

COUNTRY REPORT

ISRAEL



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Introduction¹

This report is meant to present the emerging deliberative practices in relation to constitution-making, legislation, and policy design in the State of Israel.

As will be described, the importance of, and need for, public engagement and democratic deliberation in government has only been acknowledged in recent years - making this issue new and underdeveloped in the Israeli context. Indeed, since 2000's, and particularly in the last decade, several measures and mechanisms have been initiated in order to increase public engagement, specifically in government work. While there is significant room for improvements and further development, these acts represent (first) important steps in advancing public engagement and democratic deliberation in Israel.

Part 2 of this report will address Israel's constitutional framework and its unique and controversial status, and present prominent examples constitution-making procedures, with a deliberative aspect. Part 3 will present the emerging practices of public engagement and deliberation in legislation and policy design and implementation, including notable examples in that regard. Finally, part 4 will offer a spotlight on the issue of youth's engagement and deliberation on issues relating to their lives in the Israeli context.

Israel 'Constitutional' Framework

Israel's Constitutional Status - A Historical Review

As will be presented, Israel stands as one of the only countries in the world without a written codified constitution. Instead, it formed a system of 'Basic Laws' with (semi-)constitutional status, that concern some of the main elements relating to the formation and role of principle institutions of the state, the relations between state authorities, and civil and human rights.

On May 14th 1948, the Members of the People's Council proclaimed the establishment of the State of Israel in the 'Declaration of the Establishment of the State of Israel' ('Declaration of Independence').² The Declaration holds that from the termination of the British mandate, and until the establishment of the elected authorities of the new state, the 'People's Council' shall act as a provisional council of the state, and its executive organ, the 'People's Administration', shall be the

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² The Declaration of the Establishment of the State of Israel, 14.05.1948, page 1.

provisional government. The Declaration also addressed the issue of drafting a constitution, stating that the establishment of the elected authorities shall be 'in accordance with the Constitution', which shall be drafted by a new elected body - the 'Provisional State Council', by October 1st, 1948.³

Thus, the Provisional State Council (which was ultimately established in February 1949) was tasked with drafting a constitution. However, in a controversial decision, two days after it first convened, the Provisional State Council proclaimed itself as the first Knesset ('Parliament'), without first establishing a constitution. The grounds for its decision included, among others, a concern that a constitution will limit its legislative powers; that the state was still young and 'evolving' and therefore is not set for 'rigid' constitution; and that given the diverse groups in the new state, reaching an agreement on constitutional matters is unattainable.⁴ Consequently, on June 13th, 1950, the first Knesset decided it will not draft a codified constitution, but that the constitution will instead be written in chapters (titled 'Basic Laws') that will ultimately be grouped together to form the codified constitution (this decision is known as the 'Harari Decision' or 'Harari compromise').⁵

The Harari Decision enabled to postpone constitutional drafting, with the first Basic Law enacted only in 1958. To date, there are 14 Basic Laws covering issues related to the formation and role of state institutions, governance, and protection of some civil and human rights.⁶ The laws do not address all constitutional issues, and there exists no deadline for completing the process and merging them into a comprehensive constitution. It should be noted that with the adoption of two Basic Laws on human rights ('Basic Law: Human Dignity and Liberty' [1992] and 'Basic Law: Freedom of Occupation' [1994]),⁷ the Israeli High Court of Justice ('HCJ') ruled that Basic Laws themselves (i.e., prior to their incorporation into a codified constitution) have a constitutional-like status, which allows the courts to strike down

³ *Ibid.* See also in that regard, A. Barak, Interpretation in Law, Vol. 3: Constitutional Interpretation, p. 39-40, (Nevo Publishing, 1995) (*in Hebrew*) (Hereinafter: '**Barak, 1995**'). It should be noted that drafting a 'democratic constitution' for the State is a requirement under the UN General Assembly, *United Nations General Assembly Resolution 181 (Partition Plan)*, par. 10, November 29, 1947.

⁴ See in that regard, **Barak**, *supra* note 2, p. 39-40.

⁵ Session Protocol no. 152 of the First Knesset, p. 1743 (14.06.1950); On the controversial nature of the Harari Decision see also R. Gavison, Constitutional Revolution - Depicting Reality or a self-fulfilling Prophecy?, *Mishpatim Law Journal* 28, p. 75-77, (1997) (*in Hebrew*) (Hereinafter: '**Gavison, 1997**'); **Barak**, *supra* note 2, p. 41

⁶ The Basic Laws include, among others, Basic Law: The Knesset (1958); Basic Law: Israel Lands (1960); Basic Law: The State Economy (1975); Basic Law: The Judiciary (1984); Basic Law: Human Dignity and Liberty (1992); Basic Law: Freedom of Occupation (1994); and the most recent one, Basic Law: Israel – the Nation State of the Jewish People (2018). On the legislative process of Basic Laws see **Gavison**, *supra* note 4, p. 75-110; **Barak**, *supra* note 2, p. 49-56.

⁷ Basic Law: Human Dignity and Liberty (1992); Basic Law: Freedom of Occupation (1994).

Parliament legislation that contradicts them, as well as interpret acts of legislation, and other government decisions, based on the principles anchored in the Basic Laws.⁸

This HCJ ruling marked the beginning of a process to widen and strengthen judiciary review on Parliament, based on the Basic Laws concerning human rights: a process known as the 'Constitutional Revolution' in Israeli law.⁹ While this process significantly changed governance and legislation, and strengthened the status of human rights in Israel, it remains controversial and highly disputed in the political and legal discourse today.¹⁰ Indeed, the status of Israel as a 'constitutional' democracy remains uncertain and somewhat blurred. The current regime of 'Basic Laws' is continuing to be criticized by legislators, judiciary, legal professionals and academics from every political spectra.¹¹ In addition, many important aspects relating to governance, state powers, and a bill of rights have yet to be determined in Basic Laws. It seems, then, that - almost 20 years after the 'Constitutional Revolution' in *law* - we are still no nearer to reaching the required agreements and compromises on constitutional matters within the complex and diverse Israeli *society*.

