

ISRAEL

Criminal Justice Systems in Europe and North America

Leslie Sebba, Menachem Horovitz and Ruth Geva



HEUNI

The European Institute for Crime Prevention and Control,
affiliated with the United Nations

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P.O.Box 157
FIN-00121 Helsinki
Finland

Tel: + 358-9-1606 7880
Fax:+ 358-9-1606 7890
E-mail: heuni@om.fi
<http://www.heuni.fi>

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1. Introduction

1.1 *Background on Israel*

Israel obtained its independence in 1948. The borders of the State of Israel are the Mediterranean Sea in the west, Syria and Lebanon in the north and Jordan and Egypt in the east and south-west respectively. Its total area measures some 28,000 square kilometers. The population of Israel is about 6.5 million, (not including approximately three million Arab residents in the Palestinian Authority and the Administered Territories (The West Bank and the Gaza Strip) ¹. About 80% of the population are Jews, while 20% are Arabs. Over half of all Israeli Jews are native-born, while the rest hail from over eighty countries around the world. Some 90% of Israel's inhabitants live in over 100 urban centers, including the country's four major cities: Jerusalem - the capital city - Tel Aviv and its satellites, Haifa and Beer-Sheba. The language of the country is Hebrew, while Arabic is the second official tongue.

1.2 *Form of Government*

1.2.1. Israel is a democratic republic with a parliamentary system of government. It is a multiparty system with the Prime Minister leading a coalition government.

1.2.2. The foundation on which the system of government has been built is composed of legislation, administrative acts and parliamentary practice. The Knesset, or Parliament, is a 120-member, single chamber legislature whose members are elected every four years. Restrictions on the size of the government have been removed to accommodate coalition pressures; a smaller "cabinet" is responsible for national security matters. The Prime Minister is the leading figure in the cabinet and in the government. The provision for the direct election of the Prime Minister, operative in recent elections, has now been repealed.

¹ See Table 1, section 13 - for population increases over the years.

1.2.3. The principle of separation of powers is maintained in Israel, with three branches of government: the legislature (the Knesset), the executive (the Government of Israel) and the judiciary (Israeli courts).

1.2.4. The Knesset elects the President, who is the Head of State. Under a recent amendment of the law, the President is elected for a seven-year term, not renewable. The President has no veto powers and exercises mainly ceremonial functions ².

² See section 11.6. - "Pardons".

2. Historical Development of the Penal Law ³

2.1. Israel does not have a formal written constitution, although the Declaration of Independence, issued in 1948, and a body of legislation, including some laws of a constitutional character, provide the basis for a future Constitution. A number of fundamental human rights principles were incorporated in the Declaration of Independence in 1948, but this Declaration had no binding effect. Some of these principles have been reiterated in two of the Basic Laws, to which the Supreme Court has attributed a quasi-constitutional status. In principle, legislation adopted subsequent to these Basic Laws may not contravene the principles incorporated therein and may be invalidated by the courts.

2.2. Subject to the above principle, the Knesset has exclusive powers to adopt or repeal a law. In the past, most laws were adopted on government initiative although Knesset members could initiate legislation as well. Such “private” bills now have come to dominate the political process since the introduction of “primaries”, whereby candidates for incorporation into the party lists must become known to party members (or to the party’s central committee), in order to improve their chances of election. The initiation of private bills allows for exposure and publicity of the Knesset member.

2.2.1. To become law, a bill has to pass through three stages⁴. The first is devoted to a policy discussion, after which the proposed law can be referred to the relevant committee in the Knesset, where it will be considered in depth. After this, some amendments are usually proposed. There follows the second and third readings, after which the law is signed by the Minister in charge of the implementation of the law, by the Prime Minister and by the President of the State.

³ See also Bensinger, 1989, 1998.

⁴ “Private” bills also pass through a preliminary reading.

2.3. The British Mandatory Government of Palestine introduced the Criminal Code in 1936. This was a codified version of the British common law⁵, with certain modifications to take into account local conditions and customs. Some of these followed the Ottoman Law which was in effect prior to the British rule.

Various chapters of this code were revised by the Israel legislature, after 1948, and in 1977 a new integrated version was published in the Hebrew language. Further revisions have taken place since then, and in 1994 a new draft of the general part of the Penal Law (Amendment no. 39 – Preliminary Part and General Part) was adopted. This new law constituted a revision of the basic principles of criminal responsibility. Based upon a proposal formulated by two law professors, it laid emphasis on subjective principles of culpability⁶, as well as taking into account decisions of the Supreme Court handed down over the years. However, their proposals for a more structured sentencing system were not adopted and the existing chapter of the Code, dealing with the penal system, was left in place.

2.4. There are many other statutes of a regulatory character which incorporate criminal prohibitions; some still bear the title of “Ordinance”, indicating that they were adopted during the Mandatory period: for instance, the Dangerous Drugs Ordinance (New Version) 1973 or the Traffic Ordinance (New Version) 1961, and various Ordinances concerning financial matters (income tax etc.). Infringements of these laws have the status of criminal offences. However, some of these offences may, in practice, be dealt with by less formal procedures (see below), under the Criminal Procedure Law of 1982 or as administrative offences, under the Administrative Offences Law, 1985. There are also systems of emergency legislation applicable both in the administered territories and within the “Green Line”⁷.

2.5. There is, in addition, much delegated legislation incorporating penal sanctions – including municipal bye-laws.

⁵ Similar to that introduced in Queensland, Australia and in Cyprus.

⁶ See Kremnitzer 1998, or Friedmann, 1998.

⁷ The “Green Line” refers to the pre-1967 war borders between Israel and the neighbouring countries.

3. History of Procedural Law Statutes

3.1. Criminal Procedure is governed by the Criminal Procedure Law, which was adopted by the Knesset in 1965, and reissued in a Consolidated Version, in 1982. The law reflects the common law tradition of an adversary system, and in principle, accusatory, with the burden of proof resting on the prosecution.

3.2. There are no juries and the preliminary hearing has been abolished.

3.3. Since 1965 the system has evolved, and much emphasis has been placed on the defendant's rights. For example, defendants were granted the right to peruse the prosecution's evidence and the doctrine of executive privilege was curtailed. Legal aid has come into effect in recent years⁸. The Wiretapping Law and the Privacy Law provide suspected offenders protection against the admissibility of evidence that has been acquired by illegal means, such as illegal wire-tapping.

In other aspects, however, there has been a move toward the "crime control" model. Thus, for example, the "right to silence" has been eroded, as a result of statutory amendments whereby the defendant must give advance notice if he/she wishes to rely on a defense of 'alibi', and failure to give evidence may be regarded as corroboration of the prosecution.

3.4. The other main statute, dealing with criminal procedure was the Criminal Procedure (Arrest and Search) Ordinance (New Version) 1969, now replaced by two special new laws: one dealing with arrest and the other with searches. These laws govern the pre-trial procedures relating to arrest, bail and searches.

⁸ See section 9.6.

4. Organisation of Criminal Justice

4.1 *Ministry of Public Security*

4.1.1. The police, officially established during the British Mandate in 1926, was regulated by the Police Ordinance of 1926 and the Criminal Procedure Ordinance of 1924. After the birth of the Israeli State in 1948, the Prime Minister, David Ben-Gurion, appointed a former police officer as Minister of Police and Prisons (Ben-Porat, 1988).

4.1.2. This Ministry linked the Israel Police and the Israel Prison Service, and a single Commissioner for both the Israel Police and the Israel Prison Service reported directly to the Israeli Cabinet. From 1952, however, the functions were split and there is a separate Commissioner for each of these operative bodies (known in the case of the police, as the “Inspector General”).

4.1.3. The Ministry of Public Security (the name was changed in 1995 from “Ministry of Police”) is still responsible for both these bodies, as well as for the National Crime Prevention Council (NCPC) ⁹.

4.2 *Ministry of Justice*

4.2.1. The Ministry of Justice is responsible for most aspects of criminal justice. The State Attorney heads the prosecutorial branch, under the general supervision of the Attorney General, who has overall responsibility for criminal justice matters. The Office of Attorney General is a public office of high status. In addition to his function as the head of the prosecutorial process, the Attorney General’s duties include the following functions: to represent the State in courts in all judicial processes; to

⁹ For details on the police see section 5; on the prison system, see section 7; on the NCPC, see section 13.3.

serve as legal counsel to the government and to other governmental branches; and to represent the public interest.

4.2.2. The prosecution system is divided geographically into districts. District Attorneys have great independence but take general guidance from the State Attorney.

4.2.3. The court system falls under the jurisdiction of the Ministry of Justice. The judicial system also predates 1948. During the British Mandate period, two courts system existed – civil courts and religious courts. The latter were established in Palestine in the 19th Century, and still exist today. The three-tier system of the civil courts ¹⁰ also derived from the Ottoman period and was formalized with the enactment of the Courts Law in 1957 - subsequently replaced by the Basic Law: The Courts.

4.3 Ministry of Labour and Social Affairs

4.3.1. The Ministry of Labour and Social Affairs' Division for Children, Youth and Correctional Services is responsible for correctional services and for the probation systems – both juvenile and adult.

4.3.2. Other functions within the Ministry are the correctional and treatment services for youths at-risk and at-risk families, including institutions, hostels and half-way houses, as well as special units dealing with domestic abuse and drug-abuse ¹¹.

¹⁰ See section 6.1 It should be noted that the term “civil” here is used by way of differentiation from “religious”; criminal jurisdiction is also included.

¹¹ See sections 8.4 and 8.5.

4.4 Ministry of the Environment

4.4.1. The Ministry of the Environment is responsible for all environmental offences, and has special staff which has enforcement powers in these matters. However, all criminal cases are processed through the police and the regular judicial procedures.

4.4.2. The Ministry of the Environment is responsible for advancing all legislation in this area – including that concerning hazardous wastes, land and air pollution, waste disposal, the protection of endangered species and the protection from sea pollution.

4.4.3. The Ministry represents Israel in various international agreements – both multi-national and bilateral. Among these, is the ratification of the Basle Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal, The Convention on International Trade in Endangered Species of Wild Fauna and Flora (1994), the Convention for the Protection of the Mediterranean Sea and the ratification of the Vienna Convention for the Protection of the Ozone Layer (1992).

4.5 *The Ministry of Finance*

The Ministry of Finance has enforcement powers regarding financial offences – such as tax evasion. A special investigation unit operates to detect and gather evidence before the case is passed on to the police and the prosecution for a decision regarding indictment. The National Fraud Unit of the police works in close cooperation with this unit.

4.6 Statutory Authorities

4.6.1. **The Anti-Drug Authority**¹² (ADA), formally belonging to the Prime Minister's Office, was established in 1988 and its mission is defined in the Anti-Drug Authority Law, 1988. It was founded in order to develop policy on drug-abuse prevention, to advance the infrastructure and services to combat drug-abuse and to care for victims of drug abuse, as well as to consolidate national efforts under one roof. The Authority's responsibilities and organizational set-up are structured upon the UN Global Program of Action Against Drug Abuse¹³.

4.6.2. **The Authority for the Rehabilitation of Prisoners (ARP)** was established, by law, in 1983. Its operation is financed by the State budget and in addition receives donations from various foundations from Israel and abroad. Though under the political authority of the Ministry of Labour and Social Affairs, it is an independent statutory body, headed by a 39-member council. Its goal is to develop innovative programs for the rehabilitation of prisoners upon their release from prison – mainly within the community¹⁴.

4.6.3. Recently (2001), a **National Authority for the Prevention of Money Laundering** has been set up within the Ministry of Justice, to administer the activities related to the implementation of the Law for the Prevention of Money Laundering, 2000. This Authority is responsible for the national data centre on money transfers and transactions, which will facilitate the gathering of information on suspicious activity in this respect. The information is now integrated with the banking system.

¹² Literally called in Hebrew "The Authority for the War on Drugs".

¹³ See section 13.4.

¹⁴ See section 7.10.

5. The Police¹⁵

5.1. The Israel Police (IP) from its inception in 1948 has been a national, highly centralized force, under the responsibility of the Minister of Public Security (formerly called “The Ministry of Police”). The Police Headquarters is situated in Jerusalem.

5.2. Under the Police Ordinance (New Version), 1971, which defines the functions and powers of the IP, the Police is responsible for the maintenance of law and order; for crime prevention; for traffic control; for the apprehension and remanding of criminals and suspected criminals; for securing public order and for safeguarding life and property; and for providing a secure environment for detainees.

In 1974 an additional responsibility was bestowed upon the Police - maintaining internal security, i.e. providing for pro-active and reactive functions to fight terrorism within the borders of the country.

5.3. In the last twenty years of the 20th Century, the preventive pro-active function of the police, regarding criminal activity, has been much less dominant than in the IP’s formative years (Geva, 1999). In 1995, the Police decided to implement ‘community policing’, thereby working in partnership with municipalities and local community organization.

5.4. The force is commanded and directed, operationally and organizationally, by its Commissioner (known as “Inspector-General”), who is appointed by the Government on the recommendation of the Minister of Public Security. The Commissioner has no political affiliations and is usually a veteran police officer.

¹⁵ For a perspective on the development of the police from its inception - see Shadmi, 1998.

5.5. Virtually all police employees are enlisted in the Police ¹⁶. The Israel Police service, includes soldiers performing their compulsory military service (2 years for females and three for males, aged 18). In 1995, the 7th Amendment to the Security Service Act came into effect, enabling young men and women, who volunteer to do so (and who have Army approval), to do their compulsory military service in other branches of the police in addition to the Border Guard - the para-military arm of the police - which was, until 1995, the only branch of the police in which one could do compulsory army duty.

Twenty percent of the force, are women.

Only recently (since 1999) has the organization begun to “civilianize” some of the jobs - especially secretarial and logistical support jobs.

5.6. In 1997, the I.P.’s Code of Ethics was formulated. It sets out a police officer’s basic obligations to the public and the behaviour required of him or her. Its main goal is to draw a balance between the powers granted to a police officer to enable him to carry out his duties and to uphold human rights.

5.7. At each District level there is a Public Complaints Officer, who can receive complaints from the public and investigates them. The public can send a complaint either to this functionary, to the Police HQ Ombudsperson or to the Ministry of Public Security Ombudsperson. The Discipline Division draws up indictments which are filed in the I.P.’s Disciplinary Tribunal, where hearings take place before the Police Judge, two additional Officers, who act as judges, and usually a “public representative” who is a lawyer from another agency. There is also an Appeals Tribunal.

¹⁶ In 2001, the Police numbered 25,000 recruited police officers. This number includes virtually all support staff, such as secretaries, drivers, cooks, as well as all professional staff, such as computer specialists, forensic scientists etc. However, in recent years, a process of “outsourcing” is taking place, and those in such support jobs who retire, are not replaced by recruited staff.

Complaints which deal with criminal matters punishable by over one year of imprisonment or involving unlawful use of force, are dealt with by the external Department for the Investigation of Complaints against Police Officers. This department was established in 1992, and is located in the Ministry of Justice, in order to guarantee its independence.

5.7. Divided into geographic areas, the IP is divided, geographically, into six District Commands. These Districts are further divided into Sub-Districts, each of which is under the direction of a Police Commander. An administrative and operational headquarters that parallels the organization of the central IP Headquarters in Jerusalem manages each of the Districts and Sub districts.

The Sub-Districts are, in turn, divided into large Regional Police Stations or smaller Police Stations and Police Sub-Stations and community policing centres (usually, one-man police centres in neighbourhoods or rural villages, but sometimes a mobile or temporary centres set up in a specific area to deal with specific problems). Additionally, there are hundreds of neighbourhood Civil Guard Bases, which mobilize volunteers (see below).

The commanding officers of these police units are all selected by national and regional headquarters: mayors or other heads of locally elected councils have no say whatsoever in these appointments.

5.8. Additionally, there is The Border Guard Police. This is a para-military 'gendarmerie' force within the I.P., with its own organization and structure, but acting under the responsibility of the District Commands. Its tasks are to fulfill security and anti-terrorist duties, to guard and patrol the Israel-Palestinian Autonomous Area border, to deal with public order disruptions and to prevent agricultural theft.

5.9. The Civil Guard volunteer police provide preventive patrol and support to the police station, particularly within the neighborhoods. Hundreds of Civil Guard Bases allow some 45,000 volunteers (annual averages for the last 15 years) to receive training and equipment for their work as volunteer police officers from a close-to-home centre. Volunteers have police powers only when on duty.

5.10 Investigations

5.10.1. People reporting a crime, can do so either at the local police station or to a patrol, investigation or community police officer, who takes the report at the scene of the crime or traffic offence. Following this report, a file is opened and the police must follow it up with an investigation, to determine if the case will be pursued, temporarily shelved or closed.

However, if the offence is not a felony, the police may refrain from investigation on the ground of 'lack of public interest', or that another body is responsible for the investigation.

5.10.2. In the less serious cases, i.e. where the offence is a misdemeanour or falls within certain categories of felony, the police also has responsibility for prosecuting the case in the magistrates' courts.

5.10.3. Each regional subdivision and many large police stations have forensic science technicians who are sent to gather evidence from crime scenes and from suspects. These send the evidence to the IP's centralized laboratories for further examination and for presentation as evidence in court. In addition, special testing and evidence-gathering kits have been developed to allow some preliminary tests to be made by these technicians, locally.

5.10.4. The Identification and Forensic Sciences Division at Police HQ, under the command of the Investigation Dept., houses the main laboratories and analyzes evidence that is gathered by the local units, using a range of tests and analyses (the labs include: DNA, chemistry, fingerprints, drugs, explosives and flammable materials, ballistics, etc.).

5.10.5. There is an Automatic Fingerprint Identification System (AFIS) at HQ, which helps compare latent fingerprints found at the scenes of crime with the fingerprint in the central data bank of known offenders and to authenticate the identity of suspects with the help of their fingerprints.

5.10.6. The Investigation Department is also responsible for dealing with juveniles - both as suspects and as victims - from ages 12 (the age of criminal responsibility) until the age of 18 ¹⁷.

5.10.7. A Victim Support Unit at Police Headquarters, provides the professional input on all policy and its implementation in relation to the support given to victims of crime by the line investigators - especially regarding special groups of victims, such as those of domestic abuse, sexual abuse, vulnerable (“helpless”) victims (such as the mentally retarded) or the aged.

5.10.8. “Youth police investigators” at the various levels, are specially trained to deal with youths – both as offenders and as victims – beyond the age of 14 ¹⁸, and, in addition to their investigative work, also work on preventive activity in the schools and exercise oversight on places of entertainment that are considered to be of high-risk to youths. They co-

¹⁷ For more information on juvenile justice, see section 10.

¹⁸ Regarding “Child Investigators” belonging to the Ministry of Labour and Social Affairs – who deal with children under the age of 14 – see section 10.3.5. and section 12.4

ordinate their activity with youth and community social services at the city and neighbourhood levels.

5.10.9. Special “domestic violence investigators” have been deployed in the last few years (since 1999), following the gradual increased awareness of the public with regard to the problem of domestic abuse and the changing police policy - toward greater enforcement vis a vis the offenders, and their referral to treatment centres - of both the victims and offenders ¹⁹.

5.10.10. In addition, there are two national investigation units: one for serious and international crimes (such as the operation of car theft rings, and drug-trafficking), and the second for dealing with white-collar crime, fraud and computer-crime.

5.10.11. Upon completion of the investigation, the files are handed over to the relevant prosecutorial body – either the police prosecutor or to the relevant district attorney’s bureau. The prosecutor invokes the process of indictment and decides what criminal charges the suspect is going to face.

