ACRI and Adalah Petition against the "Nakba Law": Overview and Excerpts from the High Court Petition

On 4 May 2011, a petition was filed to the High Court of Justice by the Association for Civil Rights in Israel (ACRI) in conjunction with Adalah: The Legal Center for Arab Minority Rights in Israel against the "Nakba Law" (HCJ 3429/11).

Joining the petition were the Alumni Association of the Arab Orthodox School in Haifa, Jewish and Arab parents of children in the Galil Jewish-Arab School, and Professor Oren Yiftachel of Ben-Gurion University. The petition was prepared by Atty. Hassan Jabareen and Atty. Sawsan Zaher of Adalah, and Atty. Dan Yakir, ACRI's Chief Legal Counsel.

The full text of the petition in Hebrew appears at http://www.acri.org.il/he/wp-content/uploads/2011/05/hit-4.5.11.pdf.

Below is a summary of the law and translated excerpts from the petition. The excerpts present some of the key arguments made to the Court, but are not a complete summary of the principles that appear in the petition.

EARLIER VERSIONS OF THE LAW AND OBJECTIONS RAISED

The so-called "Nakba Law" began to take shape in April 2009, proposed at the time as Independence Day Law (Amendment – Prohibition on Marking Independence Day or Establishment of the State of Israel as a Day of Mourning) 2009, which was tabled in the 18th Knesset by MK Alex Miller and others. This was a proposal to amend the Independence Day Law from 1949 by adding an article that states, "No person shall hold any action or event marking Independence Day or relating to the establishment of the State of Israel as a day of mourning or of sorrow". Violators would be liable to three years imprisonment. The Explanatory Notes to this bill stated, "it is proposed that the law prohibit actions that mark Independence Day or the establishment of the State of Israel as a day of mourning and that a harsh penalty be imposed on those who exploit the democratic and enlightened character of the State of Israel in order to destroy it from within".

This bill was later replaced with one in a similar spirit, entitled "Budget Principles Law (Amendment – Reducing Budgetary Support for Activities Contrary to the Principles of the State) 2009", which is the original version of the law passed in March. The Explanatory Notes state that "Entities that receive financial support from the state budget must not be allowed to finance or sponsor activities that entail denial of the existence of Israel as a Jewish state by, inter alia, marking Independence Day or the day of the establishment of Israel as a day of mourning".

Prior to enactment of this law and out of concern for its dangers – the potential harm to human rights and democratic values – some twenty Israel Prize laureates and other intellectuals issued a statement opposing it, which included this passage:

> This bill, which would raise to new heights the racist and anti-democratic wave that threatens to engulf the Knesset, would allow politicians to judge and sentence anyone whose pronouncements were not to their liking. They could issue rulings about verbal injury to the "Jewishness" of Israel, and the very mention of those harmed by the War of Independence would be severely punished and fined. And this comes from a nation that fights to prevent others from denying the harm done to it throughout history.

THE LAW ENACTED IN MARCH 2011

On 22 March 2011, the amendment passed its second and third readings in the Knesset, authorizing the Minister of Finance to reduce the allocation or support for any organization or entity that receives state funding or support – schools, universities, local authorities, or others – if they engage in any of five specified activities. The text of the law:

> If the Minister of Finance observes that an entity has made an expenditure that constitutes in its essence one of those hereunder specified (in this section, "an unsupported expenditure"), he is authorized, with the agreement of the minister responsible for the budget line under which this entity receives an allocation or support, after granting a hearing to the entity, to reduce the sums allocated from the state budget to this entity under any law:
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> 1. Denying the existence of Israel as a Jewish and democratic state;
> 2. Inciting to racism, violence, or terrorism;
> 3. Supporting an armed struggle or act of terrorism by an enemy state or terrorist organization against the State of Israel;
> 4. Marking Independence Day or the day of establishment of the State of Israel as a day of mourning;
> 5. Engaging in vandalism or physical desecration that dishonors the state flag or its symbol.

The law stipulates that the minister shall issue directives to reduce the allocation after receiving expert testimony from the legal counsel of the Ministry of Finance and upon recommendation of a professional staff. The reduction shall not exceed "three times the amount of the unsupported expenditure", with "expenditure" defined as "a concession of revenue". According to this law and its vague wording, if a state budgeted or supported institution engages in any form of activity – even academic, intellectual, cultural, or artistic – in which the definition of Israel as a Jewish and democratic state is challenged, or in which Nakba Day is marked as a day of mourning, or in which it is advocated that Israel become one binational state between the Mediterranean and Jordan, state financial support for that institution could be reduced.