Constitution-Making Initiatives in Israel

To date, the political and social divide between the different population groups in Israel makes reaching a consensus on constitutional issues challenging, especially those relating to judiciary review, human rights and the separation of religion and state.¹² To tackle this, some notable initiatives were launched, with the aim of developing an alternative constitutional framework for Israel. The report will briefly present two prominent examples of civil/academic led initiatives, which (also) reflected a deliberative approach to the constitution-making process, as well as the one Government initiative on this issue.

'Gavison-Medan Covenant on Jewish Religion and State in Israel' (2003) (אמנת גביון-מדן 172)

⁸ Bank Hamizarahi Hameochad Inc. v. Migdal, Cooperative Village (1995), Supreme Court of Israel 6821/93 (Hereinafter: **Bank Hamizrahi Case**). On the Basic Law: Human Dignity and Liberty (1992) see also Barak, *supra note 2*, p. 261-283. In addition, as the text of both Basic Laws on human rights (Human Dignity and Liberty and Freedom of Occupation) refers to the Declaration of Independence and its principles [section 1: titled 'basic principles'], the Israeli Supreme Court has interpreted this as elevating the Declaration to a (more) constitutional status. On this, and on the evolving perception of the Declaration's legal authority, see **Barak**, *supra note 2*, p. 300-307; Klal Insurance Company v. Ministry of the Treasure (1994), High Court of Justice, 726/94.

⁹ See **'Bank Hamizrahi Case'**, *supra note 7*, par. 1, 3 (Barak Judgement).

¹⁰ See for example, Gavison, 1997, *supra note 4*, p. 28-30, 73-112.

¹¹ In that regard, the opposition to the 'constitutional revolution' argues, among others, that the current situation grants excessive power to the judiciary, compromising the principle of separation of powers, and that, in any case, the Basic Laws do not provide a good and clear constitutional regime, and do not address important constitutional issues. See for example, Gavison, 1997, *supra note 7*, p. 95-130.

¹² See Gavison, 1997, *supra note 7*, p. 30-33, 70.

In the past decades, political and social changes in Israel resulted in increased tensions and frictions between the various Jewish sectors on issues relating to the organization of 'Religion and State': a theme with significant constitutional implications.¹³ The 'Gavison-Medan Covenant' is one of the key initiatives which aimed to tackle this issue and develop a consensus-based proposal.¹⁴ Its work process included carrying out consultations with groups and individuals, representing different sectors of Jewish communities in Israel, and - based on their comments and suggestions - amending the proposal to reflect agreements and compromise.¹⁵ The proposal was published in 2003, and included section on a wide range of controversial (constitutional-related) issues (including citizenship, marriage law and family life, Shabat [day of rest], religious conversion, etc.).¹⁶

While the proposal was not adopted in Constitutional Basic Laws or other legislation, it is still discussed and referenced to today, and there are politicians, stakeholders, and civil society organizations who call to use it as a basis for future constitutional (and other) legislation in relation to 'Religion and State'.¹⁷ However, it should also be noted that the Gavison-Medan Covenant ignited criticism, mainly on the grounds that it wavered on acknowledging liberal and/or human rights values to reach consensus with religious parties (for example, in relation to rights of women, LGBTIQ, etc.).¹⁸

The Public Council for Constitution (2005) (הוועדה בהסכמה)

In 2000, the Israel Democracy Institute (Hereinafter: 'IDI') established the 'Public Council for Constitution' (Hereinafter: 'PCC').¹⁹ The PCC was headed by the (retired) chief Justice of the Israeli Supreme Court, Meir Shamgar, and it included about 100 members, among them, former government ministers and members of

¹³ Y. Arzieli, 'Gavison-Medan Covenant: A Basis for a New Covenant between Jews on Religion and State in Israel: Core Issues and Principles', p. 13, Israel Democracy Institute and AVI CHAI Israel Publication (2003) (*In Hebrew*) (Hereinafter: 'Gavison-Medan Covenant, 2003').

¹⁴ *Ibid.* The initiative was headed by a law professor (Gavison) and a Rabbi in the national-religious sector (Medan).

¹⁵ *Ibid.*, p. 14-16.

¹⁶ *Ibid.*

¹⁷ See Gavison-Medan Covenant Implementation Initiative Website. Available at: <https://bit.ly/3nzhG5y> (last accessed, 10.10.2020); T. Frank, 'Don't make Gavison-Medan Covenant to another Political Cliché', **Makor Rishon**, (18.02.2019) (*In Hebrew*). Available at: <https://www.makorrishon.co.il/opinion/116107/> (last accessed, 10.10.2020).

¹⁸ E. Gross, 'Consensus Constitution: Whose Consensus and on Whose' Expense?', Adalah E-Journal Publication, Vol. 9 (2005) (*In Hebrew*). Available at: <https://www.adalah.org/uploads/oldfiles/newsletter/heb/jan05/ar2.pdf> (Hereinafter: 'Gross, 2005').

¹⁹ The Israel Democracy Institute (IDI) is an independent center of research and action dedicated to strengthening the foundations of Israeli democracy. For more details, see IDI Website. Available at: <https://en.idi.org.il/about/about-idi/> (last accessed, 10.10.2020). On the PCC, see also Israel Democracy Institute (ed. O. Dromi), 'Proposal for a Constitution by Consensus', p. 11, (2005) (*In Hebrew*) (Hereinafter: 'IDI Proposal, 2005').

