

Case study: Israel

Leveraging the state's checks and balances to achieve optimal conditions for gas licences



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ISRAEL, KEY INDICATORS 2015

POPULATION

8.4 millionⁱ

GDP PER CAPITA (PPP)

\$35,800ⁱⁱ

MAIN MINERAL RESOURCES

Oil, natural gas, magnesium, bromides, phosphates, potassium, calcium, sodium

RULING PARTIES

Likud, The Jewish Home, Kulanu, Shas, United Torah Judaism, Yisrael Beiteinu

RESOURCE RENTS AS % OF GDP

0.3ⁱⁱⁱ

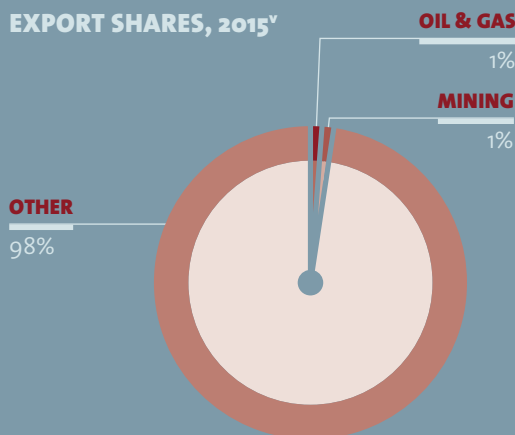
OPPOSITION PARTIES

Meretz, Hadash, Raam, Balad, Taal, Yesh Atid, Zionist Camp, Habayit Hayehudi^{iv}

POLITICAL SYSTEM

Parliamentary democracy

EXPORT SHARES, 2015^v



ⁱ "DataBank 2015," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/SP.POP.TOTL>.

ⁱⁱ "DataBank 2015," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD>.

ⁱⁱⁱ "DataBank 2015," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS>.

^{iv} Parliament of Israel, https://knesset.gov.il/faction/eng/FactionCurrent_eng.asp.

^v "DataBank 2015: Fuel exports as % of merchandise exports," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/TX.VAL.FUEL.ZS.UN> and "DataBank 2015: Ores and metals exports as % of merchandise exports," World Bank (2015), accessed 5 September 2016, <http://data.worldbank.org/indicator/TX.VAL.MMTL.ZS.UN>.

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Political system

The head of government and leader of a multiparty system in Israel is the prime minister, whose government exercises executive power. Legislative power is vested in the parliament (the Knesset). Since the country's independence, Israeli governments have been led by coalitions of Zionist parties. Today, Prime Minister Benjamin Netanyahu heads a coalition government comprising his party, Likud, Jewish Home, Kulanu, Shas, United Torah Judaism and Yisrael Beiteinu, which represent a wide range of interests from ultra-orthodox Zionism to greater economic equality. The Labor party leads the opposition.

Natural resource endowments and governance

Israel is not a resource-rich country according to the IMF definition.⁴⁸ However, in recent years, both gas and mineral discoveries have become increasingly important for its political economy and broader geopolitical interests. In 2009, Israel discovered the 10 trillion cubic feet (tcf) Tamar gas field off the north coast of the country. The discovery was followed by another major find in the same area the following year: the Leviathan field, estimated to contain 22 tcf of gas. This would make it the second largest offshore gas field in the Eastern Mediterranean, with the potential to turn Israel from a net energy importer to a net exporter.

Israel's legal framework is set by the 1952 Petroleum Law, which provides for a publicly announced licence allocation process but also assigns discretionary authority in decisions concerning petroleum rights to the minister.⁴⁹ This

⁴⁸ The authoritative *Guide on Resource Revenue Transparency* (IMF, 2007) defines mineral- and hydrocarbon-rich countries as follows: "A country is considered rich in hydrocarbons and/or mineral resources, if it meets either of the following criteria: (i) an average share of hydrocarbon and/or mineral fiscal revenues in total fiscal revenue of at least 25 percent during the period 2000–2005 or (ii) an average share of hydrocarbon and/or mineral export proceeds in total export proceeds of at least 25 percent." See <http://www.imf.org/external/np/fad/trans/guide.htm>, 2.

⁴⁹ Government of Israel, <http://energy.gov.il/English/Subjects/OilAndGasExploration/Pages/GxmsMniOilAndGasExplorationLobby.aspx>.

case study reviews how the Israeli opposition used institutional recourse mechanisms to scrutinize and reverse government action around the Leviathan field's export deal.

A battle between private and consumer interests in the parliamentary committee

At the time of their discovery, both the Tamar and Leviathan gas fields, in addition to the smaller Tanin and Karish fields, were owned by Noble Energy, a U.S. company, together with its Israeli partner Delek.⁵⁰ After Leviathan's discovery, the two companies, already producing gas from Tamar, sought to strike a production deal with the Israeli government, in order to exploit Leviathan. The proposed deal caused concern amongst opposition and the public, as it would grant a *de facto* monopoly to the two companies over Israel's gas resources. Initially, the Antitrust Authority moved to propose a deal whereby Noble and Delek would sell stakes in the smaller Tanin and Karish fields. However in December 2014, after public consultation and ahead of the 2015 general elections, with public opinion still against the deal, the Antitrust Authority objected to the proposed deal, due to the risk of higher gas prices for Israelis.⁵¹

