

International Disability Alliance (IDA)

Member Organizations:

Disabled Peoples' International, Down Syndrome International,
Inclusion International, International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS), Pacific Disability Forum

Suggestions for disability-relevant recommendations to be included in the Concluding Observations of the Committee on Economic, Social and Cultural Rights 47th Session (14 November – 2 December 2011)

The International Disability Alliance (IDA) has prepared the following suggestions for the Concluding Observations, based on references to persons with disabilities found in the CESCR Committee's 47th Session state report and list of issues.

ISRAEL

Israel has signed but not ratified the Convention on the Rights of Persons with Disabilities.

State Report

Select references to persons with disabilities in the state report:

66. On November 30, 2003, the Government consolidated Resolution no. 1073 concerning appropriate representation for **persons with disabilities** in the Civil Service. Among the measures set out in the Resolution is the appointment of **Equality for Persons with Disabilities Supervisors** in each Ministry, whose task it is both to promote the employment of **persons with disabilities** in the Civil Service and to make the Ministry more accessible to **persons with disabilities** in general. The Government further decided to give priority to **persons with severe disabilities** in appointments and promotions in the Civil Service.

Equal rights for persons with disabilities

87. The State of Israel signed the **Convention on the Rights of Persons with Disabilities** on March 31, 2007, thus expressing its commitment to the advancement and the protection of the rights of **persons with disabilities**. The Ministries of Justice and of Foreign Affairs are currently examining the necessary measures towards the ratification of the Convention, including the legislative amendments required.

88. **The Commission for Equal Rights of People with Disabilities**. Since Israel's previous periodic report, the **Commission for Equal Rights of People with Disabilities** (hereinafter: "the Commission") was established, its powers were broadened and the number of employees significantly increased. The Commission includes three main units: Accessibility, Integration in Society and the Legal Department. The Commission's work is aimed at promoting public policies regarding the rights of **persons with disabilities** as well as providing assistance to individuals who encounter difficulties. Alongside the Commission

operates a steering committee, composed mainly of **persons with different disabilities** who represent the main organizations operating in the field.

Employment of **persons with disabilities**

95. As set out in Israel's previous report, the employment provisions of the ***Equal Rights for People with Disabilities Law*** prohibit discrimination on the basis of **disability**, oblige employers to make reasonable work accommodations and require appropriate representation of **persons with disabilities** in the work force.

96. Since the submission of Israel's second periodic report, the Government promulgated various regulations with a view of promoting greater participation in the work force by **persons with disabilities**. The ***Equal Rights for People with Disabilities (Preference in Parking Spaces in the Work place) Regulations 5762- 2001***, oblige employers to provide each **disabled employee with an accessible designated parking space** for his/her exclusive use. These regulations apply to every employer who has at least six employees, and who has provided designated parking spaces for at least three of them. Under the ***Equal Rights for People with Disabilities (State Participation in Financing Accommodations) Regulations 5766 -2006***, **employers are entitled to a refund from the Government on expenses made in adjusting the work place to the disability, work and daily needs of disabled employees (subject to a maximum sum per employee)**.

98. In the first case to be decided, L.C 2968/01 *Balilti v. Jerusalem Post Publications Ltd* (2.12.01), the Jerusalem District Labor Court held that the **duty to ensure proper representation of persons with disabilities according to section 9 of the *Equal Rights for People with Disabilities Law***, includes giving priority to persons with disabilities over other similarly qualified employees when selecting for redundancy.

99. In 2003, addressing the **duty to make reasonable accommodations**, the Tel Aviv District Labor Court held that an employer is obligated to find alternative suitable employment for an employee who has become disabled during the course of his employment (C.M. (Tel Aviv) 5712/03 *Steinberg v. Israel Electric Co.* (30.12.03)).

100. In another case, in 2005, the Nazareth District Labor Court ruled that the phrase "accommodation" is not limited to the physical adjustment of structures, equipment or accessories, but extends to making accommodations of an economic nature. Thus, an employer is obligated to continue employing an employee who became disabled, and pay him the same salary, even if there is a decrease in his/her productivity due to the disability, unless the employer can prove that this imposes an unreasonable burden on his/her business. In this case, the Court held that an employee with cancer constitutes a person with a disability for the purposes of the *Equal Rights for People with Disabilities Law* (L.C (Nazareth) 1732/04 *De Castro Dekel v. M.B.A Hazore'a* (10.07.05)).