Knesset, representatives from law and academia, religious leaders and public officials - from diverse groups in the Israeli society. The PCC aimed to promote a new constitutional discourse in Israel and develop a draft constitution build on consensus - not to be adopted completely - but to serve as a basis for future parliamentary discussion, deliberation, and study.²⁰

The PCC constituting the first major attempt to conduct deliberations on constitution-making, with the participation of (albeit 'professional') a diverse representative group.²¹ It operated by organizing 12 deliberative events (public conferences), in which critical aspects relating to constitution-making and democratic governance were presented, discussed, summarized, and debated upon (these included, separation of powers in state government, the parliamentary regime, elections, bill of rights, religion and state, judicial review, aspects relating to constitution-making and the power and legal status of the constitution itself, etc.). Each deliberative event was informed by relevant materials, which were openly published prior to each conference.²² This formed the basis of 'The IDI Proposal for a Constitution by Consensus', which was published in 2005.²³

The proposal was not adopted by the Knesset (but this, in any case, was not the aim of the publication). The IDI has described the PCC's deliberative work as 'inspiring', showing that it is possible to create a constitution by consensus and that agreements, despite differences, can be achieved.²⁴ That being said, the IDI's proposal has also ensued criticism. Among others, it was argued that emphasizing consensus came at the expense of marginalized groups or those with less political power; that the proposal was not sufficiently progressive on human rights and the protection of minorities; that it allowed to entirely 'block' judicial review on religious issues; and more. Additionally, while the proposal was based on the deliberations, it was ultimately drafted by a small (and not diverse) group and it did not require (nor received) the approval of the PCC group.²⁵

'The Knesset Committee on Consensus Constitution' (2006) (*הוועדה לחוקה בהסכמה*) (*תתק"ו*)

²⁰ IDI Proposal, *supra note* 18, p. 11.

²¹ See IDI Website, Constitution by Consensus. Available at: <https://www.idi.org.il/centers/1502/16341>

²² *Ibid.*

²³ IDI Proposal, 2005, *supra note* 18.

²⁴ *Ibid.*, p. 15; IDI Website, Constitution by Consensus. Available at: <https://www.idi.org.il/centers/1502/16341>

²⁵ See Gross, 2005, *supra note* 17, p. 2-5; E. Gross, 'The Paradox of Consensus Constitution: Examination relating to Equality, Sexual Orientation, and Social Rights', p. 334-342, *Hapraklit Law Journal*, Vol. 42 (2007) (*In Hebrew*) (Hereinafter: '**Gross, 2007**'). On the objection of the PCC to the proposal, see also F. Raday, 'No Women, No Arabs', *Haaretz* (11.02.2006). Available at: <https://www.haaretz.co.il/opinions/1.1082026> (last accessed, 10.10.2020) (*In Hebrew*).

During the 16th Knesset (2003-2006), and following the HCJ 'Constitutional Revolution', the Knesset Committee on Constitution, Legislation and the Law was commissioned by the Government to develop a proposal for a Constitution. This was the first significant Government-led initiative on comprehensive constitution-making, taking place in the political arena. The aim of the Committee was to complete the constitutional process of the Basic Laws and prepare one complete Constitution document, that is based on a wide consensus.²⁶ The Committee, which was renamed for this task as 'The Knesset Committee on Consensus Constitution', conducted 87 sessions during a period of almost three years. It operated an open process (materials and protocols were published and made available online), and enabled politicians, academics, CSO's and (relevant) individual citizens - reflecting diverse perspectives in the Israeli society - to participate, speak before the Committee, and provide documents and suggestions for review and consideration.²⁷

In 2006, the Committee concluded its work and published a comprehensive Constitution proposal.²⁸ In order to reflect the different (as well as opposite) views on various Constitutional issues, the proposal was not 'conclusive', but included alternative phrasing and provisions, with explanatory remarks for future deliberation and parliamentary/public decision-making.²⁹ This proposal, too, faced criticism. Among others, it was argued that the 'alternative' phrasing merely reflected the difficulties in reaching consensus rather than attempting to resolve them; that the proposal did not adequately address the rights of the Arab minority in Israel; and that it did not sufficiently anchor public deliberation and/or require public agreements, specifically in relation to constitution-making and constitutional amendments.³⁰ Regardless, and despite the participatory process of the Committee and its impressively extensive proposal, the Knesset did not proceed with the constitution-making process, and the proposal was not adopted (this is likely due to the 17th Knesset election, which were scheduled shortly after the publication of the proposal draft, and the subsequent change in Government coalition).

²⁶ Knesset Website, Consensus Constitution. Available at: <https://main.knesset.gov.il/Activity/Constitution/Pages/ConstOpening1.aspx> (last accessed, 10.10.2020); Knesset Website, Constitution for Israel. Available at: http://knesset.gov.il/constitution/ConstOpening_eng.htm (last accessed, 10.10.2020).

²⁷ See Gross, 2007, *supra note* 24, p. 335-336.

²⁸ The Knesset Committee on Constitution, Legislation and the Law (as the Knesset Committee on Consensus Constitution), 'Constitution Proposal', 16th Knesset, January 2006 (*In Hebrew*). Available at: <https://main.knesset.gov.il/Activity/Constitution/Pages/ConstP.aspx> (last accessed, 10.10.2020) (Hereinafter: '**Knesset Constitution Proposal, 2006**').

