Date: March 15, 2021

**Re: The Government of Israel's Contribution to the Committee on the Rights of Persons with Disabilities Outline for the Preparation of a General Comment on Article 27**

**General**

1. Israel welcomes the important initiative of the distinguished Committee to address the issue of employment in its future General Comment, as it is one of the most significant domains in the life of every person, and especially persons with disabilities.
2. The right to employment goes far beyond earning a salary and living in dignity. Employment enables persons to contribute to society and allows them to develop and to strive toward self-fulfillment throughout life, as well as have the opportunity to influence the lives of others and impact the society they live in. Inclusive work places can reduce stigmas, change attitudes and promote inclusion and full participation in all areas of life.
3. Israel has taken many steps to promote the employment of persons with disabilities. The statistics show a steady increase in employment rates, although gaps still remain, and of course the COVID-19 pandemic has brought along new challenges in this area.
4. As part of its longstanding commitment to fulfill its obligations according to the Convention, and to continue its fruitful cooperation with the Committee in an open and constructive dialogue, the State of Israel welcomes the opportunity to comment on the outline for the preparation of a General Comment on Article 27 of the CRPD (the right to work and employment).
5. The following remarks reflect Israel's major observations and concerns arising from the draft outline. They do not preclude the existence of other issues of concern arising from the Committee's interpretation of the obligations of States Parties under the Convention. In compiling these observations, the relevant government ministries were consulted, and they were drafted in collaboration with the Commission for Equal Rights for Persons with Disabilities.

***Section 2(a)(ii) - Interpretation of Article 27.1(a) - Discrimination in the workplace, including workplace segregation***

### Prohibition of Discrimination and Required Adjustments

1. Regarding discrimination in the workplace (see also Section 3(b)(1)), the following is a short description of Israeli legislation in this context, that we would like to present as suggestions for best practice.
2. Section 8(a) of the *Equal Rights Law* *for Persons with Disabilities Law* 5758-1998 (hereinafter: "the *Equal Rights Law*") prohibits employment discrimination against a person with disabilities, by reason of her/his disability. Discrimination is prohibited in hiring, employment terms (including payment), promotion, vocational training or continuing education, setting irrelevant conditions, and dismissal. The prohibition to discriminate in employment applies when a person with a disability is qualified for the job or the position in question. Under Section 8(c) of the *Equal Rights Law*, any act or any omission of an act, made necessary by the substantive requirements of the position or job, is not deemed to be discrimination.
3. Section 8(d) of the *Equal Rights Law* prohibits discrimination against family members of persons with disabilities (e.g. spouse, parent or child) who act as their care-taker, as well as against a person who is regarded as having a disability even if she/he has none, or against someone who has previously had disabilities. The inclusion of such groups is important, as they, too, are liable to encounter discrimination in the labor market.
4. Recognizing the great need for adjustments in order to maximize workplace inclusion of persons with disabilities, Section 8(e) defines discrimination so as to include the failure to make adjustments required by virtue of the special needs of a person with disability, that facilitate her/his employment. Note that an employer is not obligated to implement adjustments in the workplace if they affect the essence of the job or if they would impose an "undue burden" in light of a number of factors, including the: cost and nature of the adjustment, size and structure of the business, scope of activity, number of employees, composition of the staff and existence of external or State sources of funding for the adjustment.
5. Adjustment measures in the workplace may take various forms. For example, they may be physical adjustments, such as the installation of a lift, an accessible lavatory or a ramp, or the adjustment of a personal work station, including the equipment or provision of auxiliary tools and aids; or they can be non-physical adjustments, such as a change in work procedures, adjustment of the job requirements, enabling of flexible work hours, adjustments in instruction and training, etc.
6. According to Section 12 of the *Equal Rights Law*, a person who suffered from discrimination in employment is entitled to the protection of the Law and may sue in the Labor Courts independently, or be represented by the representative employees' organization at the workplace, by the Commission for Equal Rights for Persons with Disabilities or by an organization that advances the rights of persons with disabilities, provided she/he consents thereto. The Commission provides legal aid to persons who have experienced discrimination, assisting in employer-employee mediation proceedings and in filing actions in the relevant courts. The Commission receives and deals with hundreds of complaints each year, provides information and legal assistance and takes selected cases of discrimination in the workplace to the courts. We believe that establishing such a body in every country is essential in protecting and promoting the rights of persons with disabilities.

