

A Constituent Assembly for Israel: From Crisis to Opportunity

As Israel marks its 75th anniversary, it faces an unprecedented social and political crisis.

The social crisis has permeated almost every level of society, undermining the unique and vital Israeli solidarity and leading to a severe crisis of trust in the institutions of government and in democracy itself. The most fundamental agreements in Israeli society have been eroded.

Out of this deep and sudden shock, Israeli society yearns for an equitable social consensus, for basic principles and values around which it can coalesce anew.

Against this backdrop, the political system is also experiencing a profound crisis. Basic agreements on democratic principles are now deeply contested. Although the Knesset has adopted a series of basic laws it has not created a special procedure for their enactment and amendment, nor had it completed the writing of the Israeli constitution. Over the past decade, there has been a continuous decline in the status of basic laws as coalitions from both ends of the political spectrum have rushed to rearrange democratic principles to suit their needs. Five election campaigns in less than three years have undermined political norms and led to unprecedented government instability, huge losses of public funds, a significant freeze of government activity, and widespread mistrust among political actors. Even today, after the formation of a new government, public representatives in the Knesset struggle to reach wide-ranging agreements on core issues.

Thus, on the one hand, Israel urgently needs to consolidate a social covenant on the basic principles and rules of the democratic game, yet on the other hand, the ongoing political crisis hinders the ability to consolidate this agreement.

We propose a way out of the impasse: the formation of a Constituent Assembly, a dedicated and elected body that will consolidate the principles and basic rules of Israeli democracy in a broad consensus of all its factions. This body will lay the foundations upon which the authorities will operate, including the system by which these principles and rules will be amended and updated from time to time. The products of the Constituent Assembly will be brought to the people for approval and the Knesset for ratification.

Our proposal does not prevent nor does it come at the expense of reaching a broad agreement on changes in the justice system at present. The Israeli public needs a social compact containing the principles and basic rules of Israeli democracy, even if agreements are reached on the administration of justice.

The roots of the idea of a Constituent Assembly are embedded in the declaration of independence of the State of Israel and in the historical and contemporary attempt to establish laws in democratic countries. At its core is the understanding that democracy is

based on the ability to manage disagreements through peaceful means, discussion, and dialogue. For this purpose, a clear and consensual framework is required, within which political discourse occurs and decisions are made.

The goal of the Constituent Assembly will not be to reach a consensus on all social disputes in Israel, nor is its goal to formulate policy on specific issues, but to formulate a broad and sustainable agreement on the principles and foundations of Israeli democracy.

The Constituent Assembly will not replace the Knesset, the government, or the courts. It will be a specialized forum for shaping and consolidating the principles and basic rules of Israeli democracy, including, most importantly, rules for managing and resolving continued disputes among us. The Constituent Assembly will bridge the gap between the vital need for an agreed-upon social covenant and the deadlock into which the Knesset has fallen.

Over the past few weeks, we, a group of Israeli practitioners and academics from various backgrounds, have undertaken an intensive and deep process of learning and listening among ourselves, consulted with experts and thinkers in Israel and abroad, studied historical and contemporary models of constitution-making - both their successes and failures - and engaged in extensive discussions on our ability to apply their lessons in Israel.

Our proposal emerged from this process and is presented before you.

A. THE STRUCTURE OF THE CONSTITUENT ASSEMBLY

Two main principles guided the proposed structure of the constituent assembly: first, the creation of a partnership between the Knesset and the public that reflects the responsibility of both the public and its representatives to create agreed-upon rules for Israeli democracy and act accordingly. The second principle is the broadest possible representation of all communities, religions, and ideological groups that make up Israeli society. Convening a Constituent Assembly is a rare, perhaps single historical occurrence, and all segments of Israeli society should be represented around the table and heard in the discussion.

These two principles are not only worthy in themselves, but they are also supported by lessons from around the world regarding the formation of constitutions in diverse and divided countries. Constitution drafting processes that did not include all social groups failed in their mission to create an agreed-upon constitution and even exacerbated the rifts in their countries (for example, in Sri Lanka and Iraq). Constituent Assemblies that detached themselves from the existing political system failed to produce viable constitutions that would be ratified by their publics and their representatives (for example, in Chile and Iceland). In contrast, constituent assemblies in divided societies that represented all parts of society and acted in coordination with the political system, for example in Indonesia, Ireland, Spain, South Africa, and India, produced effective and consensual constitutions.

