

To:

Israel Police Commissioner Yaakov Shabtai

Subject: Police Obligation to Protect Freedom of Expression and Protest During Run-Up to Election

1. This letter is sent to you by Zulat for Equality and Human Rights, an institute striving to strengthen democracy and the protection of human rights, in light of the Israel Police's obligation to enable free, fair, and safe elections and to refrain from taking a political stand.

2. For reasons to be detailed below, Zulat proposes that you immediately instruct all Israeli policemen to take steps toward ensuring maximum protection of the freedom of expression and protest during the upcoming election season in accordance with the law and Supreme Court rulings, to protect participants in election-related protests from violence by opponents, and to oblige district commanders and other officers to report to you personally any request from political parties to prevent or limit freedom of expression and protest.

3. As is well known, Israeli legislation restricting freedom of protest, both the licensing requirements set forth in Police Ordinance [New Version], 1971,¹ and the offenses set forth in the Penal Code, 1977,² is a relic of the British Mandate era, which unfortunately was incorporated into the Israeli law book.

4. Nevertheless, the courts have over the years given it a narrow interpretation based on the realization that Mandate-era legislation does not conform to the basic principles of a democratic regime, especially after the enactment of Basic Law: Human Dignity and Freedom; that is, to the constitutional status accorded in case law to freedom of expression, demonstration, and protest.³

5. The Supreme Court has repeatedly ruled that the right to demonstrate may be restricted only when there is near certainty of serious harm to the public order and safety, and only to the extent necessary to prevent such harm. It has decreed that the police must respect the right to demonstrate, and not only are they not allowed to restrict it unnecessarily but are obligated to assist in its fulfillment. In view of the uppermost status of the right to freedom of expression and protest, the court declared that not every breach of the order or safety justifies restricting the right to demonstrate and that it is not enough that a demonstration should cause discomfort, or even great discomfort, to prohibit it. To the extent that the Israeli public wants to live in a democracy, it must, like any civilized country, develop a level of tolerance toward

¹ [Police Ordinance \[New Version\], 1971](#), Nevo (Hebrew).

² [Penal Code, 1977](#), Nevo (Hebrew).

³ [Supreme Court Ruling 2481/93 Yosef Dayan v. Israel Police's Jerusalem District Commander Yehuda Wilk](#), *Versa Cardozo*, 9 February 1994.

demonstrations, despite the disruption of normal routine and the discomfort they cause at times.⁴

6. The Supreme Court ruled that the authority of the Israel Police under Articles 83 and 84 of the Police Ordinance to grant or deny licenses to gatherings dealing with a "matter of political interest" of 50 persons or more should be interpreted narrowly as referring to gatherings dealing with political issues in the narrow sense of the word.⁵

7. Supreme Court justices have particularly emphasized the importance of freedom of political protest. For example, Justice Uzi Fogelman wrote: "Indeed, 'the police are not in charge of ideology' (Saar case, p. 179), and 'the ideological content that a demonstration or procession seeks to express is not in and of itself a matter for the authorities' (Supreme Court Ruling 153/83 Levy v. Commander of Israel Police's Southern District, 1984). In my opinion, too, the views, opinions, wishes, and subjective desires of demonstrators –whether they do or do not seek to bring about change in the political arena, the Knesset, or the government – are not a matter for the police. In a democratic country, the extent of the restriction of fundamental rights – in our case, the right to demonstrate and freedom of expression – does not derive from the topic of the demonstration."⁶

8. Especially in an election season, there is need for maximum protection of the Israeli public's freedom of demonstration and protest, which constitute the hard core of freedom of political expression, without unjustified and unlawful interference in their fulfilment given that any such interference might be interpreted as an attempt by the Israel Police to harm free elections and to take a political stand.

9. If Israel Police still harbored doubts, then came the Supreme Court's rejection of the petition of neighbors of the prime minister's official residence on Balfour Street in Jerusalem to order the police to ban demonstrations on the site, which clearly established that Articles 83-84 of the Police Ordinance do not give the police the authority to require a license for election-related demonstrations.⁷

10. Although the Israel Police may take measures to uphold the order and public safety as part of their general authority under Articles 3-5 of the Police Ordinance, these cannot be used to circumvent the Supreme Court's ruling rescinding the need to obtain a license.

