

ISRAELI 'ANTI-NGO BILL': Bill to Amend the Income Tax Ordinance (Taxation of Donations from a Foreign Governmental Entity), 2023

Overview

- The anti-NGO bill would rescind tax-exempt status and levy 65% tax on foreign donations to NGOs, breaking international precedents.
- If passed, the bill will apply to Palestinian NGOs in the West Bank and Gaza as well as Israeli and international NGOs in Israel.
- The bill has been temporarily shelved due to international criticism, but it is part of a systematic strategy of disrupting NGO's operations and it could be reintroduced.

Background of Israeli systematic targeting of NGOs and international organisations

The new bill is part of Israel's wider systematic targeting of NGOs and international organisations. In 2016, an 'NGO transparency bill' was passed by the Knesset, which forced NGOs receiving a majority of their funding from foreign state entities to publicly declare this on their websites, newspaper advertisements, campaigns and at government meetings. Though passed, the 2016 law is not strictly enforced, following international criticism from the USA, the EU and other international actors. Israel faced condemnation from UN human rights experts in 2021 after designating six Palestinian NGOs as terrorist organisations.¹

Current status of the 2023 bill

The bill is officially called the Bill to Amend the Income Tax Ordinance (Taxation of Donations from a Foreign Governmental Entity), 2023. The bill has been tabled by Ariel Kallner MK, a member of Likud, the largest party in the current Israeli coalition government.

On Sunday, 28th May 2023, the private members bill was set to be put forward to the Ministerial Committee for Legislation for consideration, who would then have decided whether the government would support its passage through the Knesset. The committee is made up of 14 ministers, all members of the government, and it is chaired by Yariv Levin MK (Likud), Deputy Prime Minister and Minister of Justice. The committee is co-chaired by Itamar Ben Gvir MK, Minister of National Security and leader of Otzuma Yehudit.

Following international pressure from the UN Special Rapporteur on the oPt, the US State Department and the German, Dutch, Belgian, Irish, Norwegian, Finnish and Swedish embassies to Israel, Prime Minister Netanyahu decided to temporarily shelve the bill.² The decision to withdraw the bill happened on the 28th May 2023, on the day it was supposed to be put forward for consideration by the Ministerial Committee for Legislation.

Implications of the bill

The bill seeks to amend the income tax ordinance to impose a tax of 65% on financial support to non-profit organisations from a 'foreign state entity'. As defined under Section 36a of the Associations Law, a 'foreign state entity' essentially comprises a state, a union of states, or a municipality in a foreign country, including their organs, or their representatives, or corporations owned by them, as well as the Palestinian Authority. Third States

¹ UNHCR. (25th October 2021) [UN experts condemn Israel's designation of Palestinian human rights defenders as terrorist organisations.](#)

² Magid, J. (26th May 2023) [Amid overseas outcry, gov't said rethinking bill targeting foreign funding for NGOs.](#) Times of Israel.

and intergovernmental organisations such as the EU Council and the European Commission will fall under this definition.

The bill will also mean that non-profit organisations that receive funding from a 'foreign state entity' will lose their status as public institutions which will result in them losing eligibility for tax exemptions.

Due to divergent funding pathways, the bill disproportionately targets human rights organisations that are critical of the Israeli government. The bill is deliberately designed in a way that targets state-funded foreign donations, but not private foreign donations, the latter of which are often used to fund pro-Israeli institutions.

The bill was criticised by organisations across Israel and Palestine. Joseph Kelly, director at the Jerusalem-based Association of International Development Agencies, an umbrella group for 80 aid organisations working in Palestine, referred to it as a 'civil society killer'. Michael Sfar, a lawyer for organisations that advocate for Palestinian human rights, referred to the bill as 'an attempt to silence and eliminate criticism of the Israeli government'.³

Territorial remit of the bill

The bill must be interpreted in conjunction with a 2022 bill that automates the transposition of Israeli civil law to occupied Palestinian territory. The 2022 bill, entitled Bill to Amend the Directive of Government and Judicial Order (Legislation in the Area via Order) 2022, means that the 2023 bill would apply to Palestinian NGOs in the West Bank and Gaza as well as Israeli NGOs. This would obstruct aid that helps these organisations to carry out their critical humanitarian and human rights missions.

Global norms regarding tax exemptions for aid

Since the 1940s, humanitarian and development aid through official channels have generally been exempted from taxation.⁴ The UN describes this convention as 'widespread'.⁵ Introduction of taxation against organisations providing aid would mean Israel were breaking international precedent of state practice towards international aid organisations, by disincentivising donors and disrupting resources of humanitarian relief and human rights protection.

The Institute for Law and Philanthropy at Tel Aviv University predicted that the law would cause Israel to fall on the Global Philanthropy Environment Index,⁶ which measures policy adopted towards philanthropy in various countries. The Institute found that the bill, if approved, 'is expected to place Israel even below anti-liberal countries such as Hungary, Poland, and Russia, and at the level of dictatorships such as China and others in Central and South America, the Middle East, and Africa'.⁷

UN Special Rapporteur on the occupied Palestinian territories, Francesca Albanese, proposed that the bill is in contravention of Article 55 of the Geneva Convention,⁸ which she says 'stipulates that Israel cannot hamper the delivery of humanitarian relief and any impediment to such a delivery is to be determined by necessity and proportionality'.⁹

³ Freedman, E. (26th May 2023) '[Civil society killer': Israel tax bill threatens to silence NGOs](#). Al Jazeera.

⁴ Steel, I. et. al. (2018) '[The taxation of foreign aid: Don't ask, don't tell, don't know](#)'. Overseas Development Index. Briefing note, May 2018.

⁵ UN Committee of Experts on International Cooperation in Tax Matters. (2020) '[Tax treatment of official development assistance \(ODA\) projects – Revised Guidelines on the Tax Treatment of ODA Projects](#)'. Twentieth session. Item 3(j). E/C.18/2020/CRP.4

⁶ Indiana University Lilly Family School of Philanthropy. (2022) '[Global Philanthropy Environment Index 2022](#)'.

⁷ Institute for Law and Philanthropy. (2023) '[Democracy in Crisis: Shrinking Space for Civil Society in Israel: Bill to amend the Income Tax ordinance \(Taxing a donation from a foreign state entity\) 2023](#)'. Tel Aviv University.

⁸ Geneva IV. (1949). '[Geneva Convention Relative to the Protection of Civilian Persons in Times of War](#)'. Article 55.

⁹ Albanese, F. (25th May 2023) '[Israel's new anti-NGO legislation: An Effort to eradicate Opponents of Illiberalism](#)'. Foundation for Middle East Peace.