

Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الأقلية العربية في إسرائيل
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



21 October 2018

To:

- Professor Fernand de Varennes UN Special Rapporteur on minority issues
- Professor E. Tendayi Achiume, UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance
- Professor Michael Lynx UN Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967

Dear Professors de Varennes, Achlume, Lynx,

Greetings to you from Adalah – The Legal Center for Arab Minority Rights in Israel.

We are writing now to follow-up on a series of telephone calls, emails and discussions with my colleagues Adalah Attorneys Suhad Bishara and Sawsan Zaher, and International Advocacy Coordinator Soheir Asaad regarding new Israeli constitutional legislation, *Basic Law: Israel – The Nation-State of the Jewish People (JNS Law)*, enacted by the Knesset in July 2018.

Kindly find attached Adalah's request for an urgent action procedure that we submitted to the UN Committee on the Elimination of Racial Discrimination (CERD) in September 2018. While the Committee has acknowledged receipt of our request, to date, we have not received any substantive response.

We waited to address you in writing, as we were preparing the English translation of our legal petition to the Israeli Supreme Court. Adalah is representing all of the Arab political leadership in Israel in this case – The High Follow-up Committee for Arab Citizens in Israel, the Joint List (Arab members of the Knesset), and the National Committee for Arab Mayors – and demanding that the Court cancel the law, as it contradicts fundamental international human rights norms in place since the end of World War II; negates almost 20 years of Supreme Court caselaw concerning the right to equality and land rights; and constitutes an abuse of power by the majority in the Knesset, among other arguments. As the petition is now available in English, we are linking it here as well.

Link to the petition:

https://www.adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_English_Final_October_2018.pdf?mc_cid=6c9b86dc94&mc_eid=0455bda52e

In addition to detailing the Basic Law's violation of the rights of the Palestinian minority in Israel, the petition also highlights, in several respects, how the new law violates the rights of Palestinians living under occupation in the OPT. These rights include: the right to self-determination, land rights, and issues relating to Jerusalem, among others.

The Israeli Supreme Court has scheduled a hearing on this case, as well as petitions filed against the law by other groups, on Monday 28 January 2019. We expect the state to respond to the petition about one month before the hearing at the end of December 2018.

In Adalah's view, the JNS Law constitutes a grave violation of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). We urge you to issue a letter of concern urging Israel to revoke the new Basic Law, and instead to implement measures to prohibit all forms of discrimination.

Thank you in advance for your attention to these matters. Please do not hesitate to contact us with any questions.

Sincerely,

Rina Rosenberg (Jabareen)

International Advocacy Director

Adalah - The Legal Center for Arab Minority Rights in Israel

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September 6th, 2018

Prof. Nouredine Amir, Chairperson

UN Committee on the Elimination of Racial Discrimination

Geneva, Switzerland

Cc: Secretariat of the Committee

Re: Request for urgent action procedure on the Basic Law: Jewish Nation-State (Israel)

Dear Mr. Chairperson,

Adalah – The Legal Center for Arab Minority Rights in Israel writes to request that the Committee on the Elimination of Racial Discrimination (CERD) consider for an urgent action procedure the new Israeli constitutional legislation, *Basic Law: Israel – The Nation-State of the Jewish People* (hereinafter “Nation-State Law”), adopted on 19 July 2018 by the Israeli parliament (Knesset).

The purpose of this new legislation is to set forth the identity of the State, and through its provisions, it enshrines racial discrimination against the Palestinian population in all areas under Israeli state control. In defining the identity of the State of Israel as the nation-state of the Jewish people *alone*, and by restricting the right for self-determination solely to Jews, the Nation-State Law legitimizes discrimination against Palestinian Arabs, along with other non-Jewish citizens. Further, the law denies the collective rights of Palestinian citizens of the State, who constitute a homeland minority group under international human rights law. The Nation-State Law directly violates various provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as other instruments of international human rights and humanitarian law.

In Adalah’s view, the Nation-State law constitutes one of the most extreme measures in a series of governmental actions that may lead to the establishment of an apartheid regime rooted in the systematic oppression of and discrimination against the Palestinian population.

On 7 August 2018, Adalah, on behalf of all of the Arab political leadership in Israel – the High Follow-Up Committee for Arab Citizens of Israel, the National Committee of Arab Mayors, the Joint List parliamentary faction filed a petition against the Nation-State law to the Israeli Supreme Court.¹ Numerous other groups have also submitted petitions, and the Supreme Court will hold its first hearing on this matter on 28 January 2019.

