

# **Pseudo Democracy**

## State of The Regime in Israel

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דמוקרטיה לכאורה:  
מצב המשטר בישראל

**או**

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**May 2022**

# **Pseudo Democracy: State of The Regime in Israel**

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May 2022

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\* English-language reference. All other references in this report are in Hebrew.

## Executive Summary

In recent years, parts of the Israeli public and others around the world have been surprised to discover that Israel's democracy is weaker than its image in the eyes of many of its citizens and leaders, and that a real threat exists to the rule of law and to such democratic institutions as the Knesset, the courts, and the media.

Zulat's report shows that Israel has never fit the model of a liberal democracy. In other words, its regime has been a hybrid of both democratic and authoritarian components, which at different periods has tilted toward one of those extremes.

The flaws in the regime and its inherent deep tensions have afflicted the State of Israel since its inception. To illustrate this, we will briefly refer to the authoritarian tendencies in the first decades of the state when the Mapai party was in power. As we will see, the democratic crisis did not begin only because of this or that prime minister but also due to historical, political, social, and economic circumstances, both in the domestic and international arenas.

David Ben-Gurion, Israel's first prime minister, took advantage of the special circumstances surrounding its creation to run the state using undemocratic legislative and institutional steps that prevented real equality among the various groups in society. These included the forceful relocation of certain groups to border areas, a policy that pushed them to the economic and political fringes of Israeli society whose implications resonate to this day. In addition, the long-standing refusal of the political and legal establishments to recognize the discrimination against immigrants from Arab and Muslim countries as a distinct group continued to impede the achievement of equality, as evidenced by today's social stratification.

The report focuses on the reigns of the Mapai and Likud parties, due to the similarities between their authoritarian tendencies, and since these are periods that shaped the characteristics of Israel's regime. The main chapter elaborates on the authoritarian trends in the 21<sup>st</sup> century that reduced and limited the democratic space, and discusses developments in the relationship between the legislature, the judiciary, and the executive and their impact on this analysis.

The report does not purport to exhaust such an intricate issue or elaborate on the full breadth of the theoretical and historical canvas, but to present relevant examples along a 74-year timeline. This is a particularly difficult endeavor given that events and processes are still ongoing and continue to affect us.

The illegal annexation of East Jerusalem, which is unrecognized by the international community; the military rule over the Palestinian population in the Occupied Territories, which entails systematic and continuous human rights violations by Israel and its security

forces; the declaration of a constant state of emergency and the resultant use of draconian powers (such as administrative detentions) – all these make the discussion about the nature of the regime and the quality of democracy extremely complex and problematic. Some would even argue that it is an exercise in futility given that the occupation and its attendant consequences inevitably affects processes within Israel, in addition to the enormous harm it inflicts on the Palestinians.

## Theoretical Background

Democracy and authoritarianism are perceived as the two ends of the scale against which political regimes are assessed and classified. These opposite poles embody sharp contrasts: rule of the people versus one-man rule, individual freedoms and rights versus a subject's duty toward a ruler, equality before the law versus partiality vis-a-vis select groups, checks and balances versus tyranny, protection of the rights of minorities that do not participate in government versus discrimination and persecution, separation of powers versus a judiciary and legislature subordinate to a ruler, a multi-party system versus a one-party regime or a ruling party propped by "puppet" parties, and the rule of law versus a ruler's arbitrariness.

Political science has seen the emergence of a trend that recognizes the existence of a spectrum or "gray area" in this equation: regimes that combine practices characteristic of democracies such as elections and representative institutions, coupled with the repression of opposition and minorities and human rights violations characteristic of authoritarian regimes.

To create an index that allows us to map out and assess the "degree of democracy", we will first expound on the main features and characteristics of the classical democratic and authoritarian models and of known hybrids, such as the ethnocratic and oligarchic models. A subsequent scrutiny of these characteristics will allow us to assess the degree of democracy and authoritarianism of the regime in Israel today.

As explained in the report, the criteria accepted by most researchers for assessing the degree of democracy or authoritarianism of any regime provides for the definition of Israel's regime as a hybrid. This model diverges from the dichotomous view (democracy or dictatorship) and, as stated, rests on the idea that it combines elements of both.

## **Authoritarian Elements in 20th Century Israel and Their Intensification in Early 2000s**

The report presents several examples in order to provoke discussion and reflection on the processes that have brought the State of Israel to this point.

During the 1950s, the Israeli regime was characterized by several major authoritarian characteristics: a Military Government in Arab localities, restrictions on freedom of expression and protest, muzzling of criticism by violent means, monitoring of rival entities perceived to jeopardize Mapai's rule, procurement of political support through a diverse system of rewards, restrictions on civil society organizations critical of the government, lack of a binding constitutional framework, a vague definition of the powers of various institutions coupled with appointments of associates to key positions, non-independent courts, and a media with a strong partisan bias run exactly as under the British Mandate.

One of the most acute manifestations of the authoritarian nature of the regime was the Military Government in the Arab localities, which began during the 1948 war and remained in effect until 1966 by virtue of the Defense Regulations (Emergency), coupled with restrictions meant to prevent Arabs from establishing any independent political organization, and a series of laws enacted by the Mapai-led Knesset that set the basis for institutionalized discrimination between Arabs and Jews.

Israel occupied the West Bank and Gaza Strip during the Six-Day War in 1967, and thus began to rule over 5 million Palestinians. This population has never been officially annexed to the State of Israel and has been under Israeli military rule ever since (the situation of the Gaza Strip changed after the disengagement in 2005, but the area basically remains under Israel's military control). In this respect, the regime that exists in the territories occupied by Israel can be defined as classically authoritarian. Millions of Palestinians in the West Bank and Gaza Strip are forced to live under martial law and military control, with no option of participating in elections to a regime that in effect controls their lives, and no protection of basic human and civil rights. In addition, hundreds of thousands of Palestinians in East Jerusalem have been forcibly annexed to the State of Israel as non-citizen permanent residents, ruthlessly separated from their families and communities in the West Bank with no option of electing state institutions and without equal rights.

In parallel with the legal discrimination against the Arab minority, Mapai pursued a policy of repression, discrimination, and deliberate relegation to the economic, political, spatial, and social fringes of Jewish immigrants from Arab, North African, and Balkan countries. Those who tried to change the situation suffered political persecution and threats, including by the police and Shin Bet. Mapai used violence to silence criticism of this policy and conducted

racist incitement campaigns against independent political organizations set up by these immigrants in order to discredit their legitimacy.

In the 1980s and 1990s, Israel made significant strides within the democratic-authoritarian spectrum in the direction of liberal democracy, including with regard to the status of the Arab minority living within its recognized borders.

The dramatic shift of power in 1977, when for the first time in Israel's political history the Right won a plurality of seats and ended almost 30 years of left-wing rule, along with the unity governments of the 1980s and the fierce political rivalry in those years, the first intifada in the late 1980s, geopolitical changes following the end of the Cold War and subsequent international pressure on Israel to make certain changes, the beginning of economic liberalization and the peace treaties with Egypt (1979), Jordan (October 1994) and the PLO (1993-1995) – all of these set the stage for significant changes in the regime. Those years saw the Knesset become a more substantial institution, playing a more central role in the oversight of the government's activities, along with growing liberalization and democratization amid a deepening of the ideological and social divisions within Israeli society. The judiciary's refusal to recognize Mizrahim [non-Ashkenazi Jews] as a discriminated population, Sharon's land rezoning reform, and the enactment of the Admission Boards Law continued the discrimination against this group, as well as against Israel's Arab citizens. On the other hand, the aforementioned liberalization included significant steps toward the formulation of a constitution, more free and egalitarian political competition, major improvements in freedom of expression and the press, alongside the depoliticization of law enforcement agencies and more checks and balances among the branches of government. However, while the democratic components grew stronger within Israel's recognized international borders, the military regime in the Occupied Palestinian Territories intensified and came to resemble military regimes in the 19th century, despite the Oslo Accords.

During these years, four Basic Laws were enacted that significantly boosted the constitutional framework, and in particular the protection of liberties and individual rights from any abuse of power by the government, after they were acknowledged as fundamental rights by the Supreme Court. Furthermore, the right to demonstrate and protest, which is a vital element of a democratic regime, was considerably bolstered in several Supreme Court rulings, thanks to which they became a right with protected constitutional status (but not in the Occupied Palestinian Territories, where the military regime does not recognize the right to demonstrate).

During the 1990s, there were three shifts in power between the Labor and Likud parties. This governmental instability attested to fierce political competition and the lack of hegemony of one of the parties. Against the backdrop of the Oslo Accords and political rivalry,

venomous attacks began against Yitzhak Rabin and Shimon Peres, which culminated in the assassination of Prime Minister Rabin on 4 November 1995, at the end of a peace rally in Tel Aviv. The assassination and the wild incitement that preceded it reflected the weakness of the democratic mechanisms in Israel and their limited ability to deal with intense political controversy.

An intensification of the authoritarian elements took place at the turn of the 21st century, during the tenures of Binyamin Netanyahu, Ehud Barak, Ariel Sharon, and Ehud Olmert, until the elections of March 2009, when Netanyahu was re-elected prime minister. This process, which redoubled against the backdrop of the second intifada, was largely influenced by the changes in the balance of political power in Israeli society after the assassination of Prime Minister Rabin. Thus, in parallel with the expansion of the settlement enterprise in the West Bank and rule over the Palestinian people, Israel saw the surge of delegitimization and discredit of the judiciary, the gatekeepers, the Left camp, and Israel's Arab citizens.

In 1999, Ehud Barak was elected prime minister to rebuild the peace camp after Rabin's assassination. Although he spearheaded the IDF's withdrawal from Lebanon, a move popular with the public, following the October 2000 events (a series of protests in Arab localities that escalated into violent rioting and resulted in the death of 12 Arab citizens in clashes with the Israel Police) and the failure of the Camp David Conference, Barak actually accelerated the dismantling of the Left and lost much Arab public support. Likud chairman Ariel Sharon, whose well-publicized visit to the Temple Mount in September 2000 triggered the outbreak of the second intifada, was elected prime minister in March 2001 thanks to the disappointment with Barak, as well as the Israeli Arabs' boycott of the elections and the severe security situation.

Sharon's two tenures were accompanied by suicide bombings inside Israel and fighting in the West Bank and Gaza Strip that entailed serious violations of human rights and international law. Against this background, Israel's control over the Palestinian population underwent dramatic changes. In addition, Sharon sharply criticized the Supreme Court's willingness to discuss the route of the separation fence and the actions of the security forces in the Occupied Territories, even though the Supreme Court carefully avoided to interfere in policy and actions in the area.

Concurrently with mounting suspicions about his involvement in several corruption affairs, in the summer of 2005 Sharon implemented his plan to "disengage" from the Gaza Strip, hatched primarily with his circle of associates and advisers and not subjected to any in-depth democratic process in the Knesset, the government, or the Likud party. This conduct

undermined the trust of parts of the public in the political system and set a precedent for future decision-making on crucial issues.

As these dramatic events unfolded, left-wing parties were pushed to the margins and struggled to find their place and voice, to take a critical stance on the protection of human rights and adherence to the laws of war, or to criticize the unilaterality of the disengagement plan and its expected consequences.

Prof. Daniel Friedman's appointment as justice minister during Ehud Olmert's 2006-2009 premiership on behalf of the Kadima party led to repeated clashes between the government and the justice system. Friedman advanced legislative initiatives to reduce judicial review, to cut the powers of the Supreme Court in its capacity as a court of appeals, and to shrink the concept of public interest standing, which ended up damaging the public's trust in the judiciary. Simultaneously with the campaign to delegitimize the judiciary and law enforcement systems, investigations were launched into serious corruption charges involving Prime Minister Olmert, which eventually led to his prosecution and incarceration.

### **Intensification of Authoritarian Elements During Netanyahu's Tenure as Israel's 9th Prime Minister**

In March 2009, Binyamin Netanyahu was elected prime minister for the second time and served in office continuously until June 2021. As noted, since its inception, Israel's regime has conformed to a hybrid model combining democratic and authoritarian elements. During Netanyahu's second tenure of the premiership, existing authoritarian elements strengthened considerably, and the regime notably tilted toward the authoritarian pole. Over the past 20 years, Likud became the undisputed ruling party (in effect, the new Mapai) that sees itself as the only legitimate one. Even after the formation of the Bennett-Lapid government, Netanyahu refused to recognize its legitimacy and members of the opposition continued to refer to him as "the prime minister".

In this part of the report, authoritarian trends and the contraction of the democratic space during those years are examined in detail. As already noted, in order to entrench his and the Likud's rule, Netanyahu took advantage of existing authoritarian elements to follow in the footsteps of Mapai and of many prime ministers who preceded him. In addition, he spearheaded radical legislative and public moves that broke the rules of the political game in Israel.

The report describes the process of diminishing the status of Basic Laws. The attempts to halt the formulation of a comprehensive constitutional framework that recognizes basic rights

preceded Netanyahu's second premiership, and began as soon as Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation were enacted. However, during his last decade in power, after a hiatus of almost 20 years, two additional Basic Laws were enacted whose content and characteristics do not conform to the accepted conceptual framework of a constitution in democracies: Basic Law: Referendum in March 2014 and Basic Law: Israel-The Nation State of the Jewish People (hereinafter, the Nationality Law), which includes components that conflict with the value of equality.

In addition, the legislation of amendments and changes to Basic Laws intensified as of the mid-1990s, in accordance with the momentary needs of the incumbent government. The frequency of these amendments and their ratification by a simple majority of MKs devalued their status as the foundation of a future constitution. Another factor that contributed to their devaluation during Netanyahu's last 10 years in office was their amendment through time-limited temporary laws and provisions, which further emphasized their transient and impermanent nature.

Netanyahu's governments spearheaded moves that reduced the Knesset's ability to limit and offset the powers of the government and the prime minister. A series of legislative measures pertaining to the annual approval of the state budget required by Basic Law: The Knesset neutralized parliamentary oversight of the executive (e.g., a temporary provision enacted in 2009 enabled the government to present a biennial budget that required Knesset approval only once every two years, while a provision enacted in 2014 extended the period of grace during which the government was allowed to operate without an approved budget, a situation that otherwise necessitates the dispersal of the Knesset).

The increased use of the Economic Arrangements Law, which allows for an accelerated legislative mechanism that is largely controlled by the government, is yet another example of the curtailment of the Knesset's powers. Since its enactment in 1985, this instrument was exploited by governments from all ends of the political spectrum. However, due to criticism by the Supreme Court, the media, and the Knesset's legal counsel, by 2008 it had been streamlined to only a few dozen articles. In contrast, as of the version submitted for 2009-2010, the Arrangement Law included several hundred articles each time.

Furthermore, an amendment to Basic Law: The Government in 2014 toughened the requirements for overthrowing the government via a no-confidence vote, in effect rendering it a completely theoretical option. Following this amendment, the no-confidence vote became a pure propaganda tool, which does not really threaten the government's existence. The Knesset was thus deprived of yet another instrument of oversight over the government and the balance between the executive and the legislature was further eroded.

The report also details a series of moves made during Netanyahu's rule to undermine the status and independence of the gatekeepers supposed to check and balance the executive branch. The "Rule of Clerks" campaign was launched in earnest in 2015 to delegitimize the civil service's professional echelons, alleging that ministry officials were subversive elements trying to run the government anti-democratically and carry out a "coup". The campaign was directed at professionals in public bodies and government ministries in general, but particularly targeted specific "clerks" who were involved in Netanyahu's investigations and criminal prosecution. In addition, as of January 2017, the Right began floating proposals to turn the job of a government ministry's legal counsel into a position of trust, thus to be appointed by the minister in charge and facilitating their firing when they disagreed with the minister's opinion. In other words, the purpose of these proposals was to attain accommodating legal counsels and to abolish their role as gatekeepers.

In yet another effort to harm the gatekeepers a campaign was launched to undermine public confidence in the Attorney General and the judiciary, and in their ability to oversee the executive branch. Although the Supreme Court in practice tended to accept the government's positions, exceptional critical rulings aroused the anger of right-wing politicians, who went on to launch a campaign of slander, delegitimization, and even incitement against it. The debate on ways to reduce the Supreme Court's judicial review and slash its powers became an integral part of the political crusade conducted by the Likud party, especially in the last years of Netanyahu's tenure. Most of those proposals remained mere declarations, but their goal was to intimidate the Supreme Court and, indeed, they may have had a chilling effect.

In addition, an initiative by then-Justice Minister Ayelet Shaked to transfer the Supreme Court's authority to hear Palestinian petitions on land issues to the Jerusalem District Court was approved as a draft bill, and representation of the state in court concurrently shifted from the Petitions Department in the State Attorney's Office (seen by Shaked as a leftist body acting against the settlements) to the Jerusalem District Attorney's Office. The move followed an extended campaign by right-wing organizations against the Supreme Court's stance on petitions seeking to evacuate outposts and settlements established on Palestinian private lands. In this respect, the report notes that the Right's initiatives to curtail the Supreme Court's powers tended to cite as justification its judicial review of government policy in the territories (despite the court's minimal interference in the subject), but their overall goal was to sweepingly limit the ability of the judiciary and of administrative law to oversee the government's actions in all areas.

It is in this context that the recurring initiatives to split the job of Attorney General should be seen. Although this is a legitimate and important debate and there are many who believe that the Attorney General holds too much power in his hands, the proposals often came up

in connection with cases where the Attorney General disagreed with the government or a minister on a specific issue, or with criminal investigations and indictments of politicians (this campaign intensified especially in the last two years of Netanyahu's tenure against the backdrop of the decision to charge him with serious suspicions of corruption).

Another legal battleground was the Judicial Selection Committee in charge of appointing judges. Repeated proposals to change its composition or to reduce the number of judges in the Supreme Court proved unsuccessful, but following an amendment to the Courts Law in 2008, Shaked succeeded to appoint 330 judges and registrars between 2015-2019, including six Supreme Court justices, some considered conservatives and others either religiously observant or associated with the Right and the settlements.

Yet another move to hurt the gatekeepers during Netanyahu's rule was a campaign to weaken the media's independence and work. Despite widespread criticism, Prime Minister Netanyahu served as minister of communications in 2014-2017, and meddled in the work of others appointed to the job over the years. At the same time, the media market underwent major changes in recent decades, partly due to interference by politicians and the government intended to reduce the media's latitude and to encourage the emergence of outlets with a clear ideological leaning that is supportive of the Likud and Netanyahu.

The constant denigration of the media and attempts to control it harmed not only the independence of editors and journalists, but also the views of the general public, which largely perceived it as "leftist" (even though studies showed that the mainstream media aligned largely with the government). Social media, too, became a fighting arena for freedom of expression, with efforts to silence opinions unsupportive of the ruling party, to intimidate harsh critics of the government, and demands to take disciplinary action against civil servants who posted their criticism online.

The report also addresses discriminatory legislation against both the Mizrahi and Arab populations (Israel's land policy, the Admission Boards Law and the Nationality Law), and laws specifically targeting the Arab public such as the Citizenship Law, the Nakba Law, and the Kaminitz Law, which deepened and emphasized the inherent discrimination against Israel's Arab citizens as reflected in legislation since the 1950s. In this context, the report focuses on the attempt to label the very notion of cooperation with Arab citizens as illegitimate in order to exclude them from the political arena, and describes other efforts to harm the political participation of Arab citizens, such as placing cameras at polling stations in order to intimidate and lower voter turnout in Arab society.

The report reviews the steps to exclude representatives of the Arab community from parliament, such as raising the electoral threshold in 2014, in a move designed to make it

harder for Arab parties to enter the Knesset, and intensified efforts to disqualify Arab parties and candidates from being elected to the Knesset by legislating amendments to Basic Law: The Knesset. This was followed in 2016 with Amendment No. 44, the so-called "Impeachment Law", which was meant to enable the termination of a sitting MK for the same reasons that invalidate running in elections.

A significant part of the report addresses the efforts to undo the political legitimacy of the Left by means of legislation (the NGOs Law) and incitement against left-wing and human rights organizations. A law was enacted to bar entry of human rights organizations into schools, and a policy of persecuting educators who cooperated with these organizations or identified with the Left was adopted, along with the promotion of nationalist ideology in schools.

Efforts were made to delegitimize the participation of left-wing activists and human rights organizations in the Israeli cultural sphere. These included bids to stop funding cultural bodies and works of art identified with the Left or with opposition to the occupation, as well as attempts to harm cultural institutions or even to close them down on the grounds that they collaborated with left-wing and human rights organizations. In this context, in 2018 the government advanced the Loyalty in Culture Law (its promotion was halted following the dispersal of the 20th Knesset) and the Nakba Law, which in addition to violating the freedom of expression of the Arab minority and its representatives, also led to countless demands by right-wing activists to prevent the staging of events by left-wing and human rights activists.

Another massive campaign waged during Netanyahu's tenure was against the notion of a boycott, both internal and external, as part of which the Law for Preventing Damage to the State of Israel Through Boycott was enacted in 2011. The Supreme Court approved the constitutionality of the law, but repealed the provision that allowed for compensation without proof of damage. Given that the law does not define support for a boycott as a criminal offense, in practice it was used primarily to intimidate left-wing and human rights activists and organizations opposed to the settlement enterprise and to the annexation of the territories.

The report also refers to the contribution of right-wing organizations to the government's attempts to muzzle the Left, such as the incitement campaigns by the group Im Tirtzu against left-wing and human rights organizations or against lecturers in higher education institutions identified as left-wing activists. The report points to the close ideological and practical cooperation that existed between the Likud party and the Netanyahu-led government and right-wing organizations that supposedly operated independently. The joint attacks against the various gatekeepers of democracy (academia, education, culture and the arts, and of course civil society organizations) were intended to send a clear message to the public that

critics of the government were Israel's enemies and "traitors", or in other words, they were outside the boundaries of political legitimacy.

Furthermore, this report is being published after it came to light that the Pegasus spyware had been used against Israeli citizens during Netanyahu's tenures. Even if an investigation shows that the disclosures in early 2022 were totally or partially incorrect, there is no question that the Israel Police purchased this dangerous system. What is more, surveillance of citizens and databases expanded alarmingly during the period in question through the establishment of a government biometric database, Israel Police's purchase of the Hawkeye surveillance program to track the movement of citizens throughout the country, the use of the Shin Bet's phone surveillance technologies to track suspected contagion during the corona pandemic crisis, and the advancement of several legislative initiatives such as a law that would enable the use of cameras for facial recognition in the public space.

Civilian surveillance does not only violate the right to privacy, but attests to the weakening of the checks and balances that supposedly protect the public from the illegal use of intrusive and draconian tools that are irreconcilable with a democratic regime. Even if one were to accept the view that civilian surveillance is justifiable in exceptional and limited circumstances and under tight legal scrutiny, this would necessitate a strong democracy composed of a robust Knesset, gatekeepers, judiciary, and civil society as well as an independent and powerful media. As detailed in this report, all of these were greatly weakened under Netanyahu's governments.

## **Conclusion and Operational Recommendations for Addressing Authoritarianism**

As stated, based on the criteria for assessing the degree of democracy and authoritarianism of any regime accepted by most researchers, it can be asserted that Israel's conforms to the hybrid model. Since its inception in 1948, the regime has combined authoritarian and democratic elements, tilting at different times toward either the democratic or the authoritarian pole. The country began its journey at the authoritarian end, which evidently influenced its evolution in the following years and continues to affect it to this day. A political culture, both policy-wise and in practice, was created while building the norms of government during the first two decades of the state, and some of those norms clearly took root. The regression that began in the 2000s may be thus seen as deriving from those precedents, especially given that Ben-Gurion's rule and his contribution to the construction and consolidation of the state went on to acquire mythical dimensions.

The 2000s, along with the political processes that took place during this period, were characterized by a shift away from the democratic pole and a return to the authoritarian and repressive practices of the old Mapai. The strengthening of the Likud's hegemony as the ruling party led to a continuous endeavor to dismantle the mechanisms of checks and balances, alongside efforts to restrict political rights and suppress a discourse critical of the government's actions and policies.

Zulat's legislative proposals are intended to update and reinforce existing legal provisions in order to strengthen the democratic foundations of the regime, deal with its authoritarian elements, and preempt the dangers that have grown acute in recent years. They also aim to repeal legislation that poisoned the political discourse, deepened rifts in Israeli society, contracted the democratic space, and branded citizens and organizations as a fifth column based on their ethnic and religious identities or because they hold political views contrary to those of the government.

These draft laws will not solve all the problems of the regime in Israel, but if passed, they may help strengthen the protections of human and civil rights, facilitate the struggle to curb authoritarian tendencies, and tilt Israel's hybrid regime in the democratic direction:

- **Strengthen the protection of civil servants' independence:** Zulat proposes to amend Article 31 of Basic Law: The Government to include under the definition of "government functioning" a phrase to the effect that the government will allow civil service professionals to act professionally, independently, and without fear or prejudice, and will uphold an autonomous, professional, and apolitical civil service. Zulat also proposes to anchor in Article 31 the case law whereby the Attorney General is the supreme authority on interpretation of the law for the government as long as a qualified court has not ruled otherwise.
- **Combat the politicization of the judiciary:** Zulat proposes to amend the Courts Law-1984 to include Article 7b stipulating that the Judicial Selection Committee and its members shall not propose the appointment of a judge based on his political or party affiliation or if other circumstances exist that might be construed as bias.
- **Strengthen the status of the opposition in the Knesset:** Zulat proposes to amend Article 3(a) of the Knesset Law-1994 to include a phrase to the effect that the opposition shall have adequate proportional representation in the committees.
- **Strengthen the right to participate in elections:** Zulat proposes to amend Article 7a of Basic Law: The Knesset, and anchor in it the Supreme Court's case law limiting the disqualification of a candidate or list to extreme and well-proven instances (as detailed

in the bill submitted to the Knesset). It is further proposed to ban the Central Elections Committee (CEC) from preventing a list or person from running for office on the basis of race, religion or religious group, nationality, country of origin, gender, sexual orientation, worldview, age, marital status, or parenthood. It is also proposed to stipulate that candidates will not be required to make any declaration whatsoever if the CEC seeks to disqualify them for reasons other than the above.

- **Eliminating the option of impeaching MKs for political reasons:** Zulat proposes to repeal Article 42a(c) of Basic Law: The Knesset and Article 8a of the Knesset Law-1994, which were enacted in legislative amendments known as the "Impeachment Law". Although these articles are almost impossible to implement, they cause enormous damage in practice as they are used to intimidate MKs and lists representing the Arab minority and to portray their very participation in the political process as illegitimate or provisional.
- **Repealing the Admission Boards Law:** Zulat proposes to repeal Articles 6c(a)(5) and 6c(a)(6) of the Cooperative Societies Ordinance, which allow for the rejection of a candidate based on amorphous grounds that may include irrelevant reasons.
- **Combat the politicization of the education system:** Zulat proposes to repeal Amendment No. 17 to the State Education Law-1953, known as "Breaking the Silence Law", and instead reinforce the teaching of democratic values by requiring the education minister to publish an annual report listing the steps taken by his office to develop a respectful attitude toward human rights.
- **Eradicating the persecution of left-wing and human rights organizations:** Zulat proposes to repeal the Duty of Disclosure Law (known as the "NGOs Law") requiring NGOs benefitting from funding by foreign state entities to disclose it in their annual reports.
- **Eliminating restrictions on freedom of expression via boycotts:** Zulat proposes to repeal the Boycott Law, which has hardly been implemented since its enactment but is used to intimidate and harass left-wing activists and human rights organizations and keep them out of the political arena and the public space. In addition, Zulat proposes to repeal Articles 2(d) and 2(e) of the Entry into Israel Law-1952, which restrict the entry of boycott supporters. These articles provoked a number of incidents that caused international embarrassment, and their application has in any case been limited by the Supreme Court's ruling on the Lara Alqasem case.
- **Abolishing censorship of memory:** Zulat proposes to repeal Article 3b of the Budgetary Principles Law-1985. This article, known as the "Nakba Law", triggered countless requests by right-wing activists, organizations, MKs, and government ministers to local authorities

and cultural institutions to cancel events or prevent the participation therein of left-wing activists and human rights organizations.

- **Anchoring the State Comptroller's role on human rights:** Zulat proposes to amend Article 2 of Basic Law: The State Comptroller, and stipulate that as part of his duties the State Comptroller will also examine the compliance of audited bodies with those human rights that have been recognized by Israel and specified in international conventions ratified by it.
- **Anchoring the role of internal auditors of public bodies vis-a-vis human rights:** Zulat proposes to amend Article 4(a)(1) of the Internal Audit Law-1992, and stipulate that the internal auditor of a public body will check whether its actions and those of its officers and functionaries are in good standing in terms of the protection of human rights.
- **Establishing a Human Rights Commission:** Zulat proposes to establish a Human Rights Commission in Israel, as have many other countries around the world, along with legislation and case law recognizing human rights.
- **Regulating the status of human rights defenders and their protection:** Zulat proposes to promote the Human Rights Defenders Bill designed to regulate the status of individuals and organizations working to protect human rights.
- **Distributive justice vis-a-vis land:** Zulat calls for distributive justice with regard to land in a way that recognizes the historical discrimination between population groups and equates the status of residents in different types of communities, both in terms of the allocation of land and the ability to change its designation.
- **Anchoring social rights:** Zulat calls for the expansion of Israel's constitution to include social rights, in order to correct the deep inequality created between Jewish immigrants from European and American countries and Jewish immigrants from Arab, Muslim, and African countries, and native Arabs. The right to a dignified life, housing, and proper education must be enshrined in the constitution, in order to correct the historical wrongs that affect Israeli society to this today.

## Introduction

This report describes the characteristics of the regime in Israel and shows that, since the establishment of the state in 1948, it has conformed to a hybrid model combining democratic and authoritarian components. At different times, the regime has tilted toward one of the extremes: democratic or authoritarian.

The flaws in the regime and its inherent deep tensions have afflicted Israel since its inception. To illustrate this, we will briefly refer to the authoritarian tendencies in the first decades of the state when Mapai (Workers' Party of the Land of Israel) was in power. As we will see, the democratic crisis did not begin only because of this or that prime minister but also due to historical, political, social, and economic circumstances, both in the domestic and international arenas. David Ben-Gurion, Israel's first prime minister, took advantage of the special circumstances surrounding its creation to run the state using undemocratic legislative and institutional steps that prevented real equality among the various groups in society.

These measures included the forceful relocation of certain population groups to border areas, a policy that pushed them to the economic and political fringes of Israeli society whose implications resonate to this day. In addition, the long-standing refusal of the political and legal establishments to recognize the discrimination against immigrants from Arab and Muslim countries as a distinct group continued to impede the achievement of equality, as evidenced by today's social stratification.

