



פורום המרצות והמרצים למשפטים למען הדמוקרטיה

Position paper 47: Comments on the proposed amendment to the Income Tax Code (Taxing Donations by a Foreign Political Entity), 5783 – 2023

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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. **This position paper concerns the proposed law to amend the Income Tax Code (Taxing Donations by a Foreign Political Entity), 5783 - 2023 (Proposed by MK Ariel Kallner).**

We show in this document that the proposed law represents a real danger to Israeli democracy.

Even though this proposed law was suspended at the last minute from voting at the Ministerial Legislation Committee, due to pressure from foreign nations, that may be temporary. The threat still stands since a hearing about it may take place in the future and therefore it deserves a detailed analysis.

Background:

The proposed law, that was supposed to be discussed by the ministerial legislative committee on May 28, 2023, and was removed at the last minute under pressure from foreign nations (but still remains on the table for discussion in the near future), seeks to impose a 65% tax on “a donation that interferes with the internal matters of the State of Israel.” “A donation that interferes” is described as a “donation made by a foreign political entity” to civil society organizations that advance a public goal by appealing to the courts, or to the Knesset, or to the government, or to local authorities or appeals to public opinion in Israel via paid advertising. In addition, such an

organization will not be recognized as a public institution for the purpose of receiving tax exemption status for all of its income in the given tax year, previous and subsequent years, and those who donate to it will not receive a tax return.

According to its explanatory section, the bill seeks to restrict via taxation “the interference of foreign political entities in Israeli democracy . . . [as this interference] is a blow to the basic tenets of the State of Israel and leads to “flooding of the courts with lawsuits of a political nature, having direct influence on public discourse and attempting to change the policy of the government and the local authorities”. **In other words, the bill assumes that Israeli NGOs are agents of foreign governments that realize the intentions of those governments to directly influence the policy of the Knesset and the government, or to do so indirectly by influencing public opinion in Israel.**

This law is in line with legislation in those countries that seek to limit the activities of human rights NGOs. This trend, which began in Russia twenty years ago, now includes about sixty countries that adopted the Russian model (with various modifications) with the common denominator being a retreat from a commitment to democratic rule. Thus Belarus and Zimbabwe, for example, completely forbid NGOs; Egypt, Algeria, Jordan, Bahrain, Eritrea, Nepal and Pakistan require government approval to receive foreign donations; Sudan, Venezuela, Bolivia and Indonesia forbid using funds acquired from abroad for certain activities; and Russia and Tunisia forbid receipt of donations from a defined list of sources.

Israel joined this “illustrious” list of countries, attempting to limit the activities of human rights organizations already in 2008, with a minor step – the addition of Article 36A to the Associations Law, requiring an association to report any donation larger than 20,000 NIS from a foreign entity in its annual financial report. A foreign political entity was defined by the law as including foreign nations or a group of nations, foreign local authorities or organizations created by any of the above or who are controlled by them beyond fifty percent. In 2011, the Knesset enacted the “Disclosure of Support from a Foreign Political Entity Law,” which requires reporting any donation from a foreign political entity within a week of its receipt, including a report on the purpose of the donation and the conditions agreed upon with the donor. In 2016 the “Obligation to Report” law was amended at the initiative of the Minister of Justice Ayelet Shaked, an amendment publicly known as the “Transparency Law”. It required NGOs whose budget was comprised mostly by donations of foreign political entities, to state this fact in every publication, official appeal to a public body, and in every hearing that involves an official protocol. In the original draft bill, employees of these organizations were required also to wear a tag stating that they are supported by a foreign political entity, but this requirement was removed in the last moment because it echoed the infamous yellow star. These steps were relatively minor – neither activities nor donations were forbidden, so their main purpose was specifically to shame human rights organizations, as 25 of the 27 organizations affected by the law were such human rights organizations.

The current bill goes much further. It proposes to amend the Income Tax Code (Taxing donations by foreign political entities) 5783-2023. It was initiated by MK Ariel Kellner, but previous versions of it were already placed before the 23rd and 24th Knesset. It meant, according to the explanatory wording of the bill, to prevent the influence of foreign nations in internal matters. This was the exact explanation given by the Russian President Vladimir Putin in 2021 for the law operating in his country. Putin also maintained that the Russian legislation is identical to the American Foreign Agent Registration Act (FARA) that limits activities of foreign agents. But the American law, enacted in 1938, requires foreign agents to declare themselves as such, while the Russian law (and the proposed Israeli law) see civil society organizations themselves as agents of the foreign governments.

