



The Association for Civil Right in Israel's Position Regarding the Definition of Israel as a "Jewish State" within the Constitution

Approved by ACRI's Board of Directors on 11 July 2006

A constitution is a document that supersedes ordinary legislation which can be amended by an ordinary majority, and as such, determines the fundamental principles and rules that govern the democratic process. It also plays a central role in protecting human rights within a state and determining the framework for the shared existence of all its citizens. It is therefore necessary to take great responsibility when deciding upon each word that is to be included in the text of a constitution, and to make every effort to consider its past context as a means of assessing its potential impact on the future. In addition to the constitution's practical implications, the document also bears declarative and educational force which can shape and influence the public mood of the state; this aspect of the constitution should also be accorded weight during the drafting process.

In light of the above, The Association for Civil Rights in Israel (ACRI) wishes to emphasize the necessity of fully refraining from including any definition within the constitution which is liable to contravene one of the fundamental tenets of democracy: equality for all citizens regarding their rights and their belonging to the State, without distinction as to national origin, religion, or ethnicity.

ACRI recognizes the importance of the right to self-determination for all peoples – a right that is recognized by international conventions and international law. In light of the current situation in our region, and the ongoing Israeli-Palestinian conflict, ACRI, as a human rights organization that is not associated with any national movement, does not deem it within our mandate to voice an opinion concerning the appropriate political and constitutional solution from among those that have been proposed that will ensure the realization of this right for both peoples.

In the same context, and even though on a principled level ACRI supports the enactment of a constitution that would enshrine human rights, ACRI sees a major difficulty in attempts to draft a democratic constitution for the State of Israel as long as Israel continues to impose a regime of military occupation on millions of Palestinians who do not enjoy basic civil rights, and for whom, in any case, this constitution would not apply.

Despite these reservations, draft proposals for a constitution are currently on the public agenda, and ACRI has been asked on a number of occasions to provide our opinion regarding these proposals, and specifically, to express our position regarding the definition of the State of Israel as a “Jewish state” within the constitution. ACRI has therefore formulated the position set forth below, which will guide our organization in our approach toward these proposals:

1. The suggestion that the State of Israel be defined as a “Jewish state” within a binding clause in the constitution is problematic both on a principled and on a practical level:

a) The fact that the state is defined in the constitution as a Jewish state establishes a hierarchical differentiation between Jewish citizens of the state – to whom the state supposedly “belongs” – and non-Jewish citizens – to whom the state supposedly does not “belong” – thereby excluding non-Jewish citizens and discriminating against them, if only on a declarative level.

b) The phrase “Jewish state” (as well as other similar phraseology such as: “the State of the Jewish People”, “the State of the Jews” etc.) is a nebulous phrase that lends itself to multiple interpretations. Its inclusion in a binding clause within the constitution creates a wide and dangerous opening for justifying discriminatory and racist policies toward non-Jews, and raises the fear that human rights protections will be subjugated to this principle, which will also be used to justify the discriminatory allocation of human rights. The existing reality of longstanding discrimination against the Palestinian minority only reinforces the fear that this could be used as a means of justifying the violation of the rights of those persons who are perceived as posing a threat to the Jewish character of the state, i.e. Arab citizens.

2. ACRI believes that it is appropriate that the constitution give expression to the fact that the State of Israel was established as a realization of the aspirations of the Jewish people to political self-determination, and to the fact that this right is now realized within the State of Israel. This is in addition to the need to give expression to the existence of citizens of the state who belong to the Palestinian people, who are entitled to full equality and to the protection of their rights as a national indigenous minority within the state. However, in ACRI’s opinion, and as is accepted practice in the constitutions of democratic states throughout the world, it is more appropriate that the relationship between the state and national identity, as stated above, be included in the preamble to the constitution and not as a binding clause within it.