



Project Democracy: Fighting for the Ground Rules

Chapter 4: Freedom of Speech, Dissent, and Political Activity

Freedom of speech is a basic human right and an essential component of any democracy. It is this freedom that enables citizens to exchange views and information, to protest against injustice, to influence the public discourse, and to criticize the actions of the government. As such, freedom of speech represents a necessary condition for the informed and effective political participation of a country's citizenry. Restrictions on free speech cause harm to democratic life and stands in contradiction to the fundamental principles of democracy – that government should impose no more than the necessary minimum of restrictions on individuals, especially regarding their basic rights.

The safeguarding of free speech is especially critical for defending the rights of minority groups. Minorities often suffer from limited political influence and limited access to the corridors of power, and so the arena of public expression is where they are best able to give voice to their positions, to protest, and to influence public opinion.

In numerous and unrelenting rulings and legal decisions, Israel's Supreme Court has defended freedom of speech, calling it “the lifeline of democracy.” In these principled rulings, time after time the justices have affirmed that the true test of freedom of speech is not the defense of commonly accepted statements – which no one seeks to limit anyway – but of statements considered irritating, extreme, and unexceptional.

Over the last two years, we have witnessed increasing threats in Israel to freedom of speech and those freedoms which derive from it: The right to demonstrate, freedom of the press, academic freedom and freedom of political activity. We have already described some of these threats in previous chapters of this report, titled “The State of Democracy in Israel 2010”:

- Violation of academic freedom, manifested among other things in verbal attacks on professors and educators critical of Israeli policies; actions taken against students who have sought to demonstrate on campus; and a determined campaign, supported by members of Knesset, seeking to dictate to our academics positions that are deemed more “Zionist.”
- Limiting the right of Israel's Arab citizens to express their identity, both as equal citizens, and moreover as a homeland minority: Actions include the prohibition of teaching about the *Nakba*, the deliberate disappearance of the Arabic language from public spaces, the repeated repression and violation of Arab citizens' right to demonstrate, and the efforts to delegitimize the elected representatives of the Arab public.
- Legislative initiatives seeking to restrict the freedom of speech, including: Broadening the prohibition on incitement, prohibition of imposing boycotts, and conditioning the receipt of public funding for movies on the filmmaker's “declaring allegiance” to the state. Two additional legislative initiatives, which would restrict the activities of human rights groups, will be discussed later in the chapter.

The fact that freedom of speech has appeared repeatedly throughout the chapters of this report demonstrates both the centrality of this fundamental right to democracy, and also the scope of the threats it currently faces. In the current chapter, we will address several other troubling manifestations of the infringement on freedom of speech: Limitations placed on demonstrations in Israel and the harassment of protesters; restrictions imposed on demonstrations in the Occupied Territories; attacks on freedom of the press; harassment of political activists and those who criticize the government; the infringement of artists' freedom of expression; and the de-legitimization of human rights organizations.

Restriction of Demonstrations and Harassment of Protesters

"The rights to assemble, to demonstrate, to march and to express one's opinions are fundamental rights [...] The fear that others who oppose a gathering and its purpose might resort to disturbing public order is insufficient reason to declare such an assembly illegal. On the contrary – in that free assembly and freedom of expression are basic rights, it is the obligation of the police to protect that assembly from the actions of others, and they cannot declare the gathering illegal on the basis of what others might do."

Judge Gad Ehrenberg, decision dated 28.1.10 regarding the arrest of demonstrators in Sheikh Jarrah, Jerusalem Magistrates Court 3781/10, State of Israel v. Barak

In a democracy, the freedom to express – in word and deed – various positions and opinions is a necessary condition for creating a rational and sensible public discourse on the issues and matters that concern its citizens. Demonstrations enable citizens to voice their opinions so that they can influence decision-makers and their fellow citizens. In particular, freedom of demonstration affords disadvantaged groups in society, who often enjoy limited access to the media and to the corridors of power, an opportunity to sound their voice. Demonstrations also serve as a means of "letting off steam" in a controlled and democratic manner, rather than devolving into illegal and even violent forms of protest.

This is particularly relevant in a country with rifts as deep as those in the State of Israel – a society that is so socially, economically and politically diverse that there is a great need for citizens to speak out about the most pressing issues affecting their lives.

From the right to free speech arises the state's obligation to ensure that its citizens can exercise that right. Unfortunately, in many cases, instead of fulfilling its appointed role of protecting freedom of dissent and ensuring its exercise, the authorities act to thwart legitimate civilian protest and discourage those who take part in them.

The undermining of freedom of demonstration takes place in a variety of ways. Demonstrations are prevented from taking place in advance; legal demonstrations are dispersed; force is used against the demonstrators; and legal measures are taken against those exercising their right to demonstrate. These methods, in addition to violating the freedom of speech of the demonstrators themselves, create a "cooling effect" designed to deter other potential protesters.

1. Before it Starts: How to Prevent a Demonstration

A. Don't grant a permit

In one recent notable case, the Israeli police refused to allow a march of right-wing activists through the Arab city of Umm al-Fahm. The police sought to prohibit the demonstration since securing the parade would necessitate the deployment of hundreds of police officers, and chiefly out of concern that violence might result. The organizers of the march petitioned the High Court of Justice, which subsequently permitted the demonstration. There is no doubt that the event was intended to serve as a provocation, however, in a democracy provocative actions are certainly permitted; in fact the test of freedom of speech is precisely in cases of extreme and outrageous expressions of speech. In these cases, the role of police is to allow the demonstration and to secure the event, as long as there are no certain indications that violence will erupt.

