



THE ISRAELI LAW PROFESSORS' FORUM FOR DEMOCRACY

**The Israeli Law Professors' Forum for Democracy –
Legal Resistance to Regime Changes in Israel 2023**

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Heading towards another parliament session starting right after the Jewish holidays in October, we wanted to take a pause and reflect on the past months of our activities as the Israeli Law Professors' Forum for Democracy. We would like to share our story with you and encourage you to join us in our vital fight for democracy.

The Israeli Law Professors' Forum for Democracy was established in January 2023 in response to the Israeli Justice Minister's proposed "Legal Reform," which aimed to make fundamental changes in the Israeli democratic regime. These changes included drastic changes to the judges' selection committee, almost total abolishment of constitutional review of legislation and basic laws, and narrowing the scope of administrative judicial review. Additionally, the Justice Minister expressed intentions to diminish the independence of the Attorney General, allowing the government and ministers to determine their legal position in day-to-day operations and before judicial courts without the Attorney General's intervention.

Since its founding, the Forum has been at the forefront of the struggle to preserve Israeli democracy. Over 150 permanent faculty members from all law faculties and schools in Israel have passionately dedicated their time to explain the proposed legal changes and their implications. We reached out to Members of the Knesset, utilized various media platforms (including TV, radio, social media and podcasts), engaged with public officials, and interacted with the general public, including through demonstrations, home gatherings, and many more. The government's attempts to undermine the rule of law and judicial independence have spurred the Forum to make complicated legal arguments accessible, becoming a significant pillar in the growing public demand to halt the regime revolution.

The Forum stands as an example of activist academia dedicated to democracy. Comprising independent and non-affiliated experts in Israeli law, especially public law, the Forum members work collaboratively and pro bono. Their efforts have resulted in the creation of dozens of position papers and texts on various topical issues.

This document serves as a comprehensive summary of all the position papers published by the Forum to date. The full position papers in Hebrew, along with a selection of papers in English, can be accessed on our website: www.lawprofsforum.org.

The position papers are divided into seven categories:

- A) What are they Doing? Analyzing the Regime Changes
- B) Why are they Doing it? Examining the Arguments in Support of the Changes
- C) What is the Proper Way to Make Changes? How to Build a Constitution
- D) What is Done in other Countries? Comparative Perspectives
- E) What will the Changes Do to Us? Examining Expected Consequences
- F) What else are they Doing? Additional Legislative Changes Initiated by the Government
- G) What Should We Do? Possible Responses

(A)What are they Doing? Analyzing the Regime Changes

1. The Revolutionary Regime Transformation: A Summary Opinion (Position Paper #5, dated January 20, 2023)

This paper details the proposed amendments to Basic Law: The Judiciary and Basic Law: The Government put forth by the chair of the Constitution, Law, and Justice Knesset Committee. The paper examines the proposal to allow the coalition to control the appointment of judges to all judicial instances, the proposal to prevent judicial review of basic laws and to restrict almost entirely judicial review of legislation, the proposal to minimize judicial review of government and ministers' decisions by abrogating the unreasonableness doctrine, and the proposal to weaken the Attorney General's status as a gatekeeper.

The Forum contends that these proposals grant excessive power to the government, potentially undermining the rule of law, the separation of powers and the protection of human rights. They fundamentally alter the regime in Israel in an unprecedented, hasty, and flawed manner that diverges from accepted legislative processes and subverts legal advisory mechanisms and comprehensive public debate required for constitutional legislation. The cumulative effect of these amendments is such that it is unprecedented in any other democratic country and their enactment could place Israel alongside countries experiencing severe democratic backsliding such as Turkey, Hungary, and Poland. The Forum warns that these changes may be irreversible.

2. **A Memorandum Concerning Israel's Recent Unreasonableness Amendment and its Implications** (dated August 8, 2023) [Link to the Full Text](#)

In this memorandum the Forum explains the content and far-reaching implications of Amendment No. 3 to Basic Law: The Judiciary concerning the unreasonableness doctrine, the political context of the amendment, its immediate and long-term effects, including its impact on the economy, security, human rights, particularly in relation to the Occupied Territories. It also outlines the expected developments in the public, legal, and political discourse regarding the amendment.

3. **The Forum's Request to Join as an Amicus Curiae the Petitions Against Unreasonableness Amendment** (dated August 20, 2023)

This Opinion was submitted by the Forum to the Supreme Court as an Amicus Curiae brief in the petitions against the constitutionality of the law abolishing the unreasonableness doctrine as it applies to government and ministerial decisions. Based on in-depth and comprehensive historical and comparative research, we demonstrate the severe procedural deficiencies in the hasty and inadequate legislative proceedings of the Constitution, Law, and Justice Committee regarding Amendment No. 3 to Basic Law: The Judiciary. In particular, we argue that the procedure through which the amendment was enacted does not align with the required procedure for legislating Basic laws, and contradicts the rules that apply to committee-initiated Basic Law legislation.

