

## POTENTIAL THREATS TO HUMAN RIGHTS AND DEMOCRACY FROM THE IMPENDING ISRAELI GOVERNMENT<sup>1</sup>

Following the November 2022 Knesset elections, the Association for Civil Rights in Israel (ACRI) mapped various potential threats that the incoming Israeli government may pose to the country's state of human rights and democracy. This mapping is based on bills proposed and statements made by prospective ministers in the incoming government during previous Knesset sessions, the current government negotiations, and on the analysis of position papers published by right wing think tanks associated with members of the incoming coalition.

The list below describes threats that may arise and is not a comprehensive summary of bills and initiatives that ACRI expects to be put forth. ACRI is preparing to challenge these threats and suggests that other players interested in promoting human rights and democracy do the same. The actual bills and policies proposed by the government may vary slightly from our analysis.

In our threat assessment, we prioritized systemic and irreversible threats and challenges to the democratic system.

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### **THREATS TO JUDICIAL INDEPENDENCE**

All members of the coalition expressed a firm determination to limit the independence and oversight of the Supreme Court. The structure of the governance institutions in Israel (lack of constitution, lack of separation between the legislative and executive branches) positions the Supreme Court as the central check and balance on government policy.

Undermining the Judiciary will likely materialize through multiple layers of legislation. Each component will have a minor damaging effect in itself, but combined they threaten to dramatically alter the face of the Judiciary.

The first element is the **Override Clause**, which, if passed, will allow the Knesset to re-legislate laws previously rejected by the Court (there have been several suggestions as to how the law would be drafted). We anticipate the government beginning work on this legislation promptly and securing the majority needed. This would limit a very significant aspect of the Court's operation. However, the vast majority of the Supreme Court's operation is unrelated to oversight of legislation, and hence the Court will be able to continue the majority of its roles even with the passing of the Override Clause. Still, if passed, this law will impact a crucial element of the Courts' power and leave minorities with no defense against discrimination.

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<sup>1</sup> Please note that this document was written before the coalition with Jewish Zionism party was published. Updates as the situation unfolds will be available on our website.

In summary, the Override Clause will enable the Knesset/government to legislate unconstitutional laws. These “bypassing” laws are expected to be the most harmful to human rights, promoting inequality and discrimination of minorities in Israel, de-jure annexation of the Occupied Territories, and harmful treatment of asylum seekers.

Following the **Override Clause**, we anticipate several additional measures against the Judiciary, including:

- Re-defining the positions of attorney generals on all levels to reduce their authority and oversight over policy proposals.
- Limiting access to the Supreme Court for NGOs by changing the legal standing rights to the High Court.
- Reducing the ability of the Supreme Court to monitor the reasonability of government policy and decisions.
- Altering the nomination process of Justices.

Each one of these steps are likely to occur at different times and will be justified in various ways. As such, it is crucial for supporters of judicial independence to understand the impact and the entirety of the effort to undermine the Judiciary.

## **THREATS TO FREEDOM OF EXPRESSION AND FREEDOM OF PROTEST**

ACRI anticipates the government to attempt to severely limit freedom of expression and freedom of protest.

**Increase in Police brutality-** the agreement between the Jewish Power party and Likud includes bestowing unprecedented power to the minister of National Security (previously Interior Security) over police policy and action. ACRI is preparing for a reality of increased police brutality against demonstrations, a surge in the number of arrests, new and more hazardous weapons used against protestors, attempts to deter political dissent, intensification of surveillance actions against political activists and protestors. In recent years we have seen the rise of private Jewish militias that have attempted to replace the police or cooperate with it. As these militias are part of the political base of the Ministers’ party, we are concerned about legitimization of such militias and a greater role that they may play in oppressing Palestinian communities or escalating cycles of violence. Another significant part of this threat is the increased powers given to the new Minister for National Security, which includes the bodies such as the Green Patrol and the authority over the Border Police in the Occupied Palestinian Territories (OPT) alongside the promise to establish a national guard.