11. As a lesson from the last three years, during which we have had four election campaigns so far, shifting the responsibility for a violation of the right to demonstrate to a rogue police officer, issuing a measly condemnation, or declaring it an "exceptional occurrence" is clearly out of the question, as the public's trust in the police has anyway been eroded and conspiracy theories are bound to run rampant in this era of fake news.

⁴ [Supreme Court Ruling 1775/20 Movement for Quality Government in Israel v. Jerusalem Municipality](#), Nevo, 24 September 2020 (Hebrew).

⁵ [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police](#), Nevo, 8 October 2017 (Hebrew).

⁶ Paragraph 20 of Justice Uzi Fogelman's opinion in [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police](#), Nevo, 8 October 2017 (Hebrew).

⁷ [Supreme Court Ruling 5078/20 Tali Fadida et al v. Israel Police's Jerusalem District Commander Doron Yadid](#), Nevo, 19 August 2020 (Hebrew).

12. Sadly, in recent years many Israelis increasingly feel that enforcement is based on extraneous considerations and a wish to silence certain public protests, and even more so, that the Israel Police are being used politically for the purpose of interfering with the freedom of expression and protest of the anti-Netanyahu camp. This sentiment intensified in light of the fact that, for the most part, both the courts and the State Prosecutor's Office did not back up the police's enforcement efforts against participants in the "Balfour Protest" (nationwide demonstrations staged from June 2020 to May 2021, demanding Binyamin Netanyahu's resignation over his indictment on charges of bribery, fraud, and breach of trust).

13. This feeling was corroborated by investigative reports in the media, which revealed attempts at political interference in the police's enforcement efforts. For example, on 23 July 2020, IDF Radio journalist Hadas Shtauf reported that then-public security minister Amir Ohana had summoned to his office neighbors of the prime minister's residence who complained of damage to their quality of life. He suggested to them to file a petition with the Supreme Court, and ordered the police to ban any demonstrations on the site or move them to a different location.⁸ That very same day, ACRI (Association of Civil Rights in Israel) filed a complaint with the Attorney General about Ohana's overreach of authority and severe systemic disruption.⁹ On 26 July 2020, the Kan Public Broadcasting Corporation revealed a recording of a conversation where Ohana was heard trying to pressure the Jerusalem District commander to put an end to the demonstrations on Balfour Street.¹⁰

14. According to data published on 2 September 2020 by the *Siha Mekomit* website, 283 persons were arrested during 18 demonstrations held as part of the "Balfour Protest", but not a single indictment was filed against any of them. Moreover, the courts repeatedly rejected requests by the police to release the detainees under restrictive conditions or set conditions that were infinitely lighter than those demanded by the police.¹¹

15. For example, at a hearing at the Jerusalem Magistrate's Court on 27 June 2020 on the case of three demonstrators (including Amir Haskel, a retired IDF brigadier general) arrested in front of the prime minister's residence, the Israel Police representative asked for their release under the minimal condition, as he put it, of a restraining order barring them from Jerusalem. Judge Orna Sandler-Eitan replied to him: "I have a hard time with such a request. Why is this a minimum condition? It basically amounts to muzzling. I understand that the police exercised a great deal of patience and arrested or detained people as a last resort. But why must the conclusion be that barring somebody from Jerusalem is a minimal necessary condition? If the police are so tolerant, then they should allow people to continue to demonstrate in the same

⁸ Hadas Shtauf, [MK Shelah: "Police Doing Good Job, But Netanyahu Bothered by It"](#), *IDF Radio*, 23 July 2020 (Hebrew).

⁹ [Letter to Attorney General: "You Have No Authority To Stop Demonstrations!"](#), *Association of Civil Rights in Israel*, 23 July 2020.

¹⁰ Michael Shemesh, [Exclusive Recording: Here Is How Ohana Tries To Pressure Jerusalem District Commander To Put End to Balfour Demonstrations](#), *Kan Public Broadcasting Corporation*, 26 July 2020 (Hebrew).

