



THE ISRAELI LAW PROFESSORS' FORUM FOR DEMOCRACY

## The Attack on Israeli Democracy – A Synoptic View, December 2024

### Executive summary

*The Israeli Law Professors' Forum for Democracy* issues a severe warning that the combination of legal measures, promoted by Israel's own government in recent weeks, amounts to **an attack on the democratic character of the State of Israel, which is unprecedented in its intensity and scope**. They threaten the rule of law, the separation of powers, the stability of the democratic regime, freedom of expression and freedom of the press, and human and civil rights to an extent which **creates a severe and unprecedented threat to the ability of Israel to remain a properly constituted democracy**.

*The Forum* indicates four main spheres at which the government's threat to democracy are observable: (1) Radical transformation of the constitutional structure of the state, in order to increase the strength of the government and its ministers and to undermine the independence of the non-political, professional institutions, whose function it is to ensure that the government acts in accordance with the law for the benefit of all. (2) Restrictions on the freedom of expression and undermining of equal elections, in order to shrink Israel's marketplace of ideas and increase the strength of the government in the coming elections. (3) Promotion of a series of policy measures characterized by their violation of the principle of equality and rejection of the state's obligation to treat all its citizens without discrimination. (4) Government's management of the war and the hostage crisis, which involves extreme violation of human rights in a variety of contexts, without giving sufficient public account or justification for governmental policy.

*The Forum* calls upon all those to whom the future of Israel is important, to pursue every available lawful avenue with a view to preventing the realization of the dangers inherent to the measures being taken by the government and the coalition at various levels.

## The Attack on Israeli Democracy – A Synoptic View

Following its failure to push through a comprehensive regime “reform” in the months prior to October 7<sup>th</sup>, Israel’s governing coalition has, since the beginning of the present Knesset session in October 2024, turned to an alternative strategy: an multi-pronged effort to demolish, by different means, the legal foundation of Israeli democracy. Every component of this effort can and should be critically analyzed as to its content and the particular threats it poses democracy. However, it is important not to allow the many “trees” – legislative proposals, cabinet and ministerial decisions, administrative proceedings, and declarations of high-ranking officials etc. – to obscure the “wood”: **the State of Israel is under an attack unprecedented in its intensity and scope, waged by its own government, against its democratic character.** The rule of law, the separation of powers, the stability of the democratic regime, freedom of expression and freedom of the press, and human and civil rights – are all threatened by a government which seems to have become devoid of all inhibition.

Governmental threats to democracy are evident at **four main spheres**:

### A. Undermining the Institutions of Democracy

The coalition continues in its efforts to change the constitutional structure of the state, in a line of measures which share the aim of **increasing the strength of the government and its ministers, and undermining the independence of the professional non-political echelons, whose function it is to ensure that government agencies act in accordance with the law for the benefit of all.**

This includes, inter alia, the following measures: 1. The government is threatening to dismiss the **Attorney-General (AG)**, who is acting professionally and in good faith to ensure the government’s compliance with the law. The Prime Minister and other ministers are responsible for incitement against the AG and the law enforcement system more broadly, making false accusations that the AG and State Prosecutor are acting on grounds of irrelevant considerations. This incitement is aimed, in essence, to allow the government to act in breach of the law and to deter law enforcement officials. The disregard of professional opinions and the incitement severely damage the trust of the public in the legal counsel agencies and in the state prosecution, to the extent that they endanger the safety of the AG and other law enforcement officials. 2. The government decided to summarily terminate the tenure of a host of **legal counsels to government ministries**, who stand at the forefront of professional legal counselling for the executive bodies and whose independence is crucial for securing the rule of law. This latter decision has been presented as implementation of a policy to fix maximum terms of service, but in reality it was aimed at allowing the government to replace professional legal counsels with ones who are politically committed to the ministers, thus undercutting the integrity of essential gate keepers in the government. This is accompanied by attacks by the ministers on other gate keepers, amongst them senior comptrollers and department heads, whose function is to protect the rule of law. 3. The Minister of Justice obstructs – in open defiance of a Supreme Court injunction – the work of the Judicial Selection Committee, and in this way **prevents the appointment of a chief justice and new justices to the Supreme Court**, which has for a long time been functioning with a reduced bench. 4. The coalition, with the government’s support, is promoting a law to politicize the selection process of the **Public Ombudsman for Judges**, a position that has a direct impact on the professional independence of all judges in Israel. The legislation, which relies on the coalition’s

partisan support, is meant to change, *in medias res*, the selection process of the next Ombudsman, deviating from the tradition of appointing a retired Supreme Court justice to the position. The proposed process is designed to allow the government to appoint an Ombudsman who will be politically biased, which will severely undermine independence of the judiciary. 5. The coalition, with the support of the government, threatens to complete the legislation of a constitutional amendment, already approved a year ago for the Knesset's final readings, which will change **the composition of the Judicial Selection Committee** and will **grant the government absolute power in the selection of** Supreme Court justices, and indirectly of judges for other courts as well. 6. The coalition, with the support of the government, is advancing a law that will strip the **Israel Bar Association** of its autonomy to set membership fees, effectively subordinating its activities to the will of the Minister of Justice. 7. The government is consistently eroding the independence of the **Israel Police**, particularly its senior ranks, and is politicizing the organization through a combination of legislative measures, administrative decisions, and appointments. 8. The government and the prime minister are consistently attacking the Israeli Security Agency (“*Shabak*”) and threatening to dismiss its head, in an attempt to coopt it to the political needs of the government, severely subverting its constitutional commitment to the principles of democratic governance. 9. The government is seeking to politicize the selection of a new **State Civil Service Commissioner**, a position that is crucial for the proper functioning of the public service and its commitment to principles of proper governance.

