

LINGUISTIC RIGHTS FOR MINORITIES AND THE QUEST FOR
EQUALITY: THE CASE OF ARAB-PALESTINIANS IN ISRAEL

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INTRODUCTION	260
I.LINGUISTIC RIGHTS IN INTERNATIONAL LAW	261
A. Early Instruments of International Law	262
B. The International Covenant on Civil and Political Rights	262
C. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities	263
D. The Declaration on the Rights of Indigenous Peoples.....	264
II.THE LEGAL STATUS OF ARABIC IN ISRAEL	266
A. Arab-Palestinians in Israel	266
B. Article 82 of the British Mandate and Early Israeli Legislation	268
C. Additional Legislation Regulating the Status of Hebrew and Arabic in Israel.....	269
D. The Nation-State Law and its Significance	270
E. Legal Challenges to the Nation-State Law.....	272
III.THE STATUS OF ARABIC IN ISRAEL: BETWEEN ASPIRATION AND REALITY	274
A. Arabic in Practice.....	275
B. The Arab-Palestinian Community's Future Vision for Arabic	276
C. Legal Action for Advancing the Status of Arabic: Arabic on National Road Signs and in Mixed Jewish-Arab Cities.....	280
IV.LESSONS BASED ON THE ARAB-PALESTINIAN EXPERIENCE: PRINCIPLES FOR LINGUISTIC EQUALITY.....	283
A. Parity	283
B. Authenticity.....	284
C. Reflectivity.....	284
V.CONCLUSION.....	285

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INTRODUCTION

Marginalized groups, including ethnic and indigenous minorities, require special arrangements on the national level to preserve their unique identities and cultures.¹ Language and linguistic preservation are central to these groups' identities and cultures and thus are particularly significant for such minorities.² Language is also central to expressions of histories, narratives, cultures and other identity markers. Language is often embedded in cultural and religious practices and is instrumental to the preservation of these traditions. Furthermore, linguistic recognition and the right to use native languages in public forums gives minorities, who frequently face severe and prolonged discrimination, an enhanced ability to access economic rights and services including healthcare, public transportation and government offices.³

Ensuring that minorities can meaningfully use their native language in daily life is essential in diverse societies.⁴ In light of the importance of language for minorities, it is not surprising that linguistic preservation, linguistic access and linguistic equality all feature prominently in international law and norms.⁵ Many international legal documents obligate states to give minority languages official recognition and to incorporate those languages in public spaces.⁶ These linguistic protections apply doubly to minorities who are also indigenous groups. The 2007 U.N. Declaration on the Rights of Indigenous Peoples is a particularly notable example, because it focuses on the importance of language to indigenous groups.⁷ The Declaration names key norms for linguistic parity, calling for indigenous groups' right to self-administer their own education in their native tongue.⁸ Beyond this, it mandates linguistic accessibility for government offices and services,⁹ and also alludes to the importance of indigenous languages on road signs.¹⁰ Indigenous peoples were integral to the development of the 2007

¹ See Asbjorn Eide, *Minority Protection and World Order: Towards a Framework for Law and Policy*, in UNIVERSAL MINORITY RIGHTS 87, 104–105 (Alan Phillips & Allan Rosas eds., 1995); Patrick Thornberry, *An Unfinished Story of Minority Rights*, in DIVERSITY IN ACTION: LOCAL PUBLIC MANAGERMENTS OF MULTI-ETHNIC COMMUNITIES IN CENTRAL AND EASTERN EUROPE 48–59 (Anna-Maria Biro & Petra Kovacs eds., 2001); see generally WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS (1995).

² Eide, *supra* note 1, at 104–105; U.N. Off. of the High Comm'r for Hum. Rts, *Minority Rights: International Standards and Guidance for Implementation*, U.N. Doc. 8 HR/PUB/10/3 (2010); see generally WILL KYMLICKA, MULTICULTURAL ODYSSEYS: NAVIGATING THE NEW INTERNATIONAL POLITICS OF DIVERSITY (2007).

³ See *infra* Part VI.

⁴ Ilan Saban, *Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel*, 36 N.Y.U. J. INT'L L. & POL. 885, 925–38 (2004).

⁵ Robert Dunbar, *Minority Language Rights in International Law*, 50 INT'L & COMPAR. L. Q. 90, 90–120 (2001); see also Will Kymlicka, *The Internalization of Minority Rights*, 6 INT'L J. CONST. L. 3 (2008).

⁶ *Id.* at 106.

⁷ See *infra* Part I; see generally S. James Anaya & Siegfried Wiessner, *The UN Declaration on the Rights of Indigenous Peoples: Towards Re-Empowerment*, JURIST (Oct. 3, 2007), <https://www.jurist.org/commentary/2007/10/un-declaration-on-rights-of-indigenous-2/> [<https://perma.cc/4ZSJ-WEWH>] (discussing the 2007 U.N. Declaration's re-empowerment of the world's aboriginal groups).

⁸ G.A. Res. 61/295, *Indigenous Declaration* (Sept. 13, 2007), art. 14(1).

⁹ *Id.* art. 13(2).

¹⁰ *Id.* art. 13(1) (“Indigenous people have the right . . . to designate and retain their own names for communities, places and persons”).

Declaration, and the final product reflects the critical importance such groups place on linguistic rights.¹¹

When minorities' linguistic rights are protected, this engenders feelings of belonging and contributes to social cohesion and national stability.¹² National, ethnic and indigenous minorities seek linguistic parity in order to compete fairly in the job market and in national networks of higher education—both of which are essential for individual and collective social and economic mobility. Altogether, preserving minority languages can equalize the inherently unequal balance of power between majority and minority groups by contributing to the creation of a shared society and providing minorities with essential tools for advancing themselves individually and collectively.¹³

This article examines the linguistic rights—specifically the status of Arabic—in the context of the Arab-Palestinian minority in Israel. The experiences of the Arab-Palestinian minority in Israel analyzed here point to important legal and advocacy directions and principles. These can be applied by this community and other groups who face threats to their collective identity and are unable to fully realize their linguistic rights. This study, first and foremost, reinforces that basic legal protections are essential to ensuring linguistic parity and rights for minorities. Yet, legislation and legal protections alone are insufficient. They must be accompanied by true and genuine implementation in practice to guarantee that *de jure* protection by law is implemented *de facto*. Equal legal recognition of both official languages and equitable financial allocations are essential for achieving this aim. Accordingly, I argue that the inferior status of Arabic is indicative of the inferior legal and socio-economic status of Arab-Palestinian citizens in general in Israel.

The article opens with an overview of relevant instruments of international law that relate to minority rights, focusing on the collective linguistic rights enshrined in each of these laws. After providing background information on the status of the Arab-Palestinian community in Israel as an indigenous minority in Israel, Part II outlines Israeli legislation related to the status of Arabic and Hebrew as well as key efforts by the Arab-Palestinian community to define their visions for cultural and linguistic rights. Part III analyzes Israeli Supreme Court cases, showing that legal actions have been partial wins, but they have engendered many challenges for promoting full linguistic rights. Finally, the article presents a paradigm for overcoming these challenges, consisting of the principles of parity, authenticity and reflectivity. I conclude with general implications for this case and others.

I. LINGUISTIC RIGHTS IN INTERNATIONAL LAW

According to many key tenets of international law, states are obligated to recognize and safeguard minority languages. Undoubtedly, preservation of linguistic rights is essential for safeguarding minorities' identities and cultures. As demonstrated here, linguistic rights for minorities features

¹¹ *Supra* note 8.

¹² See Banting, Courchene, & Seidle, *Belonging? Diversity, Recognition and Shared Citizenship in Canada*, INST. RSCH. PUB. POL'Y 651 (2007).

¹³ See Denise G. Réaume, *Official-Language Rights: Intrinsic Value and the Protection of Difference*, in CITIZENSHIP IN DIVERSE SOCIETIES 251 (Will Kymlicka & Wayne Norman eds., 2000); Will Kymlicka & Wayne Norman (2000), *Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts*, in *Citizenship*, in DIVERSE SOCIETIES 1, 1-43; see, e.g., Jens Woelk, *Reconciliation Impossible or (only) Undesirable? South Tyrolean Experiences*, in NATIONAL AND INTERETHNIC RECONCILIATION AND RELIGIOUS TOLERANCE IN THE WESTERN BALKANS: PROCEEDINGS OF THE ECPD INTERNATIONAL SYMPOSIUM, BELGRADE, OCTOBER 28–29, 2005, 75–94 (Takehiro Togo & Negoslav Ostojic eds., 2006).

prominently in major international human rights instruments.

A. Early Instruments of International Law

Linguistic rights have been present since nearly the very founding of the international human rights legal regime. The conclusion of World War I ushered in the founding of the League of Nations,¹⁴ the precursor to the United Nations,¹⁵ and in 1922, the League of Nations established the Permanent Court of International Justice (PCIJ). Their mandate included addressing issues of discrimination against minority groups.¹⁶ As early as 1935, the court issued a leading ruling affecting linguistic rights. There, in a case regarding the situation of ethnic Greeks in Albania, the court explicitly identified language as a central cultural right.¹⁷ It ruled that linguistic minorities must be granted all of the same rights under law, and that equality was not only a matter of the dry letter of the law but needed to be effective and genuine.¹⁸

A major development in protection for minorities came with the 1945 establishment of the United Nations and the 1948 passage of the Universal Declaration of Human Rights.¹⁹ This was quickly followed by the formation of the European Convention on Human Rights (ECHR) in 1950. These changes signaled a growing willingness by the international law establishment to recognize the importance of linguistic parity.²⁰ In 1995, a national minority rights treaty was added to the ECHR—the European Framework Convention for the Protection of National Minorities (FCNM).²¹ Despite the fact that the FCNM treaty is Europe-based rather than global, it serves as a source of reference and is influential in determining matters pertaining to minority rights internationally.²²

B. The International Covenant on Civil and Political Rights

The adoption of the International Covenant on Civil and Political Rights (ICCPR) in 1966 broke new ground in minority rights standards. Previous instruments of international law were limited by their focus on the rights of individuals or by their regional approach; the ICCPR, by contrast, addressed the rights of collectives.²³

Significant in this regard is Article 27, which reads: “[i]n those States in which ethnic, religious

¹⁴ League of Nations Covenant.

¹⁵ U.N. Charter.

¹⁶ See Acts and Documents Concerning the Organization of the Court, 1922 P.C.I.J (ser. D) No. 2.

¹⁷ *Minority Schools in Albania*, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6).

¹⁸ *Id.* at 17.

¹⁹ G.A. Res. 217 (III) A, art. 13, Universal Declaration of Human Rights (Dec. 10, 1948).

²⁰ While these documents were important for setting subsequent legal standards, the 1948 Declaration was limited by its phrasing and the ECHR was limited by its regional approach. European Convention on the Protection of Human Rights and Fundamental Freedoms art. 14, Nov. 4, 1950, 213 U.N.T.S. 222.

²¹ The FCNM treaty is supported by an implementation mechanism under the Committee of Ministers, thus it legally binds only European signatories. The European Framework Convention for the Protection of National Minorities, Feb. 1, 1995, E.T.S. 157.

²² COUNCIL OF EUR., THE FRAMEWORK CONVENTION: A KEY TOOL TO MANAGING DIVERSITY THROUGH MINORITY RIGHTS 6 (May 27, 2016).

