

The Basic Law: Israel – The Nation-State of the Jewish People

November 2018

A new constitutional order in Israel

The Israeli Knesset enacted *The Basic Law: Israel – The Nation-State of the Jewish People* on 19 July 2018 by an ordinary parliamentary majority of 62 to 55. The law sets forth the constitutional order of Israel and articulates the ethnic-religious identity of the state as exclusively Jewish. It is the “law of laws”, capable of overriding any ordinary legislation. It alters the constitutional framework of the state, making changes that violate established international norms: there is no democratic constitution in the world that designates the constitutional identity of the state on racial grounds, as serving one ethnic group.

The law is not merely declarative or a confirmation of the *status quo ante*: while the state’s policy of discrimination against Palestinians has existed since 1948, there is a major difference between discriminatory practices and the codification of these policies in a new Basic Law with constitutional status. The law lends discriminatory policies against Palestinians greater legitimacy and *requires* the executive, judiciary and other authorities to implement them under the rule of law. The law also reduces the very grounds on which such discrimination can be challenged under Israeli law.

Despite the foundational nature and far-reaching scope of the Jewish Nation-State Law, however, it contains no commitment to democratic norms, or a guarantee of the right to equality, or a prohibition of discrimination on the basis of race, nationality, ethnicity or any other category for all people living under Israeli sovereignty. Indeed, it does not even define its citizenry, referring instead to the Jewish people as its subject, and defining sovereignty and democratic self-rule as belonging solely to the Jewish people, wherever they live around the world. Since the law negates basic democratic principles to the point of undermining the constitutional structure of the state, in Adalah’s view, the Knesset severely exceeded its powers as a constituent authority in enacting it. Based on all of the above, the law bears distinct characteristics of apartheid.

Main provisions of the Jewish Nation-State Law

- **Article 1** states that the Land of Israel (“Eretz Israel”) is the historic national home of the Jewish people, in which the State of Israel was established, and in which the Jewish people exercises its natural, cultural, and historic right to self-determination. It adds that the right to exercise national self-determination in the State of Israel is solely for the Jewish people.
- **Article 2** sets forth the symbols of the state, all specifically Jewish in character.
- **Article 3** defines the capital of Israel as Jerusalem, which includes occupied East Jerusalem.
- **Article 4** states that the official language of the state is Hebrew, demoting Arabic, which was previously a second official language, to a language with an undefined “special status”.
- **Article 5** establishes that immigration leading to automatic citizenship is exclusive to Jews.
- **Article 6** provides that the state will strengthen ties between the state and Jewish people around the word, and preserve the cultural, historic, and religious heritage of the Jewish people in the Diaspora.
- **Article 7** provides that the state views development of Jewish settlement as a national value, and will act to encourage, promote and consolidate its establishment, thereby instituting segregation as a new legal norm, and allowing for the annexation of the West Bank.

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What the Jewish Nation-State Law does

The law constitutionally enshrines – for the first time – the identity of the State of Israel as the national home of the Jewish people only. The law identifies *Eretz Israel*, or the “Land of Israel”, as the area to which it applies. *Eretz Israel* includes all of the West Bank, including East Jerusalem. In Adalah’s view, therefore the law intentionally puts an end to the two-state solution, as currently conceived by the international community.

The law limits the realization of national self-determination in the State of Israel exclusively to the Jewish people, and specifies that immigration leading to automatic citizenship is for Jewish people only. The law thus explicitly rejects the right of the Palestinian people to self-determination in any area in Palestine. The law elevates the Law of Return – 1950 from that of a regular statute to that of a constitutional law.

The law recognizes Palestinian East Jerusalem and the Syrian Golan Heights, which are occupied under international law, as an integral part of Israel, and imposes on their residents the constitutional identity of Israel as a Jewish state.

By providing for Jewish settlement (only) as a national value throughout *Eretz Israel* (*when read with Article 1*), the law institutes racial, ethnic and religious segregation as a new legal norm. In the OPT, it gives legal justification to the establishment and retroactive legalization of the settlements, and gives existing annexations and laws constitutional backing; indeed the annexation of the West Bank was a major purpose behind the law.

Within the Green Line, the law gives constitutional backing to the state to consolidate Jewish demographic majorities throughout Israel, and is likely to be used to establish exclusively Jewish towns in areas where Palestinian citizens are most concentrated, including the Galilee and the Naqab (Negev) desert in southern Israel, the traditional home of the Bedouin. Further, the law legitimizes discriminatory land policies, such as admissions committees that filter non-Jewish families and individuals out of small towns throughout the state. It would also give constitutional justification to discriminatory budgeting policies that channel public funds to Jewish communities and even to Jewish individuals, for the purpose of incentivizing them to relocate to certain areas.

The new Basic Law denies the collective rights of Palestinian citizens of the State, who comprise 1.5 million people or 20% of the population of Israel and constitute a homeland minority group under international human rights law. It nullifies the former status of Arabic as an official language, leaving Hebrew and the state’s sole official language. Only Jewish people are represented in the symbols of the state: the national anthem is “Hatikvah”, the flag is the Israeli flag (a prayer shawl), Independence Day is a national holiday, the Hebrew calendar is an official calendar of the state, the official memorial days and holidays are Zionist-Jewish holidays, and the state is mandated to foster ties with Diaspora Jewry.

Adalah calls upon members of the international community to urge Israel to:

1. Cancel the Jewish Nation-State Law; and/or
2. Abstain from implementing the law in a manner which results in violations to the rights of both Palestinian citizens of Israel and Palestinian residents in the OPT;
3. Voice grave concern about the denial of rights’ protections of Palestinians under the law;
4. Uphold the rights to equality and to freedom from discrimination for all those living in areas under Israel’s control;
5. Allow for the fulfillment of the right to self-determination of the Palestinian people.