

November 23, 2015

To:

Mr. Avi Licht, the Deputy Attorney General (Economic-Fiscal)

Ministry of Justice

Jerusalem

Dear Sir:

Re: Our comments on the proposed bill Disclosure Obligations of Recipients of Support from Foreign Government Entities (Increased Transparency by Recipients of Support, when the Majority of their Funding is from Donations from Foreign Government Entities), 2015

1. This paper outlines the position of the Association for Civil Rights in Israel regarding the aforementioned proposed bill, which was released for public comments. **We oppose this bill outright - as it is improper, anti-democratic and undermines basic rights.**
2. We will also note that a series of similar bills or legislative initiatives have been promoted in recent years, and that these measures were ultimately abandoned by the government because they severely undermined basic rights and principles of democracy.

The content of the proposed bill

3. The proposed bill seeks to impose a series of requirements on non-profit organizations whose majority of funding (apparently 51% or more, but this is not defined in the proposal) is from “foreign government entities,” as defined by the Non-Profit Organizations Law (meaning foreign countries, the European Union, the UN etc.).
4. The non-profits to which the law applies shall be obligated:
 - a. To disclose that the majority of their funding is from foreign government entities, including 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, in any written appeal to a public employee or public representative and in any report written and distributed to the public.
 - b. To note in the minutes, for 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.
 - c. Representatives of organizations to which the law applies shall be considered lobbyists of the foreign entities. Section 68(a) of the Knesset Law shall apply to them, and they will be required to wear a special identification tag noting that they are representatives of organizations that are funded primarily from foreign government entities.
5. Any organization that violates their responsibilities to stipulate their funding from foreign governments in writing as mentioned above, or whose representative does not wear the tag, shall be fined NIS 29,200 for each violation.

Not transparency, but rather political persecution

6. This proposed bill is one proposal out of a series of similar initiatives that have been attempted in recent years, with the intention of undermining the capacity of human rights organizations and non-profits to work and/or receive donations and to restrict their activities, because their agendas are different from those of the political majority and/or the government.
7. The stated purpose of this proposed bill is to promote transparency. We wish to clearly state that we identify with this purpose and recognize the importance of preserving transparency of various entities including non-profits, with respect to all aspects of their activities, including their goals, activities, supporters and donors.
8. However, a reading of the proposed bill indicates that while the subject line declares transparency, the essence of the bill differs from its stated purpose. The proposed bill's relates entirely to political persecution of very specific organizations. Firstly, the law as it exists today requires transparency of non-profits with respect to donations that they receive from any source, including foreign government entities –as a result of the amendment to the Non-Profit Organizations Law in 2008. Prior to this, the Non-Profit Organizations Regulations 2002, obligated non-profits to report donations from any donor greater than NIS 20,000. In addition section 36a(a) of the Non-Profit Organizations Law requires reporting of special and separate details of donations from “foreign government entities.” This section of the law was amended two years ago, to require reporting four times a year rather just once, as is common with other donations. In any case, receipt of donations from forbidden sources (such as enemy countries) or use of donated funds (of any kind) for forbidden purposes – have been banned for a long time according to law, and violators can be brought to justice.
9. Not only has the alleged purpose of transparency been achieved in existing law (through various amendments in recent years), but the proposed bill implements this purpose in an extremely selective manner. The bill focuses on donations of only one kind, that organizations which promote a right-wing political agenda do not receive.
10. Therefore, it is clear that protecting the public through transparency and exposing hidden interests are not the problems giving rise to this proposed bill. Rather, the writers of the bill are interested in creating a mechanism for political persecution and undermining the activity and legitimacy of organizations and entities that are not currently in favor with the political majority.

