



Israel: Law on Freezing Revenues Designated for the Palestinian Authority

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Israel: Law on Freezing Revenues Designated for the Palestinian Authority

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SUMMARY In accordance with the Paris Protocol and Israeli domestic implementing legislation, Israel has been transferring tax revenues to the Palestinian Authority (PA) on a monthly basis. The Israeli Defense Cabinet decided on February 17, 2019, to freeze that portion of these revenues equal to expenditures by the PA in the previous year for payments to families of people killed, injured, or imprisoned for attacks on Israel. The government's authority to deduct amounts paid by the PA to terrorism operators and their families from its revenue transfers derives from a July 8, 2018, legislation. A precondition for freezing revenues is the submission of a yearly report by the Minister of Defense on such PA payments to the Ministerial Committee for Matters of National Defense and the Committee's approval. The Law does not expressly authorize the use of frozen funds for enforcement of judgments against terrorist act perpetrators or for furthering antiterrorism projects.

I. Introduction

On February 17, 2019, the Israeli Defense Cabinet reportedly¹ decided to enforce July 2018 legislation authorizing the freezing of funds from the total revenues it transfers to the Palestinian Authority (PA) in accordance with Israeli domestic legislation for implementation of the Israeli-Palestinian Interim Agreement (the Paris Protocol).² According to a media report, the amount deducted from the revenues transferred to the PA under the Israeli legislation equals 500,000,000 New Israeli Shekels (about US\$138,222,500).³

¹ Noa Landau & Jack Khoury, *Israel Freezes Transfer of 500 Million Shekels of Palestinian Authority Taxes*, HAARETZ (Feb. 17, 2019), <https://www.haaretz.com/israel-news/israel-freezes-transfer-of-500-million-shekels-of-palestinian-authority-taxes-1.6941078>, archived at <https://perma.cc/BG4H-8F5A>.

² Gaza-Jericho Agreement, Annex IV, Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., Paris, Apr. 29, 1994, <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/gaza-jericho-agreement-annex-iv-economic-protoco.aspx>, archived at <https://perma.cc/V28G-S4KK>. Implementing Israeli legislation includes the Implementation of the Agreement on the Gaza Strip Law and the Jericho Area (Economic Arrangements and Miscellaneous Provisions) (Legislative Amendments) 5755-1994, Ch. E, SEFER HAHUKIM [SH] [BOOK OF LAWS (official gazette)] 5758 No. 1497 p. 66, *as amended*, and Implementation of the Agreement regarding the Preparatory Transfer of Powers to the Authority (Legislative Amendments and Miscellaneous Provisions) Law, 5755-1995, Ch. B., SH 5758 No. 1526 p. 325.

³ Landau & Khoury, *supra* note 1.

The Palestinian Authority rejected its regular monthly tax transfer from Israel to protest the Israeli decision to deduct sums of money the PA has payed to the families of people killed, injured, or imprisoned for attacks on Israel.⁴

The government's authority to freeze revenues derives from a July 8, 2018, legislation, the Freezing of Funds Paid by the Palestinian Authority in Connection with Terrorism from Revenues Transferred by the Israeli Government, Law 5778-2018 (FFPA Law).⁵

This report provides information on the legal developments that led to the adoption of the FFPA Law and its provisions.

II. PA Payments to Prisoners and Families of Terrorism Offenders

On January 1, 2018, Israel's Ministry of Defense released the following "fees list" paid by the PA to persons held in Israeli prisons for terrorism offenses. The list is allegedly based on PA data sources:

Definition of the Prisoner	Monthly Pay
Imprisonment of 3-5 years	2,000 NIS ⁶
Imprisonment of 20-35 years	10,000 NIS for life
Married Terrorist	300+ NIS
Terrorist with Children	50+ NIS per child
Terrorist from Jerusalem	300+ NIS
Israeli [citizen] Terrorist	500+ NIS

Source: Data from Israeli Ministry of Defense as reported by Yoav Ziton, *The PA Fees List Paid to Terrorists was Exposed*, YNET (Jan. 1, 2018), <https://www.ynet.co.il/articles/0,7340,L-5068424,00.html> (in Hebrew), <https://perma.cc/8SUZ-3KX3>, and translated by the author, R.L.

