

## ISRAEL DEMOCRACY WATCH

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## THE ISRAEL POLICY CENTER

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## WELCOME TO ISRAEL DEMOCRACY WATCH

Israel Democracy Watch is the newsletter of the Israel Policy Center (IPC). Each issue includes **Inside the Knesset**, bringing you front-line information on Israel's constitutional project and on legislation affecting Israel's democracy. The Knesset continues to work on the "Constitution by Consensus" project, whose object is to draft, for the first time, a constitution for Israel. IPC participates actively in this project, which includes dangers and opportunities for Israel's Jewish and democratic character.

Democracy Watch also includes the **Israel Liberty Monitor**, a summary of government actions against Jews' civil liberties and against the norms of governance required of the government of a free society. Regrettably, vigilance in this area is more necessary than ever. As Israel's government prepares for disengagement, it appears to have adopted a policy of defaming and violating the civil rights of its political opponents.

## ISRAEL'S CONSTITUTIONAL PROJECT

## KNESSET ADOPTS IPC PRINCIPLES ON JEWISH STATE

On March 7 the Knesset Constitutional Committee took up the "Basic Principles" section of the Constitution. This section is supposed to codify the highest values of Israel's political system, making clear that Israel's character as a Jewish state plays a central role in determining its values.

To draft this section the Committee has hired Prof. Ruth Gavison, Israel's foremost constitutional jurist, as its chief academic adviser. Prior to her appointment Prof. Gavison was in close and constant contact with our Chairman, Prof. Moshe Koppel, who showed her our previous draft chapter, "Israel as the State of the Jewish People." When the chairman of the Knesset Con-

stitutional Committee asked Prof. Gavison to produce a draft section as the Committee's basic working document, she produced our draft, with minor amendments. This is now the official draft of the committee.

In subsequent meetings Prof. Koppel has taken the lead in refining the draft and creating consensus positions that preserve Israel's character as a Jewish state.

## Produced by :

המרכז המדיני לישראל

The Israel Policy Center

P. O. Box 24433

Mount Scopus

Jerusalem, Israel 91240

Email: info@merkazmedini.org

Phone: 972-2-54-5743391

Fax: 972-2-5001722

website:

www.merkazmedini.org

Chairman:

Prof. Moshe Koppel

Director:

Dr. Yitzhak Klein

## INSIDE THE KNESSET

### ARABS REJECT ISRAEL AS A JEWISH STATE

In late December of last year the Knesset Constitutional Committee held a session on the rights of Israel's Arab minority under a prospective constitution. Representatives of the Arab parties in the Knesset have boycotted the constitutional project since its inception, but on this occasion they attended. Also present were representatives of Arab interest groups, *Adala*, the Israeli Arab legal defense group, and *Mussawa*, a lobby for Arab interests. Both these organizations deny that Is-

rael has the right to define itself as a Jewish state.

The keynote testimony of the day was given by Prof. Gavison who expressed willingness to grant Israeli Arabs—or Israeli Palestinians, as they prefer to call themselves—considerable communal rights: The right to be taught in their own language, to perpetuate their culture, to be recognized officially as an ethnic minority. However, she said,

it remained a fundamental principle that Israel should be a Jewish state. "I support the Palestinians' right to self-determination in a state of their own," said Prof. Gavison, "and I expect the Palestinians to acknowledge the right of the Jewish people to self-determination in a Jewish state."

#### MK EITAN OFFERS A DEAL

Upon this, the Chairman of the Constitutional Committee, MK Michael Eitan, turned to the Arab Knesset members and organizations present. "Do we have a deal?" he asked. "Communal recognition and cultural rights in return for supporting a constitution that defines Israel as the state of the Jewish people?"

The Arabs present would have none of it. They would happily accept communal autonomy, but they refused to concede that Israel should be a Jewish state, or that the Jewish people is entitled to self-determination. They found the suggestion discriminatory. It should be remarked that this session of the Constitutional Committee was televised and that the Arab

representatives present were well aware they were speaking for the record.

It should be noted that both *Adala* and *Mussawa*, which advocate the view that Israel's character as a Jewish state should be abolished, are funded by the New Israel Fund.



