

Elections Q&A:
The 2013 Israeli Elections and Arab Parliamentarians
Issued 11 December 2012

When and for what purpose are the elections being held in Israel?

Parliamentary elections will be held in Israel on 22 January 2013. They will determine the composition of the 19th Knesset, Israel's unicameral (single-house) parliament that has a total of 120 seats.

Who will vote?

Israeli citizens aged 18 and over have the right to vote. According to recent trends, Arab citizens are less likely to vote than Jewish citizens: in the last parliamentary elections for the 18th Knesset (2009-2012), the voter turn-out rate was 64.7% overall and 53% among Arab voters.¹

Which main political parties are running in the election?

A total of 34 political parties have entered the race for the Knesset. A majority of these parties are right-wing in their political orientation. The largest right-wing/religious parties are: the joint list of Likud/Beiteinu (led by the current Prime Minister and head of the Likud, Binyamin Netanyahu, and the Foreign Minister and head of the Yisrael Beiteinu political party, Avigdor Lieberman), Shas and United Torah Judaism (two Jewish Ultra-Orthodox parties), and the Jewish Home/National Union (a merged right-wing national religious party). The largest centrist parties are Kadima (the largest single political party in the last Knesset with 28 seats) and Labor (a center-left party). On the Zionist left is Meretz (a social-democratic party). Some newly-formed political parties will also compete in the elections, including Hatnuah (a centrist-party headed by former leader of the opposition and Kadima, Tzipi Livni), Strong Israel (Otzma Leyisrael; extreme right), Whole Nation (Ultra-Orthodox, split off from Shas), Yesh Atid (center, established in response to the social justice protests of 2011), and Calcala (which translates as "finance").

Are any Arab political parties running in the elections?

Yes. Three Arab parties will run: Hadash (Arab-Jewish; Mohammad Barakeh, Dr. Hanna Swaid, Dov Hanin, Dr. Afou Agbaria, Nabila Espanioly), the United Arab List-Ra'am-Ta'al (Sheikh Ibrahim Sarsur, Dr. Ahmad Tibi, Masud Ganaim, Talab Abu 'Arar, Talab al-Sana) and Tajammu'/Balad (the National Democratic Assembly; Dr. Jamal Zahalka, Hanin Zoabi, Dr. Basel Ghattas, Jum'a al-Zabarqa, and Fuqra 'Abd al-Raheem). A small number of Arab MKs are members of other political parties.

What is the country's electoral system?

The Israeli electoral system is a closed-list proportional representation system. Electors therefore vote for a political party rather than an individual candidate. All candidates run in a single, nationwide vote and seats are allocated in direct proportion to the percentage

¹ The Israel Democracy Institute, Participation, Abstention and Boycott, 22 April 2009.

of votes that a party receives. The threshold for a party list to gain representation is set at 2%, which has historically allowed a large number of small parties, with five seats or less, to sit in the Knesset. It has also meant that no single party has ever obtained an absolute majority without needing to form a coalition. There is a maximum parliamentary term of four years. The President of the State usually invites the largest political party, or else that which is most likely to form a majority coalition (of 61 or more seats), to form the next government. The leader of the largest party in the coalition then assumes the position of Prime Minister.

How is fair representation for the Arab national minority in Israel guaranteed?

It isn't. No seats are designated for Arab political party lists or candidates and there is no quota system to ensure that Arab citizens are appropriately represented in the parliament. Since 1948, no Arab party has been invited to join or included in governmental coalitions. In the last (18th) Knesset, Arab parties held a small proportion (11 seats) in the Knesset. This number is not expected to increase significantly in the upcoming elections.

What is a disqualification motion and who can file it?

A disqualification motion is a request filed to the Central Elections Committee (CEC) to disqualify a party or an individual candidate from the Knesset elections. A simple majority of 51% of CEC members have to approve the motion for it to be implemented. Any citizen aged 18 and over can file a disqualification motion to the CEC.

What law governs the disqualification process?

The Elections Law (Consolidated Version) – 1969 governs the process of filing, deciding on and appealing against decisions on motions for disqualification. Article 7A of the Basic Law: The Knesset – 1985 (and subsequent amendments) enumerates the grounds for which a party or individual candidate can be disqualified from the elections.

