

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to draw the attention of your Excellency's Government to information we received regarding **draft legislation (“Transparency Law”) pending before the Parliament of Israel (Knesset) and other recent legislative reforms discussed in the country which may affect the enjoyment of fundamental public freedoms.**

In 2011, the adoption of legislation affecting fundamental public freedoms was the subject of a communication sent to your Excellency's Government by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders (AL G/SO 214 (67-17)) expressing concerns about the adoption of the ‘Law for Prevention of Damage to the State of Israel through Boycott – 2011’ . While we thank your Excellency's Government for in the response, we remain concerned about the issues raised.

According to the information received:

A “Transparency Law”, which was published by the Government on 18 January 2016 and on 9 February 2016, passed the first of three readings in the Knesset. The draft legislation, if adopted, would require NGOs receiving a majority (likely more than 50%) of their funding from foreign political entities to publicly disclose certain information.

Among various requirements, the legislation would oblige NGOs receiving a majority of their funding from government entities outside Israel (including

international organisations and the United Nations) to disclose the names of the entities in all publications intended for the public or available to the public, in any visual media that can have written text added (such as publications on television, the Internet, or in the press), in any written appeal to a public servant or elected official, and in any report written and distributed to the public.

Furthermore, a subject NGOs would also be required “to note in...any meeting that has minutes, that the majority of its funding is from foreign government entities, including the names of the countries, in any public meeting with public representatives.”

An earlier version of the draft law would have required that representatives of organizations to which the law applies shall be considered lobbyists of the foreign entities. With this designation, representatives would have been required to wear while in the Knesset a special identification tag, noting that they are representatives of organizations that are funded primarily from foreign government entities, under Section 68(a) of the Knesset Law. While this requirement has since been dropped from the bill, a different bill advanced by a Knesset Member would require that representatives wear such an identifying tag, not only in the Knesset, but also in every government building. This additional bill, which the Knesset approved in a preliminary reading on 8 February 2016, may eventually be incorporated into the government bill if approved by the Knesset.

Under the draft legislation, NGOs or their representatives that fail to comply with the new obligations would be fined up to NIS 29,200 (over 7,500 USD) for each violation.

It is further alleged that the two draft laws in discussion disproportionately affect NGOs engaging in human rights work, as many of these organizations often rely on funding from foreign government entities. By contrast, organizations that receive funding from foreign individuals, both directly and through foundations, would be unaffected by the new requirements. In effect, the law targets human rights NGOs while leaving others, such as those promoting government policies, outside its scope.

Concerns were also expressed on previous norms recently debated which also may restrict NGO activity. In 2011, the Knesset enacted a law requiring NGOs to declare foreign government funding of any amount on a quarterly basis. Disclosures under the 2011 law are publicly available. Further, in 2013, another bill that sought to impose heavy taxes on overseas government donations to NGOs was considered. Notably, Israel’s Attorney General reportedly determined that the proposed taxes amounted to a “punitive measure”. Finally, in 2014, a proposed amendment to the existing Non-Profit Organizations Law sought to prevent the registration of organizations with objectives deemed contrary to the advancement of “Israel as a Jewish and democratic state.”

Serious concern is expressed that the proposed bills, in their current form and in combination with other recently adopted legislation, would curtail the rights to freedom of expression and association of some NGOs, their members and human rights defenders. Further concern is expressed on the continued proposition of additional norms restricting the exercise of public freedoms.

While we do not wish to prejudge the accuracy of the information on the proposed law reforms, we would like to draw the attention of your Excellency's Government to several instruments of international law with which any proposed legislation must comply.

The International Covenant on Civil and Political Rights ("ICCPR") and the Universal Declaration of Human Rights ("UDHR") explicitly safeguard freedom of expression and opinion. Article 19 of the ICCPR, which Israel ratified in 1991, provides the right to freedom of opinion and expression to everyone. Article 19(2), drawing about Article 19 of the UDHR, broadly protects freedom of expression, which includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Both the ICCPR and the UDHR also guarantee freedom of association. Article 22 of the ICCPR guarantees that "everyone shall have the right to freedom of association with others". Importantly, Article 22(2) states that "no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." Similarly, Article 20 of the UDHR states: "everyone has the right to freedom of peaceful assembly and association".

We also refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice". Furthermore, the Declaration provides that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations (article 5(b)) and that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means (article 13 (b) and (c)).

