israel to utilize the International Legal Assistance Law for freezing of assets and asset recovery.

1065. It should be noted that in many cases involving criminal proceeds originating in foreign states, Israel is also able to use domestic measures in order to freeze and forfeit assets. The assets are forfeited to an Asset Recovery Fund (managed by the General Receiver in the Ministry of Justice) and arrangements for asset sharing with the foreign state are possible. Domestic procedures were often utilized successfully in the case where the above-mentioned problems with the Legal Assistance Law prevented recourse to its Article Six procedures. With the recent and proposed amendments it is believed that more routine recourse to the Legal Assistance Law to freeze, forfeit and repatriate foreign criminal proceeds will take place.

#### Measures Meant to Improve Israel's Capacities to Freeze, Forfeit, and Repatriate Foreign Criminal Proceeds

1066. In addition to the legislative framework outlined above, in 2010 Israel created the office of the Deputy State Attorney for Economic Enforcement whose task, inter alia, is to establish procedures and guidelines in this area and provide general supervision concerning matters related to confiscation, forfeiture and economic enforcement generally. At the initiative of the Deputy State Attorney for Economic Enforcement and the Department for International Affairs of the State Attorney's Office, an "Effective Guidelines Team" has been established, consisting of representatives of the Israel Police and the prosecution authorities to institute guidelines regarding the effective and expeditious handling of foreign requests for the seizure and forfeiture of criminal proceeds. The guidelines will deal with matters of interpretation and implementation of Article Six of the International Legal Assistance Law dealing with such requests, as well as with the functions of various authorities in this area. The Effective Guidelines Team also discusses the parameters in determining when domestic Israeli investigations and proceedings may be appropriate in a matter originally initiated by a foreign request. A draft of these guidelines has been finalized and released internally. It is believed that these guidelines will enable the Israeli authorities to operate in a rapid and coordinated matter, regarding the foreign requests for seizure, confiscation and forfeiture.

#### Other Measures Meant to Improve Israel's Capacities to Freeze, Forfeit, and Repatriate Foreign Criminal Proceeds

1067. In addition to the legislative framework outlined above, in 2010 Israel created the office of the Deputy State Attorney for Economic Enforcement, whose task, inter alia, is to establish procedures and guidelines in this area and provide general supervision concerning matters related to confiscation, forfeiture and economic enforcement generally. At the initiative of the Deputy State Attorney for Economic Enforcement and the Department for International Affairs of the State Attorney's Office, an "Effective Guidelines Team" was established consisting of representatives of the Israel Police and the prosecution authorities to institute guidelines regarding the effective and expeditious handling of foreign requests for

the seizure and forfeiture of criminal proceeds. These guidelines were issued on 12 November 2014. The Guidelines deal with matters of interpretation and implementation of article six of the International Legal Assistance Law dealing with such requests, as well as with the functions of various authorities in this area. The Guidelines also discuss the parameters in determining when domestic Israeli investigations and proceedings may be appropriate in a matter originally initiated by a foreign request. It is believed that these guidelines will enable the Israeli authorities to operate in a rapid and coordinated matter, regarding the foreign requests for seizure, confiscation and forfeiture.

1068. Israel cited the following implementation measure.

**International Legal Assistance Law, 1998 - Article Six**

**Postponing the time for implementation of a request for legal assistance or staying its execution**

6. (a) (1) The Competent Authority may postpone the time for the implementation of an act of legal assistance, if its implementation is liable to -
- (a) interfere with the conduct of a pending criminal proceeding;
  - (b) cause unreasonable harm to some other legal proceeding;
- (2) if the Competent Authority decided to postpone the time for the implementation of an act of legal assistance, as set out in paragraph (1), then notice thereof shall be delivered to the requesting state, stating the estimated time when it will be possible to perform the act, and the act shall be performed only if the requesting state gives notice that it is interested in its being performed at the stated time.
- (b) If the Competent Authority concluded that the evidentiary basis of the request for legal assistance on a criminal matter does not make it possible - under Israel Law - to perform an act similar to the requested act, then the Competent Authority may stay performance of the act until the evidentiary basis has been completed; if the Competent Authority decided to stay performance of the act, then notification thereof shall be delivered to the requesting state and the act shall not be performed until the evidentiary basis is completed.
- (c) The Court may postpone the time for performing an act of legal assistance on a criminal matter or stay its performance, if the circumstances specified in subsections (a) or (b) hold true.

**SCHEDULE TWO**

(Sections 33(a) and 55)

- A. Offenses under the Dangerous Drugs Ordinance [New Version] 1973, for which the penalty is 20 years imprisonment or more.
- B. Offenses under Sections 3 and 4 of the Prohibition on Money Laundering Law, 2000, committed in regards to property that is prohibited property as defined in Section 3 of the above mentioned Law as well as an offense listed in the schedule to that Law.
- C. Offenses under Sections 2, 3 and 4 of the Combating Criminal Organizations Law, 2003.
- C1. Offenses under Sections 8 and 9 of the Prohibition of Financing Terrorism Law, 2005.
- C2. The following offenses in the Penal Law, 1977 (hereinafter: the Law), when they are linked to an act of terrorism as defined in the Prohibition of Financing Terrorism Law, 2005 (for the purposes of this schedule – acts of terror) and where the perpetrator is aware of said link:
  - 1. Offenses under Chapter 7, other than Sections 102(b), 108(b), 117(b), 117(c);

2. Offenses under Chapter 8 – Article One, Article One (A), Article Two, Article Three notwithstanding Section 160, Article Five, Article Six, Article Seven notwithstanding Sections 174A, 174B, Article Nine notwithstanding Sections 193, 193A, 194A, Article Eleven notwithstanding Sections 215(c), 216(a)(1)(2)(3)(4), 216(b), 217, the chapeau of 218, 220 and 223 and Article Twelve;

3. Offenses under Chapter 9 – Article One notwithstanding Sections 251, 254, 264, 265, 266, Article Three, Article Four notwithstanding Sections 277-282, 284-288 and 289 and Article Five;

4. Offenses under Chapter 10 – Article One notwithstanding Sections 303, 304, 311 Article Four notwithstanding Sections 337-340, 341, 343 and 344, Article Seven notwithstanding Sections 375A, 377A and Article Five;

5. Offenses under Chapter 11 – Article One, Article Two– notwithstanding Sections 394-400, Article Three, Article Four, Article Five notwithstanding Section 413, Article Five (A), Article Six notwithstanding Sections 416, 417, 424A, 425, 431 and 432 Article Seven notwithstanding Sections 439, 445 and 446, Article Nine notwithstanding Sections 449 and 455;

6. Offenses under Chapter 12 – Articles One and Two;

7. Offenses under Chapter 14.

D. Regulations 84 and 85 of the Defense (Emergency) Regulations, 1945.

E. Sections 2, 3 and 4 of the Prevention of Terror Ordinance, 1948.

F. Section 12 of the Entry into Israel Law, 1952, when the offense is linked to an act of terrorism and the perpetrator is aware of the said link.

G. Sections 17, 18, 18A, 19 and 20 of the Air Navigation Law (Offences and Jurisdiction), 1971.

H. Section 14 of the Air Navigation Law (Security in Civil Aviation), 1977.

I. Section 15 of the Hazardous Substances Law, 1993, when the offense is linked to an act of terrorism and the perpetrator is aware of the said link.

J. Offenses under Sections 375A and 377A of the Penal Law.

K. Offenses under Sections 284 and 425 of the Penal Law.

1069. No examples of implementation were provided.

**(b) Observations on the implementation of the article**

1070. Israeli law provides for measures relating to the execution of requests for legal assistance concerning the identification, tracing and freezing of proceeds of crime and of the recovery of assets.

1071. It is very important that the Legal Assistance Law permits courts to order the forfeiture of property equal in value to the property that is the subject of an enforcement order if the property was transferred to a purchaser acting in good faith, if the value of the property was reduced as the result of an act or omission on the part of the person against whom the order was issued or if the property was intermingled with other property and cannot be separated.

1072. In the process of Israel's ratification of UNCAC, this Schedule Two was amended to include criminal offenses under Israeli law that are covered by UNCAC. In particular, it may be noted that item 2 of the Schedule includes not only offenses under Sections 3 and 4 of Israel's Money Laundering Law but all offenses that can serve as 'predicate offenses' under the Money Laundering Law. These predicate offenses are themselves listed in Schedule 1 to the Money Laundering Law and include most serious corruption offenses. Corruption

offenses were also separately included in Schedule Two of the Legal Assistance Law. Nevertheless, it is recommended to consider including all UNCAC offences in Schedule Two of the Legal Assistance Law, as noted above under article 23 with respect to including all UNCAC offences in Schedule 1 of the Money Laundering Law.

1073. Israel additionally clarified regarding (section 33(b)) the Legal Assistance Law on compliance of final foreign forfeiture order with **the requirement that there be a sufficient evidentiary basis** in accordance with Israeli law, that such requirement is applied "mutatis mutandis" to temporary freezing orders. The practical meaning of this is that the transmission of actual evidence will not generally be required at the stage of temporary freezing of assets but that an adequate description of the evidence should be given. In certain cases, copies of some of the evidence might be required in order to clarify that a legal basis for the seizure exists. As was noted in the Self-Assessment, this Law has been rarely utilized to enable temporary freezing orders because of restrictions that once existed in the Law but which were or are being amended. It was explained that as a result, recently bank account assets were temporarily frozen on the basis of a request for seizure of assets from Canada. Canada provided a thorough description of the evidence supporting the request but not the actual evidence. Because it is anticipated that the Legal Assistance Law will be increasingly utilized to enable temporary freezing of assets, the Israeli courts will establish through interpretation and case law the parameters of the factual and evidentiary showing required.

1074. Israel additionally noted that in May 2014, the draft amendment to the Legal Assistance Law was approved by the Parliamentary Law and Constitution Committee and has since been enacted into law. It is anticipated that this will allow a much increased use of the seizure and forfeiture provisions of the Legal Assistance Law. The internal guidelines regarding the consideration of requests for seizure and forfeiture of assets have been finalized and released internally.

1075. During the country visit Israel also reported some successful experiences in international cooperation in freezing of criminal proceeds, although, not in particular, in corruption cases. In one case of tax fraud U.S. assets were returned to the U.S. and a non-conviction based forfeiture was also utilized in that case.

1076. Israel also reported instances of asset sharing in drug trafficking cases, although now similar instances have been observed in transnational corruption cases.

1077. Based on the above, Israel implemented the provision under review.

**(c) Successes and good practices**

1078. The Ministry of Justice (Office of the State Attorney) has recently issued guidelines on the consideration of requests for legal assistance concerning seizure and confiscation. The application of those guidelines will make international cooperation more effective.

**Paragraph 4 of article 46**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or*

*successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1079. Israel indicated that such transmission of spontaneous information to the competent authorities of other states, in order to assist law enforcement goals is an inherent part of informal law enforcement (and in particular police-to-police) cooperation. In a recent decision (C.C. 23123 Gold v. State of Israel) an Israeli Court determined that such transmission of intelligence information was a lawful part of police functions and did not need a specific separate statutory basis.

1080. In any case, such transmission of spontaneous information, without a request, is specifically provided for in Section 32 of the Legal Assistance Law.

1081. Where the information at issue must be received in a more formal form for evidence purposes, generally a request meeting the requirements of the Legal Assistance Law is necessary.

1082. Israel cited the following implementation measures.

**International Legal Assistance Law, 1998 - Section 13, 32 & 43**

**Effect of regulations with respect to certain international agreements**

13. If provisions on matters specified below have been prescribed in an international agreement, to which the State of Israel is a party, and if regulations were made for their implementation, then they shall have the effect of Law, notwithstanding the provisions of this or any other Law:

- (1) the service of documents, proving their contents, their verification and certification;
- (2) the taking of testimony, the production of documents;
- (3) the length of the period set in the closing passage of section 26(a)(1);
- (4) the provision of legal aid, free of charge, to nationals or residents of other states;
- (5) exemptions from Court fees, stamp duty and other payments in respect of acts performed by virtue of this Law or connected with the enforcement of foreign judgments;
- (6) exemptions for nationals or residents of other states from providing surety for their ability to pay in actions, appeals and petitions for the enforcement of foreign judgments.

**Another state's request for information**

32. (a) Where another state has requested information in connection with a criminal matter pending in that state, if a public authority in Israel has the information, and if the information is of the kind that may be transmitted to another public authority in Israel, then the Competent Authority may order that the information be transmitted for this purpose.

(b) Transmittal of information, as set out in subsection (a), may also be at the initiative of the Competent Authority.

**Undertaking by the requesting state**

43. Notwithstanding the provisions of section 42, the property shall only be transferred to the requesting state if that state provides an undertaking that should the forfeiture order in respect of the property transferred to it be canceled in Israel, the requesting state will bear all the expenses specified in section 36. **The Minister of Justice may decide not to demand such an undertaking for special reasons to be recorded.**

1083. Israel referred to the following example of implementation.

The case of Cv.C. 23123-03-11 *Gold v. State of Israel* is relevant to this Article. In that case, the Israel Police (IP) sent a letter to the Paraguayan police warning that a lawyer of an escaped criminal intended to arrive in Paraguay and demand the release of his client's frozen assets there. The court rejected the lawyer's defamation claim against the IP, ruling that it acted lawfully in order to secure the return of the stolen assets to Israel and that the information contained in the letter was intelligence information which the IP was authorized to send.

**(b) Observations on the implementation of the article**

1084. The provisions of article 46, paragraph 4, are implemented in Israel.

**Paragraph 5 of article 46**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1085. Generally, if information transmitted without a prior request is transmitted for restricted use or on the basis of confidentiality, Israel will seek to ascertain that the receiving state is willing to abide by the conditions and restrictions before accepting the information. This would also be the procedure Israel would follow if it were the receiving state. Israel has made a reservation to this effect with respect to the provisions on spontaneous information in the Second Additional Protocol to the European Convention on Mutual Legal Assistance.

1086. Israel referred to Israel's declaration to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters:

"In accordance with Article 11, paragraph 4, of the Second Additional Protocol, the Government of the State of Israel reserves the right not to be bound by the conditions imposed by the providing Party under paragraph 2 of Article 11, unless it receives prior notice of the nature of the information to be provided and agrees to the transmission".