5.10.12. There are police “lock-ups” in the various stations and in some police districts, in which those undergoing investigation or those awaiting trial are kept under detention. Some of these jails also hold offenders who have already been convicted and should therefore be held in the Prison Service facilities. This state of affairs causes general overcrowded conditions.

5.10.13. By law, juveniles are kept in separate cells from adults. Women are kept separately from men.

¹⁹ See also section 13.5.

6. Courts

6.1. The court system comprises a three-tier court, with each tier having a different jurisdiction over criminal matters:

- Magistrates' (or "Peace") courts, which exercise criminal jurisdiction in relation to offences punishable by no more than seven years of imprisonment or fine, as well as civil jurisdiction. The district attorney nevertheless has a discretion to prosecute an offence punishable by more than 7 years in the magistrates' court. There are 26 magistrates' courts throughout Israel. Most of the proceedings in these courts are conducted before a single judge.
- District courts, which deal with all criminal cases not falling within the jurisdiction of the magistrates' courts, and also serve as appellate courts in relation to cases that were tried in magistrates' courts. However, where an offence is punishable by 5 years or more, the district attorney retains a discretion to prosecute in the district court.

A three-judge panel is appointed in serious cases and in appeals: in other cases a single judge presides over the proceedings. There are 5 district courts.

- The Supreme Court exercises appellate jurisdiction over the district courts' decisions. Cases are usually decided by a three-member panel. In other proceedings the number of judges - always uneven in number - is determined by the Chief Justice²⁰. In special petitions, there are instances when the Supreme Court consists of a single justice.

²⁰ Called in Hebrew the equivalent of "President".

In addition, the Supreme Court serves as the High Court of Justice, known as “Bagatz”²¹. In this case, it functions as an administrative law court to provide judicial review of the policies and actions of the State (somewhat akin to the divisional court in England). The significance of the Israeli High Court of Justice has grown in recent years; on the one hand, protecting the rights of the citizens against the State’s actions and the State’s involvement, when their basic rights are apparently violated by the government; on the other, intervening in constitutional, political and religious issues. For example, the Supreme Court has permitted residents of the West Bank and the Gaza Strip to petition it for review of any act of the army or any other governmental body or official which affects them, much as any Israeli citizen may do. In recent decades, the Supreme Court has greatly narrowed the issues which are seen to be “not-justiciable” i.e. not subject to judicial review.

6.2. In addition to these three types of courts, there are also traffic courts (with an essentially criminal jurisdiction), and family courts, small claims courts, religious tribunals and labour tribunals, which deal with civil matters.

6.3. Military tribunals (“courts-martial”) deal with all criminal matters relating to soldiers. The military courts in Israel operated under the Emergency Regulations dating from the British Mandate. These incorporate special provisions relating to confirmation and modification of the sentence, but not regarding general conditions of incarceration. Military courts deal mainly with security matters.

6.4. Juvenile courts operate under the Youth Law (Trial, Punishment and Modes of Treatment) 1971, and extend to children and youths aged 12 to 18 years old. The specially appointed juvenile court judges operate at the magistrates’ courts level, but with expanded jurisdiction. They are

²¹ The Hebrew acronym for “ High Court of Justice”.

guided by a rehabilitative philosophy and stress treatment over incarceration. Juveniles charged with serious crimes (murder, rape, robbery) are dealt with by the district court judges, designated as juvenile judges

²².

6.5. Judges in Israel are elected by a public committee composed of representatives from the Supreme Court, the Government, the Knesset and The Bar. The purely political elements of this committee (ministers and members of the Knesset) constitute a minority. However, as a result of public pressure to increase the visibility of the committee's decision-making process, more information is now being disclosed regarding candidates.

6.6. The judicial system, in general, is characterized by case overload, which leads to significant delays in the hearings and sentencing procedures. A new plan for operating the courts in two shifts – during the daytime and evening hours – is beginning to be implemented (from 2002) as a pilot project in Tel-Aviv.

²² See also section 10.4.

7. The Prison Service ²³

7.1. The Ministry of Public Security is responsible for the Israel Prison Service.

7.2. There is one national prison system - the Israel Prison Service (IPS). According to the policy of the IPS, as formulated in The Prison Ordinance (New Version), 1971, its principal role is the safe incarceration of the inmates and prevention of the inmates from causing harm to society, as well as the rehabilitation of inmates in order to allow them to reintegrate into society.

7.3. The structure of the Prison Service broadly follows the system introduced during the British Mandate – as indicated by the title of its governing statute – The Prison Ordinance. This law was issued in an official Hebrew version in 1971, and has been modified from time to time.

7.4. Detailed provisions governing prison conditions are found in the Prison Regulations, the last major revision having been made in 1978, and in the detailed orders issued by the Prison Commissioner, who is responsible for the whole of the prison administration.

7.5. The Prison Ordinance defines an inmate as a “person lawfully placed in prison custody”. This includes pre-trial detainees held in prisons as well as other categories such as offenders sentenced by military courts.

7.6. There are some army prisons, but most criminal offenders, who are in military service, serve their sentence in the regular civilian prison.

7.7. Administrative detention used to be governed by the Emergency Regulations, but is now regulated by the Emergency Powers (Deten-

²³ For further readings, see also Shavitt, 1998.

tions) Law, 1979²⁴. This law deals mainly with the process of commitment to preventive detention within Israel's international borders. A similar law deals with security offenders within the Army Administered Territories. However, regulations have been issued relating to the conditions of detention, taking into account the Geneva Conventions.

7.8 Organization of the Prison System

7.8.1. The IPS is headed by the Prisons Commissioner, who is appointed by the Minister of Public Security.

7.8.2. There are 19 prisons as well as two jails²⁵ for pretrial detainees, in Israel. Only five of the prisons were built with the specific goal of incarceration of inmates and pretrial detainees; the remaining are located in other facilities that were not intended to serve as prisons or jails. Three fairly new prisons – maximum and minimum security – have been built in the last ten years.

7.8.3. The security levels of the institutions vary: two thirds are designated as maximum security prisons, three are medium security and two, minimum security.

7.8.4. Some facilities are intended to serve special populations: female prisoners and detainees; juvenile delinquents; prisoners who require special security measures to protect them from other inmates. There are also special wings for special populations: psychiatric wards; religious wings; a medical center; wings for drug addicted inmates and for drug-free inmates; and wings for inmates from the Administered Territories who are serving time for terrorist activities against the State of Israel.

²⁴ See section 6.3.

²⁵ The term "jail" is used for facilities used to hold pre-trial detainees, while "prisons" refer to facilities for post-trial convicted offenders.

7.9 *Furlough and Release Policy*

7.9.1. Inmates are eligible for furloughs after they have served one-quarter of their sentence. Furloughs range from 24 hours to 96 hours. They are dependent on the inmate's security status and other considerations, including information provided by police intelligence. Some inmates inevitably misuse furloughs – for instance, by trying to smuggle drugs or weapons into the prison upon their return. However, this is considered a calculated risk. Some prisoners are not eligible because of the possible danger to their families, involvement in criminal activities and other security risks. Sex offenders who disclaim their guilt are also not eligible.

7.9.2. Conjugal visits are allowed to some inmates who are not eligible for furlough. The guidelines for these were liberalized in 1999, following recommendations made by a public committee. A five-room building has been built in one of the central prison compounds, for this purpose.

7.9.3. One of the characteristics of the Prison System in Israel is overcrowding. The most common way of easing the pressure of prison overcrowding is achieved through the “early release” system. Those sentenced to terms of 3 to 6 months are ineligible for any reduction of term. Those sentenced to three to six months may have their term reduced by the Commissioner, after having served two-thirds of their sentence. Those sentenced to over six months, having served two-thirds of their term, may be released before the termination of their sentence, upon the recommendation of the Prison Release Board.

7.9.4. The Prison Release Board is a statutory body, in accordance with recent changes in the law (2001). The Chairperson is a judge, appointed by the Minister of Justice upon the agreement of the President of the Supreme Court. Two additional members are experts in the areas of crimi-

nology, sociology, psychology or psychiatry. A representative of the Prison Service may take part in the proceedings without voting power. The law allows for other officials to be present, in certain cases, and to make their recommendations. These are representatives of the Attorney General, of the Probation Service or of the Authority for the Rehabilitation of Prisoners. The Board receives written reports from the director of the prison where the inmate resides, from his/her social worker and a report of his rehabilitation programme ²⁶.

7.9.5. The Board can also release inmates for special reasons – especially medical conditions that may endanger his/her life if not released to alternative medical treatment ²⁷. Only in rare cases are prisoners released under this section.

7.9.6. The President of the State of Israel has the right to mitigate or commute sentences. He may also, sometimes, for compassionate or other reasons, reduce the lengths of prison terms – including those of “lifers” whose sentence he previously commuted. The new law mentioned above, set up a Special Release Board, headed by a judge of the Supreme Court, and including a district court judge and an expert, such as a member of the Prison Release Board. The principal use of this power is in relation to the commutation of life sentences.

7.9.7. Adopted in 1990, the Administrative Release Act allows the Prison Service to advance the release date of inmates, before they complete their full sentence or become eligible for early release, ranging from two weeks to three months. This Act empowers the Minister of Public Security to carry out the “administrative release” of offenders other than those convicted of serious felonies or drug offences, and allows some relief of the severe overcrowding in prison facilities.

²⁶ See sec. 7.10.

²⁷ There is a special Medical Centre within the Prison Service that enables the treatment of almost all medical conditions, including simple surgery.

7.9.8. As noted, the recently adopted Conditional Release Act (2001), also lays down the procedures for granting early release to prisoners – and for its revocation. An innovation – influenced by recent court precedents – is the emphasis placed²⁸ on the trust that must be placed by the public in the judicial and law enforcement systems and its deterrence effects. Therefore, it provides that there must not be an unreasonable disparity between the seriousness of the offence and the circumstances in which it was committed, and the time served by the offender in prison. This must be taken into account when considering the conditional release from prison of an offender.

7.10 Rehabilitation of Inmates and Aftercare²⁹

7.10.1. The Prison System sees as its mission, *inter alia*, the rehabilitation of prisoners. Therefore, effort is placed on providing inmates, within its limitations, with opportunities to acquire education and skills, while they have a statutory obligation to work. However, the latter is not strictly enforced owing to lack of availability of work³⁰. All inmates can study on an individual basis (in their own free time), sometimes with the assistance of outside sources. The Prison Service provides both formal education - from reading and writing skills up to university-level courses - as well as varied informal education, provided in groups, seminars and workshops. New immigrants from many countries study Hebrew.

7.10.2. One of the main objectives of rehabilitation in prison is to provide the inmate with good work habits and skills that can be used after release. Thus, there are both vocational training courses, as well as small industrial units, which are set up within the prison walls by civilian commercial companies, to provide both venues for acquiring skills as well as income for inmates who work in these industries during their stay in

²⁸ See the Conditional Release Act, 2001, paragraph 10(a).

²⁹ See also Wozner, 1998.

³⁰ See Sebba, 1999.

prison. Yet the majority of prisoners are employed in the maintenance of the prison: cleaning, gardening, kitchen work etc., providing them with token salaries – enough to buy in the prison canteen small provisions.

7.10.3. A relatively small number of prisoners take part in individual and group therapy, provided by social workers, psychologists and clinical criminologists. Various group and individual therapy sessions deal in specific problem areas – such as spouse abuse, sexual offences and drug abuse.

7.10.4. According to procedure, every inmate serving a sentence of six months or more is eligible, prior to coming before the Release Board (see above), to participate in the preparation of a rehabilitation programme after his/her release. According to legislation, the Authority for the Rehabilitation of Prisoners (ARP) may provide an opinion regarding the potential participation of the inmate in such a rehabilitation programme. Participation is voluntary, but when accepted, each participant signs a contract with the Authority for the Rehabilitation of Prisoners (ARP), in which the terms and conditions of the programme are detailed. Lately, legislation have been introduced whereby a prisoner undertakes an obligation to be under the supervision of the ARP during his rehabilitation period. The inmate who breaches the conditions of the contract, will be returned to the Release Board for further disposition.

7.10.5. Reintegration into society is done in stages: the first stage takes place some months (depending upon the length of the prison sentence) before the end of the prison sentence. At this point, the prisoner may go out of the prison, to work or study, as one of a group, escorted by a senior prison officer. If he successfully undergoes this rehabilitation stage, he will continue to the individual rehabilitation stage at which he can begin to work or study outside the prison on his own, unescorted, in civilian clothes, returning every evening to the prison. This “Work Release” scheme has been in operation since the 1970s. Workplaces are

found outside the prison walls, that can contribute to the future of the inmates' rehabilitation. Wages are, in principle, not less than the minimum wage. However, a recent decision of the High Court suggests that prisoners may not have a statutory right to such a wage.

About 5% of all prisoners work outside the prison walls. The inmates who go on "work release" reside in special rehabilitation wings within the prison and they receive, during this period, both group and individual therapy from social workers who work with them on their rehabilitation and future plans.

After at least three months at the second stage, the inmate advances to the third stage. It must be pointed out that only a small number of inmates qualify for this stage. During this stage, the inmate will live in a hostel and spend each week-end on home-leave. During this time, the inmate will also participate in various workshops, to prepare for re-integration into society.

7.10.6. The Authority for the Rehabilitation of Prisoners (ARP), prepares for the inmate a programme of rehabilitation upon his/her release, and decides, together with the prison social worker and the inmate himself, where he/she will undergo it: in half-way-houses, taking part in various programmes for rehabilitation within the community, in kibbutzim³¹, in religious study-institutions and the like. The ARP also assists in finding the inmate employment. The ARP offers counselling, training, orientation workshops, both before release (together with the Prison System's rehabilitative work programme) and upon release, as well as providing hostels for a small number of released prisoners. The Authority has initiated, *inter alia*, rehabilitation in Kibbutzim and a scheme to have students share flats with single released inmates. A counsellor of the Authority is in constant touch with those who have recently been released, and various evaluations are being undertaken in order to ascertain the effectiveness of these schemes.

³¹ A communal rural community (usually based on agriculture).

7.10.7. The care of discharged prisoners was, before 1948, the responsibility of non-governmental agencies, usually voluntary and headed by a judge. Most of these assisted the released inmate with finding employment, housing and income, when released. These associations raised their own funds; but with the increase in inmate population could not deal effectively with these tasks. However, many volunteer organizations still work in this field, assisting the Authority for the Rehabilitation of Prisoners (ARP) and the Ministry of Labour and Social Affairs with the rehabilitation and treatment of offenders by providing individual assistance and support for the released offenders' re-integration into the community.

7.11 Prisoners' Rights

7.11.1. Most prisoners' rights have their origins in legislation.

7.11.2. Until 1980, any prisoner could petition the Supreme Court, sitting as The High Court of Justice, under Section 7 of the Courts Law of 1957 (subsequently replaced by sec. 15 of the Basic Law: The Judiciary) regarding a complaint pertaining to rights. However, because of the pressure this placed both on the Supreme Court and on the authorities, who had generally to accompany the prisoner to Jerusalem for his appearance at the Supreme Court, an amendment was added to the Prison Ordinance, whereby jurisdiction was transferred to the district courts. Occasionally these petitions still reach the Supreme Court, on appeals, or by way of *habeas corpus*.

7.11.3. Many of the judgments are concerned with the notion of balancing the public interest against the rights of the prisoner. The Court invokes "natural law" concepts such as dignity of the person and bodily integrity when judging these cases³², as well as referring to the norms of the prevailing culture, while also drawing upon standards formulated by normative systems, such as the UN Standard Minimum Rules, The US

³² These principles are now incorporated in the Basic Law: Dignity and Liberty of the Person, 1992.

Constitution and Jewish law. Petitions to the Court are popular, and run to several hundred per year. There have been few landmark decisions by the Supreme Court: e.g. the Court upheld a prisoner's right to publish a column, while an older decision prohibited the use of intrusive means or enema to detect drugs or other contraband.

7.11.4. One view holds, that judicial review is an unsatisfactory mechanism for ensuring the protection of prisoners' rights, since the Court is not equipped to administer an institution. Thus, in a leading case dealing with the conditions in which administrative detainees were being held, the Supreme Court advocated the establishment of an administrative committee for monitoring purposes.

7.11.5. Some years ago the Prison System formulated a document for distribution to all inmates, setting down their rights, which included some twenty-three areas. Similarly, posters listing their rights were posted on the walls. Currently neither of these seem to be in evidence –according to one explanation offered - perhaps because they are outdated.

7.11.6. A system of “official visitors” exists, whereby representatives of the public, appointed by the Minister of Public Security, may visit any prison, unannounced, and speak to any prisoner. The purpose of this is to inspect the conditions and rights of the inmates and report back their findings to the Minister and to the Commissioner of Prisons. Any judge is also allowed to make such visits, in his/her area of jurisdiction, while Supreme Court Judges can do so throughout the country. These reports are sent to the Internal Auditor of the Ministry of Public Security – who acts both as Ombudsman and as an Inspectorate of the Police and the Prison Services.

8. Correctional Services

8.1. The Division for Children, Youth and Correctional Services within the Ministry of Labour and Social Affairs is responsible for providing treatment, supervisory and rehabilitative services for children, youth and young adults who are at risk or undergoing processes which are causing them to be disassociated from society and its norms, and are having difficulty functioning in society.

8.2. This Division also provides guidance and treatment services for adults and youth through the Probation Services.

8.3. The Division is organized into various Services: The Juvenile Probation Service; The Adult Probation Service; The Youth Protection Authority; The Youth Rehabilitation Service; The Services for Women and Young Girls (at Risk); The Service for Drug Abuse Prevention.

8.4. *The Juvenile Probation Service*

8.4.1. The Juvenile Probation Service (established by the Probation Ordinance in 1937 during the British Mandate), deals with juveniles aged 12 to 18, who are suspected of, charged with or found guilty of criminal activity, in accordance with the Youth (Trial, Punishment and Modes of Treatment) Law, 1971. The Probation Ordinance (New Version), 1969, details the operating procedures and authority given to probation officers.

8.4.2. The Service's goal is to work to treat and rehabilitate these minors, in order to bring about their social integration into society and to prevent recidivism. The probation officers of this Service - who are university trained social workers - are specially trained to treat minors and prevent any further emotional damage to them.

8.4.3. The Juvenile Probation Service has various tasks: prior to the determination of the disposition, it functions as the investigative agency of minors and their families and, on the basis of pre-sentence reports which are submitted to the police and to the court, the service recommends any future action. A comprehensive report on the minor is given to the court judge after adjudication and before sentencing – regarding his family, social environment, schooling and activities – in order to assist the court to decide on future actions regarding the minor. As a part of the sanctions that the court may impose on the minor, is a probation order for which the Service will provide treatment and/or supervision. After-care following release from welfare institutions, vested under the law in “after-care officers”, is in practice carried out by the Juvenile Probation Service ³³.

8.4.4. Minors up to the age of 14 who have been involved in sexual abuse or violent offences as victims, witnesses or suspected offenders, are also dealt with through this service, by special “Child Investigators” ³⁴.

8.5. *The Youth Protection Authority (YPA)*

8.5.1. The Youth Protection Authority, deals with children, adolescents and young adults who have been placed outside their home environment by a juvenile court order, in accordance with the Youth (Trial, Punishment and Modes of Treatment) Law, 1971, or who are designated as “minors in need of protection” because of serious physical, social or emotional neglect, or because they have been engaged in criminal activity without being charged, as outlined in the Youth (Treatment and Supervision) Law, 1960.