The Opinion also argues that the abrogation of courts' authority to perform judicial review based on the unreasonableness doctrine constitutes an abuse of constitutional authority as it severely undermines Israeli democracy. Finally, it is argued that the accumulation of procedural and substantive flaws reinforces the claim that the law is unconstitutional.

4. **Basic Principles Regarding Judicial Review on Grounds of Unreasonableness** (Position Paper #54, dated July 23, 2023)

This paper underscores the Forum's objection to the Bar-David and Amittai proposal concerning the amendment abolishing the unreasonableness doctrine, since it contradicts basic principles that must be upheld at all times. The paper stresses the importance of conditioning any compromise regarding the unreasonableness doctrine on the complete cessation of the regime changes and on the agreement that any future constitutional changes will be based on a broad consensus. Furthermore, the paper contends that the unreasonableness doctrine must continue to apply to appointments and dismissal decisions, government and ministerial decisions that do not pertain to policy, and to the decisions of interim governments.

5. **The Proposal to Revoke the Standard of Reasonableness** (Position Paper #50, dated June 26, 2023)

This paper analyzes the proposal by the chair of the Knesset Constitution Committee to abolish the unreasonableness doctrine. The Forum's position is that this proposal is unacceptable and must be opposed. It will have a significant negative impact on the quality of governmental actions and on the ability to prevent individual and institutional corruption. The proposal also infringes upon the separation of powers and upon the public interest and is detrimental to public trust in governmental authorities. The various disputes in jurisprudence and legal scholarship concerning the doctrine's application do not provide a basis for an absolute legislative ban on the doctrine's application to governmental and ministerial decisions. The proposal releases the above-mentioned institutions from any judicial review based on the unreasonableness doctrine, even when they act arbitrarily, capriciously, and in an unacceptable manner that contradicts the rule of law.

6. **Abrogation of Reasonableness as Grounds for Judicial Review** (Position Paper #6, dated January 25, 2023)

This paper argues that the proposal to abolish the unreasonableness doctrine will significantly decrease the judicial branch's authority, eliminating an essential legal tool that enables correcting flaws in governmental decision-making processes. This step could have dire consequences for vulnerable populations in Israel who lack the means to defend themselves against governmental power. In fact, the abolition of the doctrine may alter the landscape of judicial review over the executive branch, oversight which is critical in preventing the abuse of power and protecting individuals from arbitrary decisions.

7. **Knesset Representatives in the Judicial Selection Committee** (Position Paper #48, dated May 31, 2023)

This paper reviews the practice that has been customarily established according to which the Knesset chooses one member of the coalition and one member of the opposition to represent the Knesset in the Judicial Selection Committee. The paper emphasizes the importance of this custom and stresses that although it has not been directly enforced judicially, the Supreme Court has affirmed the importance of respecting this custom which expresses a commitment to fundamental constitutional principles.

8. **Response to the Proposal to Allow the Coalition to Appoint Judges** (Position Paper #32, dated March 20, 2023)

In this paper, we scrutinize the coalition's updated proposal, published on March 20, 2023, concerning the change in the composition of the Judicial Selection Committee. We demonstrate that the proposal enables the coalition to take over the judiciary by selecting the next Supreme Court president and two Supreme Court justices, through a regular majority vote in the committee, as its proposed makeup consists of a coalition majority. Meanwhile, other appointments will be subject to the majority opinion of the committee members, including a Knesset member from the opposition and a judge. The paper contends that this proposal does not amount to a genuine compromise and could potentially result in the complete erosion of judicial independence.

9. **The Forum's Response to the "Friedman/Elbashan Proposal"** (dates March 8, 2023)

This paper asserts that the "Friedman/Elbashan Proposal" regarding the amendments to Basic Law: The Judiciary does not constitute a genuine compromise. Instead, it adopts the core regime changes proposed by the chair of the Knesset Constitution, Law and Justice Committee and the Minister of Justice.

According to the Forum, the concessions offered within the Friedman/Elbashan proposal create the foundation for violations of human rights, infringement of judicial independence and the politicization of the judiciary, and subsequently have a detrimental impact on Israel as a Jewish and democratic state. The paper therefore argues that the proposal should be rejected.

10. **An Updated Opinion Concerning the Judicial Election Committee and Judicial Review** (Position Paper #19, dated February 26, 2023)

This paper presents the Forum's position concerning legislative bills that have recently passed an initial or preliminary reading in the Knesset. The paper emphasizes that the legislation regarding the selection of judges entails the coalition's takeover of the committee, thereby eliminating judicial independence for judges in all instances. The Forum posits that any compromise that does not enshrine a proper balance between political and professional actors in the committee and in its decision-making processes should be rejected. The paper also points out that the proposal to instate absolute immunity from judicial review to Basic Laws provides the coalition majority unlimited power, thus paving the way for the tyranny of the majority, corruption and human rights violations. Additionally, the position paper explains that the proposals to restrict judicial review and legislate an override clause constitute attempts to entirely abolish judicial review in Israel and as such open the door to irreversible human rights violations. These proposals represent amendments that exceed the Knesset's authority and are unconstitutional.

