The Legal Counseling and Legislation Department (International Law)

The Counter Terrorism Law 5775-2015

As part of Israel's ongoing battle against terrorism, the Israeli Government has been promoting the Counter Terrorism Bill 5775-2015. This bill was passed into law by the Knesset on June 15, 2016.

This detailed and carefully-designed new law is part of an effort to provide law enforcement authorities with more effective tools to combat modern terrorist threats while incorporating additional checks and balances necessary to safeguard against unreasonable violations of individual human rights.

The Law provides, among other things, updated definitions of "terrorist organization", "terrorist act" and "membership in a terrorist organization", detailed regulations for the process of designating terrorist organizations, and enhanced enforcement tools, both criminal and financial.

Some of the main changes in the Law are detailed as follows:

A. Act of Terrorism

The Law defines an act of terrorism as an act that constitutes an offence, or a threat to commit such an act, in regard to which all of the following criteria are met:

1) The offence or the threat are committed with a political, religious, nationalistic or ideological motive;

2) It was intended to incite public fear or panic, or to force a government, including a foreign government or an international public organization, to act in a certain way;
3) The offence committed or threatened to be committed imposed or would impose severe harm or imminent risk of severe harm to: a person's bodily integrity or freedom, public safety or health, severe damage to religious sanctities, infrastructure, systems or essential services, etc. Severe property damage will only constitute an act of terrorism if the goal of the act was to impose severe harm to a person's bodily integrity or freedom or public safety or health and there was a real possibility of such an outcome occurring.

B. Terrorist Organization

The definition of "terrorist organization" has been updated to include organizations that, although not directly engaged in carrying out terrorist attacks, support and finance terrorist organizations, thereby providing those organizations with important infrastructure enabling their activities. This expanded definition includes support organizations, whose purpose is aiding and abetting the activities of terrorist organizations, for example by raising funds to finance activities of the main terrorist organization, or organizing community activities aimed at encouraging recruitment of young persons and expansion of support for a terrorist organization.

C. Declaring an Organization a Terrorist Organization

The Law provides a detailed procedure for designating an organization a terrorist organization. The procedure was carefully designed to ensure due process by including, inter alia: a procedure for requesting a hearing prior to the finalization of the designation and a procedure for requesting the annulment of such a designation. These requests will be examined by an advisory committee which will serve its recommendations to the Minister of Defense.

D. New Criminal Offences
The Law establishes new offences, as well as rephrases existing offences stipulated in various laws, including:

- Heading and directing a terrorist organization (25 years' imprisonment, and under certain circumstances, mandatory life imprisonment).

- Holding a managerial position in a terrorist organization, being an active member, being a member, or recruiting members for the organization (5 to 15 years' imprisonment, depending on the level of involvement).

- Providing service or means to a terrorism organization, as well as providing means in order to commit an act of terrorism (five (5) years' imprisonment).

- Preparation to commit an act of terrorism, including digging tunnels in order to commit a terrorist offence (half of the punishment set for the offence).

- Providing training or guidance for terrorist purposes (seven to nine (7-9) years' imprisonment).

- Committing an action involving weapon/s or a weapon/s-transaction for terrorist purposes (20 years' imprisonment).

- Failing to prevent an act of terrorism when it is still possible to prevent the offence or its consequences (three (3) years' imprisonment).

- Demonstrating solidarity with a terrorist organization or with an act of terrorism, under the conditions detailed below, and incitement to terrorism, including via the Internet or social media. This offence consolidates and expands two existing Incitement to Terrorism offences found in the Penal Law 5737-1977 and the Prevention of Terrorism Ordinance 5708-1948.
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- The new Section prohibits:

- Publicly demonstrating solidarity with a terrorist organization

- Demonstrating solidarity with a terrorist organization, irrespective of whether in public or private, when under the circumstances there is a real possibility that such expression will result in the commission of a terrorist act, in the enlistment of additional persons to a terrorism organization, or in participation in training on behalf of the organization. One of the main objectives of this proposed offence is to tackle the problem of support groups for terrorist organizations (such as ISIS), which in many cases contribute to increased enlistment in these organizations.

- Publishing a direct call for the commission of a terrorist act. The Law does not make the materialization of the offence contingent on the probability of the act actually occurring as a result of such a call.

- Publication of praise and support of a terrorist act. In this case, the materialization of the offense is contingent on the probability of the act actually occurring as a result of such a publication.

E. Severe Punishments

The Law establishes substantially harsher sanctions for terrorism offences than those that currently exist. For offences defined as "acts of terrorism", the sanction stipulated in the Penal Law 5737-1977 would be doubled, up to a maximum of 25 years' imprisonment.

This Law sets life imprisonment at 30 years for a terrorism-related offence where life imprisonment is not mandatory (as opposed to the Penal Law, which sets life imprisonment at 20 years for criminal offences where life imprisonment is not
The punishment for an act of mass terrorism (which causes severe bodily injury to a large population), and for an act of terrorism committed using unconventional weapons, even where these acts do not result in death, would be life imprisonment (as a maximum sentence).

Mitigation of a life imprisonment sentence - according to the Law, a person sentenced to mandatory life imprisonment for a terrorism-offence would not be eligible for sentence-mitigation until 15 years have passed since the commencement of his/her sentence, and the minimum sentence would be 40 years (compared to 30 years for criminal prisoners).

F. Additional Provisions

The Law also includes the following provisions:

- Special provisions regarding detention periods and extension of detention for suspects of serious security offenses, including an obligation to report to the Knesset as to the use of these special measures. These rules, until now set forth in a temporary order, are included in the Law as permanent provisions.

- Legal authority to prevent several interrogatees in serious security offences from sharing the same lawyer, in the context of the same interrogation, where shared representation could potentially seriously compromise the interrogation.

- Non-application of the statute of limitations for serious acts of terrorism when the suspect is abroad and cannot be brought to Israel for trial.

- Establishing the admissibility of a witness statement as evidence when it is impossible to bring the witness to court as he or she has left Israel for the West...
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Bank, Gaza Strip or an enemy state. Such a witness statement would constitute supplementary evidence (i.e. capable of supporting the prosecution's evidence but not of producing a conviction in its own right).

- Extensive legal arrangements regarding forfeiture of terrorism-related assets. These arrangements provide tools for combating the wider circles of terrorist-support. The Law regulates authorities to seize and forfeit property during the criminal procedure as well as by administrative order of the Minister of Defense. It provides detailed procedures for the seizure of assets, hearings and appeals. The Law also allows for the seizure of property attempted to be smuggled into the Gaza Strip, based on the presumption that such property was intended for use in a serious terrorism offense or for transfer to a terrorist organization, unless proven otherwise.

- Detailing and expanding existing Police powers to prevent certain activities by terrorist-organizations and to close sites used by terrorist organizations for their activities, while setting clear criteria for the execution of such powers. Additionally, the Law grants the Police new powers to prevent activities organized by a terrorist organization, or organized by another party for the purpose of supporting and advancing a terrorist organization - for example, a rally.

G. Current Status of the Law

On May 30, 2016, following extensive and thorough deliberations in order to prepare the Bill for the Second and Third readings, the Constitution, Law and Justice Committee approved the amended Bill for the final session in the Knesset plenary. On June 15, 2016, the Knesset approved the new Law and it is scheduled to enter into force on November 1, 2016.