



February 23rd, 2010

To:

Ministers, MKs, Ministry of Justice

Dear ,

Re: Bill for the Duty of Disclosure for Someone Supported by a Foreign Political Entity, 5770 – 2010 – Position Paper

We hereby respectfully, submit to you our position regarding the **Bill for the Duty of Disclosure for Someone Supported by a Foreign Political Entity, 5770 – 2010** which at present is being advanced in the Knesset.

The stated intention of the bill before us is the promotion of transparency. We wish to note already at the outset that we support the promoting of this objective and view with utmost importance the maintainance of transparency in the public conduct of various bodies, including registered societies, regarding all aspects of their operations, including their aims, activities, supporters and donors.

A reading of the bill, however, reveals that whilst its title declares transparency, its essence is completely different. This is not only because the transparency has already been achieved through existing legislation (and its amendments over the last two years), but also because the bill before us implements its purpose in a selective manner. This selective implementation, along with other aspects of the bill, raise the concern that the passing of the bill will have a serious and detrimental effect on the freedom of association in Israel, and will add Israel to a very dubious list of countries in which civil society organization do not enjoy freedom of operation. It will render meaningless the registration of civil socitey organizations as recognized organizations. It will cause confusion between the [political] Party Registrar and the Registrar of Associations. For hundreds of civil society organizations that work in areas of environemnt, culture and

health, human rights, social change, and more, [the law] will cancel their status of the Public Institution (as defined in the tax code).

It must be noted that current law already requires public institutions, including NGOs (*amutot*) to be transparent in their conduct, including with respect donations which these bodies receive from all and any sources, as well as from foreign state or government entities – and this is as a result of a recent amendment to the Societies' Law (Amendment No. 11 from 2008). Even previously, the NGO Regulations, 5763 – 2002 required that organizations report any donation, from any entity, exceeding the sum of NIS 20,000. Furthermore, pursuant to Section 36A (a) of the NGO Law, [NGOs] have a particular and separate duty to report on donations from a “foreign state entity.” [We would] further note that receiving of donations from prohibited sources (such as an enemy state) or use of funds for prohibited purposes – have long been forbidden and punishable by law under other laws.

We wish to caution against misuse of (purported) transparency and reporting mechanisms for the purpose of negatively impacting the legal and legitimate activities of individuals, groups or bodies of various sorts; against utilizing these tools to eliminate and silence political or ideological opponents – whether from the left or from the right; and against discriminatory utilization, that singles out, without legitimate and reasonable cause, particular segments of the population or particular activities. These important principles must be a guiding light to legislators dealing with legislation such as this bill, along with the relevant fundamental principles in this matter that must be protected – freedom of expression, freedom of association and equality before the law.

One must also remember that the existing law, as well as this bill, permit the receiving of donations from foreign government entities. Donations of this sort have already been routinely received for many years by Israeli organizations and NGOs, including governmental bodies, municipal bodies and civil society organizations. vien, the law permits civil society to advocate for policies changes and to influence public opinion regarding the essential and important activities in a democratic regime. The selective wording of the bill as well as the unprecedented sanctions it prescribes, raise the concern that the bill does not concern merely transparency, but that rather this is an attempt to effectively prevent the activities of civil society in Israel.

Below are our comments on the bill in accordance with the sections of the law:

1. **The Framework of the Bill (the Bill's Name)** – Insofar as matters relate to the activities of a registered NGO, amendments and schedules must be made to the report obligation relating to donations **within the framework of existing legislation that already addresses the subject**, in such a way that avoids duplication of reporting and requirements, and maintains legislative coherency in this area. The wording of this bill does not consider the material differences between an individual and a registered organization [NGO] and all that this implies regarding the nature of registering [as an NGO] and the legal obligations already required of NGOs. Thereby be it proposed that insofar as an amendment is necessary, it will be implemented within the framework of the NGO Law, 5740 – 1980, which regulates this issue, and not as a new and separate law.
 2. **For Section 1 – the Definition of “Supported”** – The requirement of private, non incorporated, individuals to report legitimate social change activities, can effectively silence legitimate critical voices in a democratic society, and therefore, it is inappropriate to impose such obligations beyond what is already established in the law regarding private individuals. Irrespectively, **the [State] must distinguish between the reporting requirements of individuals and those of NGOs, whose [requirements] are already regulated in the NGO Law.** Insofar as individuals are concerned – should it be decided to impose requirements—[the State] must examine whether the existing reporting requirements are sufficient, and, should changes be necessary, the appropriate legislation should be identified.
 3. **For Section 1 – The definition of “Political Activity** – the definition is broad and vague. The way ‘activity’ is defined in the bill, includes any activity for social change of almost any sort (except activities in the area of charity and humanitarian aid), as well as any activity dealing with the defense of human rights. This is because these activities are intended, by their nature, to influence public opinion or to influence a certain entity of the governmental authorities in order to bring about the sought after change. It should be noted that activities for social change or activities to advance human rights, are not partisan activities affiliated with a political party. Activists and organisations across the political spectrum take part in activities of this sort, with the goal of bringing about a change in government policies in a variety of areas, with each organisation acting in accordance with its own world view and its own civil aims. Thus, for example, [organizations work for] policy changes in the issue of housing, education, labour, health, etc. In the area of environmental justice,
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[the work on] issues of the environment, development, pollution, etc. Surrounding the issue of equality relating to various sectors of the public, [issues include] immigrants from various countries, the Arab citizens of the country, women, migrants workers or refugees, and so on and so forth. All of this is democratic civilian activity as distinguished from partisan political activity in the political-party sense. Due to this material distinction, we cannot accept the broad vague wording, which presently appears in the proposed legislation for the definition of “political activity”. **In the spirit of promoting transparency, we propose that the legislative provisions not be limited to activity of a certain sort but rather apply equally and transparently vis-à-vis any activity (see section 5 below). Therefore, there is no need at all for this restrictive, vague and limited definition.**