101. Labor courts have also dealt with cases of **persons with Intellectual and/or Mental disabilities, whose work capacity is diminished due to their disabilities**. The courts ruled that such persons are to be regarded as "workers" and as such are entitled to all the benefits of an employer-employee relationship, including the applicability of all relevant labor laws. In both decisions, the employers were obligated to compensate

the plaintiffs retroactively (L.C (Tel-Aviv) 10973/04 *Goldstein v. Na'amat*, L.C (Haifa) 3327/01 *Roth v. Ram Buildings Ltd*).

102. As a result of these decisions and with a view of encouraging the employment of **persons with Intellectual and/or Mental disabilities in supported employment** in the open labor market, a law was enacted in 2007 - the *Equal Rights of Persons with Disabilities Employed as Rehabilitated Persons (Temporary Provision) Law*. According to this Law, a person whose **work capacity is less than 19% shall not be considered an employee, but rather a rehabilitated person. As such the entire body of labor laws does not apply, but at the same time the new Law gives a rehabilitated person the right to remuneration for work and decent work conditions concerning matters such as leave, sick pay, hours of work and travel expenses.** This law supplements the *Minimum Wage (Adjusted Wage for Employees with Disabilities Having Reduced Ability to Work) Regulations 5762 – 2002*, promulgated on February 21, 2002, concerning adjustments to the minimum wage for persons who are at various levels of diminished work capacity as the result of a **disability**. The objective of the Regulations is to encourage employers to hire employees whose work capacity is diminished due to **disability**, by enabling them to pay such employees less than the minimum wage. The Regulations set a reduced minimum wage scale which corresponds with work capacity. Thus an employee whose work capacity is reduced by between 25-50% is entitled to 75% of the minimum wage; an employee whose work capacity is reduced by between 50-70% is entitled to 50% of the minimum wage; and an employee whose work capacity is reduced by over 70% is entitled to a third of the minimum wage. Under the Regulations, the person with disability is required to apply to the Ministry of ITL requesting a determination of his/her reduced work capacity, resulting in the entitlement to a reduced minimum wage. The Regulations apply to employment in the open labor market, as opposed to sheltered employment. In the first 20 months of the implementation of the Regulations, 1,600 **persons with disabilities** have applied to have their minimum wage adjusted, and in 1,255 of these cases the wage was, in fact, adjusted.

Accessibility

104. The extensive aforementioned 2005 amendment to the *Equal Rights for People with Disabilities Law*, prohibits **disability-based discrimination in the operation of public places and the provision of public services, and requires that these be made accessible, such that persons with disabilities will be able to benefit to the full extent from public services and will be able to enter a public place, move around and enjoy its facilities in full.** The new accessibility regime applies to public places and services operated by the State and other public authorities, as well as to those operated by the private sector.

105. According to the Law, **existing buildings, as well as new construction must be made accessible.** Special provisions of the new legislation are devoted to accessibility and non-discrimination related to specific areas - insurance contracts, schools and higher educational institutions, roads and infrastructure in general and emergency services.

106. In addition to radically changing the norms governing accessibility, the 2005 amendment establishes a wide range of enforcement mechanisms: **obtaining and renewing a business licence will now be conditional on securing the approval of a licensed**

accessibility expert, to the effect that the requirements of the new accessibility regime have been complied with. The accessibility expert's approval is likewise a pre-condition for obtaining planning permission and completing other planning procedures.

107. At the core of the new provisions on enforcement are a number of key powers with which the **Commission for Equal Rights for Persons with Disabilities** has been invested: in order to secure implementation of the accessibility requirements, the Commission may either file a civil claim or, subject to providing notice as required by the Law, issue an **accessibility order setting out the various steps required in order to make a particular place or service accessible**, together with a time frame for so doing. **Violation of the terms of an accessibility order is considered a criminal offence.**

Community housing

110. **Community housing for people with Intellectual Disabilities.** To date, it is estimated that 33,000 **people with intellectual disabilities** live in Israel, 25,000 of which receive care from the social services. Some reside at home while others live in various residential services facilities.

