האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في إسرائيل
The Association for Civil Rights in Israel

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Knesset Bills Infringing on Rights of the Arab Minority: Summary and Analysis

The Association for Civil Rights in Israel (ACRI)

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I. Introduction

In recent years, ACRI has been increasingly troubled by expanding assaults on Israel's democratic values. The attacks on Israel's democracy are mainly characterized by attempts to silence social or political minorities' views or public criticism; attempts to delegitimize political rivals, human rights organizations, and minorities; attempts to restrict parties with positions that do not coincide with the political majority's views; and by presenting minorities as enemies of the State, in an attempt to legitimize the infringement on their civil and political rights.

Of great concern is the fact that one of the key arenas in which this takes place is the parliament itself – the very heart of democracy. Furthermore, the Knesset plenum and committees have frequently served as platforms for offensive and inciting discourse, mostly targeting ethnic and political minorities.

During the just-completed Knesset session, we have witnessed a slew of bills which, if passed, would infringe on the entire range of human rights and, with them, the very foundations of Israeli democracy. These bills will harm (amongst other basic rights) freedom of speech, freedom of assembly, freedom of association, and freedom of dissent of Israeli citizens and residents, especially those whose opinions are currently viewed unfavorably by the political majority. Additionally, the current Knesset session saw numerous attempts to harm human rights organizations, as well as a number of bills intended to weaken the Supreme Court.

At the same time, we were introduced to a series of bills and initiatives that would harm various minority groups in Israel. These primarily affect Israel's Arab minority, but also migrant workers, refugees, asylum seekers, and others.

Considering the important role that the Knesset plays within Israel's democratic framework, ACRI warns that the trends promoted by the Knesset have a dangerous chilling effect on Israeli civil society, have severe implications on the state of human rights and civil liberties, and contribute to undemocratic and racist public stands, which have been increasingly salient in Israeli society in the past few years.

The following review is a summary of the main legislation that was presented and promoted during the current Knesset and infringes on the rights of Arab citizens of Israel; in section 3 you will also find a summary and analysis of the "Prawer Plan" for the arrangement of Bedouin settlement in the Negev, which has been adopted by the government.

I. Knesset Legislation Discriminating against Arab Citizens of Israel

Bills Passed in the Current Knesset

The Nakba Law

Tabled by: MK Alex Miller (Yisrael Beitenu) on 1 April 2009

Description: According to the original version of this bill, persons publicly commemorating the Nakba Day as a day of mourning shall be sentenced and sent to prison. The government endorsed the bill, but in the wake of public protest an amended version was presented.

The amended version does not target individuals, but rather municipalities, organizations, and public institutions. Officially titled "Budget Foundations Law (Amendment 40) – Reducing Budget or Support for Activity Contrary to the Principles of the State," it authorizes the Minister of Finance to relinquish monetary support if the body or institution has made any payment towards an event or action that undermines the "existence of Israel as a Jewish and democratic state," violates the symbols of the State, or marks the date of Israel's establishment "as a day of mourning." In a debate held in the Knesset's Constitution Committee, Chairperson MK David Rotem (Yisrael Beitenu) stated that such a day of mourning does not necessarily have to coincide with Israel's official Independence Day, and thus any reference to the Nakba made throughout the year may fall within the category of this law. The vague wording of the law, and the fact that it gives the Minister of Finance the power to determine its implementation, raises concerns that the law will be enforced in a discriminatory manner, which will enhance the already existing oppression of Arab citizens of Israel.

This amended version was approved in its final reading in the Knesset plenum on 22 March 2011, and was added as an amendment to the Budget Foundations Law.

On 4 May 2011, ACRI and other human rights organizations have filed a petition to the High Court of Justice, requesting to disqualify this law. In the petition, Attorneys Sawsan Zaher and Hassan Jabareen of Adalah, and Attorney Dan Yakir of ACRI, outlined the infringements on freedom of speech, freedom of political expression, freedom of artistic expression, the right to equality, the right to education, academic freedom, group dignity, and freedom of occupation.

1 April 2009: Bill prsented in the Knesset
16 March 2010: The bill passed the first reading.

22 March 2011: The bill passed its second-third (final) reading.
4 May 2011: Petition filed to the High Court of Justice to disqualify this bill.

Status: Bill has been enacted as a law.

See appendix I (p.23) for the translation of this bill, a summary ACRI's position, and excerpts from the High Court petition.

Acceptance to Communities Law

Tabeled by: MKs David Rotem (Yisrael Beitenu), Israel Hasson (Kadima), Shai Hermesh (Kadima) on 11 February 2009

Description: According to this bill, acceptance committees to villages and communities may turn down a candidate if the committee decides that the candidate "fails to meet the fundamental views of the community," its social fabric, and so on. The bill primarily intends to deny ethnic minorities' access to Jewish communities set up on predominantly public lands, offering the possibility to reject anyone who does not fit in with the committee's positions, religion, political views, and so on. Acceptance committees already existed as a common discriminatory practice before this bill (and ACRI has already filed a related petition against this practice, which is still pending before the High Court of Justice); however, this law now legally anchors this discriminatory practice.