11. Procedures for the Appointment of Judges (Position Paper #7, dated January 30, 2023)

This paper examines the role of the judiciary in general and particularly in Israel, and surveys the processes for selecting, promoting, and removing judges from office in Israel since the establishment of the state. It details the rationales that underlie the election, promotion and removal procedures, which include independence, accountability to the public and the other branches of government, as well as diversity and reflection of the population. The paper argues that the existing procedures should be preserved, and contends with claims made by supporters of the regime changes.

12. Proposed Changes to the Scope of Judicial Review (Position Paper #4, dated January 20, 2023)

This paper maintains that the coalition's proposals to limit judicial review and establish a mechanism to override the decisions of the judiciary create a profound and problematic shift in the balance of power between the branches of government. The change essentially frees the Knesset majority, which is largely controlled by the government, from any effective legislative constraints. The paper contends that enacting the coalition's proposals will establish the foundation for unrestricted authority.

It further points out that the combination of the various proposals regarding the Judicial Selection Committee, the reduced status of governmental legal advisors, the abolition of the unreasonableness doctrine, and the near-absolute abrogation of judicial review alongside the override procedure, collectively cause severe harm to democracy.

13. Changes to Attorney General and Government Legal Advisors Status (Position Paper #1, dated January 15, 2023)

This paper examines the proposal put forth by the chair of the Knesset Constitution, Law and Justice Committee to establish the independence of the government and the ministers in determining their legal positions. The proposal includes a provision making a legal position provided by the Attorney General not binding. The paper finds that the proposal raises profound difficulties in both principle and practice. It may enable unlawful actions without oversight, erode public trust, and undermine professional public service. It will also remove the presumption of legality that applies to the executive. At the same time, the paper stresses that the proposal will do nothing to reinforce the government's capacities nor advance legal certainty. Moreover, the paper contends that the comparison made by the chair of the Knesset Constitution, Law and Justice Committee to other countries in which governmental legal advice may not be binding is not appropriate, since it fails to consider the other checks and balances on executive power in those countries, none of which exists in Israeli law.

(B) Why are they Doing it? Examining the Arguments to Support the Changes

1. **The Argumentative Structures Utilized by Supporters of the Regime Overhaul** (dated September 4, 2023)

This position paper analyzes the forms and structures of the arguments concerning the legal system, made by supporters of the regime overhaul. The analysis demonstrates that under the appearance of a rational, evidence-based debate, the arguments' forms in fact preclude any such deliberation. The claims concerning the state of the law are often misleading, the conclusions drawn from these claims are incompatible with the problems raised, and most importantly, the overarching effects of undermining democracy is concealed or denied.

2. **Response Paper to the “50 Injustices of the HCJ” Document** (forthcoming)

This paper examines the “50 Injustices of the HCJ” document that included a description of cases in which the High Court of Justice allegedly expressed “leftwing” positions. The position paper aims to demonstrate that many of these descriptions misrepresent the cases, are inaccurate and intentionally misleading.

Even in cases in which the description of the case is accurate, the writer does not explain why the court’s decision constitutes an injustice. Moreover, our paper points to the “50 Injustices of the HCJ” Document’s failure to address the appropriate role of the judiciary in a democracy and in Israel in particular, where the High Court of Justice is tasked with the protection of human rights.

3. **Diversity in the Judiciary** (Position Paper #14, dated February 22, 2023)

This paper points out that there has been a significant change in the past decades and the judiciary is currently more diverse than before. However, certain groups in Israeli society, primarily ultra-Orthodox and Arabs, are still significantly underrepresented in the judiciary. Furthermore, transferring the control over the appointment of judges to the government will not lead to more diversity. The mechanisms proposed by the government will lead to the appointment of judges according to their political allegiance, with professional expertise, diversity and representation becoming secondary considerations. In order to boost diversity and representation in the Israeli judiciary various other measures not included in the government’s proposals can be applied, including holding conferences aimed at encouraging lawyers from underrepresented groups to apply for judicial office and integrating diversity measures in the appointment procedures.

4. **Supreme Court Case Law Relating to Security Issues and the Occupied Territories** (Position Paper #20, dated February 27, 2023) [Link to the Full Text](#)

This paper examines the case law of the Israeli Supreme Court relating to security and the Occupied Territories. The paper reveals that the Court rarely intervenes and practices extreme restraint as concerns government measures in security matters and in matters relating to Israel's policy in the Occupied Territories. Presenting the Supreme Court's involvement as 'restrictive' in a manner that impedes the Government's ability to act is mistaken and misleading. A series of empirical studies over recent decades have shown that despite using human rights rhetoric, the Court rarely rules against Israeli conflict and security policies.

