

# The Netanyahu investigations: details, process and possibilities

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## Introduction

- *Israel's Attorney General (AG) Avichai Mandelblit will shortly announce his final decision whether or not to indict Prime Minister Benjamin Netanyahu for bribery, fraud and breach of trust in three separate corruption cases.* Netanyahu has said that he will not resign if he is indicted and he is not legally required to do so. But with Israel mired in a political standoff after two inconclusive general elections, the AG's decision will have a major political impact – especially if the country heads to a third election in March 2020.
- This briefing examines the corruption cases, maps out the different stages of the legal and political processes, and analyses potential future scenarios. It represents an update of a BICOM briefing 'The Netanyahu investigations: details, process and possibilities' published in February 2019 after the AG recommended that Netanyahu be indicted, pending a hearing.

## What cases are covered in the Attorney General (AG) investigations?

### Case 1000: gifts affair

- *The AG has recommended that Netanyahu be charged with fraud and breach of trust.*
- *It has been established that Benjamin Netanyahu and his wife Sara routinely received expensive gifts* ranging from cigars and champagne to expensive items of jewellery requested from wealthy businessmen. The bulk of accusations relate to Arnon Milchan, an Israeli billionaire Hollywood producer who is also known for his past service as an agent acquiring technologies for Israeli defence industries and nuclear programme. Milchan's business partner, Australian billionaire James Packer, has also given testimony, with media reports suggesting he shared costs for gifts. According to police, the illegal gifts that Netanyahu allegedly received amount to 1.25m shekels, or £300,000.
- *The police investigated whether the gifts constitute breach of trust (the receipt of gifts as a public official is against the law) and bribery.* It has been suggested that Netanyahu was acting in Milchan's interests in a deal to sell

an Israeli TV Channel (*Channel 10*) as well as helping him get a US visa, after Milchan's was rescinded. Netanyahu is also alleged to have pursued a deal linked to Indian businessman Ratan Tata, who was Milchan's business partner, and supported a law to extend tax breaks given to Israelis returning to live in the country after ten years (such as Milchan). Then-finance minister, and current Yesh Atid party leader, Yair Lapid reportedly refused to support the law and has testified that the Prime Minister pressured him to do so. Netanyahu claims that the gifts received were from personal friends, with no relation to his role as prime minister. Netanyahu's former Chief of Staff and close aide Ari Harrow has become a state witness in the case. The police also recommended that Milchan be charged with bribery.

### Case 2000: Arnon "Noni" Mozes and Yediot Ahronot

- *The AG has recommended that Netanyahu be charged with fraud and breach of trust.*
- *Netanyahu is accused of bribing Yediot Ahronot owner Arnon "Noni" Mozes for better media coverage,* by offering to restrict circulation of rival newspaper *Israel Hayom*, which is financed by US-based Netanyahu supporter Sheldon Adelson. A recording of a conversation between Netanyahu and Mozes found by police on the computer of Harrow (and since made public) is the basis for the case, and Harrow has become a state witness. Netanyahu claims he was not serious about what was discussed in the recording and never intended to implement the deal. The police also recommended that Mozes be charged with bribery.

### Case 4000: Bezeq affair

- *The AG has recommended that Netanyahu be charged with bribery, fraud and breach of trust.*
- *Netanyahu's appointee as Communications Ministry director general, Shlomo Filber, is accused of advancing the interests of Bezeq,* a large telecoms company owned by Shaul Elovitch, who is a close associate of Netanyahu. Related to this case, the state comptroller has already reprimanded Netanyahu for failing to disclose his relationship with Elovitch whilst holding the

portfolio as Minister of Communications.

## Background

- *In February 2018, after a 16-month investigation, the Israeli Police recommended that Prime Minister Netanyahu be charged with bribery, fraud and breach of trust in two corruption cases known as “Case 1000” and “Case 2000”. In December 2018, the police further recommended indicting Netanyahu for bribery, fraud and breach of trust in “Case 4000.”*
- Subsequently, the case materials were transferred to the State Prosecutor’s Office and Attorney General for review ahead of their own recommendations. *In February 2019 the Attorney General recommended that the Prime Minister be indicted for fraud and breach of trust in all three cases and an additional count of bribery in “Case 4000” – all pending a hearing.* According to the charge sheet made public, the AG softened some of the recommendations that were urged by the State Prosecutors.
- The pre-trial hearing, where a suspect’s lawyers can challenge evidence in their client’s case, in the hope of reducing or dropping the charges, took place in October 2019. The hearing took four days. Since the end of the hearing, prosecutors have reviewed all the case evidence and counter-arguments, with the final decision by the Attorney General whether or not to indict the Prime Minister expected in the week of 24 November 2019.
- *Netanyahu is innocent until proven guilty and he has consistently maintained his innocence, repeatedly stating that “there will be nothing because there was nothing” while arguing (either directly or through proxies) that the left wing, media, police investigators and State Prosecutors are politically biased and aim to topple him.* The argument is further extended to the Attorney General who, some Netanyahu supporters argue, is being unduly pressured by the above forces.
- *Netanyahu has also said throughout the process that he will not resign, even if formally indicted,* preferring instead to fight his battles in the political arena and, if need be, at trial. By law a sitting

