

Factionous Funding

A pair of proposed bills aimed at restricting foreign funding for 'political' NGOs has sparked a storm of controversy

Ziv Hellman

WHAT CONSTITUTES interference in the internal politics of one country by foreign governments? What can a democracy legitimately do to defend against foreign interference?

A pair of bills currently being considered by the government, described by their supporters as straightforward efforts to protect Israel from the “intervention of foreign bodies in determining the future and nature of life in the State of Israel” has sparked a storm of controversy. Opponents vehemently insist that the bills are undemocratic in both essence and intention, and that they constitute a heavy-handed attempt by the government to stifle political opinions that it dislikes. Some opponents have gone so far as to state that adopting the bills as law would be a step towards making Israel a country as undemocratic as “Sudan and Iran.”

The first bill, proposed by Likud MK Ofir Akunis and called “The Associations Law (Amendment – Banning Foreign Diplomatic Entities’ Support of Political Associations in Israel)” would limit donations from foreign state entities to “political associations” to no more than 20,000 shekels (about \$5,500) per year. A second bill, proposed by Yisrael Beiteinu MK Fania Kirshenbaum would not limit donations by foreign states to Israeli NGOs but subject them to a 45 percent taxation rate.

The bills were approved on November 13 by the government’s Ministerial Committee on Legislation, with 11 ministers voting in favor and five against. But immediately after the vote, two of the dissenting ministers, Benny Begin and Dan Meridor, lodged an appeal, a procedure that mandates that the bills must be brought to a vote before a full government assembly before they can proceed to a preliminary reading in the Knesset plenum. A source in the Knesset tells *The Report* that the decision regarding when the

government will be asked to vote on the bills is now entirely in the hands of Prime Minister Benjamin Netanyahu. And it is likely that Netanyahu will try to delay the vote as long as possible, in an effort to quiet down some of the furor that the bills have caused.

The directors of many of the country’s leading NGOs, however, have not been assuaged by the many procedural hurdles standing in the way of adoption of the bills as law. They are increasingly concerned that their freedom of operation is in danger. Some of them are openly talking in grave terms about a concerted effort by political elements to shut them down.

“The range of organizations whose important work may be affected is very wide,” says Ronit Heyd, executive director of Shatil, a civil and human rights organization established by the New Israel Fund. “It includes organizations working for civil rights, women’s rights, gender equality, employment opportunities and environmental issues. Politicians in the Knesset and government are considering passing new laws that will curtail all these, and it will affect every single citizen,” she tells *The Report*.

“These two bills are part of a larger effort to curtail the work of human rights and social change organizations whose agenda or activities are not approved by various MKs and ministers,” says Hagai El-Ad, executive director of the Association for Civil Rights in Israel (ACRI). “This attempt to harm the activities of organizations that deal with human rights in these and other bills currently being advanced undermines the foundations of democratic rule.” (See “Open, Vibrant, and Pluralistic,” page 14.)

THE ROOTS OF THE EFFORTS TO shut down foreign funding of NGOs go back to the aftermath of the Israel Defense Forces’ Operation Cast Lead in the Gaza Strip in late 2008 and early 2009. The

22-day operation, intended to put a stop to Hamas rocket fire on Israel, was largely successful in attaining this objective.

But there were more than 1,000 Palestinian fatalities in that operation (1,387 according to Palestinian sources, and 1,166 according to the IDF), and this prompted the United Nations Human Rights Council to commission a fact-finding mission, led by South African Judge Richard Goldstone. The subsequent report of the commission, published in September 2009 and popularly called the Goldstone Report, cast Israel in a negative light by concluding that the IDF and Hamas had both committed war crimes and possibly crimes against humanity.

Israel officially refused to cooperate in any manner with the Goldstone commission, and disputed its findings in January 2010. What aroused the ire of several MKs, however, was the cooperation that Goldstone ostensibly found from several Israeli human-rights NGOs, some of whom apparently willingly shared extensive documentation on the actions of the IDF with the Goldstone commission. Goldstone does, in fact, cite Israeli NGOs extensively in the footnotes of his report, although the organizations claim that they provided publicly available information and, furthermore, that they also pointed to the human rights violations committed by the Palestinians in Gaza who target civilians within Israel.

This subsequently led over the past two years to a public relations campaign by right-leaning politicians against human rights NGOs operating in Israel. The campaign included a prominent focus on the fact that many of the targeted NGOs receive funding from European government and United Nations sources, fueling charges that foreign governments were interfering in Israeli politics by way of seemingly innocent support of NGOs, as part of an international effort to delegitimize Israel.