5. **The Judiciary and the Protection of Asylum Seekers' Rights in Israel** (Position Paper #58, dated October 1, 2023)

This paper responds to recent public criticism voiced against the Supreme Court's rulings regarding asylum seekers living in Israel. It explains that the Supreme Court has not intervened in the immigration policy of the State of Israel. When it comes to asylum seekers, the court has ruled against the State only in extreme cases in which the challenged legislation or policy caused serious and disproportionate damage to basic human rights available not only to citizens but to every human being as such. Thus, the Court has primarily intervened to protect asylum seekers, whom the State recognized could not be removed from Israel, from prolonged and sweeping deprivations of liberty. While declaring extreme measures of this sort unlawful, the court has refrained from advancing an alternative policy on asylum seekers, leaving significant leeway to the legislature and executive to design and develop policy in this area.

6. **The Forum Explains: Fundamental Concepts and the Regime Overhaul: The Rule of Law and Basic Rights** (Position Paper #15, dated February 15, 2023)

This paper explains the fundamental concepts of the rule of law and basic rights and examines their status in light of the amendments proposed as part of the regime overhaul.

7. **The Forum Explains: Fundamental Concepts and the Regime Overhaul: The Nature and Limits of Majority Rule** (Position Paper #28, dated March 15, 2023)

This paper explains the complex relations between the democratic value of the "people's rule" and the justifications for and limits on the principle whereby the majority vote binds the entire public, including the minority.

(C)What is the Proper Way to Make Changes? How to Build a Constitution

1. **The Proper Procedures for the Enactment of Constitutional Reform** (Position Paper #3, dated January 18, 2023)

This paper argues that a constitutional reform requires profound dialogue and broad consensus. These can only be achieved through a slow and careful process involving a special procedure, a special decision-making mechanism and incentives to reach compromises and genuine agreements. Without such a process, a reform does not enjoy democratic legitimacy and may also lack legitimacy in the view of the public expected to act in accordance therewith.

2. **The Knesset's Authority to Amend Basic Laws** (Position Paper #9, dated February 7, 2023)

This paper contends that although the coalition's proposed amendments constituting a regime overhaul may enjoy the support of the contingent majority in the current Knesset, they undermine the basic principles of Israel as a Jewish and democratic state and are not widely accepted by the public. Therefore, the Knesset arguably lacks the power to enact them.

3. **When Do the Proposed Regime Changes Go into Effect?** (Position Paper #10, dated February 7, 2023)

This paper contends that the proposals to amend Basic Law: The Judiciary constitute an abuse of constitutional power, in light of the clear conflict of interest of the coalition majority. Therefore, even without addressing the question of whether the proposed changes harm the core values of the State of Israel—and as per the analysis presented in the paper, the proposed changes do harm those values—at a minimum, these changes should only go into effect beginning with the next Knesset.

4. **A Proposal for an Outline in the Matter of the Judicial Review and the Authorities of the Knesset and Government** (Position Paper #23, dated March 3, 2023)

This paper contends that, in general, the scope of judicial review and the method of selection of judges, in their current form, reflect a proper arrangement that significantly contributes to the protection of human rights and the promotion of the rule of law. These arrangements are the result of broad consensus. The changes that are necessary to Israeli constitutional law are the stronger entrenchment of the duty to respect human rights and the strengthening of the separation of powers.

However, we clarify that it is important to consider the opinions of those who advocate curtailing the scope of judicial review, and to seek broad consensus with respect to various proposed amendments and bills and avoid one-sided constitutional legislation.

5. **The Forum's Position Regarding the Negotiations held Under the Auspices of the President** (Position Paper #44, dated May 3, 2023)

This paper examines the problems arising from negotiating under the auspices of the President in the absence of sufficient guarantees from the government to halt the legislation. It is also argued that holding negotiations between members of the Knesset without symmetry, transparency and publicity, without public participation and appropriate representation for the variety of voices within the opposition and most significantly the Arab population, is inappropriate. Constitutional processes should not resemble regular parliamentary negotiations that involve power struggles. Instead, they should reflect the common aspiration of the participants who represent society as a whole to create a balanced constitutional arrangement with broad consensus. This paper lays out red lines within which any constitutional arrangement should be designed in Israel.

6. **Critique of the Legislative Process Concerning the Doctrine of Reasonableness** (Position Paper #52, dated July 13, 2023)

This paper cautions that the meetings of the Knesset's Constitution, Law and Justice Committee concerning the doctrine of unreasonableness do not constitute a forum for discussion, negotiation, persuasion, learning, or contending with arguments and knowledge, let alone incorporation thereof into legislation. The discussions that have taken place in the Committee, along with the enormous amount of professional background materials, preparatory documents and position papers have had no significant effect on the bill, and this is inappropriate.

7. **How to Halt Legislation** (Position Paper #40, dated March 29, 2023)

This paper considers the legal avenues available for effectively halting the legislation and "delaying" the regime overhaul. According to the Forum's analysis, the Prime Minister's declaration that the second and third readings of the Basic Law Bill: The Judiciary introducing changes in the judicial appointment process will be postponed has no legal effect. Without a binding legal guarantee for the declaration, the negotiations between the parties are overshadowed by the constant threat that the legislation will be completed promptly. Hence, the Forum demands to take one of the steps specified in the paper to ensure that the legislation will be halted and promoted only with broad consensus.