**(b) Observations on the implementation of the article**

1087. The provisions of article 46, paragraph 5, are implemented in Israel.

## **Paragraph 8 of article 46**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1088. Israel indicated that Mutual Legal Assistance Requests will not be denied simply on general grounds of bank secrecy and, indeed, obtaining of confidential bank records is one of the most common forms of assistance granted by the Israeli authorities to foreign authorities. If a request is received from a foreign state for disclosure of confidential bank account information in connection with a bribery offense, Israeli authorities would possess the same authority (and be subject to the same safeguards) as if the crime had occurred and were being investigated in Israel. The Israel Police would have to obtain an appropriate court order from an Israeli Court but the information contained in the request - connecting the account information to the alleged crime - would provide the basis for the issuance of the order. In these cases generally, there has to be a factual basis for (a) the suspicion that a crime has occurred and (b) that the disclosure of the confidential bank records is likely to promote the investigation of that crime. Certification or authentication of the bank documents may be undertaken in accordance with the particular evidentiary requirements of the requesting state.

1089. Israel cited the following text.

#### **International Legal Assistance Law, 1998**

##### **8. Subject to provisions of Law**

(a) Any act in Israel in accordance with a request for legal assistance by a foreign state shall be performed in the manner in which an act of that kind is performed in Israel, and the provisions of enactments that apply in Israel to an act of that kind shall apply to it, except if a different provision is made in this Law or under it.

(b) Any act on a foreign state's request for legal assistance shall be performed in Israel only if the act is permissible under Israel Law.

(c) The requested act shall be carried out in a manner that complies with the requesting state's request, as long as the act is permitted under Israel Law.

(d) If the requested act is in connection with a criminal matter, then the provisions of this Law shall apply, as if the offense in respect of which the act is requested was committed in Israel.

1090. No examples of implementation were provided.

### **(b) Observations on the implementation of the article**

1091. The provisions of article 46, paragraph 5, are implemented in Israel.

## **Subparagraph 9 (a) of article 46**



9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

**(a) Summary of information relevant to reviewing the implementation of the article**

1092. Dual criminality is not a specific prerequisite for the granting of legal assistance. For example, Israel regularly provides legal assistance to foreign states investigating or prosecuting money laundering cases even before Israel's own **Prohibition on Money Laundering Law, 2000** was enacted. An Israeli Court issuing a court order might apply particular scrutiny if an order for search and seizure of evidence, based on a foreign request, related to an offense that did not have a counterpart under Israeli law. Double criminality is a requirement under Article Six of the Legal Assistance Law relating to freezing, seizure and forfeiture of assets and, as noted, those forms of assistance are available only with respect to offenses which have an Israeli equivalent and are listed in Schedule Two of the Law.

1093. Israel cited the following text.

**International Legal Assistance Law, 1998** - Article Six as cited under subparagraphs 3 (j) and 3 (k) above.

**(b) Observations on the implementation of the article**

1094. Israel can provide legal assistance in the absence of dual criminality except in the case of searches, seizure and confiscation. In any request for assistance regarding an UNCAC offense Israel would take into account the purposes of UNCAC.

**Subparagraph 9 (b) of article 46**

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

1095. Israel referred to the information under UNCAC article 46(9)(a) above.

1096. Regarding de minimis requests, under the Legal Assistance Law, Section 5(a)(7), the Minister of Justice may deny a request for assistance if it involves the "performance of an act [which] involves an unreasonable burden on the State". In applying this standard, the Minister will clearly consider the nature of the offenses for which the assistance is requested as well as common sense. In this context, Israel is simply applying standards operating under Israeli domestic law which (Penal Law 34Q) also considers de minimis considerations.

1097. Israel cited the following text.

## **Penal Law, 1977**

### **34Q. Lack of importance**

No person shall bear criminal responsibility for an act, if - when the nature of the act, its circumstances, its consequence and the public interest are taken into consideration - it is of minor importance.

## **International Legal Assistance Law, 1998**

### **5. Refusal of request**

5. (a) The Minister of Justice may deny a request, if one of the following exists:

...

(7) performance of the act involves an unreasonable burden on the State.

1098. Israel indicated that there are no definitions of the term "coercive" in Israeli law. However, it is generally recognized that requests seeking search warrants, restraint and confiscation of assets, and summoning of witnesses to court, are regarded as coercive measures. Therefore, the definition encompasses anything that is not done voluntarily.

1099. Israel referred to the information above regarding matters it considers to be of a de minimis nature.

1100. No examples of implementation were provided.

### **(b) Observations on the implementation of the article**

1101. The provisions of article 46, paragraph 9(b), are implemented in Israel.

## **Subparagraph 9 (c) of article 46**

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1102. Israel referred to the information and examples under UNCAC article 46(9)(a) above.

### **(b) Observations on the implementation of the article**

1103. The provisions of article 46, paragraph 9(c), are implemented in Israel.

## **Paragraph 10 of article 46**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1104. Section 23 of the **Legal Assistance Law, 1998** makes possible the transfer of a prisoner from Israel at the request of another state "in connection with a criminal matter". "In connection with a criminal matter" includes assistance at both the investigative and prosecutorial stages of a criminal matter. Under Section 24 of the Law any such transfer is dependent on the consent of the prisoner to be transferred. Such transfer is permissible for a period of one month but may be renewed for an additional period of up to a further six months. Sections 49 and 50 of the law provide for the possibility of a request for similar assistance from another state. These Sections do not specifically provide that transfer to Israel must be at the consent of the prisoner but this is generally a requirement of the Conventions pursuant to which such transfer may take place.

1105. Israel has successfully undertaken such transfer pursuant to the Law in a drug case in which the prisoner was transferred to Israel from the Netherlands in order to testify. In another case, prior to the enactment of the Law, a transfer was undertaken of a prisoner in Switzerland to testify in a major government corruption and bribery case in Israel. At the completion of the testimony, the prisoner objected to his return to Switzerland, claiming that such compulsory return could only take place pursuant to the extradition laws. The Supreme Court rejected his claim stating that the statutes regarding legal assistance are intended to enable Israel to comply with its obligations under international conventions and must be interpreted in light of those conventions (in that case the European Convention on Mutual Legal Assistance). The prisoner-witness was returned to Switzerland. When the Law was enacted in 1998, it specifically provided in Section 50(c) that extradition procedures would not be applicable to the return of a prisoner who had arrived in Israel pursuant to legal assistance procedures.

1106. Israel cited the following text.

**International Legal Assistance Law, 1998** - Sections 22, 23, 24, 26, & 49 - 51.

**A person's appearance in another state**

22. If another state requested that a person in Israel appear in a legal proceeding in that State for testimony, identification or confrontation, or in order to participate in some other investigative act, then the Competent Authority may act to achieve compliance with the request, subject to the following conditions:

- (1) the appearance is requested in connection with a criminal matter;
- (2) the person agreed to appear in the requesting state for the acts specified in its request;
- (3) if the request for a person's appearance is connected to his military or defense occupation - that approval was given by the Minister of Defense or by a person authorized by him for that purpose;
- (4) the requesting state gave sufficient undertakings on the matters specified in section 26.

**Transferring a prisoner or a person subject to a restricting order to another state**

23. (a) If another state requested that a person appear in connection with a criminal matter, and if the summoned person is a prisoner, then - if the conditions set out in section

22 have been met - the Competent Authority may request that the Court approve his appearance in the requesting state for a period and on conditions that it shall prescribe; if the summoned person is subject to a restricting order, then the Competent Authority may approve his appearance in the other state after it coordinated the matter with the authority in charge of the implementation of the restricting order.

(b) The Court or the Competent Authority, as the case may be, shall in their decision set out the length of time the person summoned under this section shall be abroad, taking into account the time required for his transfer to the requesting state and for his return, and also for the performance of the acts for which that person was summoned, provided that the period shall not exceed six months.

(c) The Court or the Competent Authority, as the case may be, may from time to time extend that person's stay for additional periods, on condition that the total of all the additional periods shall not exceed six months, and all this provided that if the person agreed thereto.

(d) The Court's decision under this section shall constitute legal authorization for removing the prisoner from his place of imprisonment in Israel and for keeping him in legal detention during the entire period that he is outside the place of his imprisonment in Israel; the Competent Authority's decision shall constitute authorization for the departure from Israel of a person subject to a restricting order, and for the extension of the order as set out in subsection (g).

(e) The period during which a prisoner is under detention outside the place of his imprisonment in Israel due to a request of another state shall - for all intents and purposes - be deemed a period during which the prisoner is under lawful detention in Israel, and the provisions of all Israeli enactments on legal detention shall apply to him.

(f) The period during which a person under license or a person on probation is abroad under this section shall, for all intents and purposes, be deemed a period during which he is under license or on probation in Israel, and the provisions of any Israeli law in connection with the violation of a license or of probation shall apply to him, even if the violation was abroad; if a person was unable to comply with a condition of the license or probation order because he was abroad, such non-compliance shall not constitute a violation of the license or probation order.

(g) (1) The period during which a person who is obligated to perform service labor or military labor is abroad under the provisions of this section shall not be counted as part of the period for which he must perform that labor.

(2) The period during which a person subject to an order to perform service for the benefit of the community is abroad under the provisions of this section shall not be counted as part of the period during which the order is implemented and shall not be counted as part of the period during which he must conclude implementation of the order.

(3) The interruption of service labor, military labor or service for the benefit of the community in consequence of a person being abroad as set out in paragraphs (1) or (2) shall not constitute a violation of the restricting order; if the restricting order was violated for some other reason, then the provisions of Israel Law shall apply to the violation.

(4) For purposes of this subsection, "restricting order" - as set out in paragraphs (3) to (5) of the definition of restricting order in section 1.

### **The person's consent**

24. (a) A person's consent to his transfer to another state under this Article shall be given in writing.

(b) If the person is a minor, is legally incompetent or is mentally impaired, then the consent may be given by his guardian; if the person has no guardian, then the consent may be given by the Court.

(c) Before the Court approves a prisoner's transfer to another state under this Article, the prisoner shall be brought before the Court and the Court shall explain to him his right not to agree to his transfer.

(d) Before the Competent Authority approves the appearance in another state of a person subject to a restricting order, that person shall come before it and the authority shall explain to him his right not to agree to appear in the requesting state, as well as the legal significance of his appearance, as set out in section 23(f) and (g), as the case may be.

#### **Undertakings by requesting state**

26. (a) The undertakings of the requesting state under section 22(4) shall be on the following subjects:

(1) the person summoned to testify in a legal proceeding or in order to assist in an investigation (in this section: the person summoned) -

(a) shall not be interrogated, shall not be placed on trial, shall not be arrested, shall not be imprisoned, shall not be punished and his freedom shall not be restricted in any manner whatsoever for any act or omission that occurred before he entered the requesting state's jurisdiction in consequence of the request under this Article;

(b) shall be required to testify only in the legal proceeding for which he was summoned, and shall be required to assist only in the investigation for which he was summoned; unless he left the requesting state and returned to it of his own will, or if 30 days have passed since he received official notification from the requesting state that his presence was no longer necessary and he could have left the requesting state, but chose to remain in that state;

(2) if the person summoned is a prisoner - that he will be kept in detention, under conditions as similar as possible to those under which he was in Israel, during the entire period during which the prisoner is within the borders of the requesting state, provided the Competent Authority did not give notice that the prisoner is to be released;

(3) a person summoned under section 23 shall be returned immediately to Israel, in accordance with arrangements to be made by the Competent Authority, when his presence is no longer necessary;

(4) payment of travel and living expenses of the person summoned under section 22 or 23, including medical expenses and any other expense required in the Competent Authority's opinion during the period in which the person summoned as aforesaid is abroad;

(5) any other undertaking the Competent Authority deems necessary under the circumstances of the case.

(b) If the requesting state did not pay the expenses set out in this section to the summoned person, then those expenses shall be paid by the State Treasury.

#### **Appearance for testimony in Israel**

49. The Authority may request another state to make arrangements for a person in that state to appear in Israel for the purposes of a legal proceeding that is being conducted in Israel, for testimony, identification or confrontation or in order to participate in some other investigative act.

#### **Holding a foreign prisoner in custody in Israel**

50. (a) If a foreign prisoner was delivered to a governmental agency in Israel pursuant to a request for legal assistance under this Law, and if the state from which he was transferred requests that the prisoner remain in custody, then during his stay in Israel the prisoner shall be held in custody for the period which that state requests in a place to be prescribed by the Commissioner of Prisons; if the state from which the prisoner was transferred gives notice

that under its Laws he is to be released, then the prisoner shall be released or returned to that state as soon as possible and not later than 48 hours after the date on which he is to be released according to the notice, all as the Authority shall prescribe.

(b) The request of the state from which the prisoner was transferred, that the prisoner remain in legal custody during the period of his stay in Israel, shall constitute authorization for holding him in custody as aforesaid.

(c) The provisions of the Extradition Law 5714-1954 do not apply to the return of a prisoner, who was brought to Israel under this Article, to the state from which he was transferred.

### **Defenses and conditions**

51. If a person was summoned to appear in a legal proceeding in Israel pursuant to section 49, then the provisions of section 26(a)(1) and (3) shall apply to him, *mutatis mutandis*, and the State shall bear the expenses as set out in section 26(a)(4).

1107. No examples of implementation were provided.

### **(b) Observations on the implementation of the article**

1108. The provisions of article 46, paragraph 10, are implemented in Israel.

### **Paragraph 11 of article 46**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1109. Section 50 of the Legal Assistance law provides that when Israel receives a prisoner for purposes of providing assistance in a legal proceeding or investigation, it will have the obligation (Section 50 (a)) and the authority (Section 50(b)) to maintain him in custody at the transferring State's request during the period of his stay in Israel. Under Section 50(a) Israel is obligated to release the prisoner from custody (or return him to the transferring state) when the transmitting State informs Israel that it is no longer necessary that he remain in custody. Israel must, in any case, return the prisoner to the transferring state, in accordance with such arrangements as have been made, when the person's presence in Israel is no longer necessary for purposes of the assistance (Section 51, applying to the case of a transfer of Israel the provisions of Section 26(a)(3) relating to transfers of Israel prisoners for assistance purposes

to third states.) Section 50(c) specifically provides that the provisions of the Extradition Law do not apply to the return of a prisoner, who was brought to Israel under this Section, to the state from which he was transferred.

1110. Under Sections 25 and 26, Israel will require undertakings of similar effect to be made by the requesting State when Israel transfers a prisoner for assistance purposes to another state.

1111. Israel cited the following text.

#### **International Legal Assistance Law, 1998 - Section 25**

##### **Release of prisoner**

25. If a prisoner was transferred to another state under this Article and - before he was returned to Israel - it became obligatory under Israel Law that he be released, then the Competent Authority shall so inform the requesting State immediately, shall request his immediate release and shall see to it that the requesting State do all that is necessary in the matter, including payments as set out in section 26(a)(4).

Sections 26, 50 & 51, as cited under paragraph 10 above..