³³ See section 8.4. - Corrections.

³⁴ See section 10.4.4. as well as section 12.2.

8.5.2. The aims of the Youth Laws, enacted in 1960 and 1971, in this respect, were to provide treatment, education and rehabilitation for those removed from their natural setting – their home³⁵. The Authority, therefore, provides treatment, education and rehabilitational services within the framework of residential facilities (both open and closed), in half-way houses within the community, as well as institutions for assessment and observation.

8.5.3. The YPA provides three different kinds of programmes:

- Comprehensive residential institutions (some closed) which provide both educational and therapeutic programmes, mainly to youth in a state of abandonment or serious delinquency. Their primary task is to halt the process of rapid decline of these youth, who have dropped out of all formal contacts within the community and to improve their ability to integrate into the society. The next stage for these youth is to be referred to open facilities.
- Open hostels, comprising of small units located in the community, are geared to care for the particular needs of the youth. The youth usually stays in the hostel for an average of two years. Each hostel holds up to 12-16 residents, and thus allows for intensive work and supervision of the individual youths.
- Community hostels care for adolescents who come from the same locality or neighborhood. Thus, the youth are not completely separated from their family and community. The youth undergo therapy together with their family members, while they combine employment and/or study within the context of the community.

³⁵ see also Horovitz, 1995, regarding special rehabilitation projects for juvenile offenders.

8.5.4. All the above are staffed by personnel in the therapeutic fields – social workers, psychologists and psychiatrists. These are responsible for contacts with community workers and with other professionals such as welfare officers, youth workers etc. and with the family.

8.5.5. Workshops and vocational training courses take place in all types of residential and non-residential frameworks – whether within the residence or outside the facility, with the supervision of the staff. All teachers in the YPA are qualified, and are part of the educational therapeutic staff of the home. Social guidance is carried out by counsellors during non-conventional hours throughout the day, as well as on the week-ends and holidays. Their tasks include individual guidance and the organizations of all extra-curricular activity in the facility.

8.5.6. Since the 80s there has been a definite tendency to establish more open, small hostels, partly based on community models. This is in contrast to the situation which existed from the 50s, when most of the homes were placed far from population centres, with a capacity of 60 to 100 residents in each.

8.6. The Adult Probation Service

8.6.1. The Adult Service is also governed by the Probation Ordinance, while its duties are laid down in other penal legislation.

8.6.2. This Service deals with offenders over the age of 18 who have been referred by the court (from magistrates' courts up to the Supreme Court).

8.6.3. The Service performs assessment work and submits to the courts recommendations in report form related to behavioural changes and rehabilitation of the offender, and suitable modes of disposition. The presentence report regarding an offender, is prepared according to the Pe-

nal Law, 1977, and details the offender's past, his family background, economic status and other special circumstances. The probation officer may recommend a disposition which in his/her view may help to rehabilitate the offender. It is mandatory on courts to request such a report before pronouncing a prison sentence for the first time upon offenders aged under 21.

8.6.4. Probation officers, in accordance with a court order, provide treatment and supervisory services to offenders for a period between 6 months and three years.

8.6.5. They also provide these services to some prisoners, who are on probation following completion of their prison term, or in accordance with the decision of the parole board.

8.6.6. After-care services are also provided to young adults who have been released from institutions operated by the Youth Protection Authority (see above).

8.6.7. The Service also coordinates and supervises the implementation of Community Service Orders, imposed by the courts under a chapter of the Penal Law ³⁶.

8.6.8. Under various conditions, the probation officers provide reports to the court, to the police, or to the Attorney General. These include the following: when the police or the court ask to keep the suspect in detention until indictment; when the police or court advise to discontinue criminal proceedings; regarding victims of sex offences ("victim impact statements"); regarding the supervision of suspects to be released on bail.

³⁶ See section 11.

8.7. *The Youth Rehabilitation Service*

8.7.1. The Service deals with adolescents aged 12 to 15 who have adjustment problems and have dropped out of the school system.

8.7.2. It provides treatment services including daytime rehabilitation facilities operating within the community. Referrals are made by various agencies – including the Probation Service, social workers and the police³⁷.

8.8. *The Service for Women and Young Girls*

8.8.1. This Service deals with adolescents and young women - aged 13 to 22 – who are considered “in distress”. This population is characterized by girls and young women who have difficulty in forming meaningful relationships, who are involved in or victims of family conflict, have problems functioning in school or on the job, and are characterized by running away from home, early pregnancies, suicide attempts and sexual promiscuity.

8.8.2. The Service is responsible for providing programmes to assist such girls and women to adapt socially and to reintegrate into the community, as well as for outreach programmes within populations at risk. The Service provides vocational training, therapeutic clubs, pre-army projects for girls aged 17-19, as well as shelters, where they can live for a while, until permanent placement away from the home can be found.

8.8.3. Furthermore, the Service provides services to battered women and victims of sexual offences, including assistance and coordination with various volunteer organizations who deal with treatment and assistance for the victims and the offenders, as well as to the social service depart-

³⁷ For further details, see “Crime Prevention” - section 13.

ments of the municipalities that deal in these matters. This includes the shelters that have been set up, with the financial assistance of the Ministry of Labour and Social Affairs, by various non-profit organizations, as well as local Treatment Centres for the Prevention of Family Violence. The Service also provides “transitional flats” for the continued process of rehabilitation of battered women. Social workers in the field are provided with special courses and training in these areas, and special procedures have been developed to coordinate efforts for the prevention of further violence, with the police, the social services and the volunteer organizations.

8.8.4. The Ministry of Labour and Social Affairs also deals with formulation of national policy and determining the modes of assistance and developing therapeutic concepts relating to rape and sexual abuse victims. There are a number of rape and sexual abuse crisis centres - managed by non-profit organizations and staffed by volunteer professionals³⁸.

8.9. *Service for Drug Abuse Intervention*

8.9.1. The work of the Ministry’s National Service for Drug Abuse Intervention is as follows:

- Developing programmes to treat and rehabilitate drug addicts³⁹: the Service has set-up some 100 such programmes within the context of the social services departments in the municipalities and local authorities, which employ about 160 social workers for this purpose;

³⁸ See the section dealing in NGOs – 13.7.

³⁹ Recently new treatment programmes have been developed, amongst others, for addicts that are also compulsive gamblers.

- Expanding the “basket of services” provided to drug abuse clients (individuals, families, couple or group therapy and children and youth groups);
- Responsibility for 8 therapeutic communities: these are closed residential facilities, for treatment of 6 to 12 months;
- Initiating cooperation with departments and agencies in and outside the Ministry, in order to provide more opportunities for client rehabilitation (e.g. through ties with the Vocational Training Division of the Ministry, the Prisoner Rehabilitation Authority, etc.);
- Formulating the Ministry’s therapeutic policy for drug addicts and publishing it in the Social Work Regulations;
- Initiating legislation on the treatment of drug addicts in cooperation with the National Anti-Drug Authority and the Ministry of Health;
- Licensing and supervising public and private institutions, hostels and homes, which deal with drug addicts and drug users on a non-medical basis; The Ministry of health supervises medical institutions.

8.9.2. Social workers presently treat about 5,000 clients throughout the country, as well as about 10,000 family members, including wives and children of addicts (numbers for 2002).

9. Criminal Justice Procedures

9.1. Categories of Offences

There is a three-fold classification of offences according to degree of seriousness:

- Felonies - which are defined as an offence punishable with death ⁴⁰ or with imprisonment of more than three years.
- Misdemeanours - which are offences punishable by imprisonment of between three months and three years or by a maximum fine of an amount higher than the fine that is given to offences whose sum is defined by law.
- Contraventions - which are offences punishable by imprisonment of up to and including three months or a fine of the amount imposed upon offences for which the maximum fine is not defined by law.

9.2. Detection and Charging

9.2.1. When a complaint has been reported to the police, and when there is reasonable belief that a crime has been committed, the police open a file and start an investigation.

9.2.2. If the suspected offence is a misdemeanour or contravention, a police officer, with the rank of Captain (Chief Inspector) or higher, has the authority to decide that an inquiry falls within the jurisdiction of another agency having investigative and enforcement powers: e.g. The Ministry of Finance – Internal Revenue investigators, or Ministry of Environment – environmental inspectors.

⁴⁰ There is no capital punishment in Israel, except for genocide and “Crimes Against Humanity” – mainly pertaining to the Holocaust, and treason in war-time.

9.2.3. In certain cases, there may be grounds for deciding not to investigate further or not to indict the suspect. The main reasons for this could either be insufficient evidence or “lack of public interest”, in which case the person who reported the offence receives a letter from the police stating the fact and the reasons for the decision. In this case, the complainant has the right to appeal the decision to the Attorney General’s office. The processing of such appeals has been delegated to the State Attorney’s office.

9.2.4. After gathering the evidence, the police file is forwarded to the District Attorney’s office or the police prosecution unit or to other legal administrative units responsible for the prosecution of the crime (e.g. tax authorities, military prosecution etc.).

The responsible agency must then review the evidence and decide whether to request further clarification or investigation by the police, and whether there is a strong enough case to go to trial.

9.2.5. Once the indictment is prepared by the prosecutorial agency and filed in the appropriate court, and prior to trial, the defendant has the right to see and copy the prosecution’s evidence. If this is not provided to him, he may petition the court to compel the prosecution to so provide him. However, a Minister may sign an administrative order declaring certain documents to be ‘privileged’ if State security, foreign relations or other public interest are endangered by their disclosure. The defendant may then request that the privileged status be removed, and the court has the power to grant this request in the interests of justice.

9.2.6. The Penal Law deals, *inter alia*, with the international jurisdiction of the State of Israel. According to the law, the State has the authority to prosecute any person who commits a crime inside its borders or territorial waters. In addition, the law grants jurisdiction over Nazi war crimes and other crimes against humanity and acts that endanger the security of the State, even when these acts are perpetrated outside the borders of

Israel. Extraterritorial jurisdiction also exists over crimes committed by Israeli residents and citizens, regarding sexual offences against minors, bribery cases and crimes against the civil servants, drug offences and money laundering. The law also provides such jurisdiction over persons who endanger the life, limb or liberty of an Israeli citizen where the act is illegal in the place where it was committed and in Israel.

9.2.7. Israel has signed the UN Convention on trafficking in humans, and in 1999, amended the Penal Law, adding an offence of sex trading. The maximum punishment is a 16 year prison term.

9.2.8. Parliament is now dealing with proposals to provide free legal aid to victims of the sex trade, to enable them to give evidence in court without the offender being present, and to establish a minimum sentence between two and a half and four years.

9.2.9. Israel has signed, but not yet ratified, the Rome Treaty for the establishment of the International Criminal Court.

9.3. *Detention & Arrest*

9.3.1. The Arrest Law of 1996 (see below) severely curtailed the “citizens’ arrest”; a citizen may now only detain a suspect for up to three hours, and only in certain specified offences, having been committed in the presence of that citizen and if it is feared that the suspect will escape. The citizen must bring the suspect before a law enforcement officer during this time period. Police officers have wider authority and can detain, question, arrest and search a suspect, without a warrant, if they have reasonable suspicion that an offence has been committed, and if not arrested or detained, the suspect may cause harm to a person, to the public or to the security of the country. Furthermore, a police officer may arrest a suspect without a warrant if he believes that the suspect may disrupt an investigation or tamper with evidence or try to influence witnesses. He

may also arrest an offender, without a warrant, if he knows that he has been released on bail, or has violated the conditions of his release or is attempting to flee from justice (i.e. an escaped prisoner).

9.3.2. Upon the suspect's arrest, the police officer must identify himself, notify the suspect that he/she is under arrest, explain to him/her the reason for the arrest and provide the arrestee with a copy of the warrant, if such exists. The police officer must also fill out a report as to the circumstances of the arrest. At this point, the suspect is brought before the Commanding Officer at the police station, who must determine whether there was reasonable cause for the arrest and whether the suspect needs to be detained further, whether to release him on bail or whether there is a need to receive an extension of the remand or suspect's detention in custody, by a judge.

9.3.3. According to the new Criminal Procedure Law (Law Enforcement Powers and Arrest) 1996, the police have to bring the detained suspect before a judge (regardless of whether or not a warrant was issued), in order to extend remand in detention, no later than 24 hours after the initial arrest if the suspect is an adult, and no later than 12 hours, if the suspect is a minor under 14 years of age. The decision whether to extend the period, is based on whether there is evidence that shows that the suspect will be a danger to the public, to the State or to an individual if at large, or whether the judge is convinced that he/she will try to tamper with evidence or with witnesses, attempt to leave the country or otherwise to escape justice. The interpretation of these provisions and their effect on law enforcement have been the subject of much debate, as well as empirical research ⁴¹.

9.3.4. The court may extend the period of detention for up to a maximum of 15 days. Usually, however, the court extends the period for 5 days at a time. After 30 days, the police may, with the consent of the

⁴¹ See for instance Lernau , (forthcoming).

Attorney General, ask for further extensions. After 75 days the prosecution has to decide whether to present an indictment sheet to the court or to release the suspect. Nevertheless, the law provides for further 90-day extensions of the detention on the order of a Supreme Court Judge. However, this authority is rarely used.

9.3.5. A probation officer may be requested to provide a report to the police or to the court regarding the detention of suspects in various instances (as described in section 8 – “Corrections” as to alternatives available).

9.3.6. Once an indictment has been filed, the prosecution may petition the court to keep the defendant incarcerated until the end of the legal proceedings. The court has the authority to acquiesce to the prosecution’s demand if the following three conditions exist: (a). if there is “*prima facie*” evidence against him; (b). if there are just reasons for his detention - i.e. there is reason to believe that he may try to escape justice, tamper with evidence or try to influence witnesses or that he may commit further crimes or endanger a person, the public or the State; and (c). if there are no alternatives to his detention (see section 9.3.7.). Where the offence charged falls into one of the more serious categories (rape, murder, robbery, etc.), there is rebuttal presumption of dangerousness (condition (b.))

9.3.7. If the suspect is to be released, then the court may require certain conditions to be fulfilled to guarantee his appearance in front of the court at a later date, and to insure that he will not tamper with evidence or commit more crimes. For instance, depositing bail; surrendering his passport to the police; confining the suspect to “house arrest”; or periodic reporting to the police.

9.4. *Testimony and Evidence*

9.4.1. The laws of evidence are based upon the principles of the English common law, although the legislature has modified some of the stricter aspects of these principles.

9.4.2. Any person is a potential witness, and is competent to testify in the court, as long as his testimony is relevant and admissible. It does not matter that the witness has a stake in the outcome of the trial.

Spouses may not generally testify against each other nor may a parent against a child. However, parents, spouses and children must testify against one another if any of the parties are charged with violence or abuse. These include psychological, sexual or physical abuse or the obstruction of justice arising out of a violation of one of the afore mentioned crimes.

9.4.3. Hearsay evidence, as under the Common Law, is inadmissible. However there are now a number of statutory exceptions to this rule: for instance, admissions or confessions made voluntarily by a defendant; statements made by a victim of a violent crime; statements made by a child under the age of 14 to a “child investigator”⁴² in relation to sexual crimes and violence in the family; statements made by a witness to a crime, immediately following its perpetration.

Under the “Section 10A Rule” of the Evidence Ordinance, new version of which was adopted in 1979, there is a controversial exception to the hearsay doctrine: a written statement made by a witness prior to the trial is admissible evidence, if three conditions are met: a). there is testimony to the fact that the statement was made on the part of the person who received it in person, and that person is a witness at the trial and can be examined or cross-examined; b).the witness’s testimony in court devi-

⁴² See section 10.3.5. and section 12.4 for further explanations on the “child investigators” tasks.

ates substantially from the original statement or c). the witness denies its essence or claims he does not remember the content of the statement. For this purpose the Supreme Court has held that a witness who takes the stand but remains silent, or a witness who talks nonsense, are witnesses for the purposes of this provision. Moreover the same section of the Law also provides that the statement of a witness out of court may be admissible even if he does not appear in court at all, or if the court is convinced that this non-appearance derives from “foul play”. In both cases, some additional evidence is required in order to convict the defendant.

9.4.4. A statement or admission of guilt, made to the police by the accused, is admissible in court, provided that it was given out of a person’s free will. A police officer, before taking testimony, must first warn the suspect that the testimony – whether a statement or an admission of guilt – may be used in evidence in criminal procedures, whether the suspect is held in detention or not. However, a person cannot be found guilty based solely on his admission of guilt; “something additional” and/or independent proof is required here too.

9.4.5. There is generally no formal prohibition on the admissibility of evidence, even where illegally obtained, known as the “fruit of the poisoned tree”, except in the case of illegal wiretapping and evidence obtained in contravention to the Privacy Law. In other cases, the illegality of the evidence will only affect the weight attached to it.

9.5. Legal Counsel

9.5.1. Each and every criminal suspect or accused has the right to choose an attorney who will represent him/her. However, in reality, there is a major economic obstacle to this right, since a private attorney can be very expensive. In the light of this obstacle, the court has the power, based on the defendant’s request or its own initiative, to appoint an at-

torney free of charge (not only for the defendant/accused, but also for the suspect), if the defendant cannot afford one. When the suspect is “without economic means⁴³”, and the crime he is charged with bears a prison sentence of more than 5 years, the duty to appoint an attorney, free of charge, becomes mandatory.

9.5.2. In 1996, owing to the problems associated with locating an adequate number of attorneys who would agree to serve as public defenders, the Office of Public Defender was established within the Ministry of Justice. The office employs both in-house as well as private attorneys. However, it is only able to deal with a minority of all those suspects having no representation, which to date (2002) is about 58% of all the defendants.

9.5.3. There are numerous organizations (NGOs)⁴⁴ which assist suspects and accused persons with legal procedures, some specializing in political cases or special populations (e.g. Arab residents of the Administered Territories, Arab youth in Eastern Jerusalem).

9.6. *Pre-Trial Procedures*

9.6.1. This phase is based totally on administrative procedure (commitment proceedings before a magistrate have long been abolished), and judicial interference at this stage is very constrained in scope. Under an instruction issued by the Attorney General, certain categories of defendant (such as the holders of high public office), may be granted an administrative hearing, upon the initiative of the prosecution, before a decision is reached whether to file an indictment or not. The defendant’s ability to influence the decision whether to prosecute him or not is very limited. This procedure is very selective and therefore controversial.

⁴³ The criteria for this classification is set out in the law.

⁴⁴ See sec. 13.7.

However, the defendant may also request the prosecution for an administrative hearing, before the indictment is filed. For this purpose, *inter alia*, an amendment to the Procedure Law has been adopted ⁴⁵, whereby, the defendant will be notified immediately when the investigation file is passed on by the police to the prosecution, and before an indictment has been filed.

9.6.2. In rare cases, the High Court of Justice may intervene in this process, if it considers that the exercise of the Attorney General's discretion was biased or unreasonable.

9.6.3. The Inquiry into the Causes of Death Law, 1958, creates a procedure whereby a judge conducts an investigation into the death of any person, when it is suspected that the death was caused by unnatural causes or as a result of a crime, or if, prior to death, the deceased was in police or prison custody or in a psychiatric institution. The judge has authority to summon witnesses and conduct enquiries, exhume and examine the body and conclude whether there is enough proof to charge any individual with the commission of an offence. The judge plays an inquisitorial role in such cases.