111. Currently, 63 residential facilities provide housing for **people with Intellectual disabilities**: 9 governmental facilities accommodating 1,816 residents, 40 private facilities accommodating 3,740 residents and 14 public facilities run by non-profit organizations, accommodating 1,175 residents.

113. An amendment to the *Welfare (Treatment of Persons with Intellectual Disabilities) Law 5729-1969*, enacted in 2000, provides that when it is decided that a **person with an Intellectual Disability** should live outside his/her family home, priority should be given to housing in the community. The Department for the Treatment of the **Intellectually Disabled** within the Ministry of Social Affairs and Social Services, acts to implement this priority, as the general trend is to transfer people from residential facilities to community housing in the form of hostels. In practice housing in the community is now the dominant option, such that two-thirds of **people with Intellectual Disabilities** living outside their family homes live in the community.

114. Following a recent petition to the Supreme Court, the limitations set by the Ministry of Social Affairs and Social Services upon community housing have been narrowed down and are confined to cases where the medical services provided in the Community are insufficient or cases of violence or severe behavioral problems. In order to implement the new policy, the Ministry of Social Affairs and Social services has decided to establish hostels in the community, in which between 16 and 24 **persons with Intellectual Disabilities** will reside. The revised policies of the Ministry relating both to the limitations on living in the community and the building of hostels in the community have recently been approved by the Supreme Court (H.C.J 3304/07 *Lior Levi et. al v. The State of Israel et. al.* (24.9.08)).

115. **Community housing for people with Physical Disabilities.** The Department for Rehabilitation in the Ministry of Industry, Trade and Labor, which is responsible for the treatment of **people with physical or sensory disabilities**, allocates 85% of its budget towards Community Housing (mainly hostels and apartments). The remaining portion of the

budget is used to maintain existing residential facilities. Since 2001, no new residential facilities have been established, as the majority of the budget is invested in community housing. Recently, the Department published tenders for the establishment of new hostels for **people with severe disabilities**. Moreover, the existing facilities will be obligated to reassign appropriate persons from residential facilities to community housing.

Culture and leisure

117. Recently, a number of resort sites have been made accessible for the **disabled** with the help of the National Insurance Institute funds.

118. In September 2008, new regulations were promulgated, obligating the adjustment of various public sites to the needs of **persons with disabilities**. The *Equal Rights for People with Disabilities (Site Accessibility Adjustments) Regulations 5768-2008*, lay down the **accessibility requirements** for archeological sites, national parks and nature reserves, as well as other areas, mainly forests, managed by the Jewish National Fund or on its behalf. According to these Regulations, new sites will not open for public use unless the accessibility requirements are met. Existing sites are compelled to gradually fulfill the requirements within 10 years.

119. The *Television Broadcasts (Subtitles and Sign Language) Law*, mentioned above institutes a comprehensive statutory scheme in this field, thereby replacing its predecessor, the far narrower *Deaf Persons Relief Law* of 1992. The new Law applies broader responsibilities and restrictions on broadcasters in order to enhance, to the fullest extent, **disabled persons' accessibility to television broadcastings**.

120. In 2008, the Council for Cable TV and Satellite Broadcasting, a public body established under the *Telecommunications Law 5742-1982*, decided on a separate definition of “prime-time” for children’s channels, so that the requirement for subtitles will coincide with the relevant viewing hours for **children with hearing impairments**. The Council also decided on a list of children’s programs of major interest that will be subtitled.

Employment Opportunities for Persons with Disabilities

187. According to the **Commission for Equal Rights of Persons with Disabilities**, **adults with disabilities** of employment age (aged 20-64) constitute 17.6% of the population. The **rate of employment among persons with disabilities is lower than that of the rest of the population, especially among those with severe disabilities**, thus contributing to increased levels of poverty and social exclusion. Furthermore, the rate of unemployment among the disabled population is very high, especially for **persons with severe disabilities**.