Taking all of this into account, we propose a Constituent Assembly of 100 members, who will be elected by the Knesset and the general public. At least 40 Assembly members will be women and at least 40 Assembly members will be men; at least 25 members will be 39 years old or under.

The first stage of the elections will be conducted by Knesset members who will elect one-third (33) of the Assembly members, with each party selecting their representatives according to their relative proportion. Parties will be able to collaborate in appointing their representatives. This stage will conclude up to one week before the deadline to submit lists for the general elections to the Constituent Assembly.

The second stage of the elections will be conducted by the general public who will elect the remaining two-thirds (67) of the Assembly members in general secret ballot elections. The public will vote for a national list of candidates, similar to regular elections, which can be affiliated with one of the parties. A non-affiliated list must collect at least 2,000 signatures in order to run in the Constituent Assembly elections. The candidates must meet the eligibility requirements of Knesset members.

In order to enable the widest possible representation of diverse communities and minimize the loss of votes, the following steps will be taken: Firstly, similar to the original Constituent Assembly (the first Knesset), the electoral threshold will be natural (1/67 of the votes, roughly 1.5%). Secondly, lists will be able to form electoral alliances in blocs of two lists or more. Thirdly, in the event that a list in a bloc does not pass the electoral threshold, its votes will be allocated to the other parties in the bloc, as long as the parties make these agreements public on their ballots. These mechanisms will ensure that all citizens' votes are counted and will enable maximum representation of different segments of Israeli society.

To allow members of the Constituent Assembly to focus their time, effort, and mindset on completing the task, *members of the Constituent Assembly will not be members of the Knesset or the government*. Knesset members and ministers can propose their candidacies to the Constituent Assembly. If elected (either in state one or in stage two), they will resign from the Knesset and the government permanently and irrevocably.

Once elected, members of the Constituent Assembly will be independent in their actions and will not be subject to party or other discipline. Independence means that each member of the assembly will have the right to vote independently, both in the general assembly and within their faction.

B. FORMING AGREEMENTS IN THE CONSTITUENT ASSEMBLY

The Constituent Assembly will make its decisions by striving for consensus - a broad agreement that crosses factions and groups of the assembly.

Forming agreements through consensus stems directly from the ultimate goal of the Constituent Assembly: to identify the fundamental principles that Israeli society can unite and solidify around, and by doing so, to mend the unraveled seams and formulate the basic agreements of the Israeli regime. These agreements may be thin or thick; their importance lies in their existence. A decision by consensus will reveal and reflect their existence to the public.

Some might argue that consensus, in the current Israeli moment, seems impossible to achieve. However, the experience in constitutional processes that have adopted this approach globally, including in diverse and divided countries such as the United States, Indonesia, and India, is that building consensus is possible even in deeply divided conditions.

This experience teaches us that striving for decisions by way of consensus will require the various groups in the Constituent Assembly to have an in-depth and extensive discussion of the positions, concerns, red lines, hopes and visions of each group for life in Israel. This will enable the identification of agreements that exist beneath the surface and the development of mutual understanding, which facilitates the creation of new agreements. Switzerland and Canada further prove the power of consensus-based democracy over time. Consensus building processes can contribute to deepening the political discourse in Israel in general, and drive a long-term change in the Knesset's ability to reach cross-bloc agreements, which are so necessary for a healthy democracy and a cohesive society.

The Constituent Assembly will work to create consensus through a multi-step process:

Initially, the Assembly will aim for decisions to be agreed upon by all groups within the Assembly. The groups will be formed by Assembly members, each group consisting of at least 5 members (small parties can join together for that purpose, and Knesset appointees can group with elected representatives).

To generate a consensus-building process, all groups will be represented in deciding the Assembly's agenda, determining discussion procedures, establishing committees, preparing proposals for voting, and drafting the final text. The Assembly can discuss multiple alternatives on a given topic and vote multiple times or use a ranking-based voting system, as it sees fit.