9.7. *The Trial Proceedings*

9.7.1. During the first stage, the evidence is brought before the judge by the two parties (prosecution and defence), by way of the examination of witnesses and their cross-examination.

9.7.2. In criminal hearings in the district courts, district attorneys represent the State, and serve as representatives of the Attorney General. In magistrates' courts, police prosecutors generally represent the State.

⁴⁵ This provision comes into force in 1/1/2004.

9.7.3. During the entire prosecutorial process, the prosecutor has the right to offer a “plea bargain” to the accused or his/her attorneys. This institution has been recognized by the courts, although legislation which would regulate the use of the plea bargain is still pending.

9.7.4. During the proceedings the defendant must be present. However, there are exceptions – if he/she obstructs the trial, or if his/her physical or mental condition warrants it.

If the crime is not a felony, the accused does not have to be present if he pleads guilty and in writing, to the offence. Further, a defendant may be tried *in absentia*, even without admitting guilt, if he/she does not appear for the continuation of his trial, for no justified reason, and if warned that this may be done. This may occur only in magistrate’s courts. In addition, if the defendant requests not to appear at the trial and is represented by an attorney, then the court may permit him/her to be absent if it will not cause a miscarriage of justice.

9.7.5. The trial commences at the moment when the judge reads the indictment to the defendant and explains its content. At this point, the defendant may raise preliminary pleas – such as claiming immunity, claiming that there is a statute of limitations on the crime etc. If he/she does not do so, he/she may answer to the charges (admitting or denying some or all of the charges) and reveal to the court any alibi which he/she claims to have. If he/she does not do so at this point, the court will prevent him/her later from bringing any evidence to prove the alibi, unless special permission is given him/her for this purpose. He/she may also decline to raise any plea or keep silent altogether. However, if he/she does so, this may be used as evidence against him/her.

9.7.6. The trial is divided into two parts: the prosecution presents its witnesses and evidence and, subsequently, the defence does likewise. However, after the prosecution has presented its case, the defence may plead “no case to answer”, i.e. that the prosecution has not even pro-

duced *prima facie* evidence that the defendant has committed the alleged offence. If the court accepts this plea, the defendant will be acquitted without the need to present any evidence.

9.7.7. The defendant has the right not to testify, if he/she so wishes, during the defence's presentation of the case. Whichever party summons a witness is the first to examine him, while the other side, has the right to cross-examine the witness afterwards. The right to cross-examine witnesses has also become circumscribed with exceptions. For instance, see The Evidence Law (Section 10A) described above in section 9.5.3. Witnesses who are considered likely to alter their testimony, or who wish to leave the country, may be brought before the court to give testimony before the trial takes place.

9.7.8. When the two sides have completed their presentations to the court, they sum-up what they view as the salient points, at which point the court adjourns, weighs the evidence, and decides whether the prosecution has proven its case beyond a reasonable doubt. The court then delivers its verdict.

9.8. *Verdict and Sentencing*

9.8.1. Upon the completion of the above stages of the trial proceedings, the judge decides if the accused is guilty or innocent, based on the material evidence. This stage is called "the passing of the verdict".

9.8.2. If the court decides that there is reasonable doubt regarding the guilt of the defendant, then it must acquit him/her; if not, then the defendant is convicted of those offences in the indictment which were proven. The court may convict of a lesser offence than that charged, e.g. indecent assault instead of rape. The court may also convict the defendant for other offences that were not mentioned in the indictment, if proper evidence was brought before the court regarding these other offences

and if the defendant had the opportunity to defend himself before the court, regarding these offences.

9.8.3. Where the court has found the offender guilty and is considering a non-punitive disposition, such as probation or community service order, it may refrain from a formal conviction.

9.8.4. After passing the verdict, the court considers arguments pertaining to the mode of punishment ⁴⁶, and passes its sentence on the offender. Often, these three phases occur during three different sessions of the court.

9.8.5. Both parties may call additional witnesses to testify as to the character of the accused, and to provide the judge with additional information for consideration in passing sentence. At this point, the judge has the right to and must, if the accused is less than 18 years old, call for a probation officer's report, which includes the social and personal background of the accused, his family, the defendant's economic and health situation and any special circumstances related to the commission of the offence, as well as a recommendation for the sentence taking into account the rehabilitation of the offender. In most instances, the judges accept the recommendations included in the report.

9.8.6. In proceedings pertaining to sexual offences, a social worker may, at this point, be asked to provide a "victim impact statement". This may have a bearing on the sentence of the accused.

9.8.7. The verdict and the sentence together constitute the judgment rendered by the court.

9.8.8. A great deal of discretion and individualization is allowed in the sentencing process, predominantly due to the fact that the criminal law determines only the upper range or limit of the punishment, expressed,

⁴⁶ See section 11 for the different modes of sanctions available.

in terms of a maximum term of imprisonment (with the exception for the crime of murder, where, since 1954, the mandatory punishment is life imprisonment). In light of this situation, the judge is allowed to sentence the accused to any term of imprisonment, as long as it falls below or up to the maximum limit, or to an alternative sanction. The only constraint on the court's discretion (other than the maximum sentence laid down by law) is the possibility of review on appeal. The Supreme Court's decisions on sentencing may be seen as providing guidance on sentencing policy but no comprehensive policy guidelines have been provided by the court, and different benches may not always be consistent. There are exceptions to this process, where there is a mandatory minimum punishment within the law: for instance, mandatory prison sentences are provided, (some with prescribed minimum terms) for such crimes as domestic violence, sex crimes, pimping and trafficking in drugs involving minors. However, mandatory sentences are not binding where there are "special circumstances".

9.8.9. There have been attempts over the years to restrict the court's almost unlimited discretion in sentencing, by means of the introduction of mandatory or minimum sentences.

9.8.10. The wide discretion of the courts in sentencing is enhanced by the fact that the law provides no guidelines regarding the aims of the sentence. Thus a sentence may be disproportionately severe in relation to the offence on the ground of the offender's perceived dangerousness or disproportionately lenient out of consideration for the need for his or her rehabilitation.

9.8.11. It was perceived disparities in sentencing (to some extent supported by research), and sentences widely diverging from the maximum laid down for the offence, which led some legislators to press for the adoption of minimum sentences, especially in relation to certain offences (notably sex offences). The response of the government in 1999 was to establish a committee of experts headed by Supreme Court Justice Eliezer

Goldberg. The Goldberg Committee Report (see Ohana, 1998) proposed that sentencing principles should be established (somewhat similar to those of the English Criminal Justice Act of 1991), providing for a general principle of proportionality (or “appropriateness”) in sentencing, from which the court could depart only in accordance with the principles to be laid down. A minority of the committee advocated the adoption of specific minimum penalties. However, the Committee’s report has not yet been adopted, and the legislative has continued to press for minimum sentences for certain offences.

9.9. Appeals and Retrials

9.9.1. Under the Criminal Procedure Law, both parties have a basic right to appeal a court’s verdict or sentence within 45 days from the date it is delivered. The appeal court may allow the appeal in whole or in part, dismiss it, or return the case to the trials court with instructions. When the court sentences the defendant to death, the law provides for an “automatic” appeal to the Supreme Court, irrespective of whether an appeal has been filed.

9.9.2. There is an right of appeal only once. Therefore, if the case originated in the magistrates’ court, and an appeal was heard in district court, a further appeal to the Supreme Court requires leave on the part of either the district or the Supreme Court.

9.9.3. If after the Supreme Court (normally constituted by three judges) has considered an appeal, and it feels that there was a conflict with a previous judgment or that the precedent was so novel and complex that the court is of the opinion that the case should be considered by a wider composition of judges, a further hearing may be ordered.

9.9.4. Under the Basic Law: Judging and the Courts Law (Consolidated Version), 1984, a specified justice of the Supreme Court may order that

either the Supreme Court itself or a district court will retry a case in which a final judgment has been reached in the past. This may occur in any of the following circumstances: (1) a court has determined that some relevant evidence was false, with implications favourable to the defendant; (2) facts or evidence have emerged which could change the outcome of the case in the defendant's favour; (3) another person has been convicted of the same offence in circumstances giving rise to doubts as to the defendant's guilt; (4) a suspicion has arisen that the defendant's conviction has given rise to a miscarriage of justice.

9.9.5. A petition for retrial may be submitted by the defendant or the Attorney General. If the defendant is dead, it may be submitted by a family member. The court before which the retrial takes place has all the powers of a district court hearing a criminal case - except for the power to impose an increased penalty; it may also award compensation to a defendant whose conviction it overturns.

9.10. *Pardons*

9.10.1. A request for a pardon or commutation of sentence is usually dealt with by the Pardons Department of the Ministry of Justice, which makes a recommendation to the Minister. The Minister's recommendation is then submitted to the President of the State of Israel, who, after consultation with the Legal Counselor in the President's Office, decides whether to pardon the offender or to commute the sentence. Finally, the Minister of Justice counter-signs the document.

Differences of opinion are usually resolved by compromise. The final authority rests with the President of the State.

9.10.2. In a case involving alleged misconduct by the General Security Services⁴⁷, pardons were issued prior to the filing of an indictments against

⁴⁷ called also "shin-bet" or "shabak" – which are acronyms of the name of the organization, in Hebrew.

them. In its review of the legality of these pardons, the Supreme Court upheld the power of the President to grant pardons prior to conviction.

9.10.3. On two occasions, amnesty laws were passed: First, to mark the establishment of the State in 1948 and secondly, after the 1967 Six-Day War. Release of prisoners under the second of these amnesties (some 500 in all) was found not to have reduced their recidivism rate (Sebba, 1979).

9.10.4. On other festive occasions (such as “round figure” anniversaries of the independence of the State), committees were established in order to recommend a substantial number of candidates for Presidential pardons.

10. Juvenile Justice

10.1. Since the establishment of the State, the underlying philosophy of the juvenile justice system has been to emphasize individual treatment and rehabilitation, while retaining the basic characteristics of the adversary system. These ideals served as the basis for the emergence of the juvenile justice system, with its special organizational structure, which is characterized by its flexibility, informality and a wide-based discretion for the supervisory and treatment agencies that handle youthful offenders.

10.2. During the period of the British mandate, the Juvenile Offenders Ordinance dealt with both offenders and children at risk. In 1960 a special law – The Youth Law (Treatment and Supervision) - was adopted for non-delinquent youth who require protection ⁴⁸. Another new law, The Youth Law (Trial, Punishment and Modes of Treatment), which revised the delinquency provisions, was enacted in 1971.

10.3. Detention and Arrest

10.3.1. Minors in delinquency proceedings, are considered those having criminal responsibility, from age 12 to 18.

10.3.2. A minor under the age of 14 may be detained for a period of no more than 12 hours and, in specified circumstances, under authority of a senior police officer, for another 12 hours. Further detention can only be ordered by court order.

10.3.3. Minors may only be detained in facilities separated from adult detainees.

⁴⁸ See section 8.

10.3.4. Parents or other authorized adults must be informed immediately when such a detention or arrest occurs. They must be invited to be present during interrogation, unless there are specific reasons not to do so.

10.3.5. Probation officers, belonging to the Ministry of Labour and Social Affairs, serve as “Child Investigators”. They have been appointed in order to safeguard the physical, mental and psychological health of these children. The Child Investigator is usually a university trained social worker of the Youth Probation Service ⁴⁹.

These “Child Investigators” receive information from the police on each minor under the age of 14 who has been detained or arrested as a suspect, in connection with sexual offences or acts of violence. Their function is to interrogate the minor, using a range of techniques, such as picture-drawing and play-acting and are allowed to put leading questions to the child. Everything that is said must be recorded.

10.3.6. When any minor has been detained or arrested, the police must inform the youth probation officer, who will provide a report on the youth and his/her family. The youth probation officer may recommend to the police that the file on the particular juvenile offender be closed on the grounds that any further enforcement or legal proceedings would not be in the public interest nor in the interest of the individual’s rehabilitation.

10.3.7. Thus, concerning minors, the Israel Police may, after consulting the Juvenile Probation Service, decide that a file be closed or put “on hold”, or that the continuation of legal procedure be terminated. The youth is warned that the file can be re-opened if he/she continues to

⁴⁹ At this point in time (2002) these “Child Investigators” belong to the Probation Service. However, it is planned that they become independent, as a sub-unit of the Probation Service. See section 12.4.

offend. If the youth desists from committing further offences, then the file can be closed permanently after a certain period and even removed completely from the records, in order not to stigmatize the youth in later years. The youth may be referred to treatment by the social services and thus, diverted out of the criminal justice system.

10.4. Juvenile Courts

10.4.1. The Youth Law (Trial, Punishment and Modes of Treatment), 1971 provided that juvenile courts at the magistrates' court level would deal with most offences committed by minors. Only the more serious felonies, must be brought for trial before a regular district court, acting as a juvenile court. In practice, the regular district court judges are appointed for this purpose.

10.4.2. The juvenile court's proceedings are not open to the public. The juvenile's parents are entitled to attend, and may be ordered to do so by the court.

10.4.3. A juvenile court may appoint a defense counsel if it considers that the interests of the child so requires. The juvenile has the right, as do all suspects, to be represented by his/her own lawyer. Since 1998, every juvenile detained or put on trial is entitled to be defended by the Public Defender Office ⁵⁰.

10.4.4. When dealing with children under 14 years of age involved in sex offences, a "Child Investigator" ⁵¹ is the one to bring the child's evidence before the court, with the additional taped (audio and sometimes video as well) evidence of the interview or interrogation of the

⁵⁰ See section 9.5.4.

⁵¹ See section 10.3.5. for a description of this function.

child. The same Investigator, cannot deal with the juvenile offender and victim of the same offence. Under new proposals, these special procedures would only apply to child victims and witnesses, and not to child offenders.

10.4.5. When the court finds that a minor has committed an offence, it must obtain a pre-sentence report from the probation officer. The court may also require that the child be supervised by a probation officer or be sent for observation during the course of the trial.

10.4.6. After receiving the probation officer's report and any other relevant information, the court has three options: (1) to convict and sentence the minor; (2) to make a treatment order; or (3) to make no order. The last option is available for very minor offences - the first, for the most serious.

10.4.7. In the majority of cases, treatment orders are made. Even in serious cases, the courts have shown ambivalence (see Sebba, 1996), since they prefer to opt for treatment. Treatment options include a closed or open home, probation, placing the minor under the supervision of a fit person, requiring the minor or his/her parent to pay a fine or compensation, or making any other order regarding the child's conduct if, in the court's view, it is required for the minor's treatment.

10.4.8. In those cases where a minor is convicted, the usual sentencing options are available, except that the death penalty is never available, minimum or mandatory penalty provisions do not apply, imprisonment may only be imposed if the minor is over 14, and he may be committed to a closed home instead of prison. Interestingly, the term for which a minor is sent to a closed home, imposed in lieu of imprisonment, cannot exceed the term of imprisonment available for that offence – a provision which does not apply where a closed home is imposed as a treatment (see generally, Sebba and Horovitz, 1984).

11. System of Sanctions⁵²

11.1. The Israeli sentencing structure (See Chapter VI of the Penal Law, 1977) has very few limitations, beyond that of the maximum sentence allowed for a particular crime. Only in a few cases are there mandatory or minimum sentences imposed in the law ⁵³. The main example of a mandatory sentence is that of life imprisonment for murder, which was introduced in 1954.

11.2. In addition to sentencing the accused to any length of active imprisonment, judges in Israel have discretion to impose more lenient alternatives to imprisonment (subject to the maximum provided), such as: “service work” (a form of imprisonment actually served in the community); “community service”; fines; suspended sentence; probation. In the last decade, there has been, on the one hand an increase in the use of these alternative sanctions, and on the other hand a gradual increase in the length of imprisonment sentences, especially for sex offenders, abuse and violence, drug trafficking and some property crime that have become prevalent country-wide (e.g. for car theft).

11.3. The pre-trial detention period may be deducted from the term of imprisonment decreed in the sentence, although this is not written in the law. This applies only to time that the suspect was actually incarcerated in jail or prison and not under “house-arrest”.

11.4. The death penalty or capital punishment, as criminal punishment for first-degree murder, was in existence during the British Mandate (1918 to 1948) and even after the establishment of the State of Israel in 1948. However, in 1954 it was abolished and replaced by a life sentence, without parole ⁵⁴. Those who received a death sentence in the

⁵² See Sheleff, 1998.

⁵³ See sections 9.8.7 – 9.8.10.

⁵⁴ But see below, section 11.5.2.

period from 1948 to 1954 had their sentences commuted to life imprisonment⁵⁵.

Presently, the death penalty appears on the statute book as a possible punishment, for crimes such as treason during wartime, crimes against humanity and genocide. To date, only Adolf Eichmann, the Nazi war criminal, has been put to death by hanging, in 1965, for his crimes against humanity and the Jewish nation⁵⁶.

11.5. Imprisonment

11.5.1. As noted, the law generally provides a maximum prison term for each offence. Under the Criminal Code Ordinance inherited from the British Mandate, life imprisonment was the maximum specified for a number of offences, but this was replaced by a maximum term of 20 years.

11.5.2. For murder, on the other hand, the death penalty was replaced by mandatory life imprisonment. In such cases, as a matter of practice, the life terms have, after a number of years, generally been commuted by the President, on the recommendation of the Minister of Justice, to around 25-30 years; in such cases the prisoner becomes eligible for a further reduction by the Release Board. Under a recent revision of the early release provisions, a specially-constituted Release Board may make such a recommendation to the President, but only after the prisoner has served at least 7 years of the life term. Such a recommendation may not propose a term of less than 30 years.

⁵⁵ See section 7.9.6. for further details.

⁵⁶ On one other occasion, John Dejimanjuk, charged with being “Ivan the Terrible”, accused of genocide and war crimes during the Second World War, was also sentenced to death. However, the conviction was quashed on appeal.

11.5.3. Following a notorious child kidnapping case, the offence of kidnapping a child with intent to endanger life is also punishable with mandatory life imprisonment (sec. 373(b) of the Penal Law, 1977).

11.5.4. The legislature has on occasion added to the number of offences that are punishable to 20 years imprisonment, such as aggravated rape. For enabling a minor to obtain drugs, the law has prescribed a maximum penalty of 25 years (sec.21 of the Dangerous Drugs Act (New Version), 1973).

11.5.5. Prison sentences of up to 6 months can be commuted to “service work” in the community (see below). Further, the term which the suspect was in detention is usually taken into account when imposing the sentence.

11.6. Conditional Imprisonment (Suspended Sentence) and other Conditional Sentences

11.6.1. The suspended sentence of imprisonment (literally “conditional imprisonment”) was introduced in Israel in 1954. (See now Ch.6, Art. C of the Penal Law, 1977.) A term of imprisonment may be suspended for between one and three years. The suspended term will be activated if the offender commits another offence of the categories specified in the court’s order within the prescribed period of time. However in special circumstances the court may extend the period of suspension, following a conviction for a new offence, if it does not impose imprisonment for the new offence.

11.6.2. Since 1963, a suspended sentence may be combined with a probation order. This followed an ideological debate as to whether the deterrent nature of a suspended sentence was consistent with the rehabilitative spirit of a probation order.

11.6.3. The introduction of the suspended sentence led to a substantial decline in the use of imprisonment (Sebba, 1970). The “net-widening” phenomenon evident in some other jurisdictions was avoided. An important factor here was the low activation rate of these sentences (Shoham & Sandberg, 1964).