ANTI-NGO: Right-wing activists, dressed as Arabs, demonstrate against the leftist New Israel Fund (NIF); one of the signs, depicting NIF President Naomi Chazan with a horn, says 'Thank you NIF, Friends from Gaza'

The two bills on restricting foreign funding of NGOs are a direct expression of these claims. Kirshenbaum's bill explicitly mentions the Goldstone Report in its wording, accusing "several organizations operating in Israel" of working towards the aim of "defaming the State of Israel in the eyes of the world and encouraging the persecution of IDF officers and soldiers while harming their reputation." The bill goes on to refer to "the major contribution these organizations made to the findings of the Goldstone Report, a UN-sponsored report that criticized IDF conduct during Operation Cast Lead; taking part in the filing of indictments against senior Israeli officials and army officers around the world; and attempts to mark IDF soldiers as war criminals, encourage people to refuse military service, and call for economic and political boycotts against Israel."

Claiming that "foreign money pays for the moves these organizations are making against the IDF" and explicitly listing "Britain, Switzerland, Norway, Spain, Germany and Ireland" as the offending foreign governments, Kirshenbaum's bill concludes that "these are foreign states that intervene in Israel's domestic political discourse in an attempt to delegitimize the IDF's activities and soldiers."

Akunis's bill, while not mentioning the Goldstone Report, speaks in a similar vein about banning donations from foreign governments or international bodies such as the UN or the European Union to "political associations" because such associations "operate under the guise of 'human rights organizations' and intend to impact on the political discourse in and the nature and policy of the State of Is-

rael... It is intolerable that the State of Israel should freely and declaratively allow other states to intervene in its domestic affairs."

EL-AD SYSTEMATICALLY AT-tacks nearly every aspect of the proposed legislation on foreign funding for NGOs, with barely concealed contempt for the supporters of the bills. "It is troubling that the fundamental principles of the democratic system must be repeatedly explained," he tells *The Report*. "Every rational person knows that for a democracy to exist, and in particular for it to flourish, it is necessary to safeguard freedom of expression, freedom of association, and freedom of public criticism and protest, which encompasses the freedom of activity of human rights organizations and the spectrum of views and opinions, including those about which not everyone agrees."

El-Ad directly disputes the view that the activities of NGOs are harmful to the state. "Attacks on human rights organizations harm the weakest groups in the population, groups that these organizations represent and to which they give voice," says El-Ad. "And it is important to emphasize that official bodies in Israel – civilian and defense alike – seem to be aware of the importance of human rights organizational activity in Israel. These organizations are not only cited in official state reports, but all these official bodies maintain ongoing contact with the organizations, and seriously address their claims and findings."

He casts as "ridiculous" the idea that foreign states are seeking to subvert Israeli sovereignty. "The State of Israel is a recipient

of funds from these very same countries," points out El-Ad, "in the framework of trade agreements, investments, and loans, as well as the donation of enormous sums. Moreover, the 'intervention' of these states via their funding is manifested in all areas of life – education, culture, health, welfare, and, of course, security. The European Union, for example, transferred 158 million euros to Israel in 2010, of which only 1.8 million euros went to human rights organizations."

Heyd seconds El-Ad's point. "Every single government ministry receives European Union funding," says Heyd. "Of course, that will not be stopped by the proposed legislation, but the budgets of organizations fighting for justice for the weaker segments of society will be threatened."

El-Ad also pointedly asks why only contributions from foreign governments are targeted, while donations from private individuals abroad are not mentioned at all, and goes on to answer his own question by stating that the proposed legislation is nakedly intended to harm the operations of organizations on only one side of the political spectrum. The logic behind this is that right-wing MKs would not dare to shut down the sources of funding for right-wing groups, which tend to come from private individuals abroad.

"They want to ensure that funding from private foreign donors remains unharmed," says El-Ad. "But the donations from private donors abroad total no less than the funding from foreign states to human rights organizations. Some of that [money from private individuals] has a profound impact on the politics of Israel. Organizations identified with these positions do not receive moneys from foreign state entities because they do not seek to promote human rights. On the contrary, their overriding aim is to influence politics."

Finally, El-Ad worries that the ambiguous distinction made between "political associations," who would be forbidden to receive foreign government donations under the proposed legislation, and other associations would leave NGOs at the mercy of politicians, who could declare that an NGO they dislike is "political" and thus cut it off from

potential donations. “Is it really possible to define a ‘political association’?” asks El-Ad. “The interpretation is left to the eyes of the beholder. This potentially endangers any organization. It is doubtful whether such an ambiguous term can stand legally.”

Heyd regards the “political association” clause in the proposed bills as being particularly threatening to the freedom of action of NGOs. “One can define ‘political’ to be anything,” points out Heyd. “Protecting the rights of women to sing in public places could be interpreted as political by its opponents. An organization that has information on possible violations of the law by politicians could be threatened into silence by being categorized as a political association.”

A Knesset source close to MK Akunis, who asked for anonymity because he was not authorized to speak to the press, tells *The Report* that supporters of the bill feel that the distinction between political and non-political organizations is clear enough, and that opponents are effectively raising straw-men arguments in stating otherwise.

