

Democracy as a Critical Infrastructure during a State of Emergency

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Protecting Democracy as an Essential Infrastructure in Times of Emergency

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Abstract

Democracy is an essential infrastructure in times of routine, but also, and perhaps more importantly, in times of emergency. This paper addresses the complicated relationship between emergency, democracy, and individual rights. The authors recognize that in times of crisis, such as natural disasters or wars, deviations from the formal facet of democracy (decision-making procedures) and from the substantive facet of democracy (the sphere of individual freedoms) may be justified to enable decisive action that will help overcome the disaster and return to normalcy. However, the strength of a democracy is reflected particularly in its protection of individual rights during emergency, and this, along with the preservation of democratic procedures of decision making, also contribute to a better and quicker recovery from the crisis. The authors assert that in times of emergency, deviations from the sphere of individual rights and from decision-making procedures of normal times are justified only if they meet the following criteria: the measure is required to achieve an essential need that is directly connected to the state of emergency, can significantly promote the achievement of that need, and is more beneficial than detrimental in terms of public interest and derogation of individual rights, there is no effective alternative measure whose derogation of rights or of democratic decision-making procedures is lesser, and the measure is applied equally and does not discriminate between different groups of society. The authors further claim that the lack of appropriate legislation and statutory institutions in Israel that prepare for, manage, and facilitate recovery from states of emergency, contributes to greater violations of individual rights and impairs the efficient and effective management of crises.

From this point of view, and focusing on the specific context of the Swords of Iron War, this paper lists recommendations for Government decision-making in times of emergency, for protecting civil and political rights – including the freedom of expression and demonstration, the right to access information, and the rights of privacy and equality, for protecting social-economic rights, and for fulfillment of the State's obligations towards its citizens in terms of housing, education, health, and mental health.

Preface

Democratic theory and practice both strive to establish a State that is committed to equality, to honoring freedoms, and to acting according to the rule of law. However, both theory and practice are focused on normal times. Under extreme conditions, such as natural disasters, human-made disasters, or wars, it is possible to justify a certain deviation from routine decision-making procedures (e.g. decision making by a reduced cabinet or enacting emergency regulations), and certain cases require a different balance between public interest and individual rights (e.g. limited freedom of movement during the Covid-19 pandemic). Nonetheless, the strength of a democracy is tested precisely by its protection of human rights in times of emergency, when the natural tendency is to endeavor to end the emergency or handle it even at the price of derogating from individual rights. History has shown that times of emergency may be a convenient foundation for long-term damage to democracy.

The appropriate and actual balance between collective goals and individual rights becomes particularly complex in times of war, when there is a bias in favor of security needs over civil and individual needs. Such a trend is even more pronounced where a part of the population is identified, to a certain extent and by certain groups, with the national group of the enemy. This added complexity usually exacerbates the damage that characterizes times of emergency caused by natural disasters. The current war in Gaza poses unique challenges, as it began with a series of horrible crimes against humanity perpetrated by Hamas terrorists on 10/07/2023. These crimes caused a sense of humiliation and abandonment of Israeli citizens by the government, and gave rise to intense emotions of fear, loathing, and vengeance. Such emotional undercurrents affect public discourse. They are also expressed, *inter alia*, in irresponsible statements by elected public officials, and can even disrupt rational decision-making processes.

Purpose Statement

The purpose of this paper is to outline general guidelines for protecting and maintaining the democratic infrastructure during wartime in general, and specifically in the State of Israel during the Swords of Iron War. Israel has been experiencing a deterioration of its democratic

mechanisms even before the war, and the current circumstances of a protracted war that is becoming an emergency-routine make outlining such guidelines particularly important.

Structure

Following a short introduction, the paper will address recommendations for policy makers for protecting the formal facet of democracy by maintaining structures and adhering to processes – manners of decision making during wartime (Chapter 1); recommendations for protecting the substantive facet of democracy by defending human rights from excessive erosion – freedom of expression, the right to protest, and the right of privacy during wartime (Chapter 2); recommendations for protecting the right of equality during wartime (Chapter 3); and recommendations regarding social-economic rights in emergency, and for the state's fulfillment of its obligations towards war casualties (Chapter 4). In addition, an appendix focusing on internal recommendation, for the academic community and civil society, is enclosed.

Introduction

The rule of law is a major tenet of democracy. By its virtue, everyone – government authorities as well as individuals – are equally subject to the law (no person is above the law), and collective decisions are made using general prospective rules. Similar to the distinction between the procedural facet of democracy – determining systems for decision making in a manner that will represent the citizens’ preferences, and the substantive facet of democracy – by virtue of which the individual’s freedoms and rights are protected against majority rule, one can also make the distinction between the procedural and substantive facets of the rule of law. The procedural aspect of the rule of law determines that each person has the freedom to perform any action, except those explicitly prohibited by law, while the authorities of State only have the power to act as the law authorizes. The substantive facet of the rule of law imposes limitations on the prohibitions that can be imposed on the individual (this includes the *ultima ratio* principle of criminal law), as well as limitations on the powers the law may bestow upon the State. This aspect is directed by a constitution or basic laws that limit the legislature, as well as by the separation of powers principle that prohibits the over-concentration of authorities by a single branch. Independent judicial oversight is a primary means of upholding both the procedural and substantive aspects of the rule of law, i.e. of upholding democracy in both the substantive and procedural senses.

A state of emergency can be the result of a natural disaster or a human-made disaster, or the result of war or an immediate security threat. When such circumstances are not predicted in advance and are not discussed comprehensively and in detail, there is no appropriate legislation that allows the State to cope with them, giving rise to the need to make swift decisions and actions, sometimes on a case-by-case basis. This condition undermines the rule of law principle (i.e. governing by virtue of general and prospective norms), and will probably lead to a greater derogation of rights as well as to less effective management of the extreme situation.

The conclusion is that an institutional and doctrinaire emergency infrastructure that is cemented in legislation is an essential democratic infrastructure. Without it, the State will not cope as well with the emergency, and the damage to the democracy will be greater.

The State of Israel does not have such infrastructure in place. There is no comprehensive legislation that includes the establishment of emergency institutions or that defines obligations pertaining to emergency preparation, there are no firmly-rooted processes for management of emergencies and decision-making procedures during emergency, including appropriate guarantees for protecting essential human rights and for minimizing the possibility of detracting from them arbitrarily and disproportionately, and there is no concept of emergency management and recovery. Formulating comprehensive legislation pertaining to emergencies (in the spirit of the home front protection bill proposals, which were submitted for the Knesset's approval but did not reach the third reading stage) will indeed mostly address future emergencies. However, in light of the predicted continuance of the current state of emergency, and in light of the attention currently directed to the subject – which according to past experience is not expected to continue once the war is over – **we recommend commencing efforts to improve the situation now, promoting a comprehensive emergency doctrine anchored in institutions and in legislation.**

1. Preserving procedural democracy in wartime and recommendations for processes to reduce democratic erosion

In a democratic system, there is tension between the desire for governability and between collective decision-making procedures that reflect professionalism – translated into in-depth studying of the issue, communicating credible information to the public, letting a variety of voices participate, suggesting diverse alternatives, discussing them in depth, and conducting a procedure that facilitates listening, dialogue and persuasion before decisions are made by the political leadership. Such a tension exists in normal times, but it is intensified in times of emergency. In an emergency, the government must function and provide urgent solutions for the complex problems posed by the reality of the situation, and routine decision-making procedures cannot all be upheld at all times. In certain cases, adapting special and shorter procedures to emergency requirements is appropriate, with the understanding and commitment that post-emergency democracy will remain in place, and the shortcuts implemented during the emergency will be abandoned when the situation returns to normalcy.