Undermining equality – the proposed bill addresses donations only from foreign countries and not private donors

11. The initiators of the proposed bill claim that they are seeking to prevent illegitimate interference of foreign countries in Israel's sovereignty. This claim is unconvincing and completely contradictory to the operations and positions of the state with regards to these countries and their activities. It is odd and even ridiculous to suggest that “foreign government entities” are attempting to undermine Israeli sovereignty and interfere in its internal matters. The State of Israel seeks to be part of the family of nations, and as such is committed to various treaties and agreements with other countries with respect to all areas of life. In addition, at the foundation of the relationship between the State of Israel and democratic countries are shared values relating first and foremost to democracy and human rights (see Israel's agreements with the European Union and other entities). The State of Israel accepts funds from these countries through trade agreements, investments and loans, and donations of massive sums amounting to billions of dollars. Therefore “interference” of “foreign government entities” through funding occurs in relation to education, culture, health, welfare, and of course security. Almost certainly, these

countries' influence and the consequences of their involvement in some or all of these areas is much more significant than the impact of donations to human rights organizations.

12. The support of foreign countries in the field of democracy and human rights in Israel (and throughout the world) is a direct result of the lessons learned after the horrors of World War II, after which world countries decided that they could not be bystanders to human rights violations. The events of World War II led various world countries, including Israel, to be part of the family of nations, which includes working together to preserve democracy and human rights.
13. At the same time, the initiators of this bill nonchalantly accept without any criticism or suspicion foreign donations from private donors and organizations abroad (irrespective of whether they are Jewish or not). These donors support a range of activities, including those with clear political impact. This exposes and emphasizes the true intentions of the bill, which is to affect the activities of organizations whose positions do not find favor with the current government and Knesset.
14. Where there are claims regarding the transparency of non-profits operating in Israel, including suspicion of foreign entities involvement in internal matters of the state; or because of the need to expose interests which are hidden from the public, then transparency rules and reporting requirements must be applied to philanthropic funds donated to all organizations, from all donors in Israel and abroad.
15. Private foreign donors who donate to various organizations in Israel influence Israeli politics and policy no less dramatically, if not more so than foreign government entities; however they are not being required to increase transparency. This is despite reports that are released from time to time which claim that the identity of these donors is not known, and that they often receive approval for confidentiality from the Registrar of Non-Profit Organizations. The fact that private donors and organizations who receive these donations are not targets of similar criticism regarding transparency or foreign influence, indicates that a certain type of donation has been selected only because it funds organizations and non-profits whose agendas do not suit today's political majority.

Marking organizations as lobbyists of foreign countries – an attempt at de-legitimization and silencing

16. As explained above, non-profit organizations are fully transparent: their professional work and criticism is visible to all, first and foremost the government of Israel which they often target (or petition against in the courts). Information regarding their projects and donors is publicly available. As opposed to the twisted representation of them as agents of foreign countries, who supposedly have illegitimate agendas in Israel, the organizations do not work for or on behalf of any country. Each organization operates in accordance with its mandate, towards the goals for which it was established, and according to its priorities as determined from time to time. Within this framework, the organizations contact foundations and foreign countries to fund various projects to promote human rights in Israel and the Occupied Territories. Foreign countries and foundations do not approach organizations in Israel. As written above, most of the donations provided by foreign government entities fund various state or public entities in the fields of security, education, science and commerce. Do all of these entities work to implement foreign interests?
17. The donations received are relatively small, especially when compared to the false reports, but also in comparison with donations from private donors abroad and the sums donated by foreign countries for other activities in Israel (including donations which significantly impact the economy, security and society in Israel). For example, the European Union transferred 158

million Euro to Israel in 2010. Of this amount, only 1.8 million Euro was for human rights organizations.