²⁹ *Ibid.*

³⁰ Gross, 2007, *supra note* 24, p.335-343; R. Weil, 'Shouldn't we seek the People's Consent? On the Nexus between the Procedures of Adoption and Amendment of Israel's Constitution', *Mishpat umemshal*, vol. 10 (2007); G. Alon, "Wide Consensus Constitution, but without Jewish Ultra-Orthodox and Arabs", *Haaretz* (26.04.2004). Available at: <https://www.haaretz.co.il/misc/1.961697> (the article concerns the lack of participation of Arab and ultra-orthodox Jewish members of Knesset in the Committee's sessions).

To sum up, though several large-scale projects on constitution-making took place during the last decades, none of them attained a sustainable outcome. Actually, all projects delineated here resonated the immanent difficulties that originated from the naissance of the State of Israel, and they still prevent today, reaching a consensus for a constitution. Nevertheless, the project described involved multifaceted efforts, and produced an accumulative legacy of documented deliberative-like discourse. These reflect the first steps in relation to participatory constitution-making in Israel and may have some impact in future developments and initiatives.

Israel's (Emerging) Deliberative Practices in Legislation and Policy

Public Engagement and Deliberation in Legislation

Forms of public engagement and deliberative practices can be identified in the context of government-led legislation drafting - prior to its submission in parliament - as well as in relation to the discussions surrounding proposed legislation in parliament.

Government-led Legislation Drafting

In 2014, the government adopted a decision on lowering the regulatory burden [Decision 2118],³¹ which required to publish Regulatory Impact Assessment ('RIA') reports for all new government-led regulation.³² The RIA methodology includes conducting consultation processes, meaning that public engagement is now 'built-in' in legislation/regulation drafting processes. While the consultation process parameters may vary between the different government offices, and there exist challenges in relation to effective implementation or the selection of participatory audiences, this can be regarded as a promising step to begin streamlining public engagement and deliberation in legislation.³³

In addition, since the 1960's, government offices in Israel are required to share draft legislative initiatives with other government offices, to ensure intra-governmental coordination. This has since evolved to include publishing draft government-led legislation also to outside agencies and/or professionals, as well as to the general public online (since 2010), to receive feedback during the drafting process, before submitting the final legislation proposal to parliament.³⁴ In March

³¹ Decision 2118 of the 33rd Government, "on lowering the Regulatory Burden", 14.09.2014.

³² *Ibid.*

³³ Phone conversation with Ms. Noa Rosenfeld, Head of Innovation and Public Participation, Division of Strategy and Policy Planning, Ministry of Justice and Mr. Yair Gardin, Strategy and Policy Department, Division of Strategy and Policy Planning, Ministry of Justice (01.09.2020) (Hereinafter: **Phone Conversation Ministry of Justice**)

³⁴ *Ibid.*

2020, a new online platform for government legislation was launched.³⁵ The site allows users (whether individuals, NGO's, professional organizations, etc.) to comment on draft government legislation (as well as other documents relevant for the public, such as regulation, funding and support criteria, etc.)³⁶ The site is comprehensive and user-friendly: it requires only an email address to register, links with social media, includes other relevant documents and information on the proposed legislation draft, and enables users to attach documents to their comments, and decide whether they want their comments to be posted publicly or sent directly to the relevant government office.

Indeed, as the site is based on an individual (not collective) input, it is limited as a forum for deliberative events.³⁷ However, it reflects the initial steps in Israel to encourage and streamline public participation and deliberation in(to) government procedures. The platform enables users (also private individuals) to be heard and possibly impact government legislation drafting in its earliest stages, and the fact that it can present users' comments publicly for others to see, and allows representatives from the relevant government offices to respond to comments and engage with the users, adds a 'deliberative' aspect to its operation.³⁸ Yet, the potential of the platform for public engagement and deliberation is still unclear. To date, comments from the public seem to be relatively short, general, or wholly oppositional, which does not promote a serious consultative/deliberative process. However, even if the 'quality' of public comments is questionable, the 'quantity' of users engaging with a draft legislation can also reflect the public's views and stand. An interesting example in that regard is a COVID-19 emergency regulation, that received close to 20,000 comments from users. Most of the comments were similarly phrased general objections, which did not enable discourse in relation to specific provisions, but the large number of responses did reflect, at least, significant opposition to the proposed restriction.³⁹ To sum up, though this platform is active, lively and offers a certain form of deliberative-like discourse, it is difficult to assess its outcomes in relation to impact (if any) of public engagement and commentary on specific legislation and/or policies.

Legislation in Parliament

³⁵ Government Legislation Site. Available at: <https://www.tazkirim.gov.il/s/?language=iw> (last accessed, 10.10.2020). The site is limited to government-led legislation, and does not include 'private-led legislation' that is submitted by Members of the Knesset to Parliament.

³⁶ Phone Conversation Ministry of Justice, *supra note 32*.

³⁷ It is acknowledged that the online platform does not comply with the COST definition of a deliberative event. Yet it is included in this report as it is an example of emerging public engagement practices in relation to legislation and policy design.

³⁸ Some government offices are more minded to this issue and reply to, and engage with, comments posted. Still, this happens more often with comments submitted by professional organizations and/or CSO, and less with the general public. See also, Phone Conversation Ministry of Justice, *supra note 32*.

³⁹ *Ibid.*

In Parliament, both private and government⁴⁰ legislation proposals are routed to the relevant Parliament Committee for review, discussion, and final drafting. Thus, the process within the Committee determines how proposed legislation is revised and impacts its chances of being enacted into law.⁴¹ The Committees' sessions are public, as well as accessible online. For each session concerning proposed legislation, the Committee invites relevant government representatives, as well other relevant persons, including citizens.⁴² Generally, citizens in Parliament Committees are invited as representatives of civil society or business organizations, academic experts, professionals in the relevant fields, etc. Yet, individual citizens can also request to join the Committee's sessions, and to speak on the issue at hand - adding a participatory/deliberative element.⁴³ To sum up, Knesset Committees' sessions, comprising comprehensive processes of deliberation between numerous legislators, representatives of CSO, academia, professionals, business operators and members of the public are an inherent part and parcel of the legislative trajectory in the Israeli Parliament (both authors of this report also took place in such sessions, in their professional capacity).