The complexity is clear: in times of crisis, leadership is required to make quick decisions and provide solutions for new and complicated problems. Among the public there is an understandably urgent expectation for a qualified and effective response. The longer such a response tarries, the more public trust is eroded and national resilience is weakened. Any cause that delays response to the public is considered an obstacle whose proposition must be flattened and broken down, and sometimes even eliminated in order to quickly move forward. However, as the decisions contemplated are dramatic, the price of mistakes arising from a shortened decision-making procedure may be extremely high and may damage first and foremost the quality and veracity of the decisions, but also public trust and national resilience. The responsibility that falls on decision makers' shoulders in times of emergency is therefore intensified.

The legislature has recognized that in times of emergency the government is sometimes justified in enacting emergency regulations, but using such a means is only justified if the normal legislative procedure cannot be conducted. When a legislative procedure is possible, the preferred avenue for emergency norms is sun-set laws (i.e. temporary legislation by the Knesset) over permanent legislation.

Legislation, emergency regulations, and government and administration resolutions in times of emergency must meet the following criteria:

1.1 Ensuring that professional propositions have the opportunity to be heard

In times of emergency, the responsibility that lies with professional officials, public servants in all fields, is increased. Public servants and their professional propositions are essential to formulating arrangements based on solid foundations (as opposed to off-the-cuff solutions). Their contributions to the discourse are multi-faceted, and incorporate professional knowledge and outlook, organizational memory, in-depth understanding of the issues, historical lessons, understanding of consequences based on experience, ensuring process integrity, and compliance with resources, laws, or processes. We must preserve our checks and balances; they play an important role. A professional, honest, and to-the-point reflection of reality, as harsh and complex as it may be, when delivered by professional elements, constitutes loyal and necessary assistance to the political leadership, as well as pure fulfillment of the public servant's mission.

Recognizing the inevitable erosion of procedures in times of crisis and the flattening of our routine procedural mechanisms should not lead us to the conclusion that such mechanisms are unnecessary or complicating our decision-making processes in vain, and that this is a good opportunity to get rid of them. Quite the contrary. The professional officials in the various relevant fields are required to complete, with the breadth and depth of their professional propositions, the democratic deficit created as a result of process erosion, short timetables, and public pressure, which may affect the pertinence of emergency decisions. That is all the more reason to manufacture procedural guarantees that will ensure as much as possible that these

solutions are the best solutions possible given emergency considerations, and that they are considered seriously in comparison to other alternatives and in light of all the factual data relevant to the decision-making procedure.

1.2 Maintaining process integrity

The concept of due process can be broken down to its various components, including: hearing the opinions of professional officials, exposure to relevant data and facts, considering alternatives, and bringing to government attention the identity of entities that should participate in the process, the time that should be assigned for public comment or for other stages that must be completed, for the political leadership's instruction to take shape and become a binding and applicable norm. Such components are not some bothersome bureaucratic burden, but stages that contribute to the creation of a better, more sophisticated product. Diverse and multiple opinions enrich the discourse, expand the subject matter, reduce the risk of becoming mired in misconceptions, and increase the chance of a better, more appropriate result. The political leadership would be well served by making its decisions while fully aware of all the relevant data and consequences, and not based on a partial perception of reality that may steer it to the wrong decisions. Making government decisions by phone poll instead of a physical meeting is injurious to process integrity, and should only take place when there is no alternative.

1.3 Reflecting the consequences of today's resolutions on tomorrow's reality

This essential stage of decision-making consists of outlining the alternatives that should be considered, and understanding in depth the meaning of choosing a policy now, in terms of the consequences and prices we will pay for it as a society and as individuals in the future. It includes identifying the limits of each alternative's legality and what cannot be accomplished within the suggested outline, but can perhaps be achieved in some other way that is less derogatory of human rights. It also encompasses budget delineation and clarification of priorities as they are reflected in decisions – how much will it cost and who is expected to pay the price, and is this prioritization reasonable and relevant to the state of emergency, or disconnected from it. As

part of this stage, internal debate among the political leadership should be allowed, and oversight elements from outside the executive branch should not be prohibited from posing questions or quandaries about the resolutions' intended purpose and their relation to ending the emergency.

Parliamentary oversight, judicial oversight, press oversight, and public inquiries regarding the rationale behind various government resolutions that the public is required to implement, are all essential mechanisms that can optimize the final resolution and sometimes even prevent resolutions that are wrong, populist, or do not serve the public interest. It is therefore important to uphold the legitimacy of criticism, as focusing the light on weak areas can improve arrangements in real time, assist the political leadership to optimize its resolutions, or save the country from certain future fiasco.

Moreover, allowing a respectful and legitimate space for criticism in the decision-making process even in times of crisis, including the presentation of alternatives and a widening of perspective when viewing the overall picture, will strengthen public trust in its government. Even when hard resolutions are made, such that restrict the future range of possibilities and as such are difficult to contend with, the process is more likely to gain public trust if the resolutions were well reasoned, were made with full awareness to the consequences, and were transparent to the public. Public trust in the impartiality of considerations and in the fairness and due process of decision making will also increase public cooperation and compliance with those resolutions. Due process also ensures an effective result that reflects procedural justice and professional foundation, while increasing solidarity and reducing alienation among diverse populations whose inclusion in the process and consideration of their point of view reflect, create and strengthen their involvement in society and the state.

1.4 Maintaining democratic vigilance by bringing forward the voice of silenced and underrepresented groups

Bringing forward the voice of silenced and underrepresented groups and listening to them is vital during routine times, let alone in times of emergency, when the risk of harming disadvantaged populations is higher. It would be fitting to educate those participating in decision-making processes in times of emergency to proactively and consciously weigh and

consider the obligation to protect human rights and minimize their derogation. Even when said derogation is required as a result of the emergency, incorporating disadvantaged populations and entities that represent human-rights interests in decision-making forums can prevent its inflation to a disproportionate scope as well as prevent unnecessary derogation or derogation that has no connection to the state of emergency.

It is also important to ensure that underrepresented populations from among those that were harmed by the state of emergency are involved in decision making. For example, some Gaza Envelope residents are not represented by the makeup of the current government, and there is concern that they are not being treated properly and that their interests are not considered in the same manner as well-connected sectors that receive budget allocations from government entities. Other groups include those evacuated from the south and north of Israel who should be incorporated in discussions about the evacuations, or women who should be incorporated in discussions pertaining to sexual assault during the 10/07 attack and in Hamas captivity, as well as in discussions of the overall gender implications of decision making, policies, the issues that are addressed and treated, consideration of options and alternative thinking.

