

Legislative Oversight of the Executive Branch in Israel

**Current Status
and Proposed Reform**

Chen Friedberg Reuven Y. Hazan



The Israel Democracy Institute

Policy Paper 77 | Jerusalem, August 2009

Language Editor (Hebrew): Anat Bernstein
Series Design: Ron Haran
Cover Design: Nomi Morag
Typesetting and Printing: Art Plus, Jerusalem

ISBN 978-965-519-066-3

No portion of this book may be reproduced, copied, photographed, recorded, translated, stored in a database, broadcast, or transmitted in any form or by any means, electronic, optic, mechanical, or otherwise. Commercial use in any form of the material contained in this book without the express permission in writing of the publisher is strictly forbidden.

The Israel Democracy Institute's books and policy papers may be ordered from:

Tel: 1-800-20-2222, (972)-2-5300800; Fax: (972)-2-5300867

E-mail: orders@idi.org.il

Website: www.idi.org.il

The Israel Democracy Institute, P.O.B. 4482, Jerusalem 91044

Copyright © 2009 by The Israel Democracy Institute (R.A.)
Printed in Israel

All policy papers and one chapter of each book are now available for free download at www.idi.org.il

The statements published in the policy papers do not necessarily reflect the position of The Israel Democracy Institute.

Abstract

Study Overview and Recommendations

Introduction

Among the most important tasks entrusted to the legislature in a democracy is overseeing the executive branch. The goal of this study is to present Israel's current situation in this area – its shortcomings, limitations and obstacles – and to outline a more expedient reality in the form of a structured, coherent and comprehensive reform program.

To date, no proposal has been formulated for sweeping, in-depth reform in the area of parliamentary oversight of the government in Israel. The reform proposed here, which addresses the changes that are required to improve such oversight, is unique in that it deals, first and foremost, with the need to change the structural foundation and parliamentary culture of the Israeli Knesset. Only then does it turn its attention to the more formal phase of legislative amendments and procedural reforms, which completes, but cannot substitute, the process of structural and cultural change.

Chapter 1: Background, Theoretical Framework, Scope and Mechanisms

The first chapter focuses on the role of parliamentary oversight from various perspectives – the historical, theoretical, conceptual and comparative. This chapter opens with a discussion of the origin of the concept and its classical definitions as interpreted by early philosophers, such as Charles Montesquieu and John Stuart Mill. From among the abundance of modern definitions of parliamentary oversight, we have adopted the definition that classifies the concept in terms of “strong” political oversight



(culminating in the ability to topple a government by way of a no-confidence vote) and “weak” administrative oversight. We have focused our discussion on the “weak” and academically neglected form of oversight, which encompasses all the ongoing, systematic activities of verification, investigation, inspection, criticism and condemnation, challenge, preliminary inquiry and the call for government accountability, which are all conducted through a variety of parliamentary mechanisms.

This chapter expands on certain core questions: the role of oversight in the network of interactions in a parliamentary regime (in reference to prominent studies on aspects of the relationship between the legislative and executive branches that refer to the issue of oversight by the legislature); the prevailing approach to the study of this matter in general (the attitudes toward the relationship between the branches of government); and the structural-governmental factors that affect the scope of oversight in a parliamentary regime (political parties, coalition and opposition, party discipline, the parliamentary majority upon which the government depends, etc.); the institutional mechanisms through which parliamentary oversight is conducted (various committees, the State Comptroller's Office, the state budget, parliamentary questions and motions for the agenda); and the efficacy of legislative oversight in parliamentary regimes. We examined the last question by means of a comparative survey of the major oversight mechanisms available to parliaments worldwide, which allowed us to formulate a basic generalization concerning the identification of the conditions that are required to reinforce the function of parliamentary oversight using these instruments.

Finally, the chapter challenges the impression that the ability of the legislature to oversee the executive branch is almost totally powerless in a parliamentary regime as compared with its presidential counterpart. While it has been proposed that the democratic states be situated on an imaginary continuum of

oversight, with the parliamentary regime at the “weak” extreme and the presidential regime at the “strong” end, closer scrutiny reveals that parliamentary regimes are not clustered at the lowest end of the spectrum (“zero” indicates lack of oversight), but are dispersed along its length from the lowest extreme to the range of presidential regimes. This continuum, which reflects the many nuances of reality, primarily suggests that it is possible to bolster the oversight capacity of the legislature in a parliamentary regime by introducing or strengthening central oversight mechanisms, as well as by means of structural and political reforms.

