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The Regime in Israel

From Quasi-Authoritarian State To Dictatorship

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Introduction

In June 2022, Zulat published **Pseudo Democracy: State of the Regime in Israel**.¹ The report shows that the regime in Israel has never been a model of liberal democracy,² and that its authoritarian characteristics intensified over the years, especially during Netanyahu's second premiership. It illustrates the rise in authoritarianism through a comprehensive review of the government's policies since 2009, which curtailed the democratic institutions whose role is to balance the state, such as the Knesset, the judiciary, the media, and civil society organizations. The report looks at the infringements upon the independence of the authorities and the gatekeepers, and lists the steps taken by the government to harm minority groups, primarily Israel's Arab citizens, and to preserve the power of the majority.

Six months after the publication of the report, Israel saw the establishment of its 37th government based on the results of the November 2022 elections. The launching of Netanyahu's third premiership was accompanied by declarations from his cabinet ministers about a number of unilateral legislative initiatives aimed at abolishing the independence of the judiciary and strengthening the government's power.³ These bills and the coalition agreements signed upon the formation of the government reveal that the latter's intention is not only to change the rules of the game in a democratic regime, but to **abolish them altogether and replace them with a full authoritarian regime, headed by a ruler-for-life and a single ruling party propped by "puppet" parties.**

Given that the ministers persist in promoting their destructive initiatives amid a formidable public protest, we would like to outline in this paper the process that threatens to eliminate Israeli democracy. First, we will review the stauncher authoritarian nature of Netanyahu's second premiership, which we already described in **Pseudo Democracy**. We will go over the steps adopted by his governments in 2009-2021 that damaged the democratic character of the regime in several respects: the devaluation of Basic Laws, reduction of the Knesset's powers, the efforts to impair the independence of the professional echelon and the legal counsels of government ministries, the growing discrimination against the Arab minority and the attempts to exclude it from the political arena, the restrictions imposed on civil society organizations, and the incitement against left-wing activists and organizations.

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

² **Pseudo Democracy** did not deal extensively with the occupation and annexation of East Jerusalem, which has been trampling on the human rights of the Palestinians for 56 years. In view of the authoritarian regime enforced by Israel in the Occupied Territories, the aforementioned report and this document chose to deal with additional processes leading Israel toward a full authoritarian regime applied to all its citizens, including those living within the Green Line.

³ Yael Freidson and Noa Shpigel, [Netanyahu's Justice Minister Presents Plans for Radical Judicial Overhaul](#), *Haaretz*, 4 January 2023.

Next, we will assess the magnitude of the threat to the regime posed by the actions of the current government. To this end, we will review the legislative proposals ostensibly promoted as a "judicial reform," alongside other bills aimed at strengthening the government's powers. We will examine government decisions on shifting powers to ministers, such as entrusting the authority over the Civil Administration to the additional minister in the Defense Ministry and endowing the National Security Minister with powers to run the Israel Police and the establishment of a "national guard" within his purview. Each of these steps is at a different stage of implementation, but realization of just one iota will suffice to transform Israel from a quasi-authoritarian regime into a dictatorship.

The government has yet to reveal all the "installments" of the legislative amendments and cabinet resolutions it intends to promote based on the coalition agreements. As will be explained, these should not be seen as stand-alone propositions, given that the same destructive result would ensue even if one of them failed to be promoted. Therefore, these legislative amendments and cabinet resolutions must all be regarded as a single package that would transform the regime into a fully authoritarian one and completely eliminate the checks and balances between the branches of government.

Finally, we will link the moves promoted by Netanyahu's governments in 2009-2021 to those of the current government, which have triggered a massive public protest. The intent of this paper is to illustrate the extent of the ruinous anti-democratic measures effected up until 2021, during Netanyahu's second premiership, and to emphasize that these paved the way for the more systematic and targeted destruction being promoted by the government under his leadership in his third premiership, at a time when he is on trial on a slew of corruption charges. Following this analysis, we will present Zulat's recommendations for strengthening and entrenching the democratic regime in the State of Israel.

Intensification of Authoritarian Trend Under Netanyahu's Tenure 2009-2021

Pseudo Democracy described democracy and authoritarianism as two ends of a continuum by which political regimes may be measured and classified, in accordance with the school of thought in political science that recognizes the existence of a spectrum ranging between two extremes: rule of the people versus one-man rule, individual freedoms and rights versus a subject's duty to a ruler, equality before the law versus partiality vis-a-vis select groups, checks and balances versus tyranny, protection of the rights of minorities unrepresented 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 rule of law versus a ruler's arbitrariness.

As explained in the report, according to the criteria accepted by most researchers, Israel's regime has until recently been a hybrid combining both democratic and authoritarian components, leaning toward one of the extremes at different points in time. The country started out closer to the authoritarian end of the spectrum, and this starting point undoubtedly influenced its evolution in the following years. The foundations laid amid the construction of the norms of government, both in policy and in practice, created a certain political culture during the first two decades of the state, and at least some of those norms clearly took root.

The second and central part of **Pseudo Democracy** dealt with Netanyahu's second premiership in 2009-2021, and saw this period as a regression toward the dangerous precedents set during Mapai's rule in the early years of the state. We will briefly review the moves in the 2010s that distanced the regime from the democratic end of the spectrum, and show how they paved the way for the processes being promoted by the current Netanyahu-led government.

As mentioned, in order to fortify his and the Likud's rule during his second premiership, Netanyahu took advantage of existing authoritarian elements in the regime, but in addition spearheaded radical legislative and public moves that changed the rules of the game. Following are some key examples.

