

**Adalah** The Legal Center for Arab Minority Rights in Israel  
عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل  
עזאלה המרכז המשפטי לזכויות המיעוט הערבי בישראל



Draft

## *The Democratic Constitution*

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## **A Word from the Chairman of the Board of Directors**

On the tenth anniversary of its founding, Adalah is issuing “The Democratic Constitution,” as a constitutional proposal for the state of Israel based on the concept of a democratic, bilingual, multicultural state. This proposed constitution draws on universal principles and international conventions on human rights, the experiences of nations and the constitutions of various democratic states.

In recent years, Israeli groups have put forward different constitutions for the state of Israel. However, these proposals are distinguished by their lack of conformity with democratic principles, in particular the right to complete equality of all residents and citizens, and their treatment of Arab citizens as if they were strangers in this land, where history, memory and collective rights exist only for Jewish people. It is no coincidence therefore that these proposals have been preoccupied with the question of, “Who is a Jew?” and neglecting the primary constitutional question of, “Who is a citizen?”

Thus, we decided to propose a democratic constitution, which respects the freedoms of the individual and the rights of all groups in equal measure, gives the proper weight to the historical injustices committed against Arab citizens of Israel, and deals seriously with the social and economic rights of all. If “The Democratic Constitution” succeeds to underscore the enormous gap between it and the other proposals, and to create an objective public debate and dialogue on the nature of rights and freedoms in the country, then we will have taken an important step forward in the issues of racial equality, freedoms and social justice.

Work was undertaken on preparing this constitution for around two years, during which numerous meetings and study days for Adalah’s staff, Board and General Assembly were held. In my name, and in the name of Adalah, I offer my gratitude and appreciation to the professional staff of Adalah and to its General Director Attorney Hassan Jabareen for all of their efforts in preparing this proposed constitution to a high professional level, while adhering to the humanitarian principles on which it is based. I would also like to thank my colleagues in Adalah’s Board and the members of the General Assembly, as well as all my professional colleagues in Israel and abroad who participated in discussing the various drafts and enriched the discussions with their observations and suggestions.

It should be noted that the preparation of this constitutional proposal was accompanied by the preparation of two other important documents, which were drafted by two teams composed of the intellectual elite, and community and political activists: “The Future Vision for the Palestinian Arabs in Israel,” which was prepared by a team consisting of the head of the High Follow-up Committee for the Arabs in Israel on behalf of National Committee for Arab Mayors; and “The Haifa Covenant,” which was prepared by a team consisting of Mada al-Carmel - Arab Center For Applied Social Research, which will be published shortly. Many of Adalah’s members also took part in the work of these two teams. Each of these documents has its own distinguishing feature and complements the others, and each comes as an expression of the political and social empowerment of the Arab citizens of Israel.

Although the formulation of this constitution is at an advanced stage, we consider it a draft proposal open for discussion for a period of one year, in order to allow for public interaction with it. We hope at the end of this process to arrive at a final version of this important project.

Professor Marwan Dwairy,  
Chairman of the Board of Directors of Adalah  
February 2007

