

## Governance and Appointments in Israel

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*This paper addresses the issue of Israel's deficiencies of governance, as manifested in Israeli ministers' inability to plan and implement the policies they were elected for, and outlines a comprehensive reform of the appointment process to the civil service as a solution.*

The **first chapter** introduces the subjects of governance, government appointments and elected representatives' responsibility.

The **second chapter** presents the dilemma of governance and bureaucracy, with theoretical and comparative reviews that examine bureaucracy as a double edged sword; the various approaches to politically directing the civil service; and the process of government appointments in four other states.

The **third chapter** lays out the proposal for a reform in the Israeli Civil Service and the Civil Service Commission: detailing the background of "professional governance" appointments in Israel; outlining recommendations for political appointments; listing reforms in the mechanism for appointments to senior positions, (including a discussion of the issue with "gatekeeper" positions); clarifying the legal status of the Commissioner, the Civil Service Regulations, the Civil Service Board, and the Civil Service Commission; and proposing the appointment of policy advisors to Knesset factions and committees and other recommended changes.

**Appendices** include (a) a summary of all recommendations; (b) a proposal for a new civil service law, highlighting the desired changes from the 1959 Civil Service Law (Appointments) and explaining them; (c) the details of two political civil servants in Germany, as an example; (d) the full text of Government Resolution 154 establishing the Civil Service Commission; (e) a review of the literature and case-law on professional governance appointments in Israel; and (f) a note on the promotion of civil service employees, reducing the need for unnecessary tenders.

### Summary

Israel suffers from an acute lack of democratic governance, i.e., elected representatives have great difficulty in initiating policies or ensuring that the official channels carry them out, in both the planning and execution phases. The elected government's dysfunction creates frustration among the voting public and erodes their

faith in the democratic method of government. Elected representatives' responsibility towards their voters includes the responsibility to do whatever it takes to compel the government apparatus to function and implement their policies rather than find ways to block them.

The main issues affecting proper governance in Israel are:

**A. The minister is (almost) alone in office** – Israeli ministers do not have their own research and management team to help with developing policy and compelling their ministry to implement it. The only senior employee ministers are currently authorized to appoint is their ministry's director-general, who typically lacks experience in the ministry, just like the ministers themselves.

**B. Civil service reform** – The reform being currently implemented is focused on the way the Civil Service Commission manages (the approximately 900) civil service senior management positions. Most of the reform is welcome, particularly the proposals to limit the tenure of senior managers and oblige them to move to other positions or retire from service. However, one aspect of the reform is problematic: The Commission seeks to reserve the vast majority of these positions for those already employed in the civil service. The Commission's system of "examining committees" to implement this policy, effectively grants it the ability to dictate who is considered qualified for these positions and promoted to them. This means the Civil Service Commission has the power to dictate policy, since whoever dictates appointments effectively dictates the policy they will pursue.

**C. Gatekeepers** – Certain bodies in the civil service, particularly the Budgets Department in the Ministry of Finance and the Attorney General's Office, operate as "gatekeepers": they have the authority to block the policies of various ministers and ministries. Due to the organizational structure of these "gatekeepers," the employees within them feel very little responsibility towards advancing government policy as determined by the elected officials, but rather great responsibility toward the organizational culture of the body they belong to, which often does not take into account the need to advance and implement effective policy.

In other democracies, the solution to governance issues is found in the appointment mechanism to senior positions in the public service. Although public office service in a democracy should be neutral and professional – in other words, the best and brightest candidates should be recruited; the best workers promoted; and all citizens treated the same regardless of political affiliation or other identification – common practice is different when it comes to planning and carrying out public policy. The norm in democracies is that elected officials appoint advisors and directors to head official public services, so they may assist in planning policies (that at times include radical change) and implementing them in accordance with the elected official's viewpoint. A review of the practice in four leading democracies - the UK, the US,

France and Germany – demonstrates that the same principle guides them all, despite some differences in the details. This is even true of the UK in the past generation, once considered a stronghold of the "purely" professional public sector.