THE MEANING OF THE NAKBA

The literal meaning of *al-nakba* in Arabic is "a colossal catastrophe". According to the Arab intellectual Constantin Zureiq, "The defeat of the Arabs in Palestine should not be treated as a simple disaster or fleeting event. It was the worst catastrophe, in the deepest sense of the word, to have befallen the Arabs in their long and disaster-ridden history". As Palestinian historian Arif al-Arif notes in his research, "How can I not call it a nakba? It was during this period that the Arabs, and the Palestinians in particular, faced a disaster of a kind they had not encountered for generations: Our homeland was stolen, we were driven from our lands, we lost a large number of our sons, and, above all, our dignity was deeply wounded" ('Arif al-'Arif, *The Nakba of Palestine and Paradise Lost*, 1947-55, The West Bank (Dar al-Huda), vol. 1, page 3).

From the Palestinian perspective, the Nakba was the first time in their history that Palestinians not only lost their homeland, but became refugees. Kimmerling and Migdal describe the "meaning" of the tragedy that took place between late 1947 and the declaration of the State of Israel: "The Palestinian Arab community as a social and political entity ceased to exist, a process that neither the Jews nor the Arabs could have predicted – not the Jews in their most optimistic political dreams, nor the Arabs in their most terrible collective nightmare" (Baruch Kimmerling and Joel Migdal, *Palestinians: The Making of a People*). Thus the year 1948 began to be referenced in Arab literature, poetry, and politics as an unparalleled historical tragedy, one without precedent in Palestinian

history. These are the conceptual roots of the commonly heard phrase among Arabs, “Their Independence Day is our Nakba”.

As the Palestinian writer Emile Habibi noted in 1985:

> The tragedy of the Palestinian Arabs is a total tragedy, encompassing those who fled and became refugees, and those who, becoming refugees, remained in their homeland. The poet Tufik Zayid, who was also the mayor of Nazareth, was right when he said to one of his brethren, a refugee (who had fled), “The tragedy that I live is part of your tragedy.” It became clear to me that the tragedy of the Palestinian urbanites was even more tragic – those who fled and those who remained, “alone like a sword” in the hands of the lone master, surrounded by people who do not know him. Not only do they not know that he is a knight, but they do not recognize that he, like them, is a human being.
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> Translation from Laurence J. Silberstein, *Postzionism Debates*, Routledge, 1999, p. 147.

A recent historical development of this concept, bestowing additional meanings upon it, took place among Arab academics, intellectuals, and activists who are citizens of Israel. The “Arab Vision Documents” published in Israel at the end of the previous decade, were the most recent collective Palestinian attempt to formulate the concept “Nakba”. According to these documents, Nakba is not just the tragedy of refugeehood, loss of a homeland, and the founding of Israel on the remnants of their nation, and not just the obliteration of hundreds of Arab villages, and not even the transformation of the cultural landscape of that place, but also the experience of oppression and discrimination that continues to this day – the lot of those who remained in the homeland, the Palestinian citizens of Israel. The issue of oppression and discrimination, according to the Vision Documents, is related to the constitutional definition of Israel as a Jewish state.

Nevertheless, the Arab Vision Documents clearly distinguish between the historical narrative and political demands, which are based on two states between the Mediterranean and Jordan. Thus, there is no connection whatsoever between commemorating the Nakba and refusing to recognize the State of Israel, or refusal to recognize the self-determination of Jewish Israelis. The historical narrative is one matter, and political demands are another.

It is not surprising, therefore, that Israeli legal bodies have related to the Nakba as “the most severe collective trauma in their history”, as noted by the State Commission of Inquiry headed by Justice Theodor Or:

> The Arab minority in Israel is a native population that perceives itself to be under the hegemony of a majority that is largely not [native]…The founding of Israel, which the Jewish nation celebrates as the realization of a generations-long dream, is bound up in their historical memory with the most severe collective trauma in their history – *the Nakba*…The content and symbols of the state, which are also anchored in law and pay tribute to the victories of that conflict, represent defeat to the Arab minority, and it is doubtful that they can genuinely identify with them. Time can perhaps assuage the pain, but with rising national consciousness, awareness of the problem also increases, a problem that is part of the very founding of the state.
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> *Report of the State Commission of Inquiry on Clashes between the Security Forces and Israeli Citizens in October* 2000, vol. 1, pp. 26-27.

