

## **Ben-Gvir's Police Exploits Law Deficiencies To Suppress Protests**

### **Introduction**

This position paper discusses the steps to suppress anti-government demonstrations taken by the Israel Police since the Hamas terrorist attack on 7 October and the ensuing war in Gaza, and includes recommendations designed to strengthen the protection of the freedom of protest.

Since its founding, Israel's legislation has included significant restrictions on the freedom of protest in the form of draconian provisions dating back to the pre-state British Mandate period, alongside extremely feeble protections of the right to demonstrate. A comprehensive report authored by Zulat (in collaboration with the Public Committee Against Torture in Israel and the Akevot Institute for Israeli-Palestinian Conflict Research), which was completed shortly before the start of the war in Gaza, surveyed Israeli legislation pertaining to the right to demonstrate and pronounced it a patchwork of outdated laws that leaves too many powers to suppress demonstrations in the hands of the police and law enforcement agencies.<sup>1</sup>

It is estimated that 2024 will see a broad array of public protests by diverse groups, on such issues as the release of the hostages held by Hamas, bringing forward the date of Knesset elections, establishing a state commission of inquiry to look into the responsibility for the debacle of 7 October, the management of the war, national and personal insecurity in large parts of the country, the economic impact inflicted upon citizens displaced from their homes along the Gaza and Lebanon border and on the families of mobilized reservists, and more.

Given the shaky foundations of the legislation protecting freedom of protest and the extensive powers held by the Israel Police currently subordinate to National Security Minister Itamar Ben-Gvir (who makes no effort to conceal his orders to the police to suppress demonstrations that are not to the government's liking, in violation of the law

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\* English-language reference. All other references in this report are in Hebrew.

<sup>1</sup> \*Eitay Mack, The Legal Infrastructure for the Suppression of Protests and Demonstrations in Israel, *Zulat*, October 2023.

and the Attorney General's position), a categorical response is needed to ensure that the public's right to exercise freedom of protest is upheld.

Therefore, Zulat demands from the Attorney General and the State Attorney to closely and regularly monitor the conduct of the police and the national security minister with regard to the right of demonstration, even if no petition to this effect has been submitted to the Supreme Court. As suspicions arise about political interference and standing orders to restrict protests, it is imperative that these senior officials fulfill their critical roles in the defense of the basic freedoms of Israel's citizens. They must keep an eye on the police's conduct on the ground to ensure that they do not selectively enforce outdated and draconian legislation that contravenes longstanding court rulings safeguarding the freedom of protest.

In addition, Zulat recommends to urgently remedy the deficiencies in existing legislation and improve the protections of freedom of protest as proposed in the aforementioned report, first and foremost, to explicitly anchor in basic legislation the right to protest as well as to repeal draconian and anachronistic restrictions on freedom of protest that have no place in the legal system of a democratic state.

### **Suppression of Protest After 7 October**

Following the heinous terrorist attack by Hamas on 7 October 2023, Israel Police suppressed the protest against the government's conduct in the ensuing war in Gaza and its failure to secure the release of the hostages. Until January 2024, the police primarily focused on preventing anti-war protests. Thus, on 17 October, Police Commissioner Yaakov Shabtai announced a sweeping ban on demonstrations, effectively forbidding any protest against the government's conduct in the war: "Anyone who wants to be a citizen of Israel, ahlan wasahlan (welcome). Anyone who wishes to identify with Gaza, is welcome to - I will put him on the buses that are heading there now." His remarks were also posted on the police's social media sites in Arabic.<sup>2</sup>

In accordance with this policy, on 9 November, the police detained Muhammad Barakeh, chairman of the Higher Arab Monitoring Committee, and other former MKs who were on their way to a protest vigil in Nazareth.<sup>3</sup> In other cases, police dispersed the protesters for

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<sup>2</sup> \*Ran Shimoni, Deiaa Haj Yahia, and Adi Hashmonai, [Israel Police Commissioner: 'Those Who Identify With Gaza Can Be Escorted There on Buses'](#), *Haaretz*, 19 October 2023; [Israel Police's Arabic-Language TikTok Account](#), *TikTok*, 17 October 2023.

