

**STATUS OF HUMAN RIGHTS IN THE STATE OF ISRAEL  
FOR THE 43<sup>RD</sup> SESSION OF THE  
UNIVERSAL PERIODIC REVIEW**

## **Introduction**

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to provide a balanced view of the State of Israel's (Israel) human rights record for the 43rd Session of the Universal Periodic Review (UPR).

## **Background**

2. Israel is located in the Middle East and has an estimated population of 8.9 million people.<sup>1</sup> The population is predominately Jewish, with approximately 74% of the population identifying as Jewish, 18% as Muslim, 1.9% as Christian, 1.6% as Druze, and 4.5% as other.<sup>2</sup>

3. Israel's previous review was held on January 23, 2018.<sup>3</sup> As a result of the review, Israel received 240 recommendations, 70 of which it supported.<sup>4</sup> One of the recommendations, made by Portugal and noted by Israel, was that the government should "[s]tep up efforts to fight inequality and discrimination between Jewish and Arab citizens."<sup>5</sup> It was further recommended by Canada and noted by Israel that the government should "[t]ake measures to ensure an equal and non-discriminatory institutional approach toward all communities in Israel, particularly Israeli-Arabs."<sup>6</sup> Several recommendations were made regarding Israel's treatment of Arabs living in the disputed territories (i.e., Judea and Samaria—the so-called West Bank—and the Gaza Strip) and Israel's use of security barriers, checkpoints, blockades, apartheid policies, etc. in the disputed territories.<sup>7</sup> Further, several countries made recommendations regarding the issue of settlements.

## **Legal Framework**

4. Israeli law protects full and equal civil and political rights of all of its citizens. Israel's Declaration of Independence guarantees "freedom of religion, conscience, language, education and culture."<sup>8</sup> It "safeguard[s] the Holy Places of all religions."<sup>9</sup> Further, "Christian, Muslim, Druze, and Baha'i communities have jurisdiction over their own members in matters of marriage, divorce, and burial."<sup>10</sup> Israeli law does not discriminate against, but instead provides equal protection of law to every citizen.<sup>11</sup>

5. Israel is also a party to a host of international treaties on human rights as well as the ones dealing with armed conflict, including, *inter alia*, the ICCPR, CEDAW, CAT, CERD, CRC, and the Geneva Conventions of 1949.<sup>12</sup>

## **Rights of Israeli Arabs**

6. Despite recommendations made during the previous review regarding unequal treatment of, and discrimination against, the Arab population, Israel's minorities, including its Arab citizens, have full and equal civil and political rights.<sup>13</sup> In fact, Israel is one of the few places in the Middle East where Arab women have the right to vote.<sup>14</sup> 64.7% of Arab

citizens of Israel voted in the 2020 election.<sup>15</sup> As a result, Arab politicians held 15 out of 120 seats in the Knesset, making them the third most powerful coalition in the legislative branch.<sup>16</sup> In fact, the United Arab List, an Arab political party, became part of the governing coalition in Israel.<sup>17</sup> In addition, Arabs have served in cabinet positions,<sup>18</sup> and several Arabs have sat on Israel's Supreme Court.<sup>19</sup> Israeli Arabs, including Israeli Arab women, have served as Israeli judges,<sup>20</sup> and in 2022, Khaled Kabub “was sworn in as Israeli Supreme Court’s first Muslim justice.”<sup>21</sup>

7. Moreover, “[e]very Israeli citizen . . . is eligible to be a candidate for the office of President of the State.”<sup>22</sup> The election of the President is done “by secret ballot at a Knesset sitting to be dedicated exclusively to this matter.”<sup>23</sup> Israeli law does prohibit candidates from participating in elections if they negate the “existence of the State of Israel as a Jewish and democratic state,” incite racial differences, or “[s]upport . . . an armed struggle by an enemy state, or . . . a terrorist organization, against the State of Israel.”<sup>24</sup> The Supreme Court of Israel has interpreted these exceptions narrowly, allowing both the existence of political parties that do not support Israel being a Jewish state and allowing candidates from those parties to hold office in the Knesset.<sup>25</sup> Requirements such as these are no different than any other country that requires public office holders to swear allegiance to the constitution, the founding documents, and the country.<sup>26</sup>

8. Israeli Arabs also enjoy religious freedom. For instance, despite the fact that the Temple Mount is the holiest site in Judaism,<sup>27</sup> since 1967, when Jerusalem was reunified after 19 years of illegal Jordanian occupation, Israel has allowed only its Arab citizens and other Muslims to pray at the main compound.<sup>28</sup> Jews are allowed to pray at the Western Wall.<sup>29</sup> Additionally, Israel “allowed the Jordanian Waqf to continue to maintain religious authority atop the mount. Jews [we]re allowed to visit under numerous restrictions, but not to pray.”<sup>30</sup> In 2021, an Israeli court ruled that Jewish worshipers silently praying at the Temple Mount was “not a violation of police guidelines.”<sup>31</sup> There is no other country in the world, and particularly in the Middle East, that provides that level of religious freedom to its religious minorities—particularly at the expense of both the religious practices and rights of the majority of its citizens.