- **Devaluation of Basic Laws**

Efforts to block the formulation of a constitutional framework that recognizes basic rights began even before Netanyahu's second premiership. **However, during the last decade of Netanyahu's tenure, after a hiatus of almost 20 years, two additional Basic Laws were enacted, whose content and characteristics do not conform to the accepted concept**

of a constitution in democracies: Basic Law: Referendum in March 2014 and Basic Law: Israel-The Nation State of the Jewish People ("The Nationality Law") in July 2018, which includes elements that conflict with the value of equality. Furthermore, the enactment of amendments and changes to Basic Laws intensified as of the second half of the 1990s, in accordance with the momentary political needs of the incumbent government. The frequency of these amendments and their ratification, usually by a simple majority, devalued their status as the foundation of a future constitution. **In the last decade of Netanyahu's tenure, Basic Laws were amended by means of temporary laws and provisions, which further increased their devaluation and transience.**⁴

• Reduction of Knesset's Powers

Netanyahu's governments initiated legislative moves that limited the Knesset's ability to balance the power of the government and the prime minister. **As of 2009, the Knesset's oversight of the executive through the approval of the state budget was largely neutralized by means of a series of legislative measures, the Economic Arrangements Law was expanded manifold to comprise several hundred articles, and the criteria for toppling the government through a no-confidence vote were changed in 2014 to the point of turning it into a completely theoretical option.** All these measures further eroded the balance between the executive and legislative branches and reduced the powers of the Knesset.⁵

• Impairment of Gatekeepers' Status and Independence

Midway through Netanyahu's second premiership, his government began a series of moves to undermine the status and independence of the gatekeepers who are supposed to balance and restrain the executive branch. In 2015, a campaign launched to **delegitimize professional civil servants** accused government ministry "clerks" of being subversive elements trying to carry out a "coup d'état."⁶ In addition, as of January 2017, **proposals were introduced to turn legal counsels of government ministries into positions of trust to be filled at the ministers' choice.**⁷

⁴ Amir Fuchs, [Frequent Amendments to Basic Laws](#), *Israel Democracy Institute*, 17 January 2021 (Hebrew).

⁵ Ittai Bar-Siman-Tov and Gaya Harari-Heit, [Temporary Provisions' Finest Hour? The Rise of Temporary Legislation in Israel and Principles for Its Improvement](#), *Iyunei Mishpat*, 2019 (Hebrew).

⁶ Moran Azulay, [Netanyahu: 'State Attorney's Office on Hunting Expedition, Attempting Government Coup](#), *Ynet*, 5 April 2021 (Hebrew).

⁷ Ayelet Kahana, ['Returning Governance to Elected Officials': Attorney General Law Back to Knesset](#), *Makor Rishon*, 21 June 2020 (Hebrew); Gilad Zwick, [The Law That Will Return Governance to the People: 'We'll End the Rule of Jurists'](#), *Mida*, 31 January 2017 (Hebrew).

- **Undercutting Public's Trust in Judiciary**

Yet another major campaign sought to damage the public's trust in the Attorney General and the Supreme Court, and their ability to oversee the executive branch.⁸ Although the Supreme Court, in its capacity as a court of appeals, mostly tended to side with the position of the executive branch, unusually censorious rulings resulted in defamation campaigns and even incitement against it. Initiatives to reduce judicial review and the Supreme Court's powers became an integral part of the Likud's political campaign under Netanyahu, especially in the latter years of his tenure. Until the formation of the current government, most of these proposals remained at the declaratory level and were designed to intimidate the judiciary.

- **Efforts to Change Composition of Judicial Selection Committee**

Yet another battleground concerned the committee appointing judges. Various proposals to change its composition or reduce the number of Supreme Court justices sitting in it proved unsuccessful. However, following an amendment to the Courts Law in 2008 and her alliance with the head of the Israel Bar Association, during 2015-2019 then-Justice Minister Ayelet Shaked succeeded to appoint 330 judges and registrars, including six Supreme Court justices, some of them conservatives and others either religiously observant or associated with the Right and the settlements.⁹ The move, which was accompanied by grandiose statements in the media, increased the politicization of the selection of judges and sent a message to candidates that their political affiliation would carry great weight in the award of judgeships or promotions.

- **Damage to Media's Independence**

Another move to hurt the gatekeepers during Netanyahu's tenure was a campaign to weaken the media's independence and work. Despite widespread criticism, Netanyahu also served as Communications Minister in 2014-2017 and interfered in the work of other ministers he appointed over the years. 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 to encourage the emergence of outlets with a clear ideological

⁸ Unattributed report, MK Motti Yogev: 'Blade of D-9 Bulldozer Ought To Be Brought Down on the Supreme Court', *Globes*, 29 July 2015 (Hebrew).

⁹ Revital Hovel, *Israeli Justice Chief: I 'Broke' the Old Conception of the Justice System*, *Haaretz*, 8 January 2019.

tone in support of the Likud and its leader.¹⁰ On social media, too, efforts were made to silence utterances unsympathetic to the ruling party and to intimidate harsh critics of the government and civil servants who posted their views online. The meddling of Prime Minister Netanyahu and his cronies in the work of the media led to his indictment on corruption charges and seriously damaged the functioning of the Israeli media and the public's trust in it.