The original version of the bill applied to communities of up to 500 family units throughout Israel. Following public outcry regarding this bill, a compromise was reached between the Knesset Speaker MK Reuven Rivlin (Likud) and the MKs who proposed the law – to apply the law to the Negev and Galilee regions alone, and to apply it to communities of up to 400 family units instead of the original 500. This amended version was approved by the Knesset Constitution Committee on 2 February 2011, and the bill was approved in its final reading in the plenum on 22 March 2011.

Following the approval of the bill, ACRI submitted a principled petition on the matter, together with the Abraham Initiatives Fund and local residents from Misgav. In the petition, ACRI Attorney Gil Gan-Mor notes that despite their title, in the majority of these communal villages life is not "communal" and they have no unique characteristics; and yet the law will enable discrimination in acceptance to these villages based on vague criteria. Based on these criteria, the committees currently reject "unwanted" communities that wish to live in the village – such as Arabs, single parents, disabled persons, same-sex couples, Mizrachi Jews, religious people, new immigrants, and so on.

11 February 2009: Bill presented in the Knesset.
21 July 2010: Bill passed it first hearing in the plenum.
2 February 2011: The Constitutional Committee approves an amended version of the bill.
22 March 2011: Bill passed its second-third (final) vote in plenum.

23 March 2011: Petition filed to the High Court of justice to disqualify this bill.

Status: Bill has been enacted as a law.

See appendix II (p. 39) for the translation of this bill and a summary ACRI's position.

Abu Basma Bill on Regional Council Elections

Tabled by: Government

Description: This bill includes an amendment to the law concerning elections in regional councils, allowing the Minister of Interior to postpone democratic elections in new regional councils for an indefinite period. It specifically relates to the case of the Abu Basma, a regional council comprised of Bedouin villages in the Negev, which was recognized six years ago but is still being administered by an appointed representative of the Minister of Interior, not by elected representatives of the Bedouin community. The bill was approved by the Knesset in November 2009.

On 27 April 2010, ACRI, together with partner organizations and local residents, filed a petition to the High Court of Justice, demanding that the court instruct the Minister of Interior to facilitate elections immediately, claiming that the law represents a grave infringement on democratic values and on the specific obligation Israel holds to ensuring regular and transparent democratic elections. In 9 February 2011, in a High Court hearing on the matter, it was declared that elections be held no later than November 2012.

November 2009: Bill passes second-third (final) reading in plenum.
27 April 2010: Petition filed to the High Court of justice to disqualify this bill.

Status: Bill has been enacted as a law.

Bills Being Promoted with Government Support

Anti-Incitement Bill

Tabled by: MK Zevulun Orlev (Habayit Hayehudi) on 1 April 2009

Description: A proposed amendment to the existing Penalty Code, according to which persons publishing a call that denies the existence of the State of Israel as a Jewish and democratic state shall be imprisoned. This is an extension of an existing criminal offence, and it intends to

incriminate a political view that another political group does not accept.

1 April 2009: Bill is presented in the Knesset.
27 May 2009: The bill passed a preliminary reading.

Status: The bill and is expected to be discussed in the Knesset's Constitution Committee ahead of its first reading.

Preference in Civil Service to Those who Served in Military

Tabled by: MK Hamad Amar (Yisreal Beitenu) in 2009

Description: According to this government-backed bill, officially titled "Civil Service Law (Appointments) – 2002, (Proposed Amendment - Affirmative Action)," Israeli citizens who have completed military or national service will be given preference when applying for positions in the civil service. The bill stipulates that when two applicants for a civil service position have the same qualifications, preference will be given to an applicant that served in the Israeli military.

The bill discriminates against ethnic minorities and other individuals who are legally exempt from military service (e.g. religious women, Arab citizens of Israel, handicapped persons) and stands in contradiction to the value of equal access to employment. If passed, it would harm various minority groups in Israel, groups that already suffer discrimination in employment and under-representation in the civil service.

This bill has garnered opposition from many human rights organizations, including ACRI and other organizations promoting equal rights for women, Ethiopian Jews, Arab citizens of Israel, and handicapped persons. The Ministry of Justice, the Equal Employment Opportunities Commission, and even the legal advisers of the Knesset Constitution Committee – have all voiced their opposition to this bill. Despite this fierce opposition, on 22 May 2011, the Knesset's Constitution, Law, and Justice Committee has approved this bill in preparation for its first reading.

After hearing the many objections to the bill, the Chairperson of the Constitution Committee, MK David Rotem (Yisrael Beitenu) announced that the bill will not relate to immigrants who immigrated after the legal draft age, internal tenders (for persons who are already in the civil service), and people with, as he put it, “real handicaps” (meaning people who were exempt from service for physical handicaps, not mental illnesses). As such, the bill will target Arab citizens of Israel, Orthodox Jews, women, and persons living with mental handicaps.

According to ACRI, this bill will deepen the discrimination of groups that already suffer from employment discrimination – thereby undermining the efforts that the State of Israel is making to engage these very groups in the labor market.

However, in early June 2011, a very rare measure taken by Israel's Attorney-General, Yehuda Weinstein, against this bill. The Attorney-General sent a letter to Prime Minister Netanyahu, asking him to stop this bill. Attorney-General Weinstein's letter reiterated the claims stated in ACRI's position paper on this bill, and noted that "giving preference to one group over another in the distribution of limited resources [...] places other groups in a lower status, first and foremost Arabs, handicapped persons, and ultra-Orthodox Jews." Following the Attorney General's Intervention, this bill is not likely to be further promoted with government support.