Chapter 2: The Oversight Potential of the Knesset

The second chapter focuses on the identification and the assessment of the oversight potential of Israel’s Knesset, emphasizing the failures, limitations and obstacles that impinge on this capacity as described in the professional literature and in the present findings. This section begins with an elaboration of the fundamental theoretical question addressed by the study – the theoretical oversight potential of parliaments – and presents arguments supporting the rationale for examining, first and foremost, the Knesset’s *capacity* to effectively oversee the government (the system’s input) before examining the actual effectiveness of its oversight (the system’s output). The structure and parameters of this theoretical framework were particularly adapted to test the oversight potential of the Knesset. This discussion emphasizes that the advantage of applying this theory to the Israeli context is that it enables the oversight process to be broken down into stages, which makes it possible to pinpoint the shortcomings and limitations of the process even before assessing the degree of efficacy of legislative oversight.

In addition to the conceptual framework, the second chapter presents the study's time frame (the 16th Knesset, 2003-2006); the population of the study (four of the Knesset's permanent committees: the Education, Culture and Sports Committee; the Internal Affairs and Environment Committee; the Labor, Welfare and Health Committee; and the State Control Committee, as well as 100 randomly selected parliamentary questions that were directed to the Ministers of Education, Interior, Environment and Health); the research methodology (analysis of the protocols of the selected committees in three principal areas subject to Knesset oversight – education, internal affairs and health – and an analysis of the content of the randomly selected parliamentary questions); and the methods of examining the variables (the construction of a continuum of oversight potential on which all the oversight mechanisms under study are placed according to the level of their oversight potential).

This chapter presents the findings regarding the oversight potential of the Education, Culture and Sports Committee, the Labor, Welfare and Health Committee, the Finance Committee, the Internal Affairs and Environment Committee, and the State Control Committee, as well as the parliamentary questions from the 16th Knesset that were examined. To complete the picture, we present the findings that emerge from the professional literature with respect to fundamental institutional and regulatory flaws that are built into the Israeli parliamentary system, and whose very existence hampers the ability of the Knesset committees to oversee the government from the start. The empirical data as a whole indicate that the oversight potential of the committees and the parliamentary questions in most of the 14 indices examined ranks as low to mediocre at best, and in only a few instances is it found to be high.

The conclusion from the findings is that there is a need to strengthen the oversight potential of the mechanisms that are available to the Knesset for the simple reason that, without such measures, the chances that these instruments will be able to function effectively are minimal from the outset.

Chapter 3: Performance of the Knesset Compared with Its Oversight Potential

The third chapter assesses the actual *performance* of the Knesset and its committees, particularly in overseeing the government in light of its oversight potential as described in the preceding chapter. We present the findings regarding the performance of five committees in overseeing the executive branch of the 16th Knesset – the Education, Culture and Sports Committee, the Internal Affairs and Environment Committee, the Labor, Welfare and Health Committee, the State Control Committee and the Finance Committee. The empirical data indicate that, of the 12 indices examined, the committees' performance in the majority of the areas measured is poor to mediocre at best, and is ranked as good in only a few cases.

The obvious conclusion arising from the findings is that the Knesset's "nerve center," that is, its network of permanent committees, is impaired to a certain extent. This is a result of both the low to mediocre potential of the oversight instruments at its disposal and the actual performance of the Knesset committees in overseeing the executive branch, which was unsatisfactory in most of the instances studied.

Therefore, it is our opinion that, more than ever, the Israeli parliament is in need of a fundamental, systematic, comprehensive program of reform in the area of government oversight that will treat the roots of the historical, cultural, institutional and procedural flaws that have characterized it almost since its inception.



Chapter 4: Proposed Reform in Government Oversight by the Knesset

The study findings indicate the urgent need for reform in the Knesset's oversight of the government, which is discussed at length in the fourth and final chapter. This conclusion, which is not new, has been stated in other studies that have dealt with many aspects of the Knesset's activities. However, none of these studies has focused on the reforms that are needed in the area of parliamentary oversight, which are generally only mentioned as a by-product of the central subject matter of the study. The issue of parliamentary oversight has also been addressed in internal initiatives by the Knesset itself. The prime example of this is the reform promulgated by the Speaker of the 17th Knesset, which deals in large part with legislative amendments and procedural reforms.

