

## Mandate of the Special Rapporteur on minority issues

REFERENCE:  
OL ISR 7/2017

21 June 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on minority issues, pursuant to Human Rights Council resolution 25/5.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the Bill entitled "**Basic Law: Israel: Nation State of the Jewish People**". The current Bill, private bill P/1989/20, is the most recent version in a series of nine, and passed a preliminary reading on 10 May 2017. According to the information received, your Excellency's Government is expected to introduce its own Bill with the same content as that of the private Knesset bill later this week. In this connection, I am concerned that the Bill's spirit and purpose, as well as its provisions, will reduce and negatively affect the minority rights of the Palestinian citizens of Israel.

According to the information received:

On 10 May 2017, a draft Bill entitled "Basic Law: Israel: Nation State of the Jewish People (P/1989/20) (hereinafter 'the Bill') passed its preliminary reading in the Knesset. 48 Members of Knesset (MK) voted in favor of the bill, including Prime Minister Benjamin Netanyahu, and 41 MKs opposed it. Three Joint Arab List MKs were expelled for disrupting the debate.

The Bill seeks<sup>1</sup> to upgrade to the constitutional level the definition of Israel as the State of the Jewish People (Articles 1, 2, 6, 7, 8) and expressly provides that the Jewish people have the exclusive right to self-determination in the "national home of the Jewish people" (Article 1) while depriving the Palestinian minority any collective recognition. It also upgrades to constitutional level all of its symbols (Article 3), calendar (Article 10), Jewish national and religious holidays (Article 11 and 12 respectively), which are all derived from Jewish religion and heritage.

The Bill also designates Hebrew as the sole official language, while downgrading Arabic from an official language to one with "special standing" (Article 4).

When legal texts are unclear, the Bill also implies that the court should prioritize and defer to the Jewish character of the state, thereby subordinating Israeli legal rules of interpretation to Jewish Law (Article 13). In this way, one impact of the

---

<sup>1</sup> Please note that all references to the Bill are taken from the English translation, which has been made available by the Israeli Government (who), available at:

<http://www.justice.gov.il/StateIdentity/InformationInEnglish/Documents/BasicLawBill.pdf>

Bill may be a formalized legal bias in favor of the Jewish majority and to the detriment of the Arab minority.

Furthermore, the law appears to provide for the allocation of state resources for the fostering of Jewish heritage in Israel and abroad (Article 8), compared with the mere permission for other individuals who may wish to foster their heritage (Article 9).

Another aspect of importance is that the Bill, if enacted, would become a Basic Law, joining the central body of legislation that is the equivalent of Israel's constitution. Under Israeli Law, a Basic Law prevails over regular laws. Therefore, should it enter into force, this Bill may make it more difficult for the courts to effectively protect the Palestinian minority rights when necessary, especially considering that the right to equality is not covered in the Basic laws. In addition, a Basic law, once enacted, can only be modified by a special majority of at least 61 MKs, and also limits the High Court's authority to overrule it. In other words, by adopting the Bill as a Basic Law, it would effectively raise its status to constitutional law, and de facto mean that the only way to rescind or modify it would be through the clear and permanent "Jewish majority" of the Knesset.

While a Bill may seek to define the characteristics of the state, any definition adopted must guarantee the rights of all the state's citizens to absolute equality, without distinction of nationality, religion or ethnicity. I express my concern that this Bill appears to undermine the principle that stands at the foundation of democracy: the principle of equal citizenship. The Bill in its present form, effectively discriminates against Israel's Palestinian minority, as well as other minority communities. I note that Arab-Palestinian citizens are underrepresented in public institutions, as well as in the general public sphere, and also generally have a substantially lower socio-economic status than that of the Jewish community. Should it pass, I am concerned that this Bill will create and further deepen existing inequalities between Jews and Arab-Palestinians in Israel.

In this regard, I would like to refer your Excellency's Government to the international standards in relation to the protection of the rights of persons belonging to minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities). Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of national and ethnic minorities within their territories and to adopt the appropriate measures to achieve this end. Article 2 states that persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination and to participate effectively in decisions on the national and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. Furthermore, States are required to ensure that persons belonging to minorities, may exercise their human rights without discrimination and in full equality before the law (article 4.1).

While I do not wish to prejudge the situation, I wish to express serious concern that it appears that the Bill, in its current form, is contrary to international human rights law, and may disproportionately impact the Palestinian citizens of Israel.

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention, I would therefore welcome any additional information or clarification from your Government with respect to this legislation and on measures taken to ensure that its provisions comply with Israel's obligations under international human rights law, particularly with regard to the right to the right of non-discrimination. Please also provide me with any details about measures taken to ensure that the Bill will not contribute to discrimination against minorities, and in particular Palestinian citizens of Israel.

I would also welcome the opportunity to discuss the law in more detail with your Excellency's Government at your convenience.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Rita Izsák-Ndiaye  
Special Rapporteur on minority issues