It is our opinion that this bill is a discriminatory blow to the right of association and organization. It violates equality, as it discriminatorily harms the right of association. It also infringes upon the freedom of expression, and violates international human rights law. The bill also causes harm by creating a chilling effect on the activities of NGOs in Israel and on the access of these organizations (and the relevant populations they represent) to fair legal processes and participation in the political process.

In this position paper we will address the following points:

1. The role of NGOs in Israel: Are they foreign agents?
2. Foreign influence on state institutions
3. The expected harm to human rights as a result of the proposed legislation in Israeli and international law and the implications thereof, namely: illegality.

1. The role of NGOs in Israel: Are they foreign agents?

Since the 1980's, the number of NGOs operating worldwide, as well as in Israel, has increased significantly, a phenomenon dubbed as the rise of "the third sector" or of civil society organizations. This trend earned a mention in the UN Millennial declaration in 2000 that emphasized the tremendous importance of these organizations for collective decision-making and for ensuring higher quality of life for society.

An NGO (Non-Government Organization) is a not-for-profit organization - an organized group of individuals, operating on a local, national or international level, to achieve a shared goal, by means of transmitting the positions of the organization to governmental bodies, advancing policy and examining its implementation, providing information, as well as engaging with additional civilian

activities to advance the organization's goals. Some of the organizations focus on a particular area such as human rights, poverty, health or the environment. They provide expert opinions and analyses of issues, sometimes drawing conclusions that are opposed to those of the government, acting as a watchdog and also acting on the ground (sometimes as a substitute for the authorities' activities or lack of activities).

The meteoric rise in the number of NGOs applies to Israel as well, where fewer than 10,000 NGOs operated in the 1980s, compared with over 50,000 NGOs that are registered today. Most are registered as non-profit organizations according to Section 345 of the Corporation Law 5759-1999. The vast majority of these organizations are funded by donations – from the state, individuals, federations, foundations, international organizations as well as other countries.

Is it the case that organizations that receive funding from foreign countries cease serving the community and become agents of those countries? According to the proposed law, it only takes one NIS received by an organization for it to become a “foreign agent,” and all of its income (and donations received) are affected. The law maintains, without providing any proof, that the organization essentially becomes an empty vessel for intervention by foreign countries. The organization has no will of its own, and no purpose, other than providing service to the foreign nation. This bill does not provide a single example of such a situation existing in Israel. In our opinion, this determination is outrageous. It does not align with the history of intervention by the civil sector in the lives of communities in Israel, and in support that the State of Israel has given over the years – also via tax exemptions – to civil society organizations. In addition, as we will specify below, the bill does not apply to private foreign donations – of individuals or of corporations. A foreign nation can funnel funding to a foreign corporation thus “immunizing” the funding from the application of the law. Moreover, it's impossible to explain the distinction that the bill makes between donations from countries and international organizations, and donations from private individuals without considering the ideological direction of these organizations, since it is the case that organizations in Israel which promote human rights and democracy are generally supported by foreign governments, while organizations that promote undemocratic values are supported by foreign individuals and corporations.

2. Foreign influence on state institutions

The second implicit assumption that underlies the bill is that an Israeli organization is, in fact, a foreign agent that might hurt Israeli democracy by approaching state institutions and local authorities. In other words, that courts, the government or the Knesset might be affected by the organizations' activities in a way that would harm the appropriate democratic (or legal) procedure. The assumption underlying the bill, therefore, is that governmental institutions are so fragile that they warrant protection from hearing arguments made by organizations, as if the court is so volatile

that it might be swayed by a petition of an organization, or as if MKs will vote against their consciousness due to foreign influence.