# The Democratic Constitution

## Chapter One: Introduction

1. The Universal Declaration of Human Rights of 1948, which enshrined the human rights lessons of the evils committed during World War II, and the international human rights covenants, which were subsequently ratified, state that: All human beings are equal; anti-discrimination is an absolute principle which cannot be compromised; all peoples have the right of self-determination; no nation possesses rights that are superior to those of another nation; and it is essential to ensure the personal liberty and economic and social rights of the individual for freedom, equality and justice to be achieved.
2. After the end of World War II, and as a result of their long and just struggle against colonial regimes, many nations succeeded to attain their independence and realize their right of self-determination. In the last two decades, historic processes have taken place in states where policies of repression and discrimination had reigned. The end of the apartheid regime in South Africa is the most prominent example. These states have derived lessons from the past and promoted historic reconciliation, based on recognition of the historical injustice these policies inflicted on groups that were repressed and discriminated against, and ensured the effective participation of these groups in the process of constitution-making.
3. Based on universal principles, international human rights covenants and the experience of nations, we – as a human rights organization – seek to propose a constitution, which contains provisions on the governing regime and on rights and liberties, as detailed below. We believe *this constitutional proposal should be incorporated in the laws and/or the future constitution* of the State of Israel.
4. In order to build an equal and democratic society, free of repression and violence, and as a basis for historic reconciliation between the State of Israel and the Palestinian people and the entire Arab nation, the State of Israel must recognize its responsibility for past injustices suffered by the Palestinian people, both before and after its establishment. The State of Israel must recognize, therefore, its responsibility for the injustices of the Nakba and the Occupation; recognize the right of return of the Palestinian refugees based on UN Resolution 194; recognize the right of the Palestinian people to self-determination; and withdraw from all of the territories occupied in 1967.
5. The Palestinian Arab citizens of the State of Israel have lived in their homeland for innumerable generations. Here they were born, here their historic roots have grown, and here their national and cultural life has developed and flourished. They are active contributors to human history and culture as part of the Arab and Islamic nations and as an inseparable part of the Palestinian people.
6. Since their political status has been changed against their will, making them a minority in their homeland; since they have not relinquished their national identity; and since the rights of a homeland minority must include, *inter alia*, those rights which should have been preserved and developed as much as possible had they not become a minority in their homeland, thus, the legal starting point of this constitutional proposal is: The Arab citizens in the State of Israel are a homeland minority.

7. The policies and practices of Israeli governments have caused severe injustice to the Palestinian Arab minority since 1948, some of which continues today, including this minority's physical detachment from its people and nation, the uprooting and destruction of villages, the demolition of homes, the imposition of military rule until 1966, the massacre of Kufr Qassem in 1956, the killing of young people during the first Land Day in 1976 and in mass protests of October 2000, the confiscation of properties from the Muslim *Waqf*, the expropriation of land, the non-recognition of Arab villages, the separation of families, policies of institutional discrimination in all fields of life, and the exclusion of the Arab minority based on the definition of the state as Jewish. Therefore, the following constitutional proposal determines that the basic rights of the Arab minority include: the return of land and properties on the basis of restorative justice, effective participation in decision-making, the fulfillment of the right to cultural autonomy and the recognition of the Arabic language as an official language in the State of Israel.
8. The dignity and personal liberty of the individual constitute the basis for maintaining a society founded on human rights. However, the realization of these rights is conditional upon the existence of a society based on equality. Therefore, this constitutional proposal determines the duty to guarantee and protect the economic and social rights of all residents and citizens, especially the most needy.
9. In a state that does not control or occupy another people and that is based on full equality between all of its residents and between all of the different groups within it, Jewish and Arab citizens shall respect each other's rights to live in peace, dignity and equality, and will be united in recognizing and respecting the differences between them, as well as the differences that exist between all the groups in a *democratic, bilingual and multicultural state*.<sup>1</sup>

**(Approved by Adalah's General Assembly on 15 July 2006)**

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<sup>1</sup> **Explanatory notes: The introduction**

The purpose of this introduction is to explain the principles which guided us in the writing of this constitutional proposal. We believe that the preamble of a future constitution for the State of Israel must be written, if at all, with the political agreement of the representatives of all the interested parties. The liberties and rights in this constitutional proposal are based, *inter alia*, on the constitutions and legal experience of many democratic states. They are also based on international human rights covenants and declarations, particularly the following: the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948); the UNESCO Convention against Discrimination in Education (1960); the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

## **Chapter Two: The Foundations of the Regime**

### **The State of Israel<sup>2</sup>**

1. The borders of the State of Israel are the borders of the territory which was subject to the Israeli law until 5 June 1967.