**Impairment of Freedom of Speech in Culture and Education-** As in previous governments, we anticipate attempts at censorship of content in culture, in the education system, and in higher education through policies or legislation that would deny or reduce funding for institutions that allow political dissent or alleged disloyalty, specifically around Palestinian narratives.

**Attempts to limit the work of human rights organizations-** Previous governments have attempted to legislate a variety of limitations on human rights organizations. Past attempts included special taxation of funds donated to the organizations and bans on raising or receiving funds from foreign governments. This legislation could have a devastating impact on the ability of organizations to operate. In addition to that, the legislation in the past has been accompanied by a delegitimization campaign in the media and social media. There is an added risk to

organizations who work in cooperation with the 7 Palestinian Human Rights organizations in the West Bank that were designated terrorist organizations. The cooperation of Israeli organizations with these organizations may lead to charges against the Israeli organizations under the Anti-Terrorism law.

### **Threats to Palestinian Society within Israel**

ACRI anticipates multiple attempts to institute discrimination against Palestinian society within Israel. Most concerning are issues of political representation, violence and freedom of expression.

**Political Representation-** we have witnessed numerous attempts to incite against and ban political representation of Palestinians in the Knesset. The attempts were accompanied by extensive discourse delegitimizing the political representatives and their agenda. ACRI is concerned that the new government will attempt to amend the disqualification process of parties, removing judicial oversight, and paving the way to denial of political representation to large segments of Palestinian society.

**Banning of the Palestinian flag-** Members of the prospective coalition made statements about advancing legislation to ban the Palestinian flag from public spaces.

**Policing-** ACRI is concerned that the government may manipulate the crisis of crime and lack of personal security in Arab society in order to increase over-policing in Arab society, introduce new policing methods, or involve the General Security Services in policing of Arab society. The Ministry of National security will include policing units that were previously under other ministries, thus opening the way for unprecedented control by the police, in particular over the Bedouin communities in the Negev and in mixed Jewish-Arab cities.

**Violent conflict-** ACRI is concerned about the possibility of another cycle of violence in East Jerusalem, the West Bank, and in Arab society within Israel. The fear of violent outbreaks or escalation always exists in our region, but the government's expected steps regarding minorities and especially towards the Arab minority in Israel may lead to a violent escalation within Israel. Areas of special concern are the mixed cities and the Bedouin communities in the Negev. Violent conflict may create an opportunity for the government to advance new policies and measures to repress Palestinian society that might then become permanent.

### **THREATS TO PALESTINIANS IN THE OPT**

Support for the settlement movement and annexation of the OPT is high on the agenda of the coalition. We assess that the new government will aim at deepening and cementing Israeli-Jewish control, mainly over area C, and the displacement of Palestinians as it follows under the far-right general agenda of maximum territory with minimal Palestinians, establishing de-facto annexation. We are particularly worried about the following potential threats:

**Legalization of all outposts-** There are a number of mechanisms the State of Israel might employ to accelerate the legalization of outposts, with or without the passing of new legislation. Formal adoption of the [override clause](#) will open up new avenues by allowing the State to pass sweeping legislation to legalize outposts without the encumbrance of the Supreme Court. The override clause, for example, could allow for the revival of the '[Regularization Bill](#),' which the Knesset passed in 2017, and the Supreme Court struck down in 2020 following a petition filed by ACRI and Yesh Din, among other NGOs.

**Annexation of the Jordan Valley-** The government might attempt to establish de-jure annexation in the Jordan Valley. The Jordan Valley is a relatively sparsely populated area, with particularly vulnerable Palestinian communities, who are already being displaced by violent settlers and lack of Israeli law enforcement, among other coercive policies. Annexation will have a far-reaching impact on the human rights of individual Palestinians and Palestinian communities and their collective rights, and may lead to legitimization and normalization of the annexation concept.