Furthermore, in times of emergency that bring to the forefront existing social rifts – as in the current state of emergency in which the Israeli Arab community is required to constantly prove its “loyalty” and is increasingly exposed to instances of racism and to a boiling public climate – it is particularly important to ensure that policy decisions are not made based on exclusion that stems from stigma and prejudice towards these parts of the population. Active action should be taken to balance this bias, by incorporating this population in the decisions pertaining to it.

Decision makers should insist on active involvement and should endeavor to meet the population in the field, particularly harmed sectors that in times of emergency encounter even more limitations of mobility and accessibility to the Knesset.

1.5 Public alertness regarding process flattening and shortcuts

Emergencies give rise to a natural necessity to make quick decisions in order to meet urgent needs. To ensure that the sense of emergency and urgency do not flatten processes in a manner that damages its essence and its ability to generate thoughtful decisions, public alertness to

changes in decision-making processes is required. For example, decision makers should be careful of exaggerated use of smaller forums, to the point of practically nullifying the forums that are constitutionally or legally authorized to make decisions and that bear responsibility towards the public. The erosion of democratic oversight mechanisms or the creation of bypasses around them are also dangerous phenomena. Moreover, the format of discussions – video conferences (or “Zoom”) or conference calls replacing face-to-face multi-participant discussions – may have a negative effect on the ability to conduct a real discussion about the suggested alternatives, to allow exhaustive disputes, or to properly listen to experts and their professional recommendations, as well as on the quality of resolutions. Online or phone discussions are inherently flatter, and make it harder to clarify the advantages and disadvantages. This may lead to hollow discussions in which there is almost no difference between the input and the output, between the proposals discussed and the resolutions eventually made, so that the result is not based on an examination of the current issue but mostly assumes the conclusion.

Another segment of the flattening that characterizes states of emergency is the erosion of public-inclusion mechanisms, which may harm the quality of resolutions and install deficient processes and habits. During a time of emergency, public inclusion is replaced by one-sided hierarchic communication that lays down instructions or arrangements, instead of conducting a dialogue with the public that includes discourse, negotiations, and drawing conclusions. Once patterns that exclude the public become fixed, it is harder to reinstate them once the state of emergency is over, as it was seemingly proven that public opinion is not necessary to decision making.

The centralism of the forums that shape emergency arrangements contributes to the erosion of public trust and to the reduction of the transparency required of government ministries. Examples are formulating arrangement by the government alone, disregarding required parliamentary oversight, or abolishing judicial oversight over an entire section of government decisions, as attempted in the amendment to Basic law: the Judiciary for abolishing the cause of unreasonableness (which by now was struck down by the Supreme Court).

Decision making during emergency, using reduced processes, smaller forums and eschewing public inclusion, in rapidly-changing circumstances, is even more vulnerable to the conceptual fixations that threaten it even in times of routine. It is therefore appropriate to consider special mechanisms that will prevent such fixations.

To make decisions that have a justified purpose, even if human rights are derogated as often happens in times of emergency, it is significant to adhere to the appropriate legal means to derogate from those rights: is it done using a permanent provision that permanently anchors the derogation or limitation of human rights, or is it done using a temporary ordinance. It is also necessary to examine the negative implications of the derogation of rights and the price of the resolution, and not only the anticipated positive outcome of the policy. In light of the rapid change in circumstances that characterizes emergencies, it is necessary to form a mechanism that frequently examines the need for the right-derogating measure. Throughout the emergency, it should be examined whether the implemented interpretation of draconian arrangements by the authorities disproportionately expands the derogation of rights, or reduces the derogation to the scope necessary and essential for achieving the purpose the state of emergency dictates.

This flattening of processes, for which the public should be alert, also includes lesser and shorter communication of arrangements to the public, and lesser transparency. A significant diminution in communicating arrangements to the public, the making of non-transparent decisions behind closed doors, or the enactment of arrangements in an accelerated schedule that does not allow any oversight – not by the professional officials within the executive branch, nor judicial, parliamentary, press, or public oversight – are all warning signs that signify a crumbling of democracy.

1.6 Vigilance and increased action by the complementary branches (Knesset and Court) in times of emergency

Alongside guarantees for maintaining the right balance and mechanisms that protect against democratic erosion in times of emergency within the executive branch itself, we should educate, anchor, institutionalize and reflect a public expectation of increased responsibility on the part

of the executive branch's complementary branches. In other words, the public should expect maximum alertness, constant examination, and increased action by the Knesset and the judicial branch, to prevent excess and disproportionate erosion of human rights particularly in times of emergency. Due to the increased natural pressure that on the executive branch in times of emergency, and the public expectation for solutions, the complementary branches should protect it from itself and constitute an effective shield for the State's citizens and residents. The complementary branches are required to constantly ensure that the executive branch's actions are lawful, and that if human rights are derogated from as a result of the emergency the derogation is proportionate, and if such derogation is fundamental, they should verify that it is indeed necessary and that other diverse options were considered and eliminated for pertinent reasons.

The judicial branch should exercise its independence and objectiveness, exhibit increased alertness, and effectively protect the basic values of the State, in times of routine and emergency, when the muses sing as well as when the cannons roar. It must perform its role and not be intimidated by discourse that threatens its ability to do so, on the part of the government or the Knesset, or by attempts to label it as unpatriotic and as allegedly damaging the war efforts. Even, and perhaps particularly, in times of emergency, the judicial branch's role is judicial oversight over the other branches and protection of human rights.

As to the Knesset, to reduce concerns about the executive branch amassing unlimited governing power and loosening routine restraints, it is recommended to establish legal arrangements by legislation, in advance, to strengthen parliamentary oversight in times of emergency, empower the opposition in crucial oversight junctures, and add structural and procedural mechanisms that can act in these times of emergency. Such measures will have a desirable contribution to decentralizing the executive branch's power, and to reducing the chance of implementing unjustified draconian powers that are not directly related to or necessitated by the state of emergency. Other means may include: mandatory periodic examination of limitations imposed on the citizens as a result of the state of emergency; time limits and special procedures when allowing the executive branch to use draconian authorities in a manner that critically derogates from human rights; and empowering elements of the opposition in the Knesset in predefined

junctions of potential oversight over the executive branch (such as personnel changes in the Knesset's Foreign Affairs and Defense Committee, so that in times of emergency the position of the chair will be filled by an opposition member to ensure increased alertness to alternatives and to derogation of human rights).

These are all means of public alertness that should not be neglected in times of emergency, in order to ensure the ability of State institutions and diverse public oversight mechanisms to supervise government actions, to ensure that no steps are taken in the name of emergency that are unconnected to it, and that security and defense are not used as an excuse. As aforesaid, when cutting procedural corners is absolutely necessary, an arrangement for including external elements (professional officials and representatives of injured groups) in the early stages of the decision-making procedure should be considered.

Beyond these recommendations for decision making in times of emergency, it is important to stress three other points that have a crucial influence on the quality of resolutions in times of emergency and on the chances of quickly concluding the emergency.