Article 7A of the Basic Law: The Knesset, entitled “Prevention of participation in the elections”, provides that a candidate or a political party list may be disqualified from Knesset elections if their goals or actions: (i) deny the existence of the State of Israel as a Jewish and democratic state; (ii) incite to racism; or (iii) [offer] support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel.”

This ideological basis for disqualifying political parties and individual candidates was introduced in 1985, when Article 7A was added to the Basic Law: The Knesset. The latter provision – (iii) “support of armed struggle” – was added in an amendment to the law made in 2002. All of the disqualification motions that have since been filed against Arab parties and individual candidates have relied on one or more of these provisions.

The vaguely-worded provisions of Article 7A are dangerous since they could potentially be used to ban a political party that adopts political positions like supporting a one-state solution, for example, or a “state for all its citizens”, on the basis that such positions constitute some form of denial of Israel as a Jewish state. Further, the law does not define a “terror organization” or what would constitute offering “support” for an armed struggle. These grounds could therefore be used, and indeed have been used, to attempt to stifle free democratic debate and limit the political rights and freedoms of Arab citizens of Israel in particular.

What is the Central Elections Committee (CEC)?

According to the Knesset Elections Law (Consolidated Version) of 1969, the Central Elections Committee (*Va'adet HaBehirot HaMerkazit*) is established in order to carry out the elections process for the following Knesset. The committee is chaired by a Supreme Court justice who is chosen by a group of Supreme Court justices. Supreme Court Justice Elyakim Rubenstein, the former Attorney General, will chair the CEC during the current election cycle. The members of the committee are representatives of the parliamentary lists in the current Knesset.

How does the CEC work?

The functions of the CEC include: receiving the lists of candidates and approving them; other technical duties related to facilitating the voting; training elections staff; collecting the elections results from each polling station; and tallying and publishing the elections results, and dividing the 120 Knesset mandates. The CEC also holds hearings and decides on motions to disqualify political party lists and individual candidates from running in the elections.

Is there an appeal process?

If the CEC votes to disqualify an individual candidate from participating in the Knesset elections in accordance with Section 7A of the Basic Law: The Knesset, it must forward its decision and arguments to the Supreme Court for approval. By contrast, a CEC decision to disqualify a political party list is binding; however, the list has the right of appeal to the Supreme Court against the CEC's decision, under Article 64 of the Elections Law (1969).

The Supreme Court has previously overturned CEC decisions to disqualify Arab political party lists and individual candidates. The Supreme Court has ruled only once to disqualify an Arab political party from running in the Knesset elections. That ruling, in the Yardor case, was delivered in 1965 against the participation of the El Ard movement; this decision was given in the absence of any Basic Law governing the subject.

Have any disqualification motions been submitted against Arab parties or candidates ahead of the 2013 elections?

Yes. To date, right-wing MKs have asked the CEC to disqualify Arab parties Balad/Tajammu' and the United Arab List-Ra'am-Ta'al from the elections. MK David Rotem (Yisrael Beiteinu), who is a deputy chair of the CEC, has asked Tajammu'/Balad to be banned; MK Michael Ben-Ari (the National Union) and MK Aryeh Eldad (Strong Israel) have asked for Tajammu'/Balad and the United Arab List-Ra'am-Ta'al to be banned. MK Ofir Akunis (Likud) has asked for MK Hanin Zoabi (Tajammu'/Balad) to be banned as an individual candidate.

Their requests, which are all based on Article 7A of the Basic Law: The Knesset, variously cite the denial of Israel as a Jewish state and support for terror, including MK Zoabi's participation in the 2010 Gaza Freedom Flotilla, as the reasons for the disqualification motions. The deadline for the submission of disqualification motions, 13 December 2012, is still pending. Meanwhile, right-wing actors have also announced their intention to file disqualification motions against MK Ahmad Tibi (United Arab List-Ra'am-Ta'al) and MK Jamal Zahalka (Tajammu'/Balad).

Have there been previous disqualification motions against Arab political parties and candidates?