#### **(b) Observations on the implementation of the article**

1112. The provisions of article 46, paragraph 11, are implemented in Israel.

#### **Paragraph 12 of article 46**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1113. Israel requires an undertaking to this effect from the requesting State when it transfers a prisoner for assistance purposes (Section 26(a)(1)(a) of the Legal Assistance Law). Similar protections to prisoners transferred to Israel for assistance purposes are provided under Section 51 which applies to prisoners transferred to Israel the protections of Section 26(a)(1).

1114. Israel cited the following text.

#### **International Legal Assistance Law, 1998**

##### **22. A person's appearance in another state**

If another state requested that a person in Israel appear in a legal proceeding in that State for testimony, identification or confrontation, or in order to participate in some other investigative act, then the Competent Authority may act to achieve compliance with the request, subject to the following conditions:

- (1) the appearance is requested in connection with a criminal matter;
- (2) the person agreed to appear in the requesting state for the acts specified in its request;
- (3) if the request for a person's appearance is connected to his military or defense occupation -that approval was given by the Minister of Defense or by a person authorized by him for that purpose;
- (4) the requesting state gave sufficient undertakings on the matters specified in section 26.

## **26. Undertakings by requesting state**

a) The undertakings of the requesting state under section 22(4) shall be on the following subjects:

- (1) the person summoned to testify in a legal proceeding or in order to assist in an investigation (in this section: the person summoned) -
  - (a) shall not be interrogated, shall not be placed on trial, shall not be arrested, shall not be imprisoned, shall not be punished and his freedom shall not be restricted in any manner whatsoever for any act or omission that occurred before he entered the requesting state's jurisdiction in consequence of the request under this Article;
  - (b) shall be required to testify only in the legal proceeding for which he was summoned, and shall be required to assist only in the investigation for which he was summoned; unless he left the requesting state and returned to it of his own will, or if 30 days have passed since he received official notification from the requesting state that his presence was no longer necessary and he could have left the requesting state, but chose to remain in that state;

## **51. Defenses and conditions**

If a person was summoned to appear in a legal proceeding in Israel pursuant to section 49, then the provisions of section 26(a)(1) and (3) shall apply to him, *mutatis mutandis*, and the State shall bear the expenses as set out in section 26(a)(4).

## **(b) Observations on the implementation of the article**

1115. The provisions of article 46, paragraph 12, are implemented in Israel.

## **Paragraph 13 of article 46**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*



**(a) Summary of information relevant to reviewing the implementation of the article**

1116. In order to more efficiently process and give priority to requests submitted under UNCAC, the Department of International Affairs of the Office of the State Attorney has been designated as Central Authority for the purpose of assistance requests submitted under UNCAC.

1117. The authority to receive requests for assistance under the Law is the Minister of Justice who has delegated such authority pursuant to the law to other officials. As a general matter, requests for assistance are processed by the Directorate of the Courts, the office that deals with administrative matters on behalf of Israel's judiciary. Requests received from competent foreign judicial authorities will be reviewed and transferred for execution to an appropriate judicial authority, or, if the request involves investigative activities, will be transferred to the Legal Assistance Unit of the Israel Police (IP) for consideration and ultimate execution by an investigative unit. In the consideration of legal assistance requests by either by the Directorate of Courts or the IP, the Department of International Affairs is often consulted with respect to legal or policy questions.

1118. Consequently, the following Declaration, pursuant to Article 46(13) of UNCAC has been transmitted to the Secretary General of the United Nations<sup>11</sup>:

“Declaration Regarding Article 46 (13) of the Convention:

Requests for mutual legal assistance in criminal cases should be addressed to the International Department in the State Attorney’s Office, Ministry of Justice, 7 Machal St. P.O.B. 49123, Jerusalem, Zip Code 97765.”

1119. Israel cited the following text.

**International Legal Assistance Law, 1998**

**3. The Authority competent to accept requests for legal assistance and its powers**

(a) The authority competent to accept requests for legal assistance from other states and to decide on them is the Minister of Justice (hereafter: Competent Authority).

(b) The Competent Authority may approve implementation of another country's request for legal assistance, refuse it, approve it in part, stay or delay its implementation, make its implementation conditional or postpone the decision until additional information or material concerning the request is received from the requesting state.

(c) The Minister of Justice may delegate his powers under this section - except for the power to refuse a request on behalf of another state - to a public servant, with the concurrence of the Minister in charge of that public servant; notice of a delegation of powers shall be published in Reshumot.

**(b) Observations on the implementation of the article**

1120. The provisions of article 46, paragraph 13, are implemented in Israel.

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<sup>11</sup> <https://treaties.un.org/doc/Publication/CN/2009/CN.92.2009-Eng.pdf>

## Paragraph 14 of article 46

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

### (a) Summary of information relevant to reviewing the implementation of the article

1121. Section 4 of the Law, dealing with requirements of a request for legal assistance, does not provide technical requirements regarding the form of the Request or manner of transmission, as long as it is clear that the request has been submitted by an authority competent to submit such requests in the requesting State. Generally, both under most of Israel's legal assistance treaties and under general practice, it is expected that request will be submitted in writing. Regarding the manner of transmission, Israel has made the following declaration to the Second Additional Protocol of the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters:
1122. "In accordance with Article 4, paragraph 9, of the Second Additional Protocol (amending Article 15 of the European Convention on Mutual Assistance in Criminal Matters), the Government of the State of Israel declares that at the present time it will accept requests for legal assistance by means of electronic telecommunication in circumstances of extreme urgency only. Acceptance of a request by electronic telecommunication is on condition that the reasons for such urgency are set forth in the request and that the requesting Party transmits, at the same time, the original request in the usual manner. Israel will not accept requests to serve procedural documents and judicial decisions where such requests are transmitted by electronic telecommunication, as this form of transmittal is, in any case, not suitable for such requests.
1123. With respect to UNCAC members who are also parties to the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matter, Israel will accept urgent requests for legal assistance which are transmitted by fax communication, pursuant to Israel's Declaration to Article 4(9) of the Second Additional Protocol. Such fax communications should be addressed to the Director of the Department of International Affairs of the Office of the State Attorney, Ministry of Justice at fax number (972-2-5419-644). All such requests should be headed "**Urgent Request for Legal Assistance under the Second Additional Protocol**".
1124. With respect to UNCAC members who are not parties to the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matter, Israel, pursuant to article 46(7) of UNCAC, will consider in urgent cases, and under the circumstances of the situation, applying the provisions of article 46(14), which allows requests to be made "by any means capable of producing a written record", so as to allow receipt of an urgent request by fax transmission, so long as transmission of the written original will follow. In such cases, the requests should also be transmitted via fax to the Director of the Department of

International Affairs of the Office of the State Attorney, Ministry of Justice at fax number (972-2-6287-668). All such requests should be headed "**Urgent Request for Legal Assistance under UNCAC**".

1125. It may be noted that in the years since the above declaration of Israel to the Second Additional Protocol, and since Israel joined UNCAC, practices and instrumentalities of communications between competent national authorities have progressed and developed. In this light, Israel will be considering whether its relevant declarations under its treaties regarding the receipt of MLA requests should be altered to specifically contemplate the receipt of requests via more modern forms of telecommunication, including e-mail transmission.

1126. Although this Declaration was submitted under the Second Additional Protocol, it describes current policy generally. Although there is no absolute bar on oral requests in urgent cases, it is hard to conceive of a case of sufficient urgency that would preclude at least some form of written request being transmitted in some form.

1127. Regarding language of requests, although the Law does not contain a language provision, the Regulations promulgated pursuant to the Law (**International Legal Assistance Regulations, 1999**) in Regulation 3 (Translation) provides:

3. If the request for legal assistance is not in Hebrew or English, then a translation of the request to one of the said languages shall be attached to it.

1128. Consequently, Israel had made the following Declaration regarding Article 46 (14) of the Convention:

"Requests for legal assistance must be submitted either in Hebrew or in English."

**(b) Observations on the implementation of the article**

1129. The provisions of article 46, paragraph 14, are implemented in Israel.

**Paragraphs 15 and 16 of article 46**

*15. A request for mutual legal assistance shall contain: (a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1130. Israel referred to the information under UNCAC articles 46(1) and 46(14) above.

1131. The requirements of what must be included in a request for legal assistance are generally provided in Section 4 of the Law and substantially resemble those in Article 15 of UNCAC.

1132. Section 6(b) of the Law provides that where the request provides an insufficient evidentiary basis to allow its execution under Israeli law, the execution of the request may be postponed until such basis is obtained. As a matter of practice, the Israeli authorities, including the IP's Legal Assistance Unit, the Department of International Affairs within the Office of the State Attorney and the Directorate of Courts communicate with the competent authorities in requesting States to receive missing information and explanations in foreign requests in an effort to enable their execution to the full extent possible under the Law.

1133. Israel cited the following text.

**International Legal Assistance Law, 1998**

**4. Request for legal assistance from another state**

(a) The Competent Authority shall consider a request for legal assistance from another state, if the following conditions have been met:

(1) the request was submitted on behalf of the authority designated in that state as the Competent Authority for matters of legal assistance (in this Law: Foreign Competent Authority);

(2) notification of such a designation was delivered to the Competent Authority in Israel on behalf of the Foreign Competent Authority.

(b) If the request is on behalf of one of the bodies enumerated in Schedule One, then the request shall be submitted by an agent authorized on its behalf.

(c) The Competent Authority shall consider a request for legal assistance in connection with a criminal matter, if the request also specifies the following:

(1) the type of proceeding for which assistance is requested;

(2) the facts that constitute the basis for the suspicion that the offense, which is the subject of that request, was committed and the connection between those facts and the requested assistance.

(d) If the request is in connection with the prevention of an offense - then the Competent Authority shall consider the request only if the connection between the requested assistance and the facts on which the request is based has been proven.

**6. Postponing the time for implementation of a request for legal assistance or staying its execution**

...

(b) If the Competent Authority concluded that the evidentiary basis of the request for legal assistance on a criminal matter does not make it possible - under Israel Law - to perform an act similar to the requested act, then the Competent Authority may stay performance of the act until the evidentiary basis has been completed; if the Competent Authority decided to stay performance of the act, then notification thereof shall be delivered to the requesting state

and the act shall not be performed until the evidentiary basis is completed.

1134. Regarding examples of implementation, Israel indicated that corruption cases are often extremely complex, and it is Israel's experience and that a great deal of communication between Israel and the competent authorities in foreign states is required regarding both incoming and outgoing requests in such cases in order to enable execution of a request in a manner that will be meaningful to the requesting party.

**(b) Observations on the implementation of the article**

1135. The provisions of article 46, paragraphs 15 and 16, are implemented in Israeli law.

**Paragraph 17 of article 46**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1136. Section 8(a) of the Legal Assistance Law provides that a request for assistance will be performed "in the manner in which an act of that kind is performed in Israel" and pursuant to the relevant legal acts and procedures applying in Israel to such an act. Section 8(c), however, provides that the assistance shall be performed in the particular manner requested by the requesting State so long as this does not violate Israeli law. This allows for maximum flexibility in considering the procedural and evidentiary requirements of the requesting States, as long as Israeli law is not thereby violated.

1137. Israel also referred to the information under UNCAC article 46(1) above.

1138. Israel cited the following text.

**International Legal Assistance Law, 1998**

**8. Subject to provisions of Law**

(a) Any act in Israel in accordance with a request for legal assistance by a foreign state shall be performed in the manner in which an act of that kind is performed in Israel, and the provisions of enactments that apply in Israel to an act of that kind shall apply to it, except if a different provision is made in this Law or under it.

(b) Any act on a foreign state's request for legal assistance shall be performed in Israel only if the act is permissible under Israel Law.

(c) The requested act shall be carried out in a manner that complies with the requesting state's request, as long as the act is permitted under Israel Law.

(d) If the requested act is in connection with a criminal matter, then the provisions of this Law shall apply, as if the offense in respect of which the act is requested was committed in Israel.

**(b) Observations on the implementation of the article**

1139. The provisions of article 46, paragraph 17, are implemented in Israeli law.

### **Paragraph 18 of article 46**

*18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1140. When the Legal Assistance Law was promulgated in 1998, the possibility of video conference testimony was not contemplated. Nevertheless, already in 1999, Israel conducted a video conference procedure in a criminal case. That same year, the video conference procedure was specifically included in Regulation 15 of the International Legal Assistance Regulations which provide that an Israeli Court may permit and conduct a video conference hearing as long as arrangements are made to allow the Court and the parties "to see the witness in the course of the entire testimony, to hear him and to address questions to him" and allow him to keep in contact with his defense attorney and through him to address questions to the witness. The Israeli Supreme Court has held that the Law and Regulation 15 provide a sufficient basis to conduct video conferences under Israeli law but suggested that efforts be made to regularize in legislation the videoconference procedure. Although this hasn't taken place yet, video conference hearings, both in Israeli cases and on behalf of foreign authorities, have become increasingly common.

1141. Regarding the Supreme Court consideration of videoconference (rendered in a civil case but relevant to the criminal area as well), see R.C.A. 8692/09 *Bank Discount for Israel v. Massalha Mahmoud Hassan* and R.C.A. 3810/06 *Dori Ltd. v. Golstein*.

1142. Israel cited the following text.

### **Regulations to International Legal Assistance Law, 1999**

#### **15. Taking testimony over closed circuit television**

If a competent authority, a foreign competent authority or a party requested that the testimony be taken over international closed circuit television, then the Court may approve that, if arrangements were made to make the following possible:

- (a) for the Court and the parties - to see the witness in the course of the entire testimony, to hear him and to address questions to him;
- (b) for the defendant - to keep in contact with his defense attorney and through him to address questions to the witness.

1143. Israel indicated that video conference hearings have been utilized in many of Israel's most prominent corruption litigations. Thus, in the case involving charges of fraud and breach of trust brought against former Prime Minister Ehud Olmert a number of witnesses testified by means of video conference from the United States.

1144. In the Holyland corruption case (Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*), charges were filed, inter alia, against the then Mayor of Jerusalem and Minister of Industry, Trade and Labor (and who eventually served as Prime Minister), the Deputy Mayor of Jerusalem, the former Jerusalem Municipal Engineer, and others. This case concerned the construction of luxury apartments overlooking one of the mountains in Jerusalem. The plan, however, would require significantly changing the area's landscape via the construction of tower blocks. According to the indictment, concerning one of the corruption charges, contractors involved in the project gave significant bribes to a number of senior officials in the Jerusalem Municipality, in exchange for approving the project's planning, determining the project's improvement tax and in order to advance the project. In this case, one of the witnesses testified as a prosecution witness from the United States through video conference.