- **Intensified Discrimination and Exclusion of Israel's Arab Citizens**

During the Netanyahu era, **legislation was promoted that deepened the inherent discrimination against Israel's Arab citizens** since the establishment of the state, such as land policy, the Admission Boards Law, the Nationality Law, the Citizenship Law, the Nakba Law, and the Kaminitz Law. These were complemented by **efforts to impair the political participation of Arab citizens by such moves as placing cameras in polling stations** in order to lower the voting rate in Arab society.¹¹ **In yet another move to exclude Arabs from the Knesset, the electoral threshold qualifying for a Knesset seat was raised in 2014** to make it more difficult for Arab parties to gain entrance.¹² **Efforts intensified to disqualify Arab parties and candidates from being elected** through the enactment of amendments to Basic Law: The Knesset. The year 2016 saw the legislation of the "Impeachment Law," which enables the termination of a sitting MK on the same grounds as disqualification from running for office.¹³

- **Efforts To Push Out of Politics and Incitement Against Left**

Efforts were made to delegitimize the Left through **legislation against left-wing and human rights organizations, such as the NGOs Law, and incitement. Upon a new law barring human rights organizations from entering schools, educators collaborating with or identifying with the Left were persecuted and a nationalist ideology was promoted in schools.**¹⁴ **Attempts were made to stop funding cultural bodies and works of art that identified with the Left and opposed the occupation, as well as to hurt cultural**

¹⁰ Nati Tucker, [Netanyahu Behind Breaks Given to Channel 10 Owned by Confidantes Milchan and Lauder](#), *TheMarker*, 15 January 2017 (Hebrew); Gidi Weitz, [Netanyahu Tried To Aid Hollywood Producer Milchan's Purchase of Israel's Channel 2 - While Receiving Gifts From Him](#), *Haaretz*, 20 September 2017.

¹¹ Dafna Liel, [Thus Were Likud's 'Filming Activists' at Polling Stations Instructed](#), *N12*, 18 August 2019 (Hebrew).

¹² Yossi Zilberman, [Knesset Approves Governance Law: Electoral Threshold To Rise](#), *N12*, 11 March 2014 (Hebrew).

¹³ [Supreme Court Ruling 10214/16 Dr. Yusuf Jabarin v. Knesset](#), *Nevo*, 27 May 2018 (Hebrew).

¹⁴ Moshe Steinmetz, [Tel Aviv High School Principal Summoned to Hearing Over Lecture by Breaking the Silence](#), *Walla!*, 4 December 2016 (Hebrew); Adir Yanko, [Rishon Lezion High School Teacher Terminated After Conscientious Objection Posts](#), *Ynet*, 17 January 2020 (Hebrew).

institutions that collaborated with left-wing and human rights organizations.¹⁵ **The Law for Preventing Damage to the State of Israel Through Boycott was enacted in 2011** (given that the final version did not define support for a boycott as a criminal offense, the law was in practice used to intimidate left-wing activists and human rights organizations opposed to the settlements and to the annexation of the West Bank).¹⁶ **The Loyalty in Culture Law, whose legislation was aborted upon the disbandment of the 20th Knesset, and the Nakba Law enacted in 2018 to infringe on the freedom of expression of the Arab minority and its representatives,** inspired right-wing figures to submit countless requests to bar events staged by left-wing activists and human rights organizations.

Any democracy worth its name must strengthen, or at the very least preserve, the status of its parliament and judiciary, and to comprise independent and strong civil society and media. To repeat, during Netanyahu's second premiership all of these were threatened, and in many cases were damaged or greatly weakened.

¹⁵ Nir Hasson and Melanie Stern, [Jerusalem Municipality Orders Closure of Barbour Gallery Over Breaking the Silence Event](#), *Haaretz*, 8 February 2017 (Hebrew).

¹⁶ [Law for Preventing Damage to the State of Israel Through Boycott-2011](#), *Nevo*, 13 July 2011 (Hebrew).

Race to Full Dictatorship: Regime Revolution in Netanyahu's Third Premiership

Netanyahu's second premiership lasted 12 years, during which his governments promoted a host of legislative initiatives and efforts to damage the country's democratic institutions, on account of which **Pseudo Democracy** affirmed in June 2022 that Netanyahu had gradually led Israel's regime toward the authoritarian end of the spectrum. Now, in Netanyahu's third premiership, we are witnessing an accelerated continuation of these processes, through attempts to systematically weaken the gatekeepers, primarily the judiciary, and transform Israel's regime from hybrid to fully authoritarian.

Since its inception in December 2022, the 37th government under Netanyahu's leadership has been trying to upend the regime in the State of Israel by crushing the independence of the judiciary and fully subordinating it to the executive branch,¹⁷ which completely controls the legislative branch as it is, at a time when he is on trial accused of three serious charges: bribery, fraud, and breach of trust.

The government's intention is most clearly evident in a series of bills, which together aim to significantly weaken the judicial system and eliminate its role as a gatekeeper, protector of human rights, and overseer of the executive branch. These legislative measures were first unveiled by Justice Minister Yariv Levin at a press conference, and parts of them were later submitted as bills on behalf of the Knesset Constitution, Law, and Justice Committee at the initiative of its chairman, MK Simcha Rotman. The bills directly applying to the justice system have been followed by draft government proposals and resolutions, whose aim is to increase the government's powers, limit those of the other gatekeepers, and harm democracy and human rights.

We will now review some of the serious dangers inherent in the legislative proposals promoted by the government, both in terms of weakening the judicial system and strengthening the government and its leader by shifting to it additional powers. The goal of these two moves is to fatally damage the balances between the governing authorities and the prospects of mutual control and oversight.

¹⁷ Yael Freidson and Noa Shpigel, [Netanyahu's Justice Minister Presents Plans for Radical Judicial Overhaul](#), *Haaretz*, 4 January 2023.