In another similar case, a march of secularists was planned for November in the largely Haredi (Ultra-Orthodox) city of Bnei Berak in order to protest the so-called "Yeshiva Students Law." In this case, the police decided not to approve the planned march route for fear of riots and because of what they described as the prohibitively high cost of deploying police. The police offered march organizers an alternative route that passes along the edge of city. A final decision on the matter has not yet been reached and for the time being the demonstration has been postponed.

It is important to stress that demonstrations must not be prohibited for fear of the violent response of their opponents. On the contrary – the role of police is to protect the demonstrators from counter-protesters and to allow them to express themselves freely. To prohibit such a demonstration would be to surrender to what its opponents seek to achieve – the silencing of the other's freedom of expression.

In the Sheikh Jarrah neighborhood of East Jerusalem, where weekly demonstrations against the eviction of local Arab residents for the benefit of Jewish settlers have taken place for over a year now, the police have also tried to ban the demonstrations. For example, the police have prevented demonstrators from entering Shimon ha-Tzadik tomb compound whereas, according to participants, a court order had given them permission to do so.

Other examples of attempts to prevent exercise of the right to protest include: The cancellation of a rally for the release of Gilad Shalit, the Israeli soldier held captive in the Gaza Strip, which was planned to take place in the city of Or Yehuda on grounds that, "the rally was going to take on a political nature, bordering on defamation of the Prime Minister and his policies"; women's rights activist who had to petition the High Court to exercise their right to demonstrate in Mea Shearim, an Ultra-Orthodox neighborhood of Jerusalem; and the Jerusalem Municipality's demand to dismantle a protest tent set up by residents of Silwan in East Jerusalem. In the last case, the court ordered the postponement of the demolition order by one year, however, the Municipality repeated its demand that the tent be immediately demolished. Another case is that of Vered Lev, who chose to protest the statute of limitations for the crime of incest. After six weeks of staying in a protest tent set up in the Rose Garden opposite the Knesset, the police refused to allow her to stay and continue sleeping in the protest tent, even though she had all the necessary permits from the municipality and though the city does not prohibit overnight sleeping in the area.

B. Turn away the Protesters

Another method which the police have used to sabotage the free exercise of expression is by turning away protesters making their way to the demonstration, thus reducing the number of people present. For example, in March 2010 checkpoints were placed on the roads of northern Israel in order

to prevent Muslim worshipers from reaching Jerusalem and participating in a series of demonstrations held in the capital. In this case, police actions represented a double or even triple infringement, because along with the freedom to demonstrate, freedom of worship and freedom of movement were also violated.

A second case involved the attempt to prevent Haredi demonstrations against what they viewed as the desecration of Jewish graves during the construction of new wing of Barzilai Hospital in Ashkelon. Against the backdrop of statements made by representatives of the Haredi community, that masses of protesters plan to arrive at the excavation site, the police placed roadblocks at the entrance to the city of Ashkelon. In both these cases, rather than preparing for a protest and possible unrest, the police chose to take collective punishment measures against an entire community. In addition to the infringement of freedom of speech, the police engaged in discriminatory conduct that violated the freedom of movement of innocent civilians whose only sin was looking Muslim or Haredi.

C. Want to demonstrate? Pay

One irritating way in which authorities have infringed on freedom of demonstration is by demanding payment for the use of the public space for the event. In June of this year, it was reported that the Tel Aviv Municipality had begun collecting money from organizations seeking to hold demonstrations and rallies in Rabin Square – one of the central demonstration arenas in Israel – with the fees based upon the number of participants in attendance. For example, a demonstration for the legalization of marijuana was conditioned on the payment of 16,000 NIS to the municipality.

In October of this year, the issue reached the Supreme Court when the Movement for Quality Government and Tel Aviv City Councilman Yoav Goldring appealed against the practice. The court has not yet ruled on the issue but in hearings on the appeal, the Supreme Court justices noted that fees collected by the municipality were bloated and harmed the ability of people to exercise their right to free speech.

The danger in conditioning the exercise of freedom of expression on payment is in turning a basic civil right into a privilege enjoyed only by citizens who have the means to afford it. It should be stressed again that freedom of demonstration is especially important for societal groups that lack access to the media and other avenues of influence. For such groups, town square is perhaps the only arena in which they can make their voices heard.

D. Don't Disturb Public Officials

In May 2009, a government-sponsored bill limiting freedom of demonstration passed its first reading in the Knesset. If enacted, the law would enable police to prevent demonstrations from taking place opposite the houses of public officials. As soon as it was reported, the bill aroused significant opposition from all ends of the political spectrum, as the effectiveness of a demonstration is measured, in part, by the location where it took place. Public officials and their neighbors have the right to live peacefully in their own residences, but the right of citizens to express their views and to demonstrate directly in front of their representatives overrides it.

Although the law has not yet passed, the Israel Police has de facto already begun implementing it. For example, the police in the West Bank have prohibited right-wing activists from holding demonstrations in communities where inspectors of the Civil Administration live, even if the demonstrations were not held opposite the homes of the inspectors. The prohibition was based on the legal guidelines defined by the Attorney-General that do not permit a political gathering to take place opposite the residence of a public official, including within the settlement where he or she lives.

In another case, the Commander of the Sharon District Police decided to cancel the permit given by

the Petah Tikvah police allowing right-wing activists to demonstrate opposite the house of the IDF Judge Advocate General, Avihai Mandelblit. Recently, right-wing activists petitioned the High Court seeking permission to demonstrate opposite the homes of ministers Eli Yishai and Ariel Attias, protesting the building freeze in Jewish settlements in the West Bank. It should be noted that last August it was reported that the Attorney-General had decided to annul the sweeping ban on demonstrations in communities where public officials lived, and to give the police discretion in such matters. Although this is a positive step, the prohibition on demonstrating in front of homes of public officials remains in effect, and the Attorney-General's guidelines fail to differentiate between civil servants and elected representatives.