**(b) Observations on the implementation of the article**

1145. Israel implemented the provision under review.

**Paragraph 19 of article 46**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1146. Section 10 to the International Legal Assistance Law provides that Israel will only provide information or evidence to a requesting State upon receipt of an assurance that the evidence or information requested will only be used for purposes of the criminal matter with respect to which it was requested unless permission for other use is provided by the Israeli authorities.

1147. Further protections on confidentiality are provided under Section 11(c) of the Law which provides that the Israeli authorities may make transmission of evidence or information to a requesting State contingent on the receipt of assurances that the confidentiality protections that would have applied in Israel to such evidence and information (including with respect to "the privacy of a third party") will also apply in the requesting State receiving the materials.

1148. Similar confidentiality protections operate when it is Israel who requested the evidence or information. Thus, Section 48 of the Law similarly provides that when Israel receives evidence or information pursuant to a request, that Israel will not make use of that evidence or information except with respect to the criminal matter for which the request was submitted unless permission for other use is received from the requested State.

1149. Similarly Section 54(b) provides that if Israel requests information from another state, it may consent to conditions for the use of the information which were prescribed by the

requested State, and that such consent shall obligate every state authority in Israel, that receives the information.

1150. Such confidentiality provisions notwithstanding, Israel, like most states respecting the rule of law, requires that exculpatory evidence and information be provided to defendants in a criminal matter. Where evidence or information received in a legal assistance request is required to be provided to a defendant in another criminal matter, Israel, under general practice, will inform the state which provided the evidence or information and receive its permission. Provisions such as that in UNCAC Article 46(19), which allow transmittal of exculpatory materials for fundamental fairness considerations, would be considered to represent prior agreement by the parties to UNCAC to allow use of received evidence and information for this purpose, subject to the requirements set forth in Article 46 (19).

1151. Israel cited the following text.

### **International Legal Assistance Law, 1998**

#### **10. Specific use of evidence**

Evidence or information obtained in Israel pursuant to a request of a foreign state for legal assistance in connection with a criminal matter shall be transmitted only after the Competent Authority receives assurances from the requesting state that the evidence or information will be used only in the criminal matter for which it was requested, and no other use will be made of them without the prior consent of the Competent Authority in Israel.

#### **11. Confidentiality**

...

(c) The Competent Authority may make the transmittal of evidence or of information in connection with a criminal matter conditional on the receipt of a sufficient undertaking from the requesting state, that it will apply to them the rules of confidentiality in effect in that state for evidence or information of that kind, including provisions on the protection of the privacy of any third party, whose name or affairs are involved in the transmitted evidence or information.

#### **48. Specific use of evidence**

Where the State of Israel has submitted a request for legal assistance in connection with a criminal matter, any evidence or information received shall be used only in the criminal matter in connection with which it was received; use of the evidence or information for purposes of another criminal matter requires prior approval from the requested state.

#### **54. Request for information on behalf of the State of Israel**

(a) The Authority may submit a request to another state for information connected to a criminal matter in Israel.

(b) If the Authority submitted a request to another state for information connected to a criminal matter in Israel, then it may consent to conditions for the use of the information which were prescribed by the requested state, and its consent shall obligate every state authority in Israel, that receives the information.

#### **(b) Observations on the implementation of the article**

1152. The provisions of article 46, paragraph 19, are implemented in Israeli law.



## **Paragraph 20 of article 46**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1153. Section 11 (a-b) to the International Legal Assistance Law covers these concerns. According to these sub-sections, if requested to do so, the Competent Authority shall keep a foreign state's request for legal assistance confidential. This confidentiality is subject to the provisions of Israeli law. If it is not possible to carry out the request while maintaining confidentiality, the Competent Authority shall so inform the requesting State and the request shall be carried out only with the approval of that state.

1154. Israel cited the following text.

#### **International Legal Assistance Law, 1998**

##### **11. Confidentiality**

(a) If it is requested to do so, the Competent Authority shall keep a foreign state's request for legal assistance on a criminal matter and its results confidential, subject to the provisions of Israel Law.

(b) If it is not possible to carry out the request while maintaining confidentiality, then the Competent Authority shall so inform the requesting state and the request shall be carried out only with the approval of that state; for this purpose, "request for legal assistance" - includes its content or information about it, as well as the documents and information attached to it.

(c) as cited under paragraph 19 above.

### **(b) Observations on the implementation of the article**

1155. The provisions of article 46, paragraph 20, are implemented in Israeli law.

## **Paragraph 21 of article 46**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1156. Israel's legal system recognizes grounds for refusal. Israel referred to the information under UNCAC article 46(1) above. Under Section 3(c) of the Law, only the Minister of Justice has the power to refuse a request for legal assistance from another state. Section 5 of the Legal Assistance Law provides a number of discretionary bases upon which the Minister is permitted to refuse assistance including, inter alia, where the assistance requested would violate the essential interests of Israel or its ordre publique; where the request relates to an offense political in nature; where the request arises out of a proceeding which intends to harm someone due to his race, nationality, religion, sex or political opinions; where the request relates to a military offense or a fiscal offense; where the request relates to a criminal matter and Israeli law would not permit the requested act; where the request would impose an unreasonable burden on Israel; or where the requesting State does not provide Israel with similar assistance on a reciprocal basis. Similarly Section 8(b-c) prohibits assistance where the requested assistance is not permissible under Israeli law.

1157. Israel cited the following text.

**International Legal Assistance Law, 1998**

**3. The Authority competent to accept requests for legal assistance and its powers**

...

(c) The Minister of Justice may delegate his powers under this Article - except for the power to refuse a request on behalf of another state - to a public servant, with the concurrence of the Minister in charge of that public servant; notice of a delegation of powers shall be published in Reshumot.

**5. Refusal of request**

(a) The Minister of Justice may deny a request, if one of the following exists:

- (1) the act is liable to prejudice Israel's sovereignty, security, public order, public welfare or safety, or some other vital interest of the State;
- (2) the request for legal assistance is for an offense that is political in nature or for some other offense that is connected to an offense of a political nature;
- (3) the request for legal assistance is connected with a proceeding, the purpose of which is to cause harm to a person because of his political opinions or because of his origin or because he belongs to a certain race, nationality, religion, sex or social group;
- (4) the request for legal assistance is for a military offense or for a fiscal offense;
- (5) the request for legal assistance is on a criminal matter, and under Israel Law it is not possible to perform an act similar to the requested act;
- (6) the requesting state refrains from performing similar acts on requests by the State of Israel or by Israeli citizens, or it does not extend to them facilities similar to the facilities extended under this Law;
- (7) performance of the act involves an unreasonable burden on the State.

(b) If the Minister of Justice denies a request for legal assistance or for the performance of an act under it, then he shall inform the requesting state of the reasons for the denial.

1158. Israel provided an example of a case where an incoming MLA request was refused on the ground of “the national interest”. Israel referred to a request received a few years before the start of the review process where the law enforcement authorities of another state were investigating possible corruption of officials and other citizens of the requesting state in connection with the purchase of military equipment by that state from Israeli defense-related companies. The request was not submitted pursuant to UNCAC or pursuant to any bilateral treaty. The request sought a large number of materials from the Israeli companies as well as extensive questioning of the personnel of those companies by the investigators of the requesting state. It was determined by the relevant Israeli authorities that the activities requested would involve the disclosure of extremely sensitive information related to Israeli security and would involve potential prejudice to Israel's security and national interest. For this reason it was determined that the request would not be executed. Nevertheless, an examination of the matters raised by the Legal Assistance Request was conducted by the criminal investigations department of Israel's Ministry of Defense which determined that no grounds were found during its examination to substantiate criminal proceedings under the applicable law at the relevant times. The above conclusions were communicated to the requesting state.

**(b) Observations on the implementation of the article**

1159. The provisions of article 46, paragraph 21, are implemented in Israeli law through extended regulations.

1160. It should be noted that one of the grounds for refusal of a request for legal assistance is the political nature of the offence in relation to which legal assistance has been requested or a link between that offence and an offence of a political nature. Unlike in the case of extradition, there is no clause to the effect that offences in connection with which legal assistance should be provided under multilateral treaties should not be considered as offences of a political nature. However, during the country visit Israel clarified that in practice UNCAC offences will not be considered political.

**Paragraph 22 of article 46**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1161. Israel's Legal Assistance Law states in Section 5(a)(4) that the Minister of Justice may deny a request, if "the request for legal assistance is for a military offense or for a fiscal offense". However, Israel does not generally deny requests for assistance for non-fiscal offenses simply because they are connected to fiscal matters or also involve offenses that may be fiscal offenses. The offenses denominated by UNCAC are not fiscal offenses and Israel would not refuse a request relating to an UNCAC offense simply because it involved fiscal elements.

**International Legal Assistance Law, 1998**

**5. Refusal of request**

(a) The Minister of Justice may deny a request, if one of the following exists:

...

(4) the request for legal assistance is for a military offense or for a fiscal offense;

1162. Regarding examples of implementation, Israel indicated that it regularly provides assistance in the case of crimes committed where the purpose of the crime is directed against the revenue authorities of a foreign state as long as the offense is not essentially a fiscal offense. Thus, Israel provided assistance to the United States in a case where through forgery and impersonation, a group of criminals received income tax refunds to which they were not entitled. Similarly, Israel has regularly provided assistance in VAT Carousel frauds, where through fraudulent procedures criminals construct a series of shell transactions designed to avoid payment of VAT taxes. This would apply to UNCAC offenses and it is difficult to think of an UNCAC offenses that would be entirely fiscal (i.e. simply represent evasion of taxes and nothing else.)

**(b) Observations on the implementation of the article**

1163. In Israel, UNCAC offenses are not considered fiscal offenses and therefore requests regarding them could not be denied on that basis even if the circumstances involved other crimes which were fiscal offenses. It should also be noted that the Legal Assistance Law does not *require* the denial of assistance in fiscal cases, it merely permits denial on that basis. Based on the above, Israel implemented the provision under review.

**Paragraph 23 of article 46**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1164. Section 5(b) to the Legal Assistance Law, 1998 provides that the Minister of Justice will provide the requesting State with a reason for denial of its request.

1165. Israel cited the following text.

**International Legal Assistance Law, 1998**

**5. Refusal of request**

(b) If the Minister of Justice denies a request for legal assistance or for the performance of an act under it, then he shall inform the requesting state of the reasons for the denial.

1166. Regarding examples of implementation, Israel indicated that, as noted, Israel will, through dialogue with requesting States, seek to solve issues and problems that could prevent the execution of a request for assistance. In the rare cases, where a request is in the end denied, a letter is always sent to the requesting State informing it of the basis for the denial of assistance.

**(b) Observations on the implementation of the article**

1167. The provisions of article 46, paragraph 23, are observed in Israeli law.

## **Paragraph 24 of article 46**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1168. The agencies involved in the provision of legal assistance to foreign states in criminal matters - primarily the IP Legal Assistance Unit, the Department of International Affairs in the Office of the State Attorney, and the Directorate of Courts - make every effort to consider and execute requests for legal assistance on a timely basis and in a manner that will render such assistance helpful and meaningful to the requesting State. Specifically, these agencies will prioritize execution of requests on the basis of objective exigencies and deadlines that apply to the proceedings or investigation with respect to which the request was submitted. The agencies involved in providing assistance will utilize all available and practical means of communication to contact the relevant authorities of the requesting State to resolve issues and ambiguities in the requests. Due to the complexities of many corruption cases, this may be a labor intensive effort. As already noted, in order to give an extra priority to corruption cases, in light of these inherent difficulties, the Department of International Affairs of the Office of the State Attorney was uniquely designated in UNCAC as the competent authority to receive requests under UNCAC.
1169. It is the practice of the Israeli agencies involved in the execution of legal assistance requests to respond expeditiously for all requests for updates and information regarding the status of requests that have been submitted.
1170. Israel also appreciates when similar treatment is accorded to the requests that it has submitted. In order to avoid the waste of time and resources of requested States, Israel endeavors to notify requested States as soon as possible of any developments that would render a request or a part of a request unnecessary.
1171. Regarding Section 6 of the Law which provides specific legal bases upon which requests may be postponed as well as for the obligation to inform the requested State regarding the fact and effects of such postponement, see the information under UNCAC articles 46(15) and (16) and 46(26).
1172. Israel cited the following text.

## **International Legal Assistance Law, 1998**

### **6. Postponing the time for implementation of a request for legal assistance or staying its execution**

(a) (1) The Competent Authority may postpone the time for the implementation of an act of legal assistance, if its implementation is liable to -

(a) interfere with the conduct of a pending criminal proceeding; (b) cause unreasonable harm to some other legal proceeding;

(2) if the Competent Authority decided to postpone the time for the implementation of an act of legal assistance, as set out in paragraph (1), then notice thereof shall be delivered to the requesting state, stating the estimated time when it will be possible to perform the act, and the act shall be performed only if the requesting state gives notice that it is interested in its being performed at the stated time.

(b) If the Competent Authority concluded that the evidentiary basis of the request for legal assistance on a criminal matter does not make it possible - under Israel Law - to perform an act similar to the requested act, then the Competent Authority may stay performance of the act until the evidentiary basis has been completed; if the Competent Authority decided to stay performance of the act, then notification thereof shall be delivered to the requesting state and the act shall not be performed until the evidentiary basis is completed.

(c) The Court may postpone the time for performing an act of legal assistance on a criminal matter or stay its performance, if the circumstances specified in subsections (a) or (b) hold true.

1173. No examples of implementation were provided.

**(b) Observations on the implementation of the article**

1174. The provisions of article 46, paragraph 24, are observed in Israeli law.

**Paragraph 25 of article 46**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1175. Section 6 of the Law provides that the granting of assistance may be postponed by the Central Authority or by a Court if it would interfere with an ongoing domestic criminal proceedings; interfere with the conduct of a pending criminal proceeding (which would generally be interpreted as including an investigation); or would cause unreasonable harm to some other legal proceeding. If the assistance is postponed on this basis, notice is to be given to the requesting State, stating the estimated time when it will be possible to perform the requested act. The act shall be performed only if the requesting State gives notice that it is still interested in its performance on this postponed basis.

1176. The Legal Assistance Regulations (Regulation 5) provide that the Central Authority must consult with the Attorney General before determining to postpone on this basis.

1177. Israel cited the following text.

**International Legal Assistance Law, 1998**

**Section 6. Postponing the time for implementation of a request for legal assistance or**

staying its execution as cited under paragraph 24 above.