1. In times of routine one of the duties of the political leadership – which seems obvious, but it is entirely unclear whether Israeli governments do indeed normally fulfill it – is to endeavor to **prevent** future states of emergency, and to invest thought and resources in preparing for various emergencies (in other words, risk management, mitigation and preparedness). The government should prepare in advance for expected and unexpected natural disasters, take preventive steps in preparation for a health crisis that may come, strive for diplomatic agreements that may prevent the next war, foresee the probable outcomes of various disasters, and establish coping strategies before they happen. In other words: the political leadership is required to plan and implement its policy and to afford significant thought and action to preventing disaster, and not only to manage it and cope with its consequences once it occurs.

2. Many public systems, some of which responsible for providing essential public services, have over the years undergone processes of privatization and politicization. These trends have diluted the ability of such systems to provide a professional, efficient and appropriate response to emergency situations.

The privatization of public systems turned some of them into funding and not executive agencies, and eroded the long-term professional knowledge that were acquired in them. When most of the services for citizens go from operation via the government and its branches to operation by external private bodies, the state institutions lack knowledge, have no control except through the budget, and do not have the ability to lead a comprehensive and integrated campaign in times of crisis. Privatization generates organizations that are usually chronically under-budgeted. The salaries they pay their employees and the quality of their service to the public is often inversely proportional to the importance of their services, and oversight over the quality of service is almost nonexistent and certainly not effective. In emergency situations, the impotence of these organization becomes glaringly obvious.

The privatization trend is exacerbated by the toxic culture of political appointments, which also erodes the professionalism of public service, hollowing it out from within. When entry to public service is based on connections and loyalty to the appointing element instead of on skills and experience, the chance of high-quality professional service to the public is reduced and official manners of conduct are eroded, giving rise to the concern that politically-connected or sector-connected groups will receive preference in the provision of public services as well, abandoning the general public interest. Moreover, it gives rise to the concern that many central public systems will completely fail in providing the public service they are designed to provide.

3. In light of the central government's concentration on the war efforts and the immense public effort required to manage the state of emergency, and in light of the differing needs of populations in various geographic areas and the need to cut bureaucratic corners, the transfer of additional authorities from central government to local government should be

considered. This must be conducted with supervision and oversight (*inter alia* to prevent corruption) while not delaying the transfer of funds and operations, allocating additional State resources to implement the authorities that are transferred to local government. However, we caution against a situation where the State denounces its responsibility over entire spheres of life, relinquishing them to local government, while failing to budget these spheres in a way that allows local government to provide the services without drawing from its own already dwindling resources.

2. Maintaining substantive democracy in times of war – protecting the rights of expression, protest, and privacy

Protecting the freedom of speech is a litmus test for democracy: freedom of speech intact – democracy is intact; freedom of speech is gone – democracy is gone. This is true both in times of routine and in times of emergency. Protecting the right of expression and congregation is a central foundation of realizing the right of human dignity. Protecting the right to freedom of speech is necessary in order to allow public debate about the government’s actions and failures. The expression of public opinion, in an organized, reasoned manner or in a concise catchy form, in words – oral or written – or by mass congregations and marches, these are all critical to ensuring that the government is operating in a pertinent manner to promote public interest, while protecting the rights of the minority.

Freedom of the press is an important component of the freedom of speech, and the authorities’ threats to shut down newspapers and media channels, or to hinder their financing directly or indirectly, as has been done since October 7th, constitute derogation of the freedom of speech.

The greater the importance of government resolutions, the greater the importance of open public debate about the government’s actions and policy. It is safe to say that in times of emergency in particular, in which crucial decisions need to be made in a short time, the importance of protecting the rights of expression, protest and press only becomes greater. Furthermore, experience shows that it is in the defense field in particular that decision makers are sometimes beset by conceptual fixations and prejudice, and the price of a mistake in this field can be particularly great; hence the greater value of free expression.

Nonetheless, the rights of expression and protest are not absolute, and the challenge is determining the scope of protecting them correctly, especially in times of emergency. The issue arises in three main contexts: limitations on offensive expressions, the scope of the right of protest, and the public’s rights to receive information (freedom of information).

2.1 Limitations on offensive expressions

In conjunction with the importance of protecting the right to express opinions on various issues under public debate, and even to phrase them assertively, there is also great danger in offensive expressions. Incitement to violence and terror, incitement to racism and other expressions of this kind, may not only disgrace those who are the target of the incitement, but also stir people to action. Almost every act of violence or terror stems from incitement, and instances of discrimination and racism are almost always the result of widespread incitement against certain groups. In this spirit the International Covenant on Civil and Political Rights determines that the exercise of the right to freedom of expression carries with it “special responsibilities” (Article 19(3)), and uncommonly for human rights covenants it charges the state to prohibit expressions that represent “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Article 20(2)).

The state’s duty to prohibit the publication of offensive expressions poses two complex challenges: firstly, refraining from overly derogating from the right to freedom of expression, so as not to silence the expression of critical opinions (or create a “cooling effect” that suppresses such expressions); secondly, equal application of standards that limit offensive expressions, especially in times of emergency and in the particular circumstances of Jewish-Arab relations in Israel. Legislation and case law have determined two main arrangements for the appropriate handling of these challenges, which must be upheld even in times of emergency:

- A. The limitation of offensive expressions and/or any penalties on account of them must be applied in an appropriate judicial proceeding and based on clear predetermined norms, and not by exercising enforcement rights by the police, employers or institutions of education. A meticulous examination is necessary to determine whether the limitation of expression is justified, and therefore the approval of the Attorney General of Israel is required in order to prosecute for offenses of expression. During this time in particular the State **cannot bypass the restrictions specified by law by nonjudicial enforcement of expression offenses, or authorize the Police to act in this matter without prior approval by the Attorney General or the State Attorney.**

B. Applying sanctions for offensive expressions is limited to situations where it is a necessary means of protecting appropriate interests. It is only justified to limit expression when there is real danger, with high probability (what the law calls a “near certainty”) that the publication will stir people to acts of violence. Israeli legislation determines exceptions to this rule, such as an explicit call for terrorism or incitement to racism, for which the conclusive presumption applies that these are dangerous expressions that should be justifiably prohibited. **Beyond these exceptions, and particularly if the expression is not an explicit call for terrorism, it should be meticulously examined whether the danger posed by the expression is so great as to justify sanctions.**

It is also advisable to distinguish between justification for prohibition and its actual enforcement. An explicit call for terrorism by a young teenager with no public role or status, within a small circle and not as part of a mob atmosphere, does not justify criminal enforcement. The real possibility that the expression will be followed by an act of violence or terrorism has a wide range, and is highly speculative. Hence criminal enforcement is required only where the “near certainty” is convincingly and clearly founded.

In times of emergency, adhering to these arrangements is particularly necessary, because of the government’s tendency to exceedingly limit expression, and because of a general atmosphere of intolerance on the part of the government and considerable sections of the public towards critical opinions. In case of doubt, it is better to uphold the freedom of expression, to ensure that the State’s democratic foundation is not subverted. As a rule, it is advisable to refrain from derogating from the right to freedom of expression, and exercise a more moderate response such as opposing expression (including a condemnation of the originally published expression) and educational measures.