Public Engagement and Deliberation in Government and Policy Design

The issue of public engagement and deliberation in government, particularly in relation to policy design and implementation, is relatively new and (still) under-developed in the Israeli context. Most of the work related to this field began in the late 2000's, and its scope, methods, levels of engagement, mechanisms and platforms are still evolving. This part will present the main government decisions addressing this topic and based on these, highlight notable examples of public engagement practices and mechanisms.

The **first** government decision dealing with aspects of public engagement [Decision 3190] was adopted in 2008. The decision concerned the importance of strengthening government, business sector and civil society relationship and collaboration, to achieve common/public goals. To that end, the decision called for 1)

⁴⁰ Legislation in Israel is divided into government-led legislation, which is initiated/proposed by the government, and private-led legislation, which is initiated/proposed by Members of the Knesset (including those from the opposition). There are some differences in the procedural requirements for the adoption of these different types of legislation. See also, *supra note 34*.

⁴¹ On the importance of Knesset Committees, see A. Shapira, *Citizens in Knesset Committees, Parliament*, vol. 66 (2015) (*In Hebrew*). Available at: <https://www.idi.org.il/parliaments/11110/11125> (last accessed, 10.10.2020) (Hereinafter: '**Shapira, 2015**').

⁴² See §101 of the Knesset Code (Updated Version 2011) (*In Hebrew*). The provision holds that Knesset Committees' sessions will be public unless the Committee decided otherwise. See also Shapira, 2015, *supra note 40*; Knesset Website, Committees of the Knesset. Available at: <https://m.knesset.gov.il/activity/committees/pages/default.aspx>

⁴³ While citizens can request to attend Knesset Committees' sessions, receiving an opportunity to speak may prove more difficult. This depends on the decision of the head of the Committee, and on number of professional speakers that are attending, the complexity of the topic at hand, etc. See Shapira, 2005, *supra note 40*.

increased coordination, as possible, between the three sectors and ensuring ongoing discourse and 2) to establish a unit to advise on participation and collaboration under the Prime Minister Office (Hereinafter: 'PMO').⁴⁴ Since the adoption of the decision, the government established the Inter-Sectoral Roundtables: a platform to enable discourse and collaborative work between government, the business sector and civil society and philanthropy, operating under the PMO.⁴⁵ While the roundtables provide high-level deliberation and collective impact on government policy and on its implementation, they do not involve representatives from the general public (rather, civilians that represent the relevant business and civil society organizations in the particular field).⁴⁶ Still, this example arguably reflects a first step in adopting a more deliberative approach in relation to public engagement in government.

The **second** relevant government decision in that regard concerns strengthening governance, planning and implementation of government actions [Decision 4028], which was adopted in 2011. The decision specifically recognizes the importance of public engagement and participation in policy planning and implementation, and holds that increased civil involvement in the public sphere contributes to decision-making processes, policy implementation, and public-government trust.⁴⁷ The decision is linked to the Social Justice Protest of 2011, which was, in itself, a key moments for public engagement and deliberation in policy design and implementation in Israel. The protest was a series of demonstrations on several socio-economic and social justice issues, which involved hundreds of thousands of protesting citizens. This led the government to appoint a public committee on 'Social and Economic Change' ('The Trachtenberg Committee') to examine the high-cost of living in Israel (a major issue in the protest) and offer relevant solutions in the economic-social sphere.⁴⁸ To do so, the Committee was mandated to engage in public dialogue, which was a first-time and innovative requirement for a public committee. It conducted consultations and participatory processes with thousands of citizens on core issues; a government minister was appointed to oversee the development of

⁴⁴ Decision 3190 of the 31st Government, "Government, Civil Society and Business Sector Relations as a contributing factor to achieve Public Goals", 24.02.2008.

⁴⁵ To date, several roundtables were established. See Department of Governance and Society, Prime Minister Office (writers: T. Peled Amir & Sivan Vardi), "Public Participation in Government Work: A Manual", p. 57, (2017) (*In Hebrew*) (Hereinafter: '**Peled Amir et al., 2017**').

⁴⁶ It is acknowledged that the roundtable discussions do not necessarily comply with the COST definition of a deliberative event. Yet, it is included in this report as it is an example of high-level deliberative and collaborative work between government and other sectors. Potentially, this experience can be adapted later to initiatives that include public engagement and participation.

⁴⁷ Decision 4028 of the 32nd Government, "Strengthening Governance Capacities, and Government Planning and Execution - Continued Discussion", 25.12.2011. (Hereinafter: '**Decision 4028**').