And yet the law under discussion seeks indirectly to prevent the conducting of a cultural discourse about the concept “Nakba”, and intellectually challenging the constitutional definition of the state. In fact, this very text and legal discussion about it could be considered an act sanctionable by this law, which is absurd. Cultural identities are not matters to be judicialized or regulated.

LEGAL ARGUMENTS AGAINST THE LAW

A. Violation of Freedom of Expression

This law violates freedom of expression, which includes freedom of political, artistic, and academic expression.

The right to free political expression merits special status as this right lays the foundation for democracy, which is based upon the free exchange of ideas. The Kol Ha’Am ruling in 1953 (HCJ 73/53 *Kol Ha’Am vs Minister of the Interior*, PD 7, 1, 871) legally established this fundamental principle, according to which the protection of views outside political consensus is the measure of the protection of this right in a democracy. Hence, freedom of political expression cannot be overridden solely because of a fear of harm to the public interest, or only because a view does not conform to the pervasive sentiment of the majority, or because of the evil intent of the speaker. This right may be curtailed only when there is near certainty of substantive harm to a public interest of supreme importance.

The argument that the said law is constitutional because the state is entitled to withhold legitimacy from or refuse a public forum to expressions that challenge the “Jewish and democratic” values of the state, because support could be interpreted as giving legitimacy to these expressions – is an argument that contravenes the tests of freedom of expression. These are political expressions, and therefore prohibiting them due to their content alone is inconsistent with the test of near certainty.

Further, the argument that the law is constitutional because the state is entitled to withhold support from expressions citing the Nakba and treating the establishment of Israel as an event to be mourned, because these expressions offend the sensibilities of large segments of the public and give legitimacy to the Palestinian historical narrative, which in the opinion of these segments of the public is the narrative of the enemy – are invalid arguments that do not meet the tests of protecting freedom of expression.

The law could undermine freedom of artistic expression such as theater productions, poetry readings, etc., which deal explicitly with the Nakba, Palestinian refugees, the yearning to return to the homeland, etc. Based on this law, a theater receiving state support that presents Mohammad Bakri’s one-man show based on Emil Habibi’s *Pessoptimist*, for example, or that stages a play written by Mahmoud Darwish, or a theater that performs a play based on Ghassan Kanafani’s “Returning to Haifa”, could have their budget allocations slashed.

The law would also undermine academic freedom, which is a right derived from the freedom of expression and no less important in status than the freedom of political or artistic expression. Academic freedom allows for the development of critical thinking at all levels, including critical thinking about politics and art. To develop critical thinking, the government must be distanced from intervention in all academic content, particularly the expression of opinions or the range of academic views. Academic independence is underscored by Article 15 of the Council for Higher Education Law 1958, which states that every institution has the right to conduct its own academic affairs.

The said law will have a chilling effect, deterring organizations from engaging in activities that might fall within the compass of the law and result in budgetary sanctions. Deterrence is further increased as the penalty for engaging in prohibited activities could result in a fine up to three times the organization's outlay on the activity (including concession of revenue). Thus many organizations, including local authorities, schools, cultural centers, and institutions of higher learning, may refrain from engaging in activities in fear of harming their funding. Deterrence will also affect potential recipients of these organizations' services, who will be prevented from obtaining the service due to the chilling effect of the law.

The encroachment on freedom of expression by this law is so extensive that an isolated and even marginal act that falls within one of the two legal grounds would be sufficient for incurring monetary sanction, regardless of the nature of the act, its influence on the public, its impact, or the degree of harm, if any, to any legitimate interest.

B. Violation of the Right to Equality

Discrimination, according to the law, is based on nationality or on social or political views. This law will discriminate against the petitioners solely on the basis of their educational activity, which violates no law or legitimate public interest. There is serious concern that this law would prevent the petitioners from conducting community and cultural activities that have a cultural-political tenor and are designed to examine the status of Arab citizens and the historic injustice they experienced.

Conversely, this law would not harm the alumni associations of Jewish schools that hold various activities related to the identity and character of Israel as a Jewish state, and not harm activities designed to perpetuate the Jewish-Zionist narrative. Bilingual schools, such as those attended by the petitioners' children, would be disallowed from realizing their core goal of exposing the Jewish and Arab children to the national narratives of both nations, while other distinctive educational frameworks, such as the democratic schools or various experimental schools, could enjoy the full range of activities designed to preserve the hegemony of the majority group. This distinction can also be made between Arab schools and Jewish schools in the state-secular system. The petitioner Prof. Oren Yiftachel would experience discrimination in the context of his scientific and academic research, and his academic status could be seriously harmed. Conversely, many academics, including those who advocate non-democratic views and relate to Arab citizens as a demographic threat, would incur no harm to their academic status.

