



TROUBLE BREWING?

Gary Abbott explores Israel's unprecedented political crisis with the country navigating constitutional turmoil, civil unrest and the threat of internal conflict

Israel finds itself in an unprecedented constitutional crisis that threatens to paralyse the country with further widespread civil unrest, industrial action and according to President Herzog, the possibility of civil war. This follows the first of a series of long-anticipated reforms to the judiciary passing through the Knesset (parliament) on 24 July. For some, judicial reforms are a necessary democratic act which reduces the power of an unelected (and allegedly out of touch) judiciary and increases the power of democratically elected officials. For others,

however, the judicial reforms are a unilateral act by one of the most right-wing governments in the country's long history which removes the only institutional check on the executive, thereby rewriting the social contract that has upheld the Israeli polity since its foundation back in 1948. Although unknowns abound about the political crisis and what the next institutional moves will be, one certainty remains: the upcoming weeks and months will be rife with operational challenges and historical significance.

There remains deep tension at the heart of Israel's identity as to what extent religious and secular principles shape the nation

The current political crisis traces back to 1992, when the Knesset passed Basic Laws (quasi-constitutional laws) enshrining fundamental rights and liberties. During this period, Chief Justice Aharon Barak (President of the Supreme Court of Israel from 1995-2006) spearheaded a normative shift in the judiciary that saw it check the powers of the executive by examining and possibly invalidating laws or government acts that were seen to be incompatible with the Basic Laws. For the religious and those to the right of Israeli politics, this shift in the balance of power towards the (secular) judiciary was undemocratic and is obstructive to pursuing religious norms.

In this regard, the reforms are deeper and broader than academic questions relating to the constitution and balance of power between the executive and the judiciary. They expose a tension at the heart of Israel's identity: to what extent do religious and secular principles shape the nation?

Israel's societal divisions were highlighted by President Rivlin in 2015 when he spoke of a "new Israeli order" characterised by four distinct "tribes": Haredi (ultra-orthodox), Dati (religious but integrated), Masorti (slightly less religious than Dati) and Hiloni (secular). Rivlin emphasised the tensions and differences in outlook among these groups, which are perpetuated by separate schools, workplaces, and limited intermarriage. A 2016 Pew Research Center study confirmed that highly religious and secular Jews inhabit largely separate social spheres, with divergent political views – only 3 percent of Haredi and 11 percent of Dati Jews prioritise democratic principles over religious ones, in contrast to 56 percent of Masorti and 89 percent of Hiloni Jews.

These differences erupted onto the surface of Israeli society in January this year when Deputy Prime Minister Yariv Levin announced widespread judicial reforms, which reduce the judiciary's independence and ability to rule against the government. This sparked civil unrest, with protests consisting of tens (and eventually hundreds) of thousands of individuals taking place in Tel Aviv and spreading to urban centres nationwide. Protestors held days of 'disruption' and 'resistance' throughout March and targeted critical infrastructure while unions and manufacturing leaders held general strikes impacting technology, healthcare and public transportation. President Herzog captured the severity of the unrest in the country at the time, noting that: "those who think that a real civil war, with lives lost, is a line we will not cross, have no idea. Precisely now, 75 years into Israel's existence, the abyss is at our fingertips".

Although Netanyahu announced on 27 March that he was pausing the reforms and would consult the opposition before resuming the process, on 24 July his government passed piecemeal judicial reforms that remove the court's ability to cite the reasonableness doctrine (where government actions must pass rational and fairness tests). For many secular Israelis, the removal of the reasonableness doctrine reduces the ability of the judiciary to check the executive, a view that was reinforced by the far-right Minister of National Security, Itamar Ben-Gvir, who stated: "From today, Israel will be a little more democratic, a little more Jewish, and we will be able to do more in our offices". Accordingly, the move reignited widespread unrest in numerous urban centres, weakening Israel's military capability and threatening national security – air force instructors refused to work, leading to a reduction in flight hours in an air force training

course. Former Mossad director Tamir Pardo noted the high levels of polarity and warned that: "the nation is breaking into two".

As Israel navigates its next steps, the nation faces a spectrum of security and operational challenges. These encompass the resumption of previous actions, such as protests, strikes and disruptions to public transportation, but also emergent ones – such as renewed conflict between Israel and violent extremist groups. The gravity of these challenges hinges on two possible outcomes. In the best-case scenario, the July reforms pass the Supreme Court and Netanyahu is compelled to portray them as a success to his right-wing coalition and halts further reforms. In the worst-case scenario, the government unilaterally pursues further judicial reforms and/or fails to abide by Supreme Court rulings against reforms – moves that have stark security consequences.

