

# The fallout from Poland's controversial new law on the Holocaust

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In recent years, Poland has become one of Israel's best friends in Europe. However, that relationship appears to have been badly fractured with Poland's President Andrzej Duda signing a bill into law on Feb. 6 which calls for prison terms for people blaming Poland as a nation for Holocaust crimes committed by Nazi Germany.

The Polish legislation currently includes the following paragraph:

"Whoever claims, publicly and contrary to the facts, that the Polish Nation or the Republic of Poland is responsible or co-responsible for Nazi crimes committed by the Third Reich... or for other felonies that constitute crimes against peace, crimes against humanity or war crimes, or whoever otherwise grossly diminishes the responsibility of the true perpetrators of said crimes – shall be liable to a fine or imprisonment for up to three years."

The legislation applies irrespective of where the "prohibited act" took place, and regardless of whether the offender is a Polish citizen or a foreigner.

After signing the law, President Duda said he would also ask Poland's constitutional court to evaluate the bill, which means it may possibly be amended in the future.

The Polish president signed the legislation despite protests from Israel, the US and Jewish community groups who are concerned that the law could undermine free speech about the Holocaust and could prohibit Holocaust survivors and witnesses from talking about crimes committed by Poles during WW2.

When the law first passed the Polish lower house on the eve of International Holocaust Remembrance Day, Israel's Prime Minister Benjamin Netanyahu was scathing, and said in a statement, "The law is baseless; I strongly oppose it," adding, "One cannot change history, and the Holocaust cannot be denied." Israel also postponed a planned visit by a top Polish national security official.

After President Duda signed the bill, the Israeli Foreign Ministry issued the following statement in response:

"We hope that within the allotted time until the court's deliberations are concluded, we will manage to agree on changes and corrections." It added, that Israel "continues to communicate with Polish authorities and has expressed its reservations regarding the new Polish law," and that the two countries have a "joint responsibility to research and preserve the history of the Holocaust."

The US also expressed "disappointment" over Poland's decision, with US Secretary of State Rex Tillerson stating that enactment of the law "adversely affects freedom of speech and academic inquiry."

European Jewish Association chairman Rabbi Menachem Margolin said that his organisation would initiate legal proceedings in Poland's Constitutional Tribunal.

Israel's Holocaust remembrance centre Yad Vashem described the decision as "unfortunate," noting that it had repeatedly warned Polish authorities of the flaws in the wording of the legislation, commenting:

“These flaws are liable to result in the distortion of history due to the limitations that the law places on public expressions regarding the collaboration of parts of the Polish population – either directly or indirectly – in crimes that took place on their own land during the Holocaust.”

Yad Vashem agreed that the term “Polish death camps” is erroneous, but is concerned that the law will have repercussions in the areas of Holocaust research, education and remembrance.

It is also important to note that Poland is not the only country trying to criminalise discussion about the Holocaust. Countries including the Ukraine, Lithuania and Hungary have also passed legislation that appears to undermine debate on the historical record of WWII and ignore local perpetrators of the Holocaust.

Polish officials who support the legislation claim that the law is necessary to prevent Poland from being wrongly accused of institutionalised participation in the Holocaust, as well as to combat expressions like “Polish death camps”, referring to what were actually Nazi German camps built on Polish soil.

Advocates of the legislation note that Poland was invaded and occupied by Germany in 1939, but unlike countries such as France, Hungary and Norway, there was no collaborationist government in Poland, and millions of Poles were killed in the war. Polish officials also claim that there is an exemption in the law for historic research and works of art.

However, the legislation also appears to ignore Polish crimes committed during the Holocaust. For example, Polish historian Jan Grabowski argues that more than 200,000 Jews were killed, directly or indirectly, by Poles during World War II. Ofer Aderet interviewed Grabowski and wrote in Haaretz last February:

“Grabowski cites a huge figure: more than 200,000. Precise numbers are very hard to come by, he observes, but immediately goes on to explain his calculations. One can start by saying that about 35,000 Polish Jews survived the war in Poland (excluding those who fled into the Soviet Union and returned after the war). We also know that close to 10 percent of Jews fled the liquidated ghettos in 1942 and 1943 – which would give you a number of about 250,000 Jews who tried to survive in hiding. Subtract the first number from the second and you will see the scale of the dark territory, in which the Poles, for the most part, decided who lived and who died.