The reporting requirements to which NGOs would be subject under the proposed laws are problematic when examined against Israel's international human rights obligations. First, the requirement that NGOs receiving a majority of their funding from foreign government entities disclose their donors and label themselves and their representatives as "lobbyists" of "foreign entities," regardless of how the NGOs identify themselves, stifles free expression. Furthermore, the laws appear designed to damage NGOs by stigmatizing their work and harming their reputation. Although many organizations act independently in creating their policies and agendas—regardless of the amount of funding received from foreign government entities—the laws would likely build public perception that subject NGOs are foreign agents working against the interests of Israel.

The harsh penalties, moreover, underscore an evident intent to cripple NGOs that fail over time to comply with the legislation's requirements, with fines of up to NIS 29,200 per violation. The requirements of the proposed legislation mandate that any NGO receiving a majority of its funding from foreign government entities disclose that fact on the minutes from every meeting and on every document it makes available to the public; that the NGO disclose a complete listing of all countries it receives donations from in public meetings with public representatives; and, if the additional bill proposed at the Parliament is incorporated, that the NGO's representatives wear a special identification tag in every public office. Because the requirements are extensive and the fines harsh, the proposed laws could effectively silence an NGO for minor transgressions like forgetting a badge or failing to report every donor country.

In this context, we recall the resolution 22/6 of the Human Rights Council which called on States to "ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration [on Human Rights Defenders]..., other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto" (para. 9(b)).

Finally, the proposed legislation appears designed to have disproportionate impact on NGOs engaging in human rights and civil rights work, as significant amounts of their funding often necessarily comes from foreign government entities. Organizations promoting the enjoyment of human rights by Palestinians, for example, may be particularly hard hit by the new requirements.

While the right to freedom of expression is not absolute under ICCPR Article 19(3), restrictions on expression are only appropriate under narrow circumstances. Restrictions must be both provided by law and necessary to respect the rights or reputations of others or for the protection of national security, public order, or public health and morals. The legislation's proponents in the Knesset argue that it is necessary to promote transparency and to protect Israel's sovereignty by preventing foreign entities from meddling in Israel's internal affairs. While transparency is indeed a legitimate and important State interest, the proposed legislation in its current form seems unnecessary under the meaning of Article 19(3). Because a 2011 law adopted by the Knesset already

requires NGOs receiving money from foreign government donors to report their funding quarterly, and because such information is already available to the public, the additional proposed legislation and its requirements appear unnecessary to protect national security or public order. By contrast, the reporting requirement would not indiscriminately chill speech if it applied to *all* NGOs, regardless of the amount or type of foreign funding they received. However, because the proposed laws apply selectively to some NGOs, and because those organizations will undoubtedly face public stigmatization by being associated with foreign government funders, their expressions of peaceful dissent will likely be chilled. Such a result would erode the very principles of democracy Israeli legislators claim to protect through their “transparency” initiatives.

As with freedom of expression, restrictions on freedom of association must be necessary to protect national security, public safety, or the protection of the rights and freedoms of others under ICCPR Article 22. Knesset Members have stated that the proposed legislation is necessary in the interest of national security because it promotes transparency by exposing foreign involvement in internal Israeli affairs. By labeling NGOs foreign agents, the proposed legislation would amount to public shaming and social stigmatization. This could effectively deter the activities and association of certain NGOs, further restricting public debate on the situation of Israel and the Occupied Territories. By restricting the ability of NGOs to associate with foreign donors and limiting their ability to serve members of the Israeli public, the laws could have a destabilizing effect on civil society, ultimately undermining national security and public order in Israel.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Are the facts alleged in the above summary of the proposed legislation accurate?
3. Please explain how the legislation will contribute to the stated goal of promoting transparency, especially in light of the 2011 law already requiring NGOs to publicly declare foreign funding on a quarterly basis.
4. Please explain the purpose behind differential treatment between NGOs, including the distinction made between those organizations with more than 50% foreign funding and those with less, and the distinction made between organizations receiving funding from foreign government entities and foreign private donors.
5. Please provide information concerning the legal grounds for adoption of the legislation and how they are compatible with Israel’s obligations under international human rights law to respect and promote the rights to freedom of expression and freedom of association, as well as the right of

everyone to defend human rights, individually or in association with others.

We would appreciate a response before the bills reach the Knesset for final consideration. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

We also wish to advise that we are considering issuing a public statement to clarify our position on the legislation's consistency with human rights law to which Israel is party.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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