**Work Capability Assessments (also Section 3(b)(1))**

1. Since situations can arise in which work capability assessments can protect persons with disabilities against discrimination, exclusion and stigma (e.g., bringing a professional evaluation attesting that an individual can perform the job, while the employer claims s/he is unfit), we recommend that the Committee address this issue.
2. Additionally, we suggest further elaborating on basing assessments on the social-functional model, rather than medical evaluations. Of course, we agree that employers should not conduct work capability assessments only for persons with disabilities.

**Sheltered Employment**

1. Israel has established several types of settings that are oriented towards persons with disabilities, including sheltered employment. Some of these settings provide rehabilitation prior to the individual's inclusion in the open work market. Additionally, there are workplaces that employ mainly persons with disabilities for a regular wage. Israel proposes that the Committee address each of these models separately, and not as a single overarching definition, and perhaps, if possible, clarify which environments the Committee deems as a violation of the Convention, and how states should act on this issue henceforth.
2. We recommend clarifying that places of employment defined as rehabilitative should have several elements, such as: guidance for job search in the general employment market, continuous support for persons in realizing their full potential, clear rehabilitation goals for each person, meaningful employment opportunities, the possibility to choose, and the protection of the social benefits for persons in these settings. The aim should be for rehabilitative workplaces to be disability inclusive insofar as possible, and not segregated.

***Section 2(a)(iii) Interpretation of Article 27.1(b) - The Right to Equal Remuneration for Work of Equal Value***

1. It is suggested that the Committee clarify in this context, whether adjusted minimum wage schemes could be viewed as a solution for some persons with disabilities with significantly lower work productivity, as this could allow them to be included in the labor market.

***Section 2(a)(vi) Interpretation of Article 27.1 (c) - Labor and Trade Union Rights on an Equal Basis******with Others***

1. We propose adding a recommendation that workers unions and trade unions actively seek to recruit members with disabilities and to promote their rights.
2. As an example of best practice in the field of collective labor relations, we would point to the Collective Agreement signed in 2014 between Israel's major trade union, the "Histadrut", and Economic Organizations Bureau (umbrella organization of employers) (2014) (and thereafter extended by an executive Extension Order to the entire private sector) defining appropriate representation which employers are required to promote under Section 9 of the *Equal Rights Law* (see paragraph 24(a) below) as 3% of persons with disabilities in the workforce, where employers of 100 or more are concerned, and requiring such employers to appoint an officer charged with promoting the employment of persons with disabilities in the workplace.

***Section 2(a)(vii) Interpretation of Article 27.1 (d) and (j) - Access to Inclusive Education and Inclusive Vocational Training***

1. We would like to emphasize the importance of the inclusion of persons with disabilities in general vocational training, and to recommend ensuring that there be no funneling or designated vocational training for persons with disabilities in certain fields only.
2. We suggest adding emphasis on the importance of investing resources in order to enable inclusive and equal education for persons with disabilities.

***Section 2(a)(viii) Interpretation of Article 27.1 (f) - Self-employment, Microfinance, Business Development Services***

1. We note the need to create safety nets, as well as ongoing guidance and support systems for persons with disabilities in regards to self-employment, so as to prevent business failure, accumulation of debt, and widening of the financial gaps between persons with disabilities and persons without disabilities.
2. It is recommended to consult with persons with disabilities who operate as business entrepreneurs and to involve them in setting up programs for encouraging entrepreneurship.
3. We would like to emphasize the need to encourage the development of designated programs for entrepreneurship and business management for persons with disabilities. As an example of best practice, we note the program WinWork, a training project for entrepreneurs with and without disabilities, established by persons with disabilities which is financially aided by the Government. The WinWork community includes senior Israeli industry executives, as well as beginning entrepreneurs, all of whom share their knowledge and experience, working to make the Israeli industry more accessible for person with disabilities.