<sup>3</sup> \*Haaretz editorial, [Israel Is Undermining Its Citizens' Right to Protest](#), *Haaretz*, 9 November 2023.

no reason, at times forcefully, and unlawfully banned the display of placards and the use of megaphones.<sup>4</sup> The police even retracted the license for a march and rally organized under the banner "Only Peace Will Bring Security."<sup>5</sup>

The sweeping and unlawful policy was reported in the media and discussed in the courts. State Attorney Amit Eisman sharply criticized the police's conduct toward citizens protesting against the government since the start of the war, saying it amounted to harming the rule of law.<sup>6</sup> In several cases, following petitions to the Supreme Court, the police retracted their refusal to allow a demonstration<sup>7</sup> or their unlawful demand for a license to hold one.<sup>8</sup>

In a ruling on 8 November, the Supreme Court reminded the police that "a sweeping and preemptive ban on demonstrations due to their content is outside the Police Commissioner's authority, and it would have been better if their response had been worded differently," given that they are supposed to review a license application matter-of-factly and disregard the content or ideological background of the organizers or participants in a demonstration. The judges added that "freedom of expression does not belong solely to one camp or one side of the political map, and is intended to protect not only conventional and popular opinions," and that "a distinction must be drawn between support for the enemy in times of war and encouragement, praise, and sympathy for terrorism in general and for the massacre in the Gaza Envelope in particular, between legitimate criticism of government policy and identification with the suffering of Gazans hurt in the fighting and uninvolved in terrorist activity."<sup>9</sup> Although the petition that elicited this ruling was rejected due to other circumstances, the judges emphasized that "the path of protests, rallies, and marches remains available during war, too.... Demonstrations may be held at any time

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<sup>4</sup> [Letter to Attorney General and Police Commissioner: Suppression of Freedom of Protest](#), *Association for Civil Rights in Israel*, 15 November 2023.

<sup>5</sup> [Letter to Tel Aviv District Commander and Israel Police's Legal Counsel: Urgent Demand for License for Protest March and Rally on 11 January 2024](#), *Association for Civil Rights in Israel*, 10 January 2024.

<sup>6</sup> \*Gidi Weitz, [Israel's State Prosecutor Warns Police: Unjustified Arrest of Dissenters Harms the Rule of Law](#), *Haaretz*, 21 November 2023.

<sup>7</sup> [Supreme Court Ruling 8211-23, Noa Levy v. Israel Police's Tel Aviv District Commander](#), *Nevo*, 16 November 2023.

<sup>8</sup> [Supreme Court Ruling 8680-23 Moria Shlomot v. Israel Police's Tel Aviv District Commander](#), *Nevo*, 10 December 2023.

<sup>9</sup> [Supreme Court Ruling 8007-23 Hadash-Democratic Front for Peace and Equality v. Police Commissioner](#), *Nevo*, 8 November 2023.

during a war or while the fighting continues. The right to voice public criticism or political protest does not retreat in times of war, especially during a bloody and lengthy war."<sup>10</sup>

Nevertheless, Minister Ben-Gvir announced that he intended to pursue this policy, even after Attorney General Gali Baharav-Miara asserted that he had "wrongfully and illegally intervened in the police's work."<sup>11</sup> She issued her position in response to an injunction issued by the Supreme Court following a series of petitions to repeal Amendment No. 37 of the Police Act (enacted under the coalition agreement signed with Ben-Gvir's Otzma Yehudit faction, in order to enable him to intervene in the police's professional work).<sup>12</sup> Ben-Gvir countered that "according to all laws and regulations, the minister is empowered to chart policy about demonstrations, and is certainly entitled to instruct the police to enforce the law and not to allow illegal protests.... The minister will continue to instruct the police to enforce the law and not to allow pro-Hamas rallies."<sup>13</sup>

As of January 2024, police restrictions have also gone up a notch on the right to demonstrate on other issues, such as the failure to secure the release of the hostages held by Hamas. For example, on 25 January, Tel Aviv District Police arrested two protesters on charges of breach of order, endangering human life, disobeying police instructions, and reckless use of flammable material. The next day, after no evidence was presented against them, the court released them unconditionally. Judge Zippora Moshe wrote in her decision: "It is my impression that they participated in a rally in support of the hostages. With regard to one suspect, I found insufficient evidence connecting him to the torches placed on the road. After listening to the arguments of the police and of the defense lawyer, I decided to order the immediate release of the detainees without any restrictions."<sup>14</sup>

Two participants in an art installation outside the Knesset titled "The Hostages' Lives Are Not Cheap," which included spraying red paint and laying on the road, were arrested on 11 February.<sup>15</sup> Police prevented protesters gathered outside Prime Minister Netanyahu's private residence in Caesarea from reading out the names of the hostages, and on 3 and

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<sup>10</sup> Ibid.