26 January 2011: Bill passed preliminary reading.
22 May 2011: The Knesset's Constitution, Law, and Justice Committee has approved this bill in preparation for its first reading.

Status: Following the intervention the Attorney-General, the bill has been frozen for the time being.

Preference in Services to Those who Served in the Military

Tabeled by: MK David Rotem (Yisrael Beitenu) on 25 May 2010

Description: According to this bill, housing, education, and other public services shall be granted preferentially to individuals who have served in the Israeli military or completed national service. Currently, Arab citizens and others are collectively exempt from military service and can voluntarily choose to carry out national service.

25 May 2010: Bill presented in Knesset.
5 July 2010: Bill passed preliminary reading.

Status: The bill is expected to be debated in the Knesset's Employment, Welfare, and Health Committee together with a government-sponsored bill concerning incentives for those who completed military service.

Bill to Protect Israel's Values

Tabled by: MK Uri Ariel (National Union) on 1 June 2009

Description: According to this bill, organizations whose activities "harm the State of Israel as a Jewish state" shall not be permitted to operate in Israel and will be shut down.

1 June 2009: Bill was presented in Knesset.
7 November 2010: The bill was debated by the Ministerial Committee on Legislation. It was decided that this bill shall be revised with the approval of the Justice Ministry before further debate in the Knesset.

Status: The Ministry of Justice is reviewing the bill before further debate in the Knesset.

Bills the Government Has yet to Endorse or Reject

Pledge of Allegiance for Civil Servants and Council Members

Tabled by: MKs Lia Shemtov and Robert Iliatov (Yisrael Beitenu) on 20 December 2010

Description: According to this bill, members of local and city councils, as well as some other civil servants, will be required to pledge allegiance to Israel as a Jewish and democratic state. Currently, civil servants are required to pledge allegiance to the State of Israel and its laws.

20 December 2010: Bill was presented in Knesset.

Basic Law: Israel – The Nation State of the Jewish People

Tabled by: MKs Avi Dichter (Kadima), Ze'ev Elkin (Likud), and David Rotem (Yisrael Beitenu) – and signed by almost 40 other MKs from both the coalition and the opposition parties – on 3 August 2011

Description: The bill declares that the State of Israel is the national home of the Jewish people, and that democratic rule be subject to Israel's definition as such. The authority in the State of Israel would be democratic, but the principles and symbols shall be Jewish. For example:

- "Hatikva" will be the national anthem;
- The Israeli flag will be the national symbol;
- The national language will be Hebrew – though Arabic will be given a special secondary status;
- Jewish law will be the inspirational source for the legislature (much like today) and laws will only be changed with majority votes;
- Jewish holy sites will be preserved.

Additionally, the proposed bill declares that the State of Israel is the national home for the Jewish people, and that here the Jewish people have the right to self determination. This is a unique right to the Jewish people.

In essence, what is being proposed is similar to what already exists today through various laws. The major differences are the emphasis on Israel as the national home only of the Jewish people,

and the demotion of Arabic to a secondary language. The most problematic element of this legislation is its discriminatory message, leaving no room for protection of minorities in Israel – particularly not the Arab minority.

Bills not Currently Promoted due to Current Lack of Government Support

Bill on MKs' Pledge of Allegiance

Tabled by: MKs David Rotem and Robert Iliatov (Yisrael Beitenu) on 1 April 2009

According to this bill, which is a proposed amendment to the Basic Law: The Knesset, all MKs will be required to pledge allegiance to the State of Israel as a Jewish, Zionist, and democratic state, to its laws, and to its symbols. The bill intends to delegitimize and even practically prevent minority groups from partaking in the democratic process. The government decided to not support this private bill.

1 April 2009: Bill is presented in the Knesset.
6 June 2010: The Ministerial Committee on Legislation decided to not support the bill.

Status: Not currently promoted due to lack of coalition agreement.

Cinema Bill

Tabeled by: MKs Michael Ben-Ari (National Union) and Moshe Matalon (Yisrael Beitenu) on 17 March 2010

Description: According to this bill, as a condition for receiving public funding, the entire crew of a film will have to pledge allegiance to the State of Israel as Jewish a democratic state, to its laws, symbols, etc. This bill infringes on freedom of expression and on freedom of artistic expression – of Arab citizens and of those who are on one side of the political map.

17 March 2010: Bill is presented in the Knesset.
9 May 2010: The Ministerial Committee decided to not support the bill.
12 May 2010: Bill failed its preliminary reading.

Status: Not approved by the government and failed preliminary reading.

Bill on Ousting MKs

Tabled by: MK Danny Danon (Likud) on 2 November 2009

Description: According to this bill, which is a proposed amendment to the Basic Law: The Knesset, an MK may be ousted by a majority of 80 MKs if he or she expressed their opposition to Israel as a Jewish and democratic state, incited to racism, or supported an armed struggle against the State of Israel.

Status: Not approved by the government.

Bill on Banning Veils in Public

Tabled by: MK Marina Solodkin (Kadima) on 12 July 2010

Description: According to this bill, officialy titled "Penalty Code (Amendment – Prohibition on Covering the Face in Public Places," it would be illegal to cover one's face in public and the offence will carry a penalty of a fine or imprisonment. It would also be prohibited to require another person to cover their face in public.