⁴ Mohammed Daraghmeh, *Palestinian Authority Refuses Tax Revenues from Israel*, AP NEWS (Feb. 27, 2019), <https://www.apnews.com/71513b8cacfb4d7d9cda91d942dac456>, archived at <https://perma.cc/68QT-K8SK>.

⁵ Freezing of Funds Paid by the Palestinian Authority (PA) in Connection with Terrorism from Revenues Transferred to It by the Israeli Government, Law 5778-2018, SH 5778 No. 2730 p. 732, https://fs.knesset.gov.il/20/law/20_lsr_502711.pdf (in Hebrew), archived at <https://perma.cc/P2QB-8ZLA>.

⁶ On January 1, 2018, 1 New Israeli Shekels (NIS) equaled US\$ 0.29.

“For example, an Israeli terrorist, married with three children, who receives a life sentence, receives NIS 10,950 per month.”⁷

The data was reportedly disclosed in connection with a legal memorandum requiring the Minister of Defense to provide the Defense Cabinet with information on the annual payments by the PA to “terrorist operatives” at the end of each year, with the amount of such payments to be deducted from the money transferred to the PA by the Israeli government.⁸ According to then Defense Minister Avigdor Lieberman, “[t]he Palestinian Authority pays more than NIS 1 billion a year to terrorists and their families, thus encouraging and perpetuating terrorism. Stop it.”⁹

The FFPA Law appears to have provided a higher legal normative basis for the deduction of money paid by the PA to terrorism operatives and their families.¹⁰

III. Developments Leading to Adoption of the FFPA Law

Concerns over the financial support provided by the PA to persons involved in terrorist attacks and their families have been mounting in recent years. Such concerns appear to have centered on Israel’s perceived indirect facilitation of such payments by providing immunity in 2017 to Israeli banks doing business with the PA, and more recently, on Israel’s transfers of revenue that enable the PA to make the payments.

A. 2017 Cabinet Decision to Immunize Banks from Financing Terrorism Claims

In an effort to protect the PA from financial collapse, the Israeli Cabinet reportedly adopted a decision in January 2017 to grant “immunity from prosecution in Israel for Bank Hapoalim and Bank Discount, and indemnification for claims that may be filed against them abroad, on suspicion of involvement in financing terrorism.”¹¹ The decision was reportedly backed by US and European guarantees for indemnification in the case of lawsuits against the Israeli banks.¹² Accordingly,

. . . the arrangement with the Israeli banks will be for a period of two years. During this period, an alternative will be formulated that will transfer responsibility for the provision of services to Palestinian banks from Israeli private banks to another mechanism, probably the government. Representatives of the Ministry of Finance informed the Cabinet

⁷ Yoav Ziton, *The PA Fees List Paid to Terrorists was Exposed*, YNET (Jan. 1, 2018), <https://www.ynet.co.il/articles/0,7340,L-5068424,00.html> (in Hebrew), <https://perma.cc/8SUZ-3KX3>. Translations from the Hebrew here and throughout this report by author, R.L.

⁸ *Id.*

⁹ *Id.*

¹⁰ See discussion of the FFPA Law, *infra*, Part IV.

¹¹ Barak Ravid, *For Fear of the Collapse of the PA: The Government Granted Immunity from Prosecution to Banks Working with the Palestinians*, HAARETZ (Jan. 22, 2017), <https://www.haaretz.co.il/news/politics/1.3425881> (in Hebrew, by subscription), archived at <https://perma.cc/DRJ5-VFSB>.

