



Israel: New Discriminatory and Anti-Democratic Legislation

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In this short paper, Adalah draws attention to 10 new pieces of legislation – 5 newly-enacted laws and 5 currently-proposed bills – before the Israeli parliament, the Knesset. This new legislation contains discriminatory and/or anti-democratic provisions that are liable to severely harm the human rights of Palestinian citizens of Israel and Palestinians living in the 1967 Occupied Palestinian Territory (OPT), as well as those who defend their rights. The legislation is divided into two categories: (A) Legislation related to the latest, ongoing round of violence in Israel and the OPT that began in late September 2015; and (B) Legislation targeting human rights organizations and supporters of the Boycott, Divestment and Sanctions (BDS) movement.

A. Legislation related to the ongoing round of violence in Israel and the OPT

1. Law imposing a mandatory minimum sentence on convicted stone-throwers¹

Enacted by the Knesset on 2 November 2015 as Amendment No. 120 to the Israeli Penal Code

This new law imposes mandatory minimum prison sentences on persons convicted of stone-throwing or similar acts. The minimum sentence is set at “one-fifth of the maximum sentence” – either 10 or 20 years – which equates to either two or four years. Mandatory minimum sentences fail to account for the individual circumstances of each case. The new law essentially targets Palestinians (the alleged stone-throwers) who are either citizens of Israel or residents of East Jerusalem, and who are all brought before Israeli civil courts. The law is officially a “temporary order” and is valid for three years. Very few Israeli criminal laws contain mandatory minimum punishments as they remove judges’ discretion in imposing punishment; thus, this new law is a severe measure. In addition, although the majority of the stone-throwers are young people, the law does not allow judges to give reasonable weight to the option of rehabilitation.

The new law follows the earlier enactment of a related law that added a new 10-year maximum sentence for persons convicted of stone-throwing or similar acts *without requiring proof of intent to cause harm*.² The pre-existing maximum sentence of 20 years applies in cases in which the courts rule there was such proof of intent.

2. Law revoking child allowances from parents of children convicted of security offenses³

Enacted on 2 November 2015 as Amendment No. 163 to the National Insurance Act

This new law strips child allowances from the parents of a child convicted of criminal charges that are classified as security offences. It targets Palestinian minors who are either citizens of Israel or residents of East Jerusalem, and who are all brought before Israeli civil courts.

¹ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf.

² Amendment No. 119 to the Israeli Penal Code, which came into effect on 29 July 2015.

³ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf.

The National Insurance Law states explicitly that child allowances belong to the children, even if their parents actually receive these payments. By stripping child allowances from the child and his/her parents, the law creates arbitrary discrimination between minors who are convicted of security offenses (mainly Palestinians), and other minors convicted of other criminal charges, in breach of the fundamental principle of equality.

3. Law imposing fines on the parents of stone-throwers and others⁴

Enacted on 2 November 2015 as Amendment No. 20 to the Youth (Care and Supervision) Law

This new law allows for direct fines to be imposed on the parents of minors convicted of committing an offense listed in the Israeli Penal Code. It provides the offense of stone-throwing as an example, and this fact, combined with its timing during the current round of violence, gives rise to fears that it will be deployed in a discriminatory manner against the parents of Palestinian children – citizens of Israel or residents of East Jerusalem – convicted of stone-throwing and similar acts who are brought before Israeli civil courts.

The law violates the most basic principles of criminal law: that the imposition of criminal responsibility and punishment must be specific and apply solely to the person who committed the offense. Punishing the parents violates the prohibition on collective punishment, since there can be no ‘vicarious liability’ on parents for the acts of their child.