'Legal Reform' Legislation: Crushing Independence of Judiciary

As said, in order to carry out the planned revolution, Minister Levin announced a series of legislative amendments on 4 January 2023: change the composition of the Judicial Selection Committee and boost the powers of the politicians sitting in it, an override clause with a 61-MK majority, no judicial review of Basic Laws, abolish the independence of ministerial legal counsels and turn them into positions of trust, and repeal the reasonableness standard.

On 17 January, Committee Chairman Rotman presented his own proposals, which were very similar to Levin's. Initially, they were officially introduced as a "platform for discussion" by the committee, and later, in an unusual move, they were submitted as bills on the committee's behalf. Below is an overview of the main legislative proposals to weaken the judicial system and the dangers inherent in them.

■ Changing Judicial Selection Committee's Composition and Proposal to Appoint Two Supreme Court Justices on Government's Behalf

Status: Ready for second and third readings in the Constitution Committee, ahead of second and third readings in the Knesset plenum.

The Proposed Amendment: The committee will be expanded to include 11 members: three judges (Supreme Court justices when discussing appointments to the Supreme Court, non-Supreme Court judges when discussing appointments to lower courts), three ministers (the Justice Minister and two others), three coalition MKs, and two opposition MKs. In practice, the proposed new composition means that the coalition would have absolute control over the committee's decisions.

Later on, the bill was amended so that the first two appointments to the Supreme Court during a government's tenure would be decided by the coalition and would not require the approval of other committee members, the third appointment would require the approval of one of the two opposition MKs on the committee, and from the fourth appointment onwards it would require the support of both an opposition MK and one judge.

The Dangers:

- According to all the proposals revealed so far by the coalition, the government will appoint judges based on their political/party affiliation. This situation may harm their ability to conduct an independent judicial review of the government's decisions and legislation by the Knesset (which the government controls), and will allow Prime Minister Netanyahu to decide the Supreme Court panel that may hear the appeals to be filed in the corruption cases against him.

- If the latest proposal discussed in the Constitutional Committee is promoted, the two selected justices are bound to espouse extreme conservative positions and might implement the principles of the regime revolution even if its legislation by the Knesset is still incomplete. In other words, they might block any judicial review of laws or corrupt appointments and emasculate the reasonableness standard and the protection of human and civil rights.
- The proposal gives the illusion of never-ending turnover in the Supreme Court, whereas the reality is that justices serve long-term tenures until retirement at the age of 70 and that the current government could in effect shape the character of the Supreme Court for decades to come.
- The government appears to be using "salami tactics" in order to determine the identity of the justices who will hear the petitions against the regime revolution before its legislation by the Knesset has been completed. Moreover, it has not declared that the appointment of these two justices would end its preoccupation with abolishing the independence of the judiciary, the legal counsels, the media, and the public service, and that no further bills would be advanced.

■ **Override Clause and Limiting Judicial Review to Non-Basic Laws**

Status: After first reading in the Knesset plenum.

The Proposed Amendment: It sets strict restrictions on the Supreme Court's ability to annul laws or legal provisions (obligatory court plenum, vote by 80% majority, no judicial review of Basic Laws, judicial review of ordinary laws restricted to cases when these are substantially incompatible with Basic Laws), and an override clause requiring a majority of 61 MKs.

The Dangers:

- **Abolition of judicial review of basic and ordinary laws:** The government will be free to enact any ordinary or Basic Law it wishes without any limitations, including personalized legislation that will seriously harm the rule of law and the fight against corruption. Due to our parliamentary system, the government has a majority in the Knesset, which is why most of the bills that become laws enjoy its support. Therefore, a decision enabling the Knesset to overturn a Supreme Court ruling will be tantamount to giving the government unlimited power to violate human and civil rights, democracy, and the rule of law.
- The proposed override clause will abolish the existent protection of all the rights and regime practices 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 clause will apply to all constitutional rights, including the right to equality, the right to dignity, the right to vote and be elected, the right to liberty, freedom of

expression, freedom of conscience, freedom of religion and freedom from religion, the right to privacy, the right to property, and the right to exit and enter Israel.

- It will impede efforts to block dangerous, corrupt, and undemocratic bills during the legislation stage. The idea that the rare option exists to overturn a law had a restraining effect and allowed the legal counsels of Knesset committees and the Attorney General's representatives to tone down extreme and predatory bills. In other words, the proposed override clause means not only that the Supreme Court will be unable to annul laws that violate human and civil rights, but that more of such dangerous laws will be forthcoming.
- It does not suit the Israeli political system, which is not based on a strong system of checks and balances. In the few countries that have not adopted judicial review or in countries where there is an override clause, there are other mechanisms designed to curb the power of the political majority. In Israel, such checks and balances do not exist.
- Israeli politics being what it is, the fear is not only about an override clause that hinges on a majority of 61 MKs, but about one that requires a greater majority given that, sadly enough, in certain contexts, support for the denial of human and civil rights as well as the rights of women, LGBTQ, and religious and national minorities cuts across political parties and is a matter of "horse trading."

■ Immunity of Basic Laws From Judicial Review

Status: After first reading in the Knesset plenum.

The Proposed Amendment: Total ban on judicial review of Basic Laws.

The Dangers:

- It will allow the Knesset to enact any law, without any judicial review, if it is titled a "Basic Law." This might lead to the complete destruction of Israel's already fragile constitutional framework. Israel is 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 human and civil rights. The balances of its constitutional framework were further shaken upon the enactment in July 2018 of the Nationality Law, which conflicts with the value of equality and is incompatible with the accepted concept of a constitution in democratic countries.
- Israel has no law regulating the legislation of Basic Laws (in stark contrast to Western countries). A Basic Law may be approved, amended, or altogether abolished the same way as an ordinary law: by a simple majority, without even the support of 61 MKs, unless it is protected by a special majority caveat. Even if approval of a Basic Law will henceforth require four votes, as suggested in one of the proposals currently on the table, this will present no problem to the government seeing that it controls the Knesset.