The legal issue regarding the constitutionality of the law is as follows: For purposes of imposing budgetary sanctions, is it legitimate to distinguish between financially supported bodies based on their views of Zionist values? Or in another, similar formulation: For purposes of reducing a budget, is it legitimate to distinguish between financially supported bodies that advocate, or do not undermine, Zionist values and those bodies that reject these values and/or cite the Palestinian narrative? In response, we address this on two, legally linked levels: The first concerns the conception underlying the Ka'adan judgment, which grappled with the issue of equality in the context of nationality in a Jewish and democratic state; and the second concerns the purpose of the Budget Principles Law.

The conception underlying the Ka'adan judgment is that the prohibition against discrimination in Israel as a democratic state applies to Jewish and Arab citizens alike, without regard to nationality. The law in question is an amendment to the Budget Principles Law, which deals with support for institutions within Israel that are registered in accordance with the laws of Israel. The purposive interpretation of the Budget Principles Law, which is implemented by the Ministry of Finance, and which emerges from various provisions, indicates that this law has nothing to do with ethnic or

ideological matters. Furthermore, the purposive interpretation of the Budget Principles Law is evident from the very application of equality to the law, as manifested in Article 3A(d), which calls for equality in the allocation of support.

Although the provisions of international law do not alone provide grounds for invalidating primary legislation, international law, as noted more than once, does provide guidance for interpretation and adjudication. The principle of equality in international law obliges the state to take positive measures to ensure that all citizens have their rights protected, including the rights of a resident minority. Article 27 of the International Covenant on Civil and Political Rights declares that in states having ethnic, religious, or linguistic minorities, persons belonging to these minorities must not be denied the right to enjoy their own culture or use their own language. Article 27 must be read in tandem with the preceding Article 26; taken together, these articles oblige the state to take positive measures not to discriminate against a minority group that lives there. Article 26 states that every individual is entitled to equality before the law, that every type of discrimination is prohibited by law, and that all persons must be ensured "*equal and effective protection* against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

C. Violation of the Right to Equality in Education and Free Choice in Education

The provisions of this law violate the right to education. The law would prevent the children of some of the petitioners as well as other children from receiving an education in accord with the Palestinian national narrative, thereby contravening the objective of state education as anchored in Article 2 (11) of the State Education Law, "to recognize the unique language, culture, history, heritage, and tradition of the Arab population and other population groups in the State of Israel, and to recognize the equal rights of all citizens of Israel".

A recent judgment of Justice Procaccia in the Abu Labda case asserts that the right to education is core to the constitutional right to human dignity HCJ 5373/07 *Abu Labda vs Minister of Education*, para. 25 of Justice Procaccia's judgment (dated 6 February 2011).

Moreover, this violation would preserve and even intensify the already existing oppression in the education system resulting from the stringent supervision of the Ministry of Education over the content of education, particularly in Arab schools. In this context, Professor Ismael Abu-Saad's words are pertinent:

> This study demonstrates how Israeli educational policy and curriculum are designed to serve the Zionist national project. As such, they perpetuate racist and hostile images of Arabs to Jewish students, and silence the Palestinian Arab narrative while reshaping regional history for both Jewish and Arab students to fit the Zionist narrative. While the sense of Palestinian Arab belonging to the Zionist national project (for example, building the Jewish state) can only be partial and incomplete, if it exists at all, the development of identification with the Palestinian people and Arab peoples more broadly is suppressed. The study of extensive required curricular materials is used to make the Palestinian Arab student understand the history and empathize with the suffering of the Jewish people. Thus, the policy and content of the state-controlled education system for Palestinian Arabs aim to re-educate the students to accept the loss of their history and identity. And it prepares them, ideologically and practically, to accept the superior status of the Jewish people, and the subordination of their needs and identity to the needs of the national Zionist project.

> Ismael Abu-Saad, "State Educational Policy and Curriculum: The Case of Palestinian Arabs in Israel", *International Education Journal*, 2006, 7(5), 709, 717-718.