Prime Minister does not have to resign until a final conviction and all appeals (up to the Supreme Court) are exhausted. Complicating matters, however, is the ongoing Israeli political impasse and the prospect of another repeat election.

## The party-political context to the AG’s decision

- *Despite the initial AG indictment decision coming just two months before the election in April 2019, it is arguable that the electorate had already “priced in” the issue to their calculations about who they would support in the elections.* Netanyahu’s favourability ratings remained high, even increasing after the AG announcement. Likud and Blue and White each won 35 seats in that election.
- *Those supportive of Netanyahu either dismissed the allegations entirely or stated that they would wait until after the pre-trial hearing to make a decision.* Those in opposition to Netanyahu used it as a political weapon during the campaign, with the Blue and White party refusing to serve in a Netanyahu Government after the election precisely due to his looming indictments, even before a hearing and final decision by the AG.
- *The second September 2019 election was a replay of the previous round in terms of the impact that the preliminary indictment decisions had on the campaign.* The pre-trial hearing took place weeks after election day but since a final decision was not immediately announced it too had a limited impact on coalition talks.
- *In the intervening months at least two key right-wing allies of Netanyahu did soften their positions.* New Right leader Naftali Bennett had previously said he would wait until all the facts were revealed before making his decision on whether to keep supporting the Prime Minister. In late August 2019, however, he stated that: “If there is a stable government, it would require something very very extreme to make me oppose immunity [for Netanyahu].” Immunity is a legal procedure approved by a Knesset vote, granting sitting lawmakers immunity from criminal prosecution.

- Finance Minister Moshe Kahlon also softened his position after re-joining the Likud Party in May 2019. As leader of the centrist Kulanu Party, Kahlon had previously said that Netanyahu could not continue to lead the country if he were to be indicted.
- *With the Netanyahu legal process set to now enter the period after a final decision to indict (Stage 1), the most immediate political impact will likely be on Blue and White's continued refusal to form a unity government with Netanyahu – now formally under indictment and facing an upcoming trial (Stage 3). A power-sharing proposal put forward by President Reuven Rivlin would also be impacted by the AG decision to formally indict. According to the initial proposal, Likud and Blue and White would enter into a unity government, with Netanyahu serving first in a rotating premierships with Benny Gantz. Under this scenario Netanyahu would indefinitely “suspend” himself from the premierships if formally indicted and/or a trial begins (the details were left to the two parties to negotiate, at this point unsuccessfully). The fact that the AG decision will likely come before any such agreement will make it that much harder to reach consensus on the exact timing of Netanyahu's “suspension.”*
- *The impact on Netanyahu's right-wing allies is expected to be muted. Despite the loss of a useful fig leaf in the form of the pre-trial hearing and final AG decision – whereby all decisions were delayed until after those took place – they and their electorates have likely again “priced in” the impact of a formal AG announcement to indict. They are therefore unlikely to break their alliance with the Prime Minister, especially with another election possibly just a few months away. As Justice Minister Ayelet Shaked, one of the leaders of the New Right party, said last year: “My opinion remains that, certainly until a final decision by the Attorney General after a hearing, we don't have to do anything ... by law, the Prime Minister can remain until he is convicted with a final verdict. Rationality dictates that the decision of one person, the Attorney General, cannot bring down a government.” Crucially,*

Shaked, Bennett and the New Right united with Likud in November 2019. Likud officials in particular are loath to be blamed for toppling their party leader, especially after the public battle Netanyahu and his close advisors and proxies have waged on the state's legal institutions.