“It is ridiculous to claim that universities or workers’ rights organizations could be affected by the bill,” says the source. “The bill clearly defines ‘political organizations’ to be those actively involved in trying to influence foreign and defense related policies. Everyone knows what that means. In any event, the bill has a long way to go before it can become law – there is still a government vote ahead of us, and then it will go to the Knesset plenum for a preliminary vote, followed by committee deliberations and then back to a full plenum vote. Along the way there will be plenty of opportunity for objections to be heard and for introducing clearer definitions, if necessary.”

SHIRI KREBS, A RESEARCHER AT the Israel Democracy Institute and a doctoral student in international law and dispute resolution at Stanford University, minces no words in her legal analysis of the bills. “Like Putin, Chavez and leaders of similar regimes around the world, the proponents of these bills, supported by the prime minister, seek to silence criticism of the government,” explains Krebs to *The Report*.

She goes on to claim that although the stated purpose of the bills is to “combat the phenomenon of delegitimization of Israel in the world,” they are having exactly the opposite effect, further tarnishing Israel’s image in the world by presenting the country as moving in an anti-democratic direction. “In fact,

as a country that boasts that it is the only democracy in the Middle East, Israel should be promoting the opposite type of legislation: bills that protect the human rights of all citizens, and especially the rights of a minority to voice its opinion,” says Krebs.

The distinction made between foreign government sources of funding and private donors also makes little sense, argues Krebs. “While foreign democracies that support human rights organizations are committed to transparency, private parties are not,” says Krebs. “Therefore, the difficulty in identifying contributions from dubious sources should be greater in cases of private contributors than in the case of foreign countries.

“Why should contributions that are received from an organization such as, say, the World Bank, be suspected of political interference in the internal affairs of Israel and be deemed unacceptable, while contributions from extremist religious organizations operating in foreign countries, from oligarchs, and from foreign tycoons are considered worthy and legitimate? The bills currently under consideration relate to friendly countries as if they were enemy states, and to civil society NGOs as if they were terrorist organizations. They differentiate between groups that support the regime and groups that are critical of the regime, discriminating against the latter.”

The Knesset source backing the bills, however, tells *The Report* that there is no discrimination intended in the proposed legislation. “Legislation cannot discriminate between one end of the political spectrum and another, or target a specific group,” says the source. “No one’s democratic right to freedom of expression is being denied here – political NGOs will still be free to do everything they are doing now, issue statements, demonstrate, etc. There is nothing anti-democratic here at all. There is a matter of principle expressed in the bill, because no government in the world can tolerate another government trying to interfere in its policies.

“Spain would not tolerate foreign governments giving money to NGOs working for Basque separatism, nor would Her Majesty’s government in Britain agree to foreign entities openly supporting organizations working for the aims of the Irish Republican Army. Conversely, if the British government has something it wishes to say about Israel’s policies, it can use legitimate diplomatic channels to express that, instead of giving money to politically motivated groups in Israel.”

ALL THE ORGANIZATIONS interviewed by *The Report* on the subject report that even if the bills become law and their sources of foreign governmental funding are cut off, they will continue to operate. “Donations [from foreign government sources] are usually given for specific projects,” explains Heyd. “They can constitute 20 percent, 30 percent or even 50 percent of the budgets of large projects. Clearly some organizations will be hurt more than others. It depends to what extent alternative sources of funding can be found.”

El-Ad vows that ACRI will not curtail its activities. “We are determined to go on, no matter what,” he says. “We believe that we can find alternative sources of donations from private sources, if need be. Of course, we will fight this every step of the way. We are actively involved in debates on the subject in the Knesset, and our voice will be heard.”

Both Heyd and El-Ad tell *The Report* that what concerns them more than the specifics of the bills on NGO funding is a slew of legislation and bills introduced in the Knesset over the past two years that they consider anti-democratic in intent. “This includes legislation limiting freedom of expression, reducing the rights of Arab citizens, and attempts to limit the authority of the Supreme Court,” says El-Ad. “Each one separately is problematic, but the larger picture is even more disturbing.

“Clearly some of these anti-democratic laws are likely to be struck down by the Supreme Court,” continues El-Ad, “but that in itself is a problem. We should only have to use the power of the court to strike down unconstitutional legislation sparingly. If the court is the only defender of democracy, something has gone wrong. The frequent passage of laws that their supporters know will be challenged before the Supreme Court, at a time when the court itself is under attack, undermines the foundations of our democracy.”

Heyd promises that a long fight lies ahead, if necessary, to stop what she regards as a slide down a dangerous slope towards a potentially far less democratic Israel. “We will fight this with all our strength,” she says. “The trends are destructive. We will use the courts as much as we can, but ultimately the people have to show that they want a just and democratic society. I expect people to go out into the streets over this, because what is at stake will affect the lives of every single one of us.”