Table 3

Unemployed persons out of the workforce, ages 20 – 64, 2005 (%)

Level of disability	Unemployed persons
Severe disability	20
Moderate disability	11.4
With a problem, but without disability	8.4
Without disability	7.6

Source: *The Commission for Equal Rights of Persons with Disabilities, Persons with Disabilities in Israel, 2007*

Disability benefits

318. **Entitlement of returning resident to Disability Pension.** According to Amendment no. 53 to the *National Insurance Law* approved in 2002, a **Disability Pension** may also be granted to a person whose incapacity to work began when he was not a resident of Israel, if the impairment that led to the incapacity to work, began when the person was a minor (under 18) residing in Israel. Prior to the amendment of the Law, one of the prerequisites for entitlement to the **Disability Pension** was that the incapacity to work began when the person was an Israeli resident, except for new immigrants who are entitled to the Pension even if their incapacity began before they became Israeli residents. The amendment, in effect as of September 1, 2002, is meant mainly to meet the needs of returning residents.

319. **Broadening the definition of a new immigrant with regard to Disability Pension eligibility.** A recent amendment to the *National Insurance Law* broadened the definition of a new immigrant to include persons holding a visa for temporary or permanent residence in Israel who receive a basket of services from the Ministry of Immigrant Absorption. For these persons, entitlement to the **Disability Pension** begins 12 months after they entered the country, but not before July 1, 2006, when the amendment came into effect.

322. **Children with Disabilities.** The NII pays a special benefit for disabled children, defined as follows: children under the age of 18 (including adopted children or step-children) of an insured person, or of an insured person who died as an Israeli resident, who is of the following:

- a child (from age 3) dependent on the help of others for the performance of everyday functions (dressing, eating, washing, mobility in the home and the permanent presence of another, as defined in the regulations) to a degree significantly greater than is normal for his/her age group;
- a child (more than 91 days old) in need of constant supervision;
- a child with a special impairment, that is: (from birth) Down's syndrome or a deterioration in hearing, or (more than 91 days old) a vision impairment, autism, psychosis or a severe developmental retardation (the latter until the age of 3);
- a child (over 91 days) in need of special medical treatment as defined in the regulations, due to a severe chronic disease.

Children with disabilities

592. In 2007, 293,000 **disabled** or chronically ill children resided in Israel, making up 12.8% of the total child population of the country. Approximately 176,000 children (out of the 293,000), were **disabled** or suffered from a chronic illness that affected their daily functioning and had persisted for more than one year. These children made up 7.7% of the total child population.

593. The percentage of **children with special needs** who have at least one **disability** stands at 9.1% among Bedouin children (in the southern Negev area), 8.3% among the total population of Arab children and 7.6% among Jewish children.

595. The **Special Education Law** 5748-1988 (the "*Special Education Law*"), was amended in 2002 to add a chapter dealing with integration of **children with special needs**. The purpose of the amendment was to equalize the services provided to children integrated in regular schools with those provided to children in the **special education facilities**. The amendment further obligates the Placement Committee to prefer the placement of a **child with disability** in a regular educational facility. Among the purposes of the amendment is the integration of **children with disabilities** within the regular education system while enlarging the budget designated for the purpose from year to year. The amendment applies thus far to children aged 5 and older.

596. Recently, the **Rights of Pupils with Learning Disabilities in Secondary Education Facilities Law** 5768-2008, was enacted. This Law asserts the rights of **pupils with learning disabilities** to adjustments in the criteria for admission to secondary education facilities (academic, technological, rabbinical or professional), as well as in exams and other assignments throughout the school years.

597. An internal procedure of the Ministry of Education enables all **pupils with disabilities** to receive the necessary **accessibility adjustments** in the educational facility they attend, by providing the required financing according to specific blueprints submitted to the Ministry by the relevant local authority.

601. In a recent case, the Tel-Aviv District Court, residing as an Administrative Court, addressed the scope of the State's obligation to provide free education to **children with disabilities**. The petitioners contested an internal directive of the Ministry of Education, according to which, commencing in the 2007/8 school-year, supervisors of **special education schools** may authorize reinforcement assistants for **special education** classes, however, they may not authorize personal assistants. The petitioners claimed that the directive violates the right of a **child with disability** to free education as anchored in the *Special Education Law*.