### **A democratic state**

2. The State of Israel is a democratic state, based on the values of human dignity, liberty and equality.

### **The supremacy of the Constitution**

3. The Constitution is the supreme legal norm in the State of Israel.

### **The parliament**

4. The Knesset is the legislative authority of the state.
5. The Knesset is the house of representatives of the state and is comprised of 120 members.

### **A multi-party parliamentary regime**

6. The democratic regime is based on a multi-party parliamentary system that conducts free, equal, proportional and secret-ballot elections once every four years to ensure appropriate representation for the national and religious groups.

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#### <sup>2</sup> **Explanatory notes: The state's borders**

The demarcation of the borders of the State of Israel in the Constitution is also critical for issues of civil rights. The historical importance of the territory-citizenship synthesis began with the Treaty of Westphalia (1648) in Europe. Previously, the connection between citizens and the regime was not based on territory, but rather on tribal allegiance, religious affiliation, contact with the church, and/or the lifestyle of a group. According to this order, the Ottoman Empire, for example, granted religious autonomy to groups because of a tribal rather than a democratic orientation. The test of belonging to “a clear territory” facilitated the definition of “Who the citizen is” that stands as an equal before the state without intermediary agents. This is particularly true with regard to the State of Israel, where the lack of a defined border contributed to the fact that tribal and ethnic affiliation became the essence of citizenship. This also explains why Israeli law deals with “Who a Jew is” and not “Who a citizen is”; and it is no coincidence that the citizenship of Jews living outside the Green Line, for example, is stronger than that of the Arab citizens who live within the Green Line. It is also no coincidence that proposals are put forward for the transfer of the citizenship of some of the Arab citizens (in the Triangle area) as part of an exchange of populations. Indeed, the public perception that the citizenship of some of the citizenry is temporary due to a lack of defined borders will continually harm the everyday status of these citizens, thereby affirming the truth of the statement: Empires have frontiers, but democracies have borders.

7. Every adult citizen is entitled to elect and to be elected to the Knesset.

### **The government**

8. The government is comprised of the prime minister and other ministers, and derives its authority to govern from the confidence of the Knesset.
9. The government is the body authorized to administer all divisions of the executive branch.
10. The government will exercise its functions subject to and in accordance with the Constitution and the law.

### **The judicial authority<sup>3</sup>**

11. The judicial authority has the power to adjudicate, including the power to annul laws which are in contradiction of the Constitution.
12. The courts which have the power to adjudicate in the state are the Supreme Court, the District Courts, the Magistrates' Courts and other courts, and tribunals established under the law.
13. The decisions of the Supreme Court will be binding on all the other courts of the judicial authority, except the Supreme Court.
14. Nominations of judges to the judicial authority will be made on the basis of the nominees' expertise and knowledge of the law, as well as their experience, independence and commitment to the Constitution.

### **Citizenship**

15. The laws of citizenship and immigration will be established on the basis of the principle of anti-discrimination and will define the arrangements by which the State of Israel will grant citizenship to:
  - A. Anyone who was born within the territory of the State of Israel and whose parent was also born within the territory of the State of Israel;
  - B. Anyone who was born to a parent who is a citizen of the state;

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#### **<sup>3</sup> Explanatory notes: The three authorities**

We relate to the three authorities – the executive, legislative and judicial – inasmuch as they are relevant to the essence of the Constitution and inasmuch as they have an effect on the democratic regime. Parliament-enacted legislation is the appropriate way in which to detail the administrative aspects of those authorities which have not been detailed here, such as committees of the Knesset, the composition of the government, the number of ministers, and the duration of the terms of office of judges. In addition, we did not perceive a need in this Constitution to relate to other institutions which could be regulated by legislation, such as the presidency of the state, because their existence as an institution is not material to the functioning of a multi-party parliamentary regime. Moreover, every future piece of legislation which relates to the functions and administration of all such authorities will be subject to the Constitution.

