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The Influence of the New Israeli Government Policy on Refugees

During the last decade, despite the group protection granted to citizens of Eritrea (currently 20,000) and Sudan (currently 7,000), previous governments, and the Ministry of Interior in particular, actively attempted to encourage asylum seekers to leave Israel "voluntarily", by imposing various sanctions and decrees on them. These sanctions included incarceration in Saharonim and Holot detention facilities (2012 - 2018), the "deposit law" (2017 - 2020) that confiscated a total of 36% of the asylum seekers' salaries, failed deportation to "third countries" scheme (2018) and the geographical restricting regulation – pending High Court of Justice (HCJ) decision – prohibits asylum seekers from working in 17 cities (unless they work in construction, agriculture, institutional care, cleaning companies or building).

All these sanctions for such long periods left the asylum seekers in a very vulnerable situation. These sanctions and decrees can be immediately and easily revived if only some of the legislative initiatives agreed upon and signed upon in the coalition agreements will come into force:

In the Coalition agreement with the far-right party "Otzma Yehudit", it is stated that "the government will renew its efforts in front of other countries to expel infiltrators" (refugees from Eritrea and Sudan). Refugees are being "encouraged" to leave for Rwanda and Uganda since 2013, yet only in 2018 the government tried to force them to leave for these countries. The HCJ demanded to see an agreement that would include the receiving country's approval to accept deportees against their will. Despite tremendous efforts, the Israeli authorities failed to present such an approval. It is also stated that "the deposit law, which states that each infiltrator and illegal resident will deposit 20% of his net salary, a deposit that will be returned to him when he leaves Israel". These two articles in the coalition agreement are in direct violation of the HCJ request in the first case and verdict from April 2020 in the second. The Coalition agreement with "The Religious Zionism" party states that "Legislation which encourages departure of infiltrators from Israel will be promoted."

During the winter session, the government managed to promote several laws that, if coming into force, will undermine almost all the basic principles of democracy. Below is a summary of those who will violate the rights of refugees.

Amendments to the Basic Law: The Judiciary – on February 21st, 2023, amendments passed in the first reading in the Knesset. It was already prepared for the second and third readings. On March 28th, 2023, due to tremendous public pressure, PM Netanyahu declared that there will be no vote on this law in the Knesset before the Passover vacation so there will be an opportunity to amend it in May 2023. Netanyahu faces tremendous pressure inside his coalition not to give up on the planned judicial revolution in its present form. The effect of the amendments in their present form is that the government will control the judicial selection committee. This year three HCJ Judges will retire, and three new Judges selected by the present coalition will completely change the composition of the HCJ.

The Israeli Knesset approved in the first reading (61 MKs v. 52 MKs) on March 14th a bill that prevents the HCJ from ruling and abrogating basic laws, while every law can be defined and legislated as a basic law. The Knesset Constitution Law and Justice Committee also approved for first reading a bill that allows the HCJ to abrogate unconstitutional laws (which are not defined as basic laws) only by a panel of all the 15 Judges, and only if at least 12 of the Justices will support it.

According to another amendment, which was discussed at the Constitution Law and Justice Committee in preparation for its first reading at the Knesset, the Court will not be able to abrogate the government decisions based on reasonable grounds. The amendments will also enable the coalition to choose the President of the HCJ and therefore to decide which Justice will rule in which case.

The “Override Clause” was approved on March 5th, 2023, at the Knesset Constitution, Law, and Justice committee for the first reading and was approved (61 MKs v. 52 MKs) in the plenum in the first reading on March 14th. If it passes in the second and third reading in the plenum, the bill will enable the Knesset to re-legislate laws by a majority of 61 votes (while there are 64 Knesset members in the coalition). The purpose of the override clause is to re-legislate laws that were abrogated by the HCJ since they violated the rights stipulated under the Basic Law: Human Dignity and Liberty. This Basic Law currently provides for an array of rights including the right to life, body integrity, and dignity as well as the right to personal liberty and property. It protects the rights of anyone in Israel regardless of their legal status. One of the main explicit purposes of the clause is to ensure any future legislation that intentionally violates the basic human rights of “infiltrators” is immune from judicial review.

While there is tremendous opposition among the Israeli public to the above legislation, the following one, might be easier for the Israeli public to absorb.

Basic Law: Entry, Immigration, and Status in Israel:

The Likud signed coalition agreements with the Religious Zionism and Otzma Yehudit (“Jewish Power”) parties that call to promote a new Immigration Basic Law that would allow: 1) Unlimited incarceration of asylum seekers; 2) Deny foreigners access to justice; 3) Allow the state to withhold the money of refugees and migrants; 4) Limit their movement inside Israel.

The proposed law is worse than the anti-infiltration laws which were abrogated by the HCJ. If passed after the law prohibits the court from reviewing basic laws, it will be immune from judicial review.

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