¹¹ Oren Ziv, [1.5 Months Into Balfour Protest: 283 Arrested and Zero Charges](#), *Siha Mekomit*, 2 September 2020 (Hebrew).

place.”¹² Acting Commissioner Moti Cohen said in response that the police would draw conclusions from the incident.¹³

16. On 23 July 2020, Uri Givati was arrested when he chanted the word “Shame” as the police dispersed protesters at the nearby Paris Square, on the grounds that he was disturbing their work. At the police station he was asked to sign his agreement to the restraining order barring him from Jerusalem, but he refused and was brought the next morning to the Jerusalem Magistrate’s Court. A video clip of his arrest prompted the judge on duty to release him unconditionally. Givati was arrested again on 22 August 2020, this time along with 28 other protesters, six of whom refused to sign their release documents. At the subsequent court hearing, Judge Michal Hirschfeld criticized the police for issuing arrest warrants that were based on “vague and at times unclear comments written in the interrogation forms,” and for charging the detainees with “unspecified offenses attributed to several persons on the scene, but not necessarily to these respondents.” She also criticized the police’s request to bar the protesters from Jerusalem: “It is not clear what purpose is supposed to be served by barring them from Jerusalem for 15 days. If any of the respondents are allegedly dangerous, then barring them from Jerusalem will do nothing to eliminate this danger. After all, we all agree that the police are not seeking to forbid the respondents from demonstrating elsewhere in Israel.”¹⁴

17. On 3 May 2021, the Jerusalem District Court lifted the restrictions imposed on anti-Netanyahu protesters who were arrested on their way to a demonstration. Accepting their appeal against the decision of the Jerusalem Magistrate’s Court, Judge Ilan Sela stated that there was no justification for preventative arrests “unless there is a concrete fear of severe harm to public order or to public safety,” and noted that the police’s attempts to use chants such as “impose a siege on Balfour” as evidence of such fears was inappropriate.¹⁵

18. Likewise, the Israel Police were roundly condemned after three leaders of the “Submarine Affair Protest” (demanding the launch of an investigation into suspected corruption and bribery pertaining to a \$2-billion procurement deal with the German shipbuilding company Thyssenkrupp during Netanyahu’s premiership) were arrested while making their way to Jerusalem on foot on 31 October 2020. After they refused to sign their agreement to restrictive conditions and amid widespread public criticism, all three were released unconditionally.¹⁶

19. Moreover, “Balfour Protest” participants throughout the country encountered violent opponents who attacked, beat, stabbed, and sprayed them with tear gas. Among other incidents, one protester at the Gaza border fence was stabbed in the neck, another

¹² Yael Freidson, [Magistrate’s Court Judge in Hearing of Balfour Detainees: Restraining Order Amounts to Muzzling](#), *Ynet*, 27 June 2020 (Hebrew).

¹³ Aviad Glickman, [Balfour Detainees Released; Acting Commissioner: Police Will Draw Conclusions](#), *Reshet 13*, 28 June 2020 (Hebrew).

¹⁴ Oren Ziv, [What Do Arrests To Crash Protests Look Like? Ask Uri Givati](#), *Siha Mekomit*, 24 August 2020 (Hebrew).

¹⁵ Josh Breiner, [Court Removes Restrictions on Anti-Netanyahu Activists Arrested on Their Way to Protest](#), *Haaretz*, 3 May 2021.

¹⁶ Elik Maor, [Three Submarine Protest Participants Arrested While Making Their Way to Jerusalem on Foot](#), *Megafon*, 31 October 2020 (Hebrew).

wearing a pink (black and pink were the colors of the protest) bandana was beaten with a glass bottle in Jerusalem, a protester in Tel Aviv was run over and injured in the leg, and a death threat was hurled at a demonstrator in Haifa.¹⁷ The feeling was that the police were not doing everything in their power to protect the "Balfour Protest" demonstrators, and at the same time were not imposing any restrictions whatsoever on their opponents.

20. Similar to the infringement of the freedom of expression of participants in the "Balfour Protest", the mass arrests of participants in the protest of Israeli Ethiopians seriously damaged the public's trust in the police.