- C. The spouse of a citizen of the state;
- D. Those who arrive or remain in the state due to humanitarian reasons, including those who are persecuted on the basis of political background.

16. The citizenship of an Israeli citizen cannot be revoked.

#### **A bilingual state<sup>4</sup>**

- 17. A. Hebrew and Arabic are the official languages of the State of Israel and enjoy equal status in all of the functions and activities of the legislative and executive branches.
- B. All official announcements, including laws, ordinances and regulations, will come into effect when they are published, printed and disseminated simultaneously in the two official languages.
- C. The rulings of the Supreme Court, the District Courts and the appeals tribunals will be published, printed and disseminated in the two official languages immediately upon being issued.
- D. Each litigant is entitled to use either of the two official languages, according to his or her choice, in legal proceedings, and is entitled to receive full service in his or her case in the language of his or her choice: immediate and simultaneous translation in hearings, protocols, court documents, decisions and rulings.
- E. Mixed local authorities will use the two official languages in an equal manner in all of their functions and activities.
- F. Two kinds of educational institutions will be established in Hebrew and in Arabic, including institutions of higher learning; and every person will be entitled to choose to learn in an educational institution in which learning is conducted in one of the two official languages.
- G. Laws will be enacted to grant appropriate and equal status to the two official languages in the national electronic media.

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#### <sup>4</sup> **Explanatory notes: Official languages**

Determining the use of official languages was based on our perception of the essence of “an imaginary federal regime.” Therefore it is proposed, for example, that both official languages be used equally in all of the activities of the legislative and executive branches, as well as in the activities of the judicial branch from the district level and above. Therefore, the small autonomous units, such as the local authority of the village, the non-mixed city, the small community and the local courts (the lower courts such as Magistrates’ Courts and religious courts) will be authorized to use a single official language of the locality unless otherwise stipulated.



## **A multicultural state<sup>5</sup>**

18. A. Each group that constitutes a national minority is entitled to educational and cultural institutions; each group that constitutes a religious minority is entitled to religious institutions.
- B. All the groups mentioned in (A) are entitled to operate their institutions via a representative body chosen by the members of the group (hereafter: the representative body).
- C. The State of Israel will allocate a suitable budget to the representative body for operating the institutions to ensure their existence in good quality and at a level equal to that of the majority's institutions.
- D. All the historical, cultural and holy sites of all of the groups shall be preserved and protected from any damage or harm to the dignity and sanctity of the site.
- E. The dignity, equality and liberty of a person subject to the decisions of the representative body must be respected.
- F. Every citizen affiliated with one of the aforementioned groups is entitled to maintain his or her identity and culture in public life, and to develop and practice them.
- G. Every citizen is entitled to establish and maintain his or her family, social, cultural, religious and economic relations with members of his or her people or nation, including the right to freely cross borders to them.
- H. These minority groups are entitled to appropriate representation in all of the governmental authorities of the state.

## **Symbols**

19. The symbols of the state will be defined by law in accordance with article 20, below.

## **Participation in decision-making in the Knesset**

### **20. Model I**

- A. A parliamentary committee will be formed that will be called "the Parliamentary Committee for Bilingual and Multicultural Affairs." Half of the committee members will be members of parliament from parties that by definition and character are Arab parties or Arab-Jewish parties.

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#### <sup>5</sup> **Explanatory notes: Multiculturalism**

The source of these rights is stated in article 27 of the International Covenant on Civil and Political Rights, to which the State of Israel is a party. The scope and interpretation of this article was declared in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

- B. No laws will be enacted in the Knesset or statutes approved in parliamentary committees on issues related to the instructions of this Chapter without the prior consent of the Parliamentary Committee for Bilingual and Multicultural Affairs. However, the Knesset plenum will be authorized to enact or approve such legislation, overruling the committee's decision, by a special majority of no less than two-thirds of the members of the Knesset.
- C. This article will come into effect during an interim period to be agreed upon in order to establish and implement the principles of this Chapter.