The Basic Law consists of eleven sections, summarized below:

¹ (Supreme Court) HCJ 5866/18, *High Follow-up Committee for Arab Citizens of Israel et al. v. The Knesset and the Attorney General* (case pending). See Adalah’s press release:

<https://www.adalah.org/en/content/view/9574>

See also Adalah’s collected resources on the Nation-State Law, including an English translation of the Law, on our website: <https://www.adalah.org/en/content/view/9569>

- (1) Section 1 defines Israel as the “historical homeland of the Jewish people,” art. 1(a), and the “national home of the Jewish people, in which it fulfills its natural, cultural, religious and historical right to self-determination,” art. 1(b). It further limits the right to self-determination as “unique to the Jewish people,” art. 1(c).
- (2) Section 2 provides the State’s name and describes its symbols: the Star of David, centered on the blue and white striped background as the state flag, art. 2(b); the seven-branched menorah as the state emblem, art. 2(c); and “Hatikvah” as the state anthem, art. 2(d).
- (3) Section 3 identifies the capital as “Jerusalem, complete and united.”
- (4) Section 4 recognizes Hebrew as the only official language of the State, art. 4(a), while demoting the Arabic language to an undefined “special status,” art. 4(b).
- (5) Section 5 opens the State to “Jewish immigration and the ingathering of exiles.”
- (6) Section 6 characterizes the relationship between the State and Jews in the Diaspora, committing Israel to: “ensure the safety of the members of the Jewish people,” art. 6(a); “strengthen the affinity between the State and members of the Jewish people,” art. 6(b); and “preserve the cultural, historical and religious heritage of the Jewish people among Jews in the Diaspora,” art. 6(c).
- (7) Section 7 declares “the development of Jewish settlement as a national value” and demands the State to “encourage and promote its establishment and consolidation.”
- (8) Section 8 establishes the official calendars as the Hebrew and Gregorian calendars.
- (9) Section 9 lists Independence Day as the official national holiday, art. 9(a), and Memorial Day for the Fallen in Israel’s Wars and Holocaust and Heroism Remembrance Day as official memorial days, art. 9(b).
- (10) Section 10 declares the Jewish Sabbath and festivals of Israel as days of rest and provides non-Jews the right to maintain their own days of rest.
- (11) Section 11 requires a majority in the Knesset to amend the Nation-State Law.

In establishing the principles of discrimination, exclusion, and Jewish preference as constitutional values, the Nation-State Law directly violates Israel’s obligations as a State party to the ICERD. By limiting the right to self-determination to Jews only, the Basic Law grants the Jewish population alone the collective right to govern, to control the territory and its inhabitants, and to decide the allocation and distribution of rights and resources. The Nation-State Law explicitly rejects the collective rights of the Palestinian people to self-determination. Moreover, by extending this right to all Jews worldwide, not just Israeli-Jews, the law entrenches racial, ethnic, and national distinctions by providing a basis of equality for all Jews while excluding non-Jews, and in particular Palestinians, regardless of territorial affiliation or existing relationship to the State.

The Basic Law further affirms the principle of apartheid in citizenship, housing and land, and by encouraging, promoting and encouraging Jewish settlement throughout “Eretz Israel,” the entirety of Mandatory Palestine, including occupied territory. It therefore seeks to legitimize and accelerate Jewish settlement of the 1967 Occupied Territories, violating the rights of Palestinians in East Jerusalem and the wider West Bank and of Syrians living in the Golan Heights. The Nation-State Law also violates the collective language, cultural, and religious rights of Palestinian citizens of Israel, demoting the Arabic language, formerly an official language, and assigning to it a diminished “special status”, and affording constitutional status

to state symbols and national holidays that are all exclusively derived from Jewish religious and cultural history.

While the explicit provisions of the Nation-State Law violate international law, what is absent from the law is of equal concern. Despite the foundational nature and far-reaching scope of the Nation-State Law as a constitutional law, in it there is no commitment to democratic norms, or a guarantee of equality, or a prohibition of discrimination on the basis of race, nationality, ethnicity or any other category. The Nation-State Law also offers no definition of who is a citizen; it instead affords constitutional status to the Law of Return, which allows every Jewish individual the prospect of acquiring Israeli citizenship. As a result, the Nation-State Law confirms preferential treatment for foreign, non-citizen Jews, while denying the same opportunities and status to indigenous Palestinians.