As will be explained in more detail below, the report focuses especially on the reigns of the Mapai and Likud parties due to the similarities between their authoritarian tendencies, and since these are periods that shaped the nature of Israel's regime.

In the main chapter of the report, we will elaborate on the changes and authoritarian moves shrinking the democratic space in the 2000s. We will discuss developments in the relationship between the legislature, the judiciary and the executive and examine how they affect this analysis.

The report does not purport to exhaust such an intricate issue or elaborate on the full breadth of the theoretical and historical canvas, but to present relevant examples along a 74-year timeline. This is a particularly difficult endeavor given that events and processes are still ongoing and continue to affect us. The illegal annexation of East Jerusalem, which is unrecognized by the international community; the military rule over the Palestinian population in the Occupied Territories, which entails systematic and continuous human rights violations by Israel and its security forces; the declaration of a constant state of emergency and the resultant use of draconian powers (such as administrative detentions) - all these

make the discussion about the nature of the regime and the quality of democracy extremely complex and problematic. Some would even argue that it is an exercise in futility given that the occupation and its attendant consequences inevitably affects processes within Israel, in addition to the enormous harm it inflicts on the Palestinians, who have been its immediate victims for 55 years.

Since June 2021 there has been a new government in Israel. While parts of the public believe that nothing will change, for a large part of the population this government represents an opportunity to strengthen the democratic foundations of the regime, deal with its authoritarian elements, and preempt the dangers that have grown acute in recent years.

## **Theoretical Background**

Democracy and authoritarianism are perceived as the two ends of the scale against which political regimes are assessed and classified. These opposite poles embody sharp contrasts: rule of the people versus one-man rule, individual freedoms and rights versus a subject's duty toward a ruler, equality before the law versus partiality vis-a-vis select groups, checks and balances versus tyranny, protection of the rights of minorities that do not participate in government versus discrimination and persecution, separation of powers versus a judiciary and legislature subordinate to a ruler, a multi-party system versus a one-party regime or a ruling party propped by "puppet" parties, and the rule of law versus a ruler's arbitrariness.

Political science has seen the emergence of two trends that challenge this dichotomous division: one recognizes the multifacetedness of democracy and seeks to break it down into its various components and verify the presence of each one of them to enable a more accurate comparison and quantification of the degree of democracy of a regime, rather than perform a perfunctory rundown of a "check list". The other recognizes the existence of a spectrum or "gray area", as in the case of regimes that combine practices characteristic of democratic regimes, such as general and fair elections and representative institutions, concurrently with the repression of opposition and minorities and the violation of human rights characteristic of authoritarian regimes in their diverse manifestations.

To create an index that allows us to map out and evaluate the "degree of democracy", we will first expound on the main features and characteristics of the classical democratic and authoritarian models. A subsequent comparison with the attributes of Israel's regime will enable us to assess its degree of democracy and authoritarianism today and draw conclusions about the directions it will follow in the future.

### **Basic Principles of Democratic Regime**

Academic literature contains numerous and varied definitions of the concept of democracy. However, there is broad agreement on several basic principles common to all these definitions.

#### **Rule of the People**

This is the basic principle embodied in the term democracy: the people elect their leaders for a definite period of time and give them the authority to govern in their name and for their sake. Leaders bear responsibility and are accountable to the public for their actions. This principle is realized by holding regular elections at set times. These elections must be free of government intervention, open to the participation of all, and governed by a system

of laws and "game rules" known in advance that are fair and equitable to all candidates. The possibility of government change through elections should be reflected in true political competition between the candidates. A one-party regime or one with a permanent ruling party flanked by "puppet" or "satellite" parties cannot be considered a democracy.

### **Rule of Law**

This principle embodies a commitment to the law and public authorities functioning in accordance with the law, transparency, absence of arbitrariness, and accountability to the citizenry via independent and official checks and balances even during the interregnum between elections. This principle refers to the system of laws and rules that regulate a government's powers and actions. The rule of law is supposed to limit the ruler's power and dominance, ensure the separation of powers and their independence, protect the citizenry from a ruler's tyranny, and ensure equal and fair treatment of all citizens, which means equality before the law.

### **Protection of Human and Civil Rights**

A democratic regime must allow for the existence of a civil-public space free of government intervention. A democratic regime must respect and protect a range of basic human and civil rights so that citizens may deliberate and make their own decision when choosing their representatives and way of life. The fundamental rights recognized in the Universal Declaration of Human Rights,<sup>1</sup> adopted at the UN General Assembly in December 1948, include the right to equality, freedom of association, freedom of expression and protest, protection of citizens' privacy and liberty, and welfare rights such as adequate living standards in terms of health, housing, food and the like alongside workers' rights. Democracy must also provide protection to minority groups from the tyranny of the majority and from persecution due to nationality, religion, race, and gender.

These principles compose the ideal type of a democratic regime, which does not necessarily exist in reality. Nevertheless, most political science scholars agree that the established democracies of northern Europe (the Scandinavian countries), for example, implement most of these principles in practice.

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<sup>1</sup> \*[Universal Declaration of Human Rights](#), *United Nations* (10 December 1948).

## **Basic Principles of Authoritarian Regime**

At the other end of the spectrum is the prototype of an authoritarian regime in its diverse manifestations. Although assorted definitions exist in this case, too, there is agreement on some basic principles common to all definitions.

### **Regime of Dominant Minority (Ethnic Democracy)**

Such regimes do not necessarily depend on popular support or broad participation of the population, and in many cases rely on the passive legitimization of their subjects. The degree of legitimacy and resilience of an authoritarian regime stems from the individual leader's charisma and power, his populism, and his persuasion skills to convince citizens that their needs are being satisfied or to gain the support of a small group of stakeholders who dominate the country's wealth and power. An authoritarian regime allows political competition, but this is limited and takes place only within a small group of stakeholders (oligarchy, royal family, ruling party, security forces, and confidants). Political participation is restricted and subject to constant inspection. Integration into this group often hinges on blood ties, financial or personal loyalty to the ruler.

### **Arbitrary Conduct**

The legal framework governing the conduct of an authoritarian regime is vague, fairly flexible, and subject to frequent changes in accordance with the wishes and needs of the ruler and his associates. State authorities are not independent, and their status and range of powers depend on the whims of the regime (the executive branch). The same goes for the judiciary, which is under the ruler's full control. Positions and powers are based on personal ties and loyalty, and less on formal and legal definitions of roles. Furthermore, the citizenry has no real defenses against the arbitrariness and predation of the regime.

### **Tight Control Over Private and Public Space**

Authoritarian regimes exercise high control and regulation over the private and public space, with no checks and balances. They allow the activities of civil society organizations that do not engage in areas considered "political", such as sports bodies, social organizations, clubs, and leisure activities, but they closely oversee the implementation of freedom of association and expression of their subjects. Activities with "political" or "controversial" characteristics are only permitted to groups and organizations that are loyal to the regime and enjoy its support. The authoritarian regime also acts selectively vis-a-vis the media: it encourages and incentivizes newspapers and other media outlets that are close to it and favor its positions, but it persecutes, controls, and even shuts down those critical of its conduct.

### **Widespread Use of Law Enforcement Agencies**

Authoritarian regimes use such bodies as the police, army, and internal security services to monitor and supervise civilian activities in general and activities of opposition to the regime in particular. Organized violence against minorities and opposition groups is often used, too. Violence is used both overtly and covertly by law enforcement agencies or unofficial militia groups, in particular against participants in protests against the authorities.

Although this is a prototype model, most dictatorships operate in accordance with the principles of the authoritarian regime.

### **Hybrid Model**

Most researchers today argue that dichotomous models are insufficient and that there are regimes located on the continuum between the two. In other words, both democracy and authoritarianism have diverse manifestations so that it is impossible to draw a clear-cut distinction between states according to democratic or authoritarian models, since often different models exist simultaneously in a single country's regime. These regimes in fact represent a hybrid model on the span between democracy and authoritarianism, which includes components of both in varying quality and quantity. Notable examples of democratic regimes that have seen an intensification of their authoritarian characteristics in recent decades and that conform to the model of personal authoritarianism are Hungary under Victor Urban (since 2010), Turkey under Recep Tayyip Erdogan (since 2003), Poland under the Law and Justice Party (since 2015), and Brazil under President Jair Bolsonaro (since 2019).

**Some regimes may be assessed against the hybrid model; that is, one that combines democratic and authoritarian elements**

Hungary, Poland, and Brazil became hybrid regimes against the backdrop of historical, political, social, and economic circumstances, both domestic and international. In all three, full dictatorial regimes existed as of the first half of the 20th century. Beginning in the late 1980s, upon the end of the Cold War, they transitioned to democracy and adopted democratic characteristics. In the last 10 years, however, they have gone back to adopting authoritarian elements, but retain certain democratic elements such as relatively free elections and active opposition groups.

These regimes combine authoritarian practices with varying intensities of oppression and persecution of the opposition, violation of the rule of law, oppression of minorities, and

curtailment of the independence of the press and courts, along with certain democratic practices such as multiplicity of political parties, courts whose independence has been severely impaired but are still struggling for their status and to fulfill their role, a weak and limited but critical independent press, and more.

If we look at the manifestations of the hybrid model in Israel's regime and the way they violate the basic principles of democracy (civil, political, economic, and cultural equality), it seems that their authoritarian aspects in some ways meet different models of authoritarianism, in particular the model of personal authoritarianism. This model emphasizes the charismatic status of a leader who enjoys broad public sympathy, tries to erode the constitutional structure of the state (partially or in full), and buttresses his position by taking over the media and inciting against minorities. Such a leader changes the character of the state from a liberal democracy (or the aspiration to become one) that protects individual and minority rights to a regime that identifies itself with the will of the majority and narrowly interprets democracy as "majority rule", a condition also known as "tyranny of the majority".

At other times, practices are used that meet authoritarian models of ethnocracy.<sup>2</sup> In these models, national and ethnic hierarchies set an official ladder of privileges for the dominant national group and an unofficial one for the ethnic groups within it (see Oren Yiftachel's studies defining these two situations as ethnocracy). According to this model, Israel defines itself as the home of the Jewish people, uses legislation to marginalize the Palestinian public, and enables quasi-state agencies such as the Jewish Agency and the Jewish National Fund (JNF) to pursue differential and discriminatory policies against it.

Accordingly, the regime promotes the economic, political, cultural, and spatial interests of the dominant ethnic group. In Israel, as in most ethnocratic countries, there are three ethnic classes: founders, immigrants, and natives. The founding class controls a considerable portion of the country's land reserves and establishes admission boards in its own image, in a way that prevents Israeli citizens from enjoying a central public resource based on such criteria as nationality, ethnicity, gender, sexual orientation, age, etc. Kibbutzim and moshavim, whose residents are mostly Ashkenazi, meet this definition and receive substantial economic benefits. The immigrant class is made up of Mizrahim and immigrants from Ethiopia and the former Soviet Union who were settled by the state in development areas for the purpose of Judaization, while the indigenous class is made up of Israel's Palestinian citizens who were mostly expelled from their original place of residence, were allotted minimal living space, and whose lands have often been expropriated.<sup>3</sup>

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<sup>2</sup> Yiftachel O. and Kedar A., *Power and Land: Israel's Land Regime, Theory and Criticism* (2000).

<sup>3</sup> Ibid.

The establishment of the State of Israel as the national homeland of the Jewish people and the reliance on its national right to self-determination facilitated the creation of legal distinctions and the conferral of privileges to Jews over non-Jews. At the same time, the elite group within the Jewish population devised discriminatory policies by more ambiguous means, often with the assistance of the judiciary.<sup>4</sup> Thus, different Jewish groups have gained differential access to resources, according to such criteria as gender, ethnicity, sexual orientation, degree of religiosity, or occupation. In this respect, Israel conforms to the authoritarian-oligarchic model, which closely resembles the ethnocratic model.

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<sup>4</sup> Bitton Y., \*[Mizrahim and the Law: Absence as Existence](#), *Mishpatim* (2011).

## **Authoritarian Elements in 20th Century Israel and Their Intensification in early 2000s**

As will be explained below, the State of Israel has never been an exemplar of a liberal democracy, and its regime has always included authoritarian elements. That is, its regime fits the hybrid model given that at different times it has tilted toward one of the extremes: democratic or authoritarian.

In contrast with its hybrid nature, Israel's leaders have for generations succeeded in depicting to the Jewish majority and to the West a regime that is an example of a thriving and vibrant democracy, and even a model of democracy. In their public speeches, many of them repeated the mantra that it is "the only democracy in the Middle East", and some even described it as "a villa in the jungle".<sup>5</sup> Although the facts are far from these slogans, most of the Jewish public and some in the Western world were sold on these statements as facts requiring no further verification, thus perpetuating a myth that was created immediately upon the founding of the state. Yet another recent myth is that Israel was a democracy before Netanyahu came to power, and that he was the one who ruined it with his own hands.

**The State of Israel has never been a model of a liberal democracy, and its regime has always included both democratic and authoritarian elements**

This part of the report will present some examples to provoke discussion and reflection about the processes that have brought Israel to this point. In particular, the report will look at the 1950s, which were the regime's formative years.

### **The Early Years: 1950s and 1960s**

In Israel's Declaration of Independence, the heads of state promised to formulate a constitution and affirmed that the new state would protect a number of political rights and individual freedoms, as well as uphold absolute social and political equality for all its citizens regardless of religion, race, or gender. However, the Declaration of Independence did not explicitly address the form of regime that would be established in the new state, and the promises to enact a full constitution remained only on paper.

During the 1950s, the Israeli regime was characterized by a variety of major authoritarian tendencies, including a Military Government in Arab localities, restrictions on freedom of expression and protest, muzzling of criticism by violent means, control and monitoring of

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<sup>5</sup> Baruch H., [Defense Minister: We Are 'A Villa in the Jungle'](#), *Arutz 7* (10 September 2012).

competing entities perceived to jeopardize Mapai's rule, procurement of political support through a diverse system of rewards, restrictions on civil society organizations critical of the government, lack of a binding constitutional framework, a vague definition of the powers of various institutions, and personal appointments of associates to key positions. All these precluded effective control and oversight of the government's activities by various "gatekeepers".

**David Ben-Gurion served as prime minister for 13 of the first 16 years of the Israeli state. This prolonged period in power gave him and the ruling party almost exclusive control over the running of state institutions**

From the 1930s onwards, Mapai controlled most of the official institutions of the pre-state Yishuv. Ben-Gurion, who had headed the Jewish Agency continuously since 1935, became the first prime minister of the State of Israel, serving for 13 of its first 16 years. This prolonged period in power gave him and the ruling party almost exclusive control over the running of state institutions.<sup>6</sup> The majority Mapai enjoyed as the ruling party, along with the lack of constitutional regulation of the Knesset's functions and oversight of the government, led to an asymmetrical and lopsided balance of power between the government and the Knesset, and largely weakened the latter's balancing and moderating role.

One of the first laws of the new state, the Government and Justice Arrangements Ordinance,<sup>7</sup> was enacted by the Provisional State Council in May 1948, even before elections were held and representative institutions were formed. On the one hand, this ordinance set a separation of powers and established three separate branches of government: legislative, executive, and judiciary. On the other hand, the definition of their jurisdiction was general and vague, and their powers remained nebulous for many years to come.

The ordinance applied the principle of continuity to legislation dating back to the British Mandate, such as the Defense Regulations (Emergency) that confer extensive powers on the military command and bypass civilian institutions, and included it in Israel's constitutional law. These regulations served as the basis for the creation of the Military Government over the Arab population, and created a parallel authoritarian regime, whose powers and actions were not subject to supervision by the elected institutions. The constitutional framework regulating the jurisdiction, powers, and limits of power of state institutions emerged gradually

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<sup>6</sup> Avizohar M., Goldstein Y., Gorny Y., and Shavit Y., [Establishment of Mapai and Emergence of Leadership Pattern in Pre-State Yishuv](#), *Cathedra* (1982); Bareli A., *Mapai at the Start of Independence 1948-1953*, *Yad Izhak Ben-Zvi Publications* (2007).

<sup>7</sup> [Government and Justice Arrangements Ordinance-1948](#), *Nevo*.

over the years<sup>8</sup> and most of it has not been legislated to this day.<sup>9</sup> Thus, a duality was created that allows for the existence of two parallel forms of regime.

The independence of the judiciary was also relatively limited. For example, with the establishment of the state, Mapai "purged" the ranks of the courts that operated during the British Mandate and left in their position primarily judges who were perceived as loyal to the party's positions.<sup>10</sup> Some of the new judges were appointed based on such criteria as political affinity and loyalty. As a result, the courts in those days frequently sided with the state's position, including in cases touching upon core democratic values.

However, step by step, the Supreme Court proceeded to recognize fundamental rights that are considered an integral part of democratic regimes. One example is the Bejarano case, which recognized freedom of occupation as a basic right (in 1949),<sup>11</sup> and another is the Kol Ha'am case, which recognized freedom of expression as a basic right and set a more rigorous "near certainty" test for the restriction of this right (in 1953).<sup>12</sup>

The role and powers of other "gatekeepers", such as the State Comptroller and the Attorney General, were given narrow and restrictive interpretation.<sup>13</sup> Only over the years, and after interpretive intervention by the courts, were those positions granted broader definitions.<sup>14</sup> In addition, Mapai made sure to appoint to these jobs people who were close to it and whose perceptions of the role matched its needs.

Although elections were open to all, Mapai took steps to skew the game in its favor. Among other things, it availed itself of the Histadrut labor federation apparatus and of government institutions to dish out perks to different sectors of the population in order to ensure their loyalty, and used the security services to gather information on the leaders of opposition parties, such as Herut, Mapam and Maki.<sup>15</sup> It conducted highly venomous and aggressive campaigns that used harsh terms to delegitimize rivals and tarnish their integrity and credibility, to which the latter did not hesitate to respond with equally controversial expressions and to

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<sup>8</sup> [Basic Law: The Knesset-1958](#), *Knesset's website*; [Basic Law: The Government-1968](#), *Nevo*; [Basic Law: The Army-1976](#), *Nevo*; [Basic Law: The Judiciary-1984](#), *Nevo*; [Basic Law: The State Comptroller-1988](#), *Nevo*.

<sup>9</sup> To this day, Israel lacks Basic Laws on legislation and human rights issues.

<sup>10</sup> Aderet O., [From Political Appointments Through Hit Lists: This Is How Israel's Supreme Court Was Established](#), *Haaretz* (23 September 2018); Baron N., [Secret Document Unveiled: How Israel's First Judges Were Appointed](#), *Ynet* (6 February 2015).

<sup>11</sup> [Supreme Court Ruling 1/49, Salomon Shlomo Bejarano et al v. Police Minister et al](#), *Nevo* (10 February 1949).

<sup>12</sup> [Supreme Court Ruling 73/53 Kol Ha'am v. Interior Minister](#), *Nevo* (16 October 1953).

<sup>13</sup> State Comptroller Law-1949 centers on his duties in the financial sphere. The Attorney General's role and powers were not officially defined until the 1960s; Gutman Y., *The Attorney General v. the Government*, *Idanim-Yediot Aharonot Publishing* (1981).

<sup>14</sup> The Attorney General's powers were anchored in the Agranat Commission's report of 1962; Gutman Y., *The Attorney General v. the Government*, *Idanim-Yediot Aharonot Publishing* (1981).

<sup>15</sup> Bergman R., *The Shin Bet's Secrets*, *Yediot Aharonot Publishing* (23 March 2007).

call Ben-Gurion a "dictator".<sup>16</sup> Words such as "fascists", "traitors", and "Nazis" were commonplace in election propaganda in the 1950s.<sup>17</sup>

Parties had no qualms to resort to such "unofficial"

violence as employing groups of thugs, forcibly dispersing demonstrations, and planting homemade explosive devices.<sup>18</sup> But while such action against Mapai was investigated as "terrorist activity", similar deeds against its opponents were not thoroughly probed by the police or security services.<sup>19</sup>

Mapai allowed protests and "official" demonstrations in the public space that were organized by the Histadrut, but showed intolerance toward protests that were perceived as political and had the potential to challenge its hegemony. With the help of the army, the police, and the Histadrut-affiliated Hapoel Platoons, Mapai did not hesitate to use violence against a variety of protests in the 1950s, such as the labor strikes staged by bakeries, locomotive drivers, and sailors, and the ethnic protests in Haifa's Wadi Salib and elsewhere.<sup>20</sup> Intimidation and muzzling tactics were also used against organizations that disapproved of the government, such as the Volunteer Brigades or the Committee for Nuclear Disarmament.<sup>21</sup>

Mapai pursued a policy of repression, discrimination, and deliberate relegation to the economic, political, spatial, and social fringes of Jewish immigrants from Arab, North African, and Balkan countries. This policy led to unrest and insurrection, first in Wadi Salib and later in Jerusalem, upon the emergence of the Black Panthers and the Tent Protest Movement.<sup>22</sup> Those who tried to change the situation at times suffered political persecution and threats, including by the police and the Shin Bet.

**The majority enjoyed by Mapai as the ruling party, along with the lack of constitutional regulation of the Knesset's functions and oversight of the government, largely weakened the Knesset's role**

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<sup>16</sup> [Election Poster](#), *General Zionists Party* (1951); [End the Despotism Poster](#), *Herut* (1955).

<sup>17</sup> ['Agents and Traitors' Poster](#), *Mapai* (1955); ['Damascus Radio' Poster](#), *Mapai* (1955); Nakdimon S., [Story of Love and Hate Between Begin and Ben-Gurion](#), *Haaretz* (12 January 2013).

<sup>18</sup> Goldstein Y., Hapoel's Political Involvement: The Dispatchers' Union Affair, *Physical Fitness and Sports in Israel in the 20th Century* (2002); Two Intimidation Bombs Thrown at General Zionists Rally in Tel Aviv, *Haaretz* (17 July 1955); Bomb Goes Off at Israel Rokach House in Tel Aviv, *Haboker* (24 July 1955).

<sup>19</sup> Mapai's Snooping as Part of Government's Intelligence Service, *Haboker* (10 July 1955).

<sup>20</sup> Garfinkel B., Army Used To Break Strike of Train Conductors and Sailors in 1951, *Iyunim* (2020); [Naval Battle: Mapam v. Mapai – Sailors Stage First Political Strike](#), *State Archives Blog* (18 November 2015); Dahan-Kalev H., [Wadi Salib Events](#), *50th Anniversary of 1948: Theory and Criticism* (1999); Bar-On Maman S., [Protest and Social Status in Beersheba 1948–1963](#), *Iyunim* (2018); Goldstein A., [Why Did the 'Dark Day of Kiryat Shemona' Erupt in May 1956? On Work, Absorption, Protest, and Politics in the Hula Valley During the 1950s](#), *New Studies of Galilee: Third Book* (July 2018).

<sup>21</sup> Dish Y., [Ben-Gurion Warns Committee for Nuclear Disarmament of Dangers Posed by Its Activities](#), *Herut* (10 October 1962); Raz A., [Nice Jews Join the Movement](#), *Haaretz* (9 November 2015); Kabalo P., [Between Grassroots Organization and New State: Story of Volunteer Brigades](#), *Studies of Israel's Independence* (2003).

<sup>22</sup> Chetrit S., [The Tent Protest Movement](#), *50th Anniversary of 1948: Theory and Criticism* (1999).

Following the Wadi Salib events, Ben-Gurion and the police affairs minister gave the order to crush the protests "relentlessly and by all means".<sup>23</sup> Mapai defined the protesters as criminals, and their leaders were prosecuted and incarcerated. Justice Miriam Shtarkman, who presided over the trial, said in the first hearing that "anyone presenting himself to me and declaring that he is Moroccan will receive twice the sentence".<sup>24</sup> Propaganda was used to silence all criticism of Mapai's racial policy, with campaigns aimed at detaching the question of socioeconomic status from the question of ethnic origin, and racist incitement against independent political organizations of immigrants from Arab, North African, and Balkan countries.

The media landscape in the 1950s and 1960s was a direct continuation of the situation during the British Mandate, characterized by a press with a strong party bias. Every political party and movement in Jewish society set up its own newspaper, which served as a platform for disseminating partisan ideology and propaganda and provided political commentary on everyday events. The state required all newspapers to obtain a license, and imposed controls and censorship on critical content.

In parallel, the aforementioned Defense Regulations (Emergency) adopted by the British Mandate allowed the interior minister to order the closure of a newspaper or printing house that violated censorship rules and published information that allegedly harmed state security. Under this pretext, Mapai tried to shut down newspapers that were very critical of its conduct.<sup>25</sup> As for the Arab press, the creation of the state led to the cessation of the publication of many newspapers that had operated during the Mandate. Those that continued to operate were closely monitored and audited by the Israeli security services.<sup>26</sup>

One of the most blatant manifestations of the authoritarian nature of the regime was the Military Government in the Arab localities, which began during the 1948 war and remained in effect by virtue of the Defense Regulations (Emergency) until 1966. The establishment of the Military Government dealt a very serious blow to the democratic regime in terms of the principles of equality and liberty. Among other things, these regulations gave the military governor the authority to prevent and restrict movement in and out of the boundaries of the Military Government and created an intricate regime of permits and travel certificates. They also enabled unlawful detention, confiscation of property, demolition of houses, expropriation

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<sup>23</sup> Dahan-Kalev H., [Wadi Salib Events](#), *50th Anniversary of 1948: Theory and Criticism* (1999).

<sup>24</sup> Ibid.

<sup>25</sup> Avneri U., [What Happens When Prime Minister Refuses To Accept Media's Criticism](#), *Globes* (15 April 2014); Malul H., [Rimon: The Shin Bet's Secret Weapon To Lash Out at Enemies of the Establishment](#), *National Library Blog* (27 October 2017).

<sup>26</sup> Haris R., [National Tension: Al-Ard Movement in the Supreme Court](#), *Israel's Judiciary: The Formative Years 1948-1977* (2017).

of land, and even banishment and deportation of citizens. The powers of the Military Government, which were exercised exclusively toward Israel's Arab citizens, materially infringed upon their freedom of movement and individual liberties.<sup>27</sup>

**One of the most blatant manifestations of the regime's authoritarian nature was the Military Government in the Arab localities, which began during the 1948 war and remained in effect by virtue of the Defense Regulations (Emergency) until 1966**

The Military Government also served as a source of political power for Mapai. The regime of permits and certificates enabled the distribution of rewards or penalties to the electorate, according to their level of loyalty to the party. For example, the Military Government imposed restrictions on rival parties, prevented them from holding election rallies, and barred key members from certain jobs. In some cases, prominent opposition activists were expelled from their villages and severe restrictions were placed on their individual freedoms.

In addition to the actions of the Military Government, the authorities took steps to restrict and prevent Israeli Arabs from setting up any independent political organization. Throughout the 1950s Mapai discussed various initiatives to outlaw Jewish-Arab parties, such as Mapam and Maki, but these did not materialize. In contrast, Israeli Arab independent organizations such as Al-Ard or Sons of the Village were outlawed, and their members were prosecuted for involvement in terrorist activities.<sup>28</sup>

During the 1950s, the Mapai-led Knesset enacted a series of laws that laid the basis for institutionalized discrimination between Jewish and Arab citizens. These laws discriminated in favor of Jews with regard to immigration to Israel (Law of Return), joining the Civil Service, and allocation of land by the state (Basic Law: Israel Lands). In addition, several laws were enacted that expropriated the property of Arab citizens and transferred it to the state, such as the Absentee Property Law-1950, the Land Acquisition Law-1953 (Actions and Compensation), and the Development Authority Law-1950 (Transfer of Property). The Prevention of Infiltration Law-1954 (Offenses and Jurisdiction) enacted in August 1954 defined infiltration into Israeli territory as a crime punishable by a five-year prison sentence, and was intended to prevent the return of Palestinian refugees to their homes.

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<sup>27</sup> Cohen H., [Good Arabs: The Israeli Security Services and The Israeli Arabs](#), Ivrit (2006).

<sup>28</sup> Dallasheh, L., [\\*The Al-Ard Movement](#), Mustafa M., [\\*Sons of the Village Movement](#), *The Palestinians in Israel: Readings in History, Politics and Society* (2015).

Basic Law: Israel Lands created yet another distortion. Most of the land that was expropriated and transferred to the JNF (1.5 million dunams out of the 2.5 million dunams in its possession) was seized from the indigenous population. The law forbade the sale of this land to prevent its return to their erstwhile Arab owners, but the state issued leases earmarking it for commercial, housing, and agricultural purposes. Rural communities, which held significant political traction in Mapai's institutions, received 20% of the territory of the state (within its recognized international borders) in the form of leases that accorded them a strong claim to the land.<sup>29</sup> In contrast, Jewish immigrants from Arab and Muslim countries were settled in development towns and received public housing apartments with leases that gave them weak proprietary rights.<sup>30</sup> Referring to this initial iteration of the law, Judge Dafna Barak-Erez wrote that it enabled "irreversible decisions, which determined the face of the state for generations".<sup>31</sup>

The way the population was dispersed deepened the damage to the foundations of democracy by creating significant barriers to the integration of Mizrahim and Arabs into Israeli society, not only geographically but also in the economic, cultural, and educational spheres. The land and settlement policy distanced and isolated native Arabs and Jewish immigrants from Arab and Muslim countries from the centers of power in Israeli society, creating a spatial gap that in many ways overlapped with the ethnic and national disparity.<sup>32</sup>

As mentioned, during the Six-Day War, Israel occupied the West Bank and Gaza Strip and thus began to control close to 5 million Palestinians.<sup>33</sup> This population has never been annexed to the State of Israel and has since been under military rule (the situation of the Gaza Strip changed after the disengagement in 2005, but the area basically remains under Israel's military control). In this respect, the rule that exists in the territories under Israeli occupation can be defined as classical authoritarian: government institutions are not elected, nor do they represent the will of the local population; military authorities fulfill all governance functions and there is no separation of powers as the Israeli army is both legislature, judiciary, and executor of all policies in these areas; the laws are based on the will of the military commander and change constantly; external oversight of the regime and its conduct is exercised only in extreme cases and sparingly by the Israeli judiciary, which in most cases does not interfere

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<sup>29</sup> Lichtman M., [Ashkenazi Rural Communities to Make Hundreds of Millions from Separation From JNF](#), *Globes* (10 May 2015).

<sup>30</sup> Yonah Y., Republican Meritocracy, Identity Politics and the Idea of Reverse Reparation, *Political Power and Social Theory* (10 October 2006).

<sup>31</sup> Barak-Erez D., [One Dunam Here, One Dunam There: Israel Land Administration Caught in Vise of Interests](#), *Land Law in Israel: Between Private and Public* (1999).

