The Supreme Court of Israel **HCJ 3429 /11**
Sitting as the High Court of Justice

1. The Alumni Association of the Arab Orthodox School in Haifa
2. Radwan Badarneh
3. Ayman Miari
4. Hazar Hijazi
5. Ron Shapira
6. Arik Kirshenbaum
7. Professor Oren Yiftachel
8. Adalah – The Legal Center for Arab Minority Rights in Israel
9. The Association for Civil Rights in Israel

Represented by Adv. Hassan Jabareen and/or Sawsan Zaher and others from Adalah – The Legal Center for Arab Minority Rights in Israel, 94 Jaffa Street, Haifa, POB 8921 Haifa 31090, Tel. 04-9501610, Fax: 04-9503140,
And by Adv. Dan Yakir and/or Dana Alexander and others from the Association for Civil Rights in Israel, 75 Nahalat Binyamin Street, Tel Aviv-Jaffa 65154,Tel. 03-5608185, Fax: 03-5608165.

Petitioners

-v.-

1. The Minister of Finance
Represented by the State Attorney's Office, Ministry of Justice, Jerusalem

2. The Knesset
Represented by the Legal Advisor, the Knesset, Jerusalem

Respondents

Petition for *order nisi* and interim injunction

This petition is for an *order nisi* whereby the Honorable Court is requested to order the Respondents to show cause why articles 3B(b) (1) and (4) of the Budget Principles Law – 1985 should not be struck down.

Petition for an interim injunction and a prompt hearing

The Honorable Court is requested to order Respondent #1 not to implement procedures in accordance with articles 3B(b) (1) and (4) of the Budget Principles Law – 1985 until a judgment is delivered concerning this petition.

Alternatively, the Honorable Court is requested to order Respondent #1 to abstain from implementing such a procedure with regard to the activities of any of the petitioners in the institutions they are involved in: the Arab Orthodox School in Haifa, the "Galil" Jewish-Arab school**,** and the Ben-Gurion University of the Negev.

The Honorable Court is also requested to order a prompt hearing of the case.
[…]

Factual Background

The Law under Consideration

17. On 30 March 2011, the Budget Principles Law (Amendment #40) (Reduction of financial allocations or support due to activity against the principles of the state) – 2011 was published in the *Reshumot* [official registry]. Amendment #40 added section 3b to the Budget Principles Law – 1985 authorizing the Minister of Finance to reduce financial allocations or support given to any organization or entity that receives state funding if it engages in any of five activities specified by the law:

> If the Minister of Finance sees that an entity has made an expenditure that, in essence, constitutes one of those specified below (in this section – an unsupported expenditure), he is entitled, with the authorization of the minister responsible for the budget item under which this entity is budgeted or supported, after hearing the entity, to reduce the sums earmarked to be transferred from the state budget to this entity under any law:
>
> 1. Rejecting the existence of the State of Israel as a Jewish and democratic state;
> 2. Incitement to racism, violence or terrorism;
> 3. Support for an armed struggle or act of terror by an enemy state or a terrorist organization against the State of Israel;
> 4. Commemorating Independence Day or the day of the establishment of the state as a day of mourning;
> 5. An act of vandalism or physical desecration that dishonors the state's flag or symbol.

18. The law further stipulates that the Minister of Finance shall order the reduction of the allocation after receiving the expert opinion of the legal advisor to the Ministry of Finance, and following the 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."
[…]

20. According to this vaguely-worded law, an institution that receives financial allocation or support from the state and engages in any form of activity, even academic, intellectual, cultural, or artistic activity whereby the definition of Israel as a Jewish and democratic state is

challenged or Nakba Day is marked as a day of mourning, or it is advocated that Israel become a single bi-national state between the Mediterranean and Jordan, could have this support reduced.
[…]

History of the legislation of the law and objections raised before the legislature

21. The legislation process of the law under consideration in this petition began in April 2009. At the time, it was proposed as the Independence Day Law (Amendment – Prohibition on Marking Independence Day or Establishment of the State of Israel as a Day of Mourning) – 2009 and introduced in the 18th Knesset by MK Alex Miller of the Yisrael Beiteinu political party, and others. This bill proposed to amend the Independence Day Law – 1949 and to add an article that states that, "No person shall take any action or hold an event that in any way marks Independence Day, or relates to the establishment of the State of Israel, as a day of mourning or of sorrow." Violators would be liable to three years imprisonment. In the Explanatory Notes to the bill it was proposed "legally to prohibit actions that mark Independence Day or the establishment of the State of Israel as a day of mourning, and to impose a harsh penalty on those who exploit the democratic and enlightened character of the State of Israel in order to destroy it from within."
[…]