¹² *Id.*

Ministers that the Governor of the Palestinian National Bank had sent an official letter in which he undertook to carry out all the necessary actions to ensure that the Palestinian banks comply with international standards regarding the prevention of money laundering and the financing of terrorism.

A senior Israeli official said that Palestinian banks currently do not meet international standards regarding the prevention of terrorist financing. According to him, the Governor of the Palestinian Bank has undertaken to solicit a review by the International Monetary Fund and implement any recommendation given by the Fund to prevent money transfers to [support] terrorism or money laundering.¹³

Opponents of the 2017 arrangement have suggested that,

[s]ince the Paris Protocol, the Israeli government, through Israeli banks, collects PA tax revenues from outside sources and transfers them to the Palestinian Authority. Since Israel is a signatory to the Anti-Money Laundering and Terrorism Financing Regulations, the PA can claim that it does not deal with terrorism if Israel transfers money to it.¹⁴

B. Government Draft Bill

Following the public disclosure of the “Fees List,” on March 12, 2018, the Israeli government submitted the Bill for the Deduction of Revenues Paid by the Palestinian Authority (PA) in Connection with Terrorism from Funds Transferred to It by the Israeli Government, 5778-2018 (DRPA).¹⁵

The DRPA contains similar provisions to those found in the private members bill that was finally adopted into law on July 2, 2018. The DRPA bill, however, had contained special provisions regarding the management of frozen funds and their potential use for compensation of victims of terrorism and special antiterrorism efforts.¹⁶ Such provisions were not included in the final text of the FFPA.¹⁷

¹³ *Id.*

¹⁴ Ami Rojkes Dombé, *This Is How Israel Cleans Palestinian Money from the Stain of Terrorism*, ISRAEL DEFENSE (Jan. 23, 2017), <https://www.israeldefense.co.il/node/28294> (in Hebrew), archived at <https://perma.cc/RH6A-KGE4>.

¹⁵ Deduction of Revenues Paid by the Palestinian Authority in Connection with Terrorism from Funds Transferred to it by the Israeli government, Government Draft Bill 5778-2018 (DRPA Bill), HATSAOT HOK HAMEMSHALA [GOVERNMENT BILLS (official gazette)] No. 1214, p. 845 (Mar. 12, 2018), https://fs.knesset.gov.il/20/law/20_ls1_491151.pdf (in Hebrew), archived at <https://perma.cc/S87H-JJD5>.

¹⁶ *Id.* § 5(a)-(d).

¹⁷ FFPA Bill No. 2015157, Bill’s Documents, <https://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=2015157> (in Hebrew), archived at <https://perma.cc/T3UT-JEVT>.

IV. The FFPA Law

A. Initial FFPA Bill's Explanatory Notes

The FFPA bill was initially submitted as a private members bill on March 20, 2018.¹⁸ Explanatory notes of the initial draft bill provided as follows:

According to Palestinian law, the greater the punishment imposed on the Palestinian terrorist, namely, the more severe the injury to the State of Israel and its residents, the greater the salary to which [the terrorist] is entitled. Many of the terrorists receive a much higher salary than the average wage per employee in the Palestinian Authority. In addition, the terrorists gain fame from the PA and its leaders.

For example, a terrorist involved in the murder of 66 Israelis and sentenced to 67 life sentences has received a sum of NIS 700,000 since his arrest in 2002.

While we are complaining to the world that the Palestinian Authority supports terrorism, the State of Israel is doing so to a considerable extent. It regularly transfers tax revenues it collects for the PA in accordance with Annex 5 to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (the "Paris Protocol"), without taking into account the PA's support for terrorism through these funds.

Therefore, it is proposed to deduct from any amount transferred to the Palestinian Authority [an amount based on] a government decision on the rate of Palestinian Authority support for terrorism during the past year. This rate will be determined in a report to be published by the Minister of Defense on the basis of data published by the Palestinian Authority at the end of each fiscal year.¹⁹

The following is a summary of the pertinent provisions of the final version of the FFPA as adopted on July 2, 2018.