21. One of many examples of the police's treatment of the "Ethiopian Protest" is the false arrest of nine demonstrators in Tel Aviv on 31 January 2019, who the police sought to remand for six days. Explaining his decision to order their release, Judge Ala Masarwa said that the nine were arrested for "minor incidents at the end of a public protest by Ethiopian-Israelis in Tel Aviv," when a group of suspects allegedly vandalized property and assaulted police officers. Noting that the police provided evidence of each suspect's involvement, he went on to note that "there's no dispute that an act of violence against a civil servant, and especially a policeman, is grave and must be vehemently condemned." Nevertheless, he said, there's no risk that the suspects, if freed, would either disrupt the investigation or endanger the public. "Most of them have no criminal record, and their actions, without making light of them, were committed in a certain defined situation that shouldn't be detached from its broader context. No one disputes that this was a quiet protest that escalated toward the end," he concluded. The police did not appeal the decision and the nine were released, which speaks for itself.¹⁸

22. As for the arrest of "Ethiopian Protest" participants near the home of then-justice minister Ohana in September 2019, one of them was detained after chanting over a megaphone. The police charged him with attempted assault, menacing harassment, and violation of the public order, and defined the incident as "a step up in the character of the demonstrations." Presiding over the hearing for the man's release from custody under restrictive conditions, Judge Masarwa watched a video of the incident, and subsequently stated: "I've reached the conclusion that it is doubtful that the evidentiary basis, which is not in dispute, is a criminal offense," and released him unconditionally. The police appealed the decision, but District Court Judge Raanan Ben-Yosef rejected the appeal and recommended that police stop employing criminal procedures against the demonstrators, and instead switch to the civil procedure of issuing a restraining order: "I did not find even a shred of suspicion that the respondent constituted a danger, which is the determinant factor in our case," he affirmed.¹⁹

23. Another example is the release of six participants in the "Ethiopian Protest" in Tel Aviv in June 2015 released under restrictive conditions by Judge Yaron Gat, who went on to criticize the police's conduct. Referring to the case of one of the demonstrators, who was

¹⁷ Liran Levy et al, [Dozens of Attacks But Only Seven Charged: Four Months of Violence Toward Anti-Netanyahu Protesters](#), *Walla*, 27 October 2020 (Hebrew).

¹⁸ Bar Peleg, [Court Orders Release of 9 Activists Detained in Ethiopian-Israelis' Protest Against Police Violence](#), *Haaretz*, 31 January 2019.

¹⁹ Bar Peleg, [Israel Police Distance Ethiopian Israeli Protesters From Justice Minister's Home](#), *Haaretz*, 15 September 2019.

charged of participating in a forbidden gathering, Judge Gat stated: "Such an offense does not justify incarceration, and therefore the suspect must be released immediately."²⁰ Likewise, 12 demonstrators arrested at a protest in Tel Aviv on 4 July 2016 were all released without being brought to court.²¹

24. Under these circumstances, it should come as no surprise that a poll published on 31 January 2022 found that only 29% of the public trusts the police – an all-time low.²²

25. Therefore, Zulat proposes that in light of the upcoming election season you immediately instruct all police officers:

- a. To ensure maximum protection of the freedom of expression and protest.
- b. To avoid interfering or disrupting an election-related protest, and to order that any restrictions or dispersal of such a protest will be done only in accordance with the law and Supreme Court rulings, and only after obtaining approval from a district commander or a senior officer appointed on his behalf.
- c. To refrain from requiring a license for an election-related protest or its coordination with the police in deviation from the law and Supreme Court rulings.
- d. To protect participants in election-related protests from violence by opponents.
- e. To oblige district commanders and other officers to report to you personally any request addressed to them by political parties to prevent or limit freedom of expression and protest during the election season.

²⁰ Ilan Lior, [Court Orders Release of Six Israeli-Ethiopians Arrested in Anti-Police Violence Rally](#), *Haaretz*, 4 June 2015.

²¹ Raz Rotem et al, [Report From the Demonstration: Protest "Mothers" Prevent Flare-Up](#), *Davar*, 4 July 2016 (Hebrew); Alon Hakmon, [Ethiopian Protest: All Arrestees and Detainees Released After Undergoing Interrogation](#), *Maariv*, 4 July 2016 (Hebrew).

²² Omer Kabir, [Poll: Only 29% Trust Police – All-Time Low](#), *Calcalist*, 31 January 2022 (Hebrew).