Discussions in the Knesset during the legislative process provide further evidence of the racist and discriminatory purpose of the Nation-State Law. Proposals to anchor the principle of equality in the Basic Law were repeatedly rejected, despite a comparative survey revealing that no recently adopted democratic constitution restricts sovereignty to a single racial, ethnic, or religious group. It is also the case that States which have defined themselves in ethnic, racial or religious terms have turned the dispossession, oppression, and degradation of indigenous populations into discriminatory state policy.

The Nation-State Law as a whole constitutes an affront to the very purpose of ICERD. The Basic Law falls under the definition of racial discrimination set out in art. 1(1), and violates the key prohibition of racial discrimination, art. 2(1)(a-b), and of racial segregation and apartheid, art. 3. Not only is Israel engaging in prohibited conduct, but it is also rejecting the affirmative obligations to end racial discrimination, art. 2(1)(d), to nullify laws creating or perpetuating such discrimination, art. 2(1)(c), and to discourage the strengthening of racial division, art. 2(1)(e). The Nation-State Law also has serious implications for the guarantee of equality without distinction to race or national or ethnic origin in the enjoyment of political rights, art. 5(c); civil rights such as the right to return to one's country, art. 5(d)(ii), right to nationality, art. 5(d)(iii), right to own property, art. 5(d)(v), and the right to freedom of conscience and religion, art. 5(d)(vii); and socio-economic rights such as the right to housing art. 5(e)(iii) and the right to equal participation in cultural activities art. 5(e)(vi).

The Nation-State Law will detrimentally affect many communities currently under the control of the State of Israel. First, the Basic Law will be directly implemented within the "Green Line" (Israel), where Palestinian citizens of the State constitute approximately 1.5 million people or 20 percent of the population. Second, the Basic Law will apply to East Jerusalem and to the Golan Heights, territories annexed by the State of Israel illegally under international law. Third, as art. 1 refers to "Eretz Israel," the entirety of Mandatory Palestine, the Nation-State Law also extends to the occupied West Bank.

Action against the Nation-State Law is particularly urgent given its constitutional stature. The Nation-State Law is the "law of laws" capable of overriding any ordinary legislation since it defines the constitutional identity of Israel. On several occasions, this Committee has observed Israel's discriminatory practices related to, among others:

- The unequal allocation and management of land, housing, and related services and resources (CERD/C/ISR/CO/14-16, para. 15; CERD/C/ISR/CO/13, para. 19);

- The segregation and unequal treatment of Jewish and Arab populations, specifically in housing and education (CERD/C/ISR/CO/14-16, para. 11; CERD/C/ISR/CO/13, para. 22);
- The unequal access to work and public services (CERD/C/ISR/CO/14-16, para. 16; CERD/C/ISR/CO/13, para. 21);
- The unequal promotion of Jewish cultural institutions while neglecting those of non-Jewish communities (CERD/C/ISR/CO/13, para. 28);
- The dispossession and displacement of indigenous Palestinian communities (CERD/C/ISR/CO/14-16, para. 20; CERD/C/ISR/CO/13, para. 25);
- The creation of two separate legal systems and institutions for Jews and Palestinians (CERD/C/ISR/CO/14-16, para. 24, 27).

Israel has now constitutionalized these practices.

CERD has also previously indicated its concern that the definition of Israel as a Jewish Nation may lead to “systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights” (CERD/C/ISR/CO/13, para. 18).

The Committee has also recommended that the State ensure the prohibition of racial discrimination and the principle of equality are included in the Basic Law as constitutional norms (CERD/C/ISR/CO/14-16, para. 13; CERD/C/ISR/CO/13, para. 16), while making every effort to eradicate all forms of segregation between Jewish and non-Jewish communities (CERD/C/ISR/CO/13, para. 11).

By enshrining racial discrimination and apartheid in its constitutional domestic law, the State is sending a clear and unequivocal message of Jewish preference, obliging all public authorities and institutions to discriminate against Palestinian Arabs and other non-Jewish groups within the population, thereby turning discrimination into an official and institutional matter.

We therefore request that the members of the Committee initiate an urgent action procedure, with the aim of declaring the Nation-State law in grave violation of ICERD. We also call upon the Committee to urge Israel to revoke the new Basic Law, and instead implement measures to prohibit all forms of discrimination and guarantee equality for all its citizens.

Yours sincerely,



Hassan Jabareen, Advocate
General Director, Adalah