



ZU·LAT Equality
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The Legal Infrastructure for the Suppression of Protests and Demonstrations in Israel

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October 2023

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October 2023

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

Introduction

Here is how Israel Police Commissioner Pinchas Kopel, addressing a meeting of the Knesset Interior Committee on 24 August 1971, justified the use of violence at the Black Panther demonstrations in Jerusalem against the discrimination and oppression of Mizrahi Jews: "We gave consideration to the matter. We were sick and tired of demonstrations."¹ Some 52 years later, on 5 July 2023, here is how Superintendent Ami Eshed, the deposed commander of the Tel Aviv District, described his response to National Security Minister Itamar Ben-Gvir's demands, similarly reflecting the government's disgust with the protests against the regime revolution: "I sinned by not being able to meet the expectations of the ministerial level, which included violating the rules, protocols, organizational structure and culture in decision-making and in operational judgment.... We could have cleared Tel Aviv's Ayalon Highway in minutes at the cost of breaking heads and crushing bones.... We could have filled the emergency room at Ichilov Hospital at the end of every demonstration."²

Protest activity is an important and central element in a democratic society, especially protest directed against the government and the decisions of the authorities. Such activity is an important part of the public discourse and of the checks and balances in any democratic regime. Demonstrations, rallies, marches, and vigils are intended to fulfill the freedom of expression and opinion, to spread worldviews and opinions, and to influence the public discourse.³

Despite the importance that freedom of expression and protest hold for any democratic regime, their recognition and preservation in the State of Israel is based on rickety legal patchwork, which provides feeble and vague protections for the right to demonstrate along with draconian powers to the police. This report argues that these powers have in part been translated into standing operating procedures (SOP) that allow selective enforcement and use of force against protesters hailing from minority populations and disadvantaged groups in an arbitrary, political, and even racist manner, in addition to overenforcement toward demonstrators with political views in opposition to the government.

Israel has never enacted a Basic Law anchoring freedom of expression and demonstration, and the legislation pertaining to restrictions on this freedom is based on British Mandate-

The recognition and preservation of freedom of expression and protest in the State of Israel is based on rickety legal patchwork, which provides feeble and vague protections for the right to demonstrate along with draconian powers to the police

¹ [Minutes of Meeting No. 90 of Knesset Interior Committee, Israel State Archives, 24 August 1971.](#)

² [*Joshua Breiner, Tel Aviv Police Chief Quits: I Paid a Price for Choosing To Prevent a Civil War, Haaretz, 5 July 2023.](#)

³ [Supreme Court Ruling 1983/17 Mani Naftali v. Attorney General, Nevo, 27 April 2017.](#)

era statutes, whose original purpose was to limit freedom of expression in the area under its rule and to control the public's ability to hold protests, rallies, and marches by means of administrative measures, similar to legislation in other British colonial regimes of the period.

Although Israel's governments chose to incorporate British Mandate-era legislation into its statute book in order to suppress protests of the opposition and minorities, courts have over the years given this legislation a narrow interpretation based on the understanding that it does not befit the basic principles of a democratic regime, especially after the constitutional status conferred upon the freedoms of expression and demonstration following the enactment of Basic Law: Human Dignity and Liberty.⁴

The narrow interpretation of British Mandate-era legislation and the bolstering of protections for the freedom of demonstration were achieved thanks to human rights organizations and lawyers who repeatedly petitioned the courts against the restrictions on this freedom, published reports, ran public campaigns, and represented arrested and indicted protesters. These include the Association for Civil Rights in Israel (ACRI), Adalah, The Public Committee Against Torture in Israel, the Movement for Quality Government (MQG), Jerusalem Open House, and the lawyers Gaby Lasky, Leah Tsemel, and Daniel Haklai, who represented protesters from minority populations and disadvantaged groups, as well as people with political views in opposition to the government.

Despite existing court rulings, the police continue to practice an uneven, selective, and arbitrary enforcement policy (pertinent court rulings will be presented later on in this report) toward minority and anti-government demonstrators. Many times the courts refused police requests to remand arrested protesters or to impose draconian restrictions on their freedom of movement and demonstration, and in many cases indictments were dismissed or protesters were acquitted at the end of full criminal proceedings.⁵ For example, in his decision to acquit demonstrators in a rally called by the Islamic Movement's Northern Faction to protest the war in Gaza in 2008, Judge Ido Droyan wrote: "Indictments of demonstrators based on factual claims disproved by video footage shot by the police and others and on highly shaky legal evidence in complete or near-complete disregard for the proper balance between values dictated in case law are a phenomenon that keeps repeating itself."⁶

Despite existing court rulings, the police continue to practice an uneven, selective, and arbitrary enforcement policy toward minority and anti-government demonstrators

⁴ Ibid.

⁵ See for example: [Jerusalem Magistrates Court Ruling 24534-05-10 State of Israel v. Arik Vaiden Ascherman, Nevo](#), 17 March 2013; [Tel Aviv Magistrates Court Ruling 1025-09 State of Israel v. Ben Ronen, Nevo](#), 3 September 2013.

⁶ [Tel Aviv Magistrates Court Ruling 1152-09 State of Israel v. George Gantos, Nevo](#), 26 February 2013.

Amendment No. 37 to the Police Act-1971 [New Version],⁷ approved one day before the inauguration of Netanyahu's sixth government in December 2022, established that the person in charge of the Israel Police on behalf of the government would be the Minister of National Security and empowered him to outline the Israel Police's policy and operating principles, including priorities, work plans, and general guidelines, and in particular their overall policy on investigations, such as priorities and duration (in consultation with the Attorney General, the Police Commissioner, and the top brass in charge of investigations).

Pursuant to this amendment, the Minister of National Security may steer Israel Police's enforcement and investigation policy in a way that serves his political and personal interests and those of the government. This became evident in Minister Itamar Ben-Gvir's repeated attempts to intervene in the police's enforcement vis-a-vis demonstrators against the regime revolution announced by Minister of Justice Yariv Levin in early January 2023.⁸ On 8 January he instructed the police to enforce a blanket ban on flying the Palestinian flag in public spaces and to stop any anti-Israel incitement.⁹ The next day he instructed them to arrest anti-government demonstrators protesting the judicial overhaul plan if they blocked roads.¹⁰ On 9 February, he summoned the Jerusalem District commander to instruct him on how to proceed with "anarchists."¹¹ On 1 March he visited police headquarters in Tel Aviv and told officers that "zero tolerance should be shown toward anarchists who attack policemen, break through police barriers, and create anarchy."¹²

The Minister of National Security attempted to interfere with law enforcement by hiring and firing officers based on their stance about a clampdown on the protests, as when he tried to oust Superintendent Ami Eshed, the commander of the Tel Aviv District (the main scene of the mass demonstrations against the regime revolution). Although Eshed's ouster was initially blocked by the Attorney General, in early July 2023 he announced that he was retiring from the police due to Ben-Gvir's demands to quash the demonstrations by force.¹³ Another example is the participation of Chanamel Dorfman (his chief-of-staff, known to the police and the Shin Bet security service as a right-wing extremist) in interviews of senior police officers seeking promotion.¹⁴ Then there is Ben-Gvir's incitement on mainstream/social media

⁷ [Police Act-1971 \[New Version\]](#), *Nevo*, 11 March 1971.

⁸ *Yael Freidson and Noa Shpigel, [Netanyahu's Justice Minister Presents Plans for Radical Judicial Overhaul](#), *Haaretz*, 4 January 2023.

⁹ [Itamar Ben-Gvir @itamarbengvir](#), *Twitter*, 21:55 8 January 2023.

¹⁰ *TOI staff, [Ben-Gvir Tells Police To Start Arresting Anti-Government Protesters Who Block Roads](#), *The Times of Israel*, 10 January 2023.

¹¹ *Ash Obel, [Ben-Gvir Slams Police for Not Using Force Against Protesters; Top Cop Backs Officers](#), *The Times of Israel*, 10 February 2023.

¹² [Itamar Ben-Gvir @itamarbengvir](#), *Twitter*, 13:13 1 March 2023.

¹³ *Josh Breiner, [Tel Aviv Police Chief Quits: I Paid a Price for Choosing To Prevent a Civil War](#), *Haaretz*, 5 July 2023.

¹⁴ *Josh Breiner, [Ben-Gvir's Ex-Hilltop Youth Chief-of-Staff Interviews for Top Police Positions](#), *Haaretz*, 19 May 2023.

against the demonstrators, whom he called "anarchists," and his public criticism of specific policemen and officers meant to bypass the chain of command and convey "the minister's mind-set."

In response to a number of petitions to annul Amendment No. 37,¹⁵ Supreme Court Justice Yitzhak Amit initially refused to issue an interim injunction but ultimately accepted Attorney General Gali Baharav-Miara's opinion, and stated that the National Security Minister "must refrain from giving operational orders to the police, directly or indirectly, and all the more so regarding protests and demonstrations against the government."¹⁶ Baharav-Miara argued that the petitions should be rejected, despite serious concerns that the amendment might lead to the politicization of the police, the violation of individual rights, and the application of extraneous considerations to the use of force. The language of the amendment was vague and enabled the Supreme Court to interpret it in such a way as to allow the Israel Police to go on operating independently and free of extraneous considerations, she contended.¹⁷

The Attorney General's position is not new, as will be described in detail in this report, given that she merely asked the Supreme Court justices to add another interpretive piece to the patchwork legislation regulating the police's enforcement powers and use of force, in particular with regard to freedom of demonstration. Amendment No. 37 simply enables and exacerbates problems in the existing legal infrastructure that already existed in any case.

The report shows that this rickety patchwork is unsustainable, especially in light of the fact that in charge of the Israel Police is Minister Itamar Ben-Gvir, a man with anti-democratic views who is liable to abuse this system and, in the process, harm the principles of equality and of freedom of expression and protest.

Moreover, despite the myriad court rulings tilting in favor of freedom of protest, protesters whose rights are violated by the police cannot be expected to turn to the courts to obtain a legal interpretation of the specific circumstances of each demonstration where their rights were harmed. Therefore, this report will conclude with a series of proposals to remedy the deficiencies in existing legislation and

The report shows that the rickety legal patchwork regulating the police's enforcement powers and use of force is unsustainable, especially when in charge of the Israel Police is a minister with anti-democratic views

¹⁵ *Yonatan Berman and Gil Gan-Mor, [Police Ordinance Amendment – Minister of National Security's Authority \('Ben-Gvir Law'\)](#), *Association for Civil Rights in Israel*, 18 June 2023.

¹⁶ *Jeremy Sharon, [High Court Rules Ben-Gvir Cannot Issue Operational Orders to Police Forces](#), *The Times of Israel*, 19 March 2023.

¹⁷ *TOI staff, [AG Pans Law Expanding Ben-Gvir's Authority Over Police But Doesn't Recommend Repeal](#), *The Times of Israel*, 1 June 2023.

to improve the protections for freedom of protest of Israel's citizens and residents so they do no longer hinge entirely on the identity of the minister in charge of the police and his views, nor on the discretion of policemen on the scene regarding the use of force and enforcement powers.

It should be clarified that this report does not purport to be a comprehensive analysis of the evolution of the restrictions on freedom of protest in Israel, in particular as it pertains to minorities. It presents an overview of the existing legal infrastructure for the suppression of demonstrations and protest in the light of the current protests against the regime revolution, backed by examples (primarily from the last 20 years) that show how minorities and disadvantaged groups played a significant part in the ongoing struggle for the exercise of freedom of expression and protest. Moreover, 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.

The police have in the past and continue at present to use the same anti-protest 'tools' against minority groups and the so-called majority when they protest against the government

The report similarly addresses the clampdown on demonstrations in East Jerusalem, given that the same laws and court rulings apply to both occupied territory illegally annexed to Israel and to its recognized sovereign territory. On the other hand, the report does not deal with demonstrations in the rest of the West Bank and Gaza Strip, where repression is even more severe since different laws apply in those areas and, as Israel sees it, no basic right to demonstrate exists there at all (according to the Military Prosecution¹⁸ and to Military Commander Order No. 101 on the prohibition of incitement and hostile propaganda, which negates the freedoms of expression and demonstration).¹⁹

¹⁸ [Military Court of Appeals in Judea and Samaria Ruling 1913/06 Abdallah Mahmud Muhammad Abu-Rahmah v. Military Prosecutor, Nevo, 10 April 2006.](#)

¹⁹ [Military Commander Order No. 101 Prohibition of Incitement and Hostile Propaganda, Legal Adviser for Judea and Samaria Region, 27 August 1967.](#)

Problematic Premise: Right To Demonstrate Not Specifically Anchored in Any Basic Law

Although freedoms of expression and demonstration are considered the foundations of a democratic regime and are entrenched in major international treaties joined by it (primarily the 1966 International Covenant on Civil and Political Rights and the 1948 Universal Declaration on Human Rights), Israel does not have a Basic Law explicitly anchoring these rights.

In Israel, the right to demonstrate is an upshot of a Supreme Court derivative ruling on freedom of expression, which is not anchored in a Basic Law either.²⁰ According to this ruling, this freedom can be limited only when there is near certainty of severe and serious damage to public order and tranquility, and only to the extent necessary to prevent said damage. Moreover, the police must respect the right to demonstrate, and not only are they not allowed to limit it unnecessarily, but they are also obligated to assist in its realization. Supreme Court President (retired) Dorit Beinisch wrote in response to a petition to bar a gay pride parade in Jerusalem: "Freedom of expression and demonstration is not only meant to protect acceptable and well-liked opinions, but also - and herein lies the main test of freedom of expression - opinions that may be outrageous or infuriating."²¹

The status of this right was bolstered upon the enactment of Basic Law: Human Dignity and Liberty. This is what Supreme Court President (retired) Aharon Barak wrote in one of his rulings: "It appears that now this right can be derived from Basic Law: Human Dignity and Liberty, which provides a statutory constitutional basis for the human right to dignity and liberty. The freedom to express oneself, in words alone or by expressive actions, is a major expression of human dignity and liberty."²²

In view of the elevated status of the rights to freedom of expression and protest, the courts ruled that not every breach of the order or security justifies restricting the right to demonstrate, and it is not enough that a demonstration should cause discomfort, or even great discomfort, to prohibit it. As Supreme Court President Esther Hayut wrote in one of her rulings: "To the extent that people in Israel want to live in a democracy, they must, like any civilized country, adopt a level of tolerance and be able to put up with demonstrations, despite the damage to the routine of life and the discomfort that is sometimes associated with them."²³

²⁰ [Supreme Court Ruling 148/79 Adv. Zvi Sa'ar v. Minister of Interior and Police](#), *Nevo*, 31 May 1979.

²¹ [Supreme Court Ruling 8988/06 Yehuda Meshi-Zahav v. Jerusalem District Commander Ilan Franco](#), *Nevo*, 27 December 2006.

²² [*Supreme Court Ruling 2481/93 Yosef Dayan v. Jerusalem District Commander Yehuda Wilk](#), *Versa.Cardozo*, 9 February 1994.

²³ [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police](#), *Nevo*, 8 October 2017.

In the absence of explicit anchoring in a Basic Law, recognition and protection of the right to protest is unstable, insufficiently clear, and constantly in dispute between individuals seeking to exercise their right, the minister in charge of the police, the commanding officers on the scene, and the municipal authorities where protests take place. Furthermore, the extent of the recognition and protection of the right to demonstrate and its application in concrete cases depends on the judge or the panel of judges hearing the petitions on the subject.

In the absence of explicit anchoring in a Basic Law, recognition and protection of the right to protest is unstable, insufficiently clear, and constantly in dispute between individuals seeking to exercise their right, the police, and the relevant authorities

When the judicial system and government legal counsels who are supposed to monitor the enforcement policy toward protesters are simultaneously being attacked by the 37th government and the National Security Minister, the threat to the right to protest increases manifold due to the fact that it is not anchored in a Basic Law. For example, the government may appoint or promote judges who support a narrow interpretation of the right to hold demonstrations outside the homes of ministers and Knesset members, which have proved to be highly effective.²⁴

²⁴ Josh Breiner, [Police Try To Limit Ever-Growing Demonstrations Outside Homes of Ministers, MKs](#), *Haaretz*, 26 February 2023.