²³ Robert Dunbar, *Minority Language Rights in International Law*, 50 INT’L & COMPAR. L. Q. 90, 90–100 (2001).

or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”²⁴ A cursory reading would seem to indicate that the phrase “shall not be denied” is a negative right.²⁵ Nevertheless, scholars understand Article 27 as a positive obligation,²⁶ which requires states and private actors to actively protect minorities and grant said groups and their members both positive *and* negative individual *and* collective rights.²⁷ Moreover, for Article 27 to have any meaningful impact on the status of minorities and to achieve its goal of securing true equality, it must be vested with more than just a passive interpretation. The normative view is that Article 27 requires states to create special protective measures, including establishing new institutions which enable adequate participation in political and public life, and implementing affirmative action programs designed to promote equality in the workplace and in education. This is based on an understanding that both the positive and negative elements of a right – for instance, the right to enjoy one’s culture – are inseparable. As such, Article 27 of the ICCPR broke new ground in understanding minority rights as rights held by a group by virtue of its constitution as a collective.²⁸

C. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Until 1992, Article 27 provided the defining principles of international minority rights law. Yet, as noted, it was deficient because it did not expressly mandate the positive right to linguistic preservation. The United Nations rectified this omission with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.²⁹ Significantly, this Declaration is the first international document exclusively dedicated to minority rights, and it explicitly addresses both collective and individual minority rights.

²⁴ International Covenant on Civil and Political Rights (ICCPR) art. 27, Dec. 19, 1966, 999 U.N.T.S. 171.

²⁵ For a discussion on the positive rights that must be concluded from the text of the General Comment 23 and the spirit of the Covenant as a whole, see PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (1991); Francesco Caportorti, *Human Rights and the Individual in International Economic Relations*, in 8 *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW* 385, 389 (R. Bernhardt ed., 1985).

²⁶ See e.g. PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (1991); Yoram Dinstein, *Collective Human Rights of Peoples and Minorities*, 25 *INTL & COMP. L.Q.* 102 (1976).

²⁷ ICCPR General Comment No. 23: Article 27, ¶ 6.1, U.N. Doc. CCPR/C/21/Rev.1/Add.5 [hereinafter Comment 23]. The Comment also emphasizes that it is not up to a state to determine who is a minority. *Id.* ¶ 5.2. See generally PATRICK THORNBERRY, *INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES* (1991).

²⁸ Compare International Covenant on Civil and Political Rights, *supra* note 24, art. 26 (envisioning equal protection and prohibition of discrimination as: “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”) with G.A. Res. 2200 A (XXI), art. 1, 15, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966) (defining racial discrimination as follows: “[i]n this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”).

²⁹ G.A. Res. 47/135, annex, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Dec. 18, 1992).

While the majority of the rights enshrined by the Declaration are individual and are held by individual minority group members by virtue of group membership, the paramount rights to exist and to preserve and develop ones' identity are held by the group as a collective.³⁰ Because linguistic preservation is fundamental to minority groups, several articles refer to linguistic rights. For example, Article 2 states, “[p]ersons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.”³¹ Article 4(2) notes, “[s]tates shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”³² Article 4(3) continues, “[s]tates should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.”³³ Finally, Article 4(4) notes, “[s]tates should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory.”³⁴ Therefore, linguistic rights feature prominently in this instrument as a positive obligation on states and as rights that collectives deserve by virtue of being collectives.

While the Declaration is non-binding, its adoption has had a significant impact on understanding previous instruments, including Article 27, and guiding the development of new minority rights concepts as outlined below.

D. The Declaration on the Rights of Indigenous Peoples

In 2007, the United Nations passed the U.N. Declaration on the Rights of Indigenous Peoples.³⁵ The Indigenous Declaration offers a richer understanding of minority rights reflecting an indigenous perspective on both the individual and collective levels.³⁶ The meaningful role indigenous peoples played in its drafting further heightens its relevance for such groups. The Indigenous Declaration's most important innovation is its emphasis on collective rights and group-based arrangements;³⁷ indeed, it recognizes the crucial role these elements play in ensuring the preservation and development of minorities and indigenous peoples' identities and ways of life.³⁸

³⁰ The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' preamble seeks to inspire nations to actively strive to preserve minority cultures and grant such groups equal rights. For example, the preamble states that the General Assembly is “[c]onsidering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.” *Id.*

³¹ *Id.* art. 2.

³² *Id.* art. 4(2).

³³ *Id.* art. 4(3).

³⁴ *Id.* art. 4(4).

³⁵ G.A. Res. 61/295, *supra* note 8.

³⁶ See Yousef T. Jabareen, *Redefining Minority Rights: Successes and Shortcomings of the U.N. Declaration on the Rights of Indigenous Peoples*, 18 U.C. DAVIS J. INT'L L. & POL'Y 119 (2012), for a critique on the successes and shortcomings of the declaration.

³⁷ G.A. Res. 61/295, *supra* note 8, art. 7.

³⁸ Asbjørn Eide (Chairperson of the Working Group on Minorities of the Sub-Commission on the Promotion and

This Declaration goes further than previous instruments of international law in relation to minority rights in general and specifically in the realm of linguistic rights.³⁹ Article 13 notes that: “[i]ndigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”⁴⁰ It further mandates that: “[s]tates shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”⁴¹ Significantly, Article 13 also grants indigenous peoples the right to “designate and retain their own names for communities, places and persons.”⁴² Similarly, Article 14 states that: “[i]ndigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.”⁴³ The Article continues by saying: “[s]tates shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.”⁴⁴ The Declaration also addresses indigenous language media: “[i]ndigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.”⁴⁵

Because of its emphasis on collective rights and identity protection including linguistic rights, the passage of the 2007 U.N. Declaration on the Rights of Indigenous Peoples was not only significant for indigenous minorities worldwide but also bears tremendous relevance for Arab-Palestinians in Israel specifically.⁴⁶

Protection of Human Rights), *Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, U.N. Doc. E/CN.4/Sub.2/AC.5/2001/WP.1, at 11–12 (2001).

³⁹ The Declaration not only grants rights to the group – as a group – but also includes an injunction on states to uphold those rights. Article 8 of the Declaration prohibits states from forcing indigenous minorities to assimilate within the dominant majority group and imposes on States a positive obligation to provide effective measures to prevent the denial of the cultural values and identity of these minorities.

⁴⁰ G.A. Res. 61/295, *supra* note 8, art. 13.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* art. 14.

⁴⁴ *Id.*

⁴⁵ *Id.* art. 16.

⁴⁶ Actions taken by Arab-Palestinians to advance their situation as indigenous community have primarily featured legal action challenging practices that disfranchise language rights, applied research, and renewed activity in the political sphere. See AMAL JAMAL, ARAB MINORITY NATIONALISM IN ISRAEL: THE POLITICS OF INDIGENEITY (2011). For more discussion on these aspects, see generally Yousef T. Jabareen, *The Politics of Equality: The Limits of Collective Rights Litigation and the Case of the Palestinian-Arab Minority in Israel*, 4 COLUM. J. RACE & L. 23 (2013) (highlighting the limits of litigation in the case of the Palestinian-Arab minority in Israel); AMAL JAMAL, RECONSTRUCTING THE CIVIC: PALESTINIAN CIVIL ACTIVISM IN ISRAEL (2020). Cf. Shany Payes, *Palestinian NGOs in Israel: A Campaign for Civic Equality in a Non-Civic State*, 8 ISR. STUD. 60 (2003) (highlighting the development, proliferation of, and role of NGOs in advancing civic rights of Arab-Palestinian minorities in Israel); Rebecca Kook, *Representation, Minorities and Electoral Reform: The case of the Palestinian minority in Israel*, 40 ETHNIC & RACIAL STUD. 2039 (2017) (focusing on political representation and the impact of electoral incentives on institutional design).

II. THE LEGAL STATUS OF ARABIC IN ISRAEL

Similar to other minority and indigenous groups, Palestinians in Israel seek to fully realize their linguistic rights, along with their overall struggle for the full realization of their individual and group rights. This section discusses the legal status of Arabic in Israel beginning with the British mandatory period. It then provides an overview of Israeli court rulings and recent Israeli legislation and policies. This section highlights the tremendous gap between the ideal presented in international law and the reality in Israel.

A. Arab-Palestinians in Israel

Israel, which has defined itself by law as a “Jewish and democratic state”⁴⁷ and “the National State of the Jewish People,”⁴⁸ has been engaged in ongoing conflict with its Arab neighbors as the Palestinian people are denied their internationally-recognized right to an independent Palestinian state.⁴⁹ In the shadow of this conflict, successive Israeli governments have regarded Arab-Palestinians who remained in the state with a great deal of suspicion;⁵⁰ and Jewish Israelis question Arab-Palestinians’ social and political status.⁵¹ The result has been that Arab-Palestinian citizens lag far behind Jewish citizens by every measurable standard – income, employment, education, infrastructure, housing and access to public services.⁵² Consequently, the daily living conditions of Arab-Palestinians in Israel reflect

⁴⁷ See *The State of Israel as a Jewish State*, THE KNESSET, <https://knesset.gov.il/constitution/ConstMJewishState.htm> [<https://perma.cc/Y4EC-DH92>] (last visited Apr. 15, 2022); CLAUDE KLEIN, *ISRAEL AS A NATION-STATE AND THE PROBLEM OF THE ARAB MINORITY: IN SEARCH OF A STATUS* (1987). Former president of the Israeli Supreme Court, Aharon Barak, addressed the definition of Israel as a state which favors the Jewish national group: “What are, therefore, the “core” characteristics that shape the minimal definition of the State of Israel as a Jewish state? These characteristics have at one and the same time both Zionist and traditional features. . . . At their center is the right of every Jew to immigrate to the State of Israel, where the Jews will constitute the majority; Hebrew is the official, principal language of the state, and its holidays and symbols reflect the national revival of the Jewish people; Jewish heritage is a fundamental element of its religious and cultural heritage.” HCJ 11280/02 *The Central Elections Committee v. Ahmed Tibi*, 57(4) PD 1, 22 (2003) (Isr.), translated in THE NABKA FILES, *Central Elections Committee v. Tibi* (EC 11280/02) 2–3.

⁴⁸ § 1, Basic Law: Israel the Nation State of the Jewish People, 2018, SH No. 2743 (Isr.), https://main.knesset.gov.il/en/News/PressReleases/Pages/Pr13978_pg.aspx [<https://perma.cc/Q287-VVMJ>] [hereinafter *Nation-State*].

⁴⁹ See RASHID KHALIDI, *THE IRON CAGE: THE STORY OF THE PALESTINIAN STRUGGLE FOR STATEHOOD* (2007); RASHID KHALIDI, *PALESTINIAN IDENTITY: THE CONSTRUCTION OF MODERN NATIONAL CONSCIOUSNESS* (1997).

⁵⁰ See *Ilan Saban*, *Theorizing and Tracing the Legal Dimensions of a Control Framework: Law and the Arab-Palestinian Minority in Israel’s First Three Decades (1948–1978)*, 25 *EMORY INTERNATIONAL LAW REVIEW* 299, 371 (2011) (critiquing the main ways the Israeli legal system was involved in the lives of the Arab-Palestinian minority in the first thirty years of Israeli statehood, deepening and prolonging their dependence and vulnerability).

⁵¹ Muhammad Amara, *The Collective Identity of the Arabs in Israel in an Era of Peace*, in *THE ISRAELI PALESTINIANS: AN ARAB MINORITY IN THE JEWISH STATE* 243, 244–45 (Alexander Bligh ed., 2003); Yoav Peled, *Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State*, 86 *AM. POL. SCI. REV.* 432, 436–440 (1992); see also DAN RABINOWITZ & K.H. ABU BAKER, *COFFINS ON OUR SHOULDERS: THE EXPERIENCE OF THE PALESTINIAN CITIZENS OF ISRAEL* (2005) (offering an in-depth inquiry into the traumatic events of October 2000, when thirteen Arab-Palestinian citizens of Israel were killed by Israeli police during political demonstrations).