2.2 Protecting the right to protest

A central component in exercising freedom of expression is the possibility to express a message within a group, while manifesting physical presence in the public space. Social media have indeed created an almost unlimited “public stage” for self-expression, and yet shared physical presence in public remains uniquely important, as demonstrated in the public struggle for

protecting the democracy throughout 2023. Legislation in Israel does not sufficiently protect the right to protest, as it assigns Police district commanders extensive discretion to determine licensing requirements for demonstrations, without legislative provisions for applicable standards. However the tradition that has developed in Israel in this context, to a decisive degree owing to meticulous judicial oversight and instructions of the Attorney General, extensively protects the right to protest. This tradition consists of three main arrangements:

- A. As a rule, the Police may not prevent a demonstration based on the content of the message that is expected to be propagated in it, even when the Police believes that the message is illegal. As aforesaid, limiting expressions based on their content can only be done in a judicial proceeding mostly after the fact, and in any case cannot be achieved in advance by an administrative decision, such as by the Police.
- B. The Police may limit demonstrations only in aspects of "place, time, and manner". That is, it may pose conditions for the manner of conducting the demonstration, when clearly justified, but cannot forbid the demonstration completely.
- C. The conditions the Police may apply are those necessary to protect the public's safety. These are mainly intended to protect the public from violence by the demonstrators themselves, or to protect the demonstrators from harm by others. In both cases, the Police may determine conditions as to the manner of conducting the demonstration only when they are necessary, meaning that there are no less harmful ways of protecting the public's safety, and only when the danger to public safety posed by the demonstration, even after reasonable Police preparation and deployment, is real and expected, with a very high probability ("near certainty") should limitations not be imposed. As a rule, when the expected danger is that others will harm the demonstrators, the Police must prepare and deploy forces to protect the right to protest against those wishing to cause harm.

The considerable effectiveness of demonstrations and protests in stirring people to action and in applying public pressure to change government policy, leads to a greater tendency to limit demonstration in times of emergency. The main reasons used to justify the limitation of demonstrations are lack of police availability for ensuring public order, because of other emergency commitments; and increased risk of violent incidents and disorderly conduct because of increased tension between social groups in times of emergency, as well as risks of terrorist attacks against demonstrators (including the threat of missiles on Israel). These are legitimate considerations, that may justify some limitation on the manner of exercising the right of protest. **However, as a rule, they cannot justify a complete prohibition on**

demonstrations, and certainly cannot justify prohibiting a minority group, like the Arab public, from demonstrating. Assigning Police officers to ensure public order during demonstrations is an important national mission, that should be included in the Police's priorities for allocating personnel in times of emergency. **The conditions the Police may impose on the conduct of demonstrations in times of emergency should be based on concrete considerations pertaining to each specific demonstration, as its circumstances dictate, and not on a general assessment stemming from the state of emergency.** Political considerations such as lack of sympathy or objection to the demonstration's content (e.g. objection to the war) are certainly impertinent and unacceptable.

2.3 The duty to provide information to the public

Upholding freedom of speech includes not only respecting each person's freedom to express himself or herself freely, but also communicating to the public information by government authorities. Disseminating information about the relevant situation and about plans the government is discussing is essential for allowing the public to critically discuss government policy, to suggest alternatives, and to formulate an opinion about the functioning of public officials.

The legislation of the Freedom of Information Law in 1998 did lead to a considerable improvement in information sharing, by virtue of the law's stipulation to not only provide information in response to an application to a public authority, but to also oblige public authorities to publish certain types of information by their own initiative. Nonetheless, the Law has yet to instill a national culture of public information sharing in a variety of aspects. A nondisclosure of information is particularly conspicuous in two contexts: the Law's comprehensive authorization to not disclose information "the disclosure of which may harm state security" (Article 9(A)(1) of the Freedom of Information Law), whose manner of implementation is to a great extent at the discretion of the public authorities themselves; and the comprehensive exemption from publishing "information concerning policy still being formed [...] information concerning internal discussions" (Article 9(B)). The Supreme Court had rejected a petition to force the government to disclose the minutes of its discussions, and had

authorized the practice that details of government discussions are not disclosed, and that disclosing the government's agenda and complementary material is at the discretion of the Cabinet Secretary. The agenda of the Ministerial Committee on National Security Affairs ("the Cabinet") is confidential, and the transfer of authorities from the government to this entity prevents the disclosure of any information to the public. Moreover, since the beginning of the war in Gaza in October 2023, the government is refraining from disclosing even the government's agenda and the proposed resolutions discussed, including the opinions accompanying these proposals.

These arrangements, and mainly the manner in which they are implemented, are in contradiction of emergency requirements. There is certainly justification to make discussions and resolutions concerning military operations confidential, and assessment of the need for confidentiality by an apolitical professional military entity is required in this context. Yet it is in times of emergency that public disclosure of information is of particular importance, in light of the significance of the resolutions required in times such as these, in light of special public interest in the information and in clarifying uncertainties, and in light of the fact that public trust is a central component of national resilience, which is especially relevant in states of emergency.

In this spirit, the government's Rules of Procedure stipulate a duty to disclose resolutions in particular in times of emergency (Appendix D, Article 8(C)): "the Government will inform the public, regularly and frequently, of its discussions and resolutions, as long as this information does not harm national and public security and essential interests of the State or of the public".

It is advisable to incorporate a stipulation in the same spirit into Basic Law: the Government, and to implement a recognition of the importance of disclosing such information not only about resolutions of the government and its committees, but also about discussions and resolutions by government ministries and other public authorities, as well as about secondary legislation proposals. As it is safe to assume that public authorities will tend to interpret "harm to national and public security and essential interests of the state or of the public" too extensively, it is important that pertinent decisions are based on an apolitical professional assessment, and that real-time professional oversight is conducted over these decisions.

In conjunction with the IDF spokesperson's daily briefing about the war, it would have been fitting for the government to conduct a daily briefing about all the civil issues pertaining to the state of emergency.

2.4 The right of privacy

Opposite the duty to disclose information to the public is the constitutional right of privacy, and the duty that applies to public authorities, as well as to other entities, not to disclose information protected by that right. Ongoing states of emergency require unusual management of the population, and often also management of unprecedented situations. That was the case during the Covid-19 pandemic, which was a civil crisis, and that is the case during war, which is a military crisis. Such situations may give rise to tension between the fundamental constitutional right of privacy, with all its complex aspects, and between various public interests. During Covid, for example, the need arose for identifying contacts, and exceptional means of surveillance were applied, such as GSS surveillance on Covid carriers and their contact with others.

Population management during war is complicated and consists of various aspects. Some are well known with a great deal of experience accumulated about them, like identifying the dead, contact with bereaved families, and compensations for victims of hostile actions – both for physical damage to body or property, and for financial damage. This war requires care for additional groups, particularly over one hundred thousand people who were evacuated from their homes in the western Negev and along the Lebanon border. The protracted evacuation gives rise to a series of civil issues that must be handled – housing, health services, welfare, education, etc. All of these require collection and sharing of information.