<sup>32</sup> Yiftachel O., [From Sharon to Sharon: Shaping of Separation Regime in Israel/Palestine](#), *Stop – No-Border In Front of You* (2017).

<sup>33</sup> Israel and its citizens experienced severe political, social, and economic crises as a result of the Six-Day War (1967), the War of Attrition (1970-1967), and the Yom Kippur War (1973).

with the military commander's decisions; and the Military Government makes extensive use of extraordinary powers for the purpose of restricting movement, demolishing buildings, and carrying out administrative detentions.

In addition, since 1967 the army has declared 50% of the occupied territory in the West Bank state land, and expropriated additional land for the purpose of "security and development of the area".<sup>34</sup> Some 270 exclusively Jewish localities have been established in these areas: 130 settlements (considered a war crime under international law but legally recognized by Israel), and another 140 unauthorized outposts (although Israel does not officially recognize their legality, in practice it provides them full infrastructures and protection and refrains from evacuating them in most cases). Unlike the Palestinian residents of the West Bank, the Jewish residents of these localities are not subject to the full authority of the Military Government, and their lives are conducted in accordance with the laws in effect within the State of Israel.<sup>35</sup>

Millions of Palestinians in the West Bank and Gaza Strip are forced to live under martial law and military control, with no option of participating in elections to a regime that in effect controls their lives, and no protection of basic human and civil rights. In addition, hundreds of thousands of Palestinians in East Jerusalem have been forcibly annexed to the State of Israel as non-citizen permanent residents, ruthlessly separated from their families and communities in the West Bank and with no option of electing state institutions or equal rights.

The rule over the Palestinian people created two parallel systems of government: a military regime enforced on the Palestinians in the Occupied Territories, and another regime enforced within Israel's recognized international borders and on the Jews in the West Bank that includes democratic elements. This situation primarily harms the Palestinians, who have been the immediate victims of the occupation for 55 years, but it clearly has an adverse effect on the quality of Israel's democracy as well.

The reality that has developed in the Occupied Territories, where Israeli governments have settled hundreds of thousands of Jews who benefit from Israel's laws and enjoy exclusive rights and privileges, alongside a native population of millions of Palestinians living under a military regime and deprived of basic rights, conforms to the model of an ethnocratic regime. Moreover, the Israeli human rights organizations B'Tselem and Yesh Din, as well as

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<sup>34</sup> \*[Land Grab: Israel's Settlement Policy in the West Bank](#), B'tselem's website (May 2002).

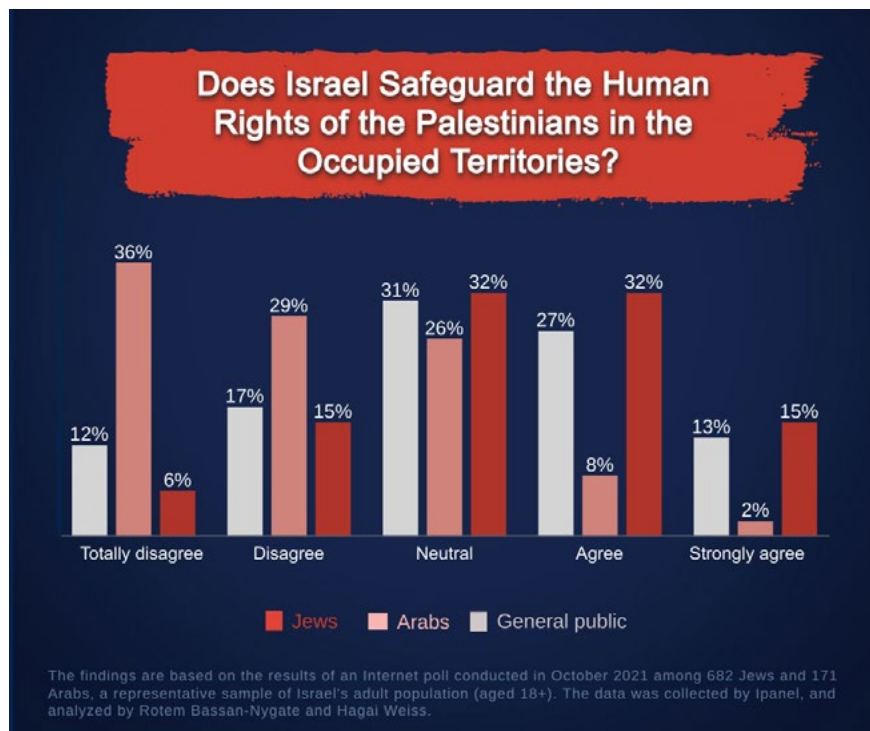
<sup>35</sup> Sasson T., [The Sasson Report: Law Enforcement in Judea and Samaria Vis-a-Vis Illegal Outposts](#), *Justice and Governance* (2005); Natour R. and Gerlitz R., \*[Land Day Is an Ongoing Injustice](#), *Haaretz* (27 March 2018).

the international organizations Human Rights Watch and Amnesty International, claim that the two different systems used by Israel vis-a-vis the Jewish and Palestinian populations can be considered an apartheid regime.<sup>36</sup>

The military control over the Palestinian population in the Occupied Territories, the illegal annexation of East Jerusalem that is unrecognized by the international community, the continued systematic violation of the civil and human rights of the Palestinian population, and the privileges granted to the Jewish population according to criteria that effectively contravene equality before the law - all these make the debate about the nature of Israel's regime and the quality of its democracy an extremely complex and problematic feat. Some would even argue that, these being the circumstances, such a discussion is an exercise in futility.

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<sup>36</sup> \*[A Regime of Jewish Supremacy From the Jordan River to the Mediterranean Sea: This Is Apartheid](#), *B'tselem's website*, (12 January 2021); \*[The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion](#), *Yesh Din's website* (9 July 2020); See also: \*[A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution](#), *Human Rights Watch's website* (27 April 2021); \*[Israel's Apartheid Against Palestinians: A Cruel System of Domination and a Crime Against Humanity](#), *Amnesty International's website* (1 February 2022). It should be noted that most of these publications It should be noted that most of these publications considers the regime operated by Israel on both sides of the Green Line as an apartheid regime, whereas Yesh Din views only the legal situation in the Occupied Territories as an apartheid regime.



A survey conducted by Zulat in October 2021 shows a considerable gap in the stances of Jews and Arabs with regard to the rights of Palestinians in the territories: 65% of Arab respondents disagree with the statement "Israel protects the human rights of Palestinians in the territories", as opposed to 21% of Jewish respondents.



A survey conducted by Zulat in October 2021 shows a significant difference between Left and Right with regard to the rights of Palestinians in the territories: 71% of respondents self-identifying as left-wing disagreed with the statement "Israel protects the human rights of Palestinians in the territories", as opposed to only 15% of respondents self-identifying as right-wing.

## The 1980s and 1990s

In the 1980s and 1990s, the regime within Israel's recognized borders made several significant strides within the democratic-authoritarian spectrum toward a liberal democracy, including with regard to the discrimination against Jewish immigrants from Arab and Muslim countries and to the status of the Arab minority.

One of the turning points was the political shift of power of 1977, led by Menachem Begin. The generational change gave rise to the emergence of a young and new leadership that was less attached to Mapai, stepped up the professionalization and depoliticization of the bureaucracy and law enforcement agencies that had started in the 1970s, and somewhat bolstered the status of populations that Mapai had excluded from the centers of power and deliberately weakened for many years, such as Mizrahi Jews, although their discrimination continued. Nevertheless, the security services and the police continued to monitor what were considered subversive elements in the Jewish sector, but especially in the Arab sector.

**In 1977, a dramatic shift of power took place in Israel, led by Menachem Begin. This change ended the hegemony of the dominant parties before and after the establishment of the Israeli state, and for the first time brought the Likud to power**

The fierce political rivalry and the unity governments formed in the 1980s elevated the status of the Knesset, which went on to play a more central role in the public monitoring of the government's activities. The slim majority enjoyed by the coalition increased the bargaining power of elected officials and their involvement in the formulation of government policy. This was reflected, among other things, in a surge in the use of auditing tools at the disposal of MKs: queries, motions to the agenda, and no-confidence votes.<sup>37</sup> In addition, changes in the Knesset's working procedures, including the merger of committees and the creation of new ones (the State Audit Committee and the Committee on the Status of Women), also increased its ability to keep an eye on the government.<sup>38</sup> However, the fact that the Knesset's powers and work processes were not anchored in law and were primarily consigned to the Knesset's Standing Procedures allowed the government to change the parliamentary game rules "on the fly".

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<sup>37</sup> [Parliamentary Questions as Instrument of Oversight of Executive Branch](#), *Israel Democracy Institute's website* (19 January 2000); Dryshpitz S., [No Confidence in Government: On No-Confidence Mechanism in Israel](#), *Israel Democracy Institute's website* (13 March 2010).

<sup>38</sup> Hazan R. and Friedberg C., [Knesset's Oversight of Government: Situation Report and Proposed Reform](#), *Israel Democracy Institute's website* (August 2009).

The shift of power in 1977, the unity governments of the 1980s, the first intifada in the late 1980s, the geopolitical changes following the end of the Cold War and the attendant international pressure on Israel to make certain changes to its policy, the start of economic liberalization and the peace agreements with Egypt (1979), Jordan (October 1994), and the PLO (1993-1995) – all these set the ground for significant changes in the Israeli regime that boosted its democratic components. Those years were characterized by growing liberalization and democratization, along with a deepening of ideological and social divisions between the groups that make up the Israeli populace. This liberalization included significant steps toward the formulation of a constitution, freer and more egalitarian political competition, considerable improvements in freedom of expression and freedom of the press, alongside the depoliticization of law enforcement agencies and more checks and balances between the branches of government.

However, while democratic components grew stronger within Israel's recognized international borders, the military regime in the Occupied Palestinian Territories, despite the Oslo Accords, only intensified and came to resemble military regimes in the 20th century.

## Legislation and Judicial Review

During these years, four Basic Laws were enacted that significantly boosted the constitution-making process: Basic Law: The Judiciary-1984, Basic Law: The State Comptroller-1988, Basic Law: Freedom of Occupation-1994, and Basic Law: Human Dignity and Liberty-1992.<sup>39</sup>

Having been recognized as fundamental rights in earlier Supreme Court rulings, the latter two laid down the constitutional foundations for the protection of liberties and individual rights from any abuse of power by the government. For the first time ever, they contained clauses requiring a special procedure for their amendment. These clauses emphasized the special status of Basic Laws, as opposed to ordinary laws, as a constitutional framework regulating the regime in Israel.

These Basic Laws formed the legal basis for judicial review of administrative decisions and ordinary laws, a power that remains legally and publicly controversial to this day. For example, the "manufacture" of the constitutional right to equality in case law and its referencing in a series of precedent-setting rulings (Ka'adan, Miller, Danilovich, Pessaro, and Mizrahi Democratic Rainbow),<sup>40</sup> which emphasized and established the principle of equality and barred discrimination between different sectors of society, provided "ammunition" to

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<sup>39</sup> [Israel's Basic Laws](#), Knesset's website.

<sup>40</sup> [Supreme Court Ruling 721/94 El Al Israel Airlines Ltd. v. Yonatan Danilovich](#) (30 November 1994); [Supreme Court Ruling 4541/94 Alice Miller v. Defense Minister](#) (8 November 1995); [Supreme Court Ruling 6698/95 Ka'adan v. Israel Land Administration](#) (8 March 2000); [Supreme Court Ruling 1031/93 Alian \(Hava\) Pessaro \(Goldstein\) v. Interior Minister](#) (12 November 1995), [Supreme Court Ruling 244/00 Mizrahi Democratic Rainbow et al v. Minister of National Infrastructures et al](#) (29 August 2002), all published in *Nevo*.

opponents of stronger human rights and to endless political and media attacks on the Supreme Court based on the claim that recognition of the right to equality amounts to unacceptable judicial activism.

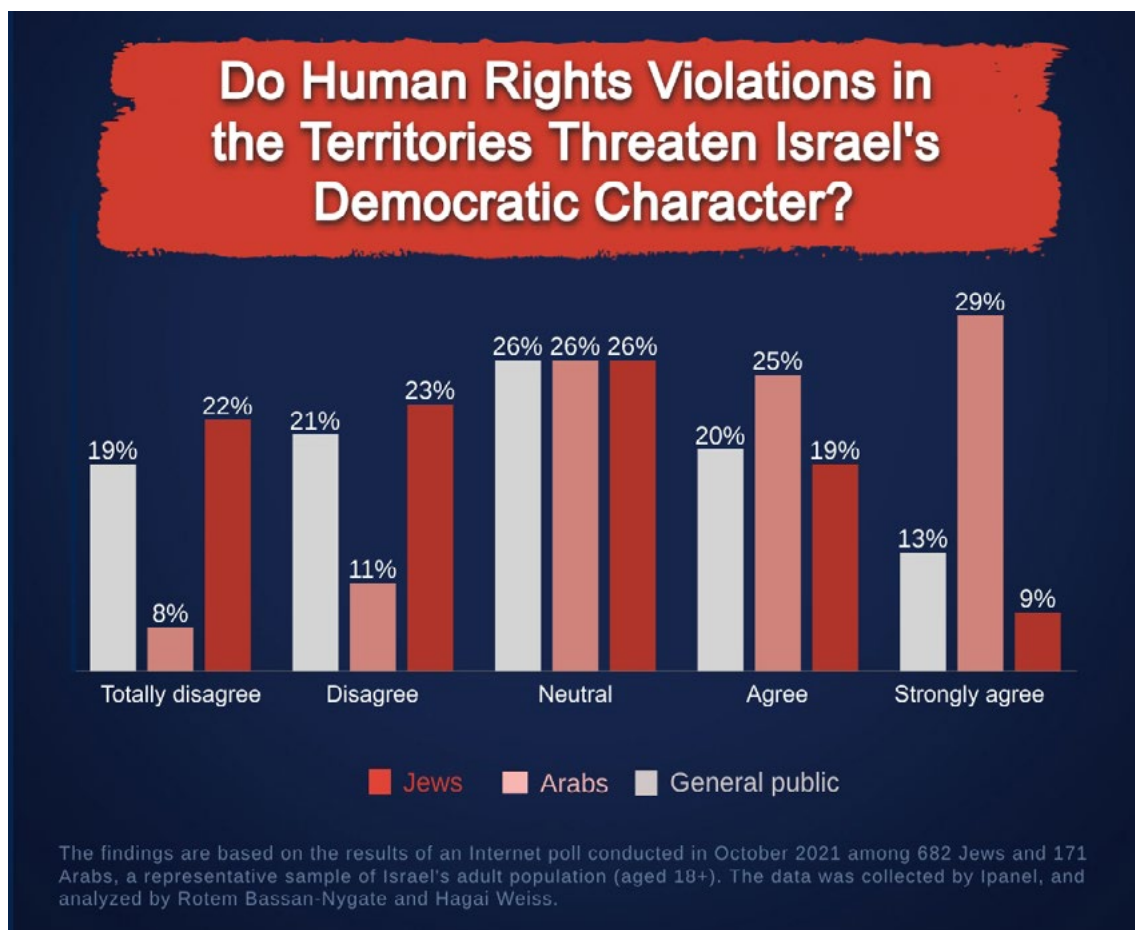
However, it should be noted that even when it intensified oversight and judicial review of the executive's performance within Israel, the Supreme Court adhered to its practice of not interfering in the government's policy in the Occupied Palestinian Territories.

During the same time, several Supreme Court rulings turned the right to protest and demonstrate, which is vital to a democratic regime, into a right with protected constitutional status<sup>41</sup> (but not recognized by the Military Government in the Occupied Palestinian Territories). The police's leeway to refuse to issue a license or to ban demonstrations under certain circumstances was restricted. Among other things, they were barred from making a license conditional on the content of the protest or on the demonstrators paying out of their own pocket for the security and safety arrangements.<sup>42</sup> Nevertheless, considerable differences remained in the state's attitude toward the Arab sector's freedom of association and right to demonstrate. These differences were particularly evident in the violent conduct of the police on Land Day anniversaries (marking the events in 1976 that resulted in six unarmed Arab citizens dead, close to 100 wounded, and hundreds arrested in clashes with the Israeli army and police after Arab towns declared a general strike and staged marches in response to the government's plans to expropriate vast tracts of land).

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<sup>41</sup> Fishman O., [Background Document: Limits of Protest](#), Knesset's Research and Information Center (6 July 2005).

<sup>42</sup> It started with [Supreme Court Ruling 5009/97 Multimedia Ltd. v. Israel Police et al](#) (13 August 1998) and continued with [Supreme Court Ruling 2557/05 Mate Harov Movement v. Israel Police](#) (12 December 2006). See also a review of the case law on freedom of protest in [Supreme Court Ruling 6536/17 Movement for Quality Government in Israel v. Israel Police](#) (8 October 2017), all published in *Nevo*.



A survey conducted by Zulat in October 2021 shows that 54% of Arab respondents agree that human rights violations in the territories threaten Israel's democratic character, while only 28% of Jewish respondents share the same view.

## Control of the Public Space: The Media

At the end of the 1980s, a new television channel was established, ending the exclusivity of Israel Broadcasting Authority, which had for years been a government mouthpiece despite the professional, opinionated, and groundbreaking journalists in its ranks. In the 1990s, the printed press, television, and radio channels played an important role in improving oversight and critique of the government's performance and contributed to strengthening liberalization.

Toward the end of the 1990s, a new phenomenon began upon the takeover of media outlets by tycoons with vested economic and political interests, and the establishment of new ones with a commercial and political orientation in parallel with a substantial weakening of the printed press. An alliance thus emerged between wealthy magnates and politicians in need of stronger public support. The government's ability to control the discourse in the media and its professionalism eroded significantly, in conjunction with a decline in the public's trust.<sup>43</sup>

<sup>43</sup> Katz Y., [Global Media and Coverage Policy of Israeli Media](#), Keshet (May 1997).

Political and social changes also led to challenging the jurisdiction and role of military censorship. The exposure of several security scandals in the 1980s triggered petitions to the Supreme Court,<sup>44</sup> and in the aftermath of its ruling, the newspapers and the censor signed a new agreement that reduced the array of subject matters subject to censorship.<sup>45</sup> In addition, one of the self-censorship mechanisms that had been in effect until then, the Editors' Committee, lost its effectiveness after several major newspapers pulled out.<sup>46</sup> These steps increased the range of issues that the media could cover and reduced the government's ability to control media criticism.

## Political Competition

During the 1990s, Labor and Likud shifted power three times. This instability reflected fierce political rivalry and the lack of hegemony of any one party.

Against the backdrop of the Oslo Accords and this rivalry, venomous attacks began against Yitzhak Rabin and Shimon Peres, which culminated in the assassination of Prime Minister Rabin on 4 November 1995, at the end of a peace rally in Tel Aviv. The assassination and the wild incitement that preceded it exposed the weakness of the democratic mechanisms in Israel and their limited ability to deal with intense political controversy. The assassination was a watershed moment, which in conjunction with the second intifada and during the premierships of Binyamin Netanyahu, Ehud Barak, Ariel Sharon, and Ehud Olmert, once again led to the resurgence of authoritarian elements.

The incitement intensified and took additional forms. For example, the Israeli government declared the Kakh movement a terror organization only after the massacre perpetrated by Baruch Goldstein at the Cave of the Patriarchs in Hebron in February 1994, but support for the Kahanist ideology did not cease and even expanded. Its followers continue to influence the public discourse to this day, and some of them even succeeded to get elected to the Knesset.

The attacks and incitement continued well into and after the 1996 elections, with a personal delegitimization campaign against Peres that used such slogans as "The Arabs Voted for Peres" and "Bring the Oslo Criminals to Trial".<sup>47</sup> Campaigns of this kind, whether during or between elections, sought to push certain groups and sectors out of the arena and to delegitimize their political participation.

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<sup>44</sup> [Supreme Court Ruling 680/88 Meir Schnitzer et al v. Chief Military Censor](#), *Takdin* (18 December 1988).

<sup>45</sup> Katz Y., [Global Media and Coverage Policy of Israeli Media](#), *Kesher* (May 1997).

<sup>46</sup> Lavi Z., [The Editors' Committee: Myth and Reality](#), *Kesher* (May 1987).

<sup>47</sup> Shtendel N., [No Mention of Rabin's Assassination: Back to Election Propaganda of 1996](#), *Mako* (31 January 2019).

## Discrimination Against Israel's Arab Citizens

The end of the Military Government in 1966 ostensibly heralded the advent of equality with Jewish citizens, as the running of their affairs was distributed among all government ministries. However, government discrimination against Arab citizens, both as communities and as individuals, has continued. To wit, since the creation of the state to this day, no new town has been established for the Arab population and the municipal area of existent ones has not expanded despite the population's natural growth. In addition, Arab locales have been discriminated in comparison with their Jewish neighbors in terms of allocation of development and other state budgets.<sup>48</sup> These are some of the reasons for the emergence of dozens of unrecognized villages in the Galilee and the Negev.

**Since the creation of the state to this day, no new town has been established for the Arab population and the municipal area of existent ones has not expanded despite the population's natural growth**

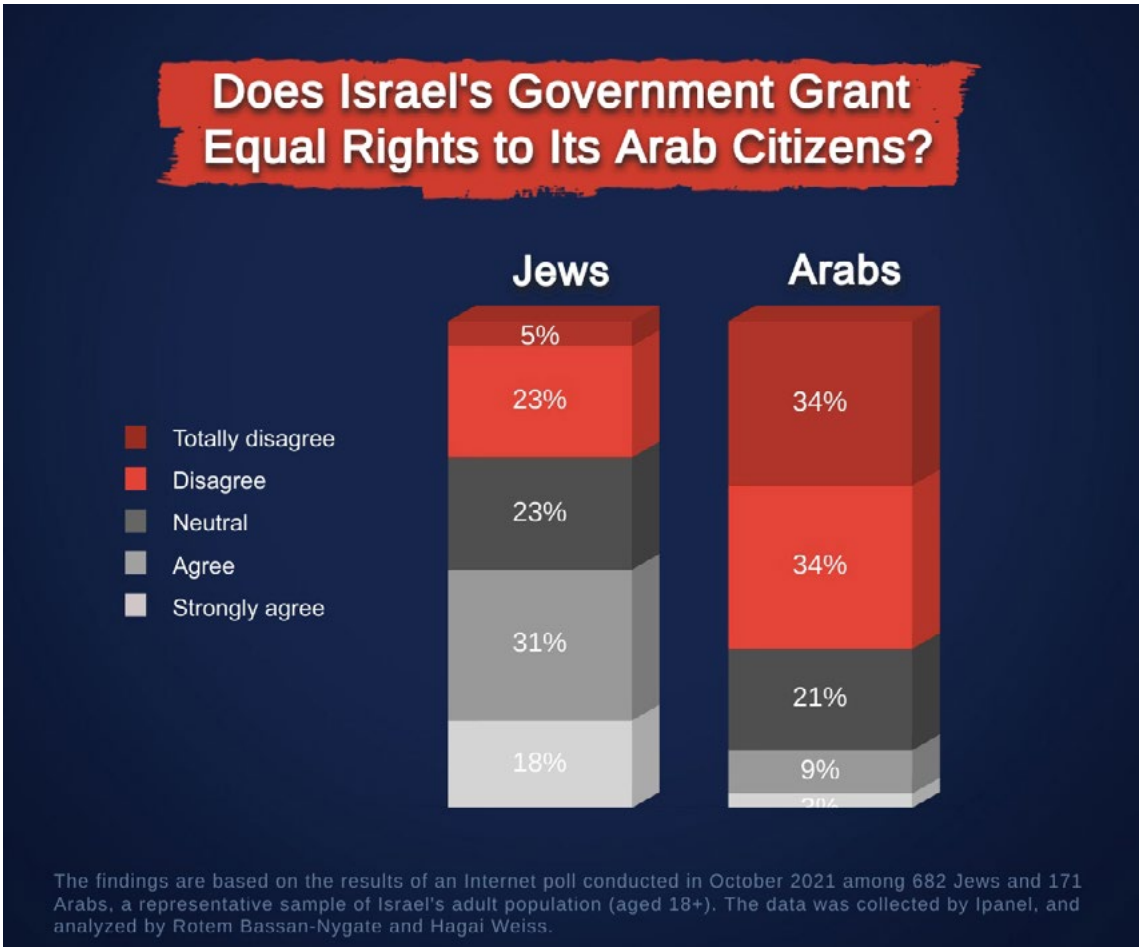
At the same time, until the mid-1980s, the expropriation of Arab-owned land continued in favor of the development and expansion of neighboring Jewish towns and the policy of "Judaization" of the Galilee and the Negev through the establishment of new communal villages.<sup>49</sup> This process was an extension of the population dispersal policy from the early 1950s, with large amounts of land given to rural communities (which, as recalled, consist mostly of Ashkenazi Jews). Mizrahim and immigrants from Ethiopia and the Soviet Union were settled in towns far away from the center of the country, while Arabs were pushed aside and their presence in the geographical landscape gradually contracted.<sup>50</sup> In the early 1990s, during the Rabin government's tenure, a major attempt was made to reduce the gaps through the budget allocations and projects to improve infrastructure in Arab localities. However, all of it amounted to a mere drop in the bucket in the face of the deep socioeconomic gaps between Jews and Arabs in Israel. Moreover, the effort was primarily geared at the Arab citizens, while discrimination against the development towns where Jewish immigrants from Arab and Muslim countries were settled continued.

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48 Rekhes A. and Rodnitzky A., [Arab Society in Israel: Information Guide](#), Abraham Fund Initiatives website (May 2009).

49 Ibid.

50 Yiftachel O., [From Sharon to Sharon: Shaping of Separation Regime in Israel/Palestine](#), *Stop – No-Border In Front of You* (2017).



A survey conducted by Zulat shows that while 68% of Arab respondents feel that Israel does not grant equal rights to its Arab citizens, only 28% of Jewish respondents share this position.

## **Intensification of Authoritarian Elements in Israel in 2000-2009**

In this section of the report, we will briefly describe the intensification of authoritarian elements that took place from the early 2000s until the elections of March 2009 when Netanyahu was re-elected prime minister. This process worsened as a result of the second intifada and was largely influenced by the shifts in the balance of political power in Israeli society after the assassination of Prime Minister Rabin. Thus, in parallel with the expansion of the settlement enterprise in the West Bank and domination of the Palestinian people, Israel saw the surge of aversion and delegitimization toward the judiciary, the gatekeepers, the Left camp, and Israel's Arab citizens.

In the past 20 years, Likud became Israel's undisputed ruling party, which just like the old Mapai, views itself as the only legitimate one. Even after the formation of the Bennett-Lapid government, Netanyahu refused to recognize its legitimacy and opposition members continued to refer to him as "the prime minister".<sup>51</sup>

The first Netanyahu government (June 1996 to July 1999) came into being, among other things, as a result of the trauma caused by Rabin's assassination and was afflicted by political and security instability. The political power of the Zionist-Left parties, the successors of the historic Mapai, diminished significantly, both due to the failure of the Oslo Accords to resolve the Israeli-Palestinian conflict and to the outbreak of the second intifada in 2000, and have not recovered since then.

In 1999, Ehud Barak was elected prime minister to rebuild the peace camp after Rabin's assassination. Although he spearheaded the IDF's withdrawal from Lebanon, which was a popular move with the public, following the events of October 2000 (in which 12 Israeli Arabs were killed) and the failure of the Camp David Conference (which Barak blamed exclusively on the Palestinians), he effectively accelerated the dismantling of the Left and lost much Arab public support. Likud party chairman Ariel Sharon, whose well-publicized visit to the Temple Mount in September 2000 contributed to the outbreak of the second intifada, was elected prime minister in March 2001. The disappointment with Barak, coupled with the Israeli Arabs' boycott of the elections and the severity of the security situation, led him to this victory.

Sharon's two tenures were accompanied by suicide bombings inside Israel and fighting in the West Bank and Gaza Strip, which saw serious violations of human rights and international law. Against this background, the rule over the Palestinian population underwent dramatic

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<sup>51</sup> Barsky, A., '[Questioning of Government's Legitimacy](#)' Dangerous: Bennett in Response to Netanyahu Ignoring His Presence, *Ma'ariv* (15 October 2021).

changes, as Israel embarked on a policy of segregation: physical, through the construction of the separation fence and the creation of an intricate bureaucratic regime of permits; and legal, by ditching civil and criminal responsibility for the actions of the security forces in the Occupied Territories (the definition of "war operations" was expanded to grant the state immunity from lawsuits in the former case, and the Military Prosecution's policy on investigation and prosecution was changed in the latter case).

Against the backdrop of the suspicions about his involvement in several corruption affairs, Sharon implemented the "disengagement plan" in the summer of 2005. The plan included the evacuation of all Jewish settlements from the Gaza Strip and changing the character of Israel's military domination of the area. Since the disengagement, control of the area has been carried out without a permanent physical presence of Israeli troops inside the Gaza Strip, but rather through air, naval, and border patrols, except for occasional bombings and military operations every few years. Sharon devised his policy primarily with his circle of associates and advisers and without subjecting it to any in-depth democratic process in the Knesset, the government, or the Likud party. This conduct undermined the trust of parts of the public in the political system and set a precedent for future decision-making on crucial issues.

As the second intifada raged, Sharon also started voicing harsh criticism of the Supreme Court due to its willingness to hold hearings on the route of the separation fence and on the actions of the security forces in the Occupied Territories, despite its aversion to interfere in the government's policies and operations there. "As soon as you do something, straight away there is a petition to the Supreme Court. There are petitions all the time. In many cases the court rules against the matter at hand. You enter some place, and a minute later there is a petition. The courts are a problem because they use the concept of proportionality, for which I'm sorry too", he declared.<sup>52</sup> Given that Supreme Court judges have always approved government policy and the actions of the security forces in the Occupied Palestinian Territories, it appears that what bothered him was not the outcome of petitions, but the very hearings held by the Supreme Court and the judicial review on his government.

As these dramatic events unfolded, left-wing parties were increasingly pushed to the sidelines and forced to struggle to find their place and voice, to take a critical stance on the protection of human rights and adherence to the rules of combat, or to criticize the unilaterality of the disengagement plan and its expected consequences.

Another authoritarian characteristic of the early 2000s was the continuation of the policy of

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<sup>52</sup> Alon G., [Prime Minister Sharon Attacks Supreme Court: The Courts Are a Problem, 'You Do Something and Straight Away There's a Petition'](#), *The Marker* (28 February 2005).