Yes. From the 2003 Knesset elections onwards, disqualification motions have been filed against Arab party lists and/or individual candidates in each successive round of elections. They have all relied on Article 7A of the Basic Law: The Knesset. Before the 2003 elections, the then-Attorney General, Elyakim Rubenstein (now a Supreme Court Justice and the chair of the CEC), and several right-wing MKs filed disqualification motions against individual Arab candidates and political parties (Balad/Tajammu', Hadash-Ta'al and the United Arab List). It was the first time that the CEC was asked to decide on the eligibility of individual candidates. Challenges against all of the Arab candidates and political parties were submitted. The CEC voted to disqualify the Balad/Tajammu' list, Dr. Azmi Bishara and Dr. Ahmad Tibi. Adalah represented the Arab political leaders and political party lists before the CEC, and later represented Balad/Tajammu', MK Bishara and MK Tibi before the Supreme Court. The Attorney General himself took the extraordinary step of asking the CEC to disqualify MK Bishara and the Balad/Tajammu' party.

An expanded 11-justice Supreme Court panel overturned all of the CEC's decisions. In the Supreme Court appeal against the CEC's decision to disqualify MK Azmi Bishara and his Balad/Tajammu' party, the Attorney General argued that the principle of "a state for all its citizens", as espoused by Balad/Tajammu', negated Israel as a Jewish and democratic state. However, the court decided to overturn the CEC's decision in a 7-4 split decision. The court ruled that in order for the state to prove that a political party or candidate "negates the existence of Israel as a the Jewish and democratic state" for the purpose of disqualification, it must provide evidence to demonstrate that the main and central activity of a political party list, as expressed through its actions, is to oppose the following: a Jewish demographic majority in Israel; the Law of Return; Hebrew as the primary language of the state; and the Jewish symbols, national holidays, Jewish law and heritage as part of the cultural life of the state. In this case, seven Justices found that the Attorney General had provided no such evidence in the case of MK Bishara or his party list.

In the run-up to the 2006 elections, the Likud Party and right-wing MKs submitted disqualification motions against MK Sheikh Ibrahim Sarsur and the United Arab List (UAL). Adalah represented MK Sarsur and the UAL before the CEC, which rejected the disqualification motions, allowing them to compete in the elections.

In the 2009 elections, the CEC voted to ban the Balad/Tajammu' and the United Arab List and Arab Movement for Change (UALAMC) party lists from the elections based on Article 7A of the Basic Law: The Knesset. Adalah filed an appeal to the Supreme Court arguing that banning the parties from standing for election would effectively deny the Arab minority an effective vote and harm their constitutional rights to elect their own representatives and run for elected political office. In January 2009, an expanded nine-justice panel of the Supreme Court overturned the CEC's decisions to ban the two parties (in an 8-1 majority ruling in the case of Balad/Tajammu', and in a unanimous ruling in the case of the UALAMC).

It can be reasonably expected that the majority of the CEC will approve the current round of disqualification motions, since the CEC is composed of the political parties that are represented in the previous Knesset. Most of these parties are right-wing and hostile towards the rights of Arab citizens to equal political participation.

Important election dates regarding disqualification motions

- 06 December 2012: Deadline for submitting lists of candidates to CEC
- 13 December 2012: Deadline for submitting disqualification motions to CEC
- 17 December 2012: Deadline for responses to disqualification motions
- 19 December 2012: CEC hearing for deliberation on disqualification motions
- 23 December 2012: Deadline for announcing CEC's decisions in disqualification motions
- 25 December 2012: Deadline for submitting appeals to the Supreme Court on CEC's decisions
- 30 December 2012: Deadline for Supreme Court's decisions in appeals on CEC's decisions
- 22 January 2013: Election day

Historical background of Arab participation in Knesset elections

Palestinian Arab citizens of Israel have run in and been elected to every Knesset since the first Knesset elections in 1949. One Arab party, the Democratic List of Nazareth, won enough seats to cross the basic threshold in 1949, taking two seats. Until the 1960s, all Arab parties in the Knesset were affiliated with Mapai, the ruling party, a forerunner of the Labor party, which did not accept Arab members itself. In 1965, the first attempt was made by an independent Arab list to run for Knesset elections, with the Al-Ard movement forming the United Arab List. However, the list was banned by the Central Elections Committee and the Israeli Supreme Court (in the Yardor case noted above) on the ground that it "den[ied] the integrity of the State of Israel and its very existence". This decision was arbitrary as it was not based on any evidence or any law, having been taken in the period predating the enactment of Article 7A of the Basic Law: The Knesset.