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Israel Office

NATION STATE LAW IN ISRAEL

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Israel's "Nation-State Bill" was voted into law in the early hours of this morning (Israel time), following marathon negotiations. This "basic law" raised many questions and concerns throughout the long period of deliberation and sparked vigorous debate involving all Knesset factions. Below is some background about this important law.

What is the Nation State bill? Basic Law: Israel the Nation State of the Jewish People (*also called the Nation-State bill or the Nationality bill*) is a newly enacted "basic law" that enshrines in legislation Israel's status as the nation state of the Jewish People. Various bills of this kind have been proposed and shelved over the years.

The first clause lays down 'basic principles' about Israel as a Jewish homeland. The law also contains several other short clauses about: *state emblems, the nation's capital (already enshrined in Basic Law: Jerusalem), "preservation of heritage", ingathering of exiles, relationship with the Diaspora, language, official calendar, national holidays and days of rest.* The last clause requires that an 'absolute majority' of MKs approve later changes to the bill, which is common with regard to basic laws (see below).

What is a basic law? Israel does not have a constitution. The first Knesset decided that constitutional legislation would be adopted piecemeal over the years through the enactment of "basic laws". The contents of the basic laws are meant to express the values of the State of Israel as a Jewish and democratic state. They set out the structure and powers of government, define the relationships between governmental authorities and ensure human and civil rights.

While basic laws may be enacted by a simple majority of MKs present, a basic law can only be amended by the enactment of another basic law. Some basic laws also contain a provision requiring an 'absolute majority' (i.e. a majority of all MKs, not only of those present for the vote) to approve any later changes to the law. Today, after the enactment of this bill, Israel has 14 basic laws, including *Basic Law: The Knesset, Basic Law: The Judiciary, and Basic Law: Human Dignity and Liberty.* Other existing basic laws already confirm the nature of Israel as a Jewish homeland and as a Jewish and democratic state.

As constitutional legislation, basic laws have a different status than ordinary legislation. Ordinary legislation is not permitted to contradict basic laws and each proposed piece of legislation is examined to ensure its constitutional

compliance before being enacted. For these reasons, basic laws are considered to be of particular importance within Israeli society.

Why are there concerns about this law? Some are uncomfortable with this law because they were never comfortable with the idea of a Jewish state to begin with. While these objections are hardly new, that was not the crux of the debate about this bill. In fact, many MKs in the opposition who objected to the specific wording of the bill bemoaned the fact that their opposition to the bill might be perceived this way by those outside of the country. Most of the debate within the country was instead about the precise wording of three of the clauses which some believe emphasize the Jewish nature of the state over its democratic nature in a problematic way.

The most controversial clauses are the ones related to:

(i) **'language'** (which downgraded the status of Arabic as an "official language" of Israel),
(ii) **Jewish 'hityashvut'** (which recognizes the formation of Jewish communities as a national value): and
(iii) **'relationship with the Diaspora'** (which some have construed as an attempt to limit the potential influence of Diaspora Jews over religious pluralism in Israel). *Earlier versions of the bill included the recognition of an explicit right to build segregated communities but that language was stricken from the bill in the wake of public outcry.*

- (i) **Language** - An "official language" is one that is used by the government bodies of a country. Many countries in the world have one or more official languages recognized by legislation and it is not uncommon for an official language to be enshrined in a country's constitution. The adoption of an official language does not in any way signify an attempt to forbid the use of other languages among the people of a country but rather indicates which language(s) will be used in official settings. Although the US does not have national legislation recognizing English as its official language, a majority of individual states have passed such legislation and English has in any event become *de facto* the country's primary language. Canada's "Official Languages Act (1969)" is the federal statute that made English and French the official languages of Canada. It requires all federal institutions to provide services in English or French on request.

During the British Mandate three languages - English, Hebrew and Arabic - were all considered official languages in Israel. When Israel declared its independence, it assimilated old laws from the mandatory period, revising them slowly over the years by enacting new laws. While Israel did amend the British law by striking English as an official language (largely out of animosity to the British), it never replaced the old mandatory law. Therefore, Hebrew and Arabic continued to share legal status as national languages of Israel. In practice, however, Hebrew became the primary language spoken by most Israelis, and government correspondence and proceedings today tend to be exclusively in Hebrew.

The Nation-State law reflects this reality in a basic law. It establishes Hebrew as the country's sole official language while granting Arabic "special status". It also calls for the creation of a future law to direct how Arabic will be used in official settings. Not surprisingly, since language is a core aspect of culture, this change in the status quo has met with significant resistance. Many in the country view this as a needless affront to the significant Arab minority in the country.