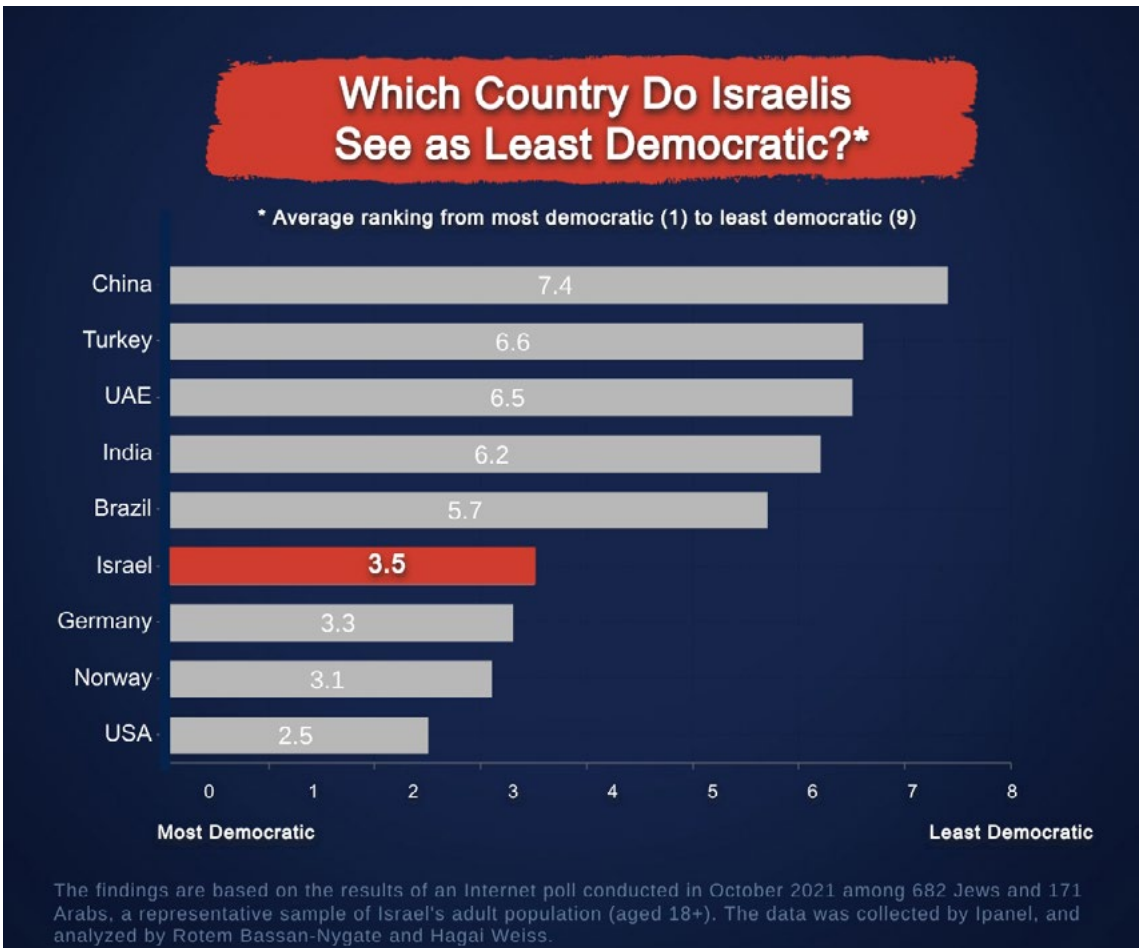
institutional discrimination. A case in point is Israel Lands Administration's (ILA) Resolution 755, which stipulated that farmers holding leases on agricultural land could rent structures therein to a third party. The rezoning brought huge profits to leaseholders who had originally been given the right to till the land for agricultural purposes, and further deepened the dramatic gaps between rural communities and development towns. As for Prime Minister Sharon's participation in the ILA's discussions, the State Comptroller declared this conduct to have been in conflict of interest.<sup>53</sup>

Sharon quit the Likud in the aftermath of the internal tensions upon the implementation of the disengagement plan, and in November 2005 founded the Kadima party, which prompted a big bang in Israeli politics. One third of the Likud's MKs as well as senior politicians from other parties, such as Shimon Peres, announced their support for the new centrist party, which in practice was led by former senior members of the Likud. Kadima went on to be a great success in the elections of March 2006 (and subsequently in the 2009 elections), as it integrated both Likud politicians tired of the internal conflicts in the party and "peace-disappointed" members of left-wing parties who wanted to return to the centers of influence and power.

Upon his appointment as justice minister during Ehud Olmert's 2006-2009 premiership on behalf of the Kadima party, Prof. Daniel Friedman began advancing legislation to reduce judicial review, cut the powers of the Supreme Court as a court of appeals, and shrink the concept of public interest standing, thus damaging public trust in the judiciary and triggering constant clashes between the government and the justice system. Simultaneously with the campaign to delegitimize the judiciary and law enforcement agencies, investigations were launched into serious corruption charges against Prime Minister Olmert, which later led to his prosecution and incarceration. In the aftermath of the Winograd Commission's report on the Second Lebanon War and preliminary evidence that he had accepted bribes during his tenure as mayor of Jerusalem, in what came to be known as the "cash envelopes affair", Olmert tendered his resignation in July 2008.

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<sup>53</sup> [Annual Report 53b for Fiscal Year 2001: Changes to ILA Resolution 755 and Conflict of Interest in Prime Minister's Conduct](#), *State Comptroller's website* (30 April 2003).



Participants in Zulat's survey were asked to rate a number of countries, from most democratic (1) to least democratic (9). Israel was ranked on average at 3.5, ahead of Brazil at 5.7 and after Germany at 3.3.

## **Intensification of Authoritarian Elements under Netanyahu's Tenure as Israel's 9th Prime Minister**

In March 2009, Binyamin Netanyahu was elected prime minister for the second time and served in office continuously until June 2021. As noted, since its inception, the Israeli regime has conformed to a hybrid model combining democratic and authoritarian elements. During Netanyahu's second tenure, existent authoritarian elements intensified considerably, and the regime notably tilted toward the authoritarian end of the spectrum.

In this part of the report, authoritarian trends and the shrinking of the democratic space during those years will be examined in detail. As already noted, in order to entrench his and the Likud's rule, Netanyahu took advantage of existing authoritarian elements to follow in the footsteps of Mapai and many of the prime ministers who preceded him. In addition, he spearheaded radical legislative and public moves that broke the rules of the game.

### **Weakening Status of Basic Laws**

Since the mid-1990s, even before Netanyahu's second tenure and following the enactment of Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation, and as a result of lessons learned from the expansion of judicial review of the legislature and the executive, efforts began to halt the formulation of a comprehensive constitutional framework that recognized basic rights and fleshed them out with distinct content.

Several attempts were made during this period (mostly by private bodies and individuals) to finalize a full constitution through a dialogue with public figures from various sectors, but these met scant government assistance and acknowledgment.<sup>54</sup> For its part, the government introduced initiatives for a constitution founded on broad-based consensus that were specifically intended to restrict rights. For example, in 2003, Likud MK Micky Eitan, then-chairman of the Knesset's Constitution Committee, started to advance in the committee a constitution premised on the notion that "the Supreme Court has been enacting a constitution for Israel without asking permission from anybody".<sup>55</sup> Such initiatives gave rise to fear that their content would be decided by apparatuses and political forces that might neglect the rights of the politically and economically weak and of minorities.<sup>56</sup>

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<sup>54</sup> Karmon A., No Constitution: An Israeli Story, *Israel Democracy Institute's website* (2012).

<sup>55</sup> Klein Y., [Micky Eitan Is Wrong and Misleading](#), *Makor Rishon* (15 September 2019).

<sup>56</sup> Gross A., [The Paradox of Constitution by Agreement: Examined Through Questions of Equality, Sexual Orientation, and Social Rights](#), *Hapraklit* (2007).

During the last decade of Netanyahu's tenure, after a hiatus of almost 20 years, two additional Basic Laws were enacted:<sup>57</sup> Basic Law: Referendum in March 2014 and Basic Law: Israel-The Nation State of the Jewish People (hereinafter, the Nationality Law) in July 2018. However, their content and characteristics do not conform to the accepted conceptual framework of a constitution in democracies.<sup>58</sup> For instance, the Nationality Law includes elements that conflict with democratic principles, especially with the value of equality (more on this below).

Simultaneously with the halt to the enactment of Basic Laws consistent with a democratic constitution, another trend emerged that also impaired the stability and robustness of Israel's constitutional framework. The legislation of amendments and changes to Basic Laws intensified as of the mid-1990s, in accordance with the momentary needs of the incumbent government. Some amendments occurred earlier too, but their frequency and scope increased significantly during this time and remained just as voluminous in the following decades.

The table below lists the number of amendments to four major Basic Laws by decade, and shows that the majority centered on Basic Law: The Government and Basic Law: The Knesset, and that significant changes were also introduced to Basic Law: The State Economy.

Amendments to Basic Laws by Decade:

Basic Law	1950s	1960s	1970s	1980s	1990s	2000s	2010s
Knesset	3	1	1	5	14	15	12
Government			2	2	13	2	10
President of the State		2			2	3	3
State Economy				3	2	1	6

The frequency and volume of these amendments created ambiguity and uncertainty about the game rules of the political process as well as the range and substance of the powers of political institutions, thus undermining the stability of the already shaky constitutional framework. In addition, the ratification of these amendments, usually by a simple and casual majority of MKs, aroused disdain for the Basic Laws and devalued their status as the foundation of a future constitution.<sup>59</sup>

<sup>57</sup> [Basic Law: Referendum-2014](#) and [Basic Law: Israel-The Nation State of Jewish People-2018](#), both published in *Nevo*.

<sup>58</sup> [Basic Law: Referendum-2014](#) and [Basic Law: State Budget 2017 and 2018 \(2016\)](#), both published in *Nevo*.

<sup>59</sup> Fuchs A., [Frequent Amendments to Basic Laws](#), *Israel Democracy Institute's website* (17 January 2021).

This was the case, for example, when the Basic Law concept was used to advance legislation on the state budget for a specific year (the biennial budget).<sup>60</sup> The Supreme Court ruled that the constitutive power in Basic Law: The Knesset (Amendment No. 50 - Temporary Provision) was abused to increase the ceiling of the "continuing budget" in order to stabilize Netanyahu's government.<sup>61</sup>

**The frequency and volume of the amendments to Basic Laws created ambiguity and uncertainty about the game rules of the political process, further undermining the stability of the constitutional framework and devaluating Basic Laws as the foundation of a future constitution**

Another factor that contributed to the devaluation of Basic Laws is their amendment through time-limited temporary laws and provisions, some of which were extended year after year, further intensifying the sense of uncertainty about the constitutional framework. The legislation of temporary provisions increased dramatically in the last decade of Netanyahu's tenure, emphasizing even more the temporality and fluidity of Basic Laws.<sup>62</sup>

## **Campaign To Reduce Knesset's Powers and Oversight of Executive Branch**

In this section, we will present examples of three legislative moves led by Netanyahu's governments, which reduced the Knesset's ability to limit and balance the power of the government and the prime minister.

### **Reducing Government Dependence on Budget Approval**

Approval of the state budget and oversight of its implementation are among the main tools available to a parliament in a democratic regime to restrain and monitor the activities of a government. Basic Law: The Knesset stipulates the obligation to approve a budget law every year, and specifies that non-approval of the budget at the end of three months from the beginning of the fiscal year must automatically lead to the dissolution of the Knesset and the announcement of early elections. Despite this, since 2009, Netanyahu's governments took a series of legislative steps that largely neutralized the Knesset's ability to use the budget law to monitor their activities.

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<sup>60</sup> [Basic Law: State Budget 2017 and 2018 \(2016\)](#), *Nevo*.

<sup>61</sup> [Supreme Court Ruling 5969/20 Stav Shafir v. Knesset](#), *Nevo* (23 May 2021).

<sup>62</sup> Bar-Siman-Tov I. and Harari-Heit G., [Temporary Provisions' Finest Hour? The Rise of Temporary Legislation in Israel and Principles for Its Improvement](#), *Iyunei Mishpat* (2019).

As of 2009, the government enacted temporary provisions that allowed for the presentation of a biennial budget and its approval by the Knesset only once every two years.<sup>63</sup> These provisions also extended the period of grace during which the government was allowed to continue operating in the absence of an approved budget without this leading to a dissolution of the Knesset.<sup>64</sup> The duration of this period changed each time, according to the needs of the moment. Legislation was also enacted allowing for the approval of a government expenditure without prior approval of the Budget Act. The government thus wrested away from the Knesset a major lever of pressure that had in the past allowed it to somewhat hold the government in check. In this case, too, Netanyahu's government emulated steps that had similarly been taken by previous governments.

As mentioned, an amendment to Basic Law: The State Economy in the early 1990s allowed the government to carry on operating on the basis of a "continuing budget", without prior approval of the State Budget Law and without dispersing the Knesset or calling early elections.<sup>65</sup> The legislature's had intended to provide an interim solution for a set period of time and to prevent a total shutdown of government services.<sup>66</sup> However, during 2019–2021, due to the political crisis created by the progress of Netanyahu's criminal cases and the difficulty of passing the State Budget Law, the atypical solution became permanent, with the government running on a rolling "continuing budget" unapproved by the Knesset and with flimsy oversight by its committees. This situation was enabled by the coalition's absolute control of the Knesset and its committees.

### **Economic Arrangements Law**

In 1985, the government adopted an economic stabilization plan aimed at dealing with the economic crisis and rising inflation rates at that time. Part of this plan was first approved by the Knesset through the so-called "Law on Economic Arrangements for Times of Emergency". The "Arrangements Law" is in fact a "package" of laws and legislative amendments on a variety of issues that the government wants to promote and, to this end, binds to the state budget in order to force their implementation. Since then, this framework has been exploited by governments from all ends of the political spectrum for the purpose of passing laws and reforms with no real connection to the state budget, in an expedited procedure and without a proper public debate.

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<sup>63</sup> [Basic Law: State Budget-2009 and 2010 \(Special Provisions; Temporary Provision; Amendment\)](#), Knesset's website (2009, 2010).

<sup>64</sup> [Basic Law: The Government-2014 \(Amendment\)](#), Knesset's website (19 March 2014).

<sup>65</sup> [Basic Law: The State Economy \(Amendment No. 5\)](#), Nevo. Amended as part of Basic Law: The Government-1992.

<sup>66</sup> [Supreme Court Ruling 5969/20 Stav Shaffir v. Knesset](#), Nevo (23 May 2021).

As repeatedly faulted by the Supreme Court,<sup>67</sup> because the accelerated legislative mechanism in the Arrangements Law is largely controlled by the government, this might upset the proper balance between the executive and the legislature. Such a balance is a prerequisite of a legislative process and reflects the principle of separation of powers that is a cornerstone of a democratic regime. In addition, the nature of this accelerated legislation does not allow for the formulation of an informed opinion on each of the issues presented in the bill, and hinders effective oversight of government ministers by the Knesset and its committees, as well as by the public.

Due to the censorious position of the Supreme Court, the media, and the Knesset's legal counsel, and thanks to the support of MKs in the 15th Knesset for restricting the Arrangements Law to issues directly related to the state budget, a relatively streamlined Arrangements Law was submitted in 2008 that included only a few dozen articles. However, ever since the version submitted for 2009–2010 (the first years of Netanyahu's term as Israel's ninth prime minister), the Arrangement Law has comprised several hundred articles each time.

### **Restricting Options of Government's Ouster Via No-Confidence Vote**

In a parliamentary regime, a no-confidence vote is a key tool that elected officials have at their disposal to express dissatisfaction with the government and its leader, and that in case of necessity allows for a change of government without elections.

The Knesset's authority to oust a government through a no-confidence vote had already been limited to some extent under Basic Law: The Government, enacted in 2001 after direct election of a prime minister was abolished.<sup>68</sup> Article 28 of this law stipulates that a no-confidence vote requires the support of a special majority of MKs and the presentation of an alternative candidate for prime minister who has given his prior consent in writing. This article was intended to reduce the possibility of the government being overthrown by a casual majority.

**The amendment to Basic Law: The Government in 2014 further toughened the requirements for the overthrow of a government through a no-confidence vote, in effect rendering it a completely theoretical possibility**

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<sup>67</sup> [Supreme Court Ruling 6304/09 Lahav- Israel Chamber of Independent Organizations and Businesses v. Attorney General, Nevo](#) (2 September 2010).

<sup>68</sup> [Basic Law: The Government-2001, Nevo](#).

However, another amendment to this Basic Law in 2014 further toughened the requirements for the overthrow of the government through a no-confidence vote, in effect rendering it a completely theoretical possibility. The new amendment requires advance presentation of the composition of the alternative government, as well as its basic guidelines and assignment of portfolios.<sup>69</sup> Following this amendment, the no-confidence vote became a pure propaganda tool, which allows for slamming the government but does not really threaten its existence. The Knesset was thus deprived of yet another instrument of oversight over the government and the balance between the executive and the legislature was further eroded.

## **Undermining Status and Independence of Executive's 'Gatekeepers'**

### **'Rule of Clerks' Campaign**

In the wake of the suspicions and criminal charges against Netanyahu and the Likud's effort to entrench itself as the only ruling party, the "Rule of Clerks" campaign intensified in 2015. According to its slogans, Israel's civil servants were subversive elements trying to run the government in an anti-democratic manner and carry out a "coup". This was no matter-of-fact debate about proper administration, but a campaign of delegitimization of the professional echelons whose slogans brought to mind the conspiratorial messages of US President Donald Trump and his supporters about a so-called "Deep State". As will be explained below, the campaign targeted the professional echelon in public bodies and government ministries in general, and specific "clerks" who were involved in Netanyahu's investigations and criminal prosecution in particular.

In the last two years of Netanyahu's tenure, following the investigations and criminal charges against him, he, his associates, and right-wing organizations launched the "Government Coup" campaign, accusing the judiciary and law enforcement agencies of filing trumped-up charges and of politically persecuting the Right in general and Netanyahu in particular in order to remove the Right from power.<sup>70</sup> Among the targets of the campaign were then-Police Commissioner Roni Alsheikh,<sup>71</sup> then-State Attorney Shai Nitzan,<sup>72</sup> Attorney General Avichai

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<sup>69</sup> [Basic Law: The Government-2014 \(Amendment\)](#), Knesset's website (19 March 2014).

<sup>70</sup> Kamm Z., [Netanyahu Asserts: 'This Is What a Government Coup Looks Like'](#), *Kan - Israel Broadcasting Corporation* (5 April 2021).

<sup>71</sup> Cohen M., [Netanyahu Lashes Out at Alsheikh: Next Commissioner Will Have Tough Job Rehabilitating Israel Police'](#), *Ma'ariv* (2 December 2018).

<sup>72</sup> Haaretz, [Shai Nitzan Responds to Netanyahu: 'There's a Limit to the Amount of Lies I Can Tolerate'](#), *Haaretz* (10 September 2020).

Mandelblit, Advocate Liat Ben-Ari (the prosecutor in the Netanyahu cases),<sup>73</sup> and the panel of judges hearing his cases.<sup>74</sup>

A case in point is the opening session of his trial at the Jerusalem District Court, to which Netanyahu was escorted by Likud government ministers. Like extras in a movie, they stood around him at the entrance to the courtroom as Netanyahu held a news conference in which he accused the justice system and the prosecution of fabricating the charges against him.<sup>75</sup> Eliakim Rubinstein, a former vice president of the Supreme Court, commented on the event: "A large part of the criticism against the judiciary is a form of brainwashing. Some statements are totally wrong, but are nonetheless repeated all the time. The best example was the opening of the former prime minister's trial, when government ministers reported to the courtroom to show their support and statements were made against the court. This is a form of intimidation. Such things trickle down in certain publics".<sup>76</sup>

Yet another example among many is the resignation of the Finance Ministry's budget commissioner, Shaul Meridor. In August 2020, Meridor tendered his resignation to Finance Minister Yisrael Katz, after Netanyahu and senior Likud members ran a media campaign against him. Meridor wrote in his letter to Katz: "The ability to perform my duties has become impossible.... You do not enable me or the other public servants in the various divisions of the Finance Ministry and other ministries to do what we know how to do: to formulate, propose, analyze and critique policy measures.... Policy is characterized by narrow, irrelevant and short-term decision-making while professional staff are silenced, blatant disregard is shown toward staff work, policies are rash and normal budgetary tools and norms are ignored.... In recent days, after more and more red lines have been crossed and elementary rules of proper economic and budgetary conduct have been crushed, I have decided that I can no longer be part of the system and give legitimacy to the wrong decision-making framework".<sup>77</sup>

A month earlier, Prime Minister Netanyahu had shared on his Facebook page a post published by Likud MK Shlomo Karai, to which the latter had attached a picture of Meridor: "We are already familiar with the phenomenon of clerks trying to control the country in place of elected officials.... The role of clerks is to carry out government policy. Any attempt to

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<sup>73</sup> Azulay M., [Netanyahu: 'State Attorney's Office on Hunting Expedition, Attempting Government Coup](#), *Ynet* (5 April 2021).

<sup>74</sup> Bender A., [Rules Out Ben-Gvir as Minister, Mocks Lapid, and Sends Message to Judges: Netanyahu Fires in All Directions](#), *Ma'ariv* (15 February 2021); Bloch A., [Netanyahu Attacks Ilana Dayan: Despicable and Transparent Political Trap](#), *Srugim* (25 January 2020).

<sup>75</sup> Brill Y., [Here Is How the Day Went: Everybody Escorted Netanyahu to Court, Social Media Networks Reacted](#), *Haaretz* (24 May 2020).

<sup>76</sup> Somfalvi A., [Eliakim Rubinstein: 'Part of the Criticism Against the Judiciary – A Form of Brainwashing'](#), *Ynet* (4 November 2021).

<sup>77</sup> Waksman A., [\\*Top Treasury Official Resigns, Accusing Minister of 'Crossing Red Lines' on Israel's State Budget](#), *Haaretz* (30 August 2020).

implement their own policy in violation of the government's policy represents bureaucratic subversion". Upon sharing Karai's post, Netanyahu added: "It's inconceivable that public servants should hold briefings against resolutions passed by the government and should try to thwart them. We won't accept that".<sup>78</sup>

As of January 2017, the Right began floating proposals to turn the job of a government ministry's legal counsel into a position of trust, thus to be appointed by the minister in charge and facilitating their firing when they disagreed with the minister's opinion. In other words, the purpose of these proposals was to install accommodating legal counsels and to abolish their role as gatekeepers.<sup>79</sup> During a hearing in the Knesset's Constitution Committee in June 2018, Attorney General Mandelblit said "this is a blow, however unintended, to the rule of law".<sup>80</sup> Retired Supreme Court Justice Rubinstein called it "a politicization of the subject that involves an element of shaming". while retired Supreme Court Justice Yitzhak Zamir termed it "a return to the dark days of political appointments to the civil service".

**As of January 2017, the Right began floating proposals to turn the job of a government ministry's legal counsel into a position of trust; that is, to make legal counseling flexible and to abolish the role of these officials as gatekeepers**

Then-Finance Minister Yisrael Katz's attack on his ministry's legal counsel, Assi Messing, must be seen against the backdrop of the campaign to enact the Legal Counsels' Law. Among other things, Messing had written a legal opinion ruling out Katz's choice of director general of the ministry, on the grounds that he did not meet the required qualifications for the position.<sup>81</sup> Katz refrained from consulting Messing on relevant issues and did not allow him to attend working meetings. In November 2020, Katz posted on his Facebook page: "As I have already made plain in the past, subversive officials who act against the policy I lead in the Finance Ministry, in accordance with the mandate we received from the electorate, the door is open for them to leave. There are many worthy substitutes who will be happy to fill their place".<sup>82</sup>

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<sup>78</sup> Retweet of Binyamin Netanyahu's [Facebook post](#), *Kann News* (17 July 2020).

<sup>79</sup> Kahana A., ['Returning Governance to Elected Officials': Attorney General Law Back to Knesset](#), *Makor Rishon* (21 June 2020); Zwick G., [The Law That Will Return Governance to the People: 'We'll End the Rule of Jurists'](#), *Mida* (31 January 2017).

<sup>80</sup> [Attorney General Law: Senior Judiciary Officials and Dozens of MKs Hold Stormy First Session of Constitution Committee](#), *Knesset News* (25 June 2018).

<sup>81</sup> Tucker N., [Yisrael Katz Suffers Blow: Finance Ministry's Legal Counsel Overrides Choice of New Director General](#), *The Marker* (21 January 2021).

<sup>82</sup> Milman O., [Yisrael Katz Persists: I'm Bigger Than Herod When It Comes to Building Ports](#), *Calcalist* (12 November 2020).

At a hearing in November 2018 in the Knesset's Education, Culture, and Sports Committee, ahead of the second and third readings of the Culture in Loyalty Law, then-Deputy Attorney General Dina Zilber said the bill "raises real difficulties". She added in a critical tone: "Give us obedient legal counsels, castrated artists, a restrained media, a disciplined and educated people with uniform thoughts". Further criticizing the government, she said recent times had brought along "not only new laws, but also new words: governance, loyalty, overriding clauses". Zilber warned against "a contrarian discourse that hurts and scars the common social fabric, one that stigmatizes and labels people as those who are with us and those who are against us. If some are loyal, then are the rest traitors? A fifth column?"<sup>83</sup> At the end of the session, Justice Minister Ayelet Shaked demanded from Attorney General Mandelblit to order Zilber to stop representing the Justice Ministry in the government and in the Knesset.

Zilber remained one of the main targets of the "Rule of Clerks" campaign for several years. As part of her role as Deputy Attorney General, she stood at the forefront of the defense of the country's democratic values and was repeatedly called upon to review and restrain illegal measures adopted by public bodies, government ministries, and ministers.

In her last public speech before retiring from her post, Zilber addressed the persistent complaints by Netanyahu's government to the effect that interference by civil servants hindered their ability to govern effectively, and went on to list a lengthy register of his past political opponents and the terms he and his allies had used to describe them. Her remarks adequately recap the reality in Israel in the last years of Netanyahu's tenure as prime minister: "Governance is a fantastic cloak, supposedly made of the best fabrics and by the best tailors, that enables 'to control and promote policy' if only there would be no interference by judges, legal counsels, 'Treasury boys', 'Deep-State' people, 'professionals', 'a biased and partisan' media, 'anti-patriotic' academia, 'an aloof and elitist culture world that we fund, that lives at our expense, and that tars our name internationally', 'satire programs that gratuitously hurt national morale', 'consciousness manipulators', 'descendants of Israel's Mayflower generation', 'Wexner Foundation alumni and the New Israel Fund and its proxies', civil society organizations 'funded by foreign governments', 'sourpusses', 'privileged ones', 'Lefties', 'kibbutzniks with swimming pools', 'those who forgot what it means to be Jews', 'rabbit and pig eaters', 'just plain Arabs', demonstrators, or Ofira and Berko (hosts of rowdy TV talk show). Afterward, maybe the next day, they will blame the 'masked singer' (TV reality show protagonist), or maybe even the Knesset or one of its committees if it fails to meet 'cut-and-paste' expectations about the issue at hand and dares to reflect, debate, or even change something in order to fulfill its parliamentary oversight duties, thereby setting this sacred governance on fire".<sup>84</sup>

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<sup>83</sup> Hovel R. and Lis J., [Shaked Versus Deputy Attorney General Zilber: Will No Longer Represent Justice Ministry Before Knesset and Government](#), *Haaretz* (6 November 2018).

<sup>84</sup> Zimuki T., [Deputy Attorney General Zilber in Harsh Speech: 'Fake Leader'](#), *Ynet* (15 November 2020).

As part of the "Rule of Clerks" campaign, a conspiracy theory was circulated by right-wing activists and organizations, and by Netanyahu's associates, to the effect that the training on the progressive positions of the Israeli version of "Deep State" had been provided by the Wexner Foundation, which awarded scholarships to hundreds of Israeli public sector workers to study for a master's degree in public administration at Harvard University in the United States.

One of the people who disseminated this conspiracy theory was Yair Netanyahu, the prime minister's son, whose posts on Twitter depicted graduates of the training program as a cult. "Meet the secret cult that rules our lives. Many thanks to Civil Service Commissioner Daniel HersHKovitz who categorically refuses to save us from this crazy cult", read one tweet. In another tweet, Netanyahu Jr. called program graduates a "cult of pedophiles". After 75 of them sued him for libel, he agreed to an out-of-court settlement whereby he deleted his tweets and issued a sweeping apology.<sup>85</sup>

In June 2021, the Supreme Court rejected a petition filed by the right-wing organization Im Tirtzu demanding to stop the participation of Israeli public sector workers in the Wexner Foundation's program. The court ruling reads: "It's hard to imagine that the participation of public sector workers in the foundation's program will harm the integrity of the Civil Service.... The plaintiff's claim that participation in the foundation's programs impacts on the promotion of civil servants is frivolous and totally unfounded".<sup>86</sup>

The "Rule of Clerks" campaign also weakened the status of gatekeepers by appointing advocates of a restrictive approach to auditing of the executive branch. For example, probably as a result of the highly critical reports issued by State Comptroller Yosef Shapira with regard to certain events (in particular the 2015 report on the expenses at the prime minister's official residence,<sup>87</sup> which triggered a criminal investigation and indictment), Netanyahu decided to advance Matanyahu Engelman as his replacement. Engelman, a certified public accountant by trade and the first state comptroller in 30 years not to be a retired judge, was chosen on the basis of his conservative and restrictive views about the role and his belief in "constructive criticism".<sup>88</sup> After his appointment, Engelman, in an unprecedented move, thanked Prime Minister Netanyahu and the MKs for their support.<sup>89</sup>

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<sup>85</sup> Morag G., [Bridging Agreement Between Yair Netanyahu and Wexner Foundation: Will Erase Tweets and Apologize](#), *Calcalist* (20 July 2021).

<sup>86</sup> [Supreme Court Ruling 4928/20 Im Tirtzu v. Justice Ministry](#), *Nevo* (2 June 2021).

<sup>87</sup> Schneider T., [State Comptroller: Mandelblit's Decisions on Netanyahu's Legal Cases Must Be Published Regardless of Elections](#), *Globes* (4 February 2019).

<sup>88</sup> [Incoming State Comptroller Matanyahu Engelman Sworn in at Knesset](#), *State Comptroller and Ombudsman's website* (1 July 2019).

<sup>89</sup> Hai S., [Engelman: Office of State Comptroller – Cornerstone of State of Israel](#), *Ynet* (3 June 2019).

## **Campaign To Undermine Public Trust in Attorney General and Judiciary**

The two-pronged delegitimization campaign conducted against the Attorney General and the Supreme Court would seem to be no coincidence. The law in Israel stipulates that the Attorney General is the topmost authority on interpretation of the law for all arms of the executive branch, and his legal opinion binds them and reflects existent law, unless otherwise determined by a qualified court.