24. This bill was finally replaced by one of a similar spirit entitled, the Budget Principles Law (Amendment – Prohibited Expenditures) – 2009; that is actually the original version of Amendment #40. The Explanatory Notes emphasize that […] "Entities that receive financial support from the state budget must not be allowed to finance or sponsor activities within their framework 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."
[…]

29. Prior to enactment and out of concern for the dangers it presents – including the potential harm to human rights and democratic values – some twenty Israel Prize laureates and other intellectuals issued a declaration opposing it. […] The declaration stated that, "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 decide that a 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 Nakba and the Jewish State

30. The literal meaning of the "Nakba" in Arabic is a "massive catastrophe". […] The Arab intellectual Constantin Zureiq was the first to use the term, which appeared in his book *The Meaning of El-Nakba*, published in Beirut in 1948. According to 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." […] The Palestinian historian Arif al-Arif noted in his research, "How can I not call it a nakba? It was during this period that a disaster of a kind we had not encountered for generations befell us, the Arabs, and the Palestinians in particular. Our homeland was stolen, we were driven from our land, 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, 1951-1956, p. 3).

31. […] From the Palestinian perspective, the Nakba was the first time in their history that Palestinians had not only lost their homeland, but also become refugees. Kimmerling and Migdal describe the "meaning of the catastrophe" that took place between late 1947 and the Declaration of the Establishment of the State of Israel as follows: "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* (Jerusalem: Keter Publications, 1999, p. 17). Thus the year 1948 began to be referred to in Arab literature, poetry, and politics as an unparalleled historical tragedy, unprecedented in Palestinian history. These are the conceptual roots of the phrase commonly-heard among Arabs, "Their Independence Day is our Nakba Day."

32. Like any literary, cultural, social or political concept, the concept of the "Nakba" developed and expanded to encompass the period after 1948, with a clear emphasis on those who remained in their land, the Palestinian citizens of the state of Israel. […] 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.
> Translation from Laurence J. Silberstein, *Postzionism Debates*, Routledge, 1999, p. 147.

33. The most recent development of this concept, which gained additional meanings, was undertaken by Arab academics, intellectuals and activists who are citizens of Israel. The "Arab Vision documents" published in Israel over the past decade were the most recent collective attempts by Palestinians to reformulate the concept of the Nakba. According to

these documents, the Nakba is not just the tragedy of the refugees, the loss of a homeland, and the founding of Israel on the remnants of a nation, and nor is it just the destruction of hundreds of Arab villages and the transformation of the cultural landscape, but it is also the experience of oppression and discrimination, that continues to this day, against those who remained in the homeland, the Palestinian citizens of Israel. The issue of oppression and discrimination, according to the Vision Documents, is intertwined with constitutional definition of Israel as a Jewish state.

34. The Arab Vision Documents clearly distinguish between the historical narrative and political demands, which are based on a desire for 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 the self-determination of Jewish Israelis. The historical narrative is one matter, and political demands another.
[…]

36. […] various Israeli legal bodies have referred to the Nakba as a collective trauma in Palestinian history, including the Official Commission of Inquiry headed by Justice Theodor Or, which stated as follows:

> The Arab minority in Israel is a native population that perceives itself to be under the hegemony of a majority that is largely not like them […] The establishment of the State of Israel, which the Jewish nation celebrates as the fulfillment of a generations-long dream, is bound up in their historical memory with the harshest 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.
> Report of the National Commission of Inquiry to Investigate the Clashes between the Security Forces and Israeli Citizens in October 2000, vol. 1, pp. 26-27.