British Mandate-Era License Requirements for Assemblies and Marches

Although the protests of Ethiopian immigrants against institutional discrimination and police brutality do not normally require a license because they are not about "a matter of political interest," it seems that in 2015 the police decided that they do. Here is what Police Commissioner Yohanan Danino said after one of the largest demonstrations in Tel Aviv: "We will allow protest, but we will not agree to unlicensed demonstrations like the ones they staged. We have no intention of putting up with it for long."²⁵ Accordingly, the police usually tried either to prevent these demonstrations in advance or to disperse them, often using arrests and disproportionate and unlawful force. This was one of the points highlighted by the panel set up to look into the eradication of racism against Ethiopians (hereinafter: "Palmor Committee").²⁶

Along with the integration of British Mandate-era statutes, Article 83 of the Police Act defines an assembly requiring a license as "50 people or more gathered to hear a speech or lecture on a matter of political interest or to discuss such a subject." A march requiring a license is defined as "50 people or more walking together, or gathering to walk together, from one place to another, be they actually in movement or not, be they in formation in some way or not." In addition, Articles 84-90 of the Police Act define the obligation to procure a license, the limitations on an assembly or a march, and the police's powers in the matter.

As will be explained below, the Supreme Court and other courts have over the years offered an ever-narrowing interpretation to the definition of "a matter of political interest" requiring a license for a gathering of "50 people or more," but the police have nevertheless continued to disperse demonstrations, prevent them in advance, or arrest protesters on arbitrary and political grounds based on the wide-ranging provisions of the aforementioned Articles 83-90.

The Supreme Court and others have over the years given an ever-narrowing interpretation to the definition of 'a matter of political interest' requiring a license for a gathering of '50 people or more', but the police have nevertheless continued to disperse demonstrations, prevent them in advance, or arrest protesters on arbitrary and political grounds

More than once, demonstrators arrested on the grounds that they had participated in an unlicensed rally or march were released, and the charges were either dropped or segued into full acquittal, with the judges noting that a license was not required in the first place.

²⁵ Itay Blumental, Noam Dvir, et al, [Dozens Wounded, Clashes, Stun Grenades, Destruction at Ethiopian Immigrants Protest in Tel Aviv](#), *Ynet*, 4 May 2015.

²⁶ [Final Report of Team for Eradication of Racism Against Ethiopian Immigrants](#), *Ministry of Justice*, July 2016.

The courts hearing such cases were forced to factually determine the number of participants (higher or lower than 50),²⁷ and in the case of an "assembly" to check whether it involved "a matter of political interest." For example, acquitting a participant in a demonstration in East Jerusalem's Silwan neighborhood where protesters chanted "No Sanctity in an Occupied City," Supreme Court Justice Shimon Stein affirmed that "chanting political slogans does not amount to a speech or a lecture on a matter of political interest or to a discussion on such a subject. Therefore, in such circumstances, a protest vigil does not amount to an 'assembly' and does not require a license in any case."²⁸

In a hearing about the demonstrations outside the Attorney General's home urging him to bring Prime Minister Netanyahu to justice (hereinafter: "Mani Naftali case"), the Supreme Court ruled that the police's authority under Articles 83 and 84 of the Police Act to grant or refuse licenses to assemblies of 50 people or more about "a matter of political interest" should be interpreted narrowly as referring to gatherings dealing with political issues in the narrow sense of the word.²⁹

In view of the narrow interpretation given by the courts to the license requirement for an "assembly," an absurd situation has arisen whereby assemblies on strictly political-policy matters require a license even though such issues are at the core of freedom of expression in a democratic regime, while gatherings on any other issue do not require a license nor is there seemingly a limit on the number of participants.

Yet another absurdity is that, based on a narrow interpretation of "a political issue," a "static" protest vigil does not require a license, but if more than 50 demonstrators want to move or advance a few dozen meters, even on a dead-end street, this might be considered a "march" that requires a license whatever its theme may be. People have a hard time grasping why a gathering of hundreds (if it is not about "a political issue") does not require a license but a march always does.

Supreme Court Justice Yoram Danziger addressed the difficulty posed by the restriction on the number of participants in his ruling in the Mani Naftali case: "Limiting the number of protesters may actually have a significant 'chilling effect' on a demonstration, whose chief purpose is to drum up support for a certain notion or opinion. The thought behind it is that through a demonstration, an idea will resonate and thrive. Thus, an idea that was initially held by a few would gain popularity among many. Hence, an effective demonstration often is a matter of momentum, whether it really succeeds to attract more and more 'believers' and

²⁷ See, for example: [Tel Aviv Magistrates Court Ruling 1404-09 State of Israel v. Moran Avni, Nevo](#), 15 December 2021.

²⁸ [Jerusalem Magistrates Court Ruling 5022-09-10 State of Israel v. Dorit Argo, Nevo](#), 2 February 2023.

²⁹ [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police, Nevo](#), 8 October 2017.

'adherents' to the cause in real time. In this respect, restricting the number of participants as a demonstration gains momentum may harm its potential success, intensity, and resonance. The harm caused by such a restriction may be particularly severe, and therefore it is better to invoke it only when there is a direct link between the number of demonstrators and the danger or harm that the police seek to reduce."³⁰

In such protest venues as Sheikh Jarrah³¹ and Silwan³² in East Jerusalem, Wadi Ara,³³ the Prime Minister's Residence on Jerusalem's Balfour Street,³⁴ Ben-Gurion Airport,³⁵ and Rabin Square, Kaplan Street, and Ayalon Highway in Tel Aviv,³⁶ interpretation of the ruling on license requirements under Articles 83-90 of the Police Act is always cause for friction between the police deployed to the scene and the demonstrators. Despite the criticism voiced by the courts, policemen use force disproportionately and unlawfully to disrupt demonstrations, and protesters are repeatedly arrested for participating in an unlicensed demonstration or for any number of protest offenses.

For example, the police repeatedly broke up the months-long protest of people with disabilities in 2017 on the grounds that they had not procured a license, even though this type of demonstration does not require a license because it does not concern "a political issue." Wheelchair-bound individuals were arrested, forcibly handcuffed and removed from the scene.³⁷ Similarly, policemen repeatedly disrupted the protest of single mothers, claiming that they had not obtained a license. In November 2016, police officers stopped a march led by Vicky Knafo, one of the leaders of the protest, and told her: "You want to march, march alone, not in a group."³⁸ When the mothers demonstrated outside the Ministry of Finance, Israel Police's Yasam troops violently evicted them.³⁹

Police enforcement of the license requirement for a march is arbitrary and political. For example, a leader of the anti-Netanyahu "Balfour Protest"⁴⁰ was charged with "leading an

³⁰ Ibid, paragraph 12 of Justice Yoram Danziger's ruling.

³¹ Nir Hasson, [Police Forcibly Disperse Demonstration Against Eviction of Palestinians in Sheikh Jarrah, Three Arrested](#), *Haaretz*, 24 December 2021.

³² [Jerusalem Magistrates Court Ruling 5022-09-10 State of Israel v. Dorit Argo](#), *Nevo*, 2 February 2023.

³³ Shlomi Gabay, [Thousands Demonstrating in Wadi Ara Against Evacuation of Bedouin Village Dispersed With Stun Grenades](#), *Walla*, 21 January 2017.

³⁴ Nitzan Shafir, [Supreme Court Allows Balfour Protesters To Play Music Until 23:00](#), *Globes*, 17 November 2020.

³⁵ Josh Breiner and Chen Maanit, [Civil Aviation Authority Tries To Force Police To Relocate Ben-Gurion Airport Demonstration to Terminal 1](#), *Haaretz*, 11 July 2023.

³⁶ Calcalist and Ynet staff, [Some 140,000 Demonstrate in Tel Aviv Against Regime Coup, Seven Arrested in Clashes With Police on Ayalon Highway](#), *Calcalist*, 15 April 2023.

³⁷ Amir Alon, [Violence and Arrests in Protest of Disabled Persons: 'One Demonstrator Planned To Set Himself on Fire'](#), *Ynet*, 14 August 2017; Hagai Amit, [Disabled Protesters: Police Were Violent With Us](#), *TheMarker*, 4 October 2017.

³⁸ [Social Justice – The Situation Room](#), Facebook, 1 November 2016.

³⁹ Eyal Hareuveni, [Single Mothers: 'Policemen Beat Us Up at the Demonstration'](#), *Ynet*, 24 August 2023.

⁴⁰ A series of protests against Netanyahu's continued tenure in the shadow of the criminal charges against him, which gained prominence throughout 2020 and 2021, named after the Jerusalem street where the Prime Minister's Residence is located.

unlawful protest march," even though countless marches with the participation of varying numbers of protesters (from several dozen to a few thousands) were taking place at that time throughout the country, particularly in Jerusalem.⁴¹

The very fact that the police check for "a political issue" constitutes interference in the content of a demonstration. In the Mani Naftali case, the Supreme Court found that the criteria for checking the content of an assembly - as opposed to "neutral" criteria pertaining to the public order - is unacceptable in democratic countries and that many Western countries have altogether or almost completely waived such license requirements. They urged the legislature to consider changing the procedures set forth in the law in light of the practices in other democratic countries.

The very fact that the police check for 'a political issue' constitutes interference in the content of a demonstration. The Supreme Court has urged the legislature to consider changing the procedures set forth in the law in light of the practices in other democratic countries

In the aftermath of the Supreme Court's aforementioned ruling, then-Attorney General Avihay Mandelblit issued a directive on 5 January 2022 abolishing the license requirement for a demonstration unless it involves a distinct political issue "in the realm of foreign relations and security, such as peace treaties, border changes, or military operations."⁴²

This definition of "a distinct political issue" could lead to a situation where a license would in practice be required primarily of demonstrators on the left side of the political map on such issues as the occupation of the territories and arms deals, while Lehava, Im Tirtzu, Hilltop Youth, and other extreme right groups whose rallies often turn violent would not. The directive cannot be seen as an affirmation of the ruling in the Mani Naftali case, given that Supreme Court President Esther Hayut refrained from drawing a list of "political" topics requiring a license.

Moreover, in contravention of the ruling, the directive includes inconsistent and broad guidelines about the police's leeway to check the content of a demonstration and use its discretion to limit it. For example, while the court ruled that such a check would be a mere "technicality," the directive allows the police to look into the innards of the organizers for "any indication that the main purpose of the demonstration is different from the stated purpose."⁴³

Strangely enough, of all the crimes in Israel's Penal Law, the Attorney General chose to cite the example of a demonstration likely to be nixed by the police as one "inciting army soldiers

⁴¹ Josh Breiner, [For First Time Since Protests Began, Anti-Netanyahu Activist Charged With 'Leading an Unlawful Protest March'](#), *Haaretz*, 14 January 2021.

⁴² [Attorney General Directive No. 3.1200: Freedom of Demonstration](#), *Ministry of Justice*, 5 January 2022.

⁴³ *Ibid.*

to disobey a legal order." While the police are not known to enforce the directive on settlers resisting the evacuation of illegal outposts or urging soldiers and policemen to refuse to carry out eviction orders, they violently disperse demonstrations by Haredim (ultra-Orthodox Jews) opposed to conscription into the IDF and by left-wing activists calling on soldiers to refrain from committing crimes against the Palestinian population in the West Bank and Gaza Strip.

Furthermore, in June 2019 the police published an updated SOP on "Licensing of Assemblies and Marches" (No. 220.001.20),⁴⁴ which actually bypasses the Supreme Court ruling. Instead of requiring a license which, as noted, is irrelevant in many cases (when the theme is not a strictly "political issue"), it sets a complicated procedure for coordinating demonstrations. Although it states that an applicant for a demonstration that is neither an "assembly" nor a "march" as defined in Article 83 of the Police Act "may" submit a request for coordination, under the broad interpretation of Articles 3-5 of the Police Act "may" actually becomes "must" and the police are empowered to demand coordination in order to preserve "the public order." The requirements that organizers must meet in order to "coordinate" a demonstration according to the new procedure are even stricter and more detailed than those stipulated in the Police Act with regard to "assembly" and "march."

The provisions of the Police Act, the Attorney General's directive, and Israel Police's SOP on licensing of assemblies and marches in fact allow the government, the police, and the minister in charge to practice a policy restricting freedom of protest and requiring a license solely for political reasons, especially for rallies by minorities and disadvantaged groups who are a priori seen as "endangering the public order" (this point will be addressed later in the report). The police frequently use violence to disperse demonstrations on the grounds that they lack a license, even though the law and court rulings do not require one in the first place. The dispute over the very requirement of a license becomes the reason for clashing with the demonstrators, and the police's justification for using violence against them.

⁴⁴ *Josh Breiner, [New Police SOP Bypasses Supreme Court, Permits Limiting Demonstrations](#), *Haaretz*, 19 August 2019; [Police SOP No. 220.001.20: Licensing of Assemblies and Marches](#), *Nevo*, 16 June 2010.

Draconian Protest Offenses Contained in the Penal Law

Responding to a motion to dismiss an indictment of a Haredi man protesting the arrest of a draft evader who was charged with participating in a riot under Article 152 of the Penal Law-1977,⁴⁵ Judge Ilan Sela ruled it a case of patently selective enforcement and noted that it was one of the exceptions justifying the claim of protection from justice.⁴⁶

The protest offenses stipulated in Articles 151-158 of the Penal Law date back to the British Mandate era and, as mentioned earlier, are incompatible with the basic principles of a democratic state. Neither is their ambiguous wording compatible with the way criminal offenses are commonly defined.

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Article 151 defines a prohibited assembly as follows: "If at least three or more persons assembled for the purpose of committing an offense or assembled for a common purpose, even a lawful one, and conducted themselves in a manner that gives nearby individuals reasonable grounds to suspect that the assembled persons will commit a breach of the peace or that by their very assembly they will provoke others needlessly and without reasonable cause to commit a breach of the peace, then that constitutes a prohibited assembly." This definition forms the basis for the definition of a riot under Article 152: "If in a prohibited assembly people began to carry out its purpose by committing a breach of the peace that terrorizes the public, then that constitutes a riot and a person who participated in a riot is liable to two years imprisonment." Articles 153-158 stipulate offenses that are derivatives of the offenses in Articles 151-152 and also define the powers at the police's disposal to prevent them.

Enforcement of these offenses has been limited by court rulings, whereby even if a vigil incites other people, this would not define it as an illegal gathering or as a demonstration that must be dispersed. The courts further established that taking into consideration the hostility of a crowd would be tantamount to awarding use of the right to demonstrate and march to those opposed to it, and this must be prevented since a mob must not be given veto powers, nor should violence be rewarded.⁴⁷ The words of Supreme Court President Esther Hayut in her

⁴⁵ [Penal Law-1977, Nevo](#).

⁴⁶ [Jerusalem Magistrates Court Ruling 15814-03-17 State of Israel v. Refael Buda, Nevo, 5 July 2018](#).

⁴⁷ [Supreme Court Ruling 153/83 Alan Levy v. Israel Police's Jerusalem District Commander, Nevo, 13 May 1984](#); [Supreme Court Ruling 8988/06 Yehuda Meshi Zahav v. Jerusalem District Commander Ilan Franco, Nevo, 27 December 2006](#).

ruling on the demonstrations near the Attorney General's home in Petach Tikva are fitting herein: "Not every breach of order or security will justify restricting the right to demonstrate, and it is not enough that a demonstration should cause discomfort, even great discomfort, to prohibit it. To the extent that people in Israel want to live in a democracy, they must, like any civilized country, adopt a level of tolerance and be able to put up with demonstrations, despite the damage to the routine of life and the discomfort that is sometimes associated with them."⁴⁸

Unfortunately, despite repeated criticism by the courts, police enforcement of these offenses has been arbitrary, selective, and political, thereby seriously hurting people's trust in the law enforcement authorities. Since the enactment of Basic Law: Human Dignity and Liberty, at least several dozen protesters charged with these offenses have been acquitted, indictments dismissed, and many detainees released without any restrictions or under more lenient terms than those sought by the police.

Despite repeated criticism by the courts, police enforcement of protest offenses has been arbitrary, selective, and political, thereby seriously hurting people's trust in the law enforcement authorities

Based on the concept that an individual's right to freedom of expression cannot be easily denied, the courts repeatedly recommended changing or canceling Article 151 and, in consequence, Article 152 of the Penal Law (as mentioned, the definition of a prohibited assembly forms the basis for the definition of a riot), and offered a narrow reading of these offenses in order to reduce their applicability at the expense of freedom of expression and demonstration.

For example, ruling on the case of members of the Islamic Movement's Northern Faction demonstrating against the fighting in Gaza in 2008 who were charged with holding a prohibited assembly under Article 151, Tel Aviv Magistrate Court's Judge Ido Droyan wrote: "This is an archaic article of legislation, which even if necessary, its use in a careless manner might lead to draconian results undermining the democratic infrastructure of public life in Israel. It is very easy to turn this article into an instrument of oppression in the hands of the government to be used against the public, be it the majority or a minority. Presumably, this was indeed the goal of the original authors of this article, colonial officials and military personnel in the service of the British Empire."⁴⁹

Addressing the policy of enforcement under Articles 151 and 152 with regard to a demonstration against the separation fence near the village of Dayr al-Ghusun held at the Kirya government

⁴⁸ Paragraph 20 of President Dorit Beinisch's opinion in [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police](#), *Nevo*, 8 October 2017; see also [Supreme Court Ruling 5277/07 Baruch Marzel v. Jerusalem District Commander](#), *Nevo*, 20 June 2007.