⁵² See Comm. on Econ., Soc. & Cultural Rights (CESCR), *Concluding Observations: Israel*, U.N. Doc. E/C.12/1/Add.27, at 3 (1998) (“The Committee expresses concern that excessive emphasis upon the State as a ‘Jewish State’

their weaker legal, political, economic and social status, while state national policies continue—both explicitly and implicitly—to favor the Jewish majority.⁵³

Arab-Palestinians refer to the war in 1948 as *al-Nakba* (which translates to “the catastrophe” in Arabic): it represents a collective catastrophe for the Palestinian people, as it dispossessed them of their lands and dispersed the vast majority of them amongst many neighboring countries that, today, continue to constitute a significant part of the Palestinian diaspora.⁵⁴ In historical Palestine (today, Israel and the 1967 Occupied Territories of the West Bank and Gaza), Palestinians live under three different but related regimes: Palestinians in the 1967 Israeli-occupied West Bank and Gaza, Palestinian residents of Israeli-occupied and annexed East Jerusalem, and Arab-Palestinians in Israel who became minority citizens in Israel following the 1948 War and the establishment of the state of Israel.⁵⁵ Despite sharing the same ethnic, linguistic and cultural identity and background, these groups are subject to different legal and political regimes, and these communities lack the ability to realize their ambitions and internationally-recognized right for statehood as a single collective.⁵⁶

The focus of this article is the native Arab-Palestinians who remained in their land and were not expelled during *al-Nakba*. Although its percentage of the total population of Israel has remained constant at about 18 percent,⁵⁷ this group has increased in size from approximately 160,000 people (during the aftermath of the 1948 War) to around 1.6 million today.⁵⁸ As such, they comprise a substantial national, cultural, linguistic and religious minority living in their historic homeland amongst a Jewish majority.⁵⁹ Approximately 90 percent of the community lives in over 80 towns and villages that are entirely Arab, while the remainder reside as a minority residents in several mixed Arab-Jewish cities, primarily Haifa, Acre, al-Led/Lydda, Ramleh and Tel Aviv-Jaffa.⁶⁰

encourages discrimination and accords a second-class status to its non-Jewish citizens. The Committee notes with concern that the Government of Israel does not accord equal rights to its Arab citizens, although they comprise over 19 per cent of the total population. This discriminatory attitude is apparent in the lower standard of living of Israeli Arabs as a result, inter alia, of lack of access to housing, water, electricity and health care and their lower level of education. The Committee also notes with concern that despite the fact that the Arabic language has official status in law, it is not given equal importance in practice.”)

⁵³ See Yousef T. Jabareen, *Constitution Building and Equality in Deeply-Divided Societies: The Case of the Palestinian-Arab Minority in Israel*, 26 WIS. INT’L L.J. 345 (2008).

⁵⁴ See NUR MASALHA, *THE POLITICS OF DENIAL: ISRAEL AND THE PALESTINIAN REFUGEE PROBLEM* (2003); BARUCH KIMMERLING & JOEL S. MIGDAL, *PALESTINIANS: THE MAKING OF A PEOPLE* (1993); G.A. Res. 194 (II), ¶ 8, Palestine – Progress Report of the United Nations Mediator (Dec. 11, 1948).

⁵⁵ See NADIM N. ROUHANA, *PALESTINIAN CITIZENS IN AN ETHNIC JEWISH STATE: IDENTITIES IN CONFLICT* (1997).

⁵⁶ See EDWARD SAID, *THE QUESTION OF PALESTINE* (1992).

⁵⁷ As’ad Ghanem, *State and Minority in Israel: The Case of the Ethnic State and the Predicament of its Minority*, 21 ETHNIC & RACIAL STUD. 428, 436–37 (1998); GERSHON SHAFIR & YOAV PELED, *BEING ISRAELI: THE DYNAMICS OF MULTIPLE CITIZENSHIP* 110–11 (2002); Antonia Noori Farzan, *Arab Israelis are rising up to protest. Here’s what you need to know about their status in the country*, WASH. POST (May 13, 2021), <https://www.washingtonpost.com/world/2021/05/13/arab-israeli-faq/> [<https://perma.cc/23BV-HP7P>].

⁵⁸ The 2 million figure mentioned in the data of the Israeli Central Bureau of Statistics includes about 375,000 Palestinian Jerusalemites mainly in East Jerusalem, so 1.6 million is more accurate when referring to Arab-Palestinian citizens in Israel. <https://www.cbs.gov.il/en/mediarelease/pages/2022/israels-independence-day-2022.aspx>

⁵⁹ Nadim Rouhana & As’ad Ghanem, *The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel*, 30 INT’L J. MIDDLE E. STUD. 321, 324–26 (1998); see DAVID KRETZMER, *THE LEGAL STATUS OF THE ARABS IN ISRAEL* (1991).

⁶⁰ AS’AD GHANEM, *THE PALESTINIAN-ARAB MINORITY IN ISRAEL, 1948–2000: A POLITICAL STUDY* 2 (2001); HUSSEIN ABU HUSSEIN & FIONA MCKAY, *ACCESS DENIED: PALESTINIAN LAND RIGHTS IN ISRAEL* 7–8 (2003).

B. Article 82 of the British Mandate and Early Israeli Legislation

In accordance with the prevailing British norms in the region, both Arabic and Hebrew were declared to be official languages when Israel was established in 1948. These mandatory linguistic regulations were codified in Article 82 of the Palestine Order in Council of 1922 under the title “Official Languages.” Regarding English, Arabic and Hebrew, the Article stated:

All Ordinances, official notices and official forms of the Government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in English, Arabic and Hebrew. The three languages may be used in debates and discussions in the Legislative Council, and, subject to any regulations to be made from time to time, in the Government offices and the Law Courts.⁶¹

Thus, according to Article 82, all legal directives, official announcements and forms issued by government agencies in relation to service provision must appear in the prescribed three languages: English, Arabic and Hebrew. Similarly, Article 82 allowed for access to government offices and the courts in those same languages.⁶²

When the state of Israel was founded, Article 82 of the Palestine Order in Council was incorporated into the first statute enacted in Israel: The Law and Administration Ordinance of 1948.⁶³ The Israeli lawmakers did not fundamentally change the Article, except for one notable exception: they made an explicit decision to remove English as an official language, indicating that they intentionally chose to retain the status of Arabic.⁶⁴ Indeed, Article 82, as incorporated into Israeli law, frames Arabic and Hebrew identically (in that order) as the two official languages of the State.⁶⁵ Therefore, from a normative perspective, Israeli law mandates bilingualism and, specifically in relation to Arabic, gives it a legal anchor as a collective right, as opposed to an individual right. In fact, this normative status of Arabic as one of the two official languages of the state is, as Ilan Saban argues, “[t]he most far-reaching” group right that is granted to the Arab-Palestinian minority by Israeli law.⁶⁶ The Israeli legislature not only maintained this legal arrangement, but the Knesset actually rejected attempts to nullify it.⁶⁷ Perhaps

⁶¹ PALESTINE ORDER IN COUNCIL [CONSTITUTION] 1922, art. 82, *reprinted in* 3 LAWS OF PALESTINE 2569, 2588 (Robert Harry Drayton ed., 1934).

⁶² Prior to the founding of the state, the international community sought to ensure linguistic parity. The partition plan of 1947, adopted by the United Nations General Assembly on November 29th, 1947, established two states – Israel and Palestine – with Jerusalem meant to be placed under international stewardship. G.A. Res. 181 (II), Future Government of Palestine (Nov. 29, 1947). Consistent with the understanding that language and language rights would contribute to peaceful relations in the region, Resolution 181 required each state to declare to the United Nations that “adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts and in the administration.” *Id.* at 137 n.1.

⁶³ Art. 10(b), Law and Administration Ordinance, 5708–1948, LSI 1 7 (1948).

⁶⁴ Mala Tabory, *Language Rights in Israel*, 11 ISR. Y.B. HUM. RTS. 272, 280 (1981).

⁶⁵ Art. 15(b), Law and Administration Ordinance, 5708–1948, LSI 1 7 (1948).

⁶⁶ Saban, *supra* note 4, at 925 (“The most far-reaching group-differentiated right that is granted to the Palestinian minority by Israeli Law is the normative status of Arabic as one of the two official languages of the state.”).

⁶⁷ While the status of the English language as an official language was canceled in Art. 15(b) of the Law and

this was because a decision to downgrade Arabic would have triggered international criticism.⁶⁸

C. Additional Legislation Regulating the Status of Hebrew and Arabic in Israel

Despite Arabic's official status *de jure*, Hebrew has always been dominant in practice and has received support and public presence through legislation and policy.⁶⁹ For example, The Interpretation Law of 1980 stipulates that the binding version of any legislation in Israel is the Hebrew version.⁷⁰ The Supreme Institute of the Hebrew Language Law of 1953 established the Supreme Institute for the Science of the Hebrew Language (the "Hebrew Language Academy"), which allocates government funding to support of the cultivation of Hebrew.⁷¹ Prior to 2007, no equivalent institution for Arabic existed.⁷² Furthermore, the 1952 Nationality Law requires "some knowledge of the Hebrew language" as a condition for citizenship, displaying a clear preference for Hebrew.⁷³ The Use of the Hebrew Calendar Law of 1998 designates the official state calendar as that of the majority culture and religion.⁷⁴ The Second Authority for Television and Radio Law of 1990 stipulates that, in fulfilling its functions, the Authority shall act with the aim, inter alia, "to promote Israeli Hebrew creations" and "to give expressions to the Jewish heritage and its values and the values of Zionism."⁷⁵ Thus, Israeli legislation

Administration Ordinance, in 1952 the Knesset rejected a bill attempting to annul the status of Arabic as an official language. DK, 2nd Knesset (July 2, 1952) 2528 (Isr.) (on file with author).

⁶⁸ Saban, *supra* note 4, at 928 ("The source of the status of Arabic (along with Hebrew) as an official language is in Mandatory legislation, as opposed to new, original Israeli legislation. The international community would have reacted negatively had the new Israeli state annulled Arabic's status as an official language.").

⁶⁹ See Ilan Saban & Muhammad Amara, *The Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change*, 36 ISR. L. REV. 5 (2002).

⁷⁰ § 24, Interpretation Law, 5741–1981, 35 LSI 370 (1980–81).

⁷¹ Supreme Institute of the Hebrew Language Law, 5713–1953, 7 LSI 140 (1952). The function of this institution is "to guide the development of the Hebrew language on the basis of research in the language and its various periods and branches." *Id.* § 2. Other legislation has granted government assistance to the cultivation of other languages spoken by Israelis, but not for Arabic, an official language according to law. See § 2, Law of the National Authority for Yiddish Culture Law, 5756–1996 (1996) (establishing a National Authority to assist and encourage creativity in the Yiddish language); National Authority for Ladino Culture Law, 5756–1996 (1996) (establishing the Ladino Authority for the same purposes); Yitzhak Navon, *The Israeli National Authority for Ladino and Its Culture*, 44 EURO. JUDAISM 4 (2011).

⁷² See Supreme Institute for the Arab Language Law, 5768–2007, SH 2092 (2007). The law established for the first time an equivalent institution in Israel for Arabic. For a discussion on the potential positive developments, as well as ongoing challenges, associated with the establishment of an Arabic language academy in Israel, see Muhammad Amara, *Words and Peace*, JERUSALEM REP. 46 (Feb. 19, 2007).

⁷³ § 5(a)(4), Nationality Law, 5712–1952, 6 LSI 255 (1951–52).

⁷⁴ Use of the Hebrew Calendar Law, 5758–1998 (1998). The law stipulates that "the Hebrew date shall be stated in every official letter in Hebrew sent by a public authority, and every official notice to the public that it publishes in Hebrew." *Id.* § 2 (translated by author). However, the law also stipulates that this duty shall not apply to any local authority where the majority of residents are not Jewish, nor to an official educational institution and a recognized institution of higher learning in which the language of instruction is not Hebrew. *Id.* § 5.

