The Israeli Law Professors' Forum for Democracy

Summary of Position Paper No. 39: The Impact of the Proposed Regime Changes on Children's Rights

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The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law and specifically Israeli public law, expresses its grave concern over the apparent intention to abolish the independence of the judiciary, to subordinate it to the government and to the partisan political considerations of the executive branch, to undermine the independent status of the attorney general and civil service legal counsels, and to violate human rights. **In this paper we present the Forum's position concerning the ramifications of the proposed regime changes for the rights of children.**

- **The proposed regime changes, especially those that abolish the independence of the judicial branch and those that undermine the standing of civil servant legal advisors and other professionals, will infringe upon human rights in general and children's rights in particular.**
- **The rights of children are protected under Israeli law only partially, even without the changes initiated by the present government.** The international standards for the

* We, members of the Israeli Law Professors' Forum for Democracy, hold different academic views regarding the details of the various reforms proposed by Israel's 37th Government to change Israel's democratic regime. However, we are united in the opinion that the host of the government's proposals - which are an unprecedentedly severe attack on the independence of the judiciary, the Attorney General and government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and Israel's democratic character. Therefore, we joined this forum to make our professional opinion available to the public at this fateful time. The position papers or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. The list of Forum's members and all position papers on our behalf are available at https://lawprofsforum.org. Follow us on Twitter: https://twitter.com/lawprofsforum. Contact us: lawprofessorsforum@gmail.com.

protection of children's rights are laid down in the UN Convention on the Rights of the Child (UNCRC), which the vast majority of the world's states have signed. Israel too is a signatory to the UNCRC, but the convention as such is not binding law in Israel, and serves only as an interpretative tool. Therefore, the judiciary plays an extremely important role in applying the principles of the convention to the interpretation of local laws protecting children's rights. It is likely that the minors most adversely affected by the government's proposals would be those belonging to minority groups, including children without official local status (migrants and refugees), LGBTQ children, and the children of LGBTQ parents.

- **Weakening the status of Basic Law: Human Dignity and Liberty will lead to a violation of the rights of minors,** a group that already enjoys little protection under Israeli law, in two key respects. Firstly, through infringement of those rights that are expressly specified in the Basic Law; and second, through violation of unspecified rights, including the right to education and social rights that affect children living in poverty.
- **Abolishing reasonableness as a ground for judicial review of government decisions will undermine existing protections from governmental abuse and will undermine individual human rights. This will result in special harm to children at risk and increase their marginality, since reasonableness is a central tool courts use for protecting children at risk.**
- **Additional harm to the right to education:** The government is promoting **changes in the education system** which are directly related to the weakening of Israel's democracy, and which complement the proposed reform of the legal system. First, it proposes restricting freedom of expression in schools and cutbacks on programs that promote democracy and human rights, including programs that address LGBQT concerns, Jewish pluralism, gender equality, and more. Eliminating such programs will not only violate freedom of expression but will also have a direct and adverse effect on the rights and well-being of children belonging to minority groups. Second, significant changes are proposed as regards haredi education: reducing the scope and budgeting of a core curriculum in Haredi schools (with subjects such as mathematics and English), and removing supervision of the two large haredi educational networks from the hands of the Ministry of Education. Reducing the scope of core curriculum studies in Haredi education goes against the public interest and will harm first and foremost the Haredi children. At the same time, the coalition agreements seek to increase the already

existent budgetary discrimination of children in the state education school system, the state-religious schools and the private school tracks, as compared to those receiving Haredi education.

- **Harm to the rights of minors in criminal proceedings:** The proposed regime overhaul is also likely to lead to a substantial and disproportionate impairment of the rights of minors as suspects and as defendants in criminal proceedings, especially those belonging to minority groups. For example, there is grave concern about possible infringement of the rights of minority youngsters to legal representation and to a fair trial, as the result of new administrative guidelines or laws that would create special offences, procedures and penalties for minors who are opposed to the regime change. We might also see harm to child victims of crimes, whose rights have not been sufficiently developed in Israel anyway, as a result of lack of judicial review and infringement of the rights guaranteed by Basic Law: Human Dignity and Liberty.
- **Politicization of the process for appointing judges is likely to lead to non-professional appointments of unqualified juvenile court and family court judges, the two professional and specialized courts established for the specific purpose of taking care of children and their families.**
- **Expanding the jurisdiction of the rabbinical courts will be detrimental to the rights minor children enjoy today in divorce proceedings, where they are in any case at their most fragile and vulnerable.**