12 July 2010: Bill presented in Knesset.
30 January 2011: Ministerial Committee on Legislation decided to not support the bill.

Status: Not approved by the government.

Bill on Funding for Cultural Institutions

Tabled by: MK Moshe Matalon (Yisrael Beitenu) on 1 June 2009

Description: The bill is intended to deny state funds from cultural institutions that employ artists, who did not served in the Israeli military.
20 February 2011: Ministerial Committee on Legislation decided to not support the bill.

Status: Not approved by the government.

Appendix I – The "Nakba Law"

English translation of the law

Budget Foundations Law (Amendment No. 40) – 2011

1. Adding Section 3b

Section 3a of the Budget Foundations Law - 1985 shall be followed by:

"Deducting budgets or aid due to activities against the state's principles

3b. (a) Under this section -

"Body" - a budgeted body and an aided body as defined in Section 21, and a public establishment as defined in Section 3a;

"Expense" - including the waiving of income.

(b) Should the Minister of Finance find that a Body has made an expense that is essentially one of those detailed below (under this section – "Non-Supported Expense"), he may - with the consent of the minister in charge of the budgetary clause by which the budgeted or aided body is supported, after hearing the Body - deduct sums of money that are to be transferred to that Body from the state budget according to all laws:

(1) Negating the existence of the State of Israel as a Jewish and democratic state;

(2) Inciting to racism, violence, or terror;

(3) Supporting an armed struggle or a terror act by an enemy state or a terror organization against the State of Israel;

(4) Marking Israel's Independence Day or establishment anniversary as a day of mourning;

(5) An act of defilement or physical contempt against the state's flag or national symbol.

(c) A deduction according to Subsection (b) shall not exceed 3 times the Non-Supported Expense.

(d) (1) The Minister of Finance will make a decision as stated in Subsection (b) after receiving the opinion of the Finance Ministry's legal counsel regarding the existence of what is listed in that Subsection, and after receiving the recommendation of a Professional Team regarding the extent of the Non-Supported Expense, the ramifications of the deduction for the Body or for other elements that are connected to it, and the appropriate deduction considering all circumstances of the matter.

(2) Under this Subsection, a "Professional Team" – a team appointed by the Minister of Finance and composed of an employee of the Ministry of Justice, according to the recommendation of the Minister of Justice, an employee of the ministry of Finance, and an employee of the ministry in charge of the budgetary clause by which the budgeted or aided body is supported, according to the recommendation of said minister."

2. Amending the Administrative Courts Law [No. 56]

In the Administrative Courts Law – 2000, in the first supplemet, at the end it should state:
"40. Deducting budgets – A decision made by the Minister of Finance according to Subsection 3(b) of the Budget Foundations Law – 1985."

3. Enactment

The directives of Subsection 3(b) of the Main Law, as worded in Section 1 of this law, shall go into effect regarding a Non-Supported Expense beginning with the day of its publication.

Overview and excerpts from the ACRI and Adalah petition to the High Court against the "Nakba Law"

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:
>
> 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.
>
> 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.]
>
> 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.
>
> 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.

Appendix II – "Acceptance to Communities Law"

English translation of the law

Amendment of the Communal Associations Order (No. 8) (Acceptance Committees of Communal Settlements) – 2011

Amending Section 2

1. In the Communal Associations Order (hereunder - the Order), In Section 2 -

(1)"Galilee" – as defined in the Galilee Development Authority Act, 1993

"Negev" – as defined in the Negev Development Authority Act, 1991

(2) The definition of "committee" shall be followed by:

""Reservations committee" - a reservations committee as defined in section 6b; "Acceptance committee" - an acceptance committee as defined in section 6b; "Real-estate rights" - leasing or long-term leasing rights to Israeli lands as defined in Basic Law: Israel's Lands; in this matter, "leasing or long-term leasing rights" are as defined in the Real-Estate Act – 1969, including the right to be registered as a leaser or long-term leaser, and a right of any part to a development contract in a communal settlement to be registered as a leaser or long-term leaser after the contract terms are met, and rent for periods that accumulatively exceed five years;"

(3) The definition "member" shall be followed by:

""Communal settlement" - a settlement located in the Negev or Galilee regions, organized as a communal settlement, which the Registrar classified as a rural communal settlement or a communal association for community settlement, or an expansion of a kibbutz, a communal moshav, or a communal village, whose residents are registered as a rural communal settlement or as a communal association for community settlement, and the following also exist:

(1) the number of households in the settlement or the settlement and the expansion together does not exceed 400;

(2) the maximum number of households in the settlement is limited by a national or regional plan."

Adding subsections 6b to 6d

2. Subsection 6a of the Order shall be followed by:

"Allocating lands and transferring rights to lands in a communal settlement 6b.

(A) (1) Land shall be allocated to a person for the acquisition of rights to land in a communal settlement with an active acceptance committee only after the committee approves it.

(2) The transfer of rights to land allocated to a person or legally assigned in a communal settlement as defined in subsection (a1) shall be done after the acceptance committee's approval of the transfer; the instruction of this clause, with required amendments, shall apply also to a person who wishes to transfer his land rights to another person.

(3) The transfer of land rights through inheritance, by law or by the power of a will, in a communal settlement as defined in subsection (a1) does not require the approval of the admission committee; nevertheless, the instructions of subsection (a2) shall apply to the inheritor, by law or by the power of a will, who wishes to transfer his land rights to another person.

