



The Mossawa Center: the Advocacy Center for Arab Citizens in Israel

The Jewish Nation-State bill and its implications for democracy, human rights, and the Middle East Peace Process - November 29, 2017

The Israeli Knesset is expected to begin voting on its most recent proposed Basic Law, "Israel as the Nation-State of the Jewish People," in the beginning of December.¹ As a Basic Law, the legislation would have constitutional status, thereby redefining the character of the state and subordinating the Supreme Court and all other legislation to its provisions. **The bill poses considerable threats to democracy, human rights (especially minority rights), and the establishment of a viable Palestinian state based on pre-1967 borders. Thus, the Mossawa Center calls on the international community to act immediately against its passage into basic law.**

As its title suggests, **the bill seeks to define Israel as the nation-state of the Jewish people exclusively.** The first provision states: "The State of Israel is the National Home of the Jewish People; wherein the Jewish People fulfills its yearning for self-determination in accordance with its historical and cultural heritage."² Despite the presence of other groups with "historical and cultural" ties to the territory, the following line declares that **"The Right of national self-determination in the State of Israel is unique to the Jewish People."** This provision contradicts **Article One of the International Covenant on Civil and Political Rights**, to which Israel is a signatory, which states that **"All peoples have the right to self-determination."**

In recent years and especially since U.S. President Donald Trump expressed his ambivalence regarding the Middle East peace process,³ the idea of a one-state solution has become

¹ Having passed its preliminary reading in October, the bill is expected to enter its first reading in the beginning of December, followed by second and third readings.

² Cited from the official translation on the website of the Israeli Ministry of Justice (<http://www.justice.gov.il/StateIdentity/InformationInEnglish/Documents/BasicLawBill.pdf>)

³ Borger, Julian, and Peter Beaumont. "Donald Trump says US not committed to two-state Israel-Palestine solution." *The Guardian*, February 16, 2017. Accessed November 17, 2017.

increasingly prevalent in the discourse of Israeli officials and politicians.⁴ The Prime Minister himself suggested that the international community should reconsider the right of Palestinians to self-determination in a speech given in London at the beginning of November.⁵ Meanwhile, the growth of illegal settlements in the occupied Palestinian territories is rendering a two-state solution based on pre-1967 borders increasingly unlikely. With this in mind, the aforementioned provision denying the right to self-determination to non-Jews is particularly alarming. **If a single state is established over all of historical Palestine—a reality that is increasingly likely considering the unwillingness of the international community to intervene—the Jewish Nation-State bill, as law, will allow for the establishment of a state in which the majority of its citizens do not have the ability to exercise their basic civil right to self-determination.**

Although the Arab Palestinian minority constitutes over twenty percent of the population of Israel, the draft bill does not once make mention of Israel's Arab citizens. Article IV does, however, address the status of the Arabic language. **Where Arabic has been one of Israel's two official languages since the establishment of the state in 1948, Article IV of the bill threatens to downgrade its status.** Following the first provision of the article which states that "Hebrew is the state language," the bill declares that "Arabic shall have a special standing in the state; those who speak Arabic shall have access in their own language to State services, as prescribed by law." For the past seventy years, and despite it being an official language of the state, Arab citizens of Israel have struggled to protect their first language, Arabic. The Mossawa Center itself has gone to court to ensure that the state provide services in Arabic. **With the passage of the Jewish Nation-State bill, however, the Arab community will no longer have legal recourse to protect the status of Arabic.**

In what appears to be an attempt to protect the rights of the state's non-Jewish minorities, **Article IX** on the "Preservation of Culture, Heritage and Identity" states that "Each resident of Israel, without regard to his religion or nationality, shall be entitled to strive for the preservation of his culture, heritage, language and identity." This provision, however, falls short of the dictates of international law. According to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, **"States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity."** Although the Jewish Nation-State bill will require the state to "act to preserve the cultural and historical heritage of the Jewish People," in both Israel and abroad, it makes no

⁴ The Mossawa Center. "Winning the support of the National Union party, Knesset Deputy Speaker calls for end to two-state aspirations, coerced emigration of Palestinians, and annexation of the occupied Palestinian West Bank." September 13, 2017. <http://www.mossawa.org/en/article/view/696>.

⁵ Pfeffer, Anshel. "Netanyahu Suggests a Sovereign State Might Not Work for Palestinians." *Haaretz*. November 3, 2017. Accessed November 17, 2017.

such promises regarding the Palestinian Arab minority, thereby privileging Jews over Arab citizens.