### The public battle against a formal indictment

- *Netanyahu's corruption investigations have unfolded on two separate but parallel tracks: the legal and political/electoral. Aiming to influence both tracks, the Prime Minister has from the start publicly framed the allegations against him as politically motivated. Over the last two years he has described the corruption investigations as a “witch hunt,” “attempted coup,” and an effort by left-wing elements to “topple a right-wing government.” At every stage in the legal process he has publicly maintained that the “entire house of cards will collapse” and that the charges against him are overblown.*
- *In recent months he and his supporters have directed their ire at alleged misconduct by police investigators and blamed State Prosecutors for leaking transcripts from the investigations to the press. Netanyahu in October 2019 went further and described the investigations as a “terror attack against Israeli democracy.”*
- *In November 2019, leaked transcripts from the police investigation of Nir Hefetz, a former Netanyahu aide turned state's witness in Case 4000, appeared to show the police deploying aggressive interrogation tactics. In October 2019, Justice Minister Amir Ohana (Likud) held a press conference and effectively alleged that there was a deep state conspiracy against the Prime Minister, saying: “there is...a prosecution within the prosecution. There are those who, alongside a small cult of court reporters, have managed to establish a perception that a war of light against darkness [is being waged].”*
- *Such efforts to cast doubt on both the motives and professionalism of the legal authorities likely have a two-fold objective. First, to*

*apply pressure on the AG to soften his final indictment decision, and second, to maintain public (right-wing) support for the Prime Minister after a decision to indict.* Responding to the allegations made by Justice Minister Ohana, AG Mandelblit and State Prosecutor Shai Nitzan said: “The law enforcement system will not be dragged into the political sphere. No person will deter or dissuade us from the correct path.”

**The Netanyahu investigations: What happens next?**

The legal process is focused on the AG’s final indictment decision and a subsequent criminal trial; which the political process relates to the ongoing political impasse, prospects of a third election, and how politicians will respond to a final indictment decision, future elections results, and trial.

**Stage 1: AG announces final decision over whether to indict the Prime Minister**

**What happens?** The AG will make a final decision whether or not to indict Netanyahu and on what charges in the three cases. This is widely expected to take place in the week of 24 November, not least because State Prosecutor Shai Nitzan is set to finish his term the following month.

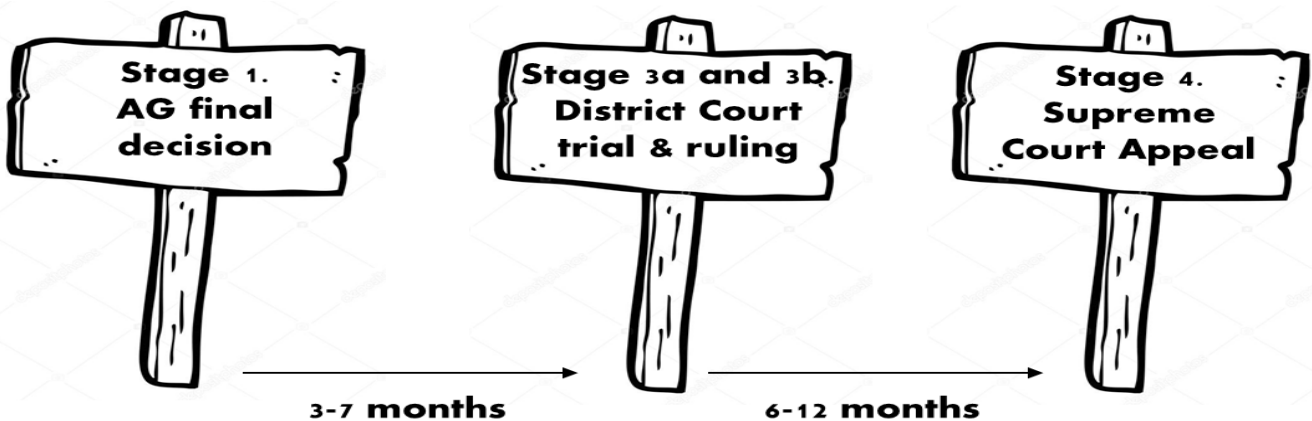
**Legal ramifications:** Netanyahu will not be legally obliged to resign. NGOs may petition the Supreme Court arguing that Netanyahu should be forced to resign, although they are unlikely to succeed. There is legal uncertainty over whether the so called ‘Deri-Pinhasi Precedent’

– a ruling which forces a Minister against whom the AG has filed an indictment to be removed from office if he does not resign – applies to the Prime Minister, and the Supreme Court is unlikely to intervene at this stage.

**Stage 2: Efforts to secure parliamentary immunity**

**What happens?** Within 30 days of the AG handing down a final indictment verdict, Netanyahu has the option to ask the Knesset to vote to grant him immunity. Under the ‘Knesset Members Immunity, Rights and Duties Law’ of 1951, Netanyahu would need the support of the Knesset ‘House Committee’ (on which the governing coalition has a majority) and the majority of Knesset members. Netanyahu may struggle to convince these bodies that one of the clauses necessary for the passage of the Immunity Law has been fulfilled, namely that the indictment was ‘not issued in good faith or as a consequence of discrimination.’ However, Netanyahu could focus on other clauses: that pursuing the case would cause great damage to the will of the voters who just elected him; and that dropping the charges would not substantially damage the ‘public interest’.