[…]

38. Yet the law under consideration indirectly seeks to prevent a cultural discourse around the concept of the Nakba and intellectual challenges to the constitutional definition of the state. In fact, the very writing the above text and its deliberation in court could be considered acts that should be prohibited under the law, demonstrating its absurdity. Cultural identities are not matters that should be open to jurisdiction or regulation.
[…]

The legal arguments

Violation of constitutional rights

Violation of freedom of expression

67. This law violates freedom of expression… including freedom of political, artistic, and academic expression.
[…]

69. The right to freedom of political expression was granted a special status as it lays the foundation for a democratic regime, which is based upon the free exchange of ideas. The *Kol Ha'Am* ruling of 1953 (HCJ 73/53 *Kol Ha'Am v. The Minister of the Interior*, P.D. 7(1), 871) established this fundamental principle in law, according to which the scope of the protection of views that oppose the political consensus is the measure of the extent to which the right to free political expression is protected in a democracy. Hence, freedom of political expression cannot be restricted solely on the basis of fear of harm to the public interest. Nor can the right be restricted merely 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 danger to a public interest of supreme importance.
[…]

72. The argument that the Nakba Law is constitutional because the state is entitled to refuse to grant legitimacy or a public forum to expressions that challenge the "Jewish and democratic" values of the state as support could be interpreted as giving legitimacy to these expressions, is an argument that fails the tests of freedom of expression. These are political expressions, and thus prohibiting them solely because of their content fails the test of near certainty. […]

73. Further, the argument that the law is constitutional because the state is entitled to withhold support from bodies that give expression to the Nakba and relate to the establishment of Israel as an event to be mourned, and that these acts offend the sensibilities of large segments of the public, and that they give legitimacy to the Palestinian historical narrative – the narrative of the "enemy" in the view of these groups – are flawed arguments that fail the tests of the protection of the freedom of expression. […]

74. The law, as noted in the factual background above, could also undermine freedom of artistic expression at events such as theater productions or poetry readings that deal explicitly with the Nakba, Palestinian refugees, or the yearning to return to the homeland. For example, a theater receiving state support that stages Mohammad Bakri's one-man show based on Emile Habibi's *The Pessoptimist*, for example, or a play written by Mahmoud Darwish, or a play based on Ghassan Kanafani's *Returning to Haifa*, could have its funding reduced by law.
[…]

77. The law could also undermine the academic freedom of Petitioner #7, a right derived from freedom of expression and of no lesser importance than freedom of political or artistic expression. Academic freedom allows for the development of critical thinking in all areas, including critical thinking about politics and art. To foster critical thinking, the government must not intervene in academic content, particularly not in the expression of different and various academic positions and views. Academic independence is underscored by Article 15

of the Council for Higher Education Law – 1958, which states that "every academic institution has the right to conduct its own academic and administrative affairs in the framework of its budget and as it sees fit […]."

78. This law will act as a deterrent against activities that may fall within its compass and result in budgetary sanctions. The effect of this deterrence is reinforced by the fact that the penalty for engaging in prohibited activities could be a fine of up to three times the organization's outlay on the activity (including concession of revenue). Consequently organizations, including local authorities, schools, cultural centers, and institutions of higher education, will avoid engaging in these activities fearing the loss of their funding. Potential recipients of the services of these organizations will therefore also be negatively affected due to the chilling effect of the law.

79. The law's encroachment on freedom of expression is so extensive that even an isolated or marginal act that falls within one of the two legal grounds set in the law would be sufficient to incur financial sanctions, regardless of the nature of the act, its influence on the public, its impact, or the degree of harm caused, if any, to any legitimate interest.
[…]

Violation of the right to equality
[…]

82. This law results in discrimination on the basis of nationality or social or political views. It will discriminate against Petitioners #1-7 solely on the basis of educational activity that violates no legitimate public interest or law whatsoever. There is serious concern that the law would deter Petitioner #1 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 have experienced. Conversely, the law would not harm alumni associations in Jewish schools that hold activities related to the identity and character of Israel as a Jewish state. Activities designed to perpetuate the Jewish-Zionist narrative would also not be affected. […] However, bilingual schools, for example, such as those attended by the children of Petitioners #2-6, would be prevented from realizing their core goal of exposing Jewish and Arab children to the national narratives of both nations. In contrast, other educational institutions, such as democratic schools or various experimental schools, will enjoy the [freedom to undertake the] full range of activities designed to preserve the status of the majority group. This distinction can also be made between Arab schools and Jewish schools in the state-secular system. Petitioner #7, for example, would experience discrimination in his scientific and academic research, and his academic status could be seriously harmed. The academic status of many other academics, including those who advocate non-democratic views and relate to Arab citizens as a demographic threat, would, on the other hand, remain unharmed.
[…]

84. The legal question regarding the constitutionality of the law is as follows: In imposing budgetary sanctions, is it possible to distinguish between financially-supported bodies based on their views of Zionist values? Or, in a similar vein: Is it possible to distinguish between financially-supported bodies that advocate Zionist values or do not harm them, and those that do not protect these values and/or commemorate the Palestinian narrative? We address these questions on two, legally-related levels. The first concerns the reasoning of the *Ka'adan* judgment, which grappled with the issue of equality in the context of nationality in a Jewish and democratic state. The second concerns the purpose of the Budget Foundations Law.