(B) (1) An acceptance committee of a communal settlement shall comprise five members: two representatives of the communal settlement; a member of the movement to which the communal settlement belongs or is a member of – and if that settlement does not belong to or is not a member of any movement as noted, or if the movement waived its right to be represented in the committee – another member of the communal settlement; a representative of the Jewish Agency or WZO; a representative of the regional council under whose jurisdiction that settlement is located.

(2) The representative of the regional council on the acceptance committee shall be the head of that regional council or his deputy, or a council employee they shall appoint, provided they are not residents of the settlement in question, and will serve as the committee chairperson.

(C) Should the acceptance committee turn down the application of a candidate for residence in the communal settlement, it must provide him with a resolution explaining its decision.

(D) The candidate and the communal settlement may file their reservations with the acceptance committee's resolution, which shall be viewed by a reservations committee.

(E) The reservations committee shall comprise five members: a public personality with an education in law, social work, or behavioral sciences, who will be appointed by the Minister of Justice and serve as the committee's chairperson; the Registrar of Communal Associations or his deputy; an employee of the Land of Israel Authority; an employee of the Ministry of Welfare and Social Services; and an employee of the Ministry of Agriculture's Rural Development Department.

(F) The reservations committee may cancel a resolution of the acceptance committee, approve it, or send it back to that committee to reconsider.

The Considerations of the Acceptance Committee 6c.

(A) The acceptance committee may turn down a candidate for membership in a communal settlement based on one or more of the following considerations only:

(1) The candidate is a minor;

(2) The candidate lacks the means required to build a home in the communal settlement within the period of time stipulated in the land allocation agreement;

(3) The candidate does not intend to make the communal settlement the center of his life;

(4) The candidate is not right for social life in the community. A decision to refuse a candidate based on this consideration shall be based on an expert opinion;

(5) The candidate does not match the socio-cultural fabric of the settlement and there is reason to assume he might harm it;

(6) Unique characteristics of the communal settlement or acceptance terms as stipulated in the association's codex, if there are any, provided they are approved by the Registrar.

(B) When making the considerations specified in subsection (A), the acceptance committee will have to consider the settlement size, age, durability, and the nature of its population.

(C) The acceptance committee may not turn down a candidate based on reasons of race, religion, gender, nationality, disabilities, family status, age, parenthood, sexual orientation, country of origin, ideology, or political activity.

Reserving rights
6d. The text of subsections 6b and 6c does not make it imperative to allocate land to a person whose candidacy was approved by the acceptance committee."

Amending the Administrative Courts Act
3. The ending of the first addendum to the Administrative Courts Act-2000 shall be followed by:
"37. Settlement – a resolution of the reservations committee, based on subsection 6b of the Communal Associations Order."
4. This law shall go into effect 30 days after it is published (hereunder - Application Day)
5. The instructions of this act shall apply to the procedures of the acceptance committees of communal settlements from Application Day onward.

ACRI position regarding "Acceptance to Communities Law"

November 23, 2010

To the Honorable MK Reuven Rivlin
Speaker of the Knesset
The Knesset, Jerusalem

Re: The "Acceptance Committees in Communal Villages" Bill

Dear Mr. Speaker,

Before the proposed amendment to the *Cooperative Societies Ordinance (Amendment No. 8) 5771 – 2010* is advanced in the Knesset for its second and third readings, we turn to you and ask that to use the full weight of your influence in convincing the government and members of Knesset to withdraw the bill from consideration under its current formulation, lest it become a dark stain upon the law books of the State of Israel.

The proposed law is anti-democratic, and severely and disproportionately harms basic constitutional rights. Additionally, some of the bill's sponsors have explicitly stated that the intention behind the legislation is to ensure exclusively Jewish communities – a result to be expected from the wording of this bill. Such intention bears the clear stamp of racism.

The proposed legislation would allow communal villages or community expansions (adjacent to a *kibbutz* or *moshav*) of up to 500 homes to screen residency applicants seeking to live there. There are hundreds of such communities scattered throughout all of Israel. Most are not defined by any special social characteristics. All were built on public land, and given to the communities' cooperative societies without a public tender.

According to the proposed legislation, an acceptance committee would be authorized to reject a residency candidate on the basis of broad, poorly-defined criteria, such as: social suitability to community life, suitability to the fabric of social and cultural life, or any other acceptance criteria set in the charter of the community.

The Violation of Constitutional Rights

The proposed law violates four constitutional rights:

The proposed law violates the constitutional right to equality:

6. The law authorizes acceptance committees to differentiate between individuals based on inappropriate considerations, amounting to illegitimate discrimination. Despite the addition of Article 6c(3), which prohibits discrimination against a residency candidate on the basis of nationality, race, religion, sex or disability, the screening criteria included in the law are so broadly and poorly defined that they allow for the rejection of almost any individual candidate. For example, the acceptance committee could reject an applicant because his/her residency would damage the social-cultural fabric of the community, even in communities devoid of any special, defining social characteristic. Our experience over the last ten years has shown us that such terminology is an accepted code-phrase for discrimination against various societal groups. First and foremost, it refers to Israel's Arab population but it also includes people of Mizrahi origin, the elderly, immigrants, people with lesser economic means, same-sex partner families, single-parent families, people with mental disabilities, people with specific political opinions, and/or people with different standards of religiosity.