The Protection of Privacy Law regulates various issues of privacy protection. *Inter alia*, it addresses situations like photographing a person in one's private domain (may be relevant to photographing in casualties' homes), and disclosure of personal information (like information about abductees who were released). One of the fundamental principles of privacy is that information collected for a certain purpose cannot be used for another. The limitations are

subject to consent by the affected individuals, and to some protections and exemptions specified by Law, intended to balance the right of privacy and the public interest. It should be noted that the Law explicitly applies to the state. **Derogating from the right to privacy even in times of emergency requires meeting the provisions of the Law and the provisions of Basic Law: Human Dignity and Liberty, according to the limitations clause.** The Law also regulates the transfer of information between public authorities, and between a public authority and other entities, and permits the transfer of information when it is necessary in order for these authorities and entities to fulfill their responsibilities and roles.

The basic right of privacy is not void in times of war. There are detailed legal arrangements concerning it, even if they require updating due to technological and other changes. During war, there may be specific situations where there is tension between privacy and public interest (e.g. including videos of the physical attack on victims in a propaganda film of national importance), and such a tension may also exist in general situations of transferring information in order to manage the population. There is a proper legal framework in place for all of these circumstances, and the challenge is to comply with it and act by its provisions. In this context we will quote the Supreme Court in a privacy-related case – necessity does not bestow authority. If there are information needs that are not addressed by existing legislation, they should be examined thoroughly (if quickly), and legislated using one of the appropriate legislation tracks, subject to the provisions of Basic Law: Human Dignity and Liberty.

3. Protecting the right of equality during war

3.1 General recommendations

The right of equality – equality before the law and equal treatment by state authorities of all citizens – is at the heart of democracy in times of routine as in times of emergency. Inequitable conduct by the authorities during war decreases public trust and national resilience, and may even sabotage the recovery from the state of emergency. One of the prime challenges that Israel faces is in the relations between the majority and a large ethnic minority: how do we express the majority's wishes while respecting the minority's rights, in a country that defines itself as "Jewish and democratic" no less? How do we prevent the majority from using its power in a despotic, arbitrary, or discriminatory manner? Handling this challenge is even harder when a large section of Israel's ethnic minority identifies with the nation/national group that is in deep dispute, sometimes also expressed in armed conflict, with Israel and its residents.

The tension between those who belong to that national group and the State becomes more apparent and more intense in wartime. Among both publics, intense feelings of fear, loathing, hostility, and sometimes even hatred arise. These emotional undercurrents may explode and lead to acts of ethnic violence, including murder, as occurred during Operation Guardian of the Walls. The harmful effect of such events on public wellbeing and on the citizens' sense of security is incredibly severe. The attacker may be a neighbor or any person on the street, and the attacked – any person because of his or her affiliation to an ethnic group. A spiral of violence outbreaks may expand to all-out war, with a never-ending cycle of retribution and vengeance. Such a dire development may have long-term negative effects, which is extremely hard to mend, on the relations between the majority and the minority. In wartime, such a development also means the generation of another front that pulls efforts, resources, and personnel away from other fronts. **It is therefore fitting that the state will act to prevent such an outbreak, which is a possible scenario but is in no way inevitable and unavoidable.** We must be careful about what is perceived as concrete threats of violence that have no actual basis in fact, as they

themselves may adversely affect majority-minority relations and become a self-fulfilling prophecy.

The Israeli-Arab public's issues that stem from unequal treatment by the government are many and deeply seated, and this is not the place to address them in detail. Yet it is imperative to note that the Arab public has been suffering for many years from discrimination, neglect, and underdevelopment. In the context of the current war, we will mention the discrimination in missile defenses for Arab towns in times of routine and emergency. The Arab public is considerably overrepresented in the underprivileged levels of Israeli society, and its municipalities are some of the weakest in Israeli local government. **Maintaining the democratic infrastructure during war in the Jewish-Arab context requires strengthening the democratic infrastructure in terms of equality in times of routine.** We must strive for a new social contract between the Jewish and Arab populations, including a fundamental change of Basic Law: Israel as the Nation-State of the Jewish People, and legislation of a basic law for protecting the collective rights of cultural groups.

In terms of the effect on public consciousness – in times of emergency it is particularly important to emphasize the shared destiny and mission of Israeli different ethnic groups (a fair and just society), and the minority's contribution to the country. It is therefore essential for leaders to meet the Arab public's various representatives, to discuss problems, difficulties, demands and wishes, with solutions provided via a coordinating entity. At the same time, empowerment of local government and assistance to weak municipalities is also required.

Furthermore it is important to arrange many shared dialogue circles led by professional Jewish and Arab facilitators, at the society and community levels. We recommend having an open, effective and quick call center for complaints by Arab citizens about special difficulties they suffer due to the current situation, like difficulties in finding employment or accommodations, and that the entity responding to these applications should have the authority and capability to solve problems.

3.2 Recommendations concerning equality and freedom of expression

Expression and protest during wartime are a sensitive area of intergroup relations. The sensitivities arising from a state of war may manifest in intolerance towards exceptional statements (exceptional as perceived by Jewish perspective), or upsetting and provoking statements. An attitude of intolerance may manifest both by harsh responses in the public sphere and by increased criminal, disciplinary and administrative enforcement (revoking citizenship and residency) of expressions or publications that are perceived as problematic.

In considering how to handle such expressions, we should remember the cathartic effect of expressing oneself, especially in protest. Blocking this option may route negative emotions towards violence, and silencing it may only increase existing emotions of loathing and hostility. Moreover, we must remember that the all-out war on incitement is not innocent of politics. It is based on the narrative that there is no essential reason for Palestinian protest or resistance, and its goal is to strengthen this narrative.

Our recommendations for criminal enforcement and Police conduct:

1. Ensuring that the publication, if it was made in Arabic, and especially when it includes expressions from religious sources, is correctly translated and understood. In such situations, various interpretations or misunderstanding are possible and may have significant implications on our understanding of the published content. The same applies to various meanings attributed to the PLO flag.
2. It is crucial to understand that an Arab-Israeli's point of view may differ from that of a Jewish-Israeli. The former is informed also or only by publications in Arabic about the war and its consequences, while the latter is generally exposed only to Israeli media, which may paint a different picture of reality. It is possible that the Arab-Israeli has relatives in Gaza, maybe even some that have been hurt. Furthermore, one cannot ignore the negative effect that instances of discrimination and racism on the part of the majority have on the minority, including systematic harassment of Arabs in the Western Bank and plans for driving the Arab population away from Israel, as well as considerable financial difficulties.

Expressions of identification with or empathy for the non involved citizens of Gaza are not incitement. Calls for stopping the war are not incitement. Expressions of mistrust or disbelief

in the horrible events of October 7th or their full scope do not necessarily amount to incitement. To a great extent they are natural: it is harder for a person to believe that his or her own people are capable of such barbaric acts than to believe it about the people of another nation. Comparisons between the two groups (Jewish and Arab) about each group's contribution to the conflict or the hostilities are not incitement, even when they are not correct. Explanations about a correlation or a causal connection between Israel's conduct and acts of terrorism are not incitement.

