

Legislative Proposal:
Judicial Appointments in Israel

Executive Summary in English

1. In a democracy, the authority of government rests on consent. Though courts need to be independent, the legitimacy of judicial power depends on it, too, enjoying the consent of the governed. Requiring the approval of elected officials for judicial appointments ensures that too wide a gap does not open between the values of the public and the values expressed by the courts.
2. For the past fifty years, throughout the democratic world, the authority of the courts has increased; yet at the same time, so has the power of the people's elected representatives over judicial appointments.
3. In Israel, however, the court system effectively has been isolated from the influence of the people, as expressed by their elected representatives. In effect, the Supreme Court appoints all judges, including Supreme Court justices. Increasingly, the judicial system is perceived as isolated, and its power as unchecked. Large segments of the population in Israel feel alienated from the courts. Both the courts' legitimacy and the legitimacy of the entire Israeli system of government suffer.
4. Under existing law all judges are appointed by a committee of nine. Three are judges of the Supreme Court; two are representatives of the Israeli Bar Association, the rest are elected officials. The members of the Bar generally follow the lead of the judges, upon whom their livelihoods depend. The judges thus enjoy an automatic majority, and in fact only once has a candidate been appointed to high judicial office who was not nominated by the judges.
5. This legislative proposal has four main points:
 - * All judicial appointments should require Knesset confirmation after a hearing in the Knesset Committee on Constitutional and Legal Affairs.
 - * Appointment to the office of Chief Justice, now determined by seniority, should also require Knesset hearings and approval.
 - * The number of Supreme Court justices should be increased immediately from 15 to 23. The court suffers from an extensive work backlog.
 - * Today the judges assigned to hear any case (in panels of three, five or more) are selected by the Chief Justice, enabling the latter practically to predetermine the outcome of any case. The Chief Justice should be empowered to select one justice to hear any case, based on that justice's areas of legal expertise. The rest should be selected by lot (the method used in the US Federal Circuit Court).