7. Beyond the discrimination suffered by some of the residency applicants, the very use of acceptance committees represents an unacceptable method of screening candidates, as many people do not even attempt to join these communities because of the acceptance committees and the invasion of privacy entailed in the acceptance process.

8. Though Article 6c(3) supposedly removes the fear of any illegal discrimination, it offers no protection against discrimination on the basis of marital status, age, sexual orientation, country of origin, political outlook or party affiliation. A request from Knesset members to amend the article in this vein was rejected by the committee without any explanation or rationale given, since, according to its sponsors, the bill does not permit discrimination in any case.

9. The infringement of equality is even more serious, considering that the land in these communities is used for more than just housing. The state allows and encourages residents to use housing lots for tourism and for income-generating businesses, such that equal economic opportunity is denied to that portion of the population that is denied admission into the community.

On the right to equal access to public resources, see HCJ 6698/95 **Ka'adan v. Israel Lands Administration**, PD 54(1) 258 (2000); HCJ 244/00 **New Dialogue Society for Democratic Dialogue v. Minister of National Infrastructure** PD 56(6) 25 (2002).

The proposed law violates the constitutional right to human dignity and the constitutional right to liberty:

10. The constitutional rights to liberty and to autonomy of choice, which lie at the core of the constitutional right to human dignity, are violated as a result of this law, since the law would limit the right of an individual to choose his/her place of residence according to his/her own free will. The subjugation of the individual's will to determine his/her place of residence in deference to the will of an acceptance committee is a dramatic and profound infringement of individual autonomy, uncharacteristic of democratic societies. On the contrary, most developed countries are struggling against discriminatory and exclusionary practices in the private market, whereas here such discrimination is given legitimacy, even when the communities in question are built on state-owned land.

11. That freedom in choosing a place of residence is a component of human dignity has already been established by Justice Or: *"This right of a person to shape his life and his destiny encompasses all of the central aspects of his life - where he will live, what work he will do, with whom he will live, and what he will believe. It is central to the condition of each and every individual in society. It is a necessary expression of the value of each and every individual as being a world of his own. It is essential to the self-definition of each individual, in the sense that the entirety of the choices of each individual define the personality and life of the individual. Recognition of a person's right to autonomy is a basic ingredient in our legal system, as the legal system of a democratic country ... It constitutes one of the central expressions of the constitutional right of each person in Israel to dignity, which is grounded in the Basic Law: Human Dignity and Freedom."*

CA 2781/93 **Da'aka v. Carmel Hospital**, PD 53(4) 526, 570 (1999). See also HCJ 1661/05 **The Gaza Coast Regional Council v. The Knesset of Israel**, PD 59(2), 481 (2005).

The proposed law violates the constitutional right to property:

12. The law would make the transfer of property rights from current residents in communal settlements to new perspective residents subject to the approval of the acceptance committee. Thus, the individual's commercial right to sell his property rights to another would be violated by this law.

13. The law also violates the right of the individual to acquire property rights in hundreds of communal villages and expansion communities, effectively denying the individual of his right to acquire common public property in favor of private corporate interests. Justice Cheshin has already ruled that: *"Each and every individual in society has a vested interest in the public property – lands intended for the public interest – which implies*

that society is prohibited from expropriating this interest unless expressly authorized by statute or by the Constitution… The principle that 'there shall be no violation of the property of a person,' as per section 3 of the Basic Law: Human Dignity and Liberty may also apply to the individual's right to public property."

HCJ 5016/96 **Horev v. Minister of Transport**, PD 51(4) 1, 152 (1997).

The proposed law violates the constitutional right to privacy:

1. The law violates the constitutional right to privacy, in that anyone who wants to live in one of the hundreds of communal villages or community expansions in Israel must reveal intimate details about himself and his family to others as a condition of acceptance into the community. This invasion of privacy is especially felt in the application process, where acceptance committee members, i.e. potential future neighbors, are exposed to the candidate's sensitive, personal information.

2. Additionally, the severe invasion of privacy itself constitutes an exclusionary chilling effect, since there are many potential applicants who would not want to expose their personal details to a group of strangers. This is especially true for population groups who jealously guard their privacy because of social intolerance, including: people who had gotten in trouble with the law in the past and are attempting to rehabilitate and reintegrate into society, people with a history of mental illness hospitalization, carriers of HIV virus, anyone discharged or excused from military service for any reason, gays and lesbians, transgenders, and so forth.

<u>The Violation of Rights is Disproportionate</u>

16. Any violation of constitutional rights must be grounded in law and must meet the test of proportionality: such violation can only be imposed for an appropriate purpose, it must be consistent with the values of the State of Israel, and it must not infringe the right any more than necessary.

<u>The Violation is not Explicitly Grounded in a Law</u>

17. While the law in question would authorize acceptance committees to carry out an acceptance process, the criteria set down in the law for screening out unacceptable candidates are so broad and poorly defined – such as social suitability or suitability to the socio-cultural fabric of communal life – as to effectively place the sole discretion of the acceptance rationale in the hands of the acceptance committee. Regarding this, Prof. Barak has written: *"Legislation stating that human rights will be restricted at the discretion of a certain person does not meet the minimum requirement of the limitation 'in accordance with the law' in our jurisprudence. According to this approach, the demand that the limitation on the human right be 'in accordance with the law' is of great importance. It is not only a formal requirement (formal rule of law), it also comprises a substantive*

requirement… The substantive nature is examined in the context of the role of the law as a system to guide and direct human conduct."