⁴⁹ [Tel Aviv Magistrates Court Ruling 1152/09 State of Israel v. George Gantos](#), *Nevo*, 26 February 2013.

compound in Tel Aviv, Judge Muki Landman wrote: "In a democratic country, it is essential to preserve the right to protest and take pains not to invoke criminal law every time an offense has formally been committed during a demonstration. The tension between freedom of expression on the one hand and the right to demonstrate and preserve the public order and safety on the other at times calls for 'stretching' the criminal law to enable rights and freedoms to coexist. As long as a clear line has not been crossed into the criminal domain, the law enforcement authorities should exercise restraint and abstain from exercising their powers, including the power to file charges."⁵⁰

And this is what the Jerusalem District Court judges wrote in response to an appeal by extreme right-wing activist Yehuda Etzion: "In our opinion, which is based on a democratic worldview, the conclusion is unavoidable that enforcement of this article causes great discomfort (as we see it, the repeal or at least amendment of Article 151 ought to be considered. Indeed, prosecution for an offense under this article calls for a great measure of wisdom, flexibility, good will, and prudence.)"⁵¹

Acquitting a human rights activist arrested at an anti-occupation demonstration near the settlement of Karmey Tzur (on account of being an Israeli citizen, he was tried in a court in Jerusalem under Israeli law and jurisprudence, and not in a military court like Palestinians living in the West Bank), Judge Yaron Mientkavich wrote about Article 151: "Consistent and extensive rulings have referred to the obligation of the courts to exercise caution about using this article, due to its violation of freedom of expression and protest." Judge Mientkavich also criticized the very indictment and arrest: "I have been presented no proof of a prohibited assembly offense. Given that this offense has not been proven, it follows that the offense of rioting, of which prohibited assembly is a fundamental element, has not been proven either. This being the case, I highly doubt that the arrest of the defendant was justified on either count."⁵²

Responding to the case of an anti-occupation demonstration that caused a major traffic jam in Tel Aviv's King George Street and Masaryk Square, Judge George Karra wrote: "Considering that the traffic disruption was tolerable and caused minimal inconvenience to users, the fact that the march was not conducted during rush hour, lasted a relatively short time, and the respondents did not engage in any violence or rioting, their conduct in the totality of the circumstances described can be ruled as providing no reasonable grounds to fear that they would violate the peace, not even at a low-level probability, not to mention that their behavior did not meet the test of 'imminent certainty', which has been adopted in jurisprudence in cases of conflict between the basic right to freedom of expression and criminal norms."⁵³

⁵⁰ [Tel Aviv Magistrates Court Ruling 5145/04 Criminal Prosecution Department v. Eilon Uri](#), *Nevo*, 3 October 2006.

⁵¹ [Jerusalem District Court Ruling 1521/98 Yehuda Etzion v. State of Israel](#), *Nevo*, 16 June 1998.

⁵² [Jerusalem Magistrates Court Ruling 50671-02-13 State of Israel v. Kobi Moshe Snitz](#), *Nevo*, 26 May 2016.

⁵³ [Tel Aviv District Court Ruling 55610-01-12 State of Israel v. Moran Avni](#), *Nevo*, 24 October 2012.

Acquitting participants in a protest vigil against the separation fence next to the Kirya government compound in Tel Aviv who were charged with rioting, Judge Muki Landman asserted: "This offense requires a breach of the peace aimed at terrorizing and instilling fear and dread in the public. Can sitting cross-armed and nonviolently on the road, next to the Kirya government compound in the heart of Tel Aviv, be seen as reason to terrorize the public? I definitely do not think so, and video footage shows that nothing in the defendants' actions could have actually struck fear into the hearts of anyone or any reasonable person at all."⁵⁴

The arbitrary and political enforcement policy, which includes sham arrests and detentions, did not change substantially even after processing of these offenses transferred from the Police Prosecution Department to the State Attorney's Office

It should be noted that the arbitrary and political enforcement policy, which includes sham arrests and detentions, did not change substantially even after processing of these offenses transferred from the Police Prosecution Department to the State Attorney's Office (SAO).

For example, in the aforementioned repeal of the indictment of a Haredi man protesting the arrest of a draft evader who was charged with rioting under Article 152, Judge Ilan Sela ruled it a case of selective enforcement based on information that the defendant obtained from the police's freedom of information officer about 23 similar Haredi demonstrations throughout Israel in 2016-2017 that included blocking city and intercity roads (a table with the data was attached to the ruling). The data show that in none of them was any participant issued a citation, indicted, or held in custody overnight, and that only in two instances were protesters arrested (three in one case and four in the other) and in two others were protesters detained (one in one case and five in the other).⁵⁵

Against the backdrop of the IDF war in Gaza and the murder of the boy Muhammad Abu-Khadir in July 2014, a wave of demonstrations by the Arab community swept the country and occupied East Jerusalem. Arguing that these were illegal gatherings and amid massive use of force, the police arrested more than 400 participants, including well-known political activists and dozens of minors. For example, on 18 July, as some 500 demonstrators gathered in Haifa to march from Wadi Nisnas to the German Colony, the police blocked their way using water hoses and horsemen and arrested 28 demonstrators.⁵⁶

⁵⁴ [Tel Aviv Magistrates Court Ruling 5145/04 Criminal Prosecution Department v. Eilon Uri](#), *Nevo*, 3 October 2006.

⁵⁵ [Jerusalem Magistrates Court Ruling 15814-03-17 State of Israel v. Refael Buda](#), *Nevo*, 5 July 2018.

⁵⁶ [Thirty Arrested in Haifa Demonstration Against Gaza Offensive by Hundreds of Palestinians](#), *Siha Mekomit*, 18 July 2014.

In light of the Balfour Protest and the police's troublesome conduct toward demonstrators, the State Attorney issued Directive No. 2.40 on the policy to be followed when prosecuting cases pertaining to demonstrations and protest events, asserting that the protection of freedom of expression and protest must be taken into consideration before pressing charges. However, this directive provides no real solution either, and since its publication the SAO has continued to file indictments and the police have continued to make mass arrests based on these draconian offenses.⁵⁷ To wit, hundreds of demonstrators against the regime revolution have been arrested since January 2023.

Instead of enforcing and preventing clear-cut crimes specified in the Penal Law and other statutes, the police "cherry-pick" vague offenses dating back to the British Mandate era, such as illegal assembly, rioting, and disturbing the public order in a bid to bypass court rulings reducing the license requirements for protest actions. The police are supposed to prevent and uncover concrete offenses (some of these are specified in the Penal Law, like Article 332 on maliciously endangering a person on a traffic route and a host of offenses having to do with bodily and property harm), and not to prevent the exercise of freedom of expression and demonstration for political reasons.

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⁵⁷ [State Attorney Directive No. 2.40: Policy on Prosecution of Cases Pertaining to Demonstrations and Protest Events](#), *State Attorney's Office*, 25 August 2020.

On 20 February 2023, National Security Minister Ben-Gvir turned up at police headquarters in Jerusalem to discuss their response to the demonstrations against the regime revolution because "the rioting by anarchists has gone out of control and major roads are blocked contrary to the minister's policy."⁵⁸ On 9 July 2023, at a cabinet meeting with the participation of the Attorney General, Prime Minister Netanyahu and his ministers complained to her about the low number of indictments filed against regime revolution protesters, particularly on charges of rioting.⁵⁹ In response, she wrote in a legal opinion dated 16 July 2023 that "the assumption that law enforcement must set 'quotas' would greatly harm the principle of equality before the law."⁶⁰ The very demand to file indictments based on "quotas" proves that as long as these draconian offenses are not abolished, they may be abused for political reasons to suppress certain demonstrations, be they minorities or critics of the government's policies. Even if in practice the courts interpret these offenses narrowly, suspects and defendants are still required to seek legal representation and contend with legal proceedings in order to be released from detention, cancel restrictive conditions, be acquitted, or see the charges against them dropped. Thus, the freedom of individuals arrested for such offenses is violated in vain.

⁵⁸ Joshua Breiner, [Ben-Gvir Holds Situation Assessment at Police Headquarters After 'Rioting by Anarchists'](#), *Haaretz*, 20 February 2023.

⁵⁹ Avraham Fraind, [Attorney General: 'Protest Without Disruptions of Order Ineffective'; Netanyahu: 'Shocking Pronouncement'](#), *Behadrey Haredim*, 9 July 2023.

⁶⁰ *Chen Maanit, [AG Rebuffs Netanyahu Government: Quotas for Protesters' Arrests Undermines Equality](#), *Haaretz*, 17 July 2023.

Obstruction of Police Officer Offense

Returning home from a Bedouin-Arab demonstration against the Praver Plan⁶¹ held in the Negev locality of Hura in November 2013, three members of a Bedouin family were busted by a group of policemen who tortured them and brought them bruised to a remand hearing on suspicion that they had committed, among other things, the offense of obstructing a policeman in the performance of his duty. Explaining her decision to reject the police's request and release all three, Judge Sarah Habib wrote: "Even though I thoroughly perused the investigation file that was presented to me, and so did the police's attorney at my request, except for the detainee's statement that he was severely assaulted by the policemen for no reason at all, I found no evidence linking him to the offenses attributed to him. On the contrary, the detainee's face is badly bruised and, according to him, so is his body. Nor did I find an arrest report among the evidence presented to me. In these circumstances, I declare that no reasonable suspicion exists in his case." Referring to the second detainee, she stated: "I found no report linking the suspect to the offenses attributed to him. In these circumstances, I am obliged to declare that no reasonable suspicion has been proven to me. I would like to clarify that his file did not even contain an arrest report. In these circumstances, I declare that no reasonable suspicion exists in his case." As for the third detainee, "it bears noting that he sustained a major injury to his lower back, which must certainly be taken into account, and I am sure that his attorney will pursue the matter accordingly."⁶²

Judge Sharon Danieli acquitted a protester who was charged with obstructing a police officer in the performance of his duty for trying to join a demonstration of the anti-Netanyahu group Black Flags in Ra'anana during the coronavirus pandemic without wearing a mask: "Indeed, both the policemen and other demonstrators who urged him to wear a mask felt that the defendant behaved in an 'annoying' manner and gave the policemen a hard time. However, in the grand scheme of things, when someone wants to join a demonstration, does not act violently toward policemen, does not resist arrest, and willingly provides his particulars upon been issued a fine, then even after accounting for the tough job faced by the police, I find that the defendant's behavior did not amount to the offense of obstructing a police officer.... During the incident, the police illegally arrested the defendant for, as it were, refusing to wear a mask and seeking to enter the venue of the demonstration, even though he was nowhere near the scene at that time, nor was he trying to enter the area. The police thus acted unlawfully. At no point did the defendant act violently, push a policeman, or try to 'sneak past them', as claimed. Indeed, he entered the 'venue' even though he was warned that he

⁶¹ Controversial five-year economic development plan involving the relocation of Negev Bedouin from unrecognized locales to government-recognized local councils.

⁶² Beersheba Magistrates Court Ruling 1755-12-13 State of Israel v. Atif Al-Kiyan et al, 1 December 2013 (not published).

would be arrested if he did so, but in view of the totality of the data presented above, as well as in view of the fact that he was issued several fines for failing to wear a mask, there is no room for convicting him of the offense attributed to him."⁶³

The offense of obstruction of a police officer is vaguely defined in Article 275 of the Penal Law: "Whoever commits an act with the intention of obstructing or foiling a police officer as he is lawfully performing his duty, or obstructing or preventing another person from assisting a police officer, is liable for a prison sentence of up to three years and no less than two weeks."

The factual basis of the obstruction offense requires that a person should "obstruct" a policeman in some way and that the obstruction should occur during the lawful performance of a duty. In addition, according to Article 5(2) of the Police Act, a police officer's duty is "to prevent disturbances during assemblies or marches on public roads and streets, or in the vicinity of a house of worship during public prayers, as well as whenever a road, street, junction, railway platform, or landing space might be jammed or blocked."

Although the courts have offered a very broad reading of "obstruction of a police officer," in several cases they ruled that such behavior did not amount to an offense if it occurred in the context of a non-violent protest, or even during passive resistance to an illegal arrest or an eviction.⁶⁴

Judge Muki Landman wrote in a ruling about a protest vigil against the separation fence held next to the Kyria government compound in Tel Aviv: "The criteria for the offense may have been

formally met, as court rulings have given a very expansive interpretation to the obstruction of a police officer. However, when it comes to behavior invoking the freedom of expression and demonstration during a legitimate protest, there is no room to conclude that any disobedience of an order, in the absence of active resistance, constitutes the offense of obstruction of a police officer."⁶⁵

Judge Michal Agmon-Gonen's remarks are just as fitting: "On account of its ambiguity and the rulings of the Supreme Court, the offense of obstruction of a police officer in the performance of his duty should not be applied to every case where a police officer's order is disobeyed. It

Although the courts have offered a very broad reading of 'obstruction of a police officer', in several cases they ruled that such behavior did not amount to an offense if it occurred in the context of a non-violent protest, or even during passive resistance to an illegal arrest or an eviction

⁶³ [Kefar Sava Magistrates Court 26809-12-20 State of Israel v. Bernard Danielli](#), *Nevo*, 13 February 2023.

⁶⁴ See, for example: [Jerusalem Magistrates Court Ruling 24534-05-10 State of Israel v. Arik Vaidan Ascherman](#), *Nevo*, 17 March 2013; [Jerusalem Magistrates Court Ruling 50671-02-13 State of Israel v. Kobi Moshe Snitz](#), *Nevo*, 26 May 2016.

⁶⁵ [Tel Aviv Magistrates Court Ruling 5145/04 Criminal Prosecution Department v. Eilon Uri](#), *Nevo*, 3 October 2006.

is necessary to check if it is a reasonable order and if there is imminent certainty that failure to comply with it will result in a breach of the public order or the commission of an offense. As noted above, this offense should not be extended beyond its limits."⁶⁶

As demonstrated by the cases mentioned in this chapter, the vague offense of "obstruction of a police officer in the performance of his duty" can be abused to suppress anti-government demonstrations. For example, an individual arguing with a police officer about his right to demonstrate, criticizing a police officer for political enforcement, or obstructing the exercise of freedom of demonstration is considered an "obstructor," and subsequently requires legal representation in order to be released from detention without any restrictions or contend with legal proceedings until they are acquitted or the indictment is dropped.

⁶⁶ Jerusalem Magistrates Court Ruling 3701/00 State of Israel v. Baruch Marzel, *Nevo*, 14 October 2001.

Police Authority To Ban Flag Display

Flag display forms part of the right to freedom of expression and has been recognized as such in Israeli court rulings and international law. Nevertheless, under Article 82 of the Police Act, the Police Commissioner is authorized to ban the display or order the removal of a flag or symbol that might "provoke a disturbance of the peace." Article 82(b) states that this ban may be all-encompassing or restricted to times, places, or circumstances to be interpreted. Article 82(c) authorizes any police officer to remove a flag displayed in violation of the aforementioned clause, while Article 82(d) sets a fine for any violation of these provisions.

As will be explained below, this is an anachronistic law provision dating back to the British Mandate era, which is invoked by the police and other authorities, primarily to ban displays of the Palestinian flag. The Supreme Court and the Attorney General in principle reduced its enforcement in the aftermath of the Oslo Accords, but the Jerusalem District in particular still applies it in East Jerusalem's Palestinian neighborhoods and in demonstrations in general.

An anachronistic law provision dating back to the British Mandate era, which is invoked by the police and other authorities, primarily to ban displays of the Palestinian flag

It should be emphasized that when the police prevent a left-wing Jewish activist from waving the Palestinian flag, they mainly violate his right to freedom of expression, but when they do it to a Palestinian activist, they also violate his rights to human dignity and culture. Flag removal is an integral part of Israel's efforts to erase Palestinian identity, culture, and history from the public space within its boundaries and in occupied East Jerusalem.⁶⁷

Upon the change in relations between the State of Israel and the PLO in the aftermath of the diplomatic agreements, the Supreme Court allowed political parties to air TV ads containing the Palestinian flag because a flag is protected under freedom of expression in election propaganda⁶⁸ and endorsed the Attorney General's policy not to initiate criminal proceedings or prosecute individuals for flying the Palestinian flag, other than in exceptional cases.⁶⁹ A document drafted in 2014 by the Acting Attorney General affirms that enforcement will only occur when display of the flag is suspected to amount to the offense of identifying or sympathizing with a terrorist organization, or when it is feared with a high level of probability that such a display would lead to a serious violation of the public peace.⁷⁰

⁶⁷ Eitay Mack, [Police's Obsession With Palestinian Flags: Investigations No, Removal Yes](#), *Siha Mekomit*, 27 April 2023.