Provided the July reforms pass through the Supreme Court, Netanyahu has inadvertently amplified the

REGARDLESS OF THE OUTCOME ISRAEL SEEMS SET FOR FURTHER UNREST AND DISRUPTION

likelihood and intensity of protests on two critical fronts. Firstly, not only are the judicial reforms unpopular and a driver of civil unrest, but they limit avenues for citizen-driven change – a role historically fulfilled by the courts. The diminishing authority of the judiciary chips away at the institutionalisation of public sentiment, channelling grievances away from state institutions and towards the streets in the form of civil unrest and widespread strikes. Well-organised civil society groups possess substantial mobilisation capabilities that are likely to play a greater role in Israeli politics. Second, judicial reforms open Israeli politics to the views of the fringe that are essential for forming and maintaining a government in a proportional voting system. Religious Zionism, for instance, requested a commitment to the legalisation of settlements in the West Bank and reforms to discrimination laws as terms for joining Netanyahu's coalition, the latter of which would allow businesses to refuse services on their religious beliefs (for example, denying services to LGBT people). Such policies are starkly unpopular among secular Israelis and are likely to serve as a catalyst for further civil unrest and operational disruption in the form of mass strikes and protests at major transportation hubs (including airports).

Since Netanyahu's government has been ambiguous as to how it will respond to the Supreme Court annulling judicial reforms, a stand-off between security personnel cannot be ruled out. The Supreme Court may strike down the reasonableness reforms (and any further reforms) but the government may refuse to acknowledge their authority – a move that would place the country in a constitutional crisis that risks splitting the state into two. Back in March, Justice Minister Yariv Levin reacted to the possibility of the Supreme Court striking down judicial reforms passed by the Knesset by warning: "We certainly won't accept it". Alongside the warnings by the president, Nadav Argaman (former

director of Shin Bet, Israel's internal security service) described reasonableness reforms as a "regime coup" and warned that he was "fearful for the state of Israel... (and) greatly fear that we are on the brink of civil war". In practice, should the government unilaterally pursue further judicial reforms and/or refuse to abide by the Supreme Court's ruling against reforms, Israel's state institutions (including the police and the military) would be forced to choose between the Supreme Court and the government. Although an outright civil war is unlikely, a stand-off between disparate state institutions cannot be ruled out.

NADAV ARGAMAN – THE FORMER SHIN BET DIRECTOR – IS "FEARFUL FOR THE STATE OF ISRAEL"

Consequent to splits that run through all state institutions (including the security services), there are two likely scenarios where disputes over judicial reforms could translate into violent conflict.

Firstly, and arguably most likely, is that reforms to the reasonableness test will precipitate policies such as the legitimisation and proliferation of settlements in the West Bank. Netanyahu may prefer these incursions on the West Bank over further judicial reforms, which have been exceptionally divisive. Showing the appetite for this, one of the conditions for Religious Zionism to join Netanyahu's coalition government was a declarative commitment to annex the West Bank while legalising settlements there. These measures would force groups such as Hamas and Palestinian Islamic Jihad (PIJ) to act, most likely in the form of a symbolic show of force – such as rocket attacks and small-arms clashes with Israeli security services.

Secondly, and different from the above by being more substantive and less symbolic (involving greater

numbers of manpower and arms), should Israeli security forces find themselves in a standoff, militant groups such as Hamas and PIJ would likely be emboldened and conduct violent attacks (with small arms against security targets or indiscriminate rocket attacks against urban centres) in a bid to assert themselves, signalling their power and influence to domestic and foreign audiences. This is compounded by the fact that these groups have lost legitimacy through numerous tactical and symbolic setbacks in recent years, most recently in July, when over 1,000 Israeli soldiers stormed the Palestinian Jenin governorate (with air support). Internal fissures in the Israeli security services would present a rare instance of vulnerability, something that these groups (likely backed and supplied by Iran) are unlikely to fail to capitalise on.

Israel finds itself in a political and constitutional crisis with no apparent path towards de-escalation. Simply walking away from judicial reforms threatens the collapse of Netanyahu's government, something that would trigger the sixth general election since 2019. Rather than asking whether the country will face unrest over the coming months, the most realistic question is one that explores the degree of unrest. In the best-case scenario, the reasonableness reforms go unchallenged by the Supreme Court, and Netanyahu's hand is forced by widespread opposition so he presents the July reforms as a success to the right of his coalition government while promising policies such as those that spread the influence of Judaism in society or those that legitimise and spread settlements in the West Bank. In the worst-case scenario, the court annuls the July reforms (or any further judicial reforms) and/or the government pursues further judicial reforms that rewrite and upend the institutional balance of power, elevating the intensity, frequency and scale of civil unrest in tandem with increasing the likelihood of a stand-off between members of the security services, leaving the country exposed to attacks by militant groups. Regardless of the chosen path, Israel seems set for further unrest and operational disruption, with minimal scope for improvement ●

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