4. **Section 2 – the Registrar** – The Registrar of NGOs already handles the NGO reporting regarding donations received. Duplication of records must be avoided, as this it is misleading and also wasteful of state resources. Moreover, the referral to the Registrar of Political Parties is not in accord with our position in Section 3 above, by which this does not constitute partisan political activity, but rather activity for policy change in Israel. **The Registrar of Political Parties should not be involved in registration regarding transparency of activities of NGOs in Israel.**
 5. **For Section 3 – Registration with the Registrar** – **In the spirit of promoting transparency it is proposed that reports apply to all donations (from the amount already presently set out in the law, and above) and not only to donations from a “foreign state entity.”** As the declared intent of the bill is the promotion of transparency – that is to say, to expose before the public in Israel the sources of donations – there is no substantial justification to limit the reporting to certain donations only. There the public has equal interest in the identity of donors of various sorts, including private, public and governmental donors. **Therefore, it is proposed (where the present law does not anyhow require this) to make the requirement for transparency (should it be so decided) apply to all of the said donations.**
 6. **For Section 4 – Application for Registration** – should the report relate to registered NGOs, the required details in the section, the aims as well as personal details of the activists, are reported, by law, to the Registrar of NGOs; **there is no need for further or separate registration.**
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7. **For Section 6 – Filing of Reports (Frequency)** – There is no need to create an unreasonable administrative burden in the form of immediate reports. **The frequency of the reporting in accordance with the relevant laws is once a year and it is a reasonable frequency that serves well the balance between the goal of transparency along with preventing needless complications and red tape, which may hinder the ability of organizations to operate, and especially third sector [civil society] organizations.**
8. **For Section 8 – Filing of Reports (to whom are reports submitted)** – reports as detailed in this section are filed with the Registrar of NGOs under the existing law, **therefore there is no need for double reporting.**
9. **For Section 9 (b) – “Transparency”** – The practical result of this instruction is the “marking” of the speaker and his words as illegitimate or as being tainted. Moreover, in light of other reporting duties (in publications and on the internet), this is an unreasonable burden. This duty is onerous to the extent that [it threatens] to silence these critical voices coming from across the political spectrum, which are so important for Israeli democracy. Moreover, this is a decree with which it is difficult to comply—failure to note a matter in any deliberations and/or any meeting, even if it is a singular occasion, and even if all other duties under the law have been complied with (reporting to the Registrar, publication, indication on documents, etc.)—will result imprisonment and heavy fines. **This section is unprecedented in its severity.** It is sufficient to comply with the transparency in accordance with the existing standards, which are already relatively far more reaching than is acceptable regarding reporting obligations of civil society organizations.
10. **For Section 10 (b) – Public Institution** - **These are far reaching provisions, which revoke a public institution's status as such due to its engagement in policy change.** There is no connection between this provision and transparency - the stated objective of the law. As the law permits the receipt of donations of this sort as well as activities of this sort – **there is no reason to spoil the status of a public institution due to its said activities.** The activity is not defined under the law as political activity in the political-party [partisan] sense and it must not be treated as such. We wish to note that the ramifications of the provision are very far reaching: Many public bodies in Israel – such as universities and other educational institutions, hospitals, environmental and social organisations, government offices, local authorities, etc. – are supported by foreign countries and/or various private
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supporters, and in the framework of their actions there is activity for policy change and efforts to influence public opinion (see for example the law clinics at law faculties, or activities and involvement of health institutions in advocating for changes in public health policies). The implication of this section is the revocation of [the organizations'] status as public bodies, with all that entails vis-à-vis the tax code. **This is a far reaching move that cannot be understood other than a move intended to limit the support for public bodies from certain sources and to silence their voices.** This is contrary to the declared objective of the bill, as detailed in the explanatory notes – which is only to ensure transparency of financing sources of the various bodies and of their aims, but not to limit the donations or the activities.

11. For Section 12 – Personal Liability – There is no need to impose personal liability, in the context of legislation of this sort, beyond the liability set out in the NGO Law. In any event, should liability be imposed in the vein of that set out in the NGO Law, it must be limited to the organizational responsibilities, such as registration with the Registrar, the filing of reports, etc., and not for individual [or personal] responsibilities.

12. For Section 13 – Punishment – Given that we are considering legal activity, including legal donations, and due to the fact that, at most, this will concern non-compliance with regular reporting requirements for the purpose of transparency – **the punishment of imprisonment is draconian.** In the NGO Law (Section 64A(a)), the legislature refrained from imprisonment as a punishment for the dozens of requirements set out in the law, **and there is no substantial justification for the imposition of imprisonment in the context of furthering transparency in thorough reporting.** As stated above, receipt of prohibited donations or carrying out prohibited activities is anyhow addressed by other criminal legislation. The existing NGO Law and the NGO regulations include details of sanctions, which the Registrar of Societies is entitled to take, including the imposition of fines on an organization that is in violation of its reporting obligations under the law. The severity of the relevant punishment in this issue, must equal to or lesser than the severity of punishment already prescribed for similar reporting issues.

This bill selectively and unequally harms the ability of civil society organizations of all kinds and in all areas of life to fulfil their duties and their purpose in a democratic state. The very nature of civil society activity is critique, protest and the

fostering of an open and free public debate, with the legitimate effort to influence public opinion and to bring about a policy change.

[The State] should not partake in harming such activity. Moreover, we call on you to reject this bill and to ensure the continued essential activities of civil society in Israel.

Yours Faithfully,

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