11.6.4. A recognizance (in effect, a suspended fine), may be required from an offender who must undertake to refrain from the commission of further offences for a period of up to three years. This sanction may not be imposed as a sole penalty, but only as an additional sanction. A recognizance to keep the peace for up to a year may also be required from a complainant.

11.7. Community Service and Service Work

11.7.1. “Community Service” was introduced in Israel in 1979. It is administered to offenders by the Probation Service. The offender performs the service in his free time, after his regular work and this may be imposed without registering a conviction. The length of this type of sanction is usually not more than 250 hours, and generally for the duration of one year. The court may add a probation order to this sanction.

11.7.2. “Service Work” was introduced in 1987, and allows the court, for those sentenced to a prison term not exceeding six months, to commute the prison sentence to this sanction. “Service Work” continues to be considered a prison sentence, but the prisoner serves his sentence in the community rather than in prison. The sentence is administered by the Prison Service, and may, in theory, take the form of two types of employment. The first type is “work for the economy” – whereby the prisoner works for a public or private employer, and is paid wages through the Prison Service, which may deduct from it the payment of fines or restitution to victims ordered by the court, as well as 10 % for administrative expenses. However, courts have been unwilling to specify this type of employment, bearing in mind the high levels of unemployment

in recent years. (Such a sanction might be perceived as a reward.) The second type of “Service Work” is “public work”, whereby the prisoner is engaged full-time without pay, in the provision of services for governmental or public non-profit bodies such as hospitals, homes for the disabled etc. In this respect, this type of “Service Work” resembles “Community Service”, as described above.

11.7.3. There has been some criticism to the effect that during “service work” prisoners are insufficiently supervised. However, it has been proposed that this unique form of penal disposition be extended to offenders sentenced to prison terms of 9 or 12 months – *inter alia* to reduce prison overcrowding. Moreover research has found that “service workers” performed better (in terms of recidivism rates) than similar offenders who served their prison terms behind bars (Nirel et al., 1997 ; see also Sebba, 1999).

11.8. Fines and Compensations for the Victim

11.8.1. The fine as a punishment is widespread in the case of misdemeanors and contraventions, especially in traffic-law offences. Its use, as an alternative to imprisonment, has also grown over the years – especially in respect to, so called “white-collar crime”.

11.8.2. In some cases, the fine is imposed as an additional sanction, e.g. in conjunction with imprisonment.

11.8.3. The court, during sentencing, generally takes into account the offender’s ability to pay the fine, although the law does not compel the court to do so. The court may also allow the accused to pay the fine in installments.

11.8.4. An accused who does not pay the fine, may be imprisoned for a period of time specified in the sentence or for the time that was stated in

the law, corresponding to the size of the fine – but not exceeding 3 years. This possibility is rarely used. A fine that is paid belatedly will have an additional amount added onto the original amount.

11.8.5. The court does not deal with the collection of unpaid fines. There is a special agency responsible for this (Einat, 1999). If the accused defaults, there is a possibility of levying execution on his salary, on social benefits he receives and thereafter, on his property - as well as the possibility of a term of imprisonment. During this procedure he is given another chance to come to some arrangement regarding the payment of the fine.

11.8.6. The courts are empowered to order the defendant to pay the victim a sum by way of compensation for harm and suffering inflicted upon him due to the offence. The maximum sum of compensation is periodically revised and may be updated by order of the Minister of Justice, in accordance with the cost-of-living index ⁵⁷.

11.8.7. The restitution order has the status of a fine and is enforceable by the State. It takes priority over the fine if both have been imposed and the offender's funds are insufficient to pay both.

11.9. *Probation (Hasin & Horovitz, 1998)*

11.9.1. In 1944 the Probation of Offenders ordinance was promulgated applying to both juvenile and adult offenders ⁵⁸. However, with regards to adults, the possibility of placing adults on probation was not used until 1951, when a special Adult Probation Service was established.

⁵⁷ It currently (2002) stands at NIS 84,000 per offence (c. US\$17,000).

⁵⁸ See section 8.4 and 8.5.

11.9.2. A probation order can be ordered for a period of 6 months to 3 years. It may be combined with a suspended sentence of imprisonment, or a community service order. It requires the consent of the offender and can be imposed without registering a conviction.

11.9.3. It may be revoked and an alternative sentence imposed if another offence is committed while the order is in force, or if other conditions, set down within the probation order, are not complied with during the period that the order is in force.

11.10. Sentencing for Narcotic Offences

11.10.1. The Dangerous Drugs Ordinance (New Version), 1973, is characterized by the harshness of the sentencing provisions which have been added or amended in recent years. This policy reflects the perception that drug abuse is a major threat to Israeli society (Horovitz and Sebba, 2000).

11.10.2. The maximum penalty for most offences relating to dangerous drugs is 20 years in prison or a fine twenty-five fold the regular maximum fine, as laid down by the Penal Law for serious offences.

11.10.3. As noted above, the maximum penalty for selling drugs to a minor is 25 years imprisonment. The imposition of a term of imprisonment in such cases is mandatory.

11.10.4. A number of additional sanctions were added in 1989. These include the confiscation of property used or procured as a result of the drug offence. A fund - managed by the Custodian General according to regulations issued by the Minister of Justice and the Minister responsible for the Anti Drug Authority - has been established for the management of the property thus confiscated, as well as for all fines levied under this Ordinance. The proceeds are used to cover costs of implementation of

the confiscation proceedings, for covering cost of enforcement of the Ordinance (mainly by the police, but also by the Customs and other enforcement agencies), as well as for the ADA's coordinating and preventive functions.

11.10.5. Other sanctions provide the court with the ability to disqualify an offender from driving a vehicle for a period which it may determine. The court is also empowered to revoke the offender's license to engage in certain occupations and to disqualify the offender from holding an Israeli passport, if such a passport may enable the offender to commit an offence.

11.10.6. A law of 1963 provided that persons convicted of offences, perceived by the court to be drug-related could, subject to psychiatric testimony, be committed to a special institution. These provisions were repealed in 1982. Offenders can now be sentenced to probation orders conditional on entering special drug treatment programmes in the community, subject to suitability, as indicated by a pre-sentence report and the consent of the offender. The emphasis in recent years has shifted from institutional to community treatment. Programmes are designated "medical", "social" or "mixed" – and are monitored accordingly.

12. The Victim

12.1. Under the common law system inherited from the British Mandate the victim had virtually no role in the criminal justice system. The Ottoman provision (influenced by French law) which provided for a *parti civile* had long fallen into disuse. The victim's rights in the early years of the state were primarily the following: the right to appeal to the State Prosecutor against closure of the prosecution file, the right – but only for a limited list of offences – to file a private criminal prosecution, and the possibility of being awarded a small amount of compensation (restitution) by the criminal court. It seems that none of these options were frequently exercised.

12.2. Concern for the protection of child victims of sex offences led to the adoption, in 1955, of a pioneering law - The Law of Evidence Amendment (Protection of Children) - for the questioning of such children by specially qualified persons rather than subjecting them to the usual judicial process – especially to protect children from harm during police or courtroom questioning. The law applies to children under 14 years of age who may be required to testify in court regarding sex offences (whether as offenders, victims or witnesses) or as victims or eyewitnesses to violence within the family.

Frequently a “rape shield” provision was introduced to restrict the cross-examination of rape victims on their previous sexual experiences. Further, as in England, the law was amended to allow for criminal judgments to be used as the basis for a civil claim.

12.3. Victims have also benefited from “crime control” measures designed to assist the prosecution in securing convictions, such as the provision for “adducing evidence immediately”, whereby a witness (generally the victim) who is likely to be unavailable at a later date, or may be intimidated into withdrawing his or her testimony (prostitutes testifying against their pimps is an example), can be brought before a court imme-

diately, whether or not an indictment has been filed. (The defendant or prospective defendant, however, is present or represented.) The witness's testimony becomes part of the court record.

12.4. The "protectionist" approach to certain categories of victims (notably women and children) was increased towards the end of the century. Special provisions were introduced in 1989 in respect of the ill-treatment of "vulnerable persons", involving heavy penalties and mandatory reporting. A law was passed in 1998 prohibiting sexual harassment (widely defined). Mandatory minimum sentences have been introduced for certain sex offences⁵⁹. A recent amendment to the Prevention of Domestic Violence Law requires professionals encountering spousal abuse to inform the victims of possible remedies. New procedures were introduced enabling victims of sex offences (especially children), to testify by close circuit TV rather than having to confront the defendant.

Similarly, the law requiring child victims of sex offences to be questioned by a Child Investigators rather than in court, was expanded to offences of violence against children committed by their parents. A further extension of this system to all offences of violence against children was never implemented owing to a shortage of child investigators, and has now been restricted to the victims of or witnesses to murder, manslaughter or attempts to commit these offences. The system of child investigators, resulting in the admission of hearsay evidence in court, has been criticized by lawyers⁶⁰ – in particular in view of the continuing additions to the list of offences included. This criticism has now been at least partially met by the recent requirements that so far as possible there should be a video recording of the interview with the Child Investigator or, failing this, a tape-recording.

⁵⁹ See section 355 of the Penal Law, requiring one quarter of the maximum prison sentence to be imposed for certain sex offences. However the provision permits the court to impose a lower sentence "for special considerations, which will be recorded". See also sections. 9.8.7. and 9.8.10

⁶⁰ See, for example, Harnon, 1988.

12.5. In the past few years there has begun to be an emphasis on victims' rights (Sebba, 2000). One of its earliest expressions was the enhancement of the provisions for restitution by the offender, whereby the potential sum was greatly increased (today- 2002 - around 17,000 Euros per offence). More recently, the victim-impact statement was introduced for cases of sex offences. Finally, in 2001 a comprehensive Victims' Rights Law was adopted. This law requires that victims be treated with dignity and have their privacy respected. Further, all victims are granted the right to protection, to information as to the progress of their case, the right to see the indictment, the right to submit a declaration as to the harm inflicted, and the right to information regarding victim assistance. Many additional rights are reserved for the victims of offences of sex and violence. These include the right to information on the defendant's detention in custody or imprisonment, the right to speedy proceedings, the right to be accompanied by another person during questioning, and the right to express their views regarding a (proposed) stay of proceedings, plea-bargain, early release from prison, or Presidential pardon.

This new victims' rights orientation has been strengthened by the Basic Law: Human Dignity and Liberty; both the present and previous Chief Justices have related to the victim's dignity in this context. This approach may also have influenced recent Supreme Court cases in which it was held that children could not be subject to corporal punishment either by educators or parents.

12.6. The concept of mediation or "restorative justice" involving the victim is in its infancy and is not yet officially recognized by the criminal justice system, although there is now some experimentation in this area (Sharvit & Garbeli, 2001).

12.7. There is as yet no State scheme for victim assistance, nor is there a comprehensive compensation fund. Statutory compensation schemes

are directed primarily at Holocaust survivors and victims of acts of terrorism (Yanay, 1994). A bill submitted to the Knesset by its Committee for the Promotion of the Status of the Child would guarantee the provision of social services to “children at risk”, but this has not yet been adopted.

12.8. NGOs have been active in victim assistance for some years ⁶¹. There exist rape crisis centres and women’s shelters for victims of abuse for many years. Recently there have been experiments with schemes to assist and accompany women and child victims as they negotiate the criminal justice system.

12.9. Finally, the prosecution authorities and, more particularly, the police have issued directives to their own personnel – long before legislation was enacted - for alleviating the problems of victims, e.g., by ensuring they are properly informed as to the proceedings taking place. These requirements have now been incorporated in the Victims’ Rights Law described above.

⁶¹ See section 13.7.

13. Crime Prevention (Geva, 1995, 2002)

13.1. It is generally difficult to delineate what comes under the heading of “crime prevention”. Today, the collaborative, inter-disciplinary and multi-agency nature of crime prevention is accepted as the most efficient way to deal with crime, by most professionals working both in the criminal justice spheres as well as in the social services. Crime prevention must use all methods to achieve long-lasting prevention. These, therefore, include *inter alia*: enforcement, treatment, rehabilitation, education, providing opportunities for achieving skills and a vocation, reducing “risk factors” and strengthening “defensive factors” - especially regarding children and their families - and by the use of “situational prevention” methods (essentially, methods that change the elements related to the targets and the situations of the offence).

13.2. Therefore, a large part of the work of the Ministry of Labour and Social Affairs ⁶² is considered to be of a preventive nature. Working with children, at all stages of their development, is essential toward reducing the risks of children becoming problem adolescents and thereafter, potential offenders. This would take into account all the efforts made to reduce “risk factors” in the family, during infancy, within the community, schools, among peers, those concerning parent education, family health, employment as well as psychological factors. This survey does not allow us to delve into all these aspects although some of these have been already dealt with in the sections concerning the work of the Ministry of Labour and Social Affairs and other organizations. However, we will place emphasis on preventive activity taking place within the criminal justice system, which has not been mentioned until now, and that may be of interest to the reader.

⁶² See section 8 for details.

13.3. *Situational Prevention*

13.3.1. The Crime Prevention and Security Unit (CPSU) at Police HQ was set-up in the late 70's. This Unit's task was to analyze crime patterns (mainly in the property crime area) and to find ways, together with various public and private organizations, to increase the "situational crime prevention" aspect of crime prevention. The Unit worked with the Israel Standard Institute to standardize equipment such as locks, alarms, and doors. It also worked with the National Insurance and other organizations to implement standardization and "best practice" regarding crime prevention. The Unit (today called the Security Unit) also acts as the Police Headquarters' authority on licensing matters regarding businesses and on security equipment and techniques regarding "Essential Installations" and nationally important institutions.

13.3.2. Since 1969, Israel has a law allowing for the security regulation of high-risk businesses. These must install various items of security equipment, in order to receive their business license, and upon receiving renewal of the license. According to The Law of Commercial Licenses (1968), the police are responsible for granting commercial licenses to those firms "...which require supervision in order to prevent any danger to the welfare of the public and to render it safe from burglary and robbery." Today, dozens of different types of businesses and thousands of separate business establishments are in this category. The evaluation of the effectiveness of this strategy has been proven, in various cases, such as in the decrease in gasoline-station, bank and diamond polishing factories' robberies, following the institutionalization of these conditional requirements.

13.3.3. No regulatory activity is targeted by the police on private dwellings. The main preventive activity, is the on-going dissemination of publicity material to victims and the public at large regarding "target hardening" – the use of hardware and electronic techniques, as well as behavioural ones of potential victims.

13.4. *The Partnership Approach to Crime Prevention*
(Geva & Efrati, 1995; Gimshi, 1999; Weisburd et al., 2001;
Geva, 2002)

13.4.1. The Community and Civil Guard Department at the Police HQ is responsible for implementing Community Policing and crime prevention activity throughout the country when it is mobilized by the police. Most local activity is implemented, since 1998, by the community policing centres that have been set-up in neighbourhoods and small towns, augmented by the local Civil Guard volunteers⁶³.

13.4.2. The main method of implementing crime prevention activity, within the community policing model, implemented gradually by the Israel Police since 1995, is via a formalized method of problem-solving: identifying, analyzing and formulating a multi-agency “model” for tackling the problem that has been identified as needing attention within the community. This implementation is still in its infancy and has not taken hold throughout the police, although there is much greater cooperation with the community representatives in policing the community in general, and in implementing preventive activity, specifically.

13.4.3. The models for crime prevention integrate enforcement and extended patrol activity, education and publicity to increase public awareness of problems, situational crime prevention activity (such as augmentation of mechanical and electronic equipment for reducing opportunities for property crime), and through outreach and extended treatment services (by the social service agencies in the particular locality) for populations at risk or to offenders. Small committees have been set up in the community to work on problems, coordinate and integrate activity and to change, where needed, policy and procedure of the agencies concerned⁶⁴.

⁶³ See section 5.9.

⁶⁴ Since the outbreak of the second *Intifada* (Palestinian uprising) in October 2000, the police are pre-occupied with security and anti-terror activity. This has caused a definite decrease in such community policing preventive activity, although the local “Community Policing Officers” continue with this local activity, where possible.

13.5. *The National Crime Prevention Council (NCPC)*

13.5.1. In 1988, the Ministry of Police set up the National Crime Prevention Council, whose task was to bring about a coordinated approach to crime prevention, through work with all relevant Ministries and organizations.

13.5.2. During the years 1988-1992 various “working groups” were set up in order to target particular crimes. The task of these working-groups was to analyze the particular crime, to bring together all the relevant parties, both public and private, and to work out a strategy that could reduce the incidence of the particular crime.

13.5.3. In the last few years, the main activity of this Council has been the initiation and financing of various local programs and the coordination of crime prevention at the national and local levels. At the municipal levels, in 22 cities, local Crime Prevention Councils have been set-up (up to 2001), in order to mobilize local crime prevention strategy. The coordinator’s salary, for such councils, is financed both by the NCPC as well as by the relevant municipality.

13.5.4. The Council has no statutory standing and is part of the Ministry of Public Security⁶⁵. It is funded partly by the General Executor’s Fund (estates that have been provided to the State because of lack of inheritors).

13.6. *The National Anti-Drug Authority (ADA)*⁶⁶

13.6.1. This ADA coordinates the anti-drug strategy throughout the country⁶⁷. Its main mission is to decrease drug-users through enforcement

⁶⁵ See section 4.1.

⁶⁶ See web site of the ADA. <http://www.antidrugs.org.il>

⁶⁷ The Authority does not deal in alcohol abuse, although this is a serious problem in Israel ; it is estimated that there are tens of thousands more alcoholics than drug addicts who need assistance and treatment (Weiss, 2002).

activity at borders as well as at street-level through the initiation and implementation of educational activity – both at schools and for the adult population; to encourage treatment and detoxification programs in the community for drug-addicts as well as in hostels, in hospitals and in the prisons; to help in the rehabilitation of drug-addicts; to encourage and create an “anti-drug” climate in the country; to develop new community prevention programs; as well to provide for research in the field of drug abuse and drug trafficking prevention.

13.6.2. The Authority has developed a number of programs aimed at reducing, controlling and treating drug abusers – and especially those targeted at the young drug-users. It also has set-up an information centre on the subject of drugs; it encourages government, public and private agencies to take on activity for the treatment and rehabilitation of victims of drug-abuse in the community including the initialization and lobbying for new legislation in the field; it encourages drug enforcement initiatives; it furthers anti-drug abuse education and publicity campaigns. The Authority has not been engaged in alternative policies of “harm reduction”.

14. The Third Sector: NGOs Dealing with Criminal Justice, Human Rights and Law Reform

14.1. There are numerous NGOs that function in the criminal justice area⁶⁸. To date, there are literally tens of organizations and various umbrella organizations, that work in the prevention fields, work to provide services to victims, to ensure human rights and to further law reform in these areas. Some examples follow:

14.2. **The National Council for the Child** is an independent public service organization dedicated to the advancement of rights and welfare of children in Israel. It was set up in 1979, and has since become the foremost advocate of the needs of children, monitoring, representing, researching, disseminating information and promoting public education on the issue. It works to achieve changes in legislation, policy and practice. It monitors the quality of services for children and gathers data on children at risks; it presses for stricter enforcement of existing laws; advocates and initiates better national and local child-oriented policies; operates outreach projects for professional personal and has a Centre for the Child and the Law, whose goal is to examine the legal situation regarding the protection of children's rights (Kadman, 1995). The Council periodically publishes a review of available statistics pertaining to children.

