

Zulat's Position on President Herzog's Blueprint for "Judicial Reform"

Zulat for Equality and Human Rights promotes the protection of the rule of law and democracy. On 20 June 2022, we published a report titled *Pseudo Democracy: State of the Regime in Israel*,¹ warning of the authoritarian processes that have been accelerated since the establishment of the new government.

On 12 February 2023, in a special speech, President Yitzhak Herzog presented a compromise proposal about the government's plan for a regime revolution, which could serve as a basis for negotiations. **Zulat congratulates the Honorable President for enlisting in the effort to block the government's moves to fundamentally change the regime in the State of Israel and the sensitive balances between the three branches of government.**

The President's blueprint refers to the package of legislative amendments revealed so far that the government intends to promote, and therefore it is an important initiative. Unfortunately, however, it does not address the immediate dangers to the regime as a result of the government's plan to carry out a regime revolution. Below is Zulat's response to the main components of the President's blueprint:

• **Enactment of Basic Law: Legislation, whereby Basic Laws would be passed by a broad Knesset majority, in four readings, and could not be overturned by the Supreme Court.**

Given that the government fully controls the Knesset, it would easily be able to pass Basic Laws that are personalized and that enable conflict of interest according to its needs at any given time (such as the law enabling Aryeh Deri's appointment as a government minister), or Basic Laws whose content would fatally harm the principle of equality and the core of democracy and would legitimize corruption. In the absence of judicial review, it would be impossible to even try to impede dangerous, corrupt, and undemocratic Basic Laws early in the legislative stage, as the government and the Knesset would be safe in their knowledge that the Supreme Court would be unable to overturn them or some of their provisions. It should be emphasized that, contrary to Western countries, Israel has no law regulating the legislation of Basic Laws.

• **Anchoring the Supreme Court's authority to conduct judicial review of ordinary laws on the one hand, and enacting an override clause enabling the Knesset to invalidate laws on the other.**

Given that it controls the Knesset, the government would be unlimited in its ability to enact any ordinary law it wishes, including personalized laws that would seriously impinge on the rule of law and the fight on corruption. The override clause could abolish existing protection of all the rights and regime mechanisms enshrined in Basic Laws, as well as the Supreme Court's ability to protect human and civil rights, the democratic system of government, and the rule of law. The override clause would also impede blocking dangerous, corrupt, and undemocratic bills early in the legislative stage, as the government and the Knesset would be safe in their knowledge that the Supreme Court would be unable to overturn them or some of their provisions. Moreover, Israeli politics being what it is, the fear is not only about an override clause hinging on a majority of 61 MKs, but even about one requiring a larger majority given that in certain contexts, sadly enough, support for the denial of human and civil rights as well as the rights of women, LGBTQ, religious and national minorities cuts across political parties and is a

¹ Eitay Mack, [Pseudo Democracy: State of the Regime in Israel](#), Zulat, 20 June 2022.

matter of "horse trading." A recent example is the law approved with the support of 94 MKs enabling the Interior Minister to revoke the citizenship/residency and deport to the Palestinian Authority areas anyone convicted of a terrorist offense who accepts funds from the PA.

- **Changing the Judicial Selection Committee's composition so that each branch of power is equally represented, and appointing public representatives agreed upon by the Justice Minister and the Supreme Court President.** Given that it controls the Knesset, the government would still enjoy a constant majority in the committee. Although the plan submitted by the Justice Minister and the Knesset Constitution Committee Chairman provides for the inclusion of representatives on behalf of the Knesset, these would be chosen from among the heads of committees that are usually controlled by the coalition. This would enable the appointment or promotion of judges based on their political or party affiliation or in circumstances that arouse real concern about bias and violation of public trust.

- **Attaining broad consensus about judges' use the reasonableness standard.** Given the disagreement about its boundaries, the reasonableness standard protecting human/civil rights and the rule of law would be rendered hollow and ineffective. Over the past two months, the government's dangerous stance with regards to the boundaries of reasonableness became evident upon Aryeh Deri's appointment as a government minister and his subsequent meddling in the work of the Ministries of Interior and Health even after the Supreme Court invalidated his appointment.

To repeat, the President's blueprint is a positive and crucial initiative that addresses the government's comprehensive plan. However, we believe that the tangible danger of a regime revolution will persist if additional issues are left unaddressed. Accordingly, Zulat proposes to address the following issues:

- ✓ **Israel's constitutional framework is extremely fragile to begin with.** It is necessary to address the fundamental problem of Israel being the only Western country lacking a constitution or a complete set of Basic Laws anchoring the democratic regime, relations between the branches of power, and recognition of all human and civil rights. This situation leads to constant conflict between state authorities and to an unstable protection of human and civil rights. The balances in Israel's constitutional framework were further undermined upon the enactment in July 2018 of Basic Law: Israel-The Nation State of the Jewish People, whose substance and character do not correspond to the conceptual structure of a constitution customary in democratic countries and conflict with the principle of equality.
- ✓ **The core of democracy includes recognition and protection of human and civil rights.** It is necessary to address the fact that a democratic regime is supposed to respect and protect basic human and civil rights, as recognized in the Universal Declaration of Human Rights and in other international treaties signed by Israel. It is particularly imperative to address the human and civil rights of close to 2 million Arab citizens, who are expected to be the most extensively, severely, and immediately affected if all the government's proposed laws are enacted.
- ✓ **The principle of the rule of law is at the core of democracy.** It is necessary to address the fact that this principle means a commitment to the law, public authorities whose

actions follow the law, transparency, no arbitrariness, and accountability to the citizens backed by checks and balances even between elections. This principle refers to the compendium of laws and rules that regulate a government's powers and actions, limit a ruler's power, provide for separate and independent branches of government, protect citizens from a government's tyranny, and ensure equal and fair treatment of all citizens; in other words, equality before the law.

- ✓ **Procedure for legislation of Basic Laws, minority rights, and representation of minorities, especially the Arab minority.** It is necessary to address the fact that today a Basic Law may be approved, amended, or altogether abolished the same way as an ordinary law: by a simple majority, without the support of even 61 MKs, unless it is protected by a special majority caveat. The question of the kind of majority needed to enact a Basic Law is a crucial one. In addition, requiring the support of a large majority or setting an arbitrary number of opposition MKs is insufficient because they would not necessarily be representative of minorities, especially the Arab minority.
- ✓ **The government's plan amounts to a regime revolution, whose implementation will cross the authoritarian threshold Israel has been treading for many years, even if some of its components are softened.** It is necessary to address the fact that the President's blueprint deals only with some of the issues in dispute, whereas the plan at hand is a comprehensive move designed to carry out a regime revolution and allow the government to gain complete control over the legislative and judicial branches. Therefore, the government must be required to reveal all the "chapters" of the legislative package it intends to promote based on the coalition agreements, while the dangerous proposals already revealed, such as turning independent legal counsels into positions of trust and declaring theirs and the Attorney General's legal opinions not binding, need to be addressed.
- ✓ **The government continues to promote a regime revolution.** It is necessary to address this matter and to demand from the government to totally halt the advancement of any legislation that would harm the rule of law, and alter the independence and professionalism of the judiciary, the law enforcement authorities, the independent legal counsels, the Civil Service Commission, and the media.

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