<sup>11</sup> Gilad Morag and Meir Turgeman, [Attorney General to Supreme Court: Ben-Gvir Wrongfully and Illegally Intervened in Police Work](#), *Ynet*, 1 January 2024.

<sup>12</sup> [Police Act-1971 \[New Version\]](#), *Nevo*, 11 March 1971.

<sup>13</sup> Gilad Morag and Meir Turgeman, [Attorney General to Supreme Court: Ben-Gvir Wrongfully and Illegally Intervened in Police Work](#), *Ynet*, 1 January 2024.

<sup>14</sup> Avi Cohen, [Court Orders Release of Two Arrested for Suspected Breach of Order](#), *Israel Hayom*, 26 January 2024.

<sup>15</sup> Orly Bar-Lev, [Two Arrested at Pro-Hostages Art Installation Near Knesset](#), *X (formerly Twitter)*, 11 February 2024.

10 February arrested two men who used megaphones to do just that.<sup>16</sup> Following these arrests, MK Gilad Karib invoked his parliamentary immunity to read out the names using a megaphone. Explaining his actions, Karib wrote: "This morning I joined a protest vigil of courageous citizens opposite the prime minister's residence in Caesarea, after the right to demonstrate and read out the names of hostages was wrested away from them in recent weeks.... I say to my colleagues in the opposition: I know that you too have received a considerable number of complaints about harassment of protesters and violation of the freedom of protest. As long as Ben-Gvir remains in charge of the police and as long as citizens are deprived of the right to protest, standing with the protesters and alongside them is our public duty."<sup>17</sup>

On 6 February, the court rejected the police demand to include in the conditions for the release of a family doctor who participated in a rally for the release of the hostages a 90-day ban on participating in a prohibited assembly/demonstration/protest. The judge wrote in her ruling: "After reviewing the investigation file and the arguments of the sides, I found no grounds for issuing such a ban since a prohibited assembly is forbidden in any case, even without a court order. Neither did I find grounds to forbid participation in legal demonstrations given that freedom of expression outweighs any fear that might exist about the defendant's conduct."<sup>18</sup>

In another demonstration in support of the hostages and against the government on 10 February, writer Orna Coussin was arrested on charges of suspected assault, obstructing a policeman, and blocking a public road. She was released after spending one night behind bars, and the police request to extend her remand in custody for three days was rejected.<sup>19</sup> Pointing out that the policeman in question did not provide a testimony and that the only evidence was an action report filed by another policeman who happened to notice the incident, Judge Binyamin Hirschel-Doron wrote in his ruling that "even if evidence were to surface, this would be a minor event," and went on to criticize the police for keeping Coussin in custody at the station overnight while releasing seven other detainees. "I don't

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<sup>16</sup> Yoav Etiel, [Police Persist, Again Arrest Protester This Morning](#), X (formerly Twitter), 3 February 2024; Nava Rozolyo, [Help Release Detainees](#), X (formerly Twitter), 10 February 2024.

<sup>17</sup> Gilad Kariv, [I Joined Protest Vigil of Courageous Citizens This Morning](#), X (formerly Twitter), 2 February 2024.

<sup>18</sup> [Legal/Psychological/Logistical Aid for Arrested Protesters](#), X (formerly Twitter), 6 February 2024.

<sup>19</sup> \*Gili Izikovich, [Police Arrest Esteemed Israeli Author at Protest for Release of Hostages Held by Hamas](#), Haaretz, 11 February 2024.

think the evidence before me indicates an assault on a police officer of such magnitude as to distinguish her from the other suspects," he wrote.<sup>20</sup>

The aforementioned examples are just a few of many attesting to a trend and a taste of things to come as the protests continue and intensify.

