

Zulat's Proposals for the Purpose of Free and Fair Elections: Presented to Prime Minister Yair Lapid

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.

Thus, a huge responsibility befalls 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 at the same time to ensure stability and continuity, especially when addressing any urgent need for action in the public sphere.¹

A key role of any caretaker government is to enable free and fair elections. After years of reckless political violence, both with regard to the management of the state's affairs and the public discourse, the challenge this time is particularly daunting.

Drawing on the lessons learned about caretaker governments in recent years, Zulat proposes that the government headed by Prime Minister Yair Lapid take crucial steps to combat fake news, protect freedom of expression and protest, and apply the principle of equality in the use of the state budget.

Combat Fake News

Fake news harms free and fair elections without which democracy cannot exist. Such 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 influence their vote.

The penetration of digital platforms into political campaigns has given way to a host of new problems due to the dissemination of false or misleading information and the use of algorithms targeting individuals or groups of voters.

When voters are fed misinformation, denied access to relevant data that should be readily available, and proceed to base their choice on false information and data, their vote does not correctly reflect their true positions.

Although the impact that fake news (primarily disseminated by foreign elements) had on the outcome of the Brexit referendum in the United Kingdom and the US presidential elections in 2016 is well known, Israel remains ill-prepared to tackle the phenomenon, especially during run-ups to elections.

To wit, in a debate held by the Knesset's Science Committee on 15 August 2018, the National Cyber Directorate revealed that Facebook had blocked thousands of fake

¹ [Supreme Court Ruling H CJ 5167/00 Prof. Hillel Weiss v. Israeli Prime Minister](#), *Versa Cardozo*, 25 January 2001.

accounts that had been trying to influence the discourse ahead of the municipal elections in Israel.²

The provisions of Election Law (Propaganda Methods)-1959 are anachronistic and suited to the pre-Internet era. Proposed updates, including by the Public Committee for the Examination of the Election Law chaired by former Supreme Court President Dorit Beinisch³ and by Zulat,⁴ have proved unsuccessful. Rulings 16/19 and 8/21 by former chairmen of the Central Elections Committee [CEC], retired judges Hanan Melcer and Elyakim Rubinstein, extended the applicability of key provisions of the law to the Internet, but these remain extremely limited and do not obviate the urgent need for up-to-date legislation.

Ahead of the elections of 2 March 2020, the CEC set up a team to deal with fake news regarding the corona pandemic. The team, made up of representatives of the Israel Police, the State Attorney's Office, and the Health Ministry, was supposed to look into rumors referred to it, to prevent their spread and locate their authors, for fear that political elements might spread disinformation in order to sow panic about the coronavirus and thus keep voters from getting themselves to the polling stations. However, it transpired already in its initial meeting that the team's leeway was limited.⁵

As things stand today, the CEC does not have the budget, personnel, ability, or even authority to deal adequately and promptly with the phenomenon of fake news. In 2019 it published a set of recommendations to the public ahead of the elections to the 22nd Knesset ("What You Can Do To Avoid Fake News"),⁶ but the public is clearly unable to deal with the flood of fake news on its own.

Therefore, Zulat proposes that the government 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 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.

Protect Freedom of Expression and Protest

Israeli legislation restricting freedom of protest 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 based on the understanding that it does not conform to the basic principles of a democratic regime, especially after the

² Omer Kabir, [Thousands of Fake News Accounts Trying To Influence Israeli Municipal Elections Uncovered](#), *Calcalist*, 15 October 2018 (Hebrew).

³ Public Committee for the Examination of the Election Law, [Report](#), *Knesset*, 2017 (Hebrew).

⁴ Dr. Michal Evron Yaniv, [Fake News & the Violation of Human Rights: Challenges & Responses](#), *Zulat*, 23 December 2021.

⁵ Josh Breiner, [CEC To Probe Fake News About Corona, But Source Admits: "Impossible To Track Down Every Rumor"](#), *Haaretz*, 1 March 2020 (Hebrew).