2. During the Demonstration: Forcefully Dispersing Demonstrators and Arresting them

In many cases, once a demonstration is already underway, the police will decide to break it up by using violence. The police's duty is to maintain public order, but in carrying out this duty it must use proportionate measures and respect the basic right of protesters to voice their opinions. In recent years, unfortunately, that has not been the case. Security forces employ excessive force against demonstrators, even when they do not constitute a threat to public order. The broader and erroneous interpretation the police offer to their obligation to prevent all public disturbances leads them to overstep their legal authority – and thus break the ground rules of democracy.

The Sheikh Jarrah neighborhood of East Jerusalem, where weekly demonstrations take place, is one of the principle locations that has seen such violence. In December 2009, the Jerusalem District Police began a tough, concerted effort to suppress protest in the neighborhood. In contrast to the previous five months, in December permits were no longer given to activists to march from downtown Jerusalem to Sheikh Jarrah. The protest vigils set up in the neighborhood were broken up through excessive force even though they required no permit, and dozens of participants were arrested. At one demonstration held on January 15, ACRI Executive-Director Hagai Elad was also arrested. In two separate court proceedings, the arrested protesters were released from custody without bail, and the court severely criticized the conduct of the police. The judges, in discussing the false arrest of the protesters, stressed the importance of safeguarding the fundamental right to protest and demonstrate, and ruled very clearly that such protest vigils do not require issuing a special permit.

It should be noted that as long as the demonstrations against the evictions from Sheikh Jarrah are held in downtown Jerusalem, the police permit them and carry out their duty to protect the demonstrators. For example, one ACRI representative, attending a demonstration as an observer, reported that at a certain point the demonstration turned into a spontaneous protest march, and that the police allowed the march and secured it even though holding a march in this manner requires, in principle, a special permit. However, it seems that the police approach changes when a demonstration is held in East Jerusalem.

The aggressive nature of police activity in Sheikh Jarrah can be seen in [this video](#), taken by activists participating in the demonstrations. Such a policy of police brutality represents an ongoing violation of the right to freedom of expression and freedom of demonstration, and in light of the violence and false arrests, it also violates demonstrators' right to bodily integrity, to liberty, and to due process. In another case, in October, a number of Border Police were recorded on camera throwing stones at Palestinian demonstrators in Silwan. Instead of faithfully protecting law and order, they themselves became criminal instigators.

Another case of unjustified arrest took place in May this year when Naomi Ofen and Ayelet Hacoen, residents of Yizhar whose husbands had been prohibited from entering the West Bank by administrative restraining order, were arrested along with their children while distributing pamphlets to passers-by condemning the restraining orders against their husbands. In another case, Chaya Noah, the Director of the Forum for Coexistence in the Negev, was detained in October 2010 while coming to

express solidarity with the residents of the unrecognized Bedouin village of al-'Araqib, which was leveled by the police. Noah was led away by the police with her hands cuffed behind her back. An ACRI intervention with the Chief of Police regarding the incident included the eye-witness testimony of Michael Rotem, an activist of the Forum who was standing beside Noah at the time of arrest: "Chaya was in shock at her arrest. She kept saying, 'But I haven't done anything wrong'. A policewoman stood next to her, and then, within seconds, more police officers arrived and surrounded her. They grabbed her hands behind her back while twisting her body and hurled her to the ground with her face down. While she was lying there, they continued pulling her hands back. It all happened very fast. After maybe a minute or two they picked her up and dragged her away as she cried out in pain. I was standing really close by. It was a brutal arrest of a middle-aged woman who wasn't threatening anyone".

The issue of police brutality during demonstrations reached the chambers of the Knesset's Interior Committee this August, following complaints filed by Haredi demonstrators. The committee was shown a video documenting police violence against Haredi demonstrators who were protesting archaeological excavations in Jaffa, which occurred seemingly without any sign of provocation by the protesters. In light of this evidence, committee members asked the police "to restrain themselves" and demanded the Police Internal Affairs to present them with the results of the investigations into the complaints.

3. After the Demonstration: Actions Taken against Protesters

At times, the end of a demonstration does not necessarily signal the end of demonstrator harassment. Criminal procedures are initiated against many protesters who sought only to exercise their right to freedom of speech. In the case of university students, it is disciplinary measures taken against them. This phenomenon is particularly troubling because, beyond the injury to the specific demonstrators, it also sends the ominous message to other citizens who want to exercise their rights that perhaps it would be better for them if they didn't.

For example, in June 2010 police arrested a young Tel Aviv resident who was protesting Israeli actions during the Gaza flotilla incident. He was charged with assaulting a police officer. Video footage taken at the demonstration raised serious questions about the police version of events, but the Magistrate Court judge, satisfied with the police testimony, refused to watch the video and ordered that the accused be held in custody. He was released to house arrest only after his lawyer appealed the District Court, though the police still intend to file an indictment against him.

Recently the Magistrates Court in Be'er Sheva awarded 12,838 NIS in compensation to a demonstrator who was arrested in January 2009 during a legal protest vigil against the war in Gaza. The protester, Ran Tzoref, a student at Ben Gurion University, was represented in court by ACRI. Included in the compensation was an unprecedented sum of 10,000 NIS for the injury caused by the police and the prosecutor's office to the young man's freedom of speech and right to protest. Tzoref and another student, Noa Salor, were brought before a Ben Gurion University tribunal on disciplinary charges, and in September 2010 they were reprimanded and suspended on probation for the course of one semester. A third student, Tal Beharav, was brought up on disciplinary charges after he helped organize a demonstration in support of the janitorial staff at the university.