⁶⁸ [Supreme Court Ruling 651/03 Association for Civil Rights in Israel v. Chairman of Central Election Committee to 16th Knesset](#), *Nevo*, 23 January 2003.

⁶⁹ [Supreme Court Ruling 5883/93 MK Shaul Yahalom v. Israel Police Commissioner Rafi Peled](#), *Nevo*, 26 May 1994.

⁷⁰ [Assistant Attorney General, Legal Situation Regarding Hoisting of PLO/Terror Organizations Flags in Israel](#), *Ministry of Justice*, 1 September 2014.

Pursuant to this non-enforcement-in-principle policy, MK Mai Golan submitted a bill to the Knesset to amend the Penal Law-2021 (Ban on Flying Flag of Hostile Entity).⁷¹ The very fact that she deemed it necessary to present such a bill speaks for itself.

Although the law remains unamended, police officers, mainly in the Jerusalem District, still invoke Article 82 to ban the display of Palestinian flags in East Jerusalem's Palestinian neighborhoods, in the Haredi neighborhood Mea Shearim in West Jerusalem,⁷² and in demonstrations in general. Confiscation of Palestinian flags and pennants at protest vigils in Sheikh Jarrah spiked after the relocation of the United States Embassy to Jerusalem in May 2018, even though this had for the most part been tolerated in the previous 10 years.⁷³ For example, in response to a lawsuit over the forcible confiscation of the Palestinian flag from a demonstrator in Sheikh Jarrah in May 2019, the court noted that it did not have the relevant authority to hear the case, but nevertheless rejected the police's claim that the confiscation had been justified and criticized their conduct in the incident.⁷⁴

On 27 April 2023, the police raided the office of the Arab-Jewish Hadash party in Nazareth, removed the Palestinian flag that was flying atop the building, and detained the office manager after he refused to take it down himself.⁷⁵ During the funeral of Palestinian journalist Shireen Abu-Aqla in Sheikh Jarrah in May 2022, police officers forcibly confiscated Palestinian flags triggering a violent riot that almost capsized her coffin.⁷⁶

On 17 December 2022, the police detained three men, aged 67, 20, and 31, on suspicion of waving Palestinian flags at a demonstration in Haifa.⁷⁷ On 10 December 2022, near Nablus Gate in East Jerusalem, police officers violently confiscated a flag from a Palestinian human rights activist, pulling at it until it tore. As he began picking the shreds and putting them under his shirt, the policemen pushed and shoved the man, who was visibly using crutches, until they recovered all the pieces. The injuries he sustained necessitated his evacuation to a hospital (a complaint submitted to the Internal Affairs Department was closed and a decision is still pending on the appeal).

⁷¹ [Amendment to Penal Law-2021 \(Ban on Flying Flag of Hostile Entity\)](#), *Knesset*, 24 May 2021.

⁷² [Srugim News, Police Troops Remove Palestine Flags in Mea Shearim](#), *Srugim*, 26 May 2020.

⁷³ Nir Hasson, [East Jerusalem Demonstrator for Hoisting Palestine Flag Although Not Law Violation](#), *Haaretz*, 9 August 2019; Josh Breiner and Nir Hasson, [Israel Police's New Target: Palestine Flag Hoisters](#), *Haaretz*, 17 May 2018; Ido Conrad, [Jerusalem Policemen's Mission: Confiscate Palestinian Flags from Demonstrators](#), *Siha Mekomit*, 24 February 2019.

⁷⁴ [Tel Aviv Magistrates Court Ruling 15567-07-18 Bitan v. State of Israel](#), *Nevo*, 17 September 2019.

⁷⁵ [Furat Nassar, Police Raid on Hadash Office in Nazareth: Palestine Flags Confiscated](#), *N12*, 26 April 2023.

⁷⁶ [Einav Halabi, Gilad Cohen, and Itamar Eichner, Clashes in Reporter's Funeral in Jerusalem: Israeli Flags Torn, Palestinian Flags Confiscated](#), *Ynet*, 13 May 2022.

⁷⁷ [Eitan Glickman, Police Detain Three Demonstrators Hoisting Palestine Flags in Haifa Protest](#), *Ynet*, 17 December 2022.

At a Supreme Court hearing in November 2022, the police contended that the policy on enforcement under Article 82 of the Police Act remained unchanged. Paragraphs 10-11 of the court ruling read: "According to the Israel Police, in each and every case they examine the potential threat that the display of flags may pose to the public peace and weigh all the relevant considerations, such as the location and timing of the event, the context, intelligence information, up-to-date operational assessments, cumulative experience, and so on.... The respondents did not deny that isolated errors may occur but claimed, and rightly so, that such random mistakes do not prove that the Jerusalem District has a sweeping policy on the display of PLO flags that systematically deviates from the Attorney General's directives."⁷⁸

On 20 February 2023, in response to a freedom of information request for data on enforcement under Article 82 of the Police Act,⁷⁹ the police replied that they do not keep a database tallying the number of removed or confiscated flags (thus casting doubts about the factual basis for the aforementioned police response to the Supreme Court), but provided data showing that the number of investigations launched for violation of this article was miniscule and that the Police Prosecution Department had filed no indictments based on it.

	Year case opened	2022	2021	2018	2016	2015	2014
District	Status, including court ruling	No. of cases	No. of cases	No. of cases	No. of cases	No. of cases	No. of cases
Southern	Archived						1
Coastal	Nearing closure			1			
Jerusalem	Archived	1	1			1	
Northern	Archived					1	
Tel Aviv	Nearing closure				1		

Given the extensive documentation about massive removal and confiscation of Palestinian flags, especially in the Jerusalem District, the lack of indictments and the negligible number of investigations a priori indicates that this is not done due to suspicions about a crime or to prevent one, but for political reasons.

The obsessive preoccupation of Ben-Gvir and his party colleagues with the Palestinian flag shows how criminal enforcement can be abused for political purposes to harm minority groups, in particular national minorities

On 3 January 2023, National Security Minister Ben-Gvir announced that he had instructed the

⁷⁹ Information request from Israel Police 131/23.

police to enforce a blanket ban on the display of the Palestinian flag in public places.⁸⁰ The commander of the Coastal District until August 2023 (Ben-Gvir's favorite candidate for the job of commander of the Tel Aviv District and to replace the current Police Commissioner), totally banned the display of Palestinian flags in his bailiwick, which includes the city of Haifa.⁸¹ In addition, MKs Zvi Sikkot and Almog Cohen, fellow members of Ben-Gvir's party, submitted draconian draft bills to the Knesset seeking to impose fines and prison sentences for the display of Palestinian flags (Sikkot's proposal was approved in preliminary reading).⁸² The obsessive preoccupation of Ben-Gvir and his party colleagues with the Palestinian flag shows how criminal enforcement can be abused for political purposes to harm minority groups, in particular national minorities.

⁸⁰ [Itamar Ben-Gvir @itamarbengvir, Twitter, 21:55 8 January 2023.](#)

⁸¹ [*Josh Breiner, Israel's National Security Minister and Police Commissioner Brawl Over Next Tel Aviv Police Chief, Haaretz, 29 May 2023.](#)

⁸² [Noa Shpigel, Bill To Impose Fines on Hoisters of Terror Organizations' Flags Passes Preliminary Reading, Haaretz, 10 May 2023.](#)

Conditions for Release From Detention Liable To Limit Freedom of Protest

The Israel Police's "bypass route" around court rulings that reduced license requirements and restrictions on assemblies and marches includes use of Article 42(b) of the Criminal Procedure Law (Powers of Enforcement-Arrests), which grants a police officer the authority to set draconian conditions for release from detention whose main purpose is to prevent a person from exercising his right to protest.

Cunningly enough, these conditions usually do not explicitly state that a protester is totally forbidden from participating in any demonstration, but rather bar a detainee from entire regions or cities where demonstrations take place, and for extended periods at that. In other words, these conditions clearly aim to prevent a person from continuing to participate in a protest that is close to his heart and views. Since this infringes on a basic right and on democracy, courts hearing such cases and appeals either revoke those conditions altogether or reduce them significantly.

A police officer is authorized to set draconian conditions for release from detention whose main purpose is to prevent a person from exercising his right to protest. Since this infringes on a basic right and on democracy, courts hearing such cases and appeals either revoke those conditions altogether or reduce them significantly

Given the distinct illegality therein and clear-cut case law, the police themselves often retract the conditions set by the precinct's duty officer either fully or partially, even before the court hearing (either by a notification to that effect to the court or by refraining from submitting a response at the time specified by the court) or during the hearing once the judge has announced his recommendation.⁸³

Of course, there is no justification for the police waiting to hear out the judge's recommendation or a recurrent decision to the effect that they are not allowed to invoke the authority bestowed upon them under Article 42(b) to prevent people from exercising their right to demonstrate. In one of his rulings, Judge Moshe Drori, the retired vice president of the Jerusalem District

⁸³ See: [Jerusalem District Court Ruling 14677-02-11 State of Israel v. Sara Banninga, Nevo, 16 February 2011](#); [Jerusalem District Court Ruling 74077-12-20 Yoav Eitan v. State of Israel, Nevo, 10 January 2021](#); [Jerusalem Magistrates Court Ruling 44202-03-20 Tzahi Levin v. State of Israel-Moria District, Nevo, 24 March 2020](#); [Jerusalem District Court Ruling 24424-05-18 Orel Rahamim v. State of Israel, Nevo, 14 May 2018](#); [Jerusalem District Court Ruling 64516-04-21 Daniel Prosper Ohana et al v. State of Israel, Nevo, 2 May 2021](#); [Jerusalem District Court's Juvenile Court Ruling 2756-12-16 Anonymous Minor v. State of Israel, Nevo, 2 December 2016](#); [Beersheba Magistrates Court Ruling 14620-05-15 Tzahi Halfi \(Detainee\) v. Beersheba Police, Nevo, 8 May 2015](#); [Masha Aberbuch, Police Cancel Restrictions for Release of Demonstrators Detained Over Weekend After Admitting They Were Illegal, Hamakom-The Hottest Place in Hell, 5 October 2020](#); [Yaniv Kubovich and Almog Ben-Zikri, Confinement Order Against Protest Organizer in Beersheba Cancelled; Police Admit to Error of Judgment, Haaretz, 9 November 2015](#).

Court, spoke about the police not learning their lesson: "I innocently thought that the police have an 'organizational culture' repository and that every new officer appointed to a job that involves dealing with demonstrations gets a legal briefing on a person's right to demonstrate and on the limitations of the police's power."⁸⁴

Even if the conditions forbidding a person to demonstrate are ultimately revoked or reduced by the court, his freedoms have already been violated. To the extent that a detainee rejects the conditions set for his release, he may be kept in custody until brought to a hearing in court. Alternatively, a detainee who accepts the conditions may file an appeal after his release, but is obliged to comply with them until the court rules otherwise.

This modus operandi has a "chilling effect" since not all detainees presented with unlawful conditions for their release bother to obtain legal representation or turn to the courts to cancel or reduce the restrictions. Of at least 283 protesters arrested in 18 "Balfour Protest" events in the summer of 2020, only 68 were brought to court (some because they had rejected restrictive conditions for their release) and 15 were released without any restrictions. In other words, it appears that most of the detainees did not appeal the restrictions set upon their release from custody.⁸⁵

The police's modus operandi has a 'chilling effect'. Even if the restrictions forbidding a person to demonstrate are ultimately revoked or reduced by the court, his freedoms have already been violated

The same conduct has continued vis-a-vis the demonstrators against the regime revolution in 2023. For example, two arrested on the Ayalon Highway in Tel Aviv refused to accept the police's condition for their release: to stay away from the protests for 15 days. Judge Yaron Gat rejected the police's request to remand them in custody and released them both, noting that the request "disproportionately and extremely infringes on the basic right to demonstrate."⁸⁶ For her part, Judge Moria Charka rejected a police request to remove from Jerusalem for 30 days protesters who were arrested as they tried to enter the Knesset plenum during the debate and vote on the abolishment of judicial review based on the reasonableness standard.⁸⁷

⁸⁴ Jerusalem District Court's Juvenile Court Ruling 2756-12-16 Anonymous Minor v. State of Israel, *Nevo*, 2 December 2016.

⁸⁵ Oren Ziv, *One-and-a-Half Months Into Balfour Protest: 283 Detainees and Zero Charges*, *Siha Mekomit*, 2 September 2020.

⁸⁶ Adam Kotev and Nina Fuchs, *Court Rejects Police Request To Bar Participation in Demonstrations: 'Disproportionate Violation of Fundamental Right'*, *Ynet*, 11 July 2023.

⁸⁷ Dotan Gabay, *Judge Unconditionally Releases Demonstrators Who Tried To Break Into Knesset Plenum*, *Mivzak Live*, 11 July 2023.

Mass arrests and draconian restrictions on participation in demonstrations as a condition for the release of detainees from custody are among the clearest characteristics of authoritarian regimes. A police force seeking to please the Minister of National Security might make extensive use of these measures to suppress demonstrations and a priori cause parts of the public to refrain from attending.

Wide-Ranging Powers Used To Profile Certain Protests as Endangering 'Public Order'

Articles 3, 5, and 78-81 of the Police Act endows the police with wide-ranging powers to maintain "the public order" and to prevent "an illegal assembly, a riot, or a disturbance of the peace." These extensive powers allow a priori "profiling" of certain demonstrations as endangering the public peace, thereby bypassing Supreme Court rulings and its revocation of the license requirement, and in practice limiting freedom of expression and protest in an arbitrary and political manner.

That this is a "bypass route" also transpires from the legal opinion dated 16 July 2023 that the Attorney General drafted at the government's request: "According to Supreme Court rulings from recent years, most demonstrations do not require a license.... It should be emphasized that Articles 83 and 84 of the Police Act in no way detract from the wide-ranging powers available to the police under Articles 3-5 therein, as being in charge of maintaining the public order and tranquility. Therefore, the police have overall authority to set **conditions** regarding the **time, place, and manner** of demonstrations, even with regard to a demonstration that does not require a license" (emphases in the original).⁸⁸

In addition, as explained above, SOP 220.001.20 on "Assembly and March Licensing" published by the police in June 2019⁸⁹ states that an applicant seeking to organize a demonstration that is neither an assembly nor a march "may" submit a request for coordination. However, based on the police's broad interpretation of their powers under Articles 3-5 of the Police Act, "may" in practice becomes "must" and the police are authorized to demand coordination in order to preserve "the public order."

For example, ahead of a demonstration against the regime revolution at Ben-Gurion Airport on 3 July 2023, the Central District's commander announced that he would allow the protest only in a limited area "based on Articles 3-5 of the Police Act."⁹⁰ Responding to the Attorney General's announcement that there existed no objection in principle to holding demonstrations at the airport, Transportation Minister Miri Regev said: "I would have expected the Attorney General to allow the proper operation of the facility and not to lend a hand to lawbreakers, whose conduct might risk human lives."⁹¹ In other words, Minister Regev decided in advance that these were "lawbreakers" who endangered human life.

⁸⁸ *Chen Maanit, [AG Rebuffs Netanyahu Government: Quotas for Protesters' Arrests Undermines Equality](#), *Haaretz*, 17 July 2023.

⁸⁹ *Josh Breiner, [New Police SOP Bypasses Supreme Court, Permits Limiting Demonstrations](#), *Haaretz*, 19 August 2019; [Police SOP No. 220.001.20: Licensing of Assemblies and Marches](#), *Nevo*, 16 June 2010.

⁹⁰ Alon Hakmon and Matan Wasserman, [Police's Conditions for Demonstration at Ben-Gurion Airport Tomorrow and Protesters' Furious Response](#), *Ma'ariv*, 2 July 2023.

⁹¹ Moran Azulay, [Attorney General OKs Ben-Gurion Airport Protest: 'Allowing Entry Only With Flight Ticket? Police Have No Such Authority'](#), *Ynet*, 11 July 2023.

These wide-ranging powers allow the police to label certain groups as "dangerous" and to over-police their protests. They presuppose that demonstrations by Bedouin, Haredi, Palestinian citizens/residents of Israel, the Ethiopian community, and left-wing and opposition activists are likely to breach the public order and peace. Therefore, without justification, they hasten to forcibly disperse, limit, or prevent them in advance.