85. The principle 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. […]

86. […] The Nakba Law is an amendment to the Budget Foundations Law that deals with support for institutions within Israel that are registered in accordance with the laws of Israel. The interpretation of the Budget Principles Law, as implemented by the Ministry of Finance, and as it emerges from various provisions of this law, indicates that this law has no relation to ethnic or ideological matters. […]

87. Furthermore, the essential interpretation of the Budget Foundations Law emerges from the principle of equality as expressed in Article 3A(d) of the law, which calls for equality in the allocation of support.
[…]

90. Although international law does not alone provide grounds for repealing primary legislation, it does, as has been determined on many occasions, provide guidance for interpretation and adjudication. The principle of equality in international law obliges the state to take positive measures to ensure protection for the rights of all citizens, including the rights of minorities residing within the state. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) declares that in states with ethnic, religious, or linguistic minorities, persons belonging to these minorities must not be denied the right to enjoy their own culture or to use their own language.
[…]

91. Article 27 [of the ICCPR) must be read in tandem with the preceding Article 26; taken together these articles oblige the state to take positive measures to prevent discrimination against a minority group. Article 26 states that every individual is entitled to equality before the law, that every type of discrimination must be prohibited by law, and that all persons must be ensured equal and effective protection against discrimination on any ground such as race, ethnic origin, color, sex, language, religion, political or other opinion or national or social origin.

Violation of the right to equality in education and free choice in education

92. The provisions of the law under consideration violate the right to education. The law would prevent the children of petitioners #2-6 and others from receiving an education that relates to the Palestinian national narrative. It would 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 delivered by Justice Procaccia in the *Abu Labda* case asserts that the right to education is central to the constitutional right to human dignity." (HCJ 5373/07, *Abu Labda v. The Minister of Education*, para. 25 of Justice Procaccia's judgment, 6 February 2011.)

93. Moreover, this violation would preserve and increase the existing repression in the education system that results from stringent supervision by the Ministry of Education of the content of education, particularly in Arab schools. The words of Professor Ismael Abu-Saad are pertinent in this context:

> […] 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, vol. 7, no. 5, pp. 717-718.

94. Furthermore, the law would deepen the discrimination that already exists in the curriculum between Arab and Jewish schools. This was addressed in a report by Human Rights Watch:

> Thus, while appreciation for different cultures and values is an important part of education, considering the relatively minimal instruction available to Palestinian Arab children on 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", *International Law and Politics*, 2005, vol. 36, pp. 790-791.

[…]

96. Implementation of the Nakba Law would also harm the right of parents of pupils to freedom in choosing an educational institution for their children to receive an education that is in keeping with the parents' own views and educational approach. The law has heavy implications for bilingual schools, as it would nullify 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.

Violation of the right to freedom of occupation

97. This law violates the freedom of occupation of Petitioner #7, the teachers of the Galil Jewish-Arab School, and the right of all those who engage in critical examination of the character of Israel as a Jewish state within the framework of their work. This [violation] is in contravention of the Basic Law: Freedom of Occupation.

98. Enforcing this law on an institution of higher learning where, for example, Petitioner #7, Prof. Oren Yiftachel, teaches or would teach in the future, may violate his constitutional right to freedom of occupation. If the study of his writings or the holding of activities related to his theories resulted in funding cuts to his place of work, his employment would be jeopardized for fear of further budget cuts. In contrast, academics who teach at the same institution and do not support the theories advocated by Petitioner #7, or who are deterred from discussing or teaching about his writings, would not be exposed to the danger of harming that institution.
[…]

100. In addition, teachers employed at the Jewish-Arab school would be unable to realize their right to freedom of occupation, unlike their colleagues who teach at what are known as "unique schools," which are based on different social or political approaches.

These violations of the constitutional right to freedom of occupation are even more serious as they are grounded in extraneous considerations irrelevant to educational concerns or academic freedom, which is fundamental to teaching. The grounds given in the law under consideration for curtailing freedom of occupation relate solely to the views of Petitioner #7.
[…]

Furthermore, an employer is prohibited from engaging in discrimination against a job candidate or an employee based on his political views or party affiliation, as stipulated in Article 2 of the Employment Equal Opportunities Employment Law – 1988.