The Supreme Court, known as the High Court of Justice in its capacity as a court of appeals, has traditionally been perceived as a defender of democracy and human rights. However, a careful examination of its decisions since 1948 indicates consistent support for the position of the executive in most cases.<sup>90</sup> Even when it exercised judicial review and overturned decisions of the executive branch, it did so in exceptional cases and after repeated attempts to persuade state representatives to rectify the situation and obviate the need for a court ruling.<sup>91</sup>

Moreover, a mapping of the legal treatment of Mizrahim as a social category reveals that the courts, the Supreme Court first and foremost, played an active role in shaping the discrimination against this group in Israeli society through its refusal to recognize it. In doing so, the judiciary adopted the government's position, refrained from challenging it, and even neglected its role as the gatekeeper of equality, which is the fundamental principle of democracy.<sup>92</sup>

Although the Supreme Court in practice tends to accept and reinforce the government's positions, exceptional critical rulings aroused the anger of right-wing politicians, who went on to launch a campaign of slander, delegitimization, and even incitement. One infamous example is the pronouncement by MK Motti Yogev (Jewish Home), after the court upheld a previous ruling ordering the demolition of illegal buildings in the West Bank settlement of Bet El, to the effect that "the blade of a D-9 bulldozer ought to be brought down on the Supreme Court".<sup>93</sup>

After the aforementioned initiatives of MK Micky Eitan in 2003 and of Justice Minister Daniel Friedman in 2006 to reduce judicial review and slash the powers of the Supreme Court,

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<sup>90</sup> Shinar-Levanon O., *The Occupation's Impact on Functioning of Supreme Court, How Much Does It Cost Us* (2018); Shtarkman R., *The Research That Started Because of Ayelet Shaked: 'An Extension of Meretz? The Supreme Court Goes Along with the State, The Right Is Wrong'*, *The Marker* (13 August 2021).

<sup>91</sup> Kremnitzer M., *Supreme Court Ruling on Conversion to Judaism Shows Politicians Forever Shirking Decisions on Religion-State Issues*, *Haaretz* (2 March 2021).

<sup>92</sup> Bitton Y., *\*Mizrahim and the Law: Absence as Existence*, *Mishpatim* (2011).

<sup>93</sup> Globes, *MK Motti Yogev: 'Blade of D-9 Bulldozer Ought to Be Brought Down on the Supreme Court'*, *Globes* (29 July 2015).

the issue repeatedly made headlines both in the media and in bills tabled in the Knesset,<sup>94</sup> primarily in the aftermath of censorious rulings on human rights and Knesset legislation, as well as against the backdrop of political crises.<sup>95</sup>

The debate on initiatives to reduce the powers of the Supreme Court became an integral part of the political crusade conducted by the Likud party and Netanyahu, especially in the last years of his tenure as prime minister. Most of those proposals remained mere declarations confined to the press or social media. However, the public squabbling that these initiatives provoked at conferences and in the media between retired judges and MKs and government ministers appeared to hurt the status of the justice system and may also have had a chilling effect. The repeated initiatives were intended to intimidate the Supreme Court, and conveyed a message to the judges that if they crossed a certain boundary by issuing one ruling or another, this would be met by Knesset legislation that would reduce their powers.

**The many initiatives to reduce the powers of the Supreme Court became an integral part of the political crusade conducted by the Likud and Netanyahu, especially in the last years of his tenure as prime minister, and were intended to intimidate the Supreme Court**

In parallel, a variety of proposals were presented to reduce the right of standing in the Supreme Court; that is, to limit the possibilities available to public plaintiffs and human rights organizations to file petitions, thereby reducing the number of cases where the Supreme Court discussed controversial public issues and criticized government policies and decisions. The bulk of the petitions that bothered MKs and that they sought to block were mentioned in the explanatory notes attached to their bills, and usually dealt with the demolition of illegal construction in outposts and settlements as well as with matters of distributive justice such as the outline of the multibillion-dollar deal with US energy giant Noble Energy.<sup>96</sup>

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<sup>94</sup> Radojcovich M., [After Supreme Court Rulings: Bennett-Shaked Plan for 'Balancing Branches of Government'](#), *Globes* (14 September 2017); Schneider T. and Maanit C., [Ministerial Committee Approves: 61 MKs Allowed To Legislate Law Overruled by Supreme Court](#), *Globes* (6 May 2018); Kamm Z., [Abolishing Supreme Court Justices' Selection Committee: Shaked's Plan for Judiciary](#), *Kan Israel Broadcasting Corporation's website* (18 March 2019); [Proposed Bill on Overriding Clause Passes Preliminary Reading](#), *Knesset News* (10 May 2021).

<sup>95</sup> The 'Overriding Clause' was last approved in preliminary reading in May 2021, and has not been advanced since then. [Proposed Bill on Overriding Clause Passes Preliminary Reading](#), *Knesset News* (10 May 2021).

<sup>96</sup> [Bill on Basic Law: The Judiciary \(Amendment: Reducing the Right of Standing\)](#), *Knesset's website* (22 March 2017).

In 2018, then-Justice Minister Ayelet Shaked initiated the transfer of the Supreme Court's authority to hear Palestinian petitions on land issues to the Jerusalem District Court, and the concurrent transfer of the state's representation in court from the Petitions Department in the State Attorney's Office to the Jerusalem District Attorney's Office. Shaked justified the step as designed to prevent the politicization of the land conflict in the territories according to the personal worldviews of Supreme Court judges.<sup>97</sup> The move followed a long campaign by right-wing organizations against the conduct of the Supreme Court and the Petitions Department with regard to petitions seeking to evacuate outposts and settlements set on Palestinian private lands. After the law was approved in the Knesset, Shaked declared: "The plethora of appeals to the Supreme Court against settlement in Judea and Samaria by Palestinians and far-Left organizations ends today".<sup>98</sup>

Earlier, in order to influence the state's response to petitions on the subject, Shaked declared that any response to the Supreme Court by the State Attorney's Office concerning settlements and outposts would go through her confidante, an external consultant deemed close to the settlers. Shaked thus sought to paint the Petitions Department as a left-wing body driving spokes in the wheels of the settlement project.<sup>99</sup>

As part of the campaign to convince the public of the need to reduce the powers of the Supreme Court, the Right tended to mention the Supreme Court's judicial review of government policy in the Occupied Territories. In practice, however, these initiatives were intended to sweepingly limit the judiciary's oversight capacity over the government and over administrative law in all areas (not just regarding the occupation) to gain vast and unrestrained power as the executive branch.<sup>100</sup> In other words, the issue of the Occupied Territories was only an excuse to make far-reaching changes in the checks and balances between state authorities. As proof that the issue of the Occupied Territories was a mere excuse, it's enough to look at the data on the Supreme Court's miniscule intervention in government policy and in the actions of the security forces in the territories.<sup>101</sup>

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<sup>97</sup> Zimuki T., [Shaked's Initiative: Palestinian Petitions on Land Issues To Transfer From Supreme Court to District Court](#), *Ynet* (4 January 2018); Grinzaig A. and Bender A., [Knesset Approves Transfer of Adjudication in Judea and Samaria From Supreme Court to Administrative Courts](#), *Ma'ariv* (17 July 2018).

<sup>98</sup> Grinzaig A. and Bender A., [Knesset Approves Transfer of Adjudication in Judea and Samaria from Supreme Court to Administrative Courts](#), *Ma'ariv* (17 July 2018).

<sup>99</sup> Hovel R., [\\*Israeli Justice Minister Using External Consultant To Dictate State's Positions on Settlements](#), *Haaretz* (22 October 2017).

<sup>100</sup> Kremnitzer M., Shani Y., Fuchs A. and Lurie G., [Suggested Amendments to Basic Law: The Judiciary \(Limiting Right of Standing and Administrative Review on Knesset and Government Resolutions\)](#), *Israel Democracy Institute's website* (20 June 2019).

<sup>101</sup> Sfard M., *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights*, *Keter* (2018).

Similarly, initiatives and proposals emerged from time to time to split the job of Attorney General. Although in 1998 the Shamgar Commission )set up to investigate the assassination of Prime Minister Yitzhak Rabin in 1995( rejected a proposal to this effect, it is a legitimate and important discussion given the fact that many believe such a split will strengthen the rule of law and that the Attorney General holds too many powers.<sup>102</sup> The problem is that these proposals were usually raised not as a matter of principle, but primarily following specific disagreements between the Attorney General and the government or a specific minister, or due to criminal investigations or indictments of politicians.

Thus, in the last two years, following the decision to indict Netanyahu for serious corruption charges, an endless campaign was waged to split the job of Attorney General in order to intimidate the incumbent Avichai Mandelblit and the prosecution, and to damage the public's trust in them.<sup>103</sup> Moreover, in his response to the Supreme Court in January 2021, Netanyahu did not hesitate to write that nothing will impede him from steering a move to split the role of head of criminal prosecution from the job of the next Attorney General.<sup>104</sup>

In recent years, the debate over whether the Attorney General's opinion is binding on the government returned to the agenda even more insistently. For example, in April 2021, in contravention of the Attorney General's position, Netanyahu decided to put to a vote in the cabinet his own candidate to the post of justice minister, Minister Ofir Akunis. The Attorney General determined that the vote was illegal, but the prime minister did not allow him to present his opinion.<sup>105</sup>

One of the most flagrant examples that ministers' nonadherence to the law and disregard for the Attorney General's opinion endangers human rights is the affair of corona vaccines for prisoners. Ignoring the Attorney General's directive and despite the danger of mass contagion in jails, then-Public Security Minister Amir Ohana ordered the Israel Prison Authority (IPS) not to vaccinate inmates before he gave his approval, depending on the rate of vaccination among the general public.

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<sup>102</sup> Kremnitzer M. and Lurie G., [Splitting the Attorney General's Job](#), *Israel Democracy Institute's website* (16 August 2015).

<sup>103</sup> Morag G. and Zimuki T., [Deputy Attorney General: 'There Are People in the Political Establishment Who Want to Crush the Judiciary'](#), *Ynet* (30 May 2015); Miranda A., [Kadima Proposes Milder Formula of Attorney General's Job Split](#), *Ynet* (1 November 2009); Zimuki T., [Exclusive Report: Shaked Contemplating Attorney General's Job Split](#), *Ynet* (4 August 2015); Levy-Weinrib E., [Shaked: 'I'm Thinking of Splitting the Attorney General's Job'](#), *Globes* (4 August 2015).

<sup>104</sup> Morag G., [Netanyahu to Supreme Court: Nothing Will Impede Me from Steering Move to Split the Attorney General's Job](#), *Ynet* (7 January 2021).

<sup>105</sup> Gutman M., [What's Binding Is the Law, Not the Attorney General's Personal Opinion](#), *Ynet* (28 April 2021); Eichner I., Zimuki T., Morag G., and Azulay M., [Attorney General Disallows Vote on Akunis's Appointment as Justice Minister: 'Illegal, Motion Didn't Pass'](#), *Ynet* (27 April 2021).

The public security minister was not authorized to order the IPS commissioner not to provide medical treatment to prisoners and detainees, and in a subsequent Supreme Court hearing on a petition against this decision, the judges even deemed fit to comment on Ohana's rejection of the Attorney General's authority. Justice Meni Mazuz wrote in his ruling that, as stated, under Israeli law the Attorney General is the topmost authority on interpretation of the law for all arms of the executive, and his legal opinion binds them and reflects existent law unless otherwise determined by a qualified court. As for Ohana's demand not to be represented by the Attorney General, Justice Mazuz noted that since the Attorney General's position reflects the law for the executive branch, it is the Attorney General who anyway determines the legal position to be presented to the court in cases to which the state is party, other than in very rare exceptions.<sup>106</sup>

Another battleground was the Judicial Selection Committee, which operates by virtue of the Courts Law-1984. Repeated proposals to change the composition of the committee and to reduce the number of judges in the Supreme Court proved unsuccessful. Amendment No. 55 enacted in 2008, initiated by then-MK Gideon Saar, set a requirement for a majority of seven out of the committee's nine members in any vote on a Supreme Court appointment. Saar stated that the amendment was intended to ensure that appointments were made by broad consensus and to advance the nomination of conservative judges.<sup>107</sup>

Thanks to this, and as a result of her alliance with former Bar Association chairman Effy Naveh, Minister Shaked succeeded to appoint 330 judges and registrars between 2015-2019, including six Supreme Court justices, some considered conservatives and others either religiously observant or associated with the Right and the settlements. At a swearing-in ceremony in January 2019, Shaked declared: "I am proud to say that there is more room now for other opinions, which are proudly on display. I've reframed the conception".<sup>108</sup>

**In November 2017, an expose aired on the 'Fact' investigative program about the behind-the-scenes of the alliance between Justice Minister Shaked and Bar Association chairman Effy Naveh revealed that Shaked had vetted the candidates to make sure they were religious, conservative, and right-wing**

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<sup>106</sup> [Supreme Court Ruling 158/21 Physicians for Human Rights v. Public Security Minister](#), Nevo (31 January 2021).

<sup>107</sup> Saar G., [The Reform Changing the Supreme Court](#), *Ynet* (26 February 2017).

<sup>108</sup> Hovel R., [\\*Israeli Justice Chief: I 'Broke' the Old Conception of the Justice System](#), *Haaretz* (8 January 2019).

In November 2017, an expose aired on the investigative TV program Fact<sup>109</sup> about the behind-the-scenes of the alliance between Shaked and Naveh in the Judicial Selection Committee revealed that Shaked had vetted the candidates to make sure they were religious, conservative, and right-wing.<sup>110</sup> Following the airing of the expose and the ensuing public uproar, Supreme Court President Esther Hayut sent a letter to all court presidents warning that an overt alliance between the Bar Association and political elements in the Judicial Selection Committee entailed the danger that selected judges might attempt to advance a political agenda at the expense of professional considerations and that "politicization of the judiciary might completely undermine its foundations as an independent and autonomous system".<sup>111</sup>

A case in point is then-MK Nurit Koren, a member of the Judicial Selection Committee, who posted on her Twitter account in February 2018 that she and Shaked had selected Judge Alex Stein to the Supreme Court due to his views on Israel's limited obligation to care for the Palestinian population under occupation.<sup>112</sup>

The revolution brought about by Shaked and Naveh had a tremendous impact not only on the Supreme Court. More and more areas were transferred to the district courts following the enactment in 2000 of the Administrative Courts Law, which authorized the former to hear issues previously adjudicated in the Supreme Court. In addition to the transfer of powers from the Supreme Court to the Jerusalem District Court, Shaked advanced the appointment therein of Adv. Haya Sandberg, head of the Committee for the Regulation of Outposts in Judea and Samaria,<sup>113</sup> and nominated dozens of district court judges. Given that district court hearings are mostly held before a single judge (unlike Supreme Court hearings held before three judges), Shaked's appointments potentially had enormous influence.

In recent years, senior members of the ruling party even went as far as calling for noncompliance with Supreme Court rulings. For example, in February 2019, Amir Ohana, then a senior Likud member and later a justice minister and a public security minister, declared that some Supreme Court rulings are patently illegal and that not every ruling needs to be implemented.<sup>114</sup> In March 2020, Knesset Speaker Yuli Edelstein deliberately violated a Supreme

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<sup>109</sup> Assenheim O., [Game of Thrones](#), *Mako* (22 November 2017).

<sup>110</sup> Assenheim O., [Real Revolution or Joke at Our Expense?](#), *Mako* (23 November 2017).

<sup>111</sup> Hovel R., [Supreme Court President Hayut: Opposes Appointment of Judges According to Political Agenda](#), *Haaretz* (27 November 2017).

<sup>112</sup> Hovel R., [Supreme Court Judge Doggedly Appointed by Shaked: Israel Not Obligated to Supply Electricity to Gaza](#), *Haaretz* (27 February 2018).

<sup>113</sup> Hovel R., [\\*Israeli Justice Minister's Pick for Judge: A Lawyer Who Backed West Bank Settlements](#), *Haaretz* (7 January 2018).

<sup>114</sup> Haaretz, ['Not Every Law Need Be Implemented': Incoming Justice Minister Amir Ohana's Pronouncements Against the Judiciary](#), *Haaretz* (6 June 2019).

Court ruling and did not convene the Knesset plenum to elect a new speaker,<sup>115</sup> after Tourism Minister Yariv Levin and Justice Minister Ohana urged him to do so.<sup>116</sup>

From then on, the "Supreme Court's Dictatorship" campaign that had until then been confined to the fringes of the Right (and limited to Supreme Court hearings in petitions for evacuation of outposts and illegal construction in the settlements) became a political crusade waged by Netanyahu, his associates, and Likud MKs

in their social media accounts, on television prime time, in the Knesset plenum, and in cabinet meetings. Netanyahu even used news conferences on the corona pandemic crisis to attack the justice system and the State Attorney's Office.

All of these had a chilling effect that hindered the justice system from adopting a critical stance toward government actions. In recent years we have witnessed more and more cases where the courts refrain from taking a clear or critical position and opt for a literal or restrictive interpretation of the law at the expense of liberal and democratic principles.<sup>117</sup> One example is the decision of the Supreme Court's 10 justices to reject the petitions to repeal the Nationality Law.<sup>118</sup> Only Judge George Kara, the single dissenting voice, wrote that no interpretive reasoning could remedy the unconstitutionality of the Nationality Law.

Although legislation restricting the powers of the Supreme Court has yet to be enacted, the number of petitions rejected outright increased dramatically in recent years, and so have the grounds for their rejection. For example, in the past year, the Supreme Court started rejecting

**In recent years, senior members of the ruling party have called for noncompliance with Supreme Court rulings. In February 2019, Likud MK Amir Ohana, who went on to be appointed minister of justice and minister of public security, declared that some Supreme Court rulings are patently illegal and that not every ruling needs to be implemented. In March 2020, Knesset Speaker Yuli Edelstein deliberately violated a Supreme Court ruling and did not convene the Knesset plenum to elect a new speaker**

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<sup>115</sup> Baum I., [Edelstein Ignores Supreme Court Ruling, Thereby Paving the Way to Anarchy](#), *The Marker* (25 March 2020).

<sup>116</sup> Schneider T., [Senior Ministers to Knesset Speaker Edelstein: Disregard Supreme Court's Ruling](#), *Globes* (23 March 2020).

<sup>117</sup> Kremnitzer M., [Supreme Court Forgets Moral and Logic and Embraces Attorney General's Clownish Treatment of Netanyahu](#), *Haaretz* (7 May 2020); Kremnitzer M., [Supreme Court Justices Inclined To Ignore Racism in Nationality Law for Fear of Conducting Judicial Review of Basic Law](#), *Haaretz* (23 December 2020).

<sup>118</sup> [Petitions To Repeal Nationality Law](#), *Supreme Decisions* (8 July 2021).

out of hand petitions to repeal legislation citing lack of exhaustion of remedies (a new and not obvious requirement in such petitions, given that no public authority is free not to act according to the law).<sup>119</sup>

Issues that the Supreme Court used to hear in the past, such as the policy on defense exports, suddenly became unjudicable.<sup>120</sup> Likewise, petitions on the constitutionality of the Admission Boards Law (allowing cooperative communities to subject prospective new residents to prior approval by an admission board) were rejected because they were not "mature" for adjudication. Use of the "doctrine of maturity" expanded later on, and was invoked to reject other petitions as well.<sup>121</sup>

The right of standing was also undermined without amending the pertinent legislation. For example, Justice Noam Solberg questioned the right of standing of the NGO Ir Amim in its third petition to change the route of Jerusalem Day's "Flag Parade" in the Old City's Muslim Quarter, even though such claim had never been made in petitions concerning two previous parades.<sup>122</sup> In the debate on the petition to release Foreign Ministry documents dealing with the human rights situation in Eritrea based on the Freedom of Information Act, Justice Dafna Barak-Erez repeatedly questioned the right of Israeli activists to seek information on behalf of Eritrean asylum-seekers without including them in the process.<sup>123</sup> In another proceeding, Justice Alex Stein ruled that "the right to appeal to the Supreme Court as a public plaintiff is given only to those who are out to empower all or part of the general public and to guarantee their rights".<sup>124</sup> Therefore, it is unclear what is to become of the public plaintiff who is not out to empower the "general public" but concerns himself with the rights of a sexual, religious, or national minority within the State of Israel, the rights of the Palestinian population in the Occupied Territories, asylum seekers, or citizens of a distant country suffering the consequences of Israeli military exports.

The politicization of the judiciary during Justice Minister Shaked's tenure, along with the extreme delegitimization suffered by the judiciary in the last years of Netanyahu's rule, undermined the public's trust and the rule of law, as well as the judiciary's ability (and perhaps also the will, which was quite scarce to begin with) to effectively audit the executive, thereby avoiding further conflict with the government. It goes without saying that this

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<sup>119</sup> [Supreme Court Ruling 912/21 Movement for Quality Government in Israel v. Finance Minister](#), *Nevo* (21 April 2021).

<sup>120</sup> [Supreme Court Ruling 1942/21 Yael Agmon et al v. Defense Ministry's Director General](#), *Nevo* (27 June 2021).

<sup>121</sup> See [Supreme Court Ruling 2311/11 Uri Sabah v. Knesset](#), *Nevo* (17 September 2014); [Supreme Court Ruling 7647/16 Association for Civil Rights in Israel v. Minister of Culture and Sport](#), *Nevo* (13 May 2020).

<sup>122</sup> [Supreme Court Ruling 2723/19 NGO Ir Amim v. Commander of Israel Police's Jerusalem District](#), *Nevo* (19 May 2019).

<sup>123</sup> [Supreme Court Ruling 5958/18 Hanna Raz v. Foreign Ministry](#), *Nevo* (24 July 2019).

<sup>124</sup> [Supreme Court Ruling 4341/21 Dr. Pinkie Feinstein v. Health Minister](#), *Nevo* (4 July 2021).

enabled the intensification of authoritarian components of the regime in Israel. Subject to constant attacks, the Supreme Court lost its elevated status and was seen by large segments of the Jewish public as a leftist institution and an enemy of the people that acts contrary to the views of the general public. Such a climate allowed the Right to take practical steps to restrain, intimidate, and restrict judges on the one hand, and to build broad public support for injuring such an important institution as is an eminent judiciary, the pillar of any democratic regime, on the other.

Especially in light of the weakened status of the judiciary and the politicization it has undergone in recent years, Israel's shortage of alternative human rights protection mechanisms, the likes of which exist in many countries around the world, such as a human rights commission and a law-regulated status for human rights defenders, is conspicuously noteworthy.

### **Campaign To Weaken Israeli Media's Independence and Work**

Despite widespread criticism, Netanyahu also served as communications minister in 2014–2017, and when he appointed others to the job, he interfered with their work. For example, in a leaked recording of a meeting with then-Communications Minister Ayoub Kara, the prime minister was heard to pressure him to disband the Cable and Satellite Broadcasting Council and to give a break to television's *Channel 20*.<sup>125</sup>

In addition to Netanyahu's meddling, the Israeli media market underwent major changes in recent decades as a result of economic and professional developments. Some of these were engendered by political and government intervention intended to narrow the media's latitude and independence, and to encourage the emergence of outlets with a clear ideological tone that would support the Likud party and its leader. The indictment of Netanyahu on a slew of corruption charges and his ongoing trial provide a comprehensive and rare glimpse into the extent of intervention and biased media coverage by tycoons, stakeholders, and politicians, as well as by official government bodies.

The economic conditions in the early 2000s caused a major crisis in the industry, leading to the sale of several prominent media outlets.<sup>126</sup> New investors entered the industry, some with a strong ideological bent, who went on to acquire various outlets in order to gain influence on public opinion, boost their status, and advance their other business and personal interests.<sup>127</sup>

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<sup>125</sup> Eichner I., Azulay M., Karni Y. and Boker R., [Netanyahu Caught on Tape Meddling in the Media Market and Screaming at Ayoub Kara: 'Are You Crazy?'](#), *Ynet* (2 September 2019).

<sup>126</sup> The Jerusalem Post and Makor Rishon in 2004, Ma'ariv in 2010, Channel 10 in 2004, and again in 2015 and 2018.

<sup>127</sup> Amior H., [The Shabbos Goyim](#), *The Seventh Eye* (1 March 2004); Balint A., [Judaism Channel Tekhelet Starts Broadcasting This Coming Saturday Evening](#) (3 April 2003); Koren-Dinar R., ['You Should Learn From the Americans: Free Is Best'](#), *Haaretz* (15 February 2006).

The first daily freebie, *Israeli*, appeared in 2006 and the freebie *Israel Hayom* began publication in 2007.<sup>128</sup> These newspapers, which were distributed on a non-profit basis, were intended to promote the worldview of the tycoons who funded them and of their political allies. The circulation of these freebies

**Some of the major changes in the media market came as a result of political and government intervention intended to narrow the media's latitude and independence and to encourage the emergence of outlets with a clear ideological tone that would support the Likud party and its leader**

severely damaged the business model of old-time newspapers, and reduced the number of players in the market. Despite their fierce personal competition, the controlling owners of both freebies were identified with the Likud party. In 2012, the *Ma'ariv* newspaper was also purchased by tycoons identified with the ideological Right.<sup>129</sup>

Furthermore, the media market was reorganized by encouraging these tycoons to purchase financially-strapped outlets and by granting franchises and breaks to outlets close to the Likud's positions,<sup>130</sup> as opposed to the hard time given to outlets that were relatively independent and critical of the party and Netanyahu. An example of the negative facet of this intervention is the byzantine red tape that television's *Channel 10* was forced to navigate in order to renew its franchise,<sup>131</sup> after airing a series of biting exposes about government leaders.<sup>132</sup> In contrast, the breaks and benefits granted first to the *Tekhelet* channel, and later to the *Moreshet* channel (which went on to become *Channel 20* and transform from a niche cable station into a major news channel, subsequently relocating to *Channel 14* and changing

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<sup>128</sup> Koren-Dinar R., ['You Should Learn From the Americans: Free Is Best'](#), *Haaretz* (15 February 2006); Carmel A., [Israel Hayom's Debut This Morning](#), *Haaretz* (30 July 2007); Bar-Zohar O., [The Face Behind Israel Hayom](#), *The Marker* (5 October 2008).

<sup>129</sup> Musli L. and Shiffrin L., [It'll Be Called Ma'ariv But the Content Will Be Makor Rishon](#), *Mako* (9 September 2012); Tucker N., [Ben-Zvi's Secret Plan for Ma'ariv and Makor Rishon](#), *The Marker* (16 January 2013).

<sup>130</sup> Tucker N., [Netanyahu Behind Breaks Given to Channel 10 Owned by Confidantes Milchan and Lauder](#), *The Marker* (15 January 2017); Weitz G., [\\*Netanyahu Tried To Aid Hollywood Producer Milchan's Purchase of Israel's Channel 2 - While Receiving Gifts From Him](#), *Haaretz* (20 September 2017).

<sup>131</sup> Zisser M., [Channel 10 Affair Continues: Proposal To Extend Franchise Rejected](#), *Bizportal* (16 August 2009); Tucker N., [Emerging Agreement on Channel 10: Franchise Extended for Two Years Only](#), *The Marker* (2 December 2012); Dor O., [Government Approves: Channel 10's Franchise Extended for Six Months, Channel 2 To Enjoy Matching Conditions](#), *Calcalist* (4 January 2015); Peleg G., [Nir Hefetz's Testimony: Thus Were Netanyahu's Discussions on Channel 10 Crisis Conducted](#), *N12* (4 September 2019).

<sup>132</sup> Miranda A., [Appeal to Mazuz: Investigate Who Paid Netanyahu's Expenses in London](#), *Ynet* (15 March 2008); Shporer S., [Netanyahu's Generous Friends Paid for His Family's Flights and Hotels Abroad](#), *Haaretz* (23 March 2011); Drucker R., [\\*How the Affair That Could Have Destroyed Netanyahu's Political Career Was Buried](#), *Haaretz* (25 May 2016).

its name to *Now 14*).<sup>133</sup> It bears noting that following petitions to the Supreme Court due to errors uncovered in the bidding, the attempt to transfer the *Knesset Channel's* franchise to *Channel 20* was called off.<sup>134</sup>

At the same time, efforts were made to deter, intimidate, and silence specific journalists who were seen by the government as "excessively" vocal and critical, the reason cited for the termination of journalist Barak Ravid.<sup>135</sup> However, more common steps were taken in personal and informal channels, with politicians and government officials asking a media outlet's owner or editor to punish or fire a specific journalist,<sup>136</sup> or personal libel lawsuits filed against a newspaper or a journalist.<sup>137</sup> The Likud-Netanyahu's campaign accused the Israeli media of being mostly "leftist", "hostile", and a potential rival that must be tamed and restrained. Hence, relentless efforts were made to delegitimize the *Haaretz* newspaper, which was a source of anti-government criticism in all areas. Netanyahu's son Yair even went as far as calling *Channel 12 News* "*Al Jazeera* in Hebrew".<sup>138</sup>

Although studies show that the mainstream media largely aligned with the government line, its constant defamation hurt not only the independence of editors and journalists, but also degraded it in the eyes of the public who largely perceived it as "leftist".<sup>139</sup> To understand this, consider what Netanyahu said in January 2017, in one of his rants against the media: "The leftist media has been recruited into a Bolshevik hunt, brainwashing, and

**Anonymous activists ('trolls') were widely used to beseech social media platforms to block critics for 'violating community rules'. In addition, employers of hypercritical users were often entreated to reprimand or fire such workers**

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<sup>133</sup> Haaretz, [Jewish Tradition Channel To Be Called Tekhelet](#), *Haaretz* (17 June 2003); Koren-Dinar R., Shlonsky: '[Tekhelet To Be Third Commercial Channel](#)', *The Marker* (5 July 2005); Boker R., [Channel 20 To Operate Knesset Channel](#), *Ynet* (4 May 2017); Vitman A., [Knesset Plenum Passes Law To Ease Regulation on TV](#), *Israel Hayom* (20 February 2018).

<sup>134</sup> Gutter A., [Supreme Court Rules: Interim Injunction Preventing Channel 20 From Operating Knesset Channel Will Not Be Cancelled](#), *Calcalist* (31 July 2017).

<sup>135</sup> Shenig I., [Journalists Shocked by Firing of Barak Ravid, Yair Netanyahu Jumping for Joy](#), *Ice* (5 July 2020).

<sup>136</sup> The Marker, [Walla! Website's Executive Director: I Was Pressured To Fire Our Editor Because of Item Angering Netanyahu](#), *The Marker* (19 February 2018); Peleg G., [Nir Hefetz's Testimony: Thus Were Netanyahu's Discussions on Channel 10 Crisis Conducted](#), *N12* (4 September 2019); Tucker N., [Dan Margalit Fired From Israel Hayom: 'I Lost My Job in the Name of Freedom of Expression'](#), *The Marker* (6 June 2017); Stern I., [Firing of Barak Ravid Criticized, Seen as Political Muzzling](#), *Haaretz* (5 July 2020).

