

# Israel's New Citizenship Deprivation-Deportation Pipeline

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Anja Bossow

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Buried in the news on the Israeli Knesset's judicial reform plans are two bills that substantially increase the government's power to deprive citizenship and subsequently deport Palestinian citizens convicted of terrorism offences and their family members. One already passed into law last Wednesday, while the one targeting their family members is still making its way through committees. In this blog post we survey and evaluate the rationales used to justify these newly assumed powers and set out why their current design is so insidious. We do not dwell on questions of compatibility with international or general constitutional law, as others have already done this elsewhere.

## Some Background

Just last year, the Israeli Supreme Court upheld the constitutionality of citizenship revocation in response to a "breach of loyalty," which includes acts of terror, treason and "serious espionage." Importantly, the Court did not consider the law's use of a rebuttable presumption that residence abroad can be read as access to citizenship elsewhere. This meant that an Israeli citizen residing in Europe, for instance, could have their citizenship revoked, even though this would render them de facto stateless. By contrast, it did insist that individuals who would be rendered stateless de jure had to be granted permanent residency in Israel.

The recent amendments expand the old provision, most notably by widening the scope of the rebuttable presumption and rendering deportation mandatory following revocation. As regards the former, the presumption now applies not just against single citizenship holders residing abroad but also individuals who have (or on whose behalf and with their knowledge) "received from the Palestinian Authority, directly or indirectly, payment or compensation for the breach of loyalty to the state of Israel."

While the presumption is rebuttable in theory, the Amendments' legislative history and explanatory text imply that residency abroad or payments from the Palestinian Authority (PA) will in fact be treated as sufficient evidence that a person can gain adequate status in a different jurisdiction. This would effectively serve to circumvent the general prohibition against statelessness that has so far set the outer limit to the deprivation power. Perhaps even more troublingly, the addition of the compensation requirement also clearly works to single out Palestinian citizens and residents of Israel for this newly minted deprivation-deportation pipeline. Statements made during the Knesset's Committee deliberations substantiate the deliberately discriminatory effect of the law, with MK Hanoach Milwidsky stating that he "prefers

Jewish murderers over Arab murderers, and more generally, in the Jewish state, [he] prefer[s] Jews over Arabs who are disloyal.”

Once citizenship is revoked, the new amendments require automatic and immediate deportation to the West Bank or Gaza following sentence completion. Moreover, a similar amendment was made to the Entry to Israel Law, to also license the revocation of residency with subsequent and mandatory deportation for those receiving payments from the PA. This effectively nullifies the important safeguard the Supreme Court had insisted upon in its ruling on the legality of the deprivation power, rendering deprivation and deportation certain, even in cases where a person was born, grew up, and has always lived as a citizen in Israel, or as a resident in East Jerusalem.

Aside from these substantive changes to the revocation power, the new law also does away with several formal and procedural requirements that were previously necessary to properly effectuate citizenship revocation. Presumably in order to expedite the process and minimize judicial oversight, the new law replaces the need for the Attorney General’s approval with the Minister of Justice’s, significantly shortens the timelines for courts to rule on revocation (30 days), minimizes judicial discretion in making that decision, and renders deportation mandatory, as opposed to a matter of discretion.

## **The Deprivation-Deportation Pipeline: Its Uses and Abuses**

For the most part, the discussion surrounding the use of citizenship deprivation has focused on the adverse impact it possesses for the individual, or the practice’s potential incompatibility with international law. By contrast, less critical attention has been paid to the general supposition that the practice serves important and legitimate goals, even though this was central to the Supreme Court’s finding of constitutionality. While the Knesset invoked several of the rationales the Supreme Court had sanctioned, these cannot sustain the more expansive deprivation-deportation powers it adopted.

### **(I) Legitimate Aims**

Citizenship deprivation’s central aim, the Supreme Court reasoned in *Zayoud*, is expressive in kind, by declaring the dissolution of the bond of citizenship following an individual’s breach of their duty of loyalty to the state. In presenting the new amendments for vote, MK Ofir Katz also stressed citizenship deprivation’s expressive benefits, noting that it declares Israel’s “complete disavowal of those despicable terrorists, who have not only committed a crime against the state and its residents, but also dare to receive monetary (and other compensation), thereby adding insult to injury.” Notably, this deviates somewhat from the Supreme Court’s approach, which framed deprivation as merely reflecting the individual’s own self-expatriation, as opposed to declaring the community’s disavowal of the individual.

Either way, it is undeniable that citizenship deprivation serves expressive aims; indeed, the practice's largely symbolic nature is why some consider it to be "all show, no bite." Recent commentary too has argued that citizenship deprivation seeks to "denounce an individual for failing to live up to the required citizenship standards." We can agree that the expression of community standards is a legitimate aim for governments to pursue. What is less clear is whether this should occur through citizenship deprivation, let alone deprivation in conjunction with deportation. After all, the affected individuals have already been punished, and an important part of what punishment does is to communicate a community's values and standards.

Nonetheless, many might and do believe that there are certain acts – e.g. terrorism or treason – that require something more than "ordinary" punishment to fulfill that purpose. And it might be that citizenship deprivation fulfills that function. Yet, it is not clear whether the pursuit of this aim can also sustain the deprivation to deportation pipeline the Knesset has now approved. The expressive aim of disavowal will already be achieved by degrading the former citizen to an alien or even stateless individual, without necessitating the further act of deporting them to a place they have never lived and that is under Israeli military control, thereby effectively cutting them off from their family and community.