⁴⁸ See Prime Minister of Israel Committee Appointment Letter, Jerusalem, 10.08.2011.

participation instruments; and various platforms for public engagement (online and offline) were used by the Committee.⁴⁹

The Committee's report and recommendations (2011) addressed various socio-economic issues (e.g., housing, education, public transport, taxation, etc.) as well as the importance of public engagement and deliberation.⁵⁰ Based on the dialogue with protesters, the report noted that citizens felt excluded from government institutions; that their views and needs were not reflected in government actions; and that government decision-making processes are not open, and do not enable dialogue and public influence - all resulting in greater public distrust of, and objection to, government policies.⁵¹ Therefore, the report recommended that the government build-in procedures for civil engagement and deliberation in the public sphere and adopt a participatory democracy approach in its work (a recommendation that was later reflected in Decision 4028).⁵² Interesting to note that the report also addressed the impact of digital technology and social media in that regard, and how it can enable collective participatory processes.⁵³ However, it should be noted that the 2011 Social Justice Protest allegedly failed to produce permanent changes, including in relation to maintaining continuous and meaningful deliberations between the general public and the government.⁵⁴

The **third** relevant government decision concerned joining to the 'Open-Government Partnership' in 2012 [Decision 4515]. The decision holds that Israel is committed to promote open government on the basis of, among others, public engagement and participation, and that it shall develop policy on public participation in planning and implementation in government; and expand public engagement in decision-making process, policy making, and more.⁵⁵

⁴⁹ The Public Committee on 'Social and Economic Change' ('The Trachtenberg Committee'), Report, p. 263-276, (2011) (*In Hebrew*). Available at: <https://www.hurvitz-institute.tau.ac.il/wp-content/uploads/2016/07/tracht.pdf>. (Hereinafter: "**Trachtenberg Report, 2011**"). The public engagement and dialogue with the Committee included a designated site, live-streaming of meetings on social media, meetings and consulting with citizens and activists at the protest site, and hearing their views, challenges and wishes.

⁵⁰ *Ibid.* About 68% of the recommendations in the Committee's report were approved and adopted by the Government (though not all effectively implemented in practice). See also Decision 4088 of the 32nd Government, "Change in Priorities in the State Budget for 2012 and Implementing the Report of the Committee for Social and Economic Change (Trachtenberg Committee)", 08.01.2012.

⁵¹ Trachtenberg Report, 2011, *supra note* 48, p. 27, 54.

⁵² *Ibid.*, p. 54-55, 59-60; Decision 4028, *supra note* 46. The Decision specifies the importance of adopting a participatory approach in relation to policy design on socio-economic issues.

⁵³ Trachtenberg Report, 2011, *supra note* 48, p. 263-264.

⁵⁴ For elaboration on the Social Justice Protest's nature and outcomes see: S. Almog & G. Barzilai, 'Social Protest and the Absence of Legalistic Discourse: The Quest for New Language of Dissent', 27 *International Journal for the Semiotics of Law*, 734, (2014)

⁵⁵ Decision 4515 of the 32nd Government, "Joining the International Open Government Partnership and appointing the 'Israeli Forum for Open Government'", 01.04.2012.

The different government decisions reflect the ever-growing understanding of the need for public engagement and deliberation.⁵⁶ In light of this, the 'Unit for Public Participation' was established in 2016, under the PMO. The unit operates as a knowledge and guidance center for government offices on conducting participatory and consultative work, at different levels, and with diverse audiences. Its functions include publishing materials on public engagement and participation, accompanying government offices, and serving as a point of contact and advice on this subject.⁵⁷ In 2017, the unit published a guide on 'Public participation in Government Work' for government offices.⁵⁸ The guide regards participation as a means for better decision-making processes, and offers a broad approach on the levels of participation (information-sharing, consultation, collaboration),⁵⁹ types of government procedures relevant for participation (e.g., legislation, decisions, policy design, work plans; ad-hoc projects, etc.), participation tools (offline and online), and the participating audiences (intra-governmental, or external actors, such as local authorities, CSO's, business sector, particular public groups, and the general public).⁶⁰ The guide also includes a questionnaire format to assist government offices in choosing the level of participation and audience required for particular issues, as well as information on planning and executing participation procedures, both offline and online.⁶¹ Yet, to date, most of the participation procedures conducted, especially those involving the wide public, were consultation-based, and not collaborative (as these are mostly reserved for intra-governmental and/or for engaging with organizations or professional audience). This indicates there are still challenges to meet in relation to 1) the willingness, and the appropriate mechanisms required, to engage with the general public on policy matters, and 2) streamline this into the work of government offices.

This relates to a recent tender (began to be applied in 2017) on 'planning and executing participation processes in government offices'. The tender enabled government offices to employ service providers for participation procedures, and create position within government offices themselves to be in charge of intra-office and public engagement (currently, such position exist in the ministry of justice, health, education, energy, and more).⁶² While this, too, can be seen as a promising step in relation to public engagement and deliberation - it is still a very 'young' process, facing many practical issues. It requires, firstly, reaching-out and

⁵⁶ Phone conversation with Ms. Yuval Shkedi, Public Participation Unit, Division of Public Engagement, Prime Minister Office, (16.08.2020).

⁵⁷ *Ibid.*

⁵⁸ Peled Amir et al., 2017, *supra note* 44, p. 8, 11.

⁵⁹ *Ibid*, p. 13-14. See in that regard, *supra note* 52.

⁶⁰ *Ibid*, p. 11-12.

⁶¹ *Ibid*, see p. 19-35, 41-47, 60-62.

