



The Israeli Law Professors' Forum for Democracy
Summary of Position Paper No.44: The Forum's Position
Regarding the Negotiations Currently Held under the
Auspices of the President

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The Israeli Law Professors' Forum for Democracy, an ad hoc and voluntary group of experts on Israeli law and specifically Israeli public law, expresses its grave concern over the apparent intention to abolish the independence of the judiciary, to subordinate it to the government and to the partisan political considerations of the executive branch, to undermine the independent status of the attorney general and civil service legal counsels, and to violate human rights. **In this position paper we examine the negotiations taking place presently under the auspices of the President between the coalition and parts of the opposition.**

We are of the opinion that:

*We, members of the Israeli Law Professors' Forum for Democracy, hold different academic views regarding the details of the various reforms proposed by Israel's 37th Government to change Israel's democratic regime. However, we are united in the opinion that the host of the government's proposals - which are an unprecedentedly severe attack on the independence of the judiciary, the Attorney General and government legal advisors, the police, the military, and public broadcasting - will seriously damage the rule of law and Israel's democratic character. Therefore, we joined this forum to make our professional opinion available to the public at this fateful time. The position papers or other professional materials produced by us reflect the prevailing position among the members, even if they are not unanimous. The list of Forum's members and all position papers on our behalf are available at <https://lawprofsforum.org>. Follow us on Twitter: <https://twitter.com/lawprofsforum>. Contact us: lawprofessorsforum@gmail.com.

- **Holding negotiations in the absence of a binding legal guarantee that no steps can be taken to renew the proposed legislation enables the government to resume the legislation at any time it pleases—which is unacceptable. This imminent threat creates an inherent imbalance in the negotiations.**
- **Furthermore, the negotiations are being carried out in an unacceptable manner: they are marked by an absence of transparency; the variety of voices within the opposition are not adequately represented, most significantly, that of the Arab population; the negotiating parties do not publish their agenda, their working plans, or the boundaries of their discussion.**
- **A proper process for creating constitutional norms should not resemble regular parliamentary negotiations that involve power struggles and horse trading between majority and minority parties. It should reflect the participants' common aspiration to create a balanced and morally defensible constitutional arrangement for the benefit of society as a whole, and should address the entirety of the issues at hand. The unique purpose of the process of forming constitutional agreements requires that it be conducted under special conditions, none of which obtain in the current negotiations: full representation, transparency and publicity, public participation, symmetrical negotiations, comprehensiveness, and assurances of broad agreement. These are all essential.**
- **In this paper we lay out our position on the red lines within which any constitutional arrangements should be designed.**