4. The “Stop-and-Frisk” Law⁵

Enacted on 7 February 2016 as Amendment No. 5 to the Power for Maintaining Public Security Law

The law expands the powers of the police to stop and frisk individuals. Previously, the police were permitted to stop and frisk a person only where there was a reasonable suspicion that he or she was carrying a concealed weapon or other object intended for use in criminal activity. The new law allows police to stop and frisk people in case of a reasonable suspicion that he or she is about to commit a violent act. It therefore significantly expands police powers to stop and frisk individuals based on far more general suspicions. The law also authorizes police to frisk any person present in an area declared temporarily as a “stop-and-frisk zone” by a district chief of police, for reasons including potential security threats [suspicion of terrorism]. The law was originally tabled in 2011 but did not pass into law at that time. It was revived during the recent round of violence. This context adds to fears that the law will create greater scope for the discriminatory use of these sweeping powers by the police to conduct arbitrary and invasive searches of Palestinians, particularly in East Jerusalem, as well as against members of other marginalized groups.

5. Order stripping essential procedural safeguards from “security” detainees⁶

Enacted on 28 December 2015 as Amendment No. 4 to the Criminal Procedure Law (Detainee Suspected of Security Offence) (Temporary Order)

The order re-extended a law from 2006 that removes a number of essential procedural safeguards to detainees suspected of security offenses that are provided to criminal suspects.⁷ The law is

⁴ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315850.pdf.

⁵ The text of the law (in Hebrew): http://www.nevo.co.il/law_html/Law01/999_469.htm.

⁶ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_319021.pdf (p. 324).

⁷ For more information on the law, see Rima Ayoub, “The Criminal Procedure Law and the Absent ‘Security Suspect’: More Time to Interrogate and Torture,” *Adalah’s Newsletter*, vol. 105, June 2013:

officially classified as a “temporary” order, but has now been in effect for close to 10 years. Its validity was due to expire in December 2015, but the new order extended it for a period of one year, until 31 December 2016. The order allows for the detention of a security suspect for up to 96 hours before being brought before judge, versus 48 hours in other cases, and for up to 35 days without being indicted, versus 30 days in other cases. The order also allows for the suspect not to be made present at hearings to extend his or her detention or in appeal hearings against the detention if the interruption of an ongoing investigation to attend the hearing is deemed highly likely to thwart efforts to safeguard human life. It also allows security suspects to be denied access to a lawyer for up to 21 days, versus 48 hours in other cases. While neutral on its face, in practice the law is used almost exclusively against Palestinians, who make up the overwhelming majority of detainees classified as “security” detainees.

6. The “Suspension of MKs” Bill⁸

This bill allows a majority of 90 Knesset Members (MKs) to oust a serving MK on the following three grounds, as enumerated in Section 7A of the Basic Law: The Knesset: (1) denial of the existence of Israel as a Jewish and democratic state; (2) incitement to racism; and (3) support for armed struggle of an enemy state or a terrorist organization against Israel. It would therefore allow an elected representative to be suspended by their peers on ideological grounds. In case of a criminal offense, standing MKs can already be expelled from the Knesset for a conviction with moral turpitude under existing provisions of the Basic Law: The Knesset.

The bill constitutes an additional legal tool for the Israeli Jewish majority in the Knesset to further delegitimize and marginalize the elected political representatives of the Palestinian minority in Israel. It provides a mechanism for the majority to oust Arab MKs and political lists on the basis of purely political/ideological considerations, despite the clear conflict of interest entailed in MKs voting to unseat their political rivals. The bill came in direct response to a recent visit by three Arab MKs to the family members of Palestinians killed by Israeli security forces while allegedly carrying out attacks, as part of efforts to secure the return their bodies, which are being withheld by Israel, to their families. The bill was drafted by the Chair of the Knesset’s Constitution, Law and Justice Committee, MK Nissan Slomiansky, and was approved by the Committee on 29 February 2016. It is expected to be brought to the Knesset plenum for a first reading in the coming week.

7. The “Counter-Terrorism” Bill⁹

The Knesset is currently considering a related bill, the “Counter-Terrorism” bill, which sprawls over 104 pages. It contains broad and vague definitions of terrorism and terrorist organizations, which may be exploited by the law enforcement authorities to criminalize legitimate political action by Palestinian citizens of Israel and Palestinian residents of the OPT. The bill seeks to entrench many emergency regulations, which are currently in effect, and which date back to the British Mandatory period. The government has recently used the emergency regulations to arbitrarily outlaw the Islamic Movement in Israel.¹⁰

<http://www.adalah.org/uploads/oldfiles/Public/files/English/Newsletter/105-June-2013/Criminal-Procedure-Law-Ayoub-06-2013.pdf>.