14.3. The organization **Defence for Children International – Israel Section (DCI-Israel)** - was founded in November 1987 by a group of Arab and Jewish educators, psychologists, lawyers and social workers to promote and protect the rights of children in Israel and under the effective control of the State of Israel in the occupied territories. The Israeli Section of DCI (Defence for Children International) is part of the international NGO for the rights of the child, headquartered in Geneva, Switzerland.

⁶⁸ See section 12.8. as well.

The first years DCI worked for family reunification of Ethiopian Jewish children and promotion of legal representation of minors in the juvenile and district courts. In 1988 it started to represent Palestinian minors in the Jerusalem district court and juvenile courts, who did not have lawyers. DCI-Israel soon began to represent minors in the Tel Aviv and Haifa courts and lobbied for a law to create a Public Defender for children.

Since 1992, DCI-Israel is involved in pilot projects to make legal advice accessible for minors. In the last few years it is involved in socio-legal projects such as a youth advancement center in East Jerusalem and “dilemma-cafes”, which is a network of walk-in-coffee houses that provide assistance and information to troubled youth. DCI- Israel provides legal advice in some of these coffee houses.

DCI-Israel takes up individual cases of children and adolescents whose rights are violated and brings cases to the Israeli Supreme Court. It participates actively in the Knesset Committee for the Advancement of the Status of Children.

DCI-Israel is the coordinator of the Israeli Children’s Rights Coalition and coordinates the Israeli NGO report (“Alternative Report”) to the UN Committee on the Rights of the Child. DCI-Israel monitors actively the implementation of the UN Convention on the Rights of the Child and other international standards.

14.4. Various women’s voluntary organizations – such as **Na’amat** and **Wizo** - have taken upon themselves to provide services – both emergency services, counseling and assistance to victims as well as treatment for offenders, in the area of spouse abuse. These include special workshops for violent offenders to help them change their behaviour and deal with anger and conflict in a non-violent fashion. The victims are assisted in legal matters, providing them with shelters, finding permanent alternative housing, psychological counseling and the like.

14.5. The Centre for the Assistance to Victims of Rape and Sexual Offences (Rape Crisis Centres), provide victim services for sexual abuse and rape victims and have set-up 'hot lines' and victim assistance programmes and deal with various publicity and educational campaigns regarding rape and sexual abuse.

14.6. The Association for Civil Rights in Israel (ACRI) was founded in 1972 as a non-political and independent body, with the goal of protecting human and civil rights in Israel and in the West Bank Territories under Israeli control. The founders of ACRI rooted their vision in the principles and rights articulated in the Declaration of Independence, and in the United Nation's Universal Declaration on Human Rights, which was drafted under the influence of the horrors seen during the Second World War. Today, ACRI is Israel's largest and leading human rights organization, and the only body to address the full range of human rights: from the right to liberty through freedom of information to the right to education, through to the freedom of expression. ACRI works to protect the right of diverse individuals and sectors of society including men and women, religious and secular, Jews and Arabs, those on the political right and left, new immigrants and veteran citizens, the unemployed and foreign workers.

In particular, ACRI encourages policy-makers to change policy, and seeks legal precedents that will bring about a positive impact on the human and civil rights of the largest possible number of people.

In the legal sphere, ACRI takes legal action in a range of courts, particularly the Supreme Court, in cases that raise issues of principle. ACRI also advances legislative initiatives intended to promote and protect human and civil rights.

In the public sphere, ACRI publishes reports on human rights for submission to the relevant authorities and to the general public, and promotes its concerns through its resource center, publications, an internet

site and the media. In the educational sphere, ACRI works in Jewish and Arab schools in Israel presents courses and workshops, publishes academic and educational materials, and promotes efforts to ensure recognition of human rights as a vital foundation of any democratic society. ACRI places particular emphasis on educational work with social and community workers, the security forces (the army, police, prison service and border guard), and among decision-makers in local and national government. In addition, ACRI processes thousands of complaints and requests for assistance received from the public through its public hotline – a telephone conduit for assistance and consultation for people whose rights have been violated.

ACRI is completely independent in its operations. Funding comes entirely from membership fees and donations from Israel and abroad. ACRI does not receive any funding from political or governmental sources.

14.7. **Kav La'Oved** (literally: “hot line to the worker”) is a non-profit organization dedicated to protecting the rights of the most disadvantaged workers in Israel, primarily: migrant workers, Palestinians from the occupied territories, personnel employed through employment agencies and new immigrants.

14.8. **Bizchut** (literally: “by right”) The Israel Human Rights Center for People with Disabilities is a non-profit organization committed to advancing the rights of people with physical, developmental and emotional disabilities and enabling their full integration into mainstream society and participation in all areas of life. People with disabilities make up over 10% of the Israeli population. Despite their numbers, people with disabilities often face discrimination and deprivation in many aspects of life. Bizchut strives to remove the barriers - both physical and psychological - that confront people with disabilities in Israel.

Bizchut is the address for people with disabilities whose rights have been violated because of their disability, their families, professionals and organizations working in the field, in addition to policy-makers in the Israeli Knesset and government.

Inter alia, focusing on the criminal justice aspects of this NGO's activity, Bizchut works to make sure that investigative and legal procedures are adapted to suit people with disabilities.

14.9. **B'Tselem**⁶⁹ - The Israeli Center for Human Rights in the Occupied Territories - was established in 1989 by a group of prominent academics, attorneys, journalists, and Knesset members. It endeavors to document and educate the Israeli public and policymakers about human rights violations in the Occupied Territories, combat the phenomenon of denial prevalent among the Israeli public, and help create a human rights culture in Israel.

As an Israeli human rights organization, B'Tselem acts primarily to change Israeli policy in the Occupied Territories and ensure that its government, which rules the Occupied Territories, protects the human rights of residents there and complies with its obligations under international law.

B'Tselem has published scores of reports, some comprehensive in scope, covering most kinds of human rights violations that have occurred in the Occupied Territories. The reports have dealt, for example, with torture, fatal shootings by security forces, restriction on movement, expropriation of land and discrimination in planning and building in East Jerusalem, administrative detention and settler violence. B'Tselem ensures the reliability of information it publishes by conducting its own fieldwork and research, whose results are thoroughly cross-checked with relevant documents, official government sources, and information from other

⁶⁹ The word is taken from Genesis 1:27, literally meaning "in the image of": "And God created humans in his image. In the image of God did He create him." It is in this spirit that the first article of the Universal Declaration of Human Rights states that "All human beings are born equal in dignity and rights."

sources, among them Israeli, Palestinian and other human rights organizations.

B'Tselem regularly provides Knesset members with information on human rights violations in the Occupied Territories. B'Tselem is independent and is funded by contributions from foundations in Israel, Europe and North America that support human rights activity worldwide, and by private individuals in Israel and abroad.

14.10. **Adalah** (literally: “justice” in Arabic) is the first non-profit, non-sectarian Palestinian-run legal center in Israel. Established in November 1996, Adalah serves the Palestinian community nationwide - over one million people or 20% of the population.

Adalah's legal work draws on Israeli law, comparative constitutional law and international human rights standards. The main goal of Adalah's work is to achieve equal rights and minority rights protections for Palestinian citizens of Israel. The eight fields of interest are cultural and language rights, education rights, religious rights, land and housing rights, political rights, prisoners' rights, Palestinian women's rights, and social and economic rights.

In order to achieve this goal, Adalah: brings group rights impact cases before the Supreme Court and the lower courts of Israel that raise issues of discrimination and Palestinian minority rights; promotes Palestinian equal rights and minority rights through legislative advocacy; provides consultation to Palestinian NGOs, CBOs, and other public institutions; organizes and facilitates panel discussions, study days, and workshops, and publishes reports on current legal issues relevant to the Palestinian minority; trains young Palestinian lawyers and law students, providing apprenticeship and internship opportunities in order to create a new generation of human rights lawyers.

14.11. **Israel Union For Environmental Defense (IUED** ⁷⁰) was founded in 1990. IUED pioneered the effective use of legal advocacy as a means of safeguarding Israel's environment.

With legal standing under a number of environmental laws to take civil and criminal action on the public's behalf, IUED pursues an agenda of strategically focused projects in four key areas: air pollution prevention, drinking water safety, solid waste management and accessible open spaces.

Through the courts, IUED leverages change in the way industries, developers and official agencies relate to the country's most pressing environmental problems.

IUED is also Israel's leader in building a sound legislative and regulatory basis for environmental protection.

Through courtroom advocacy, planning committee interventions, and legislative/regulatory reform efforts, IUED plays a key role in advancing civic values that are linked to environmental issues.

⁷⁰ In Hebrew the organization is called "Adam, Teva Ve'Din" – Literally: "Man, Nature and Law".

15. Statistics and Crime Trends ⁷¹

15.1. Data Banks

15.1.1. One of the major sources of criminal statistics is the police. The police compile the daily number of complaints reported by victims or offences detected by the police and recorded.

15.1.2. Furthermore, statistics are compiled by the Ministry of Labour and Social Affairs – regarding populations under various treatment and rehabilitation programmes, including under the supervision of the Probation Services.

15.1.3. The Prison Service compiles data on the inmate population.

15.1.4. The Anti-Drug Authority collects data on the drug-abuse situation, and also undertakes various epidemiological studies made annually through self-reporting surveys of the population – including youth.

15.1.5. The Authority for the Rehabilitation of Prisoners gathers data regarding the released inmates that receive assistance from the Authority.

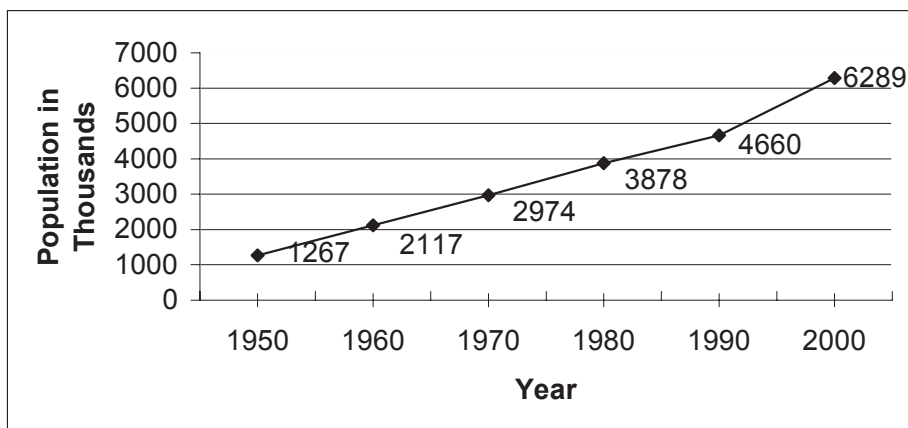
15.1.6. The Courts' Administration gathers data regarding court proceedings and sentencing.

15.1.7. All the above information is passed on to the Central Bureau of Statistics (CBS), which publishes the data in reports. Since 2000, a Freedom of Information Law has been in effect and therefore, all such data are published, *inter alia*, on internet sites of the various Ministries, agencies and Authorities, as well as by the CBS; thus, the public has access to them.

⁷¹ For detailed information on these statistics see: Israel Police Annual Reports; Israel Prison Service Annual Reports; Central Bureau of Statistics Criminal Justice Reports. Also see web sites of all Ministries and organizations referred to in this and other sections of this report.

15.1.8. In order to be able to analyze the statistics which will be brought hereafter, the reader is referred to Graph 1 – the population in Israel in the last 50 years.

Graph 1: Population of Israel: 1950 - 2000



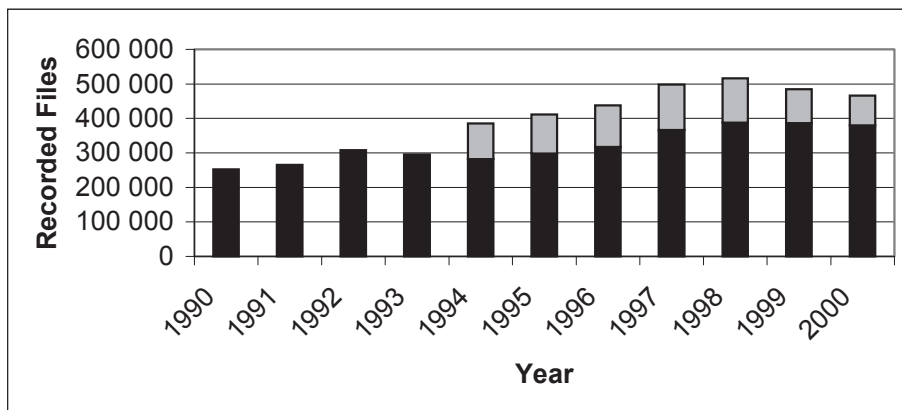
15.2. Reported and Recorded Crime Trends (see also: Rahav, 1998)

15.2.1. After a relatively steady climb in the crime rates for 15 years (1985-1999) - especially in property crime, which constitute about 75% of the total recorded crime - the last few years have shown some decline in recorded crime (in absolute numbers) as well as in the crime rate (files recorded per capita).

15.2.2. Graph 2 presents crimes reported and/or recorded to the Israel Police from 1990 to 2000. These include all criminal files but do not include traffic offences or municipal by-law offences. It must be emphasized that a large proportion of the files (about a third) were not part of the “recorded files” until 1993. These were files that were not passed on to the prosecution - mainly because of the nature of the offence (misdemeanors) or because the offenders were first time juvenile offenders, and the file was kept “on hold”, so that the minor could be diverted out of the formal criminal justice system.

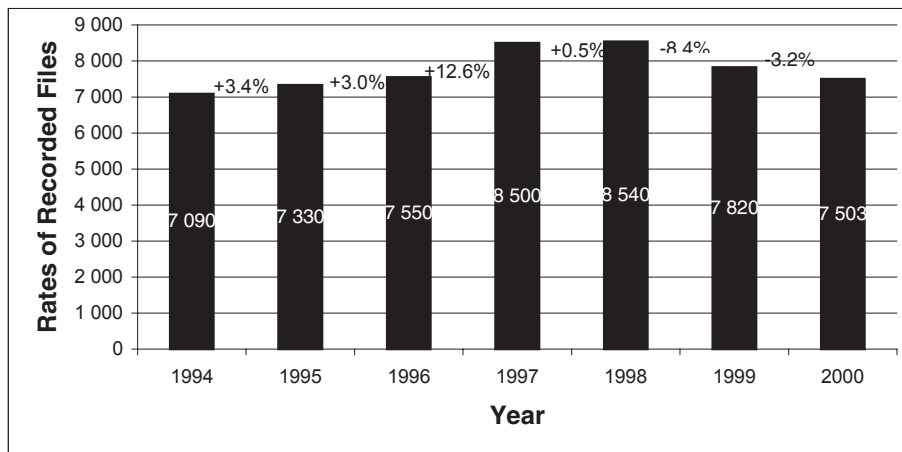
This policy still exists. However, in the last few years, these files are counted as part of the crime statistics and are now computerized (see below).

Graph 2: Criminal Files Recorded by the Police: 1990-2000



Graph 3 shows the changes in recorded crime rate per 100,000 population between 1994 and 2000. Between 1998 and 1999 there was an 8.4% drop in the crime rate, and a further 3.2% drop between 1999 and 2000.

Graph 3: Changes in Recorded Crime Rates per 100,000 Population: 1994-2000



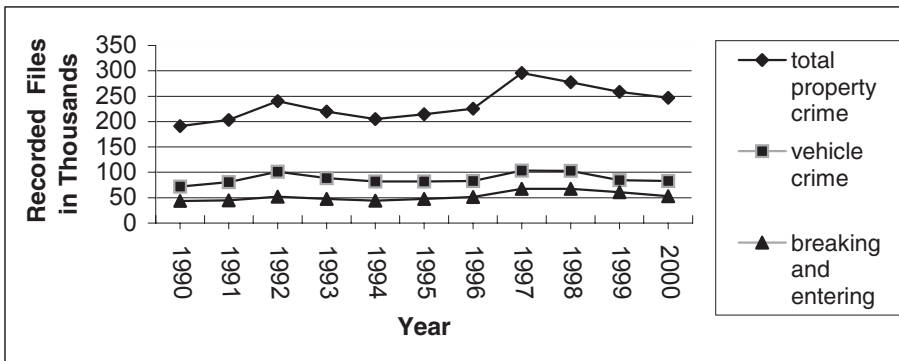
15.2.3. Property crime (including all thefts and break-ins) was increasing rapidly during the mid 90s and reached almost “epidemic” levels (see Graph 4). Property crime has proven especially difficult to combat because of its anonymous nature, low detection rate - very few offenders are actually caught – making these offences most profitable and of low-risk to the offender.⁷²

15.2.4. Regarding car theft, for instance, it is relatively easy to move the stolen cars and dismantle or change their identities within the Palestinian territories, where the Israeli police had difficulty entering. The close proximity of Israeli towns to the Palestinian Authority areas – some of which are considered “out-of-bounds” to the Israeli Police – allow for stolen cars to be brought there at night, and be dismantled within hours – before the owner has discovered his loss and reported it. Car parts are then sold to Israeli car-parts’ dealers, mainly used for repairing cars after traffic accidents. In an endeavour to decrease this problem, a law has been passed which allows the legal selling of car-parts only by authorized dealers who trade in parts that have been marked and registered. Anyone selling un-marked parts will be prosecuted for selling stolen parts.

15.2.5. House and business burglary (‘breaking and entering’) and thefts of all kinds constitute a serious problem (see Graph 4), both in terms of the economic impact on society and the traumatic effect these have on the victims. Even though it is customary for accessible windows to be barred with iron grills and for many front doors to have high-security locks, break-ins to residential premises still abound.

⁷² See also Hertzog, 2002.

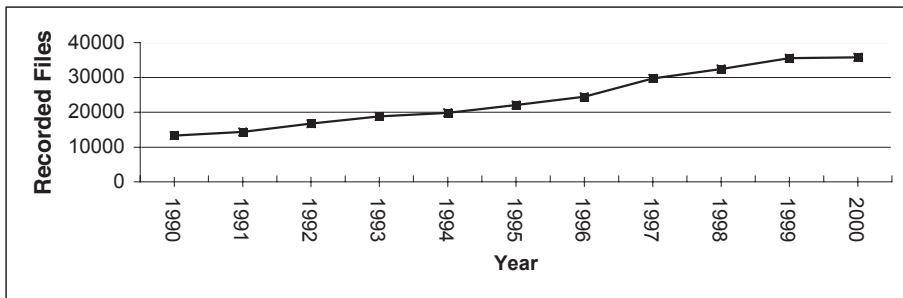
Graph 4: Total Property Crime, Vehicle Crimes and Breaking & Entering Files Recorded: 1990-2000



15.2.6. During periods in which there is increased terrorist activity – as in the present (since fall of 2000) “Intifada” (Palestinian uprising) – various anti-terrorist techniques are put into place, such as the closure of the West Bank and Gaza Strip to Palestinian workers, who would otherwise come to work in Israel. There seems to be a correlation between the decrease in crime rates – especially property crime - and these periods of “closure” – probably because of the increase in police patrolling presence, increased police and army personnel surveillance at check-points and the decrease in the number of Israeli offenders, who, prior to the Intifada, worked together with Palestinian offenders, freely entering and exiting the Palestinian territories.

15.2.7. Violent crime, including domestic violence, has also been on the rise in the last few years (see Graph 5). It is not clear whether this rise is partly due to increased public awareness to the problem of domestic abuse (publicized by dozens of cases per year of attempted murder and actual murder of women by their partners and violence against children), and thus causing an increased reporting rate. However, there has also been increased violent activity amongst youth and adults alike, perhaps also due to increased use of alcohol and drugs and culture-conflict of new immigrants.

