

November 17, 2015

To

Minister of Justice, Ayelet Shaked

Ministry of Justice

Re: Memorandum of Draft Law—Duty of Disclosure for Those Supported by Foreign State Entities (Amendment) (Increased Transparency Regarding Those Whose Main Funding is From Contributions from Foreign State Entities), 5776-2015

We wish to oppose the draft law.

This draft law seeks to delegitimize civil society organizations in Israel, to mark them with a scarlet letter, and—under the guise of "transparency"—to attack them and reduce their freedom to act. The proposal—not by chance—will apply only to contributions from a "foreign state entity" such as states, the United Nations, or the European Union; it will not apply to donations from private parties. The purpose of this is to harm only those organizations that are identified with a particular side of the political map. Nevertheless, the proposal will also harm the activity and legitimacy of many additional organizations such as organizations dealing with health, the environment, education, and other subjects. Additionally, it will do considerable harm to Israel's image as a democracy, as it reduces the freedom of association and of expression, and is directed at restricting the activities of human rights organizations.

The substance of what is proposed in the draft law

We will start by noting, to remove any doubt, that even though we see nothing wrong with the receipt of donations from foreign countries, the Israel Democracy Institute does not fall within any of the definitions in the draft law. The proposed law will therefore not apply to it.

1. The draft law seeks to impose a number of obligations on non-profit organizations that receive most of their financing from a "foreign state entity" (as defined in the Non-Profit Organization Law, these are foreign countries, the European Union, the United Nations):
 - a. Any publication directed at the public or available to the public which is published by the organization, in any visual media which allows for the inclusion of written words, and in any written appeal to any civil servant or elected official or in any report prepared and distributed to the public—the organization must indicate the fact that most of its funding comes from a foreign state entity, and must indicate the names of the state entities providing funding.

- b. A representative of such an organization who participates in a public deliberation with elected officials must, if the hearing is being recorded, note for the record that he or she is a representative of an organization whose main funding comes from a foreign state entity.
- c. A representative of such an organization will be considered to be a lobbyist for the purpose of section 68(a) of the Knesset Law and must wear a lobbyist's identification badge, which will indicate that he or she is a representative of an organization whose main funding comes from a foreign state entity.

The purpose of the proposal: transparency?

- 2. The draft law memorandum proudly mentions the word "transparency" at every turn. Under the subtitle "The Law's Objective and the Need for Its Enactment," the memorandum explains that the purpose is to "increase transparency regarding the activity of the non-profits and the public service companies whose main funding is from foreign state entities." This is the only explanation provided as to the problem that the law is intended to solve, and what its purpose is. Is there a problem regarding the concealment by the organizations of the sources of their budgets, under the current legal situation? It appears that even those who drafted the memorandum see anything other than a tautological objective—the purpose of the "Increasing Transparency Law" is to "increase transparency." This is pathetic reasoning—to say the least—to present as an explanation for "The Purpose of the Law and the Need for Its Enactment." This is in light of the known fact that for four years, organizations have in any event been subjected, by law, to an increased disclosure requirement (and there had been transparency even before that) regarding support provided from a foreign state entity. Reports required pursuant to this law are submitted each quarter and the reports of such contributions are fully visible on all the organizations' websites.
- 3. We believe that the real purpose of the law—even if it is not explicitly argued in the memorandum—has been expressed by those who have been pushing for and promoting similar proposals for several years: the delegitimization and silencing of civil rights organizations because some of them challenge and criticize governmental policy. This began with the former foreign minister who called these organizations "nothing other than terror accessories," continued through those who wanted to have a McCarthy type parliamentary investigation of organizations, and ended with the explanatory material attached to private draft laws that were similar to this one. (This memorandum has been presented as a governmental one.) Thus, for example, there was a private draft law proposed by MK's Magal, Smotrich, Yogev and Slomiansky entitled "**Draft Foreign Non-Profit Organizations Law, 5775-2015**," and the explanatory material attached to it stated as follows: "There are dozens of organizations active in the State of Israel who receive assistance from foreign state entities. Some of them clearly

represent foreign interests which are not consistent with the interests of the State of Israel." Another draft law (**Draft Amendment of the Income Tax Ordinance (Taxation of the Income of Public Institutions who Receive Contributions from a Foreign State Entity), 5771-2014**), proposed by former MK Fania Kirshenbaum, had the following explanation attached to it: "There are organizations working in Israel who have established a goal for themselves of making Israel look bad in the eyes of the world and of having Israel's soldiers and officers become wanted men, and to do this while doing damage to their good name. These organizations, who often call themselves 'human rights organizations,' receive financing from countries and international sources whose only purpose is to damage and to change the public political discourse in Israel, from the inside."