## **International Legal Assistance Regulations, 1999**

### **5. Postponing performance of a request for legal assistance or delaying its implementation**

(a) A competent authority shall decide to postpone performance of an act of legal assistance or delay its performance for reasons said in section 6(a) and (b) of the Law only after consultation with the Attorney General.

(b) If a Court decided to postpone performance of an act of legal assistance or to delay its performance for reasons said in section 6(c) of the Law, then its decision shall state the estimated date on which it will be possible to perform the act or the evidence required to complete the evidentiary foundation that will make performance of the requested act possible, all as the case may be.

1178. Regarding examples of implementation, Israel indicated that corruption cases often involve criminal offenses committed in more than one jurisdiction. Coordination and communication between national authorities is necessary to avoid actions taken in one jurisdiction that could damage the investigation or proceedings in the second jurisdiction. In an Israeli investigation involving the suspected bribery of a prominent Israeli public official, requests for legal assistance were submitted to the United States of America. The United States opened their own investigation into the matter based on the US Foreign Corrupt Practices Act and submitted requests to Israel in the context of their investigation. The manner and timing of the execution of the various requests was discussed and coordinated in a manner designed to best promote each of the investigations. In the end an indictment was issued in Israel in the matter for breach of trust and fraud offenses. No indictment in the end was issued in the United States.

### **(b) Observations on the implementation of the article**

1179. The provisions of article 46, paragraph 25, are implemented in Israel.

### **Paragraph 26 of article 46**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1180. Section 3(b) of the Law provides that requests may be executed in full, in part, or upon conditions. This is designed to make possible the execution of the request to the fullest extent possible under the Law and in light of the circumstances of the case. See also information under UNCAC articles 46(1) and 46(15) and (16) above.

1181. Several conditions such as the specific use of evidence, confidentiality, and the protection of rights of individuals concerned are specifically provided for by Israeli law. (See e.g.,

Section 10, 11(c); 19 (d-e); 22(4) and 26).

1182. Israel cited the following text.

**International Legal Assistance Law, 1998** - Sections 3(b), 10, 11, 19(d) & (e), 22 & 26

**The Authority competent to accept requests for legal assistance and its powers**

3. (a) The authority competent to accept requests for legal assistance from other states and to decide on them is the Minister of Justice (hereafter: Competent Authority).

(b) The Competent Authority may approve implementation of another country's request for legal assistance, refuse it, approve it in part, stay or delay its implementation, make its implementation conditional or postpone the decision until additional information or material concerning the request is received from the requesting State.

(c) The Minister of Justice may delegate his powers under this section - except for the power to refuse a request on behalf of another state - to a public servant, with the concurrence of the Minister in charge of that public servant; notice of a delegation of powers shall be published in Reshumot.

Sections 10, 11, as cited under paragraph 19 above.

**Order to transmit article or its substitute to another state**

19. (a) A Court that hears a request to produce an article may order that a copy, photograph or other substitute of the article (in this Article: substitute of article) be transmitted to the requesting state (in this Article: order to transmit substitute of article); if the Court made such an order, then it shall certify by its signature and seal that the copy, photograph or other substitute is correct.

(b) If the request asked for the transmittal of the article and not of its substitute, then the Court may order that it be transmitted in accordance with Israeli Law (in this Article: order to transmit article); such an order shall be made after the Court has heard the arguments of every person who claims a right in the article, if he is known.

(c) If an article is produced by a Governmental agency that carries out investigations, then the person from whom the article was obtained shall also be summoned to the hearing under this section, as well as every person who claims a right in the article, if he is known.

(d) A Court that has made an order under this section shall prescribe, by order, the purpose of the transmittal, stating particulars of the proceeding in respect of which the article was requested; if it made an order to transmit the article, then it shall also prescribe therein the conditions of the transmittal, including the article's protection and the time when it shall be returned to a person designated in the order.

(e) If a substitute of the article was transmitted to the requesting state, then its return shall not be requested, unless the Court prescribed otherwise; if the article was transmitted to the requesting state, then the Court may order that it not be returned, all in accordance with Israel Law.

(f) If the Court decided not to make an order for the article's transmittal, then it shall prescribe in its decision to whom the article is to be returned, all in accordance with Israel Law; the Court shall give notification concerning this to the Competent Authority.

Sections 22 & 26, as cited under paragraph 10 above.

1183. No examples of implementation were available.



**(b) Observations on the implementation of the article**

1184. Analysis of the provisions contained in the Legal Assistance Law of Israel on indicates that the provisions of article 46, paragraph 26, of the Convention are implemented in Israel. Although, Israeli legislation does not establish the requirement that consultations be carried out before legal assistance is refused, such consultations are conducted in practice.

**Paragraph 27 of article 46**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1185. Section 22(4) and Section 26 to the International Legal Assistance Law provide that Israel will facilitate the appearance of a person in a requesting State for purposes of a legal proceeding or an investigation only upon condition that the person enjoy 'safe conduct' protections essentially similar to those in Article 46(27). One difference between the safe conduct protections under the Israeli statute and UNCAC is that under the Israeli statute, the safe conduct provisions last for 30 days after the person is notified that his presence is no longer necessary, whereas under UNCAC the duration is only for 15 days from that point. Israel presumably would apply the longer period of its statute.
1186. Section 51 of the Law provides the same safe conduct protections to persons arriving in Israel to take part in a legal proceeding pursuant to an Israeli request for assistance. Here too, Israel would presumably apply the longer period of protection under its statute.
1187. Israel cited the following text.

**International Legal Assistance Law, 1998**

**22. A person's appearance in another state**

If another state requested that a person in Israel appear in a legal proceeding in that State for testimony, identification or confrontation, or in order to participate in some other investigative act, then the Competent Authority may act to achieve compliance with the request, subject to the following conditions:

- (4) the requesting state gave sufficient undertakings on the matters specified in section 26.

**26. Undertakings by requesting state**

- (a) The undertakings of the requesting state under section 22(4) shall be on the following

subjects:

(1) the person summoned to testify in a legal proceeding or in order to assist in an investigation (in this section: the person summoned) -

(a) shall not be interrogated, shall not be placed on trial, shall not be arrested, shall not be imprisoned, shall not be punished and his freedom shall not be restricted in any manner whatsoever for any act or omission that occurred before he entered the requesting state's jurisdiction in consequence of the request under this Article;

(b) shall be required to testify only in the legal proceeding for which he was summoned, and shall be required to assist only in the investigation for which he was summoned;

unless he left the requesting state and returned to it of his own will, or if 30 days have passed since he received official notification from the requesting state that his presence was no longer necessary and he could have left the requesting state, but chose to remain in that state;

(2) if the person summoned is a prisoner - that he will be kept in detention, under conditions as similar as possible to those under which he was in Israel, during the entire period during which the prisoner is within the borders of the requesting state, provided the Competent Authority did not give notice that the prisoner is to be released;

(3) a person summoned under section 23 shall be returned immediately to Israel, in accordance with arrangements to be made by the Competent Authority, when his presence is no longer necessary;

(4) payment of travel and living expenses of the person summoned under section 22 or 23, including medical expenses and any other expense required in the Competent Authority's opinion during the period in which the person summoned as aforesaid is abroad;

(5) any other undertaking the Competent Authority deems necessary under the circumstances of the case.

(b) If the requesting state did not pay the expenses set out in this section to the summoned person, then those expenses shall be paid by the State Treasury.

### **51. Defenses and conditions**

If a person was summoned to appear in a legal proceeding in Israel pursuant to section 49, then the provisions of section 26(a)(1) and (3) shall apply to him, mutatis mutandis, and the State shall bear the expenses as set out in section 26(a)(4).

1188. No case examples were available.

### **(b) Observations on the implementation of the article**

1189. The provisions of article 46, paragraph 27, are implemented in Israeli law.

### **Paragraph 28 of article 46**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1190. Although there is no provision in the Law dealing specifically with the bearing of

expenses, Israel will generally assume the ordinary expenses of the execution of a legal assistance request. This is provided by many of the legal assistance treaties to which Israel is party.

1191. Under these treaties certain expenses, such as expert witness expenses, are recognized as exceptions which are borne by the requesting State (Article 5(2) of Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters states: "...however, the cost of establishing a video or telephone link, costs related to the servicing of a video or telephone link in the requested Party, the remuneration of interpreters provided by it and allowances to witnesses and their travelling expenses in the requested Party shall be refunded by the requesting Party to the requested Party, unless the Parties agree otherwise").

1192. Section 5(a)(7) of the Law provides that a request may be denied where performance of the requested assistance "involves an unreasonable burden of the State". A request which involved expenses of 'a substantial or extraordinary nature' could fall into that category unless through consultations an agreement could be reached between the parties as the manner of the request's execution or as to how its costs would be divided.

1193. In certain cases where extensive telephone records were requested, the telephone companies imposed substantial charges for this service. Israel decided that it would provide only a certain amount of the requested records unless the requesting State agreed to cover part of the resulting charges.

1194. Israel cited the following text.

#### **International Legal Assistance Law, 1998**

##### **5. Refusal of request**

- (a) The Minister of Justice may deny a request, if one of the following exists: \*\*\*
- (7) performance of the act involves an unreasonable burden on the State.

1195. Regarding examples of arrangements related to such costs, Israel indicated that in several cases, Israel, as the requesting State, agreed to bear the costs of videoconference procedures or even to make the videoconference arrangements in states where videoconference testimony was still considered an extraordinary procedure. With the passage of time, videoconference testimony has become more routine and the issue arises less often.

##### **(b) Observations on the implementation of the article**

1196. The provisions of article 46, paragraph 28, are implemented in Israeli law.

#### **Subparagraph 29 (a) of article 46**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

1197. Publically available records, documents and information are routinely provided as a form of legal assistance and no particular special formalities exist with respect to such provision.

**(b) Observations on the implementation of the article**

1198. The provisions of article 46, paragraph 29(a), are implemented in Israeli law.

**Subparagraph 29 (b) of article 46**

*29. The requested State Party:*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1199. Section 32 allows for the provision of even non-publically available information held by a public authority in Israel if the information is of the kind that may, under Israeli domestic law, be transmitted to another public authority in Israel. Copies of documents and records would be considered 'information' under this rubric. If an original or certified copy of a non-publically available document or record were sought, and if any court order was necessary for this purpose, the obtaining and provision of such documents or records would be available under Sections 19 and 20 or 29 and 30 of the Law (although the provisions in those sections for protection of three parties with a property interest in the transmitted articles would presumably not be relevant).

1200. Israel cited the following text.

**International Legal Assistance Law, 1998 - Sections 19, 20, 29, 30 & 32**

**Order to transmit article or its substitute to another state**

19. (a) A Court that hears a request to produce an article may order that a copy, photograph or other substitute of the article (in this Article: substitute of article) be transmitted to the requesting state (in this Article: order to transmit substitute of article); if the Court made such an order, then it shall certify by its signature and seal that the copy, photograph or other substitute is correct.

(b) If the request asked for the transmittal of the article and not of its substitute, then the Court may order that it be transmitted in accordance with Israeli Law (in this Article: order to transmit article); such an order shall be made after the Court has heard the arguments of every person who claims a right in the article, if he is known.

(c) If an article is produced by a Governmental agency that carries out investigations, then the person from whom the article was obtained shall also be summoned to the hearing under this section, as well as every person who claims a right in the article, if he is known.

(d) A Court that has made an order under this section shall prescribe, by order, the purpose of the transmittal, stating particulars of the proceeding in respect of which the article was requested; if it made an order to transmit the article, then it shall also prescribe therein the conditions of the transmittal, including the article's protection and the time when it shall be returned to a person designated in the order.

(e) If a substitute of the article was transmitted to the requesting state, then its return shall not be requested, unless the Court prescribed otherwise; if the article was transmitted to the requesting state, then the Court may order that it not be returned, all in accordance with Israel Law.

(f) If the Court decided not to make an order for the article's transmittal, then it shall prescribe in its decision to whom the article is to be returned, all in accordance with Israel Law; the Court shall give notification concerning this to the Competent Authority.

#### **Transmittal of evidence to the requesting state**

20. (a) A Court that has taken the evidence under this Article shall transmit to the Competent Authority -

(1) a copy of the protocol which it prepared, certified by it.

(2) a copy of the order which it made concerning an article or a substitute for an article;

(3) the article or its substitute, if it ordered that it be transmitted to the requesting state.

(b) The Competent Authority shall inform the requesting state of the time for the return of the article, if it is to be returned, and every condition for its transmittal, as the Court prescribed; the Competent Authority may delay transmittal of the article until it receives an undertaking from the requesting state to comply with the said condition.

#### **Request to conduct search and seizure in Israel**

29. (a) Where another state has submitted a request to discover evidence or an article, or to seize and transfer them to it for the purposes of a criminal matter in that state, then the Competent Authority may - in order to discover the evidence or the article - apply to a Court for an order to produce the article, or for a warrant to search a certain place or to conduct a body search upon a person or a body search of a suspect, and also for an order to seize the evidence or the article and to transfer them as requested; there shall be attached to the application to the Court a copy of the request of the requesting state and all the material or information connected thereto.

(b) The provisions of section 11(a) shall apply to an application under subsection (a), and the Court shall hear it in camera.

#### **Hearing on transmittal of article**

30. Where an article has been seized, the Competent Authority may submit an application to the Court that it permit its transmittal to the requesting state; the person from whom the article was taken, as well as every person who claims a right to it, if he is known, shall be summoned to the hearing of the application; the provisions of sections 19 to 21 shall apply to the provisions of this section.

#### **Another state's request for information**

32. (a) Where another state has requested information in connection with a criminal matter pending in that state, if a public authority in Israel has the information, and if the information is of the kind that may be transmitted to another public authority in Israel, then the Competent Authority may order that the information be transmitted for this purpose.

(b) Transmittal of information, as set out in subsection (a), may also be at the initiative of the Competent Authority.

1201. No examples of implementation were provided.

#### **(b) Observations on the implementation of the article**

1202. The provisions of article 46, paragraph 29(b), are legislatively implemented in Israeli law.

### **Paragraph 30 of article 46**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1203. Israel referred to the information under UNCAC article 46(1) above.