9. Furthermore, while the State of Israel “requires every Israeli citizen over the age of 18 who is Jewish, Druze or Circassian to serve in the Israel Defense Forces,”<sup>32</sup> Israeli Arabs, *inter alia*, are exempt from mandatory military service. However, as described below, a growing number of Arab citizens do participate and are eligible for the ensuing benefits.<sup>33</sup> The exemption does not in any way prohibit Arab citizens from joining the military service. Instead, it allows Israeli Arabs to make their own choice whether to take up arms against enemies of Israel, who are Arabs in the disputed territories who have been waging war against Israel.

10. In fact, Israelis from all walks of life serve and advance in the military and more and more Arab Israelis are choosing to join. In 2020, more than 1,000 Israeli Arabs “volunteered to serve in the IDF as conscripts or reservists.”<sup>34</sup> The number of Arab recruits was more than twice that of previous years.<sup>35</sup> The number of those enlisting for combat roles also increased.<sup>36</sup> Israel’s military service requirements reflect Israel’s strong commitment to respecting the human rights of Israeli citizens of all backgrounds, and that includes providing exemptions for its Arab citizens who want that option.

11. Even though Israel only noted Portugal’s recommendation regarding inequality between Jewish and Arab citizens of Israel, it has taken this issue seriously and has taken commendable steps to further equality. Israel’s 922 economic plan to reduce the “inequalities

between Arab and Jewish communities,” which was set to expire in December of 2020 was extended through October 2021. Israel then passed new economic plans in October 2021 and January 2022.<sup>37</sup> In extending the 922 plan, the government allocated another \$500 million to the \$2.96 billion budget, to reduce inequalities through 2021. The October 2021 plan allocated \$9 billion over five years for “fighting crime and violence” and “developing employment, including raising the percentage of Arab women in the workforce, investing in technological innovation and high-tech, and developing health services and housing.”<sup>38</sup> The January 2022 plan allocated \$70 million over five years for a “tech and innovation program.”<sup>39</sup> The program focuses on promoting Arab entrepreneurship and industry involvement. It utilizes “emphasis on geographically and socially peripheral communities,” “tech accelerators,” “angel investor groups,” and “incubator[s].”<sup>40</sup> The three plans signal a significant investment by Israel into equality between Arab and Jewish communities, an investment in a minority population which is unheard of in its neighboring Muslim countries.

### **Rights of Non-Israeli Arabs in the Disputed Territories**

12. During Israel’s previous UPR, several countries also made recommendations regarding Israel’s treatment of Arabs in the disputed territories and the application of the Law of Armed Conflict (LOAC), including the use of checkpoints, security barriers, naval blockade, etc.

13. It is important to note that the term “Palestinian” is commonly used to refer to Arabs living in Judea and Samaria (aka the West Bank) and the Gaza Strip (collectively “disputed territories”), and the disputed territories are commonly labeled as “occupied Palestinian territories,” even though no state called “Palestine” has ever existed and none exists today. In fact, what we call “Palestine” today had been for millennia the historical homeland of the Jews. Nonetheless, Arabs residing in the disputed territories and much of the international community, including countries making recommendations in the previous UPR, have assumed, without any legal basis, that a state of Palestine comprises of the so-called West Bank and the Gaza Strip.

14. Based on this erroneous assumption, the countries criticizing Israel claim conclusively that the disputed territories are in fact “occupied Palestinian territories” and, as such, the LOAC applies therein. At the same time, however, those countries allege that Israeli security measures—which are lawful under the same LOAC—are unlawful. These are inherently inconsistent positions. Measures such as security barriers,<sup>41</sup> naval blockades,<sup>42</sup> military tribunals,<sup>43</sup> etc. are all lawful under the LOAC. Because the security measures are lawful under the LOAC, they cannot be unlawful under general human rights law. In other words, measures (such as restrictions on freedom of movement, security barriers, blockades, etc.) that are not allowed in peacetime are lawful during an armed conflict. This is not merely a legal technicality or theory, in actual fact, Israel uses such measures strictly to defend its own citizens—including Israeli Arabs—from relentless deadly assault from the populations of the disputed territories.