The police's wide-ranging powers allow a priori 'profiling' of certain groups, whose demonstrations they presuppose are likely to breach the public order and peace. Therefore, without justification, they hasten to forcibly disperse, limit, or prevent them in advance

Profiling is well-rooted in the modus operandi of the Israel Police, especially due to the invocation on a daily basis of their authority to conduct detentions under Article 66 of the Criminal Procedure Law.⁹² Detention violates the constitutional right to freedom of movement, which recognizes an individual's freedom to shift to a place of his choice unimpeded. It infringes on a person's constitutional right to dignity and, especially if it is done in front of bystanders, might humiliate them given that the detention labels them as suspects of a crime or other wrongdoing. The detention might prompt other lengthy policing actions, such as leaving the person in the dark about the reason for being detained and about the type of present and future actions the police might take in his regard.⁹³

Allegations about the police's widespread practice of detaining citizens of Ethiopian extraction and ask them for their identity cards without any factual justification were raised with the Palmor Committee. Indeed, the committee acknowledged in its report that "a great many number of violent incidents were triggered by the demand to show identification when there seemingly was no clear reason for it," and noted its suspicion that the authority to demand identification "is used selectively nowadays."⁹⁴ Moreover, the Israel Police admitted that "after deep internal inquiry, we found that there was over-policing at the interface between cops and members of the Ethiopian community in Israel."⁹⁵ Therefore, a police force in the habit of over-policing and detaining people based on such irrelevant characteristics as skin color, ethnicity, sect, nationality, class, and religion will probably be bound to classify demonstrators from certain minority groups as dangerous and requiring over-policing.

⁹² [Criminal Procedure Law-1996 \(Powers of Enforcement - Arrests\)](#), *Nevo*, 28 September 2023.

⁹³ [Supreme Court Ruling 3829/15 Yardao Kasai v. State of Israel](#), *Nevo*, 20 December 2018; [Supreme Court Ruling 6824/07 Dr. Adil Mana'a v. Tax Authority](#), *Nevo*, 20 December 2010; [Supreme Court Ruling 4455/19 Tebeka Advocacy for Equality and Justice for Ethiopian-Israelis v. Israel Police](#), *Nevo*, 25 January 2021.

⁹⁴ [Team for Eradication of Racism Against Ethiopian Community: Final Report](#), *Government Advertising Agency*, July 2016.

⁹⁵ *Sharon Pulwer and Yaniv Kubovich, [Israel Police Chief: It's Natural for Officers To Be More Suspicious of Ethiopians](#), *Haaretz*, 30 August 2016.

One of the many examples of the police's treatment of Ethiopian protesters as "dangerous" is the false arrest of nine participants in a demonstration on 31 January 2019, whom the police sought to remand in custody for six days. In his decision to release them, Judge Alaa Masarwa wrote: "We are talking about minor incidents at the end of a public protest in Tel Aviv, when a group of Ethiopians supposedly damaged property and attacked police officers. The material presented to me documents the actions of each one of them. There is no denying that violence toward a public servant, especially a police officer, is a serious act and must be thoroughly condemned." Nevertheless, he asserted, there was no reason for an arrest on the grounds of obstruction of an investigative procedure or dangerousness, given that "most of them have no criminal record and, without downplaying the incidents, they occurred in a specific and defined situation that must not be divorced from the broader context. There is no denying that this was a peaceful protest that escalated toward its end." The police did not appeal the decision and the nine were released, which speaks for itself.⁹⁶

At a rally near the home of then-Internal Security Minister Amir Ohana in September 2019, an Ethiopian protester was arrested for using a megaphone. The police charged him with attempted assault, menacing harassment, and violation of the public order, and defined the incident as "an escalation in the character of the demonstrations." After watching footage of the incident at a hearing about his release from custody, Magistrate Court Judge Masarwa stated: "I concluded that the evidence, which actually is in no dispute, doubtfully rises to a criminal offense," and released him without any restrictive conditions. The police appealed the decision, but District Court Judge Ra'anana Ben-Yosef rejected it and recommended to the police to stop using criminal proceedings against protesters and shift to such civil procedures as restraining orders. "I did not find even a shred of suspicion material to our case about the respondent," he affirmed.⁹⁷

Another example is the false arrest of six participants in an Ethiopian protest in Tel Aviv in June 2015. Judge Yarom Gat released them under restrictive conditions, but criticized the police's conduct. In the case of one protester who was charged with taking part in a prohibited gathering, he stated that "the offense does not constitute grounds for arrest, and therefore the suspect must be released immediately."⁹⁸ On another occasion, the police arrested 12 demonstrators at a protest in Tel Aviv on 4 July 2016, but released them all without bringing them to court.⁹⁹

⁹⁶ Bar Peleg, [Nine Demonstrators Arrested at Ethiopian Protest Set Free](#), *Haaretz*, 31 January 2019.

⁹⁷ Bar Peleg, [Up to Five, And They Must Be Quiet: Police Restrictions on Demonstrations Next to Minister Ohana's House](#), *Haaretz*, 15 September 2019.

⁹⁸ Ilan Lior, [Police Request Rejected: Six Arrested at Ethiopian Protests in Tel Aviv Released](#), *Haaretz*, 4 June 2015.

⁹⁹ Raz Rotem, Yaniv Carmel, and Nitzan Avi Cohen, [Protest 'Mothers' Prevent Violent Flare-Up](#), *Davar*, 4 July 2016; Alon Hakmon, [Ethiopian Protest: All Detainees and Arrestees Released After Questioning](#), *Ma'ariv*, 4 July 2016

Under the pretext of maintaining "the public peace," Muhammad Abu-Hummus, a Palestinian human rights activist from Issawiya, has been arrested every year in the wee hours of the day of the Jerusalem Marathon and held in custody until it finishes to prevent him from demonstrating against the route of the race through occupied East Jerusalem. Although it has admitted before the Jerusalem Magistrates Court that it has no legal authority to take such a step and has indemnified Abu-Hummus for its conduct in the 2016 and 2019 marathons, the Jerusalem District has continued the practice every year, in 2023 included.¹⁰⁰ Responding to Abu-Hummus's lawsuit against the State of Israel in 2016, the SAO wrote: "In retrospect, the defendant believes that an error of judgment was committed under the circumstances, and that a different course of action should have been taken to prevent the offense and ensure the orderly conduct of the marathon. The defendant regrets this."¹⁰¹

Selective enforcement toward different groups at times occurs concurrently. During the annual March of Flags in Jerusalem, for example, far-right activists are allowed to run wild and engage in verbal and physical violence,¹⁰² while protest vigils of left-wing activists and Palestinians are at times declared illegal gatherings.¹⁰³ Likewise, during the "Balfour Protest," there was massive enforcement against anti-Netanyahu demonstrators but hardly any enforcement against the prime minister's supporters who used violence toward the former.¹⁰⁴

In addition, the police tend to harass and disrupt anti-occupation protests of left-wing activists and place them under surveillance. For example, the Moriah precinct in Jerusalem used to send policemen and detectives to the meeting points of activists in the city. In one case, they decided to "search for drugs" a car driven by two activists, falsely claimed that the driving license of one of them had been revoked, and arrested them (the case against both was closed due to lack of culpability and they were paid compensation).¹⁰⁵ Likewise, at a demonstration in Sheikh Jarrah, a policeman falsely accused left-wing activists of throwing stones at him (contrary to all the photographic evidence and reports filed by other officers at the scene). He then went on a rampage himself, threw a grenade at the leg of a female protester, forcefully pushed and threw protesters to the ground, and arrested three of them

¹⁰⁰ Jerusalem Magistrates Court Ruling 38731-05-16 Muhammad Abu-Hummus v. State of Israel, 18 May 2016 (not published); Jerusalem Magistrates Court Ruling 54262-03-19 Muhammad Abu-Hummus v. State of Israel, 24 March 2019 (not published); Sebastian Ben Daniel (John Brown), [State To Compensate East Jerusalemite Arrested To Preempt Him From Demonstrating](#), *Siha Mekomit*, 31 January 2023.

¹⁰¹ Jerusalem Magistrates Court Ruling 38731-05-16 Muhammad Abu-Hummus v. State of Israel (not published).

¹⁰² [Supreme Court Ruling 3079/15 NPO Ir Amim v. Israel Police's Jerusalem District Commander](#), *Nevo*, 11 May 2015.

¹⁰³ Roy Yanovsky, [Clashes at March of Flags, Participants Injured and Detained](#), *Ynet*, 17 May 2023.

¹⁰⁴ Danny Zaken, [Central District Commander Admits: There've Been Times When Policemen 'Lost It'](#), *Globes*, 17 December 2020; Tal Schneider, [We Must Talk About Netanyahu Supporters' Violence](#), *The Times of Israel*, 17 March 2021.

¹⁰⁵ Sebastian Ben Daniel (John Brown), [Persecution of Taayush Activist Nothing New: Police Sued for False Arrests](#), *Siha Mekomit*, 25 January 2016.

(all three were paid compensation).¹⁰⁶ In another case, policemen violently dispersed a demonstration of solidarity with residents of Silwan and the court awarded compensation to a demonstrator who was beaten, affirming that "a police officer is not allowed to punch in the face a person he has neutralized and chained to the floor in order to arrest him, even if the person had earlier been violent toward another policeman."¹⁰⁷ At another demonstration, a police officer choked a left-wing activist, forcibly threw him on the sidewalk, bent his hands and handcuffed them tightly, and then pulled him away by the handcuffs while cursing him rudely (the activist was awarded compensation by the court).¹⁰⁸

Police officers violently crushed a demonstration of solidarity with residents of the Gaza Strip in the city of Haifa in May 2018 and arrested 21 demonstrators. One of the vehicles driving the detainees to the precinct got into a car accident, but were provided no medical treatment. While seated on the floor with their hands cuffed, a police officer at the precinct attacked eight of them and broke the leg of Mossawa Center's director Jafar Farah (an indictment was filed against the attacking officer).¹⁰⁹

The police even use excessive force to disperse protests of underprivileged groups. They repeatedly and unjustifiably disrupted the public protest in support of opening Nahal Hasi (a stream running through Kibbutz Nir David) to the general public and arrested activists without cause.¹¹⁰ To suppress the long-lasting protest of residents of Tel Aviv's Givat Amal neighborhood against their eviction, starting in 2013 the police repeatedly used unjustified and unreasonable force. Men, women, children, and elderly people were forcibly removed from their homes, sometimes by special antiterror troops.¹¹¹ For example, 1,098 policemen participated in the evacuation on 15 November 2021.¹¹²

In contrast, the police often refrain from enforcement actions vis-à-vis far-right protests. A serious phenomenon has emerged, especially in Jerusalem, whereby at the end of right-wing

The police often refrain from enforcement actions vis-à-vis extreme right protests. A serious phenomenon has emerged, especially in Jerusalem, whereby at the end of these demonstrations, groups of far-right activists proceed to march across the city, verbally and physically abusing passers-by identified as non-Jews

¹⁰⁶ Jerusalem Magistrates Court Ruling 37834-07-17 Amir Bitan et al v. State of Israel, 24 December 2018 (not published).

¹⁰⁷ [Tel Aviv Magistrates Court Ruling 11357-05-13 Anonymous v. State of Israel, Nevo](#), 13 March 2018.

¹⁰⁸ Tel Aviv Magistrates Court Ruling 38782-07-19 Anonymous v. State of Israel, 16 July 2020 (not published).

¹⁰⁹ Yoav Itiel, [Kicked, Handcuffed, Caused Bodily Harm: Policeman Accused of Attacking Jafar Farah](#), *Walla!*, 2 June 2019.

¹¹⁰ Oren Ziv, [Ahead of District Court Decision: 'Nahal Hasi Litmus Test of Society'](#), *Siha Mekomit*, 6 July 2021.

¹¹¹ Staff report, [Gilon: 'Violent and Painful Eviction in Givat Amal'](#), *Ma'ariv Online*, 29 December 2014.

¹¹² Oren Ziv, [Ahead of District Court Decision: 'Nahal Hasi Litmus Test of Society'](#), *Siha Mekomit*, 6 July 2021.

political demonstrations, groups of Lahava and Hilltop Youth activists proceed to march across the city, verbally and physically abusing passers-by they identify as non-Jews.¹¹³ These are shocking events, resembling the marches staged by extreme right-wing and racist organizations in Europe to "hunt down" immigrants and refugees in the streets.

The police generally sit tight during the violence and do not stop the extreme right-wing's protests or their transformation into "marches" targeting Arabs and their businesses. For example, members of La Familia (extreme right-wing fans of the Beitar Jerusalem soccer club) who had gathered outside Teddy Stadium after their club lost to the Bnei Sakhnin team (an Israeli Arab club) attacked Nadwa Jaber's car as she and her young daughters were trapped inside.¹¹⁴ It took a long time to disperse them as the police had failed to deploy enough troops in advance. Although the incident was caught on film, none of the attackers was prosecuted due to a series of grave errors in the investigation.

On 12 May 2021, during the war in Gaza known as Operation Guardian of the Walls, calls spread on social media urging far-right activists to converge on the beach promenade in Bat Yam to take revenge on Arabs. Responding to the calls, hundreds arrived at the promenade where, led by La Familia activists, they marched to chants of "Death to the Arabs," vandalized Arab-owned businesses, and lynched Sayid Mussa, a 34-year-old Israeli Arab from Ramla. Even though the media alerted to the preparations and the violence was reported in real time on mainstream news channels and social networks, the police allowed the march to proceed and its participants to commit nationalist crimes.¹¹⁵ Similarly, during the war in Gaza in the summer of 2014 (Operation Protective Edge), the police allowed far-right activists to hold a violent demonstration opposite a left-wing protest in Haifa.¹¹⁶ The former pelted the latter with rocks, spittle, and eggs, and threw stones at a bus of Hadash party activists.¹¹⁷

Commenting on the police's failure to deal with the physical and verbal violence of far-right activists during March of Flags parades in Jerusalem's Muslim Quarter, Supreme Court Vice President (retired) Eliakim Rubinstein said: "It is not with a light heart that we reject the petition. There should be zero tolerance toward verbally or physically violent rioters, whoever they may be. Indeed, the police have a complex and difficult job in a complex and difficult city such as Jerusalem, which is subject to violence from different quarters not to be elaborated

¹¹³ *Nir Hasson, [Israeli Extremists Beat Three Palestinians in Jerusalem: 'Police Did Nothing'](#), *Haaretz*, 29 June 2017.

¹¹⁴ Roy Yanovsky, [Muslim Woman Indemnified for Attack by La Familia Activists, Recognized as 'Victim of Hostile Activities'](#), *Ynet*, 18 August 2016.

¹¹⁵ *Bar Peleg, [Attempted Lynching and Smashed Stores as Jewish-Arab Clashes Spread Across Israel](#), *Haaretz*, 24 May 2021.

¹¹⁶ Yaheli Marom, [Haifa and Tel Aviv: Kahanists Attack Demonstrators Against Gaza Offensive](#), *Siha Mekomit*, 20 July 2014.

¹¹⁷ Staff report, [Haifa: Right-Wing Activists Hurl Stones at Bus of Hadash Party Activists](#), *Ynet*, 19 July 2014.

here. However, in this specific case, all parties to the petition agree that all types of violence must be prevented, and that there must be enforcement if it occurs. As we see it, the police and the rabbis who organize the event must issue a joint call that includes a clear and unambiguous pronouncement against verbal violence and racism, against chants of 'Death to the Arabs' that clearly cross a red line into the criminal, against physical violence and vandalism, and in support of criminal enforcement. The participating yeshivas must also take measures against any of their students, should they misbehave God forbid. Of course, we are not casting blame on anybody, but are talking in general about possible 'bad apples'. Needless to say, even if most of the perpetrators are not students in these yeshivas but individuals who join the march and commit offenses, the law and strict enforcement should rigorously apply to all of them."¹¹⁸

The above notwithstanding, year in and year out the parade continues to feature the same severe violence, with hardly any enforcement against extreme right activists or with the arrest of a handful of the numerous perpetrators, who are soon set free as well. In the latest parade on 18 May 2023, Palestinian journalists and bystanders were attacked by dozens of right-wing activists but only two of them were arrested. There is no record of any charges pressed against them,¹¹⁹ despite the fact that the inflammatory chants and physical assaults occurred in broad daylight, partly in front of the police, and were caught on film by mainstream and social media, which the police could have used to locate all the assailants.¹²⁰

The police are obliged to practice the principle of equality. This is a fundamental constitutional principle that is the lifeblood of any regime purporting to be democratic. Supreme Court President (retired) Aharon Barak's remarks about the damage done by enforcement that harms equality apply here: "There is nothing more destructive to society than the feeling of being treated unequally. Inequality is one of the hardest feelings. It harms the forces that unite society. It harms a person's self-identity."¹²¹

Every person in Israel is entitled to have limitations on their freedom of protest applied in an equitable manner, based on equal and uniform criteria.

Every person in Israel is entitled to have limitations on their freedom of protest applied in an equitable manner, based on equal and uniform criteria. Profiling potential troublemakers based on origin, religion, nationality, sex, gender identity, ethnicity, or political views is illegitimate

¹¹⁸ [Supreme Court Ruling 3079/15 NPO Ir Amim v. Israel Police's Jerusalem District Commander](#), *Nevo*, 11 May 2015.