1204. Israel provided the following list of treaties.

#### **Multilateral and Bilateral Agreements signed by Israel**

##### Multilateral Agreements:

1. European Convention on Mutual Assistance in Criminal Matter, 1959
2. United Nations Convention Against Illicit Traffic in Narcotic Drugs, 1998
3. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1998
4. International Convention for the Suppression of the Financing of Terrorism, 1999
5. United Nations Convention against Transnational Organized Crime, 2000
6. Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, 2001

##### Bilateral Agreements:

1. Treaty Between the Government of the State of Israel and the Government of Australia on Mutual Legal Assistance in Criminal Matters, 1995
2. Treaty Between the Government of the United States of America and the Government of the State of Israel on Mutual Assistance in Criminal Matters, 1999
3. Treaty Between the Government of the State of Israel and the Government of Canada on Mutual Legal Assistance in Criminal Matters, 2000
4. Agreement between the Government of Israel and the Government of Hong Kong Special Administrative Region of the People's Republic of China Concerning Mutual Legal Assistance in Criminal Matters, 2006

#### **(b) Observations on the implementation of the article**

1205. Israel has implemented the provision under review.

## **Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

1206. Israeli authorities may choose, under certain circumstances or where there exists a legitimate interest, to defer a case to the authorities of another State and to allow the prosecution to take place there. Where this occurs, cooperation between the States involved, in the form of mutual legal assistance, will often be necessary. Israel endeavors to cooperate in such a manner as to ensure that criminal offenders will be prosecuted and that the interests of justice served.

1207. There is no supporting statutory framework for this procedure and it is a matter of police or prosecutorial discretion.

1208. Regarding examples of implementation Israel indicated that, as noted, there is no formal procedure of transfer of proceedings under Israeli law. However, where a crime is investigated in more than one jurisdiction, one jurisdiction may defer to the prosecution of the matter in the other jurisdiction if the circumstances justify this. In a major corruption case involving the investigation of a high-ranking public official for having allegedly accepted bribe payments, a foreign jurisdiction was also investigating the matter as a possible foreign bribery. Ultimately, the other jurisdiction did not prosecute and the public official was prosecuted in Israel for a breach of trust and fraud. He was acquitted.

### **(b) Observations on the implementation of the article**

1209. Although there are no specific legislative provisions on the transfer of criminal proceedings in the Israeli law, Israel may defer criminal proceedings to another jurisdiction in order to prosecute criminal offenders in the most efficient way. The decisions on such deference are part of police or prosecutorial discretion. Israel may wish to consider adopting more specific guidelines or regulation in this regard.

## **Article 48 Law enforcement cooperation**

### **Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

1210. Israel's legislation establishes the main channels of communication and cooperation between competent authorities, agencies and services. Such legislation includes the **International Legal Assistance Law, 1998** (hereinafter: "Legal Assistance Law"), the **Crime Register and Rehabilitation of Offenders Law, 1981** and the **Prohibition on Money Laundering Law, 2000** (PMLL).

1211. Israel has a modern and comprehensive regime for mutual legal assistance in criminal matters. Responsibility for mutual legal assistance in Israel is divided between the Department of International Affairs in the Office of the State Attorney and the Legal Assistance Unit of the Israeli Police (IP). The former is responsible for the drafting and submission of requests to foreign countries on behalf of the State of Israel. The latter is responsible for incoming requests for assistance unless they are of a nature requiring investigation by a specialized body such as the Israel Securities Authority.

1212. In addition, the Ministry of Public Security has signed several bilateral agreements on cooperation in the fight against crime. Cooperation under these agreements relates to all forms of criminal activities, including offenses established under this Convention. Typically, such cooperation agreements provide for the nomination of contact points in order to facilitate their implementation. Other bilateral agreements such as MLA, double taxation, customs and extradition agreements, and multilateral conventions such as UNCAC, UNTOC and the INTERPOL Constitution, also provide basis for cooperation between Israeli and other law enforcement authorities.

Cooperation in the field of Anti-Money Laundering

1213. The Minister of Justice has delegated to the head of IMPA (Israel Money Laundering and Terror Financing Prohibition Authority) the authority to receive requests under the Legal Assistance Law, while the Attorney General has delegated to the Head of IMPA his authority to submit a request for legal assistance. Therefore, IMPA operates as the "competent authority" for the purpose of the submission and receiving of requests from other states, in accordance with the provisions of the Legal Assistance Law.

1214. Section 30(f) of the Prohibition on Money Laundering Law permits IMPA to transmit information to foreign financial intelligence units, even in the absence of an international agreement. Nevertheless, IMPA invests great efforts to sign agreements and MOUs with its counterparts. IMPA sees the efficient transferring of information between countries as a key element in the fight against money laundering. It welcomes information exchange requests and has cooperated accordingly over the years. Israel maintains good mutual relations with many countries, and has been sharing information concerning crimes even prior to the enactment of the Prohibition on Money Laundering Law.

Assets Tracing, Freezing and Confiscation

1215. The Israel Tax Authority is part of CARIN (the Camden Assets Recovery Interagency



Network). CARIN is an informal network of expert-practitioners in the field of asset tracing, freezing and confiscation. Within the framework of CARIN, a number of requests have been received over the years in Israel.

### Customs Agreements

1216. Israel has many Customs Cooperation Agreements in force and several others that are in the process of ratification. These agreements include agreements with the European Union, EFTA and MERCOSUR. The assistance provided for in these agreements includes carrying out investigations for the other party and supplying information on individual shipments between the parties, as well as exchanging information on professional and technical matters. In addition, where possible, there are provisions for controlled delivery. These provisions provide for the possibility of reaching financial arrangements between the parties where controlled delivery is agreed upon. A few of the agreements contain provisions for the freezing of assets.

1217. Israel cited the following text.

### **The Crime Register and Rehabilitation of Offenders Law, 1981**

#### **5. Conveying information to authorities and position holders**

(a) The Police will convey information from the crime register to the authorities and position holders detailed in the first schedule.

#### **First Schedule**

(33) Interpol and the police forces affiliated to it, or to another foreign authority which that State has committed to convey information.

### **International Legal Assistance Law, 1998**

### **Prohibition on Money Laundering Law, 2000**

#### **30. Transfer of information from the database**

(f) In order to implement this Law, the Prohibition on Financing Terrorism Law, the Trading with the Enemy Ordinance and Part 1, Chapter 2 of the Struggle Against the Iranian Nuclear Program Law, the competent authority shall be entitled to transfer information stored in the database which it administers to an authority of its kind in another country, and to request information from such an authority, provided that it relates to property traceable to an offense as defined in section 2 or to terrorist property; the provisions of the Legal Assistance between States Law, 1998 shall apply with regard to this matter.

1218. Israel provided the following examples of implementation.

1. IMPA is a member of the EGMONT Group of Financial Intelligence Units, as part of the strategy of enhancing international cooperation as well as promoting the exchange of information, and takes an active part at the EGMONT group meetings and its committees.

2. The Israel Tax Authority has more than 50 treaties for the avoidance of double taxation and prevention of fiscal evasion with foreign states. These treaties allow for the exchange of information relating to tax matters in order to prevent tax evasion.

1219. Israel transmits information mainly upon request, and does not establish databases with

other states. However, INTERPOL provides member states (including Israel) with direct access to a number of criminal databases, which contain millions of records, contributed by countries across the world.

1220. Israel provided the following statistics.

In the period 2008-2012 the Department of International Affairs in the State Attorney's Office dealt with 46 outgoing mutual legal assistance requests involving money laundering. In the same period the Police Legal Assistance Unit received 97 requests for assistance relating to money laundering. It is not technically possible to discern between the laundering of proceeds of corruption offenses and money laundering of other offenses.

In 2012, Israel's law enforcement authorities have exchanged information with other States parties' law enforcement authorities on 5 cases the framework of CARIN (the Camden Assets Recovery Interagency Network).

In 2011, Israel's law enforcement authorities have exchanged information with other States parties' law enforcement authorities on 5 cases the framework of CARIN.

In 2010, Israel's law enforcement authorities have exchanged information with other States parties' law enforcement authorities on 12 cases the framework of CARIN.

There is no available information on the particular nature of the offenses which the requests related to.

**(b) Observations on the implementation of the article**

1221. The provisions of article 48, paragraph 1(a), are implemented in Israel.

**Subparagraph 1 (b) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

1222. According to Israeli law, any form of assistance requested may be performed to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel.

This is to allow Israeli authorities to take, in the framework of legal assistance, all measures that would have been available in a domestic criminal matter, while still ensuring that the execution of these requests is in accordance with the particular evidentiary or legal requirements of the requesting State.

1223. Investigative assistance, according to Article Four of Israel's **International Legal Assistance Law, 1998**, are defined in Section 1 of the law as "an act carried out by a governmental authority competent to do so in order to investigate an offense or to prevent an offense". This kind of assistance is also available to States Parties concerning the offenses under the Convention, so long as the execution of a request is related to the investigation or prevention of a criminal act.
1224. It should be further noted that civil forfeiture proceedings are explicitly considered criminal matters for the purposes of Israel's Legal Assistance Law, and full investigative assistance for such proceedings is available under the Legal Assistance Law.
1225. Bilateral agreements on cooperation in the fight against crime generally contain broad language as to the possible forms of cooperation between the parties, and they usually also explicitly include exchange of data on persons suspected of or involved in criminal activity, objects used as instruments of crime or proceeding from crime, etc.
1226. Israel cited the following text.

#### **International Legal Assistance Law, 1998**

##### **8. Subject to provisions of Law**

- (a) Any act in Israel in accordance with a request for legal assistance by a foreign state shall be performed in the manner in which an act of that kind is performed in Israel, and the provisions of enactments that apply in Israel to an act of that kind shall apply to it, except if a different provision is made in this Law or under it.
- (b) Any act on a foreign state's request for legal assistance shall be performed in Israel only if the act is permissible under Israel Law.
- (c) The requested act shall be carried out in a manner that complies with the requesting state's request, as long as the act is permitted under Israel Law.
- (d) If the requested act is in connection with a criminal matter, then the provisions of this Law shall apply, as if the offense in respect of which the act is requested was committed in Israel.

....

#### **Article Four: Investigative Acts**

##### **28. Request by another state to carry out investigative acts**

- (a) Where the Competent Authority has decided to approve the request of another state that an investigative act be carried out, the request shall be transmitted for implementation to whoever is authorized to perform, in Israel, the type of act requested.
- (b) The Competent Authority may determine that the results of the act or anything else connected to it be transmitted directly to the requesting state by the person who performed the act; the authority may revoke its decision under this subsection at any time.
- (c) If it was not possible to perform the requested act, then notice thereof shall be given to the Competent Authority or to the requesting state, with particulars on the reasons that

prevented its implementation.

(d) If under Israeli Law a judicial order is necessary for the performance of an act of the type requested, then the act shall only be performed in accordance with such an order.

### **29. Request to conduct search and seizure in Israel**

(a) Where another state has submitted a request to discover evidence or an article, or to seize and transfer them to it for the purposes of a criminal matter in that state, then the Competent Authority may - in order to discover the evidence or the article - apply to a Court for an order to produce the article, or for a warrant to search a certain place or to conduct a body search upon a person or a body search of a suspect, and also for an order to seize the evidence or the article and to transfer them as requested; there shall be attached to the application to the Court a copy of the request of the requesting state and all the material or information connected thereto.

(b) The provisions of section 11(a) shall apply to an application under subsection (a), and the Court shall hear it in camera.

### **30. Hearing on transmittal of article**

Where an article has been seized, the Competent Authority may submit an application to the Court that it permit its transmittal to the requesting state; the person from whom the article was taken, as well as every person who claims a right to it, if he is known, shall be summoned to the hearing of the application; the provisions of sections 19 to 21 shall apply to the provisions of this section.

### **31. Secret monitoring**

(a) Where another state has requested that secret monitoring be carried out in connection with a criminal matter that is pending in that state, the Competent Authority may apply for an order on this matter from the District Court, in accordance with the provisions of the Secret Monitoring Law 5739-1979.

(b) The Competent Authority shall apply for an order for secret monitoring only in connection with one of the following:

(1) an offense which, under the laws of the requesting state, is punishable by more than three years imprisonment;

(2) an offense for which secret monitoring could have been permitted had it been committed in Israel;

(3) for the forfeiture of property as set out in Article Six.

### **(b) Observations on the implementation of the article**

1227. During the country visit Israel also reported information on a money laundering case with a corruption element where funds were seized in Paraguay based on the information provided by Israel. In another corruption related case, Israel received cooperation from an UNCAC State party to conduct a witness questioning on the basis of police-to-police cooperation. In that case, the witness refused to cooperate and in the end a formal MLA request was transmitted.

1228. The provisions of article 48, paragraph 1(b), are implemented in Israel.

### **Subparagraph 1 (c) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1229. As mentioned above, the basic principle of the Israel's **International Legal Assistance Law, 1998** is contained in Section 8, which provides that any action requested may be performed to the same extent that such act could have been performed had the crime involved occurred in Israel; and that it shall be performed in the manner requested so long as this does not violate Israeli law. This allows, for the purposes of providing legal assistance, taking all measures that would have been available in a domestic criminal matter, while still allowing the execution of the request to proceed in accordance with the particular evidentiary or legal requirements of the requesting State, insofar as not in conflict with Israeli law. In addition, many bilateral agreements also contain a non-exhaustive list of possible cooperation methods.

1230. This includes the transmittance of necessary items or quantities of substances for analytical or investigative purposes as specified in this Article.

1231. Israel cited the following text.

**International Legal Assistance Law, 1998**, Section 8 (cited under UNCAC article 48(1)(c) above).

#### **(b) Observations on the implementation of the article**

1232. The provisions of article 48, paragraph 1(a), are implemented in Israel.

### **Subparagraph 1 (d) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

1233. As mentioned above, according to Israeli law any form of assistance requested may be performed to the same extent and subject to the same safeguards had the crime occurred in Israel. This includes the exchange of all relevant information, such as specific means and

methods used to commit offenses.

1234. Israel cited the following text.

**International Legal Assistance Law, 1998**, Section 8 (cited under UNCAC article 48(1)(a) above).

1235. Israel provided the following examples of implementation.

**Trends and methods of money laundering:**

- The IP has detected activities by criminal organizations and other criminals in transfers of cash money effected outside of the banking system. These practices make it difficult to track the assets and their trail.
- Family occasions are used to disguise the transfer of large sums of cash. For example, after a wedding, a deposit of a large sum of cash may be explained as a wedding gift.
- Front men are continuously and widely used for all kinds of activities such as opening of accounts, registry of activities at money service providers, forging of import logs and lowering the value of imported goods.

**(b) Observations on the implementation of the article**

1236. The provisions of article 48, paragraph 1(d) are implemented in Israel.

**Subparagraph 1 (e) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

1237. A number of investigative or regulatory bodies in Israel are able, under Israeli law and in accordance with international agreements and memoranda of understanding, to provide information and other forms of assistance to similar bodies in other States. For example, bilateral agreements on cooperation in the fight against crime provide, in some cases, for the nomination of contact points in order to facilitate their implementation. Other agreements and conventions also call for the designation of contact points or competent authorities.