3. We should refrain from collective stigmatization and from an attitude of "what has been will be again". That is we should not assume, based on the fact that there were instances of violence in this or that Arab demonstration during Operation Guardian of the Walls, that such violence will also occur in the demonstration contemplated now in an Arab town, especially if it is organized by different people.
4. We should refrain from legislating norms that have a discriminating effect, like exposure to inciting publications, revoking of citizenship and residency, death penalty, or a perception of terror that according to some in the Jewish public does not apply to Jewish terrorism.
5. A harsh and uncompromising line of enforcement is appropriate for violent offenses with a racist motive, on both sides.
6. Expressions of dehumanization (such as calls for genocide or for making it legal) are particularly dangerous in wartime, as they may convince and stir people to action. These must be battled decisively by public, educational, and legal means, especially when they are made by influential people.
7. We must refrain from one-sided enforcement that focuses on Arabs and turns a blind eye to offenses by Jewish people. Expressions with an implication of incitement to genocide or to war crimes, especially from officials or from people in the public eye, are dangerous – *inter alia* in terms of their potential effect on soldiers in the field – and are severely damaging to the Arab public and to Jewish-Arab relations. Politics must be rigorously ejected from the military, including religious or nationalistic politics, and unequal enforcement of the law regarding the right to protest must be avoided.

4. Maintaining substantive democracy in wartime – social-economic rights and the state's obligations towards war casualties

Democracy also includes social-economic rights that generate obligations of the State towards its citizens, such as the obligation to allow citizens to sustain themselves in dignity. A national disaster that leads to a state of emergency is by definition a mass casualty incident. In wartime, State resources – both material resources and the attention of decision makers – are naturally focused on the front line. Yet wars, just like other disasters, carry a huge social-economic price that the State must take into account long before the state of emergency or war actually occur. The need to uphold the State's obligations towards its citizens in the social-economic level emphasizes how important it is to regularly prepare for various emergencies during times of routine. It is of course the State's duty to prepare for protecting these rights in the early stages of the war or the immediate reaction to the disaster. This is especially true when the war begins with a traumatic national event with many civilian casualties. The scope of damage increases the longer the duration between the initial event and the restorative treatment of citizens. The civil contract, which according to common theoretical conceptions is the basic justification for the State's existence, is increasingly dissolving: not only did the State fail to protect its citizens' lives on 10/07, it continues to abandon them to cope by themselves with much of the damage cause on that date and ever since.

Three main spheres of life – **housing, education, and mental health** – arise as basic needs at this time, and two major principles – **equality and dignity** – should inform the administration how to operate in these spheres and others. We will address them here separately although they are all interconnected. For example, safe permanent housing also facilitates permanent educational facilities and better mental healthcare for trauma victims. These five terms are known as human rights, recognized in both Israeli and international law. Every democracy is obligated to protect them in times of routine and emergency. Establishing a national infrastructure that will protect human rights, and obliging the State to uphold its duties towards

its citizens as derived from Basic Law: Human Dignity and Liberty, especially in times of emergency, are cornerstones of national resilience and of a country's ability to cope with crises.

4.1 Housing

The right to housing has been recognized in case law as a basic right, stemming from the right to human dignity. In light of the State's terrible abandonment and negligence on 10/07, which led to the devastation of many rural and urban communities in the Gaza Envelope, and to the evacuation of many towns in north Israel, the State bears the duty to actively help residents of the north and the Gaza Envelope to realize their right to stable housing, and to find temporary housing until then. In fulfilling this duty, the State must consider community structures and solutions that take them into account. For this purpose, the State must invest resources in establishing new permanent towns and villages for communities that will not be able to return to their homes, and to provide high-quality temporary accommodations or alternative solutions for individuals and communities that cannot return at this point, for security or mental-health reasons. The scope of derogation of the right of housing in light of the events that started with the October 7th attack requires special arrangements for fulfilling this duty, such as by establishing a special administration that will act in collaboration with the affected communities and individuals.

4.2 Education

The right of education had also been recognized as a basic right in case law, giving rise to the State's duty to provide education from kindergarten to high school. As part of the damages caused by wide-spread evacuations and the derogation from the housing stability of considerable parts of the population, many children and youths have been disconnected from their education frameworks and do not have access to stable education. They are being damaged both socially and pedagogically in relation to their Israeli counterparts who are not undergoing similar moves and tribulations. At the same time, the need to absorb exceptionally large scopes of additional students without advance notice is burdening the absorbing education facilities. Without support and budgets, their conduct does not benefit either the

absorbed students – who have special needs in light of the trauma they have undergone and the tribulations of evacuation – nor the existing students who are exposed to the trauma and its victims up close.

Another aspect of derogation from the right to education stems from lack of sufficient protected areas in many education facilities throughout Israel. In light of the protracted crisis and the danger of missiles, many children in Israel are exposed to harm and to a sense of insecurity in their educational institutions, which affect their mental condition and consequently their schoolwork. Israel should therefore allocate particular attention to derogations from the right to education, and to providing an equal response for these derogations.

4.3 Mental health

The right to health had also been recognized as a basic right in Israeli case law. The 10/07 events caused extremely severe damage to mental health, in expanding circles of proximity and damage. Israel must establish an infrastructure that will allow permanent, stable, and long-term treatment for victims of the 10/07 attack themselves, for those evacuated, and for their families. Such an infrastructure is not temporary and specific, but a prolonged national need in light of the severity of events, the quantity of casualties, and the emergence of a collective national post-trauma. A lack of proper mental health care for Israeli citizens, and especially for those directly harmed by the 10/07 events, may lead to severe phenomena of violence, suicidality, and an expanding circle of damage.

As aforesaid, the administration of these three acute needs, as well as other needs that arise from the field, should be accomplished in adherence to two guidelines that are the basis of a democratic State:

4.4 Equality

A democratic State has an obligation to act in equality. The 10/07 events serve to clarify this obligation: the government's failure to provide assistance, even once the abandonment during the attack itself has concluded, exposed casualties to inequitable treatment. Populations who

when the events occurred had significant organizational capabilities and support systems – like Kibbutz communities – could organize and lean on these support systems. In comparison, individuals who only had national systems to support them – like city residents – remained without treatment, and required the services of civil society. In the immediate time range, civil society replaced the State in the provision of basic services, but this cannot be a long-term solution, and that is an extremely critical issue in terms of mental health and housing.

The State must identify individuals and communities from among the 10/07 casualties that are not being treated, and provide for them appropriate preliminary treatment. For substantive equality to exist, a national operation is required. For example, decisions about the deployment of treatments in terms of geography, quality, demography, etc., cannot be made without a national database that assesses needs and lacunas and takes into account professional considerations when deciding on the appropriate care. In this context we must mention that such databases, which are crucial for the provision of appropriate treatment, may derogate from the right to privacy, and may be used in an inappropriate manner that deviates from their original purpose. That is why it is important to prepare for emergencies in advance, and in the case of this current war only (renewed) trust in the civil contract can justify the establishment of such databases, while providing guarantees that they will only be used for recovery and for a limited time.