### **Israeli Legislation: 'Toolbox' for Suppressing Freedom of Protest**

The Legal Infrastructure for the Suppression of Protests and Demonstrations in Israel, a report written shortly before the war in Gaza by Zulat (in collaboration with the Public Committee Against Torture in Israel and the Akevot Institute for Israeli-Palestinian Conflict Research) presents a comprehensive overview of the restrictions that have existed in Israeli law since the founding of the state and their use for the purpose of restricting demonstrations by minority groups and suppressing anti-government protests. The report came about in the aftermath of the advancement of the regime revolution and after the enactment of Amendment No. 37 of the Police Act, which placed the National Security Minister in charge of the Israel Police on behalf of the government.<sup>21</sup>

As described in the report, despite the importance they hold for any democratic regime, the freedoms of expression and protest have been recognized and preserved by Israel with patchwork legislation that provides feeble and vague protections, in addition to the draconian powers of enforcement and use of force against protesters bestowed on the police. These powers were partly translated into standing operating procedures that allow selective enforcement and arbitrary, political, and even racist use of force toward protesters from minority populations and disadvantaged groups, in addition to over-enforcement toward protesters with political views in opposition to the government.

The report shows that this rickety patchwork is unsustainable as a legal and democratic infrastructure for the right to hold demonstrations. Although court rulings have over the years given a narrow interpretation of British Mandate-era legislation and reinforced the protections of the freedom of demonstration, the law in its current form allows the police to pursue an uneven, selective, and arbitrary enforcement policy. This situation is expected to get worse when in charge of the police is a minister such as Ben-Gvir, who holds an anti-democratic worldview and who might abuse his position to severely impair the principle of equality and the freedom of expression and demonstration.

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<sup>20</sup> Ibid.

<sup>21</sup> [Police Act-1971 \[New Version\]](#), *Nevo*, 11 March 1971.

The examples throughout the report illustrate how the police have in the past and continue at present to use the same anti-protest "tools," both against minority and disadvantaged populations and against the so-called majority when they protest against the government. Here are some of those "tools": no explicit anchoring in a Basic Law of the right to demonstrate; license requirements for rallies and marches and draconian protest offenses dating back to British Mandate-era legislation; invocation of the offense of obstructing a police officer in the performance of his duty; authority to prohibit the display of flags; extensive authority of a precinct's commanding officer to set terms for the release of detainees liable to limit freedom of demonstration; wide-ranging powers to maintain the "public order" that enable profiling of certain demonstrations as endangering public peace; extensive powers translated into standing operating procedures on the use of force and crowd control weapons; use of Border Police troops vis-à-vis demonstrators; immunity from disciplinary and criminal prosecution for policemen involved in unlawful violence toward protesters; broad powers conferred upon local authorities that are used to limit and prevent demonstrations.

Since the 7 October calamity and the start of the war in Gaza, the police have continued to use the same "toolbox" cited in our report to suppress the protest against the government's conduct in the war and its failure to secure the release of the hostages held by Hamas. As the protests against the government's policy are bound to expand during 2024, the police under Ben-Gvir might increase their use of these tools and effectively bar the right to demonstrate.

### **Proposals To Improve Freedom of Demonstration**

- **Recommendation to the Attorney General and the State Attorney:** Since they too are of the opinion that the police and Minister Ben-Gvir are overstepping their authority and violating the law with regard to the right to demonstrate, it is imperative that the Attorney General and the State Attorney should closely and regularly monitor the two, even if no petition to this effect has been submitted to the Supreme Court. Although the Attorney General said that the Movement for Quality Government's petition to repeal Amendment No. 37 should be rejected (the other petitions are still pending), she nevertheless noted that its vague language would allow the Supreme Court to interpret it in such a way as to allow the police to continue operating independently

and without external pressures.<sup>22</sup> In order to ensure that the police allow unbiased freedom of protest, the Attorney General and the State Attorney must demand from the police regular reports listing refusals of license applications and dispersals of demonstrations, including the identity and arguments of the officer making the decision. To this end, they can seek the assistance of the Israel Police's national/district-level legal counsels and of the prosecutors who represent the police in court hearings about custody remands and restrictions on arrested demonstrators.

- **Recommendation to the opposition MKs:** Opposition MKs who are members of relevant Knesset committees should summon Israel Police and National Security Ministry officials to appear before them to discuss the principles of the right to demonstrate and to review specific cases when this right has been violated that come to their attention through the media or other channels.