*A Jewish state?*

### IPC EDUCATES MKS ABOUT AN "ACCEPTABLE" CONSTITUTION

Over the last few months, as we observe Israel's Constitutional project, we are increasingly concerned that Israeli lawmakers may be stampeded into adopting a bad constitution. Most Israelis perceive a constitution as a "good thing," without necessarily being aware of incipient problems that might make it a bad one. Most knowledgeable observers agree that a constitution that does not adequately safeguard Israel's character as a Jewish state, or that fails to curb the almost unbridled power Israel's judiciary now enjoys, would be a

very bad thing indeed. These are not issues that the general public is aware of, however. And there are groups within and outside of the Knesset who wish to agitate for just such a constitution.

To give one example, the Israel Democracy Institute, a well-endowed private Israeli policy institute, has produced a draft constitution which has been presented to the Knesset Constitutional Committee. This draft strengthens the powers of Israel's Supreme Court, and

includes a clause that would invalidate any legislation that had its source in religious belief—in effect, singling out religion as the one belief system which *may not* influence legislation in Israel. One absurd consequence of this clause would be that the Knesset could declare Monday or Thursday the national day of rest, but *not* Friday, Shabbat, or Sunday.

**"WE ARE INCREASINGLY CONCERNED THAT ISRAELI LAWMAKERS MAY BE STAMPEDED INTO ADOPTING A BAD CONSTITUTION."**

## CONSTITUTIONAL “RED LINES”

To combat this tendency, the Israel Policy Center held conversations with members of the Knesset Constitutional Committee, which is drafting the constitution, in an attempt to draft an agreed-upon set of constitutional “red lines.” We sought to convince MKs that a constitution which violates these “red lines” is not worth adopting and ought to be voted down. We are gratified to report that seven out of the 16 members of the Committee agreed to our “red lines.” Since no constitution is likely to appear legitimate if it has the vote of a bare majority of the Constitutional Committee, we hope this means the Committee will not adopt a bad constitution.

Confidentiality requires us to refrain from mentioning whom among the Committee members agreed to our red lines. These are the “red lines” we suggested:

1. Israel’s current system of proportional representation should not be written into the constitution, leaving open the possibility of

switching over to a constituency electoral system by means of ordinary legislation.

2. The present system whereby judges appoint judges should be changed to give elected officials a dominant role.

3. “Social rights” should not be enshrined in the constitution. The effect of writing such “rights” into the constitution would be to commit Israel to a social democratic economic policy *and* to give the courts effective control over the power of the purse.

4. The constitution must specifically allow the legislature to define legal standards such as justiciability (what constitutes a “political question”) and the standards of “reasonableness” the courts are to apply to executive decision-making.

5. Today, Israel’s Supreme Court construes the Basic Laws on Human Dignity and Liberty, and on Freedom of Occupation, to mean what-

ever it wants. This gives it the ability to intervene judicially in any matter whatsoever and change any executive decision to suit its own preferences. Any constitution must define the precise limits of the concepts of “human dignity” and “freedom of occupation.

6. The constitution must leave the balance between Israel’s Jewish character and individual liberty of conscience to be determined by give-and-take in the political arena.



Aharon Barak—  
Chief Justice Supreme

## IPC MEETS WITH MK ZVULUN ORLEV

On March 29 Prof. Koppel and Dr. Klein, together with Professor Berachyahu Lifshitz of the Hebrew University Law School briefed MK Zvulun Orlev of the National Religious Party on Israel’s constitutional project. Until now the National Religious Party has not taken an active interest in the constitutional project, though we regularly brief its representative on the committee about developments there. MK Orlev’s interest represented

a new and valuable development.

On this occasion our briefing made clear that the constitutional project presents both dangers and opportunities, and that a constitution that enshrines the present power of the courts or includes a “freedom from religion” clause would endanger both Israel’s democracy and its character as a Jewish state.

**“FREEDOM FROM RELIGION” CLAUSE WOULD ENDANGER BOTH ISRAEL’S DEMOCRACY AND ITS CHARACTER AS A JEWISH STATE.**

## ISRAEL LIBERTY MONITOR

### GOVERNMENT PREPARES FOR DISENGAGEMENT

The disengagement plan from Gaza and northern Samaria is potentially the most divisive policy ever adopted by an Israeli government. Supporters and opponents of the plan alike have warned that Israel's government needs to exhibit great sensitivity to the distress of the plan's intended victims, and to do as much as possible to make clear that they will continue to be considered members in

good standing of Israeli society.