There is no doubt, he writes in his book, that the great majority of Jews in hiding perished as a consequence of betrayal. They were denounced or simply seized, tied up and delivered by locals to the nearest station of the Polish police, or to the German gendarmerie.

A whole mechanism was set up to hunt Jews, he says. It operated under German supervision but all those on the ground were Poles: villagers who conducted night watches, local informers, policemen, firefighters and others. Together, Grabowski maintains, they created a dense web that made it almost impossible for those hiding to escape discovery.

Grabowski emphasizes that the actual number of Jews murdered by Poles is even higher than his estimate. [My count is very, very conservative, he notes, because I have not included here the human toll of the Polish Blue police, who were a deadly force not only after the liquidation of the ghettos but during these so-called liquidation actions. To support his argument, he recruits Emmanuel Ringelblum, the historian of the Warsaw Ghetto, who said that the Blue police alone were responsible for hundreds of thousands of Jewish deaths.”

The context of the law is also important as it appears that Poland’s governing Law and Justice party is using the legislation to promote nationalism as an election strategy, despite concerns it is emboldening Poland’s far-right.

Last November around 60,000 people marched alongside ultranationalists and Nazis to mark the 99th anniversary of Polish independence. The Washington Post reported:

“Some of the protesters carried banners and held up signs that had a clear far-right extremist message, including ‘Clean Blood,’ reported by Politico, and ‘White Europe,’ described by the Associated Press. The march was not

organized or officially promoted by the governing party. Yet officials refrained from condemning the march for days – and even publicly voiced support.”

The legislation may also be contributing to rising antisemitism in Poland, with Rafal Pankowski, a Warsaw-based political scientist and advocate, telling the Washington Post, “Anti-Semitism is not a new phenomenon here, but we’re seeing an explosion of that sentiment in popular media mainstream. It’s something that is very worrying.”

Meanwhile, Politico reported that Beata Mazurek, a spokesperson for the Law and Justice party, retweeted a comment about the Israeli Ambassador’s critical reaction to the law, saying that: “What the Israeli ambassador did makes it difficult for me to look at Jews with kindness and sympathy.” Politico also noted that “a prominent pro-government journalist called Israeli parliamentarians ‘greedy scabs’ while another state TV journalist called on Polish Jews who don’t like the law to move to Israel. Neither has apologized.”

AIJAC is also critical of the Polish legislation and has written letters to the Polish Ambassador of Australia. A letter by AIJAC Chairman Mark Leibler and Executive Director Colin Rubenstein to the Polish Ambassador included the following statement:

“We fully understand and share the concern that misrepresentations of history can result in misunderstanding of the Nazi genocide of Jews, much of which took place on the soil of occupied Poland. Yet this proposal, as drafted, would, we believe, be detrimental to Poland, Polish-Jewish relations and to vital academic relationships and scholarship.”

In addition, a letter from AIJAC Director of Community and International Affairs Jeremy Jones included the following: “I am gravely concerned that this legislation potentially will have consequences which will not affirm, but obscure, historical truth and that it will not result in enhancing the standing of the Polish people but instead bring about disrespect and foster cynicism amongst people who have seen Polish history already censored and distorted by the Nazis and then the Communists.”

Poland’s historical relationship with the Jews during and after WWII has been complicated. It is a history that certainly contained heroic tales of Polish resistance to Nazi occupation and of righteous Polish gentiles who saved Jewish lives, but it also includes individual Poles who engaged in antisemitism and/or were complicit in Nazi crimes, such as in the infamous massacre at Jedwabne in 1941. Furthermore, after the war ended, many Jews attempted to return to their homes were mistreated or murdered by their Polish neighbours, leading to pogroms in Krakow and Kielce.

During the Cold War years, Communist Poland largely ignored Jewish suffering during the Holocaust, presenting Poles and Communists as the key victims of Nazism. Since the fall of communism in 1991, Poland had come along way in accounting for its checkered history during and after World War II, but this legislation threatens to undermine the progress made and severely damage both Jewish-Polish relations, and Poland’s relationship with Israel.

<https://aijac.org.au/update/the-fallout-from-polands-controversial-new-law-o/>