France and Germany employ the "Continental democracy model", in which elected representatives may recruit both advisors and directors from within and without the civil service to aid them in planning policy and administering their ministries. Advisors and directors from within the service have the advantage of being familiar with the government and its bureaucracy and can help the minister efficiently run the ministry from day one. At the close of a minister's term, these civil servants return to their former posts. The 1989 Kovarsky Commission recommended adopting this approach thirty years ago in its exemplary report on the Israeli civil service. It would be difficult to implement the central component of the continental democracy model - granting elected officials the authority to make appointments within the professional civil service- due to the somewhat exaggerated concern that Israeli politicians are particularly susceptible to abusing this authority with inappropriate political appointments; however, other aspects can be, such as giving elected officials the tools to change the organizational culture of the civil service, and increase cooperation between elected officials and the civil service by allowing elected officials to appoint experienced civil servants to trusted positions and advisory roles in the Knesset.

In every democratic country, ministers are authorized to appoint public officials whose subsequent decisions are subject to only limited control by elected representatives, or are prohibited from any control by law. This authority balances the independence of these positions, and ministers' ability to influence these appointees' conceptions of their profession is important for governance, perhaps even more so than their ability to appoint and dismiss their direct assistants within the ministries they oversee.

It is important to develop the understanding that one of the roles of elected officials is to ensure that the civil service adapts to current needs and new policy approaches. To that end, it is essential to incorporate mechanisms within the regulations and laws that define the civil service to enable elected officials to carry out this task.

## **Recommendations:**

### **1. Political Appointments (direct appointments by ministers):**

Each minister, in addition to appointing a director-general, shall be granted the authority to fill several positions of professional advisors and senior managers, the former to advise the minister on ministry policy matters, and the latter to assist the minister and director-general in managing the ministry in service to the minister's policy. These advisors and senior managers may be recruited from among the ranks of

permanent civil service employees, who would return to their previous positions or equivalent ones at the end of the minister's term. The Civil Service Board shall set the professional requirements for these appointments. The government will be empowered, as per section 23, to define which positions be appointed or approved by the government, abolishing the requirement for ratification by the Civil Service Board.

**2. "Professional governance" and senior position appointments to the civil service** (i.e. government appointments to independent, fixed-term, professional positions, and permanent senior civil service positions appointed apolitically, respectively):

Implement an "open windows" policy, so that the top positions of the Israeli civil service may benefit from the full range of managerial and professional skills in Israeli society. It will also facilitate refreshing the ranks of the ministries and making necessary changes in policy and professional culture.

Both competitive procedures for appointment to senior positions in the civil service - tenders and search committees - should be defined as merit-based recruitment, and modified thus: All tenders should be public, i.e. open to candidates from the general public as well as to civil servants; and both the committee and tender selection bodies shall present the appointing minister or director-general with at least three possible candidates, one of whom comes from outside the civil service. This procedure shall apply to all civil service systems, including positions currently designated exclusively for employees appointed through internal tenders. The appointing authority should be empowered to formulate policy guidelines for positions, as well as be entitled to interview leading candidates and have his or her opinion taken into account when ranking the candidates.

**3. The Civil Service Commission, the Commissioner, and the Civil Service Regulations:**

The Commission shall be transformed into an auxiliary unit of the PMO, with its policy dictated by the government, and its role defined as implementing government policy in regards to the civil service. Other meta-managerial roles, such as advising on human resources, may be added. The Commissioner shall submit an annual report, and the Prime Minister will be empowered to set regulations for the Commission's

operation, ratified by the Knesset committee responsible for civil service matters. The Civil Service Board regulation will be amended by abolishing the limitation on the government's authority to approve or cancel the Board's decisions (provided that it does not cancel decisions retroactively); by abolishing the rotation mechanism of Board members, whereby the director general and the public representative must be replaced annually two years into the Board's appointment; and by removing its power to approve or refrain from approving any government decision to convert certain positions into professional governance appointments.

**4. Appointing policy advisors to Knesset committees and factions:** Faction and committee chairpersons should be allowed to appoint civil servants as professional advisors to the faction or committee. Such employees may serve in this position for two years, with the possibility of one extension, while maintaining their status as civil servants, including compensation and seniority. The status of Knesset advisor would be equivalent to an executive political appointment. Appointments shall be at the discretion of the chairperson, who can terminate them at any time.

**5. Other Recommendations:** (i) Repeal Sections 15A(e) and 15A(h) of the current Civil Service Appointments Law for greater transparency in the affirmative action policy; (ii) Extend the legal temporary appointment period to six months, but remove the ministers' authority to extend it. Six months should be sufficient to conduct a proper appointment process; and (iii) Allow the appointment of a civil servant to a position one rank above their current rank without a tender, thus reducing the need for unnecessary tenders.

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