Graph 5: Recorded Violent Crime Files: 1990-2000 (Source: www.police.gov.il)



15.2.8. Other major changes that have occurred in the last five years include the strengthening and infiltration of organized groups of criminals (many from abroad), who use Israel as a base for money laundering⁷³ and for setting up gambling, prostitution and drug-trafficking rings (Amir, 1998; Landau, 1998).

15.2.9. Furthermore, there is an increase in fraud and so-called “white collar crimes” – especially within financial institutions, and crime using the internet as well as “computer crimes”. In a recent case a youth hacker⁷⁴, who had broken into confidential computer files via the internet (including those of NASA and the US government), was sentenced to a year and a half in prison. The largest theft ever of bank funds by a bank clerk, was recently uncovered – pointing to the relative ease in which such crimes can be executed as well as the lack of control and supervision that exist within some of the financial institutions.

15.2.10. In recent years, there is an increase in the number of illegal foreign workers living and working in Israel. It is estimated that there are some 250,000 such workers in 2002⁷⁵. Their status precipitates other illegal activity, for instance forgery of documents and fraud, trafficking in women for prostitution (15% of the total foreign workers’ offences filed in 2001), property crime (4%) and violent offences (6%). There is already a second-generation - children

⁷³ See section 4.6.1. re steps that have been taken to combat this problem.

⁷⁴ The so-called “Analyzer”.

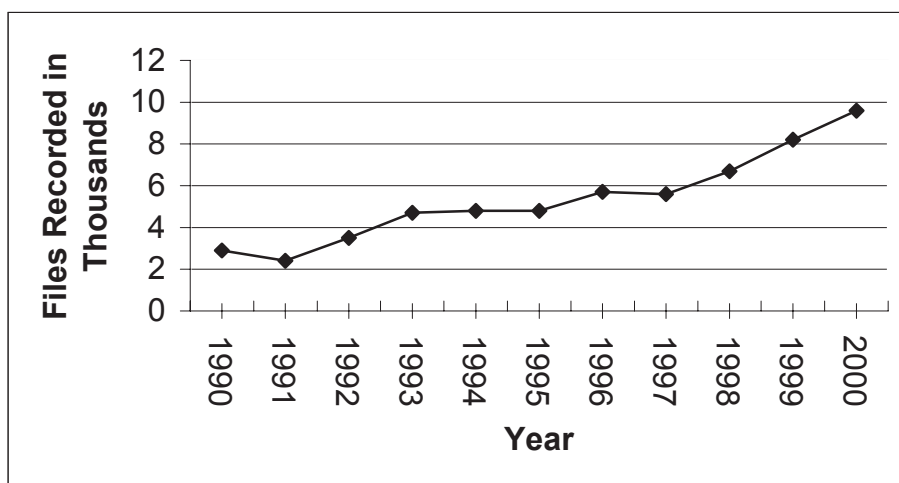
⁷⁵ Not including about 100,000 legal workers that have work permits from the government.

born in Israel to illegal workers - and it is predicted that some of these may enter the criminal world, due partly to the difficult economic and social conditions in which they live.

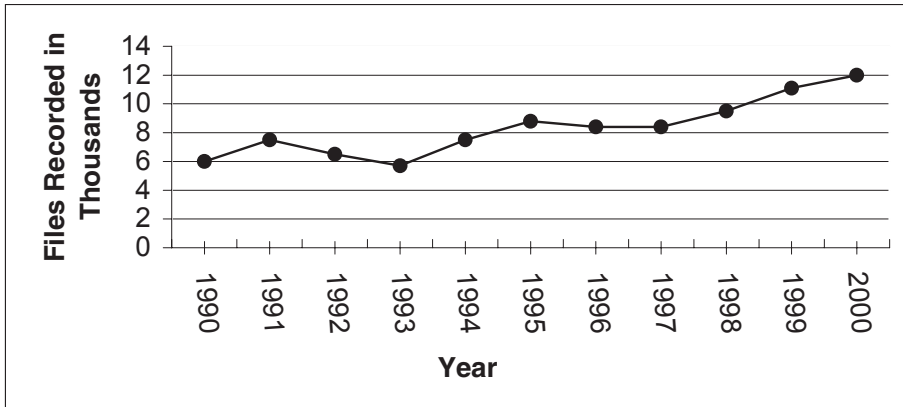
In the last year a special department in the Police has been established to deal expressly with foreign workers. It was suggested that the police act as the main enforcement agency – fining employers and manpower agencies which bring and employ the illegal workers. Eviction out of the country, when caught, should be part of an encompassing enforcement plan. It was also suggested to increase the control regarding foreigners coming into Israel, who may be illegal workers, posing as tourists.

15.2.11. Drug trafficking and drug abuse have been on the increase, although in the last few years there has been a slight decrease in drug abuse by youth. However, there has also been a decrease in the age in which drug abuse begins (see the Anti-Drug Authority Annual Report : www.antidrugs.org.il).

Graph 6: Drug Trafficking and Drug Seizures Files (not for personal use): 1990-2000 (Source: www.antidrugs.org.il)



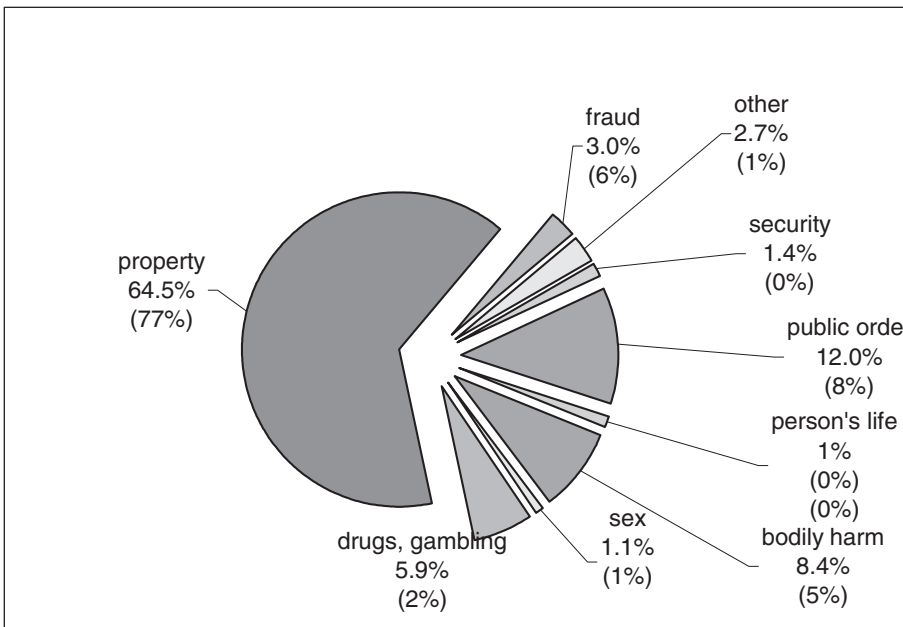
Graph 7: Drug-Use Files Recorded: 1990-2000 (Source: www.antidrugs.org.il)



15.3. Victimization

15.3.1. Throughout the years, the most prevalent offenses have been against property – mostly burglaries and thefts : see Graph 8 below for the year 2000 which exemplifies this trend.

Graph 8: Distribution of Recorded Crime Files by Type of Crimes: 2000 as compared to 1980 (number in brackets)



15.3.2. It must be pointed out that the rate of reporting of some property offenses in Israel is higher than in other industrialized countries. Cars, for instance - which make up a large part of the property offences - are very expensive in Israel (due to high taxes), and therefore, most cars are insured and their theft reported to the police, as part of the necessary procedure in order to receive compensation from the insurance company.

15.3.3. There have been four victim surveys made by the Ministry of Public Security since 1979. Some results, as reported from these surveys are as follows, in Table 1:

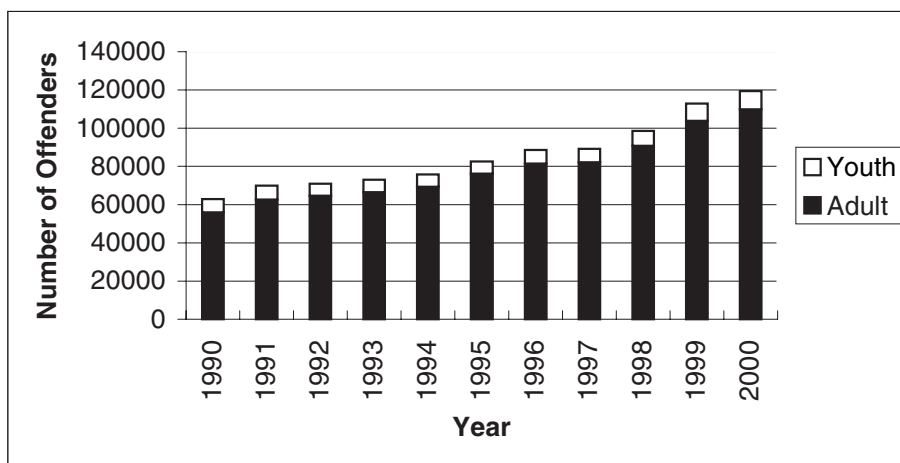
Table 1: Victimization and Reporting Rates in Israel of Selected Offences from Victimization Surveys (Sources: CBS, 1981; 1983; 1993; 2002)

Victimization Rate	1979 (1) (2)	% Reported to police	1981 (1) (2)	% Reported to police	1990 (1) (2)	% Reported to police	2001 (1) (2)	% Reported to police (3)
Offenses vs. Persons (4)	NA		NA		NA		10.2	37.5
Offenses vs. Property (Burglary & Theft) (5)	7.6	67.2	8.4	62.0	10.3	43.7	7.3	45.3
Offenses vs. Vehicles (6)	30.0	41.4	34.0	31.5	29.6	41.4	20.3	38.6

- (1) The Jewish population only
- (2) Kibbutzim not included
- (3) Relates to last offence only
- (4) Per 100 persons in the population aged 18 and over
- (5) Per 100 households
- (6) Per 100 households (vehicle owners)

15.4. Offenders

Graph 9: Number of Suspected Offenders Detected* by Police: 1990-2000 (Source: www.police.gov.il)



* Offenders that the police has connected them as suspects in specific criminal files.

Table 2: Characteristics of Convicted Offenders in 2000: Rates per 1,000(1) (Source: www.cbs.gov.il)

Sex	
Males	16
Females	1.7
Age	
Up to 19	7.7
20-24	12
25-29	11.1
30-39	12.4
40-49	10.1
50+	3.5
Place of Birth	
Israel	8.7
Asia	6.4
Africa	8.7
Europe-America	3.8

(1) Rates were computed according to the average population aged 18 and over, out of the respective group. For the group “up to 19” - out of the population aged 18-19.

Table 3: Rates of Convicted Offenders per 1,000 Population (1): 1965-1999

(Source: www.cbs.gov.il)

1965	13.2
1970	10.1
1981	8.5
1985	11.0
1990	8.6
1995	8.7
1998	9.0
1999	9.0
2000	8.6

(1) Rates were computed according to the average population aged 18 and over.

Table 4: Percent Recidivist of Total Offender Population: 1965-1999 (Source:

www.cbs.gov.il)

1965	54.4
1970	58.0
1981	61.2
1985	64.4
1990	66.7
1995	62.6
1998	60.6
1999	62.0
2000	60.2

15.5. Sentencing

Table 5: Percent of Convictions (1) in which Penalties were Imposed, by Type of Penalty and Characteristics of the Convicted (1990, 1998, 1999) (Source: www.cbs.gov.il)

Percent of total in each cell									
TOTAL	Suspended Sentence			Imprisonment			Fine		
	1999	1998	1990	1999	1998	1990	1999	1998	1990
	65.8	66.1	66.5	18.4	20.9	23.4	40.1	42.9	49.2
Courts									
District	88.4	89.2	87.7	83.8	89.2	79.0	12.2	10.6	15.8
Magistrates'	72.0	71.2	68.8	17.1	16.1	16.7	38.0	43.1	55.9
Juvenile	21.3	21.4	18.8	6.2	4.9	6.8	40.4	43.9	37.2
Military tribunals	93.8	94.1	96.2	96.1	93.4	88.8	9.2	4.6	12.9
Type of offence									
Against the security of the state	80.5	78.5	68.0	42.9	42.7	42.4	46.3	41.6	61.6
Against public order	64.4	68.4	62.9	14.0	22.8	21.1	35.4	35.3	50.3
Bodily harm	70.0	69.2	57.2	14.7	14.7	10.7	24.4	30.4	50.9
Sexual offences	77.3	77.3	67.8	53.3	52.0	35.8	18.6	24.0	33.8
Drugs and other (2)	85.9	87.4	92.3	28.2	30.3	42.7	30.7	31.7	38.4
Against property	69.6	69.0	63.7	24.5	24.2	22.7	34.7	38.4	46.1
Fraud	79.1	78.9	69.2	18.7	18.2	16.8	51.8	55.6	62.9
Religion									
Jews	63.7	64.3	67.3	17.2	20.7	24.2	37.6	40.1	44.7
Other religions	70.1	70.2	64.3	20.9	21.5	21.5	45.2	49.1	60.9
Age									
Adults	69.2	69.5	71.4	19.3	22.1	25.1	40.1	42.8	50.4
Juveniles	21.3	21.4	18.8	6.2	4.9	6.8	40.4	43.9	37.2
Recidivism									
Recidivists	76.8	76.5	75.2	22.9	23.7	26.3	38.2	41.3	49.8
Non-recidivists	46.3	48.8	48.2	10.5	16.3	17.3	43.5	45.6	47.8

(1) Not including probation orders – see Table 6.

(2) These include drug trafficking and drug abuse as well as gambling, pimping, soliciting for youth prostitution, publication of pornography.

Table 6: Offenders Under Care of the Probation Services 1953-2000 (in absolute numbers) (Source: www.sbs.gov.il)

Activities of probation services	Under care of Adult Probation Service				Under care of Juvenile Probation Service(1)			
	At end of year	Terminated during the year	New cases during the year	At beginning of year	At end of year	Terminated during the year	New cases during the year	At beginning of year
1953 – Investigation(2)	38	301	276	63
Probation	247	63	182	128
1960 - Investigation	144	691	726	109	3,397	6,457	7,014	2,840
Probation	627	448	477	598	856	359	476	739
1970 - Investigation	598	2,714	2,739	573	6,109	10,560	10,100	6,569
Probation	1,816	1,045	956	1,905	1,475	1,294	1,129	1,640
1980 - Investigation	1,017	3,419	3,652	784	6,762	9,478	9,346	6,894
Probation	1,778	1,173	1,298	1,653	2,196	1,757	1,878	2,075
1990 - Investigation	2,421	5,580	5,901	2,100	6,854	11,816	12,905	5,765
Probation	2,252	2,338	2,457	2,133	170	67	136	101
2000 - Investigation	9,973	17,329	18,976	8,326	13,953	21,918	20,574	15,297
Probation	6,682	5,035	5,701	6,016	773	696	755	713
INVESTIGATION	9,973	17,329	18,976	8,326	13,953	21,918	20,574	9,973
Males	9,198	16,002	17,615	7,585	13,115	19,380	18,064	9,198
Females	775	1,327	1,361	741	838	2,538	2,510	775
Jews	7,751	13,444	14,439	6,756	11,621	17,753	16,671	7,751
Other religions	2,222	3,885	4,537	1,570	2,332	4,165	3,903	2,222
PROBATION AND COMMUNITY SERVICE (3)	6,682	5,035	5,701	6,016	773	695	755	713
Males	6,133	4,602	5,237	5,498	722	649	704	667
Females	549	433	464	518	51	46	51	46
Jews	5,306	4,147	4,506	4,947	669	596	668	597
Other religions	1,376	888	1,195	1,069	104	99	87	116

(1) As of 1990, includes also juveniles who were referred to the Probation Service without a conviction being recorded.

(2) “Investigation” means that the offender was subject to a Pre-Sentence Investigation.

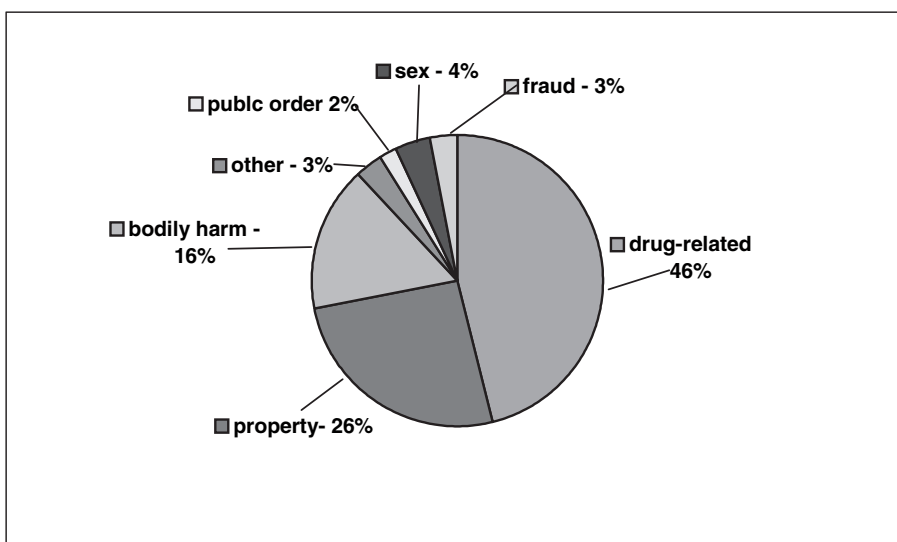
(3) As of April 1994, Community Service started operating all over Israel regarding adults only.

15.6. Prison Population (see: www.cbs.gov.il)

15.6.1. There were about 10,100 inmates incarcerated in prisons (in 30/10/2002) and detention centers⁷⁶ administered by the Israel Prison Service. The Israeli inmates are composed predominantly (about 96%) of adult males, 2% females and 2% juveniles.

15.6.2. 85% of the inmates were serving sentences for criminal offences: The distribution of offences perpetrated by these inmates is shown in Graph 10.

Graph 10: Distribution of Types of Criminal Offences of Inmates in Israeli Prisons (on October 31, 2002) (Source:www.ips.gov.il)



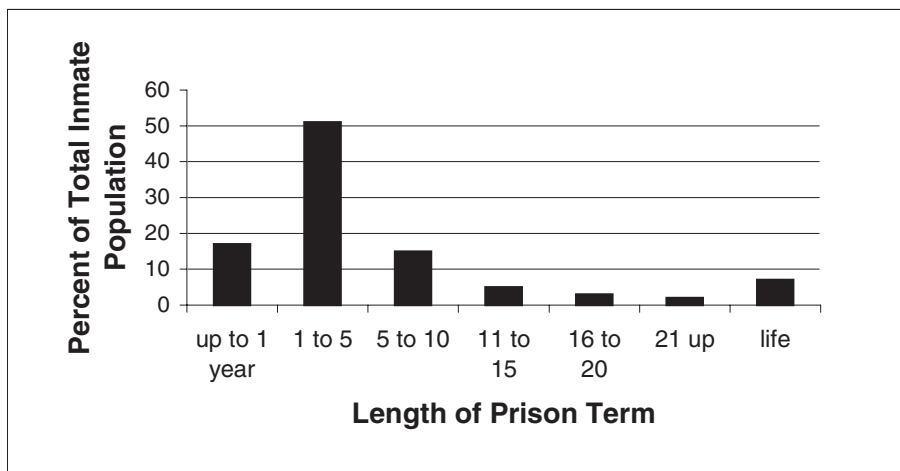
12% of the inmates have been sentenced for security (terrorist) crimes. 3% were incarcerated regarding civil matters.

