



CASE STUDY: ISRAEL

Global State of Democracy 2023 Report

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INTRODUCTION

On 24 July 2023, amid historic mass protests, the Israeli Parliament (Knesset) passed legislation abolishing the Supreme Court's 'reasonableness' doctrine, a key oversight tool used to challenge arbitrary or discriminatory policies ([Haaretz 2023](#)). This move effectively limits the Court's ability to check executive power, viewed as an attempt by Israel's new government, led by Prime Minister Benjamin Netanyahu, to erode checks and balances while advancing a nationalist agenda ([Al Jazeera 2023a](#)). Although not explicitly codified in Israeli law, the Court relied for decades on the 'reasonableness' standard to assess whether a government decision was sound and sensible. For example, in January 2023, the appointment of Aryeh Deri as Minister of Finance was deemed 'unreasonable' due to his previous criminal convictions ([Sharon 2023](#)). The new law abolishes the principle of the rule of law and gives the government the absolute power to take any decision it wishes, without control. This legislation is part of a broader judicial reform package, which seeks to increase legislative control over judicial appointments and grant ministers the authority to appoint their own legal advisors. The potential ramifications for the Israeli–Palestinian conflict are substantial. As the first segment of the reform package to be enacted, the new legislation currently awaits a Supreme Court decision on its legality—a ruling that could potentially trigger a constitutional crisis ([Rubin 2023](#)).

THE STRUGGLE TO DEFINE ISRAEL: THE BATTLE OVER THE SUPREME COURT

At the heart of this ongoing debate lies the unresolved question of Israel's unique identity as a 'Jewish democracy', and whether a theocracy can ensure equal rights for all, regardless of religious identity. These tensions are exacerbated by the controversy around Israel's continuing occupation of the

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Palestinian territories, which itself threatens the democratic legitimacy of the Israeli state (Schnell 2017). Efforts to constrain the Supreme Court's authority stem from conservative and nationalist views advocating for a stronger emphasis on Jewish identity in Israeli law and policy, which, its proponents argue, the Court is driving Israel away from. Those opposing these limitations highlight individual rights, equality and the rule of law as the focus, arguing that the Court acts as an essential safeguard against potential abuses of power and a defender of minority rights, and as a countervailing force to religious and nationalist agendas—the judiciary's traditional role.

The proposed reforms are particularly significant amid broader democratic declines and previous attempts by Prime Minister Benjamin Netanyahu's government to undermine democratic institutions (Oren and Waxman 2022; Eisen, Patel and Smith 2023). Since Netanyahu took office in 2009 Israel has witnessed a notable shift towards nationalist and illiberal policies. The 2018 Nation-State Law, defining Israel as the 'nation-state of the Jewish people' (Al Jazeera 2018), promoted settlement expansion, which critics saw as marginalizing non-Jewish minorities and institutionalizing Palestinian oppression (Beaumont 2018). Netanyahu has adopted several strategies to aggrandize executive power, including targeting independent institutions such as the judiciary, police, media, and civil society organizations (Chotiner 2023). He has also manipulated societal divisions, as seen in his contentious plan to deport African migrants and his support for right-wing nationalism, which eroded democratic institutions and exacerbated religious and racial inequalities within Israel (Taylor 2018; Al Jazeera 2023c; Grossman 2023).

Under Netanyahu's leadership, settlement expansion received government approval, consolidating Israeli control and making the establishment of a viable Palestinian state increasingly challenging (Bar-Siman-Tov 2010; Al Jazeera 2023c; United Nations 2023). Although Israel has never officially annexed most of the Occupied Palestinian Territories (OPT), persistent demands for increased authority over these lands has been a salient issue in Israeli politics (Tessler 1986). Netanyahu's 2019 pledge (Times of Israel 2019) to extend Israeli sovereignty over the OPT indicated a shift towards a permanent presence and departure from previous government support for a two-state solution (Farsakh 2011). This aligned him with right-wing and nationalist factions favouring West Bank incorporation into Israel. Moreover, his administration introduced policies and legislative proposals aimed at annexing Palestinian land, which sought to further integrate Jewish settlers into Israel and limit the prospects for a Palestinian state or full citizenship (Landau 2020). This right-wing populist shift in Israeli politics, marked by an ultra-nationalist stance and increased targeting of critics and minorities, further highlights the consequences of the judicial reform package, proponents of which argue that, by limiting moves to take effective control of the OPT, the Supreme Court is imposing liberal perspectives on a predominantly right-wing population (Scheindlin 2021).

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THE JUDICIARY AS A COUNTERVAILING INSTITUTION

Since its founding, Israel has failed to establish a constitution and distinct separation of powers. Its parliamentary system, where the executive is derived from a majority of parliamentarians, results in a unicameral legislature with no regional representation or accountability mechanisms. Israel also does not participate in international court systems and does not impose a term limit for its prime minister. The Supreme Court has emerged as a key countervailing institution within this framework, serving as a principal check on executive and legislative powers (Debre 2023). It has been the primary vehicle for advancing individual rights and safeguarding liberal institutions within the country (Abrams 2023). The Court's rulings have upheld the rights of Jewish citizens and an array of minority and marginalized communities, including same-sex couples, Arab groups, women, asylum seekers and migrants (Newman 2014; Levush 2021; Adalah 2022; Ashkenazy 2023). The Court has also played a pivotal role in mitigating (albeit only partially) OPT land annexation, with various interventions against illegal settlements and private land expropriation that have provided an essential check on executive power, although enforcement of rulings has been limited (Berger 2017; Halbfinger and Rasgon 2020).