**Steps to cement the permanency of Israeli control:**

- The Renewal of the Final Settlement of Title (land registration) in the West Bank. The process of formal land registration in the West Bank was frozen at the onset of the occupation in order to protect the rights of Palestinians who fled their lands and because it is an irreversible act that is characteristic of a permanent regime (not a temporary occupier) and therefore is an indirect instrument for the application of Israeli sovereignty.
- The religious Zionism party is expected to appoint a minister within the ministry of defence who will be in charge on settlements and will receive [authority](#) over the Civil Administration's (CA) responsibilities concerning Israeli settlers. It is expected that the new minister will work towards transfer of the CA authorities to internal Israeli ministries and will fast track legalization of all outposts. These will deepen the inequities between Israeli and Palestinians, further entrenching Israeli permanent Israeli control of the West Bank.

**Cancellation or amendment of the Disengagement Law will promote the regularization of settlements in the northern West Bank (aka north-Shomron)-** This will undermine the status quo in the area, which has been relatively improved since the disengagement.

**Threats to the designated Palestinian CSO-** The 7 Palestinian CSOs that were designated terrorist organizations in 2021 have been operational throughout the designation period and continue their vital work for human rights promotion. We are concerned about further steps against these organizations, which may be financial limitations, closure of offices and arrests of staff members.

**Increased use of tools for expanding Israeli control over land Area C under the guise of fighting Palestinian illegal construction and agriculture take-over.** Dispossession of Palestinians from their lands will likely be enacted with the use of existing tools, such as increased *interfering use orders* issued against Palestinians, while in parallel, reducing or entirely canceling the use of *interfering use orders* issued against Israelis who invade private Palestinian land. Additional tools for increasing control are allocations of land for grazing and water allocations for agriculture for settlers.

**Easing of rules of engagement for soldiers and police in the West Bank.** Reportedly, MKs Smotrich and Ben Gvir are both heavily advocating for the further easing of open-fire regulations, which were already eased in November 2021 [despite opposition from within the military](#). The impacts of easing open fire regulations in November 2021 contributed to the fact that 2022 has seen the [highest number of Palestinian civilians killed](#) by Israeli forces in at least seven years. This step will only add to an already volatile situation in which soldiers increasingly open fire on Palestinians with very little to no apparent threat or reason. It is important to note alongside this concerning development, the military [consistently fails to](#)

[protect Palestinians from settler violence](#) and at times soldiers have [assisted settlers](#) in carrying out violent attacks.

**Violent escalation of the conflict.** There has been an increasing escalation of violence in the West Bank. ACRI is concerned that the government will not work towards reducing the violence but instead push a more aggressive military approach towards the Palestinian population. ACRI is also concerned by the rapid increase of [persecution](#), [violence and arrests](#) of Palestinians and Israeli activists in area C and the [use of closed military zones](#) as a means to prevent any form of civil and solidarity activism.

## THREATS TO RIGHTS OF MINORITIES

Coalition members have expressed clear plans to undermine the rights of different minorities in Israel.

**Asylum seekers-** The Asylum Seeker community is particularly vulnerable, especially if the “Override Clause” is approved. We anticipate attempts to re-legislate indefinite imprisonment of asylum seekers, as well as heavy financial discrimination in the form of freezing of pension rights.

**Women-** Several of the parties of the coalition have expressed the intention to legalize gender segregation in the public sphere and limit military service for women. There might also be a push to limit access to reproductive rights.

**LGBT-** The LGBT community is a primary target for the Noam party. We anticipate withdrawal of government funding to LGBT organizations that provide vital services to the community, and the banning or limiting of LGBT-affirming content in various government institutions, in particular education, culture, and the ministry of social equality. The ministry of health under the 2021 government was able to promote several advances in health-related issues for the community, and this progress may be reversed. Further risks are to adoption and surrogacy rights for LGBT parents.

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