

ENSURING TRANSPARENCY
COMMISSION OF INQUIRYS
AND INSPECTION COMMITTEES

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Policy Paper No. 5 (B)
Israel, May 2021

SUMMARY

State commissions of inquiry and government inspection committees are set up to examine, investigate, get to the bottom of the truth, and then present it in full to the public. However, the situation in Israel today is such that the public generally is not exposed to the full discussions and proceedings of these bodies, and at best get to learn the "bottom line" contained in their final reports. Many human rights are thus violated, including the right to access government information, the people's right to know, and the publicity of proceedings.

This policy paper seeks to ensure that the Israeli public is able to form its own impressions, as transparently and as directly as possible, about the debate and the process that leads to the decisions of commissions of inquiry and inspection committees. We seek to ensure that hearings are held openly and that the minutes of the deliberations are publicized before the release of the final report, in order to enable the public to learn what transpired inside these panels, as well as to safeguard the publicity of the proceedings, the right to access government information, and the people's right to know.

To that end, we seek to pass two amendments that will protect these rights continually and obviate the need for legal proceedings and repeated petitions by associations, organizations, or individuals:

1. Commissions of inquiry Law-1968 shall henceforth stipulate that commissions will be required to publish regular updates of the minutes of the proceedings up until the release of the final report, unless there is a relevant security, political, economic, or personal justification for not doing so.
2. Subsection (f) shall be added to Article 8A of The Government Law-2001, stating that publicity of the proceedings of inspection committees and publication of their findings, including the minutes, shall be in accordance with Commissions of inquiry Law-1968, making publicity of proceedings and publication of minutes the rule, and keeping them confidential the exception.

BACKGROUND

GENERAL

The inherent and essential need to ensure full transparency of state commissions of inquiry and government inspection committees has long been part of the political and legal debate in Israel. Already in 2007, then-MK Zehava Galon filed a petition with the Supreme Court concerning the "Winograd Commission,"¹ the body set up to look into the Second Lebanon War, demanding that it open its deliberations to media coverage and publish the minutes of the testimonies heard by it, thereby emphasizing the need for transparency when investigating events of such magnitude.

Such a requirement was imperative in the past, and has become even more important in recent years. In late 2020, the Defense Ministry initiated the creation of an inspection committee to examine the conduct of the political-security echelon regarding the procurement of submarines from the German company ThyssenKrupp (Case 3000).² Subsequently, Zulat President Zehava Galon asked the Attorney General to make sure that the hearings of the said committee are held openly and that minutes are published up until the release of the final report.³ This request was based on two Supreme Court rulings in the aforementioned Galon petition.⁴

The stampede at Mount Meron in late April 2021 that resulted in the death of 45 people and the wounding of hundreds is of such catastrophic magnitude that it calls for the establishment of a commission of inquiry to thoroughly look into the series of failures and blunders that led to this calamity and examine the conduct of all parties responsible, transparently, openly, publicly, and with a view toward providing real accountability to the public.

In light of the above, this policy paper seeks to elaborate on the legislative changes required to guarantee maximum transparency of both commissions of inquiry and inspection committees in order to anchor in law the principles already set in court rulings and ensure

¹ [Supreme Court Petition 258/07 MK Zehava Galon vs. Government Investigative Committee on 2006 War in Lebanon](#), 28 January 2007; [Supreme Court Ruling 1999/07: Winograd Commission To Release Publishable Portions No Later Than Two Weeks After Publication of Partial Report](#), Israel's legal website PsakDin, 19 April 2007 (Hebrew).

² [Gantz Sets Up Inquiry Into Submarines Procurement](#), Danny Zaken, Globes, 23 November 2020.

³ [Strashnov, Commit To Have the Submarines Committee Hearings Open to the Public](#), Zehava Galon, Haaretz, 29 November 2020 (Hebrew).

⁴ See footnote 1.

the publicity of proceedings, the right to access government information, and the people's right to know.