Aharon Barak, *Interpretation in Law*, Part Three, (Nevo, 1994), pp. 490-491. See also HCJ 11163/03 **Supreme Monitoring Committee for Arab Affairs in Israel v. Israeli Prime Minister** (Not yet published, 27.2.06).

Lack of Appropriate Purpose Befitting the Values of the State of Israel

18. The law does not serve an appropriate purpose. The following are the purposes that have been mentioned in the context of the proposed law:

Establishment of exclusively Jewish communities

19. It has been argued that the communal villages were established for the purpose of Jewish settlement. As you know, according to **Ka'adan ruling**, it is impermissible to discriminate against an individual and prevent him from living in a communal village on the basis of his not being Jewish. This constitutes prohibited racial discrimination, which is incompatible with democratic values.

Protecting communal life in small communities

20. It has been argued that the purpose of the law is to protect those small communities organized around communal life from factors that could undermine or sabotage community life. This objective might be appropriate regarding small, remote villages located far from population centers in which the community represents the main source of support for residents, or in communities with unique, defining social characteristics, or in communities that constitute a cooperative. But as we explain below, these are the exceptions whereas the proposed law would apply to hundreds of villages and community expansions without any justification. The law is overly broad and draconian, and cannot be considered a proportionate measure toward promoting the above purpose. It is of the Talmudic category "*Tafasta meruba, lo tafasta*" – reaching for everything and grasping nothing.

Separation and maintaining homogeneity

21. It has been argued that the law will allow each community to preserve its social fabric. Such a purpose is inappropriate in a democracy. Germane to this subject, Justice Procaccia recently ruled that: "*the right of various societal groups to preserve their self-expression in the realm of culture, religion, and tradition, and in preserving their way of life as a means of strengthening their unique identity, is not to be construed as a vested right to self-isolation, to closeness, or to the rejection and distancing of the other. The constitutional protection of the individual's personal autonomy grants him membership in a broader social framework. The relative nature of personal autonomy is designed to permit*

coexistence between individuals and to grant them the ability to live together through concessions, through mutual respect, without coercion, all the while preserving cultural uniqueness... The great evil of separated and segregated housing, and the creation of closed communities self-isolated within their own cultural walls, is that it helps foster discrimination and social alienation. It is liable to weaken the social fabric of our society. Separation and segregation between different societal groups foster hostility and enmity."

HCJ 10907/04 **Solodoch v. City of Rehovot** (from 1.8.10), paragraphs 131-133.

22. Moreover, the concept of "separate but equal" is no longer acceptable within the democratic worldview, for the moral reasons listed above and because any policy of "separate but equal" inherently leads to inequality and discrimination. In the **Ka'adan case**, Chief Justice Barak noted that: "*Indeed, the combination of the unequal consequence of the policy and unequal considerations driving it, together form a critical 'mass' of inequality, a 'mass' that can by no means be canceled out or mitigated by the respondents' fundamental readiness to allocate land for a separate Arab rural communal settlement."*

HCJ 6698/95 **Ka'adan v. Israel Lands Administration,** *ibid.*, p. 280; See also HCJ 1067/08 **Noar KeHalacha v. Ministry of Education** (dated 08/06/2009), paragraph 24.

Analysis of Article 5c(4) - Social Suitability

23. Even from the sponsoring legislator's point of view – that acceptance committees are essential for protecting those small communities organized around communal life from factors that could undermine such life – the requirement that the applicant must pass the test of social suitability is not proportionate, and is not legally valid.

24. First, there is no causal relationship between the law and its desired purpose. Screening procedures cannot necessarily predict whether candidates will integrate well into the community, even if candidates have undergone diagnostic or graphology testing. Often these tests rely on prejudiced and stereotypical impressions by members of the acceptance committee or test administrators.

25. The acceptance committee is comprised of private individuals with no training to predict how well a candidate might integrate into the community, and without knowledge of how to analyze the professional opinions submitted to the committee. Among the committee members are individuals whose reasons for being there are entirely unclear, such as a representative of the Jewish Agency (especially in light of the claim that the law does not seek to establish communities exclusively for Jews). Proposals to appoint professionals to the acceptance committees, such as community social workers, were rejected by the MKs.

26. Moreover, the fact that most of the committee members are local community residents represents a fault in the process itself. The state has delegated its draconian

authority to revoke an individual's right to live in the place of his/her choosing, in a community built on public land, and placed it in the hands of private individuals, who clearly have a conflict of interest. It is impossible for a committee member to consider all the relevant material in good faith, as the law requires, when he or she have a personal stake in the results of the decision.

27. Second, the screening process is required also for villages and community expansions without any special or exceptional features of community life, such that the effective purpose of screening is not the protection of communal life, but rather the exclusion of unwanted populations from the community and preserving "the quality of our neighbors." This applies to relatively large communities as well, whose population could well exceed 2,000 residents. The pretense that such a large group of people, including the next generation of residents, would be committed to a particular vision of communal life is without rational basis and is purely speculative.