15. Hamas, Palestinian Islamic Jihad, (PIJ) and other terrorist groups in the disputed territories commit war crimes when they indiscriminately fire thousands of rockets into Israel;<sup>44</sup> use civilians as human shields;<sup>45</sup> use civilian infrastructure,<sup>46</sup> such as hospitals,<sup>47</sup> schools,<sup>48</sup> and residential buildings<sup>49</sup> for military purposes; and pay salaries and commissions to those who murder innocent Israelis.<sup>50</sup> In response to such attacks, Israeli security measures are completely lawful acts of self-defense allowed under the Geneva Conventions. In taking such measures to defend its civilian population from indiscriminate attacks (including its Arab citizens), Israel also takes every precaution to avoid civilian casualties in the disputed

territories.<sup>51</sup>

## Jewish Settlements

16. Per the explanation regarding Israel's' history above, as well as international laws governing the complicated situation of the disputed territories, the countries' recommendations in the previous UPR regarding Jewish settlements are also without any legal basis. Israel has valid, and at the very least competing claims to the disputed territories that are firmly rooted in history and law. The Balfour Declaration and the League of Nations' Mandate of Palestine are international legal documents which provide the legal basis for Jewish settlement in the disputed territories.<sup>52</sup> In fact, Article 6 of the Mandate explicitly encouraged "close settlement by Jews on the land."<sup>53</sup> Until the land dispute is resolved by peaceful means, Jewish settlements in the disputed territories cannot be declared unlawful, despite beliefs to the contrary.

## Recommendations

17. Israel takes its international commitment very seriously, as it has gone to great lengths to make sure it is not discriminating against its Arab citizens or any other minority group. It continues and has even increased its efforts to provide resources to ensure that all Israeli citizens are treated equally and fairly. Religious freedom and freedom of expression are protected in Israel. In fact, Arabs have more rights to pray at the Temple Mount than the Jews. As further proof that Israeli Arabs are not discriminated against, polls consistently show the majority of Israeli Arabs would rather live in Israel than in any other country or under the Palestinian Authority or Hamas rule.<sup>54</sup> We commend Israel for its efforts to provide equal treatment, and at times even more protection than it provides to the majority population, to its Arab minority population.

18. We also commend Israel for taking every measure to avoid civilian casualties in the disputed territories when it responds to thousands of indiscriminate rocket attacks from Hamas, PIJ, and other groups from the disputed territories. Israel's compliance with the LOAC, including the Geneva Conventions, by taking lawful measures to protect its civilian population, including the Arab population, as well as taking extreme measures to protect civilian life in general is not only commendable, but unprecedented.<sup>55</sup>

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<sup>1</sup> *Israel*, THE WORLD FACTBOOK (Sep. 2, 2022), <https://www.cia.gov/the-world-factbook/countries/israel/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Universal Periodic Review – Israel*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/en/hr-bodies/upr/il-index> (last visited July 28, 2022).

<sup>4</sup> *Israel*, OHCHR, [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/IL/ISRAEL\\_Infographic\\_29th.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/IL/ISRAEL_Infographic_29th.pdf) (last visited July 21, 2022).

<sup>5</sup> UPR of Israel – Thematic List of Recommendations, U.N. HUM. RTS. COUNCIL, A/HRC/38/15 - Para. 15., <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/115/17/PDF/G1811517.pdf?OpenElement>.

<sup>6</sup> *Id.*

<sup>7</sup> *See generally UPR of Israel – Thematic List of Recommendations*, U.N. HUM. RTS. COUNCIL, A/HRC/38/15 - Para. 15., <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/115/17/PDF/G1811517.pdf?OpenElement>.

<sup>8</sup> DECLARATION OF INDEPENDENCE para. 13 (Isr. 1948), <https://main.knesset.gov.il/en/About/Pages/Declaration.aspx>.

<sup>9</sup> *Id.*

<sup>10</sup> *Freedom in the World 2022: Israel*, FREEDOM HOUSE, <https://freedomhouse.org/country/israel/freedom-world/2021> (last visited July 22, 2022).

<sup>11</sup> Basic-Law: Human Rights and Dignity and Liberty (5752 – 1992), *available at* <https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawTheKnesset.pdf>.

