



Inter-Agency Task Force on Israeli Arab Issues

Basic Law Proposal: "Israel as the Nation-State of the Jewish People"

First Reading Passed, Now on Hold

June 2018

The latest version of the proposed **"Basic Law: Israel as the Nation-State of the Jewish People"**¹ (informally known as the Nation-State Bill or the Nationality Bill) [passed a First Knesset reading](#) (in a 64:50 majority) in an all-night session on April 30th. This is a significant milestone for a law that has been presented to the Knesset in various iterations since 2011 and repeatedly shelved as too controversial and makes it easier for a future coalition to turn it into law. However, the legislation was immediately placed on indefinite hold following this approval, due to ongoing fundamental disagreements over its content among the governing coalition parties.

The bill has been at the heart of heated and longstanding debate among political leadership over whether Israel requires a Basic Law that affirms its character as a Jewish state, and what the consequences of such law and its particular clauses would be for Israel's democratic character and for its Arab citizens² who comprise the vast majority of Israel's non-Jewish population. Passage of the first reading does not indicate that disagreements over its content or purpose have been resolved. In advance of this reading, to further the legislation but [prevent a coalition crisis](#)³, it was agreed that all coalition parties would support the current version with the understanding that the bill will not be further promoted without additional dialogue and an agreed upon version.

Within the governing coalition, the Prime Minister's Likud party has been pushing to advance the bill as fast as possible, including efforts by [Prime Minister Netanyahu directly](#).⁴ However, leaders from the center-right [Kulanu Party](#) (headed by Minister of Finance Moshe Kahlon) [have been objecting](#) to clauses they say undermine democracy and equality, especially changing the definition of Israel as both "Jewish and democratic," and the ability of Jewish residential communities to reject Arab candidates. Meanwhile,

¹ [Full Bill](#) (Hebrew) in the Knesset Website.

² Arab citizens comprise nearly 21% of Israel's population, or 1.8 million people. Around 4.8% of Israeli citizens (400,000 people) are referred to as "non-Jewish" and "non-Arab", mostly non-Jewish spouses of Jewish citizens, coming from the former USSR.

³ The Nationality Bill was [one of the main reasons](#) that the [previous Government coalition was dismissed](#) in December 2014 and early general elections followed in early 2015. As part of the new Coalition Agreement signed when the current government was established, it was agreed that ["each party can veto the Nationality Bill."](#)

⁴ PM Netanyahu stated on a number of occasions that he would like to see ["the nationality bill pass quickly"](#) (in June 2017 [he stated](#) "the bill will pass during the upcoming session") and in December 2017 [tasked Coalition Chair MK David Amsalem \(Likud\)](#) to advance its legislation

both the [Orthodox parties](#) and [Israel Beitenu's Chair MK Avigdor Liberman](#) have opposed the bill – for opposite reasons - as they are afraid it would allow the Supreme Court to alter the so-called "status-quo" between state and religion. Opposition parties voted against the current version of the bill.

This version that just passed, had been under amendment by a special parliamentary committee for nearly one year, in an effort to produce a "softer" version that would remove the most controversial clauses and replace them with stipulations more likely to garner the votes needed to pass. Still, an effective compromise was only possible towards a First Reading, since there are still strong disagreements around this latest version.⁵ The most significant amendments, which enabled the support of Kulanu Party, and the bill to pass this first reading, have been the removal of several clauses that were the source of much controversy in the past.

Clauses removed for this version:

- a) A clause that stated the current bill would "override all other Basic Laws unless specifically mentioned otherwise", so that the principles of the Nation State Bill would take precedence over elements of Israeli democracy found in other Basic Laws (e.g. [Basic Law: Human Dignity and Freedom](#) from 1992).
- b) A clause that defined Israel is a "[Jewish state with a democratic regime](#)" or a "[Jewish and democratic state in the spirit of the Declaration of Independence](#)", which were considered as alternatives were erased from the bill. Instead, the word "democratic" appears only in the "words of explanation" that accompany the Basic Law, as a "characteristic of the state" that rests on previous Basic Laws.
- c) The words "Jewish law" were struck from a [clause that stated courts should consider Jewish Law if there is an issue with no legal precedent](#), leaving only "the principles of liberty, justice, integrity and peace of Jewish tradition."
- d) A clause that specifically addressed the "Law of Return"⁶ was changed so that the current version only refers to "immigration to Israel" and the Law of Return is mentioned only in "words of explanation" to the Bill.
- e) The bill does include a clause allowing communities, including "of a single religion or a single nationality", to build separate towns, but the explanation notes to the bill state that this clause will be reexamined when the bill is prepared for second and third reading.