## Model II

- A. No bill will be approved by the plenum of the Knesset if 75% of the members of the Knesset who belong to parties which by their definition or character are Arab parties or Arab-Jewish parties vote against it under the reasoning that the bill violates the fundamental rights of the Arab minority.
- B. This article will come into effect during an interim period to be agreed upon in order to establish and implement the principles of this Chapter.<sup>6</sup>

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### <sup>6</sup> **Explanatory notes: Participation in decision-making in the parliament:**

Article 20 relies on the principle of power-sharing by minorities in government, especially in the case of homeland minorities, national minorities or linguistic minorities. We have proposed two alternative models here as examples of the implementation of this principle, but they are certainly not the only models that could implement this principle. Defining the type of model is a matter for political agreement between the representatives. In states where minorities have been granted territorial autonomy and in some federal states this principle is implemented at various levels. In Canada, for example, the province of Quebec enjoys territorial autonomy as well as the right of veto on matters of language at the federal level. Article 2 of the Belgian constitution stipulates that Belgium is comprised of three linguistic communities and that each of these enjoys non-territorial autonomy in matters of education, health, language policy and culture. In areas of the central government's purview, where communal autonomy does not apply, the communities are entitled to a group veto procedure: If 75% of the linguistic community's representatives in Belgium's federal parliament indicate that a certain issue is liable to affect the life of one of the communities, the related bill is to be sent to the federal cabinet, which must propose alternatives. This mechanism helps to mediate and arbitrate. Macedonia stipulated in its constitution of 1991 that it is the state of the Macedonian people, despite the fact that 20-25% of the population comprises indigenous Albanians. As a result of the determined opposition of the Albanians, the Ohrid Accord of 2001 states that Macedonia is the state of the Macedonians, Albanians and other ethnic minorities. According to the current constitution, veto power is granted to the Albanian minority on constitutional amendments pertaining to culture and language, as well as major appointments. Additionally, in Northern Ireland governmental institutions and power-sharing were established according to the Good Friday Agreement of 1998, which defined a complex system of veto arrangements between the Catholics and Protestants. These are merely examples. We did not set a date for ending the interim period because that is a matter for political agreement. We did not offer such power-sharing to other groups because: firstly, the Arab minority is a homeland minority; secondly, the two national groups (Arabs and Jews) are the two only groups that have established a distinct and clear category of "the other" vis-à-vis each other in a very clear and sharp way; and thirdly, serious weight was given to the historical fact that the representatives of the Arab minority in the parliament are the only representatives to have been in opposition since 1948.

## **Chapter Three: Rights and Freedoms**

### **I: Fundamental Freedoms<sup>7</sup>**

#### **Basic principles**

21. A person's basic rights in the State of Israel are rooted in the values of the sanctity of human life, dignity, equality and freedom, as well as the principles of distributive and restorative justice.

#### **The right to life and limb**

22. Every person is entitled to the protection of his or her life and body, including protection from torture, violence, and cruel, inhuman or degrading treatment.

#### **The right to dignity**

23. Every person is entitled to the protection of his or her dignity.

#### **Equality and anti-discrimination**

24. Every person is equal before the law and is entitled to equal protection; no person should suffer direct or indirect discrimination based on national affiliation, religion, race, sex, color, ethnic origin, sexual orientation, disability or age.

#### **Personal liberty**

25. Every person is entitled to his or her personal liberty; this liberty shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

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#### <sup>7</sup> **Explanatory notes: Fundamental freedoms**

Not all of the freedoms are relative and as a consequence we specifically chose to add the limitations clause only to those that are inherently relative. The language of the limitations clause states that the fundamental freedoms can be restricted only "by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required." However, the limitations clause was not attached to rights which, by their nature, may not be restricted. The Basic Law for the Federal Republic of Germany, which was enacted immediately after the end of World War II, is a good example of this distinction. Thus, for example, on the basis of this Constitution, a person's right to life and limb cannot be violated by the state in any circumstance. The right to anti-discrimination is an absolute right that cannot be compromised. It is not by chance that the International Convention on Civil and Political Rights does not allow states to violate this right even in a state of emergency, because the experience of nations has taught that violation of this right during war situations has led to repression and in some cases even to extermination.