101. Refraining from hiring a teacher due to his political views or activities was prohibited by the High Court of Justice prior to the enactment of the Basic Law: Freedom of Occupation. This ruling was based on the ground that political considerations are extraneous to the teaching profession.
[…]

Violation of the right to group dignity

103. This law violates the right to group dignity of Arab citizens of Israel, in contravention of the Basic Law: Human Dignity and Liberty […] when the violation affects elements of the group's identity and presents the group 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 in the law to restrict references to this narrative harms a constitutive element in the identity of these Arab citizens. Furthermore, the attempt to stifle legitimate opposition and protest against the values of Israel as a Jewish and democratic state – a definition that, according to many Arab citizens, excludes them – violates their group dignity as it prevents them from opposing the discrimination against them.

See the *Mar'i* **j**udgment, in which Justice Cheshin discusses the link between the Arabic language and culture and the right to dignity (HCJ 12/99, *Mar'i v. Sabek*, PD 53 (2) 128 (1999)); see also para. 25 of Chief Justice Barak's judgment in HCJ 4112/99, *Adalah v. The Tel Aviv-Jaffa Municipality*, P.D. 56(5) 393 (2002).

104. The violation of the right to group dignity results from the law's attempt to impose penalties and sanctions on legitimate opposition to the definition of the state or on the portrayal of the Palestinian narrative in a positive light. The law thereby undermines the legitimacy and status of Arab citizens, their collective memory, and national identity. The law seeks to shape the values, views, and even the behavior of the Arab minority through the use of budget allocations that are conditioned, as noted, upon the nature of an 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.

105. Although this law is ostensibly neutral in its effect on Jewish and Arab institutions and individuals, it unquestionably and substantively targets the legitimacy of Arab citizens who, as a national minority, are perceived by the state as the "Other", and regarded by many as an enemy that threatens the very existence of the state. According to this view, exceptional measures are required to restrain this minority and make it "loyal" to the group values of the majority. Hence in its essence the law fosters oppression.

106. This law could even legitimize incitement to racism against Arab citizens of Israel, as it fosters a view of them as enemies of the state and of other citizens. It labels Arab citizens and their political and legal activity as a matter that justifies defensive measures by the state, against its own citizens. Thus the law is flawed as it breaches the right to group dignity of Arab citizens as a national minority.

107. The scholar Jeremy Waldron discusses the right to dignity of groups that comprise communities in possession of unique characteristics in terms of their culture, identity and

destiny. Such a violation of the right to dignity goes beyond the harm that caused to 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 memor***y.* 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 added.]
> Jeremy Waldron, *The Dignity of Groups*, New York University School of Law, Public Law & Legal Theory Research Paper, Working Paper #08-53, November 2003, pp. 21-23.

108. It could be argued that a state which defines itself as Jewish and democratic is entitled not to encourage the Palestinian narrative or the discourse surrounding the status of the Arab citizens of the state. Irrespective of the legal legitimacy of this claim, the state is not unlimited in its powers, but rather is prohibited from harming the dignity of its citizens, or some of them. It must be noted that the concept of "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 who are not loyal to its values. […] Legal scholar Judith Resnik describes the evolution of the concept "human dignity" after World War II as follows:

> 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", *Stanford Law Review*, 2003, vol. 55, p. 1929.

<u>Specific harm to the petitioners</u>

Petitioner #1

39. Petitioner #1 is a registered non-profit association in Israel, founded in 2002. It is composed of approximately 90 alumni of the Arab Orthodox High School in Haifa. The school, founded in 1952, is one of the oldest schools in Haifa and is recognized by the

Ministry of Education. The school is considered one of the most prestigious in Israel […] it is ranked among the top fifteen schools in Israel for its students' excellence in the national matriculation exams. Its graduates include many outstanding Arab academics, intellectuals, and leaders in Israel.

40. Petitioner #1 was founded for the purpose of supporting the school and enhancing cooperation among its graduates at all levels. The purpose of Petitioner #1 is to hold various community and cultural activities at the school, designed to enrich and support the school's informal educational activities.