The second provision of **Article IX** maintains that **“The State may permit a community, including the members of a single religion or the members of a single nationality, to establish separate community settlements.”** The Jewish Nation-State bill would therefore **legalize segregation based on the ambiguous often racialized categories of religious or national belonging. This provision, therefore, defies the International Convention on the Elimination of All Forms of Racial Discrimination.** Furthermore, according to scholar Oren Yiftachel, the state of Israel has established “close to 1,100 Jewish settlements between Jordan and the Mediterranean Sea.”⁶ In the same period of time it has destroyed over 400 Arab villages. The state has not established a single locality for its Arab Palestinian citizens aside from seven localities that it created on confiscated Bedouin land in the Negev which it uses to concentrate the Bedouin population. It is, thus, highly unlikely that this article will give rise to the establishment of Palestinian, Arab, Muslim, Christian, or Druze settlements.

Article XIII states that “Where a court decides that a dispute cannot be resolved by existing statute, by judicial precedent, or by strict legal analogy, it shall render its decision in accordance with the principles of freedom, justice, equity, and peace *derived from Jewish civil law.*” **Thus, the Jewish Nation-State bill would force citizens of Israel— regardless of religion—to comply with Jewish civil law, derived from the Torah, in cases without legal precedent.**

The aforementioned articles mark a climax in a legislative trend that has repeatedly privileged Israel’s Jewish population over the state’s non-Jewish (primarily Arab Palestinian) citizens.⁷ The law even sets out to privilege Jews who are *not* citizens of the state of Israel. **Articles V and VI grant “every Jew” the right to immigrate to Israel, simultaneously calling on the state to encourage such immigration by promoting “Jewish settlement in its territory.”** These articles not only provide for systematic national, ethnic, religious, and racial discrimination in immigration,⁸ but they also (re)legislate a long-held state policy which prioritizes non-

⁶ Yiftachel, O. (2012) “Naqab/Negev Bedouins and the (Internal) Colonial Paradigm.”

⁷ Adalah, the Legal Center for Arab Minority Rights in Israel, lists over 65 discriminatory Israeli laws on its “Discriminatory Laws Database.” To see the list, visit <https://www.adalah.org/en/law/index>.

⁸ Tens of thousands of non-Jewish asylum seekers, primarily from Sudan and Eritrea, currently live in Israel. As non-Jewish “infiltrators”—as prominent Israeli officials and politicians refer to them—they have little to no chance of attaining citizenship. Rather, Interior Minister Arye Dery and Public Security Minister Gilad Erdan intend to force them to return to Africa or face indefinite detention in Israel. The Jewish Nation-State bill threatens to legislate and further normalize such discrimination.

citizens that are Jewish over the welfare of non-Jewish, Arab Palestinian citizens. As mentioned above, the state has not established a single village or town for Arab Palestinian citizens of Israel, resulting in severe overcrowding in Arab localities. Rather than address this crisis by establishing and expanding localities for its Arab citizens, the bill only promises to provide such services to Jewish non-citizens, encouraging their settlement in its “territory,” which, again, remains undefined by the state of Israel.

The bill clearly denigrates the non-Jewish, Palestinian Arab minority to the status of second-class citizens. In fact, Article IX goes so far as to refer to non-Jews as “residents,” rather than citizens. Moreover, **keeping in line with Israeli Basic Law, the Jewish Nation-State bill does not once reference equality.**

Although the second article claims that the purpose of the bill is to “codify in a basic law the values of Israel as Jewish democratic state” **the bill does not at any other point reference democracy**, nor does it explain how the state can reconcile its ethnic, religious identity with its purported democratic identity.⁹ The prioritization of Jewish law in the absence of legal precedent and the preference given to the Jewish nature of the state poses the question whether or not such an ethnic, religious state is compatible with pluralistic democracy.

For more information, please read the official translation of the bill (<http://www.justice.gov.il/StateIdentity/InformationInEnglish/Documents/BasicLawBill.pdf>) and/or contact the Mossawa Center at project.mossawa@gmail.com.

⁹ In fact, two basic laws have already defined Israel as Jewish and democratic, rendering this bill a means to ensure the Jewish character of the state is prioritized over democracy, minority rights, human rights, civil rights, and equality. In fact, several Israeli ministers and members of the Knesset, including the bill’s supporters, have recently called on state institutions to “balance” nationalism with human rights. Justice Minister Ayelet Shaked, for example, stated publicly in August that “Zionism should not continue and will not continue to bow down to the system of individual rights interpreted in a universal way.”