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<sup>12</sup> UN Treaty Data Base, UNITED NATIONS HUMAN RIGHTS TREATY BODY (last visited Oct. 3, 2022),

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=84&Lang=EN).

<sup>13</sup> *Promoting Civil Society Between Arab and Jewish Israelis*, WILSON CTR. (June 21, 2002),

<https://www.wilsoncenter.org/event/promoting-civil-society-between-arab-and-jewish-israelis-ngos-perspective>.

<sup>14</sup> *Id.*

<sup>15</sup> Oliver Holmes, *Israel's Arab Parties Make Historic Gains as Election Support Surges*, THE GUARDIAN (Mar. 4, 2020), <https://www.theguardian.com/world/2020/mar/04/israel-arab-parties-make-historic-gains-election-support-surges>.

<sup>16</sup> *Id.*

<sup>17</sup> Rany Hasan, *First Year of the Coalition: The Situation of the Arab Parties and the Balance of Power Between Them*, BAYAN (May 2022) at 2, 4, available at <https://dayan.org/content/first-year-coalition-situation-arab-parties-and-balance-power-between-them>.

<sup>18</sup> *Who's Who in Israel's New Patchwork Coalition Government*, ALJAZEERA (June 14, 2021),

<https://www.aljazeera.com/news/2021/6/14/whos-who-in-israels-new-patchwork-coalition-government>.

<sup>19</sup> See e.g., *Khaled Kabub Sworn in as Israeli Supreme Court's First Muslim Justice*, THE TIMES OF ISRAEL (May 09, 2022, 8:21 PM), <https://www.timesofisrael.com/khaled-kabub-sworn-in-as-supreme-courts-first-muslim-justice/>.

<sup>20</sup> Mitchell Bard, *The Status of Arabs in Israel*, JEWISH VIRTUAL LIBRARY (last visited 22 Jul. 2022),

<https://www.jewishvirtuallibrary.org/the-status-of-arabs-in-israel>.

<sup>21</sup> *Khaled Kabub Sworn in as Israeli Supreme Court's First Muslim Justice*, *supra* note 19.

<sup>22</sup> Basic-Law: The President of the State (5724-1944), art. 4, available at

<https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawThePresident.pdf>.

<sup>23</sup> *Id.* art. 7.

<sup>24</sup> Basic-Law: The Knesset (5718-1958), art. 7, available at

<https://main.knesset.gov.il/EN/activity/documents/BasicLawsPDF/BasicLawTheKnesset.pdf>.

<sup>25</sup> *Israel Political Parties: Balad*, JEWISH VIRTUAL LIBR., <http://www.jewishvirtuallibrary.org/balad-political-party> (last visited 22 May 2018); *Poll Ban on Arab Israelis Lifted*, BBC NEWS (9 Jan. 2003, 11:29 AM),

[http://news.bbc.co.uk/2/hi/middle\\_east/2641227.stm](http://news.bbc.co.uk/2/hi/middle_east/2641227.stm); see also Lahav Harkov, *The 20th Knesset by the Numbers: More Arabs and Women, Fewer Orthodox Members*, JERUSALEM POST (18 Mar. 2015, 11:04 AM), <http://www.jpost.com/Israel-Elections/The-20th-Knesset-by-the-numbers-More-Arab-and-female-MKs-fewer-ultra-Orthodox-lawmakers-394305>

<sup>26</sup> 5 USCS § 3331 (1966 Oaths Act 1978, Section 1); Promissory Oaths Act 1868, § 2.

<sup>27</sup> Daniel Maina Wambugu, *Holy Sites of Judaism*, WORLDATLAS (Oct. 3, 2018),

<https://www.worldatlas.com/articles/holy-sites-of-judaism.html>.

<sup>28</sup> Ruth Margalit, *The Politics of Prayer at the Temple Mount*, THE NEW YORKER (Nov. 5, 2014),

<https://www.newyorker.com/news/news-desk/furor-temple-mount>.

<sup>29</sup> *Id.*

<sup>30</sup> *Israel Quietly Letting Jews pray on Temple Mount, in Break with Status Quo – TV*, THE TIMES OF ISR. (July 17, 2021, 11:48 PM), <https://www.timesofisrael.com/israel-quietly-letting-jews-pray-on-temple-mount-in-break-with-status-quo-tv/>.

<sup>31</sup> David Sidman, *Court Rules: Jews Can Pray on Temple Mount*, ISRAEL365 NEWS (Oct. 6, 2021),

<https://www.israel365news.com/199929/court-rules-jews-can-pray-on-temple-mount/>.

