

Harming Refugees Endangers Democracy and Harming Democracy Endangers Refugees

The new Israeli government's plans, as reflected in the coalition agreements and statements in the media, are a cause for serious concern among refugees in Israel and anyone who cares about refugees' right to protection and to an adequate standard of living. Further, they are a reason for broader concern to everyone who cares about democracy in Israel. The planned attack on refugees is part of a planned attack on Israel's democratic institutions in general and its judiciary in particular. The core ambition is to make the Executive Branch (the Population and Immigration Authority) all-powerful, and allow it to trample without restraint the rights of anyone who lives in Israel but does not hold Israeli citizenship.

The planned damage to democracy will harm refugees

Over the past 15 years, Israel's Supreme Court, and to a lesser extent its lower courts, have often served as a last line of defense against the inhumane and illegal initiatives targeting refugees that were proposed by various Netanyahu-led governments. Their goal was, as then-Interior Minister Eli Yishai put it, to "make their lives miserable", because it was not possible to deport refugees to their countries of origin. These cruel initiatives included imprisonment in the Saharonim and Holot detention centers, extortion of refugees' wages through the Deposit Fund Law, and deportation to Rwanda. The campaigns against these initiatives were multi-faceted public efforts, but in each of them, the legal front was significant .

Members of the Netanyahu-led governments preoccupation with passing the "Override Clause" began mostly against the background of the Supreme Court's disqualification of amendments to "Anti-Infiltration Law" and the subsequent Deposit Fund Law. Passing the Override Clause and eliminating the legal requirement for reasonable standard of conduct, as the government plans, may lead to the reinstatement of these initiatives, and thwart any fight against future initiatives that even more blatantly and directly violate Israeli and international law.

In Israel and around the world, weakness of the gatekeepers creates a danger for vulnerable populations. The legal status of refugees in Israel is precarious and temporary. They are not entitled to assistance or social services. Many of them suffer from poverty and abusive employment. Their life circumstances include multiple difficulties stemming from trauma, immigration, and social exclusion. They will be among the first to be affected by the planned regime change.

The planned harm to refugees will endanger democracy

The coalition agreements include three measures that will directly harm refugees. Each is fundamentally an attack on the justice system.

Basic Law: Immigration (part of the agreement with the Religious Zionism party). Knesset Member Simcha Rotman of the Religious Zionism party, current chair of the Constitution, Law, and Justice Committee, submitted this as a bill to the previous Knesset. Rotman's Immigration Bill is filled with measures that are unconstitutional and violate Israeli and international law. For example, it stipulates that a person who enters Israel in an undocumented manner is forever prevented from obtaining legal status in the country. No democratic country in the world has adopted such a cruel and illegal concept. After all, refugees seeking protection and asylum are often forced to enter countries without documentation. In addition, this bill denies immigrants who are refused entry (including refugees) the right to appeal to Israeli courts and allows for the indefinite imprisonment of immigrants (including refugees). It also includes (like the clauses in the agreement with the Otzma Yehudit party, described below) a host of abusive measures against immigrants and refugees, which have previously been explicitly rejected by the Supreme Court; that is, this bill includes many "override clauses."

Renewal of the Deposit Fund Law (part of the agreement with the Otzma Yehudit party). This part of the agreement vows to reinstate the Deposit Fund Law, which stipulates that 20% of the salaries of all "infiltrators and illegal residents" (whether or not they have submitted applications for asylum) will be deposited into a temporary fund, and that the money will be returned only upon their departure from the State of Israel. This clause in the coalition agreement is, quite simply, a violation of the Supreme Court's ruling mentioned above; a backdoor override clause.

"Removal" from Israel (part of the agreements with the Otzma Yehudit and Religious Zionism parties). With Otzma Yehudit, it was agreed to renew "processes with foreign countries for removal". In 2018, the government attempted to forcibly deport refugees to a "third country" (Rwanda). The Supreme Court demanded that they be able to review the written agreement with the destination country, and that it must include that country's explicit consent to accept forcibly deported people. The Netanyahu government at the time, despite great (and expensive) efforts, was unable to find even one country that would agree to sign such an agreement. If the relevant section in the coalition agreement with Otzma Yehudit implies a plan to deport refugees to foreign countries even if they do not fulfill this requirement and the other minimum requirements that the Supreme Court raised regarding Rwanda, then this too, like the reinstatement of the Deposit Fund Law, is in fact an attack on the judiciary.

Relatedly, the agreement with the Religious Zionism party states that they will promote legislation to encourage "infiltrators" to leave Israel. Different members of the coalition parties made similar statements over the media, that the government would work to remove "infiltrators" from Israel .

The idea that it is possible to “remove” people who cannot be legally deported is, obviously, illegal. To date, the Supreme Court has refused to accept “encouraging departure” as a legal purpose. Therefore, this clause in the coalition agreement with Religious Zionism also embodies an attack on the law in the State of Israel. If it hides an intention to deport refugees to their countries of origin (and not to “third countries”), it is even more serious. It represents a new low in the willingness of a Netanyahu-led government to break the law. Until now, respecting the principle of non-refoulement was a red line that no government in Israel dared to cross openly. Crossing it would be a fatal blow to democracy in Israel.

Each of these proposed initiatives against refugees is an attack on the legal system and democracy in Israel. We cannot not let them be passed.

For further details contact:

Dr. Shani Bar-Tuvia, Refugee Rights Forum
phone: 0524336487
email: shani.refugeeforum@assaf.org.il