

# Completing Israel's Constitutional Process

A Proposal by the Israel Democracy Institute



## Introduction

Israel's national character is unique: famously, it is both a Jewish and democratic state. Less often appreciated is the unique fragility of its constitutional arrangements. This fragility is best exemplified by the extraordinarily frequent revisions to its Basic Laws in recent years—more than two dozen amendments in five years (as compared to 27 amendments to the US constitution since 1789). The controversial proposals recently presented by the new government for dramatic changes in the relationship among the branches of government, with a focus on the judiciary, come after several years of political instability, pandemic-related disruptions, and surging populism. This crisis, in which a democratically elected government is tempted to use its temporary political majority in order to overhaul Israel's constitutional foundations, is proof of the urgent importance of entrenching the "rules of the game." Every change of government need not carry the implicit risk of regime change.

A sensible public discussion on fundamental principles is imperative if we are to bequeath to future generations a stable Jewish and democratic state. Strong national solidarity around agreed constitutional principles is essential for confronting the immense challenges facing Israel in the foreseeable future.

For the past generation, the Israel Democracy Institute has been working to formulate these basic principles—beginning with its historic draft of a "[Constitution by Consensus](#)"; and including proposals to entrench protections of basic rights, such as a proposed [Basic Law: Equality](#), and recommendations for a formula to define the proper [separation of powers](#) in Israel. IDI is currently in the process of composing a revised proposal for a full constitutional arrangement for the State of Israel as it marks 75 years of independence. The basic principles of our proposal are as follows:

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## A | Basic Laws



- 1 ▶ Anchor the commitment to the principles stated in the Declaration of the Independence of the State of Israel in a new Basic Law: Declaration of Independence
- 2 ▶ Complete a Bill of Rights

This will require passage of several new Basic Laws, including:

- **Basic Law: Equality** – Every person has the right to equality before the law, to equal protection under the law, and to equal enjoyment of the benefit of every law. This law would ban discrimination on the basis of group affiliation.
- **Basic Law: Freedom of Expression and Assembly** – This law would entrench freedom of expression and the right of protest.
- **Basic Law: Freedom of Religion and Conscience** – This law would ensure the right to freedom of religion and conscience, within limits appropriate to Israel's status as a Jewish state.
- **Basic Law: Judicial Rights** – This law would ensure the right to trial, the right to a fair trial (including limits on the duration of judicial proceedings); the rights of detainees and prison inmates; the right to legal counsel; the presumption of innocence; and the right to be punished only as provided for by law.

Eventually, the Knesset may consider legislating additional Basic Laws covering socioeconomic rights to protect, inter alia, the rights to education, healthcare, housing, and a minimum standard of living—while taking account of the country's budgetary limitations and capabilities.



### 3 ▶ Basic Law: Legislation

The Basic Law: Legislation would accomplish the following:

- Define the matters regulated by the Basic Laws, the status of Basic Laws, and the procedure for amending them.
- Codify the supremacy of Basic Laws over ordinary legislation.
- Codify the Knesset's right to legislate and define the legislative procedure.
- Entrench constitutional legislation. New Basic Laws, and any amendments to them, would be enacted by means of a special procedure, involving four readings in the plenum and the support of a supermajority (such as two-thirds: 80 Knesset members).
- Basic Laws would come into effect only after the next general election and ratification by the required majority of the new Knesset as well.
- Entrench current Basic Laws. All of the existing Basic Laws would be entrenched, so that any revisions to them would require a Knesset supermajority (such as two-thirds: 80 Knesset members). A transitional period would be defined during which it would be possible to revise and amend specific sections of the current Basic Laws with the support of 61 Knesset members.



## 4▶ Amend Basic Law: The Judiciary

- The Supreme Court, and no other court, will be empowered to strike down legislation that contradicts a Basic Law.
- The Supreme Court will be empowered to strike down a law due to an essential flaw in the legislative process.
- The Supreme Court will be empowered to consider the manner and procedure by which a Basic Law was enacted.
- Only an expanded Supreme Court bench (for instance: at least 11 justices) will be able to annul a law.

## 5▶ A New Basic Law: The Civil Service

This new Basic Law would establish the following:

- The civil service is the public's trustee and servant.
- Civil servants may exercise their authority only in accordance with the law, in a fair and reasonable manner, and for the public's benefit.
- The civil service may not discriminate among citizens and must citizens to state their case.

# B | The Courts: Independence, Accountability, Representative Composition, and Transparency



## 1 ▶ Define the status of the judiciary and the mode of selecting judges

- Entrench the judiciary's status as an independent branch of government in a Basic Law.
- Enhance the judiciary's independence with respect to its budget, jurisdiction, and personnel.
- Establish an appellate court above the district courts.
- Reform the procedures for appointment of judges:
  - The principle that judges are selected by a Judicial Selection Committee that features a balanced composition of politicians, judges and attorneys will be maintained.
  - Judges on courts that are not empowered to annul laws (magistrates' courts, district courts, the appellate court) will be selected by a committee that draws the majority of its members from the legal profession (judges and attorneys).
  - Justices of the Supreme Court will be appointed by the same committee, but in a manner that requires broad agreement between the parliamentary coalition and opposition and between them and the representatives of the judicial branch.
  - The Judicial Selection Committee will be required to act with greater transparency.
  - The Judicial Selection Committee will be required to weigh diversity and fair representation of all sectors of the population on the bench.



## 2▶ The Attorney General, the Prosecution, and Ministry Legal Advisors

- Anchor in legislation the Attorney General's status and powers.
- Consider splitting the Attorney General's powers among two separate and independent agencies—the Legal Advisor to the Government and the State Prosecutor.
- Increase transparency and accountability of the Attorney General's office (through publication of reports, oversight by the Knesset).
- Merge the criminal and police prosecution systems.
- Expand the State Ombudsman's jurisdiction over state prosecutors.
- Enhance the system for investigating public complaints against police officers.

## 3▶ Increase Efficiency of Court Proceedings

- Shorten the duration of criminal and civil proceedings.
- Increase the number of judges on the magistrates' and district courts.

# C | Bolster Knesset Oversight and Government Efficiency



## 1 ▶ Strengthen the Knesset's Oversight of the Executive Branch

- Make the standing Knesset committees parallel to the relevant Government ministries.
- Enlarge Knesset committees' professional staff.
- Boost the status of the Knesset Research and Information Center and increase its budget.

## 2 ▶ Improve the Legislative Process

- Reduce substantially the number of private member's bills submitted to the Knesset.
- Increase the transparency of the Ministerial Committee on Legislation; upgrade the quality of its deliberations and representation; allow Knesset members to appeal its decisions.
- Restrict the Economic Arrangements Law to fiscal matters that are essential for implementing the State Budget.

## 3 ▶ Reduce the Size of the Government

- Limit the number of ministries by law.
- Limit the maximum number of ministers.



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