Since these assessments are wholly unbased, one can speculate that the initiators of the bill's actual concern lies elsewhere, namely that these organizations will affect public opinion (using paid advertising) and by doing so will indirectly shift public opinion against the governing institutions. But the bill provides no example whatsoever of activity initiated by a foreign government aimed at affecting public opinion through funding publications on behalf of civil society organizations. It is also unclear why foreign countries need to act indirectly to make their position known to the Israeli public, as voicing a direct message can be much more effective than an indirect one, brought with the mediation of a local organization. Additionally, the bill does not suffice itself with taxation of the funding used for advertising, and instead taxes all donations by foreign states, including funding that has no connection to advertising. This suggests that the initiators of the bill are concerned neither with the possible influence on public opinion, nor are they concerned that the court or the Knesset will be left unprotected from foreign countries and their local agents, but rather, their aim is to restrict the activity of civil society organizations in its entirety, targeting especially human rights' organizations, regardless of the involvement of a foreign country in their activity.

The distinct aim of harming human rights' organizations and disabling their activity is enhanced by the bill's distinction between foreign funding by a state or international organizations. compared to other powerful and influential entities that are not states (such as wealthy individuals or corporations). Most of the organizations that promote goals that align with the current government's ideology, such as Kohelet, Regavim and City of David Foundation (ELAD) are funded by private foreign entities.¹ Therefore the bill creates ideological or political discrimination and violates the right to equality. There is no relevant justification for the distinction between organizations that receive donations from individuals and organizations that receive donations from governments and international organizations. In fact, the contrary is true: while governments (typically democratic countries who have good relations with Israel), foreign authorities, and international organizations are subject to rules requiring transparency and democratic oversight, there are no similar oversights concerning private foreign donors. In other words, if drawing distinctions based on the source of foreign donations is justified, the bill should have applied to organizations supported by private foreign money rather than those supported by foreign governments and international organizations.

3. The expected harm to human rights and the unconstitutionality of the bill

From the above we conclude that there is no proper purpose that justifies the bill, since it is wholly aimed at restricting the scope of civil society organizations' activity to protect human rights. This

¹ https://peacenow.org.il/wp-content/uploads/2015/12/RightWingFunding_Heb.pdf (in Hebrew).

restriction constitutes a double harm: (1) violation of the rights of individuals engaged in activity in these organizations, and (2) violation of human rights of those whose rights are protected by civil society organizations.

- (1) Violation of the rights of individuals engaged in activity in organizations including the right of association, free speech, and the right to equality

We posit that the bill violates the right of association and organization. It also violates the right to equality because the restriction on the right of association is discriminatory. Additionally, it infringes upon the right to free speech and violates International Human Rights Law.

The right of association was recognized in Israeli case law as early as the beginning of the 1960s², and was described by Justice Landau as “one of the principles of the democratic regime and one of the fundamental rights of the citizen”.³ Thirty years later, Justice Shamgar, the president of the Supreme Court stated that “the right of association is a fundamental right; it is a citizen’s personal right in a democratic state, and it is also a social principle that guides the state. It is the right of each individual and of society at large, and it is a precondition to the existence of democracy”.⁴ The right of association was enshrined in legislation in Section 2 of the Companies Law, 5759-1999. Since the enactment of Basic Law: Human Dignity and Liberty the right has constitutional status, derived from the right to human dignity.⁵

The right to associate effectively to promote a public aim includes a wide range of activities. For example, to promote their ends, organizations need to be able to publicize their views in the press, to hold activities that will express them (demonstrations, marches, etc), and also to raise funds to enable these activities and aims. In other words, levying such a heavy tax of 65% on organizations constitutes a significant restriction on the scope of their activity that is equivalent to allowing them to operate or demonstrate in only 35% of the country (for example, to forbid demonstrating in Jerusalem, or in the geographic periphery, or in front of governmental offices).

The harm, however, is even more severe, because it applies only to a relatively small share of Israeli civil society organizations—those who promote human rights, which are the organizations that receive funding from foreign states and supranational entities. As described above, the

² H CJ 241/60 Cardosh v. Company registrar [Hebrew]

³ H CJ 253/64 Jaris v. Haifa District Supervisor [Hebrew]

⁴ CA 1281/93 Association Registrar c. Binyamin Kahane [Hebrew]

⁵ See Aharon Barak, Interpretation in Law 431 (third volume, Nevo publishing, Jerusalem, 1994) [Hebrew]. See also H CJ 4593/05 Mizrahi Bank Ltd. v. Prime Minister in which Justice Barak states that “person” in the Basic Law includes also non-human legal entities. “there are people behind all non-human legal entities. The right of association which is a constitutional right will be devoid of content if the association that will be established will not enjoy constitutional rights. Action through non-human legal entities is elementary in our society, and there is no modern society without them” (section 10).