<sup>137</sup> Woolf I., [Lawsuit: Binyamin Netanyahu v. Channel 10 News](#), *News1 First Class* (16 March 2008); Persico O., ['I Didn't Order and I Didn't Ask': Sara Netanyahu Sues Ben Caspit for 1 Million Shekels](#), *The Seventh Eye* (15 August 2011); Goral M., [Journalist Yigal Sarna To Pay 100,000-Shekel Damages to Netanyahus](#), *Calcalist* (11 June 2017).

<sup>138</sup> Shenig I., [Yair Netanyahu on Channel 12 News: 'Al Jazeera in Hebrew'](#), *Ice* (1 September 2020).

<sup>139</sup> Persico O., [Most Israelis Want Government-Aligned Media](#), *The Seventh Eye* (29 September 2013).

character assassination against me and my family. It happens every day and every night. They manufacture a barrage of fake news against us".<sup>140</sup>

Another battleground for freedom of expression was social media. Although not considered traditional media, social media platforms have over the last decade become a major source of information for broad segments of the population. Consequently, significant efforts were made to monitor the discourse therein, and at times also to silence utterances disapproving of the ruling party. As part of this effort, wide use was made of anonymous activists ("trolls") to beseech social media platforms to block critics for "violating community rules". In addition, employers were often contacted and entreated to reprimand or terminate workers who were hypercritical of the government.<sup>141</sup> Civil servants who posted critical content often faced disciplinary proceedings that ended in removal from their position or termination.<sup>142</sup> These steps, some of which subsequently gained publicity and praise, were intended to produce a chilling effect that would deter future potential critics and force them to exercise self-censorship.

## Effort To Remove Arab Citizens and Representatives from Political Arena

In this part of the report, we will describe how the political competition in Israel since 2009 has been characterized by moves aimed at reducing political participation through the exclusion from elections and delegitimization of voters and candidates, primarily of the Arab citizens.

Throughout his tenure, Netanyahu worked hard to prevent the establishment of an alternative to his right-wing government, which would be a coalition made up of small and medium-sized Center-Left Zionist parties and Arab parties. The Likud's intensified delegitimization of its rivals sought to undermine the legitimacy of any elections they did not win and to hurt public confidence in the very process of government change through elections. The Netanyahu-Likud message to the public was that only if they win and return to power could an election be considered legitimate and by-the-book.<sup>143</sup>

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<sup>140</sup> The Marker, [Mexico Furious? Netanyahu Blames 'Leftist Media, Character Assassination, Brainwashing'](#), *The Marker* (30 January 2017).

<sup>141</sup> Bior H., and Weissberg H., ['Death to Arabs', '13 Soldiers Dead – More the Better': To Fire Workers Over Facebook Posts?](#), *The Marker* (30 July 2014); Srugim news, [Regev: Fire Culture Ministry's Arab Worker](#), *Srugim* (5 March 2019); Bandel N., Peleg B., and Hasson N., [Escalation Leads to Surge in Monitoring of Social Media Posts by Arabs and Calls for Their Firing](#), *Haaretz* (19 May 2021).

<sup>142</sup> Varon G. and Zilberman Y., [Doctor Suspended After Posting Image of Netanyahu as Vampire in Gaza, N12](#) (21 July 2014); Yanko A., [Rishon Lezion High School Teacher Fired After Pro-Conscientious Objection Posts](#), *Ynet* (17 January 2020).

<sup>143</sup> Under these circumstances, it comes as no surprise that ahead of the March 2021 election CEC chief Orly Adas issued this unusual statement: "This time around, we are facing stubborn attempts to question the credibility of the election process. These moves are well-planned, and political sources are involved in them, too;" Bandel N., Lis J., Shpigel N. and Peleg B., [CEC: Im Tirtzu Spreading Fake News About Us; Parties Complain of Irregularities in Polling Stations](#), *Haaretz* (23 March 2021).

## Discriminatory Legislation

In parallel with his efforts to make the Likud the only ruling party, Netanyahu stepped up his attempts to enact discriminatory legislation that would send a message to Arabs that even in the 21st century they were still second-class citizens in Israel, which is why they should give up and refrain from participating in elections.

In this context, legislation was enacted that sought to hinder pragmatic political cooperation between Jewish and Arab MKs by labeling the very notion of collaboration with Arabs as illegitimate and pro-terror. Laws were passed to impede Arab parties and representatives from participating in elections and joining the Knesset by means of a requirement to constantly declare allegiance to the State of Israel. In contrast, representatives of far-Right and ultra-Orthodox parties were not required to reaffirm their allegiance to the democratic character of the state.

Netanyahu did not invent the wheel. These laws simply emphasized and deepened the built-in discrimination against Israel's Arab citizens that already existed in discriminatory laws enacted in the 1950s and afterwards.

**Citizenship Law:** The Citizenship and Entry into Israel Law, enacted in 2003 as a temporary provision, was designed to prevent citizenship or residency status from "residents of Judea and Samaria... who are not residents of an Israeli locality in the area".<sup>144</sup> It aimed to prevent naturalization by virtue of "family reunification" (Article 7 of the Citizenship Law-1952) of Palestinian residents of the Occupied Territories who married Palestinian spouses holding Israeli citizenship.<sup>145</sup> This temporary provision was extended annually until July 2021, when for the first time the Knesset failed to renew it. Even though the Bennett-Lapid government supported it, the Likud (now in the opposition) decided to vote against its extension in order to embarrass coalition members from right-wing parties. While in all its responses to Supreme Court petitions filed over the years by human rights organizations the state claimed that the temporary provision was based on real security needs, Foreign Minister Yair Lapid was not ashamed to declare its real purpose: "We shouldn't conceal the essence of the Citizenship Law; it's one of the tools aimed at ensuring Israel's Jewish majority".<sup>146</sup>

**Admission Boards Law and Intensification of Spatial Inequality:** In 2011, following the Supreme Court's ruling in the Ka'adan case to the effect that Arabs must be allowed to take up residence in Jewish cooperative communities, Amendment No. 8 to the Cooperative Societies

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<sup>144</sup> Citizenship and Entry into Israel Law-2003 (Temporary Provision).

<sup>145</sup> Margalit L., [The Controversy Over the Citizenship and Entry into Israel Law](#), *Israel Democracy Institute's website* (24 June 2011).

<sup>146</sup> Hauser-Tov M., [Lapid: 'We Shouldn't Conceal Essence of Citizenship Law; It's Aimed at Ensuring Jewish Majority'](#), *Haaretz* (5 July 2021).

Ordinance (popularly known as the "Admission Boards Law")<sup>147</sup> was enacted to regulate the conditions for the establishment of admission boards in "cooperative communities in the Galilee and the Negev". Although the newly-introduced Article 6c(c) states that "the admission board shall not refuse to accept a candidate on the grounds of race, religion, gender, nationality, disability, marital status, age, parenthood, sexual orientation, country of origin, worldview, or party-political affiliation", Article 6c(a) of the same law lists several wide-ranging causes on account of which a local admission board may reject candidates, thereby circumventing the ban on discrimination. Among these causes are "incompatibility with the social fabric" and "unique characteristics of the cooperative community". It should be noted that the public criticism leveled at the law focused on the fact that the amendment dealt not only with preventing the acceptance of Arabs, but also of persons of Mizrahi descent and LGBTQ couples. This further strengthened the grip on land of kibbutzim and communities defined as cooperatives and deepened ethnic inequality with regard to the distribution of resources.

A similar manifestation of spatial discrimination in land distribution between privileged landowners and have-nots is the struggle to gain access to the Assi creek in Kibbutz Nir David and open it to the general public, especially to residents of the neighboring town of Bet She'an. Bet She'an Regional Council's total area is 7,500 dunams, while Emek HaMa'ayanot Regional Council (where the kibbutz is located) stretches over 250,000 dunams, despite the fact that the former has a population of 19,000 and the latter has a population of 13,500.<sup>148</sup> Moreover, tourism on the banks of the Assi generates income for the kibbutz, while residents of Bet She'an have no such choice. Closing access to the creek contravenes Basic Law: Israel Land, the Real Estate Law, the Water Law, and the Transportation Regulations, which define land, water resources, and access roads as belonging to the state and thus to the general public.<sup>149</sup> Nevertheless, the court somewhat accepted the kibbutz's claim that unrestricted access to the creek would disturb the daily life of its members. The controversy, which escalated into violence, highlights the ethnocratic gaps between residents of rural communities (mostly Ashkenazim) and residents of development towns (mostly Mizrahim). It bears noting that the land in the area was Arab-owned and that flour mills operated on the banks of the creek before 1948.<sup>150</sup> According to the latest compromise agreement reached by the sides, the kibbutz will establish a leisure-recreation-bathing complex in a small section of the creek.

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<sup>147</sup> [Cooperative Societies Ordinance-2011 \(Amendment No. 8\)](#), Knesset's website (30 March 2011).

<sup>148</sup> Zomer D., [Will This Plan End Conflict Over Assi Creek?](#), *Calcalist* (26 December 2020).

<sup>149</sup> [Basic Law: Israel Land-1960](#); [Real Estate Law-1969](#); [Water Law-1959](#); [Transportation Regulations-1961](#), all published in Nevo.

<sup>150</sup> Noy A., [Betraying Oblivion: Goodbye to Gibraltar Café](#), *Haaretz* (22 October 2015).

**Kaminitz Law:** Enacted in 2017, Amendment No. 116 to the Planning and Construction Law (popularly known as the "Kaminitz Law")<sup>151</sup> allows the government to impose heavy fines and enforce demolition orders on illegal structures even when no such orders have been issued by local authorities, thus enabling stepped-up enforcement in Arab municipalities by bypassing their involvement. This legislation led to a surge in the rate of demolition of illegal structures, without a parallel approval of alternative solutions (such as new blueprints for legal construction) to deal with the long-standing discrimination in the allocation of resources and land for construction in Arab locales despite the increase in their natural growth. Data collected by the Negev Coexistence Forum for Civil Equality<sup>152</sup> show that the rate of demolition of illegal buildings in Arab localities in the Negev doubled in 2017 compared to the three preceding years, and remained at a similar level over the following three years (about 2,200 buildings per year).<sup>153</sup>

**Nakba Law:** In 2011, Amendment No. 40 was introduced to the Budgetary Principles Law-1985. Popularly known as the "Nakba Law", the new Article 3b stipulates that the finance minister may slash the allocation of a state-budgeted or state-supported body if it has incurred an expenditure that essentially boils down to one of the following: denial of Israel's existence as a Jewish and democratic state; incitement to racism, violence, or terrorism; support for the armed struggle or terrorist act of an enemy state or a terrorist organization against the State of Israel; marking Israel's Independence Day or the anniversary of its establishment as a day of mourning; an act of vandalism or physical outrage dishonoring the national flag or emblem.<sup>154</sup> The law is intended to keep the Israeli public from discussing or addressing the crimes allegedly committed against the Palestinian population in the 1948 war by the State of Israel and its troops, and to restrict the freedom of Arab citizens to express their pain at the tragedy that befell them when they or their families became refugees.

**Nationality Law:** Enacted in 2018, Basic Law: Israel-The Nation State of the Jewish People (popularly known as the "Nationality Law") is the flagship of discriminatory legislation during

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<sup>151</sup> [Planning and Construction Law-2017 \(Amendment No. 116\)](#), Knesset's website (25 April 2017).

<sup>152</sup> Arab-Jewish organization established with the aim of serving as a framework for cooperation in the joint struggle for equal civil rights.

<sup>153</sup> Avrekh T., [Demolition of Buildings as Key Tool for Dispossession and Concentration of Bedouin Population in Negev](#), Negev Coexistence Forum for Civil Equality's website (October 2018) ; Avrekh T., [\(In\)Equality and Demolition of Homes and Buildings in Negev's Bedouin Localities](#), Negev Coexistence Forum for Civil Equality's website (June 2020). The growing trend to demolish illegal structures, even when there exists no legal alternative to build, can be seen as the continuation of an older policy. For example, in 1976 the state established the Green Patrol, a special police force to protect state lands and open spaces from "hostile takeover attempts" by the Arab population. Its activities were directed mainly at the Bedouin population and included "evacuation of squatters" and demolition of their homes, confiscation of property and flocks of sheep, destruction of grain fields, and more. See: Porat H., [The Green Patrol as Reflected in the Daily Press 1976-1980](#), *News1 First Class* (23 April 2020).

<sup>154</sup> [Budgetary Principles Law-2011 \(Amendment No. 40\)](#), Knesset's website (30 March 2011).

Netanyahu's tenure.<sup>155</sup> Amid deliberate disregard for 20% of the country's non-Jewish citizens, this law stipulates that only the Jewish people may exercise the right to national self-determination in the State of Israel, that Hebrew is Israel's official language whereas Arabic holds a special status to be regulated in the future, and that the development of Jewish settlement is a national value to be encouraged, promoted, and fortified by the state – all of it without guaranteeing equal rights for Israel's non-Jewish citizens. Petitions to repeal the law on the grounds that it violated the rights of Arab citizens, as well as one filed by a group of Mizrahi activists who argued that it harms the status of Arab culture, which is their culture too, and encourages land allocation according to unequal criteria, were rejected by the Supreme Court in 2021. The court ruled that the Nationality Law must be given a sustainable interpretation that is consistent with other Basic Laws and with the principles and values of Israel's legal system, especially the principle of equality.<sup>156</sup> However, even after this ruling, which has for the moment limited the options for implementing its operative clauses, the Nationality Law still bears a negative and degrading symbolic significance for non-Jewish citizens and encourages delegitimization of their very presence in the country. The very existence of the law hurts all citizens with an affinity for Arab culture, first and foremost the country's Arab citizens, but also Jews who immigrated from Arab and Muslim countries.

### Effort To Harm Political Participation

**Cameras in Polling Stations:** Another form of intimidation and voter suppression in the Arab sector in recent times has to do with the Likud's demand to allow the use of cameras for the purpose of "preserving a wholesome election". Ahead of Election Day in April 2019, the Likud outfitted monitors deployed on its behalf to polling stations where Arab citizens cast their vote with body cameras and encouraged them to film the voting process.<sup>157</sup> Upon hearing about it, the chairman of the Central Elections Committee (CEC) ordered the police to stop the filming, but the next day Likud members bragged about their success in lowering the voting rate in the Arab sector.<sup>158</sup>

In the run-up to the September 2019 election, the Likud party attempted to enact legislation empowering the staff in polling stations to film the proceedings in the room.<sup>159</sup> Despite the failure of these efforts, the use of cameras was accorded some legitimacy when the CEC chairman allowed polling station chiefs to film "unusual incidents where there is reasonable

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<sup>155</sup> [Basic Law: Israel-The Nation State of Jewish People-2018](#), *Nevo*.

<sup>156</sup> [Supreme Court Ruling 5555/18 MK Akram Hasson et al v. Israel's Knesset et al](#), *Supreme Decisions* (8 July 2021).

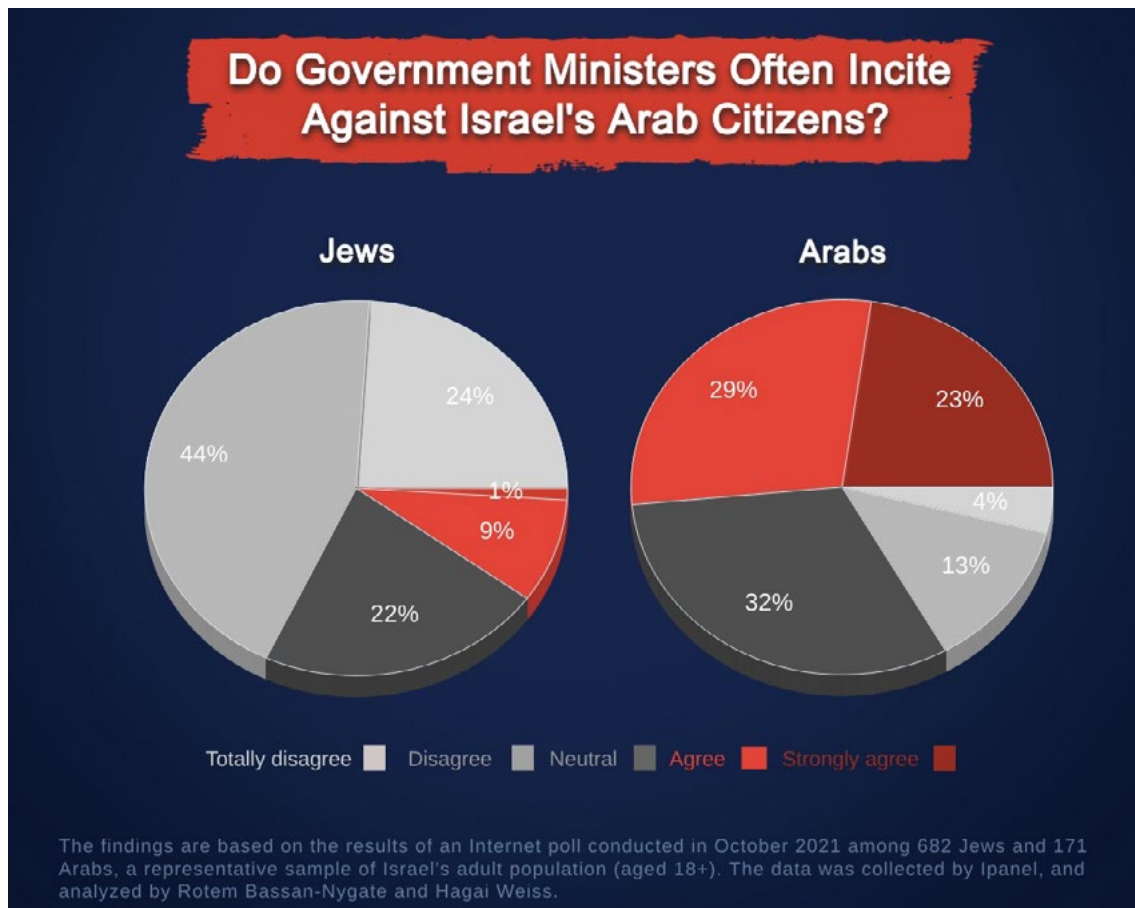
<sup>157</sup> Azulay M., [Exclusive: Likud Installs 1,300 Hidden Cameras in Arab Polling Stations](#), *Ynet* (9 April 2019).

<sup>158</sup> Liel D., [Thus Were Likud's 'Filming Activists' at Polling Stations Instructed](#), *N12* (18 August 2019).

<sup>159</sup> Bender A., [Cameras Law Defeated in First Reading, Opposition Boycotts Vote](#), *Ma'ariv* (11 September 2019).

cause for fear that the wholesomeness of the election might have been compromised".<sup>160</sup> The Likud's camera campaign undermined public confidence in the wholesomeness of elections and reinforced public delegitimization of the Arab minority's participation.

**Incitement During Election Campaigns:** All of the above dovetails with the fact that recent rounds of elections were characterized by extremely acerbic and inciteful campaigns, which included heightened delegitimization of rival groups. The Likud's campaigning against the Zionist-Left parties and the Arab public stood out in particular, with suggestions that the left-wing parties support ISIS, a video of Netanyahu declaring that "the Arabs are voting in droves", and slogans like "It's Either Bibi or Tibi" (an Arab MK).<sup>161</sup>



A survey conducted by Zulat shows that 52% of Arab respondents agree with the statement that cabinet members incite against Israel's Arab citizens. In contrast, only 10% of Jewish respondents shared the same view.

<sup>160</sup> Melcer H., [Final Decision on Requests for Guidance Regarding Use of Cameras in Polling Stations on Election Day](#), *Central Election Committee's website* (8 August 2021).

<sup>161</sup> Lis J., [Netanyahu in New Propaganda Clip: The Left Is Good for ISIS](#), *Haaretz* (14 February 2015); Bendett S., Nahmias O., and Altman Y., [Netanyahu Posts Clip: 'The Arabs Are Voting in Droves'](#), *Walla!* (17 March 2015); German A., [Netanyahu: Gantz Lying Again, Without Tibi and Ouda He Has No Government](#), *Srugim* (15 February 2020); Aharoni M., [What's Up in Propaganda: Superstar Tibi](#), *Israel Hayom* (26 February 2020).

## Exclusion of Arab Representatives from Parliament

The institutionalized discrimination against Israel's Arab citizens is also reflected in the efforts made to oust their representatives from the parliament.

**Raising Electoral Threshold:** Over the years, the electoral threshold qualifying for a Knesset seat has been corrected several times. These adjustments have officially been framed as an effort to reduce the number of parties and increase political governance. In practice, however, they appear to be intended to make it difficult for Arab parties to enter the Knesset.<sup>162</sup>

As part of a series of amendments to the Knesset Elections Law, the electoral threshold was gradually raised to 1.5% in 1992 and to 2% in 2003.<sup>163</sup> In contrast, in 2014 the government enacted a more drastic increase to 3.25%. This dramatic rise was included in broader legislation, explained away as the need to strengthen governance,<sup>164</sup> but the Arab public viewed it as an attempt to exclude it from the elections. In the aftermath of this move, and after many efforts, the Arab parties united ahead of the March 2015 elections under an Arab "Joint List", which won an unprecedentedly high number of seats. The higher electoral threshold also prompted the establishment of "technical blocs" and the merger of different right-wing and far-right parties.<sup>165</sup>

**Disqualification of Parties and Candidates:** In addition to changes in the electoral threshold, efforts increased to disqualify parties and candidates from running. Although this phenomenon began before his second term, Netanyahu's governments (as will be explained below) enacted amendments to Basic Law: The Knesset that facilitated the process of disqualification, and even allowed the termination of an incumbent MK.

The authority to disqualify lists from running for election was first legislated in an amendment to Basic Law: The Knesset in 1985.<sup>166</sup> It assigns this authority to the CEC, a body composed of politicians, and is therefore anchored in the Judicial Review Act.

While the number of disqualifications by the CEC in the 1990s was relatively low, it increased considerably after another amendment was enacted in 2002 (No. 35), which expanded the grounds for disqualification to negation of Israel's existence as a Jewish and democratic state, incitement to racism, and support for the armed struggle of an enemy state or terrorist

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<sup>162</sup> [Knesset Elections Law-2014 \(Amendment No. 62\)](#), *Knesset's website* (19 March 2014).

<sup>163</sup> [Knesset Elections Law-1991 \(Amendment No. 23\)](#), *Knesset's website* (23 October 1991); [Knesset Elections Law-2004 \(Amendment No. 51\)](#), *Knesset's website* (27 May 2004).

<sup>164</sup> Zilberman Y., [Knesset Approves Governance Law: Electoral Threshold To Rise](#), *N12* (11 March 2014); Azulay M., [Knesset Approves Governance Law 0:67](#), *Ynet* (11 March 2014).

<sup>165</sup> Marom Y., [Congratulations: 'Joint List' Hits the Road](#), *Siha Mekomit* (22 January 2015); Attali A., ['Union of Right-Wing Parties' List Submitted to CEC](#), *Ynet* (21 February 2019); Altman Y., [First Merger in Right-Wing Bloc: Jewish Power and Noam Unite](#), *Israel Hayom* (31 January 2021).

<sup>166</sup> [Basic Law: The Knesset-1985 \(Amendment No. 9\)](#), *Knesset's website* (7 August 1985).

organization against the State of Israel.<sup>167</sup> The amendment also enabled the disqualification of a single individual from a list of candidates.

Yet another amendment enacted in 2017 (No. 46) expanded the grounds for the disqualification of individuals, not only for their deeds but also for their words. These amendments paved the way for the presentation of multiple demands to disqualify Arab candidates and lists, with the most consistent effort focusing on disqualifying the Balad party. Sustained efforts were concurrently made to disqualify far-right parties, such as Jewish Power.

After the enactment of Amendment No. 46, disqualification became routine, and the Supreme Court began to intervene more frequently in the CEC's disqualification/qualification decisions.<sup>168</sup> For example, ahead of the four rounds of elections from April 2019 to March 2021, the Supreme Court approved the candidacy of the Balad party and of the Labor Party's Ibtisam Mara'ana (an Israeli Arab).<sup>169</sup> In contrast, it disqualified candidates from the far Right.<sup>170</sup>

**Impeachment Law:** Amendment No. 44 to Basic Law: The Knesset, popularly known as the "Impeachment Law", was enacted in July 2016. It enables the termination of a sitting MK for the same grounds as for disqualification from running for office, based on a motion submitted by the Knesset House Committee and with a majority of 90 MKs. The amendment came against the backdrop of the public and political uproar stirred by then-Balad MK Hanin Zoabi's criticism of the IDF's conduct in the May 2010 violent takeover of the Marmara ship (part of a flotilla carrying humanitarian aid and construction materials that set sail from Turkey to the Gaza Strip in a bid to break Israel's blockade). Rejecting petitions filed against the amendment, the Supreme Court ruled that the Impeachment Law did indeed infringe on the right to vote and be elected and even on the political freedom of expression of MKs, but this infringement did not justify a precedent-setting disqualification of an amendment to a Basic Law, given the balancing mechanisms set forth in the Impeachment Law for the purpose of its activation.<sup>171</sup>

Although the Supreme Court did not repeal it, the Impeachment Law clearly had a chilling and negative effect and undermined the legitimacy of the participation of the Arab public and its representatives in the political arena. It reduced the freedom of expression of MKs representing the Arab minority and placed them under constant threat of proceedings to be ousted from the Knesset, even if such proceedings were unjustified and baseless according to the letter of the law.

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<sup>167</sup> [Basic Law: The Knesset-2002 \(Amendment No. 35\)](#), *Knesset's website* (22 May 2002).

<sup>168</sup> Peleg G., [Elections 2020: Supreme Court Overturns CEC's Decision, Hiba Yazbek Allowed To Run](#), *N12* (9 February 2020).

<sup>169</sup> Altman Y., [Supreme Court Rules: Mara'ana Allowed to Run](#), *Israel Hayom* (28 February 2021).

<sup>170</sup> Lis J., [\\*Israel's Top Court Bars Leaders of Kahanist Party From Running for Knesset](#), *Haaretz* (25 August 2019).

<sup>171</sup> [Supreme Court Ruling 10214/16 Dr. Yusuf Jabarin v. Knesset](#), *Nevo* (27 May 2018).

If any doubts remained that these were deliberate and calculated moves, those soon dissipated. The relentless onslaught against the Arab MKs in the run-up to the March 2021 election ceased as Netanyahu, in a surprising move as he was left with no other choice, tried to strike an alliance with the Arab party Ra'am in order to form a coalition of at least 61 MKs. After he failed to do so and Ra'am joined the Bennett-Lapid government, Netanyahu and the Likud revived their delegitimization campaign against "terror-supporting" Arabs.

## **Pushing the Left Out of the Political Arena**

In addition to trying to tip the scales versus the Arab parties in the Knesset, another key strategy used by Netanyahu to transition Israel into a one-party regime with satellite parties revolving around his own Likud party was to push the Left off the political field. To this end, an effort was made to delegitimize two fundamental principles that distinguished the Zionist-Left parties from the right-wing parties: declared support for the protection of human rights and for a peace agreement with the Palestinians.

The delegitimization attacks focused on elements of the ideological Left in Israel: human rights and civil society organizations and activists, academics and educators holding left-wing political views, and opponents of the settlement enterprise in the territories. However, the real goal was to push the Zionist-Left parties out of the political arena.

The decline in the public legitimacy of the aforementioned ideological entities, as well as waning support for the protection of human rights and a peace agreement with the Palestinians, led to a change in attitudes and a "rightward shift" among Zionist-Left parties, which anyway held relatively moderate positions. In turn, this led to a loss of voters and these parties' inability to have a real impact on the agenda in the Knesset and the country as a whole.

While Arab politicians were repeatedly required to pass a test of allegiance to the state, Jewish politicians on the Zionist-Left had to pass the "Breaking the Silence Test" and reaffirm their position in the Knesset and in media interviews vis-à-vis the reviled human rights organizations. Many opted for proving their patriotism by walking out on these organizations and their activities, and even by distancing themselves from the discourse on human rights and on support for a peace agreement with the Palestinians.

## **Persecution and Muzzling of Left-Wing and Human Rights Organizations**

Most apt are the words on the importance of civil society in a democratic state contained in the report of the committee headed by retired Justice Sarah Frisch, set up in May 2014 to regulate the definition of a "public institution" for donation purposes, pursuant to Article 46 of the Income Tax Ordinance (paragraph 127):

"Civil society is the cornerstone of every country. It is important for two reasons: for strengthening democracy and for the resilience of a society. The importance of civil society to democracy is evident on a number of dimensions. First, through their activities, civil society organizations reflect an active and involved citizenry. They thus serve as 'watchdogs' for democracy and play a vital role in preserving the equilibrium between the government, the economy, and society. Many of them focus on protecting civil rights, alerting to social injustices, raising issues on the public agenda, and criticizing public policies and their implementation. Secondly, many social organizations assist in the interaction between public and government institutions (both central and local) and in the two-way flow of information, moods, and trends between citizens and leaders. Finally, civil society realizes citizens' freedom, in particular their right to assemble, speak their minds, and promote issues that accord with their worldview. These democratic rights are essential for the development of the individual and the community, and enable them to act independently in order to promote values and to advance issues of public significance".<sup>172</sup>

Strengthening democracy is all the more important where Israeli left-wing and human rights organization are concerned, as some of them speak for populations that have no official status in Israel and whose voices would otherwise not be heard by the Israeli public and authorities, such as Palestinians living in the West Bank and Gaza Strip, foreign workers, or asylum seekers.

**Left-wing and human rights organizations were persecuted by the government for criticizing its policies on the occupation and settlements and for protecting the rights of Palestinians, foreign workers, and asylum seekers**

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<sup>172</sup> [Report of Public Committee on Definition of Public Institution Pursuant to Article 46 of Income Tax Ordinance](#), Finance Ministry's website (May 2014).

**NGOs Law:** As will be detailed below, the delegitimization campaign against human rights organizations was conducted, among other things, through legislation in the Knesset. For example, during Netanyahu's second term in office, two amendments were introduced to the NGOs Law-1980, which were explicitly aimed at left-wing and human rights organizations.

The process began even before Netanyahu's tenure, with Amendment No. 11 enacted in 2008,<sup>173</sup> which required an NGO with an annual turnover of more than NIS 300,000 and receiving cumulative donations from foreign political entities in excess of NIS 20,000 over one year to include these data in its annual financial report as well as publish it on its website.