⁷⁵ § 5(b), Second Television and Radio Authority Law, 5750–1990, 45 LSI 60 (1989–90). The Broadcasting Authority Law of 1965 sets forth functions to be fulfilled by the Authority, including "strengthening the ties with, and deepening the knowledge of, the Jewish heritage and its values" and "reflecting the life of diaspora Jewry." § 3(1), Broadcasting Authority Law, 5725–1965, 19 LSI 103 (1964–65).

over the years has served to weaken Arabic on the legal and normative levels in favor of Hebrew.⁷⁶

There are also a few weaker laws regulating the use of Arabic in specific circumstances. For example, The Knesset Elections Law stipulates that voting tickets for Knesset elections shall be in Hebrew and Arabic.⁷⁷ The Mandatory Tenders Law requires government ministries to publish notices in the press in Arabic as well as Hebrew.⁷⁸ The 1965 Planning and Building Law contains a similar provision regarding notices for new building plans and construction.⁷⁹ While these laws have some important declarative effects, they are much weaker than the laws promoting the use of Hebrew. They are also more limited in scope, and as such they are unable to realistically promote linguistic parity in Israel.

D. *The Nation-State Law and its Significance*

The most significant blow to the legal status of Arabic in relation to Hebrew came with the recent passage of the Nation-State law. On July 19, 2018, the Knesset passed a basic law entitled: “Israel: The Nation State of the Jewish People” (hereafter, Nation-State law).⁸⁰ Israel lacks a constitution yet has a series of basic laws which hold constitutional status. Because the Nation-State law is a basic law, this legislation carries significant normative and symbolic weight.

The Nation-State law deepens existing inequalities between Jews and Arab-Palestinians in Israel in major areas of life and creates new inequalities by granting further legal recognition to Jewish citizens’ superior rights and privileges in comparison with Arab-Palestinian minority citizens.⁸¹ It grants collective rights to Jews by declaring that the right to self-determination in Israel is “exclusive” to the Jewish people, while denying Palestinians’ ancient history and roots in their land.⁸² The law formally establishes Jewish national belonging as the basis for group-based privileges in areas of central importance to Arab-Palestinian citizens, such as immigration and citizenship,⁸³ land rights,⁸⁴ culture

⁷⁶ For broader discussion on Israeli legislations favoring Jewish citizens, see Jabareen, *supra* note 54.

⁷⁷ § 76, Knesset Elections Law, 5729–1969, 23 LSI 127 (1968-69).

⁷⁸ § 15(b), Mandatory Tenders Regulations, 5753–1993, KT 5523 826. A separate law imposes a duty to publish a notice of liquidation of a non-profit Society in a “daily newspaper appearing in Arabic . . . if the majority of the Society’s members speak Arabic.” § 46(b), Amutot (Nonprofit Societies) Law, 5740-1980, SH 983 210 (1980) (translated by author).

⁷⁹ § 1(A)(b), Planning and Building Law, 5748-1988, 19 LSI 330 (1964-65) (amended).

⁸⁰ Nation-State, *supra* note 48.

⁸¹ For a broader critique of the ramification of this law on the status of the Palestinian-Arab minority in Israel, see Yousef T. Jabareen, *Enshrining Exclusion: The Nation-State Law and the Arab-Palestinian Minority in Israel*, in *DEFINING ISRAEL: THE JEWISH STATE, DEMOCRACY, AND THE LAW* 249–63 (Simon Rabinovitch ed., 2018); Hassan Jabareen & Suhad Bishara, *The Jewish Nation-State Law*, 48 J. PALESTINE STUD. 43 (2019). See generally Mordechai Kremnitzer, *Analysis | Jewish Nation-state Law Makes Discrimination in Israel Constitutional*, HAARETZ, 20 July 2018 <https://www.haaretz.com/israel-news/.premium-nation-state-law-makesdiscrimination-in-israel-constitutional-1.6291906> [<https://perma.cc/YJ2E-JPJV>]; *DEFINING ISRAEL: THE JEWISH STATE, DEMOCRACY, AND THE LAW* (Simon Rabinovitch ed., 2018) (examining the merits and meanings of the nation-state law in the context of fundamental disagreements).

⁸² Nation-State, *supra* note 48 § 1(c).

⁸³ *Id.* § 5 (“The state will be open to Jewish immigration and to the ingathering of the exiles.”).

⁸⁴ *Id.* § 7 (“The state views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and foundation.”).

and religion.⁸⁵ The law does not create a provision for similar collective rights for the 20 percent of Israeli citizens who are Arab-Palestinians. It completely ignores Israel's obligation under international law to guarantee their collective rights as a national and indigenous minority. Finally, the law does not refer in any way to democracy or equality.

Interestingly, the only reference to the Arab community in the Nation-State law appears in Article 4, which demotes the legal status of the Arabic language. This Article, which is entitled "Language," regulates the status of national languages. Article 4(a) states that "Hebrew is the State language" and Article 4(b) states that "[t]he Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law."⁸⁶ Article 4 makes it clear that the status of Arabic is unequivocally lower than that of Hebrew, downgrading—for the first time—the status of Arabic from being an official or 'state' language to a language with 'special status.'

Therefore, the Nation-State law creates a clear hierarchy of Hebrew over Arabic, reinforcing a discursive and normative standard in favor of identity markers central to Jewish Israelis and, accordingly, privileging the collective rights of Jewish Israelis over the Arab minority. While the symbolic impact of this legislation is substantial, the practical and legal impacts on the ground are not yet clear. To date, Article 82 of the Palestine Council-in-Order has not been amended nor has the status of Arabic been 'set by law' as Article 4(b) of the Nation-State law authorizes. Irrespective of the ultimate practical outcome of this law, because Arabic is a central component of the identity, culture, and tradition of the Arab-Palestinian minority, the law represents a serious blow to Arab-Palestinian collective rights.⁸⁷

The transformed status-quo of Arabic in relation to Hebrew isn't only a statement about language; it also provides key insights into larger dynamics of politics, identity and control over the speakers of those languages. Language can be viewed as an indicator of social relations between majority and minority groups and, specifically, as a means of control used by majorities to establish their dominant political, social and legal status vis-à-vis minorities.⁸⁸ Yasir Suleiman, a leading scholar of the politics of language, writes that language is a predictor of and an accompaniment to understanding underlying social relations and tensions which are not, on the surface, exclusively about language.⁸⁹ In his view, in situations where social and political tensions between ethnic and national groups are present and highly charged and where discussion of these dynamics is suppressed, "the use of language as proxy in expressing conflict in society reveals its availability for expressing competing narratives of the in-group and the out-group."⁹⁰ Thus, while passage of the Nation-State law can be understood as a political and constitutional issue, a specific examination of language sheds additional light on larger social, ethnic and national dynamics.

In this interpretation, passage of the Nation-State law represents an attempt by the dominant

⁸⁵ *Id.* §§ 8–9.

⁸⁶ *Id.* § 4.

⁸⁷ See Amal Jamal, *Israel's New Constitutional Imagination: The Nation State Law and Beyond*, 18 J. HOLY LAND & PALESTINE STUD. 193 (2019).

⁸⁸ See generally YONATAN MENDEL, *THE CREATION OF ISRAELI ARABIC: SECURITY AND POLITICS IN ARABIC STUDIES IN ISRAEL* (2014) (examining how political and security considerations have tremendously influenced the study of Arabic language in Israel and its overall status).

⁸⁹ YASSER SULEIMAN, *ARABIC IN THE FRAY* (2013).

⁹⁰ *Id.* at 13.

Jewish majority to further control the Arab-Palestinian minority, in part through linguistic discrimination. More concretely, Palestinians in Israel find themselves in a state that loudly and clearly proclaims that it is a state for Jewish citizens, and Arab citizens must make do with ‘special status.’ The passage of this law sends a strong message that not only is the status of Arabic being downgraded, but that this applies to the status of the Arab minority in Israel as a whole. The Adalah human rights group, a leading organization advocating for the legal rights of Palestinian citizens in Israel,⁹¹ argues that the Nation-State law in Israel expresses the politicized nature of identity: “[a] colonial regime is expressed in this Basic Law by the imposition of a constitutional identity of Jewish ethnic supremacy and control, without consent and cooperation, which denies the connection between the Palestinian natives (citizens and residents) with their homeland.”⁹²

E. Legal Challenges to the Nation-State Law

As noted, the practical impact of this new legislation is not yet clear. Some efforts have been made to challenge this legislation through courts. A number of petitions were filed soon after it passed, including one on behalf of the leadership of the Arab-Palestinian minority. On August 7, 2018, the internal political leadership of the Arab community in Israel, represented by the Adalah human rights organization, filed a petition to the Israeli Supreme Court against the law.⁹³ The petition asked the Court to cancel the law on the grounds that it undermines basic democratic principles, violates fundamental international human rights norms, negates Israeli Supreme Court rulings concerning the right to equality, and constitutes an abuse of power by the majority in the Knesset.⁹⁴ In outlining the Nation-State law’s damage to the status of Arabic and that of its speakers, the petitioners argued that the law—in violation of international law—does not recognize any collective right of the Arab-Palestinians as an indigenous minority while enshrining broad exclusive collective rights for the Jewish population. The petition further argued that the law demotes Arabic from its previous status as an official language for the first time in modern history.⁹⁵ A number of other petitions also challenged the law, and they were combined and ruled on together.⁹⁶

⁹¹ *About*, ADALAH: THE LEGAL CTR. FOR ARAB MINORITY RTS. IN ISR., <https://www.adalah.org/en/content/view/7189> [<https://perma.cc/6LV9-PFMS>] (last visited Apr. 1, 2022).

⁹² See ADALAH, PROPOSED BASIC LAW: ISRAEL - THE NATION STATE OF THE JEWISH PEOPLE (2018), <https://www.adalah.org/uploads/uploads/Adalah%20Position%20Paper%20-%20Basic%20Law%20Jewish%20Nation%20State%20-%20ENGLISH%20-%2015072018%20-%20FINAL.pdf> [[https://perma.cc/LA\]4-XGPX](https://perma.cc/LA]4-XGPX)].

⁹³ See H CJ 5866/18 *The High Follow-up Committee for Arab Citizens in Israel v. The Knesset*, ADALAH (Oct. 2018), https://www.adalah.org/uploads/uploads/Jewish_Nation_State_Law_Petition_English_Final_October_2018.pdf [<https://perma.cc/U634-SVNY>].

⁹⁴ *Id.*

⁹⁵ *Id.* at 20–24.

⁹⁶ In addition to challenging the law by petitioning to the Israeli High Court of Justice against the Law, Arab community leadership has approached the international community and maintained that “the Jewish Nation-State Law contradicts the key principles of human rights as enshrined in international treaties, including those in the UN Charter.” *For first time, UN body calls on Israel to amend or cancel Jewish Nation-State Law; Adalah to Israeli AG: Oppose law at Supreme Court*, ADALAH (June 11, 2019), <https://www.adalah.org/en/content/view/9846> [<https://perma.cc/ZME7-UAXR>]. In its concluding observations on the fourth periodic report of Israel, released on October 18, 2019, The U.N. Committee on Economic, Social and Cultural Rights (UN CESCR) “called on Israel to amend or cancel its Jewish Nation-State Law in order to comply with an international human

On July 8, 2021, roughly three years after the petitions were filed, the High Court of Justice issued its ruling.⁹⁷ The Court's majority categorically rejected the petitions; they wrote in the ruling that the law does not negate Israel's character as a democracy. Of the eleven presiding judges who ruled on the case, the only dissenting voice was Justice George Karra (the Court's only Arab justice). Writing on behalf of the majority, Chief Justice Esther Hayut concluded that:

[T]his basic law is but one chapter in our constitution taking shape and it does not negate Israel's character as a democratic state. As such, I do not believe that the Knesset exceeded the narrow limits of its legislative authority when it enacted into law the Basic Law on Israel as the Nation-State of the Jewish People.⁹⁸

In contrast, in his strong dissenting opinion, Justice Karra opened by stating that the law creates “unconstitutional arrangements that negate the heart of the state's democratic identity and shake the very foundations of Israel's constitutional structure.”⁹⁹ Despite the Court's reluctance to intervene in the passage of the law, they emphasized that its provisions must be interpreted in light of Israel's other basic laws, including the Basic Law on the Knesset, the Basic Law on Human Dignity and

rights convention that it ratified in 1991 . . . This recommendation marks the first time that a United Nations monitoring body determined that the Jewish Nation-State Law does not comply with a human rights treaty ratified by Israel – and calls on Israel to either amend or repeal the law.” *Id.* The Committee raised deep concerns about the discriminatory effect of the law on Israel's Palestinian community, urging “the State party to review the Basic Law with a view to bringing it in line with the Covenant or to repealing it and to step up its efforts to eliminate discrimination faced by non-Jews in their enjoyment of the Covenant rights, particularly the rights of self-determination and non-discrimination and to cultural rights.” Comm. on Econ., Soc. and Cultural Rts., Concluding observations on the fourth periodic report of Israel, ¶ 17, U.N. Doc. E/C.12/ISR/CO/R.4 (Oct. 18, 2019).

