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Arab Center for Research & Policy Studies

ASSESSMENT REPORT

Israel as a Legally Codified “Jewish Nation”

Israel to Legally Enshrine “Jewish Nation”

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The Arab Center for Research and Policy Studies is an independent research institute and think tank for the study of history and social sciences, with particular emphasis on the applied social sciences.

The Center's paramount concern is the advancement of Arab societies and states, their cooperation with one another and issues concerning the Arab nation in general. To that end, it seeks to examine and diagnose the situation in the Arab world - states and communities- to analyze social, economic and cultural policies and to provide political analysis, from an Arab perspective.

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Arab Center for Research and Policy Studies

PO Box 10277

Street No. 826, Zone 66

Doha, Qatar

Tel.: +974 44199777 | Fax: +974 44831651

www.dohainstitute.org

Table of Contents

Introduction	1
Jewishness Trumps Democracy	1
The Legislative Beginnings of the Jewish Nation-state	2
Provisions of the Bill	3
Conclusion	6

Introduction

On Wednesday, May 10, Israeli legislators in the ruling coalition approved a preliminary reading of the so-called “Jewish Nation-state” bill, sponsored by Avi Dichter, a Likud Party parliamentarian. It passed a reading by the Knesset’s Plenum by a vote of 48 to 41. If ultimately approved, the bill would form part of Israeli “Basic Law”—a part of its de-facto constitution—and define the State of Israel as exclusively the state of the “Jewish nation”. It is the latest in a series of measures being spearheaded by the ruling nationalist camp which seeks to legally and authoritatively define Israel as the nation-state of the Jewish people. This Report offers a survey of the most salient features of the proposed legislation, and its potential impacts on the Palestinians who hold Israeli citizenship.

Jewishness Trumps Democracy

Since coming to power under current premier Benjamin Netanyahu, Israel’s self-proclaimed “National Camp”, a coalition of conservative and far-right political forces has wasted no time in redefining the limits of Israeli political discourse. This has had an effect, particularly, on the national consensus of the limits of acceptable opposition. For the ruling coalition, the Jewish national character of the Israeli state must have precedence over democracy: in other words, while the state apparatus can take a democratic form, its fundamental nature is Jewish. By creating a “Jewish Democracy” in this way, the Palestinian citizens of Israel (also known as “1948 Arabs” or “Arab Israelis”) are relegated to the status of what is, at best, a tolerated community given the privilege of living in the state.

The latest bill is in fact reflects a surge in fascistic sentiment in evidence for at least the past decade, a period during which the Israeli legislature has passed scores of racist laws¹. Parliamentary backing for these laws came from what was in fact a wider range of Zionist

¹ Such laws have brought racism into nearly every facet of life for Palestinian citizens of Israel, and they cover such issues as: the withdrawal of citizenship for Palestinian citizens of Israel; which legalize racist “Approval Committees” that control who lives in state-funded towns; which regulate the funding of civil society bodies; which oversee zoning and urban planning; which deprive former members of the legislature of their state pensions; which govern the development of communities in the Negev Desert; which provide for special benefits for (effectively all-Jewish) veterans of the Israeli armed forces; and which legislate the persecution of persons accused of crimes against state security.

groups, including mainstream Zionist and even left/liberal Zionist parties. Their aim was both to disenfranchise Palestinian citizens of Israel as well as civil society organizations opposed to racist policies against Palestinians.

Over the past six years, an increasingly fanatic preoccupation with the “Jewishness” of the Israeli state allowed Netanyahu and his coalition partners to impose their agenda on the public space. This has leaked into not only Israeli domestic politics, but has impacted negotiations with the Palestinian National Authority as well. Specifically, these efforts have taken the form of proposed legislation which defines Israel, through its Basic Law, as the national home of the Jewish people. If passed, the state’s Jewish character would have precedence over other values, such as equality before the law and liberty—in other words, it would undermine democracy.

Aside from merely formalizing a general rightwing, national-religious chauvinism, such laws pave the way for the expansion of existing forms of discrimination against Palestinian citizens of Israel by state institutions. It would also deprive them of their collective identity, turning them into transient, unwelcome people living as second-class citizens in their own land.