28. In a portion of these communities, apartments are currently rented out without any acceptance procedures, so that people who are not members of the cooperative society are already living in the community without being subject to an acceptance committee. In a number of the community expansions, the residents take no part in the collective communal life of the adjoining *kibbutz* or *moshav*.

29. Third, even if there is a relationship between the law and its purpose, it is nevertheless draconian and violates individual rights more than minimally necessary. For example, the law was originally intended to apply solely to communities in the Negev and the Galilee, but over the course of hearings it was expanded to include communal villages and community expansions throughout Israel. The law does not distinguish between communities that rely to a large extent on communal life due to their physical isolation (if such communities exist in Israel) and communities that are suburbs situated near cities and other cultural and entertainment centers.

30. Additionally, the size of the community in which candidates may be examined for being suitability to community life is significantly larger than in a previous case brought before the Supreme Court (whose outcome is still pending), where the Israel Lands Administration argued in favor of the practice. According to their position, grounded in an Israel Lands Council resolution, the goal of protecting community life would be satisfied if a candidate's suitability could be tested in communities of up to 120 family homes (as opposed to the 500 homes in the proposed law.) According to the Israel Lands Council decision, a community with between 120-500 homes would only be able to reject a candidate if there were evidence that he intended to harm local community life.

31. In any case, there are less harmful measures that could be taken in order to protect local community life, such as amending the acceptance process so that candidates are made aware of what is expected of them, or having candidates sign a declaration stating their intention to respect the rules of community life, if such exist.

32. In light of the points above, this article of the law is unconstitutional and is not legally valid.

Analysis of Article 5c(5) – Suitability to the Socio-Cultural Fabric of Community Life

33. Article 5c(5) is included in the law to protect the homogeneous nature of the community, and it has no place in the law books of a democratic country. The article serves no appropriate purpose whatsoever, and the only values it promotes are segregated housing and social exclusion of the other. Such a broadly defined and draconian provision is effectively a license to discriminate against people on the sole basis of their being different from local residents. It is obvious that this article would primarily hurt members of various minority groups.

34. It is important to note that in some cases, even without the proposed law, the state can allocate land for the purpose of building homogeneous communities. However, this only applies in those specific cases where the community is a minority group closed-off to the general culture, and requests a separate community in order to protect its culture from that of the majority. The courts have protected the right to cultural preservation and have ruled that it is permissible to allocate land for the establishment of exclusively ultra-Orthosox and exclusively Bedouin populations. To realize this goal, there is no need for any acceptance committee.

See HCJ 528/88 **Avitan v. Israel Lands Administration**, PD 43(4) 297 (1989); HCJ 4906/98 **Free People Society for Freedom of Religion, Conscience, Education and Culture v. Ministry of Housing**, PD 54(2) 503 (2000).

35. In light of the points above, this article of the law is unconstitutional and is not legally valid.

Analysis of Article 5c(6) - Unique Characteristics of the Community or Conditions in the Community Charter

36. When a smaller communal village is established for a particular societal group or for a particular substantive purpose, the Israel Lands Authority can specify acceptance criteria for the community in its allocation conditions. For example, if it was decided to establish a communal village for rehabilitating drug addicts, the ILA could set acceptance criteria including that the candidate be a drug addict, and that he/she be found appropriately suited for life in a rehabilitation community by the opinion of a social worker. But this too does not require the work of an acceptance committee or the granting of discretionary authority to such a committee through legislation. The ILA is currently authorized to allocate land for appropriate public purposes under the Israel Lands Authority Law.

37. Contrary to this, when land is allocated to a cooperative society for establishing a

community – open to the broader public and without a specifically defined substantive purpose – it should be forbidden to give the cooperative society discretionary authority to determine in its charter any conditions that would limit admission into the community, since that would clearly constitute a mechanism for preserving homogeneity and for excluding unwanted populations.

38. For example, we saw how this possibility was exploited by the village of Mitzpeh Aviv in the Misgav region, which in its charter wrote that the community "embraces the values of rural settlement, Zionism, Jewish tradition, the values of the State of Israel as a Jewish and democratic state in the spirit of the Declaration of Independence, tolerance and human dignity." The conditions for acceptance into the community changed substantially with the new charter, such that anyone seeking to join the community would have to declare that he shared the values listed above and the goals of the cooperative society as presented in the charter. It is clear that the purpose of this clause was to prevent Arab citizens, who do not ascribe to the Zionist worldview, from living in the community.

39. Therefore, the granting of authority to establish additional acceptance criteria beyond those established by law, would give the cooperative societies broad discretionary powers to set whatever criteria appealed to them, with minimal oversight of the Registrar of Cooperative Societies, who is neither a constitutional law expert nor someone qualified to weigh the necessary checks and balances between freedom of association and the constitutional right to equality.

40. In light of the points above, this article of the law is unconstitutional and is not legally valid.

Conclusion

41. The Acceptance Committee Bill is a draconian piece of legislation that severely infringes constitutional rights without appropriate purpose and to a disproportionate extent. The law promotes values of racism against minorities, discrimination and physical segregation. It is incompatible with democratic values, and if passed, it will become a dark stain on the law books of the State of Israel.

In light of the above, we urge you to take action *vis a vis* the government and Knesset members in order to remove this legislation from consideration, or to substantially amend the bill.

Sincerely,

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