- The proposed amendment will allow the government to enact Basic Laws that are personalized and that enable conflict of interest according to its needs at any given time (for example, it could change the date of elections or the number of members of the Knesset).
- It will allow the government to enact Basic Laws that impair or rescind rights derived from Basic Law: Human Dignity and Freedom that have been recognized in case law but have yet to be explicitly enshrined in Basic Laws, such as the right to equality and freedom of expression.
- It will allow the government to enact laws that fatally harm the principle of equality and the core of democracy and that legitimize corruption. In other words, it will block any judicial review of the substance of Basic Laws. For example, the government could enact one Basic Law abolishing equality in criminal justice and granting full immunity from criminal investigation and prosecution to all the country's elected officials, another could forbid opinions and protests against its policies, a third could outlaw all political parties except the ruling party, and yet another could completely abolish elections and instead declare that the government and the Knesset would be selected in an internal vote by the ruling party.
- It will impede efforts to block dangerous, corrupt, and undemocratic Basic Laws during the legislation stage. In other words, the proposed amendment means not only that the Supreme Court will be unable to conduct judicial review of Basic Law, but that more of such dangerous Basic Laws will be forthcoming.
- Granting immunity to Basic Laws would obviate the need for an override clause and for restrictions on judicial review of ordinary laws, since an ordinary law repealed by the Supreme Court could be re-legislated, either anew or with minor changes, by titling it a Basic Law and thereby enjoy immunity.

■ Abolish Independence and Downgrading of Legal Counsels

Status: Government bill introduced by Justice Minister Yariv Levin, not yet advanced.

The Proposed Amendment: Legal counsels of government ministries will become positions of trust to be filled at a minister's personal choice, and consequently facilitate their dismissal when ministers disagree with their opinions. Moreover, Minister Levin's proposal explicitly sets a default option, to the effect that every minister will be his own and his ministry's legal counsel: he will be entitled to reject legal advice or act contrary to it, and himself decide the ministry's position to be presented to anyone with judicial authority according to the law.

The Dangers:

- It will destroy the independence of legal counsels and eliminate their role as gatekeepers with the authority to prevent the ministry/minister from carrying out actions that run contrary to the law, court rulings, and proper management.

- It will severely damage the authority of the Attorney General, given that his/her guidelines will be ignored and contravened as a result of the creation of a separate legal counseling system in every government ministry.
- It will expand corruption, conflicts of interest, lawlessness, and mismanagement in government ministries.
- It will turn legal counseling into political and elastic appointments, given that counsels who fail "to deliver the goods" will be summarily replaced and will have to live with the constant threat of impending firing.
- It will thoroughly damage the functioning of ministries. Hiring staff without a recruitment tender will lead not only to the employment of non-independent but also unsuitable legal counsels lacking the minimum requirements stipulated by the Civil Service Commission.¹⁸ It should be emphasized that the role of a legal counsel is not only to give advice to the ministry's top brass regarding reforms and matters of interest to the minister, but also to manage the legal bureau's personnel and to provide guidance on the legality and proper management of the ministry's daily work, projects, and affiliate bodies and companies with regard to commitments, contracts, and budgets, as well as on any legal proceedings.

■ Abolition of Reasonableness Standard

Status: Government bill introduced by Justice Minister Yariv Levin, not yet advanced

The Proposed Amendment: The reasonableness standard will be abolished by means of an amendment to Basic Law: The Judiciary, so that it will not apply to decisions about policy and appointments, thereby significantly limiting the Supreme Court's power to overturn them. Especially after the Supreme Court invalidated MK Aryeh Deri's appointment as a cabinet minister, the government is keen to prevent interference in appointments that invoke the reasonableness standard.

The Dangers:

- Yet another attempt to block judicial review and ignore the public's reservations in cases of government decisions based on extraneous considerations, extreme violation of civil/human rights, and severe abuse of the rule of law.
- A ban on judicial review based on the reasonableness standard will block the court's ability to examine government decisions that fatally harm rights derived from Basic Law: Human Dignity and Freedom that have been recognized in case law but have yet to be explicitly anchored in Basic Laws, such as equality and freedom of expression.
- Eliminating the reasonableness standard vis-a-vis appointments will increase the incidence

¹⁸ [Legal Counsels of Government Ministries and Auxiliary Units: Operating Guidelines](#), Civil Service Commission, 14 July 2010 (Hebrew).

of corruption in Israel. According to the OECD, the United Nations, the United States, the European Union, and leading studies in Israel, corruption leads to the waste and unequal and improper distribution of public resources. Corruption gnaws away at the government institutions that are supposed to protect human rights and harms the economy.

Steps To Expand Government/Prime Minister's Powers

The package of bills promoted by the government to weaken the judiciary can obviously be seen as dramatically expanding the powers of the ministers and the head of government. No judicial review of the actions of the government and the Knesset (which the government controls), legal counsels in positions of trust, and the rest of the proposals listed above, individually and taken together, ruinously violate the balance between the governing authorities in Israel.

These moves are complemented by legislative amendments and other measures aiming to broaden Prime Minister Netanyahu's supremacy, create the conditions enabling him to appoint any minister he wishes without any judicial review, and grant extraordinary capacities to his cabinet ministers. All of these severely damage the core principles of democracy, such as equality before the law, and give the government unlimited power.