The Legislative Beginnings of the Jewish Nation–state

In August 2011, MK Avi Dichter, a former Director of the Israeli Intelligence Services, along with Likud party MK Ze’ev Elkin first proposed the draft “Basic Law: Israel as the Nation-State of the Jewish People”. That version had been drafted by the far-right Institute for Zionist Strategy associated with extreme right-wing Jewish movements such as *Zo Artesino*². The bill was backed by 40 Knesset members, coming from a wide spectrum of the mainstream Israeli political landscape. At the time, however, the law faced strong and diverse opposition in the Knesset, including from the body’s own Legal Adviser. In his rare intervention, the adviser emphasized that the proposed Jewish Nation-state Bill would upset the delicate balance between the Jewish and democratic identities of the state. He argued that the Bill sought to advance the Jewish nature of the state at the expense of democracy, calling for an in-depth dialogue around the law before then-leader of Kadima, former Foreign Minister Tzipi Livni leaned on Dichter to withdraw support for the draft³.

² For more information: <http://izs.org.il/he>

³“Under pressure of Livni, Dichter pulls proposed ‘Nation’ law,” *Haaretz*, 14/11/2011, accessed on 16/5/2017, in Hebrew: <http://www.haaretz.co.il/news/politics/1.1566232>

With time, the entire Israeli political landscape was polarized along the lines of this Bill. While members of the self-appointed “National Camp” pushed for its approval in the Knesset, centrist and left-wing Zionist parties objected to its provisions and demanded that the draft legislation be amended to achieve a balance between Jewishness and democracy. In 2014, a previous Israeli government—at the time also headed by Netanyahu, but under a different coalition—approved a number of National Law proposals submitted by Knesset members, including Ze’ev Elkin, Ayelet Shaked and Benjamin Netanyahu himself, but it was unable to submit any of these bills to the Knesset legislative authority, because of the strong opposition of Tzipi Livni, who was then Minister of Justice.

In 2015, however, Netanyahu returned as head of government—but this time, under a much more ideologically rigid coalition centered exclusively on the “National Camp”. The terms which governed the formation of the present ruling coalition explicitly demanded that the Prime Minister establish a committee, drawn from parties which took part in the government, to draft a “Basic Law” on the “Jewish Nation”. Donald Trump’s inauguration in Washington served only to intensify demand by the far-right that this bill be expedited, and the Ministerial Committee on Legislation approved it on May 7, 2017. It passed a preliminary reading in parliament on May 10. Today, the Jewish Nation-state Bill must pass through a further three readings and be approved by an outright majority of 61 members of the Knesset.⁴

Provisions of the Bill

Although there were slight differences between the different proposals of the National Law, they all essentially provide the same definition of the Jewish state and impose Jewish supremacy and the interpretation of other laws accordingly. It is thus possible to analyze Elkin’s proposed “Basic Law: Israel, the national state of the Jewish people. The government is likely to make changes before submitting it to the Knesset for a first reading, likely to be a lengthy process.

The proposal consists of 15 Clauses. **Article 1 (a)** states that

⁴ A draft proposed by Ayelet Shaked and Yariv Levin differs from the Dichter bill in two ways. Firstly, it does not cancel state recognition of Arabic as an official language alongside Hebrew. Secondly, they do not explicitly call for the possibility of separating the Jewish and Arab citizens of the State. Yet Israeli lawmakers have already enacted a “Selection Committees” law, which in effect allows for physical segregation.

"The State of Israel is the national home of the Jewish people, in which they realize their aspiration to self-determination in accordance with their cultural and historical heritage".

It is a reflection of many of the ideological fallacies inherent in Zionism, such as treating the followers of the Jewish religion in Israel and the world as one nation, irrespective of borders, continents, languages, and nationalities. It also manufactures the Israeli right of self-determination based on their "historical and cultural heritage", thus fabricating a link to Palestine. This is in full knowledge that the 20th century Jewish settler presence in Palestine began in the context of a racist colonial movement allied with colonial powers for the purpose of establishing a Jewish state. In fact, none of the 37 signatories of the Israeli Declaration of Independence were born in Palestine, nor had ancestral links to the country. The single exception was one individual whose father had migrated from Morocco to Palestine.

Finally, this first clause disregards the fact that Israel could not have been created without the dispossession and displacement of the Palestinian people from their legitimate homeland. It ignores the very existence of Palestinian Arabs who fell under Israeli occupation in the 1948 war and upon whom Israel imposed Israeli citizenship.

Article 1 (b) limits the "right of national self-determination in the State of Israel" to Jews, depriving Palestinian citizens of Israel from their civil rights and their right to self-determination.

Article 1 (c), which states "this Basic Law and all other laws shall be interpreted in conformity with [the above provisions]", establishes the supremacy of the law of nationality above any other laws, which are henceforth overruled by it in cases of a conflict.

Article 2 states that the objective of the proposed law is "to defend the character of Israel as the nation-state of the Jewish people, in order to anchor in Israel's Basic Laws the State of Israel's values as a Jewish and democratic state, in the spirit of the Declaration of Independence of the State of Israel."