<sup>32</sup> *Our Soldiers*, IDF, <https://www.idf.il/en/minisites/our-soldiers/> (last visited Aug. 9, 2022).

<sup>33</sup> *Id.*

<sup>34</sup> Yoav Zitun, *IDF sees Record Number of Israeli Arab Conscripts*, YNET, (Jan. 3, 2021),

<https://www.ynetnews.com/article/rJVONmyCP>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Mitchell Bard, *The Status of Arabs in Israel*, Jewish Virtual Library, <https://www.jewishvirtuallibrary.org/the-status-of-arabs-in-israel> (last visited Sept. 19, 2022).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) art. 27, Aug. 12, 1949, 75 U.N.T.S 287 [hereinafter Geneva Convention IV].

<sup>42</sup> *Id.* art. 23; ICRC, *Commentary on the Fourth Geneva Convention: Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 1958* [hereinafter *Commentary of 1958*].

<sup>43</sup> Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention) art. 84, Aug. 12, 1949, 75 U.N.T.S 135 [hereinafter Geneva Convention III].

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<sup>44</sup> *Palestinian Rockets in May Killed Civilians in Israel, Gaza*, HUM. RTS. WATCH (Aug. 12, 2021, 12:00 AM),

<https://www.hrw.org/news/2021/08/12/palestinian-rockets-may-killed-civilians-israel-gaza>.

<sup>45</sup> European Parliament Resolution of 19 April 2018 on the Situation in the Gaza Strip 2018/2663(RSP), 2019 O.J. (C 390) 3; Orde F. Kittrie & Matthew Zweig, *How Congress Can Fight Hamas's Use of Human Shields*, THE HILL (June 11, 2021, 1:30 PM), <https://thehill.com/opinion/international/557939-how-congress-can-fight-hamas-use-of-human-shields/>.

<sup>46</sup> Kittrie & Zweig, *supra* note 45.

<sup>47</sup> Terrence McCoy, *Why Hamas Stores Its Weapons Inside Hospitals, Mosques and Schools*, THE WASH. POST (July 31, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/07/31/why-hamas-stores-its-weapons-inside-hospitals-mosques-and-schools/>.

<sup>48</sup> *Id.*

<sup>49</sup> Kittrie & Zweig, *supra* note 45; Julia Marnin, *Owner of Gaza Apartment Building Was Warned by Israeli Military to Evacuate Before Airstrike*, NEWSWEEK (May 13, 2021, 9:57 AM), <https://www.newsweek.com/owner-gaza-apartment-building-was-warned-israeli-military-evacuate-before-airstrike-1591185>.

<sup>50</sup> Sean Durns, *The Palestinian Authority Is Still Paying Terrorists*, NEWSWEEK (Jan. 21, 2021, 5:30 AM), <https://www.newsweek.com/palestinian-authority-still-paying-terrorists-opinion-1563138>; Sander Gerber & Michael Koplow, *No More 'Pay to Slay'*, WALL. ST. J. (July 12, 2022, 5:46 PM), <https://www.wsj.com/articles/no-more-cash-for-terrorists-payments-west-bank-abbas-biden-visit-martyrs-washington-11657656402>.

<sup>51</sup> See, e.g., *Taking Every Measure to Avoid Civilian Casualties*, Nov. 19, 2012, EMBASSY OF ISRAEL TO THE UNITED STATES, <https://embassies.gov.il/washington/NewsAndEvents/Pages/IDF-minimizes-civilian-casualties.aspx>.

<sup>52</sup> Jay Sekulow & Robert Ash, *Why Jewish Settlements in the So-Called 'West Bank' are Lawful Under International Law*, ACLJ (Apr. 19, 2022), <https://ssrn.com/abstract=4087694>.

<sup>53</sup> Mandate for Palestine, July 24, 1922, 3 L.O.N.O.J. 1007 (Supp. 1923).

<sup>54</sup> James Sinkinson, *If Israel Is So Terrible, Why Do So Many Arabs Prefer to Live Under Israeli Rule?*, JNS (Dec. 28, 2021), <https://www.jns.org/opinion/if-israel-is-so-terrible-why-do-so-many-arabs-prefer-to-live-under-israeli-rule/>.

<sup>55</sup> David Alexander, *Israel Tried to Limit Civilian Casualties in Gaza: U.S. Military Chief*, REUTERS, (Nov. 6, 2014), <https://www.reuters.com/article/us-israel-usa-gaza-idUSKBN0IQ2LH20141106>.