Transparency Law affected 27 organization, 25 of which focus on human rights. The current bill applies to all donations from a foreign political entity (and not only to organizations that receive more than half of their funding from such entities), meaning that it will apply to many more civil society organizations. However, the profile of these organizations affected will still be those who promote human rights and democratic values, activities and practices. It will not, on the other hand, apply to organizations who promote agendas that are racist, religious-fanatical, autocratic, and such, that receive foreign donations from individuals and private corporations.

Given these circumstances, the proposed bill constitutes punitive taxation aimed at restricting human rights and pro-democracy organizations, to place practical barriers on their activity, and to disincentivize donations to them, including from Israeli citizens, because as opposed to the current legal situation, such donations will not be tax deductible. The current bill aims not only to tax these organizations' funds, but also to change their legal status in terms of the tax system, which will also change the status of money transfers to them. In other words, the bill goes further than merely limiting the funds transferred from foreign sources. In its current form, the bill uses such funding to mark organizations who promote aims that challenge the government's positions to unequally infringe upon the rights of Israeli citizens who work, volunteer, and donate to these organizations to promote their beliefs.

As indicated above, the magnitude of the rights infringement of the bill is enhanced by the bill's distinction between foreign funding by a state or international organizations. compared to other powerful and influential entities that are not states (such as wealthy individuals or corporations). When 65% of the funding of an organization that promotes women's rights or the rights of LGBT individuals through lobby activity is confiscated, that organization is at a distinct disadvantage compared to organizations that promote opposed aims (such as conservative family values). When both organizations are funded by entities outside of Israel and only one is taxed, the only plausible explanation is the desire to undemocratically restrict particular positions and opinions.

(2) Violation of human rights of those that civil society organizations aim to protect

This section details the principle according to which as part of the protection of human rights, the state must enable and ensure the operation of civil society organizations. We will demonstrate that NGOs have a crucial role in protecting human rights and that International Law sees human rights organizations as an integral part of the mechanism of realizing human rights and ensuring their enforcement on the ground.

States are under a special obligation to ensure the conditions that enable the association of individuals and organizations that will act to protect human rights. Against this backdrop the United Nation's General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human

Rights and Fundamental Freedoms.⁶ The declaration explicitly denotes states' duty to create the conditions that enable association of people and organizations that protect human rights (section 2.2). This is a positive duty that arises from states' duty and responsibility to promote human rights, to respect and realize them, as stated in section 2.1 of the declaration:

“Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

Section 12(2) of the declaration stresses the state's duty to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”.

The bodies in charge of promoting human rights in International Law repeatedly declare the close connection between the existence of an active civil society, governmental transparency, a thriving democracy and ensuring the freedom of assembly and association. The human rights' commission stated:

“Recognizing the importance of the freedoms of peaceful assembly and of association, as well as the importance of civil society, to good governance, including through transparency and accountability, which is indispensable for building peaceful, prosperous and democratic societies...”⁷

In direct relevance to the bill proposing levying a punitive and discriminatory tax on human rights organizations, the Human Rights Commission states that states are prohibited from imposing discriminatory restrictions on activities of individuals and organizations that promote human rights, including imposing discriminatory restrictions on their sources of funding:

“(b) To ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in

⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144 (8 March 1999).

⁷ Human Rights Council, Resolution 24/5: The Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/RES/24/5 (8 October 2013)

accordance with the Declaration ... other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defense of human rights on account of the origin of funding thereto”⁸.

These provisions are based on the right to the freedom of association, and the right to fundraise is an integral part of that right. The declaration explicitly addresses the derivative right to raise funds to support actions promoting and protecting human rights, clarifying in section 13 that:

“Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means...”

Moreover, fundraising from foreign sources is inevitable. The special reporter for the state protection of human rights activists also states in reports and recommendations similar principles of International Law. States must allow NGOs access to resources. Restrictions based on transparency requirements are acceptable as long as they do not aim to restrict the actions and effectiveness of organizations.