Furthermore, the law would deepen discrimination that already exists between Arab and Jewish schools in curricular materials. The organization Human Rights Watch refers to this in its report:

> Thus, while appreciation for different cultures and values is an important part of education, considering the relatively minimal instruction available to Palestinian Arab children in their own cultural identity and religion compared with their Jewish counterparts, the state's educational emphasis on instilling Jewish culture and religion in Palestinian Arab children is problematic.
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> Zama Coursen-Neft, "Discrimination against Palestinian Arab Children in the Israeli Educational System", *36 International Law and Politics* 749, 790-791 (2005).

Implementation of this law would also harm *the right of parents to exercise freedom of choice about their children's schooling* – the choice of an educational institution for their children that is consistent with their views and educational approach. The law would have fateful implications for bilingual schools, as it would empty of all meaning the goals of these schools and harm the rights of the parents, who chose to register their children in a distinctive institution in order to educate them according to a particular worldview that promotes the good of their children from their perspective.

D. Violation of the Freedom of Occupation

This law violates the freedom of occupation of all those who, in the framework of their work, engage in a critical examination of the character of Israel as a Jewish state, in contravention of the Basic Law: Freedom of Occupation.

Enforcing this law on an institution of higher learning in which petitioner Prof. Oren Yiftachel teaches or will teach in the future could violate his constitutional right to freedom of occupation. This is because any cuts in allocation to a state-funded institution where he works as a result of the technical study of his writings or the holding of activities related to his theories would jeopardize his continued employment, out of concern about further cuts in allocation to an institution in which he is employed. In contrast, academics who teach in the same institution and do not support the theories advocated by Prof. Yiftachel, or who are deterred from discussing or teaching about his writings, would not be vulnerable to any damage incurred by that institution.

The teachers employed in the bilingual school would be unable to realize their right to freedom of occupation, unlike their colleagues in schools defined as "unique schools", which have different social or political approaches.

Violation of the constitutional right to freedom of occupation is even more serious as it is based on extraneous considerations that are irrelevant to educational concerns or academic freedom, which are fundamental to the teaching profession. The grounds given in this law for legitimately curtailing the freedom of occupation relate solely to the views of the petitioners. These grounds are actually intended to protect the freedom of occupation of a teacher or lecturer in higher education.

It is not superfluous to point out that an employee is prohibited from engaging in discrimination against job candidates or employees on account of their views or party affiliation, as stated in Article 2 of the Employment (Equal Opportunities) Work Law 1988.

The prohibition on hiring teachers with reference to their views or political activities was articulated by the High Court of Justice even before enactment of the Basic Law: Freedom of Occupation, as political considerations were regarded as extraneous to the occupation of teaching.

E. Violation of the Right to Group Dignity

This law violates the right to group dignity of Arab citizens in contravention of the Basic Law: Human Dignity and Liberty. Violation of the right to group dignity itself engenders violation of the right to individual dignity, and occurs when the violation relates to components of the group's identity, presenting that identity as inferior or unwanted, or when it includes elements of group oppression. The Palestinian narrative constitutes an inalienable part of the identity of most Arabs in Israel, and therefore the attempt made by the law to preclude mention of this narrative harms a constitutive element in the identity of these Arab citizens. Furthermore, the attempt to stifle legitimate opposition to and protest of the values of Israel as a Jewish and democratic state – a definition from which many Arab citizens feel excluded – violates their group dignity as it prevents them from opposing the discrimination against them. See the Mar'i judgment in which Justice Cheshin discusses the link between Arabic language and culture and the right to dignity (HCJ 12/99 *Mar'i vs Sabek*, PD 53 (2) 128 (1999)); see also para. 25 of President Barak's judgment in HCJ 4112/99 *Adalah vs Tel Aviv-Jaffa Municipality*, PD 56 (5) 393 (2002).

The right to group dignity is violated as a result of the law's imposition of penalties and sanctions on legitimate opposition to the definition of the state or on treating the Palestinian narrative in a positive light. The law thereby undermines the legitimacy of Arab citizens – their status, collective memory, and national identity. It seeks to delineate and shape the values, views, and behavior of the Arab minority by manipulative use of budget allocations that are conditioned, as noted, upon the nature of the activity and its political and moral message. Thus the law violates the right to dignity of Arab citizens, whose group dignity and legitimacy are entitled to protection by virtue of their being a national minority within the state.

Although the law is ostensibly neutral in harming Jewish and Arab institutions and individuals alike, it is unquestionably and substantively directed against the legitimacy of Arab citizens as a national minority perceived by the state as "the other" and regarded by many as an enemy that endangers the state, and therefore exceptional measures must be taken to restrain it and make it "loyal" to the values of the majority. Hence, this is fundamentally a law fostering oppression.

