



Israel: New Discriminatory and Anti-Democratic Legislation

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This short report details seven newly enacted Israeli laws and one pending bill containing discriminatory and/or anti-democratic provisions that are liable to severely violate the rights of Palestinian citizens of Israel and Palestinians living in the 1967 Occupied Palestinian Territory (OPT) as protected under international human rights and humanitarian law, and the rights of those who seek to defend them. They undermine the most basic legal protections, rights and freedoms, including the rights to vote and to be elected, to political expression, essential procedural safeguards for detainees, and to ownership of property. The new bill threatens to legalize serious violations of international humanitarian law.

1. The “Expulsion of MKs” Law¹

Enacted by the Knesset on 20 July 2016

This law allows a majority of 90 Knesset Members (MKs) to oust a serving MK for the full period of the Knesset’s remaining term on the following two grounds, as enumerated in Section 7A of the Basic Law: The Knesset: (1) incitement to racism; and/or (2) support for armed struggle of an enemy state or a terrorist organization against Israel. It presents a grave danger to the most basic civil rights in a democratic society: the right to vote and the right to be elected, and threatens to further restrict the space currently allowed for freedom of expression.²

The law stipulates that when the Knesset decides on an expulsion, the statements of the “suspect” MK will also be examined and not only their aims or actions. It would therefore allow the Israeli Jewish majority in the Knesset to oust elected 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. In the 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 and the law is therefore superfluous and not fit for this purpose.

The law is the latest attempt by the government to delegitimize the elected political representatives of the Palestinian minority in Israel, including repeated attempts to disqualify Arab MKs and political parties from Knesset elections, the government’s decision to outlaw the Islamic Movement in 2015, and the Knesset’s passage of a series of laws such as the “Electoral Threshold Law”, the “Nakba Law”, and the “Boycott Law”, all intended to silence the Arab public.

2. NGO “Foreign Funding” Law³

Enacted on 11 July 2016

This new law requires NGOs that receive more than 50% of their annual budget from foreign governments to declare their sources of funding in all publications, including letters to government and

¹ The text of the law (Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_347851.pdf.

² Adalah press release, “Israeli Knesset’s approval of ‘Expulsion Law’ poses grave danger to basic democratic rights,” 20 July 2016: <https://www.adalah.org/en/content/view/8866>.

³ The text of the law (Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_346561.pdf.

public officials, and in reports to the Registrar of Non-Profit Associations.⁴ As 25 of the 27 Israeli organizations that currently receive more than half their budget from foreign governments are human rights organizations, it is clear that these groups, which are highly critical of the Israeli government's policies particularly in the OPT, were targeted by the law.⁵

The US, the EU, numerous EU member state parliaments including the German Parliament, among others, criticized the law and called on the Israeli government not to support its passage.⁶ At the end of June 2016, three UN human rights experts urged MKs not to approve the law. The experts expressed grave concern that the legislation would chill the speech of human rights NGOs.⁷

The political motivations behind the bill are clear since all registered non-profit organizations are already legally required to comply with invasive reporting requirements that require them to publish quarterly reports on any funding received from foreign governments or publicly-funded foreign donors. Thus, this information is already publicly available and can even be found on the websites of the targeted human rights organizations. Significantly, the law does not require transparency of donations received from private individuals, leaving right-wing, settler organizations, which are heavily funded by private US donors, unaffected.⁸ Financial assistance from international sources is legitimate and necessary in states where serious human rights violations occur, in Adalah's view.

3. The "Anti-Terror" Law⁹

Enacted on 15 June 2016

The new Anti-Terror Law substantially expands the scope of the Israeli penal law by incorporating severe provisions of the British Mandate Emergency Regulations and other emergency orders. It contains broad and vague definitions of terrorism and terrorist organizations, which may be exploited by the police and the General Security Services ('Shabak' or Shin Bet) to suppress and criminalize legitimate political action, and even humanitarian and cultural activities, by Palestinian citizens of Israel and Palestinians in the OPT against Israeli policies and the Occupation. The law establishes new criminal offenses such as public expressions of "support" or "empathy" for terror organizations, and significantly increases the maximum sentences for such offenses.¹⁰

⁴ According to the new law, those organizations that fail to abide by these regulations will be fined ₪29,200 (US\$7,540). The new law will go into effect on 1 January 2017 and will not retroactively consider donations made prior to this date. NGOs will have until 30 June 2018 to file their first report – six months following the conclusion of 2017 – to the Registrar of Non-Profit Associations.

⁵ See Adalah press release, "Approval of NGO Law part of grotesque game aimed at human rights organizations," 12 July 2016: <https://www.adalah.org/en/content/view/8848>.

⁶ See Statement of US Embassy in Tel Aviv, "Information on 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: www.juliewardmep.eu/meps_send_an_open_letter_on_israeli_government_ngo_bill; 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>.

⁷ See OHCHR, "UN experts urge Knesset not to adopt pending legislation that could target critical NGOs", 24 June 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20177&LangID=E>.

⁸ 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>.