1238. The Israel Police, for example, has a number of representatives abroad. These representatives are stationed in Israel's diplomatic missions abroad and are often responsible for a number of countries.

1239. These representatives work towards identifying and preventing criminal activity, including corruption offenses, carried out by Israelis and others which affect crime in Israel and abroad. The representatives are also responsible for international cooperation and exchange of information, including the development of technologies regarding criminal activities, exchanging information and coordinating and liaising vis-à-vis the departments and ministries in Israel.

1240. The representatives take part in meetings and conferences in their host states and are in contact with the professional bodies and law enforcement agencies. These bodies and agencies help the representatives in their work in the host states and the countries for which they are responsible.

1241. Israel provided the following examples of implementation.

1. CARIN (the Camden Assets Recovery Interagency Network), is an informal network of expert-practitioners in the field of asset tracing, freezing and confiscation. It is an interagency network, such that each member state is represented by a law enforcement officer and a judicial expert. The representatives of the member states are called “national contact points”. Since 2009, Israel has had two national contact points - one from the IP and the second from the Israel Tax Authority.

2. Agreements on mutual assistance in customs matters provide, in certain cases, for the nomination of contact points in order to facilitate their implementation.

1242. Israel identified the liaison officer positions within its law enforcement authorities. The Israel Police representatives are stationed in the following locations:

1. Washington, D.C: Responsible for the United States & Canada.

2. Bogota, Columbia: Responsible for all the Latin American countries, Mexico & the Caribbean.

3. Berlin, Germany: Responsible for Central Europe & Scandinavia, including: the Czech Republic, Hungary, Poland, Slovakia, Sweden, Denmark, Norway & Finland.

4. The Hague, the Netherlands: Responsible for Northwestern Europe: Belgium, England, Ireland & Luxembourg.

5. Bucharest, Romania: Responsible for the Balkans: Serbia, Croatia, Slovenia, Turkey, Greece and Georgia.

6. Moscow, Russia: Responsible for the Former Soviet Union: Ukraine, Belarus, Kazakhstan, Uzbekistan, Kyrgyzstan, Armenia, Moldova, Estonia, Latvia & Lithuania.

7. Bangkok, Thailand: Responsible for South East Asia and the Pacific: India, Japan, China, Australia, New Zealand, Vietnam, the Philippines & Singapore.

8. Paris, France: Southwestern Europe and South Africa: Spain, Italy, Portugal & Switzerland.

**(b) Observations on the implementation of the article**

1243. Israel is able to provide different types of informal assistance. It was reported during the country visit that the Legal Assistance Unit of the Israeli Police has concluded a number of MOUs with many foreign counterparts. The requests are very often received via informal channels and also via Interpol channels.

1244. Israel also reported successful experience as a provider of technical assistance in the form of expert knowledge to a number of its law enforcement, for example through the exchange of intelligence and legal information by the Israeli police and through the FIU with international counterparts.

1245. The provisions of article 48, paragraph 1(e), are implemented in Israel.

**(c) Successes and good practices**

1246. The practice of providing technical assistance and expert knowledge is conducive to successful law enforcement cooperation and can be regarded as a good practice.

**Subparagraph 1 (f) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1247. As mentioned above, according to Israeli law, any form of assistance requested may be performed to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel. This includes the performance of all measures for early identification of offenses.

**(b) Observations on the implementation of the article**

1248. The provisions of article 48, paragraph 1(f), are implemented in Israel.

**Paragraph 2 of article 48**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in*



*respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1249. As noted before, Israel has many agreements with other states on cooperation between their law enforcement agencies, and the relevant governmental ministries continuously initiate negotiations for additional agreements.

1250. Israel provided the following information on law enforcement cooperation provided or received making use of bilateral or multilateral agreements or arrangements, including international or regional organizations.

1. Agreements on cooperation in fighting crimes have been signed with several states, including Bulgaria, Kenya, Uruguay, Croatia, Slovakia and Serbia.

2. A number of agreements on mutual assistance in customs matters have been signed with states such as Austria, Azerbaijan, Canada, Croatia, Ethiopia and the Philippines.

3. Israel has over 50 agreements on the avoidance of double taxation and the prevention of fiscal evasion, including, inter-alia, with countries such as Denmark, Estonia, Georgia, Malta, Panama and Vietnam.

4. Israeli FIU has reported on 45 MOUs it concluded with foreign counterparts.

1251. Israel indicated that it considers this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention.

1252. This Convention may be considered as the basis for mutual law enforcement cooperation, although Israel does not require the existence of a treaty in order to cooperate with other states in this regard. Israeli laws allow for the performance of any form of law enforcement assistance to the same extent and subject to the same safeguards as those that apply had the crime occurred in Israel.

1253. The most relevant example is the extradition of former District Court Judge Dan Cohen from Peru on the basis of UNCAC. For further details see the information under UNCAC article 44(1).

**(b) Observations on the implementation of the article**

1254. The provisions of article 48, paragraph 2, are implemented in Israel.

**Paragraph 3 of article 48**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1255. Israel continuously acts on the national level to meet the challenges of offenses

committed through the use of modern technology.

1256. Israel cooperates closely with INTERPOL and with other states. Israel also cooperates with the OECD on the OECD Guidelines for Multinational Enterprises, which contain a specific reference to combating bribery, and promotes the Guidelines at the national level.

**(b) Observations on the implementation of the article**

1257. The provisions of article 48, paragraph 3 are implemented in Israel.

**Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1258. Israel's legal assistance laws and practices provide flexible procedures to enable the provision of assistance and cooperation on a broad basis to law enforcement agencies of other states. The Israel Police and other investigative and regulatory agencies also possess mechanisms independent of the **International Legal Assistance Law, 1998** to cooperate with their counterparts abroad. Joint investigations are usually executed under existing legislation, international conventions or bilateral agreements. However, sometimes a protocol is signed between the parties for the purpose of a specific investigation.

1259. There is nothing in the law to preclude the enactment of a JIT agreement if it was considered necessary or of significant assistance in conducting a criminal investigation. Other multi-lateral treaties to which Israel is party, such as the Second Additional Protocol of the Council of Europe Convention on Mutual Legal Assistance, contain provisions relating to the establishment of JITs. Thus, if in a case falling under the Convention, the establishment of a formal joint investigation team was considered appropriate, Israel could participate.

1260. Israel reported that there have not been instances of joint investigations in corruption matters to date. However, there were instances of joint investigations conducted with other countries (in particular, there was a case with Czech republic) in general criminal matters.

**(b) Observations on the implementation of the article**

1261. The provisions of article 49 of the Convention are implemented in Israel.

**Article 50 Special investigative techniques**

**Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1262. The technique of controlled delivery is one that Israel has used, in appropriate circumstances, in a large number of cases. The most common cases in which this technique is used are drug trafficking cases but it is not restricted to such cases. In some cases, controlled delivery is carried out based on a request for mutual legal assistance (wherein Israel is either the requested or requesting State). In other cases, where there has been pre-existing coordination between police authorities in the countries concerned, controlled delivery may take place through police-to-police cooperation, with no need for a mutual legal assistance request.
1263. According to Israeli law, extraordinary assistance of wiretapping will be permitted where the crime at issue is punishable by at least three years imprisonment in the requesting State and where the wiretapping would have been permitted for such a crime under Israeli law.
1264. Where special investigative techniques have been lawfully utilized, either in Israel or by foreign authorities abroad, there is no restriction on their admissibility as evidence in Israeli criminal proceedings.
1265. Israel cited the following text.

**International Legal Assistance Law, 1998**

**31. Secret monitoring**

- (a) Where another state has requested that secret monitoring be carried out in connection with a criminal matter that is pending in that state, the Competent Authority may apply for an order on this matter from the District Court, in accordance with the provisions of the Secret Monitoring Law, 1979.
- (b) The Competent Authority shall apply for an order for secret monitoring only in connection with one of the following:
- (1) an offense which, under the laws of the requesting state, is punishable by more than three years imprisonment;
  - (2) an offense for which secret monitoring could have been permitted had it been committed in Israel;
  - (3) for the - forfeiture of property as set out in Article Six.
1266. Israel provided the following relevant examples, noting that the information is limited due to the sensitive nature of the issue.
- In the case of a public official suspected of accepting bribes to influence public tenders the court authorized wiretapping and search warrants.

- In the case of a municipality employee suspected of accepting bribes in exchange for providing favorable treatment to friends, relatives and business associates. the court issued wiretapping and search warrants.
- In the case of a public official suspected of accepting bribes from an importer, the court issued wiretapping and search warrants.
- The IP investigated a case where a company's chairman of the board was suspected of providing benefits in exchange for favors. There were also allegations of non-reporting of funds by the suspect's secretary. The court issued search warrants through the Criminal Procedure (Arrest and Searches) Ordinance (New Version), 1969.
- In the case of a public official suspected of accepting bribes to influence public tenders relating to a government contract, the court issued search warrants through the Criminal Procedure (Arrest and Searches) Ordinance.
- A case of suspicions concerning the taking of bribes from contractors included allegations of government corruption. The court issued search warrants through Israel's Criminal Procedure (Arrest and Searches) Ordinance.

**(b) Observations on the implementation of the article**

1267. The provisions of article 50, paragraph 1, are implemented in Israel.

**(c) Successes and good practices**

1268. Israel's ability and practice of conducting controlled delivery via police-to-police cooperation, without the need for a formal mutual legal assistance request, can be regarded as a good practice.

**Paragraph 2 of article 50**

*2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1269. As noted, Israel does not require specific agreements to carry out special investigative techniques at the request of or in cooperation with a foreign law enforcement authority. At the same time, Israel is party to several agreements that provide for techniques such as controlled delivery.

1270. Israel cited the following text.

- The Second Additional Protocol to the COE Convention on MLAT (Article 18 -

controlled delivery; Article 19 - Covert investigations).

- A bilateral agreement which was recently signed between the State of Israel and the Czech Republic on cooperation in the fight against crime contains a provision on coordination in preparing and organizing the implementation of special investigative techniques such as controlled deliveries, surveillance and undercover operations.

- Bilateral agreements on mutual assistance in customs matters usually include a wide variety of special investigative techniques, including, for example, controlled delivery.

**(b) Observations on the implementation of the article**

1271. The provisions of article 50, paragraph 2, are implemented in Israel.

**Paragraph 3 of article 50**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1272. Since Israel does not require specific agreements in order to carry out special investigative techniques at the request of or in cooperation with a foreign law enforcement authority, it may decide to use such special investigative techniques at the international level on a case-by-case basis.

**(b) Observations on the implementation of the article**

1273. The provisions of article 50, paragraph 3, are implemented in Israel.

**Paragraph 4 of article 50**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

1274. Since Israel does not require specific agreements in order to carry out special investigative techniques, it may decide to use methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced.

**(b) Observations on the implementation of the article**

1275. The provisions of article 50, paragraph 4, are implemented in Israel.

## Annex 1

### United Nations Convention against Corruption

#### The Judiciary's Perspective

The following annex provides a brief overview of the historical development of the Israeli case law in corruption cases.

Corruption offences are reviewed by the court as any other offence. The prosecution must prove its case; meaning it must prove beyond a reasonable doubt the elements of the offence, which are the *mens rea* and *actus reus*. The place where judicial discretion and policy can be implemented is in the sentencing of corrupt officials.

The following outlines some important cases of prosecution and sentencing of corrupt offenders in Israel.

- In 1976 the Supreme Court ruled on the appeal of Michael Tzor – CEO of a number of governmental companies – who was convicted of accepting bribes, fraud and breach of trust. Tzor was found guilty, by the District Court of Tel Aviv, for diverting millions of dollars from the companies he worked for, using different ruses - such as entering into a fictitious purchasing agreement, and for accepting bribes of close to 3 million dollars. Tzor was sentenced to 15 years imprisonment. He appealed, arguing for leniency since he admitted his guilt, returned some of the funds he received and asked the court to recognize all his good work over the years for the companies he led. The Supreme Court rejected Tzor's appeal saying that Tzor's argument that his good work can offset his crimes is unreasonable and destructive to the public service system.
- In 1977 the Supreme Court ruled on the appeal of Asher Yaldin – CEO of an HMO – who was convicted on several charges for accepting bribes, conspiracy to commit a crime and of giving a false statement. Yaldin was sentenced to 5 years imprisonment and a fine of 250,000 IL. He appealed on the severity of his sentence and argued that the media had blown his story out of proportion, making it impossible for him to receive a fair trial. The Supreme Court found that Yaldin himself and people close to him released statements to the media, undermining his claim about the media coverage of his trial. More importantly, the Supreme Court ruled that the media coverage did not prevent Yaldin from receiving a fair trial or influenced his sentencing. The severity of the offences and the moral turpitude of Yaldin's actions were obvious, the Court said, and the sentence handed down by the District Court well deserved.

There were also examples, however, where the offenders received low sentences for corruption offences.

- In case of Arie Deri, an important political leader (from the Shas - ש"ס party), he was found, by the District Court of Jerusalem, guilty of receiving money for his personal use and for the use of an NGO he was associated with, while serving as the Deputy Minister of Interior, CEO of the Ministry of Interior and then as the Minister of Interior himself. For this, Deri was convicted of accepting bribes, fraud and breach of trust. He was sentenced to 4 years imprisonment and a fine of 250,000 NIS. Deri appealed to the

Supreme Court, which exonerated him from some of the bribery charges and reduced his sentence to 3 years imprisonment.

- Another example of low sentencing can be found in the case of Shimon Algarisi, who was the acting and deputy Mayor of Eilat and Head of Eilat's Planning Committee. The case was argued before the Supreme Court in 2009. Algarisi was convicted of several counts of accepting bribery, breach of trust and fraud. The District Court of Beer-Sheva sentenced him to 9 months imprisonment, 9 months of probation and a fine of 25,000 NIS. Algarisi appealed, arguing that the court didn't take into account that some of his offences were committed not for personal gain but for the benefit of the local basketball team. The Court rejected the argument, saying that Algarisi, was trusted with the integrity of his position. The Court also doubted Algarisi's claim that he acted out of altruistic intentions, saying that his punishment fit his crimes.
- A month later, the Supreme Court ruled on the case of Shlomo Benizri, the former Minister of Labor and Social Affairs. The District Court of Jerusalem found Benizri guilty of accepting bribes, breach of trust, conspiracy to commit a crime and obstruction of justice. The Court sentenced Benizri to 18 months imprisonment and a fine of 80,000 NIS. Both Benizri and the State appealed. The Court rejected Benizri's appeal and accepted the State's. The Court then sentenced Benizri to 4 years imprisonment.
- In 2010, the Courts had to rule on the case of former Minister of Environmental Protection, Tzachi Hanegbi. Hanegbi was charged with bribery, breach of trust, attempt to influence votes and perjury. He was, however, convicted only of perjury. When sentencing Hanegbi, the debate revolved around the question of whether his actions justified imposing moral turpitude. The Court found, in a 2 to 1 decision, that moral turpitude is inherent to perjury, more so in the circumstances of this case which involved a minister, holding a position of the public's trust.
- In 2011, the case of former Minister of Treasury - Abraham Hirshzon - was deliberated before the Supreme Court. Hirshzon was convicted of theft and money laundering from the National Labor Organization, which at the relevant time, he served as its head. The District Court of Tel Aviv sentenced him to 5.5 years imprisonment. Hirshzon appealed, but the Supreme Court rejected the appeal.