In addition, the full report contains recommendations for remedying the deficiencies in existing legislation and improving the protection of freedom of demonstration. These legislative amendments are necessary to protect the freedom of demonstration of Israel's residents and citizens, so that they do not hinge entirely on the identity of the minister in charge of the police and his personal worldviews, nor on the discretion of policemen on the scene with regard to the use of force and enforcement of the law.

- **To prevent abuse of British Mandate-era license requirements for assemblies or marches:** We propose to cancel the anachronistic license requirements for assemblies and marches set forth in Articles 83-90 of the Police Act-1971 (New Version), which do not befit a democratic regime or the status of freedom of expression and protest in the State of Israel.
- **To prevent abuse of draconian protest offenses:** We propose to abolish the anachronistic protest offenses set forth in Articles 151-158 of the Penal Law-1977 so the police may enforce and prevent clear-cut crimes specified therein and in other statutes, instead of "cherry-picking" vague offenses such as illegal assembly and public disturbance. This would preclude the police from circumventing court rulings reducing license requirements for protest actions.

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<sup>22</sup> \*Chen Maanit and Josh Breiner, [Israeli AG Warns of Politicization of Police If Far-Right Minister Remains in Charge](#), *Haaretz*, 1 June 2023.



- **To prevent abuse of 'obstruction of a police officer' offense:** We propose to amend Article 275 of the Penal Law and to require the Attorney General's approval in writing to prosecute for this offense if such an offense is suspected to have been committed while exercising freedom of protest.
- **To prevent abuse of authority to ban flag display:** We propose to abolish the authority to ban the display of flags stipulated in Article 82 of the Police Act.
- **To prevent abuse of authority to set terms for detainee's release aimed at limiting the right to protest:** We propose to add Article 42(b3) to the Criminal Procedure Law (Powers of Enforcement-Arrests) so that a precinct's commanding officer may not set terms for the release from detention of a person suspected of committing an offense related to his participation in a procession, assembly, protest vigil, or demonstration that impair his freedom to participate in such activities, unless these conditions, based on causes specified in writing, are approved by the district police's legal counsel. Thus, freedom of expression and demonstration will be weighed not only in the courtroom.
- **To prevent abuse of the police's wide-ranging powers to profile certain demonstrations as endangering 'the public order':** We propose to amend Articles 3, 5, and 78- 81 of the Police Act-1971 so the police may deal only with enforcement and prevention of straightforward offenses specified in the Penal Law and other laws, and not with enforcement and prevention of something ambiguous like breach of "the public order." These wide-ranging powers allow the police to ignore Supreme Court rulings and the lack of a requirement to obtain a license, thereby effectively limiting freedom of expression and protest on arbitrary and political grounds.
- **To prevent abuse of the police's powers and flexible procedures to justify the use of force and crowd control weapons based solely on the identity of the protesters:** We propose to abolish the cumbersome mechanism stipulated in Article 19(b) of the Police Law-2006's First Addition, which authorizes the Attorney General or a delegated official to decide on the enforcement of Article 19(a). In light of the high incidence of police brutality, there is no justification for non-enforcement of a disciplinary offense based on Article 19(a) or for subjecting it to a special permit. We also propose to amend the Police Act-1971 by adding Article 49J(e), which would oblige the Internal Affairs Department (IAD) to launch a criminal investigation as soon as it learns that a person sustained physical or mental harm at the hands of a police officer. In cases where there is evidence that such harm was the result of police brutality, the pursuit of justice

is an overriding public interest and there is no room to factor in reasons unrelated to problems with the evidentiary infrastructure, such as over-deterrence of members of the police unit cited in the complaint, which according to Attorney General Directive No. 4.2204 solely justifies an IAD preliminary inquiry.

- **To prevent abuse of municipal regulations:** We propose to amend the Municipal Act to limit the applicability of the relevant provisions pertaining to demonstrations in Articles 235(3), 242(1), 235, 251, and 246.
- **To prevent misuse of Border Police troops for massive violence against protesters:** We recommend to introduce in the Israel Police's standing operating procedures the requirement to activate Border Police troops only in cases of extreme violence on the part of demonstrators and forbid their use in non-violent protests.

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