### **The right to a family life**

26. Every resident or citizen has the right to establish and maintain a family life in the State of Israel.

### **The rights of the child**

27. Every child will receive a name upon birth, and will be entitled to a physical connection to his or her parents, family and surroundings, ensuring his or her appropriate development and welfare.
28. Every child is entitled to protection against neglect or negligent treatment and exploitation, and is to be protected from all types of discrimination, including discrimination based on the status, activities, opinions or beliefs of his or her parents, legal guardians or family members.

### **Freedom of conscience and freedom of religion**

29. Every person is entitled to freedom of conscience, faith, opinion, religion and religious ritual, and no religious-based action or inaction will be imposed; these liberties shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Freedom of expression and association**

30. A. Every person is entitled to express opinions, write, demonstrate, assemble, conduct research and enjoy artistic and creative freedom.
- B. Every person is entitled to associate with others and to form political parties.
- C. Freedom of expression and freedom of association shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Right to privacy**

31. A. Every person is entitled to privacy; no invasion into the personal realm is allowed without his or her consent; body searches or searches of his or her property or home shall not be conducted, and the confidentiality of his or her conversations or writings shall not be violated.
- B. The right to privacy shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Freedom of movement**

32. A. Every resident or citizen is entitled to enter the State of Israel, and every person is entitled to exit the state.
- B. Every person is entitled freedom of movement within the State of Israel.
- C. An individual's freedom of movement shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Freedom of information**

33. Every resident or citizen is entitled to access information and receive information from the authorities; this right shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Freedom of occupation**

34. Every resident or citizen is entitled to engage in any occupation, profession or work; this right shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Environment**

35. Every person is entitled to an environment free of health hazards, diseases and all types of pollution; this right shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

## **II: Distributive and Restorative Justice**<sup>8</sup>

### **The right to property**

36. Every person is entitled to his or her property; this right shall not be restricted except by

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#### <sup>8</sup> **Explanatory notes: Distributive justice and restorative justice**

The articles referring to restitution of land, compensation and recognition of traditional title of Arab Bedouin are familiar to many judicial systems. The constitution of South Africa addresses the principle of restitution. In Canada, the United States and Australia, for example, similar rights were recognized for the indigenous peoples and natives. International principles of human rights also address these rights: the Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (adopted by the International Labour Organization in 1989); the UN Draft Declaration on the Rights of Indigenous Peoples (adopted by the UN General Assembly in 1994); and the London Declaration of International Law Principles on Internally Displaced Persons (adopted by the International Law Association in 2000).

a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

### **Anti-discrimination in property**

37. No person shall be discriminated against – directly or indirectly – in land transactions, such as purchasing, long-term leasing or renting property, based on nationality, religion, race, sex, color, ethnic origin, sexual orientation, disability or age.

### **Distributive justice**

38. Every group of citizens which has suffered from a policy of injustice and historical discrimination in the allocation of land is entitled to affirmative action based on the principles of distributive justice in the allocation of land and water and in planning.

### **Restitution of private land**

39. Every resident or citizen whose land has been expropriated or whose right to property has been violated arbitrarily or because of his or her Arab nationality under the following laws is entitled to have his or her property restored and to receive compensation for the period during which his or her right to property was denied: the Land Ordinance (Acquisition for Public Purposes) of 1943, and/or the Land Acquisition (Validation of Acts and Compensation) Law of 1953, and/or the Absentee Property Law of 1950, and/or article 22 of the Statute of Limitations of 1958, and/or Regulation 125 of the Emergency (Defense) Regulations of 1945.