Hence, it is clear that no comprehensive, in-depth proposal for reform has yet to be drafted with respect to government oversight by the Knesset that would address not only the formal aspect, as reflected in changes in legislation and procedure, but also, and primarily, the roots of the historical, institutional and cultural problems that have characterized the Israeli parliament practically since its founding. For this reason, we decided to formulate, for the first time, a blueprint of the requisite reforms in this area, and to propose a systematic set of recommendations to improve parliamentary oversight in Israel. The proposed reform is based on both the empirical findings of the study and on important pertinent recommendations, which have already been proffered in the past in various frameworks and have been refined. Our primary goal is not to undermine or hamper government activity, but to significantly improve and streamline parliamentary oversight in order to strengthen the Knesset, and to indirectly make the operation of the government more efficient and more productive.

The proposed reform consists of three levels: the first is the most basic and the most important phase, which involves a change in the perception of oversight in the Knesset; the second level complements the first to a large extent and treats the structural-systemic-organizational changes that will improve the potential of the Knesset to oversee the government and the effectiveness of the oversight mechanisms; and the third level addresses the more formal aspect of oversight and focuses on legislative, regulatory and procedural changes. The goal of the third level is to reinforce and supplement the changes proposed in the first two levels.

The following list of recommendations is divided according to the three levels:

First Level: Recommendations Pertaining to a Change in the Perception of Government Oversight by the Knesset

1. Severely curtail the use of private members' bills.
2. Limit the number of votes in the Knesset plenum.

Second Level: Structural-Systemic-Organizational Recommendations

1. Increase the number of Knesset members from the current 120 to 180.
2. Institute the Alternate Member Law (the "Norwegian Law") whereby Knesset members who become ministers must quit the Knesset and be replaced by the next name on their party's list.
3. Change the structure of the committees to increase the correspondence between their spheres of activity and the relevant government ministries, and empower them to conduct hearings:

- (a) Legislate a fixed number of government ministries in an ironclad manner, such that it is not subject to change (especially not for coalition purposes), and restructure the list of permanent committees to correspond with the number of ministries.
 - (b) Divide each permanent committee into standing subcommittees that parallel the major departments of the government ministry, which is answerable to that committee, and conduct most debates within the subcommittees while reducing the number of sessions of the committee plenum.
 - (c) Establish two permanent subcommittees in addition to those that parallel the ministry departments: one to manage the budgetary affairs of the ministry and to monitor the budget's implementation; and the other to handle the State Comptroller Reports relevant to the particular ministry.
 - (d) Reduce the number of members of each committee to a maximum of ten (not including the committee chair).
 - (e) Grant the committees the authority to obligate public servants and civilians to appear before them (within the framework of a hearing), and to present all relevant information and documents to the committee members.
4. Extend the work days and hours of the committees:
- (a) Increase the work hours of the committees (at the expense of plenum hours).
 - (b) Reduce the work hours of the plenum (at least on certain weekdays), and transfer those hours to the committees.
 - (c) Add another official work day to the committees.
5. Prohibit a situation in which the chair of the committee, who is responsible for a particular ministry, and the minister heading that ministry are members of the same political party.

6. Impose sanctions on Knesset members who are absent from committee debates:
 - (a) Withhold salary and payments from Knesset members (as stated in the Knesset Members' Immunity, Rights and Duties Law) for multiple, unjustified absences from sessions of committees of which they are members.
 - (b) Transfer this matter from the Knesset Ethics Committee to a public committee to be established for this purpose. Alternatively, we propose amending the Knesset Rules of Procedure to set a quota of permitted absences, and to develop a formula for calculating absences and deducting salary and payments from Knesset members whose absences exceed the permitted ceiling.
7. Limit lobbying activity:
 - (a) Severely restrict the presence of lobbyists in the Knesset, in general, and inside committee chambers, in particular.
 - (b) Require lobbyists to submit background material to the Knesset Research and Information Center, and bar them from presenting data directly to the committees.
8. Augment the professional support staff of the committees by significantly increasing committee budgets. This change will supplement two reforms that have already been implemented in the realm of advisory services, information and research, which have proven to be fairly successful (the assignment of legal advisors to the committees and the establishment of the Research and Information Center).
9. Enhance the utility of the Knesset Research and Information Center:
 - (a) Secure the Center's existence and independence in the Basic Law: The Knesset in order to prevent a situation whereby its status could be changed on the whim of a particular official.

