



# Israel's Nation-State Law and How it Affects Non-Jews Inside Israel

January 2024

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London | Washington

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# Background to the Law



## 01

# Background to the Law

Following months of controversy and seven years of heated debate, the Knesset (Israel’s parliament) adopted a new Basic Law: Israel – The Nation State of the Jewish People by a vote of 62-55 on July 19, 2018.<sup>1</sup> Since Israel has no written constitution, the Basic Laws provide legal statements outlining the rights of the individual and fundamental principles of the state.<sup>2</sup>

In the past, right-wing Israelis have objected to their Supreme Court “legislating from the bench” and felt the need to enshrine in law basic Zionist principles and symbols.<sup>3</sup>

Another factor that influenced the content and timing of the new law was the expectation of new elections in the following months.<sup>4</sup> Netanyahu and other supporters of the law were playing to their political base, which supports the substance of the legislation.<sup>5</sup>

The law joins several others, which establish the Jewish identity of the Israeli state and prevent the return of Palestinians to their land and their claim to Israeli citizenship. These laws include:

## 1950: The Law of Return<sup>6</sup>

- Granted every Jew in the world the right to settle in Israel.

## 1950: Absentees’ Property Law<sup>7</sup>

- Defines Palestinians who were expelled, fled, or left the country after November 1947, as “absentee,” thereby authorising the Custodian for Absentees’ Property to seize their property.

## 1952: Nationality Law<sup>8</sup>

- Legislated that Palestinian citizens of the British mandate would not automatically become Israeli citizens.
- Israeli nationality is acquired by Jewish immigration, residence in Israel, birth and residence in Israel, or by naturalisation. Strict criteria surrounding residence, birth, and naturalisation prevented most Palestinians from gaining citizenship.
- The law created three tracks of naturalisation: the highest track for Jews, a second track “for non-Jewish foreigners, who can apply for Israeli residency status through a process of individualised interviews and background checks”, and the lowest track for “Palestinian/Arab/Muslim spouses of Palestinian citizens of Israel who are prohibited from entry for the purpose of family unification”.<sup>9</sup>

## 1952: Entry into Israel Law<sup>10</sup>

- Prohibits the entry into Israel of any foreigner who makes a “public call for boycotting Israel” or “any area under its control”.<sup>11</sup>

## 1952: World Zionist Organisation—Jewish Agency (Status) Law<sup>12</sup>

- Grants the agency the official right of “gathering” and transporting Jewish “exiles” to Israel.<sup>13</sup>

## **Background to the Law continued...**

### **1953: Land Acquisition Law (Validation of Acts and Compensation)<sup>14</sup>**

- Expropriated around 1.2 million dunams (120,000 hectares) of Palestinian land to Israel.

### **1960: Basic Law: Israel Lands<sup>15</sup>**

- Prevents the sale of any land belonging to the Jewish National Fund, or to the state, to any third party.

### **1992: Basic Law: Human Dignity and Liberty<sup>16</sup>**

- Equality is not “recognised as an independent right that stands on its own”.<sup>17</sup>
- The Basic Law allows for rights to be violated “by a law befitting the values of the State of Israel”.<sup>18</sup>

### **2003: Citizenship and Entry into Israel Law<sup>19</sup>**

- Imposes severe restrictions on the right of Israeli citizens to apply for permits for their Palestinian spouses and children from the Occupied Palestinian Territory to enter and reside in Israel for purposes of family unification.

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# Israel's Nation-State Law



# Israel's Nation-State Law

Israel's nation-state law establishes three main things:

## 1. “The right to exercise national self-determination” in Israel is “unique to the Jewish people.”<sup>20</sup>

This means that only Jews have the right to determine what kind of state and society they live under. By default, non-Jews — such as Palestinian citizens of Israel, and Druze (an Arab religious and ethnic minority) — don't have the same right.<sup>21</sup>

The law establishes the “Land of Israel,” that is Palestine from river to the sea, as territory open to Jewish self-determination.<sup>22</sup> The law also states that the “whole and united Jerusalem is the capital of Israel.”<sup>23</sup>

## 2. Hebrew is Israel's official language, and Arabic is downgraded to a “special status”, despite being widely spoken by Palestinians in Israel and some Arab Jews.<sup>24</sup>

Previously, both Hebrew and Arabic were designated as official languages in Israel, however, the assumption in Israel has long been that you need to know Hebrew to get a good education and job, and to be able to interact with government bureaucracies, which mostly conduct business only in Hebrew.<sup>25</sup>