The committee addressed specifically the Status of Arabic language in Israel, expressing its particular concern “that the status of Arabic has been downgraded from an official language to a language with special status through the adoption of the Basic Law: Israel – the State Nation of the Jewish People.” *Id.* ¶ 68. The Committee recommends “that the State party reinstate Arabic as an official language, and promote its use, including by strengthening the Academy of the Arabic Language, inter alia by allowing more financial resources allocated to it.” *Id.* ¶ 69. The Committee further raised concerns about the lack of measures to “promote diverse cultures” and recommended the state raise awareness of Arab culture. *Id.*

On November 2, 2018, four UN Special Rapporteurs sent a communique to Israeli authorities expressing their deep concerns regarding the impact of the law. The communique was signed by the UN Special Rapporteur in the field of cultural rights Karima Bennouna, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 Michael Lynk, Special Rapporteur on minority issues Fernand de Varennes, and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance E. Tendayi Achiume. They expressed in their letter “deep concern” that the Israeli Basic Law appears “to be discriminatory in nature and in practice against non-Jewish citizens and other minorities and does not apply the principle of equality between citizens, which is one of the key principles for democratic political systems.” Special Rapporteurs in the field of cultural rights, on the situation of human rights in the Palestinian territories occupied since 1967, on minority issues, and on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, in letter dated Nov. 2, 2018 from Special Rapporteurs to the Israeli Ambassador to President Rivlin of Israel, U.N. Doc. OL ISR 12/2018, at 3 (Dec. 2018). Amongst a more extensive series of requests, the special rapporteurs call on Israel to “[c]larify the consequences of the new status of the Arabic language, and the impact if any on its use for official purposes, including on public signs, in public institutions including social and health services and in the education system.” *Id.* at 5. The communique has not received any Israeli response so far.

⁹⁷ HCJ 5555/18 Hassoun v. Knesset (2021).

⁹⁸ *Id.* ¶ 93 (Hayut, J.).

⁹⁹ *Id.* ¶ 1 (Karra, J., dissenting).

Freedom and the Basic Law on Freedom of Occupation, which, according to the court, specifically address the dual character of Israel as a Jewish and democratic state.¹⁰⁰

In commenting on Article 4 and its impact on the status of Arabic, the majority ruled that the article does not discriminate against Arabic, as it doesn't preclude "the promotion of the language" and "avoided the cancellation of Article 82 of the Palestine Council-in-Order which means that [Article 82] must continue to exist and be valid in Israeli law, even following passage of the Nation-State law. Accordingly, one should interpret Article 4 of the Nation-State law alongside the existence of Hebrew as a primary language of the state and that the two languages—Hebrew and Arabic—have official status."¹⁰¹ Justice Karra, on the other hand, emphasized that "the Nation-State law completely ignored the Arab minority and excluded it using the argument that the purpose of the law is to solely define the national identity of the Jewish people. Yet, it finds it right – in a way that contradicts the argued purpose of the law – to actively address an element that is not related to the State's Jewishness, the Arabic language."¹⁰² He further noted that the fact that "the only reference to the [Arab] minority in the law appears in the article about language [and this means that the law] aims to damage not just the status of Arabic but also its speakers, instead of advancing the interests of the minority group."¹⁰³ Karra concluded by expressing the view that "not cancelling Article 82 of the Palestine Council-in-Order does not, in fact, lessen the damage caused to the status of Arabic as outlined in Article 4."¹⁰⁴ Interestingly, Justice Meltzer of the majority ended his opinion referring to Justice Karra's "comprehensive and incisive opinion" and writing that it "should be taken into consideration in future constitutional legislation" in Israel, adding that "it's desirable that our constitution give expression to the diversity and multi-culturalism in Israeli Society."¹⁰⁵

III. THE STATUS OF ARABIC IN ISRAEL: BETWEEN ASPIRATION AND REALITY

Clear and strong constitutional norms and legislation protecting minority languages, supported by appropriate resource allocations, is a necessary baseline for ensuring realization of linguistic rights. Consistent with international law, minority languages must be granted the same constitutional and official status—*de jure*—as majority languages. This legal status should be reflected in full implementation on the ground in terms of full parity and bilingualism.¹⁰⁶ To this end, relevant national legislation must be detailed and specific to provide a clear and undisputed obligation and mandate for action by state authorities.

¹⁰⁰ *Id.* (Hayut, J.).

¹⁰¹ *Id.* ¶¶ 79–80 (Hayut, J.).

¹⁰² *Id.* ¶ 38 (Karra, J., dissenting).

¹⁰³ *Id.* (Karra, J., dissenting).

¹⁰⁴ *Id.* ¶ 39 (Karra, J., dissenting).

¹⁰⁵ *Id.* ¶ 33 (Meltzer, J., concurring).

¹⁰⁶ *See* Bundesvergassung [BV] [Constitution] Apr. 18, 1999, SR 101, art. 4, 20 (Switz) (recognizing German, French, Italian and Romansh as official languages, representing all communities and minorities in the country); Constitution of the Republic of S. Africa, Dec. 4, 1996, ch. 1, § 6 (recognizing 11 official languages, in recognition of the status of indigenous minorities in the country); Belgian Constitution, Feb. 17, 1994, art. 1 – 5 (recognizing four linguistic groups: Dutch, French, multilingual, and German speakers); Canadian Charter of Rights and Freedoms, Part I of the Constitution Act art. 16, 1982, being Schedule B to the Canada Act, 1982, c. 11, U.K. (stating that the official languages of Canada are English and French, acknowledging the French-speaking minority, which accounts for about 20% of Canada's population).

While some protections in the legislative sphere exist in Israel, the 2018 enactment of Basic Law: Israel the Nation State of the Jewish People has significantly eroded these protections. In an attempt to improve the status of Arabic in their daily life, Arab-Palestinian leaders and activists in Israel have initiated advocacy efforts and legal actions. Although their vision is consistent with tenants of international law addressing minority and indigenous rights, the status of Arabic is much weaker than that of Hebrew. This legislation and associated court rulings and their potential impact on Arabic speakers are discussed in this section.

A. Arabic in Practice

Majority groups, by virtue of being numerically dominant or a socially, politically and economically powerful group, can generally realize their interests, including their linguistic rights.¹⁰⁷ Conversely, minorities are vulnerable to assimilationist pressures from majorities.¹⁰⁸ This often takes place through the use of language: the majority language dominates everyday life in the job market, access to services, the media, government bureaucracy and more.¹⁰⁹ Speakers of minority languages are forced to speak majority languages which places them at a distinct disadvantage in conducting their daily affairs and in safeguarding their identities.¹¹⁰

This is certainly the situation in Israel. Given the significant legal disparities between Arabic and Hebrew, as explained above, Hebrew dominates socially, politically and in practice.¹¹¹ Palestinians in Israel are subject to assimilationist pressures and forced to acquire some competency in Hebrew in order to integrate into the job market and manage their daily affairs. On the more formal level, many official government forms and applications are only available in Hebrew.¹¹² Major Supreme Court opinions are often translated from Hebrew into English but not into Arabic.¹¹³ Education in Israel's primary institutions of higher education is conducted in Hebrew.¹¹⁴ On the Knesset floor, one would almost never hear Arabic uttered: while all Arab-Palestinian members of Knesset speak, read and write Hebrew fluently, only a handful of the Jewish Knesset members understand, much less read, Arabic

¹⁰⁷ See, e.g., Rodolfo Stavenhagen, *Cultural Rights and Universal Human Rights*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS 63 (Eide, Krause & Rosas, eds., 1995); MICHEL ROSENFELD, *THE IDENTITY OF THE CONSTITUTIONAL SUBJECT*, ch. 5,7 (2010).

¹⁰⁸ WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 111 (1995) ("The state can (and should) replace religious oaths in courts with secular oaths, but it cannot replace the use of English in courts with no language").

¹⁰⁹ *Id.* ("[O]ne of the most important determinants of whether a culture survives is whether its language is the language of government").

¹¹⁰ See generally Reaume, *supra* note 4.

¹¹¹ Adalah, *Adalah: Legal Violations of Arab Minority Rights in Israel*, PALESTINE YEARBOOK OF INT'L L. 111 (1998–1999); Saban & Amara, *supra* note 69; GAD BARZILAI, *COMMUNITIES AND LAW: POLITICS AND CULTURES OF LEGAL IDENTITIES* 110–114 (2003). See generally Ayman Agbaria, Mohaned Mustafa & Yousef T. Jabareen, *In Your Face' Democracy: Education for Belonging and its Challenges in Israel*, 41 BRIT. EDUC. RSCH. J. 143 (2015) (discussing ongoing governmental educational and cultural policies and practices which preserve Jewish hegemony).

¹¹² Saban & Amara, *supra* note 69, at 22–23.

¹¹³ *Id.* at 22.

¹¹⁴ Tamar Hager & Yousef T. Jabareen, *From Marginalization to Integration: Arab-Palestinians in Israeli Academia*, 20 INT'L J INCLUSIVE EDUC. 455 (2015).

and no simultaneous translation is provided.¹¹⁵ Nevertheless, Arabic is still normative on the local level in Arab-Palestinian majority population centers. Arab education is conducted in Arabic, and Arabic is the primary language of operations within Arab local government. These exceptions do little to counter the hegemony of Hebrew nationally and, as such, compel a certain degree of bilingualism amongst Arab-Palestinian citizens.

Significant steps are required to rectify this situation and ensure true linguistic parity. This includes the ability to use Arabic in interactions with governmental bodies, the national media and the courts, and in higher education along with the presence of Arabic in public institutions and public spaces. Legislation can be a key tool for creating this change, particularly legislation that mandates the use of Arabic in official state documents, public institutions and public spaces.¹¹⁶ A worthy example of this principle in law and in practice is the bilingual status of English and French enshrined in the Canadian constitution.¹¹⁷ To achieve the appropriate impact, such legislation must be cleansed of all bias in favor of the majority.¹¹⁸ Unfortunately, in light of both the Arab community's political status as a perpetual minority in Israel's lawmaking body and the recent passage of the Nation-State law, this scenario is highly unlikely to occur in Israel.