⁶ [What You Can Do To Avoid Fake News](#), *CEC*, 17 September 2019 (Hebrew).

enactment of Basic Law: Human Dignity and Freedom; that is, to the constitutional status accorded to freedom of expression, demonstration, and protest in case law.⁷

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 wellbeing, and only to the extent necessary to prevent this said harm. It has further ruled 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 realization. In view of the uppermost status of the right to freedom of expression and protest, the court ruled that not every breach of the order or security would justify restricting the right to demonstrate and that it is not enough that a demonstration should cause discomfort, or even great discomfort, to prohibit it. 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 harm to daily routine and the discomfort they cause at times.⁸

Despite repeated criticism by the courts, this Mandate-era legislation has in practice been enforced over the years arbitrarily and selectively, both with regard to license requirements and alleged violations of protest offenses. This has eroded the public's trust in the Israel Police and the State Attorney's Office and created the feeling among parts of the public that enforcement is based on political considerations and a desire to silence certain protests.

Especially during a caretaker government and impending elections, there is a need for maximum protection of the Israeli public's freedom of demonstration and protest, **the hardcore components of freedom of political expression**, without unjustified and unlawful interference in their implementation as such interference might be interpreted as an attempt by the caretaker government to harm free elections. Moreover, as a lesson from the last few years, shifting the responsibility to a rogue police officer, merely issuing a condemnation, or declaring it an "exceptional occurrence" is clearly out of the question, as the public's trust will be hurt in any case and conspiracy theories might also run rampant in this era of fake news.

Therefore, Zulat proposes that the government establish an interministerial team comprising representatives of the ministries of Justice, Public Security, Health, Transportation, Israel Police, and local government whose role will be to provide maximal and optimal protection of the freedom of expression and protest in the run-up to the election. We also propose to establish a hotline to field complaints about violations of freedom of expression and protest.

⁷ [Supreme Court Ruling 2481/93 Yosef Dayan v. Israel Police's Jerusalem District Commander Yehuda Wilk, Versa Cardozo](#), 9 February 1994.

⁸ [Supreme Court Ruling 1775/20 Movement for Quality Government in Israel v. Jerusalem Municipality, Nevo](#), 24 September 2020 (Hebrew).

Apply Principle of Equality to Use of State Budget

The obligation imposed on all authorities to allocate state funds in an equitable manner is reflected in Budgetary Principles Law-1985.⁹ Article 3a regulates the allocation of state budget funds by government ministries to public institutions dealing with education, culture, religion, etc., and states that such allocations should be distributed exclusively "according to equitable tests." The overarching requirement for equality in the distribution of any public resource by all government authorities can be inferred from Article 3a.

The principle of equality in the allocation of state budget funds is not limited to public institutions but applies also to allocations for other purposes, even though Article 3a does not specifically stipulate as much.¹⁰

An outgoing government is duty-bound to observe principles of fair-mindedness and proportionality to ensure governmental continuity on the one hand, and at the same time to avoid creating *faits accomplis* that might confront the next elected government with an irreversible situation, especially when a considerable burden on the public purse is entailed. Accordingly, the Supreme Court has upheld the position of the Attorney General, who instructed the government and ministers to avoid decisions that do not fall within the realm of day-to-day functioning and involve policy reforms or priority changes that have a significant budgetary impact.¹¹

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

⁹ [Budgetary Principles Law-1985](#), *Nevo* (Hebrew).

¹⁰ Paragraph 5 of Justice Yitzhak Zamir's opinion in [Supreme Court Ruling 1113/99 Adalah-Legal Center for Arab Minority Rights v. Religious Affairs Minister](#), *Nevo*, 18 April 2000 (Hebrew).

¹¹ See [Supreme Court Ruling 2453/06 Israel Medical Association v. Attorney General](#), *Nevo*, 31 March 2006 (Hebrew).