The Knesset also posited that the new law serves the goal of deterrence, suggesting that "those who might otherwise consider committing heinous crimes may be dissuaded by the threat of" deprivation in conjunction with deportation. While this is a popular assumption across several jurisdictions, citizenship deprivation's deterrent benefits are more assumed than proven. Indeed, those who commit terrorist crimes are already risking life in prison or even death. It seems unlikely they'd be deterred by what appears to be a much less violent and severe sanction. The at best inconsistent evidence on the actual deterrent effects might be the reason the Knesset is now also considering a bill that targets family members of convicted terrorists for deportation. While this clearly raises the stakes for those contemplating acts of terror, even the Israeli Attorney General has stated that she is "unaware of a position from the Israeli security authorities according to which deterrence [...] requires such an extreme power."

A final, explicit aim the law arguably serves is the one of prevention, thereby framing deprivation -deportation as an effective measure to keep the public safe. Specifically, by severing the terrorist citizen's connection to a state with which they are at war, the government can remove their territorial access, which "allows for enhanced perceptions of general security with minimal violence." While the connection between deportation and enhanced security has intuitive appeal, there are certain problems with it. It is not clear, for instance, how the (collective) deportation of a multitude of Palestinians, unified in their proven willingness to commit acts of ideologically motivated violence towards Israelis, will actually enhance security, as opposed to merely lending the appearance thereof. For this to be the case, deportation would have to permanently, or at least meaningfully, incapacitate them from committing further attacks against Israeli citizens. This might be possible if deported to Gaza, given its homogenous Palestinian population and Israel's military control thereof. At the same time, however, we might also wish to question whether deporting and

confining already radicalized individuals to the same territory, with a population or government already hostile to Israel's national security interests, would actually enhance security. Past experience, such as Israel's deportation of Hamas militants to Lebanon in 1992, may indicate otherwise. Deprivation-deportation's utility for enhancing security appears even more dubious in case of the West Bank, which is also populated by Israeli settlers. As such, deportation of Palestinian extremists thereto would do little to protect Israeli citizens from further attacks. All of this is to say that if the goal is to actually enhance security, there are more direct and straightforward ways of safeguarding the citizenry, not least continued detention of those deemed a collective threat.

In *Zayoud*, the appellant unsuccessfully argued that hidden underneath the law's stated aims lay another retributive-punitive one. In rejecting this contention, the Court cited multiple statements made in the Knesset denouncing the idea that citizenship deprivation served punitive aims. Indeed, it warned specifically against framing deprivation as punishment, noting that this could lead to a "slippery slope" by legitimizing the practice for additional anti-social behaviors that fall outside the narrow category of breach of loyalty. This stance is somewhat surprising, as there is somewhat of consensus that if citizenship deprivation can be justified at all, it is only for punitive purposes. After all, punishment remains the central rationale for the legitimate deprivation of a number of important rights, not least the right to liberty and life. It is not immediately apparent why punitive aims should then not also be capable of justifying citizenship deprivation. Moreover, the Court's slippery slope argument appears to be equally applicable to any of the other rationales. However, none of this is to say that citizenship deprivation can be justified as punishment: there are arguably serious problems to this reasoning, not least the assumption that the reasons in favour of rendering citizenship a conditional status outweigh those we have for treating it as a secure, non-conditional status.

## **(II) The Compensation Requirement**

Aside from the aforementioned difficulties, there is a further, more fundamental problem with the current design of the law. One of the central changes is the addition of the "compensation clause," which renders only those citizen-terrorists who have received (in)direct payments from the Palestinian Authority subject to this new procedure. In other words, instead of being a sanction for anybody committing a breach of loyalty, the law specifically singles out Palestinians convicted of such crimes. One can only presume that the reason the Knesset denied any punitive aims of the law is related to the fact that the compensation clause clearly renders the use of deprivation-deportation a violation of the equality principle, designed to ensure that equal crimes receive equal punishment. However, even outside the context of punishment, liberal democracy's commitment to equality proscribes differential treatment for the same act on the basis of a protected, arbitrary characteristic such as race or ethnicity.

Yet, the discriminatory singling out of Palestinians convicted of terrorist crimes for deprivation-deportation is not the only problem with the compensation clause. As outlined above, it also serves to ground a rebuttable presumption that the individual

receiving the payment would not be rendered stateless, or rather “without status,” upon being deprived of their citizenship. This is an insidious, yet effective way of circumventing the general prohibition on statelessness within international law (though this is, despite assumptions to the contrary, not absolute.) In the context of Israel/Palestine, it also makes cynical use of the connection binding Palestinians in Israel, Gaza and the West Bank, allowing the Israeli government to subdue expressions of national sentiment such as raising the Palestinian flag, while at the same time weaponizing said connection to justify citizenship revocation.

We should be deeply concerned about this clear willingness to water down the protection against statelessness, especially where this occurs only with regards to a particular ethnic or religious group. As Hannah Arendt so astutely observed some 60 years ago, just because the totalitarian regimes of the 20th century collapsed, we should not assume that some of their “solutions” to the problems of political organization might not persist “in the form of strong temptations which will come up whenever it seems impossible to alleviate political, social, or economic misery in a manner worthy of man.”