B. The Arab-Palestinian Community's Future Vision for Arabic

In response to the inferior status of Arabic and its speakers, in 2006 a wide and diverse range of Arab-Palestinian academics, community leaders and legal experts initiated a series of in-depth internal discussions on challenges to their status in Israel and their vision for their future as a group.¹¹⁹ These internal discussions culminated in the formation of four political documents outlining their thoughts and hopes, released between December 2006 and May 2007. The documents include *The Future Vision of the Palestinian Arabs in Israel* (the primary and most representative document),¹²⁰ *The*

¹¹⁵ Dov Liebe, *Found in Translation: Arabic language wins unexpected approval in Knesset*, THE TIMES OF ISRAEL (May 25, 2016, 6:15 AM), <https://www.timesofisrael.com/found-in-translation-arabic-language-wins-unexpected-approval-in-knesset/> [<https://perma.cc/4T45-J2SV>].

¹¹⁶ Canada provides an example of an implementation of some of these policies: The Canadian government has “provided tangible support in various forms, including financial support for ethnocultural programs; funding for minority language instruction in schools; and affirmative action through the federal government’s employment equity program.” Banting, Courchene, & Seidle, *Belonging? Diversity, Recognition and Shared Citizenship in Canada*, INST. RSCH. PUB. POL’Y 651 (2007). For a discussion of the Northern Ireland experience, see Anthony Alcock, *From Conflict to Agreement in Northern Ireland: Lessons from Europe*, in NORTHERN IRELAND AND THE DIVIDED WORLD 159 (John McGarry ed., 2001); Brian Thompson, *Transcending Territory: Towards an Agreed Northern Ireland?* 6 INT’L J. ON MINORITY & GRP RTS. 235 (1999).

¹¹⁷ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act art. 16–23, 1982, *being* Schedule B to the Canada Act, 1982, c 11 (U.K.). The Charter stipulates generally that “English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the parliament and government of Canada.” *Id.* art. 16(1). In the 1970s and 80s, Canada undertook a comprehensive conversion to bilingualism, including all governmental and public service authorities. See JOSEPH ELIOT MAGNET, THE OFFICIAL LANGUAGES OF CANADA (1995).

¹¹⁸ Yousef T. Jabareen, *Law, Minority, and Transformation: A Critique and Rethinking of Civil Rights Doctrine*, 46 SANTA CLARA L. REV. 513, 526–27 (2005); see Avishai Margalit & Moshe Halberstam, *Liberalism and the Right to Culture*, 61 SOC. RSCH. 491, 492 (1994).

¹¹⁹ See Amal Jamal, *The Political Ethos of Palestinian Citizens of Israel: Critical Readings in the Future Vision Documents*, 23 ISR. STUD. F. 3 (2008).

¹²⁰ THE NAT’L COMM. FOR THE HEADS OF THE ARAB LOC. AUTHS. IN ISR., THE FUTURE VISION OF THE PALESTINIAN

Equal Constitution for All,¹²¹ The Democratic Constitution¹²² and The Haifa Declaration.¹²³ The framing of these documents was guided by international minority and indigenous legal standards. Consistent with these legal norms, and in light of Arab-Palestinians' self-definition as indigenous, the documents feature a strong focus on collective rights—including cultural and linguistic rights. Specifically, these documents demand that the state recognize Palestinian Arab community as an indigenous national group entitled to full collective rights, including the right to administer their own cultural, educational and religious matters.¹²⁴

Furthermore, all of the documents advocate for bilingualism, each in its own way. In a chapter on the legal status of Palestinians in Israel, The Future Vision calls for recognition of Arabic as a collective national right and seeks meaningful Arabic-Hebrew bilingualism in all areas of life. Specifically, it calls for “guaranteeing [a] dual language system of both Arabic and Hebrew.”¹²⁵ In the chapter on education, it primarily seeks the reform of Arabic education in Israel through better pedagogical methods, enhanced attention to teaching spoken Arabic in relation to written Arabic, and better strategic guidance around the future of Arabic education in Arabic-language schools.¹²⁶

The Democratic Constitution, a legally oriented document, envisions Israel as a “democratic, multicultural and bilingual state.”¹²⁷ It devotes an entire section to the status of Arabic and specifies in great detail how to have Arabic expressed nationally. Article 17 is instructive:

a. Hebrew and Arabic are the official languages of the State of Israel and enjoy equal status in all of the functions and activities of the legislative and executive branches.

b. All official announcements, including laws, ordinances and regulations, will come

ARABS IN ISRAEL (Ghaida Rinawie-Zoabi ed., Abed Al Rahman Kelani trans., 2006), <http://www.adalah.org/newsletter/eng/dec06/tasawor-mostaqbali.pdf> [https://perma.cc/F2H6-ELCD] [hereinafter FUTURE VISION].

¹²¹ YOUSEF T. JABAREEN, AN EQUAL CONSTITUTION FOR ALL? ON A CONSTITUTION AND COLLECTIVE RIGHTS FOR ARAB CITIZENS IN ISRAEL (2006), [https://www.mossawa.org/eng/Public/file/02007%20An%20Equal%20Constitution%20For%20All%20\(1\).pdf](https://www.mossawa.org/eng/Public/file/02007%20An%20Equal%20Constitution%20For%20All%20(1).pdf) [https://perma.cc/W2YJ-YQQF] [hereinafter EQUAL CONSTITUTION].

¹²² ADALAH, THE DEMOCRATIC CONSTITUTION (2007), https://www.adalah.org/uploads/oldfiles/Public/files/democratic_constitution-english.pdf [https://perma.cc/AM3E-NJXY] [hereinafter DEMOCRATIC CONSTITUTION].

¹²³ MADA AL-CARMEL, THE HAIFA DECLARATION (2007), [https://perma.cc/SAA5-JEYZ] [hereinafter HAIFA DECLARATION].

¹²⁴ FUTURE VISION, *supra* note 120, at 14–15; *see also* HAIFA DECLARATION, *supra* note 123, at 14–16; DEMOCRATIC CONSTITUTION, *supra* note 122, at 10–11; EQUAL CONSTITUTION, *supra* note 121, at 50 (explaining necessary recommendations for guaranteeing rights for Palestinian Arabs); *see also* As'ad Ghanem & Mohanad Mustafa, *Coping with the Nakba: The Palestinians in Israel and the "Future Vision" as a Collective Agenda*, 24 ISR. STUD. R. 52 (2009) (analyzing the background of the Future Vision and arguing that its provisions will help ameliorate the condition of Palestinians in Israel); *cf.* Jamal, *supra* note 87 (arguing that the collective effort put into creating the future vision documents was emblematic of significant changes occurring in Arab society); *cf.* Amal Jamal, *Nationalizing States and the Constitution of 'Hollow Citizenship': Israel and its Palestinian Citizens*, 6 ETHNOPOLITICS 471 (2007) (explaining how Israel's nationalizing policies have left Palestinian Arabs without full collective rights); *cf.* Dov Waxman, *Israel's Other Palestinian Problem: The Future Vision Documents and the Demands of the Palestinian Minority in Israel*, 19 ISR. AFFS. 214 (2013) (examining the effect of the future vision documents).

¹²⁵ FUTURE VISION, *supra* note 120, at 15.

¹²⁶ *Id.* at 27–28.

¹²⁷ DEMOCRATIC CONSTITUTION, *supra* note 122, at 5.

into effect when they are published, printed and disseminated simultaneously in the two official languages.

c. The rulings of the Supreme Court, the District Courts and the appeals tribunals will be published, printed and disseminated in the two official languages, immediately upon being issued.

d. Each litigant is entitled to use either of the two official languages, according to his or her choice, in legal proceedings, and is entitled to receive full service in his or her case in the language of his or her choice: simultaneous interpretation in hearings, translation of protocols, court documents, decisions and rulings.

e. Mixed local authorities will use the two official languages in an equal manner in all of their functions and activities.

f. Two kinds of educational institutions will be established in Hebrew and in Arabic, including institutions of higher learning; and every person will be entitled to choose to learn in an educational institution in which learning is conducted in one of the two official languages.

g. Laws will be enacted to grant appropriate and equal status to the two official languages in the national electronic media.¹²⁸

Beyond outlining the normative status of Arabic, the Democratic Constitution also includes enforcement mechanisms. Specifically, it advocates for the establishment of a parliamentary committee on bilingual and multicultural affairs and discusses how this committee should be constituted to ensure an appropriate balance between the Jewish majority and the Palestinian minority.¹²⁹ The Democratic Constitution seeks constitutional recognition of multiculturalism—of which bilingualism is a crucial element—and assurances that such legislative mandates are fully implemented.

As a follow-up to these efforts, and to emphasize the importance of Arabic in shaping their collective status and communal development, in 2013 a group of leading Arab-Palestinian academics and intellectuals reexamined Arabic and its place in Arab society in Israel. They created a document dedicated to the status of Arabic and the challenges facing it in Israel.¹³⁰ According to the document, “[t]he community sees Arabic as a prominent collective right worthy of advocacy and believes that the issue of the Arabic language must be given priority in our efforts to live free and honorable lives as a distinct minority with national, cultural and historical ties to this region.”¹³¹ They also express the

¹²⁸ *Id.* at 8.

¹²⁹ *Id.* at 9–10.

¹³⁰ MUHAMMAD AMARA, ARABIC LANGUAGE IN ISRAEL: VISIONS AND CHALLENGES (2013). This initiative took place under the auspices of the Arab Pedagogical Council and the Follow Up Committee on Arab Education—a voluntarily umbrella groups representing the interests of Arab education vis-à-vis governmental authorities. *See* THE ARAB PEDAGOGICAL COUNCIL AND THE FOLLOW UP COMMITTEE ON ARAB EDUCATION, http://arab-education.org/?page_id=663 [<https://perma.cc/6BLT-DZ3E>] (accessed Mar. 6, 2022).

¹³¹ MUHAMMAD AMARA, ARABIC LANGUAGE IN ISRAEL: VISIONS AND CHALLENGES (2013).

importance of this endeavor to them as native Arabic speakers as follows:

As Arab-Palestinians citizens of Israel, the Arabic language is not only our mother tongue but the vehicle which drives our culture, identity and sense of belonging. It is our Arab space and home with its national, cultural and religious components. Arabic, as an expression of our entire identity, distinguishes us as a separate and distinctive group and grants us strength and vitality. Thus, it is a fundamental aspect of our lives as individuals and an indigenous collective which is living with a sense of alienation in our homeland.¹³²

For these academics, revitalization of Arabic is a strategy for communal development: ensuring Arabic remains a vibrant and living language also strengthens their identity.¹³³

Together, these key documents advocate for Arabic-Hebrew bilingualism in law and in practice. They seek to end Hebrew's linguistic hegemony while also ensuring that Arabic will be a legitimate vehicle for Palestinian identity. As such, they advocate for increasing Arabic's presence and use in the public sphere as a practical means of communication and as a symbolic expression of Palestinians' cultural and national identity. The framers of these documents see the advancement of linguistic rights as a strategy for transforming Israel into a multicultural state. Thus, the Arabic language reflects and is also a leading symbol of the collective rights sought by Arab-Palestinian indigenous minority in Israel, as conceptualized by the community itself.

This vision has been put into practice through the development of a legislative proposal introduced to the Knesset (and initiated by the author of this article). Entitled "Basic Law: Israel—A democratic, multicultural and egalitarian state,"¹³⁴ it was endorsed by fifteen lawmakers. The legislative proposal was submitted to the Knesset on April 30, 2018 – during the same time period in which the Knesset was debating the Nation-State law. The proposed Basic Law "aims to anchor the values of Israel as a democratic and multicultural state, treating all its citizens with complete civil, cultural and national equality."¹³⁵ In relation to the status of Arabic, the law states that "Arabic and Hebrew are the official languages of the state, and both have equal status in all posts and workplaces of the legislative,

¹³² *Id.* at III–IV.

¹³³ *Id.* at VII ("Revitalizing Arabic, and creating a new relationship with it, will be a key strategy for developing as a national group with its own sense of time and place. Examining Arabic as a native language is integrally connected to our vision for our future, along with our collective identity within our native land."). This document further advocates for improving Arabic education. It seeks a complete restructuring of the way in which Arabic language and literature is taught. This would "present Arabic as a language of identity, belonging and interconnection, and as a medium of cultural and scientific creativity." *Id.* at XI. The document calls on educational institutions including academic, semi-academic and Arab organizations to spearhead this process.