The Court determined that the State has a substantial obligation, stipulated in the **Special Education Law**, to provide free education for **children with disabilities**, and therefore cannot rid itself from its obligation once a child is placed in the **special education system**. A directive that negates the ability of an individual or a group of individuals, such as persons in need of personal assistance, to realize their fundamental right of education, contradicts the said obligation. The Court determined that it is essential that the Ministry's policy take individual circumstances into consideration. The preference of a strict framework of rules over the treating of the exceptional cases by allowing deviation from the rule, may constitute a breach of a fundamental right of a child to **special education**, and as such is invalid. The Court further determined that the Ministry of Education directive forbidding the authorization of personal assistants in the **special education** system is void and shall be rephrased to allow the integration of personal assistants to a pupil in exceptional and justified cases (Ad.P 1214/08 *Orel (minor) et. al. v. The Ministry of Education et. al.* (07.09.2008)).

613. In the North - a new **school for severe Intellectual Disabilities** was established, as well as 6 **special education** kindergartens. In addition, 4 classes in secondary schools were added, as well as 3,000 hours of integration.

The role of mass media and communication in promoting participation in Cultural Life

634. Developments concerning accessibility of **persons with disabilities** to television broadcasts are detailed above, under Article 2 above.

List of Issues

11. What steps have been taken to address the high unemployment levels of persons with disabilities, including persons with severe disabilities?

16. Please explain how the right to a minimum wage is respected for persons with disabilities, in particular for those with diminished work capacity.

35. Please provide statistics on the number of children with disabilities attending primary school, secondary school and high school.

IDA recommendations for Concluding Observations:

- Collect adequate data on children and adults with disabilities, including women and girls with disabilities, and use disaggregated data and results of studies to develop policies and programmes to promote equal opportunities for them in society.
- Take steps to ratify the CRPD and its Optional Protocol.

Articles 2 & 7

- Adopt measures to ensure the elimination of discrimination of persons with disabilities in access to employment, both in private and public sectors, and to ensure that employees with disabilities in all forms of employment, including sheltered employment, enjoy rights under fair wage and labour laws on an equal basis with others. Ensure that the law provides for reasonable accommodation for persons with disabilities in the workplace, and that its denial is recognised as disability-based discrimination within the law (Articles 2, 5(3), CRPD).

Article 12

- Adopt measures to ensure that all information, healthcare and services relating to sexual and reproductive health are made accessible to children and adults with disabilities, including women and girls with disabilities, in age-appropriate formats and that they are respectful of the dignity and integrity of persons with disabilities based on the free and informed consent of the individual concerned, and that consensual treatment such as the administration of contraception, or fertility treatments are not denied, while all non-consensual treatment, including that for which consent is given by a third party, is not permitted by law

Articles 13 & 14

- Adopt measures in the law to ensure the implementation of inclusive education of children with disabilities, such as the obligatory training of all teachers (beyond special education teachers), to require individual education plans for all students, ensure the availability of assistive devices and support in classrooms, educational materials and curricula, ensure the accessibility of physical school environments, encourage the teaching of sign language and disability culture, allocate budget for all of the above.

Article 15

- Take steps to ensure the full exercise by persons with disabilities of their cultural rights and access to information by amending legislation to provide exceptions and limitations to copyright laws so that published books may be made available and accessible to persons with visual impairments and “print disabilities”.¹

¹ Print disabled people are all those who, due to an impairment that may be physical, sensory or other, cannot read standard print. For example, a person without sight, a person whose sight is severely impaired, a person unable to hold or manipulate books or to focus or move his or her eyes.

Even in 2011, people living with a print disability still have very limited access to books and other published works. Only some 5% of published books are ever made accessible in richer countries, and less than 1% in poorer ones. The World Blind Union calls this a “book famine”. Increasingly, affordable and rapidly developing technology such as e-books is becoming accessible to print disabled people. This digital revolution ought to help end the book famine by allowing us to share accessible books worldwide. However, copyright law has not changed in line with the technology. Often copyright law prevents both the making of accessible books at national level and the sharing of them across national borders. Read more about the Right to Read Campaign <http://www.worldblindunion.org/en/our-work/campaigns/Pages/default.aspx>