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 nation and the Islamic culture 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, Arab and Jewish 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.¹

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

¹ 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 Borders of the State of Israel

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

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2 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.
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
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;

3 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.

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A multicultural state

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.

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4 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).
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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, colour, 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 property
39. Every person 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 (Defence) Regulations of 1945.

5 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).
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.