STATE COMMISSION OF INQUIRY

State commissions of inquiry deal with the factual examination of an event or debacle that is of great public importance and interest. In principle, such commissions are a quasi-judicial administrative mechanism that is often meant to quell public criticism and improve people's trust in the government.⁵ The mechanism prescribed in the Commissions of inquiry Law-1968 is relatively independent of the political echelon. The commission is established by government decision, or alternatively, with the support of two-thirds of the Knesset's State Audit Committee members, and its composition is determined by the President of the Supreme Court. The commission may call witnesses and hear testimony under oath in order to arrive at the truth. Finally, it is obliged to present a report with the results of the investigation and, at its discretion, may submit recommendations.⁶

To date, 18 state commissions of inquiry have been established on various issues, of which only four were set up by the State Audit Committee.⁷ Some of them have been appointed as a result of massive public pressure after a government debacle, such as the Agranat Commission that investigated the blunders of the 1973 Yom Kippur War and the Orr Commission that probed the events of October 2000. In general, commissions of inquiry enjoy a higher status than other governmental and parliamentary investigative bodies due to their broad and independent authority to select its members and publish conclusions.⁸

According to Article 18 (a) of Commissions of inquiry Law-1968, "a commission of inquiry shall deliberate in public: Provided that it may hold the whole or part of any hearing in camera if it deems it necessary so to do in the interest of protecting the security of the State, safeguarding morality or safeguarding the welfare of a minor." In other words, public hearings are the rule, while behind-closed-doors sessions are the exception. However, with regard to the publication of minutes, this is solely subject to the discretion

⁵ [State Commissions of Inquiry: Comparative Study](#), Knesset's Research and Information Center, 28 October 2003 (Hebrew).

⁶ Ibid.

⁷ [Between State Commission of Inquiry and Investigative Committee](#), Israel Democracy Institute, 1 January 2000 (Hebrew).

⁸ See footnote 5.

of the commission under Article 20 (c) of the law. That is to say, there exists no rule stating that the commission is required to publish the minutes of its deliberations.

GOVERNMENT INSPECTION COMMITTEE

A government inspection committee is a tool established by The Government Law-2001. Article 8A of the law stipulates that the government, or one of its ministers, may establish an inspection committee headed by a retired judge to look into a particular deed or misdeed,⁹ thus formalizing the government's ability to look into events under its jurisdiction that had previously been probed with other tools.¹⁰ In addition, the law stipulates that, with the government's approval, an inspection committee may be conferred the powers of a commission of inquiry, including the option of submitting recommendations to the political echelon as a result of its findings.¹¹

From the government's point of view, the advantage of an inspection committee is that it provides a tool for examining the conduct of the political and professional echelons in a particular event, without running the political risk of such a probe being carried out by an independent quasi-judicial body like a state commission of inquiry.¹² This is particularly underscored by the fact that the inspection committee's members are appointed by the relevant minister or by the government rather than by the president of the Supreme Court, as is the case with a commission of inquiry. This is probably the reason why mostly inspection committees have been set up since the enactment of Article 8A, and the use of commissions of inquiry has been abandoned.¹³

In response to a petition filed by Ometz¹⁴ [Citizens for Good Governance and Social Justice] and the Movement for Quality Government demanding that the Supreme Court order then-Prime Minister Ehud Olmert to establish a commission of inquiry to look into the events of the 2006 Second Lebanon War instead of the inspection committee set up by virtue of the aforementioned Article 8A (later known as "The Winograd Commission"), a majority ruling

⁹ [The Government Law \(2001\)](#), Nevo (Hebrew).

¹⁰ [Executive in Israel: Commentary on Basic Law: The Government](#), Shimon Shetreet, National Library of Israel, (Hebrew).

¹¹ Ibid.

¹² [You're Better Off Having No Expectations From Parliamentary Investigative Committee on Submarine Affair](#), Dr. Dana Blander and Dr. Chen Friedberg, Israel Democracy Institute, 13 November 2020 (Hebrew).

¹³ See footnote 10.

¹⁴ [Supreme Court Petition 6728/06 on State Commission of Inquiry on Lebanon War Rejected](#), Israeli legal website PsakDin, 3 December 2006 (Hebrew).

determined that an inspection committee is yet another auditing tool at the disposal of the executive branch and that the choice of one tool over another is up to the government.¹⁵ As it affirmed that neither entity has a normative priority, this ruling further reinforced the tendency of recent governments to cease establishing commissions of inquiry.

Contrary to the rules governing commissions of inquiry, the rules concerning the publicity of proceedings and the publication of minutes have yet to be regulated. All that exists at present is a stipulation in Article 8A (e) to the effect that the findings of the investigation and any recommendations must be submitted to the relevant minister. **Having said that, the aforementioned ruling in the Galon case states that if the inspection committee is given the same quasi-judicial powers as a commission of inquiry, the principle of publicity and the norms on freedom of information must also apply to the minutes of the proceedings.**¹⁶

¹⁵ See footnote 10.

¹⁶ See footnote 10.