Below are the main provisions of the version approved in the First Reading:

- **Basic Law:** The proposed Bill is a "Basic Law", giving it special status. Basic Laws take precedence over other Israeli legislation, guide the legal system in the absence of a constitution and are more difficult to repeal than regular laws (this Basic Law can be changed only by being replaced with a different or revised Basic Law, requiring a minimum 61 votes out of the Knesset's 120 Members).
- **Purpose:** The stated purpose is to "legislate, in a Basic Law, the character of Israel as the nation-state of the Jewish people, as well as anchor in Israel's Basic Laws the state's fundamental

⁵ Jonathan Liss, [Israel's Contentious 'Nation-state Bill' Passes First of Three Knesset Votes](#); Haaretz, May 1, 2018

⁶ The Knesset passed the Law of Return on July 5, 1950 by which "all Jews were eligible for immigration and received citizenship upon arrival in the country." The law was amended in 1970 adopting an expanded definition of Jewry to include people with one Jewish grandparent and non-Jewish people who were married to Jews. Michael Omer-man "[This Week In History: Jewish Right To Aliya Becomes Law](#)" Jerusalem Post, July 8, 2011.

character as a Jewish state. This Basic Law will be added to existing Basic Laws that anchor additional characters of the state of Israel as a Jewish and democratic state, in the spirit of the Declaration of Independence of the State of Israel.”⁷

- **Principles:** (1) The Land of Israel is the national homeland of the Jewish people, in which the State of Israel was established. (2) The State of Israel is the nation state of the Jewish people in which it realizes its natural, cultural and historic right to self-determination. (3) The right to exercise national self-determination in the State of Israel is unique to the Jewish people.
- **Symbols of the State:** The Bill designates that the official symbols of the state are Hatikvah as the national anthem, the flag as “white with two blue stripes near the edges and a blue Star of David in the center,” and the Menorah as the state emblem. It formally declares “undivided Jerusalem” as the capital, the Hebrew calendar as the official calendar, Shabbat as the day of rest, Independence Day and Memorial Days as national holidays, and mentions the right of other religious groups to “rest on their festivals.”
- **Language:** Hebrew is to be “the language of the State”. Arabic will have a “special status.” and its speakers shall have the right to “language-accessible state services.” A separate clause states that “this clause does not undermine the *de-facto* status of the Arabic language on the eve of this bill’s passing.”
- **Immigration and the Jewish Diaspora:** The state shall act to gather in the exiles of Israel, includes a pledge to strengthen the connections between Israel and the Diaspora, assist Jews and citizens persecuted around the world, and preserve the cultural, religious and historic heritage of Jews living in the Diaspora.
- **Preservation of Heritage:** The bill includes a clause defining preservation of and free access to holy sites, as well as a clause stating: “every citizen of Israel, regardless of their religion or nationality, has the right to preserve their culture, heritage, language and identity.” It also includes a clause allowing “a community, including followers of a single religion or members of a single nationality, to establish a separate communal settlement.”
- **Legal sources:** If the courts are faced with a legal question to which they cannot find an answer “in [existing] legislation, legal precedent or logical derivation”, the courts shall decide “in light of the principles of liberty, justice, integrity and peace of Jewish tradition.”

Controversy and Discourse

The Nation State Bill has generated controversy for its basic principles—that Israel is the national home of the Jewish people, and the right to self-determination in Israel is unique to the Jewish people—as for many of its specific clauses including the formal designation of state symbols, the change in the status of Arabic, the ability of communities to reject candidates from other ethnic groups, and the reliance on Jewish law in the absence of legal precedent. Following are the major areas of controversy:

Controversy on the bill's basic premises:⁸

Proponents of the Bill have long claimed that it is necessary to secure Israel’s Jewish character, citing both external attacks on “[Israel’s identification with Jewish-nationhood](#),” and internal efforts to weaken the

⁷ Wootliff, Raoul “[Full text of MK Avi Dichter’s 2017 ‘Jewish State’ bill](#)” *Times of Israel*, May 10, 2017.

⁸ Much criticism was voiced from different rights groups such as the reform movement and gay rights and women's rights groups, as well as from Orthodox groups to the effect that the Nation State Bill would also undermine their rights. This criticism, however, is beyond the scope of this brief (relevant Hebrew language materials [here](#), [here](#) and [here](#)).