Parallel to these events, in January of this year the Knesset approved a law granting amnesty to demonstrators who were criminally charged because of their protest actions against Israel's disengagement from the Gaza Strip. Legislation that makes it easier for citizens to exercise their right to political protest should be welcomed, however, it cannot be applied solely to one group of protesters on one side of the political divide¹. The police must guarantee the rights of all Israeli citizens to

¹ A petition against the law has been filed with the High Court, claiming that the law violates the principle of equality.

demonstrate and to express their opinions. It is essential that the police internalizing the importance of protest in a democratic society and understand and their role in defending these rights.

Suppression of Demonstrations in the Occupied Territories

In the Occupied Territories, the army views all demonstrations, even non-violent protests, as illegal breaches of public order. Participants in these demonstrations are met by security forces with violence and intolerance. The excessive use of force during such demonstrations in the Occupied Territories, with its concomitant dead and wounded, has become commonplace.

Security forces have used aggressive measures to suppress and break up demonstrations at Bil'in and Na'alim, where protests against the path of the separation barrier - which passes through the lands of these two villages - have been ongoing for six years. Many times soldiers have used excessive force, including the massive and indiscriminate firing of rubber-coated bullets, the throwing of stun grenades, and the use of other violent means that have wrought casualties, both physical and mental. In September this year, it became known that metal bullets were being used by the army to break up demonstrations, a practice that had been forbidden by the IDF's Judge Advocate General.

During the past year and a half, there have been escalating attempts by security forces to suppress protest in Bil'in, in part, through an unprecedented wave of arrests of village residents. An examination of these arrests shows that they cannot be considered "ordinary" law enforcement measures, but rather are steps aimed at suppressing the legitimate popular dissent of the village. Accordingly, judges of the military court have been ordering the release of these arrestees on bail, because the testimonies and evidence against them are too weak. Nevertheless, bail is set high enough so that many of the arrestee families are unable to meet it, and the accused remains in jail.

Among the many arrestees are not only youth suspected of throwing rocks, but also representatives of the local leadership involved in organizing the protest. Most senior among them is the Chairman of the Bil'in Popular Committee, Abdallah Abu-Rahma. Despite the fact that Abu-Rahma is a known champion of non-violent protest, and was exonerated from accusations of stone throwing and weapon possession, he was nonetheless convicted by the military court of incitement to throwing stones and organizing an illegal demonstration, for which he was sentenced to 12 months in prison. According to B'tselem, Abu-Rahma was convicted based on the testimony of minors, the reliability of whom is questionable.

Most Israeli media reports on the Bil'in and Na'alim demonstrations are terse, referring to the events as violent and illegal riots without presenting their background and context. The Israeli public receives a very partial and superficial portrayal of the situation, one in which the demonstrations are portrayed as violent provocations without any mention of the significance of the villagers' right to protest. Of course, the right to protest does not imply the right to throw stones or to engage in other violence. In this context, it is important to note that while stones have been thrown at some of the demonstrations, the Bil'in protests have been organized on a model of non-violent resistance.²

Violence against demonstrators in the Occupied Territories is not limited to Bil'in and Na'alim. Casualties among demonstrators have been recorded in numerous protests throughout the territories over recent years. Here we present a small sample: In May of this year, during a demonstration at the Qalandia checkpoint protesting the siege on Gaza, Emily Henochowicz, a Jewish-American student, lost her left eye after a tear-gas canister fired by Border Patrol hit her directly in the face. The Defense Ministry refused to cover the costs of her medical treatment, and recently it became known that the police have decided not to press charges against the border police officers involved in the incident. In

² For further information on this matter see Jimmy Carter's entry on the Elders blog: [Hebrew](#), [Arabic](#), [English](#)

August, while a protest against the separation barrier in the village of al-Ma'asra was being dispersed, an Israeli protester suffered moderate injuries and an American protester suffered light injuries after being shot with rubber-coated bullets. In a separate incident that occurred in October, a demonstrator sustained chest injuries from a rubber-coated bullet during clashes with security forces in the village of Nabi Saleh in the Ramallah area. Palestinians at the scene claimed that the army opened fire with live ammunition against the protesters, but both the army and the police denied the charge. Three additional protesters were injured during the dispersal of the demonstration. The events of this particular protest were almost surrealistic, seeing as the demonstration was organized to mark the International Day of Non-Violence – including a performance by clowns – which was nevertheless broken up by soldiers firing tear-gas, as can be seen in [this video](#).

The suppression of freedom of demonstration and protest in the Occupied Territories has not gone by unnoticed by human rights organizations and the international community. In January, Amnesty International sent a letter to Defense Minister Ehud Barak with a demand that three Palestinian human rights activists be released from detention. According to the letter, the activists were detained in Israel for weeks without charges being filed against them. Following a series of incidents in which foreign reporters and photographers were injured by fires shot by the security forces, the Foreign Press Association in Israel issued an announcement in July 2010 that working conditions for foreign correspondents had worsened over the past year. In September, European Union Foreign Minister Catherine Ashton released a statement on the conviction of Abdallah Abu-Rahma, which expressed the EU's deep concern that his conviction "is intended to prevent him and other Palestinians from exercising their legitimate right to protest against the existence of the separation barriers in a non-violent manner." One month later, the UN Human Rights Commissioner, Navi Pillay, spoke out against the violence employed by Israeli security forces in their suppression of demonstrations in the Occupied Territories, noting the injury and arrests of demonstrators protesting against the separation barrier.

Restricting Freedom of the Press

A free press, considered the watchdog of democracy, represents a necessary condition for holding an open public discourse and for enabling individuals to criticize the government and state authorities. Conversely, restrictions on freedom of the press are characteristic of repressive totalitarian regimes. Over the last two years, we have witnessed serious blows to freedom of the press in Israel, manifested in such actions as court gag orders, restrictions on the work of reporters, and the attempt to cast a threatening atmosphere in which for journalists are perceived as causing harm to state interests – especially security interests.