A decision will be made if the majority of members in each group support it. This agreement process preserves the independence of Assembly members within their groups, enabling diverse opinions within each group to influence the consensus process. Simultaneously, the option to proceed without the full agreement of all group members prevents a small group of individuals from sabotaging widely agreed-upon arrangements.

To address situations where no agreement is achieved despite sincere and thorough efforts, a Consensus Committee will be established, consisting of representatives of all groups. Their

role will be to examine the possibility of reaching an agreement on the disputed issue, and if that is not possible, a compromise.

If an agreement consisting of a majority of members in each group is not reached even after this procedure, the Constituent Assembly may decide the issue with a large majority of no less than two-thirds of its members (67 out of 100). A two-thirds majority, even if it does not encompass all groups in the Assembly, reflects broad agreement that necessarily crosses political factions and groups. This supermajority ensures that an in-depth discussion that strives for consensus will indeed take place, while the inclusive working process that gives representation and status to all groups guarantees that the minority's position will be considered in all matters discussed.

Finally, groups left in the minority with respect to the vast part of the document can reintroduce a limited number of arrangements for renewed discussion before finalizing the draft, under conditions that will be predetermined before the Assembly discussions commence. Various methods can be used to build protections that foster trust in such circumstances, and we recommend consulting experts for this purpose.

The proposed consensus-building method navigates between the need to prevent misuse of the consensus rule by uncooperative individuals or groups and the need to ensure that minority groups participate in the process and have their say on vital issues. Overall, the method seeks to ensure that the set of constitutional agreements reached in the Constituent Assembly will reflect a broad and balanced consensus on the democratic rules of the game in Israel.

C. THE AUTHORITY OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly will examine the regulation of the relations between the authorities in Israel, and in particular will examine and regulate the checks and balances between the three branches of government, the boundaries of the authorities of each of the branches and their composition, and will define the procedure for appointment of judges, cabinet ministers' qualifications, and the electoral system. The Constituent Assembly will be authorized to propose constitutional changes in all these areas.

The Constituent Assembly will address the relations between the government and individuals and communities, and will work to enshrine human rights and define vital obligations that bind the citizens of Israel.

In all these areas, the Constituent Assembly will work to develop balanced arrangements that preserve the Jewish and democratic identity of Israel and ensure the prosperity of individuals and communities in Israel as well as the entire Israeli society.

The following will be placed before the Constituent Assembly:

- The Declaration of Independence.
- All Basic Laws passed by the Knesset.
- The draft of the "Constitution by Broad Agreement" placed on the Knesset table in 2006 and other proposed constitutions.
- Past constitutional proposals by lawyers, rabbis, and civil society organizations, such as the proposal by Rabbi Yitzhak Isaac Herzog, the first Ashkenazi Chief Rabbi of the State of Israel, the proposal by Rabbi Yitzhak Breuer, one of the founders of Agudat Yisrael, the proposal by Rabbi Moshe Uri Blau, leader of the ultra-Orthodox community in Jerusalem, the proposal by the Constitution for Israel Association, the proposal by the Reform Center for Religion and State, the proposal by the Israel Democracy Institute, the proposal by the Zionist Strategy Institute, and the Democratic Constitution proposal by Adalah Center.

The Assembly may consider additional options and develop new ones of its own.

D. THE SCOPE OF THE CONSTITUENT ASSEMBLY'S AUTHORITY VIS-À-VIS THE KNESSET

While the Knesset's role is to legislate and determine general policy in all areas of life in Israel, the Constituent Assembly's role is limited to proposing the definition of the general principles and fundamental values of Israeli democracy. Both bodies will operate independently and in parallel to each other.

From the time of the decision to establish the Constituent Assembly until the end of its term, the Knesset shall use restraint in using its constituent authority, and shall not amend basic laws and other laws dealing with matters within the Constituent Assembly's authority, other than in pressing cases and *temporarily*. The Knesset may, through the Committee on Constitution, Law and Justice, propose items for discussion in the Constituent Assembly.