The lack of a written constitution or bill of rights in Israel has weakened the Court's ability to safeguard individual and minority rights. The Court has legitimized actions by the government and military such as the demolition of Palestinian homes and administrative detentions without charges or trials—actions which, combined with Israeli settlement construction, collective punishment, and forced civilian transfers, are considered war crimes under international law. Despite occasional rulings that protect Palestinian rights, the Court has mostly upheld the oppression of Palestinians, enabling the government to enforce discriminatory policies (Baker 2023). The Court has upheld the 2018 Nation-State Law and restricted Palestinian movement through checkpoints, barriers, and the separation wall, impacting their access to resources and basic services (Al Jazeera 2021).

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IMPLICATIONS OF THE REFORMS

Israel's legal framework is grounded in a set of 'Basic Laws' that shape its governance structures instead of a formal constitution (State of Israel n.d.). Although these laws hold a unique status, they can be amended by the Knesset with a simple majority vote (State of Israel 2014). Although the proposed judicial reforms take inspiration from legal structures that are relatively benign in other legal contexts, within the Israeli one they instead only allocate more powers to the government in what scholars have called an 'abusive borrowing' approach (Hudson 2023).

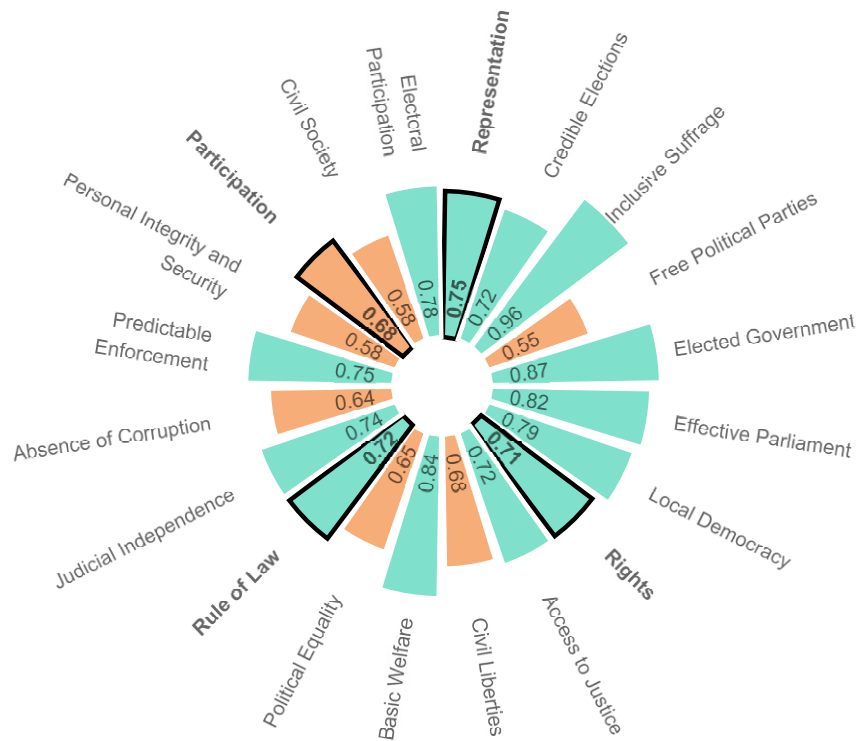
Should the proposed reforms take place, an unchecked executive could potentially increase the pace of contentious policies such as Palestinian land

annexation, or push forward recent proposals to curtail sexual rights, expand the powers of all-male rabbinical courts, and establish a 'national guard' tasked with addressing 'nationalist crime' (Gross 2023; Kampeas 2023; *Times of Israel* 2023).

UNRESOLVED QUESTIONS

Despite these institutional challenges, Israel ranks highly in the Global State of Democracy Indices (GSoD Indices) and is the only country in Western Asia with high scores across most democratic performance categories, boasting Credible Elections, Freedom of the Press, and some Judicial Independence (Figure 1). Importantly, however, assessments of democratic performance are based solely on democracy within Israel's internationally recognized borders (OHCHR n.d.). The GSoD Indices do not take into account Israel's undemocratic

Figure 1. The state of democracy in Israel 2022



Source: Global State of Democracy Indices V. 7.1, International IDEA, 2023, <<https://www.idea.int/data-tools/tools/global-state-democracy-indices>> accessed 3 October 2023.

actions in the OPT, which have been widely criticized as akin to apartheid against Palestinians by Amnesty International, Human Rights Watch and the United Nations (Amnesty International 2022; HRW 2021; UN News 2022).

Israel's sovereignty claims and settlements have fostered a dual system: a democratic government within recognized borders, and a militaristic ethnic regime across the OPT, challenging Israeli democracy. The proposed judicial reforms risk undermining the limited checks on executive power, fuelling concerns about democracy's endurance, especially given the right-wing populist trend eroding democratic institutions. Under Netanyahu, democracy has waned, and the occupation of Palestinian lands deepened. The Supreme Court has been successful in mitigating this within Israel's borders but has struggled with Palestinian issues. Nevertheless, it remains the only safeguard that the Palestinians have, and must be protected. The Supreme Court, albeit imperfect, remains pivotal for negotiating political identity and as a source of countervailing power.

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ABBREVIATIONS

GSoD Global State of Democracy

OPT Occupied Palestinian Territories

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