1. Gag orders

Gag orders are one tool that law enforcement agencies can utilize, helping them to avoid exposing information that could harm sensitive investigations or state security. Like any other measure that restricts freedom of speech and freedom of the press, as well as the public's right to know, gag orders should be used as minimally as possible. Freedom of information and the concept that information should be made known to the public are fundamental to the legal system in a democratic state. These serve to ensure transparency and to allow public scrutiny of any legal proceedings. Pulling dark curtains over legal proceedings, such as through gag orders, opens the door to arbitrary government decisions and to the violation of suspects' and defendants' rights.

The most prominent case this year involving a gag order was the arrest of Anat Kam. Kam spent several months under house arrest while the whole affair was kept under wraps by a sweeping gag order. Only after leaks about the affair began to emerge – mainly on the Internet and in foreign publications - and as a result of appeals to the courts, the gag order on the case was finally lifted.

Chapter 4: Freedom of Speech, Dissent, and Political Activity

Any situation in which a citizen is held under house arrest for a prolonged period – for whatever reason – without it being brought to public attention is alarming and serious, more apt for a totalitarian regime than an enlightened democracy. Gag orders effectively eliminate public scrutiny of the arrest, and severely harm the rights of the accused to due process.

Another such case arose in May 2010 with the arrests of Amir Makhoul and Dr. Omar Said, two Arab citizens who are political activists. Here too, by request of the GSS and the Israeli police, the court issued a sweeping gag order on details of the case, including the very fact that the two were arrested. Adalah and ACRI were joined by journalists in appealing to the courts to lift the gag order. After several days, it was permitted to publish that the two had, in fact, been arrested.

While we are able to speak about the two cases mentioned above since the gag orders were eventually lifted, in the case of the prisoner dubbed “Mr. X”, we are unable to say a thing. In June 2010 an item appeared on Ynet, an Israeli news website, that a man was being held in Ayalon prison without anyone – including prison staff – knowing his identity. The news item was quickly removed entirely from the website. Subsequently, ACRI intervened with Attorney-General Yehuda Weinstein, asking that he look into the matter, and demanding that if in fact a person was being detained or imprisoned under a total media blackout, that the gag order surrounding the case be lifted. Additionally, ACRI demanded that the Attorney-General ensure that the prisoner not be held in total isolation or under conditions that would violate his rights.

"Secret arrests and trials are unacceptable in a free democratic state," ACRI wrote. "They pose a tangible threat to the rule of law and profoundly harm the public trust in the country's justice system [...] It is unthinkable in a democratic country that the authorities could detain people in utter secrecy, making them ‘disappear’ from the public eye, without the public even knowing that an arrest was carried out". In response, the Attorney-General's office informed ACRI that the gag order was crucial for avoiding a breach of national security, and that in this case the individual's rights were being preserved according to the law.

In May 2010, MK Nachman Shai (Kadima) introduced a bill that would limit the period of gag orders to one week. According to the bill, the order could then be extended for up to two weeks at a time. Hopefully this bill, or a similar one, will be passed in the Knesset and consequently reduce the use of gag orders to a minimum.

2. Other Violations of Freedom of the Press

Limiting the public's right to information in order to preserve Israel's image in the world represents a blow to democracy. In May 2010, when the "Free Gaza" flotilla approached Israel's territorial waters, the military announced that it would jam all electronic transmissions in the waters surrounding the ships so as to prevent reports from reaching international networks, for the sake of preserving the country's image. During the takeover of the ships, the infringement on freedom of the press continued. According to the Assistant to the UN Secretary-General on Political Affairs, the Israeli military confiscated all the material recorded and filmed by the journalists who were on board. Several months later, when another ship was approaching the Gaza Strip, the military confiscated the equipment that Eli Oshrov – the only Israeli journalist aboard the Irene ship – used to document the events, including his camera, microphone, and cellular phone.

In recent months, several correspondents and writers reported on threats they had received and measures which were taken against them, including in cases of news stories unrelated to security matters. For example, journalist Kalman Libeskind charged that the army harassed him because of his investigative reporting concerning Chief of Staff designate Maj. Gen. Yoav Galant; Director of Channel 10 News, Reudor Benziman, told how an Assistant Chief of Police threatened him and his

employees while seeking to prevent the broadcast of a series of unflattering reports on police violence towards civilians; a reporter and photographer of the Internet site "B'Hadrei Haredim" reported that he was arrested while reporting and photographing a demonstration in Jaffa of ultra-Orthodox protesters against excavations there; journalists covering ultra-Orthodox demonstrations against excavations in Ashkelon were removed from the site, and in one incident, a photographer was detained for questioning.

This hostile atmosphere towards journalists is also reflected in a proposed amendment to the Penal Code introduced by MK Otniel Schneller (Kadima). The amendment would impose severe penalties on journalists who receive confidential information and refuse to turn the material and its sources over to the authorities. This draconian legislation runs counter to the accepted standards of freedom of the press in democratic countries, and seeks to dissuade journalists from doing their job, turning every investigative journalist into a potential criminal.

This attitude towards the press and journalists was highlighted in October when the Israeli Press Council convened a special discussion on the subject. At the same time, the Tel Aviv Journalists Association sent a letter to Police Commissioner Major-General Dudi Cohen and Internal Security Minister Yitzhak Aharonovitch charging that the police were making efforts to "frighten" Israeli journalists. Amongst other measures, the letter mentioned the secret wiretapping of journalists, over-enforcement of gag orders, and the use of intimidation and threats against reporters: "The police have created a situation where Israeli journalists experience uncertainty and anxiety, feeling that their hands – which are supposed to defend democracy – are tied".

