



April 2014

To Whom It May Concern:

Re: **The Position of the Association for Civil Rights in Israel Concerning the
Definition of the State's Character**

The Association for Civil Rights in Israel (ACRI) herein wishes to present its position concerning the definition of the character of the State of Israel.

In recent years, several proposed bills sought to redefine the state's identity and character and to enshrine this definition in the framework of a Basic Law. In the current Knesset, one such bill was submitted by Members of Knesset Yariv Levin and Ayelet Shaked. In a discussion held by the government with regards to this bill, it was agreed that the Justice Minister would appoint Prof. Ruth Gavison to review the matter and to suggest options for defining the state. This process is currently ongoing and even raising some public interest, which is manifested, inter alia, in different public conferences on the issue, the publication of op-ed articles and more.

In light of the above, ACRI wishes to present its position on this important matter, which carries significant ramifications for Israel's character, the relationship between the majority and minority in the state and the basic rights of the minority.

ACRI's position examines this matter from the perspective of protecting democracy and human rights. Accordingly, the presupposition is that any definition that might contradict the foundations of democracy must be absolutely and completely avoided. Hence, any definition to be adopted should enshrine the right of all citizens of the state to absolute equality, regardless of nationality, religion or ethnic origin: in their belonging to the state and in the stringent protection of their rights. This does not negate the legitimate connections that could exist between religion and nationality and the state in other spheres – such as the social, cultural, emotional and symbolic spheres. However, in the constitutional-legal sphere, the principle of equality requires that these connections not

distinguish between the rights of different citizens and their status in relation to the state based on their national or religious identity.

The constitutional dilemmas entailed in defining the state's character are substantial. The question of how the state is defined and the precise words used to enshrine this definition is a question that has severe implications for the state and all of its citizens. As is well known, it is also a question that is subject to intense public debate between different sectors of the population, as well as among each sector itself.

In our opinion, the task of adopting a constitutional definition for the state should be executed on the basis of broad civil consent, while considering the rights, needs and legitimate concerns of the different individuals and groups comprising the population. It should be noted that defining the character of the state through a Basic Law forms, in fact, part of a constitution. Although, in principle, ACRI supports the establishment of a constitution that will enshrine human rights, we find the attempts to formulate a democratic constitution for the State of Israel extremely difficult at this point, when it is not undertaken with broad consent and in due consideration of all rights of the different groups of the population, and when the state continues to implement a regime of military occupation over millions of Palestinians, who do not enjoy even fundamental civil rights and to whom this constitution will not be applied.

The crux of the matter is that the proposal to define the State of Israel as a “Jewish state” and to enshrine this definition in a Basic Law raises various problems, both on a principle level and on a practical level:

1. The very definition of the state, in a Basic Law, as a Jewish state establishes a hierarchy between Jewish citizens – to whom the state supposedly “belongs” – and non-Jewish citizens – to whom the state supposedly does not “belong” – thereby excluding the non-Jewish population and discriminating against it, if only on a declarative level.
2. The term “Jewish state” (as well as its different variations: “the state of the Jewish people,” “the state of the Jews” and so on) is a vague expression, which could have many different meanings. Incorporating it into a binding article of a Basic Law opens a wide and dangerous door to the justification of discriminatory and racist policies towards non-Jews, and raises concerns that the protection of rights will be subordinated to this article, which will be used to justify a

discriminatory allocation of resources. The current reality, of long-standing discrimination against the Palestinian minority in Israel, only enhances the fear that this method will be used to justify violations of the rights of Arab citizens.

3. ACRI believes that alongside affording expression to the fact that the State of Israel was founded as a realization of the Jewish people's aspiration to political self-determination, and that in the State of Israel this right is realized in practice, there is a need to afford expression to the Palestinian citizens of the state, who are entitled to absolute equality and to the protection of their rights as an indigenous minority within the state. In any event, ACRI believes that, as is common in the constitutions of democratic countries around the world, it is more appropriate for the matter of a connection between the state and a nationality, as noted above, to appear in the preamble to the constitution, should there be one in Israel, and not as a binding article within it.

As a side-note to our principled position on this matter, we wish to refer to the version proposed for the definition of the state in the various bills submitted during the previous Knesset (proposed bill by MK Dichter et al.) and during the current Knesset (proposed bill by MKs Levin and Shaked). The aforementioned bills sought to subordinate the democratic character of the state to its Jewish character – the state is defined first and foremost as a Jewish state, and it is even established that the law, as well as any other law, shall be accordingly interpreted. The term “democracy” appears in a separate paragraph, and the above article of interpretation does not apply to it at all. This means that the term “democracy” is in fact subordinated to the character of the state as a “Jewish” state, secondary to it in importance and shall even be interpreted according to it. This version even diminished the term “democracy,” as instead of asserting that Israel is a “democratic state” it asserts that “Israel possesses a democratic regime.” This constitutes a change in the perception of democracy from an essential component that describes and defines the state, with everything derived from that, to a formal description of a regime model. Added to that is the fact that the proposed bills do not include any reference to the significance of the state being “democratic,” including the lack of an explicit reference to the fact that a democratic state ensures equal rights to all its citizens and protects human rights without any distinction.

In conclusion, ACRI's position is that adopting a constitutional definition for the state should be executed on the basis of broad civil consent, taking into consideration the

rights, needs and legitimate concerns of all different individuals and groups comprising the population. Furthermore, it is more appropriate that the issue of the connection between the state and the Jewish nationality be actualized through means that are not constitutionally binding, but rather have social, cultural and symbolic significance; for example, in the framework of a preamble to the constitution, should there be one. This, in order to ensure absolute equality and lack of discrimination based on nationality – for all citizens of the state.

Sincerely,