4.5 Dignity

The State's absence and its abandonment of its citizens on 10/07 severely derogated from the dignity of Israeli residents. The continued abandonment and lack of treatment in the weeks since constitute prolonged harm to the casualties' dignity. The message that emanates from this failure to provide acute needs such as housing and mental healthcare is that these victims are less important than other issues. In the current state of emergency in particular, the State must refrain from transferring funds for non-urgent needs and from sectoral considerations that are unrelated to the war. These actions only deepen the derogation of the human dignity of those who were harmed and now go untreated. Moreover, leaving civil society to provide treatment is also injurious to human dignity, as it signifies a violation of the social contract – the State does not provide assistance in times of trouble.

5. Summary and recommendations

Democracy is an essential infrastructure in times of routine and in wartime, and the quality of democracy in times of routine can predict the State's conduct in an emergency. A strong democracy strengthens the nation's trust in its leadership and in public institutions, promoting national resilience. It refines the quality of the collective decisions concerning the state of emergency, improves the State's ability to overcome the emergency and recover from it, and minimizes the derogation of individual rights.

To justify an emergency deviation from the decision-making procedures that normally apply, to expand the authorities of government and its offices, and to reduce the range and scope of individual rights, measures taken in times of emergency (legislation or temporary ordinance, emergency regulations or any other norm) must meet the following criteria:

1. The measure is required to achieve an essential need that is directly connected to the state of emergency. The measure can significantly promote the achievement of that need, and is more beneficial than detrimental in terms of public interest (including among underprivileged groups of society).
2. There is no effective alternative measure whose violation of rights or of a democratic resolution procedure is lesser.
3. The measure is unbiased and does not discriminate between different groups of Israeli society.
4. The measure is more beneficial than it is detrimental to rights and due process.
5. The measure is temporary and is taken only for as long as the concrete emergency need exists, and is subject to frequent examination of the current situation.

6. Appendix – Measures for protecting and strengthening the democratic infrastructures in emergency and routine

It is difficult to expect the Israeli democratic system to function properly in a time of emergency, when it is threatened and eroded in ordinary times. It seems that in times of emergency, the fragile Israeli democracy only deteriorates further, and the government attempts to take advantage of the emergency to further limit individual rights while public attention is turned to the war.

Several studies reveal common public perceptions about the erosion of Israeli democracy. For example, an annual survey by the Israel Democracy Institute, "[Israeli Democracy Index \(Hebrew\)](#)", found that there is a slow increase in the rate of those who agree with the statement "**the democratic regime in Israel is in grave danger**", from 45% in 2017 to 59% in 2022. Among Arabs, the sense that Israeli democracy is in grave danger is much more common than among Jews (multi-annual averages: Arabs: 71.5%; Jews – 47.1%).

A report by the Reichman University's Institute for Liberty & Responsibility, "[Survey of democratic and liberal values in Israel 2022](#)", examined the importance of various characteristics of democracy, and compared the desirable condition with the actual condition. It found that the most desirable characteristic is "the citizens choose their representatives in free elections" (procedural democracy), and not far behind is the characteristic "civil rights that protect the citizens from state persecution" (substantive democracy). However, an examination of responses about the actual condition of Israeli democracy revealed a significant disparity between the desirable and the actual condition, and characteristics such as government transparency and protection of minority rights are almost nonexistent in practice. The survey also examined the differences between the importance attributed to these characteristics among various political groups, and as expected it found significant differences between left and right, between Jews and Arabs, and between groups with varying religious affiliations.

The survey further examined various opinions regarding Israeli democracy, and found the following results (on a scale of 0 to 10):

To what extent is it important to you to live in a country with a democratic regime	8.79
To what extent do you think Israel is a democratic state	6.68
To what extent are you satisfied with the way the democracy is functioning	5.62
Do you think Israeli democracy today is resilient	5.22

Responses to both surveys attest that the public does wish to live in a democratic country, but in practice there is disparity between the desirable condition and the actual condition, and there is concern that **the democratic regime in Israel is in danger**.

It should be noted that the findings of these surveys were obtained before the “judicial overhaul”, and obviously before the events of 10/07/2023 and the Swords of Iron War. We may assume that surveys representing the year 2023 will reflect an even graver picture than that depicted in the 2022 surveys.

In light of the state of democracy as reflected in these surveys, and arising from the extensive literature on the subject, measures are required to strengthen substantive democratic infrastructures and public trust in the Israeli regime. The following are measures required to strengthen the democracy in times of emergency and routine.

Measures for emergency:

1. Establishing designated emergency teams (perhaps on a volunteer basis) to monitor and report to the public in real time about any violation of the rules of procedural and substantive democracy, each team in its own field: judicial system, press, individual freedoms, public service, equality, etc. Each team of experts will publish its findings, alert about their significance, and suggest actions to prevent the damage.
2. Establishing support teams (also on a volunteer basis) for evacuees and war casualties (physical damage, mental damage, and property damage), who will inform this public about its rights in terms of employment, housing, education, etc. The purpose of the teams is to assist in coping with bureaucracy and provide essential assistance. As the damage may have a special and unusual nature, the examination of compensations and benefits should be conducted not only based on existing laws but also according to what casualties deserve to receive from the State.
3. Establishing a team for preserving various values that are strengthened in times of emergency, such as solidarity, responsibility, commitment to society, volunteering, and kindness. These values are not foreign to democracy, and we should therefore examine how to preserve them in ordinary times.

Measures for routine:

In light of survey findings, the campaign for strengthening democracy (that can begin even during a prolonged state of emergency) must focus on several core issues that will improve democratic infrastructure in Israel and will clarify to the public that strengthening democracy improves their freedom, welfare, and living conditions. We suggest three avenues of action.

1. Education for democracy

Education is the key to creating a strong foundation of substantive democracy as a national infrastructure. This is a complicated issue that requires serious attention beyond this report, from the contents that should be taught to handling the sectoral division of the education system. The guidelines specified here in short indicate that education should not be limited to the formal education system, but should also include academia and the general public.

A. Education from kindergarten to adulthood

- After examining the pedagogic material concerning democracy in Israel, age-appropriate class outlines should be prepared, and efforts to convince the Ministry of Education to implement them in the classroom must be made.
- Rewriting the chapter on democracy in civil-studies class, adapting it to the various education systems, both national and other.

B. Education in academia

- Approaching the management of academic institutions and asking them to incorporate democratic studies in the education of every graduate in every faculty.
- Each higher-education student will be obligated to study at least one elective course out of a variety of courses concerning the foundations of Israeli democracy.
- Conducting a national debate competition about Israeli democracy.

C. Education of the general public

- Establishing an institution whose purpose is to prepare and publish lectures, workshops, podcasts and films about democracy.

2. Advertising and branding

- Branding substantive democracy in a new way that will clarify to the general public its indispensability as a national infrastructure.
- With the help of marketing experts, a series of short films and podcasts about Israeli democracy should be prepared and advertised in digital media.
- Recruiting a team of celebrities and influencers to advertise Israeli democracy to youths and adults.

3. Promoting democratic initiatives

- Promoting hackathons on democratic issues in Israeli entrepreneurship centers (in academia and other frameworks).
- Establishing business companies and public-benefit companies whose main business is Israeli democracy and democracy in general.

All the practical measures mentioned above require of course **recruiting resources and volunteers.**



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