8. **Is Rothman's Updated Proposal a New Subject that Requires Returning to the First Reading?**
(Position Paper #34, dated March 20, 2023)

This paper examines whether the new version proposed for the amendment to the Basic Law: The Judiciary by the Chair of the Constitution, Law and Justice Committee, published on March 20, 2023, and intended to allow the coalition to control "only" the appointment of the Supreme Court Chief Justice and two additional judges and not all appointments, constitutes a "new subject" that requires returning to the first reading. The Forum claims that it is indeed a "new subject".

(D)What is Done in other Countries? Comparative Perspectives

1. **The Government's Regime Transformation Proposal & the Venice Commission** (Position Paper #8, dated February 4, 2023) [Link to the Full Text](#)

This paper presents reports and opinions of the Venice Commission which was established in 1990 in order to advise the Council of Europe on issues concerning the rule of law and strengthening democracy, and shows the incompatibility between the best practices proposed in these reports and the policy promoted by the government. Israel joined the Commission in 2008. In the paper the Forum focuses on three main subjects discussed by the Commission - the methods of appointing judges, the procedure for constitutional transformation, and the rule of law. This paper shows that the proposals for the regime changes being promoted by the government are in complete contradiction to the Commission's positions in all areas. It further transpires that adoption of the proposals that are being promoted by the government will make Israel resemble Poland, Hungary and Turkey in relation to which the Venice Commission has published very negative reports in recent years.

2. **Senior British Expert's Response Concerning the Comparison of Israel & UK** (Position Paper #13, dated February 19, 2023) [Link to the Full Text](#)

This paper presents the position of senior experts in the British legal system, including the former President of the UK Supreme Court, former Minister of State for Justice, the former chairman of the House of Lords Constitution Committee, and senior professors concerning comparisons made between Israel and the United Kingdom by proponents of the regime overhaul. In their opinion, the House of Lords, the second chamber of the UK legislature, has vast powers and acts as a balance to the first chamber. The paper further rejects the claim that the United Kingdom's judiciary cannot affect the design and execution of public policy in view of the Human Rights Act 1998 and the various powers conferred thereby.

3. **Public Statement of UK Legal Academics who Warn Against the Regime Changes** (Position Paper #18, dated April 23, 2023) [Link to the Full Text](#)

The Paper presents the position of over 40 British academics and jurists who express strong opposition to the proposed reform of the Israeli judicial system. In their opinion, a state in which the executive branch functions without adequate legal constraints cannot claim to be democratic. All of the elements that the overhaul supporters seek to cancel - mechanisms of checks and balances, the ability to review legislation, respect for court judgments and finality thereof, unreasonableness as a criterion for reviewing official action and independent legal counseling – are essential for the making of a stable democratic state which is rooted in the rule of law, protects minorities and civil rights and maintains the separation of powers – and must not be abrogated.

4. **Position of Senior Swiss Public Law Experts Regarding the Comparison Between Switzerland and the Coup Promoted in Israel** (Position Paper #30, dated March 18, 2023) [Link to the Full Text](#)

This paper presents the position of two leading Swiss public law experts who explain the Swiss legal system regarding the appointment of judges and judicial review of legislation. They make it clear that the comparison between Switzerland and Israel by the proponents of the judicial overhaul is made without presenting the necessary context of Swiss constitutional law as a whole and of customary practice. Without presenting the necessary context, the comparison between the elements of the Swiss law and the elements of the proposed reform loses its persuasiveness and is misleading.

5. **Mechanisms for the Appointment of Judges – Comparative and Empirical Insights** (Position Paper #33, dated March 20, 2023)

This paper presents comparative and empirical insights on mechanisms for appointing judges. The paper demonstrates that judicial appointment processes that are controlled by politicians do not prevent judicial activism and may even increase it. In addition, judicial appointment processes that are controlled by politicians often impair the quality of judicial decisions and public trust in the judicial system. In view thereof, in general, the global trend is moving towards increasing professionalism and independence in the judicial appointment processes and reducing the influence of politicians on appointments.

6. **Appointment of High Court Presidents According to the Seniority Principle in Democratic Countries** (Position Paper #47, dated May 31, 2023)

This paper is a comparative study regarding the appointment of high court presidents according to the seniority principle. For example, in the United States, the seniority principle is used in all regular federal courts, including the federal courts of appeals, except for the Supreme Court. This is also the case with regard to the appointment of presidents of the Supreme Court in several states of the United States. This principle is also important in appointment procedures in other democratic states.

7. **Comparison of Reforms of Judicial Appointments in Ireland and Israel** (Position Paper #27, dated March 14, 2023)

This paper explains that Ireland is about to approve a comprehensive reform of its judicial appointment procedure such that the search committee will be composed of four judges, four public representatives, and the Attorney-General, who will not be entitled to vote. The public representatives will be appointed by the Minister of Justice, but the Minister will be required to appoint only candidates recommended by a non-political body in the Irish civil service.