¹¹⁹ *Aharon Rabinowitz, [Flag March: Hundreds Chant 'Death to Arabs' as Israelis Rally in Jerusalem](#), *Haaretz*, 18 May 2023.

¹²⁰ Oren Ziv, [Flag March: Racism, Hatred, and Journalists Attacked](#), *Siha Mekomit*, 18 May 2023.

¹²¹ [Supreme Court Ruling 953/87 Avraham Poraz v. Tel Aviv-Jaffa Mayor Shlomo Lahat](#), *Nevo*, 23 May 1988.

Profiling potential troublemakers based on origin, religion, nationality, sex, gender identity, ethnicity, or political views is illegitimate when it is done to residents and citizens whose equal rights must be respected.¹²²

Moreover, enforcing the law against one person and not others or over-enforcement in similar cases because a person belongs to a certain group constitutes selective enforcement, which has been forbidden by the courts. Supreme Court Justice Yitzhak Zamir's remarks apply here: "Selective enforcement is enforcement that harms equality in the sense that it differentiates between similar people or between similar situations in order to attain an improper goal, based on extraneous considerations or purely arbitrary ones. A clear example of selective enforcement usually is a decision to enforce a law against a certain person and not against another, based on such factors as religion, nationality, or gender, or due to personal hostility or political rivalry. Even if it is not the only factor, it is enough that this should be the dominant one in a decision to enforce the law for such enforcement to strongly contravene the principle of equality before the law in the basic sense of this principle. It is destructive to the rule of law, it is outrageous in terms of justice, and it endangers the justice system. The authority to press criminal charges is important and taxing, as it may determine a person's fate. The same goes for the authority to enforce the law in other respects, such as to arrest a person or confiscate property. It must be exercised in a matter-of-fact, equitable, and reasonable manner."¹²³

Incitement against protesters by public figures also plays a role in the designation of certain protests as inherently threatening "the public order," as it sends a message to the police on which protests are dangerous and must be dispersed or preempted and which are legitimate. For example, Information Minister Galit Distal-Atbaryan¹²⁴ and Prime Minister Netanyahu¹²⁵ contended that the demonstrations against the regime revolution were financed by either Iran or some mysterious foreign entities, whereas Netanyahu's son Yair posted on Twitter: "They are not protesters. They are not anarchists either. They are terrorists!"¹²⁶

¹²² See court rulings on 'profiling' in airport security checks in [Supreme Court Ruling 4797/07 Association for Civil Rights in Israel v. Civil Aviation Authority](#), *Nevo*, 22 May 2012, and in ID checks in [Supreme Court Ruling 4455/19 Tebeka Advocacy for Equality and Justice for Ethiopian-Israelis v. Israel Police](#), *Nevo*, 25 January 2021.

¹²³ [Supreme Court Ruling 6396/96 Zakin v. Mayor of Beersheba](#), *Nevo*, 8 June 1999. On selective enforcement, see also Justice Uzi Fogelman's ruling in [Supreme Court Ruling 6328/12 State of Israel v. Poldi Peretz](#), *Nevo*, 10 September 2013.

¹²⁴ *Jonathan Lis, [German Envoy 'Disappointed' With Israeli Minister's Claim That Iran, Germany Fund Anti-Government Protests](#), *Haaretz*, 9 February 2023.

¹²⁵ *Staff report, [PM's Son Compares Protesters to Nazis, as Netanyahu Suggests Foreign Funding Behind Movement](#), *Haaretz*, 11 March 2023.

¹²⁶ Staff report, [Yair Netanyahu: 'Protesters Are Terrorists', Protest Leaders: 'Dangerous Incitement, Investigate and Bring to Justice](#), *Ynet*, 3 March 2023.

Unjustified Use of Force/Crowd Control Measures Based Solely on Demonstrators' Identity

At a hearing in the Knesset's Interior Committee on 24 August 1971 about the police's conduct at the Black Panther protests in Jerusalem against the discrimination and oppression of Mizrahim, Police Commissioner Pinchas Kopel explained why the police had used a water cannon: "A crowd started gathering at Zion Square.... It kept ebbing and flowing, with new people arriving and others leaving. We decided that this could not go on, ordered onlookers to disperse, and announced that the demonstration was illegal. We used the water cannon to force the crowd to retreat in a certain direction. It lasted a few minutes. There was no real direct confrontation. The crowd dispersed. Some moved to the sidewalks."¹²⁷

During a debate in the Knesset plenum on several no-confidence motions on 10 July 2023, Minister David Amsalem referred to the severe eye injury sustained by Udi Uri, a fighter pilot in the IDF reserves who was hit by a water cannon at a demonstration against the regime revolution in Tel Aviv's Ayalon Highway: "Some guy got a scratch near the eye. The BBC and other TV networks pounced on him. Why? Because a yuppie was injured in the eye? Big deal!"¹²⁸

On 2 September 2023, about 150 people were injured in Tel Aviv in clashes between Eritrean asylum seekers, opponents and supporters of the dictatorial regime in their country, and between them and the police. In an unusual move, the police used live fire in addition to sponge-tipped bullets.¹²⁹ The police claimed the officers were in a life-threatening situation necessitating the use of live fire, while Commissioner Yaakov Shabtai added that "we do not remember such a situation since the October events,"¹³⁰ alluding to the events of October 2000 where 13 Israeli-Arab citizens and one resident of the Gaza Strip were killed in clashes with the police. However, the fact that the police had not used live fire in 23 years (other than in East Jerusalem), including in extremely serious clashes with protesters, gives

The fact that the police had not used live fire in 23 years (other than in East Jerusalem), including in extremely serious clashes with protesters, gives cause for concern that the trigger was pulled not only due to fear for the life of police officers but also because the protesters were asylum seekers from Eritrea

¹²⁷ Minutes of Meeting No. 90 of Knesset Interior Committee, *Israel State Archives*, 24 August 1971.

¹²⁸ Oded Ben-Ami, *Pilot Injured by Water Cannon Responds to Amsalem's 'Yuppie' Remarks: 'I Pitied Him'*, N12, 11 July 2023.

¹²⁹ SOP No. 90.220.010.11 on Use of CCW in Demonstrations, *Israel Police*, 1 June 2021.

¹³⁰ Published for the First Time: Police SOP on Dispersal of Demonstrations, *Movement for Freedom of Information*, 1 June 2023.

cause for concern that the trigger was pulled not only due to fear for the life of police officers but also because the protesters were asylum seekers from Eritrea.

Article 4A(a)(3)(b) of the Police Act gives police officers the authority to "take any vitally necessary action and use reasonable force against a person or property for the purpose of proceeding with that action," if they fear serious injury to body or property or for the purpose of saving life or property. Today, the police's use of crowd control weapons (CCW) is anchored in SOPs 220.010.10 and 220.010.11 dated 28 June 2021 and 1 June 2021, respectively.¹³¹ In addition, separate and detailed SOP address the activation of each type of CCW,¹³² including horse-mounted policemen.¹³³

These procedures were compiled in the aftermath of the conclusions of the Orr Commission set up to look into the clashes in October 2000, in which 13 Israeli Arab citizens and a Gazan were killed and many were injured in clashes with the security forces. Referring to the guidelines about the use of CCWs, the commission wrote: "Directives given to personnel in the field were not sufficiently clear. Directives on sensitive subjects such as riot control were transmitted without due emphasis on the importance of the matter. Only after fatalities were incurred were messages transmitted that clarified police policy on this issue." As for the type of CCWs that the police may use, the commission concluded: "It should be made unequivocally clear that firing live ammunition, including sniper fire, is not a means to disperse crowds by the police. This is a means to be used only in special circumstances, such as when there is a real and immediate threat to life or in the rescue of hostages. The committee determined that rubber-coated bullets are not appropriate for use due to their risk. It was determined that the police should remove them from use. It was emphasized that this does not prevent the police from deploying other kinetic means, including rubber ones. Nonetheless, the guiding principle must be that a means with lethal potential can be used only in situations of real and immediate life-threatening danger, and only if its accuracy level enables it to hit the source of this life-threatening danger and no one else. In other situations, the police must use non-lethal means."¹³⁴

According to SOP 220.010.11, the police are allowed to use 21 "less-lethal" CCWs at disturbances and demonstrations, ranked into four levels of severity: Level A - peaceful demonstrations with no breach of the public order (no use of force or CCWs); Level B - breach of the public order and noncompliance with police instructions to maintain the public peace and order (use of force, batons, pushing, arrests); Level C - breach of the public order amid violent

¹³¹ [SOP No. 220.013.06 on Activation of Mounted Police, Israel Police, 2 August 2020.](#)

¹³² [Published for the First Time: Police SOP on Dispersal of Demonstrations, Movement for Freedom of Information, 1 June 2023.](#)

¹³³ [SOP No. 220.013.06 on Activation of Mounted Police, Israel Police, 2 August 2020.](#)

¹³⁴ [*Israeli Arabs: The Official Summation of the Orr Commission Report, Jewish Virtual Library, 2 September 2003.](#)

resistance liable to cause bodily harm and damage property (batons, arrests, dispersal, the Scream acoustic harassment device, stun grenades, horse-mounted police, etc.); Level D - breach of the public order amid severe violent resistance using a variety of objects liable to cause physical injuries and damage property (40-mm sponge-tipped bullets, teargas grenades, and FN 303 riot guns).

There are many inherent problems with SOP 220.010.11, such as the vague definition of the levels of severity and the transition from one level to the next, which might lead to arbitrary and political decisions. For example, the SOP states that "the use of CCWs will be based on professional and operational considerations," which is a very general and vague wording. Although the transition to Level C requires the approval of the regional commander (or precinct chief, in the former's absence) and that of the district commander for the shift to Level D, their approval hinges on the report of the commanding officer on the scene. More than once, a comparison of the police's action reports and investigative materials with the video footage from the scene of incidents shows that the commanding officer's report was false or conveyed inaccurate or exaggerated information to his superior.

For example, in response to the case of a Jerusalem precinct chief who gave his approval to forcibly prevent a group of leftists from waving Palestinian flags, the court ruled that the order had been based on incorrect reporting from the field: "There were problems with the policeman's account. At one point he claimed that the report on rioting had not been filed by him but by headquarters, but later he admitted that he had called it in. The precinct chief also testified that the policeman had reported rioting, but the video showed no rioting at all. Finally, the policeman himself admitted that, contrary to his report, there had been no rioting."¹³⁵

Moreover, even though all CCWs listed in the SOP are defined as "less-lethal," their use contrary to safety instructions might be fatal or cause real bodily harm.

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Addressing the use of CCWs, Supreme Court President (retired) Aharon Barak said that "law enforcers are not authorized to restore the order 'at any cost'. While not downplaying the importance of preserving the public order, it is essential to remember that the security forces are not allowed to do everything to crush disturbances or open up a road. They should only employ reasonable means befitting the circumstances. Not all circumstances justify risking human lives in order to crush rioting. Even in menacing situations, there is no license

¹³⁵ Tel Aviv Magistrates Court Ruling 15567-07-18 Bitan v. State of Israel, *Nevo*, 17 September 2019.

to do everything to prevent the danger. Even in times of peril, only those measures that are reasonable under the circumstances should be taken."¹³⁶

In demonstrations by Ethiopians, the police use abnormally excessive force and conduct mass arrests compared to their practice elsewhere within the State of Israel. For example, at a protest in Tel Aviv on 3 May 2015 they made massive use of sponge-tipped bullets,¹³⁷ while on 3 July 2019 they activated Scream, an acoustic harassment device that emits an ear-splitting sound.¹³⁸ On 2 May 2015, a stun grenade was thrown at a journalist who was filming the police's violence against demonstrators at Tel Aviv's Rabin Square. The grenade hit him in the stomach, caused him external injuries, and damaged his camera equipment (he was indemnified).¹³⁹ On 15 April 2022, a photojournalist who was filming the police's violence at a Palestinian protest on the Temple Mount was beaten all over his body with batons and his hand was fractured.¹⁴⁰

The police also use stun grenades at the protests against the regime revolution. Contrary to regulations and safety guidelines, on 3 January 2023 a policeman threw grenades at demonstrators and journalists.¹⁴¹ One demonstrator was badly bruised by a grenade that hit him on the head.¹⁴²

The police use water cannons mounted on a truck's rooftop called Makhtazit and Skunk. They both squirt fluid forcefully and inaccurately, and thus might hurt nonviolent demonstrators. Skunk sprays a pungent and foul liquid, which leaves a powerful odor of rot and sewage on whatever surface it touches, and might cause nausea, dizziness, and pose other health risks.

The police do not dispute the fact that they use Makhtazit and Skunk extensively, especially to disperse Haredim, claiming by way of justification that they stage 'massive and violent demonstrations that are not coordinated with the police'

The Jerusalem District have made it a practice to use Makhtazit and Skunk at Haredi demonstrations in particular, hurting protesters, innocent bystanders, and nearby homes and businesses. A petition submitted to the Supreme Court in 2018 presented evidence of a couple in their 60s who were hit by a water jet as they got off a bus, suffered broken limbs, and one of them required surgery. In another case, a passerby in her 20s was hit in the

¹³⁶ Supreme Court Ruling 1354/97 Mahmud Akasha v. State of Israel, *Nevo*, 6 December 2004.

¹³⁷ Staff report, *Ethiopian Protest: Stun Grenades, Sponge Bullets, Dozens Wounded and Arrested*, *Siha Mekomit*, 3 May 2013.

¹³⁸ **Police Brutality Toward Ethiopian Israelis*, *Association for Civil Rights in Israel*, 4 July 2019.

¹³⁹ Tel Aviv Magistrates Court Ruling 10075-09-15 Anonymous v. State of Israel, 15 November 2016 (not published).

¹⁴⁰ *Nir Hasson, *Israeli Cops Filmed Clubbing Palestinian Journalists on Temple Mount*, *Haaretz*, 18 April 2022.

¹⁴¹ *News Israel 13 @Newsisrael13, Twitter*, 13:46 1 March 2023

¹⁴² Liran Levy and Meir Turgeman, *Officer Who Threw Stun Grenades Questioned by IAD: 'Aimed at Open Area, Didn't Hit Demonstrators'*, *Ynet*, 12 March 2023.

eye, necessitating two-week hospitalization and surgery. Another young woman passing by cracked her ribs as the water jet threw her to the ground. In yet another case, a 12-year-old boy was sent flying into the air by the Skunk, landed on his back, and even as he lay on the ground policemen continued to spray him and two other people who were trying to help him.¹⁴³

In response to the aforementioned petition, the police did not dispute the fact that they use Makhtazit and Skunk extensively, especially to disperse Haredim, claiming by way of justification that they stage "massive and violent demonstrations that are not coordinated with the police" and that these CCWs are used "to prevent an escalation." Supreme Court Justice Anat Baron criticized the police's conduct: "The petition and attached evidence paint a disturbing picture regarding the use of the Skunk to disperse demonstrations.... There would seem to be a problem with using it in narrow and densely populated residential streets, given that it is liable to seriously hurt individuals who were not involved in the protest at all. Furthermore, video footage submitted to the court would appear to indicate that there were cases where the use of the Skunk deviated from the regulations, in terms of the angle and direction of the spraying."¹⁴⁴

As for the very legality of using Makhtazit and Skunk vis-à-vis the Haredi population and in general, Justice Baron wrote that "not only must the Haredi public's right to demonstrate against decisions impacting their faith and lifestyle be protected, but the police are obligated to assist in the exercise of this right.... Of the array of CCWs at the police's disposal, there is no question that the Skunk is a drastic one (albeit not the most extreme), given that the pungent and foul liquid it sprays sticks to a person's body for a long time and might induce nausea and dizziness and cause other side effects that could allegedly evolve into health issues. This being the case, use of the Skunk may be weighed only in the case of violent and serious rioting or in the absence of any other choice, and even then, in a limited and proportionate way while abiding by the relevant guidelines.... It should be reiterated that the dispersal of a demonstration violates the basic right of a citizen or a group to voice their protest. Therefore, it is incumbent upon the police to exercise their powers judiciously and restrainedly when it comes to preventing severe disturbances, and only when there is no other alternative and in accordance with the regulations. This applies in particular to the use of such drastic measures as the Skunk. The police should employ such measures only after carefully weighing their options and use the Skunk only as a last resort, and in a considered, responsible, and cautious manner at that. It bears noting here that the police's considerations, as well as the employment of these means, are subject to judicial review."¹⁴⁵

¹⁴³ Supreme Court Ruling 5882/18 Shmuel Aharon Epstein Kreuz v. Israel Police, *Nevo*, 19 August 2020.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

Responding to another petition regarding the use of water cannons in Haredi demonstrations, Supreme Court Justice Alex Stein wrote: "In some instances, the video footage attached to the petition exposed a problematic picture of seemingly unnecessary and unjustified violence toward the demonstrators.... Let me state the obvious in this context: The use of water cannons, the Skunk in particular, as a means to prevent violence or serious damage to property must meet the criteria of necessity and reasonableness stipulated in Article 4A(a) (3)(b) of the Police Act. This principle applies with even greater reason to demonstrations, given that a person's right to demonstrate and protest is a cornerstone of our constitutional regime, and as such deserves special protection from the actions of the-powers-that-be that might have a chilling effect and discourage citizens who wish to demonstrate and protest. It is for this reason that even when tackling Level C rioting, it must be made sure that water cannons are used only when there is no other choice; namely, when less severe measures are not sufficiently effective as a response to mass violence."¹⁴⁶

Extensive use of force and CCWs was made to disperse the demonstrations of the Arab and Bedouin minority against the Praver Plan in 2013. In Beersheba, police beat, choked, and used batons on protesters, while in Sakhnin they threw teargas grenades and canisters from closed range, choked and pushed demonstrators with horses.¹⁴⁷ In Hura, teargas grenades, water hoses, and galloping horses were used,¹⁴⁸ and three members of a Bedouin family who were on their way back from the demonstration were viciously attacked by a group of policemen.¹⁴⁹ On 13 January 2022, a protest against forestation work by the Jewish National Fund in the lands of the village of Sawa al-Atrash in the Negev was violently dispersed by Magav (Israel Police's gendarmerie and border security unit) and Yasam troops after demonstrators began blocking the road. Without giving them reasonable time to disperse, the officers began to attack them with stun grenades, teargas, and sponge-tipped bullets, with the latter also fired at those trying to leave the place.¹⁵⁰ Similar massive force has been used for nearly a decade vis-à-vis protesters against the evacuation of the Bedouin village of Al-Arakib.¹⁵¹

In the Balfour Protest demonstrations in 2020 in Jerusalem, the police aimed water cannons at the heads of participants. One protester was flung backwards by the strong water jet,

¹⁴⁶ [Supreme Court Ruling 346/21 NPO Mishpat Emet Vatzedek v. Israel Police](#), *Nevo*, 29 July 2021.