⁸ The text of the bill (in Hebrew): http://www.adalah.org/uploads/Balad_bill_feb_2016.pdf.

⁹ Legislative Proposal 20/949; the text of the bill (in Hebrew):

<http://www.knesset.gov.il/Laws/Data/BillGovernment/949/949.pdf>.

¹⁰ The administrative order outlawing the movement did not cite any terror-related or other specific charges against the movement, but merely stated that the ban was necessary for the “security of the state, public

The bill includes draconian measures for investigating detainees accused of security offenses; provides for the extensive use of secret evidence in court; limits detainees' access to judicial review; lowers the evidentiary requirements of the state in such cases; creates new criminal offenses, including for any public expression of support for or sympathy with a terrorist group; and sharply increases the maximum sentences for people convicted of security offenses. It is liable to result in serious human rights violations and to further undermine democratic principles in Israel.

The bill would substantially strengthen and expand the powers of the police and the General Security Services (GSS, or *Shabak/Shin Bet*) to suppress legitimate protest activities by Palestinian citizens of Israel and Palestinian residents of the OPT. It would add to a pre-existing system that provides fertile ground for the security agencies to employ illegal methods in the interrogation room, which includes a "temporary order" that exempts the security agencies from producing audio or visual documentation of interrogations of security detainees. The Knesset extended this order, which creates conditions that may facilitate the torture of security suspects during interrogation, in July 2015, for the third time.¹¹

The bill was first introduced in July 2011. It has been re-tabled several times since, including before the current Knesset. The Knesset approved the bill in its first reading on 2 September 2015. It is currently being further discussed in the Knesset's Constitution, Law and Justice Committee.

8. Bill to expand definition of "incitement to terrorism" – Amendment No. 123 of the Penal Code¹²

This bill aims to expand the definition of "incitement to terrorism" in law. The bill differentiates between the charges of "incitement to violence" and "incitement to terrorism". Under current law, both kinds of incitement are treated equally. Regarding the offense of "incitement to terrorism", the bill eliminates the 'near certainty' test, resulting in a situation in which a person could be convicted of "incitement to terrorism" simply for calling for an act that might be interpreted as an act of terrorism, even in the absence of a near certainty that such a call would in reality lead to the commission of such an act. It does not seek to remove the near certainty test from the charge of "incitement to violence", leaving it unchanged. While not specified in the text of the bill, the large majority of terrorism charges are brought against Palestinians in the OPT and Palestinian citizens of Israel, and not against Jewish Israelis, including political leaders, even for statements or acts amounting to incitement. The bill has the support of the government and has been prepared for a first reading in the Knesset.

safety and public order." See Suhad Bishara (Adalah), "Returning to the days of military rule in Israel," *Al Jazeera*, 24 December 2015: <http://www.aljazeera.com/indepth/opinion/2015/12/returning-days-military-rule-israel-151223131305852.html>.

¹¹ For more information on the temporary order on the exemption of audio-video documentation, see Fady Khoury and Adalah Attorney Nadeem Shehadeh, "Op-ed: Palestinians Will Continue to Eat the Fruit of the Poisonous Tree," 29 September 2015: <http://www.adalah.org/en/content/view/8697>. In July 2015, Adalah, together with other human rights organizations submitted a petition to the Israeli Supreme Court challenging the constitutionality of this law. H.CJ 5014/15 *Adalah et al. v. The Minister of Public Security et al.* (case pending). See Adalah, "Human rights organizations petition SC: Cancel law exempting Israeli Security Services from audiovisual recording of interrogations of Palestinian detainees," 27 July 2015: <http://www.adalah.org/en/content/view/8605>.

¹² Legislative Proposal 20/967; the text of the bill (in Hebrew): <http://knesset.gov.il/Laws/Data/BillGovernment/967/967.pdf>.