Arabic's “special status” under the new law ensures that some aspects, such as road signs, will remain in both languages.<sup>26</sup>

## 3. “Jewish settlement [is] a national value” and the state “will labour to encourage and promote its establishment and development.”<sup>27</sup>

This clause has angered both the law's supporters and its opponents. The former say it doesn't go far enough because it doesn't specify Jewish settlements in the West Bank.<sup>28</sup> Most of the international community, as well as Palestinians and left-wing Israelis, disagree.<sup>29</sup> They believe that the West Bank belongs to a future Palestinian state, and that Israeli settlements have been illegally occupying the West Bank since in 1967.<sup>30</sup>

By not specifically mentioning the West Bank, this provision in the new law balances between right-wing Israelis demands and the international community, by enshrining “Jewish settlement as a national value” without explicitly saying where those settlements might be.<sup>31</sup>

This provision could also spur revival of the campaign to boost the Jewish population of the Negev and Galilee by establishing communities with a Jewish character.<sup>32</sup>

Despite the foundational nature and broad scope of the nation-state law, it contains no commitment to democratic norms, or a guarantee of the right to equality, or prohibition of discrimination based on race, nationality, ethnicity, or any other category for people living under Israeli sovereignty.<sup>33</sup>

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# How it Affects Non-Jews Inside Israel





# How it Affects Non-Jews Inside Israel

## 1. “The right to exercise national self-determination” in Israel is “unique to the Jewish people.”

For Palestinians in Israel, and Druze, who make up one-fifth of Israel’s 9 million citizens, the new law clearly marked their second-class status in comparison to Jewish citizens.<sup>34</sup> In theory, as citizens, they should have access to the same passports, elections, education, health care, infrastructure, and security as Jewish Israelis.

However, in practice, this law is simply an entrenchment of the pre-existing Jewish supremacy of the Israeli state, which has always treated them as inferior.<sup>35</sup> Palestinians inside Israel have always been treated with “hostility and mistrust” and “large sections of the Israeli public [view] the Arab minority as both a fifth column and a demographic threat.”<sup>36</sup>

For Palestinians inside Israel, then, the new nation-state law is merely the culmination of years of institutional discrimination.<sup>37</sup> The only difference is that now the discrimination is officially enshrined in Israel’s basic law — the country’s constitutional equivalent, making an already unjust legal system stacked further against them.<sup>38</sup>

The legislation has been likened to the strict racial segregation in South Africa under apartheid, in which the indigenous black African population was ruled by a colonial regime based on white supremacy.<sup>39</sup>

## 2. Hebrew is Israel’s official language, and Arabic is downgraded to a “special status”, despite being widely spoken by Palestinians in Israel and some Arab Jews.

Palestinians inside Israel, Druze, and Arab Jew Israelis also believe that stripping Arabic of its official status is intended to erase their identities and histories.<sup>40</sup> It will also put them at an even greater economic disadvantage, because Hebrew is often not taught well in schools in Palestinian communities.<sup>41</sup>

This legislation also harms Arab Knesset members’ efforts to boost the status of Arabic and to advance legislation requiring that television broadcasts and movies be subtitled in Arabic.<sup>42</sup>

## 3. “Jewish settlement [is] a national value” and the state “will labour to encourage and promote its establishment and development.”

This law appears to create a legal right to separate Palestinians from living inside Jewish communities.<sup>43</sup> There are fears that this law will be used to kick out Palestinians from mixed Palestinian and Jewish villages and cities.<sup>44</sup>

# Reaction to the Law



# Reaction to the Law

Palestinians, liberal American Jews, and many Israelis on the left also denounced the law as racist and undemocratic.

## Palestinian and Druze Reactions

When the law passed, Palestinian and Arab parliamentary members ripped up copies of the bill and shouted, “Apartheid,” on the floor of the Knesset (Israel’s parliament).<sup>45</sup> Ayman Odeh, the leader of a coalition of primarily Arab parties currently in the opposition, said that Israel had “passed a law of Jewish supremacy and told us that we will always be second-class citizens”.<sup>46</sup> They have said that a “Jewish state” is incompatible with a democracy that protects the rights of all minorities, including non-Jews.