Unfortunately, Israel's government is doing the opposite. It appears to believe that the disengagement plan will go much more smoothly if it succeeds in demonizing the victims of the plan and their many supporters as violent and irresponsible. To achieve this it has spread disinformation about its political

opponents and employed covert operations to discredit them. All in all, the government's preparations for disengagement are proving to be a serious challenge to Israel's democracy, to social cohesion, and to civil rights



Avi Dichter- Head of the GSS

### GOVERNMENT DEFAMES ITS OPPONENTS

On July 1 2004 and again in February of this year the head of the General Security Services ("GSS," Israel's FBI) made well-publicized statements to the effect that "many" scores, perhaps hundreds of people were involved in plots to commit a terror attack on Jerusalem's Temple Mount or to assassinate members of the government. Such public statements are highly irresponsible. Their effect is to sow fear of armed civil strife among the public at large and create a cloud of suspicion that hovers indiscriminately over all opponents of

the government's policy. It is clearly unacceptable for a democratic government to demonize its political opponents or create a false impression that they plot violence.

If violent plots do exist, one can only wonder at the government's failure to take action against them. Under Israeli regulations, planning a terror attack or assassination constitutes a security offense for which the plotter may be arrested and placed under administrative deten-

tion. Despite Dichter's repeated statements, no arrests have been made. Various excuses have been made for this, from the inadequacy of current security regulations (which served Israel just fine during years of *intifadeh*) to the simple statement by Dichter that the time was not "ripe" for arrests. One cannot escape the impression that, in fact, nothing is taking place which would warrant arrests.

### PRIME MINISTER'S OFFICE ALLEGED TO SPREAD FALSE INFORMATION

The Prime Minister's Office has been linked to several covert attempts to spread false and defamatory information about disengagement's political opponents. Thus for example unidentified sources in the Prime Minister's office allegedly leaked to the press photographs of wall graffiti, supposedly written by the Prime Minister's opponents, stating "Arik, Lili (the Prime Min-

ister's deceased wife) is waiting for you," and supposed threats to bomb Lili Sharon's grave from the air (!). It seems incredible that anyone could deliberately involve the memory of the Prime Minister's deceased spouse in such sordid allegations, but the press reported later that both stories were deliberate falsifications.

#### What the Law Says:

While it is difficult or impossible to prove who is responsible for these actions, some of the incidents described above clearly violate Israeli law.

Article 159 of Israel's Criminal Code prohibits disseminating "false information likely to cause fear or panic" and provides that "Whoever publishes or copies a statement, rumor or other information likely to cause fear or panic or to disturb the peace, which he knows or could reasonably assume is false, shall be imprisoned for three years."

Article 4 of Israel's libel law states: "Libel against a segment of the public is equivalent to libel against an incorporated body of citizens, except that it does not provide the basis for a private civil lawsuit or criminal complaint, and an indictment may only be presented by the Attorney General or with his consent."

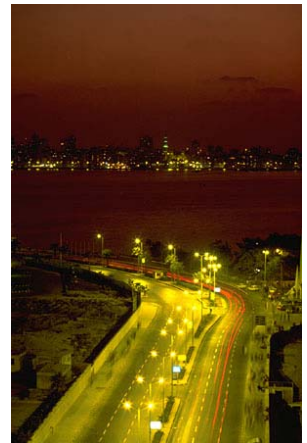
## PREPARING FOR VIOLENCE

Israel's government is preparing soldiers and policemen for the possibility that they will have to shoot to kill citizens resisting disengagement. On March 6 2005, Channel 2 television broadcast a segment of an orientation film prepared for police which included a staged news broadcast, supposedly taking place during the disengagement process, announcing that several soldiers and scores of civilians

had been killed in an exchange of fire. Such "orientation" material can lead soldiers and policemen to believe that the authorities expect they will have to open fire on civilians and that the use of arms against civilians will be condoned.

***Draconian prosecutions threatened.*** In March opponents of disengagement began to employ nonviolent acts of civil disobedience,

such as bodily obstructing major highways during rush hour. In response Israel's Attorney General, Menahem Mazuz, announced his office would apply to protestors a little-used law that provided *twenty years' imprisonment* for obstructing the roads. This was patently an attempt to cow political dissent; in Israel such sentences are not handed down for rape, manslaughter or armed robbery.



*Twenty years' Imprisonment for obstructing the roads.*

## GOVERNMENT ENTRAPMENT OF ITS POLITICAL OPPONENTS

Subsequent to the assassination of Yitzhak Rabin it became known that the General Security Service (GSS) employed an *agent provocateur* named Avishai Raviv to spread inflammatory material, making it appear as if it had been issued by the Rabin government's opponents. Raviv personally knew Yigal Amir and is known to have encouraged him to assassinate Rabin. On March 1, unnamed Shin Bet (Israel Security Service) representatives told the Knesset Constitution and

law Committee that the security services would not use *agents provocateurs* against the government's political opponents.