This law could even legitimize incitement to racism against Arab citizens of Israel, as it fosters a view of these citizens as enemies of the state and of other citizens. It frames Arab citizens and their political and legal activity as justifying defensive measures by the state against its own citizens. Hence, the law itself is invalid because it breaches the right to group dignity of Arab citizens as a national minority.

In this context, philosopher of law Jeremy Waldron discusses the right to group dignity of communities with unique characteristics of culture, identity, and destiny. Violation of this right is separate from violation of the individual's right to dignity:

> Also, even when individual rights and obligations are at issue, groups may develop a stake in those issues that requires to be respected as much as the dignity of the individuals originally affected. For example, it may be that, in some cases where the primary injustice we are fighting is injustice at the individual level, talk of group dignity can be a way of conveying respect for the community that has taken upon itself the burden of remembering the injustice and of trying to do something about it. *Some of the men and women in a group may*

> *have been starved, persecuted or murdered, and the task of remembering those events has been taken on by the community to which the victims belonged. In this situation, attributing dignity to the group in regard to this injustice can be a way of conveying respect for the substance and the burden of that memory.* We may say that the primary issue of dignity in these circumstances is the violated dignity of the individual victims. But again it will be obtuse not to acknowledge the indirect way in which group dignity is implicated as well. [Emphasis not in the original.]
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> Jeremy Waldron, *The Dignity of Groups*, New York University School of Law, Public Law & Legal Theory Research Paper, Working Paper No. 08-53, November 2003, pp. 21-23.

It could be argued that a state is entitled not to encourage the Palestinian narrative or discourse about the status of Arab citizens in a state that defines itself as Jewish and democratic. Irrespective of the legitimacy of this legal claim, the state does not have free and unrestrained power, but is prohibited from harming the dignity of its citizens or any part of them. It is not superfluous to note that the concept “human dignity” in international law has evolved in the context of the need to “limit the sovereignty” of a state vis-à-vis the rights of its subjects or citizens, including those not loyal to its values. This is because the groups harmed and oppressed have been those very groups outside the national consensus. Hence safeguarding this right emerged as a result of the atrocities that took place during World War II in an effort to protect every person regardless of his or her loyalty to one state or another. Law scholar Judith Resnik well describes the evolvement of the concept “human dignity” after World War II:

> The rise of dignity (inter alia) has changed the meaning of sovereignty…As these phrases from many legal documents illustrate, the law of dignity defines it as an attribute of all persons, not only those who claim loyalties to a specific nation. Thus dignity becomes a transportable aspect of personhood, responsive to the practical and political import of globalization. The law of dignity dovetails with a range of political theories of the changing relations between states and their citizenry and the obligations of political actors more generally.
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> Judith Resnik and Julie Chi-Hye Suk, “Adding insult to injury: Questioning the role of dignity in conceptions of sovereignty”, 55 *Stan L. Rev.*, 1921, 2003.

SPECIFIC HARM TO THE PETITIONERS

Petitioner #1 – Alumni Association of the Arab Orthodox School in Haifa

Petitioner #1 is a registered not-for-profit association in Israel, founded in 2002. It is composed of approximately 90 alumni of the Arab Orthodox High School in Haifa, founded in 1952 and recognized by the Ministry of Education. The school is considered one of the most prestigious in Israel, whose students are annually among the highest scorers in the matriculation exams among all the Arab schools in Israel. It also makes the list of the fifteen schools with the highest proportion of students who excel on the matriculation exams. Graduates of this school are among the foremost Arab academics, intellectuals, and leaders in Israel.

The goal of the Alumni Association is to support the school and enhance cooperation on all levels among the school graduates. To that end, the Association holds various community and cultural activities on the school grounds, designed also to enrich and support the informal educational activities of the school.

The Association holds six to eight programs a year. These include lectures and panel discussions on various issues, including those related to the implications of the identity of Israel as a Jewish and democratic state on the status of Israel's Arab citizens, and discussions about the Arab Vision Documents. These documents, as is known, include a call for changing the constitutional government of Israel to a bilingual and multicultural democracy, with full equality for people of all nationalities in the state. The Vision Documents were written in response to the "Kinneret Covenant" initiated by Professor Yuli Tamir and Brig.-Gen. (Res.) Effi Eitam, whose goal was to formulate principles for a compromise between Jewish seculars and Jewish religious-nationalists, and also in the wake of the writing of a "Constitution by Consensus". The Vision Documents stimulated public discussion in Israel and provoked widespread criticism based on claims that they challenge the definition of Israel as a Jewish and democratic state by rejecting the Law of Return, calling for the enactment of equal citizenship laws, advocating for the right of return of Palestinian refugees to Israel, and adopting the narrative of the Nakba.