B. The FFPA Law's Objective

According to the FFPA,

[t]he purpose of this law is to reduce terrorist activity and to eliminate the economic incentive for terrorism activity by setting provisions for the freezing of funds paid by the Palestinian Authority in connection with terrorism, out of the funds transferred by the Israeli government to the Palestinian Authority according to provisions under implementing laws.²⁰

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ Freezing of Funds Paid by the Palestinian Authority (PA) in Connection with Terrorism from Revenues Transferred to It by the Israeli Government, Law 5778-2018, § 1, SH 5778 No. 2730 p. 732, https://fs.knesset.gov.il/20/law/20_lsr_502711.pdf, archived at <https://perma.cc/P2QB-8ZLA>.

C. FFPA Definitions

1. Definition of “Amount Paid by the PA in Connection with Terrorism”

The FFPA defines an “amount paid by the PA in connection with terrorism” as including money or monetary value, paid by the PA directly or indirectly for each of the following:

- (1) For a terrorist operative, during his imprisonment or detention or after his release, or to members of his family, for being a terrorist operative;
- (2) For a prisoner or a detainee who is not a terrorist operative during his imprisonment or detention or after his/her release, or to his/her family, due to the commission of or attempt to commit an offense that causes harm to state security or public security.²¹

2. Definition of “Terrorist Operative”

For the purpose of implementation of the FFPA, a “terrorist operative” is generally defined as a person convicted of a terrorism offense under a list of specified laws, or a person who is held in custody due to suspicion of having committed such an offense.²² The definition also applies to a person held in detention under the Emergency Powers (Detentions) Law 5739-1979, or who has been convicted by a military court under relevant provisions in Israel or in Judea and Samaria (the West Bank).²³ Alternatively, the definition includes persons held under military orders or temporary detention orders concerning unlawful combatants²⁴ and those who committed terrorism and security offenses but have not been indicted or were killed in the course of committing or attempting to commit them.²⁵

D. FFPA Law’s Reporting Requirements

The FFPA Law requires the Minister of Defense to submit for the approval of the Ministerial Committee for Matters of National Security (Ministerial Committee) a report at the end of each year detailing the “amount paid by the PA in connection with terrorism” in that year.²⁶ In addition, the Minister must present the report to the Knesset Foreign Affairs and Defense Committee.²⁷

²¹ *Id.* § 2 (definition of “amount paid by the PA in connection with terrorism”).

²² *Id.* § 2(a)-(b) (definition of “terrorist operative”).

²³ *Id.* § 2(c)-(d).

²⁴ *Id.* § 2(e)-(f).

²⁵ *Id.* § 2(g).

²⁶ *Id.* § 3(a).

²⁷ *Id.* § 3(c).

If freezing of funding was carried out in the year prior to the submission of the report, the report should include, in addition to the “amount paid by the PA in connection with terrorism,” data on the impact of the said freezing on national security and foreign affairs of the state.²⁸

The report may be published by the Minister after its approval by the Ministerial Committee, unless the publication may constitute a threat to state security.²⁹

E. Freezing of Funds

The FFPA requires the freezing of an amount equal to one-twelfth of the total funds paid by the PA in relation to terrorism in the previous year from monthly revenues transferred by the Government of Israel to the Palestinian Authority. The total amount paid by the PA in relation to terrorism is based on data included in the annual report as approved by the Ministerial Committee.³⁰

The FFPA further provides for the transfer of frozen funds to the PA in full or in part, in the event that the report submitted by the Minister and approved by the Ministerial Committee indicates that the PA has not made payments in connection with terrorism in the year covered by the report. The decision of the Ministerial Committee to transfer frozen funds must be published.³¹

²⁸ *Id.* § 3(b).

²⁹ *Id.* § 3(d).

³⁰ *Id.* § 4(a).

³¹ *Id.* § 4(b).