Despite the antitrust commissioner's view, Prime Minister Benjamin Netanyahu sided with the companies, which argued that the decision significantly decreased Israel's attractiveness as an investment destination. Citing Israel's national interest with regard to security of energy supply and exports to neighboring countries, Netanyahu said, "This plan is vital to our security, because we don't want to be left with one power plant that's under fire; we need multiple gas fields."⁵²

On these grounds, the prime minister initiated the process of invoking the exemption clause (Article 52⁵³) of the Restrictive Trade Practices Law to circumvent the antitrust commissioner's objections. The required consultations with the parliament's economic affairs committee, headed by the Zionist Union MP Eitan Cabel (opposition), involved 11 committee sessions on the proposed circumvention, with testimonies and interventions from politicians and professionals from the sector. In heated committee debates, the ruling coalition appealed to national security as a justification for using Article 52, whereas the opposition focused on the deal's economic repercussions, arguing

⁵⁰ "Leviathan gas field targeted by Israeli regulator," *Financial Times*, 23 December 2014, <https://www.ft.com/content/40474f4a-8aaf-11e4-8e24-00144feabdc0>.

⁵¹ "Leviathan gas partners, Israeli government seek to break impasse," *ICIS*, 4 February 2015, <http://www.icis.com/resources/news/2015/02/04/9858480/leviathan-gas-partners-israeli-government-seek-to-break-impasse>.

⁵² "Meretz petitions High Court to block gas deal," *Times of Israel*, 17 December 2015, <http://www.timesofisrael.com/meretz-party-petitions-high-court-to-block-gas-deal>.

⁵³ Government of Israel, *Restrictive Trade Practices Law, 5748-1988*, <http://www.antitrust.gov.il/eng/Antitrustlaw.aspx>.

that increased competition would lead to a reduction of the electricity price for consumers. The opposition also argued that the prime minister had failed to convince the Knesset to use the exemption clause. After the 11 sessions, the committee voted by a narrow majority against the use of Article 52. Right-wing and religious parties aligned with the prime minister, as expected. The finance minister's Kulanu Party—whose agenda is focused on economic issues,⁵⁴ and hence it was expected to defend the interests of Israeli consumers concerned over an increase of prices of electricity—voted for the use of Article 52, facing fierce criticism from the opposition.⁵⁵ The opposition united against the use of the exemption clause, but despite their winning vote in the committee, Netanyahu ignored the nonbinding result of the committee vote and proceeded to sign the deal with Noble and Delek.

Coordination between opposition parties and the public to challenge the deal in the supreme court

Subsequently, the government was widely criticized for pressing ahead with the deal without having informed the public and taken their opinion into account.

“One can argue about the deal itself, the environmental and economic implications and the protections it guarantees or does not guarantee the public in the face of the huge monopoly of [Delek Group owner Yitzhak] Tshuva and Noble Energy...But one cannot argue about the bizarre and despicable behavior, and the anti-democratic and doubtfully legal actions of the prime minister, who promoted this deal as if he were possessed,” the opposition party Mertez wrote.⁵⁶

Support for the deal also steadily eroded within the Likud party. For example, the economy minister refused to use his right to invoke Article 52, thereby forcing the prime minister to take action.⁵⁷

Before the prime minister signed the final deal, opposition parties and civil society organizations, including the Mertez Party, Movement for the Quality of Government, and Israel Union for Environmental Defense joined forces and sent a petition to the High Court requesting it to intervene and block the deal, which they considered to favor the companies instead of citizens and the State of Israel. In March 2016, the Israeli High Court suspended the gas

⁵⁴ The party's economic agenda emphasizes the reduction of social disparities by proposing policies on housing, banking and finance, and other economic issues.

⁵⁵ The votes were as follows: 7 members (Zionist Union, Joint List, Meretz and Yesh Atid) against versus 6 members (Likud, Kulanu, United Torah Judaism and Shas) for. Unsurprisingly, all opposition members voted against the use of Article 52 by the prime minister.

⁵⁶ “Meretz petitions High Court to block gas deal,” *Times of Israel*.

⁵⁷ Haviv Rettig Gur. “Drilling into Netanyahu's gas deal and why some might oppose it,” *Times of Israel*, 1 July 2015, <http://www.timesofisrael.com/drilling-into-netanyahus-gas-deal-and-why-some-might-oppose-it>.

deal considering it to be unconstitutional. The court specifically opposed a clause in the deal that would have locked the conditions of gas production and exportation for 10 years, which has been introduced to reassure investors that considered Israel's regulatory uncertainty as a growing risk since the objection to the deal by the antitrust commissioner.⁵⁸

Debate over role of the government and other institutions continues

Following the high court's decision, the government was forced to renegotiate the terms of the deal. In May 2016, the government approved a new modified deal with a lower gas price and the obligation for the companies to sell other assets to reduce their overall control over gas deposits in Israel.

In a response to the high court's decision, a Likud MP declared that he would submit a draft law to prevent members of parliament from going to the high court if they lost a vote in the plenum, citing the gas deal case.⁵⁹ Opposition MPs have criticized this suggested action for threatening democracy.

Overall, the Leviathan case shows the importance of cooperation and coordination between opposition parties and civil society actors and the role that an independent judiciary such as the high court can play as a check against executive action.

⁵⁸ "Leviathan gas field targeted by Israeli regulator," *Financial Times*.

⁵⁹ "MK Seeks to Curb High Court Petitions," *Hamodia*, 23 June 2016, <http://hamodia.com/2016/06/23/mk-seeks-curb-high-court-petitions>.