Recent cases demonstrated a stricter approach to sentencing the corrupt.

- In 2013 the sentence of former District Court Judge Dan Cohen was handed down. Cohen was brought before the Court after being extradited back to Israel. The former judge, who in the 90s served as a director of the Israeli Electricity Company and Head of its Tenders High Committee, was found guilty of fixing tenders and was convicted, through a plea bargain, for breach of trust, fraud, accepting bribes and obstruction of justice. Cohen was sentenced to 6 years imprisonment, 2 years' probation, a fine of 6 million NIS and confiscation of assets valued at 4 million NIS. This was obviously a step up in sentencing.
- In another cases in 2013 Halil Kasam, the Mayor of Tira, who at the relevant time also served as the Head of Tira's Planning Committee, Acting Member of the District Planning Committee and Deputy Head of the Local Government, was found guilty of various counts of fraud, accepting bribes and breach of trust. Most of Kasam's offences

were of the land and construction variety. Kasam was sentenced to 5 years jail time, a year of probation, a fine of 220,000 NIS and 40,000 NIS damages.

The most recent and well publicized case is the Holyland Case which involved former prime-minister, Ehud Olmert.

- Previous to this there was the Talansky Case, where it was alleged that Olmert, while serving as Minister of Communications, Minister in Charge of Israel Land Authority and the Minister of Industry, Trade and Employment received an estimated sum of 600,000 USD from Talansky. Olmert was acquitted of charges of abuse of power and position, fraud and bribery, but was found guilty of breach of trust by maintaining inappropriate connections. He was sentenced to 1 year probation and a fine (75,300 NIS).
- Olmert however did not fare so well in the Holyland case, where he was prosecuted for and found guilty of accepting bribe, while he served as the Mayor of Jerusalem. It was found that the former prime-minister received 60,000 NIS through Shula Zaken (his former secretary) and Ori Messer (Olmert's one-time attorney and friend). For these Olmert was sentenced to 18 months imprisonment, 1 year probation, a fine of 200,000 NIS (approx. 46,840 Euro) and confiscation of 60,000 NIS (approx. 14,050 Euro).
- Shula Zaken, Olmert's former secretary, chief of his secretarial staff and close confidant for decades, was convicted of accepting bribes reaching hundreds of thousands of shekels, as well as receiving personal gifts. Near the end of the trial Zaken cut a deal with the prosecution, promising to present them with additional evidence against Olmert. She was therefore sentenced to 11 months imprisonment, 25 months of probation, a fine of 25,000 NIS and confiscation of 75,000 NIS.
- Another public official that was involved in the Holyland case was Uri Luplianski, Deputy Mayor of Jerusalem, Head of the Planning Subcommittee, Head of the Planning Committee and the Mayor Successor, after Olmert. He too was found guilty of accepting bribes directly and through the Yad Sara Organization of more than 2.5 million NIS. The Hon. Judge Rosen wrote in Luplianski's verdict that all his misdeeds were done with the intention of providing funds to Yad Sara. However, Rosen continues – Luplianski failed to distinguish between himself and Yad Sara. The organization was his life, and Luplianski's many successful activities for the organization gave him prestige, accesses to dignitaries and allowed him to run and serve in different positions in the municipality. Though Luplianski's medical condition is grave, Rosen sentenced him to 6 years imprisonment, 1 year probation and a fine of 500,000 NIS. The harshness of Judge Rosen's language in this case, should be noted, he said that: "The man accepting a bribe is a traitor – he betrays the trust bestowed upon him – a trust necessary for the existence of a deserving public service". Luplianski's conviction was upheld in the Supreme Court but the sentence was lowered to 6 months of community service, 10 months probation and a 200,000 NIS fine (approx. 46,840 Euro) (Ap.Cr.A. 4456/14 *Kelner v. the State of Israel*) due to his medical condition.

Corruption offences are also prosecuted in Israeli administrative courts.

- Such was the case of the election in Beit Shemesh, brought before the District Court of Jerusalem. The election was won by the incumbent mayor. He received 956 more votes than his opponent. The Attorney General appealed this result arguing that there was an



organization of members of certain factions in Beit Shemesh, whose members were impersonating voters who abstained from voting or who had not yet had the chance to vote. This resulted in hundreds, if not thousands, of tainted votes. Most of the Attorney General's evidence was inapplicable in criminal court – such as hearsay - but not so in the administrative forum, as administrative evidence is any evidence that one can reasonably base their decision on. There are no strict evidence rules that apply to administrative evidence, making it more flexible than the evidence that can be used both in criminal and civil court. Therefore, a three judge panel found that there was a large group of residents from Beit Shemesh who worked for the reelection of the incumbent mayor (without his knowledge) and voting for the faction "Co'ah" (כה), by impersonating other voters. It was estimated that some 1,000 to 1,400 votes were tainted. Finding that this was a substantive flaw, capable of influencing the result of the election, the results were nullified and it was ordered that new elections had to be held.

An appeal on this ruling was rejected by the Supreme Court.

## **ANNEX 2**

### **Israel's Prima Facie Evidence Requirements regarding matters of Extradition – A Practical Guide**

#### **Introduction**

Perhaps the most significant difference between the extradition procedures in Israel and those in other states, lies in Israel's requirement, rooted in its common law traditions, to require a prima facie evidentiary submission before it will approve an extradition. Because this is a requirement that most countries do not have, it is also a matter that has created difficulty and confusion at times, particularly in the case of extradition requests relating to complicated crimes. It is often the case that, our express Reservation on this point notwithstanding, extradition requests are submitted to Israel with no evidence attached or where the "evidence" is in the form of indictments or other charging documents which do not constitute evidence for the purposes of Israeli proceedings. We have had the unfortunate experience of voluminous correspondence between Israel and the requesting state extending for a lengthy period until the proper evidence is finally submitted. Sometimes this never happens and the requested extradition simply never takes place.

It is Israel's firm belief that the evidentiary requirements of its law do not constitute any significant bar or obstacle to extradition. Where such evidence does not actually exist, it is plainly the case that there is no basis to charge the person for an offense and thus no basis for the extradition request. Rarely will preparation of the required evidentiary submission involve work (other than translation) that would not, in any case, have to be done in connection with the court proceedings in the criminal case in the requesting state. Israel believes that the problem is not with the requirements themselves but rather with the unfamiliarity or misunderstanding of what is actually required. In order to eliminate some of this misunderstanding, Israel attaches hereto a Practical Guide to its prima facie evidence requirements in extradition proceedings which we hope will be helpful to States undertaking an extradition request to Israel.

## Discussion

Unlike most countries, the State of Israel requires that an evidentiary submission be made by the requesting state to support its request for extradition in the case of persons not yet convicted in the requesting state. In this requirement, Israel is similar to most of the States following the common law tradition. The particular evidentiary requirements involved are, however, a function of Israel's internal laws and regulations concerning extradition and evidence.

The evidentiary requirements for extradition requests submitted to Israel are also set forth in Reservations and Declarations made by Israel to the European Convention on Extradition.

### *Reservation to Article 2:*

"Israel will not grant extradition of a person charged with an offense unless it is proved in a court in Israel that there is evidence which would be sufficient for committing him to trial for such an offense in Israel."

### *Declaration concerning Article 22:*

"The evidence in writing, or the declarations given on oath or not, or certified copies of such evidence or declaration, and the warrant of arrest . . . shall be admitted as valid evidence in examining the request for extradition, if they have been signed by a judge or official of the requesting State or if they are accompanied by a certificate issued by such a judge or official or if they have been authenticated by the seal of the Ministry of Justice."

The reference to "committing ...to trial" in the Reservation to Article 2 is taken from section 9 of the Israeli Extradition Law, which provides that a person may only be extradited if "it is proved that the wanted person has been convicted of an extradition offense in the requesting state, or that there is evidence which would be sufficient for committing him to trial for such offense in Israel". The Israeli courts have interpreted this requirement to refer to prima facie evidence sufficient to support the issuance of an indictment against the suspect. Without getting into the various interpretations of this standard under the Israeli case-law, this standard can be usefully understood to mean that sufficient evidence should be submitted to have supported a conviction of the suspect were the evidence to be presented, accepted and not contradicted at trial. (As noted below, in this context, the Israeli courts in extradition proceedings while considering the *sufficiency* of the evidence will not generally weigh the *credibility* of the

evidence. The Israeli case-law considers the assessment of the credibility of the evidence to be the function the trial court in the Requesting State following extradition.) It is, of course, accepted under the law and regulations that evidence submitted in behalf of a request for extradition be in the form of documentary evidence.

When faced with the issue of meeting the above prima facie evidence standard on a practical basis, there are several points that should be kept in mind:

1. **There is no requirement that all the evidence in the file be submitted.** There is not even any requirement that all evidence related to guilt be submitted. Thus, if there are statements by eyewitnesses to a crime or a confession by the accused, there will generally be no requirement to attach documentary evidence that would provide additional proof of the suspect's guilt. Not all incriminating statements or testimonies need to be submitted. **A balance should be reached between the evidence available in the file and the practicalities of preparing, translating and transmitting the evidence.** The required amount of evidence may vary from case to case. Clearly in a case of a complicated fraud or in the case of charges based on circumstantial evidence, there will be more documents and evidence required to be submitted than in a simpler case.

We have often suggested that a most useful first step is to send to our office by fax (the Department of International Affairs – Fax: +972-2-5419-644) a **detailed description** of the evidence so that we can consider and discuss with the requesting state what and how much evidence need be sent.

2. **The evidence must be evidence admissible in Israeli criminal cases.** Because, as discussed below, authentication of evidence is made generally simple under the evidence laws and regulations, the requirement of admissibility basically means that only evidence that is inherently inadmissible in Israeli proceedings will be excluded. **The most significant example of inadmissible evidence in Israeli extradition cases is hearsay evidence.** The Israeli law of hearsay is generally comparable to that of other common law countries such as Britain or the United States. Under the hearsay rule, a witness can only testify as to what he observed and not as to what he knows about only because someone else told him about it. Thus, if a Witness A says that someone else, Witness B, had told him that Witness B had seen the suspect commit the crime, Witness A's statement would not be considered admissible evidence but would be rejected as hearsay. Such a statement would consequently not be accepted as evidence in support

of an extradition request. Instead, a statement by Witness B, the actual witness, would have to be submitted.

There are, however, important exceptions to the hearsay rule. The most prominent may be the rule that testimony by someone as to incriminating statements made by the suspect himself or by one of the suspect's co-conspirators will be considered admissible. Thus, Witness A may testify that the suspect told him that he had committed a crime. There are other hearsay exceptions as well. If hearsay evidence is involved in an extradition case, here too, sending us a description of the hearsay evidence involved will allow us to conclude if it falls into one of the exceptions.

There are also other bases for inadmissibility of evidence, though they are generally less important than the hearsay rule. Thus, evidence may be inadmissible in most cases if it is evidence by a spouse or parent of the suspect against the suspect. (Here too, there are exceptions such as in the case of serious crimes of violence.)

3. **Indictments, complaints and court determinations do not constitute evidence of guilt.** Unless we are dealing with an extradition based on a conviction, the rulings of government, prosecutorial or judicial bodies finding that the accused has committed acts or offenses will not constitute evidence that the acts or offenses have been committed. To give an example: The conviction of an accomplice of a suspect for the crime will not constitute evidence that the suspect himself has committed the crime. Similarly, the indictment of the suspect is not evidence that he committed the crimes for which he was indicted.

4. **The rules for authentication of documents are greatly simplified under the Extradition Laws and regulations.** Under these rules, testimonies need not be under oath and may be authenticated in the manner provided in the Convention. As you can see, our Declaration under Article 22 of the Convention greatly simplifies the rules of authentication.

5. **The extradition court will not assess the credibility of the evidence**

The fact that there are witnesses who contradict each other or even that there are conflicting testimonies from the same witness will not, in itself, prevent extradition of the requested person. Our courts have clearly held that it is the task of the trial court in the requesting state to choose which of the witnesses' testimonies is more credible and should be believed. On the other hand, in the interests of good faith, it is important to let us know if a witness whose testimony has been presented has contradicted himself or if there exists strong

evidence or testimony indicating that the suspect did not commit the crime. While this exculpatory evidence may not be a basis for the Israeli court to deny extradition, it creates a negative impression, to say the least, if the fact of the existence of such evidence is first brought up by the **defense attorneys** in the extradition proceedings.

6. **The evidence should be presented in an organized understandable fashion.** It will greatly simplify the extradition proceedings if the prima facie evidence is presented in a clear and organized fashion. **Particularly helpful is submission of an affidavit by a police, prosecuting or judicial officer, familiar with the case, describing the evidence attached to the request and explaining the significance of each piece of evidence.** The Department of International Affairs will be pleased to provide examples of such affidavits that have been submitted in the past.

7. **If in doubt call the Department of International Affairs.** The Department of International Affairs is willing to discuss any questions relating to the preparation or submission of requests for provisional arrest or extradition (Tel.: 972-2-5419-614; Fax: 972-2-5419-644. (The Department also deals with matters of Mutual Legal Assistance in Criminal Matters). Please do not hesitate to call or fax us with your inquiries.

8. **Note on Provisional Arrest** - We may note that although there is no strict evidentiary requirement at the stage of a request for preliminary arrest, Israel will generally request at least a description of the evidence at this stage. This is to provide assurance that a proper evidentiary submission will be provided to support the extradition as required. In cases of certain complicated crimes – and where there is no clear danger of imminent flight – Israel will sometimes request that a full request, with the required prima facie evidence, be submitted before the arrest is undertaken. The purpose in all cases is the same, to assure that the extradition proceedings with respect to the requested person will be successfully concluded in accordance with Israeli law and that Israel will be able to extradite the person for trial in the requested state.

We hope the above discussion will be helpful at least as an initial guide. As we have noted, any remaining uncertainties can usually be resolved through discussion and consultation.