### **Internally-displaced persons**

40. All of the Arab citizens of the State of Israel who were uprooted from their villages or from their place of residence during and after 1948 and were not permitted to return are entitled to return to their villages and original places of residence; a mechanism will be formulated in law to provide appropriate compensation for personal damages suffered by these individuals and their families since being uprooted, as well as assistance for building villages and/or homes of an appropriate quality.

### **The Muslim *Waqf***

41. Muslim Arab citizens are entitled to the reinstatement of all assets of the Muslim *Waqf*, including its revenues, which were held by the Supreme Muslim Council and transferred as absentee property to the Custodian for Absentee Property pursuant to the Absentee Property Law of 1950.

### **Traditional title to land**

42. The Arab Bedouin citizens of Israel are entitled to recognition of title to land which is or was possessed by them based on their traditional patterns of ownership; none of these entitled persons shall be transferred from their land except with their full and conscious consent.

### **Alternatives to restitution**

43. In cases where there is an objective and genuine obstacle to fulfilling the right of restitution of land as defined in articles 39-42, an alternative and fair solution will be formulated with the consent of the rights holders; if no agreed solution is attained, the decision will be transferred to a special authority whose powers, working methods and composition will be established in law and subject to article 20.

### **Unrecognized villages**

44. The residents of villages known as “unrecognized villages” are entitled to have their existing villages recognized without delay through the implementation of adequate planning procedures with their full participation.

## **III: Social and Economic Rights<sup>9</sup>**

### **The right to health**

45. A. Every person is entitled to essential health services and an appropriate standard of health conditions; the state will take reasonable legislative and other measures to achieve the progressive realization of this right.
- B. Every person is entitled to emergency medical care.

### **The right to social security**

46. Every resident or citizen is entitled to social security and a suitable standard of living, for him or herself and his or her family; the state will take reasonable legislative and other measures to achieve the progressive realization of this right.

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#### <sup>9</sup> **Explanatory notes: Social and economic rights**

In this Part, we adopted a similar approach to that of South Africa and the International Covenant on Economic, Social and Cultural Rights, to which the State of Israel is a party. Some of these rights require progressive realization that also depends on the principle of distributive justice of budgets and resources. Thus, for example, the right to free education was not restricted to twelve years of mandatory schooling, but applies beyond this and as far as this right can be progressively realized; that is, it also enables free higher education for those in financial need, according to criteria to be defined. Another part of these rights does not depend on resources and progressive realization, such as labor rights.

### **The right to housing**

47. Every resident or citizen is entitled to adequate housing; the state will take reasonable legislative and other measures to achieve the progressive realization of this right.

### **The right to sustainable development**

48. Every resident or citizen is entitled to sustainable development that ensures an improved, healthy and productive life, and responds to the needs for development, environment and public participation; the state will take reasonable legislative and other measures to achieve the progressive realization of this right.

### **The right to education**

49. Every person is entitled to accessible, free and high-quality education; the state will take reasonable legislative and other measures to achieve the progressive realization of this right.

### **Affirmative action in education**

50. Every person who belongs to a group of citizens which has suffered from a policy of historical injustice or discrimination in realizing the right to education is entitled as an individual and/or as part of his or her group to affirmative action in all matters related to the allocation of resources for advancing the right to education.

### **Anti-discrimination in job hiring**

51. An employer shall not discriminate among his or her employees or job candidates – directly or indirectly – on the basis of nationality, religion, race, sex, color, ethnic origin, sexual orientation, disability, political opinions or age.

### **Minimal working conditions**

52. Every employee is entitled to reasonable, fair and appropriate working conditions that include the following minimal conditions: remuneration, two paid days of rest per week, annual paid vacation, sick pay, social insurance and paid maternity leave for the days before and after the birth.