THE VIOLATED RIGHTS

1. THE PEOPLE'S RIGHT TO KNOW

The people's right to know is intended to protect the public from concealment of information by government agencies and to allow citizens access to government and public information. Academic literature on the subject cites two main reasons for the protection of this right in democratic regimes.

The first is that the people's right to know is a derivative of freedom of expression in its positive sense. In other words, in order for citizens to enjoy their right to freedom of expression and to try and convince others of their opinions, the state must provide them with the infrastructure to obtain information. If citizens do not receive information, they are de-facto deprived of the ability to fully use the protection of the constitutional right to freedom of expression. Thus, ensuring the people's right to know and to receive information are prerequisites for the preservation of a proper political-democratic regime.¹⁷

The second reason is proprietary. Namely, since the people own the government, the information held by state authorities belongs to the people and is intended for it, and the government holds it only as a trustee. Therefore, the government must ensure that the public has access to this information, which belongs to it in the first place.¹⁸

During the second half of the 20th century, the people's right to know was constitutionally or legally recognized in many democracies, as well as in international treaties.¹⁹ A comparison conducted in 2005 among the Council of Europe's 54 member states and observers found that the people's right to know was enshrined in the constitution of 36 countries, while in most of the others this right enjoyed judicial or legal protection.²⁰

In Israel, the people's right to know has been recognized by the Supreme Court, but not as a constitutional right. For example, in *Shalit vs. Peres*,²¹ the Supreme Court accepted

¹⁷ [The Constitutional Right To Obtain Information](#), Yoram Rabin and Roy Peled, Dalia Dorner's Book, 2009 (Hebrew).

¹⁸ [Background Paper: The Constitutional Right to Freedom of Information](#), Dr Hillel Sommer, Dan Adar, and Amit Aliman, Herzliya Interdisciplinary Center, 23 June 2005 (Hebrew).

¹⁹ See footnote 17.

²⁰ Ibid. Rabin-Peled's article notes that the right to know is not explicitly written in the constitution of most long-standing democracies, whereas it is explicitly noted in that of countries that enacted a constitution relatively late in the 20th century, as by then there was awareness about the importance of this right.

²¹ [Supreme Court Ruling 1601/90 Shalit vs. Peres](#), 1 May 1990 (Hebrew).

the petition demanding the publication of the coalition agreements signed ahead of the Knesset's vote on the establishment of a new government.²² This did not change even after the Mizrahi Bank ruling that gave constitutional validity to Basic Laws, following which the right to freedom of expression and some of its derivatives (such as freedom of the press and freedom of association) were recognized as constitutional rights.²³

The enactment of the Freedom of Information Law²⁴ in 1998 further bolstered the legal protection accorded to access to government and public information by Israeli citizens and residents. The law clearly states that *"every Israeli citizen and resident has the right to obtain information from a public authority, according to the stipulations of this law."* Thus, every citizen has the option to demand information from public authorities even if it does not directly pertain to them, unless the information in question is liable to endanger state security, infringe on the privacy of other citizens, or its acquisition necessitates an unreasonable outlay of resources.

The existing arrangement regarding publicity of proceedings and publication of minutes (in fact, the non-publication) of commissions of inquiry and inspection committees violates the people's right to know in a number of ways. First of all, the current default in the law that does not require publication of the minutes, both of commissions of inquiry and of inspection committees, constitutes a dangerous slippery slope toward the disproportionate abuse of their powers. This is exactly the reason why the ruling in the Galon case determined that publicity would be the rule, and confidentiality the exception.²⁵

Secondly, given that the commission of inquiry tool has hardly been used since the enactment of Article 8 of The Government Law, the need has grown for regulating the rules concerning publicity of the proceedings of inspection committees in order to avoid "forum shopping." The latter is a legal situation where one party to the proceedings tries to choose the judicial forum that will give it the most significant advantage in the case. This advantage could be the product of legal arrangements between countries or acquaintance with the tendency of certain courts to provide favorable judgments to litigants. If different criteria apply to inspection committees and commissions of inquiry with regard to the publicity of proceedings, the government

²² See footnote 17.

²³ Ibid, p 497. See why the authors view the current fabric of legislation and court rulings enables recognition of the right to know as constitutional, either by virtue of these rulings or through constitutional enactment.

²⁴ [Freedom of Information Law 1998](#), Ministry of Justice.

²⁵ See footnote 1.

may "buy" the forum where it will be easier to conceal material information from the public in order to protect political or personal factors. Thus, the government may engage in "forum shopping" to choose the option where infringement of the people's right to know will be the widest and transparency will be the most limited.