¹³⁴ Draft Bill Basic Law: A Democratic, Multicultural and Egalitarian State, 20th Knesset, 5782–2018, IDF 5353/20, art. 4–7 (2018). See Orly Noy, *Defying racist legislation: New bill seeks to turn Israel into a true democracy*, +972 MAG. (June 2, 2018), <https://www.972mag.com/defying-racist-legislation-new-bill-seeks-to-turn-israel-into-a-true-democracy/> [<https://perma.cc/M2KE-Z37X>]; Lahav Harkov, *'Multicultural Israel' bill responds to Jewish nation-state proposal*, JERUSALEM POST (Jan. 1, 2018), <https://www.jpost.com/israel-news/politics-and-diplomacy/multicultural-israel-bill-responds-to-jewish-nation-state-proposal-540424> [<https://perma.cc/M7CR-92UBJ>]; Shlomi Eldar, *Israeli Arab lawmakers launch response to Jewish state bill*, AL-MONITOR (Dec. 2, 2018), <https://www.al-monitor.com/originals/2018/02/israel-arabs-palestinians-nationality-law-democracy-minority.html> [<https://perma.cc/5HXK-JPMJ>].

¹³⁵ Draft Bill Basic Law: A Democratic, Multicultural and Egalitarian State, *supra* note 123, art. 1.

executive and judicial authorities.”¹³⁶ On July 11, 2018, the Knesset rejected this bill in a vote of 66 to 9.¹³⁷ One week later, the Knesset approved the Nation-State law.

C. Legal Action for Advancing the Status of Arabic: Arabic on National Road Signs and in Mixed Jewish-Arab Cities

Given the poor status of Arabic legally and in practice in Israel, the Arab-Palestinian minority has sought to improve its standing and increase recognition of their linguistic rights in concrete areas through the courts. These court cases have based their arguments on both Article 82 of Palestine Order in Council and the general principle of equality. A prominent issue addressed by these petitions was road signs and markers. In 2002, the High Court of justice delivered a groundbreaking ruling on this issue, following a petition seeking linguistic parity in municipal signage. This case constitutes the primary High Court of Justice ruling on the status of Arabic and will be outlined in this section.

In 1997, the Adalah human rights organization filed a petition to the High Court of Justice seeking to compel the Israeli Ministry of Transport and Road Safety to include Arabic on all national road signs.¹³⁸ In light of Arabic’s status as an official state language under Article 82 of Palestine Order in Council, Adalah argued that the absence of Arabic from such signs constituted discrimination against the Arab minority as well as a traffic hazard. At the time of filing, over 80 percent of road signs under the responsibility of the national government were written exclusively in Hebrew (and frequently in English as well).¹³⁹ Arabic on such signs was primarily confined to the immediate vicinity of Arab majority population centers. In a hearing held in November 1998, the Court emphasized that Arabic is an official language in Israel and that it is the mother tongue of a substantial percentage of Israel’s population.¹⁴⁰ State authorities suggested adding Arabic to national road signs over a period of seven years, yet the Court ordered that this take place over a shorter period. In February 1999, the Court ordered the government to put town names and directions in Arabic on all national road signs within five years.¹⁴¹ As a result of this ruling, thousands of signs with Arabic have been placed along Israel’s major highways.¹⁴²

Encouraged by the success of this case, in 1999 Adalah and the Association for Civil Rights in Israel filed a petition intended to rectify the lack of Arabic in street and road signs, including safety and caution signs, in municipalities where residents are both Arab and Jewish.¹⁴³ Specifically, they sued the municipalities of five cities (Tel Aviv-Jaffa, Acre, al-Led/Lydd, Ramleh, Natzirat Illit)¹⁴⁴ where

¹³⁶ *Id.* art. 7.

¹³⁷ *Knesset rejects bill to ensure full equality between all Israeli citizens*, MIDDLE E. MONITOR (Sep. 18, 2020), <https://www.middleeastmonitor.com/20200918-knesset-rejects-bill-to-ensure-full-equality-between-all-israeli-citizens/> [<https://perma.cc/9H8C-32J8>].

¹³⁸ *See* HCJ 4438/97 Adalah v. The Ministry of Transportation et. al., Takdim Elyon (1998).

¹³⁹ *Id.*

¹⁴⁰ *The Use of Arabic on National Road Signs*, ADALAH: THE LEGAL CEN. FOR ARAB MINORITY RTS. IN ISR. (accessed Mar. 25, 2022) <https://www.adalah.org/en/content/view/6618> [<https://perma.cc/L3B4-FE7Q>].

¹⁴¹ *Id.*

¹⁴² Adalah has continued to advocate for full implementation of this decision including bringing inaccuracies to the attention of the authorities, ensuring that the ruling is fully implemented and promoting the hiring of more Arab employees. *Id.*

¹⁴³ The author was the attorney of The Association for Civil Rights, along with Adv. Hadas Tagari.

¹⁴⁴ Now called “Nof Ha’Galil.”

Arabs constitute a minority of residents.¹⁴⁵ While there was clearly a practical motivation to the filing of this petition (accommodating Arab citizens and Arab drivers), there was also a symbolic element: the petitioners hoped that Arabic municipal signage would enhance feelings of belonging in the cities and publicly acknowledge the indigenous and historical connection of the Arab-Palestinian residents and the Arab-Palestinian community to these areas. Significantly, four of these cities (Acre, Lydda, Ramleh, and Jaffa) have deep historical significance for Palestinians. Prior to the Palestinian *Nakba* and the establishment of Israel, the majority of the population of these cities were Palestinian and they served as Palestinian cultural and economic centers. Palestinians currently residing in these cities are mostly descendants of those who lived in these cities prior to 1948 and became a minority of the residents in the aftermath of the war.

In 2002, the High Court of Justice handed down an important and principled ruling. The Court ordered the targeted local authorities to add Arabic to all signs in their jurisdictions, including safety and caution signs and all signs related to municipal institutions.¹⁴⁶ To date, this ruling represents the central judicial precedent of the Supreme Court regarding the status of Arabic in Israel.¹⁴⁷ This ruling sheds light on the way the justices of the Supreme Court have viewed the status of Arabic and, therefore, will be analyzed here.

The decision was delivered by a majority of two justices—Former Chief Justice Barak and Justice Dorner—with a lengthy dissenting opinion written by Justice Cheshin. Interestingly, all three justices on the panel, including the two in the majority, had different justifications. Justice Barak reasoned that Article 82 of the Palestine Order in Council of 1922 does not establish a direct obligation to add Arabic to all municipal signs. Nonetheless, he concluded that these municipalities are still legally obligated to add Arabic to local signs by balancing the various types of discretion given to local authorities, namely in applying the values of equality and in protecting language rights. Justice Dorner joined Barak’s decision but used different legal reasoning. She stated that the obligation to add Arabic to all municipal signposting is anchored in Article 82 of the Palestine Order in Council, writing that

¹⁴⁵ Some 10–15 percent of Arab citizens of Israel reside in so-called “mixed” Jewish-Arab cities such as Acre, Lydda, Ramle, Haifa and Tel Aviv-Jaffa, cities which consist of sizable populations of Jewish and Arab minority residents. For instance, Tel Aviv developed alongside the ancient port Arab city of Jaffa and today they constitute the same municipal unit. About 5 percent of the population of Tel Aviv is Arab-Palestinian, primarily residing in Jaffa. *Use of Arabic on Signs in Mixed Cities*, ADALAH: THE LEGAL CEN. FOR ARAB MINORITY RTS. IN ISR. (accessed Mar. 25, 2022), <https://www.adalah.org/en/content/view/6617> [<https://perma.cc/D5KC-SPE3>]; see also *Localities and Other Geographical Divisions*, CENT. BUREAU OF STAT. (accessed Mar. 25, 2022), [<https://perma.cc/RKY8-ZNPL>].

¹⁴⁶ The decision referred to the municipalities of Tel Aviv-Jaffa, Lod/Lydda, Ramle and Upper Nazareth. Following the filing of the petition, the Municipality of Acre decided on its own accord to add Arabic to its signs, and therefore its status in the petition was changed to mere formal respondent. A previous petition had led to bilingual signposting in Haifa, according to a settlement reached by the parties and given the status of a court judgment. HCJ 2354/93 Association for Civil Rights in Israel and the Organization for Social Advancement in Haifa v. Municipality of Haifa (not published).

¹⁴⁷ HCJ 4112/99 Adalah and the Ass’n for Civil Rights v. Municipality of Tel Aviv-Jaffa et. al. 56(5) PD 393 (2002), translated version available at <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Adalah%20--%20The%20Legal%20Center%20for%20Arab%20Minority%20Rights%20in%20Israel%20v.%20City%20of%20Tel%20Aviv-Jaffa.pdf> [<https://perma.cc/K6BL-MV4P>] [hereinafter HCJ 4112/99]. For broader discussion on this case and group right litigation on behalf of the Arab community, see Yousef T. Jabareen, *The Politics of Equality: The Limits of Collective Rights Litigation and the Case of the Palestinian-Arab Minority in Israel*, 4 COLUM. J. RACE & L. 23 (2013); Michael Karayanni, *Two Concepts of Group Rights for the Palestinian-Arab Minority Under Israel’s Constitutional Definition as a “Jewish and democratic” State*, 10 INT’L J. OF CONST. L. 304, 311 (2012); Zeev Segal, *Do Israeli Arabs have Collective Rights*, 12 J. L. SOC’Y 94 (2010).

“[t]he status of the Arabic language as an official language cannot be reconciled with the reduction of signposting in certain areas within the jurisdiction of the respondent local authorities.”¹⁴⁸ Justice Dorner went on to state that “such a reduction, in fact, has a damaging connotation.”¹⁴⁹ Justice Dorner emphasized in her ruling that “[i]n general, the principle of equality between Jews and Arabs applies to personal rights. This rule has few exceptions, and among them is the recognition of the Arabic language as a second official language, along with the Hebrew language.”¹⁵⁰

Justice Cheshin disagreed with the view that the municipalities are required to include Arabic signage. In his dissenting opinion, Justice Cheshin argued that the petition must be rejected both on the merits—as “theoretical, general and vague”—and on jurisdictional grounds, as ruling on the petition would constitute rendering “a political determination of the highest level,” which, in his view, was beyond the scope of the Court’s jurisdiction.¹⁵¹ According to Justice Cheshin, the petitioners were asking the Court to take a political stance on the topic and such political stances are responsibility of the political echelon of the State, not the Court.¹⁵²

Despite not actually using the word “indigenous” in the ruling, this decision represented the first time that the Court granted legal standing to the Arab-Palestinian minority in Israel as an indigenous community. Justice Barak’s majority opinion stated that “Arabic is the language of the largest minority in Israel, one that has long lived in Israel. This language is connected to cultural, historical and religious characteristics of the Arab minority group in Israel.”¹⁵³ In writing this, he acknowledged that language plays a significant role in identity maintenance and, as such, positively conceptualized the linguistic rights of Arab citizens. Justice Barak’s note on the lengthy Arab presence in the land contributed to an understanding of Arabic as holding special legal and social status in Israel, as the Arab minority is not only a numerically large minority in Israel but also a minority with a longstanding presence on the land.¹⁵⁴

Despite this important and principled ruling, it had limited impact on the ground. Even worse, one could argue that it may have weakened the legal position of Arabic vis-à-vis Hebrew due to its focus on both Hebrew and Arabic, as well as the hierarchy established by the court at the expense of true parity. Despite Justice Barak’s allusion to Arabs as an indigenous minority, he also stated that:

[t]he desire to ensure dignified coexistence between the descendants of our forefather, Abraham, in mutual tolerance and equality, justifies recognizing the use of the Arabic language in municipal signposting – in the same cities in which there is a significant Arab minority (6–19 percent of the population) – alongside its *senior relative*, Hebrew.¹⁵⁵

Similarly, Justice Dorner stated that: “[w]hile *Hebrew is the first official language of the State of Israel*,

148 *Id.* ¶ 8 (Dorner, J., concurring).

