

Road Map for Free Elections

On 1 November 2022 Israel will hold yet another round of elections amid a continuing political and social crisis, as well as a loss of confidence in the state's institutions and political system by parts of the Israeli public. In the face of this tension, it is **imperative to ensure that the elections are held in a free and fair manner**. After quite a few years of political recklessness, both in the management of the state's affairs and in the public discourse, the challenge this time is particularly daunting.

Zulat has formulated a road map based on the major challenges posed by the upcoming elections and their manifestation of the people's will. The government, the Israel Police, and other bodies are herewith required to act toward implementing this road map and preserve the freedom of choice. Following are the principles of our road map.

Reinforce Freedom of Protest

In the run-up to the election, the Israeli public's freedom of demonstration and protest, which forms the hard core of political expression, calls for providing maximum protection to demonstrators and for preventing acts of violence against them by either opponents or the Israel Police. Any unjustified and unlawful interference with the fulfilment of the freedom of protest by the police might be considered an attempt on their part to harm free elections.

Israeli legislation restricting freedom of protest, both the licensing requirements set forth in Police Ordinance [New Version], 1971¹ and the offenses set forth in the Penal Code, 1977,² is a relic of the British Mandate era, which unfortunately was incorporated into the Israeli law book.

Nevertheless, the courts have over the years given it a narrow interpretation. The Supreme Court has repeatedly ruled that the right to demonstrate may be restricted only when there is near certainty of serious harm to the public order and safety, and only to the extent necessary to prevent such harm. It has decreed that the police must respect the right to demonstrate, and not only are they not allowed to restrict it unnecessarily but are obligated to assist in its fulfilment. To the extent that the Israeli public wants to live in a democracy, it must, like any civilized country, develop a level of tolerance toward demonstrations, despite the disruption of normal routine and the discomfort they cause at times.³

There should be no interference or disruption of protests during this period, nor should they be dispersed in violation of the law or forced to meet requirements that go beyond the law. Police officers should be instructed to behave appropriately at demonstrations

¹ [Police Ordinance \[New Version\], 1971](#), *Nevo* (Hebrew).

² [Penal Code, 1977](#), *Nevo* (Hebrew).

³ [Supreme Court Ruling 1775/20 Movement for Quality Government in Israel v. Jerusalem Municipality](#), *Nevo*, 24 September 2020 (Hebrew).

and to report any request by political elements to limit the freedom of protest.

Curtail Fake News

Free and fair elections take place when citizens are given the possibility to choose their leaders in a free, fair, regular, and orderly manner based on access to accurate, reliable, and trustworthy information about political parties, candidates, and other factors that may impact on their vote.

In previous election campaigns we saw a variety of fake news that violated the principle of free choice, be it in the form of false information designed to encourage or suppress the vote of certain populations, fake profiles on social media, and conspiracy theories about vote rigging.

Zulat proposes to establish an interministerial team comprising representatives of relevant government ministries, the Israel Police (primarily its Investigations and Intelligence Division and Lahav 433 Unit), the State Attorney's Office, the Central Elections Committee [CEC], and the National Cyber Directorate to provide an effective and rapid response to fake news occurrences during the election campaign, and thus help the CEC uphold an orderly election.

In addition, Zulat proposes that the CEC issue guidelines to political parties and candidates on the subject of fake news, underscoring the danger it poses to the integrity and fairness of elections, reminding them of the obligation to disclose the identity behind publications (including Internet BOTs), and cautioning them that under certain circumstances the dissemination of fake news by a party or candidate might be considered a criminal offense. It also proposes that the CEC, while strictly adhering to the principle of nonpolitical intervention, set up a "rapid response team" (similar to the one operated by the Health Ministry) to deal with the management of information and to respond quickly on social media platforms and other outlets, especially to fake news intended to harm the integrity of the CEC's work or to suppress or increase voting in certain population sectors or regions of the country. Finally, we propose that the CEC set up a hotline to field real-time reports from the public about fake news and forward them to the relevant authorities.