The ongoing erosion of freedom of the press in Israel has been confirmed in international indices that examine the state of journalism in various countries. Thus the American organization Freedom House, which promotes freedom of the press around the world, lowered Israel's rating this past year to "Partly Free" – the first time Israel has received such low rating since the index was started in 1980. The rating was lowered following the restrictions placed on media coverage from the Gaza Strip before and during the war there in December 2008-January 2009. In a report published this year and referring to the situation in 2009, Israel was ranked "Free" once again, but the organization notes that "some curbs on media freedom, primarily concerning travel restrictions and military censorship, remain in place".

In the freedom of the press index of Reporters Without Borders, Israel recorded a severe hit in 2009, dropping 47 places to the 93rd freest press in the world. While 2010 has seen a modest rise and Israel ranked the 86th place, it is still dismal considering the number of countries, some non-democratic, ahead of it on the list. "The Seventh Eye", an online publication on journalism in Israel, summarized this ranking by concluding: "The report states that 'The year 2010 was not exempt from violations of freedom of the press by the Israeli military - foreign journalists on board the Gaza flotilla were arrested in May 2010, Palestinian journalists became frequent target of Israeli gunfire, and clashes on the Lebanese border last August caused the death of one Lebanese journalist.' Nevertheless, the organization notes the disparity between the severity of these cases and the near fatal blow to freedom of the press suffered the previous year, during the war in Gaza".

Tying the Hands of Political Activists

In a democracy, each and every person is entitled to participate in whatever political, social or communal activities he or she see fit. Political participation, which seeks to influence the democratic decision-making process, carries significant importance. Even though most of the major decisions regarding the country's fate are made by elected representatives, democracy still requires the participation of citizens as partners to the public discourse, whether as activists in election campaigns, in non-parliamentary social movements or in *ad hoc* groups of all types.

Chapter 4: Freedom of Speech, Dissent, and Political Activity

When security forces have no valid legal claim for limiting the actions of political activists, they sometimes resort to a host of harassment techniques, such as “warning talks”, issuing warnings and threats, detaining activists for questioning, etc. This improper exercise of power and authority, which recalls the techniques of security forces in totalitarian regimes, is intended to convey a clear message to activists even if this is not always explicitly stated: Your activities has caught our attention, we have our eye on you, and it would be best for you if you ceased these activities.

There is no shortage of examples. In recent years, Palestinian activists who are resident of East Jerusalem have been summoned to police stations for “warning talks”, aimed at stopping their participation in protests, communal, and/or political activities, and also at extracting information about the political activities of others. In Umm al-Fahm, an Arab city in northern Israel where a right-wing march was scheduled to take place, local residents were summoned to the police station and were cautioned against participating in counter-demonstrations. Police sources confirmed the existence of these warning talks, but stressed that their purpose was to "request" of residents to exercise restraint – as if summoning citizens to have a "talk" with the police is legitimate in a free country.

In another example, Yonatan Shapira, who sprayed graffiti on the walls of the Warsaw Ghetto criticizing the Israeli occupation, was summoned for questioning by the GSS. What happened in the interrogation room was posted by Shapira on his Facebook page. There is no doubt that Shapira's actions were unacceptable, to say the least, in the eyes of the vast majority of the Israeli public, but that doesn't make them worthy of a GSS interrogation. As noted by ACRI Attorney Lila Margalit: "It must be clear to all, that in a democratic country, a person must not be summoned to a talk with security services because of his participation in political protest. If he broke the law, he should be summoned by the police for questioning, and if the circumstances warrant, legal measures should be taken against him".

In late 2009 Wajih Sidawi, an activist of Tarabu-Hithabrut, an Arab-Jewish movement for social & political change, was summoned for questioning, apparently by the GSS. Both the interrogation and the manner in which it was conducted point to a single purpose: to show him that the authorities had their eye on him and to deter him from further social and political involvement. In a separate incident, right-wing activist Elad Meir claimed that his family received threatening phone calls from the GSS because of his political activism.

No Entry for Critics

Harassment of activists in order to prevent criticism of the state is not aimed solely against Israeli civilians. This year, Israel prevented a number of critical foreign voices from entering the country, though it is clear that they are not suspected of any illegitimate or criminal conduct. In so doing, Israel first and foremost violated the rights of its own citizens to be exposed to various opinions. The filtering of visitors based on their political views creates an improper affiliation between the “state” and the positions of the current government, reminiscent of totalitarian regimes, and harms those citizens holding contrary views. A democratic country, in which freedom of speech is a guiding principle, must not close itself before criticism or inconvenient views. Rather, we must deal with them through public debate and dialogue. A democracy does not prevent the entry of visitors solely because their ideas are unacceptable to the reigning government, and does not presume to determine for its citizens which views are legitimate and which are not.

One such case occurred in May of this year and received much media attention, when Interior Ministry officials at the Allenby Bridge Border Crossing prevented the entry of Noam Chomsky, an American professor, who was on his way to deliver a lecture at Bir-Zeit University near Ramallah. Chomsky, 81, considered one of the most important and influential scholars in the world, is also known for being an outspoken critic of Israeli policy. According to Chomsky, he was asked at the border why he was

lecturing at Bir-Zeit and not at an Israeli University, and was told that the Israeli government "does not like" his opinions.

A few weeks earlier, the Spanish clown Ivan Prado was deported back to his country after lengthy questioning at Ben Gurion Airport carried out by the GSS and Interior Ministry. According to investigators, Prado, who came to perform before Palestinian children in the West Bank, was suspected of having ties with terrorist organizations. Another public figure subjected to humiliating treatment was Mairead Maguire, the Irish Nobel Peace Laureate and a prominent critic of Israeli policy in the territories, whose entry into the country was denied after her participation in the Gaza flotilla. In October, Heather Bradshaw, an American professor, was subjected to humiliating treatment before boarding an El AL flight to Israel from Luton Airport in England. Bradshaw, who visited Israel once before and was on her way to a scientific conference in the country, was forced to undergo a comprehensive physical examination and prolonged security questioning. A day later she discovered the (absurd) reason for her humiliation: Bradshaw was mistakenly identified as an American human rights activist by the same name – as if being a human rights activist automatically turned her into a potentially dangerous person.