149 *Id.* (Dorner, J., concurring).

150 *Id.* ¶ 6 (Dorner, J., concurring).

151 *Id.* ¶ 38 (Cheshin, J., dissenting).

152 *Id.* ¶ 55 (Cheshin, J., dissenting).

153 *Id.* ¶ 25 (Barak, J.).

154 *See Saban, supra* note 4, at 936-37.

155 HCJ 4112/99, ¶ 25 (Barak, J.) (emphasis added).

as the national language of the majority, the status of Arabic as an official language according to amended Article 82 was designed to uphold the freedom of language, religion and culture for the Arab minority.”¹⁵⁶ Although Article 82—the only legal norm then related to Hebrew and Arabic—does not express any hierarchy, emphasizing the hierarchy between the two languages by giving Hebrew seniority in a Supreme Court ruling could open the door to additional justifications for deviating from full protection of Arabic as an official language. Indeed, 16 years later, this hierarchy was constitutionally enshrined in Article 4 of the Nation-State law discussed above.

IV. LESSONS BASED ON THE ARAB-PALESTINIAN EXPERIENCE: PRINCIPLES FOR LINGUISTIC EQUALITY

The road signs case highlights two central notions: (1) that even when some rights have been recognized and achieved through the courts, they have been weakened by poor implementation on the ground and, (2) that a decision to add Arabic by itself is not sufficient to guarantee equality. In this section, I note three main flaws in the implementation of the rulings in both cases - national road signs and mixed Jewish-Arab cities: the presentation of Arabic on the signs, the nature of the Arabic names and translation on the signs, and the actual names assigned to landmarks. Responding to these challenges, I present three principles necessary to guarantee substantive linguistic equality and full realization of minority linguistic rights: parity, authenticity and reflexivity.

A. Parity

First, the sign itself should be a marker of full equality; in other words, each language should be given equal visual status. Hebrew and Arabic should feature equally prominently in terms of font size, prevalence of the language and other such features. This principle was not implemented as, on too many signs, the Arabic words are smaller than those printed in Hebrew. Furthermore, the Arabic text should be thoughtful and professional and, of course, accurate. However, in implementation of these rulings, much of the Arabic text that was added to road signs was riddled with mistakes.¹⁵⁷ This reflects a basic lack of respect for the language and, accordingly, its speakers.

Equality in the linguistic context mandates that minority languages must appear with the same frequency, prevalence and prominence as majority languages in the public sphere, including on road signs, in official government forms, at public institutions, in publicly-funded spaces such as parks, and more. The printed language should be equitable as well. Font types and sizes and the prominence of a minority language should match that of the majority language. Furthermore, all printed signs, names and markers should be professionally written with no mistakes to reflect respect for the minority language and, accordingly, its speakers.

Consistent with international law’s directive to states to create the necessary conditions for realization of such rights, appropriate government and public resources must be allocated to ensure parity.¹⁵⁸ Thus, laws protecting minority languages must be fully implemented and supported by appropriate and equitable allocation of public resources. This can ensure that true equality is achieved

¹⁵⁶ *Id.* ¶ 7 (Dorner, J., concurring) (emphasis added).

¹⁵⁷ *Use of Arabic on Signs in Mixed Cities*, ADALAH: THE LEGAL CEN. FOR ARAB MINORITY RTS. IN ISR. (accessed Mar. 25, 2022), <https://www.adalah.org/en/content/view/6617> [<https://perma.cc/D5KC-SPE3>].

¹⁵⁸ Comment 23, *supra* note 31, ¶¶ 6.1, 7; G.A. Res. 47/135, *supra* note 34, art. 2.

not only legally but also in terms of government policies and priorities. The equitable allocation principle is based on the notion that the state assumes the role of “trustee” of the population’s public assets. These assets belong to all citizens equally and, in its capacity as trustee, the state has an inherent duty to divide those assets fairly and equally. States’ official languages are a key public cultural asset.¹⁵⁹ Therefore, the state is obliged to establish and provide equitable support for public institutions which cater to and develop official languages. This includes establishing and funding cultural institutions dedicated to preserving and developing cultural identity such as museums, public libraries and heritage centers along with offering appropriate support for cultural figures and authors. Thus, specific and strong constitutional and legal protections must be accompanied by the financial resources to realize these legal ideals in practice.

B. *Authenticity*

The Arab-Palestinian community, as an indigenous community, has its own names and markers for places and geographic locations, yet many of these names are not used by the Israeli authorities. In adding Arabic, authorities often transliterate from Hebrew into Arabic instead of writing the authentic Arab place names on the signs. For example, the geographical area of Wadi-Arra (The Valley of A’ra), the home of a substantial Arab-Palestinian population, is called E’iron in Hebrew and written as such on road signs in Arabic letters.¹⁶⁰ This practice obscures the strong Palestinian connection to the region and, instead, re-packages it as Jewish. As such, it marginalizes and undermines Palestinian historical narratives and collective identity. This undermines the aim of preserving group identity through adding Arabic to road signs.

The public sphere and the linguistic landscape are not just technical elements of daily living, but are also symbolic sites that reflect the ethos of a place, including the identity of the population that uses it and that groups’ history, heritage and narrative.¹⁶¹ Using names allocated by the majority in the language of the minority, while disregarding traditional names ascribed to places by minorities, is disrespectful and contradicts the rationale underlying the need for indigenous minorities to have their linguistic and cultural rights safeguarded. Thus, the principle of authenticity requires that place names, sign markers and geographic locations must reflect the names ascribed to those places by minority groups. In addition to being used in public spaces, these authentic minority names should also be used in educational curricula, official documents, parks, public announcements, and similar such places. This is consistent with the notion that minority groups and, in particular, indigenous minorities have their own names and markers for places.

C. *Reflectivity*

Substantive linguistic parity requires that public spaces fairly reflect the names of heroes, literary figures, public figures, religious figures, and landmarks that bear special significance for minority groups. Their narrative, history and identity should be fully reflected in the public sphere. Thus, the

¹⁵⁹ Yousef T. Jabareen, *Toward Participatory Equality: Protecting Minority Rights Under International Law*, 41 ISR. L. REV. 635, 642 (2008).

¹⁶⁰ See Mohamad Amara, Sofian Kabha & Riad Kabha, *The Struggle to Dissolve the Local Council of Eight Villages in Waddi A’ra* (The Institute for Peace Research, Givat Haviva, 1994) (Hebrew).

¹⁶¹ See MERON BENVENISTI, SACRED LANDSCAPE 144–92 (2000).

third principle related to the extent to which the linguistic landscape reflects all groups therein. In deeply-divided societies where there is competition over narratives, it is common for the dominant group to create a linguistic landscape that reflects its own narrative, heritage, worldview and understanding of history.¹⁶² This is expressed in the selection of street names, geographic markers, public national institutions, statutes, memorials and similar such visual landmarks in the public sphere. As such, majority groups shape the physical space in ways that are consistent with their collective identities and narratives.

In Israel, it is exceedingly rare for the linguistic landscape to reflect Arab-Palestinian identity and narratives.¹⁶³ Yet, the Arab-Palestinian minority has sought to ensure that its cultural heroes, heritage and historical events are reflected in public spaces on both the national and local levels.¹⁶⁴ At the very least, such naming should be proportional to percentage of population. This use of Arabic and reflection of Arabic culture in the public sphere enhances feelings of belonging in ways that placing the Arabic language on signs is unable to achieve.

V. CONCLUSION

Language is central to virtually every minority group's ability to preserve their identity, and is of particular significance to indigenous minorities.¹⁶⁵ Recent bodies of international law underscore that indigenous groups seek protection from discrimination and exclusion on the basis of their membership in the indigenous group and attempt to express, preserve and develop their identity, culture, language, religion and other aspects of their identities.¹⁶⁶ Specifically in the realm of language, these bodies of law point to the importance of national recognition of minority languages in public spheres and education in one's native language. International law also specifies that such groups should be able to use their traditional and historic place names. These international laws reflect the difficulties faced by many minorities, and specifically indigenous groups, when seeking to realize their identity rights globally.

As this article has demonstrated, the Arab-Palestinian indigenous minority in Israel faces similar such challenges in safeguarding their identity rights—specifically, the right to use and develop Arabic on the national level. While legally Article 82 of the Palestine Order in Council establishes Arabic and Hebrew as having equal status, subsequent bodies of Israeli legislation—and most recently the Nation-State law—have greatly eroded the legal status of Arabic vis-à-vis Hebrew. Furthermore, Hebrew is dominant on every level: in daily life, in Israeli legislation, in the courts and in public institutions. Despite concerted legal and advocacy efforts by the Arab-Palestinian community and the acute importance they attach to this key aspect of their identity, their linguistic rights continue to be seriously eroded and regularly violated. On the practical level, Arab-Palestinians face challenges accessing public

¹⁶² See MUHAMAD AMARA, *ARABIC IN ISRAEL: LANGUAGE, IDENTITY AND CONFLICT* (2018).

¹⁶³ AMARA, *ARABIC IN ISRAEL: LANGUAGE, IDENTITY AND CONFLICT*, *supra* note 162, ch. 9–11.

¹⁶⁴ See e.g., Noam Shoval, *Street-naming, Tourism Development, and Cultural Conflict: The Case of the Old City of Akko/Akko/Akka*, 38 *TRANSACTIONS OF THE INSTITUTE OF BRITISH GEOGRAPHERS* (2013) 612, 612.

¹⁶⁵ Thornberry, *supra* note 25, at 197.

¹⁶⁶ See ICCPR, *supra* note 24, art. 27; G.A. Res. 47/135, *supra* note 8, art. 1.1 and 11-12; The European Framework Convention, *supra* note 21, art. 5.1; ILO No. 169, art. 2(2)(b); G.A. Res. 45/158, annex, art. 31, International Convention on the Protection of the Rights of All Migrant Workers and Their Families (Dec. 18, 1990). For an overview of rights concerning a group's cultural practices, see WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* 28–34 (1995).

institutions, competing fairly in the job market and integrating into the larger national economic and social fabric. Yet no less importantly, on the symbolic level, this situation reduces feelings of belonging and denies this indigenous group the right to fully express its identity in its homeland. The current inferior legal and normative status of Arabic not only infringes on the rights of its speakers but also reflects Arab-Palestinians' overall status in Israel.

The failure of legal remedies to guarantee substantive linguistic equality points to three additional principles which are necessary for ensuring that minority linguistic rights are achieved—parity, authenticity and reflexivity. Parity requires equality in terms of physical appearance and frequency of use. Authenticity requires adopting and using the historic and traditional place names of indigenous groups in all facets of life: the linguistic landscape, educational materials, parks and geographic markers, and more. Finally, reflexivity requires including indigenous historical and public figures, history, and narratives in the public sphere.

The case of Arab-Palestinians in Israel bears important lessons for other indigenous groups seeking to protect their linguistic rights. By emphasizing that the law and legal rights continue to be crucial on both practical and symbolic levels, it demonstrates that adding the language of minority groups to locations in the public sphere by itself is not enough. Legal parity and strong, comprehensive and specific legislation is a first, and basic, prerequisite for safeguarding linguistic rights. While this strategy may formally fulfill the requirement for equality, it is insufficient for achieving the substantive quality that indigenous minorities require and deserve. These legal standards need to be accompanied by robust implementation mechanisms that actually work, so that national cultural resources—which belong to the entire public—benefit all citizens equally.