### **Labor unions and the right to strike**

53. A. Employees are entitled to associate in labor unions as they choose and engage as representative unions in collective agreements to protect and promote their rights.



- B. Workers have the right to strike in order to protect and advance their rights.
- C. The right of workers to form a union or declare a strike shall not be restricted except by a law enacted for a necessary purpose which is in accordance with the basic principles of a bilingual and multicultural democratic society, and to an extent that is no greater than is required.

#### **IV: Rights in Court and Criminal Justice**<sup>10</sup>

##### **Access to the courts**

54. Every person is entitled to have access to the courts and to receive a legal remedy in his or her case; his or her case will be heard, discussed and be completed within a reasonable period of time, in accordance with the rules of fairness, justice and equality.

##### **The rights of a detainee**

55. A person who has been arrested is entitled to the following rights:
- A. To be informed immediately, in a language he or she understands, of the right to remain silent and avoid self-incrimination.
  - B. To be informed immediately, in a language he or she understands, of the reasons for his or her arrest.
  - C. To have notification of the arrest sent immediately to someone close to him or her, as designated by him or her.
  - D. To meet with an attorney of his or her choice immediately.
  - E. To be brought before a judicial authority with twenty-four hours of the arrest.
  - F. To be sentenced within a reasonable period of time or released.

##### **The presumption of innocence**

56. Every person will be presumed innocent until convicted in a court of law; no one shall be indicted for actions or omissions that did not constitute a crime at the time of their occurrence; no punishment of any type will be imposed on someone unless his or her guilt has been proven beyond a reasonable doubt and unless he or she has been convicted of a crime stipulated by law.

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<sup>10</sup> **Explanatory notes: Rights in court and criminal justice**

We saw the need to emphasize in particular the rights of detainees and prisoners because of the Israeli legal situation, which contradicts the principle of anti-discrimination. It is very important that these rights be included in the constitution because states maintain their internal sovereignty, inter alia, through arrests and detentions. Therefore, it is the role of the constitution to restrict this enormous power, which is liable to lead to the most severe violations of human rights.

### **The right to due process**

57. Every person in a civil lawsuit or a defendant in a criminal case in court is entitled to a fair legal proceeding that ensures, inter alia:
  - A. A full right to defend him or herself.
  - B. Representation in a criminal case by a defense attorney of his or her choosing, or the appointment of a defense attorney financed by the state if he or she cannot afford one.
  - C. Access to all evidence presented in court and cross-examination of witnesses testifying against him or her.
  - D. The calling of witnesses and presentation of evidence on his or her behalf.
  - E. An explanation of the details of the criminal charge or the civil lawsuit, as well as the trial process; if he or she does not have sound mastery of the language used in the hearings, a translator will be provided.
  - F. Completion of the legal proceedings within a reasonable period of time.

### **The rights of prisoners and detainees**

58. The personal dignity and right to social rehabilitation of a prisoner or detainee shall not be violated.
59. None of the basic freedoms and rights of the prisoner or detainee shall be violated except those rights which derive from his or her incarceration as such, including restrictions on his or her freedom of movement.
60. A prisoner or detainee shall not be discriminated against in the conditions of incarceration or release on the basis of the type of crime and/or circumstances of committing the crime, political opinions, nationality, religion, race, sex, color, ethnic origin, sexual orientation, disability or age.

## **Chapter Four: Miscellaneous**

### **Amending the Constitution**

- 61.** An amendment to the Constitution will be made by a special majority of two-thirds of the members of the Knesset, except an amendment of article 20, which will be made by a special majority of 80% of all members of the Knesset.

### **Transitional orders**

- 62.** Any legislation enacted prior to the approval of this Constitution but which contradicts its provisions will be void after a transitional period not to exceed three years from the approval of the Constitution.

### **Interpretation**

- 63.** Any interpretation of the provisions of this Constitution will be conducted in the spirit of the basic values of the Constitution and in the spirit of international human rights covenants, to which the State of Israel is a party.