The Association also holds activities designed to educate about Palestinian history, particularly its history in Israel. All these activities take place on school property, making use of the school infrastructure. The Association is not charged for use of these facilities. Some of these activities could be construed as violations of the law, and the state's allocation to the school be reduced.

Petitioners 2-6 – Parents of children in the Galil Jewish-Arab School

Petitioners 2-6 – Radwan Badarneh, Ayman Miari, Hazar Hijazi, Ron Shapira, and Aric Kershenbaum – are the parents of Jewish and Arab children who attend the Galil Jewish-Arab School in Misgav, a bilingual and bi-national educational institution that is officially recognized by the Ministry of Education. This school was founded at the initiative of Hand in Hand: The Center for Jewish-Arab Education in Israel, which educates some 200 children. Every class in the school has both Jewish and Arab children and is taught in two languages by two teachers, one an Arab and the other a Jew.

This school educates for the values of democracy and equality, and allows the children to experience the culture and language of two nations, hear the national narrative of both nations, and learn the basic tenets of three religions – Christianity, Islam, and Judaism. According to the Hebrew website of the Misgav Regional Council, within whose jurisdiction the school operates, "The goal of the Galil Jewish-Arab School is for Jewish and Arab children to lead a joint life on a daily basis over time within the school framework. This is a unique educational model in which the encounter between the children is based on equality and cooperation, and which instills respect for and recognition of the culture of the other. This in-depth understanding develops the personality of the individual, enriching his own world and that of his society and culture. The school seeks to expand the circle of students to twelfth grade, while continuing to emphasize pluralism, social leadership, active citizenship, and excellence." Beyond inculcating "the values of respect, tolerance, and openness" in the students, the school educates for "critical pedagogy and an analysis of reality from a range of perspectives".

To realize the goals of the school, various activities are held each year prior to Memorial Day and Independence Day, with the aim of commemorating both Independence Day and the events of the Nakba. On this day, two separate assemblies are held – one marking Memorial Day for the Jewish students, and the other marking the events of the Nakba for the Arab students.

During the assembly to commemorate the Nakba events, passages are read to the children from Palestinian literature and poetry as well as testimonies from survivors. At the conclusion of the separate assemblies, the children come together for a joint ceremony called "From Pain to Hope". The joint assembly also allows the students to exchange experiences from the separate assemblies

held earlier. These assemblies expose the students to the unique experience of marking these two events for the entire population while making them aware of the narrative of each nation, the distinctiveness for each of Independence Day and the Nakba, and the events that transpired in 1947-48 from each perspective. Exposure to these narratives, while sharing experiences that range from happiness to sadness and even mourning, provides an effective and important educational tool through which the children can learn about the history and culture of the other nation, thereby achieving one of the main goals of the school.

After this law was enacted, the parents of the children in this school, including Petitioners 2-6, met to discuss the implications of the law for the school programs that mark Independence Day and the Nakba. During the course of these meetings, parents expressed concern that the law will force the school to curtail its annual program to mark the Nakba events, or entirely refrain from discussing them. This provoked deep concern that cancellation of the annual programs could substantially detract from realizing the school's goals and providing optimal tools to educate their children according to their worldview, as this is a specialized school within the jurisdiction of Misgav and, more generally, the north.

It should be emphasized that during a meeting of the Knesset's Constitution, Law and Justice Committee on 23 February 2010 in which this bill was deliberated prior to its first reading, it was said that teaching students about the Nakba during their school hours would fall within the purview of this law. As Committee Chair David Rotem put it, "If you mark Independence Day, even if you do it today, if you have a class today and say that Independence Day is a day of mourning and a day of disaster, this bill would apply to you" (page 19-20 of the meeting protocol dated 23 February 2010, Appendix Ayin/7).

The provisions of this law harm the status of the school and the public legitimacy of its values. The state, which is obliged to take a neutral stance toward the values of all such schools, which were established in accordance with the law and on behalf of a worthy and important purpose, is conveying a message to the public that the type of education promoted by the school is not worthy and that economic sanctions, such as budget cuts, can be imposed on schools that seek to promote legitimate and democratic values in accordance with the choices made by the parents.