De-legitimization of Human Rights and Social Change Organizations and Activists

A healthy and functioning democracy is one that can deal with criticism, both internal and external, and can bear to hear, even if it does not accept, the various voices and opinions that set the tone at a certain point in time. In this context, the activities of human rights organizations and groups working for social change, which frequently criticize the conduct of state authorities, carries great importance.

In 2009, Israel saw a marked increase in harassment of these NGOs and activists by the authorities. Amongst other incidents, we witnessed: Attacks by the IDF Spokesman and the Foreign Ministry against "Breaking the Silence", an Israeli organization that publishes testimonies of IDF soldiers who served in the Occupied Territories, thus providing evidence that undermine the official versions of the military; a police investigation against New Profile, a feminist movement working toward the demilitarization of Israeli society, which eventually proved to be futile; senior government officials issuing extreme statements against organizations assisting migrant workers and refugees; and more.

If 2009 was a bad year for freedom of expression and activity of NGOs, then in 2010 the floodgates burst. Numerous organizations came under assault, whether through harassment from government authorities, through a campaign to de-legitimize their activities, or through legislation aimed at limiting these organizations' freedom of expression and suppressing their activities.

Human rights organizations are the moral compass of our society. The critical light that human rights organizations shine on Israel – even if sometimes stinging – actually helps our society to investigate injustice and correct wrongs that need to be righted. As such, they provide a necessary condition for the existence of a healthy, functioning democratic society. A democratic state must not lend a hand to those who would intentionally silence the critical voices within it. Rather, it must honestly deal with those issues that need correcting. Any attempt to challenge the legitimacy of these organizations and to foster a hostile public attitude toward their activities stands in direct contradiction to the UN Declaration on Human Rights Defenders. This declaration, of which Israel is a signatory, states that it is the obligation of states to respect the rights of human rights activists, and protect them from any violence, threats or discrimination they might encounter as a result of their activities.

In the previous chapter of this report, we discussed at length the anti-democratic legislative trend in the current Knesset, including newly-introduced bills seeking to curtail freedom of speech, freedom of

Chapter 4: Freedom of Speech, Dissent, and Political Activity

association and freedom of political activity. Two such bills were specifically directed against organizations working toward social change and human rights. The first was a bill introduced by MK Ze'ev Elkin that expands disclosure requirements for organizations receiving financial support from foreign entities, and in effect marks and stigmatizes NGOs that receive funding from donors abroad. The second bill, which would shut the doors of any organization involved in a lawsuit abroad against Israeli officials, contradicts the basic democratic idea that citizens are free to form their own opinions and act upon them in legal, non-violent ways in order to change the policies they oppose, including policies of the government and the military.

Against this background, it is not surprising that international rights groups have recently come out with statements warning about the current situation in Israel. In July, Human Rights Watch published a cautionary announcement on the danger to Israeli democracy if anti-democratic legislation currently in the Knesset were to be passed. The organization noted that, "These developments take place against the backdrop of statements and actions by official, which have created an increasingly threatening atmosphere for human rights defenders in Israel. **There are numerous signs that the government considers the nongovernmental organizations themselves, rather than the human rights problems they expose, to be the problem.**" (Emphasis added.) So too, the Human Rights Committee of the European Parliament discussed the issue in a special session this June, following concerns that these bills and the pervading public atmosphere in Israel would limit the activities of human rights organizations in Israel.

The introduction of these bills in Knesset was accompanied by harsh statements made by some Israeli public officials against organizations and activists. It appears that many of these figures, who over the last two years have dominated the public discourse, never had any intention of engaging in serious discussion about the criticism leveled by the NGOs. They would rather vilify them and brand them as enemies of the state and a danger to its security.

An article published in January 2010 in Ma'ariv, an Israeli daily newspaper, "exposed", so to speak, that many human rights organizations – ACRI included – that receive funding from the New Israel Fund had contributed information to the Goldstone Report, a UN Fact Finding Mission on the Gaza war. The article was the opening salvo in a media smear campaign against the New Israel Fund, a philanthropic body which invests in progressive NGOs promoting a wide and diverse array of social programs. The heart of this campaign – based on lies, half-truths, and dark insinuations – was the claim that the NIF financially supports organizations that criticize the State of Israel. It was marked by a personal attack on the chairwoman of the foundation in Israel, Professor Naomi Chazan, including billboard caricatures of Chazan with a horn stuck on her forehead – a play on words from the Hebrew word "keren", which means both a fund and a horn.

The problem does not lie not with the campaign itself, led by Im Tirtzu, a nongovernmental organization. The problem begins when elected government officials and state representatives become active partners in creating an anti-democratic atmosphere, one that marks and de-legitimizes any person or organization that does not fall in line with the official government stance. MKs and public figures chose to join in on the assault against human rights organizations in general and the NIF in particular. At a session held in Knesset on "research" carried out by Im Tirtzu, MK Zevulun Orlev (Ha-Bayit ha-Yehudi) quoted from the bible and stated: "'Your destroyers and wreckers will come from amongst you.' The New Israel Fund finances bodies that are hostile to the state and cause us inestimable damage, no less than that of our worst enemies". MK Yulia Shamalov-Berkowitz (Kadima) referred to human rights groups who presented information to the Goldstone Commission as "internal enemies of Israel" and "betrayers of the people of Israel". The Knesset Constitution Committee decided to establish a special sub-committee (which was not formed in the end) to investigate the transfer of donations from foreign organizations and governments to Israeli NGOs. Chief Rabbi of Safed Shmuel Elyahu, a figure known for his racist statements, compared the NIF to the Judenrat in the Holocaust.