⁶² See the State of Israel, Ministry of Finance, 'Public Framework Tender No. 23-2015 for the Planning and Performance of Sharing Processes in Government Ministries Work', (2015).

implementing a more participatory approach in existing government working methods, secondly,) engaging with government employees 'on the ground' that are involved in the actual processes and sharing with them relevant information, best practices methodologies, etc., and thirdly, reaching-out to relevant audiences for participation.⁶³

Spotlight: Youth Participation and Deliberation in Israel

The issue of Youth Participation and Engagement in Democratic Deliberation

Youth today represent a key group in relation to public participation and engagement, and there is a growing awareness in academia, as well as 'on the ground', to the importance of creating a space for youth's voices in the deliberative democracy approach. This is especially relevant in light of the changes in democracies on a global level, which signal, among others, a need, for new forms of democratic participatory initiatives to better reflect the will of the people, and remove barriers for individuals, specifically those from vulnerable groups, to be heard - including youth.⁶⁴

The emphasis on youth's participation in the public sphere is also motivated by the children's rights discourse, anchored in the UN Convention on the Rights of the Child ('CRC'), and in the work of the UN Committee on the Rights of the Child ('CRC Committee'). The CRC is the leading international human rights instrument dedicated to children and their rights. It incorporates the full range of human rights for children - including provisions related to civil and political rights, - making it a principle document in the discussion on youth participation and engagement in deliberative democratic practices.⁶⁵ §12 CRC is particularly important in that regard, as it provides a child (or a group of children), who is capable of forming his or her views, the right to be heard and express those views freely in all matters affecting the child, and requires that the views of the child are given 'due weight' in accordance with the

⁶³ Phone Conversation Ministry of Justice, *supra note* 32.

⁶⁴ See K. Nishiyama, 'Deliberators, not Future Citizens: Children in Democracy', p. 8-10, *Journal of Public Deliberation*, Vol 13, Issue 1 (2017). See also for example, F. Casolari, 'The Right of Migrant Children to Participate in the Political Life of the Host State' in Migrant Children: Challenges for Public and Private International Law, F. Ippolito & G. Biagioni (eds.), (2016).

⁶⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3 (Hereinafter: '**CRC**'). On the CRC's impact, see T. Liefaard & J. Sloth-Nielsen (eds.), The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead, Brill Nijhoff (2016). On the CRC in relation to youth participation and engagement in the public-political sphere, see, D. Zlotnik, 'The Future of Adolescents' Right to Vote and Political Participation', *Leiden Law Blog* (3.7.2017) Available at: <https://leidenlawblog.nl/articles/the-future-of-adolescents-right-to-vote-and-political-participation> (last accessed, 10.10.2020); D. Zlotnik Raz, 'Youth and the Right to be Elected: Are We beginning to Explore an Uncharted Frontier?', *Human Rights Here* (15.04.2020). Available at: <https://humanrightshere.com/post/youth-and-the-right-to-be-elected-are-we-beginning-to-explore-an-uncharted-frontier> (last accessed, 10.10.2020).

child's age and maturity (known as the right of participation).⁶⁶ In recent years, the CRC, and specifically §12 CRC, have been commented upon and developed by the CRC Committee in relation to youth's right to participate in decision-making processes and in democratic governance.⁶⁷

Thus, youth's engagement in the public sphere stands on two main 'pillars'. From the child's perspective, it is grounded in the recognition of children as bearers of human rights, with distinct needs, interests, and voices, and that they should be heard in matters impacting their lives. The participation experience can also contribute to children's skill development, encourage active citizenship, and result in better acceptance of the final outcomes and decisions made following participatory processes. From a society perspective, including youth in public engagement and deliberation strengthens democratic principles, and - recognizing that youth are 'experts on their lives' - can enable better decision-making and policy design, that reflects youth's perspectives, experiences, and needs.⁶⁸ However, youth participation in the public sphere carries unique challenges and barriers, in relation to the prevalent public perception of children as 'subjects' (rather than independent rights holders), immature and inexperience; wishing to shield children and youth from engaging in 'adult' topics; lack of access to existing participatory and/or deliberative platform based on age; insufficient youth-centered mechanisms; need for youth-friendly principles and models to enable to enable meaningful and impactful participation in the public sphere; and more.⁶⁹

While the theme of youth engagement and deliberation has advanced in recent years, it remains under-developed and lagging in the Israeli context. Thus, in relation to **legislation**, there is currently no binding legislation that anchors youth's

⁶⁶ §12(1) of the CRC. The CRC Committee recognized the right to be heard as one of the general principles of the Convention, see UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, par. 12, 27 November 2003, CRC/GC/2003/5.

⁶⁷ See UN Committee on the Rights of the Child, *General Comment No. 12 on the Right of the Child to be Heard*, par 12, 127-131, 1 July 2009, CRC/C/GC/12; UN Committee on the Rights of the Child (CRC), *General comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, par. 24, 44-45, 6 December 2016, CRC/C/GC/20

⁶⁸ See in that regard, L Forde et al., 'The Right of Children to Participate in Public Decision-Making Processes', p. 1-2, 4-5, Save the Children International Publication (2020) (Hereinafter, '**Forde et al., 2020**'); G. Gertel, 'Youth Participation in Policy Design: Report', p. 4-9, The Initiative for Applied Research in Education (2019) (*in Hebrew*) (Hereinafter: '**Gertel, 2019**'); Committee for the Implementation of the CRC, 'Report: General Chapter', Part 2, p. 208-210, State of Israel, Ministry of Justice Publication, (2003) (*in Hebrew*) (Hereinafter: '**Rotlevi Committee Report, 2003**').

⁶⁹ See Forde et al., 2020, *supra note 67*, p. 10-23; Gertel, 2019, *supra note 67*, p. 23-25; On models relating to youth participation and engagement see, among others, R. A. Hart, 'From Tokenism to Children's Participation', UNICEF Innocenti Research Center, No. 4 (1992); L. Lundy, 'Voice' is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal*, Vol 33, No. 6, (2007); T. Gal, 'An Ecological Model of Child and Youth Participation', *Children and Youth Services Rev.*, Vol. 79, 57-64 (2017).