It is a clause calculated to pay lip service to the ideal of a "Jewish and democratic state". The bill does not refer to nor advocate for any democratic rights or features while the text itself is the antithesis of democracy.

The third clause emphasizes the Jewish symbols of the state, such as the national anthem, the national flag and its emblems. The fourth clause stipulates that Jerusalem is the state capital.

Article 5 (a) affirms that Hebrew is the language of the State. **Article 5 (b)** eliminates existing

recognition of Arabic as the official language of the State and grants it a "special status" that only provides its speakers with the right to receive public services in their language.

By stripping Arabic of its recognition as an official language, the Bill not only justifies the actual policy of the state aimed at marginalizing the Arabic language in the public sphere, the educational system and the various state institutions; additionally, it removes the question of the marginalization of the Arabic language from the jurisdiction of the Israeli Supreme Court.

Article 6 affirms that "every Jew has the right to immigrate to the land [of Israel] and acquire citizenship of the State of Israel in accordance with the law." All the while, Palestinian refugees with legitimate claims to land are denied the right to return to their homes. Articles 7 and 8 oblige the State to "gather in the exiles of Israel" to strengthen the relationship between Israel and the Jewish diaspora, and also to preserve the Jewish historical heritage of the Jewish diaspora.

The final clauses make clear that the bill treats Israel as the state for the global Jewish community and not just the Jews of Israel. These laws give precedence to foreign Jews over Arab citizens of Israel. The law compels the state to use public welfare funds, to which the Arab citizens contribute equally to Jews, in order to encourage Jewish emigration to Israel and preserve the cultural heritage of one specific group. In contrast, the law does not require the state to preserve the culture of Arab citizens and their heritage, but leaves this task to the individuals; **Article 9 (a)** affirms that every citizen has the right to work to preserve his culture, heritage and language.

Article 9 (b) provides for the possibility of categorically and unconditionally residentially segregating citizens of the State on a religious or national basis. This is intended to prevent Arab citizens from living in many Jewish communities and villages within the Green Line, originally built on lands unjustly appropriated from their ancestors (it appears that this particularly egregious clause may be excised from the government's proposal). **Articles 10, 11 and 12** cover the official calendar and the so-called Independence Day, holidays and events.

Article 13 makes "Hebrew Law", i.e. Jewish religious law, a binding legal reference in cases for which there is no clear legal provision. The provision states that if a court hears a case and finds no legal text based on it or a clear text, the law binds the courts to rely on the "heritage of Israel", generally seen as an allusion to the Talmud. Talmudic texts, of course, are not free of racism and often contradict principles of human rights.

A fourteenth clause addresses "holy sites", focusing on the Al-Aqsa Mosque, following on from a "Holy Sites Law" passed decades which Jewish millenarians use to continuously breach the

sanctity of the Al-Aqsa Mosque Compound. There is a real danger that, if the “Jewish Nation-state” bill goes into effect, this specific provision will be a flashpoint for the security of Al-Aqsa. The ruling right is attempting to create the legal environment which would allow Jewish fanatic groups to carry out oft-publicized plans. This can be felt today in the presence on the Al-Haram Al-Sharif of a clock tower and constant Jewish prayer groups, and the establishment of a "small" synagogue. These are a first step towards the spatial and temporal division of the Al-Aqsa Mosque Compound, potentially a precursor to the demolition of the Dome of the Rock and its replacement with a reconstructed “Temple of Solomon”.

The fifteenth clause protects this law and makes it difficult to change or annul, unlike the Basic Law on "Uncensored Human Liberty and Dignity," as the National Law grants itself a higher status as stated in section 1 (c). This law stipulates that it can only be changed by passing a basic law backed by an absolute majority of Knesset members.

Conclusion

The Jewish Nation-state Bill seeks to resolve the structural contradictions that exist in the phrase “Jewish and Democratic state”, a formula found in the preambles of all other basic laws. It does this by simply favoring the “Jewish” nature of the state over its democratic aspects. An intensification of Zionist ideology, it would make the far-right’s racist ideology sacrosanct, helping to derail any efforts at the creation of a “civil” state for all its citizens. It would turn the Israeli state’s policy of discrimination against Arab Israelis into a form of legal warfare, effectively placing a hard, upper limit on their aspirations and their ability to take part in the game of Israeli democracy.

Purely for reasons of foreign consumption, the Israeli government will have to amend the law before it can be enacted. Specifically, the Netanyahu government must protect its country’s reputation from being tarred with the brush of racism in Western public opinion. Clearly, however, what was once an unspoken code of racism prevalent throughout Israel is undeniably, if painstakingly, codified into written law.