The law is also liable to cause substantial harm to the school budget as a result of its curriculum, if some of that curriculum, as noted, challenges the constitutional definition of the state. Furthermore, mention of the Nakba by Arab students would be construed as violation of the law, as these students relate to their national narrative in discussing the founding of the state and/or Independence Day as a day that marks the Palestinian tragedy. The law could also have a chilling effect on the choice of curricula.

Petitioner #7 – Professor Oren Yiftachel

Petitioner #7 is Prof. Oren Yiftachel, a leading Israel academic with an international reputation. Prof. Yiftachel has won attention for the development of critical theories of regime and public policy, and particularly for his model of "ethnocracy". This model has been developed in his extensive research and publications on political and legal geography, space and urban planning policies, in which Prof. Yiftachel offers a new critical approach for the understanding of regimes in ethnically divided states.

According to this theory, the regime in Israel is an "ethnocracy", which does not meet the criteria of a democracy. Hence, the Israeli regime cannot be termed "Jewish-democratic" nor can the state be described as an "ethnic democracy". The ethnocratic model refers to "a political regime appropriated by a dominant ethnic group in the state and society" that is designed "to facilitate and

establish the Judaization of Israel/Palestine under regime characteristics that are pseudo-democratic. The ethnocratic regime is constituted by and for the dominant ethnic group, and has led to the increased institutionalization of 'ethnic rules of the game' in politics and government and to increased stratification of hierarchical ethno-classes". In keeping with this approach, the petitioner rejects the definition of Israel as a Jewish and democratic state, and prefers to conceptualize the state as promoting an ethnic, demographic, political, and colonialist project based on control and ethnic oppression.

The ethnocratic model is perceived by many in the Israeli academy as a model that seriously challenges the constitutional definition of Israel as a "Jewish and democratic" state. In accordance with the language of the law, an academic-scientific or public discussion in which identification is expressed with the ethnocratic model could be construed as related to "negating the existence of Israel as a Jewish and democratic state". A lecture in a government funded or supported institution about the ethnocratic model in which there is critical analysis of the constitutional structure that defines Israel as a Jewish-democratic state could clearly be seen as being in violation of the law on these grounds.

The law has serious implications for Prof. Yiftachel's writing and publications, particularly in light of their being part of the curriculum in various university departments. The law could deter academic or free public discussion about the critical model that he developed. Moreover, the law could encourage public delegitimization of his writing and theories, and prevent a fruitful and comprehensive discussion about the nature of the regime in Israel.

IMPLICATIONS OF THE LAW FOR OTHER BODIES

This law will harm legitimate activities, particularly intellectual and political, that are peacefully conducted. For example, the law will deter and/or prevent various institutions of higher learning and research institutes that receive state funding or support from holding seminars that deal with political issues that could be construed as "denying the existence of Israel as a Jewish and democratic state". Examples abound: calling Israel ethnocratic, an occupier, anti-democratic, etc.; public advocacy in favor of changing the regime into "a state of all its citizens"; discussing the implications of defining Israel as Jewish, including the repercussions of the Law of Return on the status of the Arab minority in Israel, expressing opposition to the symbols of state, criticizing citizenship laws, discussing the aforementioned Arab Vision Documents out of identification with them; opposing the diverse laws and bills recently tabled in the Knesset that are intended to limit the rights of Arab citizens; and all these are only a small part of the legal, intellectual, and public issues with political overtones that could fall under this law.

In preparing this law for a first reading, MKs at a meeting of the Knesset's Constitution, Law and Justice Committee related to an example of an Arab leader who lectures at an Israeli university in criticism of the Law of Return and calls for establishment of a binational state. MK David Rotem, chair of the committee and among those who sponsored the bill, responded unequivocally that such activity would come within the bounds of the law (see page 35 of the protocol of the meeting on 26 October 2009, marked Appendix Ayin/6).

This law will also harm cultural institutions, including theaters and cinematheques that, in the wake of the law, could abstain from allowing plays or movies that deal with the events of the Nakba.

Local authorities could also be harmed by the law, as funding to a body that seeks to hold activity that could be considered in violation of the law would reduce the allocation to the local authority. Reduced budgets, as noted, could have serious consequences for the residents and lead to a reduction in the services the local authority must provide its residents. Thus, not only would there

be harm to the local authority, but harm to the bodies supported by the local authority, and thereby harm to residents who have no connection to the said activity, and are being penalized although they are innocent of all wrongdoing.