41. Petitioner #1 organizes six to eight educational programs a year, featuring lectures and panel discussions on various issues, including the implications of Israel's identity as a Jewish and democratic state for the status of its Arab citizens, and the Arab Vision Documents. The Arab Vision Documents call, inter alia, for a shift in the constitutional status of Israel to a bilingual and multicultural democracy, with an emphasis on full equality between the two nationalities in the state. These documents were written in response to the "Kinneret Covenant", initiated by Professor Yuli Tamir and [Brig. Gen. (Res.)] Effi Eitam, with goal of formulating principles for a compromise between Jewish seculars and Jewish religious-nationalists, and in the wake of the publication of the "Constitution by Consensus". The Vision Documents stimulated public discussion in Israel and attracted widespread criticism for challenging the definition of Israel as a Jewish and democratic state, denying the Law of Return, demanding equal rights, supporting the Right of Return and adopting the narrative of the Nakba.

42. Petitioner #1 also holds educational activities on Palestinian history, particularly relating to Arab citizens of Israel.

43. All of these activities […] take place at the school and make use of the school's property. The Association is not charged for use of the school's facilities.

44. Some of these activities, including that planned for the next Nakba Day, could be interpreted as violations of the law, and consequently lead to the reduction of the school's budget.

Petitioners #2-6

45. Petitioners #2-6 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. The school was founded at the initiative of Hand in Hand – The Center for Jewish-Arab Education in Israel, which educates approximately 200 children. Every class in the school has both Jewish and Arab pupils and is taught in two languages by two teachers, one Arab and the other Jewish.

46. […] The school teaches the values of democracy and equality by educating its students in the culture and language of two nations; students learn the national narrative of both nations, and study the basic tenets of three religions: Christianity, Islam and Judaism.

47. According to the Hebrew website of the Misgav Regional Council, "The goal of the Galil Jewish-Arab School is for Jewish and Arab children to lead a shared life on a daily basis within the framework of the school. This is a unique educational model in which the encounter between the children is based on equality and cooperation, and 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 instilling the values of respect, tolerance, and openness, the school educates according to a 'critical pedagogy and an analysis of reality from a range of perspectives'."

48. To realize the school's goals, various activities are held each year prior to Memorial Day and Independence Day, with the aim of commemorating both Israel's Independence Day and the events of the Nakba. On this day, which was held this year on 10 May 2011, two separate assemblies are held, one marking Memorial Day for Jewish students, and the other marking the events of the Nakba for Arab students.

49. During the assembly to commemorate the Nakba, passages from Palestinian literature and poetry and testimonies from survivors of the Nakba events are read by the children. At the conclusion of the separate assemblies, the children come together for a joint ceremony called "From Pain to Hope." The joint assembly allows the students to exchange experiences from the separate assemblies. These assemblies expose the students to the unique experience of marking these two events, for the entire population, through exposure to the national narrative of each nation, the uniqueness of commemorating Independence Day and the Nakba events for each nation, and the events of 1947-48 from both perspectives. Exposure to these narratives and the sharing of experiences that range between happiness, sadness and grief is an effective and important educational tool through which the children learn about the history and culture of the other nation; this experience fulfills one of the main goals of the school.
[…]

52. Following the enactment of the Nakba Law, parents of children at the school, including Petitioners #2-6, met to discuss the implications of the law for the school's activities to mark Independence Day and the Nakba. At these meetings, parents expressed concern that the law would force the school to curtail or even cancel its annual program marking the Nakba. This possibility provoked deep concerns that these changes would substantially harm the school's goals and deny it the most valuable tools for educating their children in accordance with their worldview, as this is a unique school within the jurisdiction of the Misgav Regional Council and in the north of Israel as a whole.

53. It should be emphasized that during a meeting of the Knesset's Constitution, Law and Justice Committee held on 23 February 2010, when this legislation was deliberated prior to its first reading in the Knesset, it was stated that teaching students about the Nakba during school hours would fall within the purview of the law. In the words of Committee Chair David Rotem, "If you mark Independence Day, even if you do it today, or if you teach a lesson today and say that Independence Day is a day of mourning and a day of disaster, this bill would apply to you" (pp. 19-20 of the meeting protocol dated 23 February 2010 […]).

54. The provisions of the law harm the status of the school and the public legitimacy of its values. The state, which is obliged to take a neutral stance towards the values of all of these types of schools, which were established by law for a worthy and important purpose, is instead conveying a message to the public that the type of education promoted by this school is undesirable, and that economic sanctions, such as funding cuts, can be imposed on a school that wishes to advance legitimate and democratic values in accordance with the choice of the parents.