B. Legislation targeting Human Rights Organizations and Supporters of the BDS Movement

9. New NGO “funding transparency” bill¹³

This new bill targets human rights organizations. It would require NGOs that receive 50% or more of their funding from foreign governments to state that fact in various situations, including in all of their publications, written reports to Knesset members and decision-makers, and at any hearing or discussion involving a written protocol; and in any oral discussion held in a place where public officials work. An earlier version of the bill also sought to compel representatives of these NGOs to wear tags in the Knesset stating their names, organizations, and the fact that they receive funding from foreign governments; this provision was removed from the latest draft, dated 18 January 2016. Violations of the law will be punishable by a fine of NIS 29,200 (c. US \$7,500).

The bill aims to mark out, harass and incite against human rights organizations that express views critical to the government’s policies, particularly policies that discriminate against or otherwise harm Palestinians in the OPT and in Israel. The political motivations behind the bill are clear since all registered non-profit organizations are already required by an amendment to the Law of Associations enacted in 2011¹⁴ that imposes invasive reporting requirements on NGO by requiring them to publish quarterly reports on any funding received from foreign governments or publicly-funded foreign donors. Thus, this information is already publicly available. Significantly, the bill does not require transparency of donations received from private individuals, leaving right-wing, settler organizations, which are heavily funded by private US donors, unaffected.¹⁵

This newly-proposed law follows several previous unsuccessful bills that sought to clamp down on human rights organizations by threatening them with closure and/or taxing their income. The bill passed a first reading in the Knesset on 9 February 2016. The US, the EU, numerous members of the European and the German Parliaments, among others, have criticized the law and have called on the Israeli government not to support its passage.¹⁶

¹³ Legislative Proposal 20/1005; the text of the bill (in English):

http://www.adalah.org/uploads/NGO_transparency_bill_English.pdf, (in Hebrew):

<http://knesset.gov.il/Laws/Data/BillGovernment/1005/1005.pdf>.

¹⁴ The “Foreign Government Funding Law,” officially known as the Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity – 2011.

¹⁵ See Uri Blau, “Haaretz Investigation: U.S. Donors Gave Settlements More Than \$220 Million in Tax-exempt Funds Over Five Years”, *Haaretz*, 7 December 2015: <http://www.haaretz.com/settlementdollars/1.689683>

¹⁶ See Statement of the US Embassy in Tel Aviv, “Information on the U.S. Foreign Agents Registration Act,” 11 January 2016: <http://israel.usembassy.gov/press11012016c.html>. See also, “MEPS send an open letter on Israeli Government NGO bill,” 8 February 2016:

http://www.juliewardmep.eu/meps_send_an_open_letter_on_israeli_government_ngo_bill; Itamar Eichner, Moran Azulay, “EU slams NGOs bill: ‘Reminiscent of totalitarian regimes’,” *Ynet News*, 27 December 2015: <http://www.ynetnews.com/articles/0,7340,L-4744712,00.html>; Barak Ravid, “German MPs Implore Netanyahu to Bury NGO ‘Transparency’ Bill,” *Haaretz*, 3 December 2015: <http://www.haaretz.com/israel-news/.premium-1.689735?date=1449134456871>.

10. New anti-boycott bill: Ban on entry to Israel and territories under its control for BDS advocates¹⁷

The bill imposes a ban on persons, non-citizens and residents, who call for a boycott of Israel, and persons who represent an entity that promotes boycott of Israel, from entry into Israel and “regions under its control”, namely the OPT. If passed into law, the bill would target supporters of the boycott, divestment and sanctions (BDS) movement, including foreign citizens with Jewish ancestry, who would be barred from gaining any residency or citizenship status in Israel, regardless of the Law of Return - 1950. The government has voiced its support of the bill, in a diluted form. The bill passed a preliminary hearing in the Knesset on 11 November 2015 and was subsequently endorsed by the Knesset’s Ministerial Committee on Legislation, and therefore has governmental support. Adalah is monitoring developments concerning the bill.

¹⁷ Legislative Proposal 20/1906; the text of the bill (in English):

http://www.adalah.org/uploads/Prevention_Of_Entry_BDS_English.pdf, (in Hebrew)

http://www.adalah.org/uploads/BDS_ban_on_entry_to_Israel_law_in_Hebrew.pdf.