“[‘Jewish’ side of the formulation ‘a Jewish and democratic state.’](#)”^{9,10} According to Justice Minister Ayelet Shaked, over the last twenty years, “[we’ve seen the justice system give greater weight to democratic values than to Jewish values.](#)”¹¹ PM Netanyahu described the bill as “[one of the most important laws advanced by any Knesset.](#)” saying it “will legally establish Israel’s status as the nation-state of the Jewish people.”¹² While presenting the bill for its First Knesset Reading, its original author, MK Avi Dichter (Likud) said “[The Nationality Law is the insurance policy we will leave behind for future generations...](#)Each individual has rights as an individual, and the law does not address the rights of a populace or a resident as individuals, but rather the national character of the country.”¹³

Opponents claim that passage of this Basic Law would [create a hierarchy between Israel's Jewish and democratic character](#), “[pushing the democratic foundations of the state from the center to the margins](#)” and “[harming the delicate balance defined in the Declaration of Independence.](#)” MK Erel Margalit (Zionist Camp) said the bill is “[reminiscent of dark periods, \[...\] an effort to erode the only democracy in the Middle East.](#)” In a detailed Position Paper, [the Association for Civic Rights in Israel](#) listed numerous criticisms, including the Bill's "Prioritization of the Jewish character of the state over its democratic essence" and its "complete disregard for the Arab minority and its rights." The Israeli Democracy Institute published its concerns about the bill as well and suggested a detailed alternative - [Basic Law: The Character and Essence of the State of Israel](#).

Following the Knesset's preliminary approval of the bill in May 2017, President Rivlin warned that Israel “[must not enact legislation that is detrimental to \[the\] essence and substance](#)” of its Declaration of Independence. Following the First Reading, numerous members of the Opposition strongly objected to the bill: Zionist Union MK Tzipi Livni said: [A government that thinks, says and tells that democracy means the majority rules alone? Someone needs to send it to civics class;](#)” Yesh Atid MK Yael German also stated: “[Democracy is not majority rule, democracy is a system of government in which values, civil rights and above all minority rights are preserved.](#)” Even veteran Likud MK Benny Begin stated: “I’ll hazard a guess that a Nationality Bill that does not afford equal rights to all of Israel's citizens will not pass its third reading, but in the meantime [those annulling such a statement have the upper hand, making the bill faulty.](#) I therefore cannot support it, both for what it omits and for what it includes.

More specifically, critics assert the bill is intended to strain the already fragile relations between Jewish and Arab citizens and “[remind Arab citizens that they are second-class citizens](#)”. MK Michal Rozin (Meretz) said the bill “[has no purpose other than to brutally humiliate the Arab population and create a hierarchy between citizens](#)”. Arab MKs also vehemently criticized the Bill with Joint List MK Dr. Yousef Jabareen presenting an alternative bill: [Basic Law: Israel – A democratic, multicultural and egalitarian state](#)” in response. Joint List MK Ahmad Tibi stated, “What the law actually declares is that there are two kinds of civilians. One group comprised of Jews that has rights, and the other comprised of tolerable guests. The law practically determines Jews-only communities. [If that's not racism, I don't know what is.](#)” In early June, another alternative bill was presented by three Joint List MKs, titled “Basic Law: Israel the State of all its Citizens.” In a rare move, the Knesset Presidency (Knesset Chairman plus his nine deputies

⁹ Weinberg, David M. “[Pass the Nation-State Bill](#)” *Israel Hayom*, May 12, 2017.

¹⁰ For example, Yisrael Beytenu faction Chairman Robert Ilatov, a cosponsor of the legislation, said that it is “the best answer to all those delusional organizations that try to rewrite history and sow doubt on our historic right to our land and our eternal capital Jerusalem.” Harkov, Lahav “Jewish-Nation-State Bill Clears Hurdle” *Jerusalem Post*, May 10, 2017.

¹¹ “Israel’s Second Class Citizens Law” *Haaretz Editorial*, May 11, 2017.

¹² Greenberg, Joel “[Israel takes first step towards ‘Jewish nation-state’ law](#)” *Financial Times*, May 10, 2017.