- (b) Augment the budget of the Center and increase its staff.
 - (c) Structure the Center so that it parallels the configuration of the committees (and ministries), as well as the subcommittees.
10. Address the lack of experience in the activities of the committees, and steer Knesset members with experience in specific areas to relevant committees:
- (a) Revoke the 1996 amendment to the Knesset Members' Immunity, Rights and Duties Law, which prohibits Knesset members from engaging in any additional occupation (section 13a), and restore the status quo prior to the amendment.
 - (b) Substantially improve the preparation of new Knesset members for their positions (beyond the basic course of several hours that they currently receive) in order to increase their involvement in the work of the Knesset, and emphasize the role and the importance of oversight.
 - (c) Provide incentives to Knesset members who agree to serve on committees, whose sphere of activity coincides with their professional background, and extend their term of service on the committees in which they have amassed experience.
11. Distribute State Comptroller's reports for deliberation among the committees that are responsible for the subject matter in question, and convert the State Control Committee to a parent committee that will coordinate the conclusions of the committees, discuss general and procedural issues in the State Comptroller's reports, and submit its decisions and conclusions to the Knesset plenum.
12. Alter the Finance Committee's system of monitoring the implementation of the budget:

- (a) Delegate the task of supervising the implementation of the budget to the committees that are responsible for the relevant subject matters. Specifically appointed subcommittees will be empowered to discuss both the requests for adjustments to the budgets concerning ministries under their jurisdiction, and the extent to which these budgets have been implemented.
 - (b) Alternatively, if the Finance Committee retains responsibility for monitoring the implementation of the budget, the number of requests for adjustments that the Finance Ministry is permitted to submit to the committee must be significantly limited; the minimum sum of budgetary adjustments that require the approval of the committee must be raised; and a permanent subcommittee with the authority to deliberate and make decisions concerning budgetary changes must be established.
 - (c) Require the Finance Committee to request a quarterly report from the Finance Minister on the implementation of the budget and the financing of the deficit, based on the principle that the Minister is obligated to submit a report to the parliament when asked to do so.
13. Redefine the institution of the parliamentary commission of inquiry:
- (a) Specify the subjects that a parliamentary commission of inquiry is authorized to address, as well as its powers and functions.
 - (b) Grant quasi-binding status to the results of parliamentary commissions of inquiry (otherwise, there is a strong likelihood that their work will prove futile).
 - (c) Limit the number of parliamentary commissions of inquiry that the Knesset is authorized to establish each term so as not to overburden Knesset members with the workload of several concurrent committees.



14. Reform the institution of the parliamentary question:
- (a) Evaluate the continued existence of this institution. In its present form, it steals precious time from all parties involved; moreover, it has been clearly demonstrated that its actual value as an oversight mechanism is negligible.
 - (b) Significantly reduce the quota of parliamentary questions (of various types) permitted to each Knesset member, and address these questions during the weekly question hour, which was recently revamped to make it more efficient and productive.
 - (c) Set a much shorter time frame than the current norm – two weeks at most – to answer the remaining parliamentary questions (whose number will be greatly reduced) in order to ensure that they are kept as relevant and current as possible.
 - (d) Grant all participants in the debate, and not only the person who posed the parliamentary question, the right to an additional question in order to make the debate lively and interesting.

Third Level: Recommendations Concerning Legislative and Procedural Changes

1. Research-based recommendations
 - (a) Improve the quality of the committees' conclusions by instituting clear criteria for their wording so as to ensure that their phraseology does not facilitate the disregard of the executive branch.
 - (b) Grant the committees' conclusions binding legal status, which will obligate the ministers to report the steps that they took to implement them, and will allow the imposition of sanctions against the ministers for non-implementation.

With regard to decisions of the State Control Committee, it is recommended that:

- (i) the report of its decisions and recommendations be as straightforward and concise as possible, as well as feasible and pragmatic in nature.
 - (ii) the committee be required to monitor the implementation of its decisions and recommendations.
- (c) Change the committees' perception of supervision by formalizing a procedure to monitor the implementation of their recommendations and conclusions.
- (d) Institute a requirement that individuals, who are invited to appear before the committees, submit a written document in advance to better prepare all participants in the debate and to streamline the oversight task of the committee.
2. Existing recommendations (based on various reforms)
- (a) Empower the committees to obligate civil servants and civilians to appear before them and to submit documents to them.
 - (b) Limit the ability of parties to change their committee members.
 - (c) Bar the press from committee debates on a selective basis.
 - (d) Entitle members of the Knesset minority to establish a commission of inquiry.
 - (e) Define and streamline the role of the committee chair.