■ Reduced Conditions for Prime Minister's Impeachment

Status: The law was passed by the plenum in all readings.

The Approved Amendment: Impeachment will be restricted to cases where physical or mental incapacity prevent a prime minister from fulfilling his duties. The authority to declare this incapacity will lie with the prime minister himself or with the government, if approved by three-quarters of the ministers. The government's pronouncement will be valid for three days, at which point it will be submitted to the Knesset House Committee, which will factor in a medical opinion obtained according to the criteria set by it, for endorsement by a two-thirds majority. Any extension of more than seven days, if suggested by the House Committee, will be put to a vote by the plenum and will require a majority of 80 MKs. Impeachment will be a political decision and the Attorney General's position on the subject will be of no consequence.

The Dangers:

- The prime minister will be able to systematically commit serious criminal offenses and abuse his power, yet continue in office business-as-usual. As long as he is not physically or mentally unfit for office, he will be able to stay in office until such time as elections are called.

- This piece of legislation turns impeachment into a completely political question. If they fail to muster the majority required for such a move, the government and the Knesset might abstain from declaring the prime minister physically or mentally unfit in order to stay in power.
- Given the irrelevance of the Attorney General's position, the new mechanism for impeaching a physically or mentally unfit prime minister might not work as the high threshold (three-quarters of the government ministers, two-thirds of the House Committee's members, or 80 MKs) may be unattainable due to a variety of political interests.
- Given the irrelevance of the Attorney General's position, were the government-controlled Knesset to postpone the elections for whatever reason, be it an emergency situation or any political circumstances, the incumbent prime minister would remain in office indefinitely or until he and the ministers decided otherwise.

■ Ban on Judicial Review of Ministers' Eligibility

Status: Before second and third readings in the Knesset plenum.

The Proposed Amendment: Bar judicial review of the reasonableness or any other aspect of a minister's appointment, except for compliance with the limited provisions of Article 6 of Basic Law: The Government.

The Dangers:

- It is a personalized bill to amend a Basic Law. The proposed amendment is intended to allow the appointment of MK Aryeh Deri, which was invalidated by the Supreme Court due to his criminal record. Therefore, it emasculates the court's ruling, seriously harms the rule of law, and violates the principles of integrity and incorruptibility that oblige elected officials.
- It proposes a permanent amendment to a Basic Law that will encourage and legitimize corrupt ministers. While the government tries to misrepresent the bill as a one-stop solution to the Deri "problem," in reality it will allow the appointment of crooked politicians, who will be free to pursue their corrupt activities while in office.
- In addition to the serious violation of the rule of law, the appointment of corrupt ministers might also lead to a grievous violation of human rights, in particular equality. Corruption hurts democracy and human rights, precludes equality in the distribution of resources and in appointments, and encourages selective administrative enforcement.
- Approval of this proposal might actually have the same devastating results as will the abolition of the reasonableness standard with regard to appointments.

■ Subordination of Israel Police to National Security Minister

Status: The law was passed by the plenum in all readings.

The Approved Amendment: Amendment No. 37 to the Police Ordinance stipulates that the National Security Minister will be in charge of the Israel Police on behalf of the government. It establishes his authority to set the Israel Police's policy and broad principles for their work, including priorities, plans, and general guidelines. In particular, it stipulates his authority to set the police's overall policy with regard to investigations, including their duration (in consultation with the Attorney General, the Police Commissioner, and the officers in charge of investigations).

The Dangers:

- Fatal violation of the principle of equality before the law.
- It might legitimize and aggravate the Israel Police's existing problems with regard to profiling and their policy on the use of force and selective enforcement vis-à-vis minorities, disadvantaged groups, and demonstrators espousing certain political views. These problems have been documented in countless governmental and non-governmental reports, and the approved amendment will only exacerbate and legitimize them instead of dealing with them.
- It allows the National Security Minister to instruct the police to direct their enforcement against an individual or certain population groups based on such considerations as religion, ethnicity, nationality, sex, gender, personal hostility, or political rivalry. The minister could steer the Israel Police's enforcement and investigation policy to serve his political/personal interests or the government's, as demonstrated by Minister Itamar Ben-Gvir's repeated efforts in recent months to intervene in police enforcement toward protesters against the regime revolution.
- It could have a huge impact on equality in the enforcement of criminal law in Israel, not only due to the Israel Police's powers to maintain public order, deny a person's liberty, and conduct an investigation, but also due to the work of its Prosecution Department, which annually processes tens of thousands of cases (investigation support, examination of evidence, decision to indict or dismiss a case) and is responsible for close to 90% of the indictments filed in recent years.¹⁹ Thus, Minister Ben-Gvir could direct the Israel Police and the Prosecution Department to practice "increased" enforcement toward anti-government protesters and to broadly interpret the vague offense of "disrupting a police officer in the performance of his duty" (Article 275 of the Penal Code-1977), whereby any person arguing with a police officer about their right to demonstrate or complaining of political enforcement would be considered a "disrupter."

¹⁹ [Statistical Yearbook 2020](#), *Israel Police's Planning and Organization Directorate*, May 2021 (Hebrew).

- It allows the National Security Minister and the Israel Police to set a policy of selective enforcement of the restrictions concerning protests.
- It allows the National Security Minister to set a policy of selective, racial, and political use of force for the Israel Police.