The Constituent Assembly's powers will not encompass any of the Knesset's powers as a legislative authority. The Constituent Assembly will not be able to enact ordinary legislation or determine detailed policy on any specific issue. It will not have the power to allocate funds and resources, make appointments, oversee the acting government, or interfere in its activities.

In case of questions or disputes regarding the scope of authority of the two bodies, they will be decided by a committee composed of representatives from the Knesset and the Constituent Assembly equally. The committee will be headed by three well-respected retired Supreme Court Justices elected by the other members of the committee.

E. PROCEDURES OF LEARNING, DISCUSSION, AND PUBLIC PARTICIPATION IN THE ASSEMBLY

The Constituent Assembly shall appoint a chairperson, set its own rules of discussion, and may establish committees that will delve deeply into various issues or fulfill specific roles.

The administration of the Constituent Assembly will be headed by a retired Knesset Speaker or former Knesset general manager, chosen by the Knesset in a secret ballot. The Constituent Assembly will be funded from the state budget in ways that will ensure its proper function and independence. Legal and research consultation services will be provided by the state. The Assembly will agree on the rules of procedures before the opening of its substantive discussions.

The Constituent Assembly will hold a joint learning process before the start of its discussions. During this process, the Constituent Assembly will meet for study days and public hearings in various communities across the country, exposing its members to the diversity of communities and perceptions in Israeli society. As part of the learning process, the committee will invite experts to present the existing set of Basic Laws, the previous initiatives to establish a constitution for Israel, and lessons from constitution-making processes worldwide.

Before the opening of the Assembly's discussions, the public will be invited to submit proposals for basic law amendments, new basic laws, or complete draft constitutions. A committee composed of several assembly members, assisted by a professional team, will compile the proposals and prepare them for discussion in the assembly according to the agenda of the discussions.

The Assembly and its committees will strive to formulate well-founded and reasoned agreements based on relevant factual evidence. To this end, the Assembly will publish its agenda to the public in advance of its discussions and will invite experts, civil society organizations, representatives of different municipalities, government and administrative bodies, and any party that can contribute from its experience to the Assembly's decisions. The Assembly could consider additional models of public participation, including citizens' assemblies, smaller deliberative forums, roundtables, and public councils.

We recommend that the assembly's discussions be structured in a way that allows open and honest deliberation and debate among the representatives, in order to enable and maintain trust between the parties and increase the possibility of reaching consensus. For this reason, the ongoing discussions of the assembly will be held without the presence of cameras and media. The Assembly will keep a full record of its discussions, which will be released to the public on the Knesset's website once the Assembly concludes its work. The assembly's spokesperson will update on developments and the assembly's activities.

At the end of the drafting process, and before the final approval, the Assembly will publish a complete draft for the public and the Knesset to comment for a few weeks. After this stage, the Assembly will return to closed discussions in order to finalize the document and prepare it for the referendum and Knesset ratification (below).

This process, involving public participation from the outset and throughout, and including a referendum at the end, will ensure that the public is informed and involved in formulating the

constitution, even without ongoing broadcasting, and that the constitution will only be accepted with public approval.

F. APPROVAL AND RATIFICATION OF THE CONSTITUENT ASSEMBLY'S PROPOSALS

Upon completion of its work, the Constituent Assembly will submit its products to the people, as a single package, for a referendum. With the approval of at least 50% of Israeli voters, the Knesset will ratify the proposals. If the required majority is not obtained in the referendum, the Assembly will resume its discussions and propose amendments. The Knesset may propose amendments to the Assembly, with broad agreement.

The authority of the Constituent Assembly will expire after two years, yet the Assembly may extend it by an additional six months if it is close to reaching agreements and needs more time. Beyond that, the authority of the Constituent Assembly may be extended by the Knesset. The Constituent Assembly may not be dissolved before the end of its term.

The current proposal focused on outlining the general framework for the establishment of the Constituent Assembly and for the basis of its work. Further effort is required to detail the aspects involved in implementing this plan, and we are ready to devote ourselves to this critical task.

We propose the establishment of a special Knesset committee, with representation from all factions, to prepare a detailed plan, and accompanied by an interdisciplinary team of experts and professionals. The plan may be adopted by the Knesset as a decision or legislation.

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