Thousands of people from the Arab Druze minority protested in Tel Aviv against the law under the motto, “Equal rights for all citizens”.<sup>47</sup>

Members of the Druze community also submitted a challenge to the law in Israel’s supreme court.<sup>48</sup> The petition, supported by three Druze lawmakers, argued that the new law discriminated against Druze, many of whom serve in the military, unlike Palestinian citizens of Israel.<sup>49</sup> Netanyahu has since said that he will present a plan to affirm the state’s commitment to the Druze.<sup>50</sup>

Adalah, a Palestinian legal centre inside Israel, also challenged the law legally.<sup>51</sup> The centre used a broader human rights argument based on international laws against apartheid and Israeli legislation against racism and discrimination.<sup>52</sup> They argued that while Palestinian citizens of Israel already face institutional discrimination, this new law makes it much harder to challenge.<sup>53</sup>

- Adalah have also argued that the law’s identification of the ‘Land of Israel’ as covering all of Palestine intentionally puts an end to the two-state solution.<sup>54</sup>
- They stated that the law recognises 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.<sup>55</sup>
- Adalah has also emphasised the connection between the Nakba and the nation-state law. The immediate repercussions of the Nakba, which are mainly related to the loss of the homeland and the destruction of the Palestinian society, were realised mostly through extra-legal governmental policies. They argue that the nation-state law seeks to anchor them in a clear and explicit manner by the denial of the rights of the Palestinian people to self-determination in their own homeland.<sup>56</sup>

Saeb Erekat, a representative of the Palestine Liberation Organisation (PLO), wrote that: “this law builds up on dozens of racist and discriminatory laws against non-Jews [...] we are convinced that this law would not have been passed without the culture of impunity that Israel continues to enjoy”.<sup>57</sup>

## Liberal Jewish Reactions

The nation-state law has resulted in massive protests by Jewish Israelis who oppose what they see as Israel’s transition to a theocracy.<sup>58</sup> Tens of thousands of Israelis marched in Tel Aviv, mostly in protest of the challenge to democracy, rather than in support of Palestinians’ rights.<sup>59</sup> The protests have highlighted the deep polarisation in Israeli politics and society over the future direction of the country.<sup>60</sup>

## Reaction to the Law continued...

Critics see this new law as a definitive declaration of the primacy of Jewish identity in Israel at the expense of a ‘democratic’ one.<sup>61</sup> Yohanan Plesner, the head of the nonpartisan Jerusalem-based Israel Democracy Institute, called the new law “jingoistic and divisive” and an “unnecessary embarrassment to Israel”.<sup>62</sup>

Outside Israel, liberal Jews have also been outraged: “the damage that will be done by this new nation-state law to the legitimacy of the Zionist vision [...] is enormous,” wrote Rick Jacobs, the head of the U.S. Union for Reform Judaism.<sup>63</sup> J Street, a liberal Zionist organisation, called it “a sad day for Israel and all who care about its democracy and its future”.<sup>64</sup>

## International Human Rights Organisations

Amnesty International has said that the law has alarming implications for human rights, particularly for Palestinians and other marginalised groups in Israel, and further entrenches the system of apartheid.<sup>65</sup> Amnesty also declared that the nation-state law constitutionally enshrines the oppression and domination of Palestinians.<sup>66</sup>

Human Rights Watch also said Israel’s nation-state law “provides a legal basis to pursue policies that favour Jewish Israelis to the detriment” of the country’s 21% Arab minority.<sup>67</sup>

- Sari Bashi, programme director at Human Rights Watch, said Israeli law codifies racial discrimination against Palestinian citizens of Israel, and facilitates institutional privilege of Israeli Jews over Palestinians.<sup>68</sup>

- Regarding the Israeli protests, she wrote: “I respect the pro-democracy protestors engaging in mass demonstrations against the further erosion of judicial independence in Israel, and many are also protesting Israeli occupation and apartheid. But let’s please be clear about the Israeli ‘democracy’ they are trying to protect”.<sup>69</sup>

The nation-state law’s declaration that the ‘Land of Israel’ is all of Palestine also contradicts international law, which prohibits: the annexation of occupied territories, discrimination against the inhabitants, and the imposition of the occupying power’s constitutional identity, including the attempt to create, without consent, allegiance to this identity and its laws.<sup>70</sup>

The denial of the Palestinian people’s right to self-determination is also in contravention of the United Nations’ Charter.<sup>71</sup>

## Legal Challenges

In December 2020, The Israeli Supreme Court held a hearing on 15 petitions against the law, and in July 2021, the Court rejected the petitions in a 10 to 1 decision.<sup>72</sup> The only dissenting opinion was issued by the sole Arab justice in the court, Justice Kara.<sup>73</sup>

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