4. Thus, it is not transparency which is the goal of the law presented in the memorandum—the actual objective is an attempt to do harm to civil society organizations and to stand them against a wall and label them as "foreign agents" who are disloyal to the State. In this way, the draft law will harm the freedom of assembly, which is an important aspect of freedom of expression. As Supreme Court President Shamgar wrote—"The right to assembly is a basic right in terms of a citizen's personal rights in a democracy, both with respect to the social principles that guide such a political system, and with respect to its character as a state of law. The freedom to assemble is a right of both the individual and the public, and it is a necessary condition for the existence of a democracy." (CA 1281/93 *Non-Profit Organizations' Registrar v. Benjamin Kahane*). The organizations' activity is legal (and if it is not, there are obviously ways to investigate and restrain any organizations whose actions or objectives are in fact illegal), and it is all transparent. Their activity is not merely legal—it is the realization of basic rights, and it must therefore be obvious that there is no reason for obstructing these organizations.
5. Because the real objective of the proposed law is to present the civil society organizations as those who operate on behalf of foreign entities and foreign interests, the law appears to be making a false representation. Worse, by obligating the organizations to mark themselves and to present themselves in a harmful and misleading way, it clearly contains an element of humiliating those who work on behalf of these organizations.

Why does the memorandum only refer to funding from "a foreign state entity"? Or: a violation of the principle of equal treatment

6. As stated, the memorandum provides almost no explanation of the proposed law's objective. It therefore also makes no claims as to why the need for the law arises only in cases in which funding comes from state entities, and not with regard to private donations of foreign entities. Substantively, it is difficult to understand why the concern regarding foreign involvement by foreign entities becomes

problematic to the degree that it must be announced in every document or discussion in which the supported entity's representative takes part—but only when the support comes from states, including friendly states such as the United States and Great Britain. Why is this the case, when contributions amounting to millions of shekels flow into Israeli organizations from private entities as well—some of which have interests that are much less transparent and clear than those of friendly governments? Why is the need for "transparency" not applicable in connection with private entities? Why is there no need for disclosure and a notice regarding the identity of the party providing funding, when the party in question is a private one—even though such parties can certainly be hostile to the State of Israel?

7. The answer to the question is similar—contributions from "state entities" are, at the current time, primarily given to organizations that are identified with only one side of the political map. Thus the memorandum (as well as many other similar previous proposals) does not really deal with transparency. Instead, it deals with political persecution, hostility, and delegitimization directed at organizations that are critical of the government's policies. A letter written by Attorney General Yehuda Weinstein regarding one of the older versions of the attempts at attacking these human rights organizations (through the restriction of funding) stresses this exact point: "I would add that alongside the state funding, there are also many private entities who provide funds to the State of Israel in order to support various organizations. These proposed laws ignore this type of funding to a degree that gives rise to concern that the principle of equal treatment is being violated, at least in terms of the outcome." (Letter from the Attorney General to the Prime Minister, regarding proposed legislation passed by the Ministers Committee for Constitutional Matters, dated 13 November 2011.)
8. It should be noted that the American statute (the "Foreign Agent Registration Act"), on which those proposing these various pieces of legislation rely, makes no distinctions between private and state contributions. (And the memorandum here, for good reason, makes no mention of any similar law in the Western world.) There are other differences between the law proposed in the memorandum and the American statute—differences that relate to the nature of the supported entities' obligations to the "foreign entity." The American law covers cases in which the foreign entity actually directs, or in any other way manages the supported entity's activity.

Are the civil society organizations comparable to "lobbyists" for foreign governments?

9. The attempt to create an analogy between the civil society organizations and "lobbyists" or agents of international governments and entities is, from a factual perspective, both mistaken and baseless. These organizations are created to deal with a specific agenda (e.g., the environment, the promotion of women's rights,

children's rights, etc.) The contributions are given on the basis of research proposals, presentations of existing activities, and work plans—but this does not in any event mean that the countries providing the funding have become decision-makers or something similar within the organizations. This situation is completely different from that of a corporation that hires a lobbying firm, in which all of the lobbyist's activity is based on the initiative of the corporation that has hired the lobbyist. The lobbyist thus becomes, effectively, the employer's agent, for all intents and purposes. Can it be seriously argued that an environmental organization that works on environmentalist issues in Israel is a "lobbyist" working on behalf of the European Union or the American government? Is an organization working for equal treatment for women a "lobbyist" acting on behalf of the European Union only because it received a grant from the EU?

10. Regarding human rights organizations, the proposed law completely ignores the modern tradition of human rights which developed after the First World War, and which took form after the Second World War—primarily in response to the Holocaust and with important contributions from Jews such as Rene Cassin. According to this universalist tradition, human rights are an interest of all people and all countries, and concern for such rights is not deemed to be improper intervention by one country in the internal affairs of another country. Israel is blessed to be part of the developed Western countries, and to share their universalist-liberal values, in which human rights take center stage. In contrast, the proposal under discussion here portrays Israel as a country that is on the attack against human rights. The enactment of the proposed law will therefore lead to a situation in which Israel's claim to share the West's values will be seriously harmed.
11. The Jews, as a minority in various countries, both in the past and at the current time, expected that when their basic rights were attacked, particularly through various forms of racism or discrimination, the State of Israel and other countries would rise to their defense. In light of Jewish history and the reality experienced by Jews living in the Diaspora, the proposed law is not consistent with the Jewishness of the State of Israel. The degree of Israel's involvement with the Jews of the Diaspora, not only in terms of defending Jews when their rights are attacked but also in terms of preserving Jewish identity and encouraging immigration to Israel, is clear and strong. Does the government want the Diaspora Jews who have various degrees of connection with the State of Israel to mark themselves as being foreign agents? Is this how the Israeli government takes care of the Jewish people?