“Governments must allow access by NGOs to foreign funding, and such access may only be restricted in the interest of transparency, and in compliance with generally applicable foreign exchange and customs laws. Restrictions on foreign funding may limit the independence and effectiveness of NGOs. States should therefore review existing laws in order to facilitate access to funding.”⁹

A similar approach was recently voiced by the special reporter on the right to association and assembly, in a comprehensive report dedicated to clarifying the rules of international law on the topic, written in response to numerous states’ decision to restrict NGOs by limiting their ability to raise funds for their activities. The special report stressed that the ability to raise revenue is protected as a part of the freedom of association, and detailed state action that would be considered a violation of International Law rights:

“Under international law, problematic constraints include, inter alia, outright prohibitions to access funding; requiring CSOs to obtain Government approval prior to receiving funding; requiring the transfer of funds to a centralized Government fund; banning or restricting foreign-funded CSOs from engaging in

⁸ Human Rights Council, Resolution 22/6: Protecting Human Rights Defenders (decision from 21 March 2013), UN Doc. A/HRC/22/2 (27 August 2013)

⁹ Report of the Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. A/64/226 (4 August 2009), para 123.

human rights or advocacy activities; stigmatizing or delegitimizing the work of foreign-funded CSOs by requiring them to be labeled as “foreign agents” or other pejorative terms; initiating audit or inspection campaigns to harass CSOs; and imposing criminal penalties on CSOs for failure to comply with the foregoing constraints on funding.”

These limitations are prohibited because the right to raise funds both within the state and from foreign sources are an inherent part of the right to freedom of association, and the limitations violate provisions in international conventions that Israel is party to:

“The ability of CSOs to access funding and other resources from domestic, foreign and international sources is an integral part of the right to freedom of association, and these constraints violate article 22 of the International Covenant on Civil and Political Rights and other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights.¹⁰”

This emphasis is meant to clarify that foreign funding does not make an action foreign. International cooperation does not transform the action promoting human rights into an external matter, since international cooperation is an integral part of the universal principal that underlies international human rights. In this regard, the special report relied on the recommendations of the Inter-American Commission on Human Rights, that explicitly linked access to resources from outside the country to the principal of international cooperation for realizing human rights:

“[States should] refrain from restricting the means of financing of human rights organizations. States should allow and facilitate human rights organizations’ access to funds in the context of international cooperation, in transparent conditions.”¹¹

States’ claims that foreign funding constitutes foreign interference with their sovereignty or with their traditional values were examined and rejected by institutions tasked with ensuring the right to free association and safeguarding the protection it provides to human rights’ defenders. The special reporter on the right to free association and assembly addressed this in section 23 of the said report:

“In recent years, the protection of State sovereignty or of the State’s traditional values against external interference has also been increasingly invoked to restrict foreign funding or to launch slander offensives against those receiving foreign

¹⁰ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/23/39 (24 April 2013), para. 20.

¹¹ Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 (7 March 2006).

funding. Foreign funding to civil society has been deliberately depicted as a new form of imperialism or neo-colonialism and recipients have been subject to defamation, stigmatization and acts of harassment. This tendency has a serious impact on the work of civil society actors, not to mention their ability to access funding as it deters them from seeking foreign funding. This situation is particularly alarming for associations promoting human rights and democratic reforms who have been accused of “treason” or of “promoting regime change”.

The special reporter’s concern, based on the developing practice in states such as Russia, Bangladesh, Kirgizstan, Uzbekistan, and others, is that “democracy” is used as a cover to prevent individuals and organizations from voicing dissenting opinions and from criticizing the government (section 32):

“Protection of State sovereignty is not just an illegitimate excuse, but a fallacious pretext which does not meet the requirement of a “democratic society”. The expression “democratic society” places the burden on States imposing restrictions to demonstrate that the limitations do not harm the principles of “pluralism, tolerance and broadmindedness”. Associations, whether domestic- or foreign-funded, should therefore be free to promote their views – even minority and dissenting views, challenge governments about their human rights record or campaign for democratic reforms, without being accused of treason and other.”

Punitive taxation or any other discriminatory measure aimed at funding from foreign state entities cannot be justified by the claim that such funding constitutes illegitimate foreign influence on NGOs and is improper as such. At the foundation of international human rights law lies the duty of states to promote human rights. The preamble of the Universal Declaration of Human Rights provides that “Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms”. The member states, including Israel, comprise the United Nations and fund its activity, which includes, among other things, actions to promote human rights around the globe. As long as funding by state entities constitutes realization of their commitment to the promotion of human rights, and as long as organizations receiving the funding use it for that purpose alone, such funding should not be seen as a tool for advancing the interests of “foreign agents”, and instead it should be viewed as the activity of the international community in promoting universal human rights.