15.6.3. 45% of the population were in prison for the first time; 31% were in for their second or third term; 13% were in for the fourth or fifth time; 11.7% are in prison for their sixth term or more.

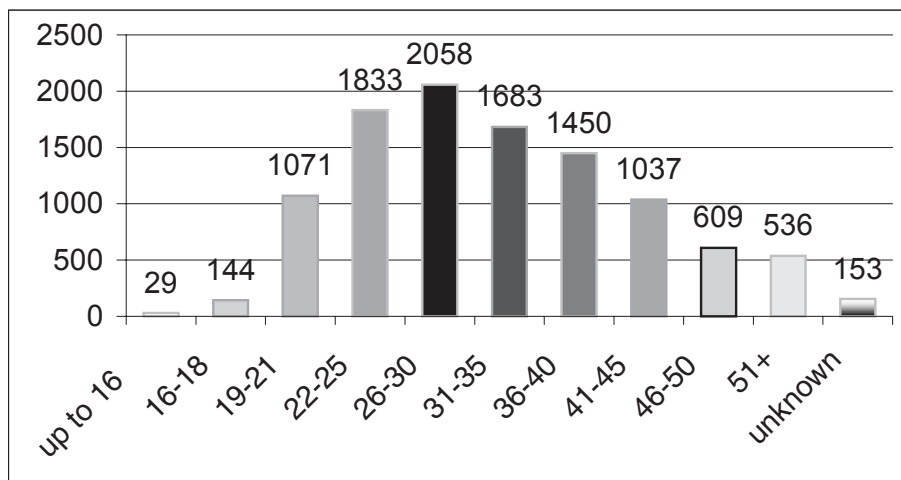
⁷⁶ Some of the sentenced offenders are kept for some time in detention centres - meant for pre-sentence detainees – while awaiting placement in the Israel Prison Service institutions. The figures include these as well.

15.6.4. The lengths of prison sentences served by inmates incarcerated in Israeli prisons (recorded on October 31), is shown in Graph 11.

Graph 11: Percentage of Total Inmates Serving Various Lengths of Prison Terms (on October 31, 2002) (Source: www.ips.gov.il)



Graph 12: Age Distribution of Inmates in Israel Prisons: (on October 31, 2002) (Source: www.ips.gov.il)



16. Overview and Current Trends in Criminal Justice

16.1. The earlier period in Israel's development in the 1950s and 1960s was characterized by a welfare-paternalistic approach to delinquency and justice – in particular, but not exclusively, in respect of juveniles. This period featured laws which developed welfare services, such as the Probation Service and other professions (psychiatrists, investigators for sex offences involving children, etc.) placing wide discretion with these professionals, as well as with the courts. At the same time there was some concern for due process in the adult criminal justice system, as reflected in the Criminal Procedure Law (first enacted in 1965). This was less true in the context of security offences, where the laws inherited from the British Mandate were retained – but even here, there were some reforms – notable of the provisions providing for administrative detention.

16.2. Since the 1970s policy makers have been concerned with the perception of increasing crime, especially involving violence and drugs, as well as organized crime, resulting in tougher provisions particularly in relation to evidence and sanctions, and in laws for the protection of vulnerable victims – especially women and children. (The latter reforms have often been promoted by voluntary associations.)

16.3. However, since the 1990s there has also been a “rights revolution”, resulting primarily from the enactment of the Basic Law: Human Dignity and Liberty, as well as from Israel's adherence to international human rights conventions and the activities of NGOs and an “activist” Supreme Court.

This has resulted in the enactment of new laws governing pre-trial detention and searches, and the establishment of a public defender system (currently in difficulties because of budgetary constraints). New policies and statutes may now be challenged under the Basic Law, which thus has a quasi-constitutional status.

As a result of this new orientation, concern for the protection of victims and children is now balanced by a concern for their rights. Thus a Victims' Rights

Law guarantees crime victims procedural rights (See section 12.) Similarly, juvenile justice legislation is being comprehensively reviewed in the light of the new orientation – and in particular as a result of Israel’s ratification of the UN Children’s Rights Convention.

At the same time, the provisions for special procedures to protect child witnesses from the traumas of the adversarial system continue to be expanded (sec.12.4 above), suggesting that traditional welfare concerns may still play a significant role in policy formulation - although these reforms may also be motivated by an expectation that they will facilitate convictions.

16.4. Public concern with crime in general appears not to have reached the level of some western countries, presumably because of the focus on terrorism and security issues. Perhaps for this reason, there seems to be no immediate pressure to introduce “three strikes”-type legislation, or to provide for the “waiver” of juvenile court proceedings to adult courts, which have been, for instance, features of the criminal justice system of the United States; nor even to adopt the softer type of interventionism introduced in England (curfew orders, behaviour orders, etc.). On the other hand, there is an ongoing concern that the almost unrestricted discretion which characterizes judicial sentencing leads to excessive leniency in many cases – resulting in periodic enactments of minimum sentences⁷⁷ . (A comprehensive proposal for structuring the sentencing system – the Goldberg Committee Report - seems to be gathering dust.)

16.5. There is also much public concern with sexual abuse and violence and particularly pedophilia. One of the many proposals for disclosing information on the release of prisoners serving sentences for such offences, has now been adopted: the employment of such offenders in occupations involving contact with children will be prohibited. Further, the criteria of “risk” or “dangerousness” are increasingly being adopted at various stages of the criminal process. Parliament is discussing a more comprehensive bill for the supervision and

⁷⁷ See section 9.8.10.

treatment of sex offenders to prevent recidivism. Early release from prison will require an expert's opinion on the degree of dangerousness of the offender and all sex offenders will be supervised in the community.

16.6. The concern with judicial leniency in relation to sex-related and violent and abusive crimes, coupled with the ongoing security problems, suggests that the current trend to prison overcrowding will be aggravated. Some minimum sentencing provisions have already been adopted for these offences. It may thus be difficult to resist pressures in favour of the privatization of prisons, given the current economic pressures. Moreover a tentative "flirtation" in some quarters with a more liberal policy in relation to drug abuse seems to have stalled, so the burden that tough drug policies place upon the penal system, seems likely to continue.

In some areas non-penal alternatives have been adopted and may be more effective than the criminal justice system. Examples are the financial penalties directed at drug offenders (see sec. 10.10.4-5 above) which may be implemented civilly, and the protection orders available in domestic violence cases (again, without the need for a criminal process). Similarly, the remedy provided by the recent anti-stalking law is a civil injunction against the "nuisance".

16.7. The development of "soft" alternatives such as community service (or "restorative justice" programmes, now being experimented with for juveniles), seem unlikely to affect the prison population – although the expansion of "service work"⁷⁸ may do so.

16.8. Prison overcrowding was substantially alleviated a few years ago by the release of security offenders, which followed in the wake of the Oslo Accords. Regrettably, further developments of this nature do not seem to be an immediate prospect at the time of writing. The increase in the numbers of security offenders from the West Bank and Gaza, now intensify the "population explosion" in the Prison Service. Police detention facilities too are severely

⁷⁸ See section 11.7.

overburdened. There are proposals to build some private prisons, that, if adopted, will be built and, perhaps, also administered by private agencies. The proposals have met with criticism, particularly on the part of the academic community.

16.9. Due to the expanded crime trend in the areas of white collar crime – fraud in various monetary institutions, and the increased criminal activity using the internet – the Ministry of Justice is working on the revision of laws, which at present are not wholly suited to these new types of crimes. As awareness regarding the damage incurred by victims of these crimes increases (whether within the country or elsewhere), these offenders may also receive stiffer sentences – including prison sentences.

16.10. Copyright violations⁷⁹ are also rampant, and have not been dealt with successfully by either the enforcement agencies or the prosecuting ones. The laws regarding illegal use of intellectual property are being revised and offences that were considered “contraventions” are being “upgraded” to the category of “felony” which, *inter alia*, will allow the police to use enforcement tools (for instance, wiretapping).

16.11. In 2002⁸⁰, the Commissioner of Police stated that the five major areas of crime that need to be addressed most vigorously by the criminal justice system and by the enforcement agencies are: trafficking in women, money laundering, drug trafficking and abuse, gambling and copyright violations. The crimes in these areas are being undertaken by organized crime rings. Some even believe that these crimes are being directed by persons who have connections to government. Therefore, it is thought that these crimes, if not dealt with efficiently, may jeopardize the very existence of Israel’s justice system.

⁷⁹ These include, for instance, unauthorized copying of music, discs, tapes and computer programmes, unauthorized use of computer programmes that have to be registered and paid for, and use of registered labels and logos on counterfeit merchandise.

⁸⁰ Report from a press conference given by the Police Commissioner on August 2002, as reported in the daily newspaper *Ha’aretz*, 14 August, 2002.

16.12. Many of the issues considered in this report derive from Israel's security situation. If and when the Palestinian conflict is resolved, the criminal justice system will have to cope primarily with two areas: (1) problems deriving from the nature of Israel's society as a multicultural democracy (e.g. orthodox and ultra orthodox versus secular citizens, ethnic conflicts, new immigrants versus veterans), and (2) problems such as those referred to in the previous paragraph – relating to the process of globalization.

References

Amir, M. (1998). "Organized Crime In Israel", In: : Friedmann, Robert R., (ed.), (1998). *Crime and Criminal Justice in Israel*, State University of New York Press.

Ben-Porat, Y. (1988). *Barrier to Chaos : Decisive Years in the Establishment of the Israel Police*, Israel: Ministry of Defense (Hebrew).

Bensinger, G. (1989) *Justice in Israel: A Survey of Criminal Justice*, Chicago: University of Illinois, Office of International Criminal Justice.

Bensinger, G. (1998). "Crime and criminal justice", In: Friedmann, Robert R., (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.

Central Bureau of Statistics (1981). *Victimization Survey 1979*, Special Series No. 664.

Central Bureau of Statistics (1983). *Victimization Survey 1981*, Special Series No. 729.

Central Bureau of Statistics (1993). *Victimization Survey 1990*, Special Series No. 937.

Central Bureau of Statistics (2002). *Victimization Survey 2001*, October (Hebrew only).

Einat, T. (1999). "How effective is criminal fine enforcement in the Israeli criminal justice system?" *Israel Law Review*, Vol. 33 (2), pp. 322-338.

Geva, R. & Efrati, T. (1995). *Community Policing Around the World*, Community Policing Unit, Israel Police. (Hebrew).

Geva, R. (1995), (ed.) *Report on Crime Prevention in Israel*, Presented to the 8th UN World Conference on Crime Prevention, Cairo, 1995.

Geva, R., (2002) "Crime Prevention: The community policing approach in Israel" In: Lab, S. & Das, D. (eds.) *International Perspective on Community Policing and Crime Prevention*, Prentice Hall.

Gimshi, D. (1999). *Community Policing in Israel and Around the World*, Community Policing Unit, Israel Police. (Hebrew)

Harnon, E. (1988) "Examination of children in sex offences – the Israeli law and practice." *Criminal Law Review*, pp.262-274.

Hasin, Y. & Horovitz, M. (1998). "Juvenile and adult probation in Israel", In: Friedmann, Robert R. (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.

Herzog, S. (2002). "Empirical analysis of motor vehicle theft in Israel, 1990-1997", *British Journal of Criminology*, Vol. 42 (4), pp. 709-728.

Horovitz, M. (1995) "Special projects in juvenile justice" In: Geva, R. (ed.), *Report to the Ninth UN Congress on Prevention of Crime and Treatment of Offenders*, Cairo, Egypt, 1995.

Horovitz, M. & Sebba, L. (eds.) (2000). *Drug Policy: War or Welfare?* Institute of Criminology, Jerusalem, (English summaries).

Israel Police, Annual Reports .

Israel Prison Service, Annual Reports.

Kadman, Y. (1995). "The law for the prevention of abuse of minors and the helpless", In: Geva, R. (ed.) *Report on Crime Prevention in Israel*, Presented to the 8th UN World Conference on Crime Prevention, Cairo, 1995.

Kremnitzer, M. (1998), "Criminal law in Israel", In: Friedmann, Robert R. (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.

Landau, S. F. (1998). "Crimes of violence In Israel: Theoretical and empirical perspectives", In: Friedmann, Robert R. (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.

Lernau., H. (forthcoming). "Reforms in detention laws in Israel", *Israel Law Review*.

Nirel, R., Landau, S.F., Sebba, L. & Sagiv, B. (1997). "The effectiveness of service work: The analysis of recidivism", *Journal of Quantitative Criminology*, Vol. 13, pp. 73-92.

Ohana, D. (1998). "Sentencing reform in Israel: The Goldberg Committee Report", *Israel Law Review*, Vol. 32, pp. 591- 643.

Rahav, G. (1998). "Criminal statistics" In: Friedmann, Robert R., (ed.), *Crime and Criminal Justice in Israel*, State University of New York Press.

Sebba, L. (1970). "Penal reform and court practice: The case of the suspended sentence", In: Drapkin, I. (ed.) *Scripta Hierosolymitana*, Vol. 21, *Studies in Criminology*, Jerusalem, pp. 133-170.

Sebba, L. (1979). "Amnesty - a quasi-experiment", *British Journal of Criminology*, Vol. 19 (1), pp. 5-30.

- Sebba, L. (1996). "Sanctioning policy in Israel – an historical overview", *Israel Law Review*, Vol. 30, pp. 234-275.
- Sebba, L. (1999). "[Prison Labour in] Israel", In: Dunkel, F. & VanZyl Smit, D. (eds.), *Prison Labour: Salvation or Slavery? International Perspectives*, Dartmouth, Aldershot, pp. 115-144.
- Sebba, L. (2000). "Victims' rights and legal strategies: Israel as a case study", *Criminal Law Forum*, Vol. 11., pp. 47-100.
- Sebba, L. & Horovitz, M. (1984). "Israel", In: Klein, M. (ed.), *Western Systems of Juvenile Justice*, Sage Publications, Beverly Hills, pp. 97-119.
- Shadmi, E. (1998). "Police and police reform in Israel: The formative role of the State", In: Friedmann, Robert R., (ed.), *Crime and Criminal Justice in Israel*, State University of New York Press.
- Sharvit, R. & Garbeli, S. (2001). "An offender-victim mediation project for young offenders", *Innovation Exchange*, No. 9, Ministry of Public Security, Israel.
- Shavitt, G., (1998) "The Israeli prison system", In: Friedmann, Robert R., (ed.), *Crime and Criminal Justice in Israel*, State University of New York Press.
- Sheleff, L. (1998) "Punishment, prisoners' rights and pardons", In: Friedmann, Robert R., (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.
- Shoham, S. & Sandberg, M. (1964). "Suspended sentences in Israel", *Crime and Delinquency*, Vol. 10, pp. 74-83.

Weiss, S. (2002). In: internet site of the National Anti-Drug Authority: www.antidrugs.org.il

Weisburd, D., Shalev, O. & Amir, M. (2001). *Community Policing in Israel: A National Evaluation*, Bureau of the Chief Scientist, Ministry of Public Security, Israel. (English summary)

Wozner, Y. (1998), "Rehabilitation efforts in the Israel Prison Service", In: Friedmann, Robert R., (ed.) *Crime and Criminal Justice in Israel*, State University of New York Press.

Yanay, U. (1994). "Assistance to civilian casualties of hostile actions", *Social Security, Journal of Welfare and Social Security Studies*, Vol. 4.

Web sites:

Adalah: <http://www.adalah.org>

Association for the CRI: <http://www.acri.org.il>

Be'Tselem: <http://www.betselem.org>

Bizchut: <http://www.bizchut.org.il>

Central Bureau of Statistics: <http://www.cbs.gov.il>

Israel Anti Drug Authority: <http://www.antidrugs.org.il>

Israel Police Service: <http://www.police.gov.il>

Israel Police: <http://www.police.gov.il>

Israel Union For Environmental Defense : <http://www.iued.org.il>

Kav La'Oved: <http://www.kavlaoved.org.il>

Na'amat: <http://www.naamat.org.il>

National Council for the Child: <http://www.site-effect.co.il/shalom/>

Wizo: <http://www.wizo.org>

Additional Sources:

There are official translations into English of the Penal Law and the Criminal Procedure Law in the Laws of the State of Israel, translated by the Ministry of Justice. Later amendments must be located in the volume of the laws in accordance with the year in which the amendment was adopted. The recent revision of the Preliminary Part and General Part of the Penal Code, see *Israel Law Review*, Vol. 30, 1996, pp.5-35. Much of the report of the Goldberg Committee on the reform of the sentencing structure appears as an appendix to the article by Ohaha (see above).

See Also:

Bein, D. (1995) "Criminal Law" In. Zamir, I. & Colombo, S. (eds.) *The Law of Israel : General Survey*, University of Haifa, Israel.

Feller, S.Z. & Kremnitzer, M. (1966). "Proposal for a general part of a new Penal Law – introduction", *Israel Law Review*, Vol. 30, pp.36-61.

Fishman, G., Kraus, V. & Lever, H. (1982). "Factors affecting juvenile court decision in Israel: A multivariate approach", *Sociological Inquiry*, Vol. 52(4), pp. 292-305.

Friedmann, R. R. (compiler.) (1995), *An Annotated Bibliography of English Language Publications, 1948-1993*, Westport, CT, Greenwood Press.

Friedmann, R. R. (1998), (ed.) , *Crime and Criminal Justice in Israel: Assessing the Knowledge Base Toward the Twenty-First Century*, State University of New York Press, Albany, USA, SUNY Series in Israeli Studies.

Geva, R. (1995), (ed.) *Report on Crime Prevention in Israel*, Presented to the 8th UN World Conference on Crime Prevention, Cairo.

Haberfeld, M. & Herzog, S. (2000). "The criminal justice system in Israel", In: Ebbe, O. (ed.), *Comparative and International Criminal Justice Systems: Policing, Judiciary and Corrections*, New York: Butterworth /Heinemman.

Herzog, S. (2000). "Evaluating the new civilian police complaints board in Israel", In: Goldsmith, A. & Lewis, C. (eds.), *Civilian Oversight of Complaints Against Police: Governance, Democracy and Human Rights*. Oxford: Hart Publishing Co.

Herzog, S. (2002). "Does proactive policing make a difference in crime? An implementation of problem-solving policing in Israel", *International Journal of Comparative and Applied Criminal Justice*, Vol. 26 (1). pp. 29-52.

Kannai, R. (1996). "The judge's discretion in sentencing: Israel's Basic Laws and Supreme Court decisions", *Israel Law Review*, Vol. 30, pp.276-315.

Landau, S.F. & Sebba, L. (1991). "Victimological research in Israel : Past and current perspectives ", In: Kaiser, G., Kury, H. & Asbrecht, H. J. (eds.) *Victims and Criminal Justice*, Max Planck Institute for Criminal Law and Criminology, Freiburg, Vol. 50, pp. 179-205.

Zamir, I. & Zysblat, A. J. (eds.) (1996) *Public Law in Israel*, Oxford, Clarendon Press, UK.

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Leslie Sebba, Hebrew University of Jerusalem
Menachem Horovitz, Hebrew University of Jerusalem
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