■ Establishment of National Guard 'Subordinate to the Ministry of National Security'

Status: The proposal was approved by the government. A committee set up to formulate the modus operandi of this body is supposed to submit its recommendations to the government for further approval in early July 2023.²⁰

The Proposal: Establishment of a national guard "subordinate to the Ministry of National Security," which will be "a dedicated, skilled, and trained force that will be used to handle emergency scenarios, nationalist crime, and fight terrorism, as well as to strengthen governance in areas where this is required," and promotion of the necessary legislative amendments and government decisions to anchor the powers of this national guard and its personnel. The draft further notes that "there is need for a skilled and trained dedicated force that can simultaneously operate in several arenas and deal with disturbances and emergency scenarios... to allow the Israel Police to concentrate on their day-to-day traditional core tasks, which are often compromised due to recurrent disturbances and emergency situations that cause harm to the citizens."²¹

The Dangers:

- It will enable the government to establish a private militia typical of dictatorial regimes, as is evident from the role assigned to it to strengthen "governance." In democratic regimes, law enforcement is usually carried out by the police (responsible for internal security) and the army (responsible for security threats from external enemies). Non-democratic regimes establish a separate force that is personally managed by the regime leaders and is used against the opposition. This strengthened "governance" is actually likely to strengthen the "government."
- The establishment of a national guard will weaken the Israel Police, which already suffer from a shortage of personnel, equipment, and budgets, and will therefore hinder the fight against crime and corruption. The creation of a competing body that will also be responsible for internal security is likely to impede the solution of the Israel Police's

²⁰ Jonathan Lis, [Israel's Cabinet Okays Advancing National Guard Under Far-Right Ben-Gvir Despite Shin Bet, Police Chief and AG Warnings](#), *Haaretz*, 2 April 2023.

²¹ National Security Minister Itamar Ben-Gvir, [Draft Resolution on Establishment of National Guard in Israel](#), *Ministry of National Security*, 29 March 2023 (Hebrew).

existing problems and further drain its depleted resources. Instead of fighting criminal gangs, priority will be given to waging war on opposition organizations and activists.

- It is likely to increase the politicization of the Israel Police and make them hesitate to investigate corruption. In order to remain relevant and receive budgets, the Israel Police will have to compete with this national guard, fulfill the government's political needs, and even abstain from investigating cases of corruption by politicians or their associates.
- It will allow the government to choose the entire chain of command and recruits from among its loyalists, contrary to the Israel Police's recruitment and promotions, which follow long-standing professional criteria and are not subject to the approval of the political echelon (except for the selection of the commissioner).
- It will enable the government to issue new instructions for the use of force and bypass the legal limitations currently governing the Israel Police's operations. The Israel Police use force in accordance with the law and the directives of the courts, the Attorney General, and the State Attorney. The establishment of a national guard will allow the government to bypass them all and issue new instructions for the use of forceful methods, such as riot-control gear and surveillance systems. For decades the courts interpreted the provisions of the Police Ordinance and instructed the police on how to apply them legally. Now, the government is expected to claim that these do not apply to the new body. To the extent that the courts, the Attorney General, and the State Attorney attempt to restrain the activities of this national guard, the government is likely to claim that they are harming "governance" or the fight against "terrorism."
- The terms used to define the role of this national guard ("emergency scenarios," "governance," "terrorism," "disturbances") are a dangerous recipe that will allow selective, political, and racist enforcement. While the Israel Police is only authorized to operate according to the law, court rulings, and Attorney General/State Attorney directives, the combination of these vague definitions is expected to allow this national guard to target the opposition and minority populations, in particular the Arab community.

■ Shift Authority Over Civil Administration in Territories to Additional Minister in Defense Ministry

Status: Memorandum of understanding between the Defense Minister and the additional minister in his office signed on 23 February 2023.²²

Content of Memorandum of Understanding: Various powers of the Civil Administration shifted to the additional minister in the Defense Ministry through the appointment of a

²² Jeremy Sharon, [Smotrich Handed Sweeping Powers Over West Bank, Control Over Settlement Planning](#), *The Times of Israel*, 23 February 2023.

civilian subordinate to him as the Civil Administration's Deputy Head. The additional minister will be in charge of issues defined as "civilian," including planning and construction, and a yet-to-be established "Settlement Directorate."

The Dangers:

- The occupation and its repercussions affect the Palestinians, who have been its immediate victims for 56 years, and influence processes within the State of Israel. The more democratic the society and the regime within Israel's recognized borders and the more elements of democracy are upheld, the greater the chance of reducing the human rights violations of the Palestinians and of ending the occupation. The transfer of authority and control over the Palestinians in the Occupied Territories to a minister signals the government's intention to perpetuate a reality of Palestinian subjects deprived of rights in the territory controlled by Israel.
- Preservation and intensification of the apartheid policy: By virtue of the powers bestowed upon him, the additional minister in the Defense Ministry intends to promote "an equal citizenship reform" or, in other words, to equate the status of Israeli citizens in the settlements to that of Israeli citizens living within the Green Line, but not to provide to the Palestinians in the territories the same services given to their Israeli neighbors.

Summary and Operative Recommendations

A key claim in Zulat's Pseudo Democracy report of June 2022 is that Israel, since its inception, has never stood on a stable democratic foundation. It shows that a variety of authoritarian and repressive practices characterized David Ben-Gurion's years in power and the conduct of the historical Mapai party in the first two decades of the state, in the 1950s and 1960s. The situation varied over the years when measures adopted by different governments upended this trend and strengthened the democratic nature of the regime. However, as the same report notes, as of the 2010s, during Binyamin Netanyahu's prolonged second premiership in 2009-2021, the government's authoritarian tendencies increased dramatically and brought the regime to the brink of dictatorship.