Among human rights organization’s the most prominent donors are the United Nations and its institutions, regional organizations, and various state and governmental foundations aimed at promoting human rights around the globe. These donations are wholly unsuspecting in the eyes of the international law, and in fact they are indispensable. On the other hand, donations from corporations and philanthropists are suspect; such donations have, at times, been given in a non-

transparent manner through corporations that operate as tax havens (designed to make it difficult to identify donors and their interests). This issue is increasingly drawing worldwide attention, and there is a growing awareness regarding the need to prevent violations of human rights by corporations, using norms of corporate responsibility developed in international law.

The idea that private corporations and financial interests should be able to fund political lobbying, advertising platforms, newspapers, television and radio, anonymously, without being subject to fines and taxation, at the same time as human rights organizations funded by state entities will be punitively taxed for every donation, constitutes blatant discrimination. The considerations described above explicate beyond doubt that this is in clear violation of International Human Rights law.

(3) Additional harms of the law: preventing the right to due process

The bill's retroactive application gravely infringes on the right to due process and equality in the political process. Think of a human rights organization that promotes a systematically marginalized group (for example: homeless people), that receives funding from the UN to promote food security among the target population. Assume now that the minister of social services decides, a year later, that the organization may not apply for a governmental tender, or if MK decides to promote legislation that will bring about a rise in the price of food, and the organization will want to file a petition to legally challenge those decisions? In both cases, if the bill is enacted, an organization that chooses to promote its ends through legal or political means, as customary in a democratic state, will be marked and sanctioned. Taking legal action will result in "fining" the organization for funds spent on such action, and the organization will lose its status as a non-profit, thereby also harming individuals who donated to that organization. Setting such a price tag on civil society organizations who realize their civil and human right to seek recourse in courts and to approach their political representatives is a red line that democracies cannot cross.

Civil society organizations in general, and human rights organizations, in particular, typically represent the weakest and most marginalized people in society. The bill aims to prevent access to funding and thereby to hinder their ability to effectively seek justice and provide voice to these individuals, as is necessary in democratic states. As a result, the bill violates the most basic human rights and passing it into law would position Israel as a state that aims to deprive these rights of the people who need them the most. As a result, the bill not only violates the right to freedom of association, and the International Law commitment to promote human rights, but it also severely and discriminatorily infringes on the most fundamental civil and human rights – the right to substantive political equality and the right of access to impartial and independent courts to enforce the law.

Summary

From the above we conclude that the state has a positive obligation to ensure the free operation of human rights organizations, and their access to sources of funding that will allow their activities, without discrimination and without labeling that will lead to delegitimization of activities to advance human rights. This duty derives from the right to the freedom of the association, the obligation to promote human rights and the principle of international cooperation in this area. Levying a punitive tax on donations from foreign political entities, that in fact singles out and discriminates against human rights organizations, is in direct opposition to the State's obligation to support freedom of association of human rights organizations and their activities to protect human rights. Restricting and in essence preventing, fundraising by human rights organizations from foreign political entities is a violation of their right of association, particularly protected in international law as an essential mechanism for ensuring the respect, protection and fulfilment of human rights obligations by the states in which they are active. There are no grounds for the government's claim that funding by foreign political entities turns these organizations into agents of foreign interests. Indeed, the funding of human rights activities is supportive of the international regime of human rights and contributes to the implementation of Israel's international human rights obligations under both customary international law and treaty law.

The proposed amendment to the Income Tax Code, both in its language and in its essence, violates, in an unacceptable and discriminatory manner, human rights organizations' right to free association, and stands in opposition to the norms of international human rights law, and to Israeli law: it is a violation of the freedom of association and the right to organize, the right to equality and the freedom of expression. The distinction between organizations funded by private monies and those supported by foreign political entities is a fatal blow to democracy, since in addition to all that has been detailed above, it gives a greater voice in decision-making to groups with partisan interests, funded in a non-transparent manner, than to organizations representing all-inclusive human rights interests and universal values.

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