Third, fulfilling the right to know is even more important in view of the desire to increase public trust in the government that underlies the decision to establish commissions of inquiry or inspection committees. As stated in the Galon case by Judge Ayala Procaccia: *"The principle of publicity has a supreme status in Israel's law and its democratic regime. It is intended to ensure the free flow of information on matters of interest to the public and to provide a vital guarantee for the ability of the individual and the general public to influence the conduct of the government.... Openness and transparency enable criticism, and at the same time increase the public's trust in the governing authorities and in the bodies auditing their actions."*²⁶

2. RIGHT TO ACCESS GOVERNMENT INFORMATION

The "rules of natural justice" have been recognized in Israel's administrative law by means of court rulings setting out red lines for the proper conduct of state authorities in order to protect the rights of citizens in various procedures. Among these rights is the right to access government information, which evolved from the "hearing rule." This rule stipulates that citizens must be allowed an opportunity to present their case concerning them personally before the decision-making authority formulates its final position. The right to access government information was recognized as a result, because citizens need to have access to relevant documents in order to be able to exercise their right to a hearing.²⁷

The right to access government information was initially recognized for the purpose of protecting the private interests of the applicant as part of the right to a hearing. For example, in the Benn case,²⁸ the court rejected a journalist's petition to get police information regarding the use of wiretaps, arguing that he failed to cite a source containing such a requirement.²⁹ However, protection of the right to access information has been bolstered over the years for public-political reasons, increasing the transparency of public information as a way of strengthening democracy, partly due to the fact that the information belongs to the public. Consequently, under this justification, citizens enjoy the

²⁶ See footnote 1.

²⁷ [Administrative Law](#), Volume 2, Dafna Barak-Erez, Israel Bar Association, 2010 (Hebrew).

²⁸ [Supreme Court Ruling 414/89 Benn vs. Justice Minister](#), Nevo (Hebrew).

²⁹ See footnote 27.

right to access information even without citing a personal interest in the matter in question.³⁰

The lack of transparency of the minutes of investigatory panels, as well as the fact that inspection committees are under no obligation to publicize the minutes of their hearings, magnifies the infringement of the right to access information on two counts: First, it violates our public right as having an interest in the proper functioning of government authorities, especially after they decided to set up a committee to look into their conduct. Secondly, freedom of the press is violated as a consequence since media outlets need this information in order to provide adequate coverage to the citizens. Moreover, the fact that the minutes can be classified as confidential for an extended period of time only exacerbates the inability of media outlets to review these materials in order to fulfill their public duty.

³⁰ See footnote 27.

OPERATIVE RECOMMENDATION

To prevent the violation of the people's right to know and the right to access information when a commission of inquiry or an inspection committee are established, and in order to standardize the tools available to the government to look into deeds and misdeeds, we at Zulat for Equality and Human Rights propose to advance a draft law that will include two legislative amendments:

1. In the Commission of Inquiry Law-1968, instead of the current Article 20 (c) stipulating that the commission may decide whether or how much to disclose of the minutes of its hearings, it will be stated that the minutes will be published at the latest by the date of publication of the final report, unless there is a security, political, economic, or privacy justification that requires retaining the confidentiality of relevant parts.
2. In The Government Law-2001, subsection (f) shall be added to Article 8A stipulating that publicity of an investigative committee's hearings and publication of its findings and minutes shall be in accordance with Articles 18 and 20 of the Commissions of Inquiry Law. Article 18 currently stipulates open-door hearings as the rule, unless there is a relevant justification for a closed-door session. Article 20 shall include the aforementioned amendment, making publication of the minutes the rule other than in exceptional cases.

Thus, the requirement of publication of minutes will be standardized for all types of investigative committees, which will guarantee the people's right to know and the right to access information, and will prevent the government from abusing the investigative committee tool to avoid publicizing the proceedings of commissions of inquiry.



In May 2020, we launched Zulat for Equality and Human Rights, a unique institute that combines research and analysis via social media networks and conventional media, and acts as a bridge between the political arena and civil society. Zulat's studies portray the political and public reality, but our work only begins there. As an activist think tank, we fight back by working to set an alternative agenda, change the public discourse, and advance policy and legislation to uphold democracy and human rights. We represent a broad perspective on human rights, that looks at universal rights, civil rights - private as well as collective, and social rights – as a whole. We believe all different types of rights depend and relay on one another.

[Read more about our mission on Zulat website](#)

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