As part of the delegitimization campaign conducted by Netanyahu's government, the duty to disclose any support by a foreign political entity was enacted by the Knesset in 2011.<sup>174</sup> This amendment to the NGOs Law expanded state oversight over the content of NGO activities, and labeled them negative and harmful. Since then, NGOs are required to report the conditions set for any contribution, including any obligations undertaken in exchange, either orally or in writing, directly or indirectly, if any. If the donation is intended to fund a special publicity campaign, the NGO must mention this fact in the campaign (it should be pointed out that the requirement does not apply to right-wing NGOs since they are usually supported by foreign tycoons). In the objections to the bill submitted by Meretz MKs Haim Oron, Ilan Gilon, and Nitzan Horowitz and by Kadima MKs Orit Zuretz and Shlomo Molla, they cynically proposed to replace the name of the law from "Duty of Disclosure for Groups Supported by a Foreign Political Entity" with "McCarthyistic Law Aimed at Reducing the Public Debate in Israel".<sup>175</sup>

An amendment to the Duty of Disclosure Law was added in 2016, which once again expanded the NGOs Law by requiring NGOs supported by foreign political entities to indicate this in any publicity on billboards, television, newspapers, their website's homepage, online campaigns, any report submitted to the public, and any written request addressed to an elected public official (cabinet minister, deputy minister, or MK) or to a public employee. Only following criticism by the Justice Ministry was a clause removed from the bill that would have obliged NGO representatives to wear identification tags at meetings in the Knesset or government ministries.

The text of the objection to the bill submitted by dozens of MKs reads: "The purpose of this law is to stigmatize and label NGOs. It has nothing to do with the principle of transparency, given that the existent law already includes a transparency requirement. In effect, it represents the political persecution of human rights and civil society organizations, especially those struggling for human rights and for ending the occupation, which document human rights

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<sup>173</sup> [NGOs Law-2008 \(Amendment No. 11\)](#), Knesset's website (24 January 2008).

<sup>174</sup> [Duty of Disclosure Law for Groups Supported by a Foreign Political Entity-2011](#), Knesset's website (2 March 2011).

<sup>175</sup> [Objections to Bill on Duty of Disclosure for Groups Supported by a Foreign Political Entity-2011](#), Knesset's website (14 February 2011).

violations in the Occupied Territories. The law is meant to apply only to donations from foreign countries and not from private sources, and the list of organizations issued by the Registrar of NGOs to which the law will apply shows that 25 out of the 27 NGOs listed are human rights organizations and come from a single side of the political map".<sup>176</sup>

**Incitement Against NGOs:** Ahead of the Knesset's vote on the bills to increase the duty of disclosure, a campaign of delegitimization, agitation, and incitement was conducted against left-wing and human rights organizations, claiming they were run by foreign elements as a fifth column. Then-Justice Minister Ayelet Shaked declared in November 2015: "The blatant intervention of foreign countries in Israel's internal affairs through the use of money is an unprecedented and large-scale phenomenon, which violates all accepted rules and norms in relations between democracies. Foreign financial support for NGOs operating in Israeli territory undermines the sovereignty and character of the State of Israel, as well as the authority of a government elected by the public. To wit, we have seen how a committee of the United Nations accused Israel of committing war crimes and of deliberately hurting civilians in Operation Protective Edge in the Gaza Strip in the summer of 2014, based on key testimonies from such Israeli NGOs as B'Tselem, Breaking the Silence, Adalah, and others. The Transparency Law will be a barrier against blatant interference by foreign countries in Israel's public life. It does not infringe on freedom of expression or the right to equality, and it contributes to increasing transparency. The public and its representatives have the right to know who is stirring the pot".<sup>177</sup>

## Education and Schools

**NGOs Banned Entry to Schools:** Although Article 2(a)(2) of the State Education Law-1953 stipulates that one of the goals of state education is to inspire respect for human rights, fundamental freedoms, and democratic values, and despite the ministry's Circular No. 0012 ("National Program for Meaningful Learning: Educational Discourse on Controversial Issues"<sup>178</sup>) encouraging political engagement and discussion in schools, Amendment No. 17 was enacted in 2018, adding Article 2(b) to the law.<sup>179</sup> According to this amendment, the education minister shall set rules for preventing activity in an educational institution of a person or external entity that severely and markedly conflicts with the purposes of state education, as well as of an external entity initiating legal or political steps outside Israel

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<sup>176</sup> [Bill on Duty of Disclosure for Groups Supported by a Foreign Political Entity-2016 \(Amendment\)](#), Knesset's website (28 June 2016).

<sup>177</sup> Adatto E., [Bill to Require NGOs To Disclose Funding from Foreign States](#), *Israel Hayom* (2 November 2015).

<sup>178</sup> [National Program for Meaningful Learning: Educational Discourse on Controversial Issues](#), Education Ministry's Database of Director General's Circulars (11 December 2015).

<sup>179</sup> [State Education Law-2018 \(Amendment No. 17\)](#), *Reshumot Gazette of Record's website* (24 July 2018).

against IDF soldiers due to actions they committed in the line of duty, or due to any other actions against the State of Israel.

The real purpose of the amendment was obvious to MKs and the public: MK Shelly Yachimovich (Zionist Camp) said in the debate ahead of the second and third readings: "As I see it, this law, full of contorted language, should actually be called 'Breaking the Silence Law'. In other words, it is a law to ban representatives of Breaking the Silence and other left-wing organizations from going to schools and talking about their positions".<sup>180</sup> MK Yael Cohen-Paran (Zionist Camp) said: "This law ought to be dropped from the committee and the Knesset's agenda. The moment a political party decides who will be allowed to enter schools is when the slippery slope starts, and pretty soon Women Wage Peace will not be admitted either. I and the Zionist Camp do not support any organization that defames IDF soldiers, but muzzling people is anti-democratic and a slippery slope". MK Shuli Mualem-Refaeli (Jewish Home) used the bill to lash out at Breaking the Silence: "The IDF is the people's army, and everybody serves in Judea and Samaria. True, not everybody serves in combat roles, but I trust all IDF soldiers. And do you know what the difference is between Breaking the Silence and their ilk and IDF soldiers? Breaking the Silence vilifies IDF soldiers, in Israel and around the world".<sup>181</sup>

**Educators Persecuted for Cooperating with Left-Wing Organizations:** In the years before and after the enactment of Amendment No. 17, right-wing activists, organizations, and MKs, as well as ministers in Netanyahu's governments, repeatedly tried to bar human rights and left-wing organizations from taking part in activities in schools or in events alongside Education Ministry officials. These efforts were at times accompanied by threats to school principals and summons to disciplinary hearings. For example, in December 2016, the principal of Tel Aviv's Gymnasia Herzliya was summoned to a hearing after approving a lecture by Breaking the Silence on the premises.<sup>182</sup> In 2017, then-Education Minister Naftali Bennett barred ministry officials from

**In the years before and after the enactment of Amendment No. 17 to the State Education Law, right-wing activists, organizations, and MKs, as well as ministers in Netanyahu's governments, repeatedly tried to bar human rights and left-wing organizations from taking part in activities in schools or in events alongside Education Ministry officials**

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<sup>180</sup> [Minutes of Knesset Plenum's Session No. 358](#), Knesset's website (16 July 2018).

<sup>181</sup> Ibid.

<sup>182</sup> Steinmetz M., [Tel Aviv High School Principal Summoned to Hearing Over Lecture by Breaking the Silence](#), *Walla!* (4 December 2016).

participating in a seminar organized by the Association for Civil Rights in Israel (ACRI).<sup>183</sup> In 2021, the principal of Haifa's Reali School was summoned to a hearing after holding a conference on human rights with the participation of B'Tselem.<sup>184</sup> All these events were accompanied by a massive campaign of delegitimization, agitation, and venomous incitement against the Left and human rights activists and organizations.

**Persecution of Educators Identified with the Left:** Teachers were also persecuted for making left-wing statements. Adam Verta, a teacher of philosophy and Jewish thought, was fired from the ORT chain of schools<sup>185</sup> in May 2014 after a fierce campaign of incitement that included death threats.<sup>186</sup> In January 2020, Rishon Lezion Municipality fired civics teacher Dr. Meir Baruchin for "liking" Facebook posts in favor of conscientious objection to military service.<sup>187</sup> Tali Mizrahi, a high school teacher in the town of Meitar with 26 years seniority, quit her job after being subjected to an onslaught over her leftist positions, identification with left-wing organizations and their work, and a picture of her holding the Palestinian flag.<sup>188</sup>

**Government's Promotion of Nationalist Ideology in Schools:** Blatant political interference in the school system in a nationalist direction occurred during Gideon Saar's tenure as education minister, especially in the area of civics studies. Saar fired the national superintendent of civics studies and shifted the emphasis from teaching about democratic values and institutions to schooling on the national-Jewish character of the state.<sup>189</sup> In a letter to school principals initiated by Saar in October 2012,<sup>190</sup> the Education Ministry for the first announced that budgets to high schools would henceforth be allocated on a differential basis and measured by the rate of enlistment to the IDF or National Service. In the total allocation, 50% would be determined by the educational factor and 50% by the ideological-social factor, with 40% of the latter being determined by the rate of service for the country (percentage of recruitment to IDF or National Service). Thus, the ORT school in Kiryat Tivon, from which Adam Verta was fired, was listed as one of the schools qualifying for a differential budget. ORT's CEO Zvi Peleg affirmed in a press release on the Verta affair in January 2014: "ORT Israel, through the values and principles it instills, encourages and challenges its students to enlist

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<sup>183</sup> Ben-Kimon E., [Bennett Cancels ACRI Event Citing 'Pro-Terrorist Activities'](#), *Ynet* (28 November 2017).

<sup>184</sup> [Letter to Education Ministry's Haifa District Director on 'Misconduct at Reali High School Rally'](#), *Association for Civil Rights in Israel's website* (29 January 2021).

<sup>185</sup> Hetzroni M., [Teacher Adam Verta Fired from ORT School: 'I Won't Miss It'](#), *N12* (25 May 2014).

<sup>186</sup> Hai S., [Verta to Fellow Teachers: 'Don't Fear to Voice Your Opinions'](#), *Ynet* (30 January 2014).

<sup>187</sup> Yanko A., [Rishon Lezion High School Teacher Terminated After Conscientious Objection Posts](#), *Ynet* (17 January 2020).

<sup>188</sup> Steinman T., [Judged and Condemned by Picture Posted Online](#), *N12* (6 September 2017).

<sup>189</sup> Barak M., [With an Eye to Rehabilitation of Civics Studies](#), *Molad-Center for Renewal of Israeli Democracy's website* (18 September 2013).

<sup>190</sup> Neshet T., [Minister Saar's Plan on Budget Allocation to Schools According to Rate of Army Enlistment Hits the Road](#), *Haaretz* (14 February 2012).

in the IDF, and likewise measures the performance of its principals according to the rate of enlistment in the IDF".<sup>191</sup>

## Art and Culture

Another battleground of delegitimization opened up with regard to the participation of left-wing activists and human rights organizations in the cultural sphere. The effort to muzzle voices identified with the Left was twofold: the first consisted of attempts to stop the funding of cultural bodies and works of art that offered content identified with the Left or with opposition to the occupation. One example is the uproar in 2017 over the film *Foxtrot*, when then-Culture Minister Miri Regev declared: "The state will not fund films that badmouth our country. My strong criticism of the film, which received funding from the state, stems from the final scene where IDF soldiers are depicted as killers and liars". The second consisted of attempts to harm and even shut down cultural institutions collaborating with left-wing and human rights organizations, such as the Barbour Gallery in Jerusalem, which suffered harsh attacks and was threatened with closure after hosting a lecture by Breaking the Silence in 2017.<sup>192</sup>

**Loyalty in Culture Law:** Spearheaded by Minister Regev, in 2018 the government advanced the enactment of Amendment No. 2 to the Culture and Art Law-2002 (popularly known as the "Loyalty in Culture Law"). The amendment, which aimed at denying budget allocations to cultural institutions presenting works of art running counter to the "values of the State of Israel", as defined in the Nakba Law,<sup>193</sup> tallied with the policy of "loyalty in culture" that Regev was trying to implement through her ministry.<sup>194</sup> The advancement of this piece of legislation stopped after its first reading, as the 20th Knesset disbanded. The objection to the bill submitted by dozens of MKs from a variety of parties reads: "The purpose of this law is to anchor the minister of culture's authority to decide what is and what isn't proper culture, and to use her power as holder of the purse strings to become the uber-commissar of Israeli culture".<sup>195</sup> Simultaneously with the legislative process, the Likud party and ministers in Netanyahu's government launched a campaign of incitement against "subversive" elements in Israeli culture. Many artists, including the poet Meir Wieseltir, said the bill was befitting of a fascist regime: "I am in favor of the new law. People with a fascist attitude toward art should be allowed to attain fulfillment so that everybody finally realizes where they are leading us. The

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<sup>191</sup> The Workshop: Educational Space on Democracy and Human Rights, [A Civics Lesson](#), Association for Civil Rights in Israel's website (23 January 2014).

<sup>192</sup> Hasson N. and Stern M., [Jerusalem Municipality Orders Closure of Barbour Gallery Over Breaking the Silence Event](#), Haaretz (8 February 2017).

<sup>193</sup> [Culture and Art Bill-2018 \(Amendment No. 2\)](#), Knesset's website (22 October 2018).

<sup>194</sup> Shinar A., [All That Miri Regev Wants from You Is to Vote Right](#), Haaretz (28 October 2018).

<sup>195</sup> [Culture and Art Bill-2018 \(Amendment No. 2\)](#), Knesset's website (22 October 2018).

law fits Miri Regev's way of thinking, given that she has declared herself a hater of culture. She was coerced into the job, and that's why she is taking her revenge on us".<sup>196</sup>

Although the Loyalty in Culture Law was stopped, the wretched public discourse and political persecution engendered censorship. In May 2017, political reasons were cited to remove Einat Weizmann's play *Prisoners of the Occupation* from competition at the Akko Festival.<sup>197</sup> Terming the move "a dangerous precedent", artistic director Avi Gibson Bar-El tendered his resignation, and hundreds of theater artists, actors, and directors launched a protest against participation in the festival.<sup>198</sup> Endorsing the position of the festival's steering committee and of Akko Mayor Shimon Lankri, Minister Regev declared: "Lankri is the mayor of Akko, not of Ramallah".<sup>199</sup>

**Nakba Law:** As stated above, Amendment No. 40 to the Budgetary Principles Law-1985, otherwise known as the "Nakba Law", was legislated in 2011. While ostensibly designed to restrict the freedom of expression of the Arab minority and its representatives, in practice it triggered endless demands from right-wing organizations, activists, MKs, and government ministers to heads of local authorities and directors of cultural institutions to ban events organized or attended by left-wing activists and human rights groups. Leading the entreaties to the finance minister to enforce the new amendment to the law was then-Culture Minister Regev. In May 2017, Deputy Attorney General Dina Zilber wrote in response to an ACRI complaint against Regev: "We are seeing an alarming accumulation of cases conveying a problematic message, whereby the activities of cultural institutions and artists are constantly under the watchful eye of the state and subject to relentless scrutiny and monitoring by the government, a scrutiny that touches upon the very root of freedom of expression. This problematic message is further intensified by the frequency of the demands".<sup>200</sup>

Although the Finance Ministry rejected their vast majority, the flood of demands brought about delegitimization and had a chilling effect.<sup>201</sup> Time and again, organizations and activists were forced to respond to those demands and explain why they were not violating the Nakba Law. Public authorities and cultural institutions increasingly began to intervene in the content of events and to pile up obstacles on their very execution. Occasionally, events

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<sup>196</sup> Cohen M., [Artists Against Minister Regev: 'Fascist Proposal'](#), *Israel Hayom* (26 January 2016).

<sup>197</sup> Ashkenazi Y., [Akko Festival Removes Political Play Citing 'Wish to Diversify and Show Consideration Toward the City's Residents'](#), *Haaretz* (24 May 2017).

<sup>198</sup> Ashkenazi Y., [Protest Expands: Playwrights and Film/TV Directors Also against Participation in Akko Festival](#), *Haaretz* (13 June 2017).

<sup>199</sup> Ashkenazi Y., [Regev Endorses Akko Festival's Removal of Play About Occupation: 'Lankri Is Not the Mayor of Ramallah'](#), *Haaretz* (5 June 2017).

<sup>200</sup> Zilber D., [Reply to ACRI's Complaint on Minister Regev's Demand From Local Authorities Concerning Cultural Events](#), *Association for Civil Rights in Israel's website* (11 May 2017).

<sup>201</sup> Anderman N., [\\*Israel's 'Censor in Chief': The Activist Who Manages To Silence the Left](#), *Haaretz* (13 January 2020).

had to be canceled due to the long time it took the legal counsels of public authorities and cultural institutions and the Attorney General's staff to complete their review of the petitions. At times, these petitions provoked a public outcry and wild incitement to violence on the Internet, which deterred people from taking part in events attended by left-wing activists and human rights organizations for fear to their personal safety.

Finally, the aborted Loyalty in Culture Law and the enforced Nakba Law may have generated self-censorship, given that in the face of the public outcry and the delegitimization campaign some artists probably a priori opted to refrain from presenting works that deviated from the government line at state-funded events and cultural institutions.

### **All-Out Campaign Against Notion of Domestic/International Boycott**

**Boycott Law:** In 2011, the Law for Preventing Damage to the State of Israel Through Boycott was enacted.<sup>202</sup> The law stipulates that knowingly publishing a public call for an economic, cultural, or academic boycott of a person or entity merely because of their affiliation with Israel, one of its institutions, or an area under its control that could harm it economically, culturally, or academically constituted a civil offense (liable to be sued for damages). The law also authorized the finance minister to restrict participation in government contracts and to deny benefits from anyone calling for a boycott. As the legal definition of what constitutes a "boycott" is very vague and broad, the Supreme Court approved the constitutionality of the law but repealed the provision in Article 2(c) that allowed for compensation without proof of damage.<sup>203</sup> In a dissenting opinion, Justice Yoram Danziger wrote that given the status of political freedom of expression in Israel and the fact that the status of the West Bank is one of the most controversial issues in the country, the term "boycott" should be given a narrow interpretation to include only a comprehensive boycott of the State of Israel and not just calls for a boycott of the settlements. In their objections to the law, Meretz MKs noted that it was aimed at preventing a boycott of settlement products by opponents of the occupation and normalization of the settlements, while Kadima MKs Yohanan Plesner and Shlomo Molla stated that it would deepen Israel's political isolation and accelerate its delegitimization worldwide.<sup>204</sup>

In practice, the Boycott Law was used to intimidate citizens, left-wing activists, and human rights organizations opposed to the annexation of the West Bank and the expansion of the settlement enterprise, and to silence their criticism by depicting it as illegal support for a boycott even though the law does not define it as a criminal offense. Against the backdrop of

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<sup>202</sup> [Law for Preventing Damage to the State of Israel Through Boycott-2011](#), *Nevo* (13 July 2011).

<sup>203</sup> [Supreme Court Ruling on Petitions re Nakba Law](#), *Supreme Decisions* (15 April 2015).

<sup>204</sup> [Law for Preventing Damage to the State of Israel Through Boycott-2011](#), *Nevo* (13 July 2011).

the Boycott Law, a number of incidents occurred that caused international embarrassment to Israel. For example, when American-Israeli actress and Oscar winner Natalie Portman announced that she would not attend a ceremony in Israel to receive the Genesis Award, Culture Minister Regev fired back that Portman was a BDS supporter, Likud MK Oren Hazan called for revoking her Israeli citizenship, and Minister of Strategic Affairs Gilad Erdan sent her a letter claiming that she supported BDS, inviting her to tour the border fence along the Gaza Strip, and proposing to her to reject evil and not to let the Dark Side win as the villain Anakin Skywalker did in the film *Star Wars* (in which she had starred).<sup>205</sup>

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In charge of enforcement of the law, "leading the campaign against the delegitimization and boycott of Israel", was the Ministry of Strategic Affairs (originally created in 2006 to accommodate the Yisrael Beiteinu party). The ministry gathered information on the activities of individuals and organizations in Israel and around the world that were critical of Israeli policy. Its staff monitored posts and publications on social media and tagged people they suspected of acting for a boycott of Israel and its policy. Officials repeatedly likened boycott activists to terrorists posing an existential and security danger to our country. For example, according to the minutes of a meeting in August 2016 of the Knesset's Special Committee for the Transparency and Accessibility of Government Information, then-ministry director general Sima Vaknin-Gil (a retired Israel Air Force brigadier general) depicted her undertaking against critics of Israel abroad as a military campaign.<sup>206</sup> She likened her job in a civilian government ministry to her work in the military, saying she used the same *modus operandi*: "The way I worked with military issues like Hezbollah or terror funds or Syria or any other country against which I conducted a campaign as an intelligence officer – we didn't tell the other side what we intended to do; we left it ambiguous".<sup>207</sup>

**Entry into Israel Law:** The Boycott Law was followed by the amendment in 2017 of the Entry into Israel Law-1952 to restrict the access of boycott supporters. Added to it was Article 2(d)

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<sup>205</sup> Cesana S., [Erdan to Portman: 'Don't Let the Dark Side Win'](#), *Israel Hayom* (20 April 2018).

<sup>206</sup> [Minutes No. 54 of Meeting of Special Committee for the Transparency and Accessibility of Government Information](#), *Knesset's website* (7 August 2016).

<sup>207</sup> Blau U., [\\*Inside the Clandestine World of Israel's 'BDS-Busting' Ministry](#), *Haaretz* (26 March 2017).

stipulating that "no visa or residence permit of any kind shall be issued to a person who is not an Israeli citizen or holds a permanent residence permit if they, or the organization or body they work for, deliberately issued a public call for a boycott, as defined under the Preventing Damage to the State of Israel Through Boycott Law-2011, or agreed to participate in such a boycott". In June 2017, Procedure No. 6.4.0010 on "Persons Passing Through Israel's International Border Crossings" included "BDS activity" among the criteria for refusing entry to a person. Subsequently, in July 2017, "Criteria for Banning Entry into Israel of Boycott Activists" were published on the Population and Immigration Authority's website.<sup>208</sup> Similar to the provisions of the Boycott Law, the list of "criteria" was formulated in general and vague language.

Lara Alqasem, an American graduate student who wanted to study at the Hebrew University, had been active in the University of Florida's chapter of Students for Justice in Palestine that advocated a boycott of Sabra hummus, an Israeli-owned brand. After interrogating her upon landing in Israel, Interior Ministry and Strategic Affairs Ministry officials decided to deny her entry into the country. Held at Ben-Gurion International Airport's detention facility, she filed a series of appeals against the decision until the Supreme Court overturned it and allowed her to pursue her studies in Jerusalem.<sup>209</sup>

In July 2017, Israel sent "black lists" of boycott activists to foreign airlines and prevented five Jewish Voice for Peace activists from boarding a flight from Washington to Israel.<sup>210</sup> In August 2019, Prime Minister Netanyahu decided to bar the entry of US Congresswomen Rashida Tlaib and Ilhan Omar.<sup>211</sup> In November 2019, the Supreme Court approved the deportation of Omar Shakir, director of the Israel-Palestine desk at Human Rights Watch, one of the most important and respected human rights organizations in the world.<sup>212</sup>

**Academia:** The Boycott Law and the ban on the entry of boycott supporters on the basis of very vague and general definitions also led to constant harassment of those opposed to normalizing the occupation and the settlements, as well as relentless testing of their loyalty to the state. In March 2021, the Israel Prize Committee decided to award the prize in mathematics and computer science research to Prof. Oded Goldreich for his work on computational complexity. Education Minister Yoav Gallant refused to approve the committee's decision and urged it to reconsider after right-wing organizations alleged that Prof. Goldreich had joined a petition

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<sup>208</sup> [Criteria for Banning Entry into Israel of Boycott Activists](#), Population and Immigration Authority's website (24 July 2017).

<sup>209</sup> [Supreme Court Ruling 7216/18 Lara Alqasem v. Interior Ministry's Population and Immigration Authority](#), Nevo (17 October 2018).

<sup>210</sup> Tibon A. and Lior I., [BDS Activists Not Allowed to Board Flight to Tel Aviv, Lufthansa: Israel's Orders](#), Haaretz (26 July 2017).

<sup>211</sup> Landau N. and Tibon A., [\\*Netanyahu Backtracks After Pressure From Trump, Bars Omar, Tlaib From Entering Israel](#), Haaretz (15 August 2019).

<sup>212</sup> [\\*Israel: Supreme Court Greenlights Deporting Human Rights Watch Official, Omar Shakir's Expulsion Would Send Chilling Message](#), Human Rights Watch's website (5 November 2019).

to the German Bundestag to repeal the definition of the BDS movement as anti-Semitic and another petition calling for a boycott of Ariel University in the West Bank. The committee petitioned the Supreme Court, and this led to a political probe of Prof. Goldreich's views and activities. The court overturned Gallant's decision, this time asking newly-appointed Education Minister Yifat Shasha-Bitton to reconsider, too.<sup>213</sup> Shasha-Bitton decided to go along with her predecessor's decision and the matter returned to the Supreme Court,<sup>214</sup> but the chilling message had already been sent to the public: the professional evaluation of a person or an academic extends to their political opinions and pronouncements as well, and should these be "incorrect" or critical of the government, their professional future might be affected.

The Goldreich affair turned the spotlight on the controversy surrounding the decision to recognize Ariel College as a university and the ensuing clashes, due to the expectation of the government and the Education Ministry that researchers and lecturers at academic institutions within Israel's borders would cooperate with it. In March 2016, the president of the Israeli Sociological Association announced his intention to boycott Ariel University due to its location outside the Green Line.<sup>215</sup> "We do not intend to cooperate with the institution known as Ariel. The time has come to fly a black flag over the Occupied Territories. People there live without rights, and our association cannot bury its head in the sand. It would be immoral to do so". In response, then-Education Minister Naftali Bennett declared: "It is absurd that people who fight for academic freedom should take upon themselves the right to discriminate between one institution and another. Israeli taxpayers fund higher education to the tune of NIS 10 billion per year, and we do not intend to allow boycotts".

The Boycott Law impeded Zionist-Left MKs from voicing opinions against the occupation or against the benefits and services lavished on the settlers, especially those living in unauthorized outposts, as opposed to those given to citizens living within Israel's recognized borders. When MKs criticized the oversized budgets given to the settlements and their residents, the government's enforcement of the Boycott Law, and restrictions on the entry of persons tagged as boycott supporters, they themselves were accused of encouraging a boycott of Israel and its citizens.

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<sup>213</sup> Kashti O., [\\*Israeli Court Voids Ex-Minister's Decision To Withhold Prestigious Prize From Left-Wing Professor](#), *Haaretz* (12 August 2021).

<sup>214</sup> Gorodisky S., [Israel Prize Committee Petitions Supreme Court Against Education Minister: 'Withholding Prize from Goldreich Unreasonable'](#), *Walla!* (24 November 2021).

<sup>215</sup> Steinmetz M., [Israeli Sociological Association's President Urges Boycott of Ariel University: 'The Occupation Is Illegitimate'](#), *Walla!* (14 March 2016).

## **Contribution of Right-Wing Organizations to Government's Muzzling of the Left**

The legislative moves and official campaign of ministers and MKs in the Netanyahu-led coalition were accompanied by a political persecution crusade spearheaded by right-wing organizations. These acted seemingly independently, but were never really condemned by Netanyahu or by the Likud and Jewish Home parties. It should be pointed out that senior members of these parties (such as then-Education Minister Gideon Saar of Likud) cooperated with them in various ways.

A prominent example is NGO Monitor, which according to its website, is a "research institute that provides information and analysis, promotes accountability, and supports an in-depth discussion of the reports and activities of NGOs claiming to promote human rights and a humanitarian agenda".<sup>216</sup> In reality, however, it promotes political persecution of human rights organizations, their activists and activities, under the guise of a research institute.

According to publications from December 2010, on the eve of International Human Rights Day, Deputy Foreign Minister Danny Ayalon declared at a joint news conference with representatives of NGO Monitor: "Human rights organizations have become a tool used by the Palestinian Authority for waging political war against Israel... and for undermining the right to self-defense of democracies. Countries funding these organizations are responsible for bolstering terrorism and strengthening the false hope of the Palestinians to establish a state other than through negotiations".<sup>217</sup>

**The legislative moves and official campaign of ministers and MKs in the Netanyahu-led coalition were accompanied by a political persecution crusade by right-wing organizations**

NGO Monitor even boasted on its website that its research was being used by senior Foreign Ministry officials against human rights organizations. Here is a post from July 2015: "Deputy Foreign Minister Tzipi Hotovely has launched a diplomatic campaign to combat funding by foreign countries of far-Left organizations undermining Israel's existence. In the past two weeks, Hotovely has held a series of meetings with European ambassadors and foreign ministers. At these meetings, she voiced Israel's expectation that the economic assistance provided by the EU and its member states to the NGOs which she claims are trying to eliminate Israel as a Jewish state, would be reduced or cancelled altogether. The deputy foreign minister presented data about the extent of each country's aid to organizations whose

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<sup>216</sup> [About](#), NGO Monitor's website.

<sup>217</sup> [Press Release: Deputy Foreign Minister Danny Ayalon: 'International Human Rights Day Has Become Terror Rights Day'](#), Facebook (9 December 2010).

activities spill over from the field of human rights into incitement against Israel and Jews. The data was collected by NGO Monitor, which tracks the sources of those funds, and is backed by evidence collated by the Foreign Ministry over the years".<sup>218</sup>

As noted, these organizations did not operate in isolation from Israel's official government. For example, in 2017 the Foreign Ministry participated in lobbying activities with NGO Monitor on at least two occasions: in May the Israeli Embassy in Ireland attended a meeting held by NGO Monitor's executive director with representatives of an Irish humanitarian organization, and in June embassy staffers in Berne participated in a meeting held by the head of the organization's Europe desk, Shaun Sacks.<sup>219</sup>

Based on allegations similar to those of NGO Monitor, Justice Minister Shaked and her office advanced the aforementioned legislation imposing heightened transparency on human rights organizations, which was seen by many in Israel and the international community as part of the deterioration of Israeli democracy and a key factor in the persecution and delegitimization of left-wing and human rights activists and organizations.