The committee's recommendations will be binding. For every judicial position, the committee will recommend three candidates and the government will be required to choose one of the three.

8. **Appointment of Judges in the US** (Position Paper #38, dated March 28, 2023)

This paper shows that in the different US states there are diverse methods for appointing judges, and the President of the United States is not involved in all of them. Even in cases of appointment by the President in the federal courts, the US Constitution requires the approval of the Senate, and thus may act as an important balance since the majority in the Senate can be held by the opposing party. In addition, in the United States there are additional measures to restrain executive authority that do not exist in Israel, such as two legislative houses and a federal government.

9. **Appointment of Judges to the Supreme Court in New Zealand** (Position Paper #43, dated April 16, 2023)

This paper examines the question of whether indeed the appointment of judges to the New Zealand Supreme Court is determined exclusively by politicians. The paper demonstrates that the claim made by proponents of the regime overhaul in Israel on this matter is erroneous and does not take into consideration the legal cultural differences between Israel and New Zealand and the great importance of constitutional conventions in New Zealand.

10. Method of Appointment of Judges in France (Position Paper #16, dated February 23, 2023)

This paper reviews the law in France regarding the appointment of judges and maintaining their independence. This review leads to the conclusion that contrary to the claims of the promoters of the reform, elected officials do not control the appointment of the majority of judges, and this in order to maintain their professionalism and independence. The independence of judges is protected by minimizing the involvement of the political echelon not only in appointment procedures, but also in decision-making processes regarding the promotion and disciplinary prosecution of judges. In addition, the independence of the judiciary is also guaranteed under the influence of EU law.

11. Judicial Review of Parliament Legislation in New Zealand (Position Paper #12, dated February 19, 2023)

This paper points out that over the last few decades, there have been significant changes in New Zealand constitutional law regarding the use of judicial review, so that it cannot be said that legislation is completely immune from judicial review. At the same time, it appears that significant differences between the New Zealand system and the Israeli system make it impossible to view New Zealand as a relevant and sufficient point of comparison for the promotion of the regime changes.

12. "Jerusalem Shall be Redeemed by Judgment": The Concept of Law, Justice, and Separation of Powers in Hebrew law (Position Paper #2, dated January 17, 2023)

This paper points out that the concept of law, justice and separation of powers in the Jewish political tradition holds that all power should not be concentrated in the hands of one person or one authority, but should be divided and dispersed. The proper model of government according to the Jewish tradition consists of different forces that influence each other and review each other. Thus, the Jewish tradition preceded modern concepts of government structure by way of separation of powers.

(E) What will the Changes Do to Us? Examining Expected Consequences

1. **Infringement of the Rights to Vote, to Stand for Election, and Harm to Free Elections** (Position Paper #31, dated March 19, 2023)

This paper examines the possible infringements of the rights to vote and to stand for election and more generally to the free and competitive nature of Knesset elections which may result from the regime changes. The undermining of the independence of the judiciary and the significant curtailment of judicial review over legislation will expose such rights to even more serious violations.

2. **Violation of Women's Rights as a Result of the Proposed Regime Changes in Israel** (Position Paper #11, dated February 19, 2023)

This paper examines the implications of the regime changes on women's rights and details the foreseeable mortal blow to the rights of all women in Israel. The promoted legislation may lead to the exclusion of women from the public sphere, from access to employment, from decision-making centers and to narrowing the right to equality, freedom and dignity.

3. **Infringement of Employees Rights** (Position Paper #41, dated April 9, 2023)

This paper addresses the implications of the regime changes on employees' rights and on labor law in Israel. The paper demonstrates that the promoted changes will result in a significant and damaging impact on both collective labor law - the right to organization and collective bargaining and the right to strike – and individual labor law, including expected violations of labor constitutional rights, including the right to equality and freedom of expression, privacy and property rights.

4. **The Impact of the Proposed Regime Changes on Children's Rights** (Position Paper #39, dated April 9, 2023)

This paper examines the ramifications of the proposed regime changes for the rights of children. The paper demonstrates that the proposals for regime changes can adversely violate human rights in general and children's rights in particular. Already nowadays, the rights of children are protected under Israeli law only partially. Therefore, the judiciary plays an extremely important role in applying the principles of the UN Convention on the Rights of the Child (UNCRC) to the interpretation of laws. It is likely that the minors most adversely affected by the regime changes would be those belonging to vulnerable minority groups, including children without official local status, Arab and LGBTQ children.

5. **Rabbinical Courts Following the Regime Changes** (Position Paper #29, dated March 15, 2023)

This paper examines the issue of the rabbinical courts following the regime changes. The paper points out that the rabbinical courts already suffer from many ills and violate basic rights and freedoms. For example, the courts lack diversity and representation. They are characterized by political dealings and do not properly enforce the principles of separation of powers and transparency. The paper also shows that the various bills that are being promoted to expand the authorities of the rabbinical court in arbitration and judgment have the potential to increase the harm that already exists today and seriously violates the rights of litigants.