18. The Prime Minister, as well as government ministers and other government figures, have for many years emphasized and been proud of Israel's democracy. A central characteristic of democracy is freedom of speech and the ability to criticize the government. At the same time, the government has been backing a long series of legislative initiatives and proposals whose goal is to silence human rights organizations in Israel. Support for these initiatives has been accompanied by a long-term campaign of de-legitimization, which presents these organizations as harming the state. These organizations are critical to promoting the development and existence of the state, in their capacity as a mirror and watchdog for Israeli democracy.
19. Presenting this bill as being related to transparency, and denying that it undermines the ability of organizations to operate, is misleading and incorrect. The proposed bill seeks to mark these organizations as working to promote supposedly foreign and illegitimate interests, despite the fact that these "foreign entities" are the closest friends of Israel and its most important supporters and partners across all areas of life. The proposed law presents organizations as attempting to hide their sources of funding, despite the fact that these sources are transparent and known to all. The very purpose of the proposal, (as well as prior versions and other similar proposals), is to leverage a smear campaign against civil society organizations and those who supposedly lead illegitimate activities which harm the country; despite the fact that these activities are legitimate, permitted under Israeli law and critically important to Israeli democracy.
20. The proposal to create a special and degrading tag for organizations that are supported by foreign countries is totally unacceptable. This idea promotes incitement against civil society organizations in an organized, harmful campaign against the legitimacy of these organizations and their work. The proposed bill seeks to silence and de-legitimize civil rights organizations and deter others from cooperating with them. The proposal is intended to affect other organizations and activities, which are critical of the government across different fields. The initiators of this bill are openly aiming to shut down these organizations and to censor public discourse, so that the only issues discussed in the public arena will be those acceptable to the ruling political majority.

The bill – an additional attempt to harm human rights organizations in Israel

21. It is legitimate to disagree with the positions of human rights organizations and/or to criticize their work. The Association for Civil Rights in Israel has fought in the past, and will fight in the future, for the rights of its critics and the critics of any human rights organizations to exercise their freedom of speech. Even today we do not intend to silence legitimate criticism of our work.
22. However, in recent years this criticism has turned into a wild and unrestrained lashing out against organizations, in attempts to silence them and undermine their work. Whether this is done to mobilize voters for the purposes of coalition campaigns, or for personal gain, public relations, or any other reason, this dangerous phenomenon cannot be ignored, especially as it is continuing to escalate. Unfortunately, organizations are being undermined without taking into consideration the potentially serious consequences that these social campaigns may have on human rights and Israeli democracy. The foundations of a strong and active Israeli democracy include the freedom of speech, the freedom of association and the freedom to protest; the ability to criticize the government and its actions freely and strongly; and a diversity of opinions and positions in Israeli society, including minority opinions or opinions which are unpopular.
23. Unfortunately, the people leading the campaign to undermine human rights organizations are the most senior figures in the Knesset and the government. To the best of our knowledge, there are people who support steps to restrict organizations' work at the Prime Minister's Office, the

Ministry of Justice, Ministry of Foreign Affairs, etc. Instead of supporting this campaign, these bodies should be denouncing the persecution against human rights organizations and providing support to strengthen the position of those working for human rights in Israel.

24. Defending human rights and criticizing aspects of policy and/or actions of the regime are critical to preserving democracy and human rights in Israel. The freedom to examine and criticize the government and assist those harmed by government policies are critical and legitimate measures, which ensure the existence and prosperity of a democracy over time. In practice, the importance and strength of a democracy is based on its defense of the rights of minority groups, and defending the freedom of speech and promoting opinions even if they fall outside of the current consensus. Encouraging a public atmosphere that is hostile to those working to defend human rights undermines the foundations of democracy. Harassment of human rights organizations harms the most disadvantaged populations in Israel and in the Occupied Territories, which the organizations represent.
25. De-legitimizing organizations' work and their criticism of the Israeli government's actions also contravenes the 1999 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which Israel has signed. The UN Declaration states that "Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility" to preserve human rights (Article 18). In light of this, the Declaration outlines the necessary protections of the right to work for human rights, alone or in a group; to collect and publish information to raise public awareness; to contact government authorities regarding their policies which subvert human rights; to participate in peaceful activities against violations of human rights; and to seek and make use of resources to promote human rights. The annex to the Declaration states that "the absence of international peace and security does not excuse non-compliance."