According to its annual reports for 2015 and 2016, NGO Monitor worked closely with the Foreign and Justice Ministries, and specifically with Minister Shaked.<sup>220</sup> The reports noted that ministry workers contacted the organization for information, which they then used to shape their policies. In response to an article published in July 2017 regarding the Foreign Ministry's ties with NGO Monitor, ministry spokesman Emanuel Nachshon said: "We work closely together with them. There is a level of coordination and we share information".<sup>221</sup>

Another prominent example of a right-wing organization that supposedly operated independently but in practice collaborated copiously with senior Likud and Netanyahu government members, is the NGO Im Tirtzu. Some of the group's messages corresponded to those of the Likud and other right-wing parties, it held joint activities with them, promoted legislative initiatives on their behalf, and its publications lashed out at left-wing politicians.

Among other things, ahead of the April 2019 elections, Im Tirtzu and the Likud filed a joint petition to the Supreme Court to prevent the busing of residents of unrecognized Bedouin villages to polling stations.<sup>222</sup> The group also started a campaign of incitement and delegitimization against asylum seekers and foreign workers in Israel, in line with the messages

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<sup>218</sup> Kahana A., [Hotovely's Campaign: End to Anti-Israel Funding](#), *NRG* (21 July 2015).

<sup>219</sup> Nahshon E., [Tweet](#) (11 June 2017, 10:40); Nahshon E., [Tweet](#) (11 June 2017, 16:33); Nahshon E., [Tweet](#) (11 June 2017, 16:39).

<sup>220</sup> \*[Annual Report 2015: A Year of Impact](#), *NGO Monitor's website*; \*[Annual Report 2016: Impacting NGO Funding](#), *NGO Monitor's website*.

<sup>221</sup> Burns J., \*[Palestinian Rights Groups Accuse Israel of 'Smear Campaign'](#), *Middle East Eye* (3 July 2017).

<sup>222</sup> [Petition to CEC Against New Israel Fund-Supported NGO Zazim](#), *Im Tirtzu's website* (4 April 2019).

of the Likud and Jewish Home.<sup>223</sup> Together with these two parties, Im Tirtzu organized a demonstration calling for the ouster of "infiltrators" (asylum seekers). Initiated by Im Tirtzu and Likud MK Miki Zohar, a lobby was established in the Knesset in October 2015 to encourage and promote minorities to enlist in the IDF and National Service.<sup>224</sup> At a conference marking Im Tirtzu's 10th anniversary in September 2017, the main guest was then-Knesset Speaker Yuli Edelstein (Likud).<sup>225</sup>

In the past two years, Im Tirtzu also participated in Netanyahu's "government coup" campaign against law enforcement agencies. In November 2019, *Haaretz* reported that the Likud, in cooperation with Im Tirtzu, was organizing a demonstration in front of the Attorney General's house with the aim of influencing public opinion and preventing calls for Netanyahu to be declared incapacitated and to take immediate leave of absence if an indictment is filed.<sup>226</sup>

Indeed, Im Tirtzu was among the organizers of a demonstration in November 2019 against a free press, the judiciary, the police, the Attorney General, and the State Attorney and its staff over the decision to indict Netanyahu, claiming that they were carrying out a "coup". They placed a huge billboard in the center of Tel Aviv tearing into then-State Attorney Shai Nitzan, and called for the establishment of a commission of inquiry into Netanyahu's investigations.<sup>227</sup> Im Tirtzu was among the organizers of yet another demonstration in December 2019 held under the banner "Stop the Judicial Coup".<sup>228</sup> At 22:30 on a Saturday night in August 2020, it organized a demonstration near Supreme Court President Esther Hayut's home in response to Justice David Mintz's rejection of an "urgent request" for an order nisi to ban a protest outside the prime minister's residence on Jerusalem's Balfour Street after 23:00. According to the website *Ynet*, this is what Im Tirtzu's executive director Matan Peleg declared at the demonstration: "The Supreme Court's justices openly function as a political body seeking to formulate Israel's policy in place of its elected officials. Israel's laws, including its Basic Laws, are putty in their hands rather than a framework they must respect, uphold, and rule by. This situation puts Israeli democracy in real danger. Enough with the Supreme Court's dictatorship! If the residents of Rehavia (Jerusalem neighborhood) cannot sleep, nor will

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<sup>223</sup> [National Camp Favors Deportation of Infiltrators](#), *Im Tirtzu's Facebook page* (23 February 2018); [Israelis in South Tel Aviv? Yes. Infiltrators in South Tel Aviv? No](#), *Im Tirtzu's Facebook page* (28 August 2017).

<sup>224</sup> [Initiative of Im Tirtzu and MKs Miki Zohar \(Likud\) and Meirav Ben-Ari \(Kulanu\): Lobby Launched to Encourage and Promote Enlistment of Minorities to IDF and National Service](#), *Im Tirtzu's website* (14 October 2015).

<sup>225</sup> [Invitation to Rally Marking 10th Anniversary of Im Tirtzu](#), *Tickchak* (4 September 2017).

<sup>226</sup> Levinson C., [\\*Likud Expecting Netanyahu Indictment Announcement on Tuesday](#), *Haaretz* (15 November 2019).

<sup>227</sup> Schlesinger E., [Billboard in Downtown Tel Aviv: 'Yet Another Election Because of Judiciary's Tyranny'](#), *Behadrey Haredim* (12 December 2019).

<sup>228</sup> Blumental I. and Azulay M., [Right-Wing Organizations Demonstrate Against Judiciary: 'Only the People Will Decide'](#), *Ynet* (30 December 2019).

the residents of Zahala (in north Tel Aviv). Do you want to sleep peacefully? Make sure the honorable president resigns at once".<sup>229</sup>

Despite its stated goals (as recorded by the Registrar of NGOs), during Netanyahu's tenure Im Tirtzu was in practice engaged primarily in political activity, muzzling and persecuting people it identified as leftists and human rights activists, denying the human and civil rights of the non-Jewish population in Israel and of the Palestinians in the Occupied Territories, and weakening the institutions of Israeli democracy, such as the Supreme Court.

In addition, Im Tirtzu played an active part in reducing the volume of the discourse on opposition to the occupation and in silencing its agents. A brief overview of the names of its various campaigns shows a resemblance and perhaps even coordination with the campaigns of government officials operating under Netanyahu: "Know Thy Judge",<sup>230</sup> "Know Thy University Lecturer",<sup>231</sup> "Know Thy Hater",<sup>232</sup> "The People Against the Moles",<sup>233</sup> "Moles in Culture",<sup>234</sup> and more.

Im Tirtzu conducted an incitement and delegitimization campaign against left-wing and human rights organizations in Israel and a personal campaign against their workers and activists, calling them "moles" and describing them as supporters of terrorism. Its crusade against NGOs, allegedly supported by the New Israel Fund, resembled campaigns conducted in recent years in Eastern Europe against organizations supported by the billionaire George Soros. Although the word "traitors" was not specifically used, this was the unequivocal message conveyed by the campaign.<sup>235</sup>

**Im Tirtzu conducted an incitement and delegitimization campaign against left-wing activists and human rights organizations in Israel and a personal campaign against their workers and activists, calling them "moles" and describing them as supporters of terrorism**

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<sup>229</sup> Blumental I., [Protest Outside Justice Hayut's Home: 'Down with Supreme Court's Dictatorship'](#), *Ynet* (2 August 2020).

<sup>230</sup> Dolev D., [Im Tirtzu Launches 'Moles' Campaign Against Judiciary: 'Supreme Court Shields Terrorists'](#), *Walla!* (20 December 2020).

<sup>231</sup> ['Know Thy University Lecturer' Campaign](#), *Im Tirtzu's website*.

<sup>232</sup> ['The People Against the Moles' Campaign](#), *Im Tirtzu's website*.

<sup>233</sup> ['Know Thy Hater: Kicking Out Moles Who Harass Soldiers at Einot Kedem'](#), *YouTube*.

<sup>234</sup> Globes, [Im Tirtzu's Campaign: 'Moles in Culture' - Artists in Left-Wing Organizations](#), *Globes* (28 January 2016).

<sup>235</sup> ['The People Against the Moles' Campaign](#), *Im Tirtzu's website*.

Another campaign of incitement and delegitimization was waged against intellectuals, artists, singers, poets, and writers, calling them "moles in culture".<sup>236</sup> In this case, too, even though the word "traitors" was not uttered, that was the message that the campaign conveyed to the public. With regard to this particular campaign, then-Likud MK Benny Begin said that "searching, locating, and tagging so-called traitors is an age-old, ugly, and dangerous hallmark of fascism".<sup>237</sup>

In a similar vein, a campaign was conducted against college and university lecturers who were tagged as leftists and human rights activists. For this purpose, a list of lecturers was posted on the "Meet Thy Lecturer" website, along with records of their statements and activities (including petitions they submitted to various courts).<sup>238</sup> Im Tirtzu wrote on its website that "the public has a right to know who acts against Israel with the taxpayers' money". Once again, the word "traitors" was not explicitly used, but this was the underlying message of the campaign.

### **Im Tirtzu ran an incitement and delegitimization campaign against college and university lecturers who were tagged as leftists and human rights activists**

One example of the coordination between Netanyahu's government and Im Tirtzu is the code of ethics for academia formulated on behalf of then-Education Minister Bennett. Academic freedom in Israel, both institutional and personal, is enshrined in court rulings, the Council for Higher Education (CHE) Law-1958, and the Student Rights Law-2007. Nonetheless, against the backdrop of Im Tirtzu's campaign to tag lecturers known to be left-wing or to engage in public activities for the protection of human rights outside teaching hours, Bennett (in his capacity as CHE chairman) appointed Prof. Assa Kasher to draw up recommendations for ethical rules concerning political and academic activity.<sup>239</sup> In his letter of appointment Bennett wrote that "in my capacity as CHE chairman, I have recently received numerous complaints about persistent overlap between academic and political activity".

Prof. Kasher's code of ethics defined political activity in the broadest terms; that is, "any activity that directly supports a particular position in a known public controversy that is constantly broached in the Knesset and in public discourse".<sup>240</sup> The code elicited sharp censure

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<sup>236</sup> Steinmetz M., ['Moles in Culture': Im Tirtzu's Next Target – Artists in Left-Wing Organizations](#), *Walla!* (27 January 2016).

<sup>237</sup> Nahmias O., [Call for Investigation of Im Tirtzu, Bennett: 'Embarrassing, Pointless, and Shameful Campaign'](#), *Walla!* (28 January 2016).

<sup>238</sup> ['Know Thy University Lecturer' Campaign](#), *Im Tirtzu's website*.

<sup>239</sup> Perez O., Tamir E., Gold S. and Morell Y., [Freedom of Expression and Protest on Campuses in Israel: Between Constitutional Law and Self-Regulation](#), *Legal Studies* (2021).

<sup>240</sup> Skop Y., [Full Code of Ethics for Academia: No Deviations from Syllabus, Political Pronouncements Constitute Abuse of Authority](#), *Haaretz* (9 June 2017).

from researchers and the Committee of University Heads, who argued that it infringed on the freedom of expression of lecturers and researchers in academic institutions, and might impede their professional advancement due to their political views.

A statement issued by the Committee of University Heads noted that "the code of ethics recommended by Prof. Assa Kasher deprives institutions of higher education of the freedom to determine the rules of conduct of faculty members, thereby seriously and fundamentally violating the concept of academic freedom as stipulated in Article 15 of the Council for Higher Education Law... A careful study of the proposed code shows that although it is defined as an 'ethical code for proper conduct in areas of intersection between academic and political activity', many of its clauses deal with the nature of all academic research and teaching, and thus becomes a collection of rules dictated by the government on the totality of academic activities of all faculty in Israel".<sup>241</sup> MK Tzipi Livni (Zionist Camp) said it was a "non-ethical and non-kosher document, yet another step on behalf of the government to muzzle opinions and eliminate all discussion and freedom of thought, this time in academia. It is befitting of dark regimes, not of Israel".<sup>242</sup>

After the uproar over the code of ethics, Im Tirtzu submitted to Bennett a list of some 20 lecturers from Ben-Gurion University who had allegedly voiced their support for pro-boycott organizations and demanded their dismissal.<sup>243</sup> The academic world boiled with rage, with Prof. Oren Yiftachel affirming: "All indications point to incitement and witch-hunting".<sup>244</sup>

Undoubtedly, Im Tirtzu and its activists are entitled to freedom of expression and to engage in political activity (within the boundaries of the law). However, the Knesset Finance Committee's decision to allocate it public funding by allowing it to receive donations in accordance with Article 46 of the Income Tax Ordinance further attests to the Netanyahu government's support for this NGO and its activities.

That there was close cooperation, both ideological and practical, between the Likud, the governments headed by Netanyahu, and the supposedly independent right-wing organizations is plain for all to see. As part of this cooperation, a direct and brazen attack was waged against the gatekeepers of democracy (academia, education, culture and the arts, and civil society organizations, of course) in order to convey a clear message to the public that those who criticize the government are enemies of the people, traitors, and moles.

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<sup>241</sup> Skop Y., \*[Israeli University Heads Blast New Ethical Code as Undermining Academic Freedom](#), *Haaretz* (10 June 2017).

<sup>242</sup> Odem Y. and Abraham Y., '[Bennett's Code: Violation of Academic Freedom](#)', *N12* (10 June 2017).

<sup>243</sup> Beersheba Net, [Im Tirtzu Demanded Termination of Ben-Gurion University Lecturers](#), *Beersheba Net* (7 July 2017).

<sup>244</sup> Steinman T., [Here's How Im Tirtzu Targets Left-Wing Lecturers](#), *N12* (4 July 2017).

## Conclusion

According to the criteria accepted by most researchers for the purpose of determining the degree of democracy or authoritarianism of any regime, Israel's fits the hybrid model. Since the establishment of the state in 1948, the regime has comprised a combination of the two, leaning at different times toward either the democratic or the authoritarian extreme. The country began its journey at the authoritarian end of the spectrum, and this basis undeniably influenced its evolution in the following years.

The regression that took place in the 2000s, coupled with various political processes, resulted in a shift away from the democratic end of the spectrum toward authoritarian and repressive practices, reminiscent of the period under Mapai's rule. The entrenchment of the Likud's hegemony as the ruling party prompted a continuous effort to dismantle the checks and balances over the government, along with attempts to restrict political rights and suppress discourse critical of its actions and policies.

## Political Competition

Israel has always held elections that, at least on paper, were free and open to all, but in practice endured a variety of manipulations in a bid to restrict them. For example, in terms of content, political campaigns (especially when Mapai and Likud were in power) made massive use of delegitimization of political rivals. This delegitimization took place both during the run-up to elections and the periods in between, and were geared at specific groups and sectors in order to push them out of the political arena, reduce their participation in the voting, and undermine the legitimacy of government change by means of elections. In addition, legislation was enacted that set restrictions on candidacies and enabled the termination of sitting MKs.

## Constitutional Framework and Institutions of Government

As noted, since the inception of the state to this day, Israel's regime has differed from that of most democracies in that it lacks a constitution regulating relations between the branches of government and the protection of human and civil rights, thereby leading to constant clashes between the former.

Israel's precarious system of checks and balances impedes effective mutual control and oversight between the governing authorities. The separation of the legislature and the judiciary from the executive branch, their degree of independence, and their ability to oversee the latter, was particularly impaired during Mapai and Likud's reigns. In the absence of a defined distribution of powers and functions, the stability of the constitutional framework

is not protected from the arbitrariness of the government's needs and its quest to enforce changes in accordance with changing circumstances.

The powers and degree of independence of the gatekeepers were impaired from time to time in accordance with the needs of the executive branch, and they were repeatedly subjected to delegitimization campaigns by the government and coalition MKs that aimed to sap their power and weaken their public status. The legislative efforts outlined in the report set back the separation of powers, equality, and protection under the law. They also attest to the growing discrimination against the Arab minority in the 2000s and to an attempt to push it and the Left out of the political arena.

In addition, a fundamental problem is created by the fact that the right to equality is not explicitly enshrined in a Basic Law, other than through interpretation of the right to human dignity contained in Basic Law: Human Dignity and Liberty. On top of it, there is legislation and case law formalizing the discrimination and exclusion of certain population groups, especially the Arab minority.

## **The Public Space**

The Likud's rule in the 2000s constituted a throwback to Mapai's omnipotent control over freedom of expression, freedom of association, and freedom of protest. During these years, new laws imposed obligations and sanctions on civil society organizations and activists that enabled control and restriction of the content of their activities. Simultaneously with these efforts, right-wing organizations conducted delegitimization and political persecution campaigns in order to restrict the political rights of various civic groups and critical voices.

## **The Media Space**

Just as during Mapai's years in power the media was held under close control, so during the Likud's rule in the 2000s did the government encourage the takeover of outlets by tycoons seeking to advance their private interests and ideology. A closer eye was kept on journalists amid intensified efforts to delegitimize those critical of the government, along with visible attempts to suppress and restrict censorious voices and media outlets, and even to fire or shut them down.

## **Treatment of Minority Groups**

Despite the significant improvement since Mapai's military government in the 1950s-1960s, the entitlement of minority groups to civil and human rights, in particular the right to equality, have not become a foregone conclusion due to the continuous effort by all Israeli governments to hold them in check and to the institutional discrimination that has been enshrined in law. During the Likud's rule in the 2000s, efforts resumed to anchor this discrimination in legislation.

## **Continued Rule Over Foreign Territory and Unconsenting Population**

Since 1967, the State of Israel has ruled over millions of Palestinians in the West Bank and Gaza Strip, and has systematically violated their basic human rights. The regime in control of these occupied territories uses collective punishment, dispossession, discrimination, and widespread violence against the occupied population, and maintains an inbuilt separation from the Israeli population that settled there with the encouragement of the state.

## **What Conclusions Can Be Drawn from This Analysis?**

First, this analysis shows the absence of a binding constitutional framework has a pivotal impact on the instability of democratic characteristics in Israel. A comprehensive and binding constitution regulating the powers and relations between the branches of government and enshrining the political rights and personal freedoms of all citizens would moderate, if not altogether cancel out, the frequent changes in the characteristics of the regime. Although an authoritarian regime can emerge even in countries with a full and fail-safe constitution (it has been known to happen in the past), the existence of a constitution containing such democratic characteristics as separation of powers and judicial independence would regulate and firmly establish a system of political norms and rules of behavior that would curb the delegitimization discourse that has developed in Israeli society.

The second conclusion emerging from this analysis has to do with the dangers posed by deep-seated hegemony and prolonged tenure of a single party and leader: Mapai headed by Ben-Gurion in the distant past and Likud headed by Netanyahu in the 2000s. Recent history has shown that long time in power inevitably leads to corruption, authoritarianism, and cronyism ("the iron rule of oligarchy", a phrase coined by German sociologist Robert Michels in his book *Political Parties*). The Israeli case shows that prolonged rule by a single

party and leader in both periods led to a regime with strong authoritarian tendencies, which donned a democratic façade in order to entrench and preserve its domination. Healthy political competition and limiting a leader's tenure would appear to be the prerequisites of a democratic regime that is truly accountable to the public.

A third conclusion has to do with the destructive impact of prolonged rule over another nation and the existence of two systems of government within a single political framework. Israel's continued military control of the Occupied Palestinian Territories, which is based on a repressive military regime and a system of laws and rules that totally differ from those of a democratic regime, has over the years taken a lasting toll on Israel's society and political culture, as they have become accustomed to "breaking the rules".

The willingness of the majority to turn a blind eye to the flaws of the regime and to authoritarian practices of oppression and discrimination against minority groups in their society largely attests to the public's lack of a profound political grasp of the minimal conditions for sustaining a democratic regime and the actions needed to strengthen it. Israel has never been a model of liberal democracy, which may explain the general public's lack of understanding – each group for its own reasons – of the basic principles and modus operandi of this system of government.

The change of government and the formation of a new one without the Likud in June 2021 raises questions about the validity of the current trends described in this report. Will the Likud and Netanyahu's decline buck the trend, or will the new government follow in the footsteps of its predecessors? Due to the short time that has elapsed since its formation, it is still hard to predict how the Bennett-Lapid government will choose to conduct itself in relation to the current characteristics of the Israeli regime.

## **Operational Recommendations for Addressing Authoritarianism**

Zulat's legislative proposals are intended to update and reinforce existing legal provisions in order to strengthen the democratic foundations of the regime, deal with its authoritarian elements, and preempt dangers that have grown acute in recent years. They aim to repeal legislation that has poisoned the political discourse, deepened rifts in Israeli society, narrowed the democratic space, and labeled citizens and organizations a fifth column because of their ethnic and religious identities or because they hold political views opposed to those held by the government. The bills also seek to give the State Comptroller and internal auditors the power to examine the record of audited public bodies with regard to human rights, and for the first time to establish a Commission for the Protection of Human Rights in Israel and thereby anchor the status and security of human rights defenders.

These bills do not address other important aspects of the struggle against authoritarianism – such as anchoring in Basic Laws the legislative process, the rights to equality and freedom of expression, the suitable duration of a prime minister's tenure, the powers of the courts, and the relationship between the judiciary and the executive – given that legislative initiatives dealing with these issues are already being promoted on various platforms.

The proposed laws will not solve all the problems of the Israeli regime, but if passed, may help strengthen the protections of human and civil rights, and assist in the struggle to curb authoritarian trends and to tilt Israel's hybrid regime in the democratic direction.

### **Legislation To Strengthen Protections Against Authoritarianism**

In light of the ceaseless attacks in recent years on the professional echelon in government ministries, the proliferation of conspiracy theories about a "rule of clerks" that eroded the public's trust in the civil service, and the constant dangerous disregard for the Attorney General's legal opinion on the part of senior ministers in previous governments, **Zulat proposes:**

To amend Article 31 of Basic Law: The Government to include under the definition of "government functioning" a phrase to the effect that the government will allow civil service professionals to act professionally, independently, and without fear or prejudice, and will uphold an autonomous, professional, and apolitical civil service. Zulat also proposes to anchor in Article 31 the case law whereby the Attorney General

is the topmost authority on interpretation of the law for the government as long as a qualified court has not ruled otherwise.

It has been revealed in recent years that hundreds of judges were appointed throughout the court system after being vetted for their political or party affiliation. In response, Supreme Court President Esther Hayut warned that "politicization of the judiciary might completely undermine its foundations as an independent and autonomous system". Therefore, **Zulat proposes:**

To amend the Courts Law-1984 to include Article 7b stipulating that the Judicial Selection Committee and its members shall not propose the appointment of a judge based on their political or party affiliation or if other circumstances exist that might be construed as bias.<sup>245</sup>

The Knesset's committees are the main tool available to the legislature and the opposition for oversight of the government. Therefore, **Zulat proposes:**

To amend Article 3(a) of the Knesset Law-1994 to include a phrase to the effect that the opposition shall have adequate proportional representation in the committees.

Admission boards are sometimes used as a means to discriminate against citizens, thus deepening the unequal distribution of land. Therefore, **Zulat proposes:**

To repeal Articles 6c(a)(5), and 6c(a)(6) of the Cooperative Societies Ordinance, which allow for the rejection of a candidate based on amorphous grounds that may include irrelevant reasons.

To address political interference by education ministers in the education system and in a bid to reverse the trend of decreasing education to democratic values and tolerance and increasing education to nationalistic values, **Zulat proposes:**

To repeal Amendment No. 17 to the State Education Law-1953, known as "Breaking the Silence Law", which intensified the education minister's political interference and created inequality between the options available to right-wing organizations and activists to participate relatively freely in the education system's activities, as opposed to the muzzling of advocates of human rights and democracy and persons affiliated with the Left who were barred from voicing their views in schools. Instead, we propose to strengthen education to democratic values by requiring the education minister to publish an annual report listing the steps taken to develop a respectful attitude toward human rights, fundamental freedoms, democratic values, respect for the law, and

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<sup>245</sup> Hauser-Tov M. and Maanit C., [\\*Libertarian Israeli Think Tank Pushes 'Conservative' Judges for Supreme Court](#), *Haaretz* (25 November 2021).

the culture and views of the other, and by requiring the Education Ministry to focus on educational activities that promote the pursuit of peace and tolerance between persons and nations (as stipulated in Article 2(a)(2) of the State Education Law).

Candidates and lists representing the Arab minority have been treated contemptuously by the Central Elections Committee (CEC) in recent years, and have been required to declare allegiance to the state in a way that delegitimized their participation in the political process. In order to put an end to this behavior, **Zulat proposes:**

To amend Article 7a of Basic Law: The Knesset, and anchor in it the Supreme Court's case law limiting the disqualification of a candidate or list to extreme and well-proven instances (as detailed in the bill submitted to the Knesset). We also propose to ban the CEC from preventing a list or person from running for office on the basis of race, religion or religious group, nationality, country of origin, gender, sexual orientation, worldview, age, marital status, or parenthood. We also propose to limit the cases where candidates will be required to make any declaration if the CEC seeks to disqualify them, thereby terminating the CEC's requirement from candidates representing the Arab minority to reaffirm their loyalty to the state that aimed to emphasize their otherness and depict them as a fifth column.<sup>246</sup>

To encourage the Arab public and its representatives to participate in the political process, **Zulat proposes:**

To repeal Article 42a(c) of Basic Law: The Knesset and Article 8a of the Knesset Law-1994, which were enacted in legislative amendments known as the "Impeachment Law". Although these articles are almost impossible to implement, they cause enormous damage in practice as they are used to intimidate MKs and lists representing the Arab minority and to portray their very participation in the political process as illegitimate or conditional.

To deal with efforts of recent years to persecute, muzzle, and delegitimize critics, especially with regard to government policy in the Occupied Territories, **Zulat proposes:**

To repeal the Duty of Disclosure Law for Groups Supported by a Foreign Political Entity-2011, given that reasonable obligations of transparency are in any case enshrined in the provisions of the NGOs Law-1980, not to mention that it applies only to donations from foreign countries and not from private sources, who are the main donors of right-wing organizations, and thus is in essence a discriminatory law.

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<sup>246</sup> According to some of members of this report's steering committee, disqualification should not be justified except for reasons related to democracy.

To repeal the Law for Preventing Damage to the State of Israel Through Boycott-2011, which has hardly been implemented since its enactment but is used to intimidate and harass left-wing activists and human rights organizations and keep them out of the political arena and public space. The law has harmed Israel's international status and has proved not to protect freedom of expression, especially when critical of its own policy.

To repeal Articles 2(d) and 2(e) of the Entry into Israel Law-1952, which restrict the entry of boycott supporters. The enactment of these articles provoked a number of incidents that caused international embarrassment, and their implementation has anyway been limited by the Supreme Court's ruling on the Lara Alqasem case.

To repeal Article 3b of the Budgetary Principles Law-1985. This article, known as the "Nakba Law", triggered countless requests by right-wing activists, organizations, MKs, and government ministers to local authorities and cultural institutions to cancel events or prevent the participation therein of left-wing activists and human rights organizations. Although the Finance Ministry rejected the vast majority of requests to enforce it and thereby slash the allocation to a state-budgeted or state-supported body if it incurred an expense that violated the law, the attendant publicity created delegitimization and had a chilling effect. In some cases, these requests inspired a public outcry and wild incitement to violence on cyberspace, which deterred people from attending the events for fear to their personal safety.

Especially in view of the weakening status of the judiciary and the politicization it has undergone in recent years, it would seem necessary to strengthen the defense mechanisms of human rights, which are one of the most important components of any regime's democracy index. Therefore, **Zulat proposes:**

To amend Article 2 of Basic Law: The State Comptroller, and stipulate that as part of his duties the State Comptroller will also examine the compliance of audited bodies with the human rights recognized by Israel and listed in international conventions ratified by it. Although the State Comptroller has been increasingly dealing with aspects of human rights since the 1990s, this has not been done in a uniform and systematic fashion. In view of the institutional eminence of the State Comptroller and given that compliance with human rights is directly linked to the legality of the activities of audited bodies, the State Comptroller's authority to engage in this field needs to be regulated in explicit legislation.<sup>247</sup>

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<sup>247</sup> See Zulat's position paper on the issue: Harnik Blum M., Ovadia E. and Luria-Pardes E., [\\*Establishing Human Rights Commissions and Strengthening the Status of the State Comptroller](#), Zulat's website (14 March 2021).

To amend Article 4(a)(1) of the Internal Audit Law-1992, and stipulate that the internal auditor of a public authority will check whether its actions and those of its officers and functionaries are in good standing in terms of the protection of human rights in order to strengthen democratic values across the board and in as many public bodies as possible.

To establish a Human Rights Commission in Israel based on legislation and case law recognizing human rights, as have many other countries around the world, and to formalize state mechanisms for promoting understanding and recognition of these rights and ensuring their protection and preservation. Such commissions engage in public education and advocacy, advise government bodies on human rights issues, conduct investigations, publish opinions and recommendations to the executive and the legislature, and assist with the enforcement of human rights laws by addressing individual complaints about violations. The proposed model is designed to address the special needs regarding the promotion and enforcement of human rights in Israel. It is based on in-depth learning from the experience of similar bodies around the world, and has been adapted to the legal situation in Israel and to its existing governmental and public systems.

To regulate in law the status of human rights defenders and their protections.<sup>248</sup> The Human Rights Defenders Bill is intended to regulate the status of individuals and organizations working to protect human rights, who are often exposed to harassment and violation of their rights due to their very involvement in such activities. This harassment can be carried out by both state and private entities, and sometimes in cooperation between them. This proposal is based on the recognition that the activities of these defenders deserve encouragement and protection against arbitrary intervention for the benefit of society as a whole, and that they are essential for the advancement and protection of human rights. This bill is of particular importance today, at a time when violence against human rights defenders has become commonplace and steps are increasingly taken in a bid to silence them. The bill is divided into chapters that first detail the general principles in each area, and then elaborate on the specific legislative amendments needed in the spirit of those principles.<sup>249</sup>

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<sup>248</sup> This proposal was formulated by the \*[International Human Rights Clinic of the Hebrew University of Jerusalem](#).

<sup>249</sup> See Zulat's position paper on the issue: Harnik Blum M., Ovadia E. and Luria-Pardes E., [Regulating the Status of Individuals and Organizations Working for the Protection of Human Rights](#), Zulat's website (7 June 2021).

**Zulat** calls for distributive justice with regard to land in a way that recognizes the historical discrimination between population groups and equates the status of residents in different types of communities, both in terms of land allocation and the ability to change its designation.

In addition, **Zulat** calls for the expansion of Israel's Basic Laws to include social rights, in order to correct the deep inequality created between immigrants from European and American countries and immigrants from Arab, Muslim, and African countries, and native Arabs. The right to a dignified life, housing, and proper education must be enshrined in the future constitution, in order to correct the historical injustices that affect Israeli society to this today.



The role of Zulat and of advocates of democracy and human rights is to present a vision based on partnership and on equality for all residents of the country and among them, Jews and Arabs. Based on these principles, we propose to act toward the finalization of a humane and progressive constitution that will fortify the protection of human rights.

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

**Zulat for Equality and Human Rights**

**President:** Zehava Galon

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