(ii) **Jewish "hityashvut"** (i.e. formation of communities) - Under the header of Jewish "hityashvut", the law recognizes the establishment of new Jewish communities in Israel as a "national value", without according similar status to the establishment of communities of other groups. This clause manifests the character of the state as a homeland for the Jewish people. It reflects existing policies which try to encourage both native-born

Israeli Jews and Jewish immigrants to further develop the country by setting up additional communities. However, because the clause refers exclusively to Jews, without a corresponding right of non-Jews, critics are calling it racist and discriminatory. Although still somewhat controversial, many believe this clause is an improvement over an earlier and redacted version of the bill which had recognized an explicit right to build segregated communities (even though the earlier language was not exclusively about Jewish communities).

[It is worth noting that in some translations of the new law into English, the word “hityashvut” is translated as “settlement”. This translation has caused some confusion. The word does not refer specifically to settlements over the Green Line (in Hebrew: “hitnahlut”), but rather the formation of any new residential community as part of the development of the land. Early pioneers in many countries are often referred to as ‘settlers’ of the land. To avoid confusion on this point, we have instead translated the term as “community” establishment or formation.]

(iii) **Relationship with the Diaspora** - Originally, the bill included a clause that read: “*The State will act to maintain the connection between the State and the Jewish people, wherever they are.*” Later, by request of ultra-Orthodox MKs, the clause was amended by deleting the words “wherever they are” and specifying that the State will act “in the Diaspora” to maintain this connection.

This entire clause has been characterized as patronizing to Jews outside of Israel, ignoring the fact that Israel-Diaspora relations are a two-way street. Also, the specific change to the draft’s language prior to its adoption seems to have been motivated by a desire to limit the impact of Diaspora Jewry on religious pluralism in Israel. MKs requesting the change said the addition of the words “in the Diaspora” was meant to avoid claims that Israel needs to further religious pluralism in Israel as part of an effort to advance its connection with Diaspora Jews. JFNA has been outspoken about its concerns with this clause and about the clause’s potential negative impact on Israel-Diaspora relations.

Does this bill mark a change in the character of the State of Israel? This bill mostly reflects things that are already true on the ground. Israel was established as a national homeland for the Jewish people. This character is already enshrined in various laws and documents, including the country’s declaration of independence. The enactment of a basic law reflecting this character is not, in and of itself, a change in the essence or nature of the state. It does not change the nature of Israel as a Jewish and democratic country.

Does this bill mark the beginning of a change in policy? Like most constitutional legislation, this law is mainly declarative. Most of its provisions are already reflected in existing laws and policies and do not really mark a shift. However, the law does reflect a strong nationalistic spirit in the majority of the Knesset, which some are concerned may lead to nationalist policies that could come at the expense of minority rights. While the law does not directly provide any new authority to enact nationalistic policies, it is possible that some extreme nationalists might feel emboldened by its passage. There is of course no way to predict the future or know which policies are forthcoming.

Why does Israel need such a basic law? Simply put, Israel does not *need* this law. Constitutional legislation is more about enshrining the qualities and values of a nation and this law is no exception. As a young country without a constitution, Israel has been doing this piecemeal over the years. A basic law on this subject has been discussed for many years and the idea has held appeal even to some on the political left. Still, some are disturbed by the specific timing and more importantly, the specific wording of this law. While there are some in the opposition who object in

principle to the enactment of such a law, many opposition MKs have voiced frustration at the fact that they could not support the bill due to the particular language of a few of its clauses.

How can I respond to people who are calling this an “apartheid bill”? Because earlier versions of the draft referred to a right to establish Jewish-only communities, some opponents of the law and many of Israel’s detractors have compared it to South African apartheid. That language was stricken from the bill in its entirety – a reflection of vigorous public debate and the vibrancy of Israel’s democratic process. It should be noted, however, that the final wording of the legislation does refer to a national value of *Jewish* community building which some continue to view as discriminatory.

It has always been difficult to respond to claims that Israel discriminates on the basis of religion. As a nation established as both Jewish and democratic, the country does in fact distinguish on the basis of religion. Jews have an automatic right of citizenship; others do not. However, the comparison to apartheid is **completely misplaced and highly offensive** both to Israeli Jews and South Africans of color. Under apartheid, people of color could not vote, hold office or travel freely in their own country. They had to use segregated public restrooms and public transportation and had separate and inferior hospitals and medical care. There was a forced physical separation between the races in every aspect of daily life.

The situation of Israeli-Arabs in Israel (both before and after the passage of this law) is in no way similar. While Israel does favor Jewish immigration and the foundation of Jewish communities in Israel, the country is committed to protecting the minority rights of non-Jews in the country. This law makes no attempt to create or enforce a separation between Arab-Israelis and Jews. It does not change the fact that Arab-Israelis vote, hold public office, and use the same hospitals and transportation as Jewish Israelis. Israeli Arabs serve as members of the Knesset, as judges, as heads of hospital departments, university professors, diplomats, and hold senior positions in the police. And there are a range of government programs designed specifically to integrate larger numbers of Arab-Israelis into positions of leadership.

Israel is a Jewish state and at the same time a multi-ethnic and multi-cultural society, committed to the protection of individual rights. That commitment is at the heart of Israel’s character as both Jewish and democratic, and there are many laws, including basic laws, which reflect that commitment.

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