The role of non-profits and human rights organizations in a democratic society

26. A democratic society is not based solely on the technical mechanisms of majority rule and decision-making. Democracy also involves defending the human rights of minority groups of all kinds, whether social, socio-economic, religious, national, ethnic, political, ideological, etc. Where a democratic regime does not protect these groups, but rather makes decisions in accordance with the majority opinion, the society becomes a "tyranny of the majority." Foundational values such as protecting minorities and their rights, freedom of expression, freedom of association and equality before the law are basic and essential parts of any democratic society.
27. Third sector organizations, including human rights organizations and social change organizations, serve as the voice for many groups in a democratic society, including Israeli society. Specifically, these organizations serve as the voice, representation and defender of human rights for minority groups of all kinds, whose abilities and access to power and decision-making are limited.
28. Only those who ignore history, and especially that of the Jewish people, can make light of the importance of organizations that defend human rights.
29. Restricting the freedom of speech, association and action of these organizations will severely harm Israeli citizens, and in particular, disadvantaged and minority groups of all kinds; as well as the democratic character of the State of Israel as a pluralistic and diverse society, and the status of the state in the family of nations.

The work of these persecuted organizations

30. Human rights organizations in Israel are diverse, and their activities cover a wide range of topics including socio-economic justice, equality, freedom of speech and privacy. The organizations being targeted by this proposed bill primarily handle (either exclusively or alongside other issues) human rights in the Occupied Territories. It seems that this activity is what provokes those who believe that defending the human rights of the Palestinians in the Occupied Territories harms Israel. This anger, which can be understood or regretted (according to one's worldview), is legitimate. However it is absolutely illegitimate for senior government figures to fuel a defamatory atmosphere against these organizations, with the goal of undermining their work and silencing them because they disagree with their positions and activities.
31. Moreover, in the current situation – of an ongoing occupation and military conflict amongst various countries and entities, with a high level of tension between populations and security forces– the expectation that there be no human rights violations and/or criticism in this field is absurd. In the situation that the State of Israel finds itself, the work of organizations addressing human rights in the Occupied Territories is not only obvious, but critical and necessary; to ensure that Israel constantly re-evaluates its policies and actions to promote human rights.
32. Strangely, it seems that the Israeli government – both civil and military – are aware of the importance of the work of human rights organizations in Israel, including work on human rights in the Occupied Territories. In official reports of the Ministry of Foreign Affairs, the state proudly notes the existence of a lively civil society in Israel, and especially notes human rights organizations and their important work. In addition, all the civil and security entities in Israel have ongoing discussions with human rights organizations; they consider their arguments and findings, and frequently act to fix and improve the human rights situation in accordance with the claims of human rights organizations.

Misuse of transparency and reporting requirements undermines the foundations of democracy and human rights

33. In practice, the initiators of the proposed bill seek to exploit and misuse agreed-upon and critical principles – of transparency and reporting – in order to undermine the legal and legitimate work of civil society organizations. They seek to use these tools in order to banish and silence political or ideological rivals. These tools should not be used in a discriminatory manner, marking specific groups or certain activities according to irrelevant and illegitimate divisions. These important principles must guide the legislators in their work of drafting legislation of this kind, together with the basic principles must be protected, including freedom of speech, freedom of association, and equality before the law.

Conclusion

34. It is unfortunate and concerning that we must again explain basic principles of the democratic system. Every intelligent person is aware that in order for a democracy to exist at all, and certainly for a democracy to prosper, we must protect the freedom of speech, the freedom of association, the freedom to protest and criticize the government publicly, the freedom of civil society organizations to work freely, and to allow for a variety of opinions and positions, especially including unpopular opinions.
35. In a democratic country, political, social and other activities must not be restricted according to the social, religious or political worldviews of a sector of the population; whilst exploiting the political power of the same group in order to banish those who are unpopular. This is not a democracy defending itself; this is simply not a democracy.

36. Political persecution and attempting to severely undermine the freedom of expression and the diversity of voices in Israeli society, must concern the entire political spectrum and all partners must be recruited to end this dangerous development. Actions of this type harm one group today, but will also legitimize harming any other group in the future, according to the positions and opinions of the political majority and those in power.
37. Passing this bill would severely undermine the freedom of speech and freedom of association in Israel, and add Israel to the list of discredited countries in which human rights organizations do not have the freedom to act.
38. We oppose this proposed bill, and hope that it will be removed from the agenda in order to ensure the continuation of important activities of civil society in Israel, the freedom of association and freedom of expression for all citizens and residents of the state, regardless of their worldviews.

Respectfully,

Attorney Debbie Gild-Hayo

Policy Advocacy Director