(collective) participation in democratic governance at the national level. Existing legal requirements for youth's engagement are limited to the context of education (forming and operating student councils) and to the local level (right to vote for 17-year-olds at municipal elections and appointing a children's committee in local authorities).⁷⁰ Additionally, while Israeli law requires that any new legislation relating to children shall note its impact on children's rights in the proposed legislation's explanatory remarks - there is no obligation to assess this issue through participatory processes with children and youth themselves.⁷¹ In its 2004 report, the Israeli Committee for the Implementation of the CRC ('The Rotlevi Committee') addressed children and youth's participation and proposed legislation to anchor children's participation in all decisions and/or actions concerning them, including at the national level, and require state authorities to implement participatory procedures for all decisions and/or actions with significant impact on children and youth's lives - yet the proposal was not adopted in practice.⁷² In addition, it seems that youth are not regarded as a distinct and relevant group in relation to **legislation drafting**. The online platform for government-led legislation is, from a technical perspective, 'age-blind'. Registration requires only an email account, so youth could comment and express their views. However, the site design is not youth-friendly, does not provide information in a simple and understandable language, does not signal child/youth related legislative proposals, and takes no measures to increase youth's ability to effectively and meaningfully participate.

There is (relatively) more progress in relation to youth participation in **policy design and policy implementation**. Thus, children and youth were involved in the Rotlevi Committee proceedings, their views were considered in the drafting of the report and recommendations, and they served as members in the sub-committee on education.⁷³ Additionally, in the past years, government offices (primarily the Ministry of Education) have conducted several ad-hoc consultations with youth on policy issues relating to their lives. Still, it is important to note that these participatory processes are not legally required and that they consist of relatively few examples, include mainly consultative processes (not collaborative and/or deliberative), and generally constitute one-time events (not on-going collective initiative).⁷⁴ Youth can, theoretically, also take part in some of the 'general' public engagement initiatives by government offices (with parental approvals and/or through anonymous digital platforms). But as these 'general' initiatives are not designed, meant, nor published for

⁷⁰ See Knesset Research and Information Center (RIC), 'Child and Youth Participation in Decision-Making Processes and Policy Design', p. 2-3, November 2016. (*In Hebrew*); Rotlevi Committee Report, 2003, *supra note 67*, p. 215.

⁷¹ See §2 & 3 of the Noting Information on the Impact of Legislation on Children's Rights Law (2002).

⁷² Rotlevi Committee Report, 2003, *supra note 67*, p. 218-220. The Rotlevi Committee was established to assess the Israeli law regarding children in light of the State's obligations under the CRC. For more information see there, part 1, p. 31-37.

⁷³ *Ibid*, part 1, p. 44-51.

⁷⁴ See Gertel, 2019, *supra note 67*, p. 32-33.

youth, and it is unlikely that a significant number of youth participate in such proceedings in practice. At present, it seems that the issue of youth participation in the public sphere and engagement in policy design and implementation is mostly promoted by CSO's, that collaborate with the relevant stakeholders (e.g., government offices, schools, professionals, etc.). An interesting example in that regard is the National Council for the Child ('NCC') Youth Parliament project. The youth parliament, launched in 2018, is an innovative initiative to include youth in policy-making processes, and provide an opportunity for significant dialogue between youth and government on matters concerning their lives. It aims to promote change in legislation and policy procedures in Israel, in a way that recognizes the right of youth to participate and be heard in matters impacting their lives, as well as to develop a sustainable model for the inclusion of youth in policy and decision-making processes at the national level.⁷⁵

Another interesting phenomena which is evolving at the time of writing this report (September-October 2020) is the enhanced participation of children and youth in active demonstrations that are taking place across Israel, following claims of corruption and inadequate governmental response to Covid-19 in Israel. The increased participation of children and youth in protests, holding signs and chanting, either together with family or independently, reflects (among others) their wish to be heard in the public sphere. This, too, could potentially strengthen the recognition of youth as 'agents' in the public sphere and contribute to creating a space for youth's voices in future participatory and/or deliberative procedures.⁷⁶

Conclusion

To conclude, public engagement and deliberative democracy in Israel requires further development and improvement in all aspects of government - from constitution-making, legislation, policy design and its implementation.

This calls for taking active measures in order to foster and streamline a participatory-focused approach to government work, initiate high-level deliberative procedures involving the public, and improve and strengthen existing participatory mechanisms in binding regulation. Indeed, the report presents positive and interesting first steps in relation to public engagement and participation in Israel, and while these are promising - they still require additional time, as well as an 'extra push', to demonstrate if and to what extent they enable meaningful and impactful public engagement and participation. In particular, the examples presented could benefit from regulation and binding procedures, emphasis on public audience (not only

⁷⁵ See National Council for the Child (NCC) Website, 'Youth Parliament'. Available at: <https://www.children.org.il/youth-parliament/?lang=en> (last accessed, 10.10.2020); D. Zlotnik Raz & V. Windman, 'Youth Parliament: Project Report', National Council for the Child Publication (2019) (*In Hebrew*).

⁷⁶ On the protests on the Prime Minister and the Israeli Government, see for example O. Ravid et al., "Saturday of Protest", *N12 News*, (04.10.2020). Available at: https://www.mako.co.il/news-israel/2020_q4/Article-11f087d9ceee471026.htm

professional or representatives of CSO's or businesses), a higher collaborative and deliberative level, and publishing data and reports on their impact in practice.

In addition, this report highlighted the issue of youth as an important 'audience' in relation to public engagement and participation. Youth are citizens today, with unique perspectives, needs, and interests that should be reflected in decision-making on issues relating to their lives. This requires learning from the developments in this field, both in the children's rights discourse and in the deliberative democracy approach. In the Israeli context, youth should be acknowledged as a distinct and relevant group in participator procedures, and ensure that they are provided with a real opportunity not only to be heard, but to collaborate, contribute to high-level deliberations, and have an impact on legislation and policy matters that concern them.