Three weeks after this statement was made, a GSS *agent provocateur* apparently attempted to entrap employees of the Council of Jewish Settlements in Judaea, Samaria and Gaza, who are spearheading the public campaign against disengagement, in a weapons sting. On March 23

"Osher Sa'ad" (possibly a false ID), a local activist from Lod who had been struck from the Council's payroll when it was discovered that he had concealed his criminal record, called a representative of the Council and offered to sell explosives and hand grenades "for the struggle." The weapons would be transferred in the trunk of a car which the activist was supposed to return to the Council.

## YESHA COUNCIL DODGES A STING

The Council's representative immediately demurred and phoned Deputy Inspector Shimon Koren, deputy commander of the Jerusalem Police District. Koren suggested setting up a sting operation; the Council's representatives would go to collect the car and the weapons, and the police would make the arrest. According to alternate versions, the Council refused to let its representatives participate, suspecting they were the true intended victims of the sting (it would be their word against the police as to what truly happened) or else participated and

found out that the activist was in fact a police agent. The Council issued a statement on the episode to the press, which was immediately quashed by a court order, obtained by the police or the GSS, that forbade all public reference to the episode. News stories on the incident circulated in Israel and abroad by email, including statements made by both GSS and police spokesmen to reporters confirming that an *agent provocateur* had been used—each blaming the other agency.

Israel has no formal laws against police entrapment.

### ***GSS recruits child spies***

On March 30 it was reported that the GSS was attempting to recruit minors resident in the Gush Katif settlements in Gaza to spy on their families and communities.

High school students hitchhiking on their way to schools outside the Gaza area were picked up and offered money, cellphones and cars to report on their families and friends.

**"ISRAEL HAS NO FORMAL LAWS AGAINST POLICE ENTRAPMENT."**





## THE ISRAEL POLICY CENTER: OUR MISSION

**Israel exists to defend the interests of the Jewish people.** This view is not adequately represented in many of Israel's most powerful institutions.

Israel's Supreme Court, the most activist in the world, blocks policies and appointments to public office that do not suit the justices' politics. The Court, rather than the Knesset, controls all judicial appointments—

including to the Supreme Court itself.

The civil service, academia and the state-owned media are nearly uniform in their views, making it exceptionally hard for elected officials to resist “politically correct” decisions.

Large organizations funded from abroad spend millions of dollars annually to pro-

mote a post-Zionist agenda within Israel and undermine its Jewish identity.

Power in Israel needs to shift away from unelected, post-Zionist elites, back to the people's elected representatives in the Knesset. **The Israel Policy Center is the only organization working directly within the political system to make this happen.**

## OUR ACTIVITIES

**Drafting Laws** to reform judicial and civil-service appointments;

**Key Players** in the Knesset's project to draft a “constitution by consensus;” official advisers to the Knesset Constitution and Law Committee, and regarded by MKs as *the* authority on legislative proposals intended to preserve Israel's character as a Jewish state.

**Providing Knesset members** from a broad range of parties with professional legislative research they cannot get anywhere else.

**Conduct seminars and briefings** for key decisionmakers and opinion leaders—Knesset members, legislative aides, political activists, journalists—on the policies needed to preserve and strengthen Israel's Jewish character and democracy.

**Keeping Score** on how Knesset members and government ministers vote on crucial constitutional and national security issues as well as issues affecting Israel's Jewish identity—and publishing the results.

## HELP KEEP ISRAEL A STRONG JEWISH DEMOCRACY

The Israel Policy Center is known and respected by elected officials and academic organizations in Israel concerned about reinforcing Israel's democracy, national security and Jewish character.

**The Israel Policy Center can be your agent for making Israel more democratic and more Jewish.** Your support will enable us to pass legislation that will put the Jewish people, through its elected representatives, in charge of Israel once more.

### Contact us:

#### The Israel Policy Center

P.O. Box 24433

Mount Scopus

Jerusalem, Israel 91240

#### Email:

[info@merkazmedini.org](mailto:info@merkazmedini.org)

#### Website:

[www.merkazmedini.org](http://www.merkazmedini.org)

Dr. Yitzhak Klein, Director  
972-54-5743391

Prof. Moshe Koppel, Chairman  
972-54-5745340

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