Attacks on human rights groups, particularly by Knesset members, continued throughout the year. In April, following the Anat Kam affair, a number of MKs came out with sweeping statements against the Israeli Left and against human rights organizations, particularly against NGOs supported by New Israel Fund. Particularly alarming were the words of MK Otniel Schneller (Kadima), who spoke out specifically against human rights values: "In a society that preaches the sanctity of freedom of information and individual rights, and views them as values trumping the interests of the state," said Schneller, insinuating that such rights were an off-putting concept, "no one should be surprised when we find in our own society the rotten fruits [of this worldview]". A press release published by the Ministry of Foreign Affairs in October concerning the participation of Deputy Foreign Minister Dani Ayalon in a conference on the de-legitimization of Israel also portrays a grim picture, as Ayalon's statement read: "Our enemies are recruiting a network of agents on their behalf called 'human rights activists' in order to discredit Israel in the eyes of the world".

When elected representatives and officials from the establishment seek to de-legitimize civil society organizations advocating for human rights and social change, and take concrete steps to curtail those organizations' activities, they are effectively trampling the democratic ground rules and leading a concerted assault on democracy. Government institutions do not have to accept the claims of these NGOs or agree with them, but they must deal with these claims in a professional manner, and not seek to harm those who dare voice their opinions. As mentioned, the freedom to criticize the government, to monitor its activities, and to help those who fall victim to it are all legitimate courses of action in a democracy. These actions safeguard democracy and are the key to its future successes. By fostering a public discourse hostile to human rights defenders, and by misusing their authority to restrict human rights activities, these officials are undermining the very foundations of democracy.

The prevailing hostile atmosphere toward human rights organizations and government critics also trickles down to the general public, which has demonstrated a marked intolerance towards difference of opinion and a willingness to curb the free speech of those with whom they disagree. For example, in a poll conducted in February of this year, 57% of Jewish respondents said that in a state of conflict – the only condition Israel has ever known – security concerns and the national interest should trump human rights. Only 52% of Jewish respondents were opposed to the statement, that any citizen criticizing Israel's foreign policy and national security policy in a foreign country or to an international body is a traitor. In another survey, published in April, the overwhelming majority of respondents (98%) claimed that freedom of speech is important to them, but when asked to apply this general claim to specific scenarios, the results changed dramatically. For example, nearly 57% of Jewish respondents indicated that Israeli human rights organizations seeking to expose unethical acts of the state should not be allowed to carry out their work and publish their findings. About half of those surveyed indicated their belief that there is too much freedom of speech in Israel.

Next Step: No one is Immune

If until recently the campaign of de-legitimization and intimidation was directed against "the usual suspects" – organizations for social change identified with the Left – it seems that the phenomenon is now reaching out in other directions. For example, MK Israel Hasson (Kadima), recently compared the environmental NGO Adam, Teva, ve-Din with Hezbollah, after the organization gave him a low ranking in its published index of "pro-green" MKs. MK Michael Ben-Ari (National Union) brought a libel suit against the Israel Women's Network and three of its staff members because they criticized a speech he had made at the Knesset plenum. Similarly, civil-action groups fighting for a fairer distribution of profits from the natural gas reservoirs off Israel's coast were shocked to discover that their activities represented "an assault on national security", according to the position of the Forum for the Land of Israel, which published this message on huge highway billboards.

These examples all come to show that the injury to democracy described in this report does not stop at any one particular group. On the contrary, the current atmosphere of silencing dissenters and disregard

for individual liberties is eroding the foundations of democracy as a whole. Intolerance and the inability to hear criticism are becoming the existential conditions of Israeli society. Those who voice opinions inconsistent with the “accepted” government stance (assuming such a stance exists) are liable to find themselves and their freedom of speech in jeopardy, denounced as enemies and traitors.

Freedom of Expression for Artists

In this context of infringements on the freedom of expression of citizens, the reaction of MKs and ministers to the announcement of leading theater actors that they would refuse to perform at the new cultural center in Ariel comes as no surprise. MKs Ronit Tirosh (Kadima) and Yariv Levin (Likud) drafted a bill that would deny state financial support to theaters employing artists boycotting any venue on political grounds. Limor Livnat, Minister of Culture, threatened to intervene in the contents of the plays themselves, and later announced that she would require theaters and other cultural companies to commit to appearing anywhere in the country as a condition for state financing. It was also reported that Livnat worked to change the criteria for funding cultural institutions in ways that would harm those companies refusing to appear somewhere in the country. Prime Minister Benjamin Netanyahu, for his part, stated that “the government should not fund organizations trying to impose a boycott from within”. The political party Yisrael Beiteinu also announced that it would work to stop funding for artists who signed the boycott letter. Earlier this year, the Knesset rejected a Yisrael Beitenu sponsored bill which sought to condition the receipt of public funding for movies on the filmmaker's declaring allegiance “to the State of Israel, its symbols, and to its Jewish and democratic values.”

When state authorities threaten to withdraw financial support from certain cultural institutions while giving preference to others whose political views are closer to their own, they are engaging in a violation of freedom of speech. The fact that the state participates in the financing of artistic creation does not give it license to condition that funding on the work being consistent with or the artist ascribing to the ruling majority's political positions. That is how dark, totalitarian regimes operate, suppressing free artistic expression and encouraging “co-opted” art that is in line with the regime's ideology. Artists have the right to express their views, also by refusing to perform in Ariel and elsewhere in the Occupied Territories. In a democracy, they cannot be forced to perform against their own conscience, nor is it permissible to condition the budgets they receive on an obligation to express views consistent with those of the ruling powers.