¹⁴⁷ [Investigation Urged of Suspected Police Brutality at Demonstrations Against Praver Plan](#), *Association for Civil Rights in Israel*, 18 July 2013.

¹⁴⁸ *Shirly Seidler, [Israel Government Retaliating Against Violent Bedouin Protests With Harsh Detention](#), *Haaretz*, 19 December 2013.

¹⁴⁹ *Amira Hass, [Israeli Police Officers Accused of Abusing Bedouin Family Evade Investigation](#), *Haaretz*, 28 February 2015.

¹⁵⁰ Oren Ziv, [Women Arrests and Undercover Troops Will Only Exacerbate Protests in the South](#), *Siha Mekomit*, 15 January 2022.

¹⁵¹ Yanir Yagna, [Policemen, Bedouin Villagers Clash Over House Demolitions](#), *Haaretz*, 18 January 2011; [Serious Violence Toward Women and Children in 16th Demolition of Al-Arakib](#), *Negev Coexistence Forum for Civil Equality*, 15 February 2011.

lost consciousness, and suffered an ear injury. Another protester was hit in the face and sustained an eye injury.¹⁵²

As mentioned, the police also make unjustified use of water cannons at the protests against the regime revolution in Jerusalem and Tel Aviv. One demonstrator was hit directly in the face and was diagnosed with a torn eye muscle, a press photographer fainted after a water jet hit the right side of his face, and a female journalist fell and broke her leg after being hit straight in the face.¹⁵³ On 1 March 2023, the Skunk was used on a group of demonstrators that included families with children at the Karkur junction.¹⁵⁴

Due to their largely flexible SOP on the use of force and CCWs, Israel Police's wide-ranging powers to uphold the public order can be abused to violently suppress demonstrations for political reasons. One example was National Security Minister Ben-Gvir's call on the police to use "CCWs to disperse the anarchists who rioted and tried to block the Ayalon Highway," his claim that "the Israel Police must use all the means at their disposal to maintain the public order and the normal life of Israel's citizens. Freedom of expression and the right to protest yes, anarchy absolutely not."¹⁵⁵ In contrast, senior police officers said the use of extraordinary measures against non-violent demonstrators was unnecessary and was meant to curry favor with Ben-Gvir.¹⁵⁶

¹⁵² *Josh Breiner, [Water Cannons to the Head: Police Disperse Anti-Netanyahu Protesters Against Regulation](#), *Haaretz*, 26 July 2020.

¹⁵³ Itay Ron, [Contrary to Regulations Police Direct Water Cannons at Demonstrators' Heads](#), *Hamakom-The Hottest Place in Hell*, 3 April 2023.

¹⁵⁴ [Civil Democratic Movement @democracymvmt](#), *Twitter*, 23:12 1 March 2023.

¹⁵⁵ David Zoldan, [Ben-Gvir: 'Demonstrators Are Anarchists', Lapid Urges Police Commissioner 'To Ignore Him'](#), *Ice*, 1 March 2023.

¹⁵⁶ *Josh Breiner, [Israeli Officers Say Top Cop Ordered Violence Against Protesters To Curry Favor With Ben-Gvir](#), *Haaretz*, 1 March 2023.

Use of Violence Against Demonstrators by Border Police Troops

In democratic countries it is not customary to use military or paramilitary forces against civilians, other than in highly extraordinary circumstances. Although the Israeli government does not use IDF soldiers in demonstrations within the territory of the State of Israel or in occupied East Jerusalem, the deployment of Magav (Hebrew acronym for Border Police) troops against demonstrators is a violent practice.

Magav troops are used indiscriminately at both violent and non-violent protests of Israeli citizens/residents who wish to exercise their right to freedom of expression and protest. The routine deployment of paramilitary troops for law enforcement against protesters has serious implications, one of which would seem to be to deter turnout.

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Magav's unsuitability to the task of dealing with demonstrations is evident from the duties and training of its troops. According to Israel Police's job description, Magav is a multi-purpose force for counter-terrorism, riot control, combatting crime in urban and rural sectors, and a reserve rapid deployment unit.¹⁵⁷ Defined as a combined police-military force, Magav troops train accordingly: a four-month boot camp at level-05 rifle qualification, which includes training in infantry combat, counter-terrorism, policing, and internal security. This is followed by specialization as platoon commanders, medics, detectives (Yamag), and undercover officers (Yamas), and based on personal compatibility, training in such areas as internal security, sniping, marksmanship, physical fitness, driving, dog handling, etc. Eighteen months after enlistment, eligible platoon commanders may go on to train as officers. Magav's military character is also reflected in its equipment (weapons, armor, CCWs, etc.), which is the same as that used by IDF soldiers in the West Bank.¹⁵⁸ This is definitely not the kind of training and equipment that is suitable for handling protesters.

More than once Magav troops themselves have been known to create provocations or use unreasonable force against demonstrators and civilians. Action reports filed by troops, revealed in the course of an IAD investigation into the case of a Palestinian boy who was shot in the head with a black sponge-tipped bullet in East Jerusalem's Issawiya neighborhood (Case 565/2016), showed that they had initiated and planned their operation in order to

¹⁵⁷ Annual Report No. 60a: Border Police – Organization and Regulations, *State Comptroller*, 13 January 2010.

¹⁵⁸ Michal Danieli, *How Hard Is It To Be a Border Police Fighter in the Midst of Riots?*, *Mako*, 1 July 2011.

create "friction with the residents" and trigger clashes.¹⁵⁹ The reports explicitly noted that the incident started as an "initiated friction activity," with one policeman writing that "during the afternoon shift we launched an activity in Issawiya to create friction with the residents." Two other policemen wrote that "we were asked to come to the Menta gas station in Issawiya for a friction activity in the village" and noted that they were given a briefing prior to the operation (the National Insurance Institute recognized the injured child as a victim of hostilities entitled to compensation).¹⁶⁰

Furthermore, due to their military equipment and training, the physical injuries often inflicted upon demonstrators are disproportionate. One of the main reasons for Magav's use of excessive force probably stems from the difficulty entailed in making a clear perceptual and professional transition between its military missions and civilian policing duties.

One of the main reasons for Magav's use of excessive force against protesters probably stems from the difficulty entailed in making a clear perceptual and professional transition between its military missions and civilian policing duties

On 28 August 2014, then-MK Mossi Raz demanded from the Police Commissioner to stop deploying Magav troops to deal with citizens exercising their freedom to protest. Rejecting the demand, Superintendent Tamar Laberti of Israel Police's Legal Counsel Office replied on 2 October 2014 that even though Magav troops have "paramilitary" duties such as fighting terrorism, guarding the country's borders, and operating under the IDF in some situations, they are to all intents and purposes policemen trained as such: "I regret that you saw fit to suggest in your letter, in vague terms and without elaboration, that Magav troops use unreasonable force against demonstrators. We are not aware of such a phenomenon, which can certainly not be attributed to all Magav troops."¹⁶¹

The routine deployment of Magav troops results in the use of disproportionate and unjustified force against demonstrators and deters people from attending. Small wonder then that Article 90 of the Likud-Otzma Yehudit coalition agreement calls for separating Magav from the Israel Police and turning it into an independent entity directly subordinate to National Security Minister Ben-Gvir, given that such control over Magav would put at his disposal a military force to suppress the opposition and demonstrators in Israel.

¹⁵⁹ *Nir Hasson, [Border Police Deliberately Provoke Palestinians in East Jerusalem, Internal Reports Say](#), *Haaretz*, 12 July 2016.

¹⁶⁰ *Nir Hasson, [Palestinian Teen Wounded by Sponge-Tipped Bullet Entitled to Compensation From Israel](#), *Haaretz*, 25 December 2017.

¹⁶¹ Letter from Attorney Superintendent Tamar Laberti, Israel Police's Legal Counsel Office, 2 October 2014.

Immunity From Disciplinary/Criminal Prosecution for Violent Policemen

Here is what the late Supreme Court Justice Haim Cohn wrote in one of his rulings in regard to the danger of police brutality: "Violence is a contagious and epidemic disease. Just as there are sadists in the police force who are infected by the violence of criminals, there are also criminals who derive great encouragement and legitimacy from the police's violence to augment their own. If the guardians of the law do not hesitate to use violence, supposedly to impose law and order in obvious violation of a person's basic right to bodily integrity, it should come as no surprise that criminals who see this violation with their own eyes and feel it on their own flesh should not give a hoot about human life and dignity. If a detainee who is beaten to a pulp by interrogators later hears them testify in court, under oath, that they never laid a finger on him, it should come as no surprise that there is such an appalling incidence of subornation to perjury and threats of violence against witnesses. Police brutality begets a vicious cycle: it does not daunt or deter criminals, but rather inspires them to react violently. It goes without saying that the very real possibility of a causal link between police brutality and surging crime must raise serious concern in the heart of every judge."¹⁶²

Violent behavior affects the police's ability to perform their duties, their public image, and people's trust, which are essential for obtaining the public's cooperation. Trust in the police is eroded especially when documented violence toward demonstrators is exposed, yet no criminal or disciplinary charges are brought against police officers as a matter of policy, for reasons unrelated to any evidentiary problems or because a disciplinary hearing is out of the question in the first place.

Trust in the police is eroded especially when documented violence toward demonstrators is exposed, yet no criminal or disciplinary charges are brought against police officers

In recent years, IAD's conduct has been criticized by human rights organizations, lawyers, complainants, and the media, and has even been discussed by the Knesset on several occasions. Following are a number of problems pertaining to the IAD's work and suggestions on how to remedy them.¹⁶³

A disciplinary offense is currently defined in Article 19(a) of the First Amendment to the Police Law-2006 as "the use of force against a person in the line of duty with no lawful authority or

¹⁶² Supreme Court Case 369/78 Yusuf Rashad Abu-Midjam v. State of Israel, *Nevo*, 25 June 1979.

¹⁶³ *For example, on 21 July 2021, the Association for Civil Rights in Israel, the Association of Ethiopian Jews, the Public Committee Against Torture in Israel, and the Hebrew University of Jerusalem's Clinic for Multiculturalism and Diversity, relayed to then-Justice Minister Gideon Sa'ar their [recommendations](#) for the changes needed in the IAD's work.

reasonable justification, in violation of Israel Police orders or other authoritative directives."¹⁶⁴ In practice, despite the vast incidence of police brutality and the public and media criticism of it, it is rare for police officers to face disciplinary proceedings for breach of duty under Article 19(a).

The Palmor Commission's report notes that complaints about use of force that do not meet standards of criminal prosecution are closed, even though some could qualify as disciplinary offenses.¹⁶⁵ The Police Disciplinary Department (PDP) told the committee that, in their opinion, they were not authorized to probe such cases given that Article 19(b) of the Police Law stipulates that the decision to prosecute for such charges is up to the Attorney General or a delegated official. "In practice, such offenses fall through the cracks and are not investigated at all," the report affirms.¹⁶⁶

The Palmor Committee recommended to the Attorney General that PDP should be empowered to probe and decide whether to prosecute cases of unlawful use of force found not to warrant a criminal investigation by IAD. Former Attorney General Avihai Mandelblit accepted the recommendation, and presently the decision to prosecute is up to the IAD's director/senior lawyer and the PDP's director.¹⁶⁷

In practice, however, it is still rare for policemen to face criminal or disciplinary proceedings, the latter in particular, under Article 19(a). According to a State Comptroller's report, of the 11,776 complaints filed with the IAD in 2019-2021, charges were pressed only in 1.1% of the cases (132), disciplinary proceedings were launched only in 2% of the cases (89 out of 4,401), and of these only 19% (17 cases) under Article 19(a).¹⁶⁸

It should be emphasized that the disciplinary offense stipulated in Article 19(a) is the only one that requires special approval. Equally serious offenses listed in the First Amendment to the Police Law, such as the one stipulated in Article 13 ("Possession, operation, or attempt to use firearms, ammunition, explosives, or other dangerous substances without authorization, required degree of caution, or contrary to Israel Police's orders") do not require the Attorney General's approval.¹⁶⁹

In addition, there has been an alarming increase in the number of cases in which the IAD launches a preliminary inquiry instead of a criminal investigation following a complaint. As

¹⁶⁴ [Police Law-2006](#), Nevo.

¹⁶⁵ [Final Report of Team for Eradication of Racism Against Ethiopian Immigrants](#), *Ministry of Justice*, July 2016.

¹⁶⁶ *Ibid.*

¹⁶⁷ [State Attorney Directive No. 1.16: Policy on Investigation and Prosecution of Cases Pertaining to Unlawful Use of Force by Police](#), *State Attorney's Office*, 8 August 2020.

¹⁶⁸ [IAD, Israel Police Handling of Offenses by Policemen \(State Comptroller's Annual Report\)](#), *State Comptroller*, 2 May 2023.

¹⁶⁹ [Police Law-2006](#), Nevo.

will be explained below, preliminary inquiries might seriously impair protesters' ability to seek justice against policemen who hurt them.

Articles 49I(a) and 49J(a) of the Police Act grants investigative powers to the IAD "and the powers and immunities of the Israel Police and of a policeman, respectively, to its employees."¹⁷⁰ According to Article 59 of the Criminal Procedure Law, exercising these investigative powers hinges on "the police learning that a crime has been committed."¹⁷¹ As stipulated in court rulings, this means that the initial evidence in the police or IAD's possession should be of such magnitude as to justify the launching of a criminal investigation.¹⁷² Given that the law does not stipulate that a criminal investigation must be launched as soon as a complaint has been filed, a preliminary inquiry may be ordered, based on which a decision will be made whether to order an investigation or to shelve the complaint.

Court rulings and Attorney General Directive No. 4.2204 address the circumstances that may justify a preliminary inquiry: when complainees are public figures who might be severely affected by the very launching of an investigation that is also liable to impact on their organization, when the evidence needs to be balanced with the public implications of a decision to launch an investigation, and when there is fear of over-detering workers in the same organization.¹⁷³

According to the State Attorney's annual report for 2020, the number of preliminary inquiries launched by the IAD in 2020 was higher than in 2019 (36% versus 15%), and a preliminary inquiry was carried out in 36% of the closed cases.¹⁷⁴ There is no mention of this fact in the SAO's report for 2021 and its report for 2022 has yet to be published,¹⁷⁵ but the State Comptroller's report for 2021 states that the IAD conducted a preliminary inquiry in 28.4% of the cases.¹⁷⁶

The SAO report for 2020 noted that "the purpose of such an inquiry is to confirm or refute allegations contained in a complaint and to ascertain whether there are grounds for an investigation under caution. The inquiry may include a review of investigative materials, video captured on bodycams and security cameras, depositions, and more." The report pointed out

Preliminary inquiries might hinder protesters' ability to seek justice against the policemen who hurt them. The inquiry itself might lead to the disruption of legal proceedings, concealment of evidence, and subornation of perjury

¹⁷⁰ [Police Act-1971 \[New Version\]](#), Nevo.