Protection of Voter Privacy

The principle of free elections requires that no personal data contained in the Voter Register be leaked to political parties for the purpose of targeting voters or persuading them to change their minds. The Privacy Protection Authority [PPA] has in the past published detailed guidelines on the provisions of the Privacy Protection Law as they apply to using the Voter Register/other personal data and to the responsibility of the political

parties for the use of databases and outsourcing services,⁴ and has conducted professional refresher courses for party representatives.⁵

These are welcome initiatives, but they are not sufficient given that in the digital era it is impossible to "recall" information that is already online. Nor is the toolbox at the PPA's disposal deterrent or persuasive enough vis-à-vis political parties engaged in a fight for each and every voter to make them devote thought and resources to the matter.

Therefore, retroactive measures to protect privacy are clearly inadequate and what the PPA needs to do is to take preemptive steps.

Zulat proposes that the PPA require political parties to notify it in advance of all the outsourcing companies hired to provide them services that are relevant to the provisions of the Privacy Protection Law. It proposes that the PPA exercise control and oversight of the parties and their service providers from the outset by requiring them to submit detailed statements about their compliance with the relevant provisions of the law and the precautions they have taken to avoid their violation. It is further proposed that the parties appoint a "Privacy Protection Law officer" who would be in constant contact with the PPA and would be responsible for regularly overseeing internal compliance with the provisions of the Privacy Protection Law.

Zulat also proposes that the PPA set up a hotline to field real-time reports from the public about violations of privacy and forward them to the relevant authorities. Finally, we propose that the PPA compile and distribute short-and-sweet brochures ("Rights at a Glance") to increase public awareness, acquaint the public with its rights, and spell out the do's and don'ts of political parties in the run-up to an election.

Apply Principle of Equality to Caretaker Government's Use of State Budget

Being a provisional entity, it is incumbent upon the current caretaker government to demonstrate the restraint befitting its status during the run-up to the election with regard to the exercise of powers unrelated to its day-to-day functions or unnecessary during a transition period, and thus allocate state funds equitably while applying principles of reasonableness and proportionality.

Zulat proposes that the government pass a decision tasking the directors of government ministries and auxiliary units to review their work plans for the run-up period, to examine the impact of budget allocations on the right to equality, and to ensure that every allocation

⁴ Privacy Protection Authority, [Privacy Protection Law Requirements for 24th Knesset Elections: Restrictions on Use of Voter Register/Other Personal Data and Responsibility of Political Parties for Use of Databases and Outsourcing Services](#), 7 January 2021 (Hebrew).

⁵ Attorney Ely Calderon, [Highlights of Proper Conduct Regarding Use of Databases](#), presentation at PPA refresher course on "Securing Proper Conduct of Parties," *Justice Ministry's website*, 8 February 2021 (Hebrew).

complies with all the rulings and directives issued by the Attorney General and the Supreme Court with regard to the equitable allocation of resources.

Furthermore, in view of the trick played by previous caretaker governments, which out of the blue invoked a dire public need to advance and budget for work plans, subsidies, and projects that had been gathering dust (a move often seen as an election propaganda ploy or an attempt to encourage voting in certain sectors), we propose that the aforementioned government decision stipulate that no budget shall be allocated to any work plans, subsidies, and projects that have not yet reached implementation unless the dire public need conforms to criteria predetermined and coordinated with the Attorney General.

Zulat calls on all decisionmakers to adopt this road map, which has been forwarded to Prime Minister Yair Lapid, the Israel Police Commissioner, the Chairman of the CEC, and the Chairman of the PPA.

Appendices

1. [Letter to Prime Minister Yair Lapid](#)
2. [Letter to Police Commissioner Yaakov Shabtai](#)
3. [Letter to CEC Chairman Judge Yitzhak Amit](#)
4. [Letter to PPA Chairman Gilad Semama](#)