6. **On the Implications of the Regime Changes for the Rights LGBTQ Persons** (Position Paper #37, dated March 27, 2023) [Link to the Full Text](#)

This paper addresses the expected harm to the rights of LGBTQ persons which emerges from the measures set forth in the coalition agreements, in promoted bills, and in the actions and statements made by the government and its members. The position paper concludes that the proposals, in the aggregate, are likely to cause grave harm to the rights of the LGBTQ community, rights that have been mainly developed in case law. In addition, they carry real potential to cause a severe backslide in the rights to equality and liberty in the public sphere of LGBTQ individuals and impair their autonomy and protection from discrimination.

7. **Implications of the Regime Overhaul on the Criminal Law and the Law Enforcement Authorities** (Position Paper #21, dated March 2, 2023)

This paper addresses the implications of the regime overhaul on criminal law. It argues that any legislation enacted, whether in the matter of procedure or substantive law, that would not be subject to proper judicial review, may substantially impair the human rights of defendants in criminal proceedings. The promoted regime changes have far-reaching implications for the degree of protection of rights from the power of the state, and facilitate the abuse of the tools of criminal law. As a result, the rights of prisoners, suspects and crime victims will be in danger, as will be the freedom of expression and other liberties of members of civil society due the aggravation of existing offenses or the establishment of new offenses.

8. **Implications of Regime Changes for the Constitutional Right to Privacy** (Position Paper #26, dated March 9, 2023)

This paper examines the expected infringements of the constitutional right to privacy in the shadow of the regime overhaul. Curtailing courts' authority to exercise judicial review is likely to enable the state to use extremely harmful tools, such as biometric cameras and wiretapping, covert searches, and more. This will also have negative implications for criminal procedure, on freedom of expression and demonstration, on the population's sense of liberty, and will create a chilling effect.

9. **No Academia Without Democracy – The Effect of the Anti-Democratic Regime Changes on the Academy** (Position Paper #42, dated April 14, 2023)

This paper addresses the expected harm to Israeli academia, and in particular to institutions of higher education, faculty members, and students' rights, as a result of the promoted regime changes. The paper expresses the concern that the reforms being promoted will substantially compromise research and teaching in institutions of higher education in Israel. This damage has severe implications for Israeli democracy more generally since it is argued that democracy cannot be sustained without a free academia.

10. **The Impact Proposed Regime Changes on the Environment** (Position Paper #45, dated May 7, 2023)

This paper points out that the Supreme Court has traditionally protected the public and the environment from corporate and harmful pollution and from inadequate state enforcement. The proposed reform that seeks to limit and weaken the power of the judiciary may undermine its ability to protect the public from environmental hazards and risks. The paper further explains that comparative analyses demonstrate that courts play a role in promoting responsible climate policies and in overseeing the implementation by governments of the climate policies they adopt. Restricting the independence of the judiciary will damage its ability to perform such a role in Israel especially now of all times, when the need for responsible climate policies is clearer than ever.

(F) What else are they Doing? Additional Legislative Changes Initiated by the Government

1. Co-operative Societies Ordinance (Amendment 12) - Expanding the Scope of the Admission Committee Law (Position Paper #57, dated September 3, 2023)

This paper concludes that the legislation that expands the Co-operative Societies Ordinance deepens the violation of the right to equality, the right to privacy, and the right to dignity of candidates for admission to a community, as well as the right to private property of members of the co-operative society and of those seeking to join a community. Expanding community settlements' ability, by law, to sort and exclude those they prefer not to have among them, including members of minorities or otherwise disadvantaged groups, constitutes unconstitutional and wrongful discrimination.

2. The Proposed Amendment to the Income Tax Code (Donations by a Foreign Political Entity) (Position Paper #49, dated September 3, 2023) [Link to the Full Text](#)

This paper concludes that the proposal to levy a punitive tax on donations from foreign political entities, which in effect singles out and discriminates against human rights organizations, is in direct opposition to the State's obligation to support the freedom of association of human rights organizations and their activities to protect human rights.

3. Comments with Respect to the Firearms Regulations (Preconditions and Criteria for Obtaining License) (Position Paper #55, dated July 27, 2023)

This paper expresses deep concern about the apparent intention to considerably expand the number of licenses for the possession of firearms as reflected in the draft regulations. Research data shows that an increase in the number of weapons found in the public sphere can lead to an increase in deaths as a result of shootings and the diversion of weapons into the hands of criminals. There is a particular concern regarding the effect of the increased issuance of permits on domestic violence. The paper concludes that there is no room to increase the issuance of permits without establishing measures to ensure amongst other things supervision and enforcement capabilities, and training.