Based on the composition of the current Knesset, Netanyahu is unlikely to secure a majority either in committee or the overall plenum to grant him immunity. Complicating matters, however, is the possibility of the Knesset dispersing itself during this 30 day period and going to another election. Such a move would in all likelihood delay Netanyahu’s efforts to secure immunity, not least to await



the results of the election with the hope of securing a parliamentary majority. Yet such a transition period would likely also delay the start of any trial since the Knesset will not be convened to review the immunity request. There exists the possibility that the AG may ultimately decide to move forward and bring the cases to trial regardless, although this is viewed as an outside possibility.

**The political ramifications:** The final decision of the AG has to be viewed in two perspectives: whether Netanyahu is indeed indicted, and on what charges. Any dismissal of the most severe charge – bribery – will be spun as a public victory by Netanyahu and his supporters. Yet Netanyahu's Likud and other right-wing allies are likely to stand by him even after the AG's final decision, allowing the Prime Minister to remain in office until the results of any upcoming election illuminate his political future.

### **Stage 3: The case is heard by the Jerusalem District Court**

**What happens?** According to Israel's Basic Law, the Jerusalem District Court, consisting of a three-judge panel, is likely to hear the case given that the defendant is the Prime Minister. Depending on court procedures, it could start anytime up to 6-7 months after the AG's decision, although it may be delayed even longer if another election takes place and with it the wait for Netanyahu's parliamentary immunity procedure to run its course. Due to the breadth of evidence, the trial itself may take more than a year. Herein the question of whether Netanyahu is still Prime Minister once a trial begins may be crucial. Some legal analysts contend that if Netanyahu were no longer Prime Minister, the Tel Aviv District Court, consisting of a one judge panel, would hear the case. Such a scenario is believed to be less favourable for Netanyahu's legal prospects.

The court will deliver a verdict and then, if Netanyahu is found guilty, hand down a sentence soon afterwards. Section 284 of Israel's 1977 Penal Law, states that "[a] public servant who, in the performance of his duties, commits an act of fraud or a breach of trust that harms the public...is liable to imprisonment for three years". Sections 290 to 291 stipulate that a public official who agrees to or accepts any bribe in his or her official capacity may be

imprisoned for up to 10 years or face a fine.

**The legal ramifications:** Should Netanyahu, still serving as Prime Minister, be found guilty his political future may depend on whether the judges deem his offence to fall under 'moral turpitude'. This concept has no exact legal definition and former head of the Supreme Court Aharon Barak argued that 'the determining point is not the formal definition of the crime but the circumstances in which it was carried out'. While it is subjective, the decision over whether to brand a specific crime as involving moral turpitude is associated with crimes of a relatively high degree of severity, and generally include bribery.

If the judges rule that the offences include moral turpitude, the Knesset's 'House Committee' can decide to recommend he be removed from office, although this would require a majority of 61 MKs. If the offences are not deemed to fall under this definition, Netanyahu cannot be forced to resign.

**The political ramifications:** The Knesset has the option to remove a PM who is convicted of offences involving moral turpitude. But theoretically if coalition partners (and Likud) continue to support Netanyahu (considered an unlikely but not impossible scenario at this stage), he could continue to serve as Prime Minister until all his appeals, up to the Supreme Court, are exhausted.

### **Stage 4: Potential appeal to the Supreme Court**

**What happens?** Netanyahu could appeal against the District Court's decision to the Supreme Court. Rather than review the evidence, the three justices who sit on the appeal will examine whether the decision-making process of the District Court was correct. The time period between the District Court ruling and the Supreme Court hearing depends on the case load of the Supreme Court, but the assumption is it will prioritise the Netanyahu case. Once it begins, it will also be significantly shorter than the trial in the District Court.

**The legal ramifications:** The Supreme Court may partially accept or reject the appeal, change the District Court's verdict, annul it or give a new one. It can also return the case to the District Court with instructions.

**The political ramifications:** If Netanyahu's appeal is denied, his term as Prime Minister and the term of his government automatically ends. Experts believe the process is highly unlikely to reach this stage. But if it were to, the President would be tasked with asking the MK with the best chance of forming a governing coalition to do so, or failing that elections would be called.

## Conclusion

Netanyahu's future will ultimately be determined by two separate but parallel processes, the legal and political. However, with the legal process potentially taking years, Netanyahu's premiership will ultimately be decided by the political process and the extent to which his fellow Likud members and coalition partners stand by him after the AG announcement and, likely more crucially, after any future election.

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# The Netanyahu indictment: what next?