⁹ The text of the law (Hebrew): http://fs.knesset.gov.il/20/law/20_ls2_pb_342150.pdf.

¹⁰ See Adalah press release, "Israel's Anti-Terror Law violates Arab citizens' human rights", 19 June 2016: <https://www.adalah.org/en/content/view/8834>.

The new law, which spans over 100 pages, is expected to significantly harm the rights of Palestinians detained for suspected security-related offenses, for example by allowing the widespread use of “secret evidence” by the state prosecution, thereby impeding the possibility of substantively objecting to repressive decisions based on their merits before the judiciary. It further contains draconian measures for investigating security detainees, adding to a pre-existing system that provides fertile ground for the security agencies to employ illegal methods in the interrogation room; removes essential procedural safeguards from security detainees that are provided to criminal suspects, including prompt access to a lawyer and judicial review; and lowers the evidentiary requirements of the state in such cases. It is liable to result in serious human rights violations and to further undermine democratic principles in Israel.

4. The “Stop-and-Frisk” Law¹¹

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/she was carrying a concealed weapon or other object intended for use in criminal activity. The new law allows police to stop and frisk in case of a reasonable suspicion that he/she is about to commit a violent act. It therefore significantly expands police powers to use the practice 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 the 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 powers to conduct arbitrary and invasive searches of Palestinians.

5. Law imposing a mandatory minimum sentence on convicted stone-throwers¹²

Enacted 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 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.¹³ 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. 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*.¹⁴ The pre-existing maximum sentence of 20 years applies in cases in which the courts rule there was such proof of intent.

6. Law revoking child allowances from parents of children convicted of security offenses¹⁵

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

¹¹ The text of the law (in Hebrew): http://www.nevo.co.il/law_html/Law01/999_469.htm.

¹² The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf.

¹³ See Adalah press release, “New punitive measures by Israel against stone throwers are unconstitutional”, 2 November 2016: <https://www.adalah.org/en/content/view/8677>.

¹⁴ Amendment No. 119 to the Israeli Penal Code, which came into effect on 29 July 2015.

¹⁵ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_lsr_315852.pdf.

of East Jerusalem, and who are all brought before Israeli civil courts. The National Insurance Law states explicitly that child allowances belong to the children, even if their parents actually receive these payments.¹⁶ By stripping child allowances from the child and his/her parents, the law creates arbitrary discrimination between minors who are convicted of security offenses (overwhelmingly Palestinians), and other minors convicted of other criminal charges, in breach of the principle of equality.¹⁷

7. Law imposing fines on the parents of stone-throwers and others¹⁸

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 recent round of violence, raises fears that it will be deployed discriminatorily against the parents of Palestinian children – citizens of Israel or residents of East Jerusalem – convicted of stone-throwing and similar acts.¹⁹ 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.

8. Bill to watch: “Validation Bill” legalizing expropriation of private Palestinian land in the West Bank for Israeli settlements²⁰

This bill seeks to allow the state to expropriate private Palestinian lands in the West Bank for the purposes of settlement construction. According to the bill, Israeli settlements built on private Palestinian land in the West Bank would be “validated” via retroactive appropriation, planning, and zoning regulations. Under international law, Israel is forbidden – as an occupying power – to transfer its civilian population into occupied territory and to exploit occupied lands for its own political or civil purposes.²¹

If enacted, the bill will cause serious harm to the property rights of Palestinian landowners, residents and refugees alike. The bill would allow the expropriation of wide swaths of land from the Palestinian population, an action that would be in the sole interest of the occupying power. The retroactive validation of settlements constructed on privately-owned Palestinian lands, and the retroactive validation of acts of trespassing by Israeli settlers via a process of expropriation – against the background of the illegality of the settlements in general – is a clear violation of the right to property. The Attorney General reportedly informed government leaders that the bill was unconstitutional. The bill is expected to come up for further readings once the Knesset reconvenes in early November 2016.

¹⁶ See Adalah press release, “Human rights organizations petition Supreme Court to cancel new law revoking social welfare benefits for parents of Palestinian minors convicted of security offences”, 22 April 2016: <https://www.adalah.org/en/content/view/8790>.

¹⁷ Adalah, in cooperation with HaMoked, Addameer and Defence for Children International-Palestine, filed a petition to the Israeli Supreme Court challenging the constitutionality of the law on 21 April 2016. H CJ 3390/16 *Adalah v. The Knesset* (pending).

¹⁸ The text of the law (in Hebrew): http://fs.knesset.gov.il/20/law/20_Isr_315850.pdf.

¹⁹ See Adalah press release, “New punitive measures by Israel against stone throwers are unconstitutional”, 2 November 2016: <https://www.adalah.org/en/content/view/8677>.

²⁰ Legislative Proposal 20/3127, the text of the bill (Hebrew): <https://www.knesset.gov.il/privatelaw/data/20/3127.rtf>.

²¹ See Adalah press release, “Adalah to AG: Reject bill legalizing expropriation of private Palestinian land for Israeli settlements”, 25 July 2016: <https://www.adalah.org/en/content/view/8870>.