***Sections 2(a)(ix) and (x) - Interpretation of Article 27.1 (g) and (h) - Employment of Persons with Disabilities in the Public Sector******and******Affirmative Action Programs and Special Attention to Persons with Disabilities who are Particularly Excluded from the Labor Market***

1. We wish to share, as best practice, Israeli legislation on affirmative action in employment, which emphasizes concrete actions and obligations of public and private sector employers, with a view to substantially increasing representation of persons with disabilities:
2. Section 9 of the *Equal Rights Law* requires an employer who has 25 or more employees to take action to promote appropriate representation of persons with disabilities in the workforce.
3. Amendment No. 10 (2016) to the *Public Bodies' Transactions Law* 5736-1976 provides an incentive to comply with Section 9 of the *Equal Rights Law*, in requiring of a provider that enters into an agreement for the provision of goods or services with a public entity (such as a government ministry, local authority, statutory or government corporation) to demonstrate compliance with Section 9; and a provider who employs 100 or more persons is also required to commit to filing details with, and receiving guidance from the relevant authorities in this regard.
4. The *Civil Service (Appointments) Law* 5719-1959,established the duty of appropriate representation for persons with disabilities in the Civil Service, providing two main employment promotion tracks:
5. Allowing preference in hiring and promotion to persons with disabilities, over other candidates, provided they have similar qualifications to those of the other candidates;
6. Designating certain positions for the employment of persons with disabilities provided they are qualified for the job. Such designated jobs include academic and professional positions with potential for promotion and growth within the Civil Service. The designation of specific jobs for person with disabilities are an effective tool for promoting employment in the Civil Service, and thus we suggest adding this practice to the General Comment.
7. Amendment No. 15 to the *Equal Rights Law,* which entered into force in January 2017, promotes appropriate representation in the public sector. This Amendment defines appropriate representation as at least 5% of persons with significant disabilities in the workforce of a Government Ministry, local authority or statutory corporations with more than 100 employees. Local authorities and statutory corporation who do not achieve this goal are obligated to prepare and post on their website an annual work program designed to promote the employment of persons with significant disabilities in her/his workforce including affirmative action and outreach measures as detailed in the Amendment. The Commission for Equal Rights for Persons with Disabilities is authorized to issue affirmative action orders to public sector employers covered by the Amendment, who do not comply with their obligations to prepare and publish their annual program, or who do not implement their program. Perhaps the most innovative aspect of Amendment No.15 to the *Equal Rights Law* is the special mechanism it creates for data cross-checking based on administrative data, which with a minimum violation of privacy, gives employers a clear indication as to the extent they have achieved appropriate representation goals. In addition, every public service employer with 25 or more employees has an obligation to appoint an Equality Officer, charged with promoting the employment of persons with disabilities. The Amendment also gives authority to the Civil Service Commissioner to take enforcement action with a view to achieving the 5% goal within the civil service.

***Section 2(a)(xii) Interpretation of Article 27(k) - Return to Work Programs***

1. We suggest that the Committee consider the issue of employment termination of persons with disabilities during downsizing processes, and the option to take into account issues of maintaining appropriate representation of persons with disabilities at the end of such processes.

***Section 3(b)(2) - Provision of Reasonable Accommodation***

1. As best practice, in order to ease the financial burden of such accommodations on the employers, we wish to share Israel's best practice on this issue:
2. *The Equal Rights for Persons with Disabilities (State Participation in Financing Adjustments) Regulations* 5766-2006 allow an employer of an employee with disabilities, or an employer who intends to hire a person with disabilities, to receive government participation in funding of adjustments required in the employee's workplace environment, as well as at her/his home, if working from home. Such funding is a key tool in encouraging employers to employ persons with disabilities. The reduction in costs helps to remove a major barrier to employment by employers who fear the high extra costs entailed in employing persons with disabilities.
3. In Israel there is also a procedure put in place for lending accommodation equipment to employers for use when an employee with disabilities starts work, and until she or he are permanently employed.
4. Israel wishes to conclude by emphasizing the importance of this topic. It is our responsibility, as individuals, society and governments, to work together with persons with disabilities and their representative organizations, to identify areas where we need to focus and take measures to ensure equal access to work, for all. This is a necessary step in our shared path towards achieving inclusive growth.
5. As evident by this document, the promotion of the rights of persons with disabilities is a high priority for the State of Israel. This promotion is done vigorously by the Government and relevant Ministries of Israel, and is also reinforced by the work of the Permanent mission of Israel in Geneva. Throughout the year Israel supports and promotes resolutions, statements and events on these issues and calls for including inclusive language in resolutions. Israel is a member of the GoF on the CRPD, GoF of the Charter on Inclusion of Persons with Disabilities in Humanitarian Actions and a Member of the HRC's Task force on Accessibility and its GoF.
6. Israel intends to continue to engage with the Committee as it proceeds with the General comment on Article 27 of the Convention.