The proposal is likely to damage the functioning of the civil society organizations

12. Beyond the damage done to the rights of the civil society organization's workers to assemble and to express themselves, it can certainly be presumed that the fact

of the "marking," the difficulty placed on their activity and the delegitimization of these organizations in Israel are all likely to diminish the donations that the organizations will receive (from both local and foreign sources). This is of course a result which will please the supporters of the proposed law, but from the perspective of the Israeli public, it is a damaging outcome which is to be regretted. The civil society organizations deal with many subjects that the State cannot or does not want to become involved with, and they do this for the benefit of the citizens of the State—primarily for its weakest citizens and its minorities.

13. Additionally, the adoption of the law may have a chilling effect. The non-profit organizations who receive only minimal financing that they receive from a "foreign state entity" may prefer a certain reduction of their budgets, in order to avoid being included in the "list" of the NGO's to which the law applies—because inclusion in the list would mean that the organization will be stigmatized as being a "foreign agent." In this, the country will lose a part of the beneficial activity that is carried out by the NGO's which, as stated, are active in connection with issues such as welfare, education, the environment and women's rights, and with other positive objectives.

The proposed law will cause damage to Israel's image throughout the world and will promote legal proceedings against Israel in international forums

14. The proposed law will bring Israel into the "good" company of the countries who enact laws that restrict the freedom of human rights organizations to act—countries such as Russia and Venezuela (although the laws in those countries are harsher and limit the funding itself).
15. The explanatory material accompanying the previous proposals, and the reasons often given by those supporting the similar proposals, state that the objective of these proposals was "to fight the phenomenon of the delegitimization of the State of Israel throughout the world." The opposite is true. If the draft law is enacted, Israel's image as a democratic country will be seriously harmed, and it will suffer a significant diplomatic blow. This law will be perceived as a hostile act directed at the countries and organizations that provide funding. As a country that takes pride in being "the only democracy in the Middle East," Israel must promote draft laws that do the opposite—that protect the human rights of all its citizens, and particularly the rights of its minorities to make themselves be heard.
16. An act that weakens the human rights organizations in Israel is likely to accelerate the international efforts to initiate legal proceedings abroad against Israeli leaders and military commanders. The best way to prevent these efforts is to persuade the international community that Israel is doing all that it can, fairly, to handle—by itself—any suspicions that war crimes have been committed. If the Knesset acts to restrict the activities of the human rights organizations, it reduces the ability to effectively investigate the suspected crimes.

17. Again, to the extent the issue is allegations of war crimes, this is not an internal affair, since such situations would be subject to universal legal norms of international criminal law. The previous Military Advocate General, Avihai Mandelblit, has credited the activities of the human rights organizations as constituting an irreplaceable channel for the transmission of relevant information to the prosecutor's office regarding suspicions of crimes. If action is taken to block this channel, the ground will be prepared for criminal enforcement action being taken against our people outside of Israel—based on the understanding that we are stifling internal enforcement. This is a measure that endangers the political and military leadership, by exposing the leaders to criminal proceedings abroad.
18. To the extent that the subject is the defense of rights of Palestinians living in the territories—the issue is not an internal Israeli matter, as the territories are not formally a part of the State and the residents there do not have an opportunity to express their interests through political participation.
19. Regarding organizations which deal with the rights of the Arab minority, this is a minority that does not have real representation among the decision-makers in the various areas of government activity, and it does not truly participate in or impact on the national decisions, including the budgetary and planning decisions. But it is understood that this is a subject that worries foreign countries and international organizations. They therefore support, through the provision of funding, local efforts the purpose of which is to ensure the realization of what was undertaken in Israeli Declaration of Independence—that the State will have "complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture." The activity of the human rights organizations, carried out primarily through petitions to the High Court of Justice, has led to the correction of various distortions in terms of the relationship to the Arab minority, mainly for the purpose of preventing wrongful discrimination. Does the government wish to present itself as being in favor of wrongful discrimination and to restrict this activity? Is it not clear what the consequences will be of such a measure in terms of our international standing? As stated, this law will be a challenge directed at friendly countries. If we wish to specifically cause problems for Israel's relationship with its friends, this is the best and most beneficial move to make.
20. Israelis should be proud of the Israeli organizations dealing with human rights, and of other similar organizations. **The fact of their existence and the internal criticism that they present regarding the government's actions contribute to the image of Israel as a moral country, and to its legitimacy within the world as a democratic state that respects international law and the rights of the minorities who live within Israeli society.**

We are completely opposed to this proposal.

Very respectfully,

Professor Mordechai Kremnitzer

Vice President of Research

Israel Democracy Institute

Dr. Amir Fuchs

Israel Democracy Institute