¹³ Shahar Hay, [Nationality Bill passes its first reading](#), YNET News, May 5, 2018

from different parties in the house) decided to disqualify the suggested bill and thus ban it from coming to the Knesset floor even for an initial discussion (in a 6:2 vote with one abstaining).¹⁴

Controversy regarding specific clauses

Two specific clauses were the focus of the deepest controversy in regards to their effect, or the damage they might cause, to the status of Arab citizens in Israel and to Jewish-Arab relations. The first is the clause that institutionalizes the formal status of the Arabic language and the second is the clause that addresses communities' right to reject candidates based on their nationality or ethnicity.

Status of Arabic: The status of Arabic as a second formal language of the state is based on the "Palestine Order in Council," a pre-state British Mandate Law that was adopted by the State of Israel in 1948.¹⁵ According to this law, the government is obligated to publish all orders, forms and formal notices in both Hebrew and Arabic. While implementation of this law is partial,¹⁶ over the past two decades, the Supreme Court began enforcing it on state institutions.¹⁷ [Previous legislation efforts](#) and different versions of the Nation State Bill suggested various formulations of how the formal status of Arabic should be defined, with early versions of the bill demoting Arabic to a secondary position without granting it any special status, while the final version included a softer formulation (as mentioned above). Politicians and communal leaders, including [The Abraham Fund Initiatives](#) and [Sikkuy](#), came out particularly strongly against the clause that changes the status of Arabic stating it "[opens the door to legalized discrimination against non-Jewish citizens of Israel.](#)" The position paper by ACRI criticizes defining Arabic as "a language enjoying only a "special status," relating solely to the realization of linguistic access to state services" as a narrow interpretation that does not recognize the role of language as "part of the identity, heritage, and culture of this minority" and the "unique status of the Arab minority in Israel and the need to protect its rights" as recognized by the Israeli courts. Others emphasized [the advantage that Arabic could have](#) as a formal language [for Israeli citizens](#) and [for Israel within the region](#).

The "Separate Communities Clause": various versions of the bill aimed to address the issue of acceptance criteria into the smaller communities in Israel. These various formulations aimed to circumvent a High Court of Justice ruling from 2000 that required a town to allow an Arab family to move in, even though it was built on Jewish Agency land. A more recent Supreme Court ruling affirmed a Knesset Legislation from 2011¹⁸ that allowed small towns to have "acceptance

¹⁴ Jonathan Liss, [Knesset Council Bans Bill to Define Israel as State for All Its Citizens](#), Haaretz, June 4, 2018

¹⁵ The 82nd paragraph of the "Palestine Order in Council", from August 1922, stated: All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew." This law was adopted in the State of Israel in 1948, with the amendment (paragraph 15-b) which states that: Any order in the law which requires the use of the English language is hereby abolished.

¹⁶ For example, many governmental ministries do not have Arabic language websites, or have only partial information in Arabic, see [research by The Abraham Fund Initiatives](#). In recent years, the role of Arabic as an important components of a shared public space was discussed in special [Arabic Language Day in the Knesset](#) and [in university conferences](#) and advances have been made in, for example, representation of Arabic in public transportation services ([Hebrew](#)).

¹⁷ For example, in a Supreme Court ruling from 2002, which stated that municipalities of mixed cities must add Arabic language to all road and street signs, Supreme Court Justice Aharon Barak explained: "...the wish to ensure respectful co-existence to the descendants of Abraham our Forefather, through mutual tolerance and equality, justifies acknowledging the Arabic language on municipal signs – in those cities where there is a substantial Arab minority (between 6-19% of the population)" Supreme Court case 4112/99, Adallah vs. the Tel-Aviv Municipality.

¹⁸ [Acceptance to Communities Law](#) passed in March 2011 - ACRI – 11.9.2011

committees", as long as they do not reject a candidate on the basis of "religion, ethnicity, sexual orientation, age, personal status, country of origin or political affiliation". As mentioned above, the current version of the clause does allow national or ethnic groups to establish separate communities. A representative from the Attorney General's Office, Eyal Zandberg, spoke out against the clause, saying "[it permits harming a person because of his nationality or religion. That is blatant discrimination between people that does not fit Israel's values as a Jewish and democratic state.](#)"

Numerous activists, politicians and writers have [come out against this concept](#). ACRI's position paper states the clause: "[formalizes in a basic law the possibility to discriminate on the grounds of religion, race, and nationality in the allocation of land and in promoting settlement,](#)" and that while "the wording does not establish an explicit preference for Jewish settlement, [it] establishes an improper norm of segregation in housing on the grounds of religion or nationality." As it is also a clause that [remains controversial within the coalition itself](#) (with Kulanu party objecting to its current formulation), the bill draft also states this clause should be reexamined.