## **B. Limiting Freedom of Expression and Free Elections**

The government is acting through various means to perpetuate its power beyond the next elections, by narrowing the Israeli marketplace of ideas and undermining the possibility of presenting alternative political options and of conducting fair elections between competing factions.

This includes, inter alia, the following measures: 1. The coalition is promoting legislation that would facilitate the **disqualification of parties and candidates** representing the Arab minority from running in the Knesset elections. The purpose of this legislation is to enhance the chances of the current coalition parties gaining a majority in the next Knesset, while violating fundamental principles of equal and universal elections. 2. The government is taking a series of actions to harm **media entities** that take a stance perceived by the government as critical of its policies and actions, while providing regulatory and promotional benefits to media entities that support it. 3. The government is working to close **public media outlets**, namely the Israeli Public Broadcasting Corporation and *Galei Tzahal* Radio Station, in a manner that will severely curtail the marketplace of ideas and deny the public a critical means to receive reliable information and to consume a variety of opinions and ideas. 4. Under the guise of a “counter-terrorism,” the coalition passed a law severely restricting the **freedom of expression of teachers** who voice opinions deemed provocative, and it threatens to pass similar silencing and intimidation legislation regarding **professors and students at universities**. 5. The government's creeping inroad into the fabric of the state police threatens to undermine oversight mechanisms designed to uphold the integrity of the upcoming elections and the right of all citizens to freely participate in it in an equal and safe manner. 6. Policies actively pursued by the police and the state prosecution effectively limit the freedom of protest in various contexts, including allowing the use of stun grenades at demonstrations and filing charges of terrorism for acts of protest. Under the direction of ministers, the police unlawfully denies the right to hold quiet protest vigils near the residences of public officials.

### C. Violation of the right to Equality

Against the background of the numerous measures undermining Israeli democracy, the coalition is promoting a series of policy measures violating the state's obligation to treat all citizens as equals.

These measures include, inter alia: 1. The government continues to defy a court order mandating the adoption of a fair policy of **military draft** and to end the discrimination in the burden of military service in Israel. 2. The coalition, with the support of the government, is working to advance a series of bills that would allow **gender segregation** in various public spaces, including in the academia, in a manner that severely undercuts the right to equality. 3. The coalition, with the support of the government, is promoting legislation to enhance the **power of religious authorities** that are not committed to the principles of equality, including the Chief Rabbinate and religious courts. 4. The government shirks its responsibility to vigorously act to protect the **safety of Arab citizens of Israel** in the face of an unprecedented spike of violent crime occurring in their communities. 5. The government is working to deepen the **discrimination** between Jews and Palestinians living in the West Bank, in access to land resources, enforcement of security legislation, and more. The Minister of Defense announced that administrative detentions – measures which are exceptional and highly problematic – will be used to prevent only Arab/Palestinian terrorism and not Jewish terrorism, and this is in addition to the discriminatory implementation of other measures in the fight against terrorism.

### D. Legality of Conducting the War and Managing the Hostages Crisis

The government is managing extensive aspects of the war without providing public justification for its policies, which involves serious violations of rights, and without adhering to the principles of proper administration.

This includes, inter alia, the following aspects: 1. The Prime Minister is conducting **negotiations for the release of the hostages** – who are subjected to continuous and atrocious violations of their rights, which gives rise to the state's obligation to act – **without having established or formulated** the government's stated policy on the subject and, in any case, **without providing the public with justification** for the course taken by the government, which has effectively resulted in the abandonment of many of the hostages. 2. The IDF is acting in a manner that severely harms the **human rights** of Palestinian residents in northern Gaza, and this is without the political leadership clarifying the purpose of the operation there and without presenting justification for the serious harms involved. 3. Ministers in the government are calling for a policy that amounts to ethnic cleansing of northern Gaza and the establishment of settlements in Gaza, in serious breach of the law, severe violation of human rights, and danger of politicizing the IDF. 4. The government is failing to instruct military authorities and law enforcement agencies to readily investigate allegations of unlawful actions by soldiers during the war, putting both the ministers and the soldiers themselves at risk of prosecution abroad. 5. The government is obstructing the establishment of a **state commission of inquiry** to examine the factors that led to the October 7 disaster, to assess the conduct of the war, and to critically examine the government's and the IDF's policies during the war in terms of compliance with the laws of war. Preventing the establishment of a commission of inquiry severely undermines public trust in

the government and Israel's international standing. 6. The IDF and the Israel Prison Service are holding hundreds of Palestinian detainees under harsh conditions, which have even led to deaths, without accounting for their identities and conditions of detention, and the coalition is promoting legislation that would deny them full legal protection if prosecuted. 7. The government is not providing adequate protection for evacuees from southern and northern communities in Israel and is not acting appropriately to rehabilitate the civilian areas affected by the war.

*The Israeli Law Professors' Forum for Democracy*, based on a deep understanding of the “trees,” warns about the “wood”: **the totality of the coalition's actions poses a serious and unprecedented threat to Israel's ability to endure as a state with a proper democratic regime. In several areas, this threat is already being realized.** We call on all those who care about Israel's future to act in any lawful way to prevent the realization of the dangers associated with the actions of the government and its coalition in the various areas.

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For further details on the main issues mentioned in the statement, visit our website: <https://www.lawprofsforum.org/en>.