¹⁷¹ [Criminal Procedure Law-1982 \[Combined Version\]](#), Nevo.

¹⁷² [Supreme Court Ruling 6410/14 Movement for Quality Government in Israel v. State Attorney](#), Nevo, 4 February 2015.

¹⁷³ [Attorney General Directive No. 4.2204: Preliminary inquiry](#), Ministry of Justice, 2 October 2018.

¹⁷⁴ [Annual Report for 2020](#), State Attorney's Office, 14 April 2022.

¹⁷⁵ [State Attorney's Office Annual Reports](#), State Attorney's Office.

¹⁷⁶ [Annual Report on IAD, Israel Police Handling of Police Offenses](#), State Comptroller, 2 May 2023.

that the increase in the number of cases that resulted in a preliminary inquiry rather than an investigation is due to the change in policy following Attorney General Directive No. 4.2204.¹⁷⁷

As mentioned, preliminary inquiries might hinder protesters' ability to seek justice against the policemen who hurt them. Even though the directive forbids deposing complainers, the inquiry itself might lead to the disruption of legal proceedings, concealment of evidence, and subornation of perjury, since the complainers may indirectly learn of a complaint against them and the information contained therein, rather than hear about it for the first time when interrogated under caution. For example, sometimes IAD investigators phone or e-mail an officer to ascertain his and the troops' version of an incident. The directive asserts that "every effort must be made to hold a preliminary inquiry as soon as possible," and that the complainant is entitled to appeal if the complaint is eventually shelved. Given the heavy workload of the IAD and the SAO's Appeals Department, processing of an appeal against the decision to close a case without conducting an investigation might take many months or even several years. This being the case, even if the appeal is accepted, in many cases it will no longer be possible to carry out an effective retroactive investigation that includes gathering evidence from all the witnesses and an interrogation under caution of the complainers, since by then they may not remember all the details of the incident in question. Similarly, as time goes by, frequently it is no longer possible to locate reports, photographs, and other evidence, which could have been easily gathered close to the time the complaint was lodged if an investigation had been launched rather than an inquiry.

The Supreme Court has ruled that pressing criminal charges against IDF soldiers for violating instructions owing to an error in judgment while operating in field conditions is problematic, even if there are indications of negligence, as such a move might adversely affect operations, stunt initiative, and hurt the public interest.¹⁷⁸ The SAO's directive on the investigation and prosecution of unlawful use of force by policemen resembles the aforementioned Supreme Court position: "In the nature of things, it is sometimes difficult to distinguish between a lawful action that falls within authorized use of force and actions that appear to rise to a disciplinary or criminal offense justifying an investigation. This difficulty stems from such circumstances as the police officer being in a situation requiring a decision straightaway, fear for the safety of a policeman or a person nearby, the nature of the task and the kind of manpower on the scene, the amount of force used, and more.... It is feared that launching an investigation without proper justification could have a 'chilling effect' on the police officers, discourage them from doing a proper job, and affect their commitment and sense of belonging to the public service.... Since being a policeman entails a high level of friction with citizens in the

¹⁷⁷ State Attorney's Office Final Report for 2020, *State Attorney's Office*, 14 April 2022.

¹⁷⁸ Supreme Court Ruling 1782/19 Sammi Ali Hassan Ali Kusbah v. Attorney General, *Nevo*, 3 September 2020.

performance of their tasks and in view of the aforementioned fear about a 'chilling effect', the use of force in the line of duty, such as preserving the order at a demonstration or conducting an arrest, should not be automatically labeled as rising to reasonable suspicion of a crime."¹⁷⁹

The nearly blanket immunity from criminal and disciplinary prosecution of policemen who used unlawful force against protesters that exists at present is one of the hallmarks of authoritarian regimes. Immunity feeds police brutality and gives it legitimacy. Therefore, it is no coincidence that National Security Minister Ben-Gvir hastened to back a police officer who was caught on film throwing stun grenades without justification at protesters against the regime revolution,¹⁸⁰ nor that Article 15 of the Likud-Otzma Yehudit coalition agreement states that police officers "acting without malice in the line of duty" would enjoy total immunity from legal liability.¹⁸¹

¹⁷⁹ State Attorney Directive No. 1.16: Policy on Investigation and Prosecution of Cases Pertaining to Unlawful Use of Force by Police, *State Attorney's Office*, 8 August 2020.

¹⁸⁰ Meir Turgeman, *Ben-Gvir's Double Standards: Backs Officer Who Threw Stun Grenades, Lashes Out at Policemen Who Confronted Party Colleague*, *Ynet*, 3 March 2023.

¹⁸¹ Likud-Itamar Ben-Gvir's Otzma Yehudit Coalition Agreement on Establishment of 37th Israeli Government, *Knesset*, 28 December 2022.

Municipal Regulations Used to Restrict and Prevent Demonstrations

This is what Judge Yoram Noam wrote in his response to a petition to remove a protest tent erected by Ethiopian immigrants near the Prime Minister's Residence in Jerusalem: "The petitioners have in recent weeks erected a protest tent on the corner of Ben-Maimon-Balfour-Azza Streets. They claim to be holding a social protest on behalf of the Israeli Ethiopian community over the discrimination and racism against them. They assert that these began upon the arrival of the first waves of immigrants from Ethiopia and have increased over the years. Therefore, they decided to protest and combat these phenomena by erecting a tent, which they dubbed 'the dialogue tent', in this specific location, where once stood the protest tent for the release of Gilad Shalit [IDF soldier held captive for five years by Hamas in Gaza]. They took this step in the hope and belief that this form of protest would gain them maximum exposure to their struggle, both vis-à-vis the authorities and even more so vis-à-vis Israeli society, would acquaint the general public with their plight, and would consequently bring about the correction of injustices and social disparities and contribute to the assimilation and integration of the community into Israeli society like every other human being."¹⁸² Nevertheless, Judge Noam accepted the Jerusalem Municipality's position that Article 235 of the Municipal Act [New Version]¹⁸³ authorized it to remove the tent in order to preserve order and cleanliness in its jurisdiction.

The right to put up physical instruments of protest, such as a tent, shed, or sign, is a derivative of the freedom of expression and demonstration. The wide-ranging powers at the disposal of local authorities, which are enshrined in the Municipal Act and in bylaws, allow them to require a permit for a protest tent or signs and might be abused to limit or forbid demonstrations altogether.

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These powers presumably derive from the provisions of the Municipal Act. Article 235(3) obliges a local authority to ensure the safe and smooth circulation of residents in the public space; Article 242(1) on public sanitation and health authorizes and obliges a municipality to remove or prevent any nuisance and to check for existing ones; Article 235 establishes a municipality's obligation to prevent encroachments on the street and to remove obstacles within its jurisdiction; Article 251 empowers a municipality to demand payment for the removal of nuisances and obstacles; Article 246 states that "the municipality shall regulate the display of billboards and signs... or prohibit their display." Indeed, Tel Aviv-Jaffa and Jerusalem's

¹⁸² Jerusalem District Court Ruling 56360-02-12 Parda Almito v. Jerusalem Municipality, *Nevo*, 1 April 2012.

¹⁸³ Municipal Act [New Version], *Nevo*.

municipal bylaws on maintaining order and cleanliness - Articles 39(a)(1), 44(a), 58¹⁸⁴ and Articles 39, 44, 63,¹⁸⁵ respectively - prohibit the placement of anything in the street without written permission from the mayor and empower the municipalities to remove obstacles in their jurisdiction.

At a Supreme Court hearing on a petition against the removal of a tent camp erected in downtown Tel Aviv during the social protests in 2011, the Attorney General presented the considerations that should guide local authorities when dealing with protest actions: Basically, a local authority is a trustee of the public, and therefore, it is both obliged and authorized to manage the public space for the benefit of the public at large according to equitable and objective criteria, while balancing all relevant interests and factors. This means giving due consideration to such basic constitutional rights as freedom of expression and demonstration, and refraining from unnecessarily harming them.¹⁸⁶

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Based on the aforementioned wide-ranging powers and the courts' occasional rejection of protesters' petitions, the Tel Aviv-Jaffa Municipality removed social protest encampments in the summer of 2011¹⁸⁷ and in 2012,¹⁸⁸ and protest tents erected by women and single mothers in the Hatikva neighborhood in 2012,¹⁸⁹ and in a public park in Jaffa in 2021,¹⁹⁰ the Jerusalem Municipality evacuated the anti-poverty Bread Square camp at the Kiryat Hamemshala government precinct in 2004,¹⁹¹ the protest camp erected in 2012 by Ethiopian immigrants fighting discrimination and racism,¹⁹² and the Balfour Protest camp opposite the Prime

¹⁸⁴ [Tel Aviv-Jaffa Municipal Bylaw-1980 \(Maintaining Order and Cleanliness\)](#), *Nevo*.

¹⁸⁵ [Jerusalem Municipal Bylaw-1978 \(Maintaining Order and Cleanliness\)](#), *Nevo*.

¹⁸⁶ [Attorney General's Position](#) presented in Jerusalem District Court Case 14921-11-20 Amir Haskell v. Jerusalem Municipality, 1 February 2021.

¹⁸⁷ [Tel Aviv District Court Ruling 18742 Stav Shaffir et al v. Tel Aviv-Jaffa Mayor Ron Huldai](#), *Nevo*, 18 November 2011.

¹⁸⁸ [Tel Aviv District Court Ruling 6095-07-12 Tamir David Hatzav et al v. Tel Aviv Municipality](#), *Nevo*, 23 July 2012.

¹⁸⁹ Gilad Morag, [Encampment in Tel Aviv's Hatikva Quarter Evicted: 'We Were Treated Like Terrorists'](#), *Ynet*, 15 January 2012.

¹⁹⁰ *Ran Shimoni, [Tel Aviv Promises Aid in Deal With Single Mothers, Demands End to Housing Protest](#), *Haaretz*, 22 November 2021; *[Permit the Existence of a Protest Tent in a Public Park in Jaffa](#), *Association for Civil Rights in Israel*, 21 November 2021.

¹⁹¹ [Supreme Court Ruling 3829/04 NPO Mikol Halev's Chairman Yisrael Tuitto v. Jerusalem Municipality](#), *Nevo*, 6 December 2004.

¹⁹² [Jerusalem District Court Ruling 56360-02-12 Parda Almito v. Jerusalem Municipality](#), *Nevo*, 1 April 2012.

Minister's Residence in 2020 (evacuated amid police brutality and arrests)¹⁹³ and in 2021.¹⁹⁴ The Jerusalem Municipality even imposed a draconian ban on permanent protest tents and sheds opposite government symbols, which was partially canceled by order of the Attorney General.¹⁹⁵

Moreover, the Jerusalem Municipality abused its powers with its heightened and selective enforcement vis-a-vis the Balfour Protest in 2020, issuing numerous parking tickets to demonstrators (some were cancelled following a public campaign),¹⁹⁶ requiring permits to put up posters and imposing fines on those failing to apply for one,¹⁹⁷ based on Article 3(a) of the municipal bylaw regarding signage.¹⁹⁸ Judge Alexander Ron stated that "this bylaw concerns signage for commercial and business purposes. Nothing in it, either indirectly or implicitly, suggests that it is intended for signs put up for demonstrations.... Any application of this bylaw in the context of demonstrations is irrelevant, immaterial, and clearly unconstitutional. That is not what this bylaw is intended for."¹⁹⁹

Given that the Municipal Act, bylaws, and Attorney General directives do not accord top priority to freedom of demonstration, municipalities may to this day invoke ordinances and bylaws to preempt, limit, and disrupt demonstrations and other protest actions citing a local authority's obligations toward its residents as a pretext, but in practice doing it for political reasons. In particular, it is feared that demonstrations might be limited and disrupted in localities whose elected officials are affiliated with the coalition parties.

¹⁹³ Staff report, [Violent Eviction Near Balfour Street: Municipality Dismantles Protest Encampment, People Wounded and Detained](#), *Hamakom-The Hottest Place in Hell*, 13 July 2020.

¹⁹⁴ [Jerusalem District Court Ruling 14921-11-20 Amir Haskell v. Jerusalem Municipality](#), *Nevo*, 1 February 2021.

¹⁹⁵ *Nir Hasson, [Attorney General Challenges Jerusalem Municipality's Rules on Protests in the City](#), *Haaretz*, 20 February 2017.

¹⁹⁶ Alon Levy, [Municipality's Parking Superintendent: 'Tickets Issued to Balfour Protesters Unlawful'](#), *Mynet*, 11 November 2020; Alon Levy, [Municipality Backtracks: Parking Tickets to Balfour Protesters Cancelled](#), *Mynet*, 12 November 2020.

¹⁹⁷ [The District Court Accepted Our Petition Regarding Protest Signs in Jerusalem](#), *Association for Civil Rights in Israel*, 5 December 2021.

¹⁹⁸ [Jerusalem Municipality Bylaw-2019 \(Signage\)](#), *Nevo*.

¹⁹⁹ [Jerusalem District Court Ruling 44961-06-21 Zehava Leib v. Jerusalem Municipality](#), *Nevo*, 5 December 2021.

Conclusion

As described in this report, despite the importance that freedom of expression and protest hold for any democratic regime, their recognition and preservation in the State of Israel is based on rickety patchwork, which provides feeble and vague protections for the right to demonstrate.

Moreover, the Israel Police are endowed with draconian powers, which have in part been translated into SOP that allow selective enforcement and use of force against protesters hailing from minority populations and disadvantaged groups in an arbitrary, political, and even racist manner, in addition to over-enforcement toward demonstrators with political views in opposition to the government.

The report shows that this rickety patchwork is unsustainable, especially in light of the fact that in charge of the Israel Police is National Security Minister Itamar Ben-Gvir, a man with an anti-democratic worldview. Pursuant to Amendment No. 37 to the Police Act-1971 enacted upon the establishment of the current government, he has been empowered to interfere with the work of the police and use selective enforcement to restrict freedom of protest. The report presents examples of various instances where he abused his authority and infringed on the principle of equality and on the freedom of expression and demonstration.

Despite court rulings offering a narrow interpretation of British Mandate-era legislation and bolstering the protections of freedom of protest, the police's enforcement policy was uneven, selective, and arbitrary even before Ben-Gvir's appointment. Moreover, even with most court rulings tilting in favor of freedom of protest, protesters whose rights are violated by the police cannot be expected to turn to the courts to obtain a legal interpretation of the specific circumstances of each demonstration where their rights were harmed.

The dangers inherent in law enforcement that is arbitrary and largely hinges on the conduct of the troops on the scene have grown more acute since the establishment of the 37th government, which has from day one promoted legislation aimed at weakening the judiciary. In response to a protest movement of unprecedented scope and duration against the government's regime revolution that began in January 2023, assorted ministers and Prime Minister Netanyahu have more than once demanded to restrict the demonstrations and slandered the protesters.

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Therefore, we propose to remedy the weaknesses of existing legislation and to improve the protections for freedom of protest. Thus, they would no longer hinge on the identity of the minister in charge of the police and his worldview, nor on those of the incumbent government or prime minister heading it or on the considerations of police officers on the scene about the use of force and enforcement powers, which might be influenced by the fact that the demonstrators belong to minority groups, disadvantaged groups, or groups opposed to the government.

Proposals to Improve Protections for Freedom of Demonstration

As described in the report, current legislation provides weak and vague protections for the right to demonstrate and at the same time gives draconian powers to the police. Therefore, **Zulat for Equality and Human Rights and the Public Committee Against Torture in Israel** have jointly formulated proposals to improve the protection of freedom of demonstration in Israel:

- **To prevent abuse of British Mandate-era license requirements for assemblies and 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]. These 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.
- **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 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 giving consideration to freedom of expression and protest 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 violation of "the public order." These wide-ranging powers allow the police to ignore Supreme Court rulings, the lack of a requirement to obtain a license, and in effect limit freedom of expression and protest on arbitrary and political grounds.
- **To prevent police brutality and immunity from disciplinary and criminal prosecution for officers involved in unlawful violence against demonstrators:** 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 police to open a criminal investigation as soon as the IAD 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 unit cited in the complaint, which according to Attorney General Directive No. 4.2204 solely justifies a 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 SOP 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.

Zulat institute works to promote a policy of equality and human rights and to restore the legitimacy of the human rights discourse in Israel.

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This document was written as part of a joint project of Zulat institute for Equality and Human Rights, The Public Committee Against Torture in Israel and Akevot Institute.



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