4. **Exercising Police Powers in a Democracy and Establishing the National Guard** (Position Paper #46, dated May 8, 2023)

This paper examines the Government's decision to establish a National Guard and concludes that the following principles must be taken into consideration as principles for the exercise of police powers in a democratic society: the exercise of these powers must be subject to the exclusive, independent and professional judgment of the Police Commissioner, and politicization of these powers, which would harm the legitimation of their exercise, must be avoided. Furthermore, police powers must always be subject to control mechanisms, they must derive from explicit and clear authority under the law, and must always be exercised subject to principle of legitimate purpose and the principle of proportionality.

5. **Proposal to Amend the Police Ordinance** (Position Paper #17, dated February 23, 2023)

This paper expresses deep concern about the implications of the bill to amend the Police Ordinance regarding the Department of Internal Police Investigations (Mahash). This bill adds another level to the curtailment of the rule of law and the politicization of the judiciary, and constitutes serious interference by politicians in the enforcement of criminal law. The bill is likely to lead to biased investigations and undue influence on prosecuting authorities. This bill has the potential to harm the principle of equality before the law and the fight against corruption.

6. **Subordination of the Civil Administration to the Ministry of Defense** (Position Paper #24, dated March 5, 2023)

This paper examines the implications of the transfer of the Civil Administration to the Minister in the Ministry of Defense. The transfer of the responsibility and administration of the Territory to civilian hands is an explicit and public submission of the administration of the Territory to national and social considerations of the state, in complete contravention of international law.

7. **The IDF's Legal Obligation to Protect Palestinians in the Occupied Territories** (Position Paper #51, dated July 4, 2023)

In this paper the Forum discusses the IDF's legal obligation to protect Palestinians in the Occupied Territories. In the absence of any action to protect the safety of Palestinians and to enforce the law against those who attack them, the International Court of Justice, to which the UN General Assembly has submitted a request for an advisory opinion on Israel's long-term occupation, is expected to address the legal implications of such ongoing abstention.

(G) What Should We Do? Possible Responses

1. Police Use of Means of Riot Control to Disperse Protests (Position Paper #53, dated July 18, 2023)

This paper examines the legality of the use of power to disperse non-violent demonstrations and against protestors who are not resisting police arrest or detention. Based on an analysis of police powers, the paper argues that an order to use means of riot control that endanger protestors when protestors are not violent or endangering others is an illegal order, which policemen have a duty to refuse to enforce.

2. The Legality of Police Restrictions on Demonstrations Outside the Residence of Public Figures (Position Paper #56, dated August 28, 2023)

This paper concludes that the *a priori* restrictions that the police impose on demonstrations outside the residences of public figures are illegal, and that their imposition exceeds the powers granted to the police. In addition, these restrictions are disproportionate and there is good reason to suspect that they were decided arbitrarily and on the basis of extraneous considerations in a manner that infringes excessively and without sufficient justification the basic right to demonstrate and freedom of expression.

3. Civil Service in Times of Constitutional Crisis (Position Paper #25, dated March 9, 2023)

This paper examines considerations and principles regarding civil service in times of constitutional crisis. According to the position paper, the way civil servants act in circumstances of a constitutional crisis is derived, among other things, from the question of whether or not their action directly affects the rules of the democratic game, the institution in which they operate, their rank and the *modus operandi* available to them. Given the characteristics of the government's operation in the constitutional field, as a general rule, civil servants must obey the instructions of the Attorney General and the High Court of Justice in cases where its rulings concern their actions, but this determination may change as the existing conditions change, chiefly regarding the independence of government legal counsel and of the High Court of Justice.

4. **The Law that Applies to Civil Servants in a Constitutional Crisis** (Position Paper #35, dated March 22, 2023)

This paper examines the law that applies to civil servants in times of constitutional crisis. The position paper explains that all civil servants must abide by the law, and That the Supreme Court is the authorized interpreter of the law in Israel.

Therefore, the Supreme Court’s interpretation is binding upon all other authorities in the country, even if the other authorities interpret the law differently. Accordingly, civil servants must act as instructed by the court, even if the appointed minister instructs otherwise.

5. **The Right to Strike in the Context of the Crisis** (Position Paper #36, dated March 23, 2023)

This paper demonstrates that in certain circumstances, a strike against actions promoted by the government may be recognized as a non-political strike that confers legal protection on strikers. This applies either to an economic strike that is carried out in an organized and coordinated manner with respect to working conditions or labor relations, or to a “quasi-political” strike which is directed against governmental actions in light of a tight connection between the changes to legislation and their implications on labor relations and working conditions.

6. **Academic Freedom and the Regime Changes** (Position Paper #22, dated March 3, 2023)

This paper addresses the effect on academic freedom of the changes proposed within the judicial reform. Additionally, attached to the position paper is a practical guide for academic staff that analyzes situations raising ethical dilemmas pertaining to the boundaries of academic freedom. According to the position paper, without an independent judiciary, lecturers will be subject to the whims of politicians, and political considerations will take precedence over academic excellence. Both academic research and teaching will significantly deteriorate as a result.