55. The law is also liable to lead to substantial harm to the school's budget due to its curriculum, as some of the school's curriculum challenges the constitutional definition of the state. Furthermore, the commemoration of the Nakba by Arab students could be construed as a violation of the law. [...] The law could therefore have a chilling effect on the content of the curriculum.

Petitioner #7

56. Petitioner #7 [Professor Oren Yiftachel], is a leading, internationally-recognized academic. The Petitioner received extensive publicity for his theories of regime and public policy, and particularly for his model of "ethnocracy". This model was developed through extensive research and publication on political and legal geography and space and urban planning policies. In this research, Petitioner #7 offers a new and critical approach to understanding regimes in ethnically-divided states. According to this theory, the regime in Israel is an "ethnocracy that does not meet the standards of a democracy. It can therefore not be termed "Jewish-democratic," nor described as an "ethnic democracy."

57. The "ethnocratic" model, according to Petitioner #7, refers to "a political regime appropriated by a dominant ethnic group in the state and society," that is designed "to facilitate and institutionalize the Judaization of Israel/Palestine under regime characteristics that are pseudo-democratic. The ethnocratic regime was founded 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." Petitioner #7 therefore rejects the definition of Israel as a Jewish and democratic state, preferring to conceptualize the state as promoting an ethnic, demographic, political, and colonialist project based on control and ethnic oppression. From Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (University of Pennsylvania Press, 2006. See

Oren Yiftachel and Uri Ram, *"Ethnocracy" and "Worldplaces": New approaches to the Research of Society and Space in Israel*, Negev Regional Development Center, Position Paper #12, March 1999.

59. The ethnocratic model is perceived by many in Israeli academia as challenging the constitutional definition of Israel as a "Jewish and democratic" state.
[…]

61. Under the law, an academic-scientific or public discussion that identifies with this ethnocratic model could be construed as denying the existence of Israel as a Jewish and democratic state. A lecture given in a government-supported institution about this model in which the constitutional structure that defines Israel as a Jewish-democratic state is criticized could clearly be interpreted as a violation of the Nakba Law.

62. The law has serious implications for the Petitioner's writings and publications, particularly since his work forms part of the curricula of several university departments. The law could also deter academic and public discussion about the Petitioner's model. Moreover, the law could encourage the public to view the Petitioner's writings and theories as illegitimate, and prevent a constructive and comprehensive discussion of the character of the regime in Israel.

Implications of the law for other bodies

63. This law will cause harm to peaceful and legitimate intellectual and political activities. For example, the law will deter and/or prevent various state-supported and/or funded institutions of higher education and research from holding seminars on political issues that could be construed as "rejecting the existence of the State of Israel as a Jewish and democratic state." Among many examples are: calling Israel an ethnocratic state, an occupier or anti-democratic state; publicly advocating for transforming the regime to "a state of all its citizens"; discussing the implications of the definition of Israel as Jewish, such as the repercussions of the Law of Return for the status of the Arab minority in Israel, expressing opposition to the symbols of state, criticizing citizenship laws, or identifying and discussing the Arab Vision Documents; and voicing opposition to the numerous laws and bills recently tabled in the Knesset that are intended to limit the rights of Arab citizens. These examples are only a small portion of the legal, intellectual, and public issues with political overtones that could fall under the purview of this law.

64. In preparing the law for a first reading, MKs attending a session of the Knesset's Constitution, Law and Justice Committee discussed a scenario in which an Arab leader who lectures at an Israeli university criticized the Law of Return and called for the establishment of a bi-national state. MK David Rotem, Chair of the Committee and one of the sponsors of this legislation, responded unequivocally that such activity would fall within the scope of the law (p. 35 of the protocol of the meeting, 26 October 2009).

65. This law will also harm cultural institutions, such as theaters and cinematheques, which could be deterred from staging plays or screening films that relate to the events of the Nakba in the wake of the law. […]

66. The law could also harm local authorities, as state funding may be reduced to any entity that seeks to hold an activity that is considered to be in violation of the law, which may lead to a reduction of the budget allocated to local councils. Funding cuts, as noted above, could have serious consequences for the public, as services provided by the local authority would be reduced. Harm would also be caused to bodies supported by the local authority, and to residents who have no connection to the activity in question, who would therefore be penalized although they are innocent of all wrongdoing.