In this document, we have very succinctly reviewed the measures adopted by the Netanyahu-led governments until 2021, which have significantly damaged all the institutions essential to the functioning of a democracy, and are detailed in Zulat's report: reducing the Knesset's powers, weakening the judiciary, harming the media, intensifying discrimination and exclusion of the Arab minority, and incitement against the Left's organizations and representatives. Most of these moves were implemented through legislative amendments whose significance was not entirely clear in real time, before their cumulative effect could be assessed. The current document is being written at a time when the Netanyahu-led 37th Israeli government has been advancing an additional series of legislative amendments of devastating impact on the regime. By showing the link between Netanyahu's anti-democratic moves in his second and third premierships, this document seeks to point to the accelerated pace at which the decades-long processes to crush the democratic features of the Israeli regime are continuing now.

At the time of this report (May 2023), the legislative changes sought by the 37th government as part of its "judicial overhaul" have been on "freeze" while talks are being held at the Presidential Residence in Jerusalem with the stated goal of reaching broad agreements. These came about in the wake of a massive and unprecedented public protest against the government's intentions to advance its "reform." As a result of the intense domestic and international pressure on the government, Netanyahu announced that he would suspend the promotion of the anti-democratic bills in order to negotiate with the opposition.²³

Nevertheless, as noted in this report, the government has already taken a series of steps in this direction and several bills have passed the first reading in the Knesset plenum and are awaiting second and third readings. The message of these legislative proposals, to the effect that the Civil Service is expected to be loyal to the government and serve the politicians rather than the public interest, may permeate through the professional echelons. In addition,

²³ Idan Eretz, [Netanyahu Suspends Judicial Overhaul](#), *Globes*, 27 March 2023.

the government has been taking advantage of its existing powers to weaken law enforcement authorities. For example, the Justice Minister has refused to convene the Judicial Selection Committee, thereby blocking the appointment not only of replacements for the president of the Supreme Court and another justice who are slated to retire in the coming months, but also for all other courts.

Nor is there any reason to believe that the government will abandon the legislation it set out to advance. The goals presented by the Netanyahu government upon its establishment were not only to change the rules of the game, but to abolish them altogether and establish a full authoritarian regime. It is also clear that the annulment of the rules of the game through legislative amendments is intended to transform full authoritarianism into an irreversible situation. Indeed, in countries such as Poland and Hungary, legislative changes like those spearheaded by the Netanyahu government have turned authoritarianism into a permanent and highly irrevocable situation.

Consequently, Zulat has formulated a series of basic recommendations to deal with the onslaught on Israeli democracy and its institutions. First of all, the need to internalize that what we are facing here is a plan for regime change, whose implementation will lead the State of Israel across the authoritarian threshold it has been treading for many years. Therefore, Zulat proposes to take steps to preserve what we have, as well as to block the government's efforts to abolish the independence of Israel's democratic institutions and roll back the recognition and protection of human and civil rights. No government should be allowed neither to temporarily expropriate the independence of Israel's democratic institutions and the recognition and protection of human and civil rights nor to set conditions for their existence due to political or personal needs of its members or the person heading it.

In order to at least preserve the existing situation, action should be taken in light of the following principles:

- Protect the independence and professionalism of the judicial/law enforcement systems and legal counsels, in particular prevent the government's takeover of the appointment of judges, legal counsels, and law enforcement staff.
- Defend the grounds for judicial review already recognized in Supreme Court rulings.
- Defend the rule of law and oppose legislation that would expand and legitimize corruption.
- Safeguard democratic and free elections and the right to be elected and vote.
- Protect, at the very least, the status quo on human and civil rights recognized in the Declaration of Independence, Basic Laws, and Supreme Court rulings.

- Uphold the independence of the media, in particular the Public Broadcasting Corporation.
- Protect the status, independence, and professionalism of the Civil Service Commission, in particular with regard to appointments in the public service.
- Safeguard women's rights in the public and private spheres recognized in law and court rulings.
- Protect the rights of minorities, especially those of Arabs (including collective rights) and LGBTQ, recognized in law and court rulings.

Having said that, preserving the existing situation is not enough and a vision must be put in place to strengthen the democratic regime in the State of Israel. Like in all liberal-Western countries, such a vision would include the enactment of a constitution or Basic Laws (a Bill of Human Rights, individual Basic Laws, or amendments to existing ones) that would regulate all the relations between state authorities (judicial, legislative, and executive) and explicitly recognize the entire range of human and civil rights required in any democratic regime (such as equality, freedom of expression, and freedom of religion) as well as the social rights necessary for a dignified and egalitarian human existence (such as education, health, and housing), and endow these rights with concrete substance.

Apart from the importance of formulating such a constitution or Basic Laws, Zulat has also drafted a series of bills designed to update and amend existing legal provisions in order to strengthen the democratic foundations of the regime and deal with its authoritarian components, which we enumerated in *Pseudo Democracy*. These include proposals to strengthen the independence of public servants, fight against the politicization of the judicial system, bolster the status of the opposition in the Knesset, reinforce the right to participate in elections, cancel the option of impeaching MKs for political reasons, fight against the politicization of the education system, end the persecution of the Left and human rights organizations, abolish the use of a boycott to restrict freedom of expression, regulate in law the status and protections of human rights defenders, enforce distributive justice in the allotment of land and enshrinement of social rights, anchor in law the State Comptroller's auditing of human rights, and create a National Human Rights Commission.

As long as all the components of democracy are not fully anchored in law, the regime in the State of Israel will remain shaky and hinge on the personal democratic or authoritarian values of the government and